

DATED

25 March

2022

**DEED OF VARIATION  
SECTION 106 AND  
SECTION 106A OF THE  
TOWN AND COUNTRY  
PLANNING ACT 1990**

relating to Merry England Nursery, Dappers Lane,  
Angmering, Littlehampton, West Sussex, BN16 4EN

between

ARUN DISTRICT COUNCIL (1)

and

BILTON FIELDS HOMES LIMITED (2)

and

CHING WAI (3)

and

OCTANE PROPERTY FINANCE LIMITED (4)

and

WEST SUSSEX COUNTY COUNCIL (5)

Gateway House, Tollgate, Chandler's Ford, Eastleigh, Hampshire, SO53 3TG

Moore Barlow is the trading name of Moore Barlow LLP, which is a limited liability partnership registered in England and Wales, registration number OC335180. The registered office is Gateway House, Tollgate, Chandler's Ford, Eastleigh SO53 3TG.

THIS PLANNING OBLIGATION is made

25 March

2022

BY

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("hereinafter called **ADC**")
- (2) **BILTON FIELDS HOMES LIMITED** (Company Registration No. 11823308) of Suite 107, 2 Sawley Road, Cariocca Business Park, Miles Platting, Manchester, M40 8BB ("hereinafter called **the Owner**")
- (3) **CHING WAI** of 3002 30<sup>th</sup> Floor Block 9 Yanlord Garden Pu Cheng Road 99 Pu Dong Shanghai China ("hereinafter called **the First Mortgagee**")
- (4) **OCTANE PROPERTY FINANCE LIMITED** (company registration no. 10483453) of Haskell House, 152 West End Lane, London NW6 1SD ("hereinafter called **the Second Mortgagee**")
- (5) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester PO19 1RQ ("hereinafter called **WSCC**")

(Hereinafter called "the Parties")

#### INTRODUCTION

1. ADC is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated and is the Authority by whom the planning obligations contained in this Deed are enforceable.
2. The Owner is the freehold owner of the Land which is registered with the Land Registry under title number WSX69504 subject to the matters recited in the Property, Proprietorship and Charges Register and subject to a legal charge in favour of the First Mortgagee dated 31 July 2019 and subject to a legal charge in favour of the Second Mortgagee dated 30 October 2019
3. The First Mortgagee has the benefit of a legal charge over the Land.
4. The Second Mortgagee has the benefit of a legal charge over the Land.
5. On 27 June 2017 the Former Owner, ADC and WSCC entered into the Section 106 Agreement in connection with application reference A/142/16/OUT. Subsequent to the completion of that Agreement, the Council issued the Planning Permission.
6. The Owner has submitted to ADC the Application.
7. ADC considers that the matters contained in this Deed are:
  - (a) necessary to make the Development acceptable;
  - (b) directly related to the Development; and
  - (c) fairly related in scale and kind to the Development and thus satisfy the requirements of Regulation 122 of the Regulations.
8. The Owner, the First Mortgagee and the Second Mortgagee have entered into this Deed pursuant to the provisions of the Operative Acts upon the terms and conditions hereinafter appearing

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

1. In this Deed the following words and expressions shall unless the context otherwise permits or requires have the following meanings:

| <b>Words and Expressions</b>       | <b>Meanings</b>                                                                                                                                                                                                                                                           |
|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“the Act”</b>                   | means The Town and Country Planning Act 1990 (as amended)                                                                                                                                                                                                                 |
| <b>“the Application”</b>           | means the application registered by ADC under reference number A/13/20/PO which seeks a variation to the Section 106 Agreement.                                                                                                                                           |
| <b>“Former Owner”</b>              | means Ingrid Camille Haggis being the former owner of the Land.                                                                                                                                                                                                           |
| <b>“Land”</b>                      | means all that land situate at and known as Merry England Nursery, Dappers Lane, Angmering, Littlehampton, West Sussex, BN16 4EN registered at the Land Registry under title number WSX69504 as shown for identification purposes only edged with a red line on the Plan. |
| <b>“Operative Acts”</b>            | means Sections 106 and 106A of the Act and Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and Section 8, 9 and 609 of the Housing Act 1985                                                  |
| <b>“the Planning Permission”</b>   | means the planning permission issued on 30 June 2017 for demolition of existing buildings & erection of 18 No. dwellings and the provision of pedestrian footpath adjacent to Dappers Lane. under planning reference A/142/16/OUT                                         |
| <b>“the Regulations”</b>           | means the Community Infrastructure Regulations 2010 (as amended)                                                                                                                                                                                                          |
| <b>“the Section 106 Agreement”</b> | means the agreement entered into by the Former Owner, ADC and WSCC following which the Planning Permission was issued.                                                                                                                                                    |

2. **CONSTRUCTION OF THIS DEED:**

In this Deed unless the context indicates or requires otherwise:

- 2.1. References in this Deed to Clauses, Paragraphs and Schedules are to Clauses, Paragraphs and Schedules 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 covenant restriction or requirement all their obligations covenants restrictions or requirements 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 subordinate 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 or any other body the successors to its statutory functions.
- 2.7. The headings are for reference only and shall not affect the construction or interpretation of this Deed.
- 2.8. Any covenant by the Owner and the Mortgagee not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

### **3. LEGAL EFFECT**

- 3.1. This Deed is a planning obligation made pursuant to Section 106 of the Act together with section 106A of the Act and its purpose is to vary the Section 106 Agreement with the intention that the planning obligations contained in that Section 106 Agreement shall continue to apply save for any variations contained within this Deed.
- 3.2. This Deed is enforceable against the Owner, the First Mortgagee and the Second Mortgagee by ADC as the local planning authority for the area in which the Land is situate and by WSCC (as applicable).
- 3.3. All the terms, definitions, conditions and obligations in the Section 106 Agreement (including for the avoidance of doubt any recitals or introductions) are incorporated in full in this Deed and nothing in this Deed shall vary or alter the Section 106 Agreement save where expressly stated otherwise in this Deed.
- 3.4. To the extent that this Deed contains obligations on the part of the Owner, the First Mortgagee and Second Mortgagee as appropriate:
  - 3.4.1. the said obligations shall bind the Land;
  - 3.4.2. the said obligations shall be enforceable by ADC and WSCC (as appropriate);
  - 3.4.3. the said obligations shall be enforceable against the , the First Mortgagee, and the Second Mortgagee, their successors in title to the Land or any part thereof and all persons deriving title to the Land or any part thereof through or under them

### **4. COMMENCEMENT**

This Deed shall come into effect on the date hereof.

### **5. MORTGAGEE'S CONSENT**

- 5.1 The First Mortgagee hereby consents to the completion of this Deed and agrees to be bound by it and that the security of the mortgage over the Land shall take effect subject to this Deed and for the avoidance of doubt the First Mortgagee shall be bound by the Owner's obligations in this Deed in the event that it becomes a mortgagee in possession of the Land or exercises any form of control over the Land whether through an administrator (including an administrative receiver) or receiver or manager or otherwise or carries out or procures the carrying out of the Development.
- 5.2 The Second Mortgagee hereby consents to the completion of this Deed and agrees to be bound by it and that the security of the mortgage over the Land shall take effect subject to this Deed and for the avoidance of doubt the Second Mortgagee shall be bound by the Owner's obligations in this Deed in the event that it becomes a mortgagee

in possession of the Land or exercises any form of control over the Land whether through an administrator (including an administrative receiver) or receiver or manager or otherwise or carries out or procures the carrying out of the Development.

## 6. VARIATION OF THE SECTION 106 AGREEMENT

6.1. The Parties agree that the Section 106 Agreement shall be varied as follows:

6.1.1. As if the definition of Affordable Housing Units had been deleted therefrom and replaced with the following definition:

"Affordable Housing Units" means five (5) of the Dwelling Units to be provided as Affordable Housing with tenure as follows:

2 x 2bh and 1 x 3bh for Affordable Rented Housing and 1 x 2bh and 1 x 3bh for Intermediate Housing

or such other tenure mix of Affordable Housing Units as may be agreed with ADC (acting reasonably) prior to Commencement of Development".

6.1.2. As if sub-paragraph 2.1 (c) to Schedule 4 had been deleted therefrom and replaced with the following:

"2.1 (c) A price reflecting no more than 45% of the market value of the Affordable Housing Land at the time of the offer".

6.1.3. As if paragraph 5.1.3 to Schedule 4 had been deleted therefrom.

6.1.4. As if paragraph 6 to Schedule 4 has been deleted therefrom and replaced with the following:

### Mortgage Exclusion Clause

The provisions contained in this Schedule 4 shall not be binding on a mortgagee or chargee (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**) of the whole or any part of the Affordable Housing Units for any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- such mortgagee or chargee or Receiver shall first give written notice to ADC of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to ADC for a consideration not less than the market value of such land on the basis of the restriction that the Affordable Housing Land can be only be occupied as set out in paragraph 6.1.1 of Schedule 4 of this Agreement land; and
- if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions contained in this Schedule 4 which provisions shall determine absolutely

6.1.5 A definition shall be added as follows:

|                                                         |                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>"Alternative Affordable Housing Provider" (AAHP)</p> | <p>means a house builder housing contractor provider or funder of Affordable Housing who is not a Registered Provider but is approved by the Council to manage Affordable Housing and such approval as an AAHP not to be unreasonably withheld or delayed by the Council.</p> |
|                                                         |                                                                                                                                                                                                                                                                               |

6.1.6 A new clause 15.10 shall be inserted in the following form:

All references in Schedule 4 to Registered Provider shall be read and construed as if they were references to a Registered Provider or an Alternative Affordable Housing Provider

## 7. CONTINUATION OF THE TERMS OF THE SECTION 106 AGREEMENT

The Parties agree that with effect from the date hereof the Section 106 Agreement shall continue in full force and effect.

## 8. COSTS

- 8.1 The Owner covenants with ADC to pay prior to the completion of this deed the sum of £500.00 being ADC's reasonable legal costs and disbursements in connection with this Deed.
- 8.2 The Owner covenants with WSCC to pay prior to the completion of this deed the sum of £500.00 being WSCC's reasonable legal costs and disbursements in connection with this Deed.

## 9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless expressly stated to the contrary, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person or persons other than the Parties shall have any rights under it nor shall it be enforceable by any person other than the Parties.

## 10. GOVERNING LAW AND JURISDICTION

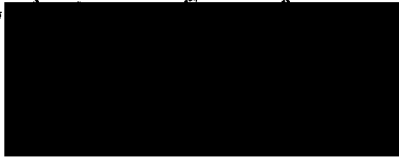
This Deed shall be governed by and interpreted in accordance with the Law of England and Wales and the Parties submit to the jurisdiction of the courts of England and Wales.

## 11. LOCAL LAND CHARGE

Upon completion this Deed shall be registered as a Local Land Charge by the Council.

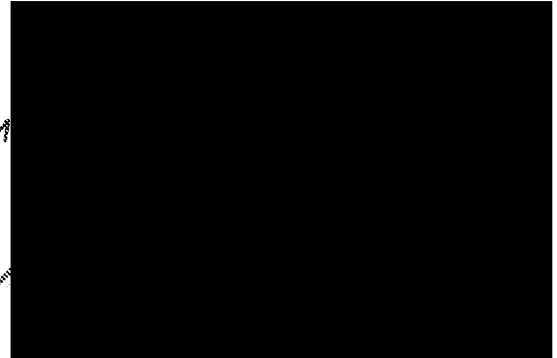
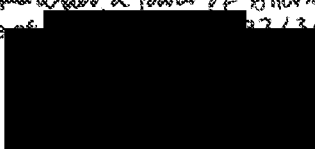
**IN WITNESS** whereof the parties hereto have executed and delivered this document as a Deed in the presence

EXECUTED as a DEED  
by BILTON FIELDS LIMITED  
acting by



DIRECTOR

EXECUTED as a DEED *by Vicki Tsan of Arun DWTM*  
*as attorney for the Wai Ching*  
~~by CHING WAI~~ *under a power of Attorney dated*  
in the presence of *27/13/2022*



Witness Signature

Witness Name:

*HONG L GARY*

Witness Address:

*Arundene Orchard*

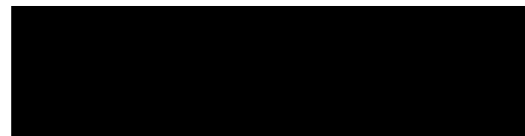
*Laxwood Road*

*Rudgwick*

Witness Occupation

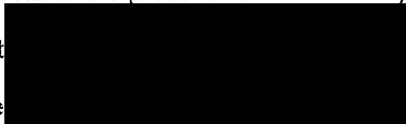
*company Director*

EXECUTED as a DEED  
by OCTANE PROPERTY FINANCE LIMITED  
acting by a director in the presence of:



Witness signature

Witness Name



Director

Witness Address

*Octane Capital Ltd, 112 West End Lane, London NW6 1SD*

Witness Occupation

*Credit Manager*

THE COMMON SEAL OF  
ARUN DISTRICT COUNCIL  
was hereunto affixed  
in the presence of:

EDWARD O'BRIEN

PROPERTY MANAGER

Seal Book no. 241202



THE COMMON SEAL OF  
WEST SUSSEX COUNTY COUNCIL  
was hereunto affixed  
in the presence of:

Authorised Signatory

