

Dated

6th October

2015

Broadland District Council

-and-

Saint-Gobain Building Distribution Limited

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land at Tile House, Eversley Road, Norwich

THIS DEED is dated

6th October

2015

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, NR7 0DU (referred to as "the Council")
- (2) SAINT-GOBAIN DISTRIBUTION LIMITED (Co. Regn. No. 01647362) of Aldwych House, 81 Aldwych, London, WC2B 4HQ (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 registered at the Land Registry under title number NK338850
- (C) Lateral Property Group (CRN: 07067427) and the Owner have jointly 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
Dwelling	A dwelling to be built on the Site as part of the Development

Nominated Officer	The Council's Chief Executive or other officer of the Council notified to the Owner
"Inflation Provision"	The increase (if any) in the Royal Institution of Chartered Surveyors (RICS) (Building Cost Information Service) All Construction TPI: All New Construction between the date of this agreement and the date upon which the payment of the open space commuted sum as referred to in the Fourth Schedule is made pursuant to this agreement
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
Permission	The outline planning permission to be granted by the Council for the demolition of existing structures and erection of up to 72 Dwellings, Open space and associated infrastructure and allocated reference number 20141134 or another planning permission for the Development granted pursuant to section 73 or 96A of the Act as the Council agrees (in its absolute discretion) in writing
Phase	A phase of the Development as shown on any Phasing Plan submitted to and approved by the Council (or such other plan or plans as the Council may agree) or, where no Phasing Plan is agreed, means the Development as a whole and 'Phases' and 'relevant Phase' will be construed accordingly
Phasing Plan	Means a plan submitted to the Council showing the proposed phases of the Development, if any
Plan	The plan attached to this Deed at the First Schedule

Site	The land known as C T D, Tile House, Eversley Road, Hellesdon, NR6 6TA and registered at H M Land Registry under title number NK338850 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 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions
- 2.6 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
- 4.4 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed to a maximum of £1000.
- 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

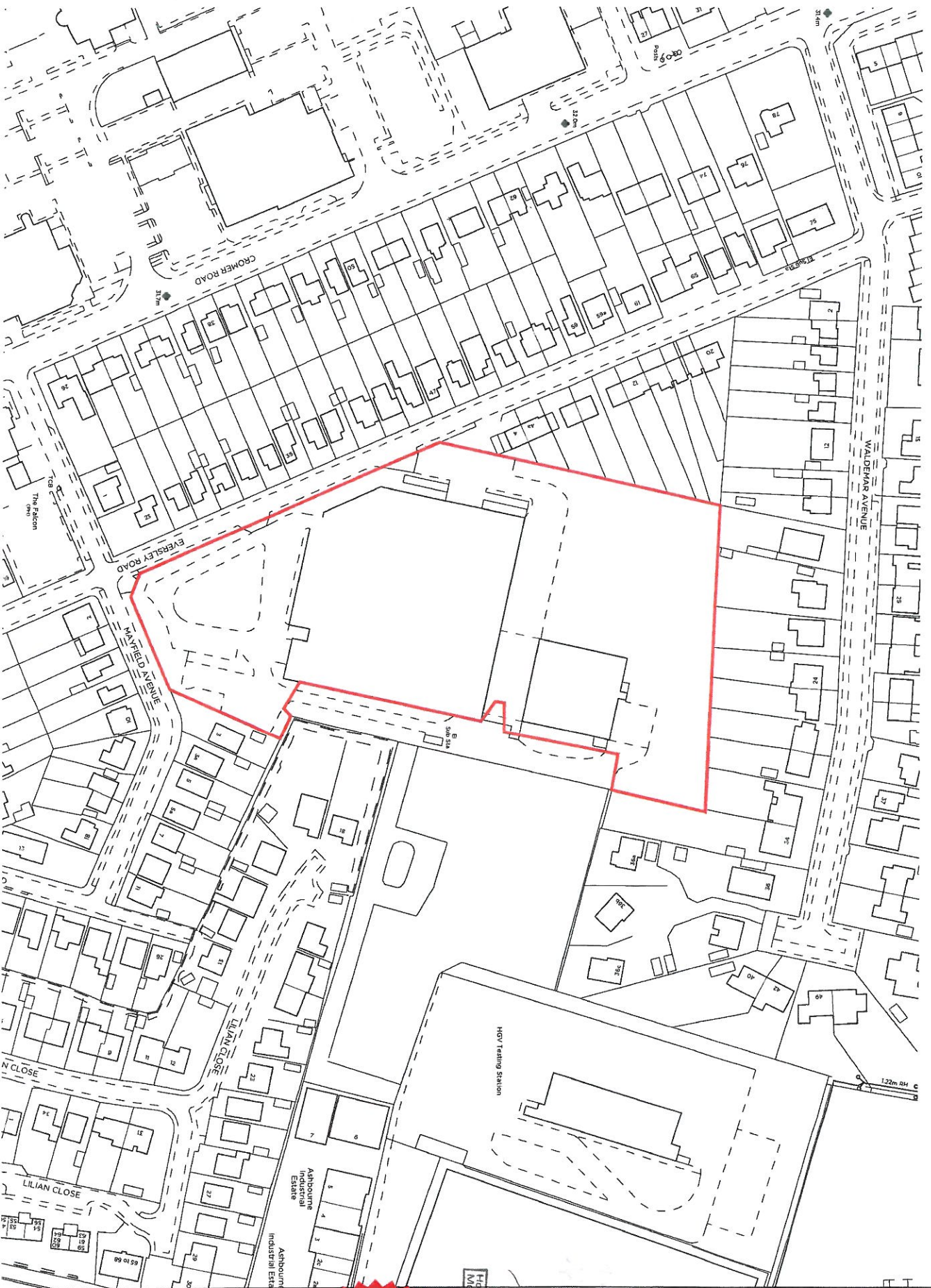
- 6.1 If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 3% above the base lending rate of the Bank of England from time to time
- 6.2 All payments under this Deed are exclusive of value added tax (VAT) and any VAT 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

First Schedule
The Plan

Eversley Road, Norwich.



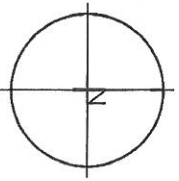
The Council of the City of Norwich, 1998, Planning & Design Unit, and the use of the map is not intended to be used as a basis for any other purpose.

On the map, the area is shown as a red-outlined area, which is not intended to be used as a basis for any other purpose.

For the purpose of the map, the area is shown as a red-outlined area, which is not intended to be used as a basis for any other purpose.

There are no other features shown on the map, which are not intended to be used as a basis for any other purpose.

The map is not intended to be used as a basis for any other purpose.



Head of Democratic Services and
Monitoring Officer

M. NICE

lateral
PROPERTY GROUP

LOCATION PLAN

Proposed Residential Development
at Eversley Road, Norwich

11500 QAS 1 Jan 2004 FOR PLANNING



7533

**Second Schedule
Affordable Housing**

PART 1

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

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		The Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market
Affordable Housing Mix		60 per cent Rented Housing and 40 per cent Intermediate Housing (or such other percentages as the parties mutually agree and confirm to each other in writing)
Affordable Provision	Housing	The provision of Affordable Dwellings on the Site equating to at least 15 per cent of the total number of Dwellings (or such other percentage as the parties mutually agree and confirm to each other in writing) in accordance with the Affordable Housing Mix
Affordable Scheme	Housing	A scheme for the construction of the Affordable Dwellings in line with Affordable Housing Provision and specifying: - The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings - the types of Intermediate Housing - 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
Affordable Rented Dwellings	Dwellings to be let by a Provider subject to rent 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
Approved Affordable Housing Scheme	The Affordable Housing Scheme submitted by the Owner and approved by the Council
Design & Quality Standards	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 determine
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 allocation policy or as otherwise approved by the Council
Intermediate 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 or prices including any service charges and shall not exceed the local housing allowance for that area) 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
Intermediate Housing	Means one or more of Intermediate Dwellings Shared Equity Dwellings and Shared Ownership Dwellings agreed with the Council
Open Market Dwelling	Any Dwelling that 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

Public Subsidy

funding provided by the Council or the Homes and Communities Agency or any successor body for the provision of the Affordable Housing

Practically Complete

Means the point at which a certificate of practical completion is issued by or on behalf of the Owner confirming that a Dwelling has been completed to Design & Quality Standards and is ready for occupation

Rented Housing

Means Affordable 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 of the remaining share 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

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
- rent at an annual level not exceeding 2.75% of the value of the equity retained by the Provider [as approved by the Council]

The Owner hereby covenants with the Council as follows:

- 1.1 Not to Commence any Phase of the Development until the Affordable Housing Scheme has been submitted to and has been approved by the Council in writing in relation to that Phase
- 1.2 Not to Occupy any Open Market Dwellings within a Phase unless and until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council in relation to that Phase to a Provider has been supplied to the Council (This requirement does not apply to any Affordable Dwellings that are not to be transferred to a Provider in accordance with the Approved Affordable Housing Scheme for that Phase)
- 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 more than 75% of the Open Market Dwellings within a Phase unless and until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme for that Phase are Practically Complete and have been transferred to the approved Provider in accordance with and subject to the following:
 - 1.4.1 any transfer shall be for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed or to enable (where appropriate) Affordable Rented Dwellings to be let or Intermediate Dwellings to be let or sold at a cost low enough for Eligible Households to afford.
 - 1.4.2 the transfer shall contain terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
 - 1.4.3 any transfer shall contain provisions that will ensure that all the Affordable Rented Dwellings are let in accordance with the local lettings policy set out in the Third Schedule

1.5 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:

1.5.1 by a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquiring the said Affordable Housing Unit pursuant to the Housing Act 1996 or the Housing and Regeneration Act 2008 or any other statutory provision for the time being in force in respect of a particular Affordable Dwelling;

1.5.2 by a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold interest of the Shared Ownership Dwelling or has acquired 100% of a Shared Equity Dwelling

1.5.3 by a mortgagee exercising its power of sale in respect of the Affordable Dwellings or any part thereof 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) 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
- d) given the Council the option to purchase the relevant Affordable Dwellings or nominate another Provider to purchase the relevant Affordable Dwellings for a period commencing on the date that the Affordable Housing Mortgagee gives the Council notice ("the Mortgagee Notice") and ending on the later of two calendar months after the date of the mortgagee notice or the end of the moratorium period (as defined and arising under either Section 145 or 147 of the Housing and Regeneration Act 2008) and the Council (or its nominated Provider shall be entitled to complete the purchase of the Affordable Dwellings at any time up to one calendar month after expiry of the moratorium period.
- c) or, in the event of any statutory amendment resulting in the removal or lapse of the relevant provisions contained in the Housing and Regeneration Act 2008 and without alternative statutory provision to instead comply with the reasonable directions of the Council in relation to the disposal by giving not less than two months prior notice to the Council of any intention to

dispose of any of the Affordable Dwellings and if the Council responds by written notice within two months from receipt of the affordable housing mortgagees notice setting out arrangements for the transfer of the Affordable Dwellings so as to maintain them as Affordable Housing then the affordable housing mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer but if the Council does not serve its response notice within the said two months or if having used its best endeavours the affordable housing mortgagee shall not have effected the transfer envisaged in the Council's response notice within two months of that notice then the affordable housing mortgagee shall be entitled to dispose of the Affordable Dwellings free of the restrictions set out in this Deed

PART 2

Affordable Housing Contribution

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

"Affordable Housing Contribution"	Means the sum equivalent to 50 per cent of the amount by which the Profit Margin exceeds 18.37 per cent of the Gross Sales Receipts from the sale of the Dwellings and not exceeding a total sum equivalent to 18% of the overall Dwellings delivered on Site multiplied by £75,000 per Dwelling Index Linked. (On the basis of the current Permission and using the above formulae, the total sum cap would equate to £972,000. This is calculated as follows: 72 (the total number of dwellings) x 18%) x £75,000.
"Development Costs"	Means the costs reasonably and properly incurred by the Owner to deliver the Development of the Site, including (but not limited to) costs associated with: the acquisition of the Site, securing of any necessary consents, construction and funding of the Development and disposal of the Dwellings excluding any taxes as approved by the Valuer

"Gross Sales Receipts"	Means the total consideration in money or moneys worth received by the Owner for the sale of every Dwelling PROVIDED THAT where the final Dwelling has not yet been sold the anticipated sale price for that Dwelling shall be included as approved by the Valuer
"Index Linked"	means an increase equivalent to the increase (if any) in the Consumer Prices Index (CPI) from 2015
"Open Book Analysis"	Means full accounts of the Gross Sales Receipts and the Development Costs with supporting documentation prepared and certificated by the Owners auditor and approved and verified as accurate and reasonable by the Valuer identifying the Profit Margin. Where any amounts of income value or costs are not realised by the date of the Open Book Analysis, reasonable estimates thereof shall be provided and approved by the Valuer and any items not attributable wholly to the Gross Sales Receipts or Development Costs of the Dwellings shall be reasonably apportioned
"Profit Margin"	Means the Gross Sales Receipts less the Development Costs as determined in accordance with the Open Book Analysis
"Valuer"	Means a valuer employed by the valuation office agency or an expert recommended by the Homes and Communities Agency or such other suitable and independent body approved by the Council

2. The Owner hereby covenants with the Council as follows:

2.1 Not to Occupy or allow Occupation of the final Dwelling unless and until:

2.1.1 the Owner has submitted the Open Book Analysis to the Valuer for approval

2.1.2 the Affordable Housing Contribution as approved by the Valuer has been paid to the Council or the Open Book Analysis as approved by the Valuer shows that the Affordable Housing Contribution is nil.

2.2 In the event that the Owner fails to complete all Dwellings approved as part of the Development and the Council has reason to believe that the Owner has no intention of completing the Development within a reasonable time, being no earlier than three years from the date of the Planning Permission then:

2.2.1 the Council may require and the Owner shall submit upon request an Open Book Analysis in relation to those Dwellings which have been Occupied or are constructed and ready for Occupation

2.2.2 Upon final approval by the Valuer of the Open Book Analysis carried out under paragraph 2.1 above to pay any Affordable Housing Contribution due within 28 days of approval

2.2.3 from the date of receipt of a request from the Council under 2.2.1 above the Owner shall not Occupy or allow Occupation of any Dwellings which remain vacant until such time as the Open Book Analysis has been approved by the Valuer and any contribution due under 2.2.2 have been paid.

AND FOR THE AVOIDANCE OF DOUBT in the event that an Open Book Analysis is provided in accordance with this Clause this shall not discharge the requirements of Paragraph 2.1 which shall continue to apply

3.1 The Owner shall provide to the Valuer such further information and evidence as he deems reasonably necessary to verify the accuracy or appropriateness of any information contained within any Open Book Analysis within 14 days of demand

3.2 The Owner shall pay the Valuer's reasonable and proper costs to a maximum of £1500.00 in connection with the Open Book Analysis within 30 days of demand either to the Council or to the Valuer direct as directed by the Council

3.3 The Council will require that the Valuer shall use his best endeavours to complete any Open Book Analysis undertaken in accordance with paragraph 2.1 and 2.2 within 28 days of submission by the Owner.

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 Hellesdon;
- (ii) if there is no suitable person in paragraph (i) allocations will be made to people who work in the Parish of Hellesdon
- (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 Hellesdon to give/receive support to/from close family
- (iv) 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 Broadland District in accordance with the Council's policies relating to housing allocation or where no such persons are available to an Eligible Household as approved by the Council

Administrative Procedure for Nominations

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

Fourth Schedule Open Space

In this Schedule the following expressions have the following meanings:

Open Space Commuted Sum	The sum of one hundred thirty four thousand and twenty eight pounds (£134,028) as increased by the Inflation Provision
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1. The Owner covenants with the Council as follows:

- 1.1 Not to Occupy or allow Occupation of any of the Dwellings on the Site until the Open Space Commuted Sum has been paid to the Council

Fifth Schedule
Council's Covenants

The Council covenants with the Owner as follows:

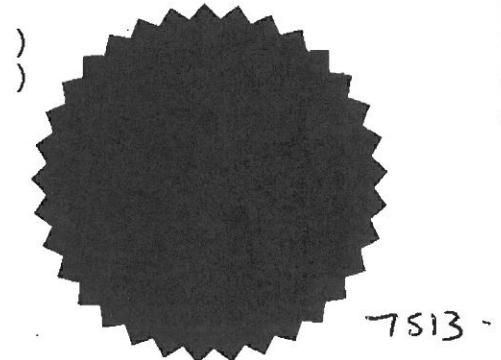
- 1.1 The Council hereby covenants with the Owner that it will deposit the Open Space Commuted Sum into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the provision and maintenance of Open Space in the Parish of Hellesdon.

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. Muev
Head of Democratic Services and
Monitoring Officer



Executed as a DEED by
SAINT-GOBAIN BUILDING DISTRIBUTION LIMITED
was in the presence of:

ED Director: *X*

AG Director / Secretary: *L*

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