

DATED

2021

BABERGH DISTRICT COUNCIL

AND

BLOOR HOMES LIMITED

*NOTE THAT SAGE AREN'T INCLUDED AS THEY DON'T HAVE
AN INTREST IN THE SITE AT THIS STAGE.*

DEED OF VARIATION
of a Section 106 Agreement dated 2 July 2019
Relating to land at Station Road, Long Melford

LEGAL REFERENCE: HXL/SAG5/1881
PLANNING REFERENCES: DC/18/00606

'Principal Agreement'

means the deed of undertaking made under section 106 of the Act given by PAULINE MARY CUTLER, CAROLYN FRANCES WILKINSON and ELIZABETH MACLEISH (Trustees of the David Westropp Cutler Will Trust) to BABERGH DISTRICT COUNCIL and SUFFOLK COUNTY COUNCIL with the consent of GLADMAN DEVELOPMENTS LIMITED dated 2 July 2019.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Principal Agreement shall have the same meaning in this deed.
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.

- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

STATUTORY PROVISIONS

2. This deed:-
 - 2.1. is made pursuant to the provisions of Section 106 and Section 106A of the Act, section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 Section 2 of the Local Government Act 2000 and all other enabling powers;
 - 2.2 is made with the intent to bind the Owner's freehold interest in the Relevant Land;
 - 2.3 is enforceable by the Council as local planning authority; and
 - 2.4 is executed as a deed.

APPLICATION OF THE PRINCIPAL AGREEMENT

- 3.1 The parties agree that the Principal Agreement shall be varied as set out in **THE SCHEDULE** to this deed but shall otherwise remain in full force and effect (insofar as the obligations in the Principal Agreement have not been discharged)
- 3.2 The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations (other than those discharged prior to the date of this deed) contained in the Principal Agreement as amended by this deed
- 3.3 This deed shall be read in conjunction with the Principal Agreement.

COMMENCEMENT

4. The provisions of this deed shall take effect upon its completion.

COVENANTS TO THE COUNCIL

5. The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this deed.

LOCAL LAND CHARGE

6. This deed shall be registered as a local land charge.

COUNCIL'S LEGAL COSTS

7. The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs in the fixed sum of [AMOUNT OF COSTS] incurred in connection with the preparation, completion and registration of this deed.

VALUE ADDED TAX

- 8.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

THIRD PARTY RIGHTS

9. A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

GOVERNING LAW

10. This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS of which the parties have executed this supplemental agreement as a deed and it is delivered on the date set out above.

SCHEDULE

VARIATIONS TO THE PRINCIPAL AGREEMENT

1. The Principal Agreement shall be varied as follows:
 - 1 The definition of "**Net Capital Receipts**" shall be added to clause 1 as follows:

"Net Capital Receipts" means the sum received by the Registered Provider by way of staircasing proceeds pursuant to the terms of a Shared Ownership Lease such proceeds shall not include:

 - a) the sum required to redeem the mortgage or charge or relevant security document (if necessary) of the Shared Ownership Housing Unit; and
 - b) all reasonably incurred costs of the Registered Provider in relation to the relevant Shared Ownership Housing Unit including those linked to the purchase and sale of the Shared Ownership Housing Unit as well as the subsequent staircasing transaction such costs shall include (but not be limited to) legal expenses and admin fees
 - 2 The definition of Shared Ownership Lease in clause 1.1.54 shall be varied by deleting the words "capital receipt" from clause 1.1.54.2 and replacing them with the words "Net Capital Receipts",
 - 3 Paragraph 2.10 of Schedule 2 shall be varied by deleting the words "capital receipt"

2.10 'To procure that the buyer of each Dwelling (other than any person who has acquired a Shared Ownership Housing Unit until they have purchased 100% of the equity in that Dwelling) comprised in the Development enters into the following covenants direct with the approved Management Company:

 - (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the approved Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 2.10 (i) and 2.10 (ii) of Schedule 2.'
 - 4 Paragraph 3.8 of Schedule 2 shall be deleted in its entirety and replace with the following:

3.8 'To procure that the buyer of each Dwelling (other than any person who has acquired a Shared Ownership Housing Unit until they have purchased 100% of the equity in that Dwelling) comprised in the Development enters into the following covenants direct with the approved Management Company:

 - (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the SUDS in accordance with the approved Management Plan; and

(ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.8 (i) and 3.8 (ii) of Schedule 2.

5 The definition of 'a Chargee' at clause 1.1.10 shall be deleted in its entirety and replaced with the following:

1.1.10 'a Chargee' means any mortgagee or chargee of the Registered Provider (or any receiver (including an administrative receiver) by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator)

6 Paragraph 4.7 of Schedule 2 shall be deleted in its entirety and replaced with the following:

4.7 The affordable housing provisions in this Agreement shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:

4.7.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

4.7.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

7 The definition of "Chargee's Duties" in Paragraph 1.5 of Schedule 6 shall be deleted in its entirety.

(i) Paragraph 12.3.2 of Schedule 6 shall be deleted in its entirety.

(ii) Paragraph 12.4 of Schedule 6 shall be deleted in its entirety and replaced with the following:

12.4 The affordable housing provisions in this Agreement shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:

12.4.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

12.4.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

**THE COMMON SEAL OF
BABERGH DISTRICT COUNCIL**

was hereunto affixed in the presence of:

EXECUTED AS A DEED
by BLOOR HOMES LIMITED

acting by its attorney