

Dated

6th November

2019

SUFFOLK COSTAL DISTRICT COUNCIL

and

SUFFOLK COUNTY COUNCIL

and

PERSIMMON HOMES LIMITED

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A
OF THE TOWN & COUNTRY PLANNING ACT 1990**

RELATING TO LAND AT MOUNT PLEASANT, FRAMLINGHAM, SUFFOLK

 **HOWES
PERCIVAL**

Flint Buildings
1 Bedding Lane
Norwich NR3 1RG
Tel: 01603 762103

THIS DEED IS MADE ON THE 6th DAY OF November 2019

Between

- (1) **EAST SUFFOLK COUNCIL** of Melton Hill Woodbridge Suffolk IP12 1AU (the "District Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House Russell Road Ipswich Suffolk (the "County Council")
- (3) **PERSIMMON HOMES LIMITED** of Persimmon House Fulford York YO19 4FE (the "Developer")

Recitals

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Property is situated.
- (B) The County Council is also a planning authority and is the highway authority for the area in which the Property is situated.
- (C) The Developer is now the freehold owner of the Property free from encumbrances.
- (D) On 18 January 2016 the District Council, County Council, First Owners, Second Owners, Third Owners and the Developer entered into the Original Agreement and planning permission was granted with reference DC/15/2759/FUL.
- (E) The Developer has submitted to the District Council the Current Applications.
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed in order to secure the planning obligations upon grant of the Revised Planning Permission.
- (G) This agreement is made under section 106A of the Act and is supplemental to the Original Agreement.

It is hereby agreed

1. Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Current Applications: two minor material amendment applications:

- i. Ref DC/17/3654/VOC - Variation of condition no. 2 of DC/15/2759/FUL - Development of 95 new dwelling units together with associated access, open space and landscaping (resubmission of DC/14/2276/FUL) – (replacement of approved masterplan 7576/05/Rev21 with site layout MPF-PL01 Rev D); and
- ii. Ref. DC/17/3681/VOC - Variation of Condition 2 of Planning Consent DC/15/2759/FUL - Development of 95 new dwelling units together with associated access, open space and landscaping (resubmission of DC/14/2276/FUL) – (replacement of approved plans to address design details and external materials).

Discharged Obligations: any terms, requirements, covenants or conditions contained in the Original Agreement that have been discharged (in whole or in part and if in part then to the extent so discharged) including (without limitation) those contained in the Seventh Schedule of the Original Agreement or otherwise save to the extent that they are inconsistent with, specifically excluded or substituted by, the terms of this deed.

Continuing Obligations: with the exception of the Discharged Obligations, all of the terms, requirements, covenants and conditions contained in the Original Agreement with such modifications as are necessary to make them applicable to this deed and the parties to this deed.

Original Agreement: the agreement made under section 106 of the Act dated 18 January 2016 between the District Council (1), the County Council (2), Bruce Nigel Hinton, Hilary Susan Hinton and Robert Oliver Hinton (3), Bruce Nigel Hinton, Hilary Susan Hinton (4), Lawrence George Fulcher and Susan Fulcher (5) and the Developer (6).

Revised Planning Permission: the planning permission to be granted pursuant to the Current Applications.

Property: that part of the Site remaining in the Developer's freehold ownership at the date of this Deed as registered at HM Land Registry with freehold title absolute under title number SK372481.

- 1.2 Unless the context otherwise requires or as otherwise defined herein, all words and phrases defined in the Original 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 separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the District Council and County Council the successors to its respective statutory functions.
- 1.8 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.
- 1.9 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.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.

- 1.11 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.
- 1.12 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. Statutory provision

This deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, and any other enabling powers.

3. Variations to the Original Agreement

3.1 From the date of the Revised Planning Permission the Original Agreement shall be varied as follows:

3.1.1 The Definition of "Planning Permission" at clause 1 of the Original Agreement shall be deleted and replaced with the following:

"Planning Permission" the planning permission to be granted subject to conditions by the District Council pursuant to the two minor material amendment applications:

- i. Ref DC/17/3654/VOC - Variation of condition no. 2 of DC/15/2759/FUL - Development of 95 new dwelling units together with associated access, open space and landscaping (resubmission of DC/14/2276/FUL) – (replacement of approved masterplan 7576/05/Rev21 with site layout MPF-PL01 Rev D); and*
- ii. Ref. DC/17/3681/VOC - Variation of Condition 2 of Planning Consent DC/15/2759/FUL - Development of 95 new dwelling units together with associated access, open space and landscaping (resubmission of DC/14/2276/FUL) – (replacement of approved plans to address design details and external materials).*

3.2 In all other respects the Continuing Obligations (as varied by this deed) shall remain in full force and effect as if they were set out in full in this deed.

4. Covenants to the District Council and County Council

The Developer covenants to observe and perform the Owner's Continuing Obligations contained in the Original Agreement as varied by this deed.

5. Covenants by the District Council and County Council

5.1 The District Council covenants with the Developer to observe and perform the District Council's Continuing Obligations contained in the Original Agreement as varied by this deed.

5.2 The County Council covenants with the Developer to observe and perform the District Council's Continuing Obligations contained in the Original Agreement as varied by this deed.

6. Local land charge

This deed shall be registered against the Property as a local land charge.

7. Endorsement

Promptly following completion of this deed the Parties shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated [] 2018 and made between Suffolk Coastal District Council (1) Suffolk County Council (2) and Persimmon Homes Limited (3)."

8. Council's costs

The Developer shall pay to the District Council and County Council on or before the date of completion of this deed, their reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

9. Value added tax

9.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.


10. Third party rights


A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

11. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

<p>The common seal of EAST SUFFOLK COUNCIL</p> <p>was affixed to this document in the presence of:</p>	
	<p>Authorised signatory</p> <p>[Redacted]</p> <p>134</p>
	<p>Authorised signatory</p> <p>[Redacted]</p>

<p>The common seal of SUFFOLK COUNTY COUNCIL</p> <p>was affixed to this document in the presence of:</p>	 <p>24218</p>
	<p>Authorised signatory</p> <p>[Redacted]</p>
	<p>Authorised signatory</p> <p>[Redacted]</p>

SIGNED as a DEED by
PERSIMMON HOMES LIMITED

Acting by its Attorneys

[Redacted]

signed [Redacted] (Attorney)

In the presence of:

Witness signature

Witness name

Witness address

[Redacted]

And

[Redacted]

sig [Redacted] (Attorney)

In the presence of:

Witness signature

Witness name

Witness address

[Redacted]