

(CMS4760) Deed of Variation re Land at the Lillies, Yapton Road, Barnham, West Sussex.
BN/32/15/OUT and BN/6/18/RES

DATED

27-11

2018

MATTHEW HOMES LIMITED

and

ARUN DISTRICT COUNCIL

and

WEST SUSSEX COUNTY COUNCIL

DEED OF VARIATION OF SECTION 106 AGREEMENT

Under Section 106A of the Town and Country

Planning Act 1990 relating to Land at

The Lillies, Yapton Road, Barnham

Planning Reference BN/32/15/OUT and BN/6/18/RES

THIS DEED OF VARIATION is made the 27 day of 11 Two thousand and eighteen

BETWEEN

- (1) **MATTHEW HOMES LIMITED** (Company registration number 01210027) whose registered office is at Pendragon House 65 London Road St Albans AL1 1LJ ("the Owner")
- (2) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("ADC").
- (3) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("WSCC").

1. DEFINITIONS

Wherever the context so permits in this Deed the following shall have the following meanings:

"The Original Deed" shall mean an Agreement dated 4 April 2016 and made between (1) Roy Rainbow Hartrick and Angela May Hartrick (the Owner), (2), Commercial First Business Limited (the Mortgagee) (3) Arun District Council (ADC) and (4) West Sussex County Council (WSCC) varied in accordance with a Deed dated 28 November 2016 made between (1), Roy Rainbow Hartrick and Angela May Hartrick (2) Commercial First Business Limited, (3) ADC and (4) WSCC.

2. CONSTRUCTION

Where the context so admits:

- 2.1 Terms and expressions defined in the Original Deed shall unless the context otherwise requires have the same meaning when used in this Deed.
- 2.2 The term "the Owner" shall include their respective assigns and successors in title to the legal or equitable estate or interest in the Site or any part or parts thereof at the date hereof and to the rights and obligations created by this Deed

- 2.3 A covenant not to do something includes a covenant not to permit or suffer that thing to be done
- 2.4 Any covenant obligations or other commitments given by more than one party to this Deed shall be joint and several and where any party consists of two or more persons obligations expressed to be made by or with that party are deemed to be made by or with such persons jointly and severally
- 2.5 The headings in this Deed are for ease of reference only and cannot be taken in account in its interpretation

3. HISTORY

- 3.1 ADC and WSCC have been requested and have agreed to vary the Original Deed in manner hereinafter appearing subject to the Owner entering into this Deed
- 3.2 ADC, WSCC and the Owner wish to enter into this Deed for the variation of the Original Deed under and in accordance with Sections 106 and 106A of the 1990 Act
- 3.3 Title SX40542 was transferred to title WSX387038 on the 22nd of December 2016. Title WSX140217 was closed. Title WSX387038 has changed ownership since the original agreement. The successor in title to WSX387038 is Mathew Homes Limited (the Owner).
- 3.4 The Owner has submitted two reserved matters application in relation to the Development.
- 3.5 An application was submitted on 11 July 2017 and validated on 1 August 2017 with reference number BN/28/17/RES ("BN/28/17/RES Application") and a second application was submitted and validated on 27 February 2018 with reference number BN/6/18/RES ("BN/6/18/RES Application")
- 3.6 Both the BN/28/17/RES Application and BN/6/18/RES ("BN/6/18/RES Application") were refused and the Owner has submitted appeals in relation to both applications.
- 3.7 The obligations in this Deed shall not take effect on Commencement of Development of any permission granted in accordance with the BN/28/17/RES Application and the terms of this Deed of Variation will not take effect and the Original Deed will remain in full force and effect.

- 3.8 The obligations in this Deed shall take effect on Commencement of Development pursuant to any permission granted in accordance with the BN/6/18/RES Application.

4. NOW THIS DEED WITNESSETH as follows:-

- 4.1 This Deed is made pursuant to Sections 106 and 106A of the 1990 Act and Section 111 of the Local Government Act 1972 and all other enabling powers it related to the Site and the covenants contained in it are enforceable by ADC and/or WSCC (as the case may be) pursuant to such Acts
- 4.2 The Owner hereby covenants and undertakes in respect of each and every part of the Site
- 4.2.1 to vary the Original Deed in manner set out in Clause 7 hereof; and
- 4.2.2 to observe and perform the covenants contained in the Original Deed as varied by Clause 7 hereof with the intent that the same shall bind the Site and be enforceable without limit of time not only against the Owner but also against their successors in title and any person claiming any legal or equitable estate in the Site or any part or parts of it as if that successor and persons had also been an original covenanting party

5. EFFECTIVE DATE

The provisions of this Deed shall come into effect upon the date hereof

6. NOTICE OF DEED

ADC and WSCC will on completion of this Deed register it in the Local Land Charges Register pursuant to the provisions of the Local Land Charges Act 1975

7. VARIATIONS TO ORIGINAL DEED

7.1 Immediately following Commencement of Development in accordance with any permission granted pursuant to the BN/6/18/RES Application the Original Deed shall be varied in the following manner and shall henceforth take effect and be read and construed as follows:-

- 7.1.1 Clause 6.1 shall be deleted and replaced with the following:-

- 6.1 to provide and lay out an area of open space situated as part of the Development within the area shown on Drawing ref MATT151202 CSL.01 attached to this deed within and on the Land in accordance with a specification to be submitted to and approved by ADC and to be implemented to ADC's satisfaction.

7.2 Regardless as to whether permission is granted pursuant to the BN/6/18/RES application from the date of this second deed of variation the Original Deed will be read and construed as though it refers and had at all times as follows;

7.2.1 The definition of "Education Contribution" shall be amended by deleting reference to "Clause 7" and replacing with "Clause 8".

7.2.3 The definition of "Library Contribution" shall be amended by deleting reference to "Clause 8" and replacing with "Clause 9"

7.2.2 The definition of " Fire and Rescue Contribution" shall be amended by deleting reference to "Clause 9" and replacing with "Clause 10"

8. CONTINUATION

The Original Deed shall continue in full force and effect save as modified by this Deed and shall operate as if the variations made by clause 7 of this Deed are incorporated into the Original Deed from the date hereof

IN WITNESS whereof ADC and WSCC and the Owner have executed this Deed the day and year first before written

EXECUTED as a **DEED** by)

MATTHEW HOMES LIMITED)

in the)

presence of:-)

Director

Director/Secy

EXECUTED BY)

COMMON SEAL OF)

ARUN DISTRICT COUNCIL)

was affixed to this deed in the)

274/2018

Authorised Signatory

Print Name: SARAH CHARLES

Job Title: PROPERTY LAWYER

EXECUTED BY AFFIXING with the)

COMMON SEAL of)

WEST SUSSEX COUNTY COUNCIL)