



**Dated 2017**

**RYDON HOMES LIMITED**

**AND**

**BANK OF SCOTLAND PLC**

**AND**

**HYDE HOUSING ASSOCIATION LIMITED**

**AND**

**MID SUSSEX DISTRICT COUNCIL**

**AND**

**WEST SUSSEX COUNTY COUNCIL**

**AND**

**HURSTPIERPOINT AND SAYERS COMMON PARISH COUNCIL**

## **Supplemental Deed to Vary Section 106 Agreement**

**in relation to the land north of Highfield Drive, Hurstpierpoint, West Sussex**



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THIS DEED is made the            day of

2017

**Parties**

**(1) RYDON HOMES LIMITED (Company No. 04773137)** whose registered office is at Rydon House, Station Road, Forest Row, East Sussex RH18 5DW (**"the First Owner"**)

**(2) BANK OF SCOTLAND PLC (Company No. SC327000)** whose registered office is at The Mound, Edinburgh EH1 1YZ (**"the Mortgagee"**)

**(3) MID SUSSEX DISTRICT COUNCIL** of "Oaklands", Oaklands Road, Haywards Heath, West Sussex RH16 1SS (**"the District Council"**)

**(4) HYDE HOUSING ASSOCIATION LIMITED** a registered society under the Co-operative and Community Benefit Societies Act 2014 registered under number 18195R whose registered office is at 30 Park Street, London, SE1 9EQ (**"the Second Owner"**)

**(5) WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex, P019 1RQ (**"the County Council"**)

**(6) HURSTPIERPOINT AND SAYERS COMMON PARISH COUNCIL** of Parish Council Office, Trinity Road, Hurstpierpoint, Hassocks, West Sussex, BN6 9UY (**"the Parish Council"**)

**RECITALS:**

1. By the Original Agreement the Site was made subject to the obligations therein contained.
2. On 19<sup>th</sup> February 2016 the First Owner became successor in title with title absolute of the Site registered under Title Number WSX378743, subject to a legal mortgage dated 19<sup>th</sup> February 2016 in favour of the Mortgagee.
3. On 26<sup>th</sup> October 2016 the Second Owner purchased part of the Site registered under Title Number WSX385829.
4. The District Council granted the Planning Permission for the Development.
5. The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is located and is the local authority for the purposes of the S106 and S106A of the Act and has agreed that the Original Agreement should be modified as set out in this Deed.

6. The County Council and the Parish Council were signatories to the Original Agreement and join this Deed to give their consent to its terms.
7. The Parties have agreed to vary the terms of the Original Agreement in respect of the Chargee provisions in clause 4.8 of the Original Agreement to facilitate the delivery of the Affordable Housing within the Development and have entered into this Deed to give effect thereto.
8. The Parties agree that the planning obligations contained in this Deed comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948).
9. The First Owner has disposed of some of the individual Market Housing Units on the Site
10. The Parties agree that the variations to the Original Agreement contained in this Deed do not affect the Market Housing Units.

## **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 (including the recitals) whose meanings are not set out in clause 1.1.3 below or varied by this Deed have the same meanings as set out in the Original Agreement.

1.1.3 The following expressions shall have the meanings set out below:

**Original Agreement** means the agreement dated 11 June 2015 between the (1) Mid Sussex District Council (2) West Sussex County Council (3) Hurstpierpoint and Sayers Common Parish Council (4) John Alan Sayers and Peter Leslie Sayers and David William Sayers (5) Sarah Penelope Hamilton and Richard Kenneth Rossiter Higgs and (6) Rydon Homes Limited pursuant to Section 106 of the Act a copy of which is annexed to this Deed at Schedule 1;

**Owners** means the First Owner and the Second Owner;

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

## **2 Legal Effect**

2.1 This Deed is supplemental to the Original Agreement and binds the Site and 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 and are entered into by the Owners with the intent it shall bind their interests in the Site and their respective successors and assigns. 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 District Council thereunto.

2.2 The planning obligations in this Deed are enforceable by the District Council as Local Planning Authority.

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

3.1 It is hereby agreed between the Parties that the Original Agreement shall be varied in the manner set out in Schedule 2 with effect from the date hereof.

3.2 Save as expressly varied by this Deed the Original Agreement shall remain in full force and effect.

## **4 Covenants to the District Council and the County Council**

The Owners covenant with the District Council and the County Council to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

## **5 Local Land Charge**

This Deed is a local land charge and shall be registered as such by the District Council.

## **6 Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

## **5 No fetter on discretion**

This Deed shall not fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the District Council or the County Council

## **6. Warranty**

The Owners warrant to the District Council and the County Council that as at the date of this Deed no person other than the Owners, the Mortgagee and

purchasers of individual plots (and their mortgagees) have any interest in the Site for the purposes of section 106 of the Act.

**7. Costs**

The Second Owner covenants to pay to the District Council prior to completion of this Deed the District Council's reasonable legal costs in connection with this Deed.

**8. Mortgagee's Consent**

8.1 The Mortgagee consents to the completion of this Deed and declares that from the date of this Deed its interest in the Site shall be bound by the terms of this Deed

8.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the First Owner.

**Schedule 1**  
**Original Agreement**



## Schedule 2

### Variations to Original Agreement

The Original Agreement shall be varied as follows:

- 1 The definition of Chargee shall be deleted and replaced with the following:

"**Chargee** means any mortgagee or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed either pursuant to the Law of Property Act 1925, or any other person appointed under any security documentation to enable such mortgagee or chargee of the Registered Provider to realise its security or any administrator (howsoever appointed) including a housing administrator appointed pursuant to Chapter 5 of Part 4 of the Housing and Planning Act 2016 (each a Receiver) of the whole or any part of the Affordable Housing Units.

- 2 Clause 4.8 shall be deleted and replaced with the following:

"4.8 Subject to and without prejudice to the powers and requirements of the Homes and Communities Agency under the Housing Act 1996 and the Housing and Regeneration Act 2008, the Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give prior notice (the "Chargee's Notice") to the District Council of its intention to dispose and:

4.8.1 the Chargee shall use all reasonable endeavours over a period of three (3) months from the date of service of the Chargee's Notice on the District Council to co-operate with the District Council to make arrangements for the transfer of the Affordable Housing Units in such a way so as to safeguard them as Affordable Housing; and

4.8.2 if the District Council or any other person has not within three (3) months of the date of service of the Chargee's Notice entered into a binding obligation or contract for the transfer of the Affordable Housing Units and the Affordable Housing Land then provided that the Chargee shall have complied with its obligations under this clause 4.8 the Chargee shall be entitled to dispose free of the covenant set out in clause 4.7 (as provided in clause 4.10.2) PROVIDED THAT at all times the rights and obligations in this clause 4.8 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage including interest lawfully due to the Chargee under the terms of the relevant charge or mortgage;

4.8.3 all parties shall engage and co-operate with each other in good faith to safeguard the Affordable Housing in accordance with the Chargee's Duty

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

SIGNED AS A DEED by )  
**RYDON HOMES LIMITED** )  
acting by 2 Directors or Director )  
and Secretary: )

Director:

Director/Secretary

**EXECUTED AS A DEED** by )  
**BANK OF SCOTLAND PLC** )  
by the affixing of the )  
Common Seal in the presence of: )

Authorised Signatory

Authorised Signatory

**EXECUTED AS A DEED** by )  
**HYDE HOUSING ASSOCIATION** )  
**LIMITED** by the affixing of the )  
Common Seal in the presence of: )

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of )  
**MID SUSSEX DISTRICT COUNCIL** )  
Was hereunto affixed in the )  
Presence of: )

Authorised Signatory

THE COMMON SEAL of )  
**WEST SUSSEX COUNTY COUNCIL** )  
Was hereunto affixed in the )  
Presence of: )

Authorised Signatory

THE COMMON SEAL of )  
**HURSTPIERSPOINT AND** )  
**SAYERS COMMON PARISH COUNCIL** )  
Was hereunto affixed in the )  
Presence of: )

Authorised Signatory