

DATED

31st MARCH

2009

BROADLAND DISTRICT COUNCIL

- AND -

PEDDARS WAY HOUSING ASSOCIATION LIMITED

and

FLAGSHIP HOUSING GROUP LIMITED

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

**relating to the development of land
at Buxton Road, Horstead**

Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Thorpe
Norwich
NR7 0DU

THIS AGREEMENT is made the 31st day of MARCH 2009

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU (hereinafter called "the Council") of the first part
PEDDARS WAY HOUSING ASSOCIATION LIMITED of Michael Chaplin House, Station Road, Dereham, Norfolk NR19 1DA, Company No: IP27582R (hereinafter called "the Applicant") of the second part and FLAGSHIP HOUSING GROUP LIMITED of Keswick Hall Keswick Norwich NR4 6TJ, Company No: IP28460R (hereinafter called "the Owners") of the third part

1. INTERPRETATION AND DEFINITIONS

In this Agreement 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 a Registered Social Landlord
"Affordable Housing Units"	bungalows and houses to be constructed or provided on the Site as part of the Development

"Affordable Rental Units "	eight Affordable Housing Units, being 6 houses and 2 bungalows, to be constructed or provided on the Site as part of the Development shown in the position on the drawing 1601P10 02 Rev H annexed hereto and to be let for a rent upon either a weekly or monthly tenancy basis not exceeding The Homes and Community Agency's target rents (or if such targets cease to be set such other measure of affordable rents as the relevant District Council shall reasonably determine) and to be let by or on behalf of a Registered Social Landlord
"Application"	the application for detailed planning permission registered on 22 nd July 2008 for eight Affordable Housing Units in accordance with the plans deposited with the Council bearing reference no 20081107
"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 including any operations relating to the demolition of any existing buildings, clearance of the Site, removal of hedging or construction of boundary and security fencing) and "commence" and "commencement" shall be interpreted in accordance with this definition
"Development"	the development permitted by the Planning Permission

"Inflation Provision"	the increase (if any) in the RICS All In Tender Price Index between 1 September 2006 and the date upon which a payment of money is due to be made pursuant to this Agreement
"Local Lettings Policy"	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
"Monitoring Fee"	the sum of Six hundred pounds (£600)
"Open Space Contribution"	the sum calculated in accordance with the formula set out in Schedule 2 to this Agreement
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the detailed planning permission granted pursuant to the Application, a draft of which is attached to this Agreement
"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 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) 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 on the Site is entitled to house within its rules from time to time

"Registered Social Landlord"

a registered social landlord in the register kept by the Tenant Services Authority under Part 1 of the Housing Act 1996 or Chapter 3 of the Housing and Regeneration Act 2008 (or any statutory re-enactment or modification thereof) as approved by the Council and for the avoidance of doubt the Council approves the Owners and Victory

"Site"

the land at Buxton Road, Horstead, Norfolk shown for the purposes of identification only edged red on the Plan

"Victory"

Victory Housing Trust (Tenant Services Authority Registered Number L4460 and Registered Company Number 527558) whose registered office is care of Cobbetts LLP, 1 Colmore Road Birmingham B4 6AJ

In this Agreement 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 Agreement
- (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 Agreement shall not form part of or affect its construction

W H E R E A S:

- 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 Applicant submitted the Application
- C. The Owners are the freehold owners of the Site
- D. 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 Owners hereunder are planning obligations enforceable by the Council against the Owners and their 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 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 of 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 or 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 Owners 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 1 Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Applicant	Business Development Manager Peddars Way Housing Association Limited Keswick Hall Keswick Norwich NR4 6TJ
The Owners	Business Development Manager

Flagship Housing Group Limited
Keswick Hall
Keswick
Norwich
NR4 6TJ

or such other address for service as may be notified by one party to the others 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. COSTS

- 6.1 The Owners 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

7. PAYMENT OF INTEREST

- 7.1 The Owners 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 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

8. VAT

- 8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 8.2 If at 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

9. JURISDICTION

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

10. The Applicant and the Owners agree 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

11. PLANNING OBLIGATIONS

The Owners hereby jointly and severally covenant with the Council as follows:

- 11.1 To carry out and comply with the obligations and restrictions set out in Schedule 1 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 Owners (or their successors in title) to the Council

12. MONITORING FEE

The Owners covenant with the Council to pay the Monitoring Fee, which is required for checking the implementation and compliance with the terms of this Agreement, to the Council prior to the Commencement Date

SCHEDULE 1

1. AFFORDABLE HOUSING

- 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 Homes and Communities Agency Design and Quality Standards and to meet Code for Sustainable Homes Level 4 and to the reasonable satisfaction of the Council and to complete the construction of the Affordable Housing Units by 31st March 2010 or such later date as may be agreed between the Owners 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.
- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.4 The Owners 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 or to a similar charitable body first approved by the Council such approval not to be unreasonably withheld
- 1.5 Paragraphs 1.2 1.3 and 1.4 above shall not be binding upon
 - (i) Any mortgagee in possession of the Affordable Housing Units or part thereof or any manager or receiver (including an administrative receiver) for such mortgagee ; or
 - (ii) Any person (including that person's successor in title) deriving title under such mortgagee manager receiver or administrative receiver; and

- (iii) Shall cease to apply to any of the Affordable Housing Units where the Owners 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

SCHEDULE 2

For each 1 bedroom dwelling comprised in the Development	£2,311.00
For each 2 bedroom dwelling comprised in the Development	£2,311.00
For each 3 bedroom dwelling comprised in the Development	£3,467.00
For each 4 bedroom dwelling comprised in the Development	£3,467.00
For each 5 or more bedroom dwelling comprised in the Development	£4,623.00

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)


HEAD OF CORPORATE SERVICES
& MONITORING OFFICER

Head of Corporate Services
and Monitoring Officer

EXECUTED as a DEED by affixing)
The Common Seal of Peddars Way)
Housing Association Limited)
in the presence of)

Authorised Signatory



Authorised Signatory

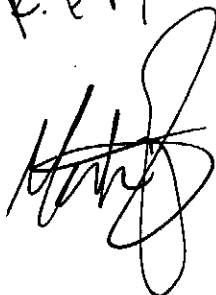


EXECUTED as a DEED by affixing)
The Common Seal of Flagship)
Housing Group Limited)
in the presence of)

Authorised Signatory



Authorised Signatory



LOCAL LETTINGS POLICY

Nomination Rights Policy

The Policy will apply to all categories of properties on the basis of 100% of all vacancies for the first 80 years (in perpetuity).

The policy will apply to the rented affordable housing on the site.

The Council and the Association are both committed to the Common Housing Register with a direct nomination system where one household is nominated in priority order for any vacancy. All properties will be advertised through the Choice Based Lettings Scheme – Home Options.

Criteria for Selecting Nominations

In the case of general needs accommodation the Council will make nominations in line with its current allocation policy and lettings plan based on the following allocation criteria:

- 1) Allocations will be made to people living in the parish of Horstead with Stanninghall or with a need to move to Horstead with Stanninghall in order to give or receive support to/from close family members as defined in our current allocation policy.
- 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 to/from close family members as defined in our current allocation policy.

Frettenham
Coltishall
Buxton with Lamas
Belaugh
Wroxham
Crostown

- 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 to/from close family members as defined in our current allocation policy.

Salhouse
Rackheath
Beeston St Andrew
Spixworth
Hainford
Stratton Strawless
Horsham and Newton St Faith

- 4) Priority will then be given to people living in, working in, or with a need to move to Horstead with Stanninghall from within Broadland District or for the purpose of giving or receiving support to/from close family members as defined in our current allocation policy.

The Council will consult the Association in the event of considering changes to its relevant policies.

Administrative Procedure for nominations

Application Number

20081107

Barefoot and Gilles
11A Princes Street
Ipswich
Suffolk
IP1 1PH

Date Of Decision : 27 February 2009
Development : Erection of 6 No. Houses & 2 Bungalows for Affordable Housing including Associated Works
Location : Buxton Road, Horstead
Applicant : Peddars Way Housing Association

Town & Country Planning Act 1990

The Council in pursuance of powers under this Act **GRANTS PLANNING PERMISSION** for the development referred to above, in accordance with the submitted plans and application forms, and subject to the following conditions:-

- 1 The development to which this permission relates must be begun not later than THREE years beginning with the date on which this permission is granted.
- 2 The development hereby permitted shall not be carried out otherwise than in accordance with:

Drawing no. 1601 P10 00 Rev B (site location plan) received 22 July 2008

Drawing no. 1601 P10 01 Rev A (site survey plan) received 22 July 2008

Drawing no. 1601 P10 02 Rev H (proposed site plan) received 2 September 2008

Drawing no. 1601 P10 03 Rev A (proposed visibility splays) received 22 July 2008

Drawing no. 1601 P10 04 Rev A (proposed pavement plan) received 22 July 2008

Drawing no. 1601 P20 01 Rev C (plans and elevations plots 1, 2, 7 and 8) received 2 September 2008

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- (k) Schedules of plants, noting species planting sizes and proposed numbers / densities where appropriate
- (l) Implementation timetables

The development shall be carried out in accordance with the details as approved.

- 5 Unless otherwise agreed in writing by the Local Planning Authority, no development shall commence until such time as a reptile survey /mitigation has been carried out.
- 6 Unless otherwise agreed in writing by the Local Planning Authority, no hedgerow on the site shall be removed between the months of March to October (bird breeding season) unless it has been first subject to a breeding bird survey / mitigation.
- 7 No development shall take place within the site until the applicant, or their agents or successor in title, has:
 - (a) caused to be implemented a programme of archaeological evaluation in accordance with a first written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority; and next
 - (b) submitted the results of the archaeological evaluation to the Local Planning Authority; and next
 - (c) secured the implementation of a programme of archaeological mitigatory work in accordance with a second written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 8 Prior to the first occupation of the development hereby permitted, the vehicular access shall be constructed in accordance with the Norfolk County Council residential access construction specification and additionally to accord with details to be approved in writing by the Local Planning Authority, for the first 2m metres into the site as measured back from the near edge of the adjacent carriageway.
- 9 Prior to the first occupation of the development hereby permitted, visibility splays shall be provided in full accordance with the details indicated on the approved plan, drawing number 1601 P10 03 Rev A. The splays shall thereafter be maintained free from any obstruction exceeding 0.6 metres

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above the level of the adjacent highway carriageway.

- 10 Prior to the first occupation of the development hereby permitted, the proposed access/ on-site parking / turning area shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 11 No works shall commence on site until a detailed scheme for the off-site footway works, as indicated on the submitted plan, numbered 1601 P10 04 Rev A has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.
- 12 Prior to the first occupation of the development hereby permitted, the off-site highway improvement works referred to in condition no. 11 above shall be completed to the written satisfaction of the Local Planning Authority in consultation with the Highway Authority.

The reasons for the conditions are:-

- 1 The time limit is imposed in compliance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 For the avoidance of doubt and to ensure the satisfactory development of the site in accordance with the specified approved plans and documents.
- 3 To ensure the proper development of the site without prejudice to the amenities of the area, and in accordance with Policies GS3 and ENV2 of the Broadland District Local Plan (Replacement) 2006 and Policy ENV7 of the East of England Plan 2008.
- 4 To ensure the proper development of the site without prejudice to the amenities of the area, and in accordance with Policies GS3 and ENV2 of the Broadland District Local Plan (Replacement) 2006 and Policy ENV7 of the East of England Plan 2008.
- 5 To ensure that the development has no adverse effects on protected species in accordance with Policies ENV4 and GS3 of the Broadland District Local Plan (Replacement) 2006 and Policy ENV3 of the East of England Plan 2008.
- 6 To ensure that the development has no adverse effects on protected species in accordance with Policies ENV4 and GS3 of the Broadland District Local Plan (Replacement) 2006 and Policy ENV3 of the East of England Plan 2008.

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- 7 To enable the County Archaeologist to keep a watching brief on the site in accordance with Policy ENV20 of the Broadland District Local Plan (Replacement) 2006.
- 8 To ensure satisfactory development of the site in accordance with Policies GS3 and TRA14 of the Broadland District Local Plan (Replacement) 2006.
9. To ensure satisfactory development of the site in accordance with Policies GS3 and TRA14 of the Broadland District Local Plan (Replacement) 2006.
- 10 To ensure satisfactory development of the site in accordance with Policies GS3 and TRA14 of the Broadland District Local Plan (Replacement) 2006.
- 11 To ensure satisfactory development of the site and a satisfactory standard of highway design and construction in accordance with Policies GS3 and TRA14 of the Broadland District Local Plan (Replacement) 2006.
- 12 To ensure satisfactory development of the site and a satisfactory standard of highway design and construction in accordance with Policies GS3 and TRA14 of the Broadland District Local Plan (Replacement) 2006.

The reasons for the decision are:

The application has been considered against the development plan for the area, being the East of England Plan (Regional Spatial Strategy) 2008 and the Broadland District Local Plan (Replacement) 2006. The policies particularly relevant to the determination of this application are SS1, T14, ENV3 and ENV7 of the East of England Plan and policies GS1, GS3, ENV1, ENV2, ENV5, ENV7, ENV8, ENV20, HOU18, TRA4, TRA8, TRA14, RL7, and CS14 of the Broadland District Local Plan.

East of England Plan Policies:

Policy SS1 seeks to bring about sustainable development.

Policy T14 emphasises the need for maximum parking standards.

Policy ENV3 requires consideration be given to the potential effects of development on species protected by law.

Policy ENV7 requires that new development should be of a high quality which complements the distinctive character and best qualities of the local area.

Broadland District Local Plan (Replacement) 2006:

Policy GS1 has a presumption in favour of development within settlement limits and

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proposed layout/design of dwellings provides for a satisfactory relationship between the two uses.

In relation to the County Wildlife Site (CWS) an Ecology survey has identified where further survey work/mitigation may be required and which can be adequately controlled through appropriate conditions. In terms of mitigation for the loss of grassland within the CWS, new hedgerows will provide connectivity with existing planting to create some habitat gain.

The matter of open space/recreational provision is to be dealt with by way of a commuted sum.

In all other respects the proposal is considered acceptable given the conditions proposed and requirements of the related legal agreement. The proposal is therefore considered to be in accordance with the development plan.

Your attention is drawn to legally protected species or Biodiversity Action Plan species and the need, where necessary, to comply with the relevant law, including obtaining and complying with the terms and conditions of any licences required as described in Part IVB of the Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their impact within the planning system.

The site is subject to a related agreement under Section 106 of the Town & Country Planning Act 1990.

This development involves work to the public highway that will require the approval of the County Council as Highway Authority. It is an offence to carry out any works within the public highway, which includes a public right of way, without the permission of the Highway Authority. Please note that it is the applicants' responsibility to ensure that, in addition to planning permission, any necessary consents or approvals under the Highways Act 1980 and the New Roads and Street Works Act 1991 are also obtained from the County Council. Advice on this matter can be obtained from the County Council's Area Managers based at Aylsham office on 01263 738380.

IMPORTANT – PLEASE READ CAREFULLY THE NOTES BELOW AS FAILURE TO COMPLY COULD MAKE THE DEVELOPMENT HEREBY PERMITTED UNAUTHORISED

1. This planning permission is granted in strict accordance with the approved plans. It should be noted that:

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- a. Any variation from the approved plans following commencement of the development, irrespective of the degree of variation, will constitute unauthorised development and may be liable to enforcement action.
 - b. You or your agent or any other person responsible for implementing this permission should inform the Development Control Section immediately of any proposed variation from the approved plans and ask to be advised to the best method to resolve the matter. Most proposals for variation to the approved plans will require the submission of a new planning application.
2. This permission is granted subject to conditions and it is the owner and the person responsible for the implementation of the development who will be fully responsible for their compliance throughout the development and beyond.
3. If there is a condition that requires work to be carried out or details to be approved prior to the commencement of the development, this is called a "condition precedent". The following should be noted with regards to condition precedents:
- a. If a condition precedent is not complied with, the whole of the development will be unauthorised and you may be liable to enforcement action.
 - b. In addition, if a condition precedent is breached, the development is unauthorised and the only way to rectify the development is the submission of a new application.

If any other type of condition is breached then you will be liable to a breach of condition notice.

Signed



Mr P Courtier
Head Of Development Management & Conservation
Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew,
Norwich, NR7 0DU