

Dated

1st December

2020

- (1) SAMUEL WILLIAM RYDER-SMITH AND
THOMAS ANTHONY RYDER-SMITH
- (2) BABERGH DISTRICT COUNCIL
- (3) SUFFOLK COUNTY COUNCIL

Deed of Variation pursuant to section 106A of
the Town and Country Planning Act 1990

Relating to

The development of land East of Artiss Close
and Rotheram Road, Bildeston, Ipswich

THIS DEED OF VARIATION is made this 1st day of December 2020

BETWEEN

- (1) **the Owners** **SAMUEL WILLIAM RYDER-SMITH** of Sycamore Cottage, Hook Road, Wimblington, March, PE15 0QL and **THOMAS ANTHONY RYDER-SMITH** of 2 Royle Mews Cowl Lane Winchcombe Gloucestershire GL54 5SF (“**the Owners**”)
- (2) **the District Council** **BABERGH DISTRICT COUNCIL** of Endeavour House, Russell Road, Ipswich, Suffolk IP1 2BX (“**the Council**”)
- (3) **the County Council** **SUFFOLK COUNTY COUNCIL** of Endeavour House, Russell Road, Ipswich, Suffolk IP1 2BX (“**the County Council**”)

together referred to as “the Parties”

DEFINITIONS

The meanings ascribed to expressions in the Original Agreement are (except as provided below) to be applicable to those expressions where used in this Deed.

- the Act means the Town and Country Planning Act 1990 (as amended)
- the Development Site means the land described in the First Schedule, Part 2 of the Original Agreement against which this Deed may be enforced and as shown edged red for identification purposes on the Development Site Plan
- the Original Agreement means the agreement pursuant to Section 106 of the Act dated 19 October 2017 made between the Council and the Owners and the County Council in respect of the Development Site
- the Planning Application means the Application for outline planning permission made under reference number B/15/01433/OUT as defined in the Original Agreement

the Planning Permission

means the Permission issued pursuant to the Planning Application as defined in the Original Agreement

BACKGROUND

- (A) The Council is a local planning authority for the purposes of the Act for the area within which the Development Site is situated
- (B) The County Council is the local highway authority (except for trunk roads)
- (C) The Owners are the only person against whom the obligations contained in the Original Agreement are enforceable.
- (D) The Original Agreement was entered into in connection with the Development the subject of the Planning Permission and further regulating that Development.
- (E) The Original Agreement contains obligations relating to matters which include the provision of Affordable Housing
- (F) The Owners and the Council and the County Council have agreed to (a) vary the Affordable Housing provisions contained in the Original Agreement and (b) amend the directional reference to the Public Footpath Link as set out in clause 2 below.

1. STATUTORY PROVISIONS

This Deed of variation is supplemental to the Original Agreement and: -

- 1.1. is made pursuant to the provisions of Sections 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and all other enabling provisions
- 1.2. the covenants and obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act
- 1.3. is made with the intent to bind the Owners' freehold interest in the Development Site
- 1.4. is enforceable by the Council and the County Council as local planning authorities and
- 1.5. is executed as a deed

2. VARIATION OF THE ORIGINAL AGREEMENT

With effect from the date of this Deed the Parties agree that the Original Agreement is varied as follows: -

Amendments to the Definitions and Corresponding Meanings

- 2.1. The definition of "Chargee" in the Original Agreement shall be deleted in its entirety and the following new definition of "Chargee" and corresponding meaning shall be inserted in substitution into the Original Agreement as follows: -

"Chargee" *Any mortgagee or chargee of the Registered Provider or of a Shared Ownership Dwelling who has not staircased to 100% ownership or any receiver (including an administrative receiver) or manager (howsoever appointed) including an administrative receiver appointed under any security documentation to enable such mortgagee or chargee to realise its security or pursuant to the Law of Property Act 1925 or any administrator including a housing administrator appointed pursuant to the Housing and Planning Act 2016;*

- 2.2. The definition of "Chargee's Duty" in the Original Agreement shall be amended by deleting the words "paragraph 1.7" and replacing with the words "paragraph 1.8".

- 2.3. The definition of "Public Footpath Link" in the Original Agreement shall be deleted in its entirety and the following new definition of "Public Footpath Link" and corresponding meaning shall be inserted in substitution into the Original Agreement as follows:-

"Public Footpath Link" *the surfaced public footpath link to be constructed in the north east corner of the Site linking Public Footpath 1 in the Parish of Bildeston with the nearest estate road within the Development Site to be adopted as highway or in the absence of any such adopted estate road, the B1078 as shown for indicative purposes on the Site Layout Plan;*

Amendments to the Third Schedule of the Original Agreement – Owners Covenants with the Council in relation to Affordable Housing

- 2.4. A new sub paragraph 1.7 d shall be inserted into the Third Schedule in the Original Agreement after the existing paragraph 1.7 c as follows: -

" d any successor in title to a Chargee"

2.5. Paragraph 1.8 of the Third Schedule in the Original Agreement shall be deleted in its entirety and replaced with the following new paragraph 1.8: -

"1.8 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than two (2) months' prior notice to the District Council of its intention to dispose and:

a in the event that the District Council responds within two (2) months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use reasonable endeavours to complete such a transfer;

b if the District Council does not serve its response to the notice within two (2) months or serves a notice indicating that it cannot arrange for the transfer of the Affordable Housing Units in such a way as to safeguard them as Affordable Housing Units then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the provisions set out in this Part of the Third Schedule and at that point the provisions shall determine absolutely;

c if the District Council or any other person cannot within one (1) month of the date of service of its response under paragraph 1.8(a) complete such a transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.8(a) the Chargee shall be entitled to dispose of the Affordable Housing Units free of the provisions set out in this Part of the Third Schedule and at that point the provisions shall determine absolutely

PROVIDED THAT at all times the rights and obligations in this paragraph 1.8 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage and nothing in this Deed shall require the Chargee to dispose of the Affordable Housing Unit for a sum less than the amount due and outstanding under the terms of the relevant security

documentation including all principal monies interest and costs and expenses.”

Amendments to the Sixth Schedule of the Original Agreement – Affordable Housing Nomination Agreement

2.6. Paragraph 1.4 of the form of Nominations Agreement set out in the Sixth Schedule of the Original Agreement shall be deleted in its entirety and replaced with the following new paragraph 1.4: -

“1.4 ‘Chargee’ means any mortgagee or chargee of the Registered Provider or any receiver (including an administrative receiver) or manager (howsoever appointed) including an administrative receiver appointed under any security documentation to enable such mortgagee or chargee to realise its security or pursuant to the Law of Property Act 1925 or any administrator including a housing administrator appointed pursuant to the Housing and Planning Act 2016;”

2.7. A new sub paragraph 10.6 shall be inserted into the Sixth Schedule in the Original Agreement after the existing paragraph 10.5 as follows: -

“10.6 this nomination agreement shall not be binding upon any mortgagee or chargee (or receiver (including an administrative receiver) appointed by the 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 (each a Receiver)) of the Registered Provider and/or the whole or any part of the Affordable Housing, or any persons or bodies deriving title through such mortgagee, chargee or Receiver.”

3. DECLARATIONS

Other than as expressly varied by this Deed the terms and conditions and definitions of the Original Agreement shall continue in full force and effect

4. COSTS

4.1 The Owner agrees to pay to the Council prior to the completion of this Agreement its reasonable legal costs in the preparation of this Agreement up to a maximum of nine hundred pounds (£900)

4.2 the Owner agrees to pay to the County Council prior to the completion of this Agreement the sum of one hundred and twenty pounds (£120) as a contribution to its legal costs in the preparation of this Agreement.

EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed

IN-WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

EXECUTED AS A DEED by
SAMUEL WILLIAM RYDER-SMITH

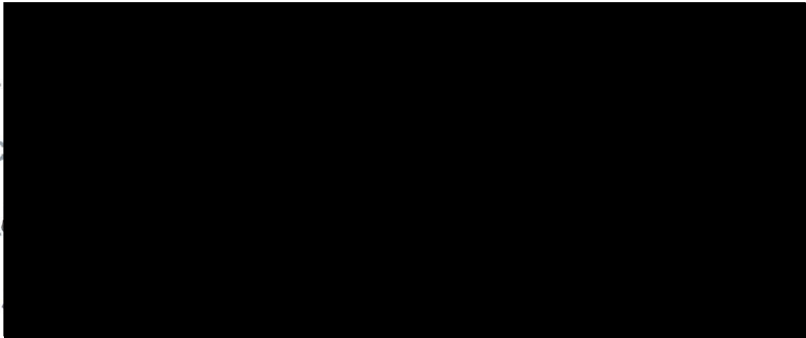


in the presence of:

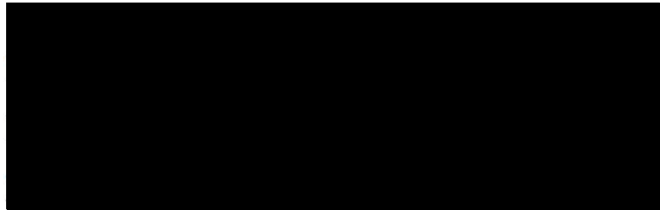
Witness Signature

Witness Name (BLOCK C

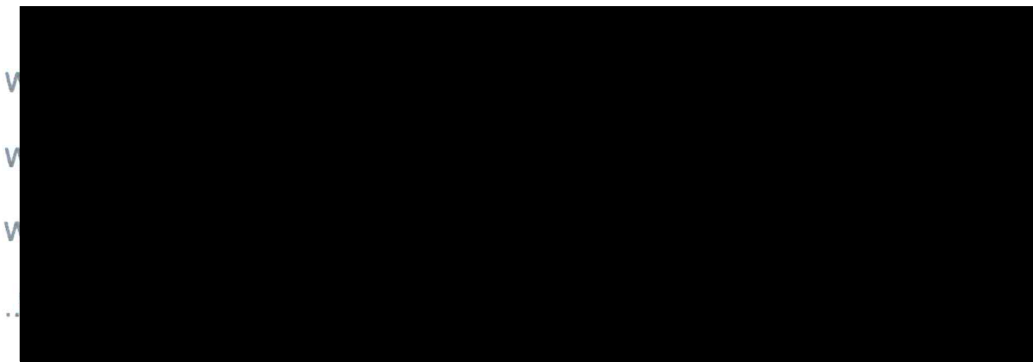
Witness Address



EXECUTED AS A DEED by
THOMAS ANTHONY RYDER-SMITH



in the presence of:

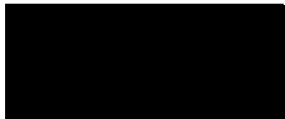


V
V
V
..

THE COMMON SEAL OF)
BABERGH DISTRICT COUNCIL)
was affixed in the presence of:)



THE COMMON SEAL OF)
SUFFOLK COUNTY COUNCIL)
was affixed in the presence of:)



Authorised Officer

