

Dated 13th July 2021

East Suffolk Council (1)

and

Suffolk County Council (2)

and

Laurence Homes (Hillview) Limited (3)

and

Flagship Housing Group Limited (4)

Deed of Variation under section 106 and 106A of the Town and Country Planning Act 1990 varying the Section 106 Agreement dated 12 September 2014 relating to land at Hillview Church Road Otley Ipswich IP6 9NP

This Deed of Variation of Section 106 Agreement is made

13th July

2021

Between:

- (1) **East Suffolk Council** of Station Road, Melton IP12 1RT ("the Council")
- (2) **Suffolk County Council** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")
- (3) **Laurence Homes (Hillview) Limited** (company number 09446934) of 1 Nelson Street, Southend-on-Sea, Essex, SS1 1EG ("the Owner")
- (4) **Flagship Housing Group Limited** (registered society number 31211R) of 31 King Street, Norwich, NR1 1PD ("the RP")

(together "the Parties")

Whereas:

- A The Council is the local planning authority for the purposes of this Deed for the area in which the Site is situated.
- B The County Council is also a local planning authority and the local education authority for the purposes of this Deed for the area in which the Site is situated.
- C The Owner is registered proprietor of the Site under title number SK359206.
- E The RP is a registered provider of social housing.
- F The Owner has agreed to dispose of the Affordable Housing (as defined in the Agreement) to the RP and the RP has agreed to accept the disposal of the Affordable Housing.
- G The Parties have agreed to vary the Section 106 Agreement as hereinafter provided.
- H This Deed is supplemental to the Section 106 Agreement

Now it is agreed as follows:

1. **Definitions and Interpretation**

In this Deed, the following words and phrases have the following meanings unless the contrary intention appears:

- 1.1 "the Act" means the Town and Country Planning Act 1990 (as amended)
- 1.2 "this Deed" means this Deed of Variation
- 1.4 "Section 106 Agreement" means the Agreement under Section 106 of the Act dated 12 September 2014 made between (1) the Council, (2) the County Council and (3) Otley Properties Suffolk Limited respect of the development of the Site

2. Effect of this Deed

2.1. This Deed of Variation is made pursuant to Section 106 and 106A of the Act and as such varies the Section 106 Agreement in accordance with the Schedule to this Deed and is a planning obligation for the purposes of Section 106 of the Act in respect of the Land and is enforceable by the Council and County Council.

3. Construction

In this Deed, unless the contrary intention appears:

- 3.1. Words and expressions defined in the Section 106 Agreement shall have the same meanings in this Deed save as otherwise provided for in this Deed.
- 3.2. References to any statute include references to:
- 3.2.1. that statute as amended or re-enacted or as other statutes modify its application from time to time; and
 - 3.2.2. any subordinate legislation made or to be made under that statute.
- 3.3. References to clauses or Schedules are references to clauses in or Schedules to this Deed.
- 3.4. References to the singular include the plural and vice versa.
- 3.5. References to the Parties in this Deed shall include their successors in title or successors in function as appropriate.
- 3.6. Where a party includes more than one person any obligations of that party shall be joint and several.
- 3.7. The headings shall not affect the interpretation of this Deed.

3.8. If any provision in this Deed is held to be illegal, void, invalid or unenforceable for any reason the legality, enforceability of the remainder of this Deed shall not be affected.

4. **Variations to the Section 106 Agreement**

4.1. From and including the date of this Deed the Section 106 Agreement shall be read and construed as varied by the provisions set out in the Schedule.

5. **Miscellaneous**

5.1. The Section 106 Agreement shall remain in full force and effect save as varied by this Deed.

5.2. This Deed is a Local Land Charge and the Council shall register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Act as amended.

5.3. This Deed is governed by and interpreted in accordance with the laws of England.

5.4. The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed.

5.5. This Deed does not release any party to it from any breaches of the Section 106 Agreement existing at the date of this Deed save where variations contained in this Deed remove the obligation of which the party is in breach.

Schedule

The Parties agree to vary the Section 106 Agreement as follows:

- 1 **A new definition of "Section 73 Consent" shall be added to the Operative Part Definitions to read:**

means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the TCPA 1990 was granted

- 2 **A new paragraph 7.13 shall be added to paragraph 7 Miscellaneous to read:**

Unless otherwise agreed between the Parties if a Section 73 Consent is granted by the Council (or the Secretary of State) in relation to the Development, then with effect from the date that each such Section 73 Consent is granted

(a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Parties;

(b) the definitions of Development, Application and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the TCPA 1990, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consent

PROVIDED THAT

- (i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the TCPA 1990; and
- (ii) if the Council considers that the obligations contained in this Deed shall be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into the secure the appropriate obligation and;
- (ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent

- 3 **The definition of "Chargee" in the Third Schedule shall be deleted in its entirety and replaced with the following:**

"any mortgagee or chargee (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 administration (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver"

4 **The definition of "Chargee's Duty"** shall be deleted in its entirety and replaced with the following:

"the tasks and duties set out in paragraph 2.9 of the Affordable Housing Part of the Third Schedule"

5 **Schedule 3 Part 2 Paragraph 2.9** shall be deleted in its entirety and replaced with the following:

"nothing in this paragraph 2 shall be binding on a Chargee PROVIDED THAT:

- a) such Chargee shall first give written notice to the District Council of its intention to dispose of the Affordable Dwellings; and
- b) 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 Dwellings to another registered provider or to the District 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
- c) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in paragraph 2 of this Agreement shall determine absolutely."

Executed and delivered as a Deed on the date of this document

The **COMMON SEAL** of **EAST SUFFOLK COUNCIL** was affixed in the presence of:

)
)
)

[Redacted signature]

Authorised signatory

[Redacted signature]

Authorised Signatory



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The **COMMON SEAL** of)
SUFFOLK COUNTY)
COUNCIL was affixed in the)
presence of:



[Redacted signature area]

Authorised signatory

Executed as a **DEED** by
LAURENCE HOMES
(HILLVIEW) LIMITED acting by
two/a director[s] [and its
Secretary]

[Redacted signature area]

Director

IAN BAKER

Name (in BLOCK CAPITALS)

[Redacted signature area]

Director[/Secretary]

BARRY HICKEY

EXECUTED as a DEED by)
FLAGSHIP HOUSING GROUP)
LIMITED acting by [a director and)
its secretary][two directors]

Signature of Director

Name (in BLOCK CAPITALS)

Signature of [Secretary][Director]

Name (in BLOCK CAPITALS)

EXECUTED as a DEED by)
PNAMITA NARAYAN],)
as attorney for and on behalf of)
FLAGSHIP HOUSING GROUP)
LIMITED under a power of)
attorney dated 18 JULY 2020)
in the presence of:)

Signature of witness: [REDACTED]

Name of witness (IN BLOCK CAPITALS): HOLLY HUNT

Address:

Occupation:

PARAMEDIC