

Dated _____ 2017

SURREY HEATH BOROUGH COUNCIL

-and-

SURREY COUNTY COUNCIL

-and-

THE SECRETARY OF STATE FOR DEFENCE

SECOND DEED OF VARIATION

pursuant to Section 106A of the Town

and Country Planning Act 1990

relating to land at Princess Royal Barracks, Deepcut, Surrey

THIS DEED is made the day of 2017

BETWEEN

- (1) **SURREY HEATH BOROUGH COUNCIL** of Surrey House, Knoll Road, Camberley, Surrey, GU15 3HD of the first part (“the Council”);
- (2) **SURREY COUNTY COUNCIL** of County Hall, Penrhyn Road, Kingston upon Thames, Surrey, KT1 2DN (the “County Council”); and
- (3) **THE SECRETARY OF STATE FOR DEFENCE** of Whitehall Buildings, Whitehall, London, SW1A 2HB and care of Defence Infrastructure Organisation, Blandford House, Farnborough Road, Aldershot, Hampshire, GU15 2HA (“the Owner”)

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (the "1990 Act") for the area within which the Site is situated and is the authority by whom the planning obligations contained in this Deed are enforceable
- (B) The County Council is a Local Planning Authority and the Highway, Education and Library Authority and owner of that part of the Basingstoke Canal within Surrey by whom the obligations in Schedule 4, 6 and 7 of the Original Agreement are enforceable
- (C) The Owner is the freehold owner of the Site free from encumbrances as the same is registered with title absolute under title number SY746846, SY806659 and SY802192 subject to the matters referred to in the Charges Register of the said title numbers
- (D) Planning permission with reference 12/0546 ('the Original Permission') was granted subject to a Section 106 Agreement entered into between the Council (1) and the County Council (2) and the Secretary of State for Defence (3) relating to the land known at Princess Royal Barracks, Deepcut, Surrey and dated 17th April 2014 (the 'Original Agreement')
- (E) The Original Agreement was varied by deed made between the same parties dated 8th March 2016 (“the First Deed of Variation”).

(F) Consent to a Non Material Amendment to the Original Permission have been granted by the Council:

F.1 On 1st September 2015 (under reference 12/0546/1) authorising the amendment of a number of the plans approved as part of Condition 1 of the Original Permission;

F.2 On 12 November 2015 (under reference 12/0546/2) consent to further non-material amendment to conditions to condition 2 (phasing) and condition 3 (design codes) was granted to permit construction of the spine road, access arrangements and village green prior to submission of the phasing scheme for delivery of the entire development and to limit the requirement for approval of design codes to prior to submission of a reserved matters application containing residential units or non-residential buildings, land and infrastructure (with the exception of the spine road);

F.3 On 8th July 2016 (under reference 12/0546/3) consent to further non-material amendment to condition 35 (Code for Sustainable Homes);

together the 'Non Material Amendments'.

NOW THIS DEED WITNESSES as follows:-

1. INTERPRETATION

1.1 In this Deed the interpretation provisions in in the Original Agreement as varied by the First Deed of Variation and this Deed of Variation shall apply.

2. COMMENCEMENT

2.1 This Deed shall take effect upon the date hereof

3. PLANNING OBLIGATIONS

3.1 The Parties hereby acknowledge that upon the date hereof of the Site shall be bound by the planning obligations within the Original Agreement as modified by the First Deed of Variation and the further amendments to it set out this the Schedule to this Deed which variations shall take effect from and including the date of this Deed.

4. LEGAL EFFECT

- 4.1 This Deed is made pursuant to Section 106 and 106A of the 1990 Act and constitutes a planning obligation for the purposes of the Act
- 4.2 Nothing in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority
- 4.3 This Deed shall be registrable as a local land charge in the Register of Local Land Charges maintained by the Council

5. LEGAL COSTS

- 5.1 The Owner shall on completion of this Deed pay the Council's and the County Council's reasonable legal and administrative costs and disbursements incurred in connection with the negotiation preparation and completion of this Deed in addition to the Council's reasonable legal and administrative costs associated with the application set out in Clause 6 of this Deed.

6. REGISTRATION OF THIS DEED

- 6.1 The Owner hereby consents to the Council making an application to register this Deed in the Charges Register of the Title Numbers referred to in Recital (C) and the Owner shall take at their expense all reasonable steps as are reasonably necessary to assist the Council in registering this Deed.

7. NO WAIVER

- 7.1 No waiver (whether express or implied) by the Council and/or the County Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and/or the County Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner.

8. SEVERABILITY

- 8.1 Each clause, sub-clause, schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any clause, sub-clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any unforeseen reasons or if any one or more of such

clause, sub-clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any sub-clause, schedule or paragraph contained herein.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

9.1 Without prejudice to the definitions of the “Council”, the “County Council” and the “Owner” any rights or benefits that may be conferred under the Contracts (Rights of Third Parties) Act 1999 are expressly excluded for the purposes of this Deed.

10. VERIFICATION

10.1 Save as expressly varied by this Deed and the First Deed of Variation the Original Agreement shall remain in full and force and effect.

SCHEDULE 1
VARIATIONS TO THE ORIGINAL AGREEMENT
as amended by the FIRST DEED OF VARIATION

1. The Deletion of the following definitions
- Central SANGS
 - Combined LEAP/NEAP
 - Para b of the definition of Development
 - Permission
 - Phase
 - Southern SANGS
 - Sports Hub
 - Travel Plan Monitoring Fee
 - Travel Plans
 - Village Green

and the substitution in lieu thereof of the following new definitions

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|--|---|
| “Central SANGS” | means that part of the Site in the relevant Phase to be Commenced to be used as SANGS as shown indicatively on Plan A comprising an area of 13 (thirteen) hectares and including the SANGS Site Hut; |
| “Combined NEAP/LEAP” | means the 2 (two) new combined Neighbourhood Equipped Area for Play and Local Equipped Area for Play as shown indicatively on Plan 3 which are to be provided by the Owner in the Phase containing the Sports Hub or as applicable the Phase containing the Village Green (1 (one) at the Sports Hub and 1 (one) at the Village Green) in accordance with the Combined NEAP/LEAP Specification; |
| Paragraph (b) of the Definition of Development | an outline application for the proposed demolition of all other buildings except St Barbara’s Church and residential led development comprising:- |

“Permission”	means the Original Permission granted pursuant to the Application as amended;
“Phase”	means a part of the Site as shall be identified as a phase of the Development as approved in accordance with Condition 2 (Phasing Scheme) or a sub-phase within the approved phase;
“Southern SANGS”	means that part of the Site in the relevant Phase to be used as SANGS as shown indicatively on Plan A, comprising an area of 22 (twenty two) hectares and including the SANGS Link and the Vehicle Maintenance Depot;
“Sports Hub”	means the sports hub to be provided by the Owner in the relevant Phase as shown indicatively on Plan 1, comprising an area of at least 7 (seven) hectares and which shall include 1 (one) Combined NEAP/LEAP, the MUGA, the Outdoor Adult Gym, the Sports Pavilion, the Sports Pitches, the Tennis Courts and associated landscaping;
Travel Plan Monitoring Fee	means the sum of £4,600.00 (four thousand, six hundred pounds) (Index Linked) to be paid by the Owner or each respective Occupier to the County Council on each of the occasions upon which an individual Travel Plan for a Phase, the supermarket, the Nursery and the Primary School is submitted in accordance with Paragraph 4.9 of Part 3 of Schedule 7 towards the cost of monitoring each of the Travel Plans;

“Travel Plans”	means the plans to promote sustainable transport and travel in respect of each Phase, the Nursery, the Primary School and the supermarket and to be prepared in accordance with the Travel Plan for the Development and the Framework Travel Plan dated May 2013 and the requirements of Schedule 7 and the Travel Plan Principles and which comprise the Travel Plan for the Development, a travel Plan for each Phase the Travel Plan: Nursery, the Travel Plan: School and the Travel Plan: Supermarket.
“Village Green”	means the village green to be provided in the relevant Phase as shown indicatively on Plan 1, comprising an area of at least 2 (two) hectares;

2. Deletion of the following provisions:

Schedule 4

Part 1 paras 7 & 8 (Education) Part 2 paras 1 & 2 (Nursery)

Schedule 5

Part 1 paras 1 & 2 (Sport England Contribution) Part 2 paras 1.3, 1.4, 1.5, 1.6, 1.8, 1.9 Part 3 para 1.3 (SANGS) Part 5 paras 1.1 & 1.2 (ANGST) Part 7 paras 1.3 & 1.4 (Sports Hub) Part 8 para 1.1 & 4.1 (Other Open Space) Part 9 Paras 1.3 – 1.8, 7, 8 (LEAPS/LAPS) Part 10 paras 1.3 & 1.4 (Formal Park) Part 11 paras 1.3 & 1.4 (Allotments)

Schedule 6 (Highways)

Part 1, para 2.2

Schedule 7 (Sustainable Travel)

Part 1 paras 1.1.13, 1.1.14

Schedule 8 (Community Facilities)

Part 4 Paras 1.3 & 1.4 Part 5 paras 1, 1.1, 1.3, 2

and the substitution in lieu thereof of the following provisions:

New Recital (H) & (I)

- (H) The original permission was granted on 17th April 2014. Since that date the original permission has been formally amended by the following consents:
 - a. Non-Material Amendment 12/0546/1 dated 1st September 2015 (Variation to Plan Approved by Condition 1)
 - b. Non-Material Amendment 12/00546 dated 12th November 2015 to Vary Condition 2 and 3
 - c. Non-Material Amendment 12/0546/3 dated 8th July 2016 to Vary Condition 35 (Code Level)
 - d. Reserved Matters Planning Permission 15/1062 dated 27th July 2016 for Phase 1 development

- (I) The Original Agreement was entered into on the 17th April 2014. Since that date the Original Agreement has been amended by the following Agreement:
 - a. An agreement between the same parties Dated 8th March 2016 (the “First Deed of Variation”)

The Following Additions to Schedule 2

In each case as subsequently formally amended by Non Material Amendments, Minor Material Amendments and/or Reserved Matters approved pursuant to the Permission

New Schedule 4

Part 1 Paras 7 & 8 (Education)

- 7. The Owner shall transfer the Primary School Site under or by the Primary School Transfer to the County Council no later than First Occupation of the 350th (three hundredth and fiftieth) Dwelling and shall not Occupy more than 349 (three hundred and forty nine) Dwellings until it has transferred the Primary School Site to the County Council and has constructed the Primary School 1 Form Entry.

- 8. The Owner shall have constructed the additional 7 (seven) classrooms necessary for the Primary School to become a Primary School 2 Form Entry within 24

Months (twenty four months) of the First Occupation of the 350th (three hundredth and fiftieth) Dwelling.

Part 2 Paras 1 & 2 (Nursery)

1. The Owner shall construct the Nursery on the Primary School Site on or before First Occupation of the 350th (three hundredth and fiftieth) Dwelling.
2. The Owner shall not Occupy more than 349 (three hundred and forty nine) Dwellings until it has constructed the Nursery.

New Schedule 5

Part 1 Paras 1 & 2 (Sport England Contribution)

1. The Owner shall pay the Sport England Contribution to the Council prior to First Occupation of the 750th (seven hundred and fiftieth) Dwelling on the Site
2. The Owner covenants with the Council not to First Occupy more than 749 (seven hundred and forty-nine) Dwellings on the Site until it has paid the Sports England Contribution to the Council.

Part 2 Paras 1.3, 1.4, 1.5, 1.6, 1.8, 1.9 (SANGS)

- 1.3 at its own expense to lay out, Practically Complete and make available for use by the public the Central SANGS in accordance with the relevant approved Landscaping Scheme prior to First Occupation of any Dwelling on the Site save in relation to that part of the Central SANGS hatched black on Plan A which SANGS shall be delivered as soon as practicable after the Owner shall have vacated such area;
- 1.4 not to First Occupy any Dwelling unless or until the Central SANGS (excluding that part of the Central SANGS hatched black on Plan A) has been laid out, Practically Completed and made available for use by the public in accordance with the relevant approved Landscaping Scheme;
- 1.5 at its own expense to reinstate the former Vehicle Maintenance Depot as part of the Southern SANGS outlined on Plan A and to layout, Practically Complete and make available for use by the public the Southern SANGS in accordance with the relevant approved Landscaping Scheme prior to First Occupation of the 500th (five hundredth) Dwelling on the Site;
- 1.6 not to First Occupy more than 499 (four hundred and ninety nine) Dwellings on the Site unless or until the Southern SANGS has been laid out and Practically

Completed and it has reinstated the former Vehicle Maintenance Depot as part of the Southern SANGS and made it available for use by the public;

- 1.8 at its own expense to lay out, Practically Complete and make available for use by the public the Southern SANGS Link prior to First Occupation of the 500th (five hundredth) Dwelling on the Site;
- 1.9 not to First Occupy more than 499 (four hundred and ninety nine) Dwellings on the Site unless or until Southern SANGS Link has been laid out and made available for use by the public in accordance with the relevant approved Landscaping Scheme; and

Part 3 Para 1.3 (SANGS Site Hut)

- 1.3 to include the SANGS Site Hut in the transfer of the Central SANGS to the Council and for the avoidance of doubt the Central SANGS and the SANGS Site Hut shall be transferred to the Council for the total consideration of £1.00 (one pound).

Part 5 paras 1.1 and 1.2 (ANGST)

- 1.1 to submit the following documents to the Council for approval with the first Reserved Matters Application for each relevant Phase:-
 - 1.1.1 a plan identifying the location and boundaries of the ANGST Land in the relevant Phase; and
 - 1.1.2 a Maintenance and Management Plan relating to the ANGST Land in the relevant Phase;
- 1.2 not to Commence Development of any relevant Phase unless or until all the documents referred to in paragraph 1.1 above and the Reserved Matters Application for landscaping of the ANGST Land in the relevant Phase have been approved in writing by the Council;

Part 7 Paras 1.3 & 1.4 (Sports Hub)

- 1.3 at its own expense to lay out and Practically Complete the Sports Hub and make it available for public use in accordance with the approved Reserved Matters Application and the full details approved by the Council pursuant to paragraph 1.1.4 above, prior to First Occupation of the 450th (four hundred and fiftieth) Dwelling on the Site;

- 1.4 not to First Occupy more than 449 (four hundred and forty nine) Dwellings on the Site unless or until the Sports Hub has been laid out, Practically Completed and made available for public use in accordance with the approved Reserved Matters Application and the full details approved by the Council pursuant to paragraph 1.1.4 above; and

Part 8 para 1.1, 4.1 (Other Open Space)

1. The Owner covenants with the Council:-
 - 1.1 to submit the following documents to the Council for approval with the first Reserved Matters Application for each relevant Phase:-
 - 1.1.1 a plan identifying the location and boundaries of the Other Open Space in the relevant Phase; and
 - 1.1.2 a Maintenance and Management Plan relating to the Other Open Space in the relevant Phase;
 - 4.1 to maintain the Other Open Space in each relevant Phase at its own cost for a period of 12 (twelve) months from the date (or Deemed Date) of the relevant Practical Completion Certificate (the "Maintenance Period") in accordance with the approved Maintenance and Management Plan for the relevant Phase, replacing and/or repairing any items (including surfaces) and any dead, dying or diseased shrubs which are defective in the Council's reasonable opinion; and

Part 9 Paras 1.3, 1.4, 7, 8 (LEAPS/LAPS)

- 1.3 at its own expense to lay out and Practically Complete the LEAP(s) and/or the LAP(s) in the relevant Phase and make them available for public use in accordance with the approved Reserved Matters Application for landscaping of the LEAP(s) and/or the LAP(s) in the relevant Phase and the full details approved by the Council pursuant to paragraph 1.1.4 above prior to Full Occupation of the Dwellings in the relevant Phase;
- 1.4 not to Fully Occupy the Dwellings in the relevant Phase unless or until the LEAP(s) and/or the LAP(s) in the relevant Phase have been laid out, Practically Completed and made available for public use in accordance with the approved Reserved Matters Application for landscaping of the LEAP(s) and/or the LAP(s) in the relevant Phase and the full details approved by the Council pursuant to paragraph 1.1.4 above;

7. The Owner covenants with the Council that within 10 (ten) Working Days of the date (or Deemed Date) of the Final Completion Certificate relating to the LEAP(s) and/or the LAP(s) in each relevant Phase, it shall offer to transfer to the Council for the consideration of £1.00 (one pound) the freehold of the LEAP(s) and/or the LAP(s) in the relevant Phase, and deliver to the Council a transfer duly completed by the Owner and unconditionally released for completion by the Council such transfer to include the terms set out in the Heads of Terms and upon the transfer of the LEAP(s) and/or the LAP(s) in each relevant Phase to the Council the Owner shall pay the relevant proportion of the LEAP Maintenance Contribution and the LAP Maintenance Contribution to the Council.
8. The Owner covenants with the Council not to Fully Occupy Dwellings in the relevant Phase unless or until a transfer of all of the LEAPs and the LAPs in the relevant Phase have been transferred to the Council and all the relevant LAP Maintenance Contribution and LEAP Maintenance Contribution has been paid to the Council.

Part 10 paras 1.3, 1.4 (Formal Park)

- 1.3 at its own expense to lay out and Practically Complete the Formal Park and make it available for public use in accordance with the approved Reserved Matters Application for landscaping of the Formal Park prior to First Occupation of the 450th (four hundred and fiftieth) Dwelling on the Site;
- 1.4 not to First Occupy more than 449 (four hundred and forty nine) Dwellings on the Site unless or until the Formal Park has been laid out, Practically Completed and made available for public use in accordance with the approved Reserved Matters Application for landscaping of the Formal Park; and

Part 11 paras 1.3, 1.4 (Allotments)

- 1.3 at its own expense to lay out and Practically Complete the Allotments and make them available for public use in accordance with the approved Reserved Matters Application prior to First Occupation of the 450th (four hundred and fiftieth) Dwelling on the Site ;
- 1.4 not to First Occupy more than 449 (four hundred and forty nine) Dwellings on the Site unless or until the Allotments have been laid out, Practically Completed and made available for public use in accordance with the approved Reserved Matters Application; and

Schedule 6 (Highways)

Part 1, para 2.2

Deepcut Bridge Road/Blackdown Road Access Roundabout

2.2 The Owner shall Substantially Complete these works to the satisfaction of the County Council (including any necessary land dedications) within 9 months from the commencement of any works forming part of the Development Site, or prior to the First Occupation of any Dwelling on the Site whichever is the sooner. Once commenced these works shall be Substantially Complete within 9 months of their commencement.

Schedule 7 (Sustainable Travel)

Part 1 paras 1.1.13, 1.1.14

1.1.13 prior to the Occupation or first use of the relevant Phase of the Development the provision of cycle routes within and to and from all internal parts of the Phase including links within the Phase to the Spine Road, school, nursery school, supermarket, local shops and canal towpath shall have been constructed;

1.1.14 prior to the Occupation or first use of the respective Phase of the Development the provision within the Phase of cycle directional signage to from and within the Development;

Schedule 8 (Community Facilities)

Part 4 Paras 1.3 & 1.4

1.3 that the Public Art Strategy shall include a minimum of 3 (three) pieces of Public Art on the Site (unless otherwise agreed in writing by the Council);

1.4 to procure the completion and installation of the Public Art in accordance with the Public Art Strategy approved by the Council pursuant to paragraph 1.1 of Part 4 of Schedule 8 subject to any revisions to the said Strategy as may be agreed between the Owner and the Council in writing from time to time and to transfer ownership of the Public Art within that Phase to the Council in accordance with the approved Public Art Strategy and any revisions to the said Strategy as may be agreed between the Owner and the Council in writing from time to time.

Part 5 paras 1, 1.1, 1.3, 2

1. The Owner covenants with the Council:-

- 1.1 to submit the following documents to the Council with the first Reserved Matters Application for each relevant Phase containing A3/A4 Land :-
 - 1.1.1 a Marketing Strategy for the Class A3/A4 Land; and
 - 1.1.2 details of the value of the Class A3/A4 Land which have been prepared by a qualified surveyor;
- 1.3 following approval by the Council of the documents and details submitted pursuant to paragraph 1.1 above, to reserve the Class A3/A4 Land in the relevant Phase and to market the availability of the Class A3/A4 Land for sale or lease in accordance with the approved Marketing Strategy for a continuous period of 8 (eight) years from the date of approval of the Marketing Strategy or until Full Occupation of the relevant Phase whichever is the later (the "Marketing Period");
2. It is hereby agreed between the Parties that if no written interest in the sale or lease of the Class A3/A4 Land is expressed or progressed to a conclusion within the Marketing Period despite the Owner's Reasonable Endeavours to do so, then all obligations contained in this Part 5 of Schedule 8 shall cease to apply and for the avoidance of doubt, the Owner may thereafter (subject to obtaining all necessary consents) seek to use the Class A3/A4 Land in each relevant Phase for uses other than those falling within Class A3 and/or Class A4 of the Use Classes Order.

EXECUTED AS A DEED in the manner hereinafter but not delivered until the day and year first written

The Common Seal of **SURREY HEATH BOROUGH COUNCIL** was hereto affixed in the presence of:

Authorised Signatory

EXECUTED AS A DEED BY affixing the Common Seal of **SURREY COUNTY COUNCIL** in the presence of and attested by:

Director of Legal Democratic and Cultural Services/Authorised Signatory

The Corporate Seal of

THE SECRETARY OF STATE FOR DEFENCE

Hereunto affixed is authenticated by