

DATED

7th January 2013 ~~2012~~

- (1) BROADLAND DISTRICT COUNCIL
- (2) NORFOLK COUNTY COUNCIL
- (3) HOPKINS HOMES LIMITED
- (4) WHERRY HOUSING ASSOCIATION LIMITED
- (5) TRUSTEES OF THE AYLSHAM AND DISTRICT CARE TRUST

DEED OF VARIATION

relating to a Section 106 Agreement dated 23 March 2006
as varied by further agreements dated 20 June 2007 and
18 October 2010 in respect of a development of land at St
Michael's Hospital Cawston Road, Aylsham, Norfolk

THIS DEED OF VARIATION is made on the 7th day of January 2013

BETWEEN

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU ("the Council");
- (2) NORFOLK COUNTY COUNCIL of County Hall, Martineau Lane, Norwich, NR1 2DH ("the County Council");
- (3) HOPKINS HOMES LIMITED (Company Registration Number 02875798) whose registered office is at Melton Park House, Melton, Woodbridge, Suffolk, IP12 1TJ ("Hopkins");
- (4) WHERRY HOUSING ASSOCIATION LIMITED of Circle Anglia House, 1-3 Highbury Station Road, London, N1 1SE ("Wherry"); and
- (5) JENNY MANUEL and EDWARD HARE as TRUSTEES OF THE AYLSHAM AND DISTRICT CARE TRUST of 121 Norwich Road, Aylsham, Norfolk NR11 6QJ ("ACT");

BACKGROUND

- (A) On 23 March 2006 the Council (1) the County Council (2) Broadland Primary Care Trust (3) the Trustees of the Aylsham and District Care Trust (4) and Wherry entered into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 ("the Act") in relation to the Development ("the Agreement").
- (B) By deeds of variation made pursuant to Section 106 of the Act dated 20 June 2007 and made between the Council (1) the County Council (2) Hopkins (3) HSBC Bank PLC (4) ("the First Variation") and 18 October 2010 and made between the Council (1) the County Council (2) Hopkins (3) Wherry (4) and HSBC Bank PLC (5) ("the Second Variation") the Agreement was thereby varied.
- (C) Hopkins are now the freehold owners of that part of the Site currently registered under title number NK339527 at the Land Registry which is no longer subject to a charge to HSBC Bank PLC ("The Hopkins Land") and have joined into this deed to confirm their consent to this deed and the alteration of the Agreement, the First Variation and the Second Variation.
- (D) Wherry are the freehold owners of plots 122 to 125 (inclusive) and registered under title number NK390712 at the Land Registry and the land upon which the Housing with Care Units are to be constructed which is registered under title number NK404624 at the Land Registry

- (E) ACT are the freehold owners of that part of the Site upon which the Community Centre is to be constructed which is registered under title number NK391474 at the Land Registry.

CO-OPERATIVE PROVISIONS

1. INTERPRETATION AND ADDITIONAL DEFINITIONS

- 1.1 This deed is made pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended).
- 1.2 Words and expressions defined in the Agreement and the First Variation and the Second Variation have the same meanings in this deed (except to the extent that they are expressly varied by this deed).
- 1.3 The provisions of the Agreement and the First Variation and the Second Variation relating to its interpretation apply equally to this deed (except to the extent that they are expressly varied by this deed).
- 1.4 This deed is supplemental to the Agreement and First Variation and the Second Variation. A breach of this deed is to be regarded as a breach of the Agreement and the First Variation and the Second Variation.
- 1.5 The parties to this deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. VARIATION OF CLAUSES

- 2.1 The Agreement and the First Variation and the Second Variation is to be read and interpreted as if the variations to it set out in the Schedule attached hereto were set out in full in the Agreement.

3. EFFECTIVE DATE

- 3.1 The amendments to the Agreement and the First Variation and the Second Variation made by this deed take effect from and including the date of this deed.

4. CONTINUATION OF THE AGREEMENT

- 4.1 The terms of the Agreement and the Variation continue in effect as amended by this deed.

5. HOPKINS CONSENT

- 5.1 Hopkins, as owners of the Hopkins Land hereby consent to this deed of variation of the Agreement, the First Variation and the Second Variation

and agree to be bound by its terms in so far as such alterations are applicable to the Hopkins Land but otherwise shall have no liability for the provisions of this deed or have any liability for any breach of its terms regardless of how such breach occurs.

6. **LEGAL COSTS**

- 6.1 Wherry will pay the Council's reasonable legal costs incurred in connection with the negotiation and execution of this Deed prior to its completion

7. **EXECUTION**

- 7.1 The parties have executed this deed as a deed and it is delivered on the date set out above.

THE SCHEDULE

Variation of the Agreement

1. The following amendments shall be made to the Agreement as varied by the First Variation and the Second Variation:-

- 1.1 The definition of "Affordable Housing" shall be deleted and replaced with the following:-

"Affordable Housing" means housing of a type which, having regard to its rent or other consideration, is suitable for occupation by people who are Qualifying Occupiers and is owned or managed by the Registered Provider which include twenty six (26) Housing with Care Units for people over the age of 55 years and the tenure of which, in relation to the Affordable Housing which is not Housing with Care Units is as set out at Appendix 5 and the tenure of which in relation to the Affordable Housing which is Housing with Care Units is set out at Appendix 6

- 1.2 The definition of "Affordable Housing Units" shall refer to 33% (Thirty Three percent) instead of 35% (Thirty Five percent)

- 1.3 There shall be inserted after the definition of "Education Contribution" in clause 1 the following definitions:

"Elderly Shared Ownership Dwelling" means a Residential Unit (and a Affordable Housing Unit) which is one of the Housing with Care Units which is let or sublet on an Elderly Shared Ownership Lease."

"Elderly Shared Ownership Lease" means a lease or sublease of a Housing with Care Unit granted at a premium and which at the time of grant of the lease or sublease complies with the requirements of the Homes and Communities Agency in respect of Shared Ownership for the Elderly and which currently restricts the tenant from acquiring more than a 75% interest in such lease";

- 1.4 In the definition of "Free Market Dwellings" after the words "Affordable Housing Units" there shall be inserted the words "or Local Sale Units"

- 1.5 In the heading of the definition which commences with "Housing with Care Units" after the word "means" there will be inserted the following:

"the 26 Affordable Housing Units and 4 Local Sale Units to be constructed on the Development known as Green Lane View by or on behalf of Wherry which are:"

and in subparagraphs (a) and (b) of the definition there shall be deleted the words "older people" and "older persons" and substituted in each case "people

over the age of 55 years" and after subparagraph (b) of the definition of "Housing with Care Units" there shall be added the following:

"the tenure and the number of Residential Units for which is set out in Appendix 6"

- 1.6 In the definition of "Local Lettings Policy" after the first instance of the words "Affordable Housing" there shall be inserted the words "Units and Local Sale Units" and after the words "the title "Local Lettings Policy" shall be deleted "- Affordable Housing"

- 1.7 After the definition of "Local Lettings Policy" there shall be inserted the following definitions:

"Local Sale Unit" means a Residential Unit which is one of the Housing with Care Units which is let or sublet by way of a lease granted at a premium in exchange for the whole beneficial interest in such a lease or sublease and which is to be made available for occupation by a Qualifying Occupier only (subject as set out in paragraph 7 of Schedule 2);"

"Minimum Care Need" means a level of care and support needs defined by the County Council that requires the use of services provided by the agency providing on-site support;"

- 1.8 In the definition of "Qualifying Occupiers" the following amendments shall be made:

After "Affordable Housing Unit" or "Affordable Housing Units" wherever such terms shall appear in this definition there shall be inserted the words "or Local Sale Unit" or "or Local Sale Units" as the context requires and after "(i)" there shall be inserted the following words "with the exception of Elderly Shared Ownership Dwellings and Local Sale Units"

After "Homelessness Act 2002)" there shall be deleted the word "and" and inserted "(ii) persons who have been"

"(iii)" shall be substituted for "(ii)" and "(iv)" shall be substituted for "(iii)"

After the word "Registered" there shall be deleted the words "Social Landlord" and inserted instead the word "Provider".

In the 13th line of the definition of "Qualifying Occupiers" there shall be inserted after the words "Shared Ownership Dwellings" the words "Elderly Shared Ownership Dwellings and Local Sale Units"

In the 17th line of the definition of "Qualifying Occupiers" there shall be deleted the words "Social Landlord's" and inserted the word "Provider's" and then in the

last line of the definition of "Qualifying Occupiers" after the word "Dwellings" there shall be inserted the words "and Local Sale Units" and in the same line after the word "and" there shall be inserted the word "Market";

1.9 In the definition of "Registered Social Landlord" wherever it shall appear in this definition there shall be deleted the word "Social Landlord" and inserted instead the word "Provider"

1.10 In the definition of "Rental Dwellings" there shall be made the following deletions and substitutions:

There shall be deleted the words "Housing Corporation" and inserted instead the words "Homes and Communities Agency or Tenant Services Authority" in two places;

The words "Social Landlord" shall be deleted and inserted instead the word "Provider".

2. In clause 1.2.4 there shall be deleted the words "registered social landlord" and inserted instead the words "Registered Provider".

3. In clause 11.2, after the words "Affordable Housing Units" there shall be inserted the words "and that the obligations contained in paragraph 5 of Part 1 to Schedule 2 shall be enforceable against the owners/occupiers of Local Sale Units and that the obligations contained in paragraphs 10 and 11 of Part 1 to Schedule 2 shall be enforceable against the owners/occupiers and/or tenants of Housing with Care Units"

4. In clause 11.3 there shall be inserted after the words and numbers "in paragraphs 1, 2" the number "3".

5. In Schedule 2 Part 1 of the Agreement the following amendments will be made:

5.1 In the heading after "Affordable Housing" the words "and Local Sale Units" shall be inserted

5.2 In paragraph 1 in the second line after the words "Affordable Housing Units" the words "and Local Sale Units" shall be inserted, in the fifth line after the words "Affordable Housing" the words "and Local Sale Units" shall be inserted and in the sixth line after the words "Rental Dwellings" there shall be inserted the words "Local Sale Units, Elderly Shared Ownership Dwellings and"

5.3 In paragraph 3 after the words "Affordable Housing Units" there shall be inserted the words "(with the exception of those that are the Housing with Care Units)" and the words "Social Landlord" shall be deleted and inserted

instead the words "Provider and the Housing with Care Units to be constructed, completed and ready for occupation by 31 October 2012".

- 5.4 In paragraph 5 after the words "Affordable Housing Units" there shall be inserted the words " (including, for the avoidance of doubt, the Elderly Shared Ownership Dwellings) and Local Sale Units"
- 5.5 In paragraph 6 after the words "Affordable Housing Units" there shall be inserted the words "or Local Sale Units"
- 5.6 Paragraph 7 shall be deleted and the following paragraph shall be inserted in its place:
7. Paragraph 2 above (after all the Affordable Housing Units comprised within the Development have been constructed and transferred to the Registered Provider) and paragraphs 4, 5, and 6 above:
- 7.1 shall not be binding upon any mortgagee or chargee and any successor in title to such mortgagee or chargee lawfully exercising its power of sale in relation to the Affordable Housing Units (excluding the Housing With Care Units) or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee or chargee and any successor in title to such mortgagee or charge;
- 7.2 shall cease to apply where the Registered Provider shall be required to dispose of any Affordable Housing Unit (excluding the Housing With Care Units) pursuant to a right to buy under Part 5 of the Housing Act 1985 or a right to acquire under Section 16 of the Housing Act 1996 or any similar or substitute right applicable, and shall not be binding upon any successor in title following such a disposal;
- 7.3 shall not be binding upon any mortgagee or charge pursuant to any lending arrangement with the Registered Provider and any successor in title to such mortgagee or chargee lawfully exercising its power of sale in relation to the Housing With Care Units or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee or chargee and any successor in title to such mortgagee or charge; and
- 7.4 shall not be binding upon a tenant of a Shared Ownership Lease (for the avoidance of doubt, not including any tenant of an Elderly Shared Ownership Lease) who has staircased to a 100% interest in a Shared Ownership Lease and any successor in title to such person.
- 5.7 Wherever in paragraphs 6, 7, and 8.1 and 8.2 the words "Social Landlord" shall appear they shall be deleted and substituted with the word "Provider".

5.8 After paragraph 8.2 there shall be inserted new paragraphs 9, 10 and 11 as follows:

9 Paragraphs 9.1 to 9.5 shall apply in respect of the initial sale of the Local Sale Units and the Elderly Shared Ownership Dwellings as follows:

9.1 not less than eight calendar months prior to the anticipated date of practical completion of the Local Sale Units and/or the Elderly Shared Ownership Dwellings under the terms of their construction contract Wherry shall serve notice upon the Council requesting nominations of persons who are able and willing to purchase Local Sale Units and/or the Elderly Shared Ownership Dwellings in accordance with the terms of this Agreement.

9.2 Wherry will provide the persons nominated by the Council under paragraph 9.1 with the relevant information regarding the Local Sale Unit or Elderly Shared Ownership Dwelling (as appropriate), the sale price, estimated service charges and any other relevant information that it would be reasonable to provide in such circumstances and will offer to sell the relevant Local Sale Unit or Elderly Shared Ownership Dwelling to the nominee as appropriate.

9.3 In the event that a nominee fails to reserve the appropriate Local Sale Unit and/or Elderly Shared Ownership Dwelling in accordance with Wherry's standard procedure within 28 days of being provided with the information referred to in paragraph 9.2 then Wherry will notify the Council and request a further nomination whereupon the procedure set out in paragraphs 9.2 and 9.3 shall be repeated.

9.4 Wherry will not be obliged to seek further nominations from the Council or to dispose of the property to a Council nomination once six months has elapsed since practical completion under the terms of Wherry's construction contract and any nominee nominated in accordance with paragraphs 9.1 to 9.3 who has not entered into a legally binding agreement to purchase the Local Sale Unit or the Elderly Shared Ownership Dwelling within 2 months of reservation shall not be permitted to proceed and Wherry will instead be permitted to dispose of the Local Sale Unit or Elderly Shared Ownership Dwelling to a household of its own choosing and notwithstanding the terms of this Agreement may convert the tenure to that of a Rental Dwelling.

9.5 The sale price of the Local Sale Unit or the Elderly Shared Ownership Dwelling shall be based on open market value determined by Wherry's professional valuers in accordance with the current practice statements of the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual.

10 Unless agreed jointly by Wherry the Council and the County Council (such agreement not to be unreasonably withheld or delayed) none of the Housing with

Care Units shall be occupied by households which do not contain a member with a Minimum Care Need.

11 The process by which households are nominated to initial lettings and sales of the Housing with Care Units will be set out in a document to be jointly negotiated and agreed by Wherry, the Council and the County Council in consultation with ACT that will reflect the matters contained in paragraphs 9.1 to 9.5 and 10 above and shall be called the "St Michael's Housing with Care Allocation Protocol".

6. In Schedule 2 Part 2 of the Agreement the following amendment shall be made:

6.1 In paragraph 3 there shall be deleted the words "occupation of the 100th Residential Unit on the Site." and there shall be inserted instead the following:

"31st August 2012 and for the avoidance of doubt this paragraph does not restrict the number of Residential Units that may be occupied before the Community Centre building (including associated car park) will be substantially completed in a good and workmanlike manner and available for use"

7. In the heading of Appendix 2 after "Local Lettings Policy" the rest of this heading shall be deleted.

8. In Appendix 5 the figure "80%" in the first column of the table shall be replaced with "100%".

9. After Appendix 5 there shall be inserted in the Agreement an Appendix 6 as follows:

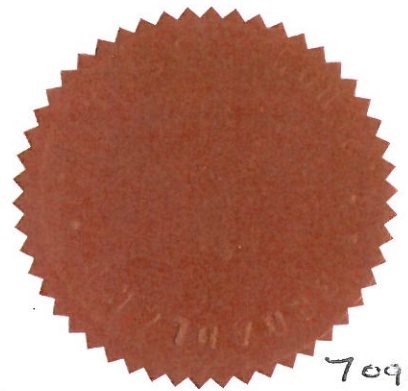
Tenure	Number of Bedrooms	Type	Number of Units	Approximate area of Unit in square metres	Plot Reference
Rental Dwelling	1	Housing with Care	16	50	
Rental Dwelling	2	Housing with Care	4	75	
Elderly Shared Ownership Dwellings	1	Housing with Care	3	50	1,3,18
Elderly Shared Ownership Dwellings	2	Housing with Care	3	75	4,19, 20
Local Sale Units	1	Housing with Care	2	50	10, 26
Local Sale Units	2	Housing with Care	2	75	9, 25

EXECUTED as a deed by
affixing the Common Seal of
BROADLAND DISTRICT COUNCIL
in the presence of:

)
)
)
)

M. Threl

Democratic
Head of ~~Corporate~~ Services
and Monitoring Officer

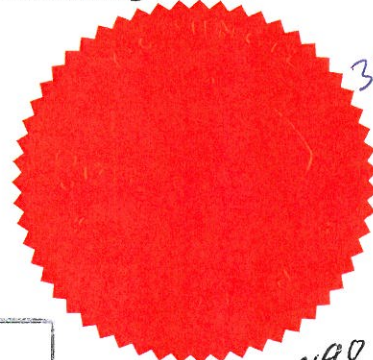


EXECUTED as a deed by
affixing the Common Seal of
NORFOLK COUNTY COUNCIL
in the presence of:

)
)
)
)

CGM

authorised to sign
on behalf of: **Head of Law**



17198

EXECUTED as a deed by
affixing the Common Seal of
WHERRY HOUSING ASSOCIATION LIMITED
in the presence of:

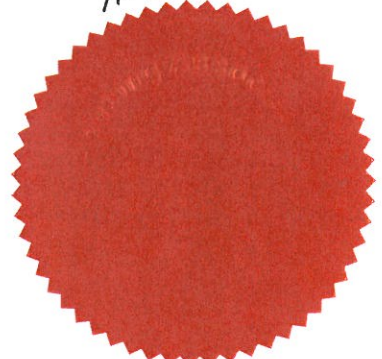
)
)
)
)

Authorised Signatory

D. P. K.

Authorised Signatory

8th C. R. R. R.



EXECUTED as a deed by
HOPKINS HOMES LIMITED
acting by
a director and its company secretary
or two directors

)
)
)
)
)

JB

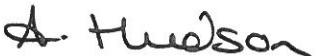
Director

M. P. R.
Director/Secretary

SIGNED as a deed for and on behalf of the
TRUSTEES OF THE AYLSHAM AND DISTRICT
CARE TRUST by JENNY MANGER



in the presence of: ANNETTE HUDSON

Witness signature: 

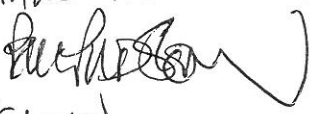
Name: ANNETTE HUDSON

Address: WALK OF LIFE, LOW RD, THURLTON, NORWICH
Occupation: PERSONAL ASSISTANT NR14 6PZ

SIGNED as a deed for and on behalf of the
TRUSTEES OF THE AYLSHAM AND DISTRICT
CARE TRUST by EDWARD HARE



in the presence of: PHIL PURSLOW

Witness signature: 

Name: PHIL PURSLOW

Address: CARMARIA, THE BUTTLANDS, WELLS - NEAR THE SEA, NORFOLK NR23 7EX
Occupation: CHARTERED SURVEYOR