

Dated 1st December 2017

Broadland District Council
and
Norfolk County Council
and
Circle Thirty Three Housing Trust Limited

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

relating to land west of Burlingham Road, South Walsham, Norfolk

THIS DEED is dated

18th December

2017

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL , Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich NR 7 0DU (referred to as "the Council")
- (2) NORFOLK COUNTY COUNCIL, County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH (referred to as the First Owner")
- (3) CIRCLE THIRTY THREE HOUSING TRUST LIMITED (Registered Society No. 18652R) of Level 6, 6 More London Place, Tooley Street, London SE1 2DA.(referred to as "the Second 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) With the consent of the Second Owner the First Owner has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) The First Owner owns the freehold of the First Land
- (D) The Second Owner owns the freehold of the Second Land subject to a Legal Charge in favour of the Mortgagee
- (E) The Second Owner intends to grant rights of access to the First Owner over the Second Land for the purposes of access to the Development and is entering in to this Deed solely for the purpose of ensuring that the Development is not commenced on the Second Land prior to the fulfilment of any pre Commencement obligations set out herein on the part of the First Owner

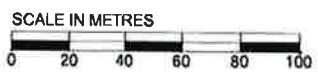
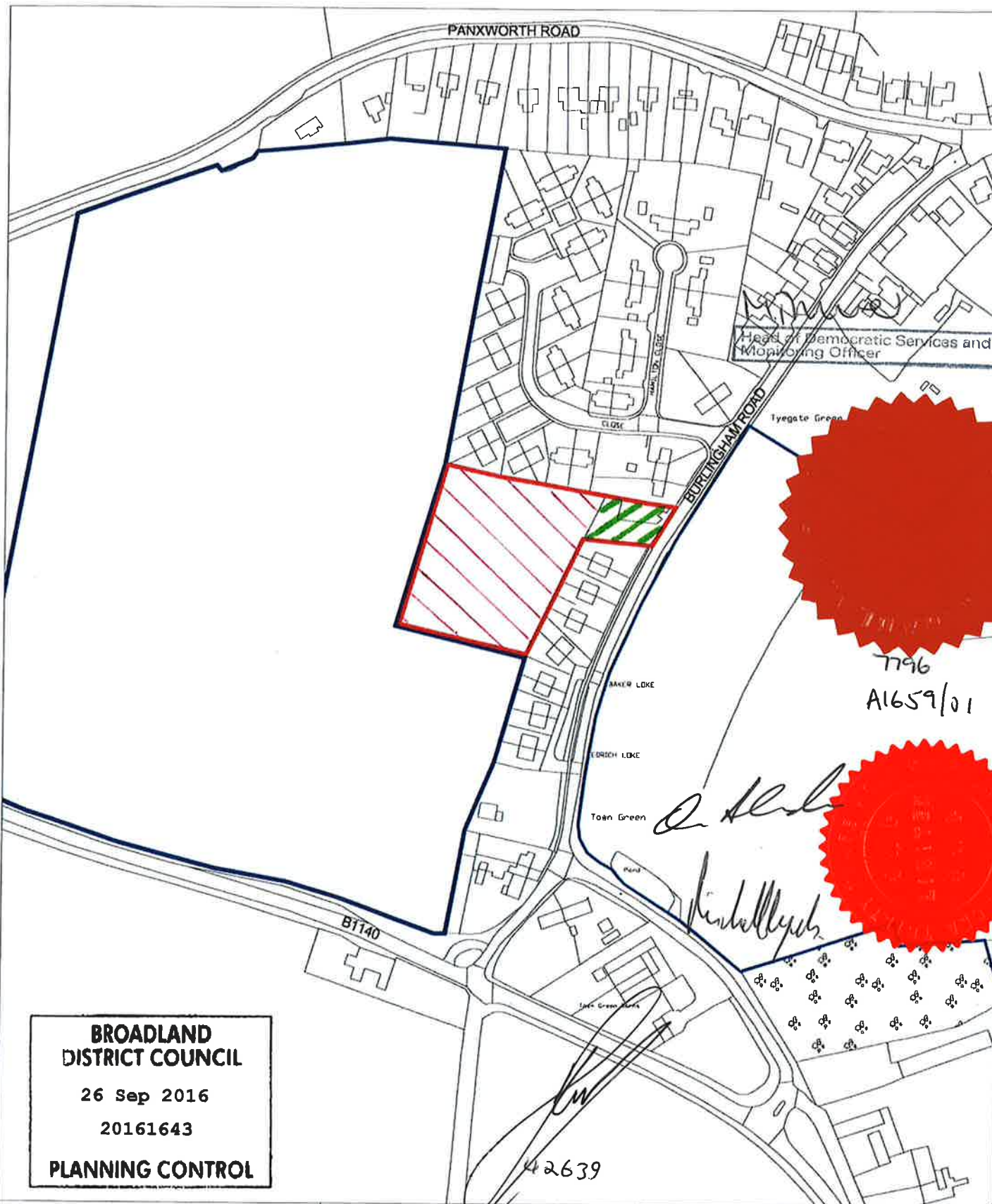
1. DEFINITIONS

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
The First Land	That part of the Site registered at the Land Registry under title number NK38559 and cross hatched in red on the Plan
Index Linked	The increase if any in the RICS Build Cost Information Service All In Tender Price Index between 1st January 2015 and the date upon which a payment of each and any of the Contributions referred to in the Third, Fourth and Fifth Schedules is made pursuant to this Agreement (or if such index

ceases to be published, another index notified to the Owner by the Nominated Officer)

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: construction internal and external refurbishment decoration fitting-out marketing and 'Occupy' and 'Occupied' will be construed accordingly
The Owner	The First Owner and the Second Owner together
Permission	The outline planning permission to be granted by the Council for residential development and allocated reference number 20161643 (with all matters reserved apart from access) 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
The Second Land	That part of the Site registered at the Land Registry under title number NK158022 and shown cross



This drawing must not be revised, altered or copied without the written consent of NPS Property Consultants Ltd (the engineer). All errors, omissions, discrepancies should be reported to the engineer immediately. All dimensions to be checked before site formation by the contractor. The architect or supplier. Do not scale plans. Use figure or grid dimensions where given. Any deviation from the drawing to be reported to the engineer immediately.

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REV	DATE	DESCRIPTION
		Address Land off Burlingham Road South Walsham Norfolk
		Title Location Plan
		Plan No 01-01-12-2-1134-002
		Scale 1:2500 @ A4
		Date APRIL 2016
		DRAWN BY RG
		CHECKED BY AS

NPS Property Consultants LTD

- NORWICH LANCASTER HOUSE TEL: 01603 706000 FAX: 01603 706001
- NORWICH COUNTY HALL TEL: 01603 222413 FAX: 01603 222718
- LONG STRATTON TEL: 01508 538400 FAX: 01508 535110
- AYLSHAM TEL: 01203 736200 FAX: 01203 731732
- KING'S LYNN TEL: 01553 776240 FAX: 01553 776241



hatched in green on the Plan

Site The land known as land to the west of Burlingham Road, South Walsham, Norfolk and registered at H M Land Registry under title numbers NK158022 and NK38559 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 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 First 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 Second Owner covenants with the Council for itself and its successors in title to observe and perform the obligations and stipulations contained in this Deed in so far as they relate to the Second Land and for the avoidance of doubt the only covenant which relates to the Second Land is the covenant set out in paragraph 2 of the Second Schedule
- 3.3 The Council covenants with the First Owner and the Second Owner to comply with its 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 (unless the breach occurred before he disposed of his interest)
- 4.2 The First Owner confirms that it is the owner of the First Land with full power to enter into this Deed and that there is no person or body with an interest in the First Land whose consent is necessary to make this Deed binding on all interests in the First Land
- 4.3 The Second Owner confirms that it is the owner of that part of the Second Land with full power to enter into this Deed and that there is no person or body with an interest in that part of the Second Land whose consent is necessary to make this Deed binding on all interests in the Second Land

- 4.4 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services
- 4.5 On completion the First Owner will pay the Council's reasonable legal costs in connection with this Deed
- 4.6 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 4.7 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions
- 4.8 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 First 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 either the First Owner or the Second Owner disposes of its interest in the First Land or the Second Land respectively it 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 Site

The land known as land to the west of Burlingham Road, South Walsham, Norfolk and forming part of the land registered at the Land Registry under title numbers NK158022 and NK38559 and shown edged red on the Plan

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 meanings:

"Affordable Dwellings"	the Dwellings to be constructed on the Site to a standard agreed with the Council 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"	85% Rented Housing and 15% Intermediate Housing (or as otherwise agreed by the Council in its absolute discretion)]
"Affordable Housing Provision"	the construction and provision of Affordable Dwellings on the Site equating to 33% 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"	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 or such details as the Council requires to satisfy itself that the Affordable Dwellings will be secured as Affordable Housing in perpetuity; - 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 including details of how the Recycling Obligation will be complied with and secured
"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 and shall not exceed the local housing allowance for that area or as otherwise agreed with the Council in writing
"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

"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
"Recycling Obligation"	an obligation to use the net proceeds from the acquisition of any share or interest in an Affordable Dwelling by an Eligible Household towards alternative Affordable Housing provision
"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 and Intermediate Rented Dwellings as agreed with 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 First 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 individual plot owners where appropriate, 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 where specifically requested by the Council, the registration of a restriction to secure compliance with the Recycling Obligation

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 or a voluntary right to buy scheme under the Housing and Planning Act 2016;

- 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
- 1.5.4 all persons or bodies deriving title under or through any persons or bodies referred to in this paragraph 1.5 (including their successors in title)

The Second Owner hereby covenants with the Council as follows:

- 2.1 Not to Commence the Development on the Second Land until the Affordable Housing Scheme has been submitted to and approved by the Council in writing

Part 2

Local Letting Policy: Local Connection Eligibility Criteria

The First Owner hereby covenants with the Council as follows;

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:
 - 1.1 first allocations shall be made to people living in the Parish of South Walsham.
 - 1.2 If there is no suitable person in paragraph 1.1 allocations will be made to people who work in the Parish of South Walsham; 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 South Walsham 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.

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

THIRD SCHEDULE

Green Infrastructure Commuted Sum

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

Green Infrastructure Commuted Sum	The commuted sum to be calculated in accordance with and by reference to Table 1, Table 2 and Table 3 at paragraph 3 below and increased in accordance with the Inflation Provision.
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The First Owner hereby covenants with the Council as follows:

- 1.1 Not to Occupy or allow Occupation of any Dwelling until the Green Infrastructure Commuted Sum has been paid to the Council.

The Council hereby covenants with the First Owner as follows:

- 2.1 To deposit the Green Infrastructure Commuted Sum in an interest bearing account and apply the capital and any interest accrued towards projects identified in the East Broadland Infrastructure Project Plan and which will thereby mitigate the potential impact of the Development on sites within the Project Plan area
- 2.2 In the event that the Green Infrastructure Commuted Sum has not been

committed (by way of contract or expenditure of monies) within 10 years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued.

3. Calculation of the Green Infrastructure Commuted Sum

3.1 Table 1 – Cost per Dwelling for land purchase

Property	Cost per Dwelling
1 bed	£600
2 bed	£800
3 bed	£1,000
4 bed	£1,200
5+ bed	£1,400

Plus

Table 2 – Cost per dwelling for equipping

Property	Cost per Dwelling
1 bed	£429
2 bed	£572
3 bed	£715
4 bed	£858
5+ bed	£1001

Plus

Table 3 – Cost per dwelling for maintenance

Property	Cost per Dwelling
1 bed	£253
2 bed	£338
3 bed	£422
4 bed	£506
5+ bed	£591

FOURTH SCHEDULE

Equipped Play Space Commuted Sum

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

Equipped Play Space Commuted Sum	The commuted sum to be calculated in accordance with and by reference to Table 1, Table 2 and Table 3 at paragraph 3 below and increased in accordance with the Inflation Provision.
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1. The First Owner hereby covenants with the Council as follows:
 - 1.2 Not to Occupy or allow Occupation of any Dwelling until the Equipped Play Space Commuted Sum has been paid to the Council.
2. The Council hereby covenants with the First Owner as follows:
 - 2.1 To deposit the Equipped Play Space Commuted Sum in an interest bearing account and apply the capital and any interest accrued towards improvements to the play area at the South Walsham Recreation Ground
 - 2.2 In the event that the Equipped Play Space Commuted Sum has not been committed (by way of contract or expenditure of monies) within 5 years of receipt of payment to refund any unspent balance of the Contribution to the payer together with any interest accrued.

3. Calculation of the Equipped Play Space Commuted Sum

3.1 Table 1 – Cost per Dwelling for land purchase

Property	Cost per Dwelling
1 bed	£51
2 bed	£68
3 bed	£85
4 bed	£102
5+ bed	£119

Plus

Table 2 – Cost per dwelling for equipping

Property	Cost per Dwelling
1 bed	£89
2 bed	£119
3 bed	£148
4 bed	£178
5+ bed	£207

Plus

Table 3 – Cost per dwelling for maintenance

Property	Cost per Dwelling
1 bed	£30
2 bed	£41
3 bed	£51
4 bed	£61
5+ bed	£72

FIFTH SCHEDULE

Sports Provision Commuted Sum

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

Sports Provision Commuted Sum	The commuted sum to be calculated in accordance with and by reference to Table 1, Table 2 and Table 3 at paragraph 3 below and increased in accordance with the Inflation Provision.
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1. The First Owner hereby covenants with the Council as follows:
 - 1.2 Not to Occupy or allow Occupation of any Dwelling until the Sports Provision Commuted Sum has been paid to the Council.
2. The Council hereby covenants with the First Owner as follows:
 - 2.1 To deposit the Sports Provision Commuted Sum in an interest bearing account and apply the capital and any interest accrued towards improvements to the existing sports facilities at the South Walsham Recreation Ground
 - 2.2 In the event that the Sports Facilities Commuted Sum has not been committed (by way of contract or expenditure of monies) within 5 years of receipt of payment to refund any unspent balance of the Contribution to the payer together with any interest accrued.

3. Calculation of the Sports Provision Commuted Sum

3.1 Table 1 – Cost per Dwelling for land purchase

Property	Cost per Dwelling
1 bed	£252
2 bed	£336
3 bed	£420
4 bed	£504
5+ bed	£588

Plus

Table 2 – Cost per dwelling for equipping

Property	Cost per Dwelling
1 bed	£288
2 bed	£385
3 bed	£481
4 bed	£577
5+ bed	£674

Plus

Table 3 – Cost per dwelling for maintenance

Property	Cost per Dwelling
1 bed	£303
2 bed	£404
3 bed	£504
4 bed	£605
5+ bed	£707

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

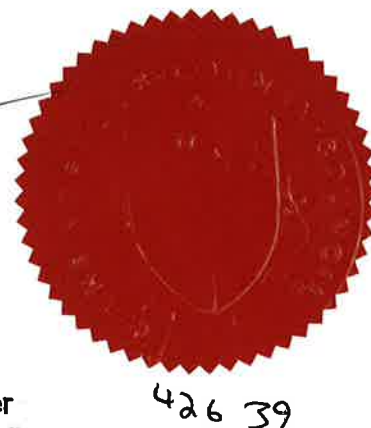
THE COMMON SEAL OF Broadland District Council)
was affixed in the presence of:)



M. Mue
Head of Democratic Services and
Monitoring Officer

Authorised Signatory:

THE COMMON SEAL OF Norfolk County Council)
was affixed in the presence of:)



[Signature]
Authorised to sign on behalf of Chief Legal Officer

Head of Law

A1659/02

THE COMMON SEAL OF Circle Thirty Three Housing Trust
Limited was affixed in the presence of:

)
)



Authorised signatory

Michelle Lyth

Authorised signatory

A. Smith