

DATED THIS

DAY OF

2020

(1) **ARUN DISTRICT COUNCIL**

(2) ***PERSIMMON HOMES LIMITED***

DEED OF VARIATION UNDER
SECTIONS 106 AND 106A OF THE
TOWN AND COUNTRY PLANNING
ACT 1990

Relating to land on the south side of *Toddington Lane Littlehampton*

Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF
Dx57406 LITTLEHAMPTON

Ref: 7582

Date:

2020

PARTIES:

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (**"the Council"**)
2. **PERSIMMON HOMES LIMITED** (Company Registration No. 04108747) whose registered office is Persimmon House Fulford York YO19 4FE (**"the Owner"**)

WHEREAS

- A1. The Council is the Local Planning Authority, the Local Housing Authority and the Local Authority responsible for Leisure and Open Spaces for the area in which the Land is situated
- A2. On 23rd January 2013 a planning obligation was entered into by Deed under Section 106 of the Town and Country Planning Act 1990 as amended was entered into between (1) the District Council (2) West Sussex County Council (3) Littlehampton Town Council and (4) the Owners (as therein defined) "The Section 106 Agreement"
- A3. The Section 106 Agreement was amended by a Deed of Variation made under Section 106A of the Act and dated the 1st November 2017 made between (1) Arun District Council (2) West Sussex County Council (3) Bovis Homes Limited (4) Donald Smith and Diane Joyce Smith (5) Hyde Housing Association Limited and (6) Hyde New Build Limited and further amended by a second Deed of Variation made under Section 106A of the Act dated 11th September 2018 between (1) Arun District Council (2) West Sussex County Council (3) The Owners and (4) Greencore Foods Limited a further Deed of Variation was made under Section 106A of the Act dated 21 December 2018 between (1) Arun District Council (2) West Sussex County Council (3) Permission Homes Limited (4) Worthing Homes.
- A4. A reserved matters application LU/305/19/RES was received by the Council and requires the original Section 106 Agreement to be varied.
- A5. The Owner is the freehold owner of the Land.

- A6. This Deed is supplemental to and to the extent that its contents so provide, varies the Section 106 Agreement to the extent only that the Section 106 Agreement relates to the Land.
- A7. This Deed pertains to the Affordable Housing Units comprised in reserved matters application LU/305/19/RES proposed to be constructed on the Land and the parties have agreed it shall be varied in the manner hereafter appearing and pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990.
- A8. The provisions of this Deed bind the Land, the parties to this Deed and their successors in title.
- A9. This Agreement is made as a deed

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

- 1.1 In this Deed unless otherwise stated the following expressions shall where the context so admits have the following meanings:

- 1.1.1. **“Land”** means the freehold *land on the south side of Toddington Lane Littlehampton West Sussex* as shown for the purposes of identification edged in red on the Plan and registered at HM Land Registry with absolute title under title number WSX52527.
- 1.1.2 **“Plan”** means the plan attached to this Deed as Appendix 1.
- 1.1.3 **“Section 106 Agreement”** means the Deed means dated 23 *January 2013* between:
(1) The Council (2) West Sussex County Council (3) Littlehampton Town Council and (4) The Owners (as therein defined)
In relation to planning permission *LU/47/11 and amended by Deed of Variation* made under Section 106A of the Act and dated the 1st November 2017 made between (1) Arun District

Council (2) West Sussex County Council (3) Bovis Homes Limited (4) Donald Smith and Diane Joyce Smith (5) Hyde Housing Association Limited and (6) Hyde New Build Limited and further amended by a second Deed of Variation made under Section 106A of the Act dated 11th September 2018 between (1) Arun District Council (2) West Sussex County Council (3) The Owners and (4) Greencore Foods Limited a further Deed of Variation was made under Section 106A of the Act dated 21 December 2018 between (1) Arun District Council (2) West Sussex County Council (3) Permission Homes Limited (4) Worthing Homes

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Section 106 Agreement shall have the same meaning in this Deed.
- 1.3 Clause headings shall not affect the interpretation of this Deed.
- 1.4 A “**person**” includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 A reference to a “**company**” shall include any company, corporation or other body corporate, where and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 1.8 A reference to any party shall include that party’s representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council the successors to its statutory functions.
- 1.9 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

- 1.11 A reference to “**writing**” and “**written**” does not include fax or email.
- 1.12 Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Legal Basis

- 2.1 This Deed is made under Section 106 and 106A of the Act and its purpose is to vary the Section 106 Agreement.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations under Section 106 and Section 106A of the Act and are enforceable by the Council in accordance with Section 106 of the Act as local planning authority against the Owner.
- 2.3 The planning obligations contained in this Deed shall bind the Land only.

3. Commencement

This Deed shall come into effect on the date first mentioned herein.

4. Variation of the Section 106 Agreement

- 4.1 The parties agree that the Section 106 Agreement shall be varied as follows:
- 4.1.1 The "Affordable Housing Scheme" definition shall be amended for the purposes of the Phase being the development comprised in the reserved matters application LU/305/19/RES as follows:
- "(e) Identifies the size and housing types of the Affordable Housing Units in accordance with the table below unless otherwise agreed in writing with the Council:

Type of Dwelling	No. of Units
3 bedroom houses	4
2 bedroom flats	4
2 bedroom wheelchair accessible flats	2

"

5. Continuation of the terms of the Section 106 Agreement

It is hereby agreed and declared by the parties *hereto* that saving and excepting as expressly provided for by the provisions of this Deed the covenants and provisions contained in the Section 106 Agreement shall continue to have full force and effect.

6. Costs

- 6.1 The Owner covenants with the Council prior to the completion of this Deed to pay to the Council the sum of £500 being the Council's reasonable legal costs and disbursements in connection with this Deed.

7. Miscellaneous

- 7.1 Unless expressly stated to the contrary, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person or persons other than the Parties shall have any rights under it nor shall it be enforceable by any person other than the Parties.
- 7.2 Upon completion this Deed shall be registered as a Local Land Charge by the Council.

8. Governing Law and Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the jurisdiction of the courts of England.

9. Counterpart

This deed may be executed in no more than two counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one deed

Appendix 1

Plan

This Agreement is executed as a deed by the parties and is delivered and takes effect on the date at the beginning hereof..

THE COMMON SEAL of ARUN)
DISTRICT COUNCIL)
was affixed to this deed in the)
presence of:)

Authorised Signatory:

Name:

Seal Book No.

EXECUTED as a **DEED** by

PERSIMMON HOMES LIMITED

acting by two attorneys in the presence of:

Attorney

Attorney

Signature of witness

Name (in BLOCK CAPITALS)

Address