

DATED 31 January 2019

- (1) DAVIDSONS DEVELOPMENTS LIMITED
- (2) JOHN WAKEFIELD ADAMS
- (3) THE COUNCIL OF THE BOROUGH OF MILTON
KEYNES

DEED OF VARIATION

Relating to land at Long Street Road, Hanslope, Milton
Keynes

LEGAL REFERENCE: PE VW 019406

THIS DEED OF VARIATION is made this 31st day of January 2019

BETWEEN:

- (1) **DAVIDSONS DEVELOPMENTS LIMITED** (Company Registration Number 04346861) whose registered office is situate c/o Fishers Solicitors at 4/8 Kilwardby Street, Ashby-de-la-Zouch, Leicestershire LE65 2FU (**the Owner**); and
- (2) **JOHN WAKEFIELD ADAMS** of Chantry Farm, Hanslope, Milton Keynes, MK19 7HL (**the Chargee**)
- (3) **THE COUNCIL OF THE BOROUGH OF MILTON KEYNES** of Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ (**the Council**).

DEFINITIONS

The meanings ascribed to definitions and terms in the Principal Deed are to be applicable to those definitions and terms where used in this Deed

the Principal Deed means the agreement entered into pursuant to Section 106 of the 1990 Act dated 19th December 2017 and entered into by the Council and John Wakefield Adams in respect of the Application Site

BACKGROUND

- (A) The Owner purchased the Application Site from the Chargee (previously the Owner) and is now the registered proprietor of the freehold title to the Application Site which is registered at HM Land Registry under title number BM424199.
- (B) The Chargee has the benefit of a charge in respect of the Application Site dated 8 June 2018 and registered at HM Land Registry under title number BM424199.
- (C) The Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated and is the authority by whom the obligations are enforceable.
- (D) The Planning Permission was granted pursuant to a planning appeal on 5 March 2018 following the completion of the Principal Deed.
- (E) The parties have agreed to modify the Principal Deed in respect of provisions relating to the further covenants given by the Owner contained within the Principal Deed.

STATUTORY PROVISIONS

1. This Deed:-
 - 1.1 is made pursuant to the provisions of Section 106 and Section 106A of the Act;
 - 1.2 is made with the intent to bind the Owner's freehold interest in the Application Site;
 - 1.3 is enforceable by the Council as local planning authority; and
 - 1.4 is executed as a deed.

APPLICATION OF THE PRINCIPAL DEED

- 2.1 It is hereby agreed between the parties hereto that the terms and obligations set out in the Principal Deed shall continue in full force and effect (subject to the modifications in this Deed) and shall be deemed by virtue of this Deed to apply to and bind the Application Site and the Development to be carried out pursuant to the Planning Permission and all reserved matters issued pursuant thereto in respect of the Application Site after the date of this Deed.
- 2.2 The Chargee hereby consents to the Owner entering into this Deed and acknowledges that its charge takes effect subject to the obligations contained within this Deed and the Principal Deed PROVIDED THAT the Chargee shall otherwise have no liability under this Deed or the Principal Deed unless it takes possession of the Application Site and the Chargee shall only be liable for any breach that has occurred whilst mortgagee in possession and shall not be liable for any pre-existing breach PROVIDED THAT any successor in title to the Chargee will be liable in respect of (i) any obligation(s) in this Deed or in the Principal Deed still to be performed or complied with and (ii) any obligation(s) in this Deed or in the Principal Deed which has not been satisfied in full including liability in respect of a breach which has not been remedied or only partially remedied.
- 2.3 The Owner hereby covenants with the Chargee that the Owner and its successors in title to the Application Site will comply with this Deed and the Principal Deed and will indemnify the Chargee against all proper actions, actionable claims and proceedings taken or made against the Chargee and all proper and reasonable costs, damages, expenses, liabilities and losses incurred by the Chargee arising from their breach

- 2.4 The Owner covenants with the Council to observe and perform the covenants restrictions and obligations (other than those discharged prior to the date of this Deed) contained in the Principal Deed as amended by this Deed

VARIATION OF THE PRINCIPAL DEED

3. The parties hereto agree that the Principal Deed is varied from the date hereof as follows:-

- 3.1 In clause 1 the definition of 'Highway Works' shall be amended by:

- (i) removing the semi-colon and the word 'and' at the end of the sentence in sub-clause (iii) of that definition; and
- (ii) deleting sub-clause (iv) of the definition in its entirety.

- 3.2 Paragraph 1.2.1 of Schedule 3 shall be deleted in its entirety and replaced with the following new paragraph 1.2.1:


"1.2.1 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 Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used all reasonable endeavours over a period of three months from the date of the written notice to complete a transfer of the Affordable Housing Units to another Registered Provider or to the Council (and if the Council indicates that arrangements for the transfer of the Affordable Housing Units can be made to another Registered Provider then the mortgagee or chargee shall co-operate with such arrangements and use all reasonable endeavours to secure such transfer) and for the avoidance of doubt this sub-paragraph shall not require the Affordable Housing Units to be disposed of for any sum 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*

(b) if such transfer has not completed within the three month period, the mortgagee or chargee or Receiver shall be entitled to dispose of the Affordable Housing Units in question free from the restriction referred to at paragraph 1.2 which provision shall determine absolutely in respect of those Affordable Housing Units

3.3 Paragraph 1.2.3 of Schedule 3 shall be deleted in its entirety.

3.4 Paragraph 6.2 of Schedule 3 shall be deleted in its entirety and replaced with the following new paragraph 6.2:

6.2 *Unless agreed otherwise in writing by the Council (Council acting reasonably), not to Occupy more than 49 of the Residential Units unless and until it has carried out the Highways Works in accordance with the Highways Agreement and this Agreement"* 

LOCAL LAND CHARGE

4. This Deed shall be registerable as a local land charge by the Council.

COSTS

5. The Owner shall pay to the Council on the date of this Deed the reasonable legal costs of the Council in preparing and completing this Deed.

JURISDICTION

6. This Deed shall be governed by and interpreted in accordance with the law of England and any dispute connected with this Deed is subject to the exclusive jurisdiction of the English Courts

THIRD PARTY RIGHTS

7. A person who is not party to this Deed (save for successors in title or successors to the functions of the Council) as provided for in the Principal Deed) shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms other than the parties to it under that Act.

EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this Deed.

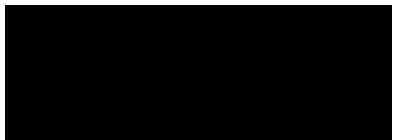
**SIGNED as a DEED on behalf of
DAVIDSONS DEVELOPMENTS LIMITED by**

Director

Director/Secretary



**SIGNED AS A DEED by
GARETH ROYSTON WILLIAMS**



as attorney for **John Wakefield Adams**)
under a Power of Attorney dated 13 November 2017)

**THE COMMON SEAL OF
THE COUNCIL OF THE BOROUGH OF MILTON KEYNES**

was hereunto affixed in the presence of:

Authorised Signatory

