

Dated

10<sup>th</sup> April

2019

**DEED OF VARIATION**

between

*East Suffolk Council*  
~~WAVENEY DISTRICT COUNCIL~~ (1)

and

SUFFOLK COUNTY COUNCIL (2)

and

CRAIG ATKINSON (3)

and

EASTERN CREDIT LIMITED (4)



This Deed of Variation is made on 10<sup>th</sup> April

2019

*EAST SUFFOLK*

- (1) WAVENEY DISTRICT COUNCIL of Riverside 4 Canning Road Lowestoft NR32 1HS ("Council")
- (2) SUFFOLK COUNTY COUNCIL of Endeavour House 8 Russell Road Ipswich IP1 2BX ("County Council")
- (3) CRAIG ATKINSON of 1 Bridge Road Lowestoft NR32 3LJ ("Owner")
- (4) EASTERN CREDIT LIMITED (Co. Regn. No. 4268426) of Sandbanks 69 Marine Parade Gorleston-on-Sea Norfolk NR31 6EX ("Mortgagee")

together the "Parties"

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The County Council is the local highway authority, the local education authority and the county planning authority for the area in which the Site is situated.
- 3 On 19<sup>th</sup> June 2017 the Owner transferred part of the Site to the Council ("the Affordable Housing Land") and registered with the Land Registry under title number SK382188.
- 4 The area retained by the Owner solely relates to the six Market Housing Units ("the Retained Land").
- 5 On the 7<sup>th</sup> February 2017 and on the 24<sup>th</sup> October 2017 the Council, the County Council, the Owner and the Mortgagee entered in to supplemental agreements to the Original Deed pursuant to s106A of the Act relating to land at Stanley Road, Lowestoft, Suffolk ("the Supplemental Agreements").
- 6 The Council wishes to amend the terms of the Original Deed and the Owner and the County Council and Mortgagee have agreed without prejudice to the terms of the other covenants contained in the Original Deed as amended by the Supplemental Agreements to enter in to this Deed in order to vary the terms of the Original Agreement as hereinafter appears and to secure the planning obligations contained in the Original Deed and the Supplemental Agreements.
- 7 The Mortgagee is the registered proprietor of the charges over the Retained Land dated 19 February 2016 and registered with the Land Registry under title numbers SK364446, SK160387, and SK361396.
- 8 The Owner is the freehold owner of the Retained Land.

NOW THIS DEED WITNESSES AS FOLLOWS:

**OPERATIVE PART**

**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act" the Town and Country Planning Act 1990.

“Original Deed”	the Section 106 Agreement dated 18 <sup>th</sup> October 2016
“Plan”	the plan attached to the Original Deed.
“Planning Permission”	the planning permission subject to conditions granted by the Council under reference number DC/17/3145/VOC and as set out in the Second Schedule

## **2 CONSTRUCTION OF THIS DEED OF VARIATION**

- 2.1 Unless the context otherwise requires or this Deed otherwise provides all words and phrases defined in the Original Deed shall have the same meaning in this Deed.
- 2.2 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.6 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.
- 2.7 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.
- 2.8 The headings are for reference only and shall not affect construction.
- 2.9 Any obligation by the Owner not to do any act or thing shall be deemed to include an obligation to use all reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably inferred.

## **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and County Council in the case of covenants made with them as local planning authorities against the Owner and their successors in title.

#### **4 CONDITIONALITY**

The variation provisions set out in the Third Schedule are conditional upon the grant of the Planning Permission and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

#### **5 COVENANTS**

5.1 The Parties covenant and agree that the Original Deed shall be varied as set out in the Third Schedule but otherwise the Original Deed as amended by the Supplementary Agreements shall remain in full force and effect.

#### **6 MISCELLANEOUS**

6.1 The Council shall pay to the Owner and to the County Council on or before completion of this Deed their reasonable legal fees incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.3 This Deed shall be registered as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:

(i) the Council by the Head of Planning Services (or the officer of the Council fulfilling such functions);

(ii) the County Council by the Interim Director of Growth, Highways and Infrastructure

and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant Party.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 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.

6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

- 6.11 No provisions of this Deed shall be binding on any statutory undertaker or other person who acquires any part of the land or takes any interest in it for the purposes of the supply of electricity gas water drainage telecommunications or highways in connection with the Development or any person or body deriving title through or from any person or body mentioned above or their successors in title.
- 6.12 The Owner covenants from the date of this Deed to allow the Council and its respectively duly authorised officers or agents at all reasonable times to enter into and upon the Retained Land for the purposes of monitoring compliance with the provisions of this Deed.
- 6.13 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Retained Land under the terms of the Deed are hereby waived.
- 6.14 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to either the Council or the County Council.
- 6.15 The Owner covenants and warrants to the Council and the County Council that it has full power to enter into this Deed and there is no other person having a charge over or any other interest in the Retained Land other than the Mortgagee, whose consent is hereby given to make this Deed binding on the Retained Land and all estates and interests therein.

**7 WAIVER**

- 7.1 No waiver (whether expressed or implied) by the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**8 JURISDICTION**

- 8.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

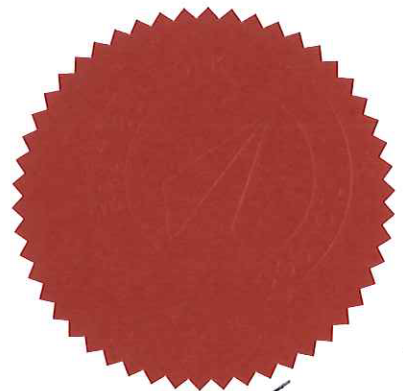
IN WITNESS whereof this Deed has been executed by the Parties hereto as a deed and is intended to be hereby delivered on the date hereof.

THE COMMON SEAL of **WAVENEY** )  
*EAST SUFFOLK* )  
**DISTRIGT COUNCIL** was hereunto )  
 affixed in the presence of: )

Authorised Officer



Authorised Officer



5

THE COMMON SEAL of **SUFFOLK COUNTY COUNCIL** )

was hereunto affixed in the presence of: )

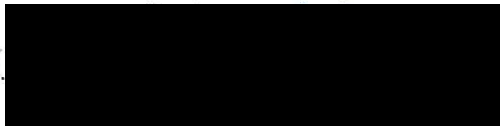


Authorised Officer



Executed as a Deed by

**CRAIG ATKINSON**.....X



.....Signed

in the presence of:

Witness Signature.....*L. Kearns*.....

Witness Name.....*L. Kearns*.....

Witness Address.....*1 Bridge Rd, Lowestoft*.....

Witness Occupation.....*Admin Accounts*.....

Executed as a Deed by

**EASTERN CREDIT LIMITED**



acting by a Director.....

.....Signed

in the presence of:

Witness Signature.....*B. Houghton*.....

Witness Name.....*BETHANY HOUGHTON*.....

Witness Address... C/O BACCHAFAC, Coneston, NBSI RA

Witness Occupation... SALES AGENT



FIRST SCHEDULE

**Details of the Owner's Title, and description of the Retained Land**

Description of land: all the land shown edged red for identification purpose only on the Plan that is registered at the Land Registry under title numbers SK364446 SK160387 and SK361396

Second Schedule

**Brief details of the Planning Permission**

Variation of Condition Nos. 2, 3, 8, 9, 10, 12, 13, 14, 17, 18, 19, 20 and 21 of DC/16/0892/FUL -  
Construction of 8no. three storey houses, 15no. two storey houses, 2no. bungalows and 6no. flats,  
with associated car parking and works, - amended layout for 6 plots fronting Lake Lothing

**Variation of the Original Deed**

1. In the Third Schedule of the Original Deed Clause 1 shall be deleted and replaced with:-

“Playing Fields Contribution” means a contribution calculated at the rate of one hundred and ninety-three pounds (£193) per Dwelling RPI Index Linked

  - 1.1 To pay the Playing Fields Contribution to the Council for the Market Housing Units (being 6 Dwellings) on completion of this Deed.
  - 1.2 To pay the Playing Fields Contribution to the Council for the Affordable Dwellings (being 25 Dwellings) prior to Occupation of no more than 50% of the Affordable Dwellings.
  - 1.3 Not to Occupy or permit Occupation of more than 50% of the Affordable Dwellings until the Playing Fields Contribution has been paid for the Affordable Dwellings to the Council
  
2. In the Fourth Schedule of the Original Deed the definition of Education Contribution shall be deleted and replaced with:-

“Education Contribution” means the sum of three thousand one hundred and forty-five pounds and ninety-four pence (£3145.94) BCIS Indexed per Dwelling
  
3. Numbered paragraphs 1 – 4 shall be deleted and replaced with:-
  1. To pay the Education Contribution to the County Council for the Market Housing Units (being 6 Dwellings) on completion of this Deed.
  2. To pay the Education Contribution to the County Council for the Affordable Dwellings (being 25 Dwellings) prior to Occupation of the twelfth (12th) Affordable Dwelling.
  3. Not to Occupy or permit or allow Occupation of more than eleven (11) Affordable Dwellings until the Education Contribution has been paid for the Affordable Dwellings to the County Council.
  4. To pay the Pedestrian and Cycle Bridge Contribution to the County Council for the Market Housing Units (being 6 Dwellings) on completion of this Deed.
  5. To pay the Pedestrian and Cycle Bridge Contribution to the County Council for the Affordable Dwellings (being 25 Dwellings) prior to Occupation of the twelfth (12th) Affordable Dwelling.
  6. Not to Occupy or permit or allow Occupation of more than eleven (11) Affordable Dwellings until the Pedestrian and Cycle Bridge Contribution has been paid for the Affordable Dwellings to the County Council.
  7. In the event that Market Housing Units are constructed in place of any of the Affordable Dwellings, to pay the Education Contribution and the Pedestrian and Cycle Bridge Contribution to the County Council prior to Occupation of each Market Housing Unit so constructed.

