

DATED

2nd November 2018

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN &
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT WILLOW PARK
AYLSHAM NORFOLK**

between

BROADLAND DISTRICT COUNCIL (1)

and

FLAGSHIP HOUSING GROUP LIMITED (2)

PRINCE EVANS SOLICITORS LLP

Craven House
40-44 Uxbridge Road
Ealing
London W5 2BS
(Ref: 7DMA/B52300/05)

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THIS DEED is dated

2nd November

2018

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Norwich NR7 0DU (the “**Council**”).
- (2) **FLAGSHIP HOUSING GROUP LIMITED** incorporated and registered in England and Wales with Co-operative and Communities Benefit Societies Act 2014, Reg. No. 31211R) (Homes and Communities Agency Reg. No. 4651 whose registered office is situated at 31 King Street Norwich Norfolk NR1 1PD (the “**Owner**”)

Together referred to as ‘the Parties’

BACKGROUND

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (“TCPA 1990”) for the area in which the Site is situated.
- (B) The Owner has applied to vary the Original Agreement only in respect of the Affordable Housing on the Flagship Site and the Council has agreed provided the Parties enter into this Deed.
- (C) The Owner is the freehold owner of the Flagship Site free from encumbrances.
- (D) On 31 May 2012 the Council (1) and the County Council (2), and William Harold Youngs, Jennifer Mary Youngs and Nicholas Gerald Youngs (3) entered into the Original Agreement.
- (E) Without prejudice to the terms of the other covenants contained in the Original Agreement the Parties have agreed to vary the terms of Original Agreement as set out in this deed.
- (F) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.
- (G) The Parties to this Deed have agreed that it is not necessary for Norfolk County Council to be a party to this Deed because it is not an authority by whom any obligations that is being varied by this Deed is enforceable in accordance with section 106A of the TCPA 1990.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed.
- 1.2 All words and phrases defined in the Original Agreement shall have the same meaning in this deed save where the context otherwise dictates.

- 1.3 In this deed the following expression shall have the following meaning:
- Flagship Site:** The area edged red on the plan attached to this Deed which is part of the Site bound by the Original Agreement
- Original Agreement:** the agreement made under section 106 of the TCPA 1990 dated 31 May 2012 between Broadland District Council (1), Norfolk County Council (2) and William Harold Youngs and Jennifer Mary Youngs and Nicholas Gerald Youngs (3).
- 1.4 All references in this deed to clauses in the Original Agreement are to clauses within the Original Agreement.
- 1.5 Clause headings shall not affect the interpretation of this deed.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.11 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time **OR** it is in force at the date of this deed; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.12 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time **OR** as at the date of this deed under that statute or statutory provision.
- 1.13 A reference to **writing** or **written** does not include faxes or e-mail.

- 1.14 References to clauses, Schedules and plans (unless the context otherwise requires) are to clauses, Schedules and plans of this deed.
- 1.15 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.16 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.17 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 The definition of the relevant tenure in the Original Agreement of “Affordable Rental Units” shall be deleted and replaced with “Intermediate Rental Units” the definition of which is as set out in 3.2 below.
- 3.2 Intermediate Rental Unit shall be defined to mean:-

Affordable Housing Units 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

- 3.3 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS TO THE COUNCIL

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

6. ENDORSEMENT

Promptly following completion of this deed the Council and County Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated 2018 and made between Broadland District Council (1) and Flagship Housing Group Limited (2).

7. COUNCIL'S COSTS

On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed

8. VALUE ADDED TAX

8.1 All consideration (if any) given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

9. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under, or in connection with, it by virtue of the Contracts (Rights of Third Parties) Act 1999.

10. GOVERNING LAW

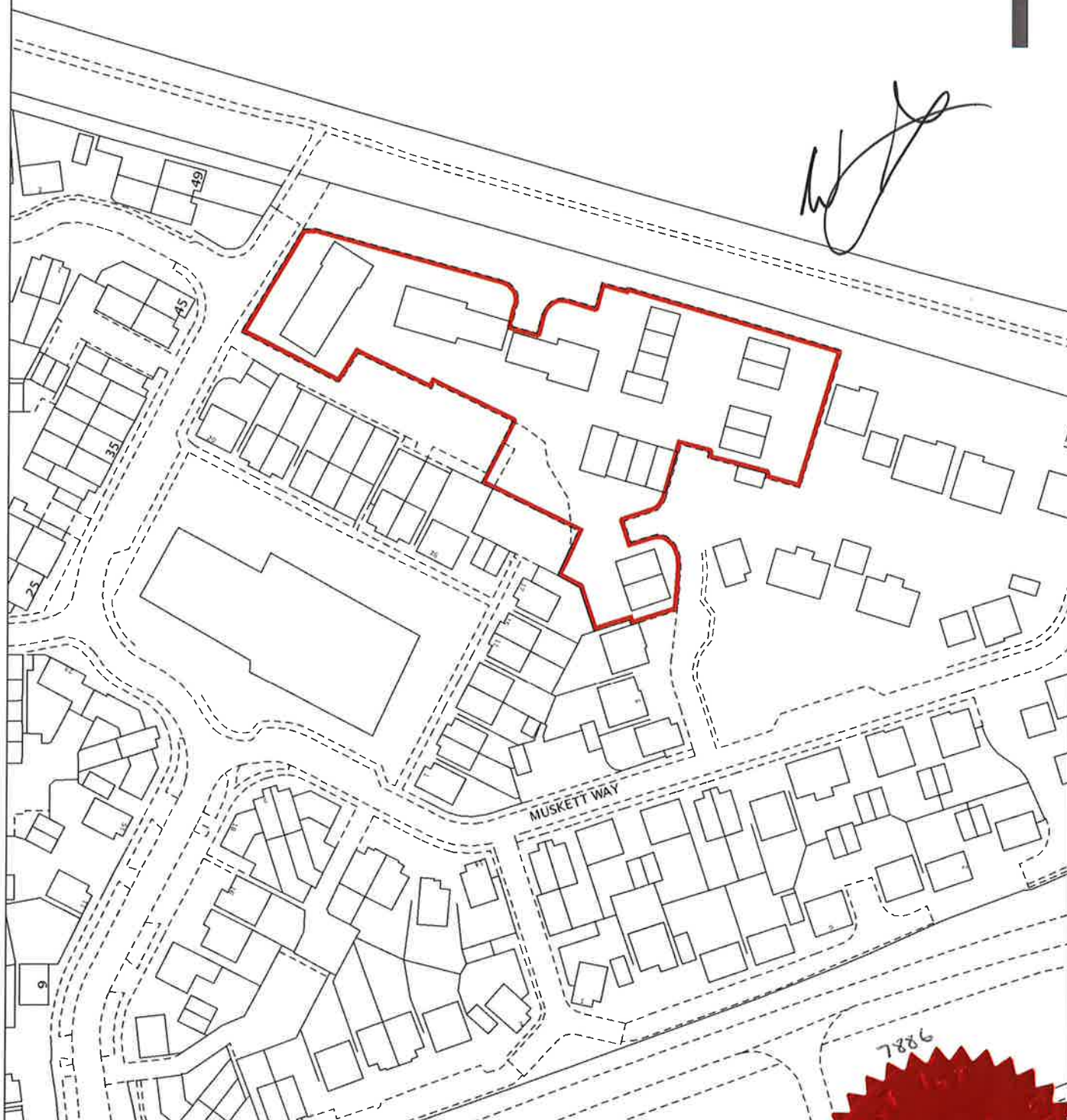
This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

HM Land Registry
Official copy of
title plan

Title number **NK481574**
Ordnance Survey map reference **TG1826SW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Norfolk : Broadland**



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M. Throver

Head of Democratic Services and
Monitoring Officer

MARTIN THROVER



This official copy is incomplete without the preceding notes page.

This document has been executed by the parties hereto as a deed on the date written above.

The COMMON SEAL of **BROADLAND
DISTRICT COUNCIL** was hereunto
affixed in the presence of:



Head of Democratic Services and Monitoring
Officer **MARTIN THROWER**

EXECUTED as a DEED by affixing the
Common Seal of FLAGSHIP HOUSING
GROUP LIMITED in the presence of:



Duly Authorised Signatory:

Duly Authorised Signatory:

