

DATED

2nd March

2021/3

MID SUFFOLK DISTRICT COUNCIL (1)

and

SUFFOLK COUNTY COUNCIL (2)

and

MATTHEW HOMES LIMITED (3)

And

EASTLIGHT COMMUNITY HOMES LIMITED (4)

## DEED OF VARIATION

Relating to

Relating to a Planning Obligation Agreement for  
Land lying to the East of Ashfield Road, Elmswell, Suffolk IP30 9HG

(Planning application reference: DC/22/01551 and 0210/17)

The District Council's reference: BM31.602

## PARTICULARS

Date

2nd March

22/3

### PARTIES

The District Council

**MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX

The County Council

**SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX

The Owner

**MATTHEW HOMES LIMITED** (Registered Company Number 01210027) whose registered office is at Pendragon House, 65 London Road, St Albans AL1 1LJ

The Applicant

**EASTLIGHT COMMUNITY HOMES LIMITED** (Company Number IP30124R) whose registered office is Eastlight House, Charter Way, Braintree, CM77 8FG

Original Agreement

An Agreement by Deed pursuant to S.106 Town & Country Planning Act 1990 dated 3<sup>rd</sup> July 2018 and made between (1) The District Council (2) The County Council (3) Herbert Earthy Godbold, Jill Patricia Turner and Jean Sandra Turner

Supplemental Agreement

A Supplemental Agreement pursuant to S.106 Town & Country Planning Act 1990 dated 10<sup>th</sup> October 2019 and made between (1) The District Council (2) The County Council (3) The Owner

THIS DEED OF VARIATION is made on the date set out in the Particulars

B E T W E E N

- (1) The District Council;
- (2) The County Council; and
- (3) The Owner; and
- (4) The Applicant

## BACKGROUND

- (A) The District Council is a local planning authority for the purposes of the Act as defined in the Original Agreement or TCPA 1990 as defined in the Supplemental Agreement 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 Act as defined in the Original Agreement or TCPA 1990 as defined in the Supplemental Agreement for the area in which the Property is situated and by whom the obligations contained in the Original Agreement are enforceable.
- (C) The Owner is the freehold owner of the Property free from encumbrances registered at the Land Registry under title number SK326860.
- (D) The Original Agreement was entered into as a pre-condition to the grant of the planning permission.
- (E) The Supplemental Agreement was entered into to add a new definition of Travel Plans Implementation Bond Expiry Date and to add wording to existing paragraphs in the Third Schedule.
- (F) Eastlight Community Homes Limited (Company Number IP30124R) have applied to modify Paragraph 8 the Original Agreement in relation to the Mortgagee protection provisions for the Affordable Housing Units and have entered into a contract to buy the Affordable Housing Units allocated under the Original Agreement and have exchanged contracts on the purchase.

## DEFINITIONS

Words and expressions defined in the Particulars and in this clause shall have the meanings given to them respectively by the Particulars and this clause and words and expressions defined in the Original Agreement shall have the same meanings in this Deed except to the

extent that they are expressly varied by this Deed or previously expressly varied by the Supplemental Agreement.

"this Deed"

This Deed of Variation

## **1. INTERPRETATION**

- 1.1 Words and expressions defined in the Original Agreement and the Supplemental Agreement have the same meanings in this Deed except to the extent that they are expressly varied by this Deed.
- 1.2 The provisions of the Original Agreement and the Supplemental Agreement relating to their interpretation apply to this Deed except to the extent that they are expressly varied by this Deed.
- 1.3 This Deed is supplemental to the Original Agreement and the Supplemental Agreement.
- 1.4 The Particulars form part of this Deed and words and expressions set out in the Particulars are to be treated as defined terms in this Deed.
- 1.5 Any reference to the "Parties" is a reference to the parties to this Deed for the time being and "Party" refers to any individual party to this Deed.
- 1.6 The Parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the District Council against the Owner and its successors in title.

## **2. VARIATIONS TO THE ORIGINAL AGREEMENT**

- 2.1 The definition of "Chargee" shall be deleted and replaced by the definition in the Schedule to this Deed and in the Draft Nomination Agreement annexed to the Original Agreement
- 2.2 The definition of "Protected Tenant" shall be deleted and replaced by the definition in the Schedule to this Deed and in the Draft Nomination Agreement annexed to the Original Agreement
- 2.3 The new definition of "Shared Ownership Lease" set out in the Schedule to this Deed shall be added to the definitions to the Original Agreement.
- 2.4 [MS1]In the Third Schedule, Part 2, paragraph 9(c), the reference to "paragraph 3.5(a)" shall be replaced with "paragraph 9(a)".

2.5 In the Third Schedule, Part 2 , paragraph 9(a) shall be replaced with "In the event that the District Council responds within one (1) month 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 its reasonable endeavours to secure such transfer for a consideration not less than the amount due and outstanding to the Chargee under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses by the Chargee".

2.6 The reference to three (3) months in the Third Schedule, Part 2, Paragraph 9(c) shall be replaced with two (2) months.

### **3. EFFECTIVE DATE**

The amendments to the Original Agreement made by this Deed are deemed to have taken effect from and including the date of the Original Agreement.

### **4. CONTINUATION OF THE ORIGINAL AGREEMENT AND THE SUPPLEMENTAL AGREEMENT**

4.1 The terms of the Original Agreement and the Supplemental Agreement continue in effect as amended by this Deed.

4.2 This Deed does not release any Party to it from any breaches of the Original Agreement or the Supplemental Agreement existing at the date of this Deed save where variations contained in this Deed remove the obligation of which any Party is in breach

### **5. AGREEMENTS AND DECLARATIONS**

5.1 This Agreement is made pursuant to section 106 of the Act as defined in the Original Agreement or TCPA 1990 as defined in the Supplemental Agreement. To the extent that they fall within the terms of that Section, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act as defined in the Original Agreement or TCPA 1990 as defined in the Supplemental Agreement and are enforceable by the District Council as Local Planning Authority.

5.2 This Deed will be registered as a local land charge by the District Council.

5.3 No person or body will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Property respect of which such breach occurs but they will remain liable for any breaches of this Deed occurring before that date.

- 5.4 The Owner agrees to pay the District Council and the County Council on or before the date of this Deed the reasonable legal costs properly incurred by the District Council in entering into this Deed.

6. **EXECUTION**

The Parties have executed this Deed as a deed and it is delivered on the date set out in the Particulars.

## THE SCHEDULE

### Definitions:

Chargee	means a 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 administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver
Protected Tenant	<ul style="list-style-type: none"> <li>a) Any person who has acquired an interest in an Affordable Housing Unit under a statutory right to buy or acquire or a voluntary right to buy scheme under the Housing and Planning Act 2016; or</li> <li>b) A lessee of a Shared Ownership Dwelling who has staircased under a Shared Ownership Lease or other shared ownership or equity product to acquire 100% of the leasehold or freehold interest; or</li> <li>c) a mortgagee of a Shared Ownership Lease lawfully exercising the mortgagee protection provision within that lease; or</li> <li>d) a mortgagee of any person who has exercised the rights noted in a) above; and</li> <li>e) All persons deriving title under or through any persons or bodies referred to above.</li> </ul>
Shared Ownership Lease	means a lease of a Shared Ownership Dwelling substantially in the form of the Homes England model shared ownership lease or where there is no such form in a form approved by the District Council.



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



Full name of Authorised Officer:

[Redacted]

Authorised Officer

[Redacted]

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

[Redacted]

Authorised Officer



Full name of Authorised Officer

EMILY SPRINGFORD

EXECUTED as a DEED by )  
**MATTHEW HOMES LIMITED** )  
acting by a director )  
in the presence of:

Director's Full Name:

JAMIE WRAGG

Witness signature

[Redacted]

Full Name, address and occupation of witness

NATHAN HUTCHINGS  
Land Manager

[Redacted]



EXECUTED as a DEED by  
**EASTLIGHT COMMUNITY HOMES LIMITED**  
acting by a director  
in the presence of:

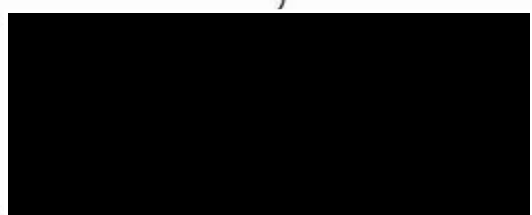
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Director's Full Name:

JANE GOODLEY

Witness signature



Full Name, address and occupation of witness

