

DATED

2025

- (1) **CUMBERLAND COUNCIL**
- (2) **STORY HOMES LIMITED**
- (3) **LLOYDS BANK PLC**

S106A DEED OF VARIATION

Under the provisions of Section 106 of the Town and Country
Planning Act 1990 (as amended)
in relation to land west of High Road, Whitehaven

THIS DEED is made the day of

BETWEEN

- (1) **CUMBERLAND COUNCIL** of Cumbria House, 117 Botchergate, Carlisle CA1 1RD (the "**Council**");
 - (2) **STORY HOMES LIMITED** (Co. Regn. No. 02275441) of Story House, Lords Way, Kingmoor Business Park, Carlisle, CA6 4SL (the "**Owner**"); and
 - (3) **LLOYDS BANK PLC** (Co. Regn. No. 00002065) of 25 Gresham Street, London, EC2V 7HN (the "**Mortgagee**"),
- (together, the "**Parties**").

WHEREAS:

- (A) For the purposes of the Act the Council is the local planning authority for the area within which the Site is located.
- (B) The Owner is the freehold owner of the Site which is registered at HM Land Registry under Title Numbers CU255656 and CU247484.
- (C) The Mortgagee is the proprietor of a registered charge over the Site dated 29 September 2014.
- (D) On 13 March 2014 the Owner gave a unilateral undertaking to the Council pursuant to Section 106 of the Act for the purpose of obtaining the grant of the Planning Permission, which was subsequently amended by a deed of variation entered into by the Council and the Owner on 23 July 2024 (the "**Principal Agreement**").
- (E) The Parties wish to amend the Principal Agreement as set out in this Deed.
- (F) This Deed is supplemental to the Principal Agreement and varies the Principal Agreement only to the extent set out in this Deed.

THIS DEED WITNESSES the following:

1. DEFINITIONS AND INTERPRETATION

- 1.1 All words and phrases defined in the Principal Agreement have the same meaning in this Deed unless explicitly stated otherwise.
- 1.2 The provisions of the Principal Agreement shall apply with similar effect to this Deed (construed with such consequential amendments as are necessary).
- 1.3 This Deed shall be read in conjunction with the Principal Agreement.

2. LEGAL EFFECT

- 2.1 This Deed is made pursuant to Section 106A of the Act and Section 111 of the Local Government Act 1972 so as to vary the Principal Agreement in the manner set out in this Deed and the Owner's obligations and covenants contained in this Deed:
 - 2.1.1 are covenants and planning obligations to which these statutory provisions apply;
 - 2.1.2 relate to the Site in the manner set out in this Deed; and
 - 2.1.3 are enforceable by the Council.
- 2.2 This Deed shall be registrable as a local land charge by the Council.

3. COMMENCEMENT

- 3.1 The provisions in this Deed shall take effect on the date this Deed is dated.
- 3.2 The Parties agree that the Principal Agreement shall be varied as set out in the Schedule to this Deed but shall otherwise remain in full force and effect (in so far as the obligations in the Principal Agreement have not been discharged).

4. COVENANTS

- 4.1 The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this Deed.

4.2 The Council where and if applicable covenants to observe and perform the covenants, restrictions and obligations on its part contained in the Principal Agreement as varied by this Deed.

4.3 The Owner will pay on completion of this Deed the Council's reasonable legal costs and disbursements in connection with its preparation.

5. **THIRD PARTY RIGHTS**

Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Deed shall not be enforceable by any third party or person pursuant to the Contract (Rights of Third Parties) Act 1999.

6. **GOVERNING LAW AND JURISDICTION**

This Deed 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 and the Parties hereby submit to the non-exclusive jurisdiction of the Court of England.

SCHEDULE

1. A new clause 3.3 shall be inserted into the Principal Agreement as follows:

“3.3 If an application is made under section 73 of the Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a **S73 Application**) then in the event that the Council is minded to approve such S73 Application the following shall apply:

 - (a) if the Council considers that the planning obligations contained in this Deed are both sufficient and necessary to make the Development proposed by such S73 Application acceptable in planning terms then references to Planning Permission in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the Act; or
 - (b) if the Council considers that additional or modified planning obligations are necessary to make the Development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 3.3 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the Act as it considers necessary and in such case Clause 3.3 (a) shall be disregarded.”
2. A new clause 3.4 shall be inserted into the Principal Agreement as follows:

“3.4 Any mortgagee or chargee (legal or individual) that has security in the form of a mortgage or charge over the Site (or any part thereof) shall be bound by the obligations contained in this Deed and the security of its mortgage or charge over the Site (or any part thereof) shall take effect subject to this Deed PROVIDED THAT the mortgagee or chargee shall have no liability under this 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 Owner.”
3. Paragraph 3.2 of the Second Schedule of the Principal Agreement shall be amended so that the words "and 500th Dwelling" are replaced with the words "and 550th Dwelling".

IN WITNESS whereof the Parties hereto have executed and delivered this document as a Deed the day and year above written.

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL OF)
CUMBERLAND COUNCIL)
is hereunto affixed in the presence of:)

Authorised Signatory

EXECUTED AS A DEED by)

.....

as attorney for **STORY HOMES**)

LIMITED under a Power of Attorney)

dated 25 September 2025 in the)

presence of:)

Witness Signature:

Name (BLOCK CAPITALS):

Address:

Occupation:

EXECUTED AS A DEED by)

.....

as attorney for **STORY HOMES**)

LIMITED under a Power of Attorney)

dated 25 September 2025 in the)

presence of:)

Witness Signature:

Name (BLOCK CAPITALS):

Address:

Occupation:

LLOYDS BANK PLC

Signed and Delivered as a deed by)
)
as the attorney and on behalf of)
LLOYDS BANK PLC)
in the presence of:-)

Witness' Signature - Bank Employee