

DATED 11 December 2020

(1) YAPTON DEVELOPMENTS LIMITED

and

(2) ARUN DISTRICT COUNCIL

and

(3) WEST SUSSEX COUNTY COUNCIL

DEED OF VARIATION

to the Agreement dated 21 November 2019 under Sections 106 and 106A of the Town and Country Planning Act 1990 (as amended)

relating to Land on the North Side of North End Road Yapton West Sussex

Planning reference: Y/71/20/RES/CMS8189



**planning
clarity legal**

This DEED is made the 11 day of December 2020

BY

- (1) **YAPTON DEVELOPMENTS LIMITED** (company registration number 132703C incorporated in the Isle of Man) of Dandara Group Head Office, Isle of Man Business Park, Cooil Road, Braddan, Isle of Man IM2 2SA (the "Owner");
- (2) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (the "Council"); and
- (3) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the "County Council")

BACKGROUND

- (A) This Deed is made by virtue of Section 106A of the Act and is a planning obligation for the purposes of that section.
- (B) The Owner is the freehold owner of the Property under the Title Numbers WSX392641 and WSX392229 registered at the Land Registry.
- (C) 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.
- (D) 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 for the area in which the Property is situated.
- (E) The Council, the County Council and Pibworth Holdings Limited (as the previous freehold owner of the Property) entered into an Agreement dated 21 November 2019 pursuant to Section 106 of the Act (hereinafter called "**the Original Agreement**") which imposed planning obligations relating to the Development approved under the outline planning permission (reference number Y/88/18/OUT) granted on 26 November 2019 ("**the Outline Permission**").
- (F) The Owner has made an application (reference number Y/71/20/RES) to the Council for the approval of reserved matters pursuant to the Outline Permission (hereinafter called "**the Reserved Matters Approval**") to develop the Property in accordance with that application and the Outline Permission and the Council has resolved to grant the Reserved Matters Approval subject to the entering into this Deed, which without prejudice to the terms of the other covenants contained in the Original Agreement the Owner, the Council and the County Council have agreed shall vary the terms of the Original Agreement as hereinafter provided.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

- 1.1 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates and for the avoidance of any doubt the Original Agreement shall remain in full force and effect save as varied by this Deed.
- 1.2 All reference in this Deed to clauses in the Original Agreement are to clauses within the Original Agreement.

2. INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions, policies and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Property include any part of it.
- 2.8 References to any party in this Deed include the successors in title of that party and any references to the Council and the County Council includes any successor local authorities.
- 2.9 References to "including" means "including, without limitation" and where appropriate in context shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.10 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that obligation.
- 2.11 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

3. EFFECT OF THIS DEED

- 3.1 This Deed is made pursuant to Section 106A of the Act.
- 3.2 To the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and the County Council.

4. COMMENCEMENT

- 4.1 With the exception of this Clause 4 and Clauses 7 and 8 (which shall take effect immediately on the date of this Deed), this Deed is conditional on the grant of the Reserved Matters Approval and the Commencement of Development.

5. VARIATIONS TO THE ORIGINAL AGREEMENT

- 5.1 The Owner, the Council and the County Council agree to vary the Original Agreement as set out in the Schedule.

6. REGISTRATION

- 6.1. This Deed shall be registered as a Local Land Charge by the Council in the Register of Local Land Charges maintained by the Council.

7. RELEASE AND TERMINATION OF THIS DEED

- 7.1 The Owner (or any person deriving an interest in the Property from the Owner) shall no longer be liable for the obligations contained in this Deed after they have disposed of their interest in the Property (or in the event of a disposal of part in relation to the part disposed of) but not so as to release the Owner from any antecedent breach non-performance or non-observance of their obligations or other provisions of this Deed arising prior to parting with such interest.
- 7.2 This Deed shall lapse and be of no further effect if:
- 7.2.1 the Reserved Matters Approval is quashed, revoked, varied (otherwise than with the consent of the Owner) or otherwise withdrawn at any time; or
- 7.2.2 the Reserved Matters Approval expires before Commencement of Development; or
- 7.2.3 the Council refuses to grant the Reserved Matters Approval.

8. COSTS OF THIS DEED

- 8.1 Upon completion of this Deed, the Owner shall pay to the Council its reasonable legal costs in connection with the consideration and negotiation of this Deed.
- 8.2 Upon completion of this Deed, the Owner shall pay to the County Council its reasonable legal costs in connection with the consideration and negotiation of this Deed.

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

SIGNED as a DEED on behalf of)
YAPTON DEVELOPMENTS LIMITED)
by a person/persons who is/are)
acting under the authority of the)
company)

YAPTON DEVELOPMENTS LIMITED

Signature



Authorised Signatory (Director)

PETER KEVIN COWIN

Print Name

YAPTON DEVELOPMENTS LIMITED

Signature



Authorised Signatory (Director/Secretary)

ANTHONY JOSEPH CAGNEY

Print Name

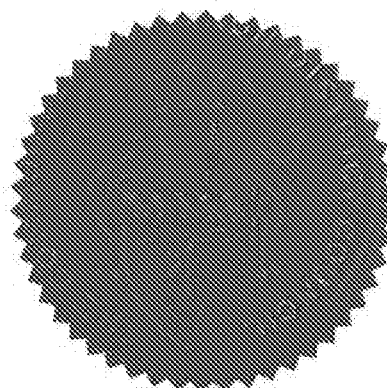
THE COMMON SEAL of)
ARUN DISTRICT COUNCIL)
was affixed to this deed in the)
presence of:)

Authorised Signatory:



Name: EDWARD COWIN, PROPERTY LAWYER

Seal Book No: 197 / 2020



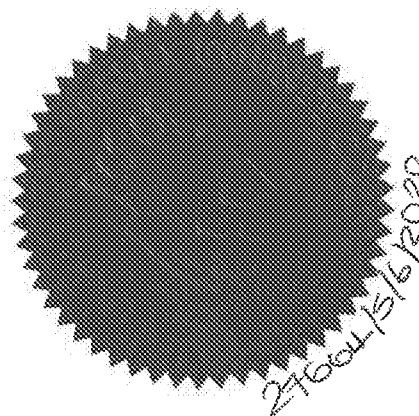
THE COMMON SEAL of WEST)
SUSSEX COUNTY COUNCIL)
was affixed to this deed in the)
presence of:-)

Authorised Signatory:



Name:

Seal Book No:



THE SCHEDULE
VARIATIONS TO THE ORIGINAL AGREEMENT

A. HOUSING MIX

The Owner, the Council and the County Council covenant to vary the Original Agreement as follows:

1. Delete the wording in the definition of 'Housing Mix' in Clause 1.1 of the Original Agreement and replace it with the following new wording:

"Housing Mix: means the following Units which are Affordable Rented Units:

5 x 2-bedroom houses

3 x 3-bedroom houses

or such other mix to be agreed in writing with the Council,

and the following Units which are Shared Ownership Units:

1 x 2-bed house

2 x 3-bed houses

or such other mix to be agreed in writing with the Council."

B. PRIMARY EDUCATION CONTRIBUTION, SECONDARY EDUCATION CONTRIBUTION AND SIXTH FORM EDUCATION CONTRIBUTION

1. Delete the wording in Paragraph 4.1 of the Second Schedule from "DfE Figure – Department for Education (DfE) building costs per pupil place, as adjusted for the West Sussex area (which are £18,370 – Primary, £27,679 – Secondary; £30019 – Sixth Form respectively)" and replace with:

"DfE Figure = Department for Education (DfE) building costs per pupil place which are updated annually and currently for the financial year 2020/2021 are £18,933 – Primary; £28,258 – Secondary; £30,939 – Sixth Form respectively".

2. Delete the wording in the last paragraph of Paragraph 4.1 of the Second Schedule from "The parties agree that the Primary Education Contribution, Secondary Education Contribution and the Sixth Form Education Contribution will be calculated by inputting the relevant housing mix into the spreadsheet annexed to the e-mail from Charlotte Nash to Sophie Henwood on 30 May 2019 at 09:52 which based on the above formula and utilising the figure that this spreadsheet determines which will be subject to indexation"

C. LIBRARY CONTRIBUTION

1. Delete the wording in Paragraph 5.4 of the Second Schedule from "L = Extra library space in sqm. per 1,000 population x the library cost multiplier (which are 30sqm. and £5,384 per sqm respectively)" and replace with:

"L = extra library space in sqm. per 1,000 population x the library cost multiplier which is updated annually (and which are currently 30 sqm. and £5,549 for the financial year 2020/2021 respectively)".

2. Delete the wording in the last paragraph of Paragraph 5.4 of the Second Schedule from "The parties agree that the Library Contribution will be calculated by inputting the relevant housing mix into the spreadsheet annexed to the e-mail from Charlotte Nash to Sophie HENwood on 30 May 2019 at 09:52 which is based on the above formula and utilising the figure that this spreadsheet determines which will be subject to indexation".