

DATED

10.30 SEPTEMBER

2019

ARUN DISTRICT COUNCIL

- and -

CRAYFERN HOMES LIMITED

- and -

BARCLAYS BANK PLC

-and-

WEST SUSSEX COUNTY COUNCIL

DEED OF VARIATION

under Section 106 and 106A of the Town & Country Planning Act 1990 relating
to Land South of Burndell Road, Yapton in the County of West Sussex

Arun District Council
Arun Civic Centre
Maltravers Road
LITTLEHAMPTON
West Sussex
BN17 5LF

THIS DEED OF VARIATION is made the 30th day of SEPTEMBER 2019

BETWEEN:

- (1) "the Council" Arun District Council of the Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF
- (2) "the Owner" Crayfern Homes Limited (Co Reg No 02703219) of 14 St. Johns Road, Hedge End, Southampton SO30 4AB
- (3) "the Mortgagee" Barclays Bank PLC (Co Reg No 9740322 whose registered office is at Barclays Mortgages, PO Box HK444, Leeds, LS11 8DD of Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester, ME3 3AQ
- (4) "the County Council" West Sussex County Council of County Hall, West Street, Chichester, PO19 1RQ

Background

- A The Council is the local planning authority and local housing authority and the authority responsible for leisure services in the area of the Development within which the Land is situated and is capable of enforcing the obligations in the Original Agreement as varied by the First Deed of Variation.
- B The County Council is the strategic planning authority, the local highway authority and the authority responsible for the provision of education library and fire and rescue services in the area of the Development and is capable of enforcing the obligations in the Original Agreement as varied by the First Deed of Variation.
- C The Owner is the new owner of the Land bound by the planning obligations contained in the Original Agreement as varied by the First Deed of Variation.
- D The Mortgagee has secured a legal mortgage over the Land by a Debenture dated 11 July 2019.
- E The "Land" as defined in Original Agreement, as varied by the First Deed of Variation is registered at HM Land Registry under title number WSX318640. The majority of the Land to which this Second Deed of Variation relates is now registered at Land Registry under title number WSX386080.
- F Without prejudice to the covenants in the Original Agreement as varied by the First Deed of Variation the parties have agreed to vary the terms as set out in this Agreement.

NOW THIS DEED WITNESSES as follows:-

1. Definitions

In this Deed:-

- 1.1. "the Land" means the land which is bound by the obligations contained in the Original Agreement, as varied by the First Deed of Variation, and defined in the Original Agreement as "Land south of Burndell Road Yapton West Sussex and shown for identification purposes only edged red on Plan 1" and the majority of which is registered at HM Land Registry under title number WSX386080.
- 1.2. "the Original Agreement" means an Agreement made pursuant to Section 106 Town & Country Planning Act 1990 on 1 March 2016 between the Council (1) and the then owners being Susan Mary Abbot, Andrew Brian Abbot and Graham John Abbot (2) the then Developer being Brookworth Homes Limited (3) and the County Council (4) in relation to the planning application given Council reference F/7/15/OUT.
- 1.3. "the First Deed of Variation" means the Deed of Variation made pursuant to S.106 and S.106A of the Town and Country Planning Act 1990 on 13 July 2018 made between the Council (1) the County Council (2) and the then owner being Mildren Homes (Isle of Wight) Limited (3) and their mortgagee MSP Capital Ltd (4) and Crayfern Homes Limited (5) in relation to the application given Council reference F/2/18/PO which varied the Original Agreement.

2. Recitals

- 2.1 This Second Deed of Variation is supplemental to the Original Agreement and the First Deed of Variation
- 2.2 The Owner is successor in title to the Owner as specified in the Original Agreement and First Deed of Variation
- 2.3 The Council, the County Council and the Owner agree that the Original Agreement and First Deed of Variation shall be varied as set out in clause 4 of this Second Deed of Variation.
- 2.4 The Mortgagee holds a legal charge on the Land by virtue of a Deed made between the Owner and the Mortgagee and has agreed to join in this Second Deed of Variation to give effect to the agreement referred to at clause 2.3 above

3. Operative powers

The Council and County Council enter into this Deed under powers contained in Section 106 and Section 106A of the Town and Country Planning Act 1990 and pursuant to Section 111 Local Government Act 1972 and Section 1 Localism Act 2011 and all other enabling powers and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the Council and County Council against the Owner of the Land and their respective successors in title provided always that no person shall be liable for any breach of any covenant or obligation in this Agreement after it has parted with all of its interest in the Land or the part of the Land in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

4. Variation

The Council, the County Council and the Owner AGREE that the Original Agreement and First Deed of Variation shall be varied upon completion of this Second Deed of Variation as follows:

- 4.1 A new clause 4.2 shall be inserted into the Original Agreement as follows:

"4.2 The Parties agree that a mortgagee or chargee of the Land from time to time shall have no liability under this Deed unless and until it takes possession of the Land in which case it too will be bound by the obligations contained within this Deed as if it were a person deriving title from the Owner. For avoidance of doubt such mortgagee or chargee shall not be liable for any pre-existing breach and shall have no liability after it has discharged its respective security or have disposed of the Land whether by sale or otherwise"

4.2 The Original Agreement as varied by the First Deed of Variation shall otherwise continue in full force and shall have the same legal effect as before this amendment or variation.

4.3 The Mortgagee acknowledges and declares that this Second Deed of Variation has been entered into by the Owner with its consent and that the Land is bound by the obligations contained in the Original Agreement as varied by the First Deed of Variation and this Second Deed of Variation and that the security of the mortgage over the Land shall take effect subject to the Original Agreement as varied by the First Deed of Variation and this Second Deed of Variation provided that the Mortgagee shall have no liability under the Original Agreement as varied by the First Deed of Variation and this Second Deed of Variation unless it takes possession of the Land in which case it too will be bound by the obligations as it were a person deriving title in the Land from the Owner.

5. Costs

The Owners shall pay the Council's and County Council's reasonable legal costs on completion of this Deed

6. Local Land Charge

This Second Deed of Variation is a local land charge and the Council shall register it as soon as practicable after completion of this Agreement.

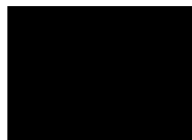
7. Jurisdiction

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England .

IN WITNESS whereof the Council and County Council have hereunto caused their respective Common Seals to be affixed and the Owners and Mortgagee have hereunto set their hands as a Deed the day and year first before written.

EXECUTED BY AFFIXING with the COMMON SEAL
of ARUN DISTRICT COUNCIL
in the presence of:

Seal Book No: 250/2019
AUTHORISED SIGNATORY
PRINT NAME APRIL HEASMAN
JOB TITLE LAWYER



EXECUTED as a DEED by
Crayfern Homes Limited
acting by one director

Director

Witness signature:

Witness name:

Witness address:

LEWIS YACE
52 BARROLEY ROAD
EASTLEIGH
SOS3 5NN

EXECUTED as a Deed by as
attorney for Barclays Bank PLC
in the presence of:

as attorney for Barclays Bank PLC

Name of attorney: Niv Kozlmirov

Witness signature:

Witness name: ANJITHA GOWDARAJA

Witness address: FLOOR 12, LAURHILL PLACE
E1A1HP

THE COMMON SEAL OF
West Sussex County Council was hereunto
affixed in the presence of:

AUTHORISED SIGNATORY: