

DATED 10 October

2019

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN &  
COUNTRY PLANNING ACT 1990 RELATING TO THE DEVELOPMENT OF  
LAND LYING TO THE EAST OF ASHFIELD ROAD ELMSWELL SUFFOLK**

between

**MID SUFFOLK DISTRICT COUNCIL (1)**

**SUFFOLK COUNTY COUNCIL (2)**

**MATTHEW HOMES LIMITED (3)**

THIS DOCUMENT IS A TRUE COPY OF THE ORIGINAL

DATED 10.10.2019

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THIS DEED is dated 10 October 2019

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (**District Council**).
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX (**District Council**).
- (3) **MATTHEW HOMES LIMITED** incorporated and registered in England and Wales with company number 01210027 whose registered office is at Pendragon House, 65 London Road, St Albans, AL1 1LJ (**OWNER**).

## **BACKGROUND**

- (A) The District Council is a local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The County Council is the local highways authority (except for trunk roads) and is also a local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated and by whom the obligations contained in the Original Agreement are enforceable.
- (C) Pursuant to a Transfer dated 31<sup>st</sup> January 2019 made between the Previous Owners (1) and the Owner (2) the Property was transferred to the Owner by the Previous Owners.
- (D) The Owner is the freehold owner of the Property free from encumbrances.
- (E) On 3 July 2018 the District Council and the County Council and the Previous Owners entered into the Original Agreement.
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement the District Council and the County Council and the Owner have agreed to vary the terms of Original Agreement as set out in this deed.
- (G) This deed is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

#### **1.1 Definitions:**

**Original Agreement:** the agreement made under section 106 of the TCPA 1990 dated 3 July 2018 between the District Council (1) the County Council (2) and the Previous Owners (3).

**Previous Owners:** Herbert Earthy Godbold, Jill Patricia Turner and Jean Sandra

**Property:** land lying to the east of Ashfield Road Elmswell Suffolk as shown outlined in red on the plan attached to this deed

**TCPA 1990:** the Town and Country Planning Act 1990 (as amended)

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original 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.

2. **STATUTORY PROVISION**

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, [section 1 of the Localism Act 2011 OR section 2 of the Local Government Act 2000] and any other enabling powers.

3. **VARIATIONS TO THE ORIGINAL AGREEMENT**

3.1 The following shall be added to Clause 1 of the Original Agreement as a new definition:

“**“Travel Plans Implementation Bond Expiry Date”** One (1) year after the first Occupation of the final Dwelling”.

3.2 Paragraph 4(a) of Part 2 of the Third Schedule to the Original Agreement shall be amended by adding to the first line of the paragraph the words “Fifty Per Cent (50%) of” before the words “the Affordable Housing Units”.

3.3 Paragraph 5(a) of Part 2 the Third Schedule to the Original Agreement shall be amended by adding to the first line of the paragraph the words “One Hundred Percent (100%) of ” before the words “the Affordable Housing Units”.

3.4 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. **COVENANTS TO THE COUNCIL**

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

5. **LOCAL LAND CHARGE**

This deed shall be registered as a local land charge.

6. **ENDORSEMENT**

Promptly following completion of this deed the Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated [DATE] and made between [PARTIES]."

7. **COUNCIL'S COSTS**

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 together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

8. **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.

9. **THIRD PARTY RIGHTS**

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.

10. **GOVERNING LAW**

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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

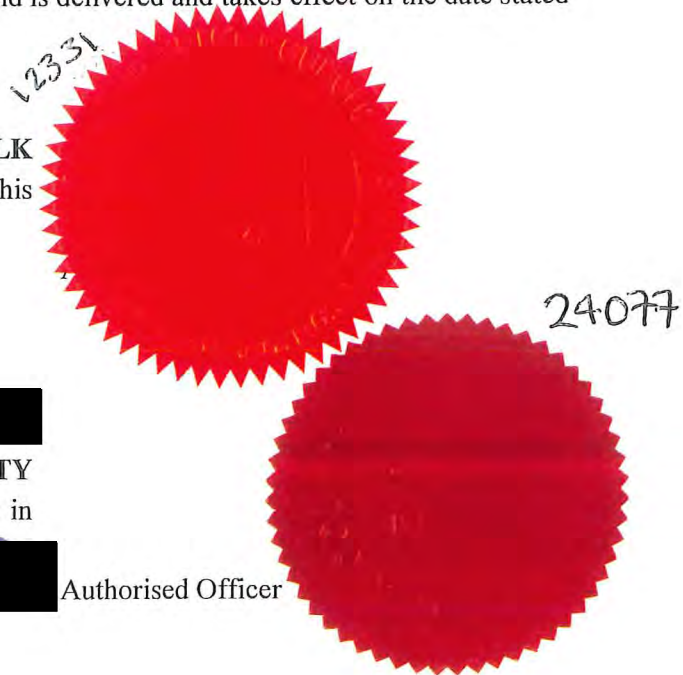
The common seal of **MID SUFFOLK DISTRICT COUNCIL** was affixed to this document in the presence of:



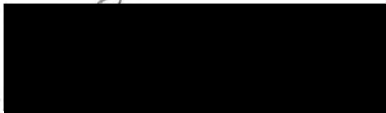
The common seal of **SUFFOLK COUNTY COUNCIL** was affixed to this document in the presence of:



Authorised Officer



Executed as a deed by  
**MATTHEW HOMES LIMITED**  
acting by a director, in the presence of:



Director



[SIGNATURE OF WITNESS]

[NAME, ADDRESS  
[AND OCCUPATION] OF  
WITNESS]

