DATED **2023**

(1) HORSHAM DISTRICT COUNCIL

(2) ASTER COMMUNITIES

DEED OF VARIATION TO SECTION 106 AGREEMENT RELATING TO KILNWOOD VALE

---

ashfords

THIS AGREEMENT is made on 2023

PARTIES

(1) **Horsham District Council** of Parkside, Chart Way, Horsham, West Sussex RH12 1RL ("**Council**");

(2) **Aster Communities** (a charitable registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number 31530R) and whose registered office is Sarsen Court, Horton Avenue, Cannings Hill, Devizes, Wiltshire, SN10 2AZ ("**The Owner**")

BACKGROUND

(A) The Council is the local planning authority for the purposes of s 106 and s 106A of the 1990 Act for the area within which the Land is situated and is capable of enforcing the obligations in the Original Agreement.

(B) The Owner is the freehold owner of part of the Site (the Aster Land) registered at the Land Registry with title number WSX415689, WSX415669, WSX430389 and WSX430391 subject to the entries referred to in the Charges Register but otherwise free from restriction. means plots 42, 43, 54, 55, 70 – 77 and 93 - 96 (inclusive) constructed upon the Site as shown in Schedule 1

(C) On 28 April 2016 the Original Agreement was entered into. Without prejudice to the covenants in the Original Agreement the parties have agreed to vary the terms of the Original Agreement (insofar as it relates to the Aster Land)as set out in this Agreement.

IT IS AGREED:

1. Interpretation

1.1. In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

1990 Act	means the Town and Country Planning Act 1990 (as amended)
Aster Land	means plots 42-52, 54-56, 70-84 and 93-96 comprised in the Site as shown coloured pink on the Aster Land Plan;
Aster Land Plan	means the plan attached to this Agreement at Annex 1 showing the extent of the Third Owner's ownership of the Site;
Original Agreement	means the agreement made pursuant to s 106 of the 1990 Act dated 28 April 2016 between (1) Crest Nicholson Operations Limited; (2) Piers Henry Calvert and Henrietta Amelia Calvert; (3) Piers Henry Calvert and Ruth Margaret Calvert and Julian Richard Whately as executors of Henry Clifton Calvert (deceased); (4) The Homes and Communities Agency; (5) Trustees of the Crest Nicholson Group Pension and Life Assurance Scheme; and (6) Horsham District Council;

1.2. Unless the context requires otherwise, all words and phrases defined in the Original Agreement shall have the same meaning in this Agreement (except to the extent that they are expressly varied in this Agreement).

1.3. References in this Agreement to the 'Owner' shall include their respective successors in title to the Site and their assigns.

1.4. References in this Agreement to the "Council" shall include any successor to its functions as local planning authority.

1.5. References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.

1.6. The clause headings in this Agreement are for convenience only and do not form part of the Agreement.

1.7. References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.

1.8. References to the singular shall include the plural and vice versa.

1.9. Where any covenants in this Agreement are given by or for the benefit of more than one party they are given by or for the benefit of them jointly and severally.

1.10. Where a party includes more than one person, any obligations of that party will be joint and several.

2. Statutory powers

This Agreement entered into by Deed is made pursuant to s 106 and 106A of the 1990 Act and pursuant to s 111 of the Local Government Act 1972 and s 1 of the Localism Act 2011 and any other enabling powers and is supplemental to the Original Agreement and it is acknowledged by the parties that the obligations contained within it are binding on the Site and are enforceable by the Council as local planning authority against the Owner as owner of the Site and against their successors in title and assigns in respect of their interests in each and every part of the Site provided always that no person shall be liable for any breach of any covenant or obligation in this Agreement after it has parted with all of its interest in the Site or the part of the Site in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

3. Variations to the Original Agreement

3.1. Without prejudice to the other covenants in the Original Agreement which shall continue in full force and effect, parties to this Agreement agree that from the date of this Agreement the Original Agreement shall be amended as set out in Schedule 1 insofar as it relates to the Aster Land.

4. Owner's covenants

The Owner covenant with the Council that they will observe and perform the covenants restrictions and obligations on their part contained in the Original Agreement as amended by this Agreement.

5. Council's covenants

The Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the Original Agreement as amended by this Agreement.

6. Local land charge

6.1. This Agreement is a local land charge and the Council shall register it as such as soon as practicable after the completion of this Agreement.

7. No fetter on discretion

Nothing in this Agreement shall fetter or prejudice the Council's statutory rights powers discretions and responsibilities (save where legally or equitably permitted) under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

8. Severability

It is agreed that if any part of this Agreement is declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provision(s) will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

9. Legal costs

The Third Owner will no later than the date of this Agreement pay the Council's reasonable legal costs for preparation and completion of this Agreement.

10. Contracts (Rights of Third Parties) Act 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and the terms of the Agreement may be varied by a deed agreed between the parties without the consent of any third party being required.

11. Waiver

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12. Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England, and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement

Schedule 1 Amendments to Original Agreement

1. **The Original Agreement shall be amended as follows:**

1.1. Paragraph 17 of Schedule 4 of the Original Agreement shall be deleted in its entirety and replaced with the following new paragraph 17:

17 The provisions of this Schedule 4 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 Housing Unit(s) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

17.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) 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 Unit(s) 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

17.2 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 Unit(s) free from the provisions of this Schedule 4 which provisions shall determine absolutely

EXECUTED as a DEED by)
HORSHAM DISTRICT COUNCIL)
whose Common Seal was hereunto)
affixed in the presence of:

..... (Authorised Officer)

.....(Name of Authorised Officer)

[redacted]

EXECUTED as a DEED by ASHFORDS LLP acting by Paul Butterworth a member as attorney under a power of attorney dated 20 April 2023 for)
~~affixing the common seal of~~
ASTER COMMUNITIES)

[redacted]

In the presence of:

.....
Member

~~Authorised signatory~~

Witness Signature [redacted]
Witness Name:
Witness Address:

.....

~~Authorised signatory~~

ashfords
Tower Wharf
Cheese Lane
Bristol BS2 0JJ

Annex 1

Aster Land Plan