

Dated 11<sup>th</sup> July 2018

Broadland District Council  
-and-  
Cripps Developments Limited  
- and -  
Lloyds Bank PLC  
and -  
Norfolk County Council

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

relating to land at Little Plumstead Hospital,  
Little Plumstead, Norfolk

THIS DEED is dated

11<sup>th</sup> July

2018<sup>9</sup>

**PARTIES:**

- (1) BROADLAND DISTRICT COUNCIL, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU ("the Council")
- (2) CRIPPS DEVELOPMENTS LIMITED, (Company number 04081629) whose registered office is at Dencora House, Blyburgate, Beccles, Suffolk NR34 9TQ (referred to as "the Owner")
- (3) LLOYDS BANK PLC, (Company number 2065) of Dept. 1355, Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HZ (referred to as "the First Mortgagee")
- (4) NORFOLK COUNTY COUNCIL of County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH ("the County Council")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council and the County Council are local planning authorities 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
- (D) Both the First Mortgagee and the County Council have 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
Inflation Provision	The increase or decrease (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in Tender Price Index between January 2018 and the date upon which payment is made pursuant to this Agreement (or if such index ceases to be published such other index as the Council shall reasonably determine)
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 or any other activity preparatory to the use of the Site for the purposes as authorized by the Permission and

	'Occupy' and 'Occupied' will be construed accordingly
Permission	The planning permission to be granted by the Council for the erection of 20 two storey dwellings, expansion of car parking for school and car parking and access road to walled garden and allocated reference number 20171008 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 land at Little Plumstead Hospital, Little Plumstead, Norfolk and registered at H M Land Registry under title number NK349174 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 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 Council covenants with the 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 or the part of the Site in respect of which such breach occurs (unless the breach occurred before he disposed of his interest)

4.2 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 (other than the First Mortgagee and the County Council) 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 the preparation and completion of 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
- 4.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission or any renewal thereof or any reserved matters approval with respect thereto) granted after the date of this Deed in respect of which development this Deed will not apply
- 4.9 In the event of the Permission being quashed revoked or withdrawn before the Commencement of Development or expiring and not being renewed without the Development having been Commenced or in the event of the revocation of the Planning Permission the obligations under this Deed shall cease absolutely BUT FOR THE AVOIDANCE OF DOUBT where permission is issued pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein
- 4.10 The covenants in this deed shall only come into effect on Commencement unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any such covenants
- 4.11 The covenants in this deed shall only come into effect on Commencement unless otherwise specifically indicated in this Deed or to construe otherwise

would be inconsistent with the requirements of any such covenants

## **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 and:

5.1.1 the Expert shall act as an expert;

5.1.2 the Expert shall afford the Parties to the dispute an opportunity promptly to make representations in writing and if they so direct to make submissions on one another's representations;

5.1.3 the Expert shall be able to stipulate periods of time for the making of such submissions and representations;

5.1.4 the Expert shall be bound to have regard to the said submissions and representations;

5.1.5 the Expert shall have the power to award the costs of the determination in favour of any of the Parties at the expense of any other Party in the event that the Expert shall consider that the said other Party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;

5.1.6 the Expert shall be limited in his findings to the determination of the dispute put by any Party;

5.1.7 the findings of the Expert shall save in the case of manifest material error be final and binding on the Parties save that the Parties retain the right to refer to the Courts on a matter of law; and

5.1.8 the Expert shall be required to issue his decision as soon as reasonably practicable.

5.2 If for any reason the Expert shall fail to make a decision and give notice thereof within two months of the deadline for submissions and representations given by the Expert in clause 5.1.3 above any of the Parties may apply to the President or the Vice President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary;

## **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 within 7 days of the Commencement of Development occurring or the event of any other Trigger



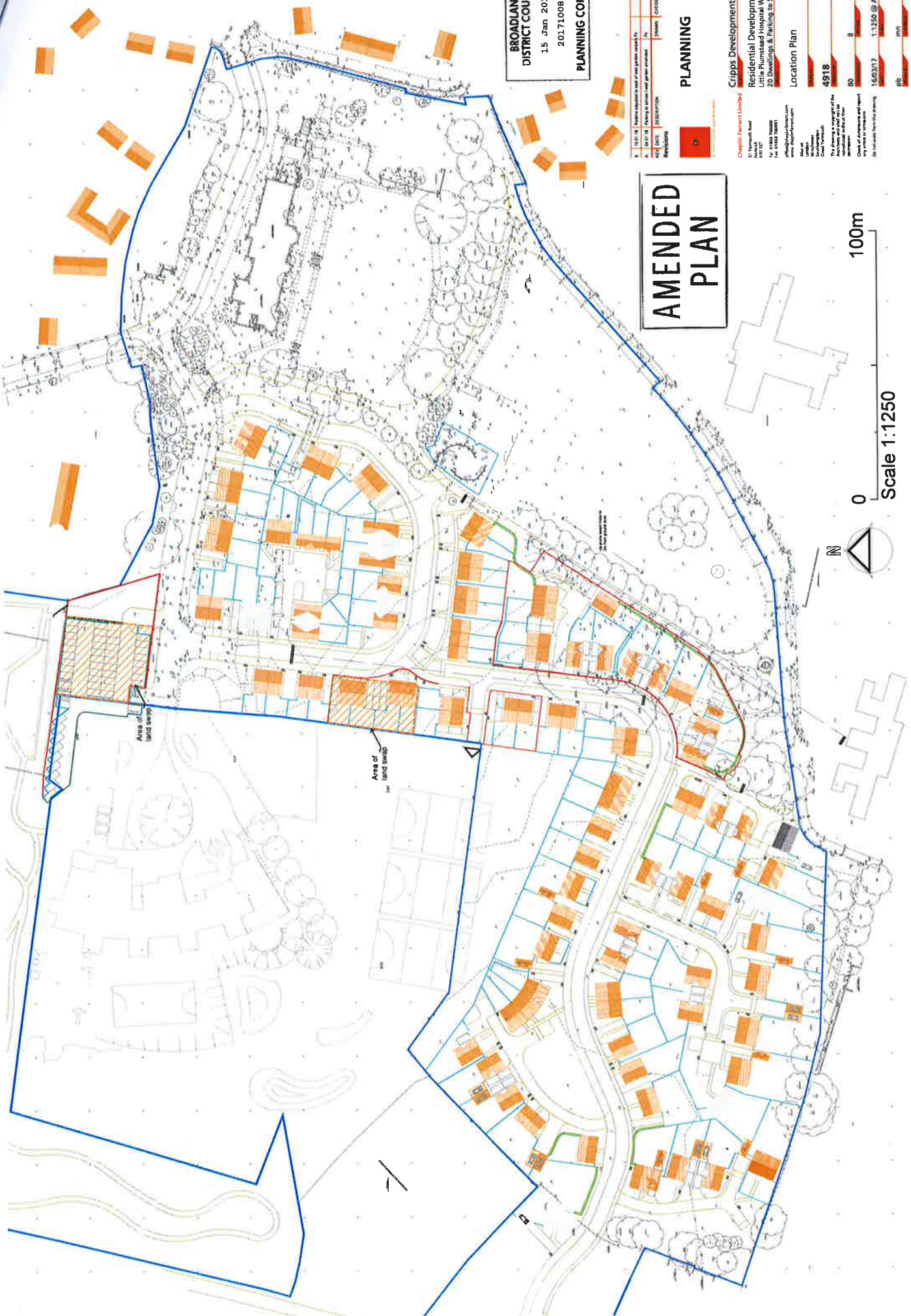
- 7.3 If the Owner disposes of his interest in all or part of the Site he will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site

## **8. MORTGAGEE CONSENT**

The First Mortgagee and the County Council both consent to this Deed so that their respective interests in the Site are bound by the obligations contained in this Deed and both agree that their security over the Site takes effect subject to the provisions of this Deed PROVIDED THAT neither the First Mortgagee nor the County Council are required to observe or perform the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site. (For the avoidance of doubt any person acquiring title to all or part of the Site as a result of the First Mortgagee or the County Council enforcing its security (as the case may be) will be bound by the terms of this Deed.)

## SCHEDULE 1

### The Plan



# AMENDED PLAN

**BROADLAND  
DISTRICT COUNCIL**  
15 Jan 2018  
20171008  
**PLANNING CONTROL**

Revisions	Date	By	Check	Reason
1	15/01/18	Author	15/01/18	Initial design
2	15/01/18	Author	15/01/18	Final design
3	15/01/18	Author	15/01/18	Final design

## PLANNING

**Cripps Developments Ltd**  
Residential Development  
20 Broadland Road, Norwich, Norfolk  
NR1 1AA

**Location Plan**  
4918  
80  
160317  
1:1150 @ A3  
800

**Scale 1:1250**  
0 100m

**North Arrow**  
N

**Area of land swap**

**Area of land swap**

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**Area of land swap**

## 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 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"	the mix of Intermediate Housing and Rented Housing, dwelling types, location and size as set out in Part 2 of this Schedule being a mix of 75% Affordable Rented Dwellings and 25% Intermediate Housing
"Affordable Housing Provision"	the construction and provision of 4 Affordable Dwellings on the Site (or such other provision as the Council may approve in its absolute discretion) in accordance with the Affordable Housing Mix
"Affordable Housing Scheme"	<p>a scheme securing the Housing Provision and specifying:</p> <ul style="list-style-type: none"><li>- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;</li><li>- the identity of the Provider (if known at this stage) or such details as the Council reasonably requires to satisfy itself that the Affordable Dwellings will be</li></ul>

	<p>secured as Affordable Housing in perpetuity;</p> <p>- 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</p>
"Affordable Rented Dwellings"	<p>Dwellings to be let by a Registered Provider with an appropriate agreement with the Homes England 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</p>
"Approved Affordable Housing Scheme"	<p>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</p>
"Eligible Household"	<p>A person or persons in need of accommodation who are unable to rent or buy on the local open market and nominated by the Council in accordance with Part 3 of this Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council</p>
"Homes England"	<p>Homes England or the Regulator of Social Housing or their successor bodies or other appropriate body as the Council may nominate</p>
"Intermediate Dwelling"	<p>An Intermediate Housing Dwelling for sale at a price 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</p>



	ownership, shared equity and equity loan products as approved by the Council
Intermediate Housing	The Shared Equity Dwelling or Shared Ownership Dwelling as the case may be
"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, Homes England 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 as

	agreed with the Council
"Shared Equity Dwelling"	<p>A dwelling 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 (provided that an institutional lender mortgagee only may exercise the staircasing rights under the shared equity lease at any time) 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) but for the avoidance of doubt the ability to increase ownership within 5 years of acquisition shall be available only to institutional lender mortgagees to whom funding the acquisition of the initial equity proportion is part of their day-to-day activities and not to a purchaser</p>
"Shared Ownership Dwelling"	A Dwelling purchased on a Shared Ownership Lease
"Shared Ownership Lease"	<p>a lease substantially in the relevant model form approved by Homes England or where there is no such relevant published model 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 50% 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</li> </ul>

	<p>up to 100% if they so wish</p> <p>- 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 Homes England</p>
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The Owner hereby covenants with the Council as follows:

- 1.1 Not to Occupy any Dwelling 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 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
  - (a) standards previously agreed with the Council and
  - (b) the Approved Affordable Housing Scheme and the timescales and details set out therein and
  - (c) the table set out at Part 2 of this Schedule 2.
- 1.4 Not to offer for sale the Intermediate Dwelling (other than if it is a Shared Ownership Dwelling) without the prior written consent of the Council to the maximum selling price of that Intermediate Dwelling
- 1.5 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 including where specifically requested by the Council, the registration of a restriction to secure compliance with the Recycling Obligation

1.6 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:

- 1.6.1 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 (or under any equivalent contractual right or voluntary scheme) and all persons deriving title under such a person and all their respective successors in title;
- 1.6.2 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 the Shared Equity Dwelling and all

persons deriving title under such a person and all their respective successors in title

1.6.3 a mortgagee or charge of a Provider (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 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

1.6.4 all persons or bodies deriving title under or through any persons or bodies referred to in this paragraph 1.6 (including their successors in title)

1.7 To comply with the requirements of the Local Letting Policy at Part 3 of this Schedule and to ensure that 33% of the Affordable Rented Dwellings are let in accordance and compliance with that Policy

## Part 2

### Affordable Housing Mix

Plot number	Property type	No. of persons	Tenure
41	2 bedroom house type AD	4	Affordable Rented Dwelling
42	2 bedroom house type AD	4	Affordable Rented Dwelling
43	2 bedroom house type AD	4	Affordable Rented Dwelling
44	2 bed room house type AD	4	Intermediate Housing

## Part 3

### Local Letting Policy

#### LOCAL CONNECTION ELIGIBILITY CRITERIA

1.1 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 (at sub paragraphs 1.1.1 – 1.1.4):

1.1.1 First allocations shall be made to people living in the Parish of Great and Little Plumstead (and including Thorpe End);

1.1.2 If there is no suitable person in paragraph (i) allocations will be made to people who work in the Parish of Great and Little Plumstead (and including Thorpe End)

1.1.3 If there are no suitable persons in paragraphs (i) and (ii) allocations will be made to people who need to move to the Parish of Great and Little Plumstead (and including Thorpe End) to give/receive support to/from close family

1.1.4 If there are no suitable persons in paragraph (i) and (ii) and (iii) 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

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 Owner shall agree between them

### SCHEDULE 3

#### Off Site Open Space Contribution

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

"Off Site Open Space Contribution"	<p>The sum of £86,667.14 in lieu of the deficiency in the amount or type of Open Space being provided for the Development compared to that required in accordance with the Councils current Open Space Policies at the date of this Deed and subject to the Inflation Provision and to be applied as follows:</p> <ul style="list-style-type: none"><li>(i) the sum of £31,307.79 to be used towards the improvement of existing Sport facilities at the Great Plumstead Recreation Ground, Church Road, Great and Little Plumstead, Norfolk NR13 5AB</li><li>(ii) the sum of £6,333.64 to be used towards the improvement of existing play areas on the Little Plumstead Hospital site</li><li>(iii) the sum of £1,429.35 to be used towards the Allotment site adjacent to the Great Plumstead Recreation Ground (address as above).</li><li>(iv) the sum of £47,596.36 to be used towards the improvement of Green</li></ul>
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	<b>Infrastructure in the Parish of Great and Little Plumstead</b>
<b>"Open Space"</b>	Land ordinarily to be set aside on the Site in accordance with the Council's current Open Space Policies and used as public open space which would include areas for sport, play, allotments and green infrastructure
<b>"Open Space Policies"</b>	Means the Councils current planning policies (or such replacement policies or documents as the Council may specify) relating to the provision of open space, recreation, sport, allotments, green infrastructure and other similar types of amenity land and facilities

The Owner hereby covenants with the Council as follows:

1. Not to Occupy or permit the Occupation of more than 10 Dwellings until the Off Site Open Space Contribution has been paid to the Council

## SCHEDULE 4

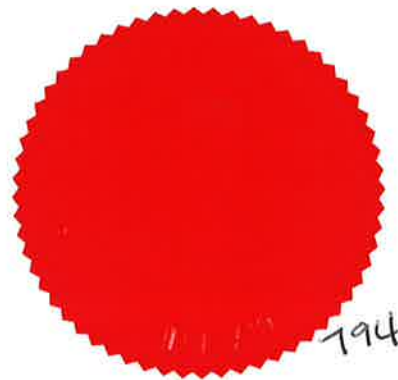
### The Council's covenants

The Council hereby covenants with the Owner as follows:


1. to hold the Off Site Open Space Contribution in an interest bearing account and apply the same (together with any interest accrued) towards the purposes for which it was paid and in the event that the said Contribution (or any part of it) has not been committed (by way of contract or expenditure of the monies) within 5 years of receipt of the Off Site Open Space Contribution to repay the unspent balance to the payer together with any interest accrued **SAVE ONLY** that in relation to that part of the Off Site Open Space Contribution to be used towards the improvement of Green Infrastructure in the Parish of Great and Little Plumstead the Repayment Period shall be 10 years instead of 5 years
2. within 28 days of written request provide to the Owner the details of the expenditure of the Off Site Open Space Contribution or any part of it

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:

  
C M MOCKFORD  
Deputy Monitoring officer

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

JAMES CROSSWELL  




Authorised to sign on behalf of Chief Legal Officer

Chief Legal Officer:

EXECUTED AS A DEED by  
Cripps Developments Limited  
in the presence of:

Director:

Director/Secretary:

)  
)  
  




Executed as a Deed by  
as Attorney for and on behalf of

*BARRY COOTE*

) *B Coote*  
)

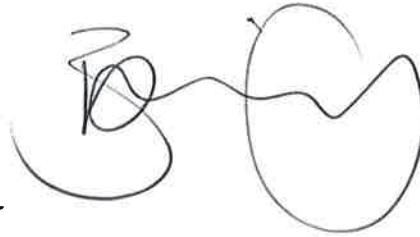
**LLOYDS BANK PLC**

in the presence of:

*NELL BROWNING*

*C/O 3 QUEEN STREET*

*NORWICH*

A large, stylized handwritten signature, likely belonging to Nell Browning, consisting of several loops and a long horizontal stroke.