

Dated

19 September

2016

BROADLAND DISTRICT COUNCIL

-and-

MR & MRS G H POINTER

-and-

LLOYDS BANK PLC

**DEED OF PLANNING OBLIGATION  
UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990**

relating to the Former Piggeries, Manor Farm,  
Yarmouth Road, Blofield, Norfolk

Victoria McNeill  
Practice Director  
Nplaw  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH

SR/BDC - 49703

THIS DEED is dated

19 September

2016

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU (referred to as "the Council"); and
- (2) **GERALD HOWARD POINTER** and **JULIE ANNE POINTER** of Fields View, 20 Yarmouth Road, Blofield, Norfolk NR13 4JS (referred to as "the Owners")
- (3) **LLOYDS BANK PLC** of 25 Gresham Street, London, EC2V 7HN with company number 00002065 (referred to as the Mortgagee)

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 Owners have applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) The Owners own the freehold of the Site pursuant to a transfer dated 5 April 2016 and have made an application to the Land Registry to become the registered proprietors of the Site
- (D) The Mortgagee has a charge over the Site

**1. DEFINITIONS**

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 senior officer of the Council responsible for development management or other officer of the Council notified to the Owners
Inflation Provision	the increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in tender price Index between January 2015 and the date upon which a payment of the Off Site Open Space Contribution/Maintenance Sum and/or Green Infrastructure Contribution is made pursuant to this Deed
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 planning permission (full) to be granted by the Council for the erection of 13 dwellings plus associated works and allocated reference number 20150262 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development

Plan

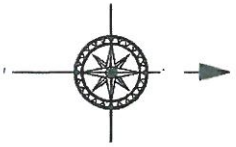
the plan attached to this Deed

Site

the Former Piggeries, Manor Farm, Yarmouth Road, Blofield, Norfolk as shown edged red on the Plan

Trigger

the date of Commencement 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



**BROADLAND  
DISTRICT COUNCIL**  
20 Feb 2015  
20150262  
**PLANNING CONTROL**

Site Location Plan 1:1250

*Consent*

*Mme*

7633

Head of Democratic Services and  
Monitoring Officer



## **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 knowingly 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 Conditional on and subject to the grant and issue of the Permission:
  - 3.1.1 The Owners jointly and severally covenant with the Council for themselves and their successors in title to observe and perform the obligations and stipulations on the part of the Owners contained in the First, Second and Third Schedules in this Deed
  - 3.1.2 The Council covenants with the Owners to comply with the obligations on the part of the Council contained in the First, Second and Third Schedules to 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 Owners confirm that they are the owners of the Site with full power to enter into this Deed and other than the Mortgagee there is no person or body with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site
- 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 Owners 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 upon provision of a VAT invoice

## **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 Owners 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 Owners dispose of their interest in all or part of the Site they 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



## 8. MORTGAGEE'S CONSENT

The Mortgagee consents to this Deed so that its interest in the Site is bound by the obligations contained in this Deed and agrees that its security over the Site takes effect subject to the provisions of this Deed PROVIDED THAT the Mortgagee is not required to observe or perform the obligations in this Deed unless it takes possession of the Site. (For the avoidance of doubt any person acquiring title to all or part of the Site as a result of the Mortgagee enforcing its security will be bound by the terms of this Deed.)

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

### FIRST SCHEDULE

#### Affordable Housing

In this Schedule the following expressions have the following meanings:

"Affordable Dwellings"	the 4 Dwellings known as plots 10 - 13 to be constructed to Design & Quality Standards on the Site as Affordable Housing and "Affordable Dwelling" shall be construed accordingly
"Affordable Housing"	the Affordable Dwellings to be provided to Eligible Households whose needs are not met by the market
Affordable Housing Mix"	50% Affordable Rented Dwellings and 50% for Shared Equity or Shared Ownership (or as otherwise agreed by the Council in it's absolute discretion)
"Affordable Housing	the construction and provision of Affordable Dwellings

Provision"		on the Site equating to 30% 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 securing the provision of the Affordable Dwellings on the Site and which will comprise of a terrace consisting of</p> <ul style="list-style-type: none"> <li>a) 2 x 1 bedroom (2 person) flats (plots 10 and 11) as Affordable Rented Dwellings; and</li> <li>b) 2 x 2 bedroom (4 person) houses (plots 12 and 13) for Shared Equity or Shared Ownership</li> </ul> <p>and specifying:</p> <ul style="list-style-type: none"> <li>- the identity of the Registered Provider; and</li> <li>- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings AND, where the Parties agree in writing, any amendment or alteration to the Approved Affordable Housing Scheme</li> </ul>
"Affordable Dwellings"	Rented	Dwellings to be let by a Registered Provider with an appropriate agreement with the HCA 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 or as otherwise agreed with the Council in writing to Eligible Households in accordance with the Second Schedule

"Approved Affordable Housing Scheme"	the Affordable Housing Scheme as approved by the Council in writing and including any amendment, revision or substitution to the Affordable Dwellings and the Affordable Housing Scheme that may be approved by the Council in writing
"Design & Quality Standards"	the appropriate standards as specified by the Homes and Communities Agency or its successor or such other construction standards as the Council may specify
"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 housing allocation policy or as otherwise approved by the Council
"HCA"	the Homes & Communities Agency or it's successor body or other appropriate body as the Council may nominate
"Open Market Dwelling"	a Dwelling that is not an Affordable Dwelling
"Practically Complete"	the point at which an Affordable Dwelling has been completed to Design & Quality Standards and is capable of occupation and a certificate of practical completion has been issued
"Recycling Obligation"	an obligation to use any monies (other than rent and service charge) paid in relation to the acquisition of any share or interest in an Affordable Dwelling by an Eligible Household towards alternative Affordable



	Housing provision
"Registered Provider"	as defined in the Housing and Regeneration Act 2008
"Shared Equity"	<p>Affordable Dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition of the initial share and upon a payment equating to the additional equity being purchased payable to the Council or the Provider as the case may be (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 of the additional equity such scheme to be secured by a mechanism and in a form agreed with and approved by the Council (or such other body as the Council may elect) and "Shared Equity Dwelling" shall be construed accordingly</p>
"Shared Ownership"	Affordable Dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	<p>a lease in a form approved by the HCA or where there is no such form in a form approved by the Council such lease to provide for the following:</p> <ul style="list-style-type: none"> <li>- not more than 75% 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</li> <li>- power to the purchaser to increase their ownership up to 100% if they so wish</li> </ul>

	- 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) plus 0.5% or such other rent as complies with the requirements from time to time of the HCA

The Owners hereby covenant with the Council as follows:

- 1.1 Not to Commence the Development until the Approved Affordable Housing Scheme is in place
- 1.2 Not to construct the Affordable Dwellings otherwise than in accordance with the details of the Approved Affordable Housing Scheme and the Design and Quality Standards
- 1.3 Not to Occupy any Open Market Dwellings until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and are owned by a Registered Provider in accordance with and subject to the following terms:
  - a) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;
  - b) with the benefit of all necessary easements, rights and utilities; and
  - c) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme including where specifically



requested by the Council the registration of a restriction to secure compliance with the Recycling Obligation

- 1.4 Not to use the Affordable Dwellings for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED that the provisions of this paragraph shall not bind any of the following:

1.4.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire

1.4.2 an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Equity Dwelling

1.4.3 a mortgagee or chargee or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it is has first complied with the following: it is has first complied with the following:

- a) such mortgagee or chargee or receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings or another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security

documentation including all accrued principal monies, interest, costs and expenses; and

- b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwellings

- 1.5 Not to Occupy the Affordable Rented Dwellings other than in accordance with the provisions of the Second Schedule.

## **SECOND SCHEDULE**

### **Affordable Housing Allocation**

#### **Local Lettings Cascade - Blofield**

- 1 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:
  - 1.1 first allocations shall be made to people living in the parish of Blofield
  - 1.2 if there is no suitable person in paragraph 1.1 allocations will be made to people who work in the parish of Blofield; and
  - 1.3 if there are no suitable persons in paragraphs 1.1 and 1.2 allocations will be made to people who need to move to the parish of Blofield to give/receive support to/from close family.
  - 1.4 If there are no suitable persons in paragraph 1.1 and/or 1.2 and/or 1.3 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

2 Administrative Procedure for Nominations

2.1 To grant to the Council nomination rights to 100% of the Affordable Rented Dwellings unless otherwise agreed in writing.

2.2 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 Owners shall agree between them.

### **THIRD SCHEDULE**

#### **Open Space and Green Infrastructure**

In this Schedule the following expressions have the following meanings:

"Green Infrastructure Contribution"	the sum of £29,061.00 (as increased by the Inflation Provision) to be used towards green infrastructure to be provided in accordance with the Council's planning policies at the date of this Deed.
"Off-site Formal Recreational Open Space Contribution"	the sum of £23,855.88 (as increased by the Inflation Provision) which is in lieu of and equivalent to the deficiency in the amount of recreational space being provided on site in accordance with the Council's planning policies at the date of this Deed.

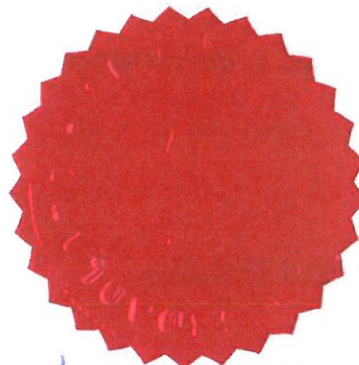
1. The Owners covenant with the Council not to occupy any Dwelling unless and until both the Green Infrastructure Contribution and the Off-site Formal Recreational Open Space Contribution have been paid to the Council

#### 1. The Council's Covenants

2. The Council covenants with the Owners as follows:

- 2.1 To use any sums paid to it under this Deed for the purpose for which they were paid.
- 2.2 Any balance of the sums paid to the Council under this Deed that are outstanding and not committed for payment after completion of the Development (within 5 years in respect of the Off-Site Formal Recreational Open Space Contribution and within 10 years in respect of Green Infrastructure Contribution) must be repaid to the person who paid them.

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



*M. Muel*  
Head of Democratic Services and  
Monitoring Officer

7633

Authorised Signatory:



**EXECUTED** as a Deed by  
**GERALD HOWARD POINTER**

in the presence of:

*PAUL DAVIES*  
*[Signature]*  
C/O NORFOLK PREMIER GOLF  
BURYFIELD NR13 4JS

) *[Signature]*  
)  
)

**EXECUTED** as a Deed by  
**JULIE ANNE POINTER**

in the presence of:

*PAUL DAVIES*  
*[Signature]*  
C/O NORFOLK PREMIER GOLF  
BURYFIELD NR13 4JS

) *Julie Anne Pointer*  
)  
)

**THE COMMON SEAL** of  
**LLOYDS BANK PLC**

was affixed in the presence of:

Authorised Signatory:

)  
)  
)

SIGNED AS A DEED	
BY THOMAS OLIVER BELFORT as authorised signatory for Lloyds Bank plc in the presence of (signature of witness)	Per Pro Lloyds Bank plc
<i>[Signature]</i>	<i>[Signature]</i>
Wobaston Rd, Wolverhampton WV9 5HZ	