

Dated 9 October 2020

TENDRING DISTRICT COUNCIL

-and-

BRITTON DEVELOPMENTS LTD

-and-

PERSIMMON HOMES LIMITED

**DEED OF VARIATION OF PLANNING OBLIGATION
UNDER SECTION 106A
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to at Oakwood Park, land east of Thorpe Road, Clacton-on-Sea, Essex

THIS DEED OF VARIATION is dated 9 October 2020

PARTIES:

- (1) **TENDRING DISTRICT COUNCIL** of Council Offices, Thorpe Road, Weeley CO16 9AJ ("the Council"); and
- (2) **BRITTON DEVELOPMENTS LTD** (Company Registration Number: 10257659) whose registered office is at Summit House, 13 High Street, London E11 2AA and whose address for service is at Unit 2, Wild Close, Oakwood Business Park, Clacton-on-Sea CO15 4BB ("the First Owner"); and
- (3) **PERSIMMON HOMES LIMITED** (Company number 4108747) of whose registered office is at Persimmon House, Fulford, York Y19 4FE ("the Second Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated
- (B) The First Owner is the freehold owner of the First Owner's Land
- (C) The Second Owner is the freehold owner of the Second Owner's Land and has the benefit of an Option Agreement dated 3 October 2019 to purchase the land shaded blue and orange on the Ownership Plan
- (D) The Council has been requested to vary the Original Agreement and the Council has agreed to vary the Original Agreement on the terms set out in this Deed
- (E) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

First Owner's Land	the land shaded blue, orange, yellow and purple for indicative purposes only on the Ownership Plan
Original Agreement	An agreement dated 28 September 2015 made under Section 106 of the Act between the Council (1); Stebbing & Sons Limited (2); and Kevin James Britton (3) containing planning obligations enforceable by the Council
Owners	the First Owner and Second Owner
Ownership Plan	the plan attached to this Deed
Second Owner's Land	the land shaded white (including land shaded white and hatched black), shaded green and shaded pink for indicative purposes only on the Ownership Plan

2. LEGAL BASIS

- 2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106 of the 1990 Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council
- 2.2 The terms and conditions of the Original Agreement shall remain in full force and effect except as varied by this Deed

3. VARIATION

- 3.1 The Parties agree that the Original Agreement is varied in the manner specified in the Schedule to this Deed
- 3.2 The Original Agreement shall from the date of this Deed be read and construed as varied by the Schedule to this Deed
- 3.2 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Site as varied by this Deed

4. OTHER PROVISIONS

- 4.1 On completion the Second Owner will pay the Council's reasonable legal costs in connection with this Deed
- 4.2 The Owners warrant that they have full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site
- 4.3 On completion the Council shall register this Deed in its Register of Local Land Charges
- 4.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission
- 4.5 This Deed shall be governed by and construed in accordance with the laws of England and each of the parties hereby submits to the exclusive jurisdiction of the English Courts
- 4.6 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

- 4.7 If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed to be affected or impaired
- 4.8 Words and expressions defined in the Original Agreement shall, unless the context or the express terms of this Deed otherwise require, bear the same meaning in this Deed

**Schedule
Variation**

- 1 The Parties agree that Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following new Schedule 3:

SCHEDULE 3

AFFORDABLE HOUSING

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

"Affordable Housing" means housing provided to a Person in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices and includes Affordable Rented Housing and/or Intermediate Affordable Housing;

"Affordable Housing Dwellings" unless otherwise agreed in writing with the Council means the following Dwellings which shall be provided as Affordable Rented Housing:

a) the 16 Dwellings identified as plots 5 to 20 (inclusive) on the Affordable Housing Plan; and

either:

b) the 12 Dwellings identified as plots 43 to 54 (inclusive) on the Affordable Housing Plan; or

c) if the Second Owner (in this context being Persimmon Homes Limited only) serves written notice on the Council following their acquisition of the land shaded blue on the Ownership Plan but prior to the Occupation of more than 184 Market Dwellings confirming that it does not intend to provide the 12 Dwellings specified at b) above as Affordable Housing then it shall instead provide the 12 Dwellings identified as plots 217 to 228 (inclusive) on the Affordable Housing Plan as

Affordable Housing;

"Affordable Plan"	Housing	unless otherwise agreed in writing with the Council means plan PH-144-002 Rev C attached to this Deed showing the locations of the plots on the Development;
"Affordable Housing"	Rented	has the meaning ascribed to it in paragraph a) of the definition of affordable housing of the National Planning Policy Framework 2019 (or any successor policy thereto);
"Approved Body"		means either a registered provider of social housing as defined in Section 80 of the 2008 Act and which is recognised by Homes England or any other body organisation or company who may lawfully provide or fund Affordable Housing from time to time;
"Chargee"		means any mortgagee or chargee of the Affordable Housing (or any manager or receiver including an administrative receiver) appointed by such mortgagee or charge or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") in possession of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or charge or Receiver;
"Homes England"		Homes England or its successor body or such other body as may replace it and undertakes the existing functions of Homes England within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or as may be defined by any amendment to or

replacement or re-enactment of such Act of 2008);

"Housing Needs Register"

means the register maintained by the Council or its nominee or an Approved Body for Persons in Housing Need;

"Intermediate Affordable Housing"

means housing at prices and rents above those of Affordable Rented Housing but below market price or rents and which meet the needs of Persons in Housing Need and can include:

- a) intermediate rented homes which are provided at rent levels above those of Affordable Rented Housing but below private rent levels;
- b) shared equity homes where more than one party has an interest in the property for example by way of shared ownership lease and there may be a charge on the loan and restrictions on price access and resale;
- c) shared ownership homes whereby the purchaser buys an initial share in the equity of the property from the housing provider who retains the remainder and may charge a rent with the purchaser being able to purchase additional shares of the equity ("staircasing")

and the expressions "Intermediate Affordable Housing Dwelling" and "Intermediate Housing Dwellings" shall be construed accordingly;

"Persons in Housing Need"

means a person or persons registered on the Council's Housing Needs Register or such other person or persons considered by the Council or the Approved Body to be in housing need having regard

to their income and local house prices or rents;

"Protected Tenant"

Means any tenant who:

- a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (including a preserved right to buy) (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling;
- b) has exercised any statutory right to buy, purchase or acquire (or equivalent contractual right) in respect of a particular Affordable Housing Dwelling;
- c) has been granted a shared ownership lease by the Approved Body in exercise of that persons' statutory right in respect of a particular Affordable Housing Dwelling;

"2008 Act"

means the Housing and Regeneration Act 2008;

The Owners covenant with the Council as follows:

- 1.1 Not to Occupy or cause or permit to be Occupied more than 46 of the Market Dwellings unless and until four of the Affordable Housing Dwellings have been constructed to Completion and transferred to an Approved Body
- 1.2 Not to Occupy or cause or permit to be Occupied more than 92 of the Market Dwellings unless and until a further four (eight in total) of the Affordable Housing Dwellings have been constructed to Completion and transferred to an Approved Body
- 1.3 Not to Occupy or cause or permit to be Occupied more than 138 of the Market Dwellings unless and until a further four (twelve in total) of the Affordable Housing Dwellings have been constructed to Completion and transferred to an

Approved Body

- 1.4 Not to Occupy or cause or permit to be Occupied more than 184 of the Market Dwellings unless and until a further four (sixteen in total) of the Affordable Housing Dwellings have been constructed to Completion and transferred to an Approved Body
 - 1.5 Not to Occupy or cause or permit to be Occupied more than 219 of the Market Dwellings unless and until a further twelve (twenty eight in total) of the Affordable Housing Dwellings have been constructed to Completion and transferred to an Approved Body
 - 1.6 Any transfer of the Affordable Housing Dwellings shall include the provisions contained in Annex A of the Agreement
 - 1.7 Subject always to paragraph 2 of this Schedule 3 the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Rented Dwellings
- 2 It is hereby agreed and declared:
- 2.1 The obligations and restrictions in this Schedule 3 shall not bind the following:
 - 2.1.1 a Chargee of the whole or part of the Affordable Housing Dwellings or any successors in title to such Chargee PROVIDED THAT such Chargee must first comply with the provisions of paragraph 2.2 of this Schedule 3; or
 - 2.1.2 any person who has bought an Affordable Rented Dwelling pursuant a statutory right to buy or a statutory right to acquire or any person who has acquired one hundred percent (100%) ownership (save for any mortgage) in an Intermediate Affordable Housing Dwelling;
 - 2.1.3 a Protected Tenant;

2.1.4 any mortgagee or chargee of a person referred to at paragraph 2.1.2 of this Third Schedule

2.1.5 any person or body deriving title through or from any of the parties mentioned in paragraphs 2.1.1 – 2.1.3 above

2.2 Any Chargee claiming the protection granted by paragraph 2.1 above must first:

2.2.1 give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling(s); and

2.2.2 have used reasonable endeavours over a period of eight (8) weeks from the date of the written notice to dispose of the Affordable Housing Dwelling(s) to another Approved Body or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge; and

2.2.3 if such disposal has not taken place within the said eight (8) week period the Chargee shall be entitled to dispose of the Affordable Housing Dwelling(s) free from the affordable housing provisions contained in this Agreement which shall determine absolutely in respect of that particular Affordable Housing Dwelling (or Affordable Housing Dwellings)

PROVIDED THAT at all times the rights and obligations in this paragraph 2.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage



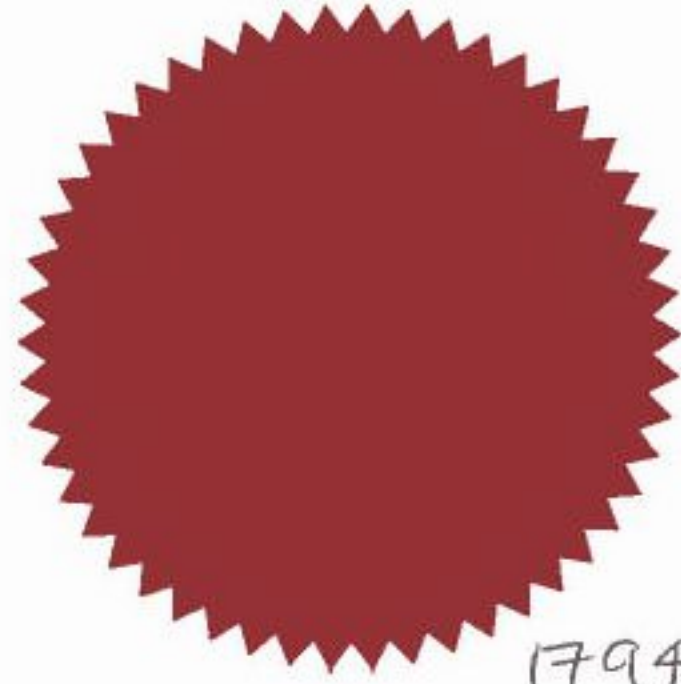
Key	
	Outline Consent
	Phase 1 & 2 Reserved Matters



PROJECT	
Oakwood Park, Clacton-on-Sea	
TITLE	
Masterplan	
DRAWING NUMBER	REVISION
PH-144-002	C
DATE	SCALE @ A3 SIZE
Oct 2018	1:500
PERSIMMON Persimmon Homes (Essex) plc Persimmon Homes Group Head Office, Essex, UK Tel: 01206 558800 Fax: 01206 558801 www.persimmonhomes.com	

IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

THE COMMON SEAL of)
TENDRING DISTRICT)
COUNCIL was hereunto affixed)
to this Deed in the presence of:)



17943

Atte: [Redacted]

EXECUTED as a DEED by)
BRITTON DEVELOPMENTS LTD)
acting by two directors or a director)
and its secretary)

Director

Director/Secretary

**SIGNED as a DEED by
PERSIMMON HOMES LIMITED**

Acting by its Attorneys

[] signed(Attorney)

In the presence of:

Witness signature

Witness name

Address

.....

And

[] signed(Attorney)

In the presence of:

Witness signature

Witness name

Address

THE COMMON SEAL of)
TENDRING DISTRICT)
COUNCIL was hereunto affixed)
to this Deed in the presence of:)

Attesting Officer

EXECUTED as a **DEED** by)
BRITTON DEVELOPMENTS LTD)



SIGNED as a DEED by
PERSIMMON HOMES LIMITED

Acting by its Attorneys

[Redacted]

signed [Redacted](Attorney)

In the presence of:

[Redacted]

And

[Redacted]

signed . [Redacted](Attorney)

In the presence of:

[Redacted]