

DATED 11th December 2019

LANCASHIRE COUNTY COUNCIL
and
RIBBLE VALLEY BOROUGH COUNCIL
and
OAKMERE HOMES (LONGTOWN) LIMITED
and
HANDELSBANKEN PLC

DEED OF VARIATION

Pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) relating to land at Chatburn Road, Clitheroe

Planning reference 3/2019/0859

THIS DEED OF VARIATION is made the 11th day of December 2019

BETWEEN

- (1) **Lancashire County Council** of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ ("**the County Council**")
- (2) **Ribble Valley Borough Council** of Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA ("**the Council**")
- (3) **Oakmere Homes (Longtown) Limited** (Company registration number 06318340) of Helm Bank Natland Kendal Cumbria LA9 7PS ("**the Owner**")
- (4) **Handelsbanken plc** a company incorporated in England and Wales with company number 11305395 and whose registered office is at 3 Thomas More Square, London, E1W 1WY and whose address for service is situated at Bridge Mills, Stramongate, Kendal LA9 4BD ("**the Mortgagee**")

RECITALS

- (A) The Owner is the freehold owner of the land on the north west side of Chatburn Road, Clitheroe, the title of which is registered at H M Land Registry under title number LA703653 which said land is more particularly described in the Original Agreement ("**the Property**").
- (B) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("**the Act**") for the area within which the Property is situated and by whom the obligations contain in this Deed are enforceable.
- (C) The County Council is the County Planning Authority and the local highway authority for the area in which the Property is situated by whom the obligations in Schedule 1 to the Original Agreement are enforceable.

- (D) The County Council is the County Planning Authority and education authority for the area within which the Property is situated by whom the obligations contained in Schedule 3 are enforceable.
- (E) The Mortgagee is the registered proprietor of a charge dated 13th May 2019 registered against the Property.
- (F) The Owner is a subsidiary company of Oakmere Homes (Northwest) Limited and it purchased the Property pursuant to a Transfer dated 13th May 2019 and made between (1) Kathleen Rushton and (2) Oakmere Homes (Longtown) Limited.
- (G) The Property is subject to a section 106 agreement dated 31st October 2018 made under section 106 of the Act pursuant to planning permission reference 3/2017/0653 between (1) Lancashire County Council (2) Ribble Valley Borough Council and (3) Kathleen Rushton (4) Oakmere Homes (Northwest) Limited ("**the Original Agreement**").
- (H) The Owner has by written application applied to the Council to vary the terms of the Original Agreement in the manner set out in the Application.
- (I) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.
- (J) This agreement is made under section 106A of the Act and is supplemental to the Original Agreement.
- (K) Any words or phrases which are defined in the Original Agreement which appear in this Deed of Variation shall have the same meaning as are associated to them in the Original Agreement unless a contrary intention appears from this Deed of Variation.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. Definitions and Interpretation

- 1.1 All words and expressions defined in the Original Agreement shall bear the same meaning in this Deed except where otherwise provided or where the context otherwise requires.
- 1.2 In this Deed of Variation, the following words and expressions shall unless the context otherwise requires have the following meanings:
- ‘**Act**’ means the Town and Country Planning Act 1990 as amended;
- ‘**Application**’ means the section 73 application for planning permission submitted to the Council to amend the terms of the Original Agreement;

2. Variation

- 2.1 It is hereby agreed between the parties in respect of the Property that the Original Agreement is varied in the manner set out in the Schedule to this Deed of Variation.
- 2.2 This Deed of Variation is made pursuant to the statutory provisions and in consideration of the covenants contained herein.
- 2.3 This Deed of Variation contains planning obligations made pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 which are enforceable by the Council and shall bind the Property.
- 2.4 The provisions of this Deed of Variation shall have immediate effect upon the completion of this Deed.
- 2.5 This Deed of Variation is governed and constructed in accordance with the law of England and Wales.
- 2.6 The expressions ‘the Council’ and ‘the Owner’ shall include their successors in title and assigns.

2.7 This Deed of Variation is a Local Land Charge and shall be registered as such.

2.8 No person shall be liable for breach of a covenant or covenants contained in this Deed after he shall have parted with all interest in the Property or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

2.9 Any mortgagee shall be liable only for the breach of the provisions of this Deed during such period as it is mortgagee in possession of the Property

2.10 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("the 3rd Party Act") to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the 3rd Party Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.

3. **Miscellaneous**

3.1 The Owner agrees to pay the Council and County Council legal fees in respect of the drafting negotiation and completion of this Deed of Variation in the sum of £200 (two hundred pounds) and (£125) (one hundred and twenty five pounds) respectively .

4. **Mortgagee's consent**

4.1 The Mortgagee hereby consents to the completion of this Deed and acknowledges that from the date hereof its interest in the Property shall be bound by the restrictions and obligations contained herein as if the Deed had been executed and registered as a land charge prior to the creation of the interest of the Mortgagee in the Property PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Property (or part of it) in which case it too will be bound

by the Owner's obligations herein as if it were a person deriving title from the Owner.

Schedule

The Parties hereby mutually agree that the Original Agreement is to be varied as follows:

1. The definition of “Affordable Housing Unit” in the Original Agreement shall be deleted and shall be replaced with the following:-

“Affordable Housing Unit” means those 9 Dwellings which are provided as Affordable Housing on the Site of which 4 units numbered 1, 2, 8 and 9 on the Plan shall constitute Discounted Market Sale Units, 2 units numbered 3 and 4 on the Plan shall constitute “Affordable Ownership Housing” and 3 units numbered 5, 6 and 7 of the Plan shall constitute Affordable Rented Housing and “Affordable Housing Unit” shall be constructed accordingly;

2. Reference in the definition of “Affordable Ownership Housing” to “...up to a maximum of 55% of OMV...” shall be replaced with “....up to a maximum of 75% of OMV...”
3. A new definition shall be inserted as follows:-

“Discounted Market Sale Units” means the 4 Discount Market Sale Units numbered 1,2,8 and 9 on the Plan sold to persons in Priority Order as defined in the Original Agreement at a sale price of not greater than 70% of Open Market Value with the sale price and Priority Order criteria approved by the Council in writing.

4. Clause 1.2 of Schedule 2 to the Original Agreement shall be deleted and shall be replaced with the following:-

- 1.2. The Affordable Housing Scheme referred to in this agreement provides for 9 of the Dwellings to be constructed within the Development as Affordable Housing Units of which 4 of the Affordable Housing Units shall be Discounted Market Sale Units, 3 of the Affordable Housing Units shall be Affordable Rented Housing and 2 of the Affordable Housing Units shall be Affordable Home Ownership. The Over 55 Accommodation shall be at least 15% of the total number of Affordable Housing Units to meet the identified need for Over 55 Accommodation as part of the 9

Affordable Housing Units of the Development Units 1, 2, 8 and 9 on the Plan shall be The Over 55's Accommodation.

5. A new additional clause shall be added at Schedule 2 Clause 1.12 as follows:

A form L Restriction in favour of the Council shall be included in the Land Registry Form TR1 or TP1 for each and every Discount Market Sale Unit sale to a plot purchaser in the following form:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by Ribble Valley Borough Council or its conveyancer that the provisions of Schedule 2 of the Section 106 Agreement dated 31 October 2018 as varied have been complied with".

6. In all other respects the Original Agreement shall remain in full force and effect.

IN WITNESS whereof of these present have been duly executed as a Deed by the parties hereto the day and year first before written:

The common seal of

LANCASHIRE COUNTY COUNCIL

Was hereunto affixed to this Deed

in the presence of:



Authorised Signatory



28503

The common seal of

RIBBLE VALLEY BOROUGH COUNCIL

Was hereunto affixed to this Deed

in the presence of:



[Redacted]
[Redacted]
[Redacted]

Mayor

Chief Executive

1840

SIGNED AS A DEED by

Oakmere Homes (Longtown) Limited
acting by a Director

[Redacted]

Director

In the presence of:

Signature of witness ..

[Redacted]

Name (in BLOCK CAPITALS)

Address ..

[Redacted]

Signed as a deed by

[Redacted]

as attorneys for Handelsbanken plc

[Redacted]

[Redacted]

[Redacted]

..... as attorney
for Handelsbanken plc

in the presence of:

.....

Signature of witness

.....

Name of witness (IN BLOCK CAPITALS)

.....

Address of witness

.....

Occupation of witness

..... as attorney
for Handelsbanken plc

in the presence of:

.....

Signature of witness

.....

Name of witness (IN BLOCK CAPITALS)

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Address of witness

.....

Occupation of witness