



dated 20 December 2016

Arun District Council

and

West Sussex County Council

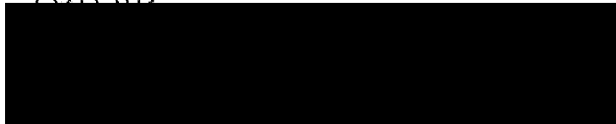
and

Cala Management Limited

Deed to Vary Section 106 Agreement

in relation to land at West End Nursery, Roundstone Lane, Angmering,
Littlehampton BN16 4AX

Trowers & Hamlins LLP
3 Bunhill Row
London
EC1Y 8YZ



trowers & hamlins

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Deed of agreement

dated 20 December

2016

Parties

- (1) **Arun District Council** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (the **District Council**);
- (2) **West Sussex County Council** of County Hall, West Street, Chichester, West Sussex, PO19 1RG (the **County Council**); and
- (3) **Cala Management Limited** (Company Registration Number SC013655) whose registered office is at Adam House 5 Mid New Cultins Edinburgh EH11 4DU (the **Owner**).

Recitals

- (A) This Deed varies the Original Agreement.
- (B) The Owner owns the freehold interest in the Site (as defined in the Original Agreement) registered at the Land Registry with title absolute under title number WSX31476.
- (C) The District Council is the local planning authority for the purposes of Section 106 of the 1990 Act for the area in which the Site is situated and is entitled to enforce the obligations covenants and restrictions contained in the Original Agreement as varied by this Deed.
- (D) The County Council is the local highway authority and local education authority for the purposes of the 1980 Act and Education Acts respectively for the areas within which the Site is situated and is entitled to enforce the obligations covenants and restrictions contained in the Original Agreement as varied by this Deed.
- (E) The Original Agreement contains planning obligations relating to the Development (as defined therein) approved by the Planning Permission (as defined therein).
- (F) The Parties have agreed to enter into this Deed to amend certain provisions relating to the Affordable Housing (as defined in the Original Agreement).

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 whose meanings are not set out in clause 1.1.3 below or varied by this Deed have the same meanings as in the Original Agreement; and
- 1.1.3 the following expressions shall have the meanings set out below:

HomeBuy Scheme means a scheme enabling social tenants, key workers and first time buyers to buy an Intermediate Unit.

Original Agreement means the agreement between the District Council (1) the County Council (2) and Cala Management Limited (3) in respect of the Site entered into pursuant to section 106 of the 1990 Act dated 1 June 2016; and

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

Rent to Buy Scheme means a scheme allowing households to rent Intermediate Housing providing them the opportunity to save for a deposit to then go on and purchase their first home.

2 **Legal Effect**

2.1 This Deed varies the Original Agreement and relates to and binds the Site and is made pursuant to the provisions of sections 106 and 106A of the 1990 Act and is a planning obligation for the purposes of section 106 of the 1990 Act. Insofar as the provisions hereof do not constitute planning obligations for the purposes of section 106 of the 1990 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 and County Council thereunto.

2.2 The planning obligations in this Deed are enforceable by the District Council as local planning authority and the County Council as the local highway authority and local education, library and fire and rescue authority.

3 **Variation of the Original Agreement**

3.1 It is hereby agreed between the Parties that the Original Agreement is varied in the manner set out in the Schedule.

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

4 **Local Land Charge**

This Deed is a local land charge and shall be registered as such.

5 **Jurisdiction**

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

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

Schedule

Variations to Original Agreement

The Original Agreement shall be varied as follows:

- 1 Paragraph 1.4 of Schedule 2 of the Original Agreement shall be amended by adding the words "(save by way of mortgage or charge)" after the words "shall not be disposed of";
- 2 Paragraph 1.9 of Schedule 2 of the Original Agreement shall be amended by adding the words "*in relation to the first disposal of the Affordable Housing Units*" after the words "*with the following provisions*";
- 3 Paragraph 1.14.1 of Schedule 2 of the Original Agreement shall be amended by the addition of the words "*or Rent to Buy Scheme or equivalent*" after the words "*of the HomeBuy Scheme or equivalent*" in sub paragraph 1.14.1(ii);
- 4 Paragraph 1.14.1 of Schedule 2 of the Original Agreement shall be amended by the addition of the following sub paragraph at 1.14.1 (iii)

1.14.1 (iii) by way of mortgage or charge to a mortgagee or chargee
- 5 Paragraph 1.14.2 of Schedule 2 of the Original Agreement shall be amended by replacement of the words "*Shared Ownership Unit*" with the words "*Intermediate Units*";
- 6 Paragraph 1.15 of Schedule 2 of the Original Agreement shall be deleted in its entirety and replaced with the following;

1.15 The Owner and the District Council hereby agree that the provisions of this paragraph 1 shall not apply to;

*1.15.1 (save for provisions in paragraph 1.17) any mortgagee or chargee of the AHP that is the owner of the Affordable Housing Units or any part thereof (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) and any persons or bodies deriving title through such mortgagee or chargee or Receiver; or*

1.15.2 the owner of an Intermediate Unit who shall have acquired or staircased his interest in that unit such that he owns 100% (one hundred percent) of the equity in that unit and any mortgagee chargee or Receiver and all successors and assigns; or

1.15.3 the owner of an Affordable Housing Unit who shall have exercised his right to acquire that unit under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substantive right applicable and any mortgagee chargee or Receiver and all successors and assigns.
- 7 Paragraph 1.17.1 of Schedule 2 of the Original Agreement shall be deleted in its entirety and replaced with the following;

1.17.1 *in the event of a default under any security referred to in paragraph 1.16.1 or in other circumstances warranting the intervention of the Homes and Communities Agency (whether or not under the Housing Act 1996 part 1 Chapter IV of Schedule 1 Part IV) nothing in this paragraph 1.17 shall prevent the transfer of the Affordable Housing Units or any part of them to another AHP;*

- 8 Paragraph 1.17.3 (i) of Schedule 2 of the Original Agreement shall be amended by the insertion of the words "*(including all accrued principal monies, interest, costs and expenses)*" after the words "*all monies*";
- 9 Paragraph 1.17.3 (iii) of Schedule 2 of the Original Agreement shall be amended by replacing the word "*restrictions*" with the words " *the provisions of this Schedule including this paragraph 1.17 which provisions shall cease to bind the Affordable Housing Units and and shall determine absolutely*";
- 10 Paragraph 1.17.3 (iv) of Schedule 2 of the Original Agreement shall be amended by the insertion of the words "*(including all accrued principal monies, interest, costs and expenses)*" after the words "*all monies*" and by the deletion of the word "*all*" in the penultimate line;
- 11 Paragraph 1.17.3 (v) of Schedule 2 of the Original Agreement shall be amended by the insertion of the words "*(including all accrued principal monies, interest, costs and expenses)*" after the words "*charge or mortgage*";
- 12 Paragraph 1.17.3 (vi) of Schedule 2 of the Original Agreement shall be amended by replacing the word "*restrictions*" with the words " *the provisions of this Schedule including this paragraph 1.17 which provisions shall cease to bind the Affordable Housing Units and and shall determine absolutely*".

Executed as a Deed by affixing the
Seal of of ARUN DISTRICT
COUNCIL in the presence of:)
)
)

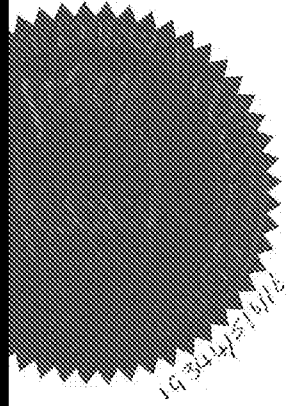
Authorised signatory signature

Authorised signatory name

Authorised signatory job title

Executed as a Deed by affixing
Common Seal of of WEST SU
COUNTY COUNCIL in the pres

Authorised Officer:



EXECUTED as a DEED by)
CALA MANAGEMENT LIMITED)
acting by)
and by)
as Attorney of CALA Management)
Limited)

Attorney
Attorney

In the presence of

Witness signature

Witness Name:

Witness Address: 5 of BATHURST COURT, GLOUCESTER

Witness Occupation: SENIOR MANAGER

