

DATE 21st December 2023

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) ELVEDEN ESTATES LIMITED

(4) PERSIMMON HOMES LIMITED

**Planning Obligation by Deed of Variation under Section 106 and Section
106A of the Town and Country Planning Act 1990**

relating to

Land west of Eriswell Road Lakenheath Suffolk

West Suffolk Council
West Suffolk House
Western Way
Bury St. Edmunds
Suffolk

THIS DEED OF VARIATION is made the 21st day of December 2023

PARTIES:

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **ELVEDEN ESTATES LIMITED** a company incorporated in Jersey with company number 49543 whose registered office is at 50 La Colomberie, St Helier, Jersey JE2 4QB (hereinafter called the "**Owner**")
- (4) **PERSIMMON HOMES LIMITED** (company number 04108747) of Persimmon House Fulford York YO19 4FE (hereinafter called the "**Developer**")

RECITALS

- A The Council (formerly Forest Heath District Council) is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in the Principal Deed and this Deed are enforceable
- B The County Council is the local highway authority (except for trunk roads) the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in the Principal Deed and this Deed are enforceable
- C The Owner is the freehold owner of the Site which is part of the Land registered at the Land Registry under the title number SK238042
- D The Developer has an interest in the Site pursuant to a contract for sale between the Owner, Elveden Farms Limited and the Developer dated 21 May 2021 and noted at the Land Registry on title number SK238042
- E On 1 October 2018 a deed pursuant to Section 106 of the Town and Country Planning Act 1990 was entered into by (1) Forest Heath District Council (2) Suffolk County Council and (3) Elveden Estates Limited which was secured by planning permission and given the

reference F/2013/0394/OUT (hereinafter called the "**Principal Deed**")

F The Developer submitted reserved matters pursuant to planning permission F/2013/0394/OUT which resulted in a Public Open Space Contribution needing to be secured by the Council to enable approval of the reserved matters

G Without prejudice to the terms of the other covenants contained in the Principal Deed the Parties hereto agree to vary the Principal Deed on such terms as set out herein

1. DEFINITIONS

For the purposes of this Deed the words and expressions defined in the Recitals shall have the meanings given to them respectively by the Recitals

2. INTERPRETATION

2.1 Words and expressions defined in the Principal Deed shall have the same meanings in this Deed except to the extent that they are expressly varied by this Deed

2.2 Any reference to the "Parties" is a reference to the parties to this Deed and "Party" shall be construed accordingly

2.3 The Parties do not intend that any of this Deed's terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

3. VARIATIONS TO THE PRINCIPAL DEED

3.1 The Parties agree that the Principal Deed shall be varied as set out in this clause but otherwise the Principal Deed shall remain in full force and effect

3.2 Within the agreed terms of the Principal Deed the following wording shall be added to the end of the definition of "Public Open Space":

"(unless otherwise agreed by the Council through the determination of reserved matters)"

3.3 Within the agreed terms of the Principal Deed the definition of "Public Open Space Contribution" shall be inserted as follows:

"Public Open Space Contribution"	eighty-five thousand and twenty pounds (£85,020.00) BCIS Indexed
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- 3.4 Within the agreed terms of the Principal Deed the definition of "Development" shall be deleted and replaced with the following definition:

"Development"	the development of the Site for the type of development proposed in the Application and as permitted by the Planning Permission
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- 3.5 Within the agreed terms of the Principal Deed the definition of "the Planning Permission" shall be deleted and replaced with the following definition:

"the Planning Permission"	the planning permission granted pursuant to the Application and subsequent planning permissions for the Development granted pursuant to Section 73 of the Act
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- 3.5 Within the Second Schedule after clause 2.4.3 to insert the two new following clauses:

2.5 To pay the Public Open Space Contribution to the Council prior to the first Occupation of the Dwellings
2.6 Not to permit Occupation of any Dwellings unless and until the Public Open Space Contribution has been paid to the Council

4. EFFECTIVE DATE

The amendments to the Principal Deed made by this Deed shall come into effect on the date of this Deed

5. CONTINUATION OF THE PRINCIPAL DEED

This Deed does not release any party to it from any breaches of the Principal Deed existing at the date of this Deed save where variations contained in this Deed remove the obligation of which the Party is in breach

6. AGREEMENTS AND DECLARATIONS

- 6.1 This Deed is made pursuant to sections 106 and 106A of the Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers
- 6.2 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 6.3 The covenants restrictions and requirements imposed by this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and the County Council as the local planning authorities against the Owner and their successors in title
- 6.4 This Deed will be registered as a local land charge by the Council
- 6.5 No person or body will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Deed occurring before that date

7. MISCELLANEOUS

- 7.1 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity legality or enforceability of the remaining provisions of this Deed
- 7.2 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities

8. LEGAL FEES

The Developer shall pay the reasonable legal costs of the Council and the reasonable legal costs of the County Council on completion of this Deed incurred in the negotiation preparation and execution of this Deed

9. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales

10. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

11. EXECUTION

The Parties have executed this Deed as a deed and it is delivered on the date set out in this Deed

**THE COMMON SEAL OF
WEST SUFFOLK COUNCIL**

was affixed in the presence of:



[Redacted signature]

ficer

**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



Authorised Officer

[Redacted signature]

EXECUTED as a DEED on behalf of)
PERSIMMON HOMES LIMITED)
acting by its Attorneys)

ALEXCOX

[Redacted]

(Attorney)

in the presence of:

Witness signature:

Witness name:

Witness occupation:

Witness address:

[Redacted]

and

[Redacted]

YLEE

in the presence of:

Witness signature:

Witness name:

Witness occupation:

Witness address:

[Redacted]

EXECUTED as a **DEED** by)
ELVEDEN ESTATES LIMITED:)

[REDACTED]
Zedra Directors (Jersey) Limited
As corporate Director

Signature of Witness:

Name of Witness:

Address of Witness:

[REDACTED]
limited