

Dated *30 January* 2015

Broadland District Council

-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

2015

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, NR7 0DU (referred to as "the Council")
- (2) NORFOLK COUNTY COUNCIL of 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 is the freehold owner of the Site and has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed

DEFINITIONS

- 1. 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
Nominated Officer	The Council's Chief Executive or other officer of the Council notified to the Owner
"Inflation Provision"	RICS (Building Cost Information Service) All Construction TPI: All New Construction between September 2006 and the date upon which the payment of the open space commuted sum is made pursuant to this Deed
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 planning permission to be granted by the Council for residential development of the Site and allocated reference number 20141108 or another planning permission for the Development granted pursuant to

section 73 or 96A of the Act as the Council agrees (in its absolute discretion) in writing

Phase	A phase of the Development as shown on any Phasing Plan submitted to and approved by the Council (or such other plan or plans as the Council may agree) or, where no Phasing Plan is agreed, means the Development as a whole and 'Phases' and 'relevant Phase' will be construed accordingly
Phasing Plan	Means a plan submitted to the Council showing the proposed phases of the Development, if any
Plan	The plan attached to this Deed at the First Schedule
Site	The land north of Norwich Road, Acle and registered at H M Land Registry under title number NK134721 and 11644 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 Covenants given by more than one party can be enforced against them individually or jointly

2.3 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

2.4 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done

2.5 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 obligations 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

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

First Schedule
The Plan

37421



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Acle
Land north of Norwich Road

Scale : 1:5000

Date : 16 Oct 2014

Produced by : JPG

This map is taken from Ordnance Survey Digital Data.
Nat Grid Reference: 639486.845 310394.162



Norfolk County Council

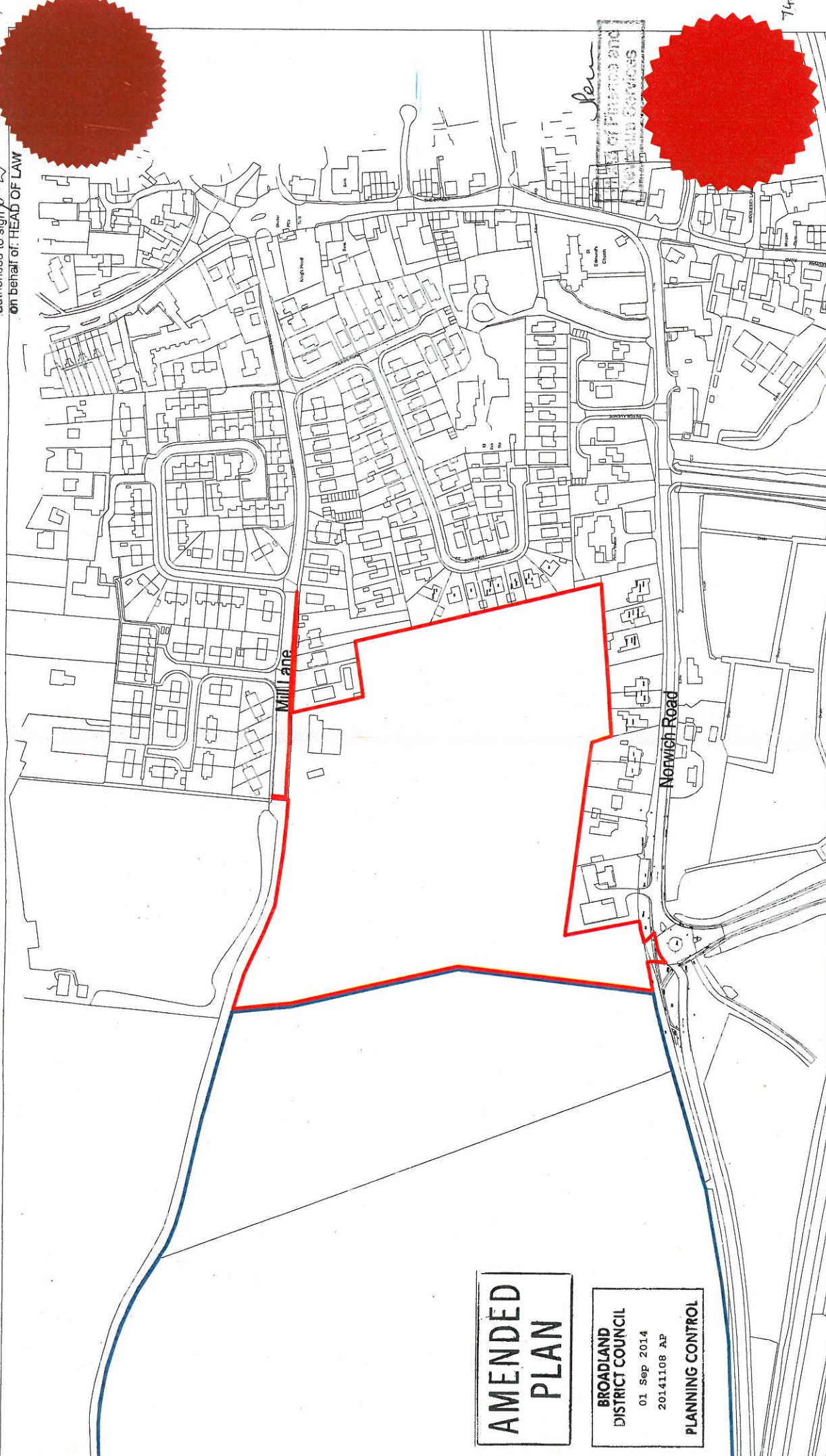
NPS Property Consultants Ltd. on behalf of Norfolk County Council,
County Hall, Martineau Lane, Norwich, NR1 2SF

nps group

743

(3)

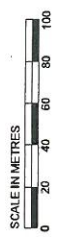
authorised to sign *J. L. Phelan* 37421
on behalf of: HEAD OF LAW



**AMENDED
PLAN**

**BROADLAND
DISTRICT COUNCIL**
01 Sep 2014
20141108 AP
PLANNING CONTROL

Scale 1:2500 @ A3		Plan No. 01-01-09-2-1026 (01A)	
Date 20 May 14		Scale 1:2500 @ A3	
REV		DATE	DESCRIPTION
Title Location Plan Proposal: Outline planning application for proposed residential development and associated works Location: Land North of Norwich Road, Aple Norfolk Client: Norfolk Country Council			
NPS Property Consultants LTD ■ NORWICH LANCASTER HOUSE TEL: 01603 760000 FAX: 01603 760001 ■ NORWICH COUNTY HALL TEL: 01603 222413 FAX: 01603 222719 ■ LONG STATION TEL: 01508 356400 FAX: 01508 355110 ■ AYLHAM TEL: 01263 736200 FAX: 01263 731732 ■ KINGS LYNN TEL: 01553 776240 FAX: 01553 778241			
DRA VN BY		MP	
CHE /KED BY		JG	



nps group

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Second Schedule
Affordable Housing

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

Affordable Dwellings	The Dwellings to be constructed on the Site as part of the Development as Affordable Housing such dwellings to be built to the Design & Quality Standards 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	80 per cent Rented Housing and 20 per cent Intermediate Housing (or such other percentages as the Council may agree in it's absolute discretion)
Affordable Housing Provision	The provision of Affordable Dwellings on the Site equating to at least 33 per cent 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 for the construction of the Affordable Dwellings in line with Affordable Housing Provision and specifying:</p> <p>- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings</p>

- the types of Intermediate Housing
- The identity of the Provider or details of how the Affordable Dwellings will be secured as Affordable Housing in perpetuity;
- such other information and requirements as the Council may require in connection with the provision of Affordable Housing for the Site and to enable approval of the Affordable Housing Scheme

Affordable Dwellings	Rented	Dwellings to be let by a Provider subject to rent controls that limit the rent to no more than 80 per cent of local market rents including any service charges as approved by the Council
Approved Housing Scheme	Affordable	The Affordable Housing Scheme submitted by the Owner and approved by the Council
Design Standards	& Quality	The Design and Quality Standards as specified by the Homes and Communities Agency or its successor or such other construction standards as the Council may determine
Eligible Household		A person or persons in need of accommodation who are unable to rent or buy on the open market determined in accordance with the Council's allocation policy or as otherwise approved by the Council
Intermediate Dwellings		Dwellings at prices and rents above those of Social Rented Dwellings but below market price or rents and at prices or rents (which shall in any event be 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) that Eligible Persons can afford as determined by the Council acting reasonably including shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent but not including Affordable Rented Dwellings or low cost market housing

Intermediate Housing Means one or more of Intermediate Dwellings Shared Equity Dwellings and Shared Ownership Dwellings agreed with the Council

Provider Means either:

(i) a “Registered Provider” as defined in the Housing and Regeneration Act 2008; 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 or the Homes and Communities Agency or any successor body for the provision of the Affordable Housing

Practically Complete Means the point at which a certificate of practical completion is issued by or on behalf of the Owner confirming that a Dwelling has been completed to Design & Quality Standards and is ready for occupation

Rented Housing Means Affordable Rented Dwellings

Shared Equity Dwellings Dwellings purchased on a shared equity basis whereby not more than 75 per cent of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition upon a payment equating to the additional equity being purchased payable to the Council (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 by the purchaser of the remaining share such a scheme to be secured by a mechanism agreed with and approved by the Council (or such other body as the Council may elect) and in a form approved by the Council (or by 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 Homes and Communities Agency or where there is no such form in a form approved by the Council such lease to provide for the following:

- 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
- power to the purchaser to increase their ownership up to 100% if they so wish
- rent at an annual level not exceeding 2.75% of the value of the equity retained by the Provider as approved 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 has been submitted to and has been approved by the Council in writing in relation to that Phase
- 1.2 Not to Occupy any Open Market Dwellings within a Phase unless and 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 (This requirement does not apply to any Affordable Dwellings that are not to be transferred to a Provider in accordance with the Approved Affordable Housing Scheme for that Phase)
- 1.3 Not to construct the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales set out therein.
- 1.4 Not to Occupy more than 75% of the Open Market Dwellings within a Phase unless and 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 in accordance with and subject to the following:
 - a) any transfer shall be for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed or to enable (where appropriate) Affordable Rented Dwellings to be let or Intermediate Dwellings to be let or sold at a cost low enough for Eligible Households to afford.
 - b) the transfer shall contain terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
 - c) To ensure that 33% of the Affordable Rented Dwellings are let in

accordance with the local lettings policy set out in the Third Schedule

1.5 Not to use or allow the Affordable Dwellings to be used for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme other than:

1.5.1 by a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquiring the said Affordable Housing Unit pursuant to the Housing Act 1996 or the Housing and Regeneration Act 2008 or any other statutory provision for the time being in force in respect of a particular Affordable Dwelling;

1.5.2 by a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold interest of the Shared Ownership Dwelling or has acquired 100% of a Shared Equity Dwelling

1.5.3 by a mortgagee exercising its power of sale in respect of the Affordable Dwellings or any part thereof or any receiver or administrator of that mortgagee or any mortgagee of a Shared Ownership Dwelling lawfully exercising any mortgagee protection provisions within the Shared Ownership Lease ("Affordable Housing Mortgagee") PROVIDED THAT it has first complied with the following:

- a) the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008 and provided copies of all notices served and any proposals received together with updates as to progress
- d) given the Council the option to purchase the relevant Affordable Dwellings or nominate another Provider to purchase the relevant Affordable Dwellings for a period commencing on the date that the Affordable Housing Mortgagee gives the Council notice ("the Mortgagee Notice") and ending on the later of two calendar months after the date of the Mortgagee Notice or the end of the

Moratorium Period (as defined and arising under either Section 145 or 147 of the Housing and Regeneration Act 2008) and the Council (or it's nominated Provider shall be entitled to complete the purchase of the Affordable Dwellings at any time up to one calendar month after expiry of the Moratorium Period.

- c) or, in the event of any statutory amendment resulting in the removal or lapse of the relevant provisions contained in the Housing and Regeneration Act 2008 and without alternative statutory provision to instead comply with the reasonable directions of the Council in relation to the disposal by giving not less than two months prior notice to the Council of any intention to dispose of any of the Affordable Dwellings and if the Council responds by written notice within two months from receipt of the Affordable Housing Mortgagees notice setting out arrangements for the transfer of the Affordable Dwellings so as to maintain them as Affordable Housing then the Affordable Housing Mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer but if the Council does not serve its response notice within the said two months or if having used its best endeavours the Affordable Housing Mortgagee shall not have effected the transfer envisaged in the Council's response notice within two months of that notice then the Affordable Housing Mortgagee shall be entitled to dispose of the Affordable Dwellings free of the restrictions set out in this Deed

Third Schedule
AFFORDABLE HOUSING
LOCAL LETTING POLICY: LOCAL CONNECTION ELIGIBILITY CRITERIA

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:

- (i) first allocations shall be made to people living in the Parish of Acle;
- (ii) if there is no suitable person in paragraph (i) allocations will be made to people who work in the Parish of Acle
- (iii) 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
- (iv) If there are no suitable persons in paragraph (i) and/or (ii) and/or (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

Administrative Procedure for Nominations

- To grant to the Council nomination rights to 100% of the Affordable Housing Rental Units
- 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

Fourth Schedule

Open Space

In this Schedule the following expressions have the following meanings:

Approved Off-Site Informal Open Space Scheme	<p>A scheme for the provision of the Open Space comprising plans and details of:</p> <p>a) the layout, location and design of the Off Site Open Space including details of proposed equipment, landscaping, drainage features, access arrangements, street furniture and fencing and</p> <p>b) the ongoing management and maintenance of the open space until the Open Space is transferred to the Nominated Body to a standard suitable for use by members of the public and approved by the Council / Nominated Officer and 'the Scheme' shall be construed accordingly</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 equipping of the On-Site Informal Open Space approved in writing by the Nominated Officer</p>
Off-Site Informal Open Space	<p>An area of 1 hectare of land within the land shaded yellow on the plan, the exact location, boundaries and access to which to be approved in writing by the Nominated Officer</p>
Maintenance Sum	<p>A sum to be used for the repair maintenance and management of the Play Area and the On-Site</p>

	Informal Open Space, calculated in accordance with the Council's standard charges upon Commencement of the Development as increased by the Inflation Provision
Management Company Arrangement	The arrangements approved in writing by the Nominated Officer for the on-going maintenance and management of the Play Area (including provision for finances to be available to the management company to enable it to carry out its obligations) A company set up to manage and maintain the Open Space
Nominated Body	The Council, the Acle Parish Council or other body, as notified by the Council to the Landowners
Play Area	An area of land within the Site of 0.36 hectares, the location and boundaries of which are 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
Standard Terms	<ul style="list-style-type: none"> 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	Is free from financial charges, adverse rights,

easements, restrictions or other encumbrances which would interfere with the use of or result in any additional cost or liability not normally associated with the use of the On-Site Informal Open Space and the Play Area as public open spaces

The Owner covenants with the Council as follows:

- 1.1 Not to Commence the Development until the locations and boundaries of the Play Area, the On-Site Informal Open Space and Off-Site Informal Open Space have been approved, and the Approved Play Area Scheme, the Approved On-Site Informal Open Space Scheme and Approved Off-Site Informal Open Space 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 maintain and manage the Play Area and the On-Site Informal Open Space to the satisfaction of the Nominated Officer until they 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, such agreement not to be unreasonably withheld), the Play Area and the On-Site Informal Open Space 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 be a Management Company Arrangement must first have been approved by the Council and they 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 carried out to the satisfaction of the Nominated Officer. Thereafter the Off-Site Informal Open Space must be maintained in accordance with the Approved Off-Site Informal Open Space Scheme and be made available for public use

Fifth Schedule
Council's Covenants

The Council covenants with the Owner as follows:

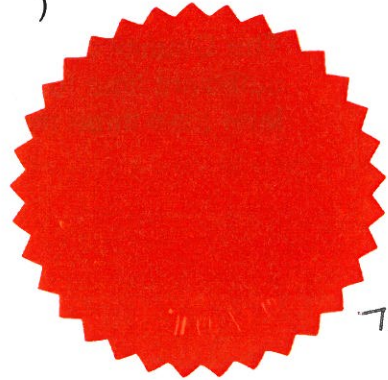
The Council covenants with the Owner to notify him of the Nominated Body in sufficient time to enable the requirement in paragraph 1.5 to be met, being no later than three months from the date of Occupation of the last Dwelling

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:

)
)

Authorised Signatory:



7431

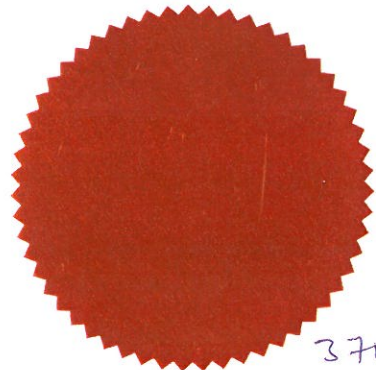
THE COMMON SEAL OF Norfolk County Council
was affixed in the presence of:

)
)

~~Head of Law~~



authorised to sign
on behalf of: HEAD OF LAW



37421