

**PLANNING OBLIGATION DEED**

**SECTION 106 OF**

**THE TOWN AND COUNTRY PLANNING ACT 1990**

**THIS DEED OF AGREEMENT** ("this Deed") is made the 7<sup>th</sup> March day of 2019

**BETWEEN:**

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge 1 Yarmouth Road Norwich NR7 0DU ("the Council"); and
- (2) **NORFOLK COUNTY COUNCIL** of County Hall Martineau Lane Norwich Norfolk NR1 2DH ("the County Council"); and
- (3) **RK PROPERTIES LIMITED** (incorporated in Samoa) of 2<sup>nd</sup> Floor, Building B, SNPF Plaza, Savalalo, Apia, Samoa ("First Owner"); and
- (4) **JOHN FREDERICK FAIRCLOTH** of The Grange, Salhouse Road, Rackheath, Norwich NR13 6LA ("the Second Owner"); and
- (5) **JOHN FREDERICK FAIRCLOTH and JANET LILIAN FAIRCLOTH** of The Grange, Salhouse Road, Rackheath, Norwich NR13 6LA ("the Third Owners"); and
- (6) **DAVID ERIC SMITH** of The Old Maltings, 14 Anchor Street, Coltishall, Norwich NR12 7AQ ("Fourth Owner")

together referred to as "the Parties"



## RECITALS

- (1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated
- (2) The County Council is a local planning authority for the purposes of the 1990 Act and the local highway authority and the education authority for the area in which the Site is situated
- (3) The First Owner is the freehold owner of the First Owner's Land
- (4) The Second Owner is the freehold owner of the Second Owner's Land
- (5) The Third Owners are the freehold owners of the Third Owners' Land
- (6) The Fourth Owner at the date of this Deed is the freehold owner of the Fourth Owner's
- (7) The Owners have submitted the Application to the Council and the Council has resolved to grant the Planning Permission subject to the prior completion of this Deed
- (8) The Parties have agreed to enter into this Deed with the intention that obligations contained herein may be enforced by the Council and the County Council against:
  - (a) the First Owner and their respective successors in title in respect of the First Owner's Land;
  - (b) the Second Owner and their respective successors in title in respect of the Second Owner's Land;
  - (c) the Third Owners and their respective successors in title in respect of the Third Owners' Land; and
  - (d) the Fourth Owner and their respective successors in title in respect of the Fourth Owner's Land.

In order to implement the policies and proposals of the development plan for the Council's administrative area and in order to serve the needs of the residents of the Dwellings as follows:

- (i) provision of Affordable Housing as part of the Development as required as further set out in the Second Schedule to this Deed
- (ii) provision of formal open space, informal open space and children's play on the Site which includes mitigation for any impacts on sensitive internationally designated sites or the payment of contributions for the provision of such areas off the Site or the provision of such areas off the Site as set out in the Third Schedule to this Deed



- (iii) the provision of the School Site as further set out in the Fourth Schedule to this Deed
- (iv) either an obligation to comply with the Travel Plan or funding towards the costs associated with the implementation of the Travel Plan by the County Council as set out in the Fifth Schedule to this Deed

(9) Save where otherwise stated or where the context so admits it is intended that this Deed will take effect once the Planning Permission has been granted, the Reserved Matters Application relevant to any Phase has been approved and the relevant part of the Development applicable to that Phase has Commenced

**NOW THIS DEED WITNESSETH as follows:**

**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"the 1990 Act"	the Town and Country Planning Act 1990 as amended
"Anglian Water"	Anglian Water Services Limited as sewerage undertakers
"Application"	the application validated on 5 April 2016 for outline planning permission for the erection of a minimum of 803 dwellings with access roads and associated infrastructure; a site for a new primary school; land for a Bus Rapid Transit (BRT) scheme; a section of orbital link road; retained areas of woodland and creation of open space submitted to the Council and allocated reference number 20160498
"Commencement"	the date on which a material operation as defined in Section 56(4) of the 1990 Act is first carried out except operations consisting of:  site clearance and regrading  works connected with infilling  construction of access roads



	demolition
	archaeological investigations
	ground surveys
	removal of contamination
	erection of temporary fences
	laying of services
	the temporary display of site notices and/or advertisements
	and "Commence" "Commenced" and "Commencement Date" shall be interpreted in accordance with this definition
"Development"	the development of the Site to be carried out pursuant to the Planning Permission
"Dwelling"	any residential unit to be constructed on the Site pursuant to the Planning Permission as part of the Development whether an Affordable Dwelling or an Open Market Dwelling
"Education Acts"	has the meaning given to it in Section 578 of the Education Act 1996
"the First Owner's Land"	the part of the Site registered at the Land Registry under title numbers NK181274 and NK178682 (subject to the matters recorded on the register) and shown shaded yellow on the Ownership Plan
"the Fourth Owner's Land"	the part of the Site registered at the Land Registry under title number NK454634 (subject to the matters recorded on the register) and shown shaded blue on the Ownership Plan
"Implementation Phasing Plan"	the phasing plan referred to at condition 3 of the Planning Permission (unless otherwise agreed in writing with the Council)
"Index Linked"	the increase or decrease (if any) in the Royal Institute of Chartered Surveyors Build Cost



Information Service All in Tender Price Index (or if such index ceases to be published such other index as the Council shall reasonably determine) as follows:

(a) in respect of any contribution payable under the provisions of the Third Schedule to this Deed between January 2015 (being the date of the Council's Recreational Provision in Residential Development (SPD)) and the date upon which the payment of the Off Site Open Space Contribution is made pursuant to this Deed; and

(b) in respect of any other contribution payable under the provisions of this Deed between the date of this Deed and the date upon which the payment of the relevant contribution is made pursuant to this Deed

"Nominated Officer"

the senior officer of the Council responsible for development management or other officer of the Council notified to the Owners

"Occupation"

occupation of any building or part of the Site for any purposes authorised by the Planning Permission but excluding occupation for the purposes of construction internal and external refurbishment decoration fitting-out marketing or security operations and "Occupy" and "Occupied" shall be construed accordingly

"Open Market Dwelling"

any Dwelling constructed as part of the Development which is not an Affordable Dwelling

"Owners"

the First Owner in respect of First Owners' Land, the Second Owner in respect of the Second Owner's Land, the Third Owners in respect of the Third Owners' Land and the Fourth Owner in respect of the Fourth Owner's Land together



"Ownership Plan"	the plan attached to this Deed at the First Schedule indicatively showing the extent of the Owners' landownership at the date of this Deed (ref: 23061/100)
"Phase"	any part of the Development shown as a phase for the purpose of identification only on the Implementation Phasing Plan and "Phases" and "relevant Phase" shall be construed accordingly
"Plan"	the plan attached to this Deed at the First Schedule (ref: 101)
"Planning Permission"	the planning permission to be granted subject to conditions by the Council pursuant to the Application
"Reserved Matters"	the appearance, landscaping, layout and scale of a Phase of the Development in respect of which details have not been given in the Application
"Reserved Matters Application"	the application(s) for the approval of Reserved Matters for a Phase to be submitted to the Council pursuant to the Planning Permission
"the Second Owner's Land"	the part of the Site registered at the Land Registry under title numbers NK374295 and NK116494 (subject to matters recorded on the register) and part of the Site unregistered, but comprised of a root Conveyance dated 28 July 1978 between Sidney Ernest Cowell Joan Mary Cowell (1) and John Frederick Faircloth (2); a Deed of Gift dated 6 January 1971 between Ernest Richard Faircloth (1) and John Frederick Faircloth (2) and a Deed of Gift dated 6 January 1971 between Frederick William Faircloth (1) and John Frederick Faircloth (2) all comprising part of the land shown shaded green on the Ownership Plan
"Section 38 Agreement"	any proposed agreement between the Owners and the highway authority pursuant to Section



38 of the Highways Act 1980 or any statutory modification or re-enactment thereof to ensure that the estate roads and footpaths on the Site are constructed to the required standard for adoption

"Site"

the land south of Salhouse Road Sprowston shown edged red for identification purposes only on the Plan against which this Deed may be enforced

"the Third Owners' Land"

the part of the Site registered at the Land Registry under title numbers NK108152 and NK441247 (subject to the matters recorded on the register) and comprising part of the land and shown shaded orange on the Ownership Plan

"Trigger"

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

"Wider Allocation"

the land comprising 56 hectares or thereabouts allocated for residential led mixed use development pursuant to policy GT7 of the policy document entitled "Growth Triangle, Area Action Plan, Old Catton, Sprowston, Rackheath and Thorpe St Andrew" forming part of the Council's Local Plan and adopted by the Council on July 2016 (including for the avoidance of any doubt and as the circumstances so permit or require the balance of the Site over and above the Phase under particular consideration (irrespective of whether or not Development has Commenced))



## **2. INTERPRETATION**

- 2.1 One gender includes all the others
- 2.2 The singular includes the plural and vice versa
- 2.3 The parties to this Deed include their respective successors in title to the parts of the Site in respect of which they hold an interest (as detailed above in the recitals to this Deed) and reference to the Council includes any successor local planning authority exercising powers under the 1990 Act and reference to the County Council includes any successor authority exercising powers under the Highways Act 1980 or the Education Acts
- 2.4 A covenant not to do something includes a covenant not to permit or suffer that thing to be done
- 2.5 Headings in this Deed are for ease of reference only and cannot be taken into account in its construction or interpretation
- 2.6 A reference to a paragraph or clause in the Schedule of this Deed is a reference to a paragraph or clause in that part of the Schedule
- 2.7 Reference to any statutory provision includes reference to Acts of Parliament and all other legislation having effect as directly or indirectly amended consolidated extended replaced or re-enacted by any subsequent legislation and any orders regulation instruments or other subordinate legislation made under that statute or provision

## **3. ENABLING POWERS AND LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the 1990 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 1990 Act enforceable by the Council and the County Council
- 3.2 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
- 3.3 A reference to an act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that act
- 3.4 This Deed is governed by and interpreted in accordance with the law of England



#### **4. OWNERS' COVENANTS AND OBLIGATIONS**

- 4.1 The Owners covenant with the Council and the County Council in this Deed and the Schedules to this Deed (as appropriate) to observe and perform the obligations and stipulations contained in this Deed and it is AGREED (subject to Clause 5.1 of this Deed) for the avoidance of all doubt that the obligations or covenants within this Deed shall not be joint and severally enforceable against the Owners and shall only be enforceable against:
- 4.1.1 the First Owner (or any of their successors in title) in respect of the First Owner's Land or any part thereof;
  - 4.1.2 the Second Owner (or any of their successors in title) in respect of the Second Owner's Land or any part thereof;
  - 4.1.3 the Third Owners (or any of their successors in title) in respect of the Third Owners' Land or any part thereof;
  - 4.1.4 the Fourth Owner (or any of their successors in title) in respect of the Fourth Owner's Land or any part thereof

#### **5. AGREEMENTS AND DECLARATIONS AND OTHER PROVISIONS**

The parties agree and declare as follows:

- 5.1 No person shall be liable for any breach of this Deed which first occurs after they shall have disposed of all of their interest in the Site or that part of the Site to which the breach relates PROVIDED THAT the reservation of any rights easements or the inclusion of any covenants or restrictions in any transfer shall not constitute an interest for the purposes of this clause
- 5.2 The Owners confirm that they are the owners of their respective parts of the Site (as detailed above in the recitals to this Deed) with full power to enter into this Deed and that there is no other person or body with an interest in any part of the Site whose consent is necessary to make this Deed binding on all interests in the Site
- 5.3 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
- 5.3.1 individual purchasers lessees and/or occupiers of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees SAVE FOR individual purchasers lessees and/or occupiers of Affordable Dwellings which shall be subject to Paragraph 1.7 in Part 1 of the Second Schedule;



- 5.3.2 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 or drainage in connection with the Development of the Site
- 5.4 On completion the Owners will pay the Council's and the County Council's reasonable legal costs in connection with this Deed
- 5.5 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions
- 5.6 No waiver, express or implied, by the Council or County Council constitutes a continuing waiver, nor prevents the Council or the County Council from enforcing any of the provisions in this Deed
- 5.7 The covenants requirements and the planning obligations in this Deed shall only come into effect in respect of any Phase once Development has Commenced on that Phase unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any such covenants requirements or the planning obligations
- 5.8 This Deed shall be registered as a local land charge by the Council
- 5.9 Where approval, agreement, written satisfaction or consent is required from any party to this Deed such approval, agreement, written satisfaction or consent shall not be unreasonably withheld or delayed
- 5.10 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 Planning Permission
- 5.11 Following the performance of all the obligations contained in the Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 5.12 If the Planning Permission is subject to an application under Section 73 of the Act for the removal or amendment of any condition attached to the Planning 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. COUNCIL AND COUNTY COUNCIL OBLIGATIONS**

- 6.1 The Council and the County Council hereby covenant with the Owners (as appropriate) to comply with their respective requirements in this Deed



## **7. RANSOM STRIPS**

- 7.1 Without prejudice to the generality of clause 4 above the Owners covenant with the Council and the County Council in respect of any Phase to construct or improve any road cycle-track or other services on that Phase required under the terms of this Deed or the Planning Permission or any Section 38 Agreement or any requirement of Anglian Water up to the boundary of the relevant Phase but for the avoidance of any doubt this provision shall not place any obligation on the Owners to grant any rights to the owner of any land which abuts any part of the Site
- 7.2 Without prejudice to the generality of clause 6 above the Council shall use its best endeavours to ensure that identical provisions as those contained in Clause 7.1 are included in any planning permissions granted by the Council or planning obligations entered into under Section 106 of the 1990 Act or any agreements entered into under either Sections 38 or 278 of the Highways Act 1980 in respect of any planning application that it receives (or any planning application the Council has previously received as of the date of this Deed which remains undetermined as of the date of this Deed) for development of any land within the Wider Allocation
- 7.3 For the avoidance of any doubt the Parties agree and specify that the intention of clauses 7.1 and 7.2 above is to prevent the creation of ransom strips and thereby to facilitate the development both of the Site in Phases and of any sites within the Wider Allocation

## **8. DISPUTES**

- 8.1 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
- 8.2 Nothing in this clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 9.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999



**10. LENDER'S CONSENT**

- 10.1 Any lender who may acquire an interest in the Site consents to this Deed with the intention that notwithstanding section 104 Law of Property Act 1925, its interest in the Site will be bound by the terms of this Agreement as if it had been executed and registered as a local land charge before the execution of their security
- 10.2 Notwithstanding Clause 10.1 no lender shall incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession

**11. INTEREST AND VAT**

- 11.1 If any payment due to the Council or the County 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
- 11.2 All payments made in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof

**12. NOTICES**

- 12.1 Any notice or written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by registered or recorded delivery to address given at the beginning of this Deed unless written notification of another address has been received:
- 12.2 The Owners or any one of them will notify the Nominated Officer and the County Council in writing of the relevant
- 12.2.1 anticipated Triggers seven days in advance of each anticipated date
- 12.2.2 actual Triggers within seven days of each actual date
- 12.3 If the Owners or any one of them disposes of their interest in all or part of the Site they will notify the Nominated Officer and the County Council within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site PROVIDED THAT this requirement shall not apply to the sale of any Dwellings for Occupation as dwellinghouses



**IN WITNESS** whereof the Parties hereto have executed this instrument as their Deed and it is the Parties' intention that this Deed be delivered and it is hereby delivered on the date first before written



**FIRST SCHEDULE**

**Plan**

**Ownership Plan**

**School Site Area Plan**



Noto

SUMMARY

Application Site

*Handwritten signature*

Head of Democratic Services and  
Planning Officer

**BROADLAND  
DISTRICT COUNCIL**

18 Mar 2016

20160498

**PLANNING CONTROL**

PROJECT TITLE  
Salhouse Road GT7  
Allocation

PROJECT NUMBER  
DES001-0283

CLIENT  
Grange Farm Salhouse  
Consortium

101 Location Plan

CHANGING LAYOUTS

101

SCALE  
1/5000(at 1/10000(a3))

DATE  
MARCH 2016

DRAWN BY

VK

**Lamprom**

Planning and Development Consultants  
Brentwood House, 41 Poplar Road  
Brentwood, Essex, S11 1JQ  
www.lamprom.co.uk





# Land Ownership Legend

- Property owned by John and Janet Faircloth
- Property owned by RK Properties Limited
- Property owned by David Eric Smith
- Property owned by John Faircloth



## Ordnance Survey Mapping

This plan is based on current Ordnance Survey Master Map Data. Boundaries and physical details have only been taken from the red line boundaries shown on this drawing. See Licence details for AL100000811. At Ordnance Survey, mapping is subject to their own accuracy and tolerances.

All surveyed data relates to Ordnance Survey GPS datum. Control was established using Ordnance Survey's Active GPS network OSGB36/2005, transferred from ETRF89 using OSGB36 and OS1940 models.

## Land Registry Title Plan information

This drawing has been digitally overlaid with Land Registry's title plan. The red line boundary indicated on this overlay is subject to a General Boundaries condition unless otherwise stated, under a 200(1) LRA 2002. Unless the tolerances applied to Ordnance Survey mapping tolerance. Plans (Guide 40 - Supplement 1 - The basis of Land Registry plans). There is no standard tolerance, measurement or value that can be attributed to the relationship between the position of the General Boundary mapped on a Land Registry title plan and the position of the legal boundary.

Rev	Date	By	Description
1	Feb 2019	CSJ	Final issue

**plandescil**  
consulting engineers

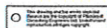
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Client  
Mrs J Smith

Project  
Consortium A  
Salhouse Road  
Norwich, Norfolk.

Drawing Title  
Consortium Ownership  
Section 106 Agreement

Scale	U.K.D.	Date	Drawn by
1:2500 (A1)	February 2019	CSJ	
Sheet No.	23061/100	Rev	



DRAWING SCALE REFERENCE IN  
40 0 40 80 120 160 200

M. Mue  
Head of Democratic Services and  
Monitoring Officer







**SECOND SCHEDULE**  
**AFFORDABLE HOUSING**

**Part 1**

In this Second 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 each Phase of 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"       | in respect of every Phase other than the First Phase of the Site 60% Rented Housing and 40% Intermediate Housing per Phase unless otherwise agreed by the Council in writing with the mix for every Phase other than the First Phase being determined in the Affordable Housing Scheme for that Phase   |
| "Affordable Housing Provision" | <p>the construction and provision of Affordable Dwellings on each Phase of the Site (other than the First Phase) in the following percentages (whichever is the higher) either:</p> <ul style="list-style-type: none"><li>a) the Minimum Percentage of Affordable Dwellings;</li><li>or</li><li>b) the Revised Percentage of Affordable Dwellings</li></ul> <p>dependent upon the determination and recommendations of the Viability Assessment to be carried out for each Phase (other than the First Phase) in accordance with the provisions of Part 2 of this Second Schedule</p> <p>(or such other percentage as the Council may approve in its absolute discretion) in accordance with the Affordable Housing Mix</p> |
| "Affordable Housing            | (i) a scheme for the First Phase securing the First Phase   |



Scheme"	Affordable Housing Provision; or
	<p>(ii) a scheme for each and every subsequent Phase securing the Affordable Housing Provision for each subsequent Phase and specifying in each case:</p> <ul style="list-style-type: none"> <li>- the Phase to which the scheme relates;</li> <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 or Providers (if known at this stage) or such details as the Council reasonably requires to satisfy itself that the Affordable Dwellings will be secured as Affordable Housing in perpetuity;</li> <li>- the number, location, type and size of Affordable Dwellings to be constructed on the relevant Phase;</li> <li>- full details of the Affordable Housing Mix including the types of Intermediate Housing and Rented Housing;</li> <li>- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme including details of how the Recycling Obligation for the relevant Phase will be complied with and secured</li> </ul>
"Affordable Rented Dwellings"	Affordable Dwellings to be let by a Provider with an appropriate agreement with Homes England for the provision of social housing to Eligible Households subject to rent controls that require a rent of no more than 80 per cent of the local market rent including any service charges (where applicable) and shall not exceed the local housing allowance for that area or as otherwise approved by the Council in writing
"Approved Affordable Housing Scheme"	the Affordable Housing Scheme approved by the Council for each Phase (including for the avoidance of any doubt the First Phase) in accordance with paragraph 1.1 of this Schedule including any amendment, revision or substitution approved by the Council in writing
"Discount Price"	means 75% of the Open Market Value of the Discounted Market Dwelling as at the date of any proposed sale as



determined in writing by an independent chartered surveyor of not less than ten years standing having experience of residential property within the parish of Sprowston

"Discounted Market Dwellings" Dwellings for sale to Eligible Households at the Discount Price and "Discounted Market Dwelling" shall be construed accordingly

"Discount Restriction" a restriction on the sale of each Discounted Market Dwelling to an Eligible Household at a Discount Price in the following form:

No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer for the disponor or the disponee that the provisions of paragraph 1.4.1 – 1.4.3 of Part 1 of the Second Schedule of the Section 106 agreement dated [ ] and made between Broadland District Council (1) Norfolk County Council (2) RK Properties Limited (3) John Frederick Faircloth (4) John Frederick Faircloth and Janet Lilian Faircloth (5) and David Eric Smith (6) and have been complied with"

"Eligible Household" a person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Paragraph 1.8 of Part 1 of this Second Schedule and Part 3 of this Second Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council

"First Phase" the Phase of the Site marked "Phase 1" on the Implementation Phasing Plan

"First Phase Affordable Housing Mix" 60% Rented Housing and 40% Intermediate Housing (unless otherwise agreed by the Council in writing) with the mix for the First Phase being determined in the Affordable Housing Scheme for that Phase

"First Phase Affordable" the construction and provision of Affordable Dwellings on the First Phase equating to no less than 15% of the total



Housing Provision"	number of Dwellings on the First Phase (unless otherwise agreed in writing by the Council) in accordance with the First Phase Affordable Housing Mix
"Homes England"	Homes England (the body formerly known as the Homes & Communities Agency) or its successor body or other appropriate body as the Council may approve
"Intermediate Dwellings"	Affordable Dwellings for sale and rent 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 and shared equity products as approved by the Council
"Intermediate Housing"	one or more of Intermediate Dwellings Discounted Market Dwellings Shared Equity Dwellings and Shared Ownership Dwellings as approved by the Council
"the Minimum Percentage of Affordable Dwellings"	17% of the total number of Dwellings on each Phase (other than the First Phase)
"Open Market Value"	means the best price at which the sale of an interest in a Dwelling (other than an Affordable Dwelling) would have been completed unconditionally for cash consideration on the date of valuation assuming (i) a willing buyer and a willing seller, (ii) any restrictions imposed on a Dwelling by this Deed are disregarded (iii) there has been a reasonable period within which to negotiate the sale (iv) the Dwelling has been freely exposed to the market (v) and both the buyer and the seller acted knowledgeably prudently and without compulsion
"Practically Complete"	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"	<p>either:</p> <p>(i) a Registered Provider; or</p> <p>(ii) another organisation that owns affordable dwellings and has been approved in writing by the Council</p>
"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 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 within the Council's administrative area or such other area as the Council may agree
"Registered Provider"	as defined in the Housing and Regeneration Act 2008
"Rented Housing"	one or more of Affordable Rented Dwellings and Social Rented Dwellings as agreed with the Council
"the Revised Percentage of Affordable Dwellings"	<p>if so determined and justified by a Viability Assessment</p> <p>the percentage of Affordable Dwellings in excess of the Minimum Percentage of Affordable Dwellings to be provided on a Phase (other than the First Phase)</p> <p>PROVIDED THAT the Revised Percentage of Affordable Dwellings shall not exceed the percentage of Affordable Dwellings that would be required to be provided on a Phase pursuant to the Council's adopted development plan policy in force at the time a Viability Assessment for a Phase (as appropriate) as settled or agreed in accordance with the provisions in Part 2 of the Second Schedule</p>
"Shared Equity Dwellings"	Affordable 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



	<p>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)</p>
"Shared Ownership Dwellings"	Affordable Dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	<p>a lease in a form approved by Homes England 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"> <li>- 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</li> <li>- power to the purchaser to increase their ownership up to 100% if they so wish</li> <li>- 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 Homes England</li> </ul>
"Social Rented Dwellings"	Affordable 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 Homes England or any subsequent replacement or where there is no such replacement at a rent determined by the Council
"Viability Assessment"	an assessment in writing of the economic viability of each Phase (other than the First Phase) to be carried out in accordance with Part 2 of this Schedule and in strict accordance with the approach and methodology recommended by the Royal Institution of Chartered



Surveyors in the report entitled "RICS Professional Guidance, England, "Financial Viability in Planning" 1<sup>st</sup> Edition, Guidance Note" (or any subsequent re-enactment) using ARGUS appraisal software in the same manner as the previous report of Carter Jonas on the Development dated 11 October 2017 as provided to Stuart Bizley of SMB Property Consultants utilising direct evidence on sale and costs from the immediately preceding Phases of the Development which are in progress or have been completed prior to the date the relevant assessment is carried out in order to determine whether a Phase can viably provide more than the Minimum Percentage of Affordable Dwellings and in the event that it is so established that it can so provide then to determine and justify the Revised Percentage of Affordable Dwellings applicable to that Phase

**The Owners covenant with the Council as follows:**

- 1.1 Not to Commence or allow Commencement of any Phase of the Development until:
  - 1.1.1 the Affordable Housing Scheme for that Phase (save for the identity of the Provider and the timetable for the provision of the Affordable Dwellings) has been submitted as part of the Reserved Matters Application and has been approved by the Council in writing; and
  - 1.1.2 the identity of the Provider and the timetable for provision of the Affordable Dwellings has been approved by the Council as part of the Approved Affordable Housing Scheme for that Phase
- 1.2 Not to Occupy or allow Occupation of the first Open Market Dwelling in any Phase until an exchanged contract or contracts for the sale of the Affordable Dwellings on that Phase to a Provider has been supplied to the Council **SAVE THAT** where the Council agrees that the Affordable Dwellings on any Phase are not to be so transferred this obligation shall not apply
- 1.3 Not to construct or procure the construction operation or provision of the Affordable Dwellings on any Phase otherwise than in accordance with the Approved Affordable Housing Scheme for that Phase and the timescales and details set out therein



- 1.4.1 On first sale not to transfer or otherwise dispose of any Discounted Market Dwelling to any person other than an Eligible Household as approved by the Council
- 1.4.2 On any second or subsequent sale not to transfer or otherwise dispose of any Discounted Market Dwelling to any person other than an Eligible Household
- 1.4.3 Not to transfer or otherwise dispose of any Discounted Market Dwelling other than subject to a Discount Restriction at any time
- 1.5 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
- 1.6 Not to Occupy or allow Occupation of more than the 75% of the Open Market Dwellings on any Phase until all of the Affordable Dwellings to be provided on that Phase pursuant to the Approved Affordable Housing Scheme for that Phase are Practically Complete and the following requirements have been met:
  - (a) any Rented Housing and Shared Ownership Dwellings for that Phase have been transferred to the approved Provider (or where no transfer is required their on-going provision has been secured) in accordance with and subject to the following terms:
    - i) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
    - ii) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;
    - iii) with the benefit of all necessary easements, rights and utilities; and
    - iv) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme for the relevant Phase and where specifically requested by the Council, the registration of a restriction to secure compliance with the Recycling Obligation
  - (b) any other Intermediate Housing for that Phase has been made available for sale in accordance with the Approved Affordable Housing Scheme for that Phase
- 1.7 Not to use or allow the Affordable Dwellings in any Phase to be used for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme for that Phase **PROVIDED THAT** the obligations contained in this Schedule shall not be binding upon:



- 1.7.1 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 any statutory re-enactment);
- 1.7.2 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;
- 1.7.3 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 or any administrator (howsoever appointed) including a housing administrator (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 is 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
- 1.7.4 all persons or bodies deriving title under or through any persons or bodies referred to in this paragraph 1.7 (including their successors in title)
- 1.8 To comply with the requirements of the local connection criteria at Part 3 of this Schedule and to ensure that 33% of the Affordable Rented Dwellings are let in accordance and compliance with that local connection criteria



## **Part 2**

### **VIABILITY ASSESSMENT**

1. The Owners hereby covenant with the Council as follows:
  - 1.1 Not to Commence or allow Commencement of a Phase (other than the First Phase which for the avoidance of any doubt shall not be affected or bound by the provisions and obligations of this Part 2 of this Second Schedule) until the Owners have undertaken and submitted to the Council in writing a Viability Assessment for that Phase:
    - (a) making a determination and recommendation on whether or not it is economically viable to construct and provide Affordable Dwellings in excess of the Minimum Percentage of Affordable Dwellings on that Phase; and
    - (b) in the event that the Viability Assessment determines and recommends that the construction and provision within that Phase of Affordable Dwellings in excess of the Minimum Percentage of Affordable Dwellings is economically viable making a further determination and recommendation as to the Revised Percentage of Affordable Dwellings applicable to that Phase
  - 1.2 When submitting the Viability Assessment to the Council in accordance with the provisions of paragraph 1.1 above to confirm to the Council also in writing that they accept the determination and recommendation of the Viability Assessment for that Phase
  - 1.3 Not thereafter to Commence or allow Commencement of that Phase until the Council has either accepted (in accordance with the provisions of paragraph 2.1 below) the findings and recommendations of the Viability Assessment or any disagreement on the Council's part has been resolved utilising the procedure set out at paragraph 2.3 below; and an Affordable Housing Provision for that Phase has thereby either been agreed or been resolved and settled (as the case may be)
2. The Council and the Owners hereby covenant and agree with each other as follows:
  - 2.1 Within 20 working days of receipt of a Viability Assessment for a Phase from the Owners (together with the information required under paragraph 1.2 above) the Council shall confirm in writing to the Owners whether it:
    - 2.1.1 accepts the findings and recommendations of the Viability Assessment for that Phase ("the Acceptance Notice"); or
    - 2.1.2 rejects (with reasons) the findings and recommendations of the Viability Assessment for that Phase ("the Non-Acceptance Notice")
  - 2.2 If the Council through the issue of the Acceptance Notice accepts the findings and recommendations of the Viability Assessment for that Phase then the Affordable Housing



Provision for that Phase shall be that determined and recommended by the Viability Assessment

- 2.3 If the Council issues a Non-Acceptance Notice for a Phase then either Party may immediately refer the dispute to the expert appointed in accordance with the provisions of clause 8 hereof ("the Appointed Expert") and the determination of the Appointed Expert as to the Affordable Housing Provision for that Phase shall be binding on the Parties (save in the event of manifest error) and the Affordable Housing Provision for that Phase shall be that determined by the Appointed Expert PROVIDED THAT if both Parties agree in writing not to refer the dispute to the Appointed Expert for a specified period of time to allow negotiations to settle the dispute by consent to take place then the ability of either Party to refer the dispute to the Appointed Expert pursuant to this paragraph 2.3 shall cease and then only arise again on the expiry of such agreed period AND FOR THE AVOIDANCE OF DOUBT it is agreed that if the negotiations referred to above result in the dispute being settled by consent then the Affordable Housing Provision for that Phase shall be that agreed in writing between the Parties following the successful conclusion of the negotiations
- 2.4 Once the Affordable Housing Provision for a Phase has been settled and agreed either in accordance with the provisions of paragraphs 2.1.1 and 2.2 above or in accordance with the provisions of paragraph 2.3 (as the case may be) above then that Affordable Housing Provision shall remain in full force and effect unless and until a revised Viability Assessment for that Phase is submitted by the Owners to the Council in accordance with the provisions of paragraph 2.5 below PROVIDED THAT unless otherwise agreed in writing by the Council no such revised Viability Assessment may be submitted by the Owners to the Council within a 12 month period commencing (as the case may be) on the following events:
- (a) the date of the Acceptance Notice issued under paragraph 2.1.1 above;
  - Or
  - (b) the date of the written notice of agreement between the Parties at the end of any period of negotiation agreed under paragraph 2.3 above;
  - Or
  - (c) the date of the determination of the Appointed Expert under paragraph 2.3 above
- 2.5 Strictly subject to the provisions of paragraph 2.4 of this Part 2 of the Second Schedule the Owners may (but shall be under no requirement to) submit a revised Viability Assessment to the Council in respect of a Phase (other than the First Phase) and in the event that the Owners submit such a revised Viability Assessment the provisions of paragraphs 2.1 to 2.4 of this Part 2 of the Second Schedule shall apply to that Phase in



the same manner as they apply to the Viability Assessment submitted prior to the Commencement of Development of that Phase in accordance with the requirements of paragraph 1.1 of Part 2 of this Second Schedule PROVIDED THAT and for the avoidance of any doubt the provisions of both paragraph 2.4 and of this paragraph 2.5 shall be without prejudice and subject to the provisions of paragraph 1.6 of Part 1 of this Second Schedule



### **Part 3**

#### **LOCAL CONNECTION 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:

- 1.1 first allocations shall be made to people living in the parish of Sprowston;
- 1.2 if there is no suitable person in paragraph 1.1 allocations will be made to people who work in the parish of Sprowston; and
- 1.3 if there are no suitable persons in paragraphs 1.1 and 1.2 allocations will be made to people who need to move to the parish of Sprowston to give/receive support to/from close family;
- 1.4 If there are no suitable persons in paragraph 1.1 and/or 1.2 and/or 1.3 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 The administrative procedure for nominations shall be as follows:
  - 2.1 to grant to the Council nomination rights to 100% of the Affordable Rented Dwellings unless otherwise agreed in writing;
  - 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 Owners shall agree between them



### **THIRD SCHEDULE**

#### **OPEN SPACE**

##### **Part 1**

##### **Owners' Obligations**

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

"Approved Open Space Scheme"	the Open Space Scheme for each Phase as approved by the Nominated Officer including any amendment or substitution agreed by the Nominated Officer in writing
"Green Infrastructure Contribution"	means that part of the Off Site Open Space Contribution and / or Open Space Maintenance Contribution for a Phase (if any) allocated to the provision and maintenance of green infrastructure as detailed in Part 2 of this Schedule
"Management Company"	a company to be set up for the purposes of managing and maintaining the Open Space for each Phase in perpetuity
"Nominated Body"	one of the following as agreed by the Council:  a) the Council;  b) the town or parish council for the area within which the Site is located;  c) the Management Company; or  d) such other body as the Council may elect as being responsible for maintenance of the Open Space within a Phase
"Off Site Open Space Provision"	in the Council's absolute discretion the provision of Open Space either elsewhere within the Site or in the parishes of Sprowston, Rackheath and/or Plumstead in lieu of any deficiency in the amount or type of Open Space being provided within a Phase compared to that required in accordance with the Council's current Open Space Policies
"Off Site Open Space	a sum in lieu of any deficiency in the amount or type of



Contribution"	Open Space being provided within a Phase compared to that required in accordance with the Council's current Open Space Policies such sum to be calculated in accordance with Part 2 of this Schedule and Index Linked and applied in the Council's absolute discretion towards the provision of open space serving the Development in the parishes of Sprowston, Rackheath and Plumstead
"Open Space"	land to be set aside and used as public open space within a Phase which may include areas for formal recreation, play, allotments and green infrastructure in line with current Open Space Policies (unless the Nominated Officer agrees to either or both of Off Site Open Space Provision and/or an Off Site Open Space Contribution in lieu of part or all of the Open Space in which case such lower amount as the Nominated Officer agrees)
"Open Space Maintenance Contribution"	a financial contribution Index Linked towards the repair, management and maintenance of the Open Space within a Phase to be calculated in accordance with Part 2 of this Schedule
"Open Space Policies"	means the policies contained in the Council's Development Management Development Plan Document including policy EN1 biodiversity & habitats, EN3 green infrastructure & RL1 provision of formal recreation space or such replacement policies or documents as the Council may specify (or any amendment or revision therefore) relating to the provision of open space, recreation, sport, allotments, green infrastructure and other similar types of amenity land and facilities
"Open Space Scheme"	a scheme securing the provision of Open Space within a Phase calculated in accordance with Part 3 of this Schedule (unless the Nominated Officer agrees to either or both of Off Site Open Space Provision and/or an Off Site Open Space Contribution in lieu of part or all of the Open Space in which case such lower



amount as the Nominated Officer agrees) and containing in respect of each Phase:

- full details of the amount of recreation, play, allotment and green infrastructure provision to be provided in line with the Open Space Policies
- the extent, location and boundaries of the Open Space
- details of the design and layout of the Open Space all equipment, drainage features, access arrangements, street furniture, fencing and landscaping together with appropriate plans drawings and specifications
- details of the ongoing management and maintenance of the Open Space including whether a Management Company is proposed as the Nominated Body
- such other information as the Council may reasonably require to enable approval of the Open Space Scheme

"Standard Terms"

in accordance with the reasonable requirements of the Council in consultation with the Nominated Body to include in respect of each Phase:

- the transfer of the freehold estate of the Open Space Unencumbered with full title guarantee
- for a sum not exceeding £1 (one pound)
- with the benefit of all necessary rights and easements and with vacant possession
- subject to a restriction on the future use of the Open Space for recreational and amenity purposes by the general public
- an obligation to maintain the Open Space to a standard suitable for use by members of the public
- a requirement that the Nominated Body's conveyancing fees and disbursements are paid for by



the Owners

"Unencumbered"

means free from all adverse rights, easements, restrictions or other encumbrances which would interfere with the use of the Open Space as public open space and all encumbrances which might result in additional cost or liability to the Nominated Body not normally associated with the use of the Open Space

The Owners hereby covenant with the Council as follows:

1. OPEN SPACE

1.1 Not to Commence or allow Commencement of any Phase until the Open Space Scheme for that Phase has been submitted to and approved in writing by the Nominated Officer

1.2 Where the Nominated Officer has agreed to a deficiency in the amount of Open Space within a Phase not to Occupy or allow Occupation of more than 50% of the Dwellings within that Phase until either:

(a) a scheme for the provision of any Off Site Open Space Provision applicable to that Phase has been submitted to and agreed in writing by the Council such scheme to include

- full details of the amount of recreation, sport, play, allotment and green infrastructure provision to be provided in line with the Open Space Policies and the timetable for such provision
- the extent, location and boundaries of the Off Site Open Space Provision
- details of the design and layout of the Off Site Open Space Provision and all equipment, drainage features, access arrangements, street furniture, fencing and landscaping together with appropriate plans drawings and specifications
- details of the ongoing management and maintenance of the Off Site Open Space Provision including whether a Management Company is proposed as the Nominated Body
- such other information as the Council may reasonably require to enable approval of the said scheme or

(b) any Off Site Open Space Contribution applicable to that Phase has been paid to the Council

2. ON-SITE OPEN SPACE

Where Open Space is to be provided on-Site within a Phase under the Approved Open Space Scheme:



- 2.1 Not to Occupy or allow Occupation of any Dwellings within a Phase otherwise than in accordance with and subject to the timetable contained within the Approved Open Space Scheme and the planning conditions imposed by the Planning Permission for that Phase
- 2.2 Not to Occupy or allow Occupation of more than 50% of the Dwellings in a Phase until the Open Space to be provided within that Phase has been laid out and provided in accordance with the Approved Open Space Scheme for that Phase to the written satisfaction of the Council
- 2.3 Thereafter to maintain the Open Space Unencumbered provided within that Phase to a standard suitable for use by members of the public as approved by the Nominated Officer and not to use the Open Space within that Phase for any purpose other than public recreation and amenity land for the general public
- 2.4 Not to Occupy or allow Occupation of more than 80% of the Dwellings in a Phase unless:
  - a) where the Management Company is the Nominated Body:
    - i) the Management Company has been created to the satisfaction of the Council; and
    - ii) the memorandum and articles of association and the form of transfer of the Open Space to the Management Company has been submitted to the Nominated Officer for approval and has been approved by the Council; and
  - b) the Open Space provided in accordance with the Approved Open Space Scheme has been transferred to the Nominated Body subject to the Standard Terms; and
  - c) the Open Space Maintenance Contribution has been paid to the Council

PROVIDED FIRSTLY THAT the Nominated Body shall not be required to accept the transfer of the Open Space for a Phase unless it has been provided and maintained in strict accordance with the Approved Open Space Scheme for that Phase AND

SECONDLY THAT there shall be no obligation to pay the Open Space Maintenance Contribution for a Phase where the Nominated Body for that Phase is not the Council, the town or parish council for the area within which the Site is located or such other body funded by the Council



## Part 2

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

Contribution towards purchase of land

Land purchase					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£252	£51	£24	£600	£927
2 bed	£336	£68	£32	£800	£1,236
3 bed	£420	£85	£40	£1,000	£1,545
4 bed	£504	£102	£48	£1,200	£1,854
5 + bed	£588	£119	£56	£1,400	£2,163

Equipping of Off Site Open Space

Equipping					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£288	£89	£15	£429	£821
2 bed	£385	£119	£19	£572	£1,095
3 bed	£481	£148	£24	£715	£1,368
4 bed	£577	£178	£29	£858	£1,642
5+ bed	£674	£207	£34	£1,001	£1,916



Maintenance of Off-Site and On-Site Open Space

<b>Maintenance</b>				
<b>Property</b>	<b>Sports</b>	<b>Play</b>	<b>Green infrastructure</b>	<b>Total</b>
1 bed	£303	£30	£253	<b>£586</b>
2 bed	£404	£41	£338	<b>£783</b>
3 bed	£504	£51	£422	<b>£977</b>
4 bed	£605	£61	£506	<b>£1,172</b>
5+ bed	£707	£72	£591	<b>£1,370</b>



### Part 3

Extract from Open Space Policies detailing the Area (Sq mtrs) required per dwelling for the provision of on-site Open Space

<b>Number of bedrooms</b>	<b>Children's play spaces m<sup>2</sup></b>	<b>Sports facilities m<sup>2</sup></b>	<b>Allotments m<sup>2</sup></b>	<b>Green Infrastructure m<sup>2</sup></b>
1 bed	5.1	25.2	2.4	60
2 bed	6.8	33.6	3.2	80
3 bed	8.5	42.0	4	100
4 bed	10.5	50.4	4.8	120
5+ bed	11.9	58.8	5.6	140



## **FOURTH SCHEDULE**

### **SCHOOL SITE**

#### **Part 1**

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

"Clear"	means a site suitable for the construction and erection of the School that is accessible and usable without undue land reformation or engineering and free from any known or apparent physical hazards or impediments to building, both above and below ground (including, but not limited to land contamination, electricity pylons, Japanese knotweed, asbestos, allotments and problems with site access) to the complete satisfaction of the County Council
"School Site Area Plan"	the plan annexed to this Deed and marked "School Site Area Plan"
"the School"	means a primary school to be built on the School Site by the County Council
"School Site"	means the site to be used for the School having an area of 2 (two) hectares the location of such site to be approved by the County Council and provided and transferred Clear Fully Serviced and Unencumbered in accordance with the provisions of this Deed PROVIDED THAT unless otherwise agreed in writing with the County Council the School Site of 2 (two) hectares shall be located on the Site within and form part of the area edged red for identification purposes only on the School Site Area Plan
"School Site Phase"	means the Phase of the Development in which the School Site shall be located and provided as agreed with the County Council pursuant to Paragraph 1.1 of this Part 1 of the Fourth Schedule PROVIDED THAT unless otherwise agreed with



the County Council in writing the School Site shall be located on the Site within the area edged red for identification purposes only on the School Site Area Plan

"Fully Serviced"

means:

(a) with vehicular and pedestrian access either to the nearest adopted highway or to the nearest highway subject to a Section 38 Agreement (as the case may be) and provided to the boundary of the School Site; and

(b) with surface water and foul water drainage and gas, water, electricity and telecommunication services of sufficient capacity reasonably required for the use of the School Site for the School also provided to the boundary of the School Site

all at the expense of the Owners and all to the reasonable satisfaction of the County Council PROVIDED THAT and for the avoidance of any doubt the vehicular and pedestrian access to be so provided shall itself be the subject of a Section 38 Agreement if it does not directly adjoin an adopted highway or a highway subject to a Section 38 Agreement

"Unencumbered"

means free from all adverse rights, easements, restrictions or other encumbrances which would interfere with the use of the School Site for the School and all encumbrances which might result in additional cost or liability to the County Council not normally associated with the use of the School Site

The Owners hereby covenant with the County Council as follows:

- 1.1. Not to Commence or allow Commencement of Development on any Phase other than the First Phase until the Owners have agreed with the County Council which Phase of the Development shall be the School Site Phase
- 1.2. Not to Commence or allow Commencement of Development on the School Site Phase until and unless the precise location and extent (including boundaries) of the School Site has been agreed by the County Council



- 1.3 Not to Commence or allow Commencement of the Development on the School Site Phase until the County Council and its employees, contractors and agents have been allowed all reasonable access to the School Site for the purposes of survey and inspection of the School Site for the uses intended and the County Council has confirmed in writing that it is suitable for the uses intended PROVIDED that the County Council provides the Owners with at least three days written notice of its intention to access the School Site
- 1.4 Not to Occupy or allow Occupation of more than 100 of the Dwellings within any part of the Site excluding the First Phase unless and until an offer in writing to transfer Clear Fully Serviced and Unencumbered the freehold title to the School Site has been made to the County Council in accordance with the terms set out in Part 3 of this Fourth Schedule for nil consideration
- 1.5 Not to Occupy or allow Occupation of more than 150 Dwellings within any part of the Site excluding the First Phase unless and until a transfer in an agreed form has been delivered signed and dated to the County Council for the transfer Clear Fully Serviced and Unencumbered of the freehold title to the School Site in accordance with the terms set out in Part 3 of this Fourth Schedule and the transfer of the School Site to the County Council has thereby been completed PROVIDED THAT and for the avoidance of any doubt this provision shall be of no effect if the County Council rejects the offer of a transfer of the School Site in accordance with the provisions of paragraph 2.1 of Part 2 of this Fourth Schedule



## **Part 2**

### **County Council Obligations for the School Site**

The County Council covenants with the Owners:

- 2.1 To either accept or reject in writing the offer of a transfer of the School Site pursuant to paragraph 1.4 of Part 1 of this Fourth Schedule by no later than 3 months from the date of receipt by the County Council of the offer
- 2.2 In the event that the offer of a transfer of the School Site to County Council is accepted by the County Council and the transfer is thereafter completed (subject to the provisions of paragraph 2.3 below) to construct the School on the School Site
- 2.3 If at the seventh anniversary of the transfer of the School Site either:
  - 2.3.1 the County Council has not entered into a contract or contracts relating to the provision of the School on the School Site; or
  - 2.3.2 the School Site has become surplus to the County Council's requirements as education authority and it no longer intends to construct the School on the School Site

then the County Council shall transfer the School Site to the Owner(s) which transferred the School Site to the County Council for £1 consideration (and at no other cost to the County Council) and on the equivalent terms as set out in Part 3 of this Schedule, except that the covenant referred to at paragraph 3.3 of Part 3 shall lapse and shall not apply within three months of this seventh anniversary



### **Part 3**

#### **Transfer Terms for land transfers to the County Council**

It is hereby agreed between the Parties that if the County Council accepts a transfer of the School Site the School Site shall be transferred to the County Council Clear Fully Serviced and Unencumbered and subject to and in accordance with the following additional terms:

- 3.1 Without prejudice and subject to the provisions of paragraph 1.5 of Part 1 of this Schedule completion of the transfer of the School Site to the County Council shall take place on such date as shall be agreed in writing between the County Council and the Owners or in default of such agreement upon such date as shall be specified in a notice in writing given by the County Council to the Owners
- 3.2 Without prejudice to the definition within this Deed of the terms "Clear" Fully Serviced" and "Unencumbered" the transfer of the School Site shall contain all such rights and easements whatsoever (including without prejudice to the generality of the foregoing the provision of all rights of access of services and service installations thereto) as are required to facilitate the use of the School Site for the School and any rights and easements that are required by the Owners to develop their retained land and/or the remainder of the Development as agreed with the County Council
- 3.3 The transfer will if so required by the Owners contain a covenant by the County Council restricting the use of the land transferred for the purpose of education except that this provision shall lapse and shall not apply within three months of the seventh anniversary of the date of transfer of the School Site
- 3.4 The Owners shall pay the reasonable legal fees and Land Registry disbursements of the transferee



## **FIFTH SCHEDULE**

### **THE TRAVEL PLAN CONTRIBUTION OBLIGATIONS**

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

"Approved Travel Plan"	means the Travel Plan(s) for each Phase submitted to the County Council by the Owners in accordance with Conditions 14 and 15 of the Planning Permission and approved by the County Council in writing
"Bond Sum"	means the sum of £500 (Index Linked) per Dwelling or such other sum as the County Council may agree in writing being the cost of implementation of and compliance with the Approved Travel Plan for each Phase
"Travel Plan(s)"	means a framework of options and measures to enable and encourage people to travel more sustainably and reduce the need to travel altogether being site and people specific
"Travel Plan Bond"	means a bond substantially in the form annexed at Annex 1
"Travel Plan Contribution"	means the sum of £500 per Dwelling (Index Linked) or such other sum as the County Council may agree in writing towards the implementation of the Travel Plan for each Phase
"Travel Plan Update"	means a mode of travel survey prepared in consultation with the County Council detailing how the Approved Travel Plan for a Phase has operated during the relevant period and its effectiveness



The Owners hereby covenant with the County Council as follows:

1. TRAVEL PLAN

- 1.1 to pay the Travel Plan Contribution for each Phase to the County Council prior to Occupation of the first Dwelling on that Phase towards the production, approval and on-going review of a Travel Plan for the Phase

OR

- 1.2 not to Commence or allow Commencement until a Travel Plan for that Phase has been submitted to the County Council for approval as an Approved Travel Plan in accordance with the Planning Permission and thereafter to monitor and review the Approved Travel Plan for each Phase and submit a Travel Plan Update for each Phase to the County Council on the twelve month anniversary after the date of first Occupation of each Phase and on subsequent anniversaries (or such other date as may be agreed with the County Council) such monitoring to continue each year until the second anniversary of the first Occupation of the final Dwelling on each Phase of each Phase; and

- 1.3 if the Owners proceed under paragraph 1.2 above not to allow first Occupation of any Dwelling on a Phase until they have complied with paragraphs 1.3 (a) or 1.3 (b) below:

(a) obtained and provided to the County Council the Travel Plan Bond for that Phase with a surety approved by the County Council for the Bond Sum ("the Approved Travel Plan Bond"); or

(b) deposited the Bond Sum for that Phase with the County Council ("the Travel Plan Deposit").

AND

- 1.4 Where paragraphs 1.2 and 1.3 of this Fifth Schedule apply in the event that the Owners fail in the reasonable opinion of the County Council to perform the obligations and deliver the requirements of the Approved Travel Plan for that Phase the County Council may serve notice on the Owners confirming the actions required by the Owners to comply with the obligations contained in this Deed for that Phase ("the Performance Notice"); and
- 1.5 if after a period of 28 days the Owners have failed in the reasonable opinion of the County Council to comply with the Performance Notice the County Council may call in the Approved Travel Plan Bond for that Phase or utilise the Travel Plan Deposit for that Phase as the case may be and carry out the requirements of the Approved Travel Plan for that Phase without further recourse to the Owners



**SIXTH SCHEDULE**  
**COUNCIL'S COVENANTS**

The Council hereby covenants with the Owners as follows:

1. Upon approval of the Open Space Scheme for a Phase to confirm the Nominated Body for that Phase
2. To pay any Open Space Maintenance Contribution payable and received for a Phase to the Nominated Body within 28 days of receipt in the event that the Council is not the Nominated Body
3. To hold any contribution received under this Deed in an interest bearing account and apply the same (together with any interest accrued) towards the purposes for which they were paid and in the event that the contributions have not been committed (by way of contract or expenditure of the monies) within 10 years of receipt of the total amount of the relevant contribution to repay the unspent balance to the payer together with any interest accrued
4. The Council shall within 28 days of written request provide to the Owners the details of the expenditure of any Open Space Maintenance Contribution or any Off Site Open Space Contribution
5. At the written request of the Owners the Council shall provide written confirmation of the discharge of any or all of the obligations (as appropriate) contained in this Deed when satisfied that such obligations have been performed



## **SEVENTH SCHEDULE**

### **COUNTY COUNCIL'S COVENANTS**

The County Council hereby covenants with the Owners as follows:

- 1.1 Following payment of the relevant Travel Plan Contribution for a Phase the County Council shall take responsibility for implementing and complying with the relevant Travel Plan for that Phase without unreasonable delay
- 1.2 Within 28 days of written request provide to the Owners the details of the expenditure of the relevant Travel Plan Contribution for a Phase
- 1.3 At the written request of the Owners the County Council shall provide written confirmation of the discharge of any or all of the obligations (as appropriate) to the County Council contained in this Deed when satisfied that such obligations have been performed
- 1.4 To only use any sums received pursuant to this Deed for the purposes set out in this Deed and for no other purpose



**Annex 1**  
**Form of Travel Plan Bond**

DATED \_\_\_\_\_ 20

- and -

---

BOND

in respect of

---

Norfolk County Council

County Hall

Martineau Lane

NORWICH

NR1 2DH



THIS BOND reference number [ref no.] is made as a deed

this                      day of                      20

By [     ] ("the Surety")

On behalf of: [     ] ("the Developer")

In favour of: THE NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich Norfolk  
("the County Council")

WHEREAS:

(A) by an agreement dated [     ] and made between the County Council and the Developer ("the Agreement") the Developer undertook to provide a bank bond issued in favour of the County Council in the sum of £[     ] ([     ] pounds) ("the Bond Sum")

(B) the Surety at the request of the Developer and with the approval of the County Council has agreed to become the surety for the Developer and will pay to the County Council the Bond Sum upon demand.

NOW THIS DEED WITNESSES:

1.     the Surety is held and firmly bound to the County Council in the sum of [£(     pounds)] ("the Bond Sum") to be paid to the County Council for which payment we bind ourselves and our successors and assigns by these presents
2.     upon receipt by the Surety of the County Council's written demand stating "the Developer has failed to duly perform and observe all the terms of the Agreement" ("Demand") the Surety shall pay to the County Council within 28 days of receipt of the Demand such amount as certified by the County Council as is required to satisfy and discharge the damages sustained by the County Council (including without prejudice to the generality thereof any costs actually incurred by the County Council pursuant to the Agreement)



3. receipt of a Demand from the County Council shall be taken as conclusive evidence by the Surety for the purposes of this Bond that a breach has occurred and the sum demanded is properly due PROVIDED THAT the amount demanded does not exceed the Bond Sum.

4. Multiple Demands may be made pursuant to this Bond up to the Bond Sum

5. Subject to the Developer performing the Obligations the Bond Sum will reduce as follows:

a) Upon receipt of written confirmation from the County Council on the first anniversary of first Occupation (as defined in the Agreement) that the Obligations are being complied with the Bond Sum shall be reduced by an amount proportionate to the number of Dwellings then Occupied and thereafter upon receipt of the County Council's written confirmation on each subsequent anniversary of first Occupation by a further proportionate amount taking into account the number of Dwellings then Occupied (as defined in the Agreement)

b) To nil on the date upon which the County Council confirms in writing that all Obligations have been complied with and final Occupation has occurred.

6. This Bond shall expire upon the earlier of:

a) The date upon which the Bond Sum is reduced to nil: or

b) The date upon which the County Council confirms in writing that the Bond is no longer required and the same is formally released

7. This Bond is a continuing obligation and shall remain in full force until released or discharged in accordance with the provisions contained herein.

8. This Bond is personal to the County Council and is not transferable or assignable without the consent of the Surety such consent not to be unreasonably withheld PROVIDED THAT a Statutory successor in title to the County Council shall automatically be deemed to have the consent of the Surety and will benefit from this Bond

9. Subject to Clause 8 above no party who is not a party to this Bond shall be entitled to enforce any of its terms for his own benefit and the application of the Contracts (Rights of Third Parties) Act 1999 to the terms of this Bond are hereby expressly excluded .



10. This Bond shall be governed by and construed in accordance with the law of England.

SIGNED as a Deed by  
the Surety acting by:-

AUTHORISED SEALING OFFICER



THE COMMON SEAL of  
BROADLAND DISTRICT  
COUNCIL was hereunto affixed  
to this Deed in the presence of:

)  
)  
)  
)



7925

Authorised signatory

*Mimue*

Head of Democratic Services and  
Monitoring Officer

THE COMMON SEAL of  
NORFOLK COUNTY  
COUNCIL was hereunto affixed  
to this Deed in the presence of:

)  
)  
)  
)

43444



*Hugh  
Ferguson*

Authorised to sign on behalf of Chief Legal Officer

*[Signature]*

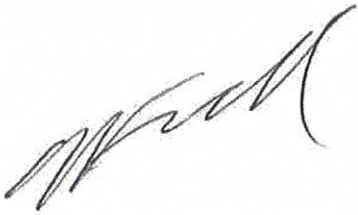
Chief Legal Officer



**SIGNED** by the said

**JOHN FREDERICK FAIRCLOTH** as his

Deed in the presence of:

)  
)  
) 



Signature of Witness

Name of Witness *JAMIE CHILDS*

Address of Witness

**HOWES PERCIVAL LLP  
FLINT BUILDINGS  
1 BEDDING LANE  
NORWICH NR3 1RG**

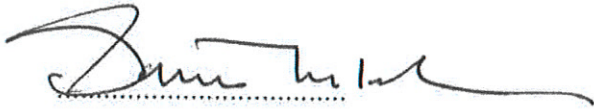


SIGNED by the said

JANET LILIAN FAIRCLOTH as her

Deed in the presence of:

)  
) J L Faircloth  
)



Signature of Witness

Name of Witness

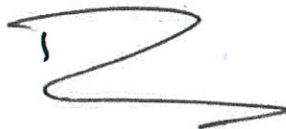
Address of Witness

GAVIN MICOOLE  
Old Rectory  
Chippesley  
NR29 3BH

SIGNED by the said

DAVID ERIC SMITH as his

Deed in the presence of:

)  
)   
)

  
.....

Signature of Witness

Name of Witness

Address of Witness

JAMIE CHILDS

HOWES PERCIVAL LLP  
FLINT BUILDINGS  
1 BEDDING LANE  
NORWICH NR3 1RG



Executed as a deed by RK

)

**PROPERTIES LIMITED** acting by:

)

Thomas Alford Prentiss

Thomas Alford Prentiss

Director's name

Director's Signature

in the presence of:

Nicola Curle

Signature of Witness

Name of Witness

Nicola Curle

Address of Witness

**HOWES PERCIVAL LLP  
FLINT BUILDINGS  
1 BEDDING LANE  
NORWICH NR3 1RG**



DATED 7<sup>th</sup> March

2019

BROADLAND DISTRICT COUNCIL (1)

- and -

NORFOLK COUNTY COUNCIL (2)

- and -

RK PROPERTIES LIMITED (3)

- and -

JOHN FREDERICK FAIRCLOTH (4)

- and -

JOHN FREDERICK FAIRCLOTH and JANET LILIAN FAIRCLOTH (5)

- and -

DAVID ERIC SMITH (6)

**PLANNING OBLIGATION DEED**

Under (inter alia) Section 106 of the  
Town and County Planning Act 1990  
as amended by the  
Planning and Compensation Act 1991  
relating to land south of  
Salhouse Road, Sprowston, Norfolk

nplaw

Martineau Lane

Norwich

Ref: PRC/52764