

Dated 5th September 2023

TENDRING DISTRICT COUNCIL

-and-

ESSEX COUNTY COUNCIL

and

PERSIMMON HOMES LIMITED

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

relating to land east of Pond Hall Farm, Harwich, Essex
Planning references 14/01431/OUT and 20/00385/OUT and 22/01976/DOV05

THIS DEED OF VARIATION is dated 5th September

2023

PARTIES:

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE (“the Council”);
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex, CM1 1HQ (“the County Council”); and
- (3) **PERSIMMON HOMES LIMITED** (Company number 4108747) of whose registered office is at Persimmon House, Fulford, York YO19 4FE (“the Residential Phase Owner”)

together referred to as ‘the Parties’

INTRODUCTION

- (A) The Council and the County Council are the local planning authorities for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The County Council is also the local authority for statutory age education and pre-school age education and child care and the local highway authority for the area in which the Site is situated.
- (C) On 29 April 2016 the Original Agreement was entered into in respect of the Planning Application for the Development of the Site.
- (D) On 8 June 2016 the Council granted Planning Permission for the Development of the Site pursuant to the Planning Application subject to conditions and the Original Agreement.
- (E) On 2 December 2021 the Council approved the Phasing Plan which identified Phases 2A and 2B of the Site as the Residential Phases of the Development under reference 21/01787/DISCON pursuant to condition 2 of the Planning Permission.
- (F) The Residential Phase Owner is the freehold owner of the Residential Phases of the Site which are registered at the Land Registry under title number

AA40954 free from any encumbrances that would prevent it from entering into this Deed.

- (G) The Council has been requested to vary Schedule 4 of the Original Agreement which relates to the Residential Phases only and the Council have agreed to vary the Original Agreement on the terms set out in this Deed in relation to the Residential Phase.
- (H) The obligations in the Original Agreement that are varied by this Deed are enforceable against the Residential Phase Owner by the Council and relate only to the part of the Site in the control of the Residential Phase Owner
- (I) 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:

Original Agreement an agreement dated 29 April 2016 made under Section 106 of the 1990 Act between the Council (1); Essex County Council (2); Harding Estates (East Anglia) Limited (3); Topland Jupiter Limited (4); and HIM Properties Limited (5) containing planning obligations enforceable by the Council and Essex County Council

Phasing Plan Drawing No. 13977-7054 Rev 04 attached to this Deed at Schedule 1 as approved by the Council under reference 21/01787/DISCON on 2 December 2021 pursuant to condition 2 of the Planning Permission (or such other phasing plan showing the Residential Phases of the Development as may be approved by the Council in writing)

2. LEGAL BASIS

- 2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106 and 106A 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 1990 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 Schedule 2 to this Deed
- 3.2 This Deed shall come into effect immediately upon its completion
- 3.3 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 Residential Phase Owner will pay the Council's reasonable legal costs of £1,000 (One Thousand Pounds) and the County Council's reasonable legal costs in connection with this Deed
- 4.2 The Residential Phase Owner warrants that it has full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Residential Phases
- 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 1
Phasing Plan

Schedule 2 Variation

1 The Parties agree that the Original Agreement shall be varied as follows

1.1 The definition of "Affordable Rented Housing" in Schedule 4 of the Original Agreement shall be deleted in its entirety and replaced with the following:

"Affordable Rented Housing" *means Dwellings let by an Approved Body (save for where included as part of a Build to Rent scheme, in which case the landlord need not be an Approved Body) at either:*

- a) a rent set in accordance with the Government's rent policy for social rent or affordable rent; or*
- b) a rent at least 20% below local market rents (including service charges where applicable)*

with such Dwellings to remain at such rents in perpetuity subject to the provisions of this Schedule 4

1.2 The definition of "Homes and Communities Agency" in Schedule 4 of the Original Agreement shall be deleted in its entirety and replaced with the following:

“Homes Communities Agency” and means the public body trading as “Homes England” set up to fund and regulate the provision of Affordable Housing in England and any successor body (and “HCA” shall be construed accordingly

- 1.3 The definition of “Shared Ownership Housing” in Schedule 4 of the Original Agreement shall be deleted in its entirety and replaced with the following:

“Shared Ownership Housing” means a dwelling where the purchaser buys an initial share in the dwelling from the Approved Body who retains the remainder which is let on a Shared Ownership Lease to the purchaser and may charge a rent with the purchaser being able to purchase additional shares beyond the initial share acquired by the purchaser (“Staircasing”)

- 1.4 The following definitions shall be added to Schedule 4 of the Original Agreement:

“Build to Rent” shall have the same definition as set out in Annex 2 of the National Planning Policy Framework (July 2021) as may be updated from time to time

“Capital Receipts” means proceeds from Staircasing obtained by the Approved Body through Shared Ownership Housing (which for the avoidance of doubt shall exclude any and all proceeds derived from the disposal of the initial share acquired by

the purchaser) less the Approved Body's costs of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees

"Shared Ownership Lease" means a lease of 990 years or more substantially in the form of the Homes England model shared ownership lease from time to time

- 1.5 Paragraph 3.1.1 of Schedule 4 of the Original Agreement shall be deleted in its entirety and replaced with the following:

3.1.1 any Capital Receipt is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to reinvest such Capital Receipts in Affordable Housing within the district of Tendring subject to any contrary requirements within the Homes and Communities Agency capital funding guide

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:)



Attesting Officer



EXECUTED as a DEED
by affixing the common seal of
ESSEX COUNTY COUNCIL
in the presence of:



.....
Attesting Officer

