

THIS AGREEMENT is made the *Twenty-ninth* day of  
*March*

One thousand nine hundred and ninety-six

*Chaps*  
B E T W E E N ENGLISH VILLAGES HOUSING ASSOCIATION LIMITED whose registered office is situate at 9 Clarendon Place Leamington Spa Warwickshire (hereinafter called 'the Association which term shall include its successors in title') of the one part and HART DISTRICT COUNCIL of Civic Offices Harlington Way Fleet in Hampshire GU13 8AE (hereinafter called 'the Council') of the other part

W H E R E A S

- (1) The Association is a housing association registered with the Registrar of Friendly Societies pursuant to the Industrial and Provident Societies Act 1965 under Number 25810R and is the beneficial owner in fee simple of the Property free from encumbrances
- (2) The Council is in respect of the said land the District Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (hereinafter called 'the Act')
- (3) The Council has adopted the local plan which (inter alia) provides that in certain circumstances the development of housing to meet particular long term local needs may be permitted
- (4) The Association is desirous of erecting upon the Property thirteen (13) units more particularly described in Planning Application 95/00054 (hereinafter called 'the Development') and the Council is disposed to grant planning permission provided that the Development is regulated in the manner hereinafter appearing

THIS DEED WITNESSETH -

1.0 Defined Terms

The following terms in this Agreement shall have the following meanings unless the context requires otherwise :-

- 1.1 'Building Contract' means a contract to be entered into by the Association for the carrying out of the Development to a standard acceptable to the National Housebuilders Confederation
- 1.2 'Building Contractor' means the person employed under the Building Contract
- 1.3 'Building Works' means the building works to be carried out under the Building Contract
- 1.4 'Practical Completion' means the practical completion of the Building Works or of any block of Units in accordance with the Building Contract and references to 'the date of Practical Completion' are to the date on which the certificate of Practical Completion is issued by the Employer's Agent in accordance with the terms of the Building Contract
- 1.5 'the Property' means the land at Pankridge Street Crondall in Hampshire shown edged red on the annexed plan
- 1.6 'Requisite Consents' has the meaning assigned to it by Clause 6.3
- 1.7 'Unit' shall mean a unit of housing accommodation constituting a separate unit within the Development together with its curtilage and any parking space

- 1.8 'Perpetuity Period' means the period of 80 years commencing with the date hereof
- 2.0 Interpretation
- 2.1 Reference to a clause are references where the context so admits to a clause in this agreement
- 2.2 The clause headings in this agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of the clause to which they refer
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeable in that manner
- 2.5 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit infringements of that restriction
- 2.6 All references to legislation are to that legislation as from time to time amended or re-enacted
- 3.0 This agreement constitutes a Planning Obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and it is a Planning Obligation enforceable by the Council entered into in respect of the said land by the Association whose interest in the said land is detailed above

- 4.0 This agreement is made pursuant to Section 106 of the Act (as amended) Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 111 of the Local Government Act 1972
- 5.0 The Association hereby covenants with the Council not to permit the occupation of any part of the Development otherwise than strictly in accordance with the procedures set out in the following clauses
- 6.0 Development of the Site
- 6.1 The Association shall as soon as practicable after the date hereof and subject to all Requisite Consents being obtained enter into the Building Contract and endeavour to procure Practical Completion of all the Units within two years of the date of this agreement subject to this period being extended commensurately with any extension of time granted to the Building Contractor under the Building Contract
- 6.2 The Association will apply for and use all reasonable endeavours to obtain all Requisite Consents
- 6.3 The Requisite Consents are those permissions consents approvals licences certificates and permits in legally effectual form as may be necessary lawfully to commence carry out maintain and complete the Development including (but without limitation) :-
- 6.3.1 planning permission and approval of reserved matters and any further details
- 6.3.2 building regulations consent and byelaw approval

- 6.3.3 the requirements of all competent authorities regulating the Development
- 6.3.4 the consents of all persons having interests or rights in or over the Site who by the lawful exercise of their powers in the absence of such a consent could prevent or impede the carrying out or progress of the Development
- 6.4 The Association will keep the Council informed of :-
  - 6.4.1 all material measures taken and stages reached by the Association in performing its obligations
  - 6.4.2 the progress of the Building Works
  - 6.4.3 any material problems or delays affecting the Building Works
- 6.5 The Association will enforce the defects liability provisions in the Building Contract and/or as appropriate under the NHBC Scheme
- 7.0 Maintenance of the Property
- 7.1 The Association shall remain responsible so as to ensure that any landscaped areas or open space shall be laid out and planted in accordance with the requirements of the Local Planning Authority and more specifically set out in Schedule 2 hereto such landscaping to be carried out and completed as soon as reasonably practicable and if not done sooner forthwith on completing the construction of the Units
- 7.2 Thereafter to maintain the said landscaping areas and open space to a standard acceptable to the Council

7.3 To provide a boundary enclosure around the property as provided for by the conditions to any planning consent and thereafter to maintain at the expense of the Association

8.0 Designation of Units

The Association will give to the Council not less than six weeks prior written notice of the Practical Completion of each Unit such notice to be addressed to the Housing Services Manager

9.0 Use of Assured Tenancy Units

This clause shall apply to seven (7) Units

9.1 The Association and the Council hereby mutually agree as follows :-

- (A) that the Units shall at all times be let and managed by and in accordance with the objects of the Association and its current published housing waiting list and allocation system or by and in accordance with similar objects and published documents of any other registered Housing Association
- (B) that the Association shall upon completion of the Development and at all times thereafter allocate each Unit comprised therein to a person -
  - (i) who is considered by the Association to be in need of such accommodation and to be unable to afford housing accommodation on the open market (whether by renting or purchasing) within the Parish of Crondall
  - (ii) who has a strong local connection with the said Parish of Crondall and for the purposes of this Deed a person shall be taken to have a strong local connection with those Parishes if -

- (a) he was ordinarily resident there for a continuous period of not less than ten (10) years ending with the date of his application to the Association for housing accommodation; or
  - (b) he has resided there for not less than ten (10) years prior to the date of such application being made and another member of his family actually resides there at that date; or
  - (c) he has a readily demonstrable need to reside there by reason of his current employment there PROVIDED THAT such employment has been continuous for a period of not less than five (5) years ending with the date of such application; or
  - (d) he has a demonstrable need to reside there either to support or to be supported by another member of his family who has resided there for a continuous period of not less than ten (10) years ending with the date of such application
- (C) That if within a reasonable time of any Unit comprised in the Development becoming available for occupation whether upon practical completion of the development or at any time thereafter the Association (having first consulted the Council's Housing Services Manager for the time being) is unable to fill any such vacancy arising in accordance with paragraph (B) of this clause then the Association shall allocate (but only with the prior written approval of the said Housing Services Manager)

any such vacant Unit to a person who falls within the criteria set out in sub-paragraph (i) of paragraph (B) of this clause and who has a close association with the Parish of Crondall even though that person does not satisfy the criteria set out in sub-paragraph (ii) of paragraph (B) hereof

(D) That if within a reasonable time of any Unit comprised in the Development becoming available for occupation whether on practical completion of the Development or at any time thereafter the Association (having first consulted the Council's Housing Services Manager for the time being) is unable to fill any such vacancy arising in accordance with paragraphs (B) or (C) of this clause then the Association shall allocate any such vacant Unit to a person -

(i) who is considered by the Association to be in need of such accommodation and to be unable to afford housing accommodation on the open market (whether by renting or purchasing) within the Parishes of Odiham Dogmersfield Long Sutton and Crookham Village (being Parishes within the administrative area of the Council) and

(ii) who has a strong local connection with any of those Parishes and for the purposes of this Deed a person shall be taken to have a strong local connection with the said Parishes if he satisfies the criteria set out at (a) to (d) inclusive of sub-paragraph (ii) of paragraph (B) hereof except that references therein to the Parish of Crondall shall be read and construed ~~shall be read and construed~~ as references to the Parishes of Odiham Dogmersfield Long Sutton and Crookham Village

(E) That if within a reasonable time of any Unit comprised in the

Development becoming available for occupation whether on practical completion of the Development or at any time thereafter the Association (having first consulted the Council's Housing Services Manager for the time being) is unable to fill any such vacancy arising in accordance with paragraphs (B) (C) or (D) hereof then the Association may with the consent of the Council (such consent not to be unreasonably withheld) allocate any such vacant Unit to any person who satisfies the criteria set out in sub-paragraph (i) of paragraph (B) or sub-paragraph (i) of paragraph (D) of this clause hereof SAVE THAT preference shall be given by the Association to such person ordinarily resident within the administrative area of the Council

9.2 Any vacancy arising for any reason whatsoever shall be notified by the Association to the Council's Housing Services Manager and the Chairman for the time being of Crondall Parish Council in writing as soon as reasonably practicable and in any event within fourteen days of the vacancy arising.

In the event of there being more than one potential occupant fulfilling the criteria set out in this Agreement for the vacancy then the Council together with the Association shall determine which potential occupant should be offered the vacant Unit such determination to be made on the basis of greatest need

9.3 IT IS FURTHER MUTUALLY HEREBY AGREED by and between the parties hereto that for the purposes of clause 9.1 hereof a person shall be a member of another's family if he or she (as the case may be) is the spouse mother father sister brother daughter son or grandparent of such person

10.0 Use of Shared Equity Units

This clause shall apply to six (6) Units

10.1 The Association shall as soon as reasonably practicable after the date

of Practicable Completion of a Unit and at all times subsequently within the Perpetuity Period allocate each Unit to a person who is considered by the Association to be in need of such accommodation and who satisfies the criteria set out in the Draft Hart District Local Plan Second Alteration set out in Schedule 1 hereto provided that -

- (i) if within six (6) weeks of a Unit becoming available for sale on a shared equity basis the Association is unable to fill any vacancy in accordance with the criteria referred to above then the Association may allocate such Unit to any person who is considered by the Association to be in need of accommodation
- (ii) if within a further six (6) weeks of a Unit becoming available for sale on a shared equity basis the Association is unable to fill any vacancy in accordance with the preceding provisions of this clause then the owners thereof/mortgagee in possession may sell the Unit to any person but only on the basis that such person purchased the same subject to the terms of this agreement

11.0 Notices and Notifications

Any notice to be given by one part to the other under this agreement shall be made in writing by letter or facsimile and if by first class post shall be deemed to be received two business days after posting and if by facsimile shall be deemed to be received when sent

12.0 Assignment of a Party's Interest in this Agreement

No party shall assign or dispose of its interest under this agreement without the written consent of the other party such consent not to be unreasonably withheld or delayed PROVIDED THAT such consent shall not be required in the case of a mortgage or charge of the Property or any part thereof or to any disposal by a mortgagee exercising its power of sale

13.0 Agreement not to Constitute a Partnership

This agreement shall not constitute or be deemed to constitute a partnership in any manner whatsoever

14.0 Council not to be Guarantor for Association

14.1 The Council shall not be deemed by virtue of its being a party to this agreement to be a guarantor for the performance or observance of any obligations entered into by the Association with third parties in pursuance of this agreement

14.2 Subject as aforesaid each party shall make advice and assistance available to the other to facilitate the objects <sup>and</sup> performance of this <sup>to</sup> agreement without prejudice to or limitation of the Council's powers duties rights and obligations statutory contractual or otherwise

15.0 Dispute

15.1 Where any dispute arises between the parties as to the interpretation or operation of the provisions of this agreement such dispute shall be submitted for determination by an expert

15.2 The expert shall be appointed by the parties jointly or if they cannot or do not agree on the appointment by the President (or other acting senior officer for the time being) of the Royal Institution of Chartered Surveyors on the request of either party

15.3 A person appointed shall act as an expert and not as an arbitrator

15.4 The expert so appointed shall afford the parties the opportunity to make written representations to him

15.5 The expert's decision shall be final and binding

15.6 The fees and expenses of the expert including the cost of his <sup>to</sup> appointment and the parties' own costs with respect to the determination of the issue by the expert shall be borne between the parties as the expert may determine

16.0 Interest

All sums payable under the terms of this Agreement not paid to the Council within fourteen days of the due date shall be subject to interest at a rate of four per cent over the National Westminster Bank PLC base lending rate from time to time calculated from the date payment is due to the date payment is received by the Council on a daily basis with quarterly rests

17.0 Costs

17.1 The Association will on completion of this agreement pay the Council's costs in connection therewith not exceeding Four Hundred Pounds (£400.00) plus VAT

17.2 The Association shall be liable for all costs expenses liabilities and damages howsoever arising under the Building Contract or any other matter relating to or arising from the *Association's obligations under this Agreement*

IN WITNESS whereof the Council and the Association have caused their respective Common Seals to be affixed to this Deed the day and year first before written

SCHEDULE I

Housing development outside defined rural settlement boundaries may in exceptional circumstances be permitted to meet local needs if the following additional requirements can be satisfied :-

- (i) There must be a proven need for affordable and/or rented housing for local people
- (ii) A maximum of approximately one acre (0.4 hectares) or 1% of the size of the existing settlement (whichever is the greater) should be developed on the site
- (iii) The site must normally be contiguous to a defined settlement boundary or relate to the existing settlement in such a way that the development forms a logical extension to the existing settlement
- (iv) The development should not have an adverse effect on the surrounding open countryside

For the purposes of this proposal -

'Need' is defined as those who cannot compete in the open housing market from any of the following categories :-

- (a) Existing residents needing separate accommodation in the area such as newly married couples, people living in tied accommodation on retirement or redundancy
- (b) People whose work provides important services and who need to live closer to the local community
- (c) People who are not necessarily resident locally but have people who need to move back to a village to be near relatives
- (d) People with the offer of a job in the locality who cannot take up the offer because of lack of affordable housing
- (e) People who meet the existing criteria for acceptance onto the housing waiting list

'Local' is defined as -

- (a) Firstly the Rural Parish in which the settlement is located
- (b) Secondly an adjacent or nearby Rural Parish of a similar nature within Hart District to the one in which the settlement is located

#### SCHEDULE II

The Association covenants to carry out the following works :-

1. As soon as reasonably practicable and in any event within three(3) months of the commencement of the Development to complete the following tree works to the satisfaction of the Council's Director of Operations. All such tree works to be carried out by a suitably qualified contractor

Tree No. 375 - Poplar

Fell - due to large basal wound with decaying timber and close proximity to road.

Tree No. 376 - Poplar

Remove major dead wood from main stem and lift to clear overhead cables by 1.5 metres.

Tree No. 377 - Poplar

Remove major dead from main stem, snapped branches, there is a basal wound which appears sound.

Tree No. 378 - Poplar

Remove major dead from main stem and inspect large dead stob at approximately seven metres for decay.

