

DATED 16 October

2013

(1) LOVELL PARTNERSHIPS LIMITED

(2) BROADLAND DISTRICT COUNCIL

(3) FOULSHAM PARISH COUNCIL

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

relating to the development of land on the north side of
Foundry Close, Foulsham

Ref: ZZW/053029.422

One Eleven
Edmund Street
Birmingham
B3 2HJ

DX 13033 Birmingham-1

t: +44 (0) 121 234 0000

f: +44 (0) 121 234 0001

www.gateleyuk.com

THIS DEED is made the

16th

day of October 2013

BY:

- (1) **LOVELL PARTNERSHIPS LIMITED** (Company Number 02387333) of Kent House, 14-17 Market Place, London, W1W 8AJ ("the Owner")
- (2) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk ("the Council")
- (3) **FOULSHAM PARISH COUNCIL** whose Clerk Emma Bridgland of 8, Highfield Close, Foulsham, Norfolk NR20 5SW ("the Parish Council")

1. **INTERPREATION AND DEFINITION**

In this Deed unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market to be owned and/or managed by an AHP
"Affordable Housing Scheme"	the scheme for the provision of the Affordable Housing Units set out at Schedule 3
"Affordable Housing Unit"	Fourteen (14) Dwellings to be provided as Affordable Housing in accordance with Schedule 1 and the Affordable Housing Scheme consisting of the Affordable Rental Units and "Affordable Housing Units" shall be construed accordingly
"Affordable Rental Units"	the Affordable Housing Units to be constructed or provided as part of the Development and to be let for a rent by or on behalf of an AHP to households who are

	eligible for affordable housing and let on a weekly or monthly tenancy at a rent of no more than 80% of the market rent (and "Affordable Rent" shall be construed accordingly)
"Affordable Housing Provider" ("AHP")	<p>(i) a registered provider as defined by s80 of the Housing and Regeneration Act 2008; or</p> <p>(ii) another body whose object is or contains the provision and/or operation of affordable housing and which has been approved by the Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the Council for the purposes of this Deed</p>
"Application"	the detailed planning application validated on 11 th July 2013 for fourteen (14) Dwellings all for Affordable Housing under reference 20130929
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56(4) of the Act (but not, for the purpose of this Deed only, operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure, the

	temporary display of site notices or advertisements) and "Commences" shall be interpreted in accordance with this definition
"Development"	the development permitted by the Planning Permission
"Director"	the District Council's Chief Executive or other officers of the Council acting under his hand
"Dwelling"	any unit of residential occupation being a self-contained house or bungalow or flat constructed as part of the Development
"HCA Standards"	the "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency
"Index Linked"	the indexation adjustment to the contributions payable under the various provisions of this Agreement in accordance with the requirements of Clause 17 and 'Indexation' shall be construed accordingly
"Local Lettings Policy"	the order in which the Affordable Rental Units are to be allocated is set out under the title "the Local Connections Lettings Policy Cascade" at Schedule 2 to this Deed as amended from time to time
"Occupation and Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Off Site Play Space Contribution"	the sum of twelve thousand and forty two pounds and sixty six pence (£12,042.66) Index Linked
"Open Space "	The land shown for identification purposes coloured and hatched in green on the Plan to

	be used as public open space and to be laid out in accordance with the Open Space Works Specification
"Open Space Maintenance Contribution"	the sum of three thousand three hundred and fourteen pounds and eight pence (£3,314.08) Index Linked
Open Space Works Specification"	A scheme including plans drawings and specifications showing but not limited to the layout and design of the Open Space including details of any landscaping paths and access arrangements, street furniture and fencing together with details of the proposed permanent Open Space management regime
"Plan"	the plan annexed to this Deed
"Planning Obligations"	the planning obligations set out in clause 9 hereof
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to the housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002)
"Site"	the land known as Land on the north side of Foundry Close, Foulsham which is shown for the purposes of identification only edged red

	on the Plan
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In this Deed unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Deed except where otherwise specified
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- (iv) headings in this Deed shall not form part of or affect its construction

WHEREAS:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site registered with the Land Registry under title number NK253147
- C. The Owner has submitted the Application
- D. The Owner enters into this Deed with the intention that the obligations herein may be enforced by the Council against the Owner and its respective successors in title
- E. The Parish Council has agreed to join in as a Party to this Deed having regard to the provisions of paragraph 2 of Schedule 4 to this Deed

2. GENERAL PROVISIONS APPLICABLE TO THIS DEED

- 2.1 This Deed is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers

- 2.2 The obligations of the Owner hereunder are planning obligations for the purposes of the Act and enforceable by the Council against the Owner and its successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring after he has parted with the interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Deed shall have immediate effect upon completion of this Deed with the exception of the Planning Obligations which shall not come into effect until both the grant of the Planning Permission and the Commencement Date
- 2.5 This Deed shall cease to have effect if:
- 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.5.2 the Planning Permission shall expire prior to the Commencement Date
- 2.6 This Deed may be registered as a charge in the Council's Register of Local Land Charges

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully effectively exercised

3.2 Invalidity or Unenforceability of any of the terms of this Deed

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

3.4 Enforceability

Nothing in this Deed shall be binding on or enforceable against:

3.4.1 purchasers or occupiers of those Dwellings which are not Affordable Housing Units or their mortgagees or successors in title to such purchasers occupiers or mortgagees; or

3.4.2 any statutory undertaker

4. **NOTICES**

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Deed shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 The address for any notices or other written communication in the case of each party to this Deed shall be as follows:-

The Council	The Chief Executive, Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe, St. Andrew, Norwich, Norfolk NR7 0DU
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The Owners	Company Secretary, Kent House, 14-17 Market Place, London W1W 8AJ
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Foulsham Parish Council	8, Highfield Close, Foulsham, Norfolk NR20 5SW
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5. THIRD PARTIES

- 5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provision of this Deed pursuant to the provisions of the said Act

6. JURISDICTION

- 6.1 This Deed is to be governed by and interpretation in accordance with the law of England and Wales

7. TITLE WARRANTY

- 7.1 The Owner hereby warrants to the Council that it is the freehold owner of the Site and has full power to enter into this Deed and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Council's Director prior to the date hereof

8. NOTIFICATION

- 8.1 The Owner shall notify the Council in writing of the Commencement Date and upon first Occupation of the first Affordable Housing Unit such notifications to be given within 14 days of reaching such threshold

9. PLANNING OBLIGATIONS

- 9.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions set out in Schedule 1, Schedule 3 and Schedule 4 to this Deed which are expressed to be given to or to be for the benefit of the Council

10. COSTS

- 10.1 The Owner shall on completion of this Deed pay the Council's reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Deed and the Council acknowledges receipt of the same

11. PAYMENT OF INTEREST

- 11.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Deed in the event of late payment for the period from the date the monies should have been paid to the date the money is received

12. VAT

- 12.1 All consideration given in accordance with the terms of this Agreement shall be inclusive of all VAT (if any)
- 12.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

13. DISPUTES

- 13.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 13.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution
- 13.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR

procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.

- 13.4 Nothing in Clauses 13.1 13.2 and 13.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

14. OWNERS INDEMNITY

- 14.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived

15. ISSUE OF APPROVALS

- 15.1 Where any approval, consent, agreement or the like is required to be given by the Council pursuant to the terms of this Deed it shall be in writing and shall not be unreasonably withheld or delayed

16. STATUTORY UNDERTAKERS CONSENT

- 16.1 The obligations and restrictions in this Deed shall not be enforceable against any statutory undertaker which acquires any part of the Site for the purposes of its statutory undertaking or function

17. INDEX LINKING

- 17.1 Where any sum specified to be payable by the Owners under the terms of this Deed is expressed to be Index Linked, that sum shall be Index Linked from the Date of this Deed until such time as the payment of that sum is made such

Index Linking to be equivalent to any increase or decrease in the in the Building Cost Information Service All-In Tender Price Index (or in the event that the Index shall have ceased to be published at the date of the relevant payment, then the closest equivalent Index shall be used as agreed between the parties acting reasonably).

18. COUNCIL OBLIGATIONS

- 18.1 The Council hereby covenants with the Owner that it will deposit the Off Site Play Space Contribution into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the improvement of existing play space or the provision and maintenance of new play spaces in the Parish of Foulsham
- 18.2 The Council hereby further covenants with the Owner that in the event that the Off Site Play Space Contribution has not been committed for the improvement of existing play space or the provision and maintenance of new play spaces in the parish of Foulsham within 5 years of the date of receipt of the Contribution then the Council will refund so much of the sum as shall remain uncommitted together with all interest accrued to the party who paid the same
- 18.3 The Council hereby covenants with the Owner and the Parish Council to pay the Open Space Maintenance Contribution to the Parish Council within 10 days of receipt of the same.

19. PARISH COUNCIL COVENANTS

- 19.1 The Parish Council covenants with the Owner and the Council to comply with its covenant in Schedule 4.

20. EXECUTION

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original and all the counterparts together which constitute one and the same instrument

SCHEDULE 1

1. AFFORDABLE HOUSING

The Owner covenants with the Council:

- 1.1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission, the Affordable Housing Scheme, to a minimum of level 3 of the Code and to current HCA Standards
- 1.2 Save as otherwise provided to this Deed not to use or allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units
- 1.3 Save as otherwise provided in this Deed not to use or allow or permit the Affordable Housing Units to be occupied other than by Qualifying Occupiers
- 1.4 Save as otherwise provided in this Deed that all of the Affordable Housing Units will be subject to the Local Lettings Policy and not to allow or permit the disposal of any of the Affordable Housing Units other than in accordance with the Local Lettings Policy
- 1.5 Save as otherwise provided in this Deed the Owner shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP
- 1.6 Paragraphs 1.2 and 1.3 and 1.4 and 1.5 above shall not be binding upon:
 - (a) any mortgagee in possession of the Affordable Housing Units or part thereof or successors in title to the mortgagee in possession; nor
 - (b) any receiver or manager (including an administrative receiver) for such mortgagee; nor
 - (c) any individual owner occupier of the Affordable Housing Units (or their mortgagee or chargee) who has purchased the Affordable Housing Unit pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable or their mortgagee; nor
 - (d) successors in title to all of the above

- 1.7 to recycle any recyclable grant or proceeds from the disposal of the Affordable Housing Units in line with the requirements of the Homes and Communities Agency's Capital Funding Guide and that these sums will be reinvested within the administrative area of the Council.

SCHEDULE 2

THE LOCAL CONNECTION LETTINGS POLICY CASCADE

- 1 Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:
 - 1.1 Residents of Foulsham who have lived in the Parish for a total of at least 3 of the last 10 years.
 - 1.2 Former residents of Foulsham who have had their main home in the Parish for 3 of the last 10 years.
 - 1.3 Households who need to move to the parish of Foulsham to give/receive support from family/relatives.
 - 1.4 Residents of the adjacent parishes of Guestwick and Themelthorpe who have lived in these parishes for the last three years.
 - 1.5 People working in the parish of Foulsham who have done so for a year or more.
 - 1.6 Residents of Foulsham who have lived in the parish for less than three years.
 - 1.7 Residents of the adjacent parishes of Guestwick and Themelthorpe who have lived in these parishes for less than 3 years.
 - 1.8 Residents of the adjacent parishes of Reepham and Wood Dalling, who have lived in these parishes for the least three years.
 - 1.9 Residents of the adjacent parishes of Reepham and Wood Dalling, who have lived in these parishes for less than 3 years.
 - 1.10 Residents of Broadland District.
 - 1.11 Any other person.
2. Administrative Procedure for Nominations
 - 2.1 To grant to the Council nomination rights to 100% of the Affordable Housing Units.
 - 2.2 The administrative procedure for nominations shall be in accordance with the Council's Housing (Options) Allocations Policy, as amended from time to time, or in accordance with alternative procedures as the Council and the Owner shall agree between them.

SCHEDULE 3

THE AFFORDABLE HOUSING SCHEME

PLOT NUMBER	DWELLING TYPE	TENURE
1	2-Bedroom 4-Person Bungalow	Affordable Rent
2	2-Bedroom 4-Person Bungalow	Affordable Rent
3	2-Bedroom 4-Person House	Affordable Rent
4	2-Bedroom 4-Person House	Affordable Rent
5	2-Bedroom 4-Person House	Affordable Rent
6	2-Bedroom 4-Person House	Affordable Rent
7	3-bedroom 6-Person House	Affordable Rent
8	3-bedroom 6-Person House	Affordable Rent
9	1-bedroom 2-Person House	Affordable Rent
10	1-bedroom 2-Person House	Affordable Rent
11	1-bedroom 2-Person House	Affordable Rent
12	1-bedroom 2-Person House	Affordable Rent
13	3-bedroom 6-Person House	Affordable Rent
14	3-bedroom 6-Person House	Affordable Rent

SCHEDULE 4

THE OFF SITE PLAY SPACE CONTRIBUTION AND OPEN SPACE

The Owner covenants with the Council:

1. OFF SITE PLAY SPACE CONTRIBUTION

- 1.1 to pay to the Council the Off Site Play Space Contribution prior to the Occupation of any Dwelling on the Site
- 1.2 not to Occupy or allow Occupation of any Dwelling on the Site unless and until the Off Site Open Space Contribution has been paid to the Council.

2. OPEN SPACE

- 2.1 to submit the Open Space Works Specification to the Council for approval within 3 months of Commencement of Development and not to Occupy any Dwelling until the Open Space Works Specification has been approved in writing by the Council (such approval not to be unreasonably withheld)
- 2.2 not to Occupy or allow Occupation of more than four (4) of the Dwellings comprised in the Development unless and until the Open Space has first been provided in accordance with the approved Open Space Works Specification to the written satisfaction of the Council
- 2.3 to thereafter maintain the Open Space to a standard suitable for use by members of the public and as approved by the Council for a minimum period of twelve months (12) and thereafter until such time as the Open Space has been transferred to the Parish Council in accordance with the provisions contained herein
- 2.4 upon the expiration of the twelve month period referred to in paragraph 2.3 hereof thereupon to offer for transfer and then transfer the Open Space to the Parish Council (which offer and transfer the Parish Council shall accept) in accordance with the reasonable requirements of the Council (which for the avoidance of doubt includes a requirement for the Open Space to be transferred free from all incumbrances restrictions or easements which might affect the use as Open Space or result in additional cost or liability to the Parish Council not normally associated with the use of the Open Space) in

consultation with the Parish Council for a sum not exceeding one pound (£1) and subject to a restriction on the future use of the Open Space for recreational and amenity purposes by the general public.

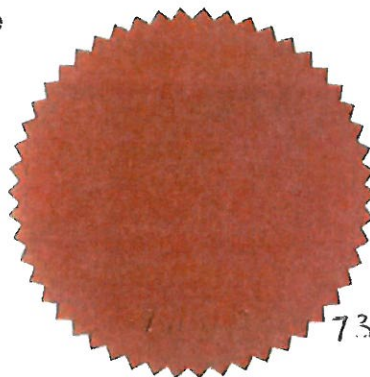
PROVIDED THAT the Parish Council shall not be required to accept the transfer of the Open Space unless it has been provided in strict accordance with the Open Space Works Specification

- 2.5 to pay to the Council the Open Space Maintenance Contribution at the same time as the transfer of the Open Space to the Parish Council

EXECUTED by the parties hereto as a deed on the date written above

THE COMMON SEAL of
BROADLAND DISTRICT COUNCIL
was hereunto affixed
in the presence of

)
)
)
)



7301

M. Muel

Head of Corporate Services
and Monitoring Officer

Head of Democratic Services and
Monitoring Officer

SIGNED as a Deed by two members
of **FOULSHAM PARISH COUNCIL**
as their Deed in the presence of:

)
)
)

[Handwritten signature]

U. Stedog

63 Station Rd
Foulsham
NR20 5RD

Signed as a deed by *John Kemp* and
Kenneth Smith as attorneys for **LOVELL
PARTNERSHIPS LIMITED** in the presence of:

[Handwritten signature]

[SIGNATURE]

WITNESS

[Handwritten signature]
.....
SUZANNE MOORE
MARSTON PARK
TAMWORTH
STAFFORDSHIRE
B78 3HN

[SIGNATURE]
[NAME]
[ADDRESS]

as attorney for Lovell Partnerships Ltd

[Handwritten signature]

[SIGNATURE]

WITNESS

[Handwritten signature]
.....
SUZANNE MOORE
MARSTON PARK
TAMWORTH
STAFFORDSHIRE
B78 3HN

[SIGNATURE]
[NAME]
[ADDRESS]

*is attorney for
Lovell Partnerships Ltd*

