_planningadvice

From: Fidler, Richard
Sent: 03 July 2020 10:01
To: _planningadvice
Subject: H14-0606-12 Supplementary agreement under Section 106A
Attachments: S106 H14-0987-11 Pennytoft variation.pdf

Please scan to H14-0606-12 as 3106 – Section 106A Supplementary Agreement

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ROYTHORNES solicitors

ROYTHORNES LIMITED

DATED 17 December 2014

SOUTH HOLLAND DISTRICT COUNCIL

- and -

LARKFLEET LIMITED

- and -

HSBC BANK PLC

SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND AT PENNYTOFT LANE PINCHBECK SPALDING

Certified as a True Copy

LSL

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14 PARK ROW
NOTTINGHAM
NG1 6GR

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THIS D

THIS DEED is dated 17 December 2014.

(1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices Priory Road Spalding Lincolnshire (the "**Council**");

(2) **LARKFLEET LIMITED** (Company Registration Number 03520125) whose registered office is situate at Larkfleet House Falcon Way Southfield Business Park Bourne PE10 0FF (the "**Owner**"); and

(3) **HSBC BANK PLC** (Company Registration Number 0014259) of the Securities Processing Centre PO Box 6304 Coventry CV3 9JY (the "**Mortgagee**")

BACKGROUND

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated and by whom the obligations in the Original Agreement (as defined below) as amended by this Deed are enforceable.

(B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.

(C) The Mortgagee is the registered proprietor of the charge dated 13th August 2013 referred to in entries 2 and 3 of the charges register of Title Number LL341634 and has agreed to enter into this Deed to give its consent to the terms of this Deed.

(D) On 25th July 2013 the Council and the Owner entered into the Original Agreement and the obligations and covenants contained the Original Agreement are enforceable by the Council.

(E) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this Deed.

(F) The Council has agreed that there is no further requirement for the purchasers of the Affordable Dwellings to be approved by the Council

(G) This Deed is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

AGREED TERMS

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this Deed.

1.1 Definitions:

Original Agreement: the agreement made under section 106 of the TCPA 1990 and section 111 of the Local Government Act 1972 and section 1 of the Local Government Act 2011 and any other enabling powers dated 25th July 2013 between the Council and the Owner.

1.2 **Help to Buy Scheme:** means the Homes and Communities Agency's Help to Buy: Equity Loan or Help to Buy: Mortgage Guarantee scheme

1.3 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.

1.4 Clause headings shall not affect the interpretation of this Deed.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply to this Deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.

1.9 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.

1.10 Unless the context otherwise requires, references to clauses are to the clauses of this Deed.

1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.12 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.

1.13 The expressions "the Owner" and "the Mortgagee" shall include their successors in title and assigns and the expression "the Council" shall include its successors as the local planning authority for the area in which the Property is situated

2. 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 1 of the Localism Act 2011 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

The Original Agreement shall be varied as follows:

3.1 The definition of Property in clause 1.1 of the Original Agreement shall be deleted and replaced with the following definition:

"**Property:** the land to the north of Pennytoft Lane Pinchbeck Spalding shown edged red on the Plan and forming part of the land registered at the Land Registry with title absolute under Title Number LL341634 but excluding the land shown edged in green and edged in blue"

3.2 The Plan attached to the Original Agreement at Appendix 1 shall be removed and replaced with the plan annexed to this Deed.

3.3 The definition of Affordable Dwellings in paragraphs 1.1 of Schedule 1 shall be deleted and replaced with the following definition:

"**Affordable Dwellings:** means new build dwellings erected or to be erected on the Property available for sale on a Shared Equity basis provided that each Affordable Dwelling shall be subject to a maximum price of £600,000 and Affordable Dwelling means any one of them

3.4 Paragraph 1.4 of Schedule 1 (the definition of Approved Purchaser) shall be deleted.

3.5 Paragraph 1.15 of Schedule 1 (definition of EMHomeBuy) shall be deleted

3.6 Paragraph 1.26 of Schedule 1 (the definition of Marketing Commencement Date) shall be deleted

3.7 All references to an Approved Purchaser or the Approved Purchaser in the Original Agreement shall be deleted and replaced with a Purchaser or the Purchaser.

3.8 The following definitions shall be included in Schedule 1:

1.37 **Purchase Criteria** means (save as provided herein) that the Purchaser:

1.37.1 shall after the legal completion of the purchase of an Affordable Dwelling occupy that Affordable Dwelling as his only or main residence;

1.37.2 shall not hold a legal interest in another residential property;

1.37.3 shall not purchase an Affordable Dwelling as a buy-to-let property; and

1.37.4 shall not be permitted to use any Help to Buy Scheme to finance the purchase of an Affordable Dwelling

PROVIDED THAT:

a) a Purchaser who has a legal interest in another property may be permitted to purchase an Affordable Dwelling where the Purchaser's personal circumstances are deemed to be exceptional by both the Owner and the Council (both acting reasonably) such circumstances to be assessed on a case by case basis and may include but shall not be limited to situations where a Purchaser has a legal interest in

another residential property but is unable to live at that property (for example following a divorce or separation);

b) the subsequent letting of an Affordable Dwelling may be permitted in accordance with the terms of the Shared Equity Charges where both the Owner and the Council provide prior written consent; and

c) a Purchaser shall be permitted to purchase an Affordable Dwelling by way of a part-exchange transaction entered into between the Purchaser and the Owner

d) the Owner and the Council may at their absolute discretion agree in writing at any time to vary the Purchase Criteria set out herein

Purchaser means a purchaser of an Affordable Dwelling

3.9 Paragraph 2 of Schedule 1 shall be amended by the addition of the words "and the land adjoining the Property shown edged in green on the Plan"

3.10 Paragraph 3 of Schedule 1 shall be deleted in its entirety.

3.11 In paragraph 4.2 of Schedule 1 the words "subject to paragraph 3 hereof" shall be deleted and the following words shall be inserted at the end of paragraph 4.2:
"PROVIDED THAT the Owner shall ensure that at the time of the legal completion of the purchase of an Affordable Dwelling the Purchaser meets the Purchase Criteria"

3.12 Paragraph 4.5 of Schedule 1 shall be deleted in its entirety.

3.13 A new Paragraph 4.14 shall be inserted in Schedule 1 in the following terms:
"For the purposes of the definition of "Buyer" in the Deed of Priority a Purchaser shall be a purchaser of an Affordable Dwelling approved pursuant to the terms of this Agreement".

3.14 Paragraph 4 of Schedule 2 shall be deleted in its entirety.

3.15 In paragraph 1 of Schedule 3 the reference to Affordable Housing shall be deleted and replaced with "affordable housing (as referred to in condition 4 of the Planning Permission)"

3.16 In paragraph 4.2 of Schedule 3 the words "or (if later) 5 working days of the date of approval in accordance with paragraph 4 of Schedule 2 for each Affordable Dwelling" shall be deleted.

3.17 Paragraph 4.2.1 of Schedule 3 shall be deleted in its entirety.

3.18 A new paragraph 5 shall be inserted in Schedule 3 in the following terms:
"It is hereby agreed that the Owner is entitled to dispose of the Affordable Dwellings to Purchasers who do not require a prior mortgage with an institutional lender and in such case the Shared Equity Charges shall be amended so that the Council's Shared Equity Charge shall be a first legal charge and the Owner's Shared Equity Charge shall be a

(for example in accordance

second legal charge and the Council's Shared Equity Charge shall be registered against the Affordable Dwelling as a first legal charge and the Owner's Shared Equity Charge shall be registered against the Affordable Dwelling as a second legal charge but the Shared Equity Charges shall rank equally and the Deed of Priority shall be ameded accordingly"

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

4. COVENANTS TO THE COUNCIL

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

5. MORTGAGEE'S CONSENT

The Mortgagee consents to the completion of this Deed and acknowledges that from the date of this Deed the Property 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 Mortgagee's interest in the Property PROVIDED THAT The Mortgagee shall not be personally liable for any of the obligations in the Original Agreement or this Supplemental Agreement and shall have no liability whatsoever under the Original Agreement or this Supplemental Agreement unless it takes possession of the Property in which case it too will be bound by the obligations as if it were a person deriving title from the Owner in respect of the land of which possession is taken PROVIDED FURTHER THAT the Mortgagee shall upon parting with all its interest in or releasing or discharging its security over the Property or any relevant part be released from all obligations relating to the Land or such relevant part

6. LOCAL LAND CHARGE

This Deed shall be registered as a local land charge.

7. ENDORSEMENT

Promptly following completion of this Deed the Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated 17 December 2014 and made between (1) the Council (2) the Owner and (3) the Mortgagee.

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. **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.

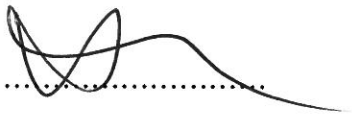
10. **GOVERNING LAW**

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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of **SOUTH HOLLAND DISTRICT COUNCIL** was affixed to this document in the presence of:





Authorised signatory

Executed as a deed by **LARKFLEET LIMITED** acting by a director in the presence of:



Director

Witness Signature:



Witness Name: PAUL RICHARD OSBORNE

Witness Address: ENTERPRISE WAY PINCHBECK LINCS PE11 3YR

Executed as a deed by **HSBC BANK PLC**
by its duly authorised attorney in the presence of:-

.....

Authorised Attorney

Witness Signature:

Witness Name: Ed Broadbury.

Witness Address:

HSBC Bank plc
4th Floor
120 Edmund Street
Birmingham
B3 2QZ

PLAN