

DATED

31st March

2009

PEDDARS WAY HOUSING ASSOCIATION LIMITED

and

BROADLAND DISTRICT COUNCIL

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

**relating to the development of land at Cawston Road
Reepham Norfolk**



**GREENLAND
HOUCHEN
POMEROY
SOLICITORS**

Telephone (01603) 660744

38 Prince of Wales Road
Norwich NR1 1HZ
Fax (01603) 610700
DX No 5217 Norwich

THIS AGREEMENT is made the *31st* day of *March* 2009

BETWEEN

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU ("the Council") and
- (2) **PEDDARS WAY HOUSING ASSOCIATION LIMITED** of (Industrial and Provident Society Number 27582R) Michael Chaplin House, Station Road, Dereham, Norfolk NR19 1DA ("the Owner")

1 Interpretation

In this Agreement unless the context otherwise requires the following expression shall have the following meanings:


- 1.1 "The Act" means the Town and Country Planning Act 1990 (as amended)
- 1.2 "Affordable Housing" means 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 a Registered Social Landlord
- 1.3 "Affordable Housing Units" means flats and houses to be constructed or provided on the Site as part of the Development
- 1.4 "Affordable Rental Units" means eight Affordable Housing Units to be constructed or provided on the Site as part of the Development to be let for a rent upon either a weekly or monthly rental basis for a rent not exceeding Housing Corporation target rents (or if such targets cease to be set such other measure of affordable rents as the Council shall reasonably determine) and to be let by or on behalf of a Registered Social Landlord
- 1.5 "Commencement Date" means the date upon which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act. For the avoidance of doubt this will not be triggered by any of the following operations:-
 - site investigations;
 - site decontamination;
 - construction of access and service roads;
 - the demolition of any existing buildings or structures;
 - the clearance or regrading of the Site;
 - works connected with infilling; or

- works for the provision of drainage of mains services to prepare the Site for Development
- 1.6 "the Site" means the Red Land
 - 1.7 "the Development" means the development permitted by the Planning Permission
 - 1.8 "Inflation Provision" means the increase in the DTI Output Price Index for Public Works between 30 September 2006 and the date upon which payment of the Open Space Contributions is made pursuant to this Agreement
 - 1.9 "Local Lettings Policy" means the order in which the Affordable Housing Units are to be allocated and which is set out under the title "Local Lettings Policy" at Appendix 1 to this Agreement as amended from time to time
 - 1.10 "Open Space Contributions" means the sum of £13,530 as increased by the Inflation Provision
 - 1.11 "Qualifying Occupiers" means 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 housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1986 and 2004 and the Homelessness Act 2002) and ranked in accordance with the Local Lettings Policy or where such persons have been exhausted any person as nominated by the Council on the Broadland Housing Register that the Registered Social Landlord owning or managing the Affordable Housing Units is entitled to house within its rules. For the avoidance of doubt this includes the spouse or partner of and any dependants of the Qualifying Occupier provided that they are living as a single family unit
 - 1.12 Planning Permission means the permission (Ref 20080076) dated 16 April 2008 for the construction of 10 Affordable Housing Units
 - 1.13 "Red Land" means the land shown for identification purposes edged red on the plan attached hereto
 - 1.14 "Registered Social Landlord" means a registered social landlord within the meaning of the Housing Act 1996
 - 1.15 "Shared Ownership Dwellings" means two Affordable Housing Units to be let on a Shared Ownership Lease to be provided on the Site as part of the

ECDA 1008
 HEAD OF CORPORATE SERVICES
 & MONITORING OFFICER



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 Metres

	20080076	
Date 20 Jan 2009	Land Rear of 67 Cawston Rd, Reepham	
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Development and Shared Ownership Dwelling shall mean one such Affordable Housing Unit

- 1.16 "Shared Ownership Lease" means a lease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) on first purchase of the equitable interest in the dwelling is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to 80% (eighty per cent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and shall allow a rent to be charged on the remainder of the equitable interest such rent not to exceed Housing Corporation target rents (or if such targets cease to be set such other measures of affordable rents as the Council shall reasonably determine) and in any event to be not higher than an annual sum calculated at 2.75% of the value of the equity retained by the Owner at the date of the grant of the Shared Ownership Lease and any increase of the said annual rent shall be no more than the percentage increase in the Retail Price Index (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% of the current annual rent from time to time
- 1.17 Words importing the masculine include the feminine and vice versa
- 1.18 Words importing the singular include the plural and vice versa
- 1.19 Words importing persons include companies and corporations and vice versa
- 1.20 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 1.21 Any reference to a clause or schedule or plan is to one in or attached to this Agreement
- 1.22 In the absence of contrary provisions any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it
- 1.23 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its respective functions as local planning authority and local housing authority

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 save for the land shaded blue on the plan attached hereto.
- C The Council has granted the Planning Permission

2 General Provisions Applicable to this Agreement

- 2.1 This Agreement 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 enforceable by the Council against the Owner and its successors in title and assigns
- 2.3 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.4 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.5 This Agreement shall be registered by the Council as a charge in the Council's Register of Local Land Charges
- 2.6 In the event that this Agreement comes to an end the Council if so requested by the Owners will execute a Deed of Release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges

3 Agreements and Declarations

IT IS HEREBY AGREED AND DECLARED as follows

- 3.1 No Fetter or Discretion
Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights 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 and effectively exercised as if the Council were not a party to this Agreement
- 3.2 Invalidity of Unenforceability of any of the Terms of this Agreement
If any provision in this Agreement 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 Agreement 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 No person shall be liable under this Agreement for any breach of the covenants contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any person's interest in the Site or any part thereof in respect of which any such breach has taken place

4 Notices

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

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

The Council	The Strategic Director and Chief Planner (Community Services) Thorpe Lodge Yarmouth Road Norwich NR7 0DU
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The Owner	Michael Chaplin House Station Road Dereham Norfolk NR19 1DA
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Or such other address for service as may be notified by one party to the other in accordance with the provisions of this clause 4

- 4.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

5 Third Parties

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

6 Payment of Interest

- 6.1 The Owner shall pay interest at the rate of 4% above the base rate of Barclays Bank Plc for the time being in force on any monies due under the provisions of this Agreement 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

7 VAT

- 7.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 7.2 If any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, 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

8 Jurisdiction

- 8.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

9 Compensation

- 9.1 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 the Agreement are hereby waived

10 Legal Fees

The Owner shall on completion of this Agreement pay the Council's reasonable legal and administrative costs properly incurred in the preparation negotiation and completion of this Agreement

11 Planning Obligations

The Owner hereby covenants with the Council as follows:-

- 11.1 To carry out and comply with the obligations and restrictions set out in The Schedule to this Agreement
- 11.2 Prior to the occupation of any Affordable Housing Unit on the Site the Open Space Contribution as increased by the Inflation Provision shall be paid by the Owner (or their successors in title) to the Council
- 11.3 Interest at 4% above the base rate of Barclays Bank Plc shall be paid on any part of the Open Space Contribution which is not paid within fourteen days of the date upon which it becomes due in accordance with clause 11.2 above

The Schedule

- 1.1 To construct or procure the construction of the Affordable Housing Units in accordance with current NHBC standards and building regulations in force at the time of building and to the Housing Corporation's Scheme Development Standards and to meet Eco-Homes rating "very good" and to the satisfaction of the Council and to use reasonable endeavours to complete the construction of the Affordable Housing Units within twelve (12) months of the Commencement Date or such later date as may be reasonably agreed between the Owner and the Council
- 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units and Shared Ownership Dwellings
- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers save that in the case only of Shared Ownership Dwellings occupation under the terms of a Shared Ownership Lease incorporating Housing Corporation (or any successors to the roles and obligations of the Housing Corporation) requirements shall not be deemed to be a breach of this obligation subject to all other provisions of any such Lease complying in

all other respects with the definition of Shared Ownership Lease contained in this Agreement

- 1.4 The Owner shall not dispose of their interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Social Landlord
- 1.5 Clauses 1.2, 1.3 and 1.4 of this Schedule shall not be binding upon
- (i) Any mortgagee in possession of the Affordable Housing Units or part thereof or any mortgagee in possession of any Shared Ownership Dwelling under a charge of a Shared Ownership Lease or manager (including an administrative receiver) for such mortgagee nor any receiver; and
 - (ii) Any person (including that person's successor in title) deriving title under such mortgagee receive or administrative receiver; and
 - (iii) Shall cease to apply to any of the Affordable Housing Units where the Owner shall be required to dispose of such Units pursuant to a right to buy under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

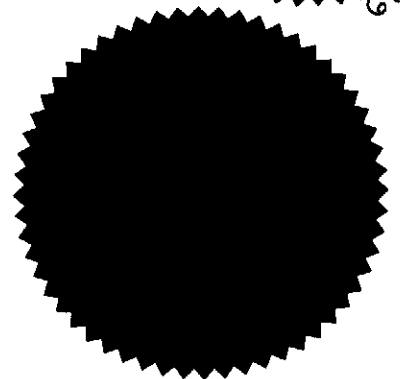
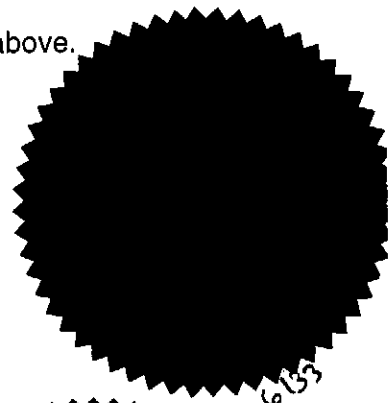
EXECUTED by the Parties as a Deed on the date written above.



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

HEAD OF CORPORATE SERVICES
& MONITORING OFFICER

THE COMMON SEAL of PEDDARS WAY HOUSING ASSOCIATION LIMITED was hereunto affixed in the presence of :



APPENDIX 1

LOCAL LETTINGS POLICY

1 Nomination Rights Policy

- 1.1 The Policy will apply to all categories of properties on the basis of 100% of all lettings for the first 80 years
- 1.2 The Council and the Owner are both committed to eradicating double scrutiny of nominated households for general needs accommodation. They are also agreed on the move away from a pool nominations system to a direct nomination system where a maximum of 2 households will be nominated in priority order for any letting other than those designated as hard to let where a maximum of 3 households will be nominated

2 Criteria for Selecting Nominations

In the case of general needs accommodation the Council will attempt to make nominations in line with its current allocation priorities to need exercising the following criteria

- 2.1 Allocations will be made to people living in the Parish of Reepham working in the Parish of Reepham or with a need to move to the Parish of Reepham in order to give or receive support.
- 2.2 Priority will then be given to people living in, working in, or with a need to move to the following areas in order to give or receive support
 - Salle
 - Booton
 - Great and Little Witchingham
 - Themelthorpe
 - Wood Dalling
- 2.3 Priority will then be given to people living in, working in, or with a need to move to the following areas in order to give or receive support
 - Foulsham
 - Grestwick
 - Heydon
 - Cawston

- Brandiston
- Alderford
- Weston Longville
- Morton on the Hill

2.4 Priority will then be given to people living in, working in or with a need to move to any other Parish within Broadland District for the purpose of giving or receiving support

2.5 The Council will consult the Owner in the event of considering changes to its relevant priorities. However it is accepted that the ability to maintain these priorities will be largely dependent on the type of Housing Association property that becomes available

2.6 In the case of designated special needs accommodation (the designation of which will be agreed between the Council and the Owner) the Council will seek to make nominations in line with its relevant allocation programme priorities. However it is accepted by the Owner that the Council is only obliged to ensure that the nominated household is an appropriate nomination for the type of property

3 Administrative Procedure for nominations

The administrative procedure for nominations shall be in accordance with the operational procedures of the Home Option Choice Based Lettings as amended from time to time or in accordance with such alternative procedures as the Council and the Owner shall agree between them