

DATED 2<sup>nd</sup> July 2014

**EAST DEVON DISTRICT COUNCIL**

and

**JOHN ROGER PIGOTT & BRENDA MARY PIGOTT**

and

**DALE LOUISE BRAZENALL**

**SECTION 106 AGREEMENT**

relating to

**LAND OFF OF CLAPPER LANE, HONITON**

THIS AGREEMENT is made the 2<sup>nd</sup> day of July 2014

**BETWEEN**

1. **EAST DEVON DISTRICT COUNCIL** of Station Road, Knowle, Sidmouth, Devon, EX10 8HL (the "District Council").
2. **JOHN ROGER PIGOTT and BRENDA MARY PIGOTT** of 62 Moorland Road, Leek, Staffordshire, ST13 5BW (the "First Owner")
3. **DALE LOUISE BRAZENALL** of 14 Newcomen Road, Dartmouth, Devon, TQ6 9BN (the "Second Owner")

**WHEREAS:**

1. In this Agreement the following definitions shall apply:

1990 Act	Means the Town and Country Planning Act 1990 as amended
Application	Means the full planning application 13/2508/MOUT made to the District Council for the Development
Allotment Land	Means that part of Site edged green on the attached plan and which is to be used for the relocation of existing allotments on the Site
Allotment Scheme	Means the scheme to be submitted to the District Council for the relocation and provision of allotments on the Allotment Land and which shall include the following detail; <ul style="list-style-type: none"><li>- Layout of the allotments</li><li>- Parking arrangements</li><li>- Boundary treatment</li><li>- Arrangements for the provision of water</li></ul> Future management and maintenance responsibilities

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.
Dwelling	Means any dwelling or dwellings to be constructed on the Site pursuant to the Planning Permission
The Development	Means the 'Construction of 10 dwellings and re-location of allotment gardens' as is more fully described in the Application
Index	Means the Retail Price Index (All Items)
Interest Rate	Means 4% above the Bank of England Base Rate calculated on a day to day basis.
Monitoring Fee	Means the sum of £1,242.00 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
Open Space Contribution	Means the sum of £21,050.80 to be used towards the provision enhancement and / or maintenance of public open space within the vicinity of the Development
Owners	Means together the First Owner and the Second Owner

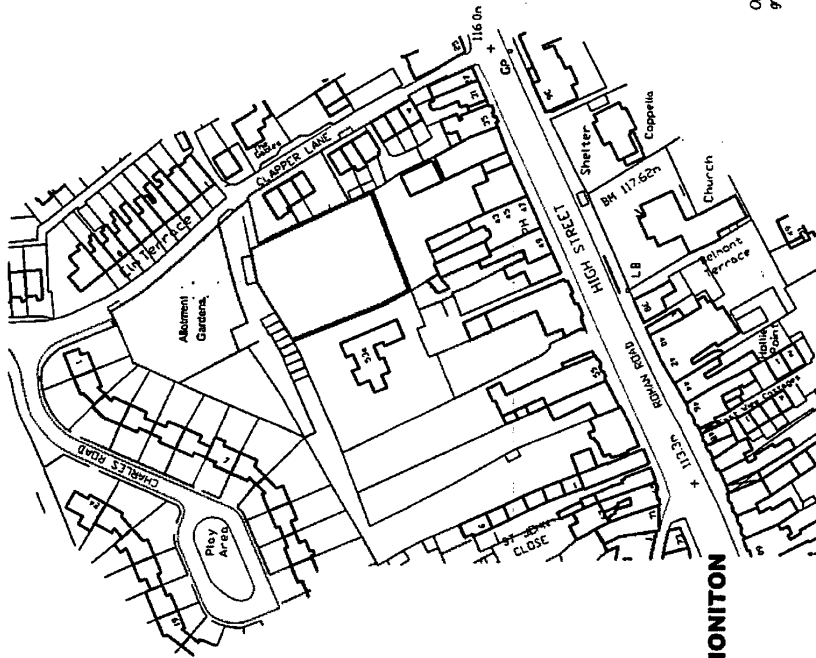
Plan	Means the plan annexed to this Agreement showing the extent of the Site and the Allotment Land.
Planning Permission	Means any planning permission issued pursuant to the Application
Site	Means the land shown edged red on the Plan and known as land off of Clapper Lane, Honiton with such land registered at HM Land Registry under title numbers DN484127 & DN536635

#### **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.
- 1.2. The First Owner is the proprietor of that part of the Site registered at HM Land Registry under Title Number DN484127
- 1.3. The Second Owner is the proprietor of that part of the Site registered at HM Land Registry under Title Number DN536635
- 1.4. John Roger Pigott and Dale Louise Brazenall submitted the Application to the Council which was registered on 15<sup>th</sup> November 2013
- 1.5. The District Council has resolved to grant the Planning Permission subject to the prior completion of this Deed to secure the obligations herein contained
- 1.6. 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.



hgan



Site area of joint owners  
edged in red amounting to  
approx 0.40Ha with the net  
allotment and parking area  
edged in green

Ordnance Survey 100M  
grid shown in faint line

# MARSHALL

ARCHITECTURAL & SURVEYING PRACTICE

Tracey Ham, Awilscombe,  
HONITON,  
Devon. Tel. 01404 41061

e-mail [brian@marshallarchitectural.co.uk](mailto:brian@marshallarchitectural.co.uk)

CLIENT  
JOHN PIGOTT & DALE BRAZENALL,  
92 MOORLAND ROAD, STAFFES &  
EAST KENT FARMHOUSE, WHITESTONE,  
EXETER, DEVON

REVISIONS  
\* Parking and allotment areas edged  
green as required and red line to  
50m Garden House modified 14.05.14

PROJECT  
TERRACED HOUSING DEVELOPMENT  
AND ALLOTMENT GARDENS, AT  
LAND OFF CLAPPER LANE,  
HONITON, DEVON.

DRAWING NO. COPYRIGHT  
**1317-230a**  
SCALE DATE DRAWN  
A3 1:1250 14.05.14 BL5M

Brian L.S Marshall MCIAI

## SECTION 106 PLAN

© Crown Copyright 2007. All rights reserved. Licence number 100020449

**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 under section 106 of the 1990 Act against the Owners 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 Deed is conditional on 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 Owners) 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 Owners fail 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 Owners 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 Owners shall, prior to the execution hereof, pay the District Council's reasonable legal costs and the Monitoring Fee.

**6. Owners' Covenants**

The Owners covenant with the District Council to observe and perform the Obligations in the First 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 (or such person in whom the responsibilities of the Head of Planning are from time to time vested)
- 7.4 The District Council will upon the written request of the Owners at any time after the obligations of the Owners 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:-

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

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

**13. Interest**

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

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

The Owners hereby covenant with the District Council as follows:-

**1. Allotment Provisions**

- 1.1 Not to Commence the Development until the Allotment Scheme has been submitted to and approved in writing by the District Council
- 1.2 To have provided the allotments on the Allotment Land prior to any works of construction occurring on the Dwellings in accordance with the Allotment Scheme approved pursuant to paragraph 1.1 above
- 1.3 To manage and maintain the Allotment Land for use as allotments in accordance with the Allotment Scheme in perpetuity (here meaning 80 years from the date of this Agreement)

**2. Open Space Contribution**

- 2.1 To pay 50% of 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 50% of the Open Space Contribution has been paid to the District Council together with any additional sum due pursuant to Clause 11 hereof
- 2.2 To pay 50% of the Open Space Contribution on or before Occupation of the fifth (5<sup>th</sup>) Dwelling and not to permit or cause Occupation of the fifth (5<sup>th</sup>) Dwelling until the remaining 50% of the Open Space Contribution has been paid to the District Council together with any additional sum due pursuant to Clause 11 hereof

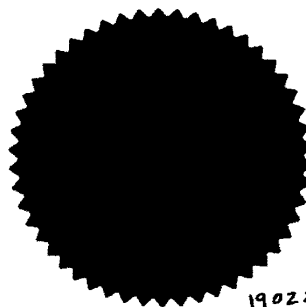
**3. Repayment of Contributions**

- 3.1 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 Owners (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

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

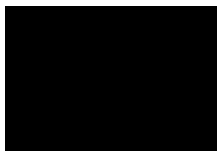
**EXECUTED AS A DEED**  
by affixing the Common Seal of  
**EAST DEVON DISTRICT COUNCIL**  
in the presence of :-

Authorised Signatory

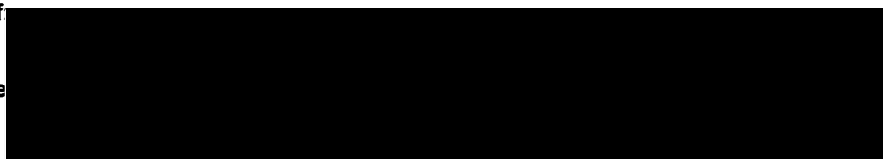


19022

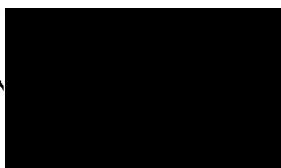
**SIGNED AND DELIVERED AS A DEED by**  
**JOHN ROGER PIGOTT**



in the presence of  
Witness name  
Witness Signature



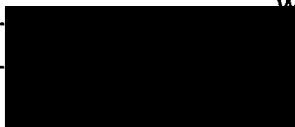
**SIGNED AND DELIVERED AS A DEED by**  
**BRENDA MARY PIGOTT**



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

Witness name

Witness Signature

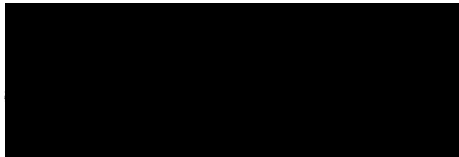


Witness Address

Witness Occupation

\_\_\_\_\_  
\_\_\_\_\_

**SIGNED AND DELIVERED AS A DEED by**  
**DALE LOUISE BRAZENALL**



in the presence of:

Witness name

Witness Signature

