

THIS DEED OF VARIATION is made the 26<sup>th</sup> day of June 2008

BETWEEN

1. WELWYN HATFIELD BOROUGH COUNCIL of Council Offices, The Campus, Welwyn Garden City, Hertfordshire, AL8 6AE formerly Welwyn Hatfield District Council ("the Council")
2. HERTFORDSHIRE COUNTY COUNCIL of County Hall, Pegs Lane, Hertford, Hertfordshire, SG13 8DE ("the County Council")
3. SOUTH ANGLIA HOUSING LIMITED of 1-3 Highbury Station Road, London N1 1SE ("the Owner")

WHEREAS

- (1) This Deed is supplemental to an agreement dated 24th September 2003 made between the Council (1) the County Council (2) The First Owner (3) the Third Owner (4) and the Club (5) ("the Original Agreement") in relation to land at Chequersfield Welwyn Garden City Hertfordshire as more particularly described in the Original Agreement and therein called "the Land" and entered into pursuant to inter alia Section 106 Town and Country Planning Act 1990 (hereinafter called "the Act")
- (2) Under Clause 1.9.1 (c) of the Original Agreement "Affordable Housing" is defined as dwellings which are let at an affordable rent which does not exceed Housing Corporation rent cap levels for the time being or such other rent level limits as may be set by the Housing Corporation or any other body with the function of regulating Registered Social Landlords.
- (3) The Original Agreement provides amongst other things a Covenant contained in clause 6.1 by the Council with the Owners not to enforce the obligations contained in Clause 4.2. of the Agreement, if the Lender has lent monies to the Registered Social Landlord on the Security of Affordable Housing and the Registered Social Landlord is in breach of the Loan Documentation/Agreement in such a way as to permit the Lender to exercise a legal power of sale, provided that a set number of conditions have been met.
- (4) The Conditions contained in sub-clauses 6.1(a) to 6.1(f) are as follows:

- (a) that the Director receives written notification from the Lender of its decision to repossess all or part of the Affordable Housing and that the Registered Social Landlord has breached the Loan Documentation enabling the Lender to exercise a legal power of sale
  - (b) that the Council receives such notice a minimum of 28 days prior to any proceedings being commenced or power of sale being exercised to allow the Council to investigate the Lender's decision
  - (c) that the Council is satisfied that the Lender will exercise its power of sale only to remedy the breach of the loan documentation and for no other purpose
  - (d) that the Council is satisfied that the Lender has used its best endeavours to negotiate with another Registered Housing Association before the expiry of the 28 days notice and before exercising its power of sale
  - (e) that the Council is satisfied that the sale of the Affordable Housing dwellings is at a price that sufficiently covers the monies, costs, and expenses owed to the Lender under the Loan Documentation together with the reasonable costs of the Council
  - (f) that the costs incurred by the Council in investigating whether this covenant should be enforced are paid by the Lender within 28 days of the date of the Council's demand
- (5) The Owner is now the freehold owner of part of the land subject to the affordable housing provisions in the Original Agreement

NOW THIS DEED WITNESSETH as follows: -

1. The Deed is entered into pursuant to Section 106 of the Act
2. Clause 1.9.1 sub-paragraph (c) of the Original Agreement shall be varied in such a way to be read henceforth as follows:  
  
Dwellings which are:-  
  
“(c) let by way of shared ownership or at an affordable rent which does not exceed Housing Corporation rent cap levels for the time being or such other rent level limits as may be set by the Housing Corporation or any other body with the function of regulating Registered Social Landlords and”
3. Sub-clause 6.1 (e) of the Original Agreement shall be varied in such a way to be read henceforth as follows:

"6.1 (e) that the Council is satisfied that the Lender has used reasonable endeavours to obtain the best possible price for the disposal of the Affordable Housing dwellings taking into consideration the prevailing conditions of the property market at the time of the breach of the Loan Documentation."

4. A new clause, referred to as 6.2. shall be inserted and shall read as follows

"6.2. Subject to completion of a Nomination Agreement in a form reasonably acceptable to the Council the Council covenants that it will not enforce the obligations contained in Clause 4.2. in the event that:

(a) any tenant of an Assured Tenancy exercising the right to buy or right to acquire under the Housing Act 1996 (or any other such statutory equivalent) has acquired the legal estate in the Affordable Housing dwelling or

(b) the tenant of any Shared Equity Arrangement has purchased the whole of the equity of an Affordable Housing dwelling

6. The Owner hereby covenants jointly and severally with the County Council and the Council in the form of the covenant set out as the varied Clause 6 (e) and new Clause 6.2. within clauses 3 and 4 of this Deed respectively

7. In all other respects the terms of the Original Agreement remain unchanged

8. This Deed shall be registered as a Local Land Charge


IN WITNESS whereof the parties hereto have executed this Deed but not delivered it until  
the day and year first before written

EXECUTED AS A DEED by affixing )  
THE COMMON SEAL of WELWYN )  
HATFIELD BOROUGH COUNCIL )  
in the presence of: )

  
Duly Authorised Officer

THE COMMON SEAL OF )  
HERTFORDSHIRE COUNTY )  
COUNCIL was hereunto affixed )  
in the presence of:- )

Full Names ..... County Secretary/~~Assistant~~

Signature .....  ..... County Secretary

The COMMON SEAL of )  
SOUTH ANGLIA HOUSING )  
LIMITED )  
Was hereunto affixed in )  
The presence of:- )

Authorised Signatory..... 

Authorised Signatory... 

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