

DATED 23rd September 2019

(1) LIONCOURT HOMES (DEVELOPMENT NO. 1)
LIMITED

and

(2) EAST STAFFORDSHIRE BOROUGH COUNCIL

SECOND DEED OF VARIATION

under Section 106A of the Town and Country Planning Act
1990 relating to land at Tatenhill Lane, Branston, Burton upon
Trent, in the county of Staffordshire

 **SHAKESPEAREMARTINEAU**

No 1 Colmore Square
Birmingham
B4 6AA

File Ref:

THIS DEED is made the 23rd day of September Two Thousand and Nineteen

BETWEEN:

1. **LIONCOURT HOMES (DEVELOPMENT NO. 1) LIMITED** whose registered office is situate at 3 Apex Park, Wainwright Road, Warndon, Worcester WR4 9FN ("the Owner").
2. **EAST STAFFORDSHIRE BOROUGH COUNCIL** whose principal office is at Town Hall, Burton on Trent, Staffordshire, DE14 2EB ("the Council")

RECITALS:

- A. The Council and the County Council are both a local planning authority for the purposes of Section 106 and 106A of the Act for the area within which the Application Land is situated
- B. On 26 March 2018 the Owner provided a Unilateral Undertaking in favour of the Council and the County Council pursuant to (inter alia) Section 106 of the 1990 Act ("the Original Agreement")
- C. The Application Land was acquired by the Owner (as defined in this Deed) from the County Council on 23 March 2018 and is the registered proprietor under title number SF576041.
- D. In order to facilitate the delivery of Affordable Dwellings on part of the Application Land the Owner seeks and the parties agree to vary the terms of the Original Agreement as set out below.

NOW THIS DEED WITNESSES as follows: -

1. GENERAL

- 1.1 Words importing one gender include all other genders

- 1.2 Clause headings are inserted for convenience only and shall not affect the construction of this Deed and all references to clauses sub-clauses and the Schedule are to clauses sub-clauses and the Schedule of this Deed
- 1.3 References to statutes or statutory instruments include references to any modification extension or re-enactment of them from time to time
- 1.4 Words and phrases defined in the Original Agreement shall have the same meaning when used in this Deed save unless expressly modified by this Deed

2 ENABLING POWERS

This Deed is made pursuant to the provisions of Section 106A of the 1990 Act and all other enabling powers and is a planning obligation for the purposes of the 1990 Act and is enforceable by the Council.

3 EXTENT OF VARIATIONS

- 3.1 Except as varied by the First Schedule to this Deed the Original Agreement shall remain in full force and effect.
- 3.2 For the avoidance of doubt all references in the Original Agreement shall take effect as references to that agreement as varied by this Deed and all references to clauses, schedules and appendices in and to the Original Agreement shall take effect as references to such clauses, schedules and appendices as varied by this Deed.

4 COMMENCEMENT

- 4.1 The amendments specified in the First Schedule to this Deed shall take effect from the date hereof.

5 VARIATIONS

- 5.1 It is hereby agreed between the Council the County Council and the Owner that the Original Agreement are varied as set out in the First Schedule to this Deed.

6 MISCELLANEOUS

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

- 6.2 This Deed shall be registrable as a local land charge by the Council
- 6.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 6.4 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council or the County Council in the exercise of its functions as a local planning authority or under any public or private statute, byelaw or regulation.

7 JURISDICTION

- 7.1 The Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England

8 DELIVERY

- 8.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

The First Schedule

Variations to the Original Agreement

- 1 The heading to Clause 8 “The Chargee” is to be deleted and replaced with “Chargee Liability”
- 2 A new paragraph 8.4 is to be inserted containing the following wording:

“It is agreed that any mortgagee or chargee of the Land from time to time shall not incur any liability for any breach of the terms and conditions of this Deed unless and until such mortgagee or chargee becomes a mortgagee in possession of the Land.”
- 3 The definition of “Affordable Housing Chargee” at paragraph 1.2 of Schedule 2 is to be removed and replaced with the following wording:

“Any mortgagee or chargee or successors in title to such mortgagee or chargee (or any receiver (including any 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) of whole or any part of the Affordable Housing and FOR THE AVOIDANCE OF DOUBT the successor in title to a mortgagee or chargee of a Registered Provider of Social Housing does not apply to any successors in title to any mortgagee or chargee who has complied with the Chargee’s Duty pursuant to clauses XX of the Original Agreement
- 4 The words “in possession” at paragraph 3.1 of Schedule 2 are to be deleted.
- 5 Paragraph 3.2.3 is to be deleted and replaced with the following wording:

“Any purchaser from an Affordable Housing Chargee (where the Affordable Housing Chargee has complied with 3.2.2 above) or any successor in title thereto.”
- 6 The words “not less than three (3) months” at paragraph 4.1 of Schedule 2 are to be deleted.
- 7 The words “responds within three months” at paragraph 4.2 of Schedule 2 are to be deleted and replaced with the words “responds within one month”.
- 8 The words “best endeavours” at paragraph 4.2 are to be deleted and replaced with the words “reasonable endeavours”.

- 9 After the words “free of the restrictions set out in this Schedule 2...” at paragraph 4.3 of Schedule 2 the words “ ...which provisions shall determine absolutely”.
- 10 The words “such three (3) months” at paragraph 4.3 of Schedule 2 are to be deleted and replaced with the words “one (1) month”.
- 11 After the words “free of the restrictions set out in this Schedule 2...” at paragraph 4.4 of Schedule 2 the words “...which provisions shall determine absolutely”.
- 12 The words “secure a transfer” at paragraph 4.4 are to be deleted and replaced with the words “complete a transfer”.
- 13 The words “within three months” at paragraph 4.4 of Schedule 2 are to be deleted and replaced with the words “within two months.”
- 14 The proviso at paragraph 4.5 of Schedule 2 is to be deleted and replaced with the following wording:

“PROVIDED THAT at all times the rights and obligations in this section 4 shall not require the Affordable Housing Chargee act contrary to its duties under the charge or mortgage and that the Affordable Housing Chargee shall not be required to complete a disposal of the whole or any part of the Affordable Housing Unit for a consideration less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses.”

IN WITNESS whereof the parties hereto have executed this Deed on the date first above written

**THE COMMON SEAL of EAST
STAFFORDSHIRE BOROUGH
COUNCIL**

was affixed in the presence of:



Authorised Signatory

SIGNED AS A DEED by
LIONCOURT HOMES
(DEVELOPMENT NO. 1) LIMITED
in the presence of: -

COLIN COLE .
Director

SKOTT HUGHES
Director/Company Secretary

