

Dated 2nd April 2015

MID SUSSEX DISTRICT COUNCIL (1)

AND

WEST SUSSEX COUNTY COUNCIL (2)

AND

PERSIMMON HOMES LIMITED (3)

AND

SUNLEY PROPERTY LLP (4)

AND

SUNLEY ESTATES LIMITED (5)

DEED OF VARIATION
pursuant to section 106A of the Town and
Country Planning Act 1990
relating to Land East of Kings Way, Burgess
Hill, West Sussex



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THIS DEED is made on the 2nd day of April 2015

BETWEEN

- (1) **MID SUSSEX DISTRICT COUNCIL** of "Oaklands" Oaklands Road Haywards Heath West Sussex RH16 1SS (the "**District Council**")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex P019 1RQ (the "**County Council**")
- (3) **PERSIMMON HOMES LIMITED** (Company Registration Number 04108747) whose registered office is at Persimmon House, Fulford, York YO19 4FE (the "**Owner**")
- (4) **SUNLEY PROPERTY LLP** (LLP Registration Number OC350451) whose registered office is at 20 Berkeley Square, London W1J 6LH (the "**First Chargee**")
- (5) **SUNLEY ESTATES LIMITED** (Company Registration Number 2266458) whose registered office is at 20 Berkeley Square, London W1J 6LH (the "**Second Chargee**")

together the "**Parties**"

INTRODUCTION

- 1 This Deed is supplemental to an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (the "**Act**") dated 10th May 2013 between the District Council (1) the County Council (2) Sunley Property LLP (3) Spartacus Equitation Limited (4) Nicholas Geoffrey Edward Hawkings-Byass and James Anthony Trafford (5) Neil Andrew Fletcher and Karen Fletcher (6) and Barclays Bank Plc (7) (the "**First Agreement**")
- 2 The Parties have agreed to this Deed varying the provisions of the First Agreement in relation to the timing of the submission of a Reserved Matters Application in relation to the Neighbourhood Centre and in relation to the Community Facilities Land
- 3 The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated
- 4 The Owner is the freehold owner of the Land which is now registered solely under title number SX103368

- 5 The First Chargee has the benefit of a registered charge as referred to at entries 11 and 12 on the Charges Register of title number SX103368
- 6 The Second Chargee has the benefit of two registered charges as referred to at entries 13 to 16 on the Charges Register of title number SX103368
- 7 Following the completion of the First Agreement the District Council granted the Planning Permission on the 10th day of May 2013
- 8 The Owner has submitted to the District Council a reserved matters application (reference: 14/03208/REM) for approval of appearance, landscaping, layout and scale details for phases 1A, 1B and 1C of previous outline application 12/01532/OUT
- 9 The District Council has resolved to enter into this Deed at the meeting of the District planning committee on 19 February 2015 and following the execution of this Deed to grant approval pursuant to the application referred to above in recital 8
- 10 The covenants in this Deed are planning obligations for the purposes of Section 106 of the Act and are supplemental to the obligations in the First Agreement

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Save as otherwise provided herein the capitalised words and expressions used herein shall have the same meanings as defined in the First Agreement

2 LEGAL EFFECT AND COMMENCEMENT

- 2.1 This Deed is made under the same powers as the First Agreement and Section 106A of the Act and the obligations contained herein are planning obligations pursuant to Section 106 of the Act and are entered into by the Owner and the First Chargee and the Second Chargee with the intent that it shall bind the Owner and the First Chargee and the Second Chargee and their successors in title to each and every part of the Land and their assigns
- 2.2 This Deed shall be enforceable by the District Council as local planning authority

3 VARIATION TO THE FIRST AGREEMENT

3.1 It is hereby agreed by the Parties as follows:

- (a) Clause 8.1 of the First Agreement shall be deleted and substituted as follows:

"The Owner shall incorporate within the Land as part of the Development a site for the Neighbourhood Centre and no more than one hundred (100) Dwellings shall be Occupied until a Reserved Matters Application has been submitted to the District Council in relation to the Neighbourhood Centre which shall identify the precise location, composition and proposed uses within the Neighbourhood Centre (including for the avoidance of doubt the Retail Facility and the Community Resource Centre and the Community Facilities Land and the Community Facilities Building (if applicable) and shall accord with the general principles established in the Master Plan"

- (b) Clause 9 of the First Agreement shall be deleted in its entirety and substituted with the following clause 9 set out below:

"9. COMMUNITY BUILDING CONTRIBUTION AND COMMUNITY FACILITIES LAND

The Owner hereby jointly and severally covenants with the District Council so as to bind their interests in the Land as follows:

9.1

9.1.1 The Owner shall, prior to the Occupation of the 100th Dwelling, pay to the District Council all of the Community Building Contribution; and

9.1.2 the provisions of Schedule 2 shall apply in relation to the Community Facilities Land and the parties herein shall comply with their respective obligations under Schedule 2; and

9.1.3 No more than 150 Dwellings shall be Occupied until the Owner has transferred the Community Facilities Land to the District Council by way of the Community Land Transfer in accordance with Schedule 2

9.4 Subject to:

9.4.1 the Owner having transferred the Community Facilities Land to the District

Council in accordance with Schedule 2; and

9.4.2 the District Council having not constructed or commenced construction of or having entered into a legally binding contract for the construction of a Community Facilities Building before the expiry of the period of ten (10) years from the date of the transfer of the Community Facilities Land to the District Council then , subject to the Owner (which for the avoidance of doubt for the purpose of this provision means the person who transferred the Community Facilities Land to the District Council) giving notice in writing to the District Council referring to this clause within 6 months of the tenth anniversary of the date of the transfer to the District Council of the Community Facilities Land, the District Council shall transfer the Community Facilities Land to the person that transferred the Community Facilities Land to the District Council for a consideration of £1.00 on the terms of the Standard Conditions of Sale 4th Edition as amended to the extent herein contained in Schedule 2 and the Owner shall pay the District Council's reasonable costs in connection with the preparation, execution and completion of the transfer together with any disbursements connected therewith but not otherwise."

(c) Paragraph 1.1 of Schedule 2 of the First Agreement shall be amended by the deletion at the start of Paragraph 1.1 of Schedule 2 of the words 'Following receipt of the Election Notice and' before the word 'prior'.

(d) The First Agreement shall remain in full force and effect as amended by this Deed

4 COVENANTS TO THE DISTRICT COUNCIL AND THE COUNTY COUNCIL

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

5 COSTS

5.1 The Owner shall pay on completion of this Deed:

(a) the District Council's reasonable legal costs and disbursements incurred in connection with the completion of this Deed up to the value of £2, 000;

and

- (b) the County Council's reasonable legal costs and disbursements incurred in connection with the completion of this Deed up to the value of £ 750 in respect of costs and £50 in respect of disbursements

6 LOCAL LAND CHARGE

- 6.1 This Deed shall be registerable by the District Council as a Local Land Charge

7 CHARGEES' CONSENT

- 7.1 The First Chargee and the Second Chargee hereby consent to the completion of this Deed and acknowledge that from the date of this Deed the Land shall be bound by the restrictions and obligations herein, as if it had been executed and registered as a land charge prior to the creation of the First Chargee's and Second Chargee's interests in the Land

8 THIRD PARTY RIGHTS

- 8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

9 JURISDICTION

- 9.1 This Deed is governed and interpreted in accordance with the law of England and Wales

10 WARRANTY

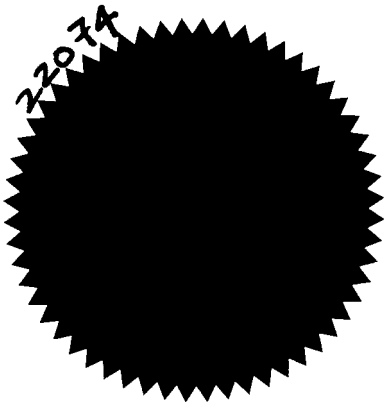
- 10.1 The Owner warrants to the District Council and the County Council that as at the date hereof no person or company other than the Owner and the First Chargee and the Second Chargee has any legal or equitable interest in the Land

11 DELIVERY

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

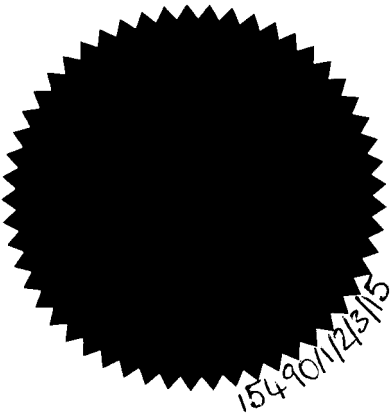
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

THE COMMON SEAL OF)
MID SUSSEX DISTRICT COUNCIL)
was affixed in the presence of:)



Authorised Officer: Therese J. Lee

THE COMMON SEAL OF)
WEST SUSSEX COUNTY COUNCIL)
was affixed in the presence of:)



Authorised Signatory: D. Rosland

SIGNED as a DEED by
PERSIMMON HOMES LIMITED

)
)

 U. ENDERSBY

Acting by its Attorneys

)
)

Attorney


[]

and

)
)

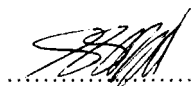
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in the presence of:

 J. Lindsay

Attorney

Witness Signature



Name of Witness

SHIRLEY BUDD

Address

PERSIMMON HOMES SOUTH COAST

100 WICKHAM ROAD

FAREHAM, PO16 7HT

EXECUTED AS A DEED BY

SUNLEY PROPERTY LLP

)
)
)

Acting by a Member:

Member:



Witness Signature

M. Clark

Name of Witness

MARY CLARK

Address

3A PENWITH ROAD

LONDON

SW18 4PL

EXECUTED AS A DEED BY)
SUNLEY ESTATES LIMITED)
acting by a Director in the presence of:)

Director:



Witness Signature



Name of Witness

MARY CLARK

Address

3A PENWITH ROAD

LONDON

SW18 4PU