

Dated 9 NOVEMBER 2023

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) CALA MANAGEMENT LIMITED
- (4) BELLWAY HOMES LIMITED
- (5) VIVID HOUSING LIMITED
- (6) RYDON HOMES LIMITED
- (7) GLEESON LAND LIMITED

Deed of Variation (Section 106A Town and Country Planning Act 1990)

to an agreement made under Section 106 of the Town and Country Planning Act 1990 dated 27 August 2019 and varied by agreement made under Section 106 of the Town and Country Planning Act 1990 dated 7 September 2022

in relation to Land north of Water Lane, Angmering, West Sussex

Ref: A/268/22/PO

THIS Deed is made the

9

day of

NOVEMBER

2023

BETWEEN

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton BN17 5LF ("**District Council**")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ ("**County Council**")
3. **CALA MANAGEMENT LIMITED** (Scot Co. Regn. No. SC013655) of Adam House, 5 Mid New Cultins, Edinburgh EH11 4DU ("**First Owner**")
4. **BELLWAY HOMES LIMITED** (Co. Regn. No. 0670176) of Woolsington House, Woolsington, Newcastle Upon Tyne, England NE13 8BF ("**Second Owner**")
5. **VIVID HOUSING LIMITED** (Registered under the Co-operative and Community Benefit Societies Act 2014 with the Community Benefit Society No. 7544) of Peninsular House, Wharf Road, Portsmouth PO2 8HB ("**Vivid Homes**")
6. **RYDON HOMES LIMITED** (Company Registration No.: 04773137) whose registered office is at Luxford Place, Lower Road, Forest Row RH18 5HE and **GLEESON LAND LIMITED** formerly known as Gleeson Strategic Land Limited (Company Number 05181745) of 6 Euopa Court Sheffield S9 1XE ("**the Chargees**")

WHEREAS

1. The District Council is the local planning authority in respect of the area within which the Land is situated.
2. The County Council is the education authority and highway authority for the area within which the Land is situated.
3. The First Owner is the registered freehold proprietor of that part of the Land which is registered with HM Land Registry under title number WSX429760 which is subject to a charge in favour of the Chargees dated 17 December 2021.
4. The Second Owner is the registered freehold proprietor of that part of the Land which is registered with HM Land Registry under title number WSX430121 and which is subject to a charge in favour of the First Owner dated 17 December 2021.
5. Vivid Homes are to become the registered owner of that part of the Land forming part of the Affordable Housing (as defined in the Principal S106) acquired by way of a Transfer dated 23 December 2022 and which is pending registration at HM Land Registry.
6. The County Council is the registered freehold proprietor of that part of the Land which is registered with HM Land Registry under title number WSX328346 and which is adopted public highway.
7. An agreement pursuant to section 106 of the 1990 Act was entered into between (1) the District Council (2) the County Council (3) James Stewart Hazel Grove and Steven Lindsay Cloran and Graham Robert Fuller (4) Clement Charles Fitzroy Somerset and Sophie Elizabeth Pinnegar (5) Daryl Fedele Perilli and Sonja Browning-Page (6) Amanda Farina Perrilli and Melinda Anne Perilli and Lisa Dinah Espezel and Maria Vanessa Thomas and (7) Rydon

Homes Limited on 27 August 2019 in relation to planning application reference A/40/18/OUT (the "**Principal S106**").

8. Planning permission (reference A/40/18/OUT) was issued by the District Council on 27 August 2019 following completion of the Principal S106 (the "**Original Permission**").
9. Planning permission (reference A/248/21/PL) was issued by the District Council on 29 April 2022 pursuant to section 73 of the 1990 Act to vary condition 4 of the Original Permission to vary the parameter plans ("**the S73 Permission**").
10. An agreement to vary the Principal S106 pursuant to section 106A of the 1990 Act was entered in between the (1) District Council (2) the County Council and (3) the Owner on 7 September 2022 ("**the First Variation**").
11. The First Owner has submitted an application (reference A/268/22/PO) pursuant to A/40/18/OUT of the 1990 Act to the District Council to vary the Principal S106 as varied by the First Variation as detailed in Clause 3 of this Deed of Variation.
12. The parties to this Deed of Variation agree and acknowledge that from the date hereof the Principal S106 as varied by the First Variation is to be read as further varied by this Deed of Variation.

NOW THIS SUPPLEMENTAL AGREEMENT WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed of Variation wherever the context so admits the definitions and expressions set out in the Principal Agreement as varied by the First Variation shall continue to apply to this Deed of Variation with the additions below:

"Deed of Variation" means this second supplemental deed of agreement made pursuant to Sections 106 and 106A of the 1990 Act and all other enabling powers in respect of the S73 Permission and varying the terms of the Principal Agreement as varied by the First Variation.

- 1.2 This Deed of Variation is supplemental to and amends the Principal Agreement as varied by the First Deed of Variation in the manner appearing at Clause 3.
- 1.3 This Deed of Variation constitutes a Deed.
- 1.4 Clause headings shall not affect the interpretation of this Deed of Variation.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.6 References in this Deed of Variation to any statute or statutory provision shall be construed as a reference to the same as it may from time to time be amended, extended, modified, consolidated or re-enacted whether before or at the date of this Deed of Variation.
- 1.7 Unless the context otherwise requires, reference to any clause, paragraph, sub-clause or schedule or appendix is a reference to a clause, paragraph, sub-clause, schedule or appendix of or to this Deed of Variation.
- 1.8 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Deed of Variation.

- 1.9 Where a party includes more than one person named as a party any obligations of that party shall be joint and several unless there is an express provision otherwise.
- 1.10 References to any party to this Deed of Variation shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council any successors in statutory functions to it.
- 1.11 To the extent that there is any conflict between the provisions of the Principal Agreement as varied by the First Variation and this Deed of Variation then the provisions of this Deed of Variation shall prevail.

2. LEGAL BASIS AND EFFECT

- 2.1 This Deed of Variation is made pursuant to Sections 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972 as amended, Section 1 of the Localism Act 2011 and all other statutory and enabling powers and shall be enforceable by the District Council accordingly but without prejudice to all other means of enforcing it at law or in equity or by statute.
- 2.2 The First Owner, the Second Owner and Vivid Homes hereby agree that the obligations created by this Deed of Variation are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council as local planning authority and further agree that the Land shall be subject in all respects to the covenants and obligations contained in the Principal Agreement as varied by the First Variation and as further varied by this Deed of Variation.
- 2.3 The Chargees consent to and join in the execution of this Deed of Variation and acknowledge that part of the Land which is registered with HM Land Registry under title number WSX429760 shall be bound by the planning obligations in this Deed PROVIDED that the Chargees shall otherwise have no liability under this Deed unless it takes possession of the Land which is registered with HM Land Registry under title number WSX429760 in which case it too will be bound by the obligations as if it were a person deriving title from the First Owner.
- 2.4 The provisions of this Deed of Variation shall come into effect on the date hereof.

3. VARIATIONS TO PRINCIPAL AGREEMENT AS VARIED BY THE FIRST VARIATION

- 3.1 The parties to this Deed of Variation agree the following variations shall be made to the Principal Agreement as varied by the First Variation on the date hereof.
- 3.2 The definition of "*Mortgagee*" in Clause 2.1.40 shall have the words "*or any persons or bodies deriving title through such mortgagee or chargee or Receiver*" at the end of the definition **DELETED**.
- 3.3 The definition of "*Registered Provider*" in clause 2.1.51 shall be **DELETED** and **REPLACED** with the following new definition:

"2.1.51 "*Registered Provider*"

means a provider of Affordable Housing pursuant to the Housing and Regeneration Act 2008 who is on the List of Arun District Council Preferred Registered Providers (attached as Appendix 1 to this Agreement) or is specifically approved by the District Council in writing for the purposes of this Agreement

- 3.4 Clause 3.13 paragraph (iii) shall have the words "*paragraph 9 of Schedule 3*" in the third line **DELETED** and **REPLACED** with the words "*paragraph 10 of Schedule 2*".

- 3.5 Clause 3.13 paragraph (iv) shall have the words "*Schedule 3*" in the second line **DELETED** and **REPLACED** with the words "*Schedule 2*".
- 3.6 In Schedule 2 paragraph 9.3 the word "*or their Mortgagee or their successors in title*" shall be **DELETED** and **REPLACED** with the words "*and their mortgagee or chargee and their successors in title and their mortgagees or chargees as the case may be*" in the second line.
- 3.7 Schedule 2 paragraph 10.2 shall be AMENDED as follows:
- 3.7.1 The words "*from the date of service of the Notice*" shall be **INSERTED** between the words "*Endeavours*" and "*(including*" in the first line; and
- 3.7.2 The words "*to complete a disposal of the Affordable Housing Units (or any number of them as applicable) to another Registered Provider for a consideration not less than the amount due and outstanding under the terms of the relevant charge including all accrued principal monies, interest and costs and expenses*" shall be **ADDED** to the end of the paragraph
- 3.8 Except where amended or varied by this Deed of Variation the Principal Agreement as varied by the First Variation shall remain in full force and effect.
4. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- 4.1 No express or implied term of this Deed of Variation is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
5. **COSTS**
- 5.1 Prior to the completion of this Deed of Variation the First Owner will pay the District Council's reasonable costs and disbursements in connection with the negotiation and completion of this Deed of Variation.
6. **REGISTRATION**
- 6.1 The First Owner, the Second Owner and Vivid Homes consent to the registration of this Deed of Variation as a Local Land Charge by the District Council.
7. **MISCELLANEOUS**
- 7.1 The terms conditions and provisions of the Principal Agreement as varied by the First Variation and as supplemented and varied by this Deed of Variation shall continue in full force and effect and shall be binding upon the First Owner, the Second Owner and Vivid Homes and their successors in title.
- 7.2 Nothing contained or implied in this Deed of Variation shall prejudice or affect the rights, powers, duties and obligations of the District Council or the County Council in the exercise of their functions as local planning authority education or highway authority (as the case may be) and their rights, powers, duties and obligations under all public and private statutes, bylaws and regulations may be as fully and effectually exercised as if the District Council and County Council were not a party to this Deed of Variation or the Principal Agreement as varied by the First Variation.
- 7.3 If any provision in this Deed of Variation shall be held to be invalid, illegal or unenforceable then the validity, legality and enforceability shall not affect the validity or enforceability of the remaining provisions of this Deed of Variation or the Principal Agreement as varied by the First Variation.
- 7.4 No waiver (whether express or implied) by the District Council or County Council of any breach or default by the First Owner or the Second Owner or Vivid Homes in performing or observing any of the covenants agreements obligations or restrictions contained in this Deed of Variation

shall constitute a continuing waiver and no such waiver shall prevent the District Council or County Council (as the case may be) from enforcing any of the said covenants agreements or obligations from acting upon any subsequent breach or default in respect thereof by the First Owner or the Second Owner or Vivid Homes.

7.5 Nothing in this Deed of Variation shall be construed as a grant of planning permission.

8. **JURISDICTION**

This Deed of Variation is governed by and shall be interrupted in accordance with the law of England.

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

EXECUTED as a DEED by affixing the Common Seal of)

ARUN DISTRICT COUNCIL

in the presence of)



Authorised Signatory

Name: *SOFIYA AHMED*

Occupation: *SOLICITOR*

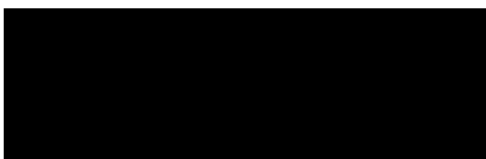
Seal Book No. *135/223*



EXECUTED as a DEED by affixing the Common Seal of)

WEST SUSSEX COUNTY COUNCIL

in the presence of:)

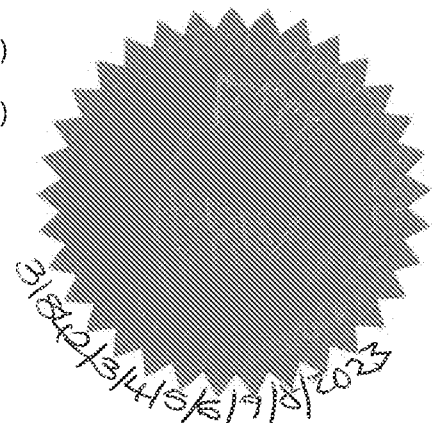


Authorised Signatory

Name:

Occupation:

Seal Book No.



EXECUTED as a DEED by two directors of CALA

HOMES (SOUTH) LIMITED as attorneys for

CALA MANAGEMENT LIMITED

R. Home



N. Brown



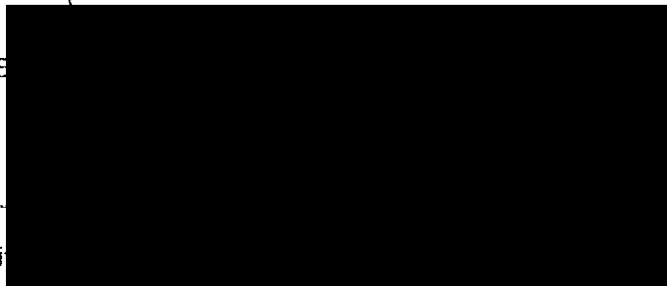
Director

Executed as a deed by)

BELLWAY HOMES LIMITED)

acting by its attorney)

NIGEL CLASBY/DUNCAN FISHER



Signed: _____

BELLWAY HOMES LIMITED by its

attorney to a power of attorney
in the presence of:



Nigel Clasby
Group Head of Legal
Bellway Homes Limited
Woolsington House
Woolsington
Newcastle upon Tyne
NE13 8BF

[ADDRESS OF WITNESS]

~~EXECUTED as a DEED by RYDON~~

~~HOMES LIMITED acting by two~~

~~directors or a director and secretary~~

.....

~~Director~~

.....

~~Director / Secretary~~

EXECUTED as a Deed by Sharratts (London) LLP

acting by Nicholas Wookey a member partner as attorney

under a Power of Attorney dated 1 April 2023 for

VIVID HOUSING LIMITED

Attorney Signature:

In the presence of:

Witness signature:

Witness name (print): NEAL MACQUEEN

Witness occupation (print) PLANNING MANAGER

Witness address (print): DOLING BUSINESS PARK

STATION ROAD

DOLING

RH4 1WJ

EXECUTED as a DEED by RYDON

HOMES LIMITED acting by two

directors or a director and secretary:

[Redacted signature block]

Director / Secretary

~~EXECUTED as a DEED by GLEESON LAND~~

~~LIMITED acting by two~~

~~directors or a director and secretary:~~

~~Director~~

~~Director / Secretary~~

~~EXECUTED as a Deed by Shanatts (London) LLP~~

~~acting by Nicholas Wookey a member partner as attorney~~

~~under a Power of Attorney dated 1 April 2023 for~~

~~VIVID HOUSING LIMITED~~

Attorney Signature:

~~In the presence of:~~

~~Witness signature:~~

EXECUTED as a DEED by GLEESON LAND

LIMITED acting by two

directors or a director and secretary

.....
Director

.....
Director / Secretary

