

Dated

~~2023~~ 28th February 2024

The London Borough of Hillingdon (1)

Metropolitan Housing Trust Limited (2)

The Law Debenture Trust Corporation P.L.C (3)

PP 66819/APP/2022/3379

1-12 Jasper Court
Arlo Place

Deed of Variation

Second Deed of Variation

Under Section 106A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 relating to the development of land at the former ARLA Dairy Site, Victoria Road, RUISLIP

Deed of variation

Dated

~~2023~~ 28th February 2024

Parties

- (1) The London Borough of Hillingdon of Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW (the "Council"); and
- (2) METROPOLITAN HOUSING TRUST LIMITED (a Registered society under the Cooperative and Community Benefit Societies Act 2014 with number 16337R) whose registered office is at The Grange 100 High Street London N14 6PW (the "Owner");
- (3) The Law Debenture Trust Corporation p.l.c. of 8th Floor, 100 Bishopsgate, London, EC2N 4AG (the "Chargee")

who shall together be referred to in this Deed as the Parties

(each a Party and together the Parties)

Recitals

- (A) This Deed varies an agreement dated 106 Agreement dated 24 December 2014 made between (1) Arla Foods UK Property Company Limited, (2) CIP Property (AIPT) Limited, (3) Albemarle Developments Limited and (4) the London Borough of Hillingdon (the "S106 Agreement") as varied by a supplemental agreement dated 19 August 2016 made between (1) The London Borough of Hillingdon, (2) Bellway Homes Limited, (3) Fund Nominee No 1 Limited and CTCL (BUKP) Fund Nominee No 2 Limited and (4) CIP Property (AIPT) Limited (the "First Deed of Variation") (together the "Principal Agreement").
- (B) The Owner is the registered proprietor of the leasehold land which comprises part of the Affordable Housing Units and is registered at the Land Registry under title number AGL397849 (being the Association Land).
- (C) The Chargee is the registered proprietor of a charge dated 1 June 2022.
- (D) The Council is the local planning authority for the purposes of the Town and Country Planning Act ("the 1990 Act") for the area in which the Affordable Housing Units is situated and by whom the obligations pertaining to affordable housing within the Principal Agreement are enforceable.
- (E) The Council and the Owner have agreed to enter into this Deed to vary the Principal Agreement only in so far as it relates to the Affordable Housing Units in the manner set out in this Deed.

Agreed terms

1 Definitions and interpretation

- 1.1 The capitalised terms of this Deed shall (unless otherwise provided by this Deed) have the same meaning and interpretation as provided in the Principal Agreement.
- 1.2 References to this **Deed** means this deed of variation.
- 1.3 This Deed is supplemental to and varies the provisions of the Principal Agreement.
- 1.4 Words and expressions defined in the Principal Agreement shall, unless the context otherwise requires, bear the same meanings in this Deed.
- 1.5 The provisions in the Principal Agreement regarding interpretation shall apply to this Deed.
- 1.6 Save as varied by this Deed the Parties affirm and confirm the contents of the Principal Agreement.

2 Legal effect

- 2.1 This Deed constitutes a planning obligation for the purposes of the Act which binds the Association Land.
- 2.2 This Deed is a variation to the Principal Agreement in so far as it relates to the Affordable Housing Units and is made pursuant to section 106 and 106A of the 1990 Act.
- 2.3 Nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise by it of its statutory functions and the rights, powers, duties and obligations of the Council under private statutes are effectively exercised as if it were not a party to this Deed.
- 2.4 This Deed shall be registered as a local land charge in the Register of Local Land Charges.
- 2.5 It is hereby agreed between the Parties that the provisions of this Deed take effect upon the date hereof.

3 Variation

The Parties agree that with effect from the date of this Deed the Principal Agreement is amended in accordance with the Schedule to this Deed in so far as it relates to the Affordable Housing Units.

4 Miscellaneous

- 4.1 If any provisions in this Deed shall be held invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 4.2 No waiver (whether express or implied) by the Council of any breach or default by the OWNER in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the OWNER.
- 4.3 Save as expressly varied by this Deed the Principal Agreement shall remain in full force and effect.

5 STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 16 of the Greater London Council (General Powers) Act 1974 section 1 of the Localism Act 2011 and any other enabling powers, to the intent that it will bind the Owner and their successors in title to the Association land.

6 COVENANTS TO THE COUNCIL

The Owner and the Chargee covenant to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this deed.

7 CHARGEES CONSENT

- 7.1 The Chargee consents to the completion of this deed and acknowledges that from the date of this deed the Association Land shall be bound by the terms of this deed, as if it had been executed and registered as a land charge prior to the creation of the Chargee's interest in the Association Land.

8 VALUE ADDED TAX

- 8.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

9 Contracts (Rights of Third Parties) Act 1999

Without prejudice to the definitions of the Council and the OWNER, any rights or benefits that may be conferred under the Contract (Rights of Third Parties) Act 1999 are expressly excluded for the purposes of this Deed.

10 Costs

Prior to completion of this Deed the OWNER will pay the Council's reasonable and proper legal expenses and costs associated with the preparation negotiation and execution of this Deed.

11. INTEREST

All costs, payments and expenses payable to the Council under this Agreement shall bear the Interest rate from time to time being charged from the date such payment is due until the payment is received by the Council.

12. JURISDICTION/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.

Schedule

Variation to the Principal Agreement

It is hereby agreed that the Principal Agreement is varied as follows:

- 1 A new clause 2. 3 of Schedule 9 shall be added as follows

2.3 The affordable housing provisions in Schedule 9 of this Agreement shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee provided that:

2.3.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of 3 months from the date of the written notice, to complete a disposal of the Affordable Housing Units to a 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

2.3.2 if such disposal has not completed within the 3 month period, the Chargee, shall be entitled to dispose of the Affordable Housing Units free from the affordable housing restrictions in Schedule 9 of this Agreement which provisions shall determine absolutely.

- 2.3 For the purpose of this schedule the following definitions will apply:

"Charge" means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units (or any number of them) in favour of the Chargee.

"Chargee" means any mortgagee or chargee of the Registered Provider of the Affordable Housing Units or the Additional Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager 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.

"Date of Deemed Service" means, in each instance where a Chargee has served a Default Notice under this paragraph 3 of Schedule 9:

- (a) in the case of service by delivery by hand of the Default Notice to the Council's offices addressed to the Director of Planning, Regeneration and Public Realm, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW the date on which the Default Notice is so delivered; or
- (b) in the case of service by using first class registered post to the Council's offices at the second Working Day after the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) provided that the Chargee is able to evidence that the Default Notice was actually delivered to the Council (by Royal Mail proof of delivery or otherwise).

"Default Notice" means a notice in writing served on the Council by the Chargee under paragraph 3 of Schedule 9 of the Chargee's intention to enforce its security over the relevant Affordable Housing Units.

"Intention Notice" means a notice in writing served on the Chargee by the Council under paragraph 3.2 of Schedule 9 that the Council is minded to purchase the relevant Affordable Housing Units.

"Moratorium Period" means, in each instance where a Chargee has served a Default Notice under paragraph 3 of Schedule 9, the period from (and including) the Date of Deemed Service on the Council of the Default Notice to (and including) the date falling 3 months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the LPA).

"Option" means the option to be granted to the Council (and/or its nominated substitute Registered Provider) in accordance with paragraph 3.2 for the purchase of the Affordable Housing Units.

"Sums Due" means all sums due to a Chargee of the Affordable Housing Units pursuant to the terms of its Charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses.

- 3.1 In order to benefit from the protection in paragraph 3.6 (an absolute release of the restriction on the Affordable Housing Units if a sale to the Council or a Registered Provider has not been completed with the 3 month Moratorium Period detailed below) a Chargee must:
- (a) serve a Default Notice on the Council by delivery by hand to the Council's offices during office hours or using first class registered post to the Council's offices in either case addressed to the Director prior to seeking to dispose of the relevant Affordable Housing Units;
 - (b) when serving the Default Notice, provide to the Council official copies of the title registers for the relevant Affordable Housing Units; and
 - (c) subject to paragraph 3.5, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units before the expiry of the Moratorium Period except in accordance with paragraph 3.3
- 3.2 From the first day of the Moratorium Period to (but excluding) the date falling 1 calendar month later, the Council may serve an Intention Notice on the Chargee.
- 3.3 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Council and the Chargee), the Chargee will grant the Council (and/or the Council's nominated substitute Registered Provider) an exclusive option to purchase the relevant Affordable Housing Units which shall contain the following terms:
- (a) the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
 - (b) the price for the sale and purchase will be agreed in accordance with paragraph 3.4(b) or determined in accordance with paragraph 3.5;
 - (c) provided that the purchase price has been agreed in accordance with paragraph 3.4(b) or determined in accordance with paragraph 3.5, but subject to paragraph 3.3(d), the Council (or its nominated substitute Registered Provider) may (but is not obliged to) exercise the Option and

complete the purchase of the relevant Affordable Housing Units at any time prior to the expiry of the Moratorium Period;

- (d) the Option will expire upon the earlier of (A) notification in writing by the Council (or its nominated substitute Registered Provider) that it no longer intends to exercise the Option and (B) the expiry of the Moratorium Period; and
- (e) any other terms agreed between the parties to the Option (acting reasonably).

3.4 Following the service of the Intention Notice:

- (a) the Chargee shall use reasonable endeavours to reply to reasonable enquiries raised by the Council (or its nominated substitute Registered Provider) in relation to the Affordable Housing Units as expeditiously as possible having regard to the length of the Moratorium Period; and
- (b) the Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units which shall be the higher of:
 - (i) the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing Units contained in this Schedule; and
 - (ii) (unless otherwise agreed in writing between the Council (or its nominated substitute Registered Provider) and the Chargee) the Sums Due.

For the avoidance of doubt at no point shall the Chargee be required to dispose of the relevant Affordable Housing Unit(s) for a consideration less than the amount due and outstanding under the terms of the relevant security documentation.

3.5 On the date falling 10 Working Days after service of the Intention Notice, if the Council (or its nominated substitute Registered Provider) and the Chargee have not agreed the price pursuant to paragraph 3.4(b):

- (a) the Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;
- (b) if, on the date falling 15 Working Days after service of the Intention Notice, the Council (or its nominated substitute Registered Provider); and
- (c) the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or their deputy to appoint an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute;
- (d) the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 3.4(b)(i), due regard being had to all the restrictions imposed upon the relevant Affordable Housing Units by this Agreement;
- (e) the independent surveyor shall act as an expert and not as an arbitrator;

- (f) the fees and expenses of the independent surveyor are to be borne equally by the parties;
- (g) the independent surveyor shall make their decision and notify the Council, the Council's nominated substitute Registered Provider (if any) and the Chargee of that decision no later than 14 days after their appointment and in any event within the Moratorium Period; and
- (h) the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).

3.6 The Chargee may dispose of the relevant Affordable Housing Units free from the obligations and restrictions contained in Schedule 9 which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:

- (a) the Council has not served an Intention Notice before the date falling 1 calendar month after the first day of the Moratorium Period;
- (b) the Council (or its nominated substitute Registered Provider) has not exercised the Option and completed the purchase of the relevant Affordable Housing Units on or before the date on which the Moratorium Period expires; or
- (c) the Council (or its nominated substitute Registered Provider) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.

3.7 The Council (and its nominated substitute Registered Provider, if any) and the Chargee shall act reasonably in fulfilling their respective obligations under paragraphs 3.1 to 3.5 (inclusive).


2. Existing clause 3 of Schedule 9 shall be amended to clause 4.

3. Existing clause 4 of Schedule 9 shall be amended to clause 5.

IN WITNESS whereof the parties hereto have executed this instrument as their deed and it is the parties' intention that this Deed be delivered and it is hereby delivered on the date first before written

THE COMMON SEAL of
Mayor and Burgesses of
The London Borough of Hillingdon
was hereunto affixed
in the presence of:

Member of the Council



Authorised signatory



Executed as a Deed by
Metropolitan Housing Trust Limited
affixing of its Common Seal
in the presence of:

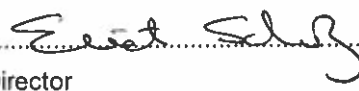
Authorised Signatory



Authorised Signatory



Executed as a Deed (but not delivered
until dated) for and on behalf of
The Law Debenture Trust Corporation
p.l.c.


Director


Secretary



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