

**DATED**

**2022**

**LANCASHIRE COUNTY COUNCIL**

and

**RIBBLE VALLEY BOROUGH COUNCIL**

and

**OAKMERE HOMES (LONGTOWN) LIMITED**

and

**HANDELSBANKEN PLC**

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**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 3/2020/0325**

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**THIS DEED OF VARIATION** is made the                      day of                      2022

**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 situate at Bridge Mills, Stramongate, Kendal LA9 4BD (“**the Mortgagee**”)

**RECITALS**

- (A) The Owner is the freehold owner of the land on the north of Chatburn Road, Clitheroe, the title of which is registered at H M Land Registry under title numbers LAN251745 and 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 13<sup>th</sup> May 2019 registered against that part of the Property that falls within title number LA703653 and has agreed to enter into this Agreement to give its consent to the terms of this Agreement.
- (F) The Owner purchased the Property pursuant to a Transfer dated 16<sup>th</sup> August 2021 and made between (1) Nicholas Guy Le Gendre Starkie and Irene Lillian Ann Chenery and (2) the Owner.
- (G) The Property is subject to a section 106 agreement dated 15<sup>th</sup> July 2021 made under section 106 of the Act pursuant to planning permission reference 3/2020/0325 between (1) Lancashire County Council (2) Ribble Valley Borough Council and (3) Nicholas Guy Le Gendre Starkie and Irene Lillian Ann Chenery (4) the Owner (5) Handelsbanken PLC (“**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 application 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. **Mortgagee’s consent**

3.1 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 shall be varied as follows:

1. "Plan 2" in the Original Agreement shall be substituted with this Plan 2 attached to this Agreement.

2. Clause 1.2.2 of Schedule 3 shall be deleted and substituted with the following clause:-

1.2.2 One of the Over 55 Accommodation Units (which shall be a Market Dwelling) shall be a 3-bedroom house and shall be constructed on Plot 9 as shown on Plan 2 ("the Market Over 55 Accommodation Unit").

3. Clause 1.5 of Schedule 3 shall be amended by the addition of the following words at the end of the clause:-

"and subject to the provisions of clause 1.7 of this Agreement")

4. Clause 1.7 of the Original Agreement shall be deleted in its entirety and the following clause substituted:-

1.7. In the event that despite the proper marketing of the Market Over 55 Accommodation Units no sale of the Market Over 55 Accommodation Unit has been effected:-

(a) in the case of the Owner within 3 (three) months of Practical Completion of the said Unit; and

(b) in the case of a sale by the successors in title to the Owner within 4 (four) months from the date of commencement of marketing the said Unit

then paragraph 1.8 of this Schedule 3 (below) shall apply in respect of such Market Over 55 Accommodation Unit.

5. The words "Where paragraph 1.7 applies then:" in clause 1.8 of Schedule 3 shall be deleted and substituted with the following words:

"Where paragraph 1.7 applies then the provisions of clauses 1.8 to 1.10 inclusive shall apply and all references to "the Owner" in these clauses shall be to the Owner and the Owner's successors in title".

6. Clause 1.10 of Schedule 3 shall be deleted in its entirety and the following clause substituted:-

1.10 In the event that the Council or an Expert (pursuant to clause 13 of this Deed) confirms pursuant to this paragraph 1.10 of this Schedule 3 or clause 13 (as the context requires) that despite complying with paragraph 1.6 of this Schedule 3 the Owner has been unable to sell the Market Over 55 Accommodation Unit to those eligible for such then the Owner shall be entitled to dispose of the Market Over 55

Accommodation Unit to those eligible for such units on the open market free from the restrictions of this Schedule 3 provided that on the subsequent sale of the Market Over 55 Accommodation Unit the provisions of Schedule 3 will apply to such sale.

7. 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 .....

The common seal of

**RIBBLE VALLEY BOROUGH COUNCIL**

Was hereunto affixed to this Deed

in the presence of:

Mayor .....

Chief Executive .....

SIGNED AS A DEED by

**Oakmere Homes (Longtown) Limited**  
acting by a Director

..... Director

In the presence of:

Signature of witness .....

Name (in BLOCK CAPITALS) .....

Address .....

Signed as a deed by ....., (.....) and .....  
.....) as attorneys for Handelsbanken plc

.....  
..... as attorney  
for Handelsbanken plc

.....  
..... as attorney  
for Handelsbanken plc

in the presence of:

in the presence of:

.....  
Signature of witness

.....  
Signature of witness

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Name of witness (IN BLOCK CAPITALS)

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Name of witness (IN BLOCK CAPITALS)

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Address of witness

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Address of witness

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Occupation of witness

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Occupation of witness