

## Deed of variation to Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

Relating to the development of 1-8 Mariners Court, Mariners Way, Rhoose, Barry CF62 3FA

Dated 18<sup>th</sup> September 2020

- (1) Vale of Glamorgan Council
- (2) Hafod Housing Association Limited
- (3) The Welsh Ministers

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THIS DEED is dated

18<sup>th</sup> September

2020

**PARTIES:**

- (1) **Vale of Glamorgan Council** of Civic Offices, Holton Road, Barry CF63 4RU ("**the Council**")
- (2) **Hafod Housing Association Limited** (a registered society under the Co-Operative and Community Benefit Societies Act 2014 (18766R) of St. Hilary Court, Valegate Business Park, Cophorne Way, Cardiff, CF5 6ES ("**Hafod**")
- (3) **The Welsh Ministers** of Crown Buildings, Cathays Park, Cardiff, CF10 3NQ ("**the Mortgagee**")

**INTRODUCTION**

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- (B) On 1 May 2015 (1) the Council (2) Stephen William Robinson and (3) Hafod entered into an agreement under Section 106 of the Act (the "**Principal Agreement**")
- (C) Without prejudice to the terms of the other covenants contained in the Principal Agreement the Council and Hafod have agreed to vary the terms of Principal Agreement insofar as the terms relate to the Affordable Housing and the Site as set out in this Deed
- (D) This Deed is made under section 106A of the Act and is a variation of the terms of the Principal Agreement
- (E) The Mortgagee has the benefit of a Legal Charge over the Site dated 21 October 2015 and consents to this Deed.

**AGREED TERMS**

**1 DEFINITIONS AND INTERPRETATIONS**

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

- 1.1 Unless the context otherwise requires all words and phrases defined in the Principal Agreement shall have the same meaning in this deed
- 1.2 Clause headings shall not affect the interpretation of this deed
- 1.3 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality)
- 1.4 Unless the context otherwise requires words in the singular shall include the plural and in the plural shall include the singular

- 1.5 Unless the context otherwise requires a reference to one gender shall include a reference to the other genders
- 1.6 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
- 1.7 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
- 1.8 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
- 1.9 Unless the context otherwise requires references to clauses are to the clauses of this deed
- 1.10 Any words following the terms including include in particular for example or any similar expression shall be construed as an illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms
- 1.11 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 Act section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000, section 1 of the Localism Act 2011 and any other enabling powers

## **3 VARIATIONS TO THE PRINCIPAL AGREEMENT**

- 3.1 The following definitions of the Principal Agreement shall be amended as set out below:

Chargee in clause 1 of the Principal Agreement shall be deleted and replaced with the following:

**“Chargee”** means any mortgagee or chargee of the RSL or of an Affordable Housing Unit following any transfer or grant of a lease of an Affordable Housing Unit by the RSL only or a receiver manager administrative receiver or administrator (including a Housing Administrator) howsoever appointed;

- 3.2 Part 2 of the Third Schedule to the Principal Agreement (Chargee's Duty) shall be deleted and replaced with Schedule 1 to this Deed

- 3.3 The following clause shall be added to the Principal Agreement as clause 7.10:

7.10 Obligations contained in this Deed shall not be enforceable against:

- 7.10.1 any statutory undertaker or other person who acquires or has acquired any part of the Site or interest therein for the purposes of the supply of

electricity, gas, water, drainage, telecommunication services or public transport services; nor

7.10.2 a Chargee subject to compliance with the Chargee's Duty

3.4 In all other respects the Principal Agreement (as varied by this Deed) shall remain in full force and effect

**4 COVENANTS TO THE COUNCIL**

Hafod covenants to observe and perform the covenants restrictions and obligations contained in the Principal Agreement in relation to the Site as varied by this Deed

**5 LOCAL LAND CHARGE**

This Deed shall be registered as a local land charge

**6 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

**7 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 as they apply in Wales

**8 COUNTERPARTS**

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same document and any party may enter into this Deed by executing a counterpart.

**Schedule 1**

**THIRD SCHEDULE**

**2. AFFORDABLE HOUSING COVENANTS**

**PART 2**

**CHARGEES DUTY**

- 1.5 The Chargee prior to seeking to dispose of any Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge shall give not less than 2 months' prior notice in writing to the Council of its intention to dispose and:
- a) in the event that the Council responds within 2 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer.
  - b) If the Council or any other person cannot within 1 month of the date of service of its response under paragraph 1.5(a) complete such transfer for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses then provided that the Chargee shall have complied with its obligations under this Part 2 the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) as Market Housing Units free of all of the obligations set out in this Agreement which shall determine absolutely in so far as they bind the Affordable Housing Unit(s) which are subject to the notice in paragraph 1.5 above.

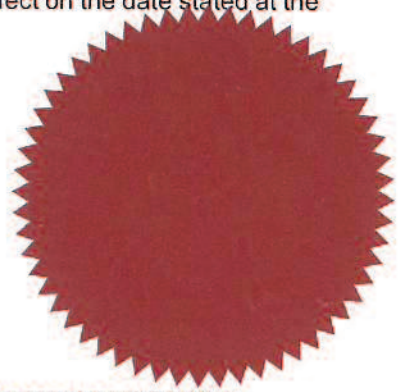
PROVIDED THAT at all times the rights and obligations in this paragraph 1.5 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage including all accrued principal monies interest and costs and expenses.

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** on behalf of the **Vale of Glamorgan Council**  
By the affixing of its seal in the presence of



17569



DEBBIE MARLES/VICTORIA DAVDISON  
~~Monitoring Officer/Head of Legal and Democratic Services/Operational Manager Legal Services~~

**EXECUTED** as a deed by affixing  
the common seal of  
**HAFOD HOUSING ASSOCIATION LIMITED**  
in the presence of:

Company Secretary

Board Member / authorised signatory



Executed as a deed by applying the seal of

**THE WELSH MINISTERS**

The application of the seal of the Welsh Ministers is

Authenticated by:

[Mair Hughes]

Senior Lawyer .....

Who is duly authorised for that purpose by the  
Director of Legal Services by authority of the  
Welsh Ministers under section 90(2) of the  
Government of Wales Act 2006.