

**DATE** 25<sup>th</sup> April 2023

**(1) WEST SUFFOLK COUNCIL**

**(2) SUFFOLK COUNTY COUNCIL**

**(3) BURGESS HOMES LIMITED**

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**Planning Obligation by Deed of Variation under Section 106 and Section  
106A of the Town and Country Planning Act 1990**

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relating to

**Land at Thelnetham Road Hopton Suffolk**

West Suffolk Council  
West Suffolk House  
Western Way  
Bury St. Edmunds  
Suffolk

**THIS DEED OF VARIATION** is made the 25<sup>th</sup> day of April 2023

**PARTIES:**

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **BURGESS HOMES LIMITED** (company number 04301745) of The Grove Magpie Green Wortham Diss Norfolk IP22 1RG (hereinafter called the "**Owner**")

**RECITALS**

- A The Council is a local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and by whom the obligations contained in the Principal Deed and this Deed are enforceable.
- B The County Council is the local highway authority (except for trunk roads) the local education authority the local library authority and is also a local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and by whom the obligations contained in the Principal Deed and this Deed are enforceable.
- C The Owner is the freehold owner of the Site registered at the Land Registry under the title number SK409046 pursuant to a transfer dated 17 June 2021 between (1) David Neill Timothy Sarson and (2) Burgess Homes Limited.
- D On 24 October 2019 a deed pursuant to Section 106 of the Town and Country Planning Act was entered into by (1) West Suffolk Council (2) Suffolk County Council and (3) David Neill Timothy Sarson which was secured by planning permission and given the reference DC/15/2298/FUL (hereinafter called the "**Principal Deed**").
- E On 14 July 2022 the Owner submitted a planning application to vary planning permission DC/15/2298/FUL and the council is resolved to grant planning permission under the reference DC/22/1257/VAR (hereinafter called the "**Variation Application**").

F Without prejudice to the terms of the other covenants contained in the Principal Deed the Parties hereto agree to vary the Principal Deed on such terms as set out herein.

**1. DEFINITIONS**

For the purposes of this Deed the words and expressions defined in the Recitals shall have the meanings given to them respectively by the Recitals.

**2. INTERPRETATION**

2.1 Words and expressions defined in the Principal Deed shall have the same meanings in this Deed except to the extent that they are expressly varied by this Deed.

2.2 Any reference to the "Parties" is a reference to the parties to this Deed.

2.3 The Parties do not intend that any of this Deed's terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**3. VARIATIONS TO THE PRINCIPAL DEED**

3.1 The Parties agree that the Principal Deed shall be varied as set out in this clause but otherwise the Principal Deed shall remain in full force and effect.

3.2 Within the agreed terms of the Principal Deed the definition of "Variation Application" shall be inserted as follows:

"Variation Application"	the application made pursuant to section 73 of the 1990 Act for variation of planning permission DC/15/2298/FUL which was validated on 14 July 2022 and given the reference DC/22/1257/VAR by the Council
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3.3 Within the agreed terms of the Principal Deed the definition of "Development" shall be deleted and replaced with the following definition:

"Development"	the development of the Property for the type of development proposed in the Application and as permitted by the Planning Permission;
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- 3.4 Within the agreed terms of the Principal Deed the definition of "the Planning Permission" shall be deleted and replaced with the following definition:

"the Planning Permission"	the planning permission granted pursuant to the Application and the planning permission granted pursuant to the Variation Application and any further and subsequent planning permissions for the Development granted pursuant to Section 73 of the 1990 Act
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**4. EFFECTIVE DATE**

The amendments to the Principal Deed made by this Deed shall come into effect on the date of the grant of the planning permission pursuant to the Variation Application.

**5. CONTINUATION OF THE PRINCIPAL DEED**

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

**6. AGREEMENTS AND DECLARATIONS**

- 6.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.
- 6.2 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 6.3 The covenants restrictions and requirements imposed by this Deed create planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the Council and the County Council as the local planning authorities against the Owner and their successors in title.
- 6.4 This Deed will be registered as a local land charge by the Council.

6.5 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 or the part of the Property in respect of which such breach occurs but they will remain liable for any breaches of this Deed occurring before that date.

## **7. MISCELLANEOUS**

7.1 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

7.2 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.

## **8. LEGAL FEES**

The Owner shall pay the reasonable legal costs of the Council and the reasonable legal costs of the County Council on completion of this Deed incurred in the negotiation preparation and execution of this Deed.

## **9. JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

## **10. DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## **11. EXECUTION**

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

**THE COMMON SEAL OF  
WEST SUFFOLK COUNCIL**

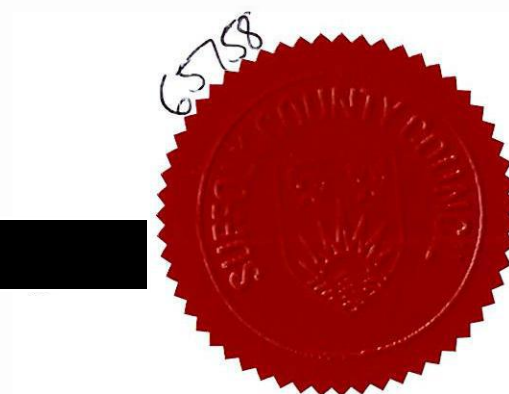
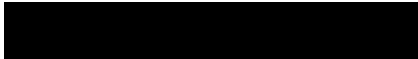
was affixed in the presence of:



Authorised Officer

**THE COMMON SEAL OF  
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



Authorised Officer

**EXECUTED AS A DEED BY  
BURGESS HOMES LIMITED**



in the presence of:

Signature of Witne

Name of Witness:

Address of Witness

Occupation of Witn

