

11/12/14

This Deed is dated

12th January 2018

- (1) **BDW TRADING LIMITED** whose registered office is at Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("BDW");
- (2) **HALLAM LAND MANAGEMENT LIMITED** whose registered office is at Banner Cross Hall, 55 Ecclesall Road South, Sheffield, S11 9PD ("Hallam") and
- (3) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("ADC"); and
- (4) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("WSCC")

Each a "Party" and together the "Parties"

BACKGROUND

- (A) ADC is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (B) WSCC is the Strategic Planning Authority, the local highway authority, the local education authority and a local planning authority for the purposes of the Act for the area in which the Land is situated.
- (C) On 11 December 2014, Hallam (1) Peter John Frogatt and Deborah Jane Frogatt (referred to in the Original Agreement as the Oakdene Owners) (2), together with ADC (3) and WSCC (4) entered into the Original Agreement.
- (D) At the time the Original Agreement was entered into Hallam and the Oakdene Owners were the owners of the Land. Following the subsequent grant of the Planning Permission, the Land transferred to Hallam.
- (E) On 5 January 2017, Hallam transferred the majority of the Land to BDW and BDW is now the registered proprietor of the Land comprised in title number WSX387289, with Hallam retaining certain parts of the Land comprised in title number WSX235311.
- (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.
- (G) This agreement is made under section 106A of the Act and is supplemental to the Original Agreement.
- (H) The Parties re-confirm that the obligations contained in the Original Agreement (as varied by this deed)

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Original Agreement: the agreement made between the parties set out in recital D above and made under section 106 of the Act and dated 11 December 2014.

- 1.2 Unless the context otherwise requires, 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 ADC and WSCC the successors to their 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, section 1 of the Localism Act 2011 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

3.1 Within Clause 2 of the Original Agreement, the following sub-clauses and definitions:

Clause 2.13 - *"Affordable Housing Units"*

Clause 2.14 - *"Affordable Housing Standard"*

shall be deleted and replaced with the following definitions (in alphabetical order and, for the avoidance of doubt, the sub-clauses in Clause 2 shall be renumbered accordingly):

"Affordable Housing Units" means thirty percent (30%) of the Dwelling Units (rounded down to the nearest whole number) to be provided as Affordable Housing split as:

(1) fifty per cent (50%) as Affordable Rented and

(2) fifty per cent (50%) as Shared Ownership

in accordance with the terms of this Agreement;

"Affordable Housing Standard" means the Homes and Communities Agency's Design and Quality Standard (but only insofar as such standards continue to be required by the Homes and Communities Agency) or, where relevant at the point of construction, any such replacement or similar standards which are required by the Homes and Communities Agency (or any successor body to the Homes and Communities Agency)

3.2 In the definition of *"Affordable Rented"* at sub-clause 2.15 of the Original Agreement, the words *"(or any successor body to the Homes and Communities Agency)"* shall be added at the end of such definition.

3.3 In the definition of *"Shared Ownership"* at sub-clause 2.53 of the Original Agreement, after the words *"Homes and Communities Agency"* (in each case) the words *"(or any successor body to the Homes and Communities Agency)"* shall be added.

3.4 In Schedule 2 (Affordable Housing) of the Original Agreement, the following amendments shall be made

3.4.1 in paragraph 3.2, after the words *"...cease to bind any of the Affordable Housing Units"* the words *"(and shall cease to bind any of the following parties, and/or their mortgagees, chargees and/or any successors to the same and/or persons deriving title therefrom)"*.

3.4.2 in paragraph 4.1, after the words *"...Affordable Housing Units"* add the words *"(in this paragraph 4., references to Affordable Housing Units meaning the whole or any part of parts of them)"*.

3.4.3 in paragraph 4.1, after the words *"...chargee or mortgagee"* add the words *"(or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver))"*.

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- 3.4.4 in sub-paragraph 4.1(ii), add the following words at the end of that sub-paragraph "...and such restrictions shall determine absolutely".
- 3.4.5 in sub-paragraph 4.1(iii) the word "secure" shall be deleted and replaced with the word "complete" and the following words shall be added at the end of that sub-paragraph "...and such restrictions shall determine absolutely".
- 3.4.6 at the end of the proviso in clause 4, add the words "or other relevant security documentation (including all accrued principal monies, interest and costs and expenses)".
- 3.4.7 after paragraph 4, add in a new paragraph 5 (headed "Utility Providers") as follows:

"The obligations contained in this Agreement shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services."

- 3.5 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS

The Parties covenant to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. LOCAL LAND CHARGE

This deed shall be registered as a local land charge by ADC.

6. ENDORSEMENT

Promptly following completion of this deed and if considered necessary by ADC, ADC shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated [DATE] and made between (1) BDW Trading Limited (2) Hallam Land Management Limited (3) Arun District Council (4) West Sussex District Council."

8. ADC'S AND WSCC'S COSTS

8.1 BDW shall pay to ADC on or before the date of completion of this deed, ADC's reasonable and proper legal costs limited to £500 together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

- 8.2 BDW shall pay to WSCC on or before the date of completion of this deed, WSCC's reasonable and proper legal costs limited to £350 in connection with the completion 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.

The common seal of Arun District Council
was affixed to this document in the presence of:

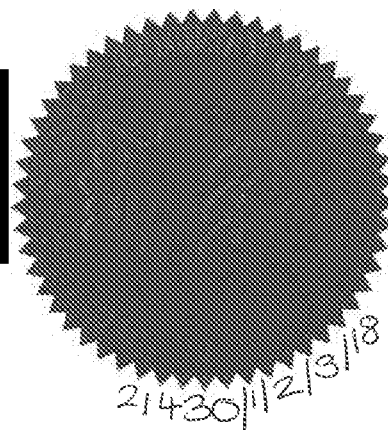
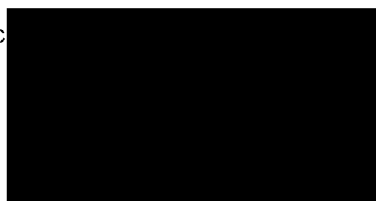


Authorised signatory

HELEN JANE ATKINSON
SOLICITOR



The common seal of West Sussex County Council
was affixed to this document in the presence of:



EXECUTED as a DEED by BDW
TRADING LIMITED

Authorised Signatory
(sign)
(print name)



Authorised Signatory
(sign)
(print name)



Executed as a deed by affixing the
Common Seal of
HALLAM LAND MANAGEMENT LIMITED
In the presence of:

Director

Secretary

