

DATED

2025

**ARUN DISTRICT COUNCIL**

- and -

**HYDE HOUSING ASSOCIATION LIMITED**

---

**DEED OF MODIFICATION OF**

**A SECTION 106 AND 106A DEED OF DISCHARGE AND VARIATION DATED 4 AUGUST 2006  
RELATING TO SITE AT BERSTEAD, BOGNOR REGIS, WEST SUSSEX**

---

**BETWEEN:**

- 1 **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF ("the Council") and
- 2 **HYDE HOUSING ASSOCIATION LIMITED** of 30 Park Street, London SE1 9EQ ("Hyde")

**WHEREAS**

- (A) Hyde is the freehold owner of the Land registered at the Land Registry with title absolute under title number WSX342319
- (B) The Council is the local planning authority for the purposes of the Act in which the Land is situated
- (C) The First S106 Agreement was entered into on 4 August 2006, the Second S106 Agreement was entered into on 29 April 2008, the Third S106 Agreement was entered into 14 December 2009, the Fourth S106 Agreement was entered into 10 March 2010, the Fifth S106 Agreement was entered into 23 September 2011 and the Sixth S106 Agreement was entered into 10 August 2015, together the 'Original Agreement'
- (D) The parties to this deed have agreed that the Original Agreement should be amended in order to ensure that the planning obligations contained in the Original Agreement are complied with save for the provisions as set out in this deed
- (E) This deed is made under S106A of the 1990 the Act and is supplemental to the Original Agreement

**NOW THIS DEED WITNESSES** as follows:-**1. STATUTORY PROVISIONS**

- 1.1 This deed is made pursuant to section 106A of the 1990 Act section 106 of the 1990 Act and all other powers enabling the Council and for the avoidance of doubt all obligations by Hyde hereinafter contained in this agreement shall be ones to which the provisions of section 106 of the 1990 Act shall apply and shall subject to the terms of this deed be binding and enforceable against the Land or any part thereof

**2. INTERPRETATION**

- 2.1 In this deed unless the context otherwise requires
  - 2.1.1 First S106 Agreement means the section 106 agreement dated 4 August 2006 made between (1) Arun District Council; and (2) various redacted parties
  - 2.1.2 Second S106 Agreement means the deed of variation and planning obligation dated 29 April 2008 made between (1) Arun District Council; (2)

Berkeley Strategic Land Limited; (3) Persimmon Homes Limited; (4) G Money & Sons Limited; (5) CC Trading Limited; and (6) Southern Housing Group Limited

- 2.1.3 Third S106 Agreement means the deed of variation and supplementation dated 14 December 2009 between (1) Arun District Council and (2) Berkeley Homes (Southern) Limited
- 2.1.4 Fourth S106 Agreement means the section 106 deed of discharge and variation dated 10 March 2010 between (1) Berkeley Homes (Southern) Limited
- 2.1.5 Fifth S106 Agreement means the section 106 agreement and deed of supplementation dated 23 September 2011 between (1) Arun District Council; (2) West Sussex County Council; (3) Berkeley Homes (Southern) Limited; and (4) Southern Group Limited
- 2.1.6 Sixth S106 Agreement means the deed of variation dated 10 August 2015 between (1) Arun District Council; (2) West Sussex County Council; (3) Berkeley Homes (Southern) Limited; (4) G Money & Sons Limited; (5) Persimmon Homes Limited; and (6) Southern Housing Group Limited
- 2.1.7 references to clauses paragraphs and schedules are references to those in the Original Agreement
- 2.1.8 any term defined in the Original Agreement shall have the same meaning and for the avoidance of doubt where the definition of a term in the Original Agreement is modified by this deed that term shall have the modified meaning in this deed (unless and to the extent otherwise stated)
- 2.1.9 the singular includes the plural and vice versa
- 2.1.10 title headings to the clauses and schedules are for convenience only and shall not affect the interpretation of this Deed;
- 2.1.11 references to any statute or statutory instrument include reference to any statutory modification or re-enactment thereof for the time being in force
- 2.1.12 references to a numbered or lettered clause schedule or paragraph are references to that clause schedule or paragraph so numbered or lettered in this Deed and references within a schedule to this Deed to a numbered or lettered paragraph are references to that paragraph of the same schedule so numbered or lettered

- 2.2 Unless provided otherwise the Interpretation Act 1978 shall apply to this deed
- 2.3 Covenants made hereunder:
  - 2.3.1 if made by and/or with more than one person are made jointly and severally by each covenantor and/or severally with each covenantee as the case may be; and

2.3.2 shall operate as a local land charge on the Land registered under title number WSX342319

### **3. AGREEMENTS AND COVENANTS**

3.1 Hyde confirms and covenants with the Council that all obligations on the part of Hyde in the Original Agreement as modified by this deed shall be enforceable under the Original Agreement and are enforceable against Hyde as the owner of the Land registered under title number WSX342319

### **4. COMMENCEMENT AND EFFECT OF THIS DEED**

4.1 The provisions of this deed shall have effect on the date this agreement is dated.

### **5. MODIFICATIONS OF THE ORIGINAL AGREEMENT**

5.1 Hyde and the Council (in its capacity as local planning authority) hereby agree that the First Agreement shall be modified in the following manner:

5.1.1 Schedule 4 paragraph 39 of the First Agreement shall be deleted and replaced by the following as a new Schedule 4 paragraph 39:

“The Affordable Housing provisions in Schedule 4 of this Agreement shall not be binding on a 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 (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- i. such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the affordable dwellings and 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 dwellings to another 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
- ii. if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the affordable dwellings free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.”

### **6. STATUS OF AGREEMENT**

Save as modified by this deed the Original Agreement shall remain in full force and effect.

## 7. MISCELLANEOUS

- 7.1 This deed shall be registered by the Council (alongside the registration of the Original Agreement) as a local land charge for the purposes of the Local Land Charges Act 1975
- 7.2 Nothing in this deed shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes, by-laws, statutory instruments, orders and regulations in the exercise of their functions and powers as local authorities.

## 8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 8.1 It is agreed and declared that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.

**EXECUTED AS A DEED** in the manner hereinafter referred to but not delivered until the day and year first above written

Executed as a Deed by **HYDE HOUSING ASSOCIATION**

acting by a director

Director

IN THE PRESENCE OF

Witness name

Witness Signature

Witness Address

The COMMON SEAL of

**ARUN DISTRICT COUNCIL**

In the presence of:-