

Dated *30 SEPTEMBER.* 2016

BROADLAND DISTRICT COUNCIL

- and -

CRIPPS DEVELOPMENTS LIMITED

- and -

LLOYDS BANK PLC

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

relating to land at 11 Dixons Fold, Old Catton, Norwich, NR6 7QD

THIS DEED OF VARIATION is dated 30 SEPTEMBER 2016

**PARTIES:**

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St. Andrew Norwich NR7 0DU (referred to as "the Council")
- (2) CRIPPS DEVELOPMENTS LIMITED (company registration number 04081629) of registered company address at Dencora House, Blyburgate, Beccles, NR34 9TY (referred to as "the Owner")
- (3) LLOYDS BANK PLC (company number 2065) of Pendeford Securities Centre Pendeford Business Park Wobaston Road Wolverhampton WV9 5HZ (referred to as "the Mortgagee")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the area within which the Site is located.
- (B) The Owner has made a reserved matter application pursuant to the Planning Permission.
- (C) The Owner wants to amend the Affordable Housing Mix in the Original Agreement. The Council is content to do the same provided the Parties enter into this Agreement.
- (D) The Owner owns the freehold of the Site and is the successor in title from Mary Elizabeth Haines and David John Betts.
- (E) The Mortgagee has the benefit of a legal charge over the Site and is entering into this Deed to acknowledge that its interest is bound

- (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 13 July 2015 made under Section 106 of the Act between the Council (1) Mary Elizabeth Haines (2) and David John Betts (3) containing planning obligations enforceable by the Council and under planning permission 20150131.
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## **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 follows:
- 3.2 the Fourth Schedule of the Original Agreement shall be deleted.

3.3 a new Fourth Schedule shall be inserted into the Original Agreement as set out in the Schedule to this Deed.

3.4 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. OTHER PROVISIONS**

4.1 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed.

4.2 The Owner warrants that he has full power to enter into this Deed and there is no other person (other than the mortgagee) whose consent is necessary to make this Deed binding on the Site.

4.3 The Mortgagee hereby consents to the Owner entering into this Deed and acknowledges that its interest is bound by the terms of the Original Agreement as varied by this Deed

4.4 This Deed is a Local Land Charge and shall be registered as such.

## AFFORDABLE HOUSING GROUP STANDARD

### Affordable Housing

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meanings:

"Affordable Dwellings"	the Dwellings to be constructed to Design & Quality Standards on the Site as Affordable Housing and "Affordable Dwelling" shall be construed accordingly
"Affordable Housing"	the Affordable Rented Dwellings and the Discount Market Dwellings (or such other tenures as the Council may agree in writing) to be provided to Eligible Households
"Affordable Housing Mix"	<p>The mix of Affordable Dwellings being 60% Affordable Rented Dwellings and 40% Discount Market Dwellings as follows:</p> <p>3 x 1 bedroom 2 person bungalows to be provided as Affordable Rental Dwellings</p> <p>2 x 3 bedroom houses to be provided as Discount Market Dwellings</p> <p>(or such other mix or tenures as the Council may agree in writing in its absolute discretion)</p>
"Affordable Housing Provision"	the construction and provision of Affordable Dwellings on the Site in accordance with the Affordable Housing Mix or, where there is any change to the number of Dwellings to be constructed as part of the Development or where the parties agree a change to the Affordable Housing Mix, 33% of the total number of Dwellings (or such other percentage as the Council may agree in its absolute discretion)
"Affordable Housing Scheme"	<p>A scheme securing the Affordable Housing Provision in accordance with the Affordable Housing Mix and specifying unless otherwise agreed in writing with the Council</p> <p>- The timescale and programme for implementation of the Affordable Housing Scheme and construction</p>



	<p>of the Affordable Dwellings;</p> <ul style="list-style-type: none"> <li>- The identity of the Registered Provider (if secured);</li> <li>- Where not already agreed, the number, location, type and size of Affordable Dwellings to be constructed on the Site;</li> <li>- where any change is proposed, full details of the proposed Affordable Housing Mix for consideration and approval by the Council;</li> <li>- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme</li> </ul>
"Affordable Rented Dwellings"	Dwellings to be let by a Registered Provider with an appropriate agreement with the Homes & Communities Agency for the charging of affordable rents (being rents that are no more than 80 per cent of local market rents including any service charges as approved by the Council)
"Agreed Market Value"	The market sale price of the Affordable Dwellings as assessed by a local agent and based on local values to be agreed by the Council prior to advertisement for sale including any service and other charges in relation to the Affordable Dwellings PROVIDED THAT where the value is not agreed within three months of the proposed market sale price being confirmed to the Council in writing this shall be determined by an expert in accordance with Clause 6.
"Approved Affordable Housing Scheme"	the Affordable Housing Scheme approved by the Council in accordance with paragraph 1.1 of this Schedule including any amendment, revision or substitution approved by the Council in writing
"Chargee"	any mortgagee or charge of the Registered Social Landlord or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.
"Design & Quality Standards"	The Level One Space Standards as specified by the Homes and Communities Agency or its successor or

	such other construction standards as may be agreed between the Owners and the Council
"Discount Market Dwelling"	Affordable Dwellings to be made available for sale at 20% less than the Agreed Market Value and subject to a restriction on subsequent sales in perpetuity to ensure the dwellings remain available to those in Housing Need at 20% less than the Agreed Market Value on the date of any subsequent sale or transfer.
"Eligible Household"	A person or persons in need of accommodation who are unable to rent or buy on the open market nominated by the Council in accordance with the Fifth Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council
"Housing Need"	<p>A person or persons in need of accommodation who are unable to buy on the open market, (an indicator of which could be, for example, persons registered with Help to Buy) and approved by the Council with priority given to applicants with a local connection to the district as determined by the Council PROVIDED THAT where a person with a local connection in accordance with the Council's policies cannot be found within the earlier of 20 weeks of:</p> <p>a). the date of the notice of an Institutional Mortgagee's notice of its intention to sell the Discount Market Dwelling; or</p> <p>b). the date upon which the property is made available for sale on the open market</p> <p>to either:</p> <p>a). such other person as the Council may approve in accordance with the Council's housing allocation policies;</p> <p>or in the instance of a sale of a Discount Market Dwelling by an Institutional Mortgagee in possession</p> <p>b). to such person as the Institutional Mortgagee shall so require provided that such sale shall always be at than 20% less than the Agreed Market Value</p>

"Institutional Mortgagee"	A mortgage lender to whom funding the acquisition of residential dwellings to the general public is part of its day-to-day activities or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 by such mortgage lender
"Open Market Dwelling"	A Dwelling that is not an Affordable Dwelling.
"Practically Complete"	the point at which a Dwelling has been completed to Design & Quality Standards (if an Affordable Dwelling), is capable of occupation and a certificate of practical completion has been issued.
"Public Subsidy"	funding provided by the Council, the Homes and Communities Agency or any other public successor body towards the provision of Affordable Housing
"Registered Provider"	as defined in the Housing and Regeneration Act 2008.

The Owners hereby covenants with the Council as follows:

- 1.1 Not to Commence or allow Commencement of the Development unless and until the Affordable Housing Scheme has been submitted to and approved by the Council in writing ("the Approved Affordable Housing Scheme").
- 1.2 Not to construct or procure the construction of the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales set out therein.
- 1.3 Not to Occupy or allow Occupation of more than 50% of the Open Market Dwellings unless and until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and the Affordable Rented Dwellings have been transferred to the approved Provider in accordance with and subject to the following terms:
  - a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
  - b) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;



- c) with the benefit of all necessary easements, rights and utilities; and
  - d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
- 1.4 Subject to paragraph 1.6 not to use the Affordable Dwellings for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme other than by a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;
- 1.5 Subject to paragraph 1.6 not to Occupy the Affordable Rented Dwellings other than in accordance with the provisions of the Fifth Schedule.
- 1.6 Nothing in this Schedule shall be binding on a Chargee PROVIDED THAT any Chargee shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under the terms of its mortgage or charge comply with the requirements under Part 2 Chapter 4 of the Housing and Regeneration Act 2008.

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 hereunto affixed )

Authorised Signatory: )



Head of Democratic Services and  
Monitoring Officer

Executed as a Deed by CRIPPS )  
DEVELOPMENTS LIMITED )  
acting by a director in the presence of: )

Director: )

Signature of Director: )

Name of Witness (in BLOCK CAPITALS): )

Signature of witness )

Address of Witness: )

Executed as a Deed by )  
as Attorney for and on behalf of )  
LLOYDS BANK PLC )  
in the presence of:

Signature of witness )

Address of Witness: )



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 hereunto affixed )

Authorised Signatory: )

Executed as a Deed by CRIPPS )  
DEVELOPMENTS LIMITED )  
acting by a director in the presence of: )

Director: )

Signature of Director: )

David CRIPPS

Name of Witness (in BLOCK CAPITALS): )

Signature of witness )



Address of Witness: )

PAUL LEACH  
PAUL  
DENCOM HOUSE, BURYSGATE  
BULLS, N23 6 4TY

Executed as a Deed by )  
as Attorney for and on behalf of )  
LLOYDS BANK PLC )  
in the presence of: )

Signature of witness )

Address of Witness: )

SIGNED AS A DEED	
BY LISA JANE PACKHAM as authorised signatory for Lloyds Bank in the presence of (signature of witness)	Per Pro Lloyds Bank
	
Wobaston Rd, Wolverhampton WV9 5HZ	

- c) with the benefit of all necessary easements, rights and utilities; and
  - d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
- 1.4 Subject to paragraph 1.6 not to use the Affordable Dwellings for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme other than by a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;
- 1.5 Subject to paragraph 1.6 not to Occupy the Affordable Rented Dwellings other than in accordance with the provisions of the Fifth Schedule.
- 1.6 Nothing in this Schedule shall be binding on a Chargee PROVIDED THAT any Chargee shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under the terms of its mortgage or charge comply with the requirements under Part 2 Chapter 4 of the Housing and Regeneration Act 2008.