

Dated 18th April

2019

Broadland District Council

-and-

Clerks Well Developments Limited

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

relating to land at relating to land at Spixworth, Norfolk

THIS DEED is dated

18th April

2019

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU (referred to as "the Council")
- (2) CLERKS WELL DEVELOPMENTS LIMITED (Company number 9247449) whose registered office is at 290 High Street, Aldeburgh, Suffolk IP15 5DQ (referred to as "the Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Council is a local planning authority for the purposes of this deed for the area within which the Site is located.
- (B) The Owner has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed.
- (C) The Owner owns the freehold of the Site which is registered at the Land Registry under title number NK108271 and held free from encumbrances

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990 as amended.
CIL Regulations	The Community Infrastructure Regulations 2010 as amended
Commencement	The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except (for the purposes of this Deed only) operations consisting of: site clearance

demolition
 archaeological investigations
 ground surveys
 removal of contamination or other adverse ground conditions
 erection of temporary fences
 temporary display of site notices and/or advertisements
 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

Index Linked Index linked from 28 November 2018 until the date any payment referred to in this Deed is made, such index linking being equivalent to any change in the RICS Building Cost Information Service All In Tender Index (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 "Occupier" will be construed

	accordingly
Permission	The planning permission to be granted by the Council for 5 no. supported retirement bungalows and revised car parking layout and allocated reference number 20171221
Plan	The plan attached to this Deed
Site	The land known as North Walsham Road, Spixworth, Norfolk and registered at H M Land Registry under title number NK108271 shown edged red on the Plan (which for the avoidance of any doubt shall include the Rosa Close Footpath Link as Defined in Schedule 4 below)
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, to the extent that it does not contain planning obligations, under Section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2 The covenants and obligations contained in this Deed create planning obligations for the purposes of section 106 of the Act enforceable by the Council and relate to the Site.
- 2.3 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 CIL Regulations.
- 2.4 Covenants given by more than one party can be enforced against them individually or jointly.
- 2.5 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.

- 2.6 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done.
- 2.7 References to any party to this Deed shall include 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 its statutory functions.
- 2.8 Representatives of the Council may enter the Site at any reasonable time to ascertain whether the terms of this Deed are being or have been complied with provided that:
 - 2.8.1 they do not enter any individual Dwelling; and
 - 2.8.2 they adhere to all reasonable health and safety requirements.

3. CONDITIONALITY

This Deed is conditional upon:

- 3.1 The grant of the Permission; and
- 3.2 The Commencement of Development.

Save for the provisions of this clause and clauses 6.4 and 6.14 which shall come into effect immediately on completion of this Deed.

4 COVENANTS

- 4.1 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.
- 4.2 The Council covenant with the Owner to comply with its requirements contained in this Deed.

5 USE OF CONTRIBUTIONS INDEXATION AND INTEREST

- 5.1 The improvements referred to in this Deed for which contributions are required may at the Council's absolute discretion be commenced or provided (in whole or in part) at any time after the date of this Deed even if payment of the relevant contribution may not have become due.

- 5.2 If the improvements have been commenced or provided prior to the due date for payment of the relevant contribution then the payment will be regarded as a reimbursement of the costs incurred in providing the improvement.
- 5.3 Nothing in this Deed binds the Owner to pay;
- 5.3.1 any contribution before the date on which it is due or
- 5.3.2 any contribution at all if the relevant due date is not reached, or
- 5.3.3 any greater contribution than provided in Schedule 2.
- 5.4 The Council are entitled to use all interest accrued on each contribution specified in Schedule 2 from the date of actual payment of the contribution until the date when the contribution is spent.
- 5.5 The contribution specified in Schedule 2 is to be Index Linked.
- 5.6 In the event of any delay in paying the contributions specified in Schedule 2 then from the due date of payment:
- 5.6.1 the contributions are a debt due to the Council and are recoverable by action by the Council; and
- 5.6.2 are liable to interest calculated on a daily basis at a rate of 4 percent over the bank rate as set by the Bank of England in force from time to time from the due date for payment until the actual date of payment.
- 5.7 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid.
- 5.8 Any money from time to time held by the Council in respect of any payment made to the Council by the Owner under the provisions of this Deed will in any event become the absolute property of the Council and will not be subject to return by the Council to the party who made that payment if that party:
- 5.8.1 becomes bankrupt or has a winding-up petition or a petition for an administration order presented against it, or
- 5.8.2 passes a winding-up resolution or an administrative receiver or a receiver and manager is appointed in respect of the property (or any part thereof) belonging to that party, or
- 5.8.3 enters into any arrangement scheme compromise moratorium or composition with its creditors or any of them
- but shall continue to be held by the Council under the terms of this Deed.
- 5.9 The Council may spend part of the contribution specified in Schedule 2 on

reasonable legal costs and disbursements which are supplemental to or incurred in connection with the spending of the said contribution in accordance with the said Schedule.

6. OTHER PROVISIONS

- 6.1 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).
- 6.2 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 on all interests in the Site.
- 6.3 The covenants, restrictions and requirements contained in Schedule 2 Schedule 4 to this Deed (as to the Affordable Housing Contribution (as Defined in Schedule 2 below) and the Rosa Close Footpath Link respectively) shall not be enforceable against individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease. (but for the avoidance of any doubt the provisions of Schedule 3 to this Deed (as to the Occupancy Restriction (as hereinafter Defined in Schedule 3 below) shall apply to such individual purchasers or lessees within the terms of the said Schedule 3)
- 6.4 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.
- 6.5 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed.
- 6.6 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.7 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions.
- 6.8 No waiver, express or implied, by the Council of any breach or failure to perform

or observe any of the covenants, terms or conditions of this Deed constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed.

- 6.9 If the Permission is quashed revoked or expires before Commencement then, save for clause 6.4, this Deed will cease to have effect (insofar only as it has not already been complied with).
- 6.10 Subject to clause 6.11, nothing in this deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted after the date of this Deed.
- 6.11 If the Permission is subject to an application under Section 73 of the Act for the removal or amendment of any condition attached to the Permission then the obligations in this deed shall also apply to the new planning permission resulting from such application if so agreed by the Council (acting in its absolute discretion).
- 6.12 This Deed is registrable as a local land charge.
- 6.13 Following the performance and satisfaction of all the obligations contained in this Deed the Council will, upon the written request of the Owner, cancel all relevant entries contained in the Register of Local Land Charges.
- 6.14 An agreement, approval, consent or expression of satisfaction required by the Owner from the Council under the terms of this deed must be given in writing and shall not be unreasonably withheld or delayed.
- 6.15 The provisions of this Deed (other than this clause which takes immediate effect) will be of no effect until this deed has been dated.
- 6.16 Nothing contained or implied in this Deed will fetter, prejudice or affect the rights, discretions, powers, duties and obligations of the Council in the exercise of any of its functions as a local authority.

7. DISPUTES

- 7.1 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.

7.2 The expert is to be replaced by a fresh appointee in the event that he becomes at any time unable or unwilling for any reason to proceed to discharge his functions. The fresh appointee is to be appointed in the manner prescribed in this clause.

7.3 The expert is to make his decision within 6 weeks of being appointed.

7.4 The costs of appointing the expert are to be shared equally by the parties to the dispute except where the expert takes the view that one party has acted unreasonably. In that case the expert has binding discretion as to apportionment of the costs.

7.5 Nothing in this clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

8. NOTIFICATIONS

8.1 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.

8.2 The Owner will notify the Nominated Officer in writing of the relevant

8.2.1 anticipated Triggers seven days in advance of each anticipated date,

8.2.2 actual Triggers within seven days of each actual date.

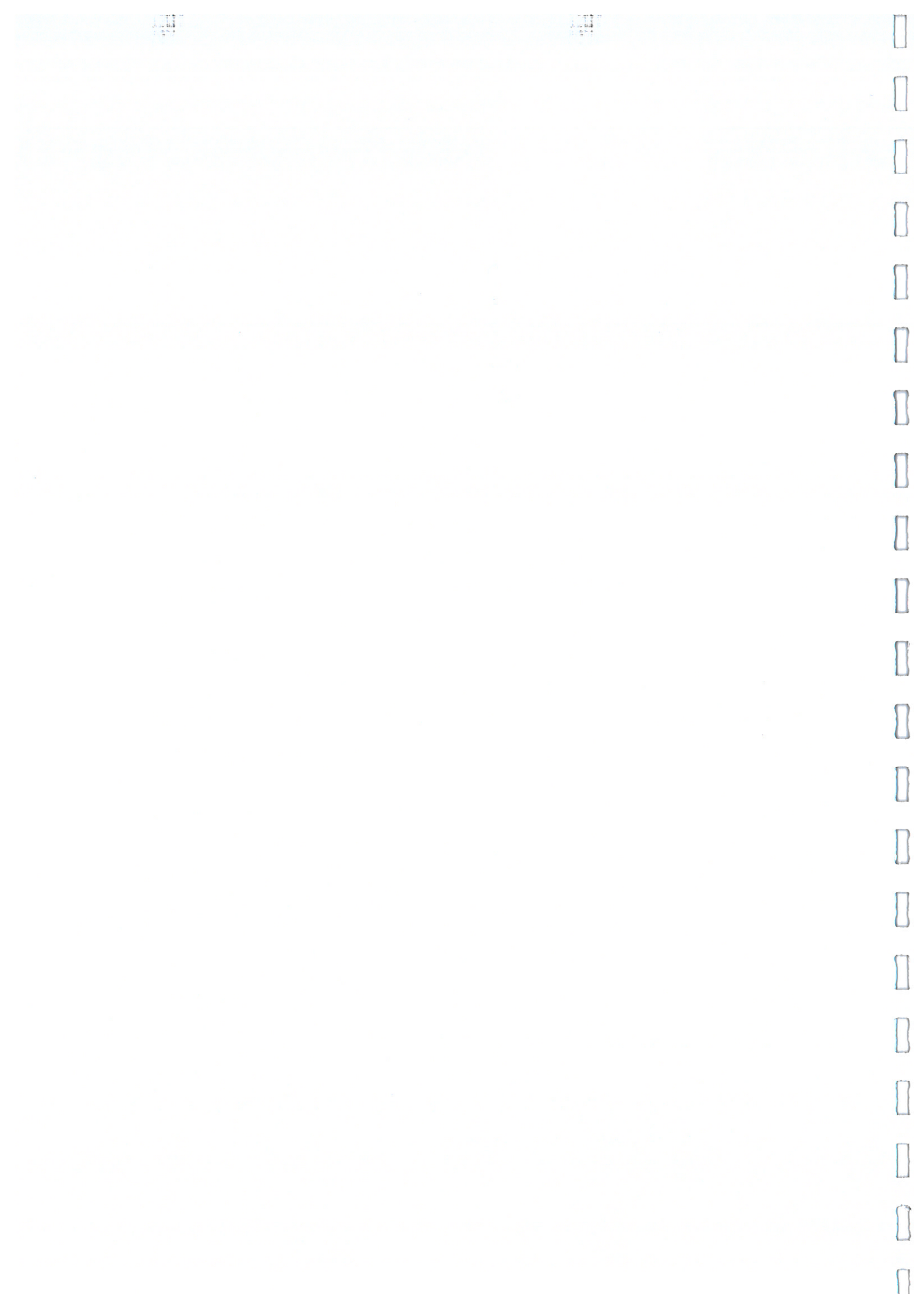
8.3 If the Owner disposes of his interest in all or part of the Site he will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site.

9. JURISDICTION

This deed is governed by and interpreted in accordance with the law of England and Wales.

SCHEDULE 1

The Plan



SCHEDULE 2

Affordable Housing Contribution

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 which ordinarily be constructed on the Site to a standard agreed with the Council as Affordable Housing
Affordable Housing	housing which would be provided to Eligible Households whose needs are not met by the market (including housing that provides a subsidised route to home ownership and which complies with one or more of the definitions of affordable housing in Annex 2 of the NPPF) unless other types of affordable housing are agreed in writing by the Council
Affordable Housing Contribution	The sum of £70,000 Index Linked to be paid by the Owner to the Council in lieu of the provision of any Affordable Dwellings on the Site
Eligible Households	A person or persons in need of accommodation who is or are unable to rent or buy on the local open market determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council.

The Owner hereby covenants with the Council:

1. Not to Occupy more than 2 Dwellings on the Site until the Affordable Housing Contribution has been paid to the Council

The Council hereby covenants with the Owner:

1. to hold the Affordable Housing Contribution received under this Deed in an interest bearing account and apply the same towards the provision of Affordable Housing within the administrative area of the Council
2. within 56 days of written request provide to the Owner the details of the precise expenditure of the Affordable Housing contribution paid to it under this Deed

SCHEDULE 3

Over 55 years Occupancy Restriction

The Owner hereby covenants with the Council:

1. Not to Occupy or permit the Occupation of any of the Dwellings by persons under the age of 55 years ("the Occupancy Restriction") PROVIDED THAT the Occupancy Restriction shall not prevent Occupation by
 - 1.1 a younger partner of someone who is 55 years of age or over and in Occupation
 - 1.2 the younger partner if the older partner who is 55 years of age or over dies and had until his or her death been in Occupation
2. Not to sell, lease or otherwise dispose of a Dwelling unless all reasonable steps have been taken to ensure that the new Occupier (or at least one of them) will comply with the Occupancy Restriction
3. To provide to the Council on request such reasonable evidence as it may require to check compliance with the Occupancy Restriction

and for the avoidance of any doubt and having regard to the provisions of clauses 2.7 and 6.3 above, the Occupancy Restriction shall apply in the same terms to any successive purchaser of any of the Dwellings

SCHEDULE 4

The Rosa Close Footpath Link

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

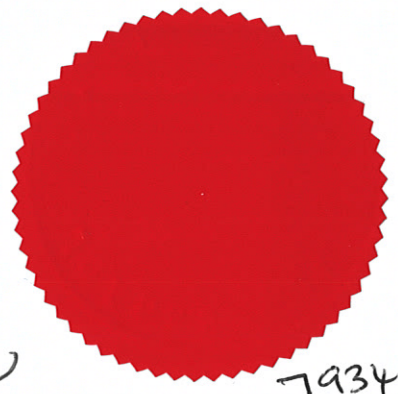
The Rosa Close Footpath Link	The land (included within the terms of the Permission) shown outlined in red and coloured yellow on the Plan and providing a means of public access on foot between the Site and the public highway known as Rosa Close
The Rosa Close Footpath Link Specification	The specification approved in accordance with plan 6760B SL01 Rev M (annexed to this Deed) for the constructed with HRA (Hot Rolled Asphalt) on a granular sub base type 1 on prepared formation treated with a granular weed killer

The Owner hereby covenants with the Council:

1. Not to Occupy or permit the Occupation of any Dwelling until the Rosa Close Footpath Link has been provided in accordance with the Rosa Close Link Specification to the reasonable satisfaction of the Council
2. Thereafter to maintain the Rosa Close Footpath Link in accordance with the requirements of the Rosa Close Footpath Link Specification and to the reasonable satisfaction of the Council for a period of 2 years from its completion

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:)



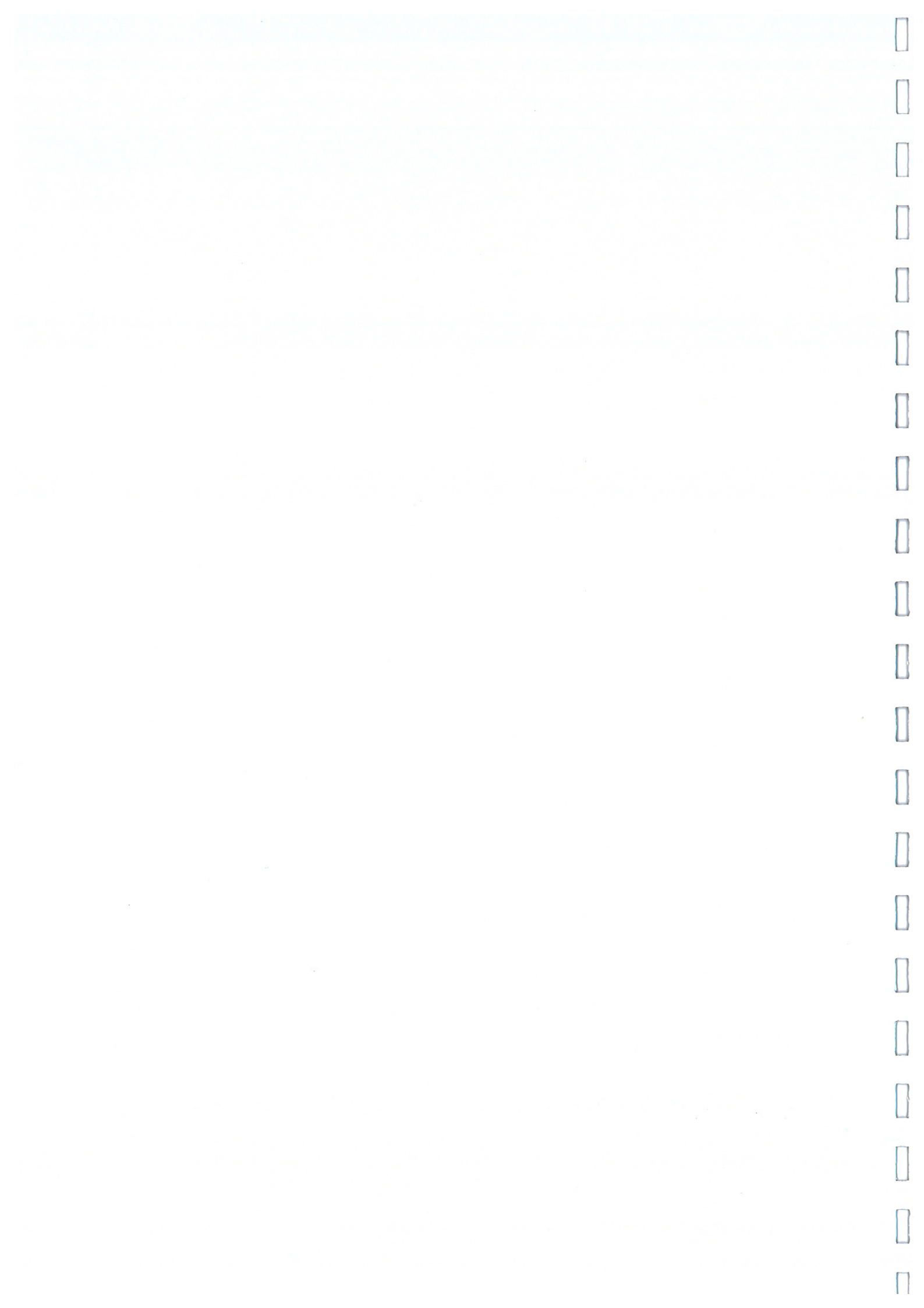
Authorised Signatory:

M. Mune
Head of Democratic Services and
Monitoring Officer

SIGNED AS A DEED by)
Clerk Well Developments Limited)
In the presence of:


Director

Director/Secretary



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

SIGNED AS A DEED by _____)
Clerk Well Developments Limited _____)
In the presence of: _____)



Secretary 