Thomas Eggar

Date: 29th May 2012

Roffey Homes Limited
and
Worthing Borough Council

Variation Agreement

Relating to 84 – 88 and 90 – 92 Heene Road
Worthing West Sussex

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Dated 29th May 2012 2012

PARTIES:

(1) **ROFFEY HOMES LIMITED** (Company Number 657938) whose registered office is situated at Preece House, Davigdor Road, Hove, East Sussex BN3 1RE (**'Owner'**)

(2) **WORTHING BOROUGH COUNCIL** of Town Hall Chapel Road Worthing West Sussex BN11 1HA (**'Council'**).

2 DEFINITIONS AND INTERPRETATION

2.1 In this deed the following words and expressions have the following meanings:

2.1.1 'Completion of Sales' means a sale or a grant of a lease of an individual unit at the Property

2.1.2 'Council' means the person named as Council in the parties clause of this deed and its successors in title

2.1.3 'Existing Covenants' means the covenants contained in Schedule 1 of the Variation Agreement and specified in the First Schedule

2.1.4 'New Covenants' means the covenants set out in the Second Schedule

2.1.5 'Owner' means the registered proprietor named as Owner in the parties clause of this deed and its successors in title

2.1.6 'Planning Application' means the application to vary condition 3 of planning permission WB/03/00842/FULL (as varied by WB/04/01147/FULL) by reducing car parking from 27 to 20 spaces through omitting basement car park and rearranging the surface parking , together with allied alterations to the layout submitted to Worthing Borough Council and registered under application number WB/11/0107/FULL.

2.1.7 'Property' means the freehold property known as 84 – 88 and 90 – 92 Heene Road Worthing West Sussex (registered with Title Number WSX57835)

2.1.8 'Variation Agreement' means an agreement dated 19 April 2010 and made between the Council and the Owner

2.1.9 'VAT' means value added tax or any tax replacing it

2.2 In this deed:

2.2.1 the headings are for convenience only and do not affect its construction or interpretation and references to a clause are references (unless otherwise stated) to a clause in this deed

2.2.2 words of one gender include all other genders and any reference to a person includes a reference to a company authority board department or other body

2.2.3 if an obligation is owed to or by more than one person that obligation is owed to or by those persons separately jointly or in any combination

2.2.4 any obligation on a party to do any act or thing includes an obligation to procure that it is done and any obligation not to do any act or thing includes an obligation not to permit the doing of the act or thing

2.2.5 any consent approval authorisation or notice required or given under this deed will only take effect if given in writing

2.2.6 references to 'statute' are references to any statute or statutory provision for the time being in force and any regulations orders byelaws or other subordinate legislation made under any such statute or statutory provision from time to time

2.2.7 unless expressly stated to the contrary any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of that statute and any regulations or orders made under it

3 RECITALS

3.1 This deed is supplemental to the Variation Agreement

3.2 At the request of the Owner the Council has agreed to vary the Variation Agreement by the deletion of the Existing Covenants and the substitution for them of the New Covenants

4 VARIATION OF VARIATION AGREEMENT

4.1 The Council and the Owner agree that the Variation Agreement is varied by the deletion of the Existing Covenants and substitution for them of the New Covenants and will from now on take effect and be read and construed accordingly

4.2 To give effect to the variation the Council releases the Existing Covenants to the Owner with full title guarantee to the intent that the Existing Covenants shall be extinguished from the date of this Agreement and the Owner covenants with the Council in the form of the New Covenants

Schedule 1

Existing Covenants

SCHEDULE 1

'The Owner hereby covenants with the Council that it will no later than seven days after 50% Completion of Sales have taken place pay to the Council the following sums:-

(1) In relation to recreational provision in Heene Ward the sum of Thirty six thousand and thirty four pounds (£36,034);

(2) In relation to highway cycle provision in Heene Ward the sum of twenty two thousand pounds (£22,000);

(3) In relation to bus shelter provision in Heene Ward twelve thousand pounds (£12,000); and

(4) In relation to education provision in schools in Heene Ward fourteen thousand pounds (£14,000).'

4.3 The Council and the Owner confirm that the covenants and conditions contained in the Variation Agreement except as varied by this deed are to continue in full force and effect

Schedule 2

New Covenants

SCHEDULE

1 The Owner covenants to notify the Council, in writing, within 48 hours once 50% Completion of Sales have taken place

1.2 The Owner covenants with the Council that it will no later than seven days after 50% Completion of Sales taking place pay to the Council the following sums:

1.2.1 in relation to recreational provision in Heene Ward the sum of thirty six thousand and thirty four pounds (£36,034);

1.2.2 in relation to highway cycle provision in Heene Ward the sum of twenty two thousand pounds (£22,000);

1.2.2 in relation to bus shelter provision in Heene Ward twelve thousand pounds (£12,000); and

1.2.3 in relation to fire and rescue provision in Heene Ward five hundred and eighty nine pounds (£589).

2 The Owner covenants with the Council to pay a contribution of up to three hundred and forty-five thousand pounds (£345,000) in relation to the provision of off site affordable housing in ~~Heene Ward~~ the vicinity of the Borough when:- :

AM.

2.1 The Owner's Profit as calculated in Schedule 3 exceeds 17.5% margin, so much of that profit as exceeds that margin shall be paid to the Council, subject to an upper limit of £345,000; and

2.3 If the Owner's Profit exceeds 17.5% margin by more than £345,000 the Owner shall be entitled to keep the surplus.

3. The Owner covenants to submit to the Council, within two calendar months of 50% Completion of Sales having taken place and again when 100% Completion of Sales having taken place, a written report setting out:

3.1 the level of Owner's Profit;

3.2 a worked calculation showing how this figure was reached; and

3.3 supporting evidence for the calculation, in the form of receipts or a certified set of accounts.

4. In the event of any dispute or difference arising between the parties to this Deed in respect of the interpretation and/or the calculations contained in Schedule 3 then such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

4.1 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 4 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

4.2 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

4.3 The expert shall be required to give notice to each of the parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

Schedule 3

Calculation of Owner's Profit

1. The Owner's Profit shall be calculated as follows:

1.1 Gross Revenue – Total Costs = Owner's Profit;

1.2 Gross Revenue shall equal the total sale price (excluding any tax levied upon it) or, if any of the units have been sold at an undervalue, the total market value of all units sold in the scheme or market value whichever is higher;

1.3 Total Costs shall mean all costs incurred by the Developer in acquiring the Property, achieving planning permission and building and completing the scheme including, but not limited to, legal and professional costs, contractors fees, financing costs, sales and marketing costs, any payments made or due to be made to the Council under covenant 1 above, CIL contributions, insurance costs, VAT and any other applicable payments arising out of the development which are due to be made by the Owner to HMRC on or before or consequential upon the last unit being sold, and costs associated with environmental, archaeological, decontamination or remediation works and any other costs attributed to the developing the Property.

1.4 In respect of any element of the Total Costs a receipt for payment or certified set of accounts provided by the Owner to the Council shall be deemed to be proof of such costs having been incurred.

1.5 Any reference to '17.5% margin' is a reference to the difference between Owner's Profit and 17.5% of Gross Revenue so that, for example:

1.6 If Gross Revenue is £1,175,000 and Total Costs are £1,000,000 the Owner's Profit is £175,000. The Owner's Profit comes to less than 17.5% of £1,175,000 (£205,625) and so no payment is due under this clause; or

1.7 If Gross Revenue is £2,450,000 and Total Costs are £2,000,000 the Owner's Profit is £450,000. The Owner's Profit comes to more than 17.5% of £2,450,000 (£428,750) and £21,250 (that is, the sum by which the Owner's Profit exceeds 17.5%) will be payable to the Council under this clause; or

1.8 If Gross Revenue is £4,900,000 and Total Costs are £3,000,000 the Owner's Profit is £1,900,000. The Owner's Profit exceeds 17.5% of £4,900,000 (£857,500) by more than £345,000 and the full £345,000 shall be payable to the Council under this clause.

Signed as a **DEED** by)
ROFFEY HOMES LIMITED acting by a)
Director and its Secretary (or two Directors))

Director:

Director or Secretary:

Executed as a **DEED** by affixing hereto)
the **COMMON SEAL** of **WORTHING**)
BOROUGH COUNCIL)

Authorised signature: