dated 12th OCTOBER 2023

Adur District Council

and

West Sussex County Council

and

Hyde New Build Limited

and

Wharf Store Limited

Supplemental deed to vary Section 106 agreement

in relation to a development of Kingston Wharf Brighton Road Shoreham-By-Sea West Sussex

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Agreement

dated 12th OCTOBER **2023**

Parties

(1) **Adur District Council** of Worthing Town Hall, Chapel Road, Worthing, West Sussex BN11 6PR (the **Council**);

(2) **West Sussex County Council** of County Hall, West Street, Chichester, West Sussex P019 1RH (the **County Council**);

(3) **Hyde New Build Limited** (company registration number 07250525) whose registered office is at 30 Park Street, London SE1 9EQ (the **First Owner**); and

(4) **Wharf Store Limited** (company registration number 14362173) (formerly Easistore (Shoreham) Limited) whose registered office is at Cripps LLP, Number 22, Mount Ephraim, Tunbridge Wells, Kent, England, TN4 8AS (the **Second Owner**).

Introduction

(A) 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 Supplemental Deed.

(B) The County Council is the highway authority the county planning authority and the education authority for the area in which the Site is situated.

(C) The First Owner entered into the Original Agreement with the Council and the County Council to bind the Development of the Site pursuant to the Planning Permission.

(D) The First Owner is the freehold owner of part of the Site registered at HM Land Registry under title numbers WSX17737 and WSX338018.

(E) The Second Owner has since the date of the Original Agreement acquired the freehold ownership of part of the Site which is registered at HM Land Registry under title numbers WSX421076, WSX416550, WSX411034, WSX435041 from Easistore Holdings Limited.

(F) Easistore Holdings Limited no longer has an interest in the Site and is not party to this Supplemental Deed.

(G) The First Owner also has the benefit of a registered charge dated 20 January 2023 against the Second Owner's interest in the part of the Second Owner's Land registered at HM Land Registry under title numbers WSX416550 and WSX411034.

(H) Since the date of the Original Agreement the registered charge dated 12 July 2019 against title numbers WSX416550 and WSX411034 held by Lloyds Bank PLC has been discharged and Lloyds Bank PLC is therefore not a party to this Supplemental Deed.

(I) The First Owner has submitted the Section 73 Application to the Council.

(J) The Council has resolved to grant the Section 73 Application under delegated authority.

(K) The parties have agreed to enter into this Supplemental Deed to vary the Original Agreement in the manner set out in this Supplemental Deed.

Agreed terms

1 **Definitions and interpretation**

1.1 For the purposes of this Supplemental Deed the following terms shall have the following meanings unless otherwise stated or unless otherwise inconsistent with the context:

Easistore Holdings Limited means Easistore Holdings Limited (company registration number 09957780) whose registered office is at Storage King 127a High Street Ruislip, Middlesex, HA4 8JN;

Original Agreement means the agreement under section 106 of the Act dated 28 January 2021 made between (1) the Council (2) the County Council (3) the First Owner (4) Easistore Holdings Limited and (5) Lloyds Bank PLC relating to the Site;

Section 73 Application means the application submitted to the Council (allocated reference number AWDM/1973/22) to remove Condition 33 and variation of the Original Agreement to omit references to the District Heat Network, to the development permitted under ref: AWDM/0511; (Application to vary Condition 1 of previously approved AWDM/0204/20. Amendments to approved plans including reduction of building heights and raising of basement to mitigate risk of flooding, provision of steps from podium gardens to riverside walk, alterations to windows detailing, alterations to basement car parking layout and alterations to internal building cores to meet fire strategy compliance. Mixed-use redevelopment comprised of three blocks of residential dwellings (4 to 8 storeys) and mixed-use business centre (office, storage and cafe uses) - incorporating riverside walk, landscaping and ancillary car and cycle parking); and

Supplemental Deed means this deed.

1.2 This Supplemental Deed is supplemental to and varies the provisions of the Original Agreement.

1.3 Words and expressions defined in the Original Agreement shall, unless the context otherwise requires, bear the same meanings in this Supplemental Deed.

1.4 Where in this Supplemental Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Supplemental Deed.

1.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.6 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

1.7 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

1.8 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.

1.9 References to any party to this Supplemental Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.

1.10 The headings and contents list are for reference only and shall not affect construction.

1.11 The words **including** and **include** shall be deemed to be followed by the words **without limitation**.

1.12 References in this Supplemental Deed to **development** shall have the meaning given to it by Section 55 of the Act.

2 Legal basis

2.1 This Supplemental Deed is supplemental to the Original Agreement and relates to 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.

2.2 Insofar as the provisions hereof do not constitute planning obligations for the purposes of Section 106 of the Act this Supplemental Deed is also entered into pursuant to Section 111 Local Government Act 1972, Section 1 Localism Act 2011 and all other powers enabling the Council thereunto.

2.3 The planning obligations in this Supplemental Deed are enforceable by the Council and the County Council.

2.4 Subject to clauses 4.3, 7.8, 7.9 and 7.10 of the Original Agreement, the First Owner and Second Owner enter into the obligations (for themselves and their respective successors in title and persons deriving title from them) with the Council and County Council with the intent subject always to clause 4.3 of the Original Agreement that the obligations contained in the Original Agreement as supplemented and varied by this Supplemental Deed shall be enforceable not only against the First Owner and Second Owner but also against their respective successors in title and any person claiming through or under the First Owner and/or Second Owner an interest or estate in the Site or any part thereof.

3 Conditionality and legal effect

3.1 The parties to this Supplemental Deed hereby agree that this Supplemental Deed takes immediate effect.

3.2 Save as expressly varied by this Supplemental 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 Supplemental Deed.

4 **Miscellaneous**

4.1 The First Owner and the Second Owner hereby warrant that they are the freehold owners of the First Owner's Land and the Second Owner's Land (as applicable) and that no other party has a material interest in the Site save for the charge the First Owner has against part of the Second Owner's Land.

4.2 No provisions of this Supplemental Deed shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Supplemental Deed to any person who is not a party or successor in title or statutory successor to a party hereto.

4.3 This Supplemental Deed shall be registrable as a Local Land Charge by the Council.

4.4 Insofar as any clause or clauses of this Supplemental 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 Supplemental Deed.

5 **Obligations of the First Owner and the Second Owner**

5.1 The First Owner and Second Owner so as to bind their respective parts of the Site and their successors in title covenant with the Council and the County Council as the case may be:

5.1.1 to comply with their respective obligations to the Council and the County Council set out in the Original Agreement as supplemented and varied by Schedule 1 of this Supplemental Deed; and

5.1.2 to pay to the Council and the County Council on completion of this Supplemental Deed their respective reasonable legal costs and disbursements of and incidental to the negotiation preparation and execution of this Agreement.

5.2 For the avoidance of doubt and not withstanding clause 1.2.4 of the Original Agreement wherever a planning obligation is expressed as being given:

5.2.1 by the First Owner only, then that obligation shall not bind the Second Owner's Land and shall not be enforceable by the Council or the County Council (as the case may be) against the Second Owner or the Second Owner's successors in title (including for the avoidance of doubt any mortgagee that takes possession of the Second Owner's Land or any part thereof); and

5.2.2 by the Second Owner only, then that obligation shall not bind the First Owner's Land and shall not be enforceable by the Council or the County Council (as the case may be) against the First Owner or the First Owner's

successors in title (including for the avoidance of doubt any mortgagee that takes possession of the First Owner's Land or any part thereof).

6 **First Owner's consent**

6.1 In its capacity as a mortgagee of the Second Owner's Land registered at HM Land Registry under title numbers WSX416550 and WSX411034, the First Owner acknowledges and declares that this Supplemental Deed has been entered into by the Second Owner with its consent and that the Second Owner's Land shall be bound by the obligations contained in the Original Agreement as supplemented and varied by this Supplemental Deed and that the security of its charge over the Second Owner's Land shall take effect subject to the Original Agreement as supplemented and varied by this Supplemental Deed provided that the First Owner shall otherwise have no liability under this Original Agreement as supplemented and varied by this Supplemental Deed in relation to the Second Owner's Land unless it takes possession of the Second Owner's Land (or part thereof) in which case it too will be bound by the obligations in the Original Agreement as supplemented and varied by this Supplemental Deed that bind the Second Owner's Land as if it were a person deriving title from the Second Owner.

7 **Future Mortgagees**

It is acknowledged and declared by the parties that this Supplemental Deed has been entered into by the Owners with their consent and that the Site shall be bound by the obligations contained in this Supplemental Deed and that the security of any mortgage or charge over the Site (or any part thereof) shall take effect subject to this Supplemental Deed provided that any mortgagee or chargee shall otherwise have no liability under this Supplemental Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

8 **Jurisdiction**

This Supplemental 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 **Delivery**

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

Schedule 1

Variations to the Original Agreement

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

1 The definition of "Development" in clause 1.1 shall be deleted and replaced with the following:

> ***"Development** means the mixed-use redevelopment comprised of three blocks of residential dwellings (4 to 8 storeys) and mixed-use business centre (office, storage and cafe uses) - incorporating riverside walk, landscaping and ancillary car and cycle parking as set out in the Application and/or the Section 73 Application;"*

2 The definition of "Planning Permission" in clause 1.1 shall be deleted and replaced with the following:

> ***"Planning Permission** means the planning permission subject to conditions to be granted by the Council pursuant to the Application and/or the Section 73 Application;"*

3 The following new definition shall be inserted into clause 1.1:

> ***"Section 73 Application** means the application submitted to the Council for the Development (allocated reference number AWDM/1973/22) to remove Condition 33 and variation of this Agreement to omit references to the District Heat Network, to the development permitted under ref: AWDM/0511/21; (Application to vary Condition 1 of previously approved AWDM/0204/20. Amendments to approved plans including reduction of building heights and raising of basement to mitigate risk of flooding, provision of steps from podium gardens to riverside walk, alterations to windows detailing, alterations to basement car parking layout and alterations to internal building cores to meet fire strategy compliance. Mixed-use redevelopment comprised of three blocks of residential dwellings (4 to 8 storeys) and mixed-use business centre (office, storage and cafe uses) - incorporating riverside walk, landscaping and ancillary car and cycle parking);"*

4 Clause 12 shall be deleted and replaced with the following:

> *12.1 The Owners agree with the Council and the County Council that any sum payable by the Owners pursuant to this Agreement shall be increased by the application of the following formulae:*
>
> *A = (B x C) divided by D*
>
> *Where A is the sum actually payable;*
>
> *B is the original sum mentioned in this Agreement;*
>
> *C is the All-In Tender Price Index for the quarter preceding the Specified Date;*

D is the All-In Tender Price Index preceding 28 January 2021 SAVE FOR the Additional Commercial Cycle Path Contribution, the Additional Residential Cycle Path Contribution, the Commercial Cycle Path Contribution and the Residential Cycle Path Contribution for which D is the All-In Tender Price Index preceding the 2 February 2023;

C/D is equal to or greater than 1.

5 Schedule 2 shall be amended as follows:

5.1 The definitions of "Energy Centre", "Heat Network" and "Shoreham Heat Network" in paragraph 1.1 shall be deleted.

5.2 Paragraph 7 (including sub-paragraphs 7.1 to 7.7 (inclusive)) shall be deleted.

6 Schedule 3 shall be amended as follows:

6.1 The following new definitions shall be inserted into paragraph 1.1:

*"**Additional Commercial Cycle Path Contribution** means the additional sum of £6,228.2 to be used towards the provision of a cycle path on Brighton Road along the front of the Site required in connection with development of the Commercial Floorspace;"*

*"**Additional Residential Cycle Path Contribution** means the additional sum of £22,081.80 to be used towards the provision of a cycle path on Brighton Road along the front of the Site required in connection with the development of the Dwellings;"*

6.2 Paragraph 2.1.3 shall be deleted and replaced with the following:

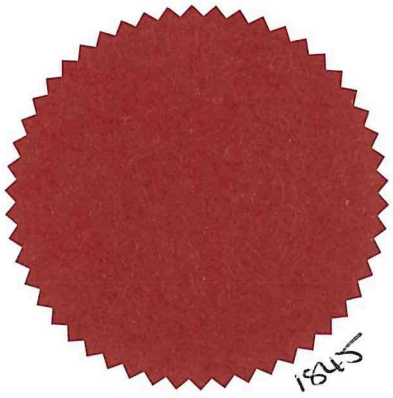
"2.1.3 to pay 50% of the Residential A259 Contribution, 50% of the Residential Cycle Path Contribution, 100% of the Additional Residential Cycle Path Contribution, 50% of the Residential Junction Contribution and 50% of the Residential Traffic Regulation Orders Contribution Index Linked to the County Council prior to Occupation of the Dwellings or on or prior to 2 years of the date of Commencement of the Development on the First Owner's Land, whichever is soonest;"

6.3 Paragraph 2.2.3 shall be deleted and replaced with the following:

"2.2.3 to pay 50% of the Commercial A259 Contribution, 50% of the Commercial Cycle Path Contribution, 100% of the Additional Commercial Cycle Path Contribution and 50% of the Commercial Junction Contribution Index Linked to the County Council prior to Occupation of the Commercial Floorspace or on or prior to 2 years of the date of Commencement of the Development on the Second Owner's Land, whichever is soonest;"

This Deed has been executed on the date stated at the beginning of it.

Executed as a deed by affixing the)
Common Seal of **Adur District Council**)
in the presence of:)



Authorised Signatory

Executed as a Deed by affixing the)
Common Seal of **West Sussex County Council**)
in the presence of:)



Authorised Signatory

Executed as a Deed by)
Hyde New Build Limited)
acting by one director in the)
presence of a witness:)

Director

Witness signature:

Name: ALEXANDRA PERRYMAN

Address: 30 PARK STREET, LONDON, SE1 9EQ

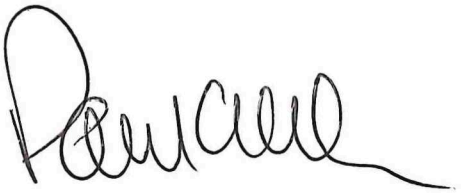
Occupation: GOVERNANCE OFFICER

Executed as a Deed by)

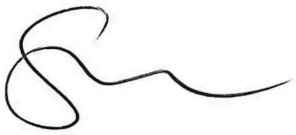
Wharf Store Limited)

acting by one director in the)

presence of a witness:)



Director

Witness signature: 

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Occupation: Legal Secretary