

Confidential

DATED THIS 1st DAY OF April 2021			
(1)	ARUN DISTRICT COUNCIL		
(2)	WEST SUSSEX COUNTY COUNCIL		
(3)	CRAYFERN HOMES LIMITED		
(4)	BARCLAYS BANK PLC		
	DEED OF VARIATION UNDER SECTION 106 AND 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990 relating to land known at Cinders Nursery, Cinders Lane, Yapton, West Sussex BN18 0JJ Planning Ref. Y/5/17/OUT and Y/4/19/RES		
	Arun District Council Maltravers Road Littlehampton West Sussex BN17 5LF DX 57406 LITTLEHAMPTON CMS7769		

Date:

1 April

2021

PARTIES:

1.	ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council ")
2.	WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, CHICHESTER, West Sussex PO19 1RQ (the " County Council ")
3.	CRAYFERN HOMES LIMITED (Company Registration No. 02703219) of Apollo House, Mercury Park, Wycombe Lane, Woodburn Green, High Wycombe, HP10 0HH (" Crayfern ")
4.	BARCLAYS BANK PLC (Company Registration No. 01026167) whose registered office is at 1 Churchill Place, London, E14 5HP (" Mortgagee ")

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 Property is situated
A2.	The County Council is a county planning authority and the highway authority, the education authority and the authority responsible for the provision of libraries and fire and rescue services
A3.	The Previous Owner transferred the Property to the Owner on 30 September 2019 and the Owner is registered as freehold owner of the Property at HM Land Registry comprised in title numbers WSX356228, WSX280553, WSX271482, WSX230908, WSX230905 and WSX99079.
A4.	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 Property.
A5.	The provisions of this Deed bind the Property, the parties to this Deed and their successors in title.
A6.	The Council acknowledges that the Owner has complied with its obligations to offer the Affordable Housing Units under paragraph 3.7 Schedule 1 of the S106 Agreement and no offers by Registered Providers were made during the first offer period or the second offer period. The Owner has agreed to sell the Affordable Rented Units to the Council subject to the completion of this Deed. If the Council does not purchase the Affordable Rented Units the Owner will pay the Affordable Housing Commuted Sum in accordance with paragraph 3.8 and 3.9 of Schedule 1 of the Section S106 Agreement as varied by this Deed.

A7.	Without prejudice to the terms of the other covenants contained in the S106 Agreement and to give effect to the agreement between the Owner and the Council referred to in Recital A.6 above the Parties have agreed to vary the terms of the S106 Agreement as set out in this Deed.
A8.	This Agreement is made as a Deed.

NOW THIS DEED WITNESSETH as follows:

1.	Interpretation						
1.1	In this Agreement unless otherwise stated the following expressions shall where the context so admits have the following meanings:						
	<table> <tr> <td>"Act"</td><td>means the Town and Country Planning Act 1990</td></tr> <tr> <td>"Previous Owner"</td><td>means Shirley Ann Thompson, Audrey Jane Hawkins, Michael Stephen Fildes and Lucille Margaret Fildes</td></tr> <tr> <td>"Section 106 Agreement"</td><td> means the Deed dated 29th August 2018 between: (1) Arun District Council; (2) West Sussex County Council; (3) Shirley Ann Thompson; (4) Audrey Jane Hawkins; (5) Michael Stephen Fildes and Lucille Margaret Fildes; (6) National Westminster Bank PLC; and (7) Sundial Planning Limited in relation to outline planning permission Y/5/17/OUT </td></tr> </table>	"Act"	means the Town and Country Planning Act 1990	"Previous Owner"	means Shirley Ann Thompson, Audrey Jane Hawkins, Michael Stephen Fildes and Lucille Margaret Fildes	"Section 106 Agreement"	means the Deed dated 29th August 2018 between: (1) Arun District Council; (2) West Sussex County Council; (3) Shirley Ann Thompson; (4) Audrey Jane Hawkins; (5) Michael Stephen Fildes and Lucille Margaret Fildes; (6) National Westminster Bank PLC; and (7) Sundial Planning Limited in relation to outline planning permission Y/5/17/OUT
"Act"	means the Town and Country Planning Act 1990						
"Previous Owner"	means Shirley Ann Thompson, Audrey Jane Hawkins, Michael Stephen Fildes and Lucille Margaret Fildes						
"Section 106 Agreement"	means the Deed dated 29th August 2018 between: (1) Arun District Council; (2) West Sussex County Council; (3) Shirley Ann Thompson; (4) Audrey Jane Hawkins; (5) Michael Stephen Fildes and Lucille Margaret Fildes; (6) National Westminster Bank PLC; and (7) Sundial Planning Limited in relation to outline planning permission Y/5/17/OUT						
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 and the County Council the successors to their respective 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.
3.	LEGAL BASIS
3.1	This Deed is made under Section 106 and 106A of the Act and its purpose is to further vary the Section 106 Agreement with the intention that the planning obligations contained in the Section 106 Agreement shall also apply to development to be undertaken save for any variations contained within this Deed
3.2	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 and County Council (as appropriate) in accordance with Section 106 of the Act as local planning authorities against the Owner.
3.3	The planning obligations contained in this Deed shall bind the Property.
4	COMMENCEMENT
	This Deed shall come into effect on the date first mentioned herein.
5.	VARIATION OF THE SECTION 106 AGREEMENT
	The Parties agree that the Section 106 Agreement shall be varied as follows

5.1	In the definition of 'Affordable Housing' in Clause 1.1, the words '("Intermediate Units")' shall be deleted.
5.2	The definition of 'Affordable Housing Dwellings' at Clause 1.1 shall be deleted and replaced with: "Affordable Housing Dwellings: means fourteen (14) of the Dwelling Units to be provided as Affordable Housing as to:- 1.1 Affordable Rented Units: ten (10) No. dwellings/flats; and 1.2 Intermediate Units: four (4) No. dwellings/flats in accordance with the terms of this Agreement"
5.3	In the definition of "Affordable Housing Provider" in Clause 1.1 there shall be added d) the Council; and e) Landspeed Homes Limited (Co No 08726176) whose registered office is at Top Floor Buckley House, 31a The Hundred Romsey, Hampshire
5.4	The definition if "Chargee" at clause 1.1 shall be deleted and replaced with: "Chargee means any mortgagee or chargee from time to time or any receiver (including 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 of the whole or any part of the Affordable Housing Dwelling or any persons or bodies deriving title through such mortgagee or chargee or receiver"
5.5	In Clause 1.1 the following definition shall be inserted: "Intermediate Units –means a form of Affordable Housing involving housing at a cost below market levels and which remains at an affordable price for future eligible households and which may include (but shall not be limited to) shared equity products other low cost homes for sale and intermediate rental as defined in the National Planning Policy Framework"
5.6	The following clause shall be added to the Section 106 Agreement as a new clause 25:

	"25. MORTGAGEE IN POSSESSION CLAUSE The Parties agree that a Chargee of the Property from time to time shall have no liability under this Deed unless and until it takes possession of the Property 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 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 Property whether by sale or otherwise."
5.7	Paragraph 3.6 of Schedule 1 shall be deleted and replaced with: "Subject to the following provisions of this paragraph 3 the Owner shall not cause or permit the First Occupation of more than seventy-five percent (75%) (or such other percentage as may be agreed in writing by the Council acting reasonably) of the Open Market Dwellings until the Affordable Housing Dwellings have been completed and are ready for Occupation."
5.8	In paragraph 6 of Schedule 1 (a) Any reference to "mortgagee or chargee" shall be deemed to be a reference to a Chargee; (b) In sub-paragraphs 6.1.3 and 6.1.5 the references to "one month" shall be varied to "four (4) weeks"; (c) Sub-paragraphs 6.1.4 and 6.1.9 shall each be deemed to be deleted in their entirety; (d) In sub-paragraph 6.1.5 the words "or within the time limit specified in sub-paragraph 6.1.4. The Council gives written notice to the Chargee that arrangements can be made in accordance with sub-paragraph 6.1.4" shall be deleted; (e) At the end of paragraph 6.1.5 there shall be added "PROVIDED THAT the Chargee shall be under no obligation to dispose of the Affordable Housing Dwellings(s) for an amount less than the sum outstanding under the terms of the relevant security documentation together with all accrued costs, interest and expenses"; (f) In sub-paragraph 6.1.6 the reference to "two months" shall be varied to "four (4) weeks"; (g) Sub-paragraph 6.1.8.2 shall be deleted and replaced with "6.1.8.2 the Council gives notification of the refusal of the Offer";
6	CONTINUATION OF THE TERMS OF THE SECTION 106 AGREEMENT

	It is hereby agreed and declared by the Council, County Council and Crayfern 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.
7	COSTS
7.1	The Owner covenants with the Council to pay prior to completion of this Deed the sum of £500.00 being the Council's reasonable legal costs and disbursements in connection with this Deed.
7.2	The Owner covenants with the County Council to pay prior to completion of this Deed the sum of £650 being the County Council's reasonable legal costs and disbursements in connection with this Deed.
8	MISCELLANEOUS
8.1	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.
8.2	Upon completion this Deed shall be registered as a Local Land Charge by the Council.
9	Mortgagee's Consent
	The Mortgagee hereby consents to the Owner entering into this Deed but shall not under any circumstances be liable for any breach of the S106 Agreement (as varied by this Deed) nor for any costs incurred by the Council or the County Council as a result of such breach unless the Mortgagee has caused such breach while in possession and irrespective of whether or not the Mortgagee shall have caused such breach it shall have no liability after the Mortgagee has discharged the charge dated 1 April 2020 or has disposed of the Owner's interest in the Property whether by sale or otherwise.
10	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.

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:

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)
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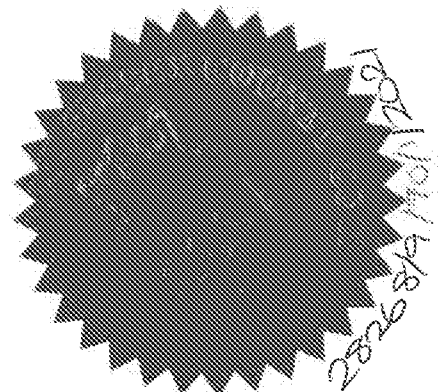
Authorised Signatory



Name: *SALLY SUGDEN*
CONTRACTS LAWYER
Seal Book No. *42/2021*

**THE COMMON SEAL of
WEST SUSSEX COUNTY COUNCIL**
was affixed to this deed in the presence of:

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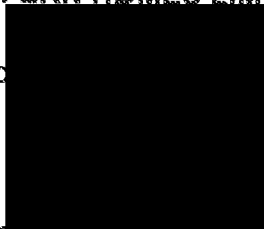
Authorised Signatory



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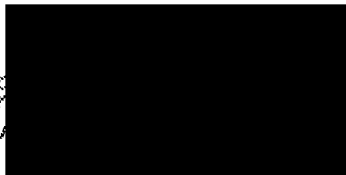
**EXECUTED as a DEED by
CRAYFERN HOMES LIMITED**

Director



in the presence of:-

Signature of witness
Name (in BLOCK CAPITALS)
Address



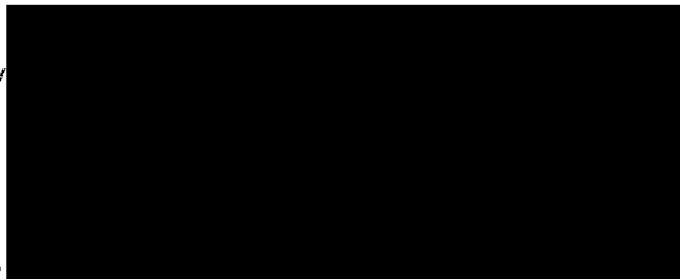
11 ORCHARD GROVE.
108 8TH

EXECUTED as a DEED by



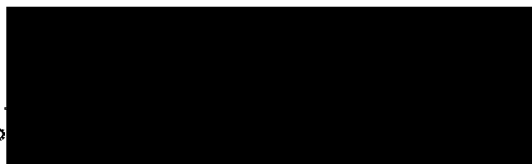
as attorney for

BARCLAYS BANK PLC,



in the presence of:

Signature of witness
Name (in BLOCK CAPITALS)
Address



2 WAYSIDE
LOWER SWANWICK
SOUTHAMPTON SO31 7JS