

THIS DEED OF VARIATION is made the day of 20

BETWEEN

1. **CHICHESTER DISTRICT COUNCIL** whose offices are at East Pallant House, East Pallant, Chichester in the County of West Sussex (hereinafter called "**the Council**")
2. **WEST SUSSEX COUNTY COUNCIL LIMITED** whose offices are at County Hall, West Street, Chichester PO19 1RQ (hereinafter called "**the County Council**")
3. **RUNNYMEDE HOMES LIMITED** a company incorporated in England and Wales (company registration number 07889048) whose registered office is at 182 Brooklands Road, Weybridge KT13 0RJ (hereinafter called "**the Owner**")
4. **SG KLEINWORT HAMBROS BANK LIMITED** a company registered in England and Wales (company registration number 964058) whose registered office is 5th Floor, 8 St James's Square, London SW1Y 4JU (hereinafter called "**the Mortgagee**")
5. **ST ARTHUR HOMES LIMITED** a company registered in England and Wales (company registration number 05948793) whose registered office is 95 Handel House, High Street, Edgware, Middlesex HA8 7DB (hereinafter called "**St Arthur**")

WHEREAS:

- (1) BY AN AGREEMENT dated the 23rd May 2016 and made between the Council (1) and the County Council (2) and Leede Limited (3) as varied by a deed of variation dated the 5th August 2019 and made between the Council (1) and the County Council (2) and the Owner (3) and the Mortgagee (4) and further varied by a Deed of Variation dated the 23rd November 2020 made between the Council (1) and the County Council (2) and the Owner (3) and the Mortgagee (4) (hereinafter referred to as "**the Original Agreement**") in pursuance of Section 106 of the Act the Council agreed to grant conditional outline planning permission under application number WR/15/03366 ("**the Original Application**") subject to planning obligations as therein contained in respect of the Land shown edged red on Plan 1 annexed to the Original Agreement
- (2) THE parties to the Original Agreement acknowledged that the Original Agreement was enforceable by the Council against persons deriving title in respect of the Land
- (3) THE permission pursuant to the Original Application ("**the Original Permission**") was issued on 30 March 2016
- (4) THE Owner remains the freehold owner of part of the Land registered at HM Land Registry under title number WSX209724 free from encumbrances
- (5) On [*date*] the Owner and St Arthur completed an estate contract under which, subject to the satisfaction of various conditions, Vivid-St Arthur will acquire the freehold of the Affordable Dwelling Units
- (6) Application number [#] has been made to the Council to vary the terms of the Original Agreement and the parties have agreed that the Original Agreement should so varied in the manner set out in this Deed of Variation
- (7) THE Council is the Planning Authority for the area within which the Land is situated and is authority by whom the Planning Obligations contained in this Deed are enforceable.

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NOW IT IS HEREBY AGREED:

1. In this Deed of Variation where the context so admits all expressions shall have the same meanings as given in the Original Agreement unless otherwise varied by the terms of this Deed of Variation
2. The Council in pursuance of its statutory powers and all other enabling powers and the Owner hereby agree that the Original Agreement shall be amended as follows and the obligations herein contained shall be planning obligations for the purposes of Section 106 of the Act:
 - (i) In clause 1 the following definitions shall be **DELETED**:
 - "Approved Body Charge"*
 - "Approved Body Share"*
 - "Commencement of Marketing"*
 - "Equity Share"*
 - "First Intermediate Disposal"*
 - "Intermediate Housing"*
 - "Intermediate Owner"*
 - "Intermediate Unit"*
 - "Local Connection"*
 - "Shared Equity Units"*
 - "Shared Ownership Lease"*
 - "Shared Ownership Units"*
 - "Staircasing"*
 - "Staircasing Payment"*

and the following new definitions shall be INSERTED:-

- "Intermediate Housing"** housing at prices and rents available at a cost low enough for eligible households to afford with regard to local incomes and local house prices and which may include Shared Ownership Units and/or other forms of low cost home ownership as set out in detail in the Council's Planning Obligations and Affordable Housing Supplementary Planning Document
- "Protected Occupier"** Any person who has accomplished final staircasing in accordance with

the terms of the Shared Ownership Lease

"Shared Ownership Lease" a lease for a term of at least ninety-nine (99) years which shall accord with the requirements and be consistent with any model shared ownership lease published from time to time by Homes England (or any replacement or successor body);

"Shared Ownership Units" any Affordable Dwelling Units to be provided as shared ownership units for sale under a Shared Ownership Lease in accordance with paragraph 1.3 of the First Schedule to this Agreement;

(ii) Appendix 1 and Appendix 2 shall be deleted

(iii) Paragraph 1, Affordable Housing, of the First Schedule shall be **DELETED** in its entirety and **REPLACED** by a new paragraph 1 as set out in the Schedule hereto

3. Otherwise the Original Agreement shall remain as drawn and shall be enforceable by the Council as the Local Planning Authority for the purposes of the Act and the Owner agrees to be bound by all the terms of the Original Agreement as herein amended
4. The Owner shall be responsible for payment of the Council's reasonable legal costs incurred in connection with the preparation and completion of this Deed of Variation
5. The Mortgagee hereby acknowledges and declares that this Deed of Variation has been entered into with its consent and that the Land shall be bound by the Planning Obligations contained in this Deed of Variation and that the security of the Mortgagee over the Land shall take effect subject to the Original Agreement and this Deed of Variation PROVIDED THAT the Mortgagee shall otherwise have no liability under the Original Agreement and this Deed of Variation unless and to the extent that it takes possession of the Land in which case it too will be bound by the Planning Obligations as if it were a person deriving title from the Owner and such liability shall cease (save for any antecedent breach) once the Mortgagee has parted with its interest in the Land
6. ~~St Arthur Vivid~~ consents to the completion of this Deed of Variation and declares that its interest in the part of the Land subject to the estate contract referred to in Recital (5) hereof shall be bound by the terms of this Deed of Variation as if it had been registered as a local land charge prior to completion of the said estate contract
7. The Council confirms that St Arthur is an Approved Body for the purposes of the Original Agreement as varied by this Deed of Variation
8. Nothing contained in this Deed of Variation shall affect the powers of the Council with regard to the enforcement of planning control under the Act from time to time in force
9. This Deed of Variation shall be enforceable by the Council as the local planning authority in the same manner as the Original Agreement
10. This Deed of Variation is made pursuant to Section 106 and Section 106A of the Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and any other enabling powers in respect of the Land

11. This Deed of Variation shall be registered as a local land charge
12. This Deed of Variation is governed by and interpreted in accordance with the law of England

IN WITNESS WHEREOF the parties hereto have caused this document to be executed as a Deed and delivered the day and year first before written

THE SCHEDULE

1. AFFORDABLE HOUSING

1.1 No development shall be commenced until the Council has received written notification of the name of the Approved Body for its approval and thereafter approved in writing by the Council.

1.2 Not Used¹

1.3 Prior to First Occupation of any Open Market Unit to provide all of the Affordable Dwelling Units on the Affordable Dwelling Land and not to allow First Occupation of any Open Market Units until the said Affordable Dwelling Units have been Provided in accordance with the following provisions and written notification of such has been received by the Council.

1.4 The Affordable Dwelling Units shall (unless otherwise agreed in writing by the Council) be of the following size mix and tenure and in a location approved by the Council acting reasonably in writing prior to First Occupation:

Six (6) Units of Intermediate Housing of the following mix and sizes:

2 x 2 bedroom houses

2 x 1 bedroom flats

2 x 2 bedroom flats

1.5 None of the Open Market Units shall be occupied until the Affordable Dwelling Units have been disposed of to the Approved Body and provided that:

1.5.1 The Disposal is on terms that accord with any relevant Homes England funding requirements current at the date of construction of the Affordable Dwelling Units; and

1.5.2 The Disposal is on terms which require the Approved Body to enter into the Nomination Agreement with the Council within twenty-eight (28) days of the date of the Disposal or such other period as may be agreed in writing with the Council; and

1.5.3 The Approved Body has entered into the Nomination Agreement within the time specified at 1.5.2 above; and

1.5.4 written notification of the Disposal has been received by the Council.

AND the Owner shall not dispose of the Affordable Dwelling Units other than to an Approved Body previously approved in writing by the Council and such disposal shall be together with all necessary rights and easements

1.5A Upon the Approved Body entering into the Nomination Agreement with the Council, the provisions of the Nomination Agreement shall apply to the Affordable Dwelling Units

¹ There appears to be a numbering error in the original s106 agreement as the paragraphs went from 1.1 to 1.3 with no 1.2. In order to maintain the numbering in the remainder of the document, I propose that we say that paragraph 1.2 is not used.

specified therein and such agreement shall take the place of the provisions of Paragraphs 1.6 to 1.10 below.

- 1.6 The Affordable Dwelling Units shall not be used other than for Affordable Housing except by:
 - 1.6.1 Any Protected Occupier or any mortgagee or chargee of the Protected Occupier or any person deriving title from the Protected Occupier or any successor in title thereto and their respective mortgagees and charges; or
 - 1.6.2 Any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 1.7 If at any time the Council is reasonably satisfied that:
 - 1.7.1 the Chargee in the proper exercise of its powers intends to dispose of or to cause to be disposed all or any part of the Affordable Dwelling Land; and
 - 1.7.2 the disposal referred to at 1.7.1 would not comply with the provisions of clause 1.5no disposal shall take place other than in accordance with clauses 1.8 and 1.9.
- 1.8 The Chargee (or any receiver appointed by the Chargee) shall:
 - 1.8.1 notify the Council in writing of its intention to dispose of the Affordable Dwelling Units as soon as reasonably practicable;
 - 1.8.2 not exercise its power of sale for a period of three (3) months following the service of notice on the Council mentioned in paragraph 1.8.1 above to enable the Council or a Registered Provider to attempt to complete a transfer of the Affordable Dwelling Units within the said period of three (3) months provided that the consideration for any such transfer shall not be for less than the amount due and outstanding under the terms of the relevant security documentation which includes all accrued principal monies, interest and costs and expenses reasonably incurred by the Chargee;
 - 1.8.3 if the Affordable Dwelling Units are not disposed of within the three (3) month period, the Chargee may thereafter sell or dispose of the Affordable Dwelling Units free from the affordable housing provisions in this Agreement and the Nomination Agreement which provisions shall determine absolutely in relation to such Units.
- 1.9 Subject to paragraph 1.8 of this First Schedule the Council's right of pre-emption shall be binding on and enforceable against any successor in title, mortgagee or chargee of all or part of the Affordable Dwelling Land or the income derived therefrom but for the avoidance of doubt shall not be binding upon nor enforceable against any Chargee or Protected Occupier or any persons or bodies deriving title through such Chargee or Protected Occupier who have complied with clause 1.6 or 1.8 of this First Schedule.
- 1.10 The parties agree that:
 - 1.10.1 At the date of this Agreement the statutory purchase grant scheme contained in Part 1 of the Housing Act 1996 does not apply to the Property;
 - 1.10.2 A disposal to a Protected Occupier shall not be in breach of this Agreement and, save where expressly indicated, upon completion of such disposal the Protected

Occupier shall be exempt from the provisions of this Agreement as shall anyone deriving title from such person.

DATED

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CHICHESTER DISTRICT COUNCIL

and

WEST SUSSEX DISTRICT COUNCIL

and

RUNNYMEDE HOMES LIMITED

and

SG KLEINWORT HAMBROS BANK LIMITED

and

ST ARTHUR HOMES LIMITED

DEED OF VARIATION

of Agreement made under

S.106A of Town and Country Planning Act 1990

relating to

Land east of Winterfold, Durbans Road, Billingshurst, West Sussex
