

DATED 2025

(1) ARUN DISTRICT COUNCIL

and

(2) WEST SUSSEX COUNTY COUNCIL

and

(3) ELIVIA HOMES LIMITED

and

(4) MELANIE JENKINS FARMING LIMITED

and

(5) BARCLAYS BANK

Deed of Variation made pursuant to Section 106 and 106A of the Town and Country Planning Act
1990 and all other enabling powers
relating to Land East of Shripney Road & south of Haddan House, Shripney Road, Bersted, PO22
9NW

Application reference: []

BETWEEN:

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex, PO19 1RQ (the "County Council")
- (3) **ELIVIA HOMES LIMITED** (Company Reg No: 05011077) of Suites 5 & 6, Woodlands Court, Burnham Road, Beaconsfield HP9 2SF. (the "First Owner")
- (4) **MELANIE JENKINS FARMING LIMITED** (Company Reg No. 5521174) of 190 Strand, London, WC2R 1JN and of Basing Park, Privett, Alton, Hampshire, GU34 3NS (the "Second Owner")
- (5) **BARCLAYS BANK** (Company Reg No:) of (the)
"Mortgagee"

WHEREAS:

1. The First Owner is the registered proprietor of the freehold interest in that part of the Land which is registered at the Land Registry under title number WSX435131
2. The Mortgagee has a legal charge pending on the Owner's land dated [13 December 2024] pending registration at H M Land Registry under title number WSX435131
3. The Second Owner is the registered proprietor of the freehold interest in that part of the Land which is registered at the Land Registry under title number WSX294677
4. Following completion of the Principal Agreement the Planning Permission was granted on 9 December 2021
5. The parties to this Deed agree to vary the Principal Undertaking as set out in this Deed with the intention that the Principal Undertaking applies to the Development as amended by the Non-Material Amendment Applications.
6. The parties to this Deed hereby agree and declare that (insofar as the same are relevant) the tests and requirements set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 have been satisfied in this regard.

Commented [VC1]: Charge pending against title

7. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated
8. The County Council is the local authority responsible for highways infrastructure in the area in which the Land is situated.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of this Deed (including for the avoidance of doubt the recitals above) the definitions set out in the Principal Undertaking will apply unless the context requires otherwise and in addition the following additional expressions shall have the following meanings which shall take precedence in the event of a conflict:

“Deed” means this deed of variation made pursuant to s.106A of the 1990 Act (as amended);

“Principal Undertaking” means the unilateral undertaking dated 3 November 2021 and entered into pursuant to section 106 of the 1990 Act by The Trustees of the Ashmarden Limited Retirement Benefit Scheme (1) to Arun District Council (2) and West Sussex County Council (3)

“Planning Permission” means the full planning permission subject to conditions granted by the District Council on 9 December 2021 under reference number BE/109/19/OUT

“Owners” means the First Owner and Second Owner together

- 1.2 The provisions of the Principal Undertaking shall apply with similar effect to this Deed (construed with such consequential amendments as are necessary).
- 1.3 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations may be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2. LEGAL BASIS AND EFFECT

This Deed is made pursuant to section 106A of the 1990 Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

3. STATUTORY FUNCTIONS

Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local planning authority or under any public or private statute bylaw or regulation.

4. VARIATION TO THE PRINCIPAL UNDERTAKING

4.1 The parties agree that the Principal Undertaking shall be varied as set out in the Schedule to this Deed but shall otherwise remain in full force and effect (in so far as the obligations in the Principal Undertaking have not been discharged).

4.2 This Deed shall be read in conjunction with the Principal Undertaking

5. LEGAL COSTS

Upon completion of this Deed the First Owner will pay the Council's reasonable and properly incurred legal costs (no VAT) incurred in the preparation and completion of this Deed.

6. WARRANTIES

6.1 The Owners warrants that:

- 6.1.1 they have full authority to enter into this Deed;
- 6.1.2 no person other than the Owners has any legal or equitable interest in the Land;
- 6.1.3 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that all payments due to any mortgagee or chargee are paid as at the date of this Deed;
- 6.1.4 they have investigated as necessary all matters of title to the Land and know of no impediment to the validity of entering into this Deed.

7. GENERAL

7.1 This Deed is a Local Land Charge and shall be registered as such by the Council in the Local Land Charges Register provided that if the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

7.2 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

8. MORTGAGEE'S CONSENT

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the First Owner with its consent and the Site shall be bound by the obligations contained in this Deed in priority to the charge of the Mortgagee and that the security of the Mortgagee over the Site shall take effect as if this Deed had been entered into prior to the charge of the Mortgagee

8.2 The parties hereby agreed that the obligations contain in this Deed shall not be enforceable against the Mortgagee unless it takes possession of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed 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.

10. DECLARATION

Other than as varied by this Deed the Principal Undertaking shall continue in full force and effect. Further:

(i) Except as far as varied by this Deed the words and expressions defined in the Principal Undertaking shall bear the same meaning in this Deed;

(ii) This Deed varies and shall be construed in connection with and supplemental to the Principal Undertaking and any necessary amendments to the Principal Undertaking to give effect to such variation shall be deemed to have been made; and

(iii) Nothing in this Deed affects the Council's powers in respect of any antecedent breach or omission in relation to the Principal Undertaking

11. COMMENCEMENT

For the avoidance of doubt the provisions of this Deed shall not have any effect until this document has been dated.

12. **GOVERNING LAW**

This Deed is governed by and interpreted in accordance with the laws of England and Wales.

SCHEDULE

VARIATIONS TO THE PRINCIPAL UNDERTAKING

The Principal Undertaking shall be varied as follows:

- 1) The following definitions at clause 1 (Definitions) are to be **AMENDED** and **REPLACED** with the following:

"Affordable Housing Units" *Means 13 Dwellings on the Site to be provided as Shared Equity Housing in accordance with the Approved Affordable Housing Scheme and "Affordable Housing Unit" shall be construed accordingly*

"Affordable Housing Scheme" *Means a scheme submitted by the Owner and approved in writing by the Council, setting out, in relation to the Affordable Housing Units:*
a. the dwelling type;
b. the location

- 2) The following new definitions are to be added at clause 1 (Definitions) in the relevant alphabetical order:

"Deed of Variation" *means the deed of variation made between (1) ARUN DISTRICT COUNCIL (2) WEST SUSSEX COUNTY COUNCIL (3) ELIVIA HOMES LIMITED and dated.....*

"Shared Equity Housing" *means housing which is provided by an Affordable Housing Provider to an Eligible Household on a shared equity arrangement whereby the purchaser buys an initial share of up to 70% of open market value of the Dwelling with the Affordable Housing Provider retaining a beneficial interest of at least 30% of the Dwelling secured by legal charge thereon with no rent paid on the unsold equity and the ability*

for the purchaser to subsequently purchase the remainder of the equity in the Dwelling;

3) The following definitions shall be **DELETED** in its entirety

"Affordable Rented Units"	Means a form of Affordable Housing, involving homes being available at a rent level of up to 80% of local market rent (inclusive of service charge at the time of each letting which rent may be increased annually by no more than CPI + 1.0% (or such other level as may been agreed in writing with the Council) or in the event of any change to legislation in relation to affordable rent such other rent level or allowed annual increase as may be applicable at the time of first letting. "Affordable Rent Unit" and "Affordable Rent" shall be construed accordingly.
"Homes England"	Means Homes England or any bodies undertaking the existing function of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act)
" <i>Intermediate Housing Units</i> "	Means 25% of the Affordable Housing Units (a total of 3 Dwelling Units if 46 Dwellings are granted Reserved Matters Approval comprising Affordable Housing for sale and rent provided at a cost above socal rent but below market levels which can included shared equity (shared ownership and equity loans) other low cost homes for sale and intermediate rent but not Affordable Rented Units
"Nomination Agreement"	Means a nomination agreement entered into by an Affordable Housing Provider with the Council in respect of the Affordable Housing Units

"Nomination Rights"	containing provisions substantially in the form set out in the Appendix 4 to this Undertaking and which shall grant to the Nomination Rights
	Means the right of the Council to nominate occupiers to the Affordable Dwelling Units in accordance with paragraph 1.9 of the Third Schedule to this Undertaking and which shall (subject to the provisions of the Nominations Agreement) allow the Council the write to nominate occupiers in respect of 100% of initial voids and in respect of 75% of subsequent voids unless otherwise agreed between the Affordable Housing Provider and the Council
" Shared Ownership Lease"	Means a shared ownership lease for a term of at least 125 years in the form regulated by the Homes England from time to time and which shall accord with the requirements and be consistent with any model shared ownership lease from time to time established by Homes England
"Shared Ownership Units"	Means any Affordable Housing Units to be Provided as shared ownership units for sale under a Shared Ownership Lease for sale in accordance with this Undertaking

Commented [VC2]: Again drafting from Undertaking. I suspect it was agreed quickly.

Commented [VC3]: Typo in original undertaking

4) Paragraph 1.1 of Schedule 3 shall be **DELETED** in its entirety and **REPLACED** with the following wording:-

1.1 That 13 Dwellings shall be Provided as Affordable Housing Units in accordance with the Affordable Housing Scheme.

5) Paragraph 1.9 of Schedule 3 shall be **DELETED** in its entirety

6) Appendix 4 shall be **DELETED** in its entirety

IN WITNESS whereof the parties hereto have executed this Deed as a deed the day and year first before written.

The **COMMON SEAL** of **ARUN DISTRICT COUNCIL**

was hereunto

affixed in the presence of:-

.....
Authorised Officer

The **COMMON SEAL** of **WEST SUSSEX DISTRICT COUNCIL**

was hereunto

affixed in the presence of:-

.....
Authorised Officer

EXECUTED as a DEED by

ELIVIA HOMES LIMITED

acting by a director

in the presence of:

Director

Witness Signature:

Witness Name (IN BLOCK CAPITALS):

Witness Address:

Witness Occupation:

EXECUTED as a DEED by

MELANIE JENKINS FARMING LIMITED acting
by a director

in the presence of:

Director

Witness Signature:

Witness Name (IN BLOCK CAPITALS):

.....

Witness Address:

.....

.....

Witness Occupation:

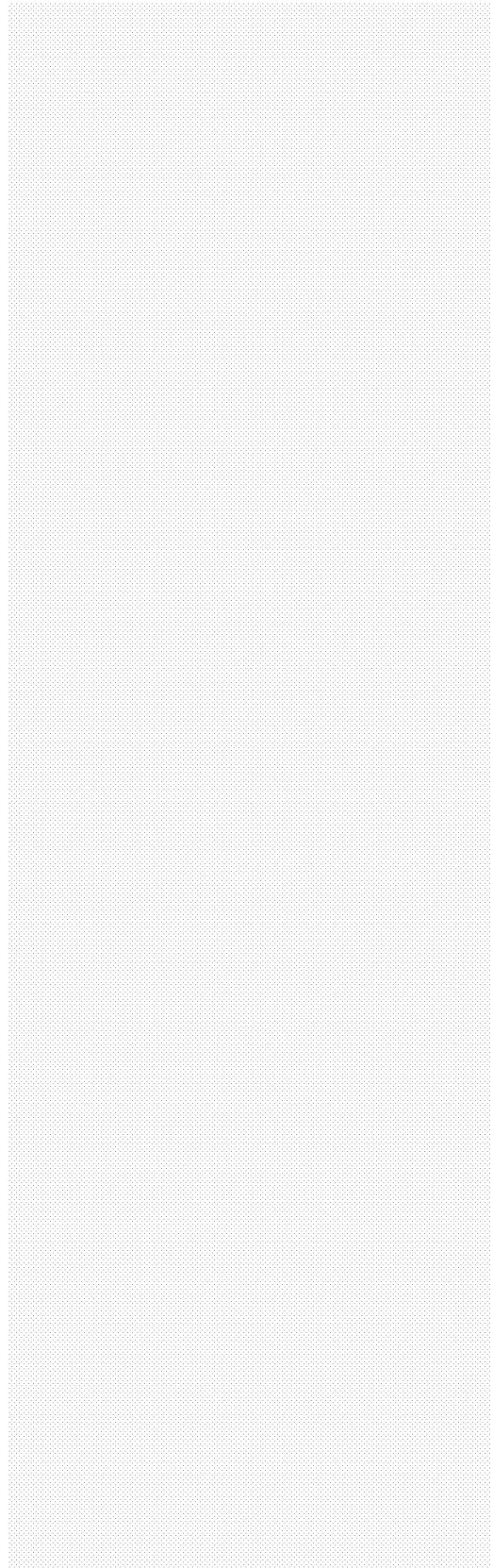
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EXECUTED as a **DEED** by

BARCLAYS BANK acting by two directors

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APPENDIX ONE:
SITE LAYOUT

