DATED 2011

(1) ARUN DISTRICT COUNCIL

(2) THE GARDEN CENTRE GROUP HOLDINGS LIMITED

(3) BANK OF SCOTLAND PLC

AGREEMENT AND DEED OF DISCHARGE

pursuant to Section 106 of the Town and Country Planning Act 1990

relating to

Worthing Garden Centre, Littlehampton Road, Ferring, West Sussex

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Peyto Law

File Ref: 01-0077-151

Bryslan House
Upper Street
Fleet
Hampshire
GU51 3PE

[redacted]

THIS DEED is made the day of two thousand and eleven

BETWEEN

(1) **ARUN DISTRICT COUNCIL** of Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF ("the Council")

(2) **THE GARDEN CENTRE GROUP HOLDINGS LIMITED** (company registration number 1972554) whose registered office is situate at Syon Park, Brentford, Middlesex TW8 8JF ("the Owner")

(3) **BANK OF SCOTLAND PLC** (company registration number SC 327000) whose registered office is situate at The Mound, Edinburgh EH1 1YZ ("the Mortgagee")

jointly referred to as **"the Parties"**

1. DEFINITIONS:

1.1 In this Deed the following words and phrases shall have the following meanings unless the context otherwise requires

"the Act"	The Town and Country Planning Act 1990
"the Land"	All that land situate and known as Worthing Garden Centre, Littlehampton Road, Ferring, West Sussex as is more particularly described in the First Schedule and as is shown edged red on Plan 1
"Plan 1"	The Plan No. 1 attached hereto

2 INTRODUCTION

2.1 The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated

2.2 The Owner is the freehold owner of the Land registered at HM Land Registry under title number WSX43100

2.3 The Mortgagee has the benefit of legal charges over the Land dated 23 June 2006 and 24 February 2009

2.4 By Deed of Agreement made on the 9 May 2001 pursuant to s106 of the Act and other enabling powers between (1) the Council, (2) Country Garden Centres Limited ("the Original Planning Obligation") it was agreed that:

2.4.1 Three earlier agreements relating to the Land dated 26 June 1981, 5 August 1986 and 11 December 1997 would be discharged; and

2.4.2 The sale of goods from the Land would be limited to those specified in the Second Schedule of that Agreement.

2.5 An application under s106A of the Act was made by the Owner dated [TO BE INSERTED] and allocated reference number [TO BE INSERTED] by the Council to amend the terms of the Agreement dated 9 May 2001

2.6 The Council has resolved [DETAILS]

3 CONSTRUCTION OF THIS DEED

3.1 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

3.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

3.3 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

3.4 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

3.5 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

3.6 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 the successors to their respective statutory functions

4 **LEGAL BASIS**

4.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and all other enabling powers

4.2 The covenants restrictions and requirements imposed upon the Lessee and the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

5 **DEED OF DISCHARGE**

5.1 The Parties agree that

5.1.1 The Original Planning Obligation shall from the date of this Deed be discharged;

5.1.2 The Original Planning Obligation shall be replaced by this Deed from the date hereof; and

5.1.3 The Original Planning Obligation shall be removed from the register of Local Land Charges by the Council

6 **THE OWNER'S COVENANTS**

6.1 The Owner covenants with the Council as set out in the Second Schedule

7 **MISCELLANEOUS**

7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation preparation and execution of this Deed

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registerable as a Local Land Charge by the Council

7.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

7.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted either with its entire interest in the Land or with its interest in that part of the Land affected by the breach but without prejudice to liability for any subsisting breach arising prior to parting with such interest

7.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed

8 MORTGAGEES' CONSENT

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the legal charges over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

9 JURISDICTION

9.1 This Deed is governed by and interpreted in accordance with the law of England and Wales

10 DELIVERY

10.1 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

11 VARIATION

11.1 The terms and conditions of this Deed shall be capable of being varied by a Supplemental Deed or a Memorandum in Writing executed by the Parties or their respective successors in title

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

THE FIRST SCHEDULE

The Land

All that land shown edged red upon Plan 1 annexed hereto and known as Worthing Garden Centre, Littlehampton Road, Ferring West Sussex registered at HM Land Registry under title number WSX43100

THE SECOND SCHEDULE

Restrictions and Obligations

The Owner and the Lessee hereby covenant:

1. That the Land shall only be used for the sale of goods in the categories specified below and (unless otherwise proved in writing by the Council) shall not be used at any time for any other purpose falling within Class A1 of the Town and Country Planning (Use Classes) Order 1987:

   Goods and services normally sold at a Garden Centre, which for the avoidance of doubt shall include:

   (a) goods and services related to gardens and gardening,

   (b) horticultural products, trees, plants, shrubs, house plants and flowers of any type including fresh and dried flowers,

   (c) garden and gardening equipment, tools and accessories,

   (d) machinery for garden use and servicing of it,

   (e) barbeques and their accessories,

   (f) conservatories,

   (g) outdoor and conservatory furniture, furnishings and accessories,

   (h) fresh and local farmhouse produced foods including meats, dairy products, vegetables and beverages,

   (i) sheds, garden buildings, greenhouses, summerhouses, gazeboes, pergolas, garden offices,

   (j) swimming pools and associated equipment, materials and fittings for pools, ponds and lakes and for the servicing of pool surrounds,

   (k) fencing, trellis and landscaping materials,

   (l) aquatics, water garden equipment and their accessories,

   (m) garden ornaments and statuary, baskets and other containers for the growing and display of indoor and outdoor plants and flowers,

(n) books, magazines, periodicals, videos and CD and DVDs relating to gardening, leisure, hobby, travel, sports and coffee table books and other literature other than fiction,

(o) pets, pet supplies, food and accessories, pet care and advice,

(p) indoor and outdoor hobbies, toys, games, crafts and garden play equipment,

(q) baskets, wickerwork and country crafts,

(r) Christmas trees (live and artificial) decorations, gifts,

(s) china, glass and gifts,

(t) soft furnishing associated with garden and conservatory furniture,

(u) outdoor clothing and footwear, including wellington boots, garden aprons and smocks, gardening boots and clogs, gardening gloves, gardening hats, gardening rainproofs and gardening overalls,

(v) outdoor and country pursuits and equipment e.g. camping, fishing, equestrian, hiking, climbing, etc.,

(w) restaurant, coffee shop and children's play area,

(x) arts and crafts products,

(y) other items incidental to the operation of the garden centre as a garden centre and ancillary to its character as a garden centre,

(z) such other products, goods or services as the Council shall have first approved in writing.

2. Not to use the Land otherwise than in accordance with the restrictions and limitations referred to in paragraph (1) above

THE **COMMON SEAL** of **ARUN DISTRICT COUNCIL** was hereunto affixed in the presence of)
)
)

Authorised Signatory _____

Seal Book No:

[ATTESTATION CLAUSE FOR GARDEN CENTRE GROUP HOLDINGS LIMITED]

EXECUTED as a **DEED** by **BANK OF SCOTLAND PLC** acting by)
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Authorised Signatory _____

Authorised Signatory _____