DATED 14 July 2025

(1) HORSHAM DISTRICT COUNCIL

and

(2) WEST SUSSEX COUNTY COUNCIL

and

(3) ELIVIA HOMES LIMITED

and

(4) BARCLAYS BANK PLC

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 at Chanctonbury Nursery, Rectory Lane, Ashington

---

Lauren Kelly – Head of Legal and Democratic Services
Horsham District Council
Albery House
Springfield Road
Horsham
West Sussex
RH12 2GB

Planning Ref: DC/22/0372 & DC/24/1081

Legal Ref: SW/12151

THIS DEED is made this 14th day of July 2025

BETWEEN:

(1) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB (**"the District 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 Apollo House Mercury Park, Wycombe Lane, Wooburn Green, Buckinghamshire, HP10 0HH **(the "Owner")**

(4) **BARCLAYS BANK PLC (Co. Regn. No 01026167)** care of Real Estate Asset Management Team, Barclays BANK plc, 1 Churchill Place, London, E14 5HP **(the "Mortgagee")**

WHEREAS:

1. The 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 WSX443662

2. The Mortgagee has the benefit of a legal charge dated 13 December 2024 registered at H M Land Registry against title number WSX443662 at paragraphs 3, 4 and 5 of the Charges Register.

3. Following completion of the Principal Agreement the Planning Permission was granted on 4 September 2023

4. The Owner has submitted the Minor Material Application to the District Council which was granted on 4 October 2024.

5. The parties to this Deed agree to vary the Principal Agreement as set out in this Deed with the intention that the Principal Agreement applies to the Development as amended by the Minor Material Application.

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.

7. The District 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. **DEFINTIONS 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 Agreement 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)."
"Modification Permission"	"means the permission for minor material amendment granted 4 October 2024 under reference number DC/24/1081."
"Minor Material Application"	"means the application submitted on 8 July 2024 under reference DC/24/1081 for the variation of condition 1 of previously approved application reference DC/22/0372 (Demolition of existing buildings and erection of 74 dwellings with associated parking and landscaping) amendment to the affordable housing plans and to the approved site layout to include a sub-station."
"Principal Agreement"	"means the agreement dated 24 August 2023 and entered into pursuant to section 106 of the 1990 Act by Horsham District Council (1), Landacre Developments (Ashington) Limited (2), Ashington Parish Council (3), West Sussex County Council (4)."
"Planning Permission"	"means the full planning permission subject to conditions granted by the District Council on 4 September 2023 under reference number DC/22/0372."

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

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

1.4 References in this Deed to the "District Council" or the "County Council" shall include any successor to its functions as local planning authority.

1.5 References in this Deed 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 Deed 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 Deed.

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

1.9 Where any covenants in this Deed 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, LEGAL BASIS AND EFFECT**

2.1 This Deed is made pursuant to section 106 and 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 and is supplemental to the Principal Agreement and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the District Council as the local planning authority against the Owner as owner of the Land and against their successors in title and assigns in respect of their interests in each and every part of the Land provided always that no person shall be liable for any breach of any covenant or obligation in this Deed after it has parted with all of its interest in the Land or the part of the

Land in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

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

3. **VARIATION TO THE PRINCIPAL AGREEMENT**

3.1 Without prejudice to the other covenants in the Principal Agreement which shall continue in full force and effect (in so far as the obligations in the Principal Agreement have not been discharged), the parties to this Deed agree that from the date of this Deed, the Principal Agreement shall be varied as set out in the Schedule 1 to this Deed).

3.2 This Deed shall be read in conjunction with the Principal Agreement.

4. **OWNER'S COVENANTS**

4.1 The Owner covenants with the District Council and County Council that they will observe and perform the covenants restrictions and obligations on their part contained in the Principal Agreement as amended by this Deed.

5. **COUNCIL'S COVENANTS**

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

6. **LEGAL COSTS**

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

7. **WARRANTIES**

7.1 The Owner warrants that:

7.1.1 they have full authority to enter into this Deed;

7.1.2 no person other than the Owner has any legal or equitable interest in the Land;

7.1.3 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;

7.1.4 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.

8. **GENERAL**

8.1 This Deed is a Local Land Charge and shall be registered as such by the District 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.

8.2 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

8.3 Nothing in this Deed shall fetter or prejudice the District 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.

9. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

9.1 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 Agreement 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 Agreement shall bear the same meaning in this Deed;

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

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

11. MORTGAGEE'S CONSENT

11.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and the Site shall be bound by the obligations contained in this Deed as if it has been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Site 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

11.2 The Mortgagee and any current or future mortgagee or chargee shall not be liable for any breach of the obligations contained in this Deed and/or the Principal Agreement unless committed or continuing at a time when it is in possession of all or part of the Site (or any parcel of land comprising part of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner, but not further or otherwise, but for the avoidance of doubt if the Mortgagee or any current or future mortgagee or charge is in possession of part of the Site, it shall only be bound by the obligations relating to that part of the Site, but not further or otherwise.

12. WAIVER

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

13. **COMMENCEMENT**

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

14. **GOVERNING LAW**

14.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE

VARIATIONS TO THE PRINCIPAL AGREEMENT

The Principal Agreement shall be varied as follows:

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

"Affordable Dwellings"	*Means the 35% of the Dwellings (rounded up to the nearest whole Dwelling equating to 26 Dwellings) together with associated vehicle and cycle parking to be provided by the Owner on the Land of which* *a) 70% shall be Affordable Rented Unit (equating to 18 Dwellings) comprising* *10 one bedroom flats* *4 two bedroom flats* *3 two bedroom house* *1 four bedroom house* **AND** *b) 30% shall be Shared Ownership Units (equating to 8 Dwellings) comprising* *2 two bedroom house* *6 three bedroom house* *And which are to be transferred to a Registered Provider for housing persons in Housing Need in accordance with the provisions of this Schedule*

"Affordable Housing Scheme"	*Means the affordable housing scheme shown on the Proposed Site Layout Plan Drg No PL-03 Rev G and attached at Appendix 1 to the Deed of Variation approved on 4 October 2024 pursuant to the Modification Permission.*

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) HORSHAM DISTRICT COUNCIL (2 WEST SUSSEX COUNTY COUNCIL (3) ELIVIA HOMES LIMITED and (4) BARCLAYS BANK PLC dated……*

3) Paragraph 2.1 of Schedule 3 shall be DELETED in its entirety.

4) Paragraph 5.1.1 of Schedule 3 shall be DELETED in its entirety and replaced with the following wording:-

5.1.1 The affordable housing provisions in Schedule 3 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**:

5.1.1.1. such mortgagee or chargee or Receiver shall first give written notice to the District 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 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

5.1.1.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in Schedule 3 of this Agreement which provisions shall determine absolutely

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

SEALED WITH THE COMMON SEAL of

HORSHAM DISTRICT COUNCIL

in the presence of:

[redacted]

Authorised Officer

18061 XY

EXECUTED as a **DEED** by **ELIVIA HOMES LIMITED**

Acting by a director

[redacted].....Signature

[redacted].....Print Name

In the presence of:

W [redacted].....Signature

I. [redacted].....Print Name

T "Drenewydd", Sandy Lane.....Address 1

N Lyndhurst.....Address 2

E Hampshire.....Address 3

S SO43 7DN ....Post Code

S Residential Developer ....Occupation

Shane Dempsey
Vice President

EXECUTED as a **DEED** by .....

(Attorney to print name) as attorney for **BARCLAYS BANK PLC**

[redacted]

.....

(Attorney to sign)

In the presence of:

[redacted]

W.....Signature

I.....Print Name (IN BLOCK CAPITALS)

T BARCLAYS BANK PLC ....Address 1

N 1 CHURCHILL PLACE ....Address 2

E CANARY WHARF, LONDON ....Address 3

S E14 5HP ....Post Code

S OPERATIONS ANALYST ....Occupation

SEALED WITH THE COMMON SEAL of

WEST SUSSEX COUNTY COUNCIL

In the presence of:

[redacted]

Authorised Officer

WEST SUSSEX COUNTY COUNCIL

33844/2025

APPENDIX ONE :

SITE LAYOUT



CDM 2015 Health & Safety Information
Note: Site Boundary drawn to 'Land Registry General Boundary Line' as found on topographical survey by Offington Land Surveys drawing 17300620 dated 29.06.2020
Key
Affordable Rent
Shared Ownership Homes
31.6m
BLAKISTON CLOSE
Chanctonbury Lodge
Winders
Cleftstones
Karoja
Kestrels
Site Boundary drawn to existing physical features between proposed site, Kestrels and Chanctonbury House
Chanctonbury House
Pond
Existing tree to be removed
Existing trees and hedge planting retained
Post and rail fence at top of existing ditch
Site Boundary as shown on Topographical Survey layer 'Land Registry'
Existing trees and hedge planting retained
Existing trees and hedge planting retained
Stepped pedestrian connection to existing PROW over bund
Existing bund retained within all RPAs
trees retained and all development outside of RPAs
Existing PROW along edge of site improved
Tree to be removed
Existing wooden bridge across ditch made good
El Sub Sta
Pond
Ordnance
Licence number 100022432
3384 3/2025
ECE Architecture
Landacre Development (Ashington) Ltd
Chanctonbury Nursery, Ashington
Proposed Site Layout Plan
1:500 @ A1 / 1:1000 @ A3
SLG
AK
14.06.21
7071
PL-03
G
APPROVAL