

Dated 3 APRIL

2017

Broadland District Council

-and-

Faberdean Limited

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land at 75 The Green, Freethorpe

3rd APRIL

2

removal of contamination
erection of temporary fences
occupation and use of the existing commercial office
building and associated parking
(each being an 'excepted operation')
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 Owner

Occupation Occupation of the Site, or any part of it, for any
purpose authorised by the Permission, but excluding
occupation for the purposes of:
The excepted operations hereinbefore referred to
construction
internal and external refurbishment
decoration
fitting-out
marketing
and 'Occupy' and 'Occupied' will be construed
accordingly

Permission The planning permission to be granted by the Council
for a residential development and allocated reference
number 20160632 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 land known as 75 The Green, Freethorpe and registered at H M Land Registry under title numbers NK90410 and NK89543 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 Section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000 (or any statutory modification or re-enactment thereof) 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 It is agreed by the Parties that any obligation contained within this Deed which sets out how a planning obligation will be performed will not amount to more than one planning obligation per Schedule for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010, as amended
- 2.3 Covenants given by more than one party can be enforced against them individually or jointly

2.4 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

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

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 himself and his 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 their respective requirements 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 or in part of the Site to which the breach relates (unless the breach occurred before he disposed of his interest)

4.2 The Owner confirms that he 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 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 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

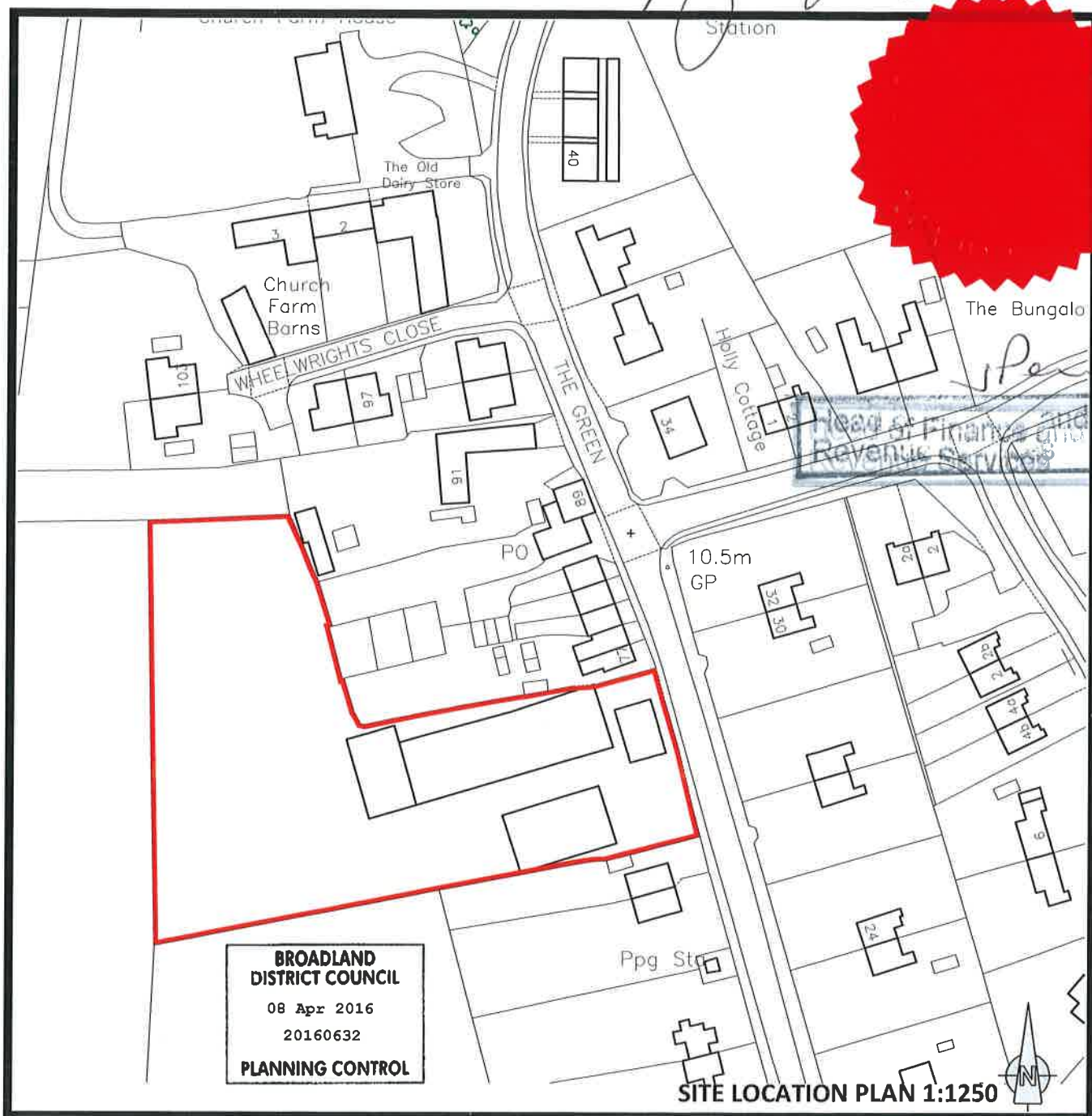
- 7.2 The Owner will notify the Nominated Officer in writing of the relevant
 - 7.2.1 anticipated Triggers fourteen days in advance of each anticipated date
 - 7.2.2 actual Triggers within fourteen days of each actual date
- 7.3 If the Owner disposes of his interest in all or part of the Site he will notify the Nominated Officer within 14 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site

8 AGREEMENTS AND DECLARATIONS

- 8.1 This deed shall cease to have effect if the Permission is quashed revoked or otherwise withdrawn before the Commencement Date
- 8.2 The covenants and obligations on the part of the Owner shall only come into effect on the grant of Permission and on the Commencement Date save for the payment of legal costs which shall come into effect immediately
- 8.3 Where any approval or consent or agreement is required from any party to this Deed such approval or consent or agreement shall not be unreasonably withheld or delayed
- 8.4 References to any party in this Deed shall include the successors in title to that party and to any persons deriving title through or under that party and in the case of the Council any successor in title to its respective statutory functions
- 8.5 Following the performance and satisfaction of all the Owner's obligations in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

SCHEDULE 1

The Plan



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client:

One Planning

location:

Freethorpe, Norwich

title:

Proposed housing development

scale @ A4:
1:1250

date:
AUG 2016

project no:
7566

drawn by:
KM

approved:
SC

dwg no:
100

revision:

rev:	date:	description:	by:

SCHEDULE 2

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 meanings:

"Affordable Dwellings"	the Dwellings to be constructed to Design & Quality Standards on the Site as Affordable Housing 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"	67% Rented Housing and 33% Intermediate Housing (or as otherwise agreed by the Council in it's absolute discretion)
"Affordable Housing Provision"	the construction and provision of Affordable Dwellings on the Site equating to 33% of the total number of Dwellings in accordance with the Affordable Housing Mix
"Affordable Housing Scheme"	A scheme securing the Affordable Housing Provision and specifying: - The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings; - The identity of the Provider; - The number, location, type and size of Affordable Dwellings to be constructed on the Site; - 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) including the types of Intermediate Housing and Rented Housing; - such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

"Affordable Rented Dwellings"	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 and subject to nominations by the Council in accordance with Part 2 of this Schedule
"Approved Affordable Housing Scheme"	the Affordable Housing Scheme approved by the Council in accordance with paragraph 1.1 of this Schedule including any amendment, revision or substitution approved by the Council in writing
"Design & Quality Standards"	means the Level One Space Standards as specified by the Homes and Communities Agency or its successor or such other construction standards as may be agreed
"Eligible Household"	A person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Part 2 of this Schedule 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
"Intermediate Dwellings"	Dwellings for sale at prices below local market price that Eligible Households can afford as determined by the Council acting reasonably including low cost homes (but not including low cost market housing), shared ownership, shared equity and equity loan products as approved by the Council
"Intermediate Housing"	one or more of Intermediate Dwellings Shared Equity Dwellings Shared Ownership Dwellings and "Intermediate Rented Dwellings" as agreed by the Council
"Intermediate Rented Dwellings"	Dwellings at rents above those of Social Rented Dwellings but below local market rents that Eligible Households can afford (which shall be no more than 80% of local market rents including any service charges and shall not exceed the local housing allowance for that area) as determined by the Council
"Open Market Dwelling"	Any Dwelling constructed as part of the Development

which is not an Affordable Dwelling

"Practically Complete"	Means completion of the construction of the Affordable Dwellings in accordance with this Deed subject only to the existence of minor defects and / or omissions at the time of inspection which are capable of being made good without materially interfering with the beneficial use and enjoyment of the Affordable Dwellings and which it would be reasonable to include in a schedule of minor snagging items and "Practically Completed" shall be construed accordingly
"Provider"	either: (i) a Registered Provider; 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, the HCA or any other public body or successor body towards the provision of Affordable Housing
"Registered Provider"	Is as defined in the Housing and Regeneration Act 2008
"Rented Housing"	one or more of Affordable Rented Dwellings and Social Rented Dwellings as agreed by the Council
"Shared Equity Dwellings"	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)
"Shared Ownership Dwellings"	Dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	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:

- 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
- power to the purchaser to increase their ownership up to 100% if they so wish
- 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

"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 HCA 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 until the Affordable Housing Scheme has been submitted to and approved by the Council in writing
- 1.2 Not to Occupy the first Open Market Dwelling until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council SAVE THAT where the Council agrees that the Affordable Dwellings are not to be transferred this obligation shall not apply
- 1.3 Not to construct the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales and details set out therein.
- 1.4 Not to Occupy more than 50% of the Open Market Dwellings 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 (or where no transfer is required their ongoing provision has been secured) 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
- 1.5 Not to use the Affordable Dwellings for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:
- 1.5.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;
 - 1.5.2 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
 - 1.5.3 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:
 - 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 to 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

Part 2

Local Letting Policy: Local Connection Eligibility Criteria

1. Unless otherwise agreed in writing 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:
 - a. first allocations shall be made to people living in the Parish of Freethorpe.
 - b. If there is no suitable person in paragraph 1.1 allocations will be made to people who work in the Parish of Freethorpe; and
 - c. 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 Freethorpe to give/receive support to/from close family.
 - d. 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.

Administrative Procedure for Nominations

2. To grant to the Council nomination rights to 100% of the Affordable Rental Dwellings unless otherwise agreed in writing.
3. 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."

SCHEDULE 3

Open Space

Part 1 Owner Obligations

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

"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 payment is made pursuant to this Deed
"Off-Site Open Space Contribution"	A sum in lieu of the deficiency in the amount or type of open space being provided as part of the Development compared to that required in accordance with the Councils current open space policies at the date of this Deed such sum to be calculated in accordance with Part 2 of this Schedule such sums to be used for the improvements and enhancements to facilities on Freethorpe Recreation Ground and The Green Infrastructure payment to be spent on a project identified in the East Broadland Green Infrastructure Project Plan.

The Owner hereby covenants with the Council as follows:

1. OPEN SPACE

- 1.1 Not to Occupy any Dwelling until the Off-Site Open Space Contribution has been paid to the Council.

Part 2

Cost per Dwelling for Provision and Maintenance of Open Space

Purchase of Off Site Open Space

Land purchase				
Property	Sports	Play	Green Infrastructure	Total
1 bed	£252	£51	£600	£903

2 bed	£336	£68	£800	£1,204
3 bed	£420	£85	£1,000	£1,505
4 bed	£504	£102	£1,200	£1,806
5 + bed	£588	£119	£1,400	£2,107

Equipping of Off Site Open Space

Equipping				
Property	Sports	Play	Green Infrastructure	Total
1 bed	£288	£89	£429	£806
2 bed	£385	£119	£572	£1,076
3 bed	£481	£148	£715	£1,344
4 bed	£577	£178	£858	£1,613
5+ bed	£674	£207	£1,001	£1,882

Maintenance of Off-Site Open Space

Maintenance				
Property	Sports	Play	Green infrastructure	Total
1 bed	£303	£30	£253	£586
2 bed	£404	£41	£338	£783
3 bed	£504	£51	£422	£977
4 bed	£605	£61	£506	£1,172
5+ bed	£707	£72	£591	£1,370

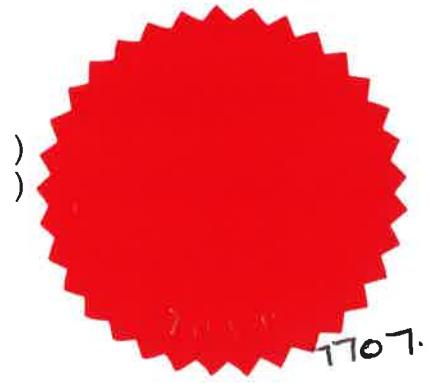
SCHEDULE 4

Use of money paid and repayment

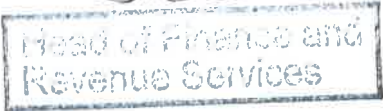
1. The Council covenants that any money paid to it under the provisions of this Deed will be held in an interest bearing account and used for the purpose for which it was paid ("the Approved Purpose")
2. The Council covenants with the Owner that if any money paid to it under the provisions of this Deed has not been used or committed by way of contract for the Approved Purpose within 5 years of final Occupation of the Development, it will be repaid to the party that paid it together with any interest accrued

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:

EXECUTED AS A DEED by Faberdean Limited
Acting by a Director in the presence of:



Director:

Director/Secretary:


Liam Ruff
74 Frie Chm
Nmt
NRI 421
Solicitor