

24 May 2018 **2018**

Dated

Broadland District
-and-
Norfolk County Council

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

relating to land at Norwich Road, Acle, Norfolk

THIS DEED is dated

24th May

2018

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU (referred to as "the Council")
- (2) NORFOLK COUNTY COUNCIL, County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH (referred to as "the 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) The Owner owns the freehold of the Site
- (C) The Owner has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990 as amended
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

Index Linked The increase (if any) in the Royal Institute of
Chartered Surveyors Build Cost Information Service
All in tender price Index between 1st January 2015
and the date upon which a payment of the Open
Space contribution 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

Permission	The outline planning permission to be granted by the Council for proposed residential development (up to 140 dwellings) and open space/associated works and allocated reference number 20172189 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
Phase	A phase of the Development as shown on the approved Phasing Plan (and for the avoidance of any doubt any reference to "Phase" in this Deed will only be applicable in the event that the Development is to be carried out in phases pursuant to clause 8)
Phasing Plan	In the event that the Development is to be carried out in phases pursuant to clause 8 a plan submitted to the Council showing each Phase of the Development
Plan 1	The plan of the Site attached to this Deed at Schedule 1
Plan 2	The Plan showing the land within which the Off Site Informal Open Space is to be provided attached to this Deed at Schedule 1
Site	The land known as Norwich Road, Acle, Norfolk and registered at H M Land Registry under title number NK11644 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 covenant 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 (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 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 seven days in advance of each anticipated date
- 7.2.2 actual Triggers within seven 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 7 days of the name and address of the new owner and

sufficient details to identify the Site or part of the Site

8. PHASING

8.1 Not to Commence the Development on Site unless and until the Owner has done either of the following:

8.1.1 Provided a letter to the Council confirming that the Development will not be carried out in Phases, OR

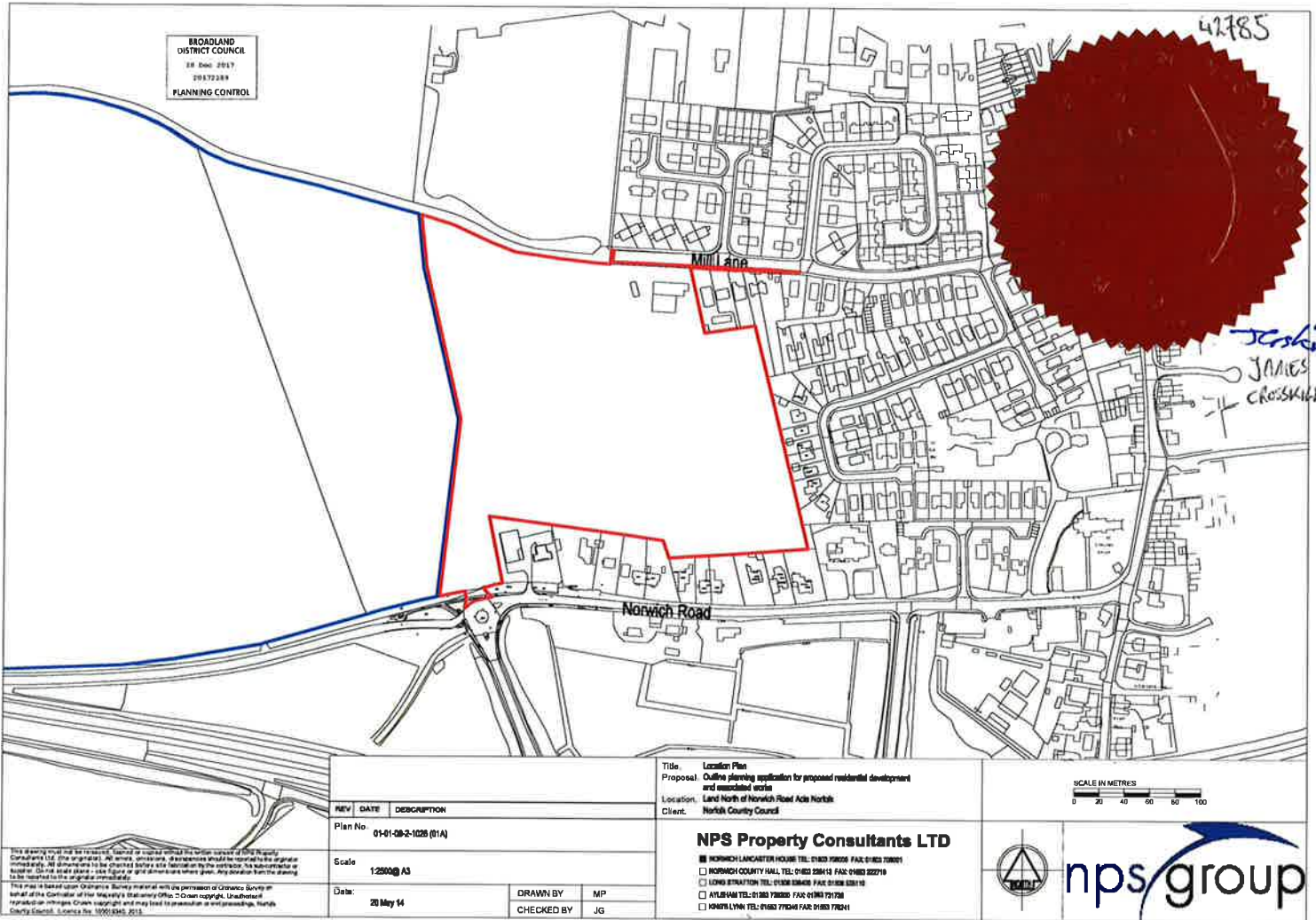
8.1.2 A Phasing Plan for the Development has been submitted to and approved by the Council in writing for the Development

Schedule 1

Plan 1

Plan 2

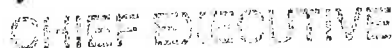
PLAN 1



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CHIEF EXECUTIVE





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"	60% Rented Housing and 40% 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"	<p>A scheme securing the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none">- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;- Full details of the design of the Affordable Dwellings- The identity of the Provider or such details as the

	<p>Council requires to satisfy itself that the Affordable Dwellings will be secured as Affordable Housing in perpetuity;</p> <ul style="list-style-type: none"> - The number, location, type and size of Affordable Dwellings to be constructed on the Site; - Full details of the Affordable Housing Mix 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"	<p>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 or as otherwise agreed with the Council in writing and as nominated by the Council in accordance with Part 2 of this Schedule</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>
"Complete"	<p>a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily amount to "development" for the purposes of section 55(1) of the Act and "Complete" and "Completed" shall be construed accordingly.</p>

"Eligible Household"	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 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 any monies paid in relation to 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"	<p>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:</p> <ul style="list-style-type: none"> - 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 any Phase of the Development until the Affordable Housing Scheme for that Phase has been submitted to and approved by the Council in writing
- 1.2 Not to Occupy the first any Open Market Dwelling within a Phase until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council in relation to that Phase SAVE THAT where the Council agrees that any the Affordable Dwellings within a Phase 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 for that Phase and the timescales and details set out therein.
- 1.4 Not to offer for sale any Intermediate Dwelling (other than 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 in any Phase until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme for that Phase 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;

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 a Shared Equity Dwelling

1.6.3 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 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 2 of this Schedule and to ensure that 33% of the Affordable Rented Dwellings are let in accordance and compliance with that Policy

Part 2

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 Acle;

1.1.2 If there is no suitable person in paragraph (i) allocations will be made to people who work in the Parish of Acle

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 Acle 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 Housing Rental Units

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

Open Space

Part 1

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

"Approved Off Site Informal Open Space Scheme"	<p>A scheme for the provision of the Off Site Informal Open Space comprising plans and details of</p> <p>(a) the layout, location and design of the Off Site Informal Open Space including details of the proposed equipment, landscaping, drainage features, access arrangements, street furniture and fencing and</p> <p>(b) the ongoing management and maintenance of the Off Site Informal Open Space by the Owner</p> <p>to a standard suitable for use by the general public and approved by the Nominated Officer</p>
"Approved Play Area Scheme"	<p>A scheme for the laying out and equipping of the Play Area approved in writing by the Nominated Officer</p>
"Approved On Site Informal Open Space Scheme"	<p>A scheme for the laying out and equipping of the On Site Informal Open Space approved in writing by the Nominated Officer</p>
"Maintenance Sum"	<p>A sum to be used for the repair management and maintenance of the On Site Informal Open Space and the Play</p>

	Area calculated in accordance with the Council's standard charges upon Commencement of the Development at Part 2 of this Schedule and Index Linked
"Management Company"	a company to be set up for the purposes of managing and maintaining the On Site Informal Open Space and the Play Area
"Management Company Arrangement"	The arrangements approved in writing by the Nominated Officer for the ongoing management and maintenance of the On Site Informal Open Space and the Play Area including provision for finances to be available to the Management Company to enable it to carry out its obligations to manage and maintain both the On Site Informal Open Space and the Play Area
"Nominated Body"	The Council, the Acle Parish Council or other body as notified to the Council by the Owner
"Off Site Informal Open Space"	An area of 1 hectare of land within the land coloured yellow on Plan 2 the exact location, boundaries and access to which to be approved in writing by the Nominated Officer
"On Site Informal Open Space"	An area of land within the Site of 0.66 hectares the location and boundaries of which are approved by the Nominated Officer
"Play Area"	An area of land within the Site of 0.36 hectares the location and boundaries of which are approved by the Nominated Officer

"Standard Terms"	(a) the On Site Informal Open Space and the Play Area only to be used as public open space (b) the consideration to be £1 (c) the transfer to be of the Unencumbered freehold estate with full title guarantee (d) to pay the Nominated Body's reasonable legal fees in connection with the transfer
"Unencumbered"	Means free from all adverse rights, easements, restrictions or other encumbrances which would interfere with the use of or result in any additional cost or liability to the Nominated Body not normally associated with the use of the On Site Informal Open Space and/or the Play Area as public open spaces

The Owner hereby covenants with the Council as follows:

1.1 Not to Commence the Development until the locations and boundaries of the On Site Informal Open Space the Off Site Informal Open Space and the Play Area have been approved and the Approved On Site Informal Open Space Scheme the Approved Off Site Informal Open Space Scheme and the Approved Play Area Scheme are in existence

1.2 Not to Occupy more than 75% of the Dwellings until the Approved Play Area Scheme has been implemented and completed and within 28 days of completion of the Approved Play Area Scheme to submit to the Council a post installation inspection report

1.3 Not to Occupy the last Dwelling until the Approved On Site Informal Open Space Scheme has been implemented and completed to the written satisfaction of the Nominated Officer

1.4 To manage and maintain the On Site Informal Open Space and the Play Area to the satisfaction of the Nominated Officer until they both have been transferred in accordance with paragraph 1.5

1.5 That within 12 months of the Occupation of the last Dwelling (or earlier by agreement of the Council, such agreement not to be unreasonably withheld) the On Site Informal Open Space and the Play Area will be transferred to the Nominated Body on the Standard Terms and the Maintenance Sum has been paid to the Nominated Body. If the Nominated Body is to operate under a Management Company Arrangement this must first have been approved in writing by the Council and must afterwards be complied with

1.6 Not to Occupy more than 50% of the Dwellings until the Off Site Informal Open Space Scheme has been implemented and completed to the written satisfaction of the Nominated Officer. Thereafter the Off Site Informal Open Space must be managed and maintained in accordance with the Approved Off Site Informal Open Space Scheme and to be made available for public use

Part 2

Extract from Open Space Policies detailing the cost per dwelling for the Provision and Maintenance of Open Space as at January 2015

Maintenance of Off-Site and On-Site Open Space

Property	Play	Green infrastructure	Total
1 bed	£30	£253	£283
2 bed	£41	£338	£379
3 bed	£51	£422	£473
4 bed	£61	£506	£567
5+ bed	£72	£591	

Schedule 4

The Council's covenants

The Council hereby covenants with the Owner as follows:

- 1.1 To notify it of the Nominated Body in sufficient time to enable the requirement in paragraph 1.5 to be met being no less than 3 months from the date of Occupation of the last Dwelling.

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:

Head of Democratic Services and
Monitoring Officer



Authorised Signatory:



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



JAMES CROSSKILL

Authorised to sign on behalf of Chief Legal Officer

~~Head of Law~~

