

Dated 22nd July 2020

(1) **TENDRING DISTRICT COUNCIL**

- and -

(2) **BELLWAY HOMES LIMITED**

DEED OF VARIATION

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THIS AGREEMENT is made the 22nd day of July 2020

BETWEEN:

- (1) **TENDRING DISTRICT COUNCIL** of Thorpe Road, Weeley, Clacton-on-Sea Essex CO16 9AJ ("the Council")
- (2) **BELLWAY HOMES LIMITED** (company registration number 00670176) of Seaton Burns House, Dudley Lane, Newcastle upon Tyne ("the Landowner")

INTRODUCTION:

- (A) This Deed varies a unilateral undertaking dated 23 April 2018 from (1) Christopher Dean Harrington, Benjamin Shaw Harrington, Marcus Gail Harrington, Nicola Jill Harrington, Marion Dawn Nicolas, Philip David Beardwell, Jacqueline Sylvia Beardwell and Robin Ian Piggott to (2) Tendring District Council with the consent of (3) Gladman Developments Limited (the Original Undertaking).
- (B) The Landowner is now the registered proprietor of the Site.
- (C) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (D) The Council and the Landowner have agreed to enter into this Deed to vary the Original Undertaking.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

- 1.1 References to this Deed means this Deed of variation.
- 1.2 This Deed is supplemental to and varies the provisions of the Original Undertaking.
- 1.3 Words and expressions defined in the Original Undertaking shall, unless the context otherwise requires, bear the same meanings in this Deed.
- 1.4 The provisions in the Original Undertaking regarding interpretation shall apply to this Deed.
- 1.5 Save as varied by this Deed the Parties affirm and confirm the contents of the Original Undertaking.

2. LEGAL EFFECT

- 2.1 This Deed constitutes a planning obligation for the purposes of the 1990 Act which binds the Site and the Council is the local planning authority by whom the obligations are enforceable.
- 2.2 This Deed is a variation to the Original Undertaking in so far as it relates to the Site and is made pursuant to section 106 and 106A of the 1990 Act.
- 2.3 Nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise by it of its statutory functions and the rights, powers, duties and obligations of the Council under private statutes are effectively exercised as if it were not a party to this Deed.
- 2.4 This Deed shall be registered as a local land charge in the Register of Local Land Charges
- 2.5 This Deed is subject to and will be construed in all respects in accordance with the provisions of English law.

- 2.6 It is hereby agreed between the Parties that the provisions of this Deed take effect upon the date of this Deed.

3. VARIATION OF THE ORIGINAL UNDERTAKING

- 3.1 The Parties hereby agree that from the date of this Deed the Original Undertaking shall be varied as follows:

- 3.1.1 The definition of Chargee shall be deleted and replaced as follows:

3.1.1.1 **Chargee** means any mortgagee or chargee or any receiver or manager (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.

- 3.1.2 The definition of Chargee's Duty shall be deleted.

- 3.1.3 The following definitions shall be added as follows:

Register means the register maintained by the Regulator pursuant to section 111 of the Housing and Regeneration Act 2008;

Registered Provider means a private provider of social housing which is designated in the Register as a non-profit organisation under sub-sections 115(1)(a) or 278(2) of the Housing and Regeneration Act 2008 or a private provider of social housing which is designated in the Register as a profit-making organisation under section 115(1)(b) of the Housing and Regeneration Act 2008.

Regulator means the Regulator of Social Housing established pursuant to Chapter 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Right to Acquire Sale means the sale of any completed residential units where a Registered Provider shall be required to dispose of the same pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable including any such right arising from any voluntary scheme entered into by a Registered Provider; and

Right to Buy Sale means the sale of any completed residential units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or any similar or substitute right applicable including any such right arising from any voluntary scheme entered into by a Registered Provider.

- 3.2 Paragraph 4.5 of Schedule 2 of the Original Undertaking shall be deleted and replaced with the following:

4.5 From the date of Practical Completion of the Affordable Housing Units, they shall not be used other than for Affordable Housing in accordance with the Approved Affordable Housing Scheme.

- 3.3 Paragraph 4.6 of Schedule 2 of the Original Undertaking shall be deleted and replaced with the following:

- 4.6 The obligations at paragraph 4.5 of this Second Schedule shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee provided that:
- 4.6.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 4.6.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the provisions of paragraphs 4.5 of this Second Schedule, which provisions shall determine absolutely.
- 4.6.3 The obligations at paragraph 4.5 of this Second Schedule shall cease to apply to any Affordable Housing Unit:
- 4.6.3.1 following a Right to Acquire sale or a Right to Buy sale of that Affordable Housing Unit;
- 4.6.3.2 where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof;
- 4.6.3.3 in respect of which a shared ownership lease has been granted and where a Registered Provider shall have disposed of 100% of the equity under the terms of such lease and shall not bind a shared ownership leaseholder who is disposing on the open market in accordance with its rights and obligations under that lease nor bind the mortgagee or chargee or Receiver of such leaseholder.

4. MISCELLANEOUS

- 4.1 If any provisions in this Deed shall be held invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 4.2 No waiver (whether express or implied) by the Council of any breach or default by the Landowner in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Landowner.
- 4.3 Save as expressly varied by this Deed the Original Undertaking shall remain in full force and effect.

5. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

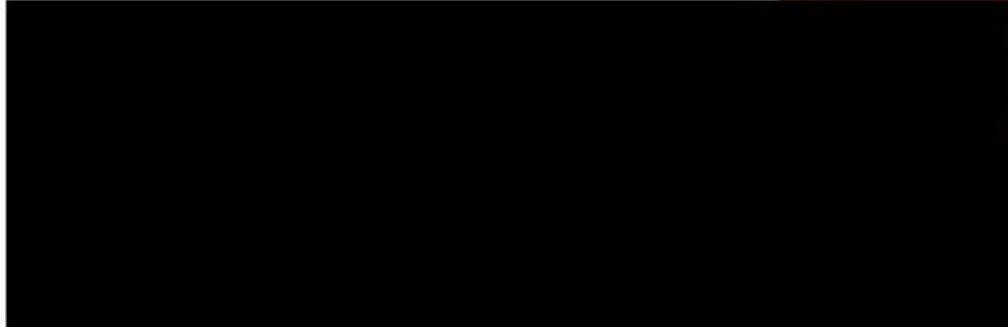
Without prejudice to the definitions of the "Council" and the "Owner", any rights or benefits that may be conferred under the Contract (Rights of Third Parties) Act 1999 are expressly excluded for the purposes of this Deed.

This Deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SIGNATURE PAGE

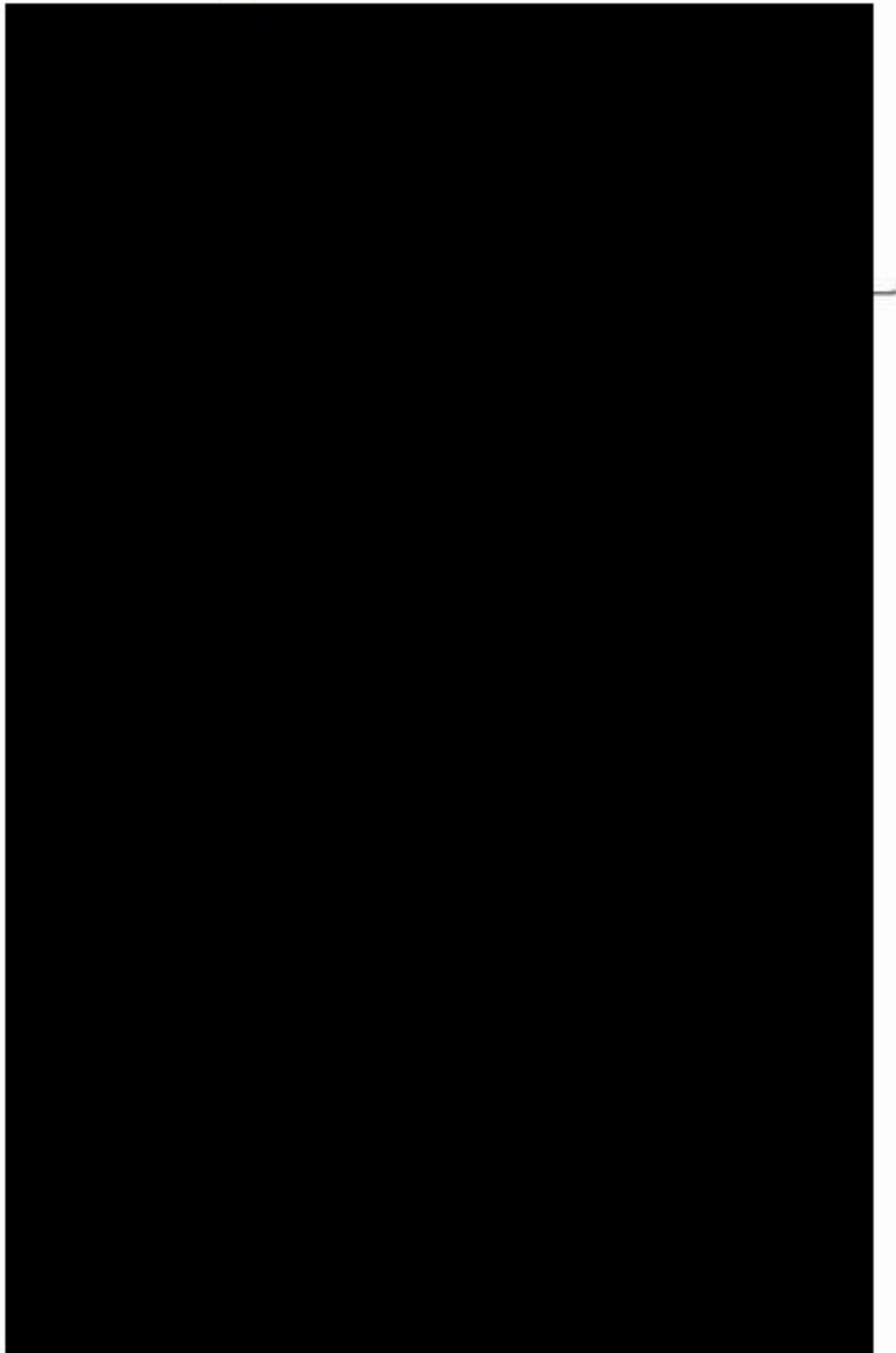
The Common Seal of
**TENDRING DISTRICT
COUNCIL** was affixed
in the presence of:-

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EXECUTED AS A DEED by)
~~NIGEL SLADBY~~/JAMIE HALL)
Acting as attorney for **BELLWAY**)
HOMES LIMITED)
Under a Power of Attorney)
dated 21st May 2019)

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In the presence of: