

DATED

28 May

2020

(1) TENDRING DISTRICT COUNCIL

AND

(2) ENGLISH RURAL HOUSING ASSOCIATION LIMITED

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**DEED OF VARIATION  
OF SECTION 106 AGREEMENT  
dated 19<sup>th</sup> October 2011  
relating to  
land at Harwich Road Mistley Essex**

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**Devonshires Solicitors LLP**

30 Finsbury Circus  
London  
EC2M 7DT

DX 33856 Finsbury Square

THIS **VARIATION AGREEMENT (the Variation Agreement)** is made by Deed on the day of 28 May 2020

**BETWEEN:**

- (1) **TENDRING DISTRICT COUNCIL** of Council Offices, Weeley, Clacton-on-Sea, Essex, CO16 9AJ ("**Council**") and
- (2) **ENGLISH RURAL HOUSING ASSOCIATION LIMITED**, Industrial and Provident Society Number IP27606R, of Astolat, Coniers Way, Burpham, Guildford, Surrey, GU4 7HL ("**Association**")

**BACKGROUND**

- A. The Association is now the registered proprietor of the freehold estate registered with title absolute at H.M. Land Registry under Title Number EX871732 which comprises of 2-9 (inclusive) Heathview Close, Mistley, Manningtree CO11 2BL ("**the Property**").
- B. The Property is subject to a Section 106 Agreement dated 19<sup>th</sup> October 2011 made between (1) the Association, and (2) the Council ("**the Section 106 Agreement**") a copy of which is annexed hereto at Appendix 1.
- C. The Council granted Planning Permission on 27 October 2011 subject to the Section 106 Agreement.
- D. The parties hereto have agreed that the Section 106 Agreement be varied by the Variation Agreement.

**OPERATIVE PART**

**1. INTERPRETATION**

Save where the content otherwise requires words and expressions defined in the Section 106 Agreement shall have the same meaning when used in the Variation Agreement.

**2. VARIATION OF SECTION 106 AGREEMENT**

- 2.1 The parties hereto agree to delete the Clauses 2.6 and 2.7.1 in their entirety and replace with the following Clause 2.6:

"2.6. The provisions in this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or

chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units; and
- (b) shall have used reasonable endeavours over a period of three months from the date of the written notice required by clause 2.6(a) above to complete a disposal of the Affordable Housing Units to another registered provider or to the Council 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; and
- (c) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions in this Agreement which provisions shall determine absolutely."

2.2 The parties hereto agree to change the numbers of the following clauses:

Clause 2.7.2 to Clause 2.7, Clause 2.7.2.1 to Clause 2.7.1, Clause 2.7.2.2 to Clause 2.7.2, Clause 2.7.2.3 to Clause 2.7.3 and Clause 2.7.2.4 to Clause 2.7.4 and those references, where contained elsewhere in the Section 106 Agreement will be construed accordingly.

### **3. PRINCIPAL AGREEMENT TO CONTINUE IN FORCE**

Save as varied by this Agreement the Section 106 Agreement shall continue to have full force and effect and be binding on the respective parties thereto.

### **4. REGISTRATION AS LOCAL LAND**

This Agreement shall be registered as a Local Land Charge by the Council.

### **5. COSTS**

The Association agrees that on completion of this Agreement it shall pay the Council's legal costs incurred in the negotiation and completion of this Agreement in the sum of £350.00 (exclusive of Value Added Tax).

This Agreement was executed and delivered by the parties as a deed on the day and year first above written.

APPENDIX 1  
Section 106 Agreement

MIS 10

DATED 19th October 2011

- (1) TENDRING DISTRICT COUNCIL
- (2) ENGLISH RURAL HOUSING ASSOCIATION LIMITED

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**AGREEMENT**

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under section 106 Town and Country Planning Act 1990  
relating to land at Harwich Road Mistley Essex

THIS AGREEMENT is made on *Nineteenth October*

2011

**BETWEEN:**

- (1) **TENDRING DISTRICT COUNCIL** of Council Offices, Weeley, Clacton-on-Sea, Essex, CO16 9AJ ("**the Council**");
- (2) **ENGLISH RURAL HOUSING ASSOCIATION LIMITED** (IPS registration number 27606R) whose registered office is situated at 2 Graphite Square Vauxhall Walk London SE11 5EE ("**the Developer**")

**BACKGROUND**

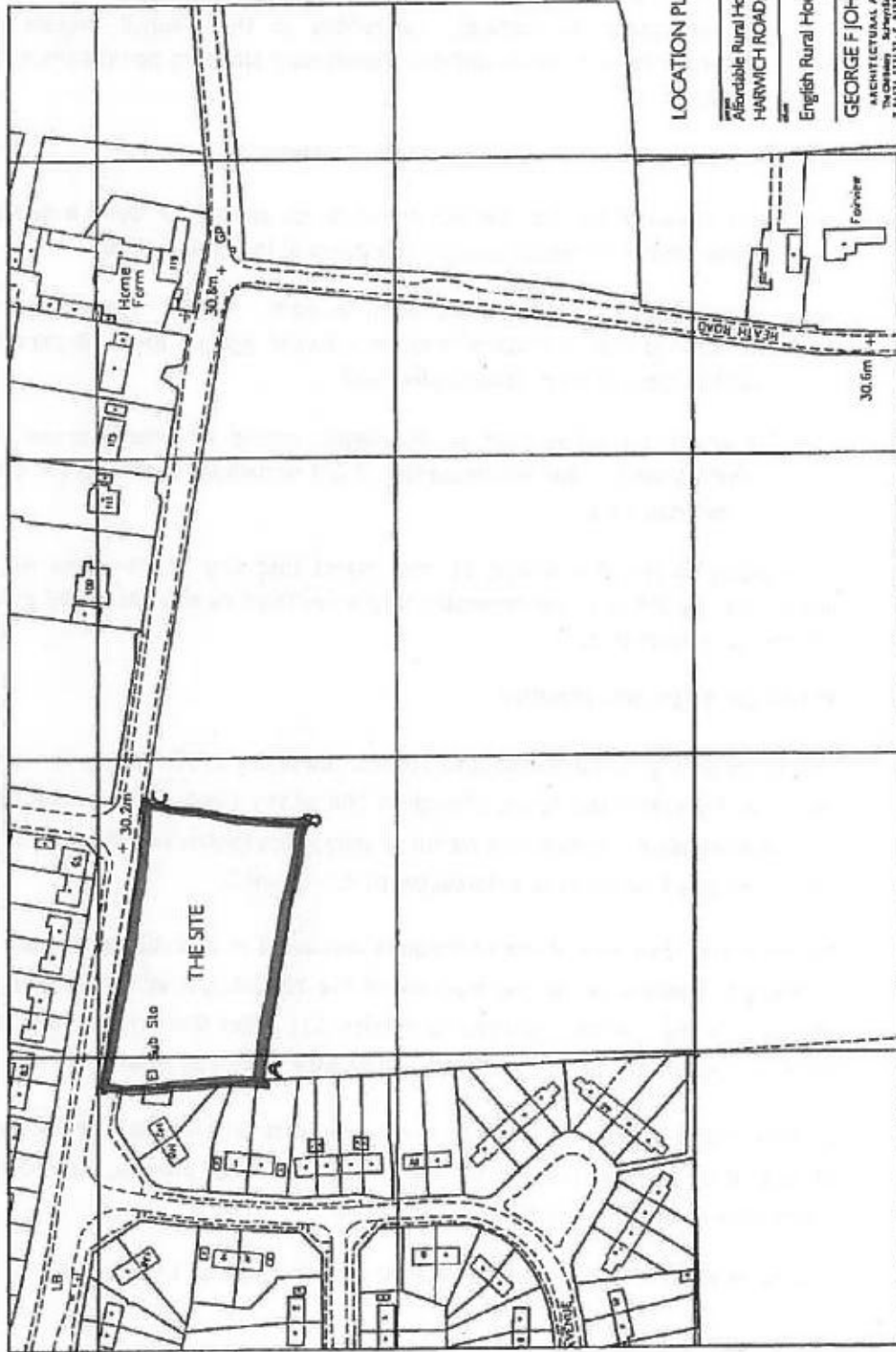
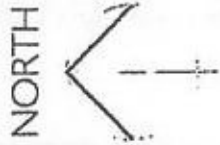
- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The Developer is the freehold owner of the whole of the Site free from encumbrances that would prevent the Developer entering into this Agreement.
- (C) Pursuant to the Planning Application the Developer has applied to the Council for full planning permission for the Development.
- (D) The Council is satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms; are directly related to the Development and fairly and reasonable relate in scale and kind to the Development
- (E) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Developer and its respective successors in title subject to Clause 4.3 hereof.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

- 1.1 In this Agreement, the following words and expressions have the following meanings:

<b>"1990 Act"</b>	the Town and Country Planning Act 1990
<b>"Commencement Date"</b>	the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act



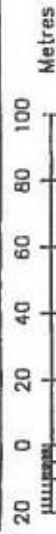
**LOCATION PLAN**

Affordable Rural Housing  
HARWICH ROAD, MISTLEY, ESSEX

English Rural Housing Association

GEORGE F JOHNSON ASSOCIAT  
ARCHITECTURAL AND PLANNING SERVICES  
The Old Mill, Harwich Road, Mistley, Essex, SS16 3AA  
T 01376 516131 F 01376 516132 www.gfja.co.uk

DATE: 14/03/13  
DRAWN BY: HJT/200  
SCALE: 1:1000  
PROJECT NO: 0448 - 13



- 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
  - 1.2.4 references to the Site include any part of it;
  - 1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
  - 1.2.6 "including" means "including, without limitation";
  - 1.2.7 any covenant by the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
  - 1.2.8 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
  - 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
- 1.3 The parties to this Agreement 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.

## **2. EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 Local Government Act 2000 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Agreement will be registered as a local land charge by the Council.



3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:

3.2.1 archaeological investigations;

3.2.2 site investigations or surveys;

3.2.3 site decontamination;

3.2.4 the clearance of the Site;

3.2.5 works connected with infilling; or

3.2.6 works for the provision of drainage or mains services to prepare the Site for development.

3.2.7 erection of fencing or boarding;

3.2.8 erection of boards advertising the development; and

3.2.9 the construction of a site compound or marketing suite.

#### 4. **OBLIGATIONS OF THE PARTIES**

4.1 The Developer covenants with the Council to serve on the Council written notice of Intended Commencement Date at least 14 days prior to the Intended Commencement Date (marked for the attention of the Council's Legal Agreements Manager)

4.2 The Developer covenants with the Council to comply with the obligations set out in the Schedules in relation to the Development.

4.3 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.3**.

6.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

6.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## 7. COSTS OF THIS AGREEMENT

7.1 Upon completion of this Agreement the Developer shall to pay to the Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

7.2 Upon completion of this Agreement the Developer shall pay to the Council a contribution of £600 towards the Councils administration costs of monitoring the performance of the planning obligations that the Developer is required to observe and perform pursuant to the terms of this Agreement

## 8. DETERMINATION OF DISPUTES

8.1 Subject to **clause 8**, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this **clause 8**. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.2 For the purposes of this **clause 8** a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional Institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under **clause 8.4**.

8.4 Any dispute over the Identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot

Landowner and enforce any judgment against the Landowner in the courts of any competent jurisdiction.

**10. CHARITABLE DECLARATION**

English Rural Housing Association Limited is an exempt charity

**11. EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

local market rents and the expressions "Affordable Rented Housing Dwelling" and "Affordable Rented Housing Dwellings" shall be construed accordingly

**"Approved Body"**

means any housing association registered with the Tenant Services Authority any body organisation or company which is a registered charity with the Charity Commissions for England and Wales and approved by the Tenant Services Authority or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association

**"Intermediate Affordable Housing"**

means housing at prices and rents above those of Affordable Rented Housing but below market price or rents at a low enough cost to be affordable having regard to local incomes and local house prices and can include but is not limited to:-

- a) intermediate rented homes which are provided at rent levels above those of Affordable Rented Housing but below private rent levels
- b) shared equity homes where more than one party has an interest in the property for example by way of an equity loan arrangement or a shared ownership lease and there may be a charge on the loan and restrictions on price access and resale
- c) shared ownership homes whereby the purchaser buys an initial share in the property from the housing provider who retains the remainder and may charge a rent with the purchaser being able to acquire additional shares ("staircasing") and the

**"Tenant Services Authority"** means the regulatory body for registered social landlords as defined by the 2008 Act Section 81 or any body appointed by Government to undertake its functions

**2. Provision of the Affordable Units**

- 2.1 The Landowner covenants with the Council to provide all residential dwellings permitted under the Planning Permission as Affordable Housing Units in accordance with the Affordable Housing Scheme
- 2.2 The Landowner covenants not to allow any of the Affordable Units to be used for any purpose other than Affordable Housing and to ensure that any future transfer of an Affordable Housing Unit contains a restriction preventing the Affordable Housing Unit from being used for any purpose other than as Affordable Housing.

**3. Occupation**

- 3.1 Save as permitted by paragraphs 3.2, 3.3 or 3.4 no Affordable Housing Unit shall be occupied other than by a Local Person.
- 3.2 In the event that following a Marketing Period of two months a Local Person cannot be found to occupy an Affordable Housing Unit, then the Landowner (only if they are an Approved Body) may offer the Affordable Housing Unit to residents or workers in the Surrounding Parishes who would qualify as a "Local Person" where that definition is applied to the Surrounding Parishes
- 3.3 In the event that following a further Marketing Period of one month following any Marketing Period pursuant to 3.2 above, a resident or worker from the Surrounding Parishes cannot be found to occupy an Affordable Housing Unit then the Landowner (only if they are an Approved Body) may offer the Affordable Housing Unit to residents or workers in any other location in the Tendring District as agreed in writing with the Council such agreement not to be unreasonably withheld or delayed
- 3.4 In the event that following a further Marketing Period of one month following any Marketing Periods pursuant to 3.2 and 3.3 above a resident or worker from any other location as agreed in writing with the Council cannot be found to occupy an Affordable Housing Unit the Landowner (only if they are an Approved Body) may offer the Affordable Housing Unit to any person considered by the Landowner to be in need of such accommodation

**SCHEDULE TWO**

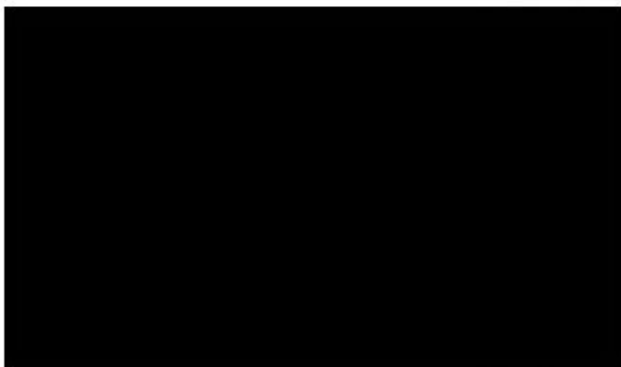
- 2.2 place the Public Open Space Contribution when received into an interest bearing account with a clearing bank and to utilise the same for the Public Open Space Contribution Purposes and
- 2.3 upon receipt of a request in writing to do so to be received by the Council no sooner than the tenth (10<sup>th</sup>) anniversary of the first Occupation of the final Affordable Housing Unit on the Development but no later than one year thereafter to return to the party who deposited the Public Open Space Contribution the unexpended part of the Public Open Space Contribution together with interest accrued on the unexpended part
- 2.4 where at the tenth (10<sup>th</sup>) anniversary of the first Occupation of the final Affordable Housing Unit on the Development a legally binding contract has been entered into by the Council in respect of the Public Open Space Contribution Purposes the Council shall be entitled to utilise the Public Open Space Contribution to make payment under such a contract

**EXECUTED AS A DEED** when the seal of)  
**TENDRING DISTRICT COUNCIL** was )  
 affixed in the presence of: )



**Principal Solicitor**

**EXECUTED AS A DEED** by )  
 affixing the Common Seal of )  
**ENGLISH RURAL HOUSING** )  
**ASSOCIATION LIMITED** in the )  
 presence of:-



15475

1126/MUST/074

**EXECUTED AS A DEED by**

The Common Seal of )  
TENDRING DISTRICT )  
COUNCIL was affixed )  
in the presence of )



SEAL REGISTER  
17952  
NUMBER

The Common Seal of )  
ENGLISH RURAL HOUSING )  
ASSOCIATION LIMITED )  
was affixed in the presence of:- )



Authorised Signatory

Authorised Signatory



1533/MHT/0520 .

