

Dated 14<sup>th</sup> November 2018

PETER LAURENCE TATHAM AND DAVID ROBERT TATHAM

and

GLADMAN DEVELOPMENTS LIMITED

and

RYEDALE DISTRICT COUNCIL

and

KEEPMOAT HOMES LIMITED

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**Deed of Variation**

pursuant to Section 106A of the Town and Country  
Planning Act 1990 relating to land (also known as  
"Site B") at Langton Road, Norton, Malton

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WE HEREBY CERTIFY THIS TO  
BE A TRUE COPY OF THE ORIGINAL  
Ward Hadaway  
WARD HADAWAY  
SOLICITORS  
102, QUAYSIDE  
NEWCASTLE UPON TYNE NE1 3DX  
DATED: 16/11/18

**wardhadaway**  
lawfirm

This Agreement is made the *14<sup>th</sup>* day of *November* 2018

**By**

1. **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, YO17 7HH ("the Council");
2. **PETER LAURENCE TATHAM** and **DAVID ROBERT TATHAM** both of High Farm, Welham, Norton, Malton, North Yorkshire, YO17 9QY and **GLADMAN DEVELOPMENTS LIMITED** (company registration number 3341567) whose registered office is at Gladman House, Alexandria Way, Congleton Business park, Congleton, CW12 1LB ("the Mortgagee"); and
3. **KEEPMOAT HOMES LIMITED** (company registration number 02207335) whose registered office is at The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL ("the Owner")

**Whereas**

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site (as described in the Original Agreement) is situated and the body entitled to enforce the obligations in this Deed and the Original Agreement.
- B. The Owner is the freehold owner of the Site as described in Schedule 1 of the Original Agreement further to a transfer dated 3 September 2018.
- C. The Mortgagee is the owner of a charge over the Site further to a charge dated 3 September 2018.
- D. A Section 106 Agreement was entered into by the Council (1) Peter Laurence Tatham and David Robert Tatham (2) and Gladman Developments Limited (3) on 18 August 2016 ("the Original Agreement").
- E. Outline planning permission was granted on 22 July 2016 for the construction of up to 85 Dwellings together with the formation of vehicular access although the Original Agreement restricted the number of Dwellings to be constructed on the Site to 79.
- F. The parties have agreed that the terms of the Original Agreement shall be varied and the parties have agreed to enter into this Deed to reflect such agreement.

**NOW THIS DEED** is made pursuant to section 106A of the Act and is a planning obligation for the purposes of that section and **WITNESSES** as follows:

1. **INTERPRETATION**

1.1. All references, clauses, definitions and paragraphs refer to the Original Agreement (unless expressly stated otherwise) and are used in this Deed;

1.2. In this Deed unless the contrary intention appears the following terms shall have the following meanings ascribed to them:

"Plan 2" means the plan titled "Plan 2" and annexed hereto as Appendix 1

2. **VARIATIONS**

2.1. The parties agree that the Original Agreement shall remain in full force and effect save as expressly varied by the Schedule.

2.2. It is hereby agreed between the parties that the variations and modifications to the Original Agreement contained in the Schedule shall take effect from the date of this Deed as though they had originally been contained in the Original Agreement.

3. **REGISTRATION AS A LAND CHARGE**

The Council shall register this Deed as a local land charge.

4. **GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

5. **CONTRACTUAL RIGHTS OF THIRD PARTY**

No term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

6. **MORTGAGEE'S CONSENT**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in the Original Agreement as varied by this Deed and that the security of the mortgage over the Site shall take effect subject to the Original Agreement as varied by this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under the Original Agreement as varied by this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**IN WITNESS** of which the parties have executed this Deed on the date first written above

## THE SCHEDULE

### Variations to the Original Agreement

1. The parties hereby agree that the following amendments shall be made to the Original Agreement:-
  - 1.1. The definition of "Affordable Housing" in clause 1.1.2 of the Original Agreement shall be deleted in its entirety and replaced with the following:

*"Affordable Housing' means the Affordable Housing Units provided to Eligible Occupiers whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future Eligible Occupiers"*
  - 1.2. The definition of "Affordable Housing Units" in clause 1.1.5 of the Original Agreement shall be deleted in its entirety and replaced with the following:

*"the Affordable Housing Units' means that part of the Development comprising of 30 of the Dwellings which shall be constructed for Affordable Housing, 15 of which shall be 2 bedroom 4 Person Affordable Rented Units at 59.37sqm, 11 of which shall be 3 bedroom 5 Person Intermediate Rented Units at 87.21sqm and 4 of which shall be 3 bedroom 5 Person Shared Ownership Units at 87.21sqm and 'an Affordable Housing Unit' shall be construed accordingly."*
  - 1.3. The definition of "Chargee" at clause 1.1.11 of the Original Agreement shall be deleted in its entirety and the following shall be inserted in its place:

*"a Chargee' means a mortgagee or chargee (or any receiver (including an 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 (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or charge and any successors in title thereto"*
  - 1.4. The definition of "the Chargee's Duty" in clause 1.1.12 of the Original Agreement shall be deleted in its entirety and, to avoid the renumbering of subsequent clauses shall be replaced with the wording "1.1.12 – [this clause number is not in use]"
  - 1.5. A new clause 1.1.50 shall be inserted into the Original Agreement as follows:

*"Intermediate Rented Units' shall mean those 11 Affordable Housing Units shown coloured brown and marked with an asterix on Plan 2 to be rented at an Intermediate Rent"*

- 1.6. A new clause 1.1.51 shall be inserted into the Original Agreement as follows:

*"Intermediate Rent' shall mean those Dwellings rented at a rent of no more than eighty per cent (80%) of the open market rent for the relevant property*

- 1.7. A new clause 1.1.52 shall be inserted into the original Agreement as follows:

*"Shared Ownership Units' shall mean those 4 Affordable Housing Units shown coloured brown and marked with a triangle on Plan 2 which are to be owned and managed by a Registered Provider such that they are occupied on the basis of a Shared Ownership Lease "*

- 1.8. A new clause 1.1.53 shall be inserted into the Original Agreement as follows:

*"Shared Ownership Lease' shall mean such lease being a lease as shall from time to time be in accordance with the Regulator of Social Housing's model form of shared ownership lease or such other successor bodies model form of lease"*

- 1.9. The definition of "Affordable Housing Scheme" at clause 1.1.4 of the Original Agreement shall be deleted in its entirety and to avoid the renumbering of subsequent clauses shall be replaced with the wording "1.1.4 – [this clause number is not in use]"

- 1.10. The definition of "Discounted Sale Dwellings" at clause 1.1.17 of the Original Agreement shall be deleted in its entirety and to avoid the renumbering of subsequent clauses shall be replaced with the wording "1.1.17 – [this clause number is not in use]"

- 1.11. The definition of "Discounted Sale Price" at clause 1.1.18 of the Original Agreement shall be deleted in its entirety and to avoid the renumbering of subsequent clauses shall be replaced with the wording "1.1.18 – [this clause number is not in use]"

- 1.12. The definition of "Intermediate Housing" at clause 1.1.27 of the Original Agreement shall be deleted in its entirety and to avoid the renumbering of subsequent clauses shall be replaced with the wording "1.1.27 – [this clause number is not in use]"

- 1.13. The definition of "Resale Covenant Scheme" at clause 1.1.45 of the original Agreement shall be deleted in its entirety and to avoid the renumbering of subsequent clauses shall be replaced with the wording "1.1.45 – [this clause number is not in use]"

- 1.14. The definition of "Affordable Rented Housing" at clause 1.1.6 of the original Agreement shall be deleted in its entirety and replaced as follows:

*"Affordable Rented Units' shall mean those 15 Affordable Housing Units shown coloured blue and marked with an asterisk on Plan 2 and to be let at an Affordable Rent"*

- 1.15. The definition of "Commuted Affordable Housing Contribution" at clause 1.1.14 of the Original Agreement shall be deleted in its entirety and replaced as follows

*"Commuted Affordable Housing Contribution' means in respect of each Affordable Housing Unit means the sum equivalent to the actual sale price of the relevant Dwelling less the Agreed Transfer Value of that Affordable Housing Unit on the date that it is sold by the Owner on the open market;"*

- 1.16. A new clause 1.1.54 shall be inserted into the Original Agreement as follows:

*"Plan 2' means the plan attached to this Deed and marked 'Plan 2'"*

- 1.17. A new clause 1.1.55 shall be inserted into the Original Agreement as follows:

*"Affordable Rent' means rented housing let to an Eligible Occupier and such rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the local market rent (inclusive of service charges), or target rents where greater"*

- 1.18. A new clause 1.1.56 shall be inserted into the Original Agreement as follows:

*"Eligible Occupier' shall mean:*

*(a) In relation to the Affordable Rented Units that the occupier in question is in Housing Need and meets the criteria set out in Schedule 6;*

*(b) In relation to the Intermediate Rented Units that the occupier in question meets the criteria set out in Schedule 6 and meets the allocation criteria of the Registered Provider from time to time.*

*(c) In relation to the Shared Ownership Units that the occupier in question is in Housing Need and meets the criteria set out in Schedule 6*

- 1.19. A new clause 1.1.57 shall be inserted into the Original Agreement as follows:

*"Housing Need" means that the occupier in question has economic circumstances meaning that they cannot afford to secure, or have difficulty securing, accommodation on the open market (to rent or buy as the context requires)"*

- 1.20. A new clause 1.1.58 shall be inserted into the Original Agreement as follows:

*"Practical Completion' shall mean the date upon which a certificate of practical completion is issued by the Owner's architect or such*

*other person who is monitoring the Development on behalf of the Owner and "Practically Completed" shall be construed accordingly";*

- 1.21. Clause 1.1.49 of the Original Agreement shall be deleted in its entirety and replaced with the following:

*"the Travel Plan' means the travel plan prepared by the Owner and approved in accordance with Condition 13 of application 15/00098/MOUT approved by appeal APP/Y2736/W/15/3136237 before Occupation of any of the Dwellings;"*

- 1.22. A new Clause 1.1.59 shall be inserted into the Original Agreement as follows:

*"Agreed Transfer Value" shall mean the sum as calculated in accordance with Schedule Seven"*

- 1.23. A new Clause 1.1.60 shall be inserted into the Original Agreement as follows:

*"Occupant" shall mean "A person who occupies any part of the Affordable Rented Units or Intermediate Rented Units in accordance with the terms of this Agreement"*

- 1.24. Clause 6.2 of the Original Agreement shall be amended such that the following words shall be inserted at the end of the clause following "by reference to a plan":

*"SAVE THAT this provision shall not apply in the context of a transfer of a Market Housing Unit to an owner-occupier of Dwellings constructed pursuant to the Planning Permission or those deriving title from such owner-occupiers.*

- 1.25. Paragraph 1.2. of Schedule 3 of the Original Agreement shall be deleted in its entirety

- 1.26. Paragraph 4 of Schedule 2 shall be deleted in its entirety and a new Paragraph 4 relating to Affordable Housing shall be inserted as follows:

*"4.1 No more than:*

*4.1.1 30% of the Market Housing Units to be constructed on the Site shall be Occupied until 25% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made available for residential Occupation;*

*4.1.2 60% of the Market Housing Units to be constructed on the Site shall be Occupied until 50% of the Affordable Housing Units have been constructed in accordance with Planning Permission and made available for residential Occupation*

*4.1.3 80% of the Market Housing Units to be constructed on the Site shall be Occupied until all of the Affordable Housing Units have been constructed in accordance with Planning Permission and made available for residential Occupation"*

4.2 *From the Date of Practical Completion of the Affordable Housing Units they shall not be used other than in accordance with the provisions of this Deed, save that this obligation shall not be binding:*

4.2.1 *on any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees; or*

4.2.2 *on any Chargee; or*

4.2.3 *on any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor;*

4.2.4 *any successor in title to any of the parties mentioned in paragraphs 4.2.1-4.2.3 above*

4.3 *The Owner shall market the Affordable Housing Units for transfer to a Registered Provider and for the avoidance of doubt, the parties agree that such marketing commenced in January 2017.*

4.4 *Any transfer of Affordable Housing Land shall include the following:*

4.4.1 *full and free rights of access both pedestrian and vehicular from the public highway to such Affordable Housing Land;*

4.4.2 *full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to such Affordable Housing Land, all such services to be connected to the mains;*

4.4.3 *A reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development*

#### ***Affordable Rented Units and Intermediate Rented Units***

4.5 *Subject to the terms of this Deed (and particularly the exemptions in paragraph 4.2 hereof), the Affordable Rented Units and Intermediate Rented Units shall only be Occupied on the first and any subsequent letting as follows:*

4.5.1 *by a person and his family who on allocation of the Affordable Rented Unit or Intermediate Rented Unit was an Eligible Occupier*

4.5.2 *on the basis of being let for an Affordable Rent or Intermediate Rent as relevant or less*

4.5.3 *subject to paragraphs 4.10 and 4.11 below as soon as reasonably practicable after Practical Completion of the Affordable Rented Units or Intermediate Rented Units (it being agreed that nothing shall prevent the Owner from selling the Affordable Housing Land or from selling incomplete Affordable Rented Units or*



*Intermediate Rented Units to a Registered Provider prior to Practical Completion) the Owner shall (if he does not already comprise a Registered provider) transfer the Affordable Rented Units and Intermediate Rented Units to a Registered Provider.*

*4.5.4 The Owner of the Affordable Rented Units and Intermediate Rented Units shall choose a potential Occupant using the North Yorkshire Home Choice or the Council's Allocations Scheme and the Eligibility Criteria set out in Schedule 6, upon a choice being made such person's details shall be submitted to the Council for approval PROVIDED THAT if no such approval or rejection has been received within 14 days of such details being submitted the Council shall be deemed to have approved the persons whose details have been submitted to it.*

*4.5.5 If the Council is not content that the person whose details are submitted fulfils the Eligibility Criteria (acting reasonably at all times) as set out in Schedule 6 it shall communicate its decision to the Owner within 14 days (with its reasons) whereupon the Owner shall submit a different persons details for approval and the procedure set out in this paragraph and paragraph 4.5.4 shall continue to operate until such time as the Council has either approved the details submitted or has failed to respond within the 14 day period required.*

#### **Shared Ownership Units**

*4.6 Subject to paragraphs 4.2, 4.10 and 4.11 hereof as soon as reasonably practicable after Practical Completion of the Shared Ownership Units (it being agreed that nothing shall prevent the Owner from selling Affordable Housing Land upon which the Shared Ownership Units are to be constructed or from selling incomplete Shared Ownership Units to a Registered Provider prior to Practical Completion) the Owner (if he does not already comprise a Registered Provider) shall transfer the Shared Ownership Units to a Registered Provider.*

*4.7 Subject to paragraphs 4.2, 4.10 and 4.11 hereof no Shared Ownership Unit ("SOU") on the first or any subsequent transfer shall be Occupied otherwise than by an Eligible Occupier on the basis of such Eligible Occupier entering into a Shared Ownership Lease PROVIDED that the provisions of this Deed shall cease to apply to a SOU where the tenant of it has subsequently purchased from the Registered Provider all shares in the said SOU so that the tenant then owns the freehold of it.*

*4.8 It is hereby PROVIDED AND AGREED that (subject to paragraph 4.2 hereof): -*

*4.8.1 every time an SOU shall become available for occupation again in the future it shall be allocated to an Eligible Occupier, and*

*4.8.2 in the case of the first letting of an SOU, the Owners shall be free to market those SOU's to an Eligible Occupier at any point prior to the construction of such Dwellings being completed.*

- 4.9 No provision herein shall prevent any SOU from being subsequently occupied on the basis of the payment of an Affordable Rent or Intermediate Rent PROVIDING ALWAYS that the Council is first of all notified of such change in tenure in which case the Affordable Housing Unit in question shall for the purposes of this Deed be treated as an Affordable Rented Unit or Intermediate Rented Unit as relevant, and it is further agreed that the said unit may at any time in the future revert to the tenure of a SOU on reasonable notice of the same being given to the Council in writing PROVIDED THAT the SOU shall at all times Occupied as a sole or principal residence by the Owner for the time being of the SOU

**Commuted Affordable Housing Contribution**

- 4.10 In the event that the Owner is unable to exchange contracts in respect of a transfer to a Registered Provider of some or all of the Affordable Housing Units within a period of three months from the completion of the s106 Deed of Variation dated [14 November 2018] and made between the Council (1) the Mortgagee (2) the Owner (3) the Owner may give written notice to the Council ("Notice") at any time thereafter and the Owner shall use reasonable endeavours for a further period of 3 months following the date of the Notice to exchange contracts with a Registered Provider. WJA
- 4.11 In the event that contracts have not been exchanged for the transfer of the Affordable Housing Units on the terms of this Agreement at the end of the three-month period referred to in paragraph 4.10 hereof then the Owner shall be permitted to dispose of the Affordable Housing Units to be constructed within the Development that may not have been contracted to be sold to a Registered Provider individually on the open market free from the restrictions and obligations contained in this Deed and the Owner shall within 6 weeks of a sale of any of the Affordable Housing Units on the open market pay to the Council the Commuted Affordable Housing Contribution attributable to the relevant Affordable Housing Unit sold on the open market.
- 4.12 For the avoidance of doubt any Affordable Housing Unit that is subject to a transfer on the open market for the purposes of clause 4.11 hereof shall be free of any affordable housing obligations pursuant to any terms of this Deed and shall be treated for the purposes hereof as a Market Housing Unit.
- 1.27. A new part 6 shall be inserted into Schedule 2 of the Original Agreement as follows:
- "6. Travel Plan**
- 6.1 The Owner shall implement the approved Travel Plan in accordance with the timescales contained therein
- 1.28. A new Schedule 5 shall be inserted into the original Agreement as follows:

**"Schedule 5**

**The Council's Covenants with the owner**

The Council covenants with the Owner as follows:

1. *At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed*
2. *To use (or procure the use of) all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.*
3. *That it will return such amount of the Air Quality Contribution, the Bus Stop Contribution, the Highways Contribution, paid pursuant to this Deed to the person making the payment which has not been expended or committed to be expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council of the payment.*
4. *The Council shall provide to the person making the payment such evidence as the person making the payment shall reasonably require in order to confirm the expenditure of sums paid by that person under this Deed."*

1.27 A new Schedule 6 shall be inserted into the Original Agreement as follows:

**"SCHEDULE 6**

**ELIGIBILITY CRITERIA**

1. **The Owner shall ensure the Affordable Housing Units are occupied by persons:**
  - 1.1 *who have for a period of at least 3 years been ordinarily resident within the towns of Norton or Malton; or*
  - 1.2 *who have been permanently employed in the towns of Norton or Malton for 3 years or more; or*
  - 1.3 *if no such person qualifies under paragraphs 1.1 or 1.2 above for occupation a person ordinarily resident for a period of at least 3 years in any of the Parishes which adjoin the towns of Norton or Malton; or*
  - 1.4 *if no such person qualifies under paragraph 1.3 above for occupation then a person ordinarily resident for a period of at least 3 years in any area in the District of Ryedale; or*

1.5 *if no such person qualifies under paragraph 1.4 above then persons who have a strong local connection with Ryedale District by one of the following means:-*

1.5.1 *family association in the area of Ryedale District,*

1.5.2 *any period of ordinary residence in the area of Ryedale District not immediately before the date on which any Affordable Housing Unit becomes vacant, or*

1.5.3 *through their work provide important services to Ryedale District and who need to live closer to the local community or who have employment within the area of Ryedale District"*

1.27.1 The plan attached to this Deed as Appendix 1 is to be appended to the Original Agreement.

1.27.2 A new Schedule Seven to the Original Agreement shall be inserted as follows;

**AGREED TRANSFER VALUES**

<u>Property Type</u>	<u>Minimum Gross Internal Floor Area</u>	<u>Built in storage</u>	<u>Transfer Value Social/Affordable Rent (*1)</u>
1B2P Flat	50	1.5	£45,000
1B2P Bungalow	50	1.5	£45,000
1B2P House	58	1.5	£52,200
2B3P Flat	61	2.0	£54,900
2B3P Bungalow	61	2.0	£54,900
2B4P Flat	70	2.0	£63,000
2B4P Bungalow	70	2.0	£63,000
2B4P House	79	2.0	£71,100
3B5P House (2 Storey)	93	2.5	£83,700
3B5P House (3 Storey)	99	2.5	£89,100
4B6P House (2 Storey)	106	3.0	£95,400
4B6P House (3 Storey)	112	3.0	£100,800
4B7P House (2 Storey)	115	3.0	£103,500
4B7P House (3 Storey)	121	3.0	£108,900
4B8P House (2 Storey)	124	3.0	£111,600
4B8P House (3 Storey)	130	3.0	£117,000

Executed as a Deed (but not delivered until the date of it) by affixing

THE COMMON SEAL OF  
RYEDALE DISTRICT COUNCIL

In the presence of:

[Redacted box]

Council Solicitor

.....  
Authorised Signatory

Signed as a deed by  
PETER LAURENCE TATHAM

in the presence of: -

[Redacted box]



Minute 934/82  
Reg No. 7013  
Initials *KWJ*

Witness Signature:

[Redacted box]

Name:

*Susan Martin*

Address:

*Timbertops, Cranham*

*G10S*

*944 84R*

Occupation:

*Administrator*

<sup>PRT</sup>  
Signed as a deed by  
DAVID ~~PETER~~ TATHAM  
<sup>ROBERT</sup>  
in the presence of: -

Witness Signature:

Name:

Address:

Occupation:

[Redacted Signature Box]

SUSAN COATES  
CONY COTTAGE  
MAIN STREET, WESTON,  
YORK, YO6 7NE  
RETIRED POLICE OFFICER

Executed as a deed,

by

GLADMAN DEVELOPMENTS LIMITED

acting by a director

[Redacted Signature Box]

Director (Jonathan Mark Stansfield Shepherd)

[Redacted Signature Box]

Director / Company Secretary

In the presence of: Tom Johnson

Name Tom JOHNSON  
Gladman Legal Department  
Gladman House Alexandria Way  
Congleton Cheshire CW12 1LB

Occupation: Solicitor

**Executed as a DEED**

by

**KEEPMOAT HOMES LIMITED**

acting by

.....  
Director

.....  
Director/ ~~Company~~ Secretary



Appendix 1

Plan 2

plan site b

