

Dated

28 June

2017

BROADLAND DISTRICT COUNCIL

-and-

KIER CROSS KEYS DEV LLP

-and-

HSBC BANK PLC

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

relating to land at Garden Farm, land to the south of Yarmouth Road and north of  
Lingwood Road, Blofield, Norwich

THIS DEED OF VARIATION is dated

28 June

2017

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU (referred to as "the Council")
- (2) **KIER CROSS KEYS DEV LLP** (LLP Registration Number OC415517) of Tempsford Hall, Sandy SG19 2BD (referred to as "the Owner")
- (3) **HSBC BANK PLC** (Company Registration Number 14259) of 8 Canada Square, London E14 5HQ (referred to as "the Mortgagee")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is the local planning authority for the area within which the Site is located
- (B) The Owner owns the freehold of the Site (save the electricity substation site comprised in Registered Title No NK460549) as successor to the Previous Owner
- (C) The Mortgagee has a charge over the Site (save the said electricity substation site)
- (D) The Previous Developer no longer has an interest in the Site
- (E) The Owner wishes to vary the Original Agreement in the manner provided for by this Deed and the Council has agreed to the variation
- (F) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

Original Agreement	An agreement dated 19 December 2013 made under
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Section 106 of the Act between Generator Group LLP  
(1) William Hordern Hough Andrews and Jeremy  
Edward Needham Andrews (2) and the Council (3)  
containing planning obligations enforceable by the  
Council

Previous Owner	William Hordern Hough Andrews and Jeremy Edward Needham Andrews
Previous Developer	Generator Group LLP
Varied Agreement	The Original Agreement as varied by this Deed

## **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 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. VARIATION**

- 3.1 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.
- 3.2 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

#### **4. MORTGAGEE CONSENT**

- 4.1 The Mortgagee consents to this Deed so that its interest in the Site is bound by the obligations contained in the Varied Agreement and agrees that its security over the Site takes effect subject to the provisions of the Varied Agreement PROVIDED THAT the Mortgagee is not required to observe or perform the obligations in the Varied Agreement unless it takes possession of any part of the Site. (For the avoidance of doubt any person acquiring title to all or part of the Site as a result of the Mortgagee enforcing its security will be bound by the terms of the Varied Agreement)

#### **5. OTHER PROVISIONS**

- 5.1 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed
- 5.2 The Owner warrants that it has full power to enter into this Deed and there is no other person other than the Parties whose consent is necessary to make this Deed binding on the Site

## **Schedule Variation**

- 1 The Parties agree to vary the Original Agreement as follows:
- 2 In paragraph 1 in the definition of “Affordable Housing” the following wording is added “or as agreed with the Council in writing in accordance with Paragraph 1.1 of Part 1 of Schedule 1 hereto”.
- 3 In paragraph 1, after the definition of “Eligibility Criteria”, the following definition is inserted:

<b>“HCA</b>	The Homes and Communities Agency or its successor body or other appropriate body as the Council may nominate”
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- 4 In paragraph 1, the definition of “Shared Equity Dwelling” is omitted.
- 5 In paragraph 1, after the definition of “RTA Purchaser”, the following definitions are inserted:

<b>“Shared Ownership Dwelling</b>	An Affordable Dwelling to be let on a Shared Ownership Lease”
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<b>“Shared Ownership Lease</b>	A lease or sublease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 75% (seventy five per cent) of the equity is granted on first purchase of the equitable interest in the Shared Ownership Dwelling and is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to purchase the freehold of a Shared Ownership Dwelling and acquire up to 100% of the legal and equitable
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interest by instalments at some future date or dates and allows a rental premium to be charged on the remainder of the equitable interest, not exceeding HCA target rents (being 2.75% of the value of equity retained by the Approved Provider, such rent not to be increased by more than the percentage increase in the Retail Price Index (or such other index as the Council may determine) plus 0.5% of the current annual rent from time to time”

- 6 The table at paragraph 1 of Part 1 of Schedule One is deleted and the following table is substituted:

Tenure	Percentage of the affordable dwellings to be delivered	Types of Affordable Housing to be delivered
Shared Ownership Dwellings	37%	2 bed and 3 bed dwellings
Affordable Rented Dwellings	63%	1 bed, 2 person; 2 bed, 4 person; 3 bed, 6 person; 4 bed, 8 person dwellings
Total	100%	100%

- 7 Paragraph 1.1(f) of Part 1 of Schedule One is omitted
- 8 Paragraph 2 of Part 1 of Schedule One is omitted
- 9 Paragraph 6 of Part 1 of Schedule One is omitted
- 10 In paragraph 7.3 of Part 1 of Schedule One, after “;”, “or” is omitted
- 11 After paragraph 7.3 of Part 1 of Schedule One, there is inserted:
- “7.4 a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold of the Shared Ownership Dwelling;

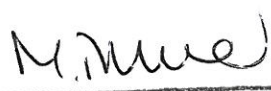
- 7.5 a mortgagee or chargee of a Shared Ownership Lease who is validly exercising the mortgagee protection clause in the Shared Ownership Lease; or”
- 12 Paragraph 7.4 of Part 1 of Schedule One is renumbered 7.6, and in the text of that paragraph, for “paragraphs 6.1 to 6.3” there is substituted “paragraphs 7.1 to 7.5 “

Kier Limited  
Temporary  
Sandy Grove  
2019 280

Kier Limited  
Temporary  
Sandy Grove  
2019 280

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 )  
BROADLAND DISTRICT COUNCIL )  
was affixed in the presence of: )

  
Head of Democratic Services and  
Monitoring Officer



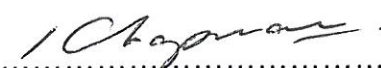
EXECUTED as a DEED BY )  
{ DANIEL BROWNE } )  
as attorney for KIER CROSS KEYS )  
DEV LLP )

  
.....  
as attorney for KIER CROSS KEYS  
DEV LLP

Witness signature:  JANE MACDONALD

Name: **Kier Living Limited**  
Address: **Tempsford Hall**  
**Sandy, Beds**  
Occupation: **SG19 2BD**

EXECUTED as a DEED BY )  
{ IAN CHAPMAN } )  
as attorney for KIER CROSS KEYS )  
DEV LLP )

  
.....  
as attorney for KIER CROSS KEYS  
DEV LLP

Witness signature:  JANE MACDONALD

Name: **Kier Living Limited**  
Address: **Tempsford Hall**  
**Sandy, Beds**  
Occupation: **SG19 2BD**



EXECUTED AS A DEED by )  
HSBC BANK PLC )  
acting by )

Director

[Director][Witness]

Executed as deed by a duly  
authorised Official of the Bank  
as Attorney of the Bank the day  
and the year first above written  
Signed and Delivered by



Richard Lewis

Attorney of  
HSBC Bank plc

In the presence of

Witness   
Graham Fleming

Address  
120 Edmund Street  
Birmingham  
B3 2QZ

