

DATED

18th October

10
2009

- (1) BROADLAND DISTRICT COUNCIL
- (2) NORFOLK COUNTY COUNCIL
- (3) HOPKINS HOMES LIMITED
- (4) WHERRY HOUSING ASSOCIATION LIMITED
- (5) HSBC BANK PLC

DEED OF VARIATION

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

THIS DEED OF VARIATION is made on the 18th day of October 2009

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 1-3 Highbury Station Road, London, N1 1SE ("Wherry"); and
- (5) HSBC BANK PLC (Company Registration Number 14259) of Sheffield Securities Processing Centre, PO Box 3924, Sheffield, S1 9ED ("the Bank")

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 in relation to the Development ("the Agreement").
- (B) By a deed of variation made pursuant to Section 106 of the Town and Country Planning Act 1990 ("the Act") (and other statutory provisions) dated 20 June 2007 and made between the Council (1) the County Council (2) Hopkins (3) the Bank (4) ("the 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.
- (D) Wherry are the freehold owners of plots 122 to 125 (inclusive) as shown on the Current Plan and have entered into an agreement to purchase the Affordable Housing Units by virtue of an agreement dated 29 March 2006 (as varied by an agreement dated 23 July 2009) both made between Hopkins (1) and Wherry (2).
- (E) HSBC Bank Plc hold two charges over the land comprised in title number NK339527 dated 18 April 2006 and 24 April 2009 ("the Charges") and have joined into this deed to confirm their consent to this deed.

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 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 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 Variation. A breach of this deed is to be regarded as a breach of the Agreement and 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.
- 1.6 "Current Plan" means plan reference AYL 1-3-004-1 Rev K prepared by Hopkins Homes dated November 2008 ~~a copy of which is attached hereto~~ and which was approved by the Council under planning permission reference 20061912 for this Site.

2. VARIATION OF CLAUSES

- 2.1 The Agreement and the 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.

~~2.2~~ *see*

3. EFFECTIVE DATE

- 3.1 The amendments to the Agreement and the 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. LEGAL COSTS

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

6. **EXECUTION**

- 6.1 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 defined term shall be deleted from the Agreement:
 - 1.1 In clause 1 the definition of "Shared Equity Dwellings" shall be deleted in its entirety.
 - 1.2 In the definition of "Registered Social Landlord" under clause 1 there shall be deleted the following:

"(within the meaning of the Housing Act 1996 or any statutory re-enactment or modification thereof)"

and substituted in place of the above the following:

"(which is either a Registered Social Landlord registered under the Housing Act 1996 or a registered provider registered under Section 111 of the Housing and Regeneration Act 2008)"
 - 1.3 The words "Shared Equity Dwellings and" and "and Shared Equity Dwellings" in the definition of "Qualifying Occupiers" in clause 1 and the words "and Shared Equity Dwellings" in paragraph 1 Part 1 Schedule 2 and the words "or a Shared Equity Dwelling" in paragraph 7 of Part 1 of Schedule 2 of the Agreement shall be deleted.
2. In the definition of "Shared Ownership Lease" in clause 1 the words "80% (eighty per cent) of the equitable interest in the Affordable Housing Unit" shall be deleted and the following inserted in its place:

"100% (one hundred per cent) of the equitable interest (and/or takes a transfer of a freehold interest therein) in the Affordable Housing Unit"
3. The Chargee hereby consents to the execution of this deed and the variation of the Agreement and Variation.
4. In Schedule 2 Part 1 of the Agreement the following amendments shall be made:
 - 4.1 After the words "mortgagee" in lines 3 and 6 of paragraph 7 there shall be inserted the words "or chargee and any successor in title to such mortgagee or chargee".
 - 4.2 After the word "or" in line 8 of paragraph 7 there shall be inserted the words "right to acquire under" and after the word "applicable" in line 9 of paragraph 7

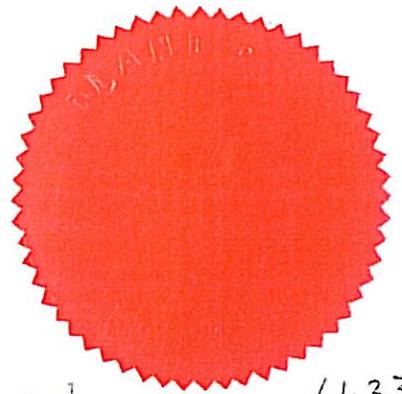
there shall be added the following words "and any successor in title to such person".

4.3 There shall be added at the end of paragraph 7 the following words:

"or upon a tenant of a Shared Ownership Lease who has staircased to a 100% interest in a Shared Ownership Lease and/or taken a transfer of the freehold of the property comprised in such Shared Ownership Lease and any successor in title to such person".

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

)
)
)
)



6433

M. Moore
**Head of Corporate Services
and Monitoring Officer**

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

)
)
)
)



30007

C. Seaman

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

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

)
)
)
)



10063

Authorised Signatory

Authorised Signatory

W. Co. of
W. Co. of

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

)
)
)
)
)

S. B.

Director

Director/Secretary

[Signature]

IN WITNESS WHEREOF this document which is intended to take effect as a deed has been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day and year first above written.

SIGNED AND DELIVERED

by

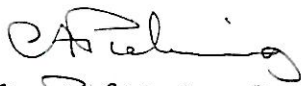
HUGH SAMUEL GREENING

TAYLOR



Attorney of
HSBC Bank plc

in the presence of:



Witness: CARA PICKERING

Address: HSBC BANK PLC
4TH FLOOR, 120 EDMUND ST
BIRMINGHAM B3 2QZ

Occupation BANK OFFICIAL

1735-6 (7/99) - UOI = 1 x PK250