

DATED

1<sup>st</sup> May

2014~~5~~

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**AGREEMENT**

under s.106 Town and Country Planning Act 1990

Relating to the development of land  
north of Sir William's Lane Aylsham Norfolk

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**LAYTONS**

SOLICITORS

**GUILDFORD**

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**LONDON**

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**MANCHESTER**

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14/28726. /6786 February 2014

**THIS DEED** is made on

1<sup>st</sup> May

2014~~4~~5

**Is made BETWEEN:-**

1. **BDW TRADING LIMITED** (Company No. 3018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF ("the Owner");
2. **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 ODU ("the Council"); and
3. **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane Norwich NR1 2DH ("the County Council")

and is supplemental to an Agreement under Section 106 of the Town and Country Planning Act 1990 dated 18 February 2013 relating to land north of Sir William's Lane Aylsham NR11 6AN ("the 2013 Agreement") and made between the Council, the County Council and Oak Park Farms Limited, Juliet Mary Buckingham, Mark Nevitt Buckingham, Annabel Marina Lawrence, Ernest John Walker Holman and Saltcarr Farms Limited (then the proprietors of the property bound by the 2013 Agreement) and Welbeck Strategic Land LLP (who then had the benefit of an option over the property bound by the 2013 Agreement relating to planning permission 20111453 ("the Outline Consent").

**WHEREAS**

- (A) The Owner is the registered proprietor of "the Land" under title NK434526 being the Site as defined in the 2013 Agreement except for the Informal Open Space and access drive to the Allotments the title for which has been retained by the executor for the late Ernest John Walker Holman, Anne Holman. The obligations and provisions of the 2013 Agreement that relate to the Land are not now enforceable against Anne Holman as she has parted with her interest in the Land;
- (B) Prior to the Owner's purchase of the Land the Owner sought clarification from the Council on the interpretation of a potential conflict in the wording of the 2013 Agreement which on the one hand states at paragraph 10 of Schedule 1 that paragraphs 3-6 of Schedule 1 (containing obligations relating to the use and disposal of Affordable Housing Units including the Discounted Market Dwellings) shall not be binding on any mortgagee in possession or exercising its powers of sale of any Affordable Housing Units, but on the other says (i) at paragraph 16 that every transfer of a Discounted Market Dwelling shall include a restrictive covenant to secure the discount to Open Market Value in perpetuity, but does not clarify that this

will not bind mortgagees in possession or exercising its powers of sale and (ii) that the definition of the Discounted Market Sale Restriction that is required by paragraph 11.7 of Schedule 1 to be registered at the Land Registry on the register of title for each Discounted Market Dwelling is unclear on this subject too. The Council has agreed that it was intended that the covenants required pursuant to paragraphs 11.7 and 16 of Schedule 1 should not limit the effect of the wording of paragraph 10 of Schedule 1 and enters into this agreement to clarify the position.

- (C) The Owner has identified that difficulties will be experienced in disposing of Discounted Market Units due to mortgagee requirements and has therefore asked the District Council to consider alternative arrangements pursuant to the provisions of paragraph 18 of Schedule 1 of the 2013 Agreement.
- (D) For the purposes of Sections 106, 106A and 106B of the Act:
  - (a) The obligations on the part of the Owner contained in this Deed (so far as they relate to the regulation of the use or development of land) are planning obligations;
  - (b) The land the subject of the planning obligations is the Owner's land
  - (c) The Council and the County Council are Local Planning Authorities by whom the obligations are enforceable;

## **NOW THIS DEED WITNESSES that:**

### **1. STATUTORY AUTHORITY**

This Deed is made in pursuance of Section 106 of the Act with the intent that it shall bind the Owner and its successors in title, assigns to the persons deriving title to the Property under or through it and creates planning obligations for the purposes of Section 106 of the Act.

### **2. INTERPRETATION**

Where any words or expressions are defined in the 2013 Agreement such words or expression shall have the same meaning in this Deed save where the context admits otherwise.

### **3. AGREEMENT**

The parties agree that:

- 3.1 There is added to the 2013 Agreement a new definition of "Shared Equity Intermediate Housing" means any Affordable Housing Unit constructed as part of the Development to be used for intermediate housing (as that

expression is defined in Annexe 2 of the National Planning Framework (2012)) on an Equity Percentage Arrangement (as defined at s70(5) of the Housing and Regeneration Act 2008) or Shared Ownership Arrangements (as defined at s70(4) of the Housing and Regeneration Act 2008 (where, in the case of Equity Percentage Arrangements the Qualifying Occupier buys the relevant Affordable Housing Unit paying 80% of the Open Market Value of the relevant Affordable Housing Unit (unless the District Council agrees that a higher percentage may be applied taking into consideration (inter alia) housing prices in the vicinity and the viability of the Development) and grants a mortgage to the Owner for the ultimate payment of the remainder of the value in the relevant Affordable Housing Unit);

3.2 The definition of "Affordable Housing Scheme" in the 2013 Agreement shall be amended by the addition of "or Shared Equity Intermediate Housing" at the end of line 10 after "Discounted Market Dwellings";

3.3 A new clause 16.3 shall be added to the main body of the 2013 Agreement to read as follows:

"Without prejudice to the generality of clauses 16.1 and 16.2, the obligations in this Agreement shall not bind:-

16.3.1 any mortgagee or chargee of an AHP which has the benefit of a legal mortgage or charge secured against any part of the Affordable Housing Units or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 nor any purchaser from such person or their successors in title; or

16.3.2 any person exercising the right to acquire under Section 180 of the Housing and Regeneration Act 2008 or the preserved right to buy under Part V of the Housing Act 1985 or any future legislation to similar effect entitling a tenant to buy a long lease or the freehold of their home nor any mortgagee or chargee of such a person; or

16.3.3 a lessee under a shared ownership lease who has staircased to acquire 100% of the equity of the Dwelling nor any mortgagee or chargee of such a person; or

16.3.4 any person who has acquired a Dwelling under a shared equity scheme and has redeemed the entirety of the equity share held by an AHP nor any mortgagee of such a person; or

16.3.5 A mortgagee or chargee of a shared ownership lease or a Shared Equity Intermediate Housing dwelling exercising its statutory power of sale; or

- 16.3.6 any person deriving title under any of the persons or bodies referred to in paragraphs 16.3.1 to 16.3.5 inclusive and all their respective successors in title”.
- 3.4 The second line of paragraph 3 of Schedule 1 to the 2013 Agreement shall be amended by the addition of “or Shared Equity Intermediate Housing” before the words “as the case may be”.
- 3.5 In paragraphs 3, 4 and 7 of Schedule 1 of the 2013 Agreement the words “and Shared Equity Intermediate Housing” shall be added after each reference to “Discounted Market Dwellings”.
- 3.6 In paragraph 10 of Schedule 1 of the 2013 Agreement the words “or Shared Equity Intermediate Housing” shall be added after “Shared Ownership Dwelling”.
- 3.7 the restrictive covenant in paragraph 16 of Schedule 1 to the 2013 Agreement shall be read in the light of Clause 16.1 of the 2013 Agreement and paragraph 10 of Schedule 1 of the 2013 Agreement. Therefore, notwithstanding the wording of paragraph 16 of Schedule 1 to the 2013 Agreement, the restrictive covenant required by paragraph 16 can be worded so as not to be binding on mortgagees in the circumstances set out in paragraph 10 of Schedule 1 of the 2013 Agreement, or on such mortgagees’ successors in title.
- 3.8 The definition of “Discounted Market Sale Restriction” in the 2013 Agreement shall be amended to read as follows:  
 “No disposition of the registered estate (except by way of legal charge) by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor of the disponent or the disponentee that the provisions of paragraph 11 of Schedule 1 to an Agreement dated 15 February 2013 and made between Broadland District Council (1), Norfolk County Council (2), Oak Park Farms Limited, Juliet Mary Buckingham, Mark Nevitt Buckingham, Annabel Marina Lawrence, Earnest John Walker-Holman and Saltcarr Farms Limited (3) and Welbeck Strategic Land LLP (4) as clarified by a supplemental agreement between Broadland District Council (1), Norfolk County Council (2) and BDW Trading Limited (3) dated [ ] 2014 containing planning obligations relating to land north of Sir William's Lane, Aylsham, Norfolk have been complied with. For the avoidance of doubt the restrictions shall not prevent registration of any disposition by the proprietor of any registered charge who shall be free to dispose of the registered estate free of this restriction”.
- 3.9 any mortgagee exercising its power of sale shall be entitled to apply to the Land Registry for the cancellation of the restriction referred to at clause 3.7

above on the title to the relevant Discounted Market Dwelling without further consent from the Council.

3.10 There shall be added a new paragraph 22 to Schedule 1 to the 2013 Agreement as follows:

3.10.1 The Owners shall use reasonable endeavours to market and sell the Shared Equity Intermediate Housing dwellings as Shared Equity Intermediate Housing either:

(i) to Qualifying Persons on an Equity Percentage Arrangement;  
or

(ii) to an AHP for use on a Shared Ownership Arrangement;

PROVIDED ALWAYS THAT in the event that (the Owner demonstrates to the Council that it has used reasonable endeavours to market and sell the Shared Equity Intermediate Housing dwellings for a period of at least 6 (six) consecutive months) if one or more of the Shared Equity Intermediate Housing dwellings has not been sold as aforesaid at the date which is 6 (six) months after the commencement of marketing of the said Shared Equity Intermediate Housing dwelling(s) then:-

3.10.2 each unsold Shared Equity Intermediate Housing dwelling may be sold on the open market free from the restrictions imposed by this Agreement; and

3.10.3 the Owner shall pay 20% (or such lesser percentage as may be agreed in writing by the District Council taking into consideration (inter alia) housing prices in the vicinity and the viability of the Development) of the proceeds of sale of each of the said Shared Equity Intermediate Housing dwellings which is sold pursuant to this proviso on the open market free from the restrictions in this Agreement (less marketing and sale costs) to the Council by way of an Affordable Housing Contribution

3.11 As soon as reasonably practicable after the sale of any Affordable Housing Unit as Shared Equity Intermediate Housing on Equity Percentage Arrangements the Owner shall assign to an AHP or the Council (by way of gift) the benefit of any mortgage granted to the Owner by the plot buyers of the Shared Equity Intermediate Housing

3.12 The second subheader of Appendix 1 to the 2013 Agreement that reads "Discounted Market Dwellings on Site (43 Units)" shall be amended to "Discounted Market Dwellings/Shared Equity Intermediate Housing on Site (43 Units)":



**4. COMMUNITY INFRASTRUCTURE LEVY**

The parties agree that the nature and extent of the obligations undertaken by the Owner hereunder shall be taken into account and properly credited in any subsequent assessment of Community Infrastructure Levy imposed in respect of any development of the Property

**5. COSTS**

The Owner shall pay the reasonable costs of the Council and the County Council in the preparation of this Agreement

IN WITNESS this Agreement has been executed as a Deed by the parties

**EXECUTED as a Deed by BDW  
TRADING LIMITED**  
acting by its Attorneys

and

in the presence of:

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)  
)  
)  
)  
)

*[Signature]*  
*[Signature]*

**Allison Cronin**

**Peter Kemmann-Lane**

Witness

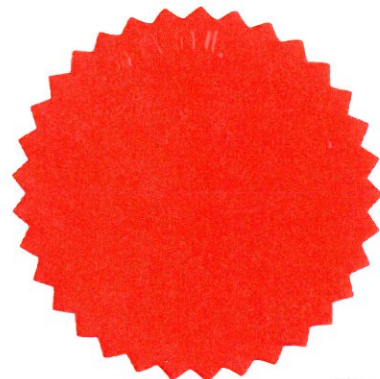
Name *[Signature]* **DAVID GRILING**

Address *7 SPRINGFIELD LANE APPROACH*

*CHELMSFORD ESSEX*

Occupation *PARTNERSHIPS MANAGER*


**EXECUTED as a Deed by  
BROADLAND DISTRICT  
COUNCIL** by affixing  
its common seal in the presence of:- )  
)  
)  
)  
)  
)



*[Signature]*  
Head of Democratic Services and  
Monitoring Officer

7428

EXECUTED as a Deed by )  
NORFOLK COUNTY )  
COUNCIL by affixing its common )  
in the presence of:- )



authorised to sign  
on behalf of: HEAD OF LAW



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