

ATED

6<sup>th</sup> November

2015

**EAST DEVON DISTRICT COUNCIL**

and

**DEVON COUNTY COUNCIL**

and

**GREENDALE INVESTMENTS LIMITED**

and

**THE AGRICULTURAL MORTGAGE COMPANY PLC**

**SECTION 106 AGREEMENT**

relating to

**LAND ADJACENT TO NORTH STAR, OTTERY STREET, OTTERTON, EX9 7HW**

**THIS AGREEMENT** is made the

day of

2015

**BETWEEN**

1. **EAST DEVON DISTRICT COUNCIL** of Station Road, Knowle, Sidmouth, Devon, EX10 8HL (the "**District Council**").
2. **GREENDALE INVESTMENTS LIMITED** (Co. Regn. No. 02236420) of Greendale Barton, Woodbury Salterton, Nr Exeter, Devon, EX5 1EW (the "**Owner**")
3. **THE AGRICULTURAL MORTGAGE COMPANY PLC** (Co. Regn. No. 234742) of Charlton Place, Charlton Road, Andover, Hampshire, SP10 1RE (the "**Mortgagee**")
4. **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, EX2 4QD (the "**County Council**")

**WHEREAS :**

1. In this Agreement the following definitions shall apply:

The 1990 Act	Means the Town and Country Planning Act 1990 as amended
The Application	Means the full planning application made to the District Council for the Development and assigned reference number 11/1597/MFUL
Commencement of Development	Means the commencement of The Development by the carrying out of any material operation (as defined in Section 56 of the 1990 Act) but for the purposes of this Agreement only shall not include operations consisting of site clearance, demolition works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the display of site notices or advertisements and the expressions "Commence", and "Commenced" shall be construed accordingly.

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Interest Rate	Means 4% above the Bank of England Base Rate calculated on a day to day basis.
Maintenance Period	means the period between the issue of the Practical Completion Certificate and the date the On Site Open Space is transferred to the Management Company such period being not less than twelve (12) months (or an alternative time period at the Head of Services' discretion)
Management Company	means the private limited company to be established by the Owner (and registered at Companies House) the purpose of which will be (amongst other things) to manage and maintain the On Site Open Space and established in accordance with the provisions in the Third Schedule hereto
Monitoring Fee	Means the sum of £1525.50 to be paid to the District Council as a contribution towards the District Council's costs of monitoring the implementation and delivery of this Agreement
Occupation	means occupation of a Dwelling (except for the purposes of construction, fitting out or marketing) on a residential basis and "Occupy" or "Occupied" "Occupancy" shall where the context so requires have the same meaning
On Site Open Space	Means the areas marked and identified as 'Landscaping / Open Space' on the Plan to be used and maintained as ancillary public open space in perpetuity
On Site Open Space Scheme	Means the scheme to be submitted pursuant to paragraph 5 of the First Schedule dealing with the following elements in respect of the On Site Open Space, namely; <ul style="list-style-type: none"> <li>- the programme and timing for the provision of all elements</li> <li>- a detailed plan and specification for the laying out and planting</li> <li>- a detailed plan for the ongoing maintenance</li> </ul>

Open Space Contribution	Means the sum of £17,065.40 to be used towards the provision enhancement and / or maintenance of public open space within the vicinity of the Development
Plan	Means the plan annexed to this Agreement showing the extent of the Site the On Site Open Space and the Affordable Housing Site.
Planning Permission	Means any planning permission issued pursuant to the Application
Practical Completion Certificate	means the certificate or certificates issued by the Head of Service Services once he is satisfied that the On Site Open Space has been completed
Private Dwelling	Means any Dwelling constructed on the Application Site which is intended for private sale or rent on the open market
Remedial Notice	means the notice or notices issued by Head of Service either prior to or during the Maintenance Period (if appropriate) requiring the Owner to carry out any works that he considers (acting reasonably) to be necessary for the On Site Open Space to be provided in accordance with the approved details including (without limitation) re-planting of unhealthy dead diseased or dying plants and trees and a timescale within which those works are to be completed
Rentcharge	means the perpetual yearly variable estate rentcharge imposed on each Dwelling to cover the annual costs of complying with the obligations under the On Site Open Space Scheme such rentcharge to include the administrative and management costs of the Management Company once established in consideration of the Management Company covenanting to perform its obligations under the On Site Open Space Scheme PROVIDED ALWAYS that the rentcharge on each individual Dwelling shall be an equal proportion of the total number of Dwellings in the completed Development

<b>Site</b>	Means the land shown edged red on the Plan and known as land adjacent to North Star, Ottery Street, Otterton, EX9 7HW with such land registered at HM Land Registry under title number DN494275
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## **Background**

- 1.1. The District Council is the Local Planning Authority for the District of East Devon for the purposes of the 1990 Act for the area in which the Site is situated and is the authority by whom the planning obligations in this Agreement shall be enforced except for the obligation relating to the Education Contribution which shall be enforced by the County Council.
- 1.2 The Owner is the proprietor of the Site registered at H M Land Registry under Title Number DN494275 subject to a charge in favour of the Mortgagee dated 30<sup>th</sup> September 2005 but otherwise free from encumbrances
- 1.3 The County Council is the Education Authority for the area in which the Site is situated and is the authority by whom the planning obligations in this Agreement relating to the Education Contributions shall be enforced.
- 1.4 The parties hereto in accordance with the provisions of section 106 of the 1990 Act as amended, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 2 of the Local Government Act 2000 and any other enabling powers have agreed to enter into a Planning Obligation the terms of which are contained in this Agreement.

**IT IS HEREBY AGREED AND DECLARED that:**

## **General**

- 2.1 This Agreement is a planning obligation binding the Site made in pursuance of section 106 of the 1990 Act and enforceable by the District Council and County Council under section 106 of the 1990 Act against the Owner and their successors in title.
- 2.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital, such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.



- 2.3 The obligations contained in this Deed shall come into effect upon the later of the grant of Planning Permission ~~and~~ Commencement of Development save for any Obligation expressed to be required to be complied with prior to the Commencement of Development and the provisions of clause 5 which shall take effect from the date of this Agreement.
- 2.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.6. Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all such persons jointly and against each individually unless there is an express provisions otherwise.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validly from it.
- 2.8 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party, and references to any local authority shall include the successors to its various statutory functions.
- 2.9. This Deed shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) if it is modified by statutory procedure or expires prior to Commencement of Development.
- 2.10 The contents of this Agreement shall be registerable by the District Council as a Local Land Charge pursuant to section 106(11) of the 1990 Act.

### 3. Service of Notices

3.1. Any notices to be served shall be served in writing to the principal address or registered office (as appropriate) of the relevant party.

3.2. If the Owner fails to serve any notice required by this Agreement any period within which the District Council is required to give a response to that notice shall not commence before the date that the District Council notifies the Owner in writing that it is in breach of its duty to serve the notice.

#### **4. Liability for future breaches of Agreement**

4.1. No person shall be liable for any breach of the obligations or covenants contained within this Agreement which occurs after that person has parted with their entire interest in the Site or the part of it in respect of which the breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest.

#### **5. Legal Fees and Monitoring Fee**

The Owner shall, prior to the execution hereof, pay the District Council's reasonable legal costs and the Monitoring Fee together with the County Council's Legal Costs in connection with the preparation and completion of this Agreement.

#### **6. Owner's Covenants**

The Owner covenants with the District Council to observe and perform the Obligations in the First Schedule and Third Schedule and separately with the County Council to observe and perform the Obligations contained in the Second Schedule

#### **7. Miscellaneous**

7.1 No provisions of this Deed are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Deed, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.



- 7.2 Where the agreement approval, consent or expression of satisfaction is required by one party from another party under the terms of this Deed, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 7.3 Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Deed be given on behalf of the District Council by the Head of Planning
- 7.4 The District Council will upon the written request of the Owner at any time after the obligations of the Owner under this Deed have been fulfilled issue written confirmation of the same, and thereafter cancel all related entries in the Register of Local Land Charges.
- 7.5 Insofar as any clause or clauses in this Deed are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.6 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) granted (whether or not an appeal) after the date of this Deed.

## **8. Waiver**

No waiver (whether express or implied) by any party to this Deed of any breach or default in performing or observing any of the provisions of this Deed by any other party shall constitute a continuing a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.

## **9. VAT**

All sums payable under this Deed shall be deemed to be exclusive of Value Added Tax where applicable, and except where otherwise stated, the party liable to make the payment shall also be liable to pay any Value Added Tax due.

## **10. Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and Wales; and the County Court in whose district the Site is situated shall have full jurisdiction to hear

and determine proceedings arising from or relating to this Deed or for the enforcement of its terms or any of them.

**11. Indexation**

Any sum to be paid pursuant to the Obligations contained in the Schedule shall be subject to an additional sum calculated in accordance with the following formula:-

$$C = \frac{\text{£Y} \times B}{A} - \text{£Y}$$

Where:

A is the value of the relevant Index last published before the date hereof and

B is the value of the Index last published before the said contribution has been paid

C is the additional sum to be paid

£Y is the amount of the contribution to be paid

**12. Interest**

In the event of the Owner failing to make any payment due pursuant to the terms of this Agreement the Owner shall pay interest at the Interest Rate from the date payment was due to the date payment was made

**13. Mortgagee Consent**

The Mortgagee hereby consents to the obligations herein contained being entered into by the Owner and acknowledges that from the date of this Agreement its interest in the Site is subject to the said obligations though will not become bound by the said obligations unless the Mortgagee becomes a mortgagee in possession


**SCHEDULE 1**  
**COVENANTS WITH THE DISTRICT COUNCIL**

**Part A: Affordable Housing Provisions**

The Owner hereby covenants with the District Council as follows:-

**1. Definitions**

For the purposes of this Schedule the following words will have the following meanings:

"Affordable Housing"	Means units of subsidised housing within the meaning of National Planning Policy Framework or any Government Policy Statement or Circular that replaces it
"Affordable Shared Ownership Dwelling"	means a Dwelling for sale on a shared ownership basis solely by way of a Shared Ownership Lease
"Affordable Housing Units"	means the 10 Dwellings to be provided as Affordable Housing comprising 5 Affordable Shared Ownership Dwellings and 5 Affordable Rented Dwellings to be provided in accordance with the provisions of this Schedule on the Affordable Housing Site
"Affordable Housing Scheme"	means the scheme for securing the provision of the Affordable Housing Units on the Affordable Housing Site as hereinafter defined more particularly the location of and mix of unit types and proposed tenure for those units and the proposed timetable for such provision
"Affordable Housing Site"	means the land to accommodate the Affordable Housing Units as shown within  on the Plan annexed hereto
Affordable Rented Dwelling	means a Dwelling available to those whose needs are not adequately served by the commercial housing market at a rent level of up to 80% of local market rent to include the service charge (where applicable) and which complies with the definition of affordable rented housing in Annex

	2 of the National Planning Policy Framework such rent level to be agreed in writing with the District Council
"Chargee"	means a mortgagee or charge or any receiver (including an administrative receiver) appointed by any such mortgagee or charge
"Common Housing Registers"	means in the case of Affordable Rented Dwellings the register or list of applicants maintained by "Devon Home Choice" and in the case of Affordable Shared Ownership Dwellings the regional HomeBuy agent
"Design and Quality Standards"	Means that the Affordable Housing Units shall be constructed; <ul style="list-style-type: none"> <li>(i) strictly in accordance with the plans and elevations deposited and as approved by the District Council as part of the Planning Permission</li> <li>(ii) to Code for Sustainable Homes Level 3 or if higher the appropriate level at the time of Commencement of Development</li> <li>(iii) in accordance with the Homes and Community Agency's design and quality standards and the Housing Provider's own design standards applicable at the time of Commencement of Development</li> <li>(iv) Tenure blind so as externally to be indistinguishable from Private Dwellings</li> </ul>
"Designated Person"	Means a person or family who is registered on the Common Housing Register or Housing Provider's waiting lists and is in Housing Need
"District"	means the administrative area of the East Devon District Council
"Housing Need"	Means the circumstances unless provided to the contrary in this Agreement where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an

	income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
"Housing Provider"	means a housing association or similar organisation or a social landlord in each such case registered with the Housing Corporation under Section 1 of the Housing Act 1996 or such other body or organisation whose main object is the provision of Affordable Housing as agreed by the District Council
"Local Connection"	<p>means a connection to the Parish of Otterton demonstrated by one or more of the following in priority order:</p> <ul style="list-style-type: none"> <li>(1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or</li> <li>(2) being formerly permanently resident therein for a continuous period of five (5) years; or</li> <li>(3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or</li> <li>(4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support</li> </ul> <p>and in the event that no-one satisfying the above requirements can be found within the Parish of Otterton then the process shall be repeated considering persons from the following areas in the following priority order;</p> <ul style="list-style-type: none"> <li>(1) the Neighbouring Parishes,</li> <li>(2) persons from the District</li> </ul>
"Neighbouring Parishes"	means the parishes of Budleigh Salterton, East Budleigh, Bicton, Colaton Raleigh, Newton Poppleford and Harpford and Sidmouth

"Nomination Agreement"	means the agreement or an agreement substantially in the form of the one appended to this Agreement in the Fourth Schedule and which governs the ability of the District Council to nominate occupiers for the Affordable Housing Units
"Shared Ownership Lease"	means a long shared ownership lease (as defined in section 622 of the Housing Act 1985 or successor provision) with a Housing Provider substantially in accordance with the Homes and Communities Agency (or successor body) Model as at the date of any such lease where the purchaser purchases an initial share of the equity between 25 – 80% and pays rent on the remaining unsold equity and where additional share of the equity can be purchased provided that no more than 80% of the equity can be purchased
"Staircasing Receipts"	Means any monies received by the approved Housing Provider of an Affordable Shared Ownership Dwelling as a result of the leaseholder exercising a right to increase their share of the equity (and any part of such monies)

## 2. Affordable Housing Provision

- 2.1 Not to carry out or otherwise permit the Commencement of Development unless and until the Affordable Housing Scheme has been submitted to and approved in writing by the District Council
- 2.2 To construct and provide the Affordable Housing Units in accordance with the Affordable Housing Scheme approved pursuant to paragraph 2.1 above and in accordance with the Design and Quality Standards
- 2.3 Notwithstanding the requirements of paragraphs 2.1 and 2.2 above to have transferred the freehold interest or leasehold (of a minimum period of 80 years) interest in the Affordable Housing Site to the Housing Provider and to have completed 50% of the Affordable Housing Units prior to the Occupation of the Third (3<sup>rd</sup>) Private Dwelling and 100% of the Affordable

Housing Units prior to Occupation of the Fifth (5<sup>th</sup>) Private Dwelling and not to permit Occupation of the Fifth (5<sup>th</sup>) Private Dwelling until such transfer has occurred and all of the Affordable Housing Units have been completed and are available for Occupation

- 2.4 Subject to the terms of this Schedule the Affordable Housing Units shall only be used for the purpose of providing Affordable Housing and shall be so used in perpetuity (here meaning for a minimum period of 80 years)
- 2.5 The transfer of the Affordable Housing Site and / or the Affordable Housing Units to the Housing Provider shall be in such form as the Owners shall reasonably require to ensure that the Affordable Housing Site and / or the Affordable Housing Units are subject to the same rights and easements and covenants (both restrictive and positive) as are to be granted and reserved in sales of the Private Dwellings
- 2.6 To ensure that the Affordable Housing Site and / or Affordable Housing Units together with their respective curtilages will abut a publicly adopted highway or roads and footways the subject of a bonded road making agreement under section 38 of the Highways Act 1980 (or enjoy ready and free access thereto via an intervening private drive) and have ready and free access to all usual domestic services needed for residential occupation of such Affordable Housing Units without the Housing Provider having to make any payment either to the Owner or any third party for any right of way or right to use such services or connect to them
- 2.7 The transfer of the Affordable Housing Site and the Affordable Housing Units to the Housing Provider will contain a declaration that the Affordable Housing Site is so transferred subject to and with the benefit of the terms of this Agreement
- 2.8 To give at least 10 working days written notice to the District Council prior to Occupation of the Third (3<sup>rd</sup>) and Fifth (5<sup>th</sup>) Private Dwelling
- 2.9 To give one month's written notice to the District Council of the date when the Affordable Housing Units (or any of them) shall be available for Occupation

### **3. Restrictions on Occupation of Affordable Housing Units**

3.1 Not to permit Occupation of any Affordable Housing Units unless and until the Owners and/or the Housing Provider (as appropriate) has entered into the Nomination Agreement with the District Council

3.2 The Owners and/or Housing Provider as appropriate shall not at any time permit the Affordable Housing Units to be occupied other than as Affordable Housing by a Designated Person (and their dependents) who has a Local Connection

#### **4 Release**

4.1 None of the obligations and restrictions referred to in Part A of this Schedule will be enforceable in respect of the Affordable Housing Site or any Affordable Shared Ownership Dwelling and Affordable Rented Dwelling as appropriate against any Chargee in possession of, or otherwise exercising a power of sale of, any of the Affordable Shared Ownership Dwellings and Affordable Rented Dwellings erected on the Affordable Housing Site or against any person or body deriving title from such Mortgagee PROVIDED ALWAYS that the Chargee has complied with its obligations contained in paragraphs 4.2 below

4.2 The Chargee shall prior to seeking to dispose of the Affordable Housing Site or any Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge shall

- (i) give prior notice in writing to the District Council of its intention to dispose and;
- (ii) In the event that the District Council responds within four weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Site or Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall cooperate with such arrangements and use its reasonable endeavours to secure such transfer, and
- (iii) If the District Council or any other person cannot within eight weeks of the date of service of its response under paragraph 4.2(ii) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 4.2 the Chargee



shall be entitled to dispose of the Affordable Housing Site or Affordable Housing Unit(s) free of the restriction set out in this Part A of the First Schedule

PROVIDED THAT at all times Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage and FURTHER PROVIDED THAT the rights and obligations in paragraph 4.2 shall not require the the Chargee to dispose of the Affordable Dwellings for less than the amount required to redeem the outstanding borrowing secured upon the Affordable Dwelling(s) concerned including all accrued principal monies, interest and reasonable and proper costs and expenses in connection with the charge or mortgage

- 4.3 In relation to any Affordable Housing Units the Affordable Housing obligations in this Deed shall not apply to;
- 4.3.1 any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons
  - 4.3.2 in relation to any Affordable Shared Ownership Dwelling where a waiver to the requirements of the Designated Protected Area Order (SI 2009/2098) (or such other regulations restricting the ability to achieve 100% staircasing) has been granted and the owner subsequently acquires such percentage that will take their ownership to 100% of the said unit or to the successors in title to any such persons
- 4.4 In the event of any Affordable Shared Ownership Dwelling being released from the Affordable Housing restrictions herein contained by virtue of the operation of paragraph 4.3.2 above the Owner or the Housing Provider (as appropriate) shall provide the District Council with details of Staircasing Receipts from the Affordable Shared Ownership Dwellings and in co-operation with the District Council and SUBJECT to any requirements that may be imposed by any regulatory or grant funding body reach agreement to invest 100% of the Staircasing Receipts, if any, arising from the Affordable Shared Ownership Dwellings in the provision of new build Affordable Housing or to invest in measures to enhance the provision of Affordable Housing within the administrative area of the District Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied provided that the use of the Staircasing Receipts is limited to the provision within District

## **5. Provision of Information**

- 5.1 The Housing Provider will on request from the District Council allow the District Council to inspect or provide to the District Council such information as is necessary in order to enable the District Council to verify that the Housing Provider has sold or let of the Affordable Housing in accordance with the terms of this Schedule

## **Part B: On Site Open Space**

The Owner hereby covenants with the District Council as follows:-

- 6.1 Prior to Commencement of the Development the Owner shall submit the On Site Open Space Scheme to the Council for its approval and the Owner shall not Commence the Development until the On Site Space Scheme has been approved by the Council
- 6.2 To provide the On Site Open Space in accordance with the programme and detail approved by the Council pursuant to paragraph 6.1 above and at all times in accordance with the approved On Site Open Space Scheme
- 6.3 Within seven (7) days of completion of the On Site Open Space pursuant to paragraph 6.2 above the Owner shall notify the Head of Service in writing of details of their designated contact for queries regarding the On Site Open Space and requesting an inspection following which the Head of Service shall issue either the Practical Completion Certificate or a Remedial Notice which shall be complied with within 28 days following which the Owner shall request a further inspection by the Head of Service following which the Head of Service shall issue a Practical Completion Certificate or a Remedial Notice and such process is to be repeated until the Practical Completion Certificate is issued
- 6.4 Following the issue of the Practical Completion Certificate the Owner shall maintain the On Site Open Space in accordance with the On Site Open Space Scheme to the satisfaction of the Council for the Maintenance Period (or such shorter period as may be agreed to by the Head of Service) and during that time to comply with any Remedial Notice reasonably served by the Council

- 6.5 If the Owner does not comply with the requirements of any Remedial Notice to the Council's satisfaction as required by this paragraph 6 of this Schedule the Council may after giving the Owner 14 days' written notice of the works it intends to carry out and the Owner failing to carry out the works within that period enter upon the Site and themselves carry out those works and the cost of these works shall be paid by the Owner to the Council
- 6.6 One month prior to the expiry of the Maintenance Period (or such shorter period as agreed to pursuant to paragraph 6.5 above) the Head of Service will carry out the Final Maintenance Inspection following which the Head of Service shall either issue the Final Certificate for the Open Space or a Remedial Notice which shall be complied with within 28 days following which the Owner shall request a further inspection by the Head of Service following which the Head of Service shall issue the Final Certificate or a Remedial Notice and such process is to be repeated until the Final Certificate is issued
- 6.7 Following the issue of the Final Certificate for the On Site Open Space and in any event prior to Occupation of the last Dwelling to transfer the On Site Open Space to the Management Company in accordance with the Third Schedule hereto and thereafter the On Site Open Space shall be maintained in perpetuity in accordance with the maintenance regime set out in the On Site Open Space Scheme
- 6.8 Not to permit Occupation of the last Dwelling unless and until the On Site Open Space has been transferred to the Management Company in accordance with paragraph 6.7 above

### **Part C: Contributions**

The Owner hereby covenants with the District Council as follows:-

- 7.1 To pay the Open Space Contribution on or before Occupation of the first (1<sup>st</sup>) Dwelling and not to permit or cause Occupation of the first (1<sup>st</sup>) Dwelling until the Open Space Contribution has been paid to the District Council together with any additional sum due pursuant to Clause 11 hereof

### **Part D: Repayment of Contributions**

- 8.1 In the event that the Open Space Contribution or any part thereof has not been spent or committed to be spent by the District Council within 10 years of Completion of the Development, the District Council shall upon request of the Owner (or such person who made the payment) repay the Open Space Contribution or the unspent or uncommitted part thereof to the original paying party together with interest from the date of original payment to the date of repayment at the rate of the higher of either 0% or one per cent (1%) below the Bank of England base rate for the time being in force

## **SCHEDULE 2**

### **1. Education Contribution**

- 1.1 The Owner shall pay the Education Contribution to the County Council in accordance with the following:
- (a) 50% of the Education Contribution prior to Occupation of the second (2<sup>nd</sup>) Dwelling forming part of the Development; and
  - (b) The remaining 50% of the Education Contribution prior to Occupation of the eighth (8<sup>th</sup>) Dwelling of the Development
- together with any additional sum calculated in accordance with Clause 11 hereof.
- 1.2 No more than one (1) Dwelling forming part of the Development may be Occupied until 50% of the Education Contribution has been paid to the County Council and no more than seven (7) of the Dwellings forming part of the Development may be Occupied until all of the Education Contribution has been paid to the County Council
- 1.3 In the event that the Education Contribution or any part thereof has not been spent or committed to be spent by the County Council within 10 years of Completion of the Development, the County Council shall repay the Education Contribution or the unspent or uncommitted part thereof to the original paying party together with interest from the date of original payment to the date of repayment at the rate of the higher of either 0% or one per cent (1%) below the Bank of England base rate for the time being in force.

**SCHEDULE 3**  
**Management Company Provisions**

1. Not to use or Occupy or cause or suffer or permit the use or Occupation of any of Dwellings until such time as the Owner has at its own expense;
  - 1.1 set up and registered the Management Company as a private limited company incorporated and registered in England at Companies House
  - 1.2 ensured that the Management Company has at least two named persons as Directors and one Company Secretary that are eligible to be appointed and (if required) removed and replaced by the Members of the Management Company;
  - 1.3 procured that the Management Company appoints a named manager ("the MC Manager") responsible for liaising with the Council and owners and occupiers of the Dwellings
  - 1.4 procured through the Management Company documentation (as set out in paragraph 2.2 below) that the Management Company will hold at least one (1) public meeting per year
  - 1.5 procured that the Management Company is responsible for the upkeep and on-going maintenance of the On Site Open Space in accordance with the On Site Open Space Scheme and the Obligations under this Agreement

Management Company Documents

2. Not to use or Occupy or cause or suffer or permit the use or Occupation of any of Dwellings until such time as the Owner has provided the Council with the following information and documents relating to the Management Company;
  - 1.1 a copy of the company Certificate of Incorporation and Articles of Memorandum;
  - 1.2 a copy of its Rules (including the holding of at least one (1) public meeting per year and the giving of a minimum of seven (7) days written notice of each meeting to the Council and all Company Members and any other interested parties and to provide suitable facilities for the meetings of the Management Company) and Regulations and operational manuals
  - 1.3 any other relevant documentation relating to the On Site Open Space
  - 1.4 details of the names and addresses of all Directors, Members and the Company Secretary
  - 1.5 full and sufficient details of the financial resources available to the Management Company including evidence that there are adequate resources in place to undertake the maintenance of On Site Open Space in perpetuity in accordance with the On Site Open Space Scheme

Operation of the Management Company

3. The Owner hereby covenants to

1.1 ensure that upon the transfer of any Dwellings that all freehold and registerable leasehold owners of the Dwellings are Members of the Management Company and eligible to vote at any Annual General and Special Company Meetings;

1.2 ensure that the Housing Provider is a Member of the Management Company;

1.3 the MC Manager will ensure that their contact details including his name address and telephone number are regularly updated and distributed to the owners and occupiers of all of the Dwellings on the Site

1.4 ensure that the Rentcharge is secured on the first transfer or disposal of any Dwelling and that covenants are contained on the transfer to procure that on any subsequent transfer or disposal the Rentcharge is secured in favour of the Management Company

**SCHEDULE 4**  
**Draft Nomination Agreement**

**NOMINATION AGREEMENT IN RESPECT OF LAND ADJACENT TO NORTH STAR, OTTERY STREET, OTTERTON**

**THIS NOMINATION AGREEMENT** is made the                      day of    2014

**BETWEEN:**

- (1) **EAST DEVON DISTRICT COUNCIL** of Knowle, Sidmouth, EX10 8HL ("EDDC"); and
- (2) *[Insert RP details]* an industrial and provident society (**IPS Number XXXXX**) whose registered office is at *[Insert address]* ("the Registered Provider")

**IT IS AGREED THAT:**

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and expressions shall (unless the context (otherwise requires) have the following meaning:

"Affordable Housing Units"	means the 10 units which are subject to the Transfer to the Registered Provider dated [XX XX 2014] and which shall be made available as Affordable Housing (as defined in the Section 106 Agreement) and which shall comprise Affordable Rented Dwellings and Affordable Shared Ownership Dwellings as defined and delivered pursuant to the Section 106 Agreement and Affordable Housing Unit shall be construed accordingly;
"Common Housing Register"	means in the case of Affordable Rented Dwellings the register or list of applicants maintained by Devon Home Choice and in the case of Affordable Shared Ownership Dwellings the register or list of applicants maintained by the Regional HomeBuy Agent;
"Designated Person"	means a person who is in Housing Need within the District and who is registered on the Common Housing Register
"District"	means the administrative area of EDDC
"EDDC"	means East Devon District Council
"Eligible Person"	means a person who is a Designated Person who has a Local Connection

"Expert"	means an expert independent arbitrator to be appointed in accordance with clause 10.1 of this Agreement;
"First Occupation"	means first Occupation (as defined in the Section 106 Agreement);
"Housing Need"	where a household is currently occupying accommodation that is sub standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market
"Local Connection"	<p>means a connection to the Parish of Otterton demonstrated by one or more of the following in the following priority order;</p> <ol style="list-style-type: none"> <li>(1) being permanently resident therein for a continuous period of at least three (3) years out of the five (5) years immediately prior to being offered the Affordable Housing Unit; or</li> <li>(2) being formerly permanently resident therein for a continuous period of five (5) years; or</li> <li>(3) having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) therein for a continuous period of at least twelve (12) months immediately prior to being offered the Affordable Housing Unit; or</li> <li>(4) having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family member is currently resident therein and has been so for a continuous period of at least five (5) years immediately prior to being offered the Affordable Housing Unit and where there is independent evidence that the family member is in need of support or can give support</li> </ol> <p>and in the event that no-one satisfying the above requirements can be found within the Parish of Otterton then the process shall be repeated considering persons from the Neighbouring Parishes and in the event that no-one satisfying the above requirements can be found from the Neighbouring Parishes then the process shall be</p>



	repeated considering persons from the District of East Devon
"Neighbouring Parishes"	means the parishes of Budleigh Salterton, East Budleigh, Bicton, Colaton Raleigh, Newton Poppleford and Harpford and Sidmouth
"Nomination Period"	means the period of eighty (80) years from the date of this Agreement;
"Nomination Right"	means the right referred to in the Section 106 Agreement and conferred in clause 5 of this Nomination Agreement for EDDC to: (a) nominate Eligible Persons to occupy the Affordable Housing Units during the Nomination Period; or (b) allow a Registered Provider to allocate Eligible Persons to occupy the Affordable Housing Units in accordance with Devon Home Choice or Regional Homebuy Agent during the Nomination Period;
"Parties"	means <i>[insert RP name]</i> and EDDC and "Party" shall be construed accordingly;
"Section 106 Agreement"	means the Agreement dated <i>[insert date]</i> and entered into pursuant to Section 106 Town and Country Planning Act 1990 between (1) East Devon District Council (2) Devon County Council (3) Greendale Investments Limited and (4) The Agricultural Mortgage Company Plc which makes provision for affordable housing on land adjacent to North Star, Ottery Street, Otterton;

- 1.2 Words denoting the singular only shall include the plural and vice versa
- 1.3 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa
- 1.4 References to any statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
  - (b) all statutory instruments or orders made pursuant to it.
- 1.5 References to any party in this Agreement shall include that party's successors in title and assigns
- 1.6 References to a body exercising statutory powers and/or functions in this Agreement

shall unless otherwise specified include any successor in function

- 1.7 Every covenant in this Agreement not to do a particular thing shall be deemed to include (a covenant not to cause authorise or permit that thing to be done by another person
- 1.8 Where there is conflict between any of the provisions of this Nomination Agreement and the provisions of the Section 106 Agreement the provisions of the Section 106 Agreement shall be taken to prevail for all purposes.
- 1.9 Nothing in this Nomination Agreement shall be taken to override the Devon Home Choice or Homebuy Scheme and if any conflict arises between this Nomination Agreement and the Devon Home Choice or Homebuy Scheme then the Devon Home Choice or Homebuy Scheme shall prevail
- 1.10 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

## **2 NOTICES**

- 2.1 Unless provided for otherwise in this Agreement any notice or other communication shall be given by telephone and must be confirmed within two working days by letter for that notice or communication to be effective.

## **3 PROVISION OF AFFORDABLE HOUSING**

- 3.1 The Registered Provider agrees to make the Affordable Housing Units available for sale to or rent by (as appropriate) Eligible Persons for the duration of the Nomination Period.
- 3.2 In accordance with EDDC's obligations under Parts II Housing Act 1985 and Parts VI and VII Housing Act 1996 EDDC and the Registered Provider have agreed to enter into a programme for the nomination of Eligible Persons to purchase or rent the Affordable Housing Units.

## **4 NOMINATION RIGHTS**

- 4.1 The Registered Provider grants to EDDC the Nomination Rights in respect of the Affordable Housing Units throughout the Nomination Period and the Registered Provider covenants that it shall not allow the occupation of the Affordable Housing Units other than in accordance with this Agreement.
- 4.2 The Nomination Rights may be exercised by EDDC where an Affordable Housing Unit becomes available for occupation by reason of availability for First Occupation or arising upon any subsequent resale, re-let or assignment after the expiry of the First Occupation or any subsequent occupation of that Affordable Housing Unit.
- 4.3 EDDC may appoint the Registered Provider to act on its behalf in relation to this Agreement on such terms as to be agreed in writing from time to time

## **5 NOMINATION PROCEDURE**

### **Notice of availability**

- 5.1 Where an Affordable Housing Unit is available for First Occupation the Registered Provider shall provide notice in writing to EDDC no later than two weeks after the date on which the Affordable Housing Unit becomes available for First Occupation that it is available.
- 5.2 Where an Affordable Housing Unit becomes or is to become available for any reason after the expiry of the First Occupation or any subsequent occupation the Registered Provider shall provide notice in writing of the availability of that Affordable Housing Unit to EDDC no less than four weeks prior to that Affordable Housing Unit becoming available.

### **Nomination of Eligible Persons**

- 5.3 Where EDDC receives notice of the availability of an Affordable Housing Unit in accordance with clause 5.1 above it may within four weeks nominate to the Registered Provider in priority order up to three prospective Eligible Persons to occupy the Affordable Housing Unit.
- 5.4 Where EDDC receives notice of the availability of an Affordable Housing Unit in accordance with clause 5.2 above it may within four weeks nominate to the Registered Provider in priority order up to three prospective Eligible Persons to occupy the Affordable Housing Unit.

### **Offer of accommodation to Eligible Persons**

- 5.5 The Registered Provider shall within ten working days of receipt of the names of the three Eligible Persons pursuant to clauses 5.3 or 5.4 above have the reasonable right of interview and (on reasonable grounds) rejection of any prospective Eligible Person so nominated by EDDC.
- 5.6 Where the Registered Provider:
  - (a) does not reject all of the prospective Eligible Persons nominated by EDDC;
  - or
  - (b) where it does reject a Eligible Person and it is later determined that the rejection was unreasonable,it shall make an offer to purchase or offer to lease (as appropriate) to the highest priority Eligible Person
- 5.7 Where EDDC has nominated a Eligible Person(s) the Registered Provider shall as soon as practicable notify EDDC if:
  - (a) the Registered Provider rejects any Eligible Person(s) nominated by EDDC;
  - or
  - (b) if any Eligible Person nominated in respect of a particular Affordable Housing Unit fails to accept or refuses an offer of a lease or an offer to purchase which is made by the Registered Provider.
- 5.8 Where the Registered Provider rejects a Eligible Person and provides notice to EDDC of that rejection in accordance with clause 5.7(a) above that notice shall include the Registered Provider's reasons for that rejection.

- 5.9 On receipt of a notice of rejection EDDC shall consider the reasons for rejection and if it determines that a rejection was not reasonable it shall set out its reasons for so doing in writing and immediately notify the Registered Provider of those reasons.
- 5.10 In the event of a dispute between the Registered Provider and EDDC relating to whether a rejection is reasonable or not the matter may be referred by either party for resolution under the terms of clause 10.

#### **Further nominations**

- 5.11 This clause applies where either:

(a) all Eligible Persons nominated to an Affordable Housing Unit by EDDC are rejected by the Registered Provider and such reasons are considered reasonable by EDDC;

or

(b) an Eligible Person refuses to accept an offer to lease or offer to sale made by the Registered Provider within four weeks of the date of that offer.

- 5.12 Where clause 5.11 applies, the Registered Provider shall notify EDDC and invite further nominations within ten working days.
- 5.13 Within ten working days of receipt of a notification received in accordance with clause 5.12 EDDC may nominate to the Registered Provider a further three prospective Eligible Persons in priority order for the purposes of occupying that Affordable Housing Unit. Clauses 5.5 to 5.10 shall apply in respect of those nominations as if they were made under clause 5.3 or 5.4.

#### **Local Connections**

- 5.14 If within four weeks of the expiration of a notice served upon EDDC pursuant to clause 5.1, 5.2 or 5.12 above EDDC have failed to nominate a Eligible Person the Registered Provider may let the Affordable Housing Unit free from the Nomination Rights to any Eligible Persons in accordance with Devon Home Choice without prejudice to the Nomination Rights which shall arise upon the expiry of that person's occupation of the Affordable Housing Unit.

#### **Fit for occupation**

- 5.15 Where the Registered Provider gives notice to EDDC under clauses 5.3, 5.4 or 5.12 the Registered Provider shall certify to EDDC that the Affordable Housing Unit to which the notice relates is fit for occupation.

#### **6 VARIATION AND WAIVER**

- 6.1 The nomination procedure described in clause 5 above may be varied in respect of any single Affordable Housing Unit provided always that such variation is agreed in writing by the Parties and that no such variation shall constitute a waiver of the Nomination Rights as described in this Agreement.

## **7 INFORMATION**

- 7.1 The Registered Provider shall provide EDDC with information concerning the occupation of the Affordable Housing Units on each anniversary of the date of this Agreement throughout the Nomination Period such information to include evidence concerning voids, sales, re-sales, lets and re-lets.
- 7.2 EDDC may request such further information from the Registered Provider concerning the occupation of the Affordable Housing Unit as it may reasonably require and such information shall be provided by the Registered Provider within twenty-eight days of receipt of a request.

## **8 ENFORCEABILITY OF COVENANTS**

- 8.1 This Agreement is made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and the Localism Act 2011 Section 1 and the covenants on the part of the Registered Provider shall be enforceable without any limit of time against any person deriving title from the Registered Provider in respect of its interest in the Affordable Housing Units and any person deriving title under it in respect of any lesser interest in the Affordable Housing Units as if that person had also been an original covenanting party in respect of the interest for the time being held by him provided always that the obligations contained or referred to in this Nomination Agreement shall not apply in so far as is provided for in the Section 106 Agreement.

## **9 COSTS**

- 9.1 On completion of this Agreement the Registered Provider shall pay EDDC's legal costs in preparing amending and completing this Agreement.

## **10 DISPUTES**

- 10.1 In the event of a dispute or question arising between the Registered Provider and EDDC in relation to any of the provisions of this Agreement it is agreed that:
- (a) in the absence of agreement the dispute or question shall be referred to an Expert to be agreed by EDDC and the Registered Provider;
  - (b) in the absence of agreement between the Registered Provider and EDDC the Expert shall be determined upon the application of either EDDC or the Registered Provider by the President of the Royal Institution of Chartered Surveyors;
  - (c) any such reference is to be treated as a submission to arbitration within the means of the Arbitration Act 1996; and
  - (d) in the event of a reference to arbitration arising out of the unreasonable withholding of any approval required or sought under this Agreement the timescale for carrying out any required steps under this Agreement may be extended either by written agreement between the parties to the procedure or failing such agreement in accordance with such extended timescale as the Expert may deem fit.
- 10.2 In the event of such election made in clause 10.1 then any resulting finding decision or determination of the Expert shall be binding on the Registered Provider and EDDC.

## 11 EXCLUSIONS

11.1 Nothing in this Agreement shall bind

11.1.2 a mortgagee in possession or chargee (or to a receiver appointed thereby) of an Affordable Housing Provider to whom the freehold or long leasehold of the Affordable Housing Dwellings has been transferred,

11.1.2 any sale to a tenant in exercising their right to acquire or purchase under a statutory power or to the successors in title to any such persons

11.1.3 In relation to any Shared Ownership Dwelling (as defined in the S106 Agreement) where the owner of the said unit has been granted a waiver to the requirements of the Designated Protected Area Order (SI 2009/2098) (or such other regulations restricting the ability to achieve 100% staircasing) the owner subsequently acquires such percentage that will take their ownership to 100% of the said unit or to the successors in title to any such persons

IN WITNESS whereof this Agreement has been executed by the parties hereto the day and year first before written

**THE COMMON SEAL of EAST DEVON** )  
**DISTRICT COUNCIL** was affixed to this )  
Agreement in the presence of )

.....  
Authorised Signatory

**EXECUTED as a DEED by** )  
affixing the common seal of )  
 )  
in the presence of: )

Authorised Signatory

.....

Authorised Signatory / Secretary

.....

IN WITNESS whereof the parties have executed this document as a Deed the day and year first before written

**EXECUTED AS A DEED**

by affixing the Common Seal of  
**EAST DEVON DISTRICT COUNCIL**

in the presence of :-

Authorised Signatory

**EXECUTED AS A DEED**

by affixing the Common Seal of  
**DEVON COUNTY COUNCIL**

in the presence of :-

Authorised Signatory

DOCUMENT No. **46529**

**SIGNED AND DELIVERED AS A DEED by**  
**GREENDALE INVESTMENTS LIMITED**

in the presence of: \_\_\_\_\_

Witness name

T.D. Smith

Witness Address

44 Cedars Road Greb G82  
WNA

Witness Signature

[Signature]

Witness Occupation

Chartered Surveyor

**SIGNED AS A DEED BY**

**Neal Fennell**

**As Attorney for and on behalf of The**  
**Agricultural Mortgage Corporation PLC**

**In the presence of: -**

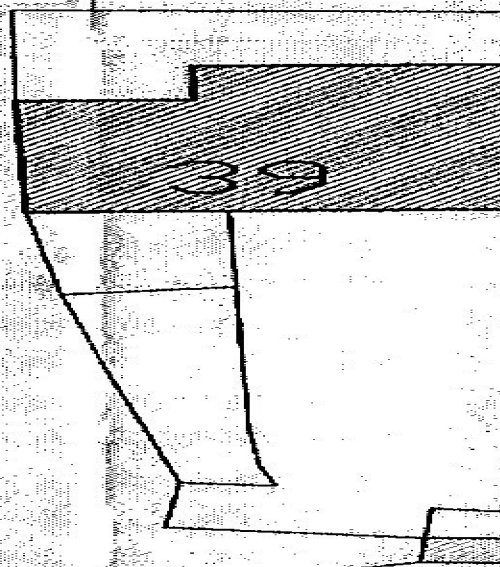
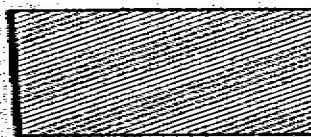
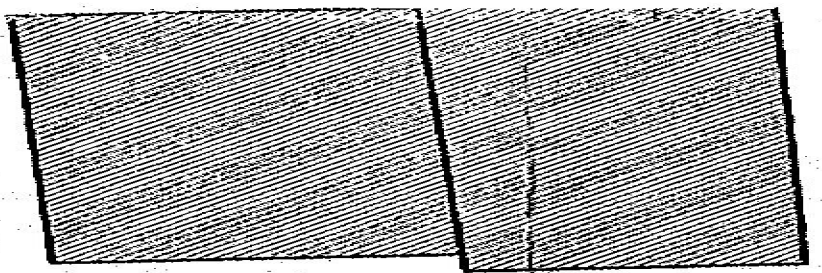
**Witness signature: .....CORAL JACQUELINE WARNER**

**Witness Name: .....Charlton Place**

**Witness Address: .....Charlton Road**

**.....Andover**

**.....Hampshire SP10 1RE**



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## **Shirley Heavey**

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**From:** Jacqueline Stokes  
**Sent:** 10 November 2015 09:55  
**To:** Planning Central  
**Subject:** S106 - North Star, Otterton [ID=DEV.2-0089] - UNCLASSIFIED:  
**Attachments:** Completed S106 agreement - scanned 06-11-15 - 00075487.pdf

Good morning

Please find attached the completed S106 document. Completion memo will follow.

Kind regards

Jacqui Stokes

Legal Administrator  
East Devon District Council  
Tel: 01395 571678  
Ext: 1678  
Email: [jstokes@eastdevon.gov.uk](mailto:jstokes@eastdevon.gov.uk)