

Dated

13th December

2021

(1) SOUTH HOLLAND DISTRICT COUNCIL

AND

(2) BELLWAY HOMES LIMITED

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

VARIATION TO A PLANNING OBLIGATION DATED 7
MARCH 2019

Relating to land off
Wardentree Lane, Spalding (Redmile Nurseries)

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AGREED TERMS

1 INTERPRETATION

1.1 In this Deed unless the context otherwise requires the following terms shall have the following meanings:

First Agreement: means the Deed dated 7 March 2019 made pursuant to Section 116 of the Act relating to the land made between (1) the Council (2) the Original Owner.

1.2 Unless the context requires otherwise, all words and phrases defined in the First Agreement shall have the same meaning in this Deed (except to the extent that they are expressly varied in this Deed).

1.3 References in this Deed to the Owner shall include its respective successors in title to the land.

1.4 References in this Deed to the Council shall include any successor to its functions as local planning authority.

1.5 References in this Deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.

1.6 The clause headings in this Deed are for convenience only and do not form part of this Deed.

1.7 References to clauses, paragraphs, schedules or recitals shall (unless the context otherwise requires) be references to clauses, paragraphs, schedules or recitals in this Deed.

1.8 References to the singular shall include the plural and vice versa.

2 STATUTORY POWERS

This Deed is made pursuant to section 116 of the Act and any other enabling powers and is supplementary to the First Agreement and it is acknowledged by the parties that the obligations

THIS DEED is dated the

13th

day of

December

2021

AND MADE BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("**Council**"); and
- (2) **BELLWAY HOMES LIMITED** of Woolsington House, International Drive, Woolsington, Newcastle Upon Tyne, NE13 8BF (Company Registration No. 00670176) ("**Owner**")

RECITALS

- (A) On 7 March 2019 the Council entered into a Planning Obligation with Mark John Preston and Claire Louise Tidswell ("**Original Owners**") made pursuant to Section 106 of the Act relating to the Land (the "**First Agreement**"). All definitions used in these Recitals are as per the First Agreement unless otherwise stated.
- (B) The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and is capable of enforcing the obligations in the First Agreement.
- (C) The Owner is a successor in title to the Original Owners and is the freehold owner of the Land.
- (D) Without prejudice to the covenants in the First Agreement the parties have agreed to vary the terms of the First Agreement as set out in this Deed.

AGREED TERMS

1 INTERPRETATION

- 1.1 In this Deed unless the context otherwise requires the following terms shall have the following meanings:

First Agreement: means the Deed dated 7 March 2019 made pursuant to Section 106 of the Act relating to the Land made between (1) the Council (2) the Original Owners.
- 1.2 Unless the context requires otherwise, all words and phrases defined in the First Agreement shall have the same meaning in this Deed (except to the extent that they are expressly varied in this Deed).
- 1.3 References in this Deed to the 'Owner' shall include its respective successors in title to the Land.
- 1.4 References in this Deed to the "Council" shall include any successor to its functions as local planning authority.
- 1.5 References in this Deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.6 The clause headings in this Deed are for convenience only and do not form part of the Deed.
- 1.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Deed.
- 1.8 References to the singular shall include the plural and vice versa.

2 STATUTORY POWERS

This Deed is made pursuant to section 106 of the Act and any other enabling powers and is supplemental to the First Agreement and it is acknowledged by the parties that the obligations

contained within this Deed are binding on the Land and are enforceable by the Council as local planning authority against the Owner and against its successors in title to the same extent as the First Agreement in respect of its interest in each and every part of the Land provided always that no person shall be liable for any breach of any covenant or obligation in this Deed after it has parted with all of its interest in the Property or the part of the Property in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

3 VARIATIONS TO THE FIRST AGREEMENT

3.1 Without prejudice to the other covenants in the First Agreement which shall continue in full force and effect, parties to this Deed agree that from the date of this Deed the First Agreement shall be amended as set out in this Deed.

3.2 The obligations and covenants in the First Agreement as varied by this Deed relate to the Land, are planning obligations to which the statutory provisions in clause 2 apply and for the purposes of regulation 122 of the Community Infrastructure Regulations 2010 are necessary, directly related to and fairly and reasonably related in scale and kind to the development of the Land.

4 OWNER'S COVENANTS

The Owner covenants with the Council that it will observe and perform the covenants restrictions and obligations on its part contained in the First Agreement as amended by this Deed.

5 COUNCIL'S COVENANTS

The Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the First Agreement as amended by this Deed.

6 LOCAL LAND CHARGE

6.1 This Deed is a local land charge and the Council shall register it as such as soon as practicable after the completion of this Deed.

6.2 Following the performance and satisfaction of all the obligations contained in the First Agreement as amended by this Deed the Council shall forthwith cancel all the entries made in the register of local land charges in respect of both the First Agreement and this Deed.

7 AGREEMENTS AND DECLARATIONS

The Council agree and confirm that Sage Housing Limited are an approved Affordable Housing Provider.

8 NO FETTER ON DISCRETION

Nothing in this Deed shall fetter or prejudice the Council's statutory rights powers discretions and responsibilities (save where legally or equitably permitted) under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9 SEVERABILITY

It is agreed that if any part of this Deed is declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provision(s) will be severed from the Deed and the remainder of this Deed shall continue in full force and effect.

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and the terms of the Deed may be varied by a deed agreed between the parties without the consent of any third party being required.

11 DISPUTE RESOLUTION

In the event of any dispute or difference arising between the parties arising out of this Deed such dispute or difference shall be dealt with in accordance with clause 14 of the First Agreement.

12 WAIVER

No waiver (whether expressed or implied) by the Council (or the Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

13 JURISDICTION

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England, and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

This Deed has been executed as a deed and delivered on the date stated at the beginning.

SCHEDULE 1 - AMENDMENTS TO FIRST AGREEMENT

- 1 The First Agreement shall be amended as follows:
 - 1.1 The following definition shall be added to clause 1 of the First Agreement:

" **County**" means the County of Lincolnshire".
 - 1.2 The following definition shall be added to clause 1 of the First Agreement:

" **Deed of Variation**" means the deed varying the terms of this Deed made between (1) South Holland District Council and (2) Bellway Homes Limited dated []".
 - 1.3 The following definition shall be added to clause 1 of the First Agreement:

" **Shared Ownership Dwelling**" means an Affordable Dwelling to be let on a shared ownership lease by the Affordable Housing Provider".
 - 1.4 The following definition shall be added to clause 1 of the First Agreement:

" **Staircasing**" means the purchase by a shared owner of additional equity shares in a Shared Ownership Dwelling (for the avoidance of doubt this definition does not apply to the initial purchase of the Shared Ownership Dwelling by the Affordable Housing Provider)".
 - 1.5 The following definition shall be added to clause 1 of the First Agreement:

" **Staircasing Receipts**" means the sum received by the Affordable Housing Provider by way of Staircasing proceeds pursuant to the terms of a shared ownership lease for a Shared Ownership Dwelling, such proceeds shall not include:

 - a) the sum required to redeem the mortgage or charge or relevant security document (if necessary) of the Shared Ownership Dwelling; and
 - b) all reasonably incurred costs of the Affordable Housing Provider in relation to the relevant Shared Ownership Dwelling including those linked to the purchase and sale of the Shared Ownership Dwelling as well as the subsequent Staircasing transaction such costs shall include (but not be limited to) legal expenses and admin fees. "
 - 1.6 The following words shall be added to the definition of Chargee contained in clause 1 of the First Agreement after the words "or chargee to realise its security":

"or any persons or bodies deriving title through such mortgagee or chargee or receiver".
 - 1.7 The following words shall be deleted from the definition of "Intermediate Dwellings" in clause 1 of the First Agreement "shared equity (shared ownership and equity loans) and Intermediate Rent Dwellings". These words shall be replaced with the words "Shared Ownership Dwellings".
 - 1.8 The definition of "**Intermediate Rent Dwelling**" shall be deleted in its entirety from clause 1 of the First Agreement.
 - 1.9 The following words shall be deleted from the definition of "Rented Housing" in clause 1 of the First Agreement "Intermediate Rent Dwelling or".
 - 1.10 Where the words "charge or mortgage" are used in clause 8.10 of the First Agreement they shall be deleted and replaced with the words "mortgage, charge or relevant security document".
 - 1.11 The words "five (5) Working Days" in paragraph 1.7 of Schedule 3 of the First Agreement shall be deleted and replaced with the words "one (1) calendar month".

- 1.12 The words "with any terms deemed by either the Owner or the Affordable Housing Provider to be commercially sensitive redacted" shall be added to paragraph 1.7 of Schedule 3 of the First Agreement after the words "supply a certified copy of such contract".
- 1.13 The word "best" in paragraph 1.11.1 of Schedule 3 of the First Agreement shall be deleted and replaced with the word "reasonable".
- 1.14 The reference to "sub-paragraph 1.11.1" in paragraph 1.11.3 of Schedule 3 of the First Agreement after the words "the Chargee shall have complied with its obligations under" shall be deleted and replaced with the words "sub-paragraph 1.11".
- 1.15 The words "mortgage or charge" in paragraph 1.11.3 of Schedule 3 of the First Agreement shall be deleted and replaced with the words "mortgage, charge or relevant security document".
- 1.16 The words "and for the avoidance of doubt such debt shall include the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses" shall be inserted into paragraph 1.11.3 of Schedule 3 of the First Agreement after the words "that the debt protected by the mortgage, charge or relevant security document shall not be repaid in full".
- 1.17 The words "PROVIDED ALWAYS that the Chargee shall not be entitled to protect a debt greater than the market value of the property valued as an Affordable Dwelling" shall be deleted from paragraph 1.11.3 of Schedule 3 of the First Agreement.
- 1.18 Paragraph 1.12 of Schedule 3 of the First Agreement shall be deleted in its entirety and replaced with the following:

" 1.12 The Affordable Housing Provider shall re-invest Staircasing Receipts in liaison with the Council and shall exercise reasonable endeavours so far as is reasonably practicable to use Staircasing Receipts in part, in full or in conjunction with other sums in the following order of priority:

1.12.1 for the purchase of Affordable Housing within the District;

1.12.2 for the purchase of Affordable Housing within the County;

1.12.3 for the purchase of Affordable Housing outside of the District and County;

1.12.4 this paragraph 1.12 shall determine absolutely five (5) years from the date of the Deed of Variation.

PROVIDED THAT compliance with the above shall not apply where to do so would require the Affordable Housing Provider of the Affordable Housing Units to act in a manner contrary to the requirements of Homes England (or any successor body) or any binding national guidance or direction that determines how any Staircasing Receipts or other capital receipts from the disposal (except for the redemption of any charge or mortgage or relevant security document) of any Affordable Housing Unit should be re-invested or recycled.

Executed as a Deed by the parties and delivered on the date above written.

THE COMMON SEAL OF)
SOUTH HOLLAND DISTRICT COUNCIL)
was affixed in the presence of:)



Authorised Signatory:

EXECUTED AS A DEED by)
BELLWAY HOMES)

LIMITED ACTING BY ITS ATTORNEY NIGEL CLASBY)
PURSUANT TO A POWER OF ATTORNEY DATED 1st SEPTEMBER 2021)
in the presence of:)

ATTORNEY

CA Marshall
Deputy
Aniel
Executive
SIS!

NAME :

Director:

ADDRESS:

Director/Secretary:

WITNESS

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