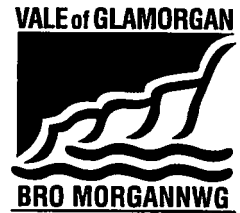


MEMORANDUM / COFNOD

The Vale of Glamorgan Council
Civic Offices, Holton Road, Barry, CF63 4RU



To / I: Steve Butler
Dept / Adran: Planning and Transportation
– Dock Offices
Date/Dyddiad: 16th October 2014
Your Ref / Eich
Cyf:

From / Geraint Davies
Oddi Wrth:
Title / Teitl: Lawyer
Tel / Ffôn: (01446) 709781
My Ref / GED/MLF/C04-1249
Ein Cyf:

Subject / **S106 Agreement – Penarth Heights, Second Deed of Variation**
Testyn:

Dear Steve

With reference to the above matter, please find enclosed a copy of the Second Deed of Variation and Supplement S106 Agreement for your records.

Kind regards

Geraint Davies
Lawyer for
Operational Manager, Legal Services

c.c. Pam Toms, Housing Services, The Alps

D.E.E.R
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ACTION BY: <i>IR SDB</i>
NO: <i>P226</i>
ACK:

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13 NOV 2014

ENVIRONMENTAL
AND ECONOMIC
REGENERATION



Second Deed of Variation and Supplemental S106 Agreement

Relating to land at Penarth Heights

Dated *7th November* 2014

- (1) THE VALE OF GLAMORGAN COUNCIL
- (2) CREST NICHOLSON OPERATIONS LIMITED
- (3) UNITED WELSH HOUSING ASSOCIATION LIMITED

This Deed is made on

7th November

2014

Between:

- (1) **THE VALE OF GLAMORGAN COUNCIL** of Civic Offices, Holton Road, Barry CF63 4RU (the "**Council**");
- (2) **CREST NICHOLSON OPERATIONS LIMITED** (Company Number 01168311) of Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN (the "**Developer**"); and
- (3) **UNITED WELSH HOUSING ASSOCIATION LIMITED** (IP Number 26623R) whose registered officer is at Y Borth, 13 Beddau Way, Caerphilly, CF83 2AX (the "**RSL**").

Whereas:

- (A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (the "**Act**") for the area in which the Site is situated.
- (B) The Developer is the freehold owner of part of the Site free from encumbrances.
- (C) The Council is the freehold owner of part of the Site free from encumbrances.
- (D) The RSL is the freehold owner of part of the Site free from encumbrances.
- (E) On 19 April 2010 the Council and the Developer entered into an agreement made under section 106 of the Act (the "**Principal Agreement**").
- (F) On 23 January 2014 the Council and the Developer entered into a Deed of Variation and Supplemental Agreement to the Principal Agreement (the "**First Deed of Variation**").
- (G) Without prejudice to the terms of the other covenants contained in the Principal Agreement as varied by the First Deed of Variation the parties have agreed to further vary the terms of the Principal Agreement as set out in this Second Deed of Variation.
- (H) This Second Deed of Variation is made under Sections 106 and 106A of the Act and is supplemental to the Principal Agreement as varied by the First Deed of Variation.

1 Construction of this Deed

- 1.1 All terms and definitions contained in the Principal Agreement shall apply to this Deed unless otherwise stated herein.
- 1.2 All references in this Deed to clauses in the Principal Agreement are to clauses within the Principal Agreement.
- 1.3 Clause headings shall not affect the interpretation of this Deed.

- 1.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.6 References to any party in this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their statutory functions.
- 1.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.8 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 1.9 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 1.10 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

2 Statutory Provision

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and any other enabling powers.

3 Conditionality

This Second Deed of Variation shall be effective upon the date hereof.

4 Variations to the Principal Agreement

- 4.1 Within the definition of "**Chargee's Duty**" the number "10.13" shall be deleted and replaced with the number "10.11".
- 4.2 Part 3 of the Third Schedule to the Principal Agreement shall be deleted and replaced with the following:

"Chargee's Duty

10.11 The Chargee prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 6 weeks prior notice in writing to the Council of its intention to dispose and:

- (a) in the event that the Council responds within 6 weeks from receipt of the notice that it or a Registered Social Landlord will purchase those Affordable Housing Units subject to such disposal then subject to paragraph 10.11(b) below the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;
- (b) if the Council or the Registered Social Landlord identified by the Council in its notice cannot within 6 weeks of the date of service of its response under paragraph 10.11 (a) secure such transfer then provided that the Chargee shall have complied with its obligations under this part the Chargee shall be entitled to dispose of the Affordable Housing Units as Market Housing Units for Market Housing free of the restrictions set out in this Third Schedule;

PROVIDED THAT at all times the rights and obligations in this clause 10.11 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."

4.3 The following clause shall be added to the Principal Agreement as clause 7.12:

"Save for the provisions of Part 2 and Part 3 of the Third Schedule this Deed shall not be enforceable against the Registered Social Landlord of the Affordable Housing Units, its Chargee(s) or any successor in title to the Registered Social Landlord or its Chargee(s)."

4.4 The following paragraph shall be added to The Fourth Schedule of the Principal Agreement

"Removal of the Restriction

5 In the event of a disposal in accordance with Paragraph 10.2(a) and 10.2(b) of Part Two of the Third Schedule the Council shall use reasonable endeavours to assist the Chargee or the person exercising their right to acquire or right to buy or staircasing out as the case may be in the removal of the Restriction on the Affordable Housing Unit being disposed of without delay"

4.5 In all other respects the Principal Agreement as varied by the First Deed of Variation and this Second Deed of Variation shall remain in full force and effect.

5 Covenants to the Council

The Developer, the RSL and the Council (as owner of part of the Site) covenant to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by the First Deed of Variation and this Second Deed of Variation.

6 Local Land Charge

This deed shall be registered as a local land charge.

7 Council's costs

The RSL shall pay to the Council on the date of completion of this Deed, the Council's reasonable and proper legal costs in the sum of £ 600 together with all reasonable disbursements incurred in connection with the preparation, completion and registration of this Deed.

SA WD

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

The Common Seal of)
THE VALE OF GLAMORGAN)
COUNCIL

was hereunto affixed in the presence of:

Witness signature:

Witness name:

Witness address:

Witness occupation:

Executed as a Deed)
by **CREST NICHOLSON**)
OPERATIONS LIMITED
acting by a Director and its)
Secretary/Two Directors:

Director

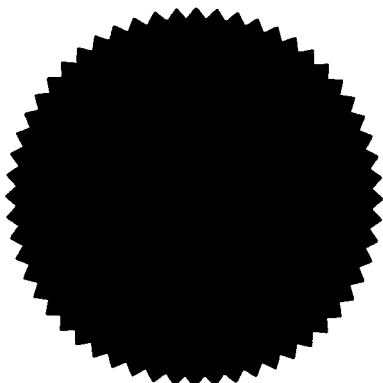
~~Director~~/Secretary

Executed as a Deed)
by affixing the **COMMON SEAL** of)
UNITED WELSH HOUSING
ASSOCIATION LIMITED

In the presence of)

Authorised
Signatory

Authorised
Signatory



Vale of Glamorgan Council
Council Offices Hektanbel
Operational Manager

