DATED 6th June 2024

(1) WORTHING BOROUGH COUNCIL

AND

(2) WEST SUSSEX COUNTY COUNCIL

AND

(3) ST WILLIAM HOMES LLP

DEED OF VARIATION UNDER SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990

Relating to Land at Former Gas Works Site, Park Road, Worthing, West Sussex

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irwinmitchell

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THIS AGREEMENT is made on 6th June 2024

BETWEEN:

(1) **WORTHING BOROUGH COUNCIL** of Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA (**"Council"**);

(2) **WEST SUSSEX COUNTY COUCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ (**"County Council"**);

(3) **ST WILLIAM HOMES LLP** (company number OC396332) Berkeley House, 19 Portsmouth Road, Cobham, Surrey KT11 1JG (**"Developer"**).

BACKGROUND

A The Council is the local planning authority for the purposes of section 106 and section 106A of the TCPA 1990 for the area within which the Site is situated and is capable of enforcing the obligations in the Original Agreement.

B The County Council is a local planning authority and the highway authority for the area in which the Site is situated.

C On 13 September 2022 the Council, the County Council and the Developer entered into the Original Agreement

D On 24 January 2024 the Developer and Berkeley Homes (Southern) Limited submitted the First Variation Planning Application to the Council seeking to amend the Original Planning Permission for the Revised Development.

E Without prejudice to the covenants in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Agreement.

IT IS AGREED as follows:

1 INTERPRETATION

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

"**First Variation Planning Application**" means the planning application (reference number AWDM/0083/24) submitted to the Council for variation of the Original Planning Permission;

"Original Agreement" means the agreement made pursuant to section 106 of the TCPA 1990 dated 13 September 2022 made between the Council, the County Council and the St William Homes LLP;

"Original Planning Permission" means the planning permission dated 4 October 2022 under reference number AWDM/1459/21;

"Revised Development" means demolition of existing structures, partial removal of boundary walls and the construction of a residential development spread across 5 blocks with associated access, parking, open space and landscaping;

1.2 Clause, paragraph and Schedule headings do not form part of this Agreement and shall not affect the construction or interpretation of this Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council and the County Council the successors to their respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to writing or written includes fax but not e-mail.

1.11 A reference to this Agreement or to any other deed or document referred to in this Agreement is a reference to this Agreement or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

1.12 References to clauses and Schedules without further designation are to the clauses and Schedules of this Agreement.

1.13 An obligation on a party not to do something includes an obligation not to cause permit or suffer that thing to be done.

1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.

1.16 Save in respect of the Planning Permission, in the event of any conflict between the terms conditions and provisions of this Agreement and any document annexed hereto or referred to herein, the terms conditions and provisions of this Agreement will prevail.

1.17 In this Agreement, unless otherwise specifically stated, any reference to the term "month" shall mean calendar month, any reference to the term "day" shall mean any day on which retail banks are open for business in London and any reference to the term "year" shall mean calendar year.

1.18 The Interpretation Act 1978 shall apply to this Agreement.

2 STATUTORY PROVISION

2.1 This Agreement constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 278 of the Highways Act 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

2.2 The covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Developer with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns save for as set out in clause 7 of the Original Agreement.

2.3 The covenants, restrictions and obligations contained in this Agreement are enforceable by the Council in accordance with section 106 of the TCPA 1990.

2.4 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the TCPA 1990, they are entered into pursuant to the other powers contained in clause 2.1.

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 this Agreement.

3.2 The obligations and covenants in the Original Agreement as varied by this Agreement relate to the Site, are planning obligations to which the statutory provisions in clause 0 apply and are for the purposes of regulation 122 of the Community Infrastructure Levy Regulations 2010 necessary, directly related to and fairly and reasonably related in scale and kind to the development of the Site.

3.3 Save for as provided in this Agreement it is agreed by the parties that all covenants and obligations in the Original Agreement met and performed prior to the date of this Agreement are satisfied.

4 DEVELOPER'S COVENANTS

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

5 COUNCIL'S COVENANTS

The Council covenants with the Developer 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.

6.2 Following the performance and satisfaction of all the obligations contained in the Original Agreement as amended by this Agreement the Council shall forthwith cancel all the entries made in the register of local land charges in respect of both the Original Agreement and 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

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

9.2 The Developer will no later than the date of this Agreement pay the County 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 Developer 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 Developer) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12 GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England without reference to any other country's system of laws and the parties agree to irrevocably submit to the exclusive jurisdiction of the English courts.

13 DELIVERY

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

THIS AGREEMENT HAS BEEN EXECUTED AS A DEED AND DELIVERED on the date stated at the beginning of this Agreement.

SCHEDULE

Amendments to Original Agreement

The Original Agreement shall be amended as follows:

1 Clause 1.1 of the Original Agreement shall be varied such that the definitions of 'Affordable Housing Contribution', 'Development', 'District Heating Network', 'Planning Application' and 'Planning Permission' shall be deleted from the Original Agreement and replaced with the following:

""**Affordable Housing Contribution**"	means the sum of £451,260 (four hundred and fifty-one thousand two hundred and sixty pounds) to be paid to the Council to be applied to the provision of Affordable Housing within the Borough;
"**Development**"	means the development authorised pursuant to the Planning Permission;
"**District Heating Network**"	means the Council's proposed district heating system which is intended to use air source heat pumps located on the Council's multi-storey car park to generate and distribute heat around the heat network;
"**Planning Application**"	means the application for planning permission registered by the Council on 24 January 2024 under reference number AWDM/0083/24;
"**Planning Permission**"	means the planning permission granted by the Council pursuant to the Planning Application;

2 The following definitions shall be inserted into Clause 1.1 of the Original Agreement:

"Commencement of AWDM/1439/23"	means the carrying out of any material operation as defined by section 56(4) of the TCPA 1990 in respect of planning permission AWDM/1439/23;
"Substantial Implementation"	means the Development has been Commenced;
"Substantial Implementation Target Date"	means the date 18 (eighteen) months from the date of grant of the Planning Permission".

3 The definition of 'Heating Supply Options Study' in Clause 1.1 of the Original Agreement shall be deleted in its entirety.

4 Paragraph 1.1. of Schedule 5 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

"1.1 Where Substantial Implementation has not occurred before the Substantial Implementation Target Date the Developer shall submit a Viability Review to the Council for approval and for the avoidance of doubt, the Developer may submit more than one Viability Review to the Council for approval."

5 Schedule 7 of the Original Agreement shall be deleted in its entirety and replaced with the following new Schedule 7:

SCHEDULE 7

DISTRICT HEATING NETWORK

1.1 Subject to paragraph 1.2 below, the Developer will use Reasonable Endeavours to connect the Development to the District Heating Network.

1.2 If the Developer is unable to connect to the District Heat Network it must provide to the Council a written report (including copies of all appropriate evidence) ("the Report") detailing why it cannot connect to the District Heat Network including, but not limited to the following:

(a) whether a sustainable connection route can be provided;

(b) whether the District Heating Network has capacity to supply sufficient heat to the Development;

(c) whether the District Heating Network is consistent with the technical requirements of the Development;

(d) whether the District Heating Network can be delivered in a timescale that is appropriate for the Development;

(e) whether a connection and supply agreement can be agreed with the District Heating Network operator on reasonable and commercial terms being financially and technically viable;

(f) the connection and supply agreement contains suitable safeguards, protections and dispute mechanisms to protect the long-term interests of the residents of the Development until such time as the District Heating Network becomes subject to consumer protection regulations introduced under the Energy Act 2003, and an obligation to abide by such regulations in the event that they are introduced in the future; and

(g) whether there are any other reasons why the Development cannot feasibly connect to the District Heating Network.

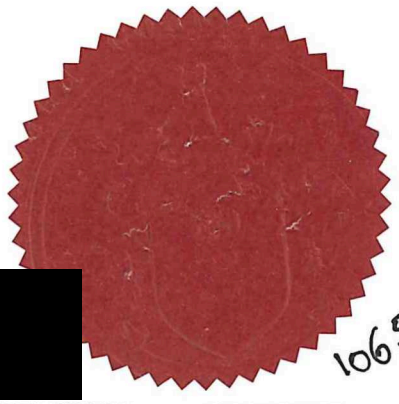
1.3 The Council will review the Report and either agree or not agree with its conclusions in writing to the Developer within 28 days of receipt. If the Report is not agreed the Council may seek further information or justification within the prescribed 28 day period. The Council then has a further 28 days to assess any additional information submitted and write to the Developer confirming its final decision.

1.4 Should a suitable agreement not be reached between the parties then the matter will be referred to Dispute Resolution in accordance with Clause 25 of the Original Agreement.

1.5 In the event that the Commencement of AWDM/1439/23 has not begun within nine months of the Commencement of Development the Developer shall be released from all foregoing obligations in this Schedule 7.

1.6 In the event that connection to the District Heating Network is not deemed viable and feasible by the parties taking into account the considerations of paragraph 1.1 and 1.2 of this Schedule, the Developer shall within 28 days therefore submit details of an alternative energy strategy to the Council for its written approval.

EXECUTED as a **DEED** by affixing .....)
the **COMMON SEAL** of .....)
WORTHING BOROUGH COUNCIL .....)
in the presence of: .....



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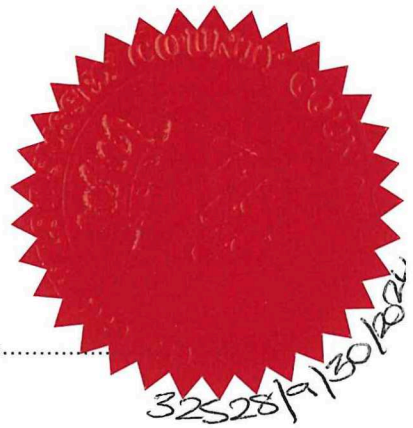
.....
Authorised Signatory

EXECUTED as a **DEED** by affixing .....)
the **COMMON SEAL** of .....)
WEST SUSSEX COUNTY COUNCIL .....)
in the presence of: .....)



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.....
Authorised Signatory

EXECUTED as a **DEED** by .....)
As attorney **for ST WILLIAM HOMES LLP** .....)
under a Power of Attorney .....)
dated .....)
in the presence of: .....)

[redacted]

Witness Signature ..... [redacted] .....

Witness Name ..... STEPHEN CORMACK .....

Witness Address ..... 118 ST JOHNS RD .....

..... TUNBRIDGE WELLS, KENT .....

.....

Witness Occupation ..... FINANCE DIRECTOR .....