

Dated 15 JULY 2024

(1) **PEMBERS LLP**

- and -

(2) **ASPECT EASTLEIGH LIMITED**

- and -

(3) **HAMPSHIRE COUNTY COUNCIL**

- and -

(4) **EASTLEIGH BOROUGH COUNCIL**

DEED OF VARIATION

pursuant to

S106A Town and Country Planning Act 1990 in relation to land at
Pembers Hill Farm, Mortimers Lane, Fair Oak, Eastleigh SO50 7EA

DAC Beachcroft LLP
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Draft 20 June 2023

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THIS DEED is made the 15 day of JULY 2024

BETWEEN:

- (1) **PEMBERS LLP** of 11 Tower View, Kings Hill, West Malling, Kent, England ME19 4UY ("the Owner")
 - (2) **ASPECT EASTLEIGH LIMITED** of Eastleigh House, Upper Market Street, Eastleigh SO50 9YN ("the Lender")
 - (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ ("the County Council")
 - (4) **EASTLEIGH BOROUGH COUNCIL** of Eastleigh House Upper Market Street Eastleigh Hampshire SO50 9YN ("the Council")
- ("the Parties")

RECITALS:

- (A) The County Council and the Council are the local planning authorities for the purposes of the Act for the area in which the Site is situated.
- (B) The Owner is the freehold owner part of the Site registered at HM Land Registry under title number HP825422.
- (C) The Lender is the registered proprietor of the charge dated 12 October 2018 referred to in entry title number C4 of the charges register of title number HP825422 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (D) The Site has the benefit of the Planning Permission and is subject to the provisions of the Principal Deed.
- (E) The Parties have agreed to vary the obligations in the Principal Deed relating to the payment of the education contributions under the Principal Deed.
- (F) The parties acknowledge that payment of the Primary Education Contribution as defined under the Principal Deed has been paid in full.
- (G) The Owner, the Lender, the Council and the County Council have agreed that as the variations envisaged by this Deed relate to the Education Contribution only and the making of payments to the County Council these obligations remain to be discharged by the Owner and have agreed that the Other Owners are not required to be a party to this Deed.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

- 1.1 All words and phrases defined in the Principal Deed shall have the same meaning in this Deed unless otherwise specified or amended in this Deed.
- 1.2 For the purposes of this Deed the following expressions shall have the following meanings:

"Act"

means the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force

"Other Owners"	means the owner of the affordable housing registered with title number HP836053 and the owners of any individual dwelling on the Site
"Planning Permission"	means the outline planning permission granted by the Council on 23 May 2018 under planning reference 0/15/77190 and includes any reserved matters approvals granted pursuant to the Planning Permission and any amendments or variations to the Planning Permission
"Principal Deed"	means the agreement entered into pursuant to section 106 of the Act between (1) the Council, (2) the County Council and (3) Annette Cooper and Kevin Roy Cooper dated 11 May 2018 as varied by the deed of variation dated 1 st October 2020
"Site"	means the land that has the benefit of the Planning Permission described as the "Site" under the terms of the Principal Deed

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 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.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council includes the successors to its statutory functions.
- 2.7 For the purpose of such parts of this Deed as may be subject to the rule against perpetuities the perpetuity period applicable to this Deed shall be eighty years from the date hereof.
- 2.8 Headings are for reference only and shall not affect construction.
- 2.9 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to cause or permit or suffer such act or thing to be done by any other person.

3. LEGAL BASIS

This Deed is entered into as a Deed pursuant to section 106 and 106A of the Act and section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other statutory and enabling powers.

4. OWNERSHIP OF SITE

The Owner HEREBY CONFIRMS AND WARRANTS that no other person other than the Owner and the Lender has any legal or equitable interest in the Site.

5. LENDER'S CONSENT

5.1 The Lender consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge before the creation of the Lender's interest in the Property.

5.2 The Lender shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Lender is in possession of all or any part of the Property.

6. CONTINUANCE OF THE PRINCIPAL DEED

6.1 The Parties hereby agree that save as is provided for in this Deed the covenants terms and conditions of the Principal Deed shall continue in full force and effect against the Owner and all Other Owners' interests in the Site (and their successors in title).

6.2 This Deed shall be read in conjunction with and alongside the Principal Deed.

7. VARIATIONS TO THE PRINCIPAL DEED

The Parties hereby agree that the Principal Deed shall be varied as set out in Schedule 1 of this Deed and such variations shall take effect from the date of this Deed.

8. REGISTRATION AND LEGAL FEES

8.1 This Deed shall be registerable as a local land charge by the Council.

8.2 The Owner shall pay to the Council and the County Council on or before completion of this Deed, the proper legal costs reasonably and properly incurred in connection with the preparation, negotiation and completion of this Deed.

9. DELIVERY

9.1 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.

10. GOVERNING LAW

10.1 This Deed is governed by and interpreted in accordance with the laws of England.

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

SCHEDULE 1

The parties HEREBY AGREE that the Principal Deed shall be amended as follows with effect from the date hereof:

- 1.1 The following definitions at Clause 1 of the Principal Deed shall be deleted in their entirety:

"Education Contribution Phase"

"Plan 2"

"Secondary Education Contribution 1"

"Secondary Education Contribution 2"

- 1.2 The following new definition shall be inserted at Clause 1 of the Principal Deed and shall read as follows:

"Secondary Education Contribution"

means a contribution in the maximum sum of five thousand and eight pounds and twenty nine pence (£5,008.29) for each Eligible Dwelling to a maximum of one million, two hundred and fifty two thousand, and seventy two pounds and fifty pence (£1,252,072.50) index linked from and including 4Q2016 in accordance with clause 12 of this Deed towards secondary education facilities at Wyvern School to include:

- Enhancement of school security to improve safeguarding;
- Enhancement to the external areas of the school;
- To fund consultant work to explore opportunities to enhance and improve the school and consider expansion opportunities; and
- Other improvement projects to secondary education facilities at the school

- 1.3 The definition of "Education Contribution" at Clause 1 of the Principal Deed shall be deleted and replaced with the following:

"Education Contribution" means the Primary Education Contribution and the Secondary Education Contribution

- 2.1 Paragraphs 7.1 to 7.5 of Schedule Four shall be deleted in their entirety and replaced with the following paragraphs:

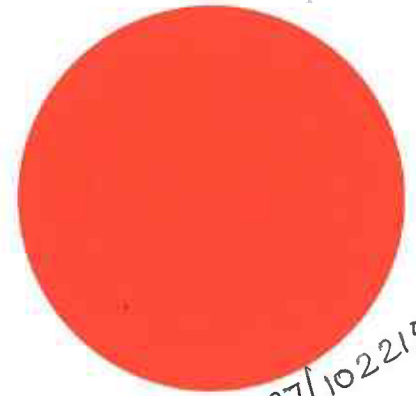
"7.1 Prior to Occupation of the 200th Dwelling the Owner shall pay the Primary

Education Contribution to the County Council, the receipt of which is hereby acknowledged.

- 7.2 No more than 199 Dwellings shall be Occupied until the Primary Education Contribution has been paid to the County Council in accordance with paragraph 7.1.
- 7.3 Prior to Occupation of the 220th Dwelling the Owner shall pay the Secondary Education Contribution to the County Council.
- 7.4 No more than 220 Dwellings shall be Occupied until the Secondary Education Contribution has been paid to the County Council in accordance with paragraph 7.3.

EXECUTION PAGE

EXECUTED as a DEED by affixing)
the COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL in the presence of:)

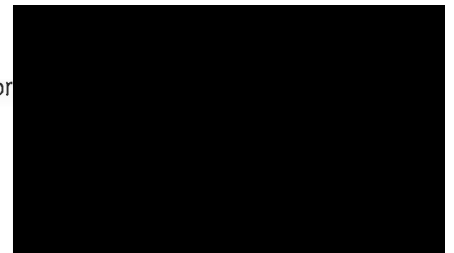


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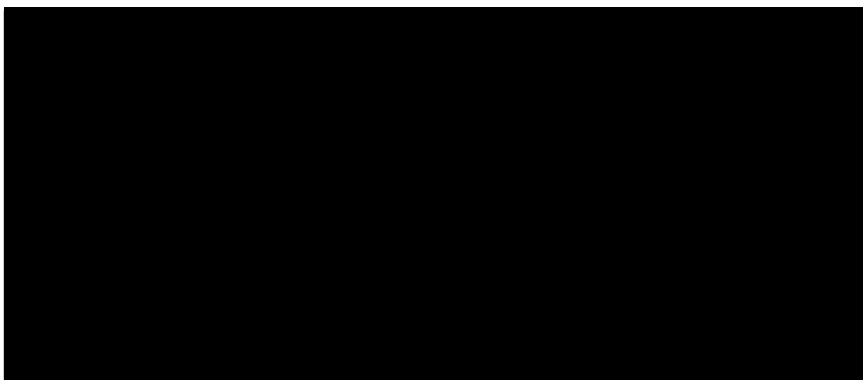
Authorised Signator

Name

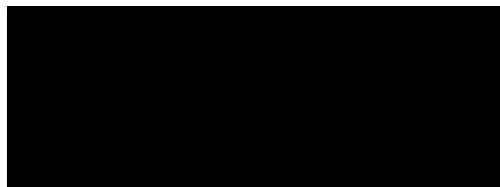
Position



EXECUTED as a DEED by
ASPECT EASTLEIGH LIMITED
acting by [SARAH KING] a director
and [JAMES STRACHAN] a director:-



EXECUTED as a DEED by
PEMBERS LLP acting by its
attorneys



ATTORNEY

in the presence of
WITNESSES
NAME:

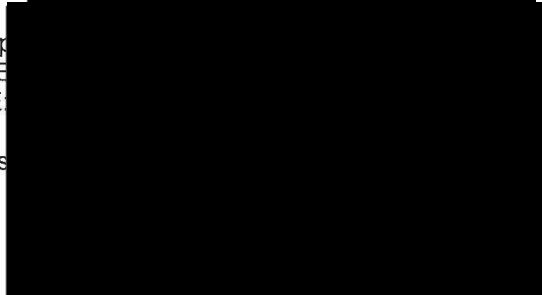
Address:



ATTORNEY

in the presence of
WITNESSES
NAME:

Address:



EXECUTED as a DEED by affixing)
THE COMMON SEAL of EASTLEIGH)
BOROUGH COUNCIL in the)
presence of:)



12130

Authorised Signatory

