

**DATED**

**2024**

**MID-SUFFOLK DISTRICT COUNCIL (1)**

and

**ORWELL HOUSING ASSOCIATION LIMITED (2)**

**DEED OF VARIATION OF PLANNING OBLIGATION  
UNDER SECTION 106 AND 106A  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990**

relating to the development of nine affordable  
housing dwellings at Priors Road Fressingfield  
Suffolk

DATED

2024

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the District Council") and
- (2) **ORWELL HOUSING ASSOCIATION LIMITED** of Crane Hill Lodge, 325 London Road, Ipswich, Suffolk, IP2 0BE ("the Owner")

**Together "the Parties"**

## **INTRODUCTION**

- (A) The District Council is a local planning authority for the purposes of the Act for the area in which the Land is located
- (B) The Owner has requested that the District Council modifies the affordable housing provisions set out in the Original Agreement and the Parties have agreed to amend the Original Agreement.
- (C) The Land is bound by the Original Agreement and it is agreed between the Parties that the Original Agreement shall be amended as set out in the Schedule to this Deed
- (D) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

## **1. DEFINITIONS**

- 1.1 In this Deed the definitions in the Original Agreement as varied by the First Deed of Variation apply unless the context otherwise requires.
- 1.2 In this Deed the following expressions which have the following meanings:

"Act"	the Town and Country Planning Act 1990 (as amended)
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“Land”	Means the nine plots of land situated at Priory Road Fressingfield Suffolk forming the site of plots 7, 8, 9, 10, 11, 19, 21, 22 and 23 on the Site and shown coloured pink on the Affordable Housing Plan.
“Original Agreement”	The Agreement dated 14 <sup>th</sup> August 2017 made under Section 106 of the Act between Mid Suffolk District Council (1) and George Joseph Strange Barrett (2) National Westminster Bank Plc (3) and Christine Barrett (4) containing planning obligations and other provisions pursuant to Section 106 of the Act enforceable by the District Council relating to the Planning Permission.

**2. LEGAL BASIS**

- 2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act enforceable by the District Council.
- 2.2 The terms and conditions of the Original Agreement shall remain in full force and effect except as varied by this Deed.

**3. COMMENCEMENT**

- 3.1 This Deed shall take effect upon the date hereof.

**4. VARIATION**

- 4.1 With effect from the date of this Deed the Parties agree to vary the Original Agreement as set out in the Schedule to this Deed.
- 4.2 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Site as varied by this Deed.

**5. OTHER PROVISIONS**

- 6.1 On completion the Owner will pay the District Council's reasonable legal costs in connection with this Deed
- 5.2 The owner warrants that he has full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Land.
- 5.3 This Deed shall be registered as a local land charge.

**6. OWNERS CONSENT**

- 6.1 The Owner hereby agrees to execute this Deed and further acknowledges that the Land from the date hereof shall be bound by the terms of this Deed.

## The Schedule

### Variation

1. The Parties agree to vary the Original Agreement as follows:-

1.1 To delete all the following definitions from Clause 1 of the Original Agreement

- i. Affordable Housing
- ii. Affordable Housing Scheme.
- iii. Affordable Housing Units.
- iv. Protected Tenant.
- v. Shared Ownership Lease.
- vi. Suffolk Homebuy Agent

1.2 The following new definitions shall be inserted into Clause 1 of the Original Agreement

- i. "Affordable Housing"      Subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with Annexe 2 of the National Planning Policy Framework 2021.
  
- ii. "Affordable Housing Scheme"      Shall comprise nine (9) Affordable Housing Units to be made available in the following mix, type and size.

#### **Affordable Rent**

One bedroom 2 person flat x 2. 51 square metres.

One bedroom 2 person flat x 2. 62.5 square metres.

Two bedroom 4 person house x 3. 79 square metres.

#### **Shared Ownership**

Two bedroom 4 person house x 1. 97 square metres

Three bedroom 5 person house x 1. 126.5 square metres

as set out in the Affordable Housing Plan unless otherwise agreed in writing by the Council.

- iii. "Affordable Housing Plan" Shall mean the plan annexed hereto and marked "Affordable Housing Plan" showing the Affordable Housing units coloured pink.
- iv. "Affordable Housing Units" Shall mean the nine (9) Affordable Housing Units to be provided on the site consisting plots 7, 8, 9, 11, 19, 21, 22 as Affordable Rental Units and Plots 10 and 23 as Shared Ownership Units.
- v. "Shared Ownership Lease" a long lease of 990 years of a dwelling granted at a premium whereby no less than ten percent (10%) and no more than up to seventy five percent (75%) on first purchase of the equitable interest in the Shared Ownership Unit is purchased by a lessee upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased, such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time.

- 1.3 The affordable housing provisions contained in clauses 2.1, 2.2.3, 2.12, 2.13 and 2.14 of The Third Schedule of the Original Agreement shall be deleted in their entirety and replaced with the following new affordable housing provisions :-

## **2. AFFORDABLE HOUSING PROVISION**

- 2.2.3 To procure a covenant in any transfer of the Rental Dwellings to a Registered Provider that the Registered Provider will enter into a Nomination Agreement substantially in the form set out in the attached draft Nomination Agreement in Part 1 of the Fifth Schedule within three (3) months of the date of transfer
- 2.13 The Affordable Housing Provisions contained in this clause 2 shall not be binding upon:
- 2.13.1 a person acquiring an interest in a Rental Dwelling under any statutory Right to Buy or Acquire or
  - 2.13.2 a person who has staircased to acquire a 100% interest in the leasehold interest in a Shared Ownership Dwelling or
  - 2.13.3 any mortgagee or charge deriving title from any parties referred to in clauses 2.13.1 and 2.13.2 or
  - 2.13.4 any successors in title to any parties referred to in 2.13.1, 2.13.2 or 2.13.3
- 2.14 The Affordable Housing provisions contained in this clause 2 of the Third Schedule shall not be binding on a mortgagee or chargee of a Registered Provider (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 Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 2.14.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another Registered Provider or to the 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

2.14.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely PROVIDED THAT at all times the rights and obligations in this Clause shall not require the mortgagee or chargee to act contrary to its duties under the mortgage or charge and that the Council shall give full consideration to protecting the interest of the mortgagee or chargee or Receiver in respect of moneys outstanding under the mortgage or charge.

1.4 The Fifth Schedule of the Original Agreement shall be deleted and replaced by the Fifth Schedule set out at the end of this Deed.”

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

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

Authorised Signatory

EXECUTED as a Deed by )  
Affixing the Common seal of )  
**ORWELL HOUSING ASSOCIATION** )  
**LIMITED** in the presence of: )

Director/Secretary

Board Member



**New Fifth Schedule  
Nomination Agreement – Affordable Rental Dwellings**