

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 as successor to the Previous Owner
- (C) The Mortgagee has a charge over the 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 5 December 2014 made under Section 106 of the Act between the Council (1) William Hordern Hough Andrews and Jeremy Edward Needham Andrews (2) and Generator Group LLP (3)
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	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 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 the Second Schedule, after the definition of "Qualifying Occupiers", there is inserted the following definition:
 "Registered Provider" is as defined in the Housing and Regeneration Act 2008"
- 3 In the Second Schedule, in the definition of "Shared Ownership Lease" for "50% (fifty per cent)" substitute "75% (seventy five per cent)".
- 4 For paragraphs 1.6 and 1.7 of the Second Schedule there is substituted the following paragraph:
 "1.6 Paragraphs 1.3 and 1.4 and 1.5 shall not be binding upon:
 1.6.1 a person acquiring an interest in an Affordable Housing Unit under a statutory right to buy or acquire;
 1.6.2 a Qualifying Occupier who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or a person who has acquired 100% of a Shared Equity Dwelling
 1.6.3 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) 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 (each a "Receiver")) of the whole or any part of the Affordable Housing Unit or any persons or bodies deriving title through such mortgagee or chargee or Receiver
 PROVIDED THAT it has first complied with the following:
 a) such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Housing Unit and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit 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, costs and expenses; and

- b) 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 Unit free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Housing Unit"

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:

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M. Murrel

Head of Democratic Services and
Monitoring Officer

EXECUTED as a DEED BY
{ *DANIEL BLAWIE* }
as attorney for KIER CROSS KEYS
DEV LLP

)
)
)
)

[Signature]

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

Witness signature: *[Signature]*

Name:

JANE MACDONALD

Address:

**Kier Living Limited
Tempsford Hall
Sandy, Beds
SG19 2BD**

Occupation:

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

)
)
)
)

[Signature]

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

Witness signature: *[Signature]*

Name:

JANE MACDONALD

Address:

**Kier Living Limited
Tempsford Hall
Sandy, Beds
SG19 2BD**

Occupation:

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

Director

[Director][Witness]

Executed as a 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

Kier Living Limited
Templeford Hall
Sandy Beds
SG18 2BD

in the presence of

Witness 
Graham Fleming

Address

120 Edmund Street
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