

Dated

28 October

2019

MID SUFFOLK DISTRICT COUNCIL

and

SUFFOLK COUNTY COUNCIL

and

CREST NICHOLSON OPERATIONS LIMITED

and

CLARION HOUSING ASSOCIATION LIMITED

**Deed of Variation of a Planning Obligation Deed under Section 106 of the Town and
Country Planning Act 1990 relating to land adjacent to Wetherden Road Elmswell
Suffolk**

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Winckworth
Sherwood

Solicitors and
Parliamentary Agents

THIS DEED IS DATED

28 October 2019

BETWEEN

- (1) **MID SUFFOLK DISTRICT COUNCIL** of 131 High Street Needham Market IP6 8DL ("the District Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX ("the County Council")
- (3) **CREST NICHOLSON OPERATIONS LIMITED** (company registration number 01168311) whose registered office is at Crest House, Pycroft Road, Chertsey, Surrey, KT16 9GN ("Crest") and **CLARION HOUSING ASSOCIATION LIMITED** a Registered Society as defined in Section 1 of the Co-operative and Community Benefit Societies Act 2014 with registered Society Number: 7686 whose registered office is at Level 6, 6 More London Place Tooley Street London SE1 2DA ("Clarion") (collectively, the "Owner")

RECITALS

- (A) The District Council is a local planning authority for the purposes of the Act for the area in which the Site is situated
- (B) The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Site is situated
- (C) By a Transfer dated 13 June 2018 made between (1) J.D. & R.J. Baker Farms Limited and (2) Crest Nicholson Operations Limited the Site was transferred to the Owner and is registered at the Land Registry under Title Number SK389899
- (D) By a Transfer dated 31 October 2018, part of the Site being plots 47, 53-54, 77, 80, 107-108, 115-120, 138, 168, 170, 184-186, 214, 224 and 144-161, 195-209, 215- 219 and 225-234 (inclusive) at Wetherden Road, Elmswell, Suffolk IP30 was transferred by Crest to Clarion. This Transfer is pending registration at the Land Registry.
- (E) On 31 October 2018 Clarion also contracted with Crest to acquire plots 22-27, 48-52, 57-68, 78-79, 112-114, 121-123, 139, 140-143, 162-167, 169, 171-173, 187-189, 210-213, 220-223, 235-240 (inclusive) at Wetherden Road, Elmswell, Suffolk IP30 forming part of the Site.
- (F) A Section 106 Agreement dated 26 March 2018 was entered into between the District Council (1) the County Council (2) J.D. & R.J. Baker Farms Limited (3) and Endurance Estates Strategic Land Limited (4) pursuant to the planning permission reference 4911/16 ("the **Section 106 Agreement**").
- (G) The Owner wish to amend the Section 106 Agreement as set out in this deed.

IT IS HEREBY AGREED

1. Terms defined in the Section 106 Agreement

In this deed, expressions defined in the Section 106 Agreement and used in this deed have the meaning set out in the Section 106 Agreement. The rules of interpretation set out in the Section 106 Agreement apply to this deed.

2. Variation

2.1 The Parties agree to make the following variations:

2.1.1 The definition of "Chargee" in clause 1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

"any mortgagee or chargee of the Registered Provider (or any receiver (including an administrative receiver) appointed 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 of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through any of them"

2.1.2 In clause 15.2 the address for service for the Owner and the Applicant will be deleted and replaced with the following:

<i>Crest</i>	<i>Crest House, Pycroft Road, Chertsey, Surrey, KT16 9GN</i>
<i>Clarion</i>	<i>Level 6, 6 More London Place Tooley Street London SE1 2DA</i>

2.1.3 Part 1 of the First Schedule shall be deleted and replaced with the following:

"FREEHOLD INTERESTS

- 1. Clarion is the freehold owner of part of the Site being plots 47, 53-54, 77, 80, 107-108, 115-120, 138, 168, 170, 184-186, 214, 224 and 144-161, 195-209, 215- 219 and 225-234 (inclusive) at Wetherden Road, Elmswell, Suffolk IP30 which Clarion acquired from Crest pursuant to a Transfer dated 31 October 2018 but which has not yet been registered by the Land Registry.*
- 2. Crest is the freehold owner of the remainder of the Site which is registered to Crest at the Land Registry with Title Absolute under Title Number SK389899."*

2.1.4 The following words shall be added to the end of paragraph 9 of Part 1 of the Second Schedule:

"or any replacement or modification or re-enactment of such provisions from time to time in force."

2.1.5 A new paragraph 10 of Part 1 of the Second Schedule shall be added as follows:

"10. Provided that the Chargee shall have complied with the Chargee's Duty, the Chargee and any successor in title or persons deriving title through such Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions set out in this Part 1 of the Second Schedule of this Deed which provisions shall determine absolutely."

2.2 Except as set out in clause 2.1 above the Section 106 Agreement shall continue in full force and effect and this deed does not release any of the Parties from any breaches of the Section 106 Agreement existing at the date of this deed.

3. Local Land Charge

This Deed is a local land charge and upon completion shall be registered by the District Council as such

4. Governing law

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

5. Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This agreement has been entered into as a deed on the date stated at the beginning of it.

**THE COMMON SEAL OF
MID SUFFOLK DISTRICT COUNCIL**

was affixed in the presence of:



[Redacted]
Authorised Officer

**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



Authorised Officer [Redacted]

EXECUTED as a DEED by

CREST NICHOLSON OPERATIONS LIMITED

acting by a Director in the presence of:-



Director

Witness



Signed

Name

Address Crest Nicholson
Pycroft Road
Chertsey
Surrey
KT16 9GN

OR

EXECUTED as a DEED by

[] acting as Attorney for

CREST NICHOLSON OPERATIONS LIMITED

under a Power of Attorney dated []

in the presence of:-

Attorney

Witness

Signed

Name

Address

.....

.....

EXECUTED AS A DEED by

the Common Seal of

CLARION HOUSING ASSOCIATION LIMITED

being affixed in the presence of

A7173



Authorised Signatory



Authorised Signatory

