

DATED

10th April

2008

**TOWN AND COUNTRY PLANNING ACT 1990
AGREEMENT**

BETWEEN

WEST DORSET DISTRICT COUNCIL

- and -

BUCKLAND NEWTON CPT LIMITED

**SECTION 106 AGREEMENT
relating to land lying to the North
of the village of Buckland Newton**

Cobbetts LLP
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ISM/BU539.1

THIS AGREEMENT AND DEED is made the

Tenth

day of

April

Two

Thousand and Eight BETWEEN

- 1 **WEST DORSET DISTRICT COUNCIL** of Council Offices, 58/60 West Street, Dorchester, Dorset ("the Council ")
- 2 **BUCKLAND NEWTON CPT LIMITED** whose registered office is situate at Locketts, Knapp Farm, Buckland Newton, Dorset ("the Owner")

WHEREAS

- 1 In this Deed the following words and expressions shall have the following meanings:

Act	The Town and Country Planning Act 1990 (as amended from time to time).
Affordable Dwellings	Ten residential units for sale or rent as stipulated below and shown edged red on the Plan comprising the Sale Units and the Rented Units
Application	The planning application number 002472 submitted by the Owner to the Council.
Approved Provider	Buckland Newton CPT Limited or such other body as shall be approved by the Council (such approval not to be unreasonably withheld or delayed) in accordance with the Council's policy on Approved Providers from time to time
Declaration of Trust	Disposal by the Owner by way of Declaration of Trust lease whereby the leaseholder can purchase a share in the Affordable Dwelling at a percentage of its Open Market Value (of which the initial sales shall include opportunities to purchase at no more than 40% open market value) but can never acquire any share above 80% the form of such Lease to be approved by the Council prior to marketing of the Affordable Dwellings by the Owner for sale (such approval not to be unreasonably withheld or delayed)
Development	The development of the land edged red on the Plan to create ten newbuild houses as Affordable Dwellings
Interest Rate	The Law Society's Interest Rate calculated on a day to day basis.
Land	The Land in the freehold ownership of the Owner or which the Owner has exchanged Contracts to buy edged red on the Plan.
Open Market Value/Open	

Market Rent	In respect of any interest in an Affordable Dwelling shall mean the value that the interest would have on the open market if the price or rent at which it could be sold or let or the persons who are entitled to occupy it were not subject to the restrictions in this Agreement.
Owner	Buckland Newton CPT Limited or their successors in title the owners of the land
Plan	The Plan annexed hereto.
Qualifying Person	<p>A person or persons who meet all of the following criteria:</p> <ul style="list-style-type: none"> (I) that person's household income and capital are insufficient to allow that person to afford to rent or acquire a dwelling sufficient for their needs on the open market; and (II) that person's household income and capital are sufficient to allow them to afford to rent or acquire a dwelling on the Development for their needs from the Owner on an assured tenancy or a Declaration of Trust basis; and (III) that the size and nature of that person's household is or will be appropriate to the size of the dwelling they will occupy; (IV) and that person is on the Councils housing register together with members of that person's household living with him or her in the Affordable Dwelling.
Rented Units	<p>means the dwellings to be offered for rent</p> <ul style="list-style-type: none"> (i) at rents not exceeding 80% of the rent set by the Rent Officer as the Housing Rent Allowance for a dwelling of that size (ii) on assured tenancies (iii) in accordance with the allocation policy referred to in Clause 7 of the Schedule below (iv) such rents to be increased annually on 1st April by no more than the Index of Retail Price (or successor index)
Sale Units	means the dwellings to be offered for sale by Declaration of Trust or Shared Ownership
Shared Ownership	disposal by the Owner of a Sale Unit by way of shared ownership lease under which the leaseholder cannot acquire more than 80% of the Open Market Value of the Sale Unit the form of such Lease to be approved by the Council prior to

marketing of the Affordable Dwellings by the Owner for sale
(such approval not to be unreasonably withheld or delayed)

- 1 The Owner is the proprietor of the freehold title to the Land.
- 2 The Council issued Planning Permission for the Development on 5th April 2007.
- 3 The Owner and the Council are willing to enter into this Agreement to restrict occupation of the dwellings comprised in the Development.
- 4 The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated and is entitled to exercise the powers conferred upon it by Section 106 of the Act within its area.

NOW THIS DEED WITNESSES as follows:-

- 1 For the purposes of this Deed references to the Owner and the Council respectively include their successors in title and assigns.
- 2 This Section 106 Agreement
 - 2.1 Is entered into pursuant to the provisions of Section 106 of the Act (as substituted by Section 12 of the Planning and Compensation Act 1991) and all other powers enabling;
 - 2.2 Creates obligations which are planning obligations for the purposes of Section 106 of the Act and which are intended to bind the Land and the Owners and all persons deriving title under them;
 - 2.3 Shall be enforceable by the Council in relation to the Obligations in the Schedule as local planning authority;
 - 2.4 Shall be registered as a Local Land Charge in the register of the Local Land Charges maintained by the Council; and
 - 2.5 Is executed by the Owner and the Council as a Deed.
- 3 The Owner hereby covenants with the Council to observe and perform the obligations and restrictions set out in the Schedule.
- 4 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval in itself.
- 5 The obligations contained in this Deed are conditional upon and shall only come into force on commencement of the Development (within the meaning of Section 56 of the Act).
- 6 General Provisions:
 - 6.1 No person or party shall be liable for a breach of a covenant contained in this Deed after he or it shall have parted with all of his or its interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
 - 6.2 If the planning permission granted pursuant to the Application shall expire before the Development is commenced within the meaning of Section 56 of the Act or shall at

any time be revoked this Agreement shall forthwith determine and cease to have effect.

- 6.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Deed.
- 6.4 Subject to Clause 5 above the Owner and the Council hereby agree and undertake for the purposes of Section 106 of the Act as aforesaid to comply with the obligations in the terms set out in the Schedules hereto.
- 6.5 Nothing herein contained or implied shall prejudice or affect in any way the exercise by the Council of its rights powers duties and obligations in the exercise of its functions as a local planning authority or as a local authority generally.

7 Dispute Resolution

- 7.1 All differences and questions which arise between the parties concerning arising out of or connected with this Agreement shall:
- 7.1.1 If such different or question relates to the rights and liabilities of either party or to the terms or conditions to be embodied in any deed or document appertaining thereto be referred to a solicitor or barrister agreed upon by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Law Society of England and Wales; and
- 7.1.2 If such difference or question relates to the value of any interest in property be referred to a chartered surveyor agreed upon by the parties but in default of the agreement appointed at the request of either party or by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors
- 7.1.3 Any such reference to a solicitor, barrister, chartered civil engineer, chartered surveyor or chartered accountant shall if the parties are agreed in writing be deemed to be a reference to an expert (and not to an arbitor) whose decision shall be final and binding but shall otherwise be deemed to be a reference to an arbitor pursuant to the Arbitration Act 1996 and any statutory amendment, variation, substitution or re—enactment thereof.
- 7.1.4 If the parties shall fail to agree as to the nature of the difference or question then it shall be referred to a solicitor or barrister agreed upon by them but in default of agreement either of them may apply to the President of the Law Society to appoint a solicitor to decide in relation to any such matter which of the preceding sub-paragraphs is applicable thereto and the decision of such solicitor or barrister acting as an expert and not as an arbitrator shall be final and binding

7.1.5 If any solicitor, barrister, chartered civil engineer, chartered surveyor or chartered accountant shall act as an expert pursuant to the terms of this clause then either party shall be entitled to submit to him representations and cross-examinations which such supporting evidence as they shall respectively consider necessary and he shall deliver in writing and the reference to him shall include authority to determine in what manner all the costs of the referral shall be paid.

7.1.6 If the parties are unable to agree as to the appointment of such arbitrator within 30 days of one party serving notice on the other calling for the appointment of an arbitrator then such arbitrator shall be appointed on the application of either party to the President for the time being of the Law Society of England and Wales or the Institution of Civil Engineers or the Royal Institution of Chartered Surveyors or the Institute of Chartered Accountants in England and Wales

IN WITNESS whereof the Owner and the Council have executed these presents as a Deed the day and year first above written.

THE SCHEDULE

Affordable Dwellings

1 Ownership of Affordable Dwellings

The Owner shall not allow an Affordable Dwelling to be occupied by any person who is not a Qualifying Person and no person may acquire any interest in an Affordable Dwelling unless they are a Qualifying Person. The Owner shall not allow the occupation of any Affordable Dwellings save in accordance with the allocations policy agreed from time to time with the Council (such agreement not to be unreasonably withheld or delayed).

2 Occupation by Qualifying Person

The Owner shall not permit the Affordable Dwellings or any of them to be occupied other than by a person who is (at the time of that person's first occupation) a Qualifying Person under the provisions of a Declaration of Trust or Shared Ownership lease in the case of a Sale Unit or an assured tenancy in the case of a Rented Unit.

3 Local Connection

3.1 The Owner will not at any time permit the occupation, allocation, possession or acquisition of any of the Affordable Dwellings other than to a Qualifying Person and persons who has a Local Connection (as hereinafter defined) with the Parish of Buckland Newton **PROVIDED ALWAYS** that such Local Connection shall be deemed

to be satisfied where at least one member of the relevant household can demonstrate a Local Connection.

3.2 In order to demonstrate the Local Connection for the purposes of paragraph 3.1 above a person must either:

- 3.2.1 Have immediately prior to such acquisition or occupation been continuously resident for 6 months in the past year or at least 3 years in the last 5 years in the said Parish; or
- 3.2.2 Have previously lived in the said Parish for 3 years out of the last 5; or
- 3.2.3 Have attended a school for full time education within the said Parish; or
- 3.2.4 Be in continuous permanent full time or part-time employment within West Dorset District Council area for 6 months out of the last 12 months immediately prior to the application for housing; or
- 3.2.5 Demonstrate a family connection to the said Parish and for the purposes of this sub-clause a person shall be deemed to have a family connection to a parish where that person's mother, father, son or daughter has immediately prior to such acquisition or occupation been continuously resident in the said Parish for a period of 5 years

or other special circumstances which create a link to the specified parish or parishes (not including residence in a hospital, armed forces accommodation, holiday let or prison) and having been first verified in writing by the CLT as having such special circumstances

PROVIDED ALWAYS that if an occupier of an Affordable Dwelling wishes to dispose of his interest in that Affordable Dwelling (in accordance with the allocations policy referred to below) but is unable within 3 months to find a purchaser or tenant who is a qualifying person and who can demonstrate a Local Connection of the following types (in order of priority):

- (i) within the said parish
- (ii) within the surrounding/adjoining parishes
- (iii) within the district of West Dorset
- (iv) within the ceremonial boundary of the County of Dorset

then such occupier may dispose of his interest in such Affordable Dwelling to a person without a Local Connection but who is still a Qualifying Person

4 Allocation of Units

In accordance with the allocations policy referred to below:-

- 4.1 To notify the Council in writing of any proposed purchaser/occupier and supply details of the said person's qualification as a Qualifying Person;
- 4.2 To advise the Council of the advertised and actual price and terms of lease or tenancy of the Affordable Housing Unit

5 **Allocations Policy**

The Council and the Developer shall agree an allocations policy for allocation of the occupiers of the Affordable Housing Units prior to occupation of the said units. The Developer agrees not to allocate any units except in accordance with the allocations policy and not to alter the same without supplying prior written notification of the same to the Council.

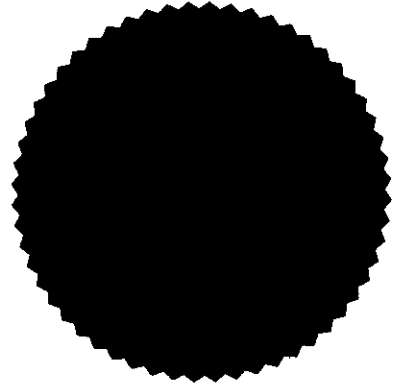
6 **Interest**

If any sum due under this Deed remains unpaid at the time specified herein the party responsible for making the payment shall pay to the Council interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment at the rate of 4% per annum over Lloyds TSB Bank PLC base rate from time to time in force and such amount shall be recoverable by action as a liquidated sum

7 **Notices**

Any notice consent or approval required to be given under this Deed to any party to this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post to the address of the party as aforesaid or such other address for service as shall have been previously notified by the party to the other parties

THE COMMON SEAL of WEST)
DORSET DISTRICT COUNCIL was)
hereunto affixed in the presence of:)



R.W. Loatsworth

Chairman of Council

[Handwritten signature]

Chief Executive

11437/08

EXECUTED as a Deed by)
BUCKLAND NEWTON CPT LIMITED)
In the presence of:)

[Handwritten signature]

E. Clare

EILEEN CLARE

C/O STRATTON HOUSE

