

DATED 25th February 2010

**SECTION 106 AGREEMENT
RELATING TO
LAND AT HIGHER TOWN FARM, WOOLSERY, DEVON, EX39 5QS**

MADE BETWEEN

TORRIDGE DISTRICT COUNCIL

- And -

MAGNA HOUSING ASSOCIATION LIMITED

- And -

ELSIE LIMITED



Riverbank House

Bideford

EX39 2QG

Tel. 01237 428 700

“Affordable Housing”		means the housing to be provided in accordance with the Schedule 1 attached to this Agreement. Words such as Affordable Dwelling shall be construed in the same way.
“Affordable Rented Dwelling”		means a dwelling to rent at not more than an Affordable Rent in accordance with the requirements set out in Schedule 1 of this Agreement
“Affordable Rent”		a rent which does not exceed the Tenancy Services Authority (TSA) target rent for the area in which the Land is located. (Or any other such measure that the TSA or a body given its duties and responsibilities may provide in its place).
“the Application”		means the application for planning permission for the Development registered by the Council under the 1990 Act registered on the 1st December 2009 and given reference 11/1185/2009/FULM
“The Council”	“the Housing Association” and “the Owner”	respectively include their successors and assigns;
“Commencement of Development”	of	means the date upon which a material operation within the meaning of Section 56 of the Act is carried out, and similar expressions such as “Commence the Development” shall be interpreted the same way;
“the Development”		means the erection of twelve affordable dwellings for rent;
“Housing Need”		where a person does not have available to him or her and could not afford (personally or jointly with other members of his or her household) to acquire or rent a home suitable for his or her needs and the needs of their household at normal market values prevailing in the district.
“LAP”		means a Local Area of Play with hard and/or soft landscaping as are agreed between the Owner and the

	Proper Officer as part of the Recreation Facilities Scheme and Maintenance Plan
"Local Requirement"	<p>(a) a minimum continuous residence by a prospective owner or occupier of five years in the Parish immediately prior to their first Occupation; or</p> <p>(b) residence by a prospective owner or occupier in the Parish for five years within the ten years preceding their first Occupation; or</p> <p>(c) where one or both parents or guardians of a prospective owner or occupier have resided in the Parish for a minimum period of ten years prior to their first Occupation; or</p> <p>(d) where a prospective owner or occupier has had continuous employment in the Parish for the past five years prior to their first Occupation; or</p> <p>(e) a key worker under a scheme approved by the Council; or</p>
"Maintenance Contribution"	means a contribution equal to the cost of implementing the maintenance specified in the Recreational Facilities Scheme and Maintenance Plan for a period of not less than 20 years, such a figure to be specified by the Proper Officer upon written request.
"Mortgagee"	any corporate body granted a charge over the Land or any part of it.
"the Obligations"	means the planning obligations contained in the Schedules hereto;
"Occupation"	Occupation means the occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel at the time engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed

	accordingly.
"Parish"	the Parish of Woolsery.
"the Plan"	means the plan attached hereto;
"Planning Permission"	means the planning permission to be granted by the Council pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder;
"Proper Officer"	the Council's Head of Planning or any officer performing the relevant functions thereof.
"Recreation Facilities Scheme and Maintenance Plan"	means the scheme for the provision and future maintenance of the LAP and all other hard and soft landscaping not within private gardens on the Site
"RSL"	means a registered social landlord registered pursuant to the Housing Act 1996; or a non profit registered provider of social housing pursuant to the Housing and Regeneration Act 2008.
"the Site"	means the land at Higher Town Farm, Woolsery shown edged red on the Plan;

- 1.2 In this Agreement, except where the context requires otherwise:-
- 1.2.1 The singular includes the plural, the masculine includes the feminine, and vice versa;
 - 1.2.2 References to clauses and schedules are to the clauses in and schedules to this Agreement;
 - 1.2.3 Reference to any party having an interest in land affected by this Agreement shall include any successor in title of that party to that land or to any part of it;
 - 1.2.4 Reference to any party having a statutory function referred to in this Agreement shall include any successor to that statutory function;

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- 1.2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
- 1.2.6 Where an Obligation applies to more than one person, their liabilities shall be joint and several;
2. The Council the Housing Association and the Owner hereby agree that:-
- 2.1 If the Planning Permission granted pursuant to the Application should expire before the Development is Commenced or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect;
- 2.2 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site 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 Agreement;
- 2.3 This Agreement is a Local Land Charge and shall be registered as such;
- 2.4 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof.
- 2.5 Nothing in this Agreement is or amounts to or shall be construed as a planning permission or approval;
- 2.6 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 Agreement or for the enforcement of its terms or any of them;
- 2.7 This Agreement is made pursuant to Section 106 of the 1990 Act and is a planning obligation made with the intent to bind the Owner's interest in the Site;
- 2.8 None of the provisions of this Agreement 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 Agreement, but for the avoidance of doubt the exclusion of the application of that Act shall not prevent all or any of the future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the
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obligations in this Deed;

- 2.9 The Owner and its successors in title to the Site shall only retain any liability under this Agreement whilst it or they shall retain any interest in the Site, save for any pre-existing breach of this Agreement;
- 2.10 The Owner hereby covenants with the Council to observe and perform the Obligations contained in the Schedule, which shall bind the Site (and every part of it) as planning obligations under section 106 of the 1990 Act.

3. General

Upon the completion of this Agreement the Owner shall pay the reasonable legal fees of the Council in respect of the preparation of this Agreement.

4.0 Mortgagees Interest

- 4.1 For the avoidance of doubt and notwithstanding the terms of any legal charge or rule of law incidental thereto, subject to the requirements of paragraphs 4.2 and 4.3, any mortgagee shall be bound by the terms of this Agreement upon exercising any power to take possession lease sell or otherwise deal with the Development, or any individual Affordable Dwelling or part thereof. However this Agreement shall not be enforceable against any mortgagee until it takes possession, and then shall only be liable for any breach for the period of time that it is in possession. Once the requirements of paragraphs ^{4.2, 4.3 and 4.4 have} ~~INSERT~~ has been fulfilled, the terms of this obligation shall no longer apply, and any mortgagee in possession shall be free to sell the property free of this obligation, and the Agreement shall not be binding upon any person deriving title from that mortgagee in possession.

- 4.2 In the event that a Mortgagee goes into possession of any Affordable Dwelling and wishes to exercise its power of sale, it shall first offer to sell the Affordable Dwelling to any RSL nominated ("Nominated RSL") within 14 days of the receipt of the request by the Council.

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- 4.3 If the Nominated RSL choose not to complete the purchase of the Affordable Dwelling within 28 days of a reasonable written offer to do so, or choose not to commence a purchase, the process detailed in clause 4.2 above and this clause 4.3 shall be repeated on two further occasions and if none of the Nominated RSLs complete within the requisite timescale or choose not to commence a purchase, or the Council choose not to nominate, the Mortgagee shall be free to sell the Affordable Dwelling to any person and the obligations and restrictions in this Agreement shall cease to apply.
- 4.4 For the avoidance of doubt, if the Nominated RSL advise they do not wish to purchase the Affordable Dwelling within the 28 day period there shall be no requirement for the 28 day period to expire before the Council may nominate a further RSL.

5. **Obligations**

The obligations imposed by this agreement are set out in the following schedules

SCHEDULE 1

AFFORDABLE RENTED DWELLINGS

The Planning Obligation

1. The Owner covenants to : -
 - 1.1 not provide nor allow the Occupation of any dwelling to be constructed on the Site as anything other than as an Affordable Rented Dwelling;
 - 1.2 not provide nor allow the Occupation of any Affordable Rented Dwelling other than for rent;
 - 1.3 not to charge or levy a rent in respect of any Affordable Rented Dwelling which exceeds an Affordable Rent.
 - 1.4 not do anything in relation to the provision of the Affordable Rented Dwelling which conflicts with the Council's requirement that such dwelling shall always be available as Affordable Housing.
2. Two weeks prior to making any Affordable Rented Dwelling available for Occupation, the Owner shall give the Proper Officer written notice including the following information: -
 - 2.1 the form of tenancy for such lettings
 - 2.2 procedures for renting by first and future tenants and how the Council may nominate tenants from the Council's housing list.
3. The Proper Officer may: -
 - 3.1 agree the proposals submitted under clause 2; or
 - 3.2 seek to agree amendments to the proposals submitted under clause 2.
4. No person shall Occupy the Affordable Rented Dwelling unless that person: -
 - 4.1 was a person in Housing Need and had a Local Requirement at the time of his or her first Occupation of the Affordable Rented Dwelling; or
 - 4.2 is a member of a household of and living with a person who had a Local Requirement at the time of his or her first Occupation of the Affordable Rented Dwelling; and (in either case)

4.3 Occupies the Affordable Rented Dwelling as his or her sole or main residence

but nothing in this clause shall require any person who satisfied such a requirement when they first Occupied the Affordable Rented Dwelling to vacate the Dwelling if they cease to qualify under paragraph 4.2 by virtue of death, hospitalisation or breakdown of a relationship with a person who qualified under paragraph 4.1.

5. If no prospective occupier meeting the Local Requirement wishes to Occupy the Affordable Rented Dwelling within a period of 1 month from the date that the Affordable Rented Dwelling becomes available for Occupation, the Council may permit Occupation by a person in Housing Need with a Local Requirement from any directly adjacent parish to the Parish. If after a period of 2 months from the date the Affordable Rented Dwelling becomes available for Occupation, no prospective occupier in Housing Need meeting the Local Requirement wishes to Occupy the Affordable Rented Dwelling, then an Occupier in Housing Need with a Local Requirement from any parish within the District of Torridge shall be permitted and should there still be no suitable prospective occupier after a further period of two months an occupier from any parish within the Districts of North Cornwall, North Devon, West Devon or Mid Devon may Occupy the dwelling. PROVIDED THAT during the said periods the Affordable Rented Dwelling shall have been continually marketed within the Parish or District, as appropriate, at a rent not exceeding the Affordable Rent.
6. The Owner shall not allow the Occupation of the Affordable Rented Dwelling by any person unless that person complies with the requirements of clauses 4 and/or 5 to this Schedule as applicable and is Occupying that dwelling in accordance with the form of tenancy agreed under clause 3 of this schedule.
7. Where the Owner of the Affordable Rented Dwelling is an RSL the Affordable Rented Dwelling may also be Occupied in accordance with any nomination and management agreement in effect between the Council and that RSL.

SCHEDULE 2

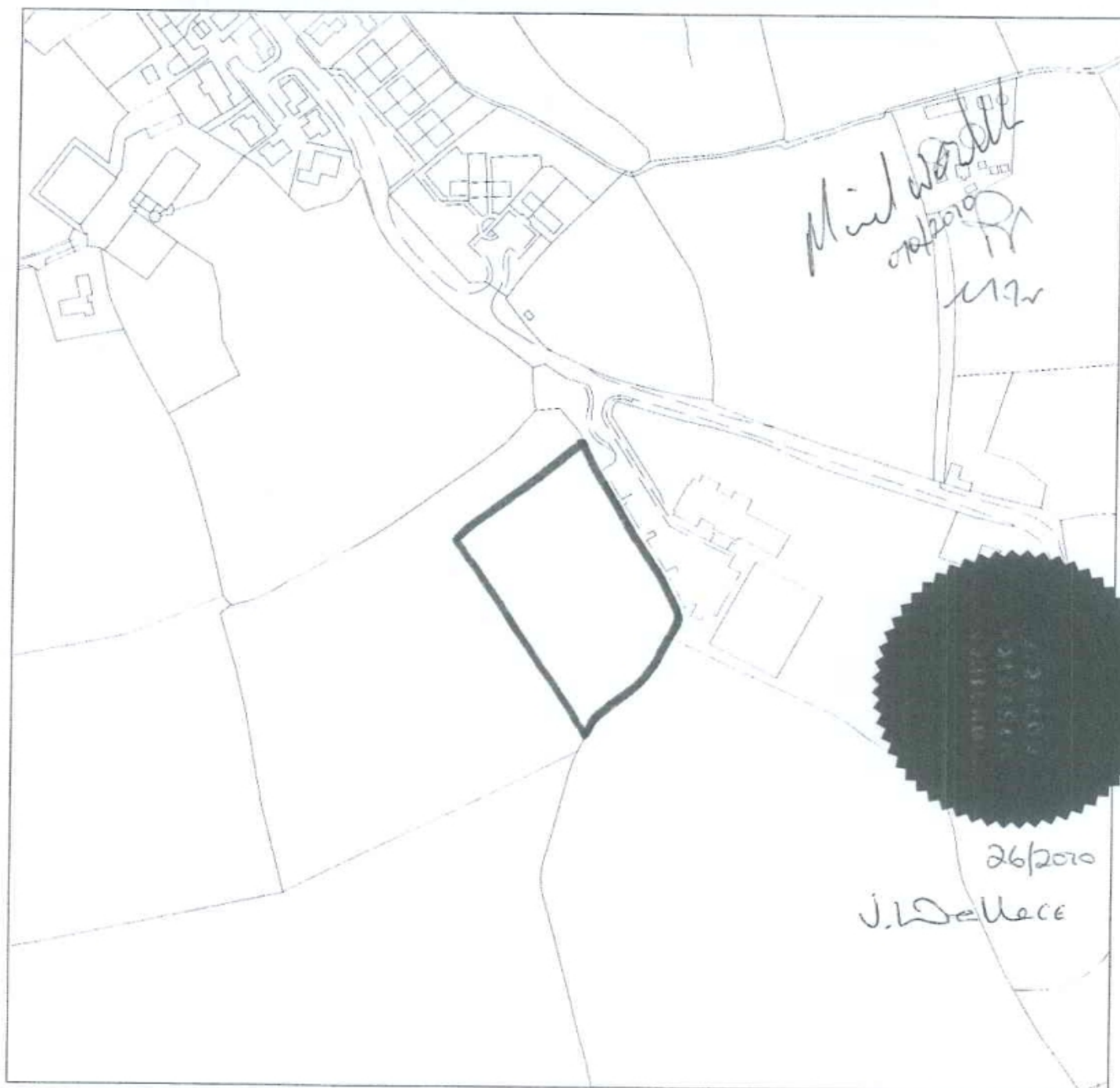
PUBLIC OPEN SPACE PROVISION

The Planning Obligation

1. Prior to the Commencement of Development the Owner shall submit to the Council for its written approval the Recreation Facilities Scheme and Maintenance Plan.
2. The Recreation Facilities Scheme and Maintenance Plan shall include the following information: -
 - i. details of the equipment and facilities to be provided within the LAP;
 - ii. details of the hard and soft landscaping to be provided within the LAP and in all public spaces within the Site.
 - iii. A phasing plan for the provision of hard and soft landscaping throughout the Site.
 - iv. Arrangements for the maintenance of the LAP and all areas of hard and soft landscaping in perpetuity
3. The Owner covenants not to Commence the Development until the Recreation Facilities Scheme and Maintenance Plan has been approved in writing by the Proper Officer.
4. The Owner covenants not to Occupy or allow to be Occupied more than 50% of the dwellings to be constructed on the site until the LAP has been provided in accordance with the Recreation Facilities Scheme and Maintenance Plan to the reasonable satisfaction of the Proper Officer.
5. The Owner covenants to provide and maintain the said hard and soft landscaping and the LAP in accordance with the approved Recreation Facilities and Maintenance Scheme at the times specified therein to the satisfaction of the Proper Officer NOTWITHSTANDING that in the event of the Council adopting the LAP and/or the hard and soft landscaping to be provided within the Site, the obligation to maintain the adopted facility shall cease upon payment of the Maintenance Contribution and completion of the adoption.
6. The Owner covenants that the LAP and all or any other public spaces contained by agreement between the parties in the Recreational Facilities Scheme and Maintenance Plan shall be made available for public access at all times following their completion, and maintained in accordance with the Recreation Facilities

Scheme and Maintenance Plan as may be varied in writing from time to time by agreement between the parties.

Town and Country Planning Act 1990



Scale : 1:2500

 The Site

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Organisation	Torrington District Council
Department	Planning Services
Comments	
Date	10 February 2010
SLA Number	100022736

IN WITNESS of which the parties hereto have executed this document as a deed
the day and year first before written

Executed and delivered as
A Deed by **ELSIE LIMITED**
acting by the following

) *Mind w. rights*
) *M. C. Kelly - (4/3)*

Director

Director/ Secretary

Executed and delivered as)
a Deed by affixing the common seal))
of **MAGNA HOUSING**)
ASSOCIATION LIMITED)
in the presence of: -

) *[Signature]*

Authorised Officer
Board Member

Authorised Officer
Secretary

M.A. ✓



THE COMMON SEAL OF)
TORRIDGE DISTRICT COUNCIL)
Was affixed)
In execution as a deed in the)
Presence of: -



..... *J. J. Deller*
SOLICITOR duly authorised in that behalf

20/2010

