

**DATED**

8th November 2016

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF  
THE TOWN & COUNTRY PLANNING ACT 1990**

**relating to**

**Land at Burton Road, Ludgate Street Farm, Tutbury,  
Staffordshire**

Planning Ref: P/2011/00546/CEH/PO – P/2011/00547/CEH/PO

**Between**

**East Staffordshire Borough Council**

**And**

**Trent & Dove Housing Limited**

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THIS DEED is dated

8th November 2016

**BETWEEN**

- (1) EAST STAFFORDSHIRE BOROUGH COUNCIL of The Maltsters Wetmore Road, Burton-upon-Trent, Staffordshire DE14 1LS ('the Council'); and
- (2) TRENT & DOVE HOUSING LIMITED a registered society under the Co-operative and Community Benefit Societies Act 2014 with registered number 030668R of Trinity Square, Horninglow Street, Burton on Trent, DE14 1BL ('the Owner')

**BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (TCPA 1990) for the area in which the Property is situated.
- (B) On 09 May 2012 the Original Agreement was entered into.
- (C) The Owner has a freehold interest in the Affordable Housing.
- (D) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.
- (E) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

**AGREED TERMS**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

**1.1 Definitions:**

**Chargee:** any mortgagee or chargee (including a security trustee) of the registered social landlord who at the relevant time has a mortgage or charge over the Affordable Housing or the successors in title to such mortgagee or charge (including a security trustee) or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or Housing and Planning Act 2016 in respect of that Registered Provider of Social Housing

**Original Agreement:** the agreement made under section 106 of the TCPA 1990 dated 09 May 2012 and made between (1) George Ernest Shaw (2) East Staffordshire Borough Council (3) Staffordshire County Council and (4) Peveril Homes Limited

**The Head of Service (Section 151 Officer):** means the person the Council shall appoint as the Head of the Department responsible for Planning Services for the time being

**the Property:** land at Burton Road, Ludgate Street Farm, Tutbury, Staffordshire

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. **STATUTORY PROVISION**

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. **VARIATIONS TO THE ORIGINAL AGREEMENT**

- 3.1 Clause 2.12, 2.12.1, 2.12.2, 2.12.3 at Schedule 3 of the Original Agreement shall be deleted and replaced with the following:

**Chargee's Duty**

2.12 The Chargee prior to seeking to dispose of the Affordable Housing pursuant to any default under the terms of its mortgage or charge must give not less than one months prior notice to the Head of Service (Section 151 Officer) of its intention to dispose and the notice must make specific reference to this Agreement and:

2.12.1 If the Head of Service (Section 151 Officer) responds within one month from receipt of the notice indicating that he is seeking arrangements for the transfer of the Affordable Housing in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use reasonable endeavours to secure such transfers

2.12.2 if the Head of Service (Section 151 Officer) does not serve his response to the notice served under paragraph 2.12.1 within one month then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule.

2.12.3 if the Council responds in accordance with paragraph 2.12.1 but neither it or any person secures such a transfer within three months from receipt of the notice given under paragraph 2.12 then provided that the Chargee shall have complied with its obligations under paragraph 2.12.1 the Chargee shall be entitled to dispose of the Affordable Housing free of the restrictions set out in this Schedule.

PROVIDED THAT at all times the rights and obligations in this paragraph 2.12 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

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

**4. COVENANTS TO THE COUNCIL**

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

**5. LOCAL LAND CHARGE**

This deed shall be registered as a local land charge.

**6. COUNCIL'S COSTS**

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

**7. VALUE ADDED TAX**

7.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

**8. THIRD PARTY RIGHTS**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

**9. 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.

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

EXECUTED AS A DEED

By affixing the COMMON SEAL of

**EAST STAFFORDSHIRE BOROUGH COUNCIL**

In the presence of:-

Authorised signatory



EXECUTED AS A DEED

by **TRENT & DOVE HOUSING LIMITED**

acting by

Signature.....  
Director

A handwritten signature consisting of a large 'X' shape, written over the dotted line for the signature of the Director.

Signature.....  
[Secretary][Director]