

DATED

26 January

2020 2021

(1) TENDRING DISTRICT COUNCIL

and

(2) ESSEX COUNTY COUNCIL

and

(3) CHELMER HOUSING PARTNERSHIP LIMITED

**DEED OF VARIATION under Section 106A
OF THE TOWN AND COUNTRY
PLANNING ACT 1990 (AS
AMENDED)**

OF SECTION 106 AGREEMENT DATED 11TH MARCH 2015

Relating to land at Ingrams Piece Ardleigh Essex CO7 7PZ



Devonshires Solicitors LLP
30 Finsbury Circus
London
EC2M 7DT

THIS DEED OF VARIATION is made the 26th
day of January 2020 2021

BETWEEN:

- (1) **TENDRING DISTRICT COUNCIL** of County Hall, Market Road, Chelmsford, CM1 1QH ("the District Council"); and
 - (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex CM1 1LX ("the County Council"); and
 - (3) **CHELMER HOUSING PARTNERSHIP LIMITED** registered as a Community Benefit Society under the Co-operative and Community Benefit Societies Act 2014, Registration Number: 8112 whose Registered Office is at 33 Springfield Lyons Approach, Springfield, Chelmsford, CM2 5LB ("the Association").
- (together "the Parties").

Recitals:

- (A) This Deed of Variation (Deed) pertains to the Affordable Housing Dwellings detailed under the Section 106 Agreement.
- (B) The Association owns the freehold interest in 10-16 (even) Ingrams Piece, Ardleigh, Essex, CO7 7PZ (formerly known as Land lying to the east of Ingram's Piece, Ardleigh, Colchester) which is registered at the Land Registry under Title Number EX917418 (the Affordable Housing Site).
- (C) The Association has requested and the District Council and the County Council have agreed that the Section 106 Agreement shall be varied in the manner hereinafter appearing and pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 as amended.
- (D) Myriad Homes Ltd who were party to the Section 106 Agreement no longer have an interest in the Affordable Housing Site having sold it to the Association on 30 January 2015

NOW IT IS AGREED as follows:

1. Definitions and Interpretation

In this Deed the following expression shall have the following meaning:-

"Section 106 Agreement" means the Planning Obligation by Agreement dated 11th March 2015 made between Tendring District Council (1) Essex County Council (2) Myriad Homes Limited (3) and Chelmer Housing Partnership Limited (4) relating to land at Ingrams Piece Ardleigh Essex CO7 7PZ.

2. Variations to the Section 106 Agreement

It is hereby agreed between the Parties to this Deed that the Section 106 Agreement shall be varied by this Deed as follows:-

2.1 The definition of "Chargee" at Schedule 3 shall be amended as follows:

'any mortgagee or chargee of the whole or any part of the Affordable Housing Dwellings 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'

2.2 Clause 9.1 of **Part One** of SCHEDULE 3 shall be amended as follows:

'The obligations and restrictions contained in Schedules 1-3 (inclusive) of this Agreement shall not bind:'

2.3 Clauses 9.2.1 - 9.2.3 (inclusive) of **Part One** of SCHEDULE 3 shall be deleted in their entirety and replaced with the following:

'9.2.1 give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings; and

9.2.2 shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another Approved Body or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the relevant security documentation including all accrued principal monies, interest and

costs and expenses incurred by the Chargee in respect of the mortgage or charge; and

9.2.3 if such disposal has not completed with the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely'

2.4 Clause B1. of **Part Two** of SCHEDULE 3 shall be deleted and replaced with the following:

'a restriction requiring each Affordable Housing Dwelling to be occupied by a Person in Housing Need PROVIDED THAT such restriction will not be binding on any 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 of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT paragraph 9.2 of Part One of SCHEDULE 3 of the Section 106 Agreement has first been complied with'

2.5 Clause B2. of **Part Two** of SCHEDULE 3 shall be deleted and replaced with the following:

'a restriction preventing the Affordable Housing Dwellings from being used for any purpose other than as Affordable Housing PROVIDED THAT such restriction will not be binding on any 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 of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT paragraph 9.2 of Part One of SCHEDULE 3 of the Section 106 Agreement has first been complied with '

2.6 Clause B5 of **Part Two** of SCHEDULE 3 shall be deleted and replaced with the following:

'a requirement that any proceeds received by the Approved Body in respect of the transfer of subsequent shares (other than the first share and net of any

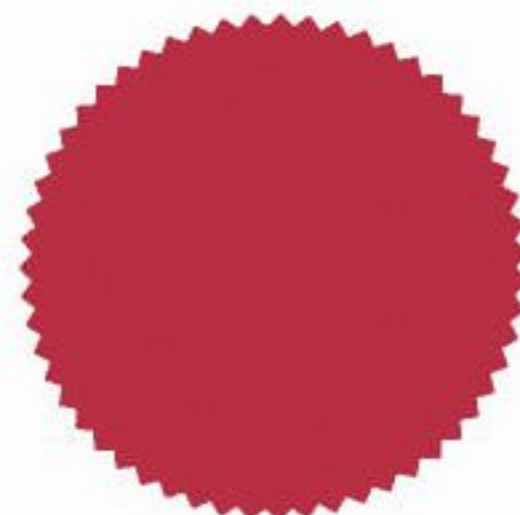
repayment of mortgage) on the transfer of any of the Intermediate Affordable Housing Dwellings shall be recycled and used for the provision of further Affordable Housing within the Council's area so that such new housing shall be provided within four years of the date of receipt of the said proceeds by the Approved Body unless otherwise agreed in writing with the Council and on a six monthly basis the Approved Body shall provide to the Council information in writing as to the amount of such proceeds received.'

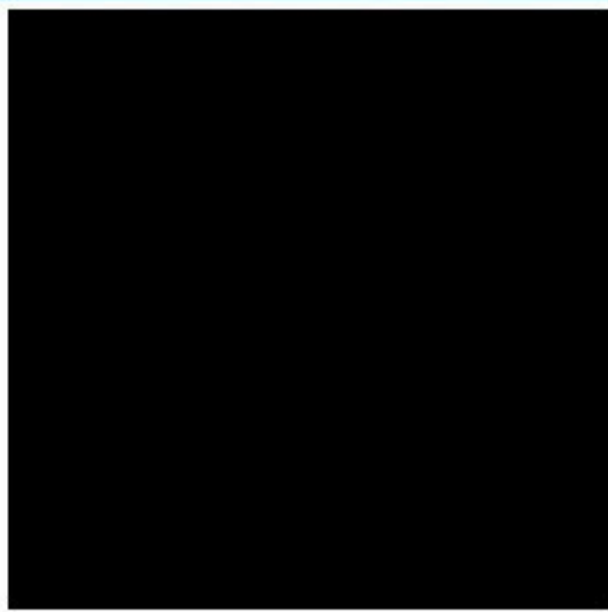
3. Miscellaneous provisions

- 3.1 Except as varied by clause 2 of this Deed the Section 106 Agreement is otherwise confirmed by the Parties hereto and remains in full force and effect.
- 3.2 This Deed is a Local Land Charge and the District Council shall register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Town and Country Planning Act 1990 as amended.

IN WITNESS whereof this deed has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a Deed by affixing the Common Seal of **CHELMER HOUSING PARTNERSHIP LIMITED** in the presence of:



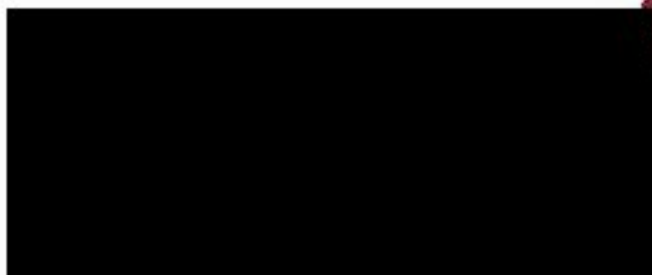


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EXECUTED as a Deed by affixing the Common Seal of **TENDRING DISTRICT COUNCIL** in the presence of:



EXECUTED as a Deed by affixing the Common Seal of **ESSEX COUNTY COUNCIL** in the presence of:



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