



dated 5 JANUARY 2017

The Council of the Borough of Havant
and
Aster Communities

Deed of Modification under Section 106A of the Town and Country Planning Act 1990

in relation to land north of Goldring Close and My Lords Lane, east of Margarets Road and South of Beech Grove and Hawthorne Grove, Hayling Island

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Parties

- (1) **The Council of the Borough of Havant** of Public Service Plaza Civic Centre Road Havant PO9 2AX (the **Council**);
- (2) **Aster Communities** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number 31530R) whose registered office is at Sarsen Court, Horton Avenue, Cannings Hill, Devizes, Wiltshire, SN10 2AZ (the **Owner**)

Introduction

- (A) This deed is supplemental to an Agreement dated 4 June 2013 pursuant to Section 106 of the Town and Country Planning Act 1990 made between Tolcarne Drive Developments Limited (1) Hampshire County Council (2) and the Council (3) (the **Principal Deed**) as varied by a Deed of Variation dated 25 September 2014 made between Bellway Homes Limited (1) Hampshire County Council (2) and the Council (3) (the **Supplemental Deed**)
- (B) The Council is the local planning authority for the purposes of the 1990 Act (as defined in the Principal Deed) for the area in which the Land (as defined in the Principal Deed) is situated.
- (C) The Owner is the freehold owner of the Affordable Housing Land (as defined in the Principal Deed) upon which the Affordable Housing Units have been built which is registered at the Land Registry with Title Absolute under Title Numbers SH42393; SH45489; SH43815; SH43814; SH42391.

The Owner and the Council have agreed that the Principal Deed shall be modified in respect of the Affordable Housing Land in the manner set out in the Schedule hereof.

Agreed terms

1 Interpretation

- 1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

Principal Deed means a deed made under section 106 of the Town and Country Planning Act 1990 ('the **Act**') dated 4 June 2013 made relating to the Affordable Housing Land and other land

and except where otherwise specified or where the context otherwise requires, definitions in the Principal Deed shall apply in this Agreement.

- 1.2 In this Agreement, except where the context requires otherwise:

- 1.2.1 The singular includes the plural, the masculine includes the feminine, and vice versa;

- 1.2.2 References to clauses and schedules are to the clauses in and schedules to this Agreement;
- 1.2.3 Reference to any party having an interest in land affected by this Agreement shall include any successor in title of that party to that land or to any part of it;
- 1.2.4 Reference to any party having a statutory function referred to in this Agreement shall include any successor to that statutory function;
- 1.2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;

2 The Council and the Owner hereby agree that:

- 2.1 The Principal Deed and the Supplemental Deed shall be modified as set out in the Schedule to this Agreement;
 - 2.2 This Agreement is a Local Land Charge and shall be registered as such;
 - 2.3 This Agreement is made pursuant to Sections 106 and 106A of the Act and is a planning obligation made with the intent to bind the Owner's interest in the Affordable Housing Land and section 111 of the Local Government Act 1972 and any and all enactments and powers in that behalf;
 - 2.4 Except as provided in this Agreement, it is agreed between the parties that this Agreement is supplemental to and not in substitution for the Principal Deed and the Supplemental Deed and that the terms of the Principal Deed and the Supplemental Deed will continue in full force and effect, subject only to the provisions of this Agreement;
 - 2.5 This Agreement shall take effect from the date hereof
- 3 The Owner agrees to pay the Council's reasonable legal fees and any costs incurred in the negotiation preparation and execution of this Agreement on completion of this Agreement.

In witness of which the parties hereto have executed this document as a Deed the day and year first before written.

Schedule

Provisions amended or inserted in the Principal Deed

- 1 Clause 7.2 shall be amended to read:
 - "7.2 The Obligations in this Agreement:
 - 7.2.1 *shall not bind, nor be enforceable against any mortgagee or chargee or any Receiver of the whole or any part of the Affordable Housing Land or Affordable Housing Units provided that the provisions of paragraph 3.13 of Schedule 1 are followed.*
 - 7.2.2 *shall cease to apply to any completed residential units where a registered provider shall be required to dispose of the same pursuant to a Right to Buy under Part 5 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 either Section 180 of the Housing and Regeneration Act 2008 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable;*
 - 7.2.3 *shall cease to apply to any completed residential units where a registered provider sells to a tenant through social home buy [through social home buy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008] pursuant to a voluntary grant scheme under Section 21 of the Housing Act 1996 or any amendment or replacement thereof;*
 - 7.2.4 *shall not bind any shared ownership leaseholder nor any purchaser, tenant or occupier of the completed residential units nor any successor in title to such person;*
 - 7.2.5 *shall not bind any mortgagee of any such shared ownership leasehold or any purchaser, tenant or occupier referred to in sub-clause 32.4 above;*
 - 7.2.6 *shall cease to apply to any completed residential units referred to 32.4 and 32.5 above in respect of which a shared ownership lease has been granted and where a registered provider shall have disposed of 100% of the equity in such units under the terms of such lease or the leaseholder is acting in accordance with its rights and obligations under that lease."*
- 2 Paragraph 3.10 of Schedule 1 shall be amended to include the wording:

"Subject to the provisions of paragraph 3.11 below" shall be inserted at the commencement of this paragraph.
- 3 Paragraph 3.11 of Schedule 1 shall be deleted and replaced with the following paragraph:

"3.11 the covenants set out in paragraphs 3.10.1 to 3.10.8 (inclusive) to be included in the Transfer referred to at paragraph 3.10 above shall not be binding or enforceable against any purchasers who purchases from the Registered Provider or alternative Affordable Housing Provider the entire freehold to an Affordable Housing Unit or a long leasehold interest pursuant to an equity share arrangement nor shall be binding or enforceable

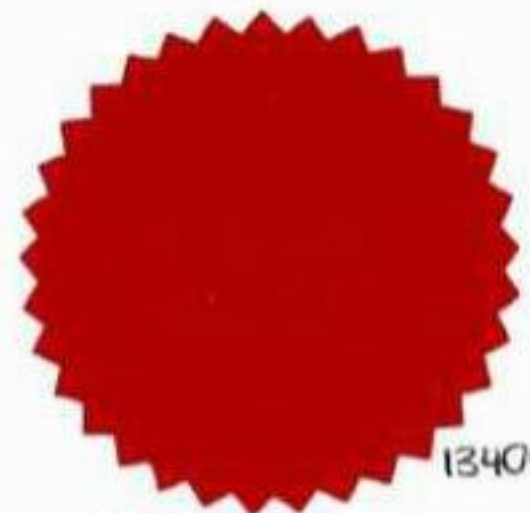
against such a purchasers successor in title or a mortgagee or chargee (or any receiver including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or Affordable Housing Land or any persons or bodies deriving title through such mortgagee or chargee or Receiver."

- 4 Paragraph 3.13 of Schedule 1 is deleted and replaced with the following paragraph:

3.13 The provisions of this deed 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 Units or Affordable Housing Land or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- 3.13.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units or Affordable Housing Land; and*
- 3.13.2 shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of Affordable Housing Units or Affordable Housing Land 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*
- 3.13.3 if such disposal is not completed within the three month period, the mortgagee, charge or Receiver shall be entitled to dispose of the Affordable Housing Units or Affordable Housing Land free from the provisions in this deed, which shall determine absolutely.*

Executed as a Deed by **THE COUNCIL of the**)
Borough of Havant whose Common Seal was)
hereunto affixed in the presence of:)



Authorised Officer

Executed as a Deed by affixing the Common)
Seal of

ASTER COMMUNITIES)

In the presence of)



Authorised Signatory

Authorised Signatory/

