

Deed of Variation

DATED 28 October 2021

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) CLARION HOUSING ASSOCIATION LIMITED

DEED OF VARIATION UNDER
SECTIONS 106 AND 106A OF THE
TOWN AND COUNTRY PLANNING
ACT 1990

Relating to land at Courtwick Lane, Littlehampton, West Sussex

Planning Ref: LU/205/21/PO

Arun District Council
The Civic Centre
Maltravers Road
LITTLEHAMPTON
BN17 5LF
DX57406 LITTLEHAMPTON

Ref: 8644

Date: 28 October 2021

PARTIES:

- 1 ARUN DISTRICT COUNCIL** of The Civic Centre, Maltravers Road,
LITTLEHAMPTON BN17 5LF ("the District Council")
- 2 WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street,
Chichester, PO19 1RQ ("the County Council")
- 3 CLARION HOUSING ASSOCIATION LIMITED** of 6 More London Place,
Tooley Street, London SE1 1DA ("the Owner")

WHEREAS

- A. The District Council is the local planning authority, the local housing authority and the authority responsible for leisure and open spaces for the area in which the Site is situated.
- B. The County Council is the local highway authority, the county planning authority, the education authority and the authority responsible for the provision of library and fire and rescue services for the area in which the Site is situated.
- C. The Owner is the freehold owner of the Affordable Housing Units on the Site free from incumbrances and registered at HM Land Registry under Title Numbers WSX380557, WSX380553, WSX378525, WSX374322, WSX394212, WSX387000, WSX385924, WSX384855, WSX374172, WSX369237 and WSX369221.
- D. The Owner and the District Council and the County Council have agreed to amend the Section 106 Agreement and the Binding Nomination Agreements as set out in Clauses 4 and 5 of this Deed.
- E. This is made as a Deed.

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

1.1 In this Deed unless otherwise stated the following expressions shall where the context so admits have the following meanings:

1.1.2 "Binding Nomination Agreements" means the nomination agreements that are already binding and entered into by the Owner and the District Council in accordance with the Model Nomination Agreement referred to in Appendix 2 of the S106 Agreement for the following sites :

- (a) Phase 1A Courtwick Lane, 3-11 (odd) and 25-39 (odd) Ockenden Road, Littlehampton dated 30 June 2015
- (b) Phase 1A Courtwick Lane – 20-30 (even) Ockenden Road and 17-23 (odd) Blackbourne Close, Littlehampton dated 30 June 2015
- (c) Phase 2 Courtwick Lane, Littlehampton dated 25 September 2017
- (d) Phase 2 and 3 Kingley Gate, Courtwick Lane, Littlehampton dated 17 March 2017
- (e) Phase 4 Kingley Gate, Courtwick Lane, Littlehampton dated 17 March 2017

1.1.3 "Section 106 Agreement" means the Deed dated 22 March 2012 and made between (1) the District Council (2) the County Council (3) the Courtwick Partnership LLP (being the landowner at the time the agreement was entered into) and (4) Gleeson Developments Limited (being the developer at the time the agreement was entered into) in relation to planning permission LU/355/10 varied in accordance with a Deed dated 13 November 2019 made between (1) the District Council (2) the County Council and (3) BDW Trading Limited in relation to planning permission LU/241/18/PO and LU/219/19/PL

1.1.4 "Section 106A Application" means the application made by Clarion Housing Association to amend the mortgagee exclusion clause which covers affordable housing restrictions under Clause 7 of the Section 106 Agreement pursuant to this Deed.

1.1.5 "Section 106A Determination" means the determination made by the District Council pursuant to the S106A Application.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Section 106 Agreement shall have the same meaning in this Deed.
- 1.3 Clause heading shall not affect the interpretation of this Deed.
- 1.4 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 A reference to a **"company"** shall include any company, corporation or other body corporate, where and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 1.8 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.9 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 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.
- 1.11 A reference to **"writing"** and **"written"** does not include fax or email.
- 1.12 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.

- 1.13 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.

2. Legal Basis

- 2.1 This Deed is made under Section 106 and 106A of the Act and its purpose is to vary the Section 106 Agreement and Nomination Agreements with the intention that the planning obligations contained in the Section 106 Agreement shall also apply to development to be undertaken in accordance with the Section 106A Determination save for any variations contained within this Deed .
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations under Section 106 and Section 106A of the Act and are enforceable by the Council and County Council (as appropriate) in accordance with Section 106 of the Act as local planning authorities against the Owner.
- 2.3 The planning obligations contained in this Deed shall bind the Site.

3. Commencement

This Deed shall come into effect on the date first mentioned herein.

4. Variation of the Section 106 Agreement

- 4.1 The parties agree that the Section 106 Agreement shall be varied as follows:
- 4.1.1 Clause 7.3(a) of Schedule 4 shall be deleted and replaced with the following wording:
- "7.3 (a) a mortgagee or chargee or any receiver (including an administrative receiver) of the AHP 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 Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver provided that the mortgagee or chargee or receiver has complied with the provisions of paragraph 7.5 below; or"
- 4.1.2 Paragraph 7.4 of Schedule 4 shall be deleted in its entirety and replaced with the following wording:
- "7.4 Not used"
- 4.1.3 Paragraph 7.5 of Schedule 4 shall be deleted in its entirety and replaced with the following wording:

"7.5 In order to rely on the provisions of paragraph 7.3(a) of this Schedule 4, such mortgagee or chargee or receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units 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 Housing Units to another registered provider or to the District 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 if such disposal has not completed within the three month period, the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions of this Schedule 4 which provisions shall determine absolutely."

5. Variation of the Binding Nomination Agreements

5.1 The parties agree that the Binding Nomination Agreements shall be varied as follows:

5.1.1 Clause 6 of the Binding Nomination Agreements shall be deleted and replaced with the following wording:

"6. Mortgagees

The provisions of this Agreement shall:

6.1 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 Property or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

6.1.1 such mortgagee or chargee or receiver shall first give written notice to the Council of its intention to dispose of the Property 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 Property 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

6.1.2 if such disposal has not completed within the three month period, the mortgagee, chargee or receiver shall be entitled to dispose of the Property free from the provisions in this Agreement which provisions shall determine absolutely.

- 6.2 cease to apply to any Rented Units where the RP shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable including any such right arising from any voluntary scheme entered into by an RP."

6. Continuation of the terms of the Section 106 Agreement

It is hereby agreed and declared by the District Council and the County Council that saving and excepting as expressly provided for by the provisions of this Deed the covenants and provisions contained in the Section 106 Agreement shall continue to have full force and effect.

7. Costs

- 7.1 The Owner covenants with the District Council prior to the completion of this Deed to pay to the District Council its reasonable legal costs and disbursements in connection with this Deed.
- 7.2 The Owner covenants with the County Council prior to completion of this Deed to pay to the County Council its reasonable legal costs and disbursements in connection with this Deed.

8. Miscellaneous

- 8.1 Unless expressly stated to the contrary, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person or persons other than the Parties shall have any rights under it nor shall it be enforceable by any person other than the Parties.
- 8.2 Upon completion this Deed shall be registered as a Local Land Charge by the Council.

8. Governing Law and Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the jurisdiction of the courts of England.

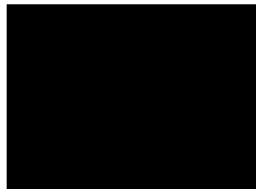
Deed of Variation

This Agreement is executed as a Deed by the parties and is delivered and takes effect on the date at the beginning hereof:

THE COMMON SEAL of ARUN)
DISTRICT COUNCIL)
was affixed to this deed in the)
presence of:)



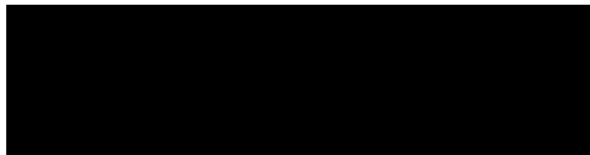
Authorised Signatory:



Name: EDWARD OWEN, PROBATE LAWYER

Seal Book No. 216 / 2021

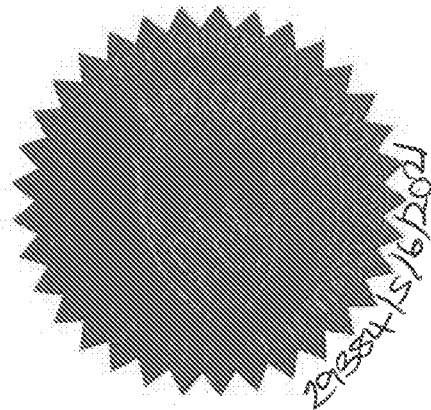
THE COMMON SEAL of)
WEST SUSSEX COUNTY COUNCIL)
was affixed to this deed in the presence of:)



Authorised Signatory:

Name:

Seal Book No:



Deed of Variation

Executed as a deed by **CLARION HOUSING**)

ASSOCIATION LIMITED with its common seal)

hereby affixed in the presence of:)

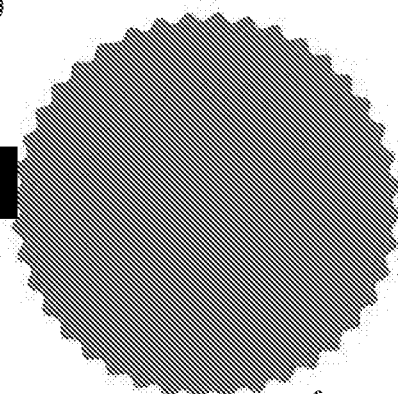
.....
Authorised signatory

.....
Authorised signatory

[Handwritten signature]

Head of Governance

Witness
signature



A14976