

DATED

12 August

2020

(1) BROADLAND DISTRICT COUNCIL

and

(2) CLARION HOUSING ASSOCIATION LIMITED

DEED OF VARIATION

PURSUANT TO SECTION 106 AND SECTION 106A TOWN AND COUNTRY PLANNING ACT
1990 AND OTHER POWERS IN RELATION TO LAND KNOWN AS:

1 – 4 Station Road, Swannington,
NR9 5SY

Minerva House
5 Montague Close
London SE1 9BB
DX: 156810 London Bridge 6

T 020 7593 5000
F 020 7593 5099
www.wslaw.co.uk

Winckworth
Sherwood

Solicitors and
Parliamentary Agents

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	2
2.	OPERATIVE POWERS.....	3
3.	AMENDMENTS TO THE ORIGINAL S.106 AGREEMENT	3
4.	WAIVER	5
5.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1990	5
6.	COUNCIL'S LEGAL FEES.....	5
7.	MISCELLANEOUS.....	6
8.	SEVERANCE	6
9.	GOVERNING LAW	6

Minerva House
5 Montague Close
London SE1 9BB
DX: 156810 London Bridge 6

T 020 7593 5000
F 020 7593 5099
www.wslaw.co.uk

Winckworth
Sherwood

Solicitors and
Parliamentary Agents

THIS DEED OF VARIATION AND SUPPLEMENTATION is made the 12th
2020

day of August

BETWEEN

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Norwich, NR7 0DU ("the **Council**")
- (2) **CLARION HOUSING ASSOCIATION LIMITED** (Registered Society Number: RS007686) whose registered office is Level 6, 6, More London Place, London, England, SE1 2DA (the "**Owner**")

together referred to as "**the Parties**"

INTRODUCTION

- (A) This Deed of Variation is made pursuant to section 106 and section 106A of the Town and Country Planning Act 1990 Act ("**the 1990 Act**") and is supplemental to and varies a section 106 agreement dated 10 June 2016 (the "**Original S.106 Agreement**") made between (1) Broadland District Council and (2) Wherry Housing Association Limited
- (B) The freehold of the Site was transferred from Wherry Housing Association to the Owner by a transfer dated 18 January 2018 and the Owner is the freeholder owner of the Site registered under Title Number NK88824
- (C) The Council is the local planning authority for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable
- (D) The Council has agreed to enter into this agreement to change the tenure of the Affordable Housing Units

INTERPRETATION:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The words and expressions defined in this Deed shall have the same meaning as in the Original S.106 Agreement save where the context admits otherwise.
- 1.2 Where in this Deed reference is made to a clause, paragraph, schedule or plan it is to a clause, paragraph, schedule or plan in this Deed except where otherwise provided in this Deed or where the context otherwise requires.

- 1.3 A reference to any statute or statutory provision are references to a statute or statutory provision for the time being in force and any regulations, order, bye laws or other subordinate legislation made under any such statute or statutory provision from time to time in force.
- 1.4 Words of one gender include all other genders and any reference to a person includes a reference to a company authority board department or other body.
- 1.5 If an obligation is owed to or given by more than one person that obligation is owed to or by those persons separately jointly or in any combination.
- 1.6 The headings in this Deed are for convenience only and do not affect its construction or interpretation.

2. **OPERATIVE POWERS**

- 2.1 This Deed is made pursuant to all the powers enabling the Parties to do so including section 106 and section 106A(1)(a) of the 1990 Act to the intent that it shall bind the Owner and their successors in title to the Site and any persons claiming under or through them subject to the terms of the Original S.106 Agreement and shall be enforceable by the Council.
- 2.2 This Deed is supplemental to and varies the Original S.106 Agreement and takes effect upon the date hereof.
- 2.3 This Deed shall be read and construed as if the variations set out had appeared in the Original S.106 Agreement as originally executed.
- 2.4 Except as varied by this Deed all the covenants terms and conditions contained in the Original S.106 Agreement shall remain in full force and effect and from the date this Deed takes effect the Original S.106 Agreement shall apply as amended by this Deed.

3. **AMENDMENTS TO THE ORIGINAL S.106 AGREEMENT**

- 3.1 The following new defined terms shall be inserted into Schedule 2 Part 1 of the Original S.106 Agreement:

“**Homes England**” means Homes England or the Regulator of Social Housing or their successor bodies or other appropriate body as the Council may nominate”

“**Social Rented Dwellings**” means Dwellings owned or managed by a Provider let at rents not exceeding the Target Rent”

“**Target Rent**” means the rent for Social Rented Dwellings as determined by the national rent regime published by Homes England or any subsequent replacement or where there is no such replacement at a rent determined by the Council”.

- 3.2 The definition of “Affordable Housing” and “Affordable Housing Mix” in Schedule 2 Part 1 of the Original S.106 Agreement shall be deleted and replaced as follows:

“**Affordable Housing**” means the Social Rented Dwellings to be provided to Eligible Households whose needs are not met by the market”

“**Affordable Housing Mix**” means 100% Social Rented Dwellings (or as otherwise agreed by the Council in the Council’s absolute discretion) as detailed at Part 2 to Schedule 2”.

- 3.3 The definition of “Affordable Rented Dwellings” in Schedule 2 Part 1 of the Original S.106 Agreement shall be deleted.

- 3.4 The definition of “Shared Ownership Dwellings” in Schedule 2 Part 1 of the Original S.106 Agreement shall be deleted.

- 3.5 The definition of “Shared Ownership Lease” in Schedule 2 Part 1 of the Original S.106 Agreement shall be deleted.

- 3.6 In Paragraph 1.2 of Schedule 2 Part 1 of the Original S.106 Agreement the words, “Affordable Rented Dwellings and Shared Ownership Dwellings” shall be deleted and replaced with the words, “Social Rented Dwellings”.

- 3.7 In Paragraph 1.1 of Schedule 2 Part 3 of the Original S.106 Agreement the words, “both Affordable Rented Dwellings and Shared Ownership Dwellings” shall be deleted and replaced with the words “the Social Rented Dwellings”.

- 3.8 Paragraph 1.5.3 of Schedule 2 Part 1 of the Original S.106 Agreement shall be deleted.

- 3.9 The table in Schedule 2 Part 2 of the Original S.106 Agreement shall be deleted and replaced with the following table:

PLOT NUMBER	DWELLING TYPE	TENURE
1.	2 bedroom 4 person house	Social Rented Dwelling

2.	2 bedroom 4 person house	Social Rented Dwelling
3.	3 bedroom 5 person house	Social Rented Dwelling
4.	3 bedroom 5 person house	Social Rented Dwelling
5.	1 bedroom 2 person bungalow	Social Rented Dwelling
6.	1 bedroom 2 person bungalow	Social Rented Dwelling
7.	3 bedroom 6 person house	Social Rented Dwelling
8.	2 bedroom 4 person house	Social Rented Dwelling
9.	1 bedroom 2 person house	Social Rented Dwelling
10.	1 bedroom 2 person house	Social Rented Dwelling

3.10 In Paragraph 3.1 of Schedule 2 Part 3 of the Original S.106 Agreement the term "Affordable Housing Rental Units" shall be deleted and replaced with the term "Social Rented Dwellings".

4. **WAIVER**

4.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in the Original S.106 Agreement as varied by this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings or obligations or restrictions from acting upon any subsequent breach or default in respect thereof by the Owner.

5. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1990**

- 5.1 Nothing in this Deed is intended to confer any benefit on any party other than the Parties executing this Deed and any rights or benefit provided under the Contract (Rights of Third Parties) Act 1999 is hereby excluded.

6. **COUNCIL'S LEGAL FEES**

- 6.1 On completion hereof the Owner shall pay on the date hereof the Council's reasonable legal costs properly incurred in the negotiation of this Deed.

7. **MISCELLANEOUS**

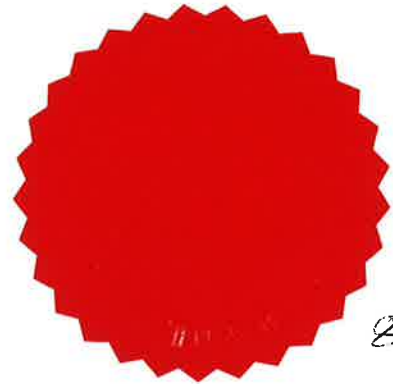
- 7.1 The covenants on behalf of the Parties hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered at the Local Land Charges Registry for the purpose of the Local Land Charges Act 1975.
- 7.2 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its respective statutory functions and the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if it were not respectively a party to this Deed.
- 7.3 Nothing in this Deed shall affect the validity of any act taken by any party to comply with or discharge any obligation contained in the Original S.106 Agreement and any matters which have been approved under the Original S. 106 Agreement or obligations which have been complied with or discharged pursuant to the Original S.106 Agreement shall be deemed to have been approved under the Original S.106 Agreement or complied with or discharged pursuant to the Original S.106 Agreement as varied by this Deed as the case may be.
- 7.4 The Owner warrants that it has full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site.
8. **SEVERANCE**
- 8.1 If any court or other competent authority finds any provisions of this Deed (or part of any provision) to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this Deed shall not be affected.

9. **GOVERNING LAW**

- 9.1 This Deed is governed by and interpreted in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the courts of England.

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
THE COMMON SEAL of BROADLAND
DISTRICT COUNCIL



AUTHORISED SIGNATORY

8038

[Signature] Director of Place

EXECUTED as a DEED by
ANDREW MURRAY as attorney for **CLARION HOUSING**
ASSOCIATION LIMITED under a power of attorney
dated 19 March 2020

ANDREW MURRAY as attorney for CLARION HOUSING
ASSOCIATION LIMITED

[Signature]

in the presence of:

[Signature]
S. L. FORREST

Witness Signature:

Witness Name:

Address of Witness:

Witness Occupation:

Winckworth Sherwood LLP
DX 156810 London Bridge 6
Minerva House
5 Montague Close
London SE1 9BB

SOLICITOR