



dated 1<sup>st</sup> March 2017

**Hyde New Build Limited**

and

**Adur District Council**

and

**West Sussex County Council**

**Supplemental Deed to vary Section 106 Agreement**

in relation to land at Riverbank Business Centre and 12-18 Old Shoreham Road, Shoreham-By-Sea

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dated

14<sup>th</sup> March

2017

**Parties**

- (1) **Hyde New Build Limited** (company registration number 7250525) of 30 Park Street, London SE1 9EQ (the **Owner**);
- (2) **Adur District Council** of the Civic Centre, Ham Road, Shoreham-by-Sea, West Sussex BN43 6PR (the **Council**); and
- (3) **West Sussex County Council** of County Hall, Chichester, West Sussex PO19 1RH (the **County Council**).

**Recitals**

- (A) This Deed is supplemental to and varies the Original Agreement
- (B) A section 106 agreement was entered into between the Council (1) the County Council (2) Riverside Walk Developments (Sussex) Limited (3) 1812 Old Shoreham Road Developments (Sussex Limited) (4) A.I.B Group (UK) Plc (5) Network Rail Infrastructure Limited (6) and Neil John Mather and Nigel Price (7) dated 12 June 2015 (the **Original Agreement**) in respect of the Site (as therein defined) in relation to outline consent reference AWDM/0935/13 (the **Outline Consent**).
- (C) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated and as such is the local planning authority entitled to enforce the terms of this Deed.
- (D) The County Council is the local highway authority, the education authority and the authority responsible for the provision of the fire service and the library service for the area within which the Site is situated and as such is the authority entitled to enforce the terms of this Deed.
- (E) The Owner is the freehold owner of part of the Site registered at the Land Registry under title numbers WSX312780, WSX294796, WSX368696 and WSX90863.
- (F) The Owner has submitted an application to the Council for a reserved matters approval reference AWDM/1006/16 (the **Reserved Matters Application**) in respect of the area of land edged red on the plan attached to this Agreement (the **Reserved Matters Application Site**).
- (G) The Council have agreed to approve the Reserved Matters Application subject to the completion of a Deed of Variation.
- (H) The parties to this Deed agree to alter the terms of the Original Agreement in the manner hereinafter appearing.



## Operative Clauses

### 1 Definitions and interpretation

#### 1.1 In this Deed where the context so admits:

- 1.1.1 References to clauses, paragraphs and schedules are references to those in the Original Agreement.
- 1.1.2 Words and phrases whose meanings are not set out in clause 1.1.3 below or varied by this Deed have the same meanings as in the Original Agreement.
- 1.1.3 The following expressions shall have the meanings set out below:

**Deed** means this Supplemental Deed to vary Section 106 Agreement;

**Original Agreement** means the agreement between the Council (1) the County Council (2) Riverside Walk Developments (Sussex) Limited (3) 1812 Old Shoreham Road Developments (Sussex Limited) (4) A.I.B Group (UK) Plc (5) Network Rail Infrastructure Limited (6) and Neil John Mather and Nigel Price (7) entered into pursuant to section 106 of the Act dated 12 June 2015;

**Outline Consent** means the outline consent reference AWDM/0935/13 dated 12 June 2015;

**Parties** means the parties to this Deed and "Party" shall be construed accordingly;

**Reserved Matters Application** means the application submitted to the Council for reserved matters approval and allocated reference number AWDM/1006/16; and

**Reserved Matters Application Site** means the land shown edged red on the plan attached to this Deed labelled "Proposed Ground Floor Plan";

**Reserved Matters Approval** means the reserved matters approval that may be granted pursuant to the Reserved Matters Application.

### 2 Legal Effect

- 2.1 This Deed is supplemental to the Original Agreement and relates to and binds the Site and FOR THE AVOIDANCE OF DOUBT clause 17 of the Original Agreement shall still apply. This Deed is made pursuant to the provisions of sections 106 and 106A of the Act and is a planning obligation for the purposes of section 106 of the Act. Insofar as the provisions hereof do not constitute planning obligations for the purposes of section 106 of the Act this Deed is also entered into pursuant to section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers enabling the Council thereunto.
- 2.2 The planning obligations in this Deed are enforceable by the Council as the local planning authority and the County Council as the local highway authority, the education authority and the authority responsible for the provision of the fire service and the library service of the area in which the Site is situated.











- 2.3 This Deed shall come into effect on the date hereof but the obligations contained herein shall only become effective upon the grant of the Reserved Matters Approval.

### **3 Variation of the Original Agreement**

- 3.1 It is hereby agreed between the Parties that the Original Agreement is varied in the manner set out in the Schedule.
- 3.2 Save as expressly varied by this Deed the Original Agreement shall remain in full force and effect.
- 3.3 Where any obligation under the Original Agreement has been complied with that obligation shall be deemed to have been complied with under the Original Agreement as varied by this Deed.

### **4 Covenants by the Owner**

The Owner hereby covenants with the Council and the County Council that in consideration of the grant of the Reserved Matters Approval the Site shall be bound by the terms of the Original Agreement as varied by this Deed shall continue in full force and effect.

### **5 Local Land Charge**

This Deed is a local land charge and shall be registered as such.

### **6 Costs**

The Owner covenants with the Council and the County Council that on execution of this Deed it will pay their reasonable costs incurred in the negotiation, preparation and execution of this Deed.

### **7 Contracts (Rights of Third Parties) Act 1999**

The parties do not intend that any term of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed.

### **8 Jurisdiction**

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

### **9 Termination**

This Deed shall cease to have effect in the event that the Reserved Matters Approval is quashed, revoked or otherwise withdrawn or it has not been implemented in accordance with S56 of the Act before the expiration of the period specified in the Reserved Matters Approval.

## Schedule

### Variations to Original Agreement

The parties agree that the Original Agreement shall be varied as follows:

- 1 The definition of "Act" in clause 1 of the Original Agreement shall be varied to include the following words "(as amended)" after "1990".
- 2 The definition of "**Affordable Housing Units**" in the Second Schedule of the Original Agreement shall be deleted in its entirety and replaced with the following definition:

***""Affordable Housing Units"***

*means 22% of the Dwellings on the Site of a type and in a location to be agreed between the Owners, the relevant Registered Provider and the Council's Head of Planning and Development; such Dwellings:*

- (a) *to comprise 65% housing at Affordable Rent and 35% Intermediate Housing or such other mix as may be agreed between the Owners, the Council's Head of Planning and Development and the relevant Registered Provider from time to time; and*
- (b) *the housing at Affordable Rent to be comprised of 4 x 1 bedroomed flat; 6 x 2 bedroomed flat, 3 x 3 bedroomed flat, 3 x 2 bedroomed house and 1 x 3 bedroomed house; the Intermediate Housing to comprise 4 x 1 bedroomed flat, 3 x 2 bedroomed flat and 2 x 2 bedroomed house;*

*and any dispute or difference between the Owners, the relevant Registered Provider and the Council's Head of Planning and Development regarding the location of such Dwellings shall be settled or determined pursuant to clause 15.1 and 15.3 of this Deed".*

- 3 The definition of "**Flood Defence Wall**" in Second Schedule of the Original Agreement shall be deleted in its entirety and replaced with the following definition:

***""Flood Defence Wall"***

*means a flood defence wall to be erected on the Site, in accordance with conditions attached to the Planning Permission, which will form an integral part of the basements of the river frontage Dwellings on the Site to the extent shown coloured blue on the Flood Defence Wall Plan".*

- 4 A new definition of "**Flood Defence Wall Plan**" shall be inserted in the Second Schedule of the Original Agreement after the definition of "Flood Defence Wall" and shall state the following:

***""Flood Defence Wall Plan"***

*means the plan attached to this Deed labelled "Flood Defence Plan" showing the extent of the Flood Defence Wall coloured blue".*



- 5 The definition of **"Transport and Cycle Path Contribution"** in the Third Schedule of the Original Agreement shall be deleted in its entirety and replaced with the following definition:

***""Transport Contribution"***

*means the sum of £100,000 towards facilitating the construction of a new pedestrian crossing across Old Shoreham Road".*

- 6 Each mention or reference to the **"Transport and Cycle Path Contribution"** in the Original Agreement shall be deleted and replaced with the **"Transport Contribution"** as the context permits.

- 7 Paragraph 5 of the Third Schedule of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

***"5. Transport Contribution***

*To pay the Transport Contribution to the County Council prior to Commencement of Development PROVIDED THAT the Transport Contribution shall be Index-Linked."*

- 8 The definition of **"Education Contribution"** in the Third Schedule of the Original Agreement shall be deleted in its entirety and replaced with the following definition:

***""Education Contribution"***

*the sum of £247,960 to accommodate the extra demands for education services at Swiss Gardens Primary School (Swiss Gardens, Shoreham-by-Sea, West Sussex, BN43 5WH) within the District of Adur required as a consequence of the Development".*

**This Deed** has been executed by the Parties as a Deed but not delivered until the date stated at the beginning.



Executed as a Deed by ADUR )  
DISTRICT COUNCIL by the )  
affixing of its Common Seal )  
in the presence of: )

Authorised Signatory

[Redacted Signature]



1043

Executed as a Deed by WEST )  
SUSSEX COUNTY COUNCIL )  
by the affixing of its common )  
Seal in the presence of: )

Authorised Signatory

[Redacted Signature]



191632/1314/17

EXECUTED as a DEED by )  
HYDE NEW BUILD LIMITED )

Acting by a Director: *and*  
*its secretary*

In the presence of

[Redacted Signature]

*DIRECTOR*

*SECRETARY*

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness: