

Planning Application Reference:	BN/27/09/
Document Type:	Section 106 agreement
Date of Agreement:	12th September 2012

NB: Above text in bold to be included in free text field.

Check thoroughly for **telephone numbers/email addresses & signatures** and block.
Check **maps** for signatures and block.

Please return original to s106 Monitoring Officer

DATED 12th September 2012

WEST SUSSEX COUNTY COUNCIL

-and-

ARUN DISTRICT COUNCIL

-and-

WEST SUSSEX COUNTY COUNCIL

SECOND DEED OF VARIATION of a Unilateral Undertaking
made under Section 106 of the
Town and Country Planning Act 1990
dated 4 August 2010 in relation to

Land known as ANGELS NURSERY on South West side of
Yapton Road,
Barnham, West Sussex

THIS SECOND DEED OF VARIATION is made the 12th day of September 2012

BETWEEN

(1) WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the Owner")

(2) ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5HF, ("the Council"),

(3) WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the County Council")

RECITALS

1. BY a DEED OF Unilateral Undertaking made pursuant to Section 106 of the Act dated 4 August 2010 (hereinafter referred to as the "Unilateral Undertaking") and as varied by a FIRST DEED OF VARIATION made 19 October 2010 and both given or agreed by West Sussex County Council to Arun District Council and West Sussex County Council the development of the Land as described in the Unilateral Undertaking is regulated
2. The Owner made the Application to the Council under planning application reference BN/27/09 for planning permission (thereinafter called "the Application")
3. The Owner submitted the Appeal to the Secretary of State against the Council's refusal to grant Planning Permission pursuant to the Application and the appeal was given Appeal Reference APP/C3819/A/10/21032014/NWF

4. The Planning Permission for the Development was granted on appeal on 6 January 2011
5. It is now the intention of the parties to amend the Unilateral Undertaking and the First Deed of Variation so as to further vary the terms in respect of the Public Open Space Contribution and the parties have therefore agreed to enter into this Deed to give effect to such variations

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Definitions

- 1.1 Save as otherwise provided herein words phrases and expressions in this Deed (including the Recitals) shall have the same meaning as those contained in the Unilateral Undertaking as though they were contained in and formed part of this Deed

2. Enabling Provisions

- 2.1 This Deed is made pursuant to Section 106A of the Act and all other enabling powers (the "Deed of Variation") the obligations contained herein are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intent that it shall bind the Owner 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 Council and the County Council as the case may be

3. Agreements and Declarations

- 3.1 It is hereby agreed and declared that except for the modifications as set out in the Schedule hereto the provisions of the Unilateral Undertaking shall remain in full force and effect

- 3.2 This Deed is a local land charge and shall be registered as such by the Council

The Schedule

It has been agreed by the Owner and the Council and the County Council to Discharge the First Deed of Variation so far as clauses 1 to 6 in The Schedule thereto are concerned and replace those clauses with the clauses set out below so that the Unilateral Undertaking shall now read from the date of this Second Deed of Variation as follows:

1. The definition of Community Facilities Contribution in clause 7 of the Unilateral Undertaking shall be re inserted in the Unilateral Undertaking so as to read :

"Community Facilities Contribution" means the sum payable in accordance with clause 7.2.4 of this Deed being a financial contribution towards the cost of providing the Barnham Community Scheme to be constructed on the adjoining land as shown edged blue on the plan attached to this Deed and calculated in accordance with Schedule 2 and payable subject to the Conditions in this Deed and in Schedule 2 "

2. The words "community facilities" shall be re inserted in Clause 6.2 of the Unilateral Undertaking and the word "public" shall be deleted before "open space obligations" in clause 6.2 so that the clause reads as follows:

"6.2 Upon disposal by the Owner of its interest in the Land the County Council shall become the local planning authority responsible for enforcing the planning obligations in this Deed other than in respect of the affordable housing and Community Facilities Contribution which shall remain enforceable by the Council"

3. The words "Community Facilities Contribution" shall be re inserted in clause 7.2.4 of the Unilateral Undertaking and shall replace the words "Public Open Space Contribution" from the date of this Second Deed of Variation
4. The words "Community Facilities Contribution" shall be re inserted in clause 7.2.5 of the Unilateral Undertaking and shall replace the words "Public Open Space Contribution" from the date of this Second Deed of Variation
5. Clause 7.2.7 shall from the date of this Second Deed of Variation read :-

"the Community Facilities Contribution is paid to and accepted by the Council on the basis that it will be used to part fund the provision of the Barnham Community Scheme to be constructed on the adjoining land as shown edged blue on the Plan attached to the Unilateral undertaking in accordance with Planning Permission BN/03/09"

6. Schedule 2 of the Unilateral Undertaking shall read as follows from the date of this Second Deed of Variation :

"The Community Facilities Contribution shall be calculated on the basis of £1000 per dwelling approved at Reserved Matters stage PROVIDED ALWAYS that the use of the Community Facilities Contribution shall be open to renegotiation if it cannot be used within five years of payment for its intended purpose provided

always that such alternative use shall be for uses similar or
analogous to use for off-site play space improvements"

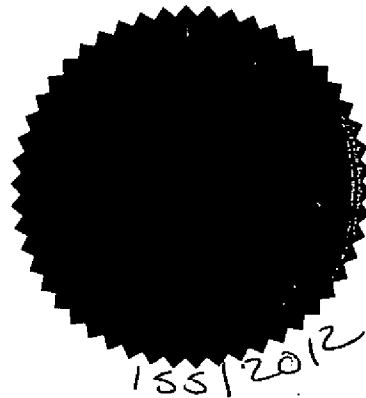
IN WITNESS WHEREOF the parties hereto have caused this document to
be executed as a Deed the day and year first before written

The COMMON SEAL of)
WEST SUUSEX COUNTY COUNCIL)
In capacity as Landowner)
was hereunto affixed to this Deed in the)
presence of:-)

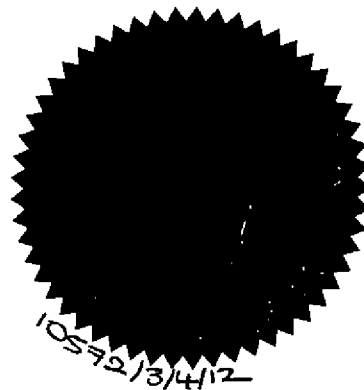



Authorised Signatory

The COMMON SEAL of)
ARUN DISTRICT COUNCIL)
was hereunto affixed to this Deed in the)
presence of:-)



The COMMON SEAL of)
WEST SUUSEX COUNTY COUNCIL)
In capacity as County Planning Authority)
was hereunto affixed to this Deed in the)
presence of:-)




Authorised Signatory