

DATED 21 November 2024

BETWEEN:

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) CHALCROFT ASSOCIATES LIMITED LIABILITY PARTNERSHIP
- (4) ORCHARD ENTERPRISES (SOUTHERN) LIMITED
- (5) BDW TRADING LIMITED

### **s106A Deed of Variation**

relating to a Deed dated 19 March 2019 made pursuant to Section 106 of the Town and Country Planning Act 1990 and relating to Land at Chalcroft Nursery, Chalcroft Lane, Bersted, West Sussex PO21 5TS

(planning application refs: BE/133/23/S73 and BE/13/24/S73)

THIS DEED is dated

21 November

2024

BETWEEN:

- (1) **ARUN DISTRICT COUNCIL** of Bognor Regis Town Hall, Clarence Road, Bognor Regis, West Sussex PO21 1LD ("the **District Council**")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ ("the **County Council**")
- (3) **CHALCROFT ASSOCIATES LIMITED LIABILITY PARTNERSHIP** (Company Registration number 0C 337417) whose registered office is at 5 Culver Road, Felpham, Bognor Regis, West Sussex PO22 7EF ("the **First Owner**")
- (4) **ORCHARD ENTERPRISES (SOUTHERN) LIMITED** (Company Registration number 30/10021) whose registered office is at 5 Culver Road, Felpham, Bognor Regis, West Sussex PO22 7EF ("the **Second Owner**")
- (5) **BDW TRADING LIMITED** (Company Registration number 03018173) of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF ("the **Third Owner**")

#### BACKGROUND

- A. The District Council is the local planning authority for the purposes of s106 of the Act for the area within which the Land is situated.
- B. The County Council is the authority responsible for highways and education for the area in which the Land is situated and is the authority by whom the obligations in this Deed are enforceable
- C. The District Council is the local planning authority by which the planning obligations contained in this Deed are enforceable.
- D. The First Owner is the freehold owner with title absolute of part of the Land registered at the Land Registry under title number WSX318871.
- E. The Second Owner is the freehold owner with title absolute of part of the Land registered at the Land Registry under title number WSX32009.
- F. The Third Owner is the freehold owner with title absolute of the Land registered at the Land Registry under title number WSX436748.
- G. Following applications to vary the Permission, the Owner has agreed to enter into this Deed under section 106A of the Act so that the obligations contained within the section 106 agreement dated 19 March 2021 and made between (1) Arun District Council (2) West Sussex County Council and (3) Chalcraft Associates LLP (4) Chalcraft Developments Limited (5) Orchard Enterprises (Southern) Limited (6) National Westminster Bank PLC ("the **Original Agreement**") will also apply to the planning permissions with references BE/133/23/S73 and BE/13/24/S73 and any future permissions granted pursuant to Section 73 of the Act, has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in the Original Agreement as varied by this Deed.
- H. Without prejudice to the terms of the other covenants contained in the Original Agreement, the parties wish to vary the Original Agreement as set out in this Deed with effect from the date of this Deed ("the **Variation Date**")

- I. This Deed is made under section 106A of the Act and is supplemental to the Original Agreement and is made with the intention that it binds the Owners' interests in the Site and their successors in title.

## **AGREED TERMS**

1. **Interpretation and Effect**

In this Deed, expressions defined in the Original Agreement and used in this Deed have the meaning set out in the Original Agreement (save as expressly varied by the provisions of this Deed). The rules of interpretation set out in the Original Agreement apply to this Deed.

2. **Statutory Provision**

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act.

3. **Variations**

With effect from the Variation Date the parties agree that the Original Agreement shall be varied as set out in this clause 3:

- 3.1 In clause 1.2 of the Original Agreement the following definitions shall be deleted and substituted by the following definitions:

"Application" means the application for outline planning permission for the Development allocated reference number BE/81/20/OUT and the applications to vary the outline planning permission allocated reference numbers BE/133/23/S73 and BE/13/24/S73;

"Permission" means the outline planning permission granted by the District Council pursuant to the Application.

- 3.2 An additional clause 24 be inserted to the Original Agreement as follows:

**"24 FUTURE PERMISSIONS**

24.1 If, after the date of this Deed, any planning permission is granted pursuant to section 73 of the Act (save for the permissions granted pursuant to application references BE/133/23/S73 and BE/13/24/S73) in respect of conditions attached to the Permission, references in this Deed to the Application and Permission shall be deemed to include any such subsequent section 73 planning applications and any planning permissions granted pursuant to those section 73 planning applications and this Deed shall apply and take effect and be read and construed accordingly PROVIDED ALWAYS THAT nothing in this clause shall fetter the discretion of the District Council in determining any such section 73 planning application from requiring that any consequential planning obligations be secured by way of a new deed or supplemental deed under section 106 and section 106A of the 1990 Act.

24.2 Save as expressly provided (if at all) nothing in this Deed shall be implied to prohibit or restrict the future development of the Land (or any part of it) in accordance with any planning permission granted after the date of the Permission."

4. **Covenant to the District Council**

The Owner covenants 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 by the District Council as a local land charge.

6. **Third Party Rights**

It is not intended that any person other than a party to this Deed and their successors shall have any right to enforce any of its terms.

7. **Costs**

The Owner shall pay the District Council's and the County Council's reasonable and proper legal costs and disbursements in connection with the preparation, negotiation and completion of this Deed on completion of this Deed.

8. **Notices**

8.1. The address for any notice or other written communication is as specified above in the case of each party hereto or (at the option of the recipient) such address as may be specified for service from time to time provided that the same is within the United Kingdom or (at the option of the party giving notice or other communication) the last-known place of business in the United Kingdom of the recipient.

8.2. Any notice or other written communication to be served or given by one party upon or to any other under the terms of this Deed shall be deemed to have been validly served or given if received by first class recorded post, by electronic mail or by recorded delivery post or other service which provides for delivery on the next business day or by hand to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing SAVE THAT where delivery is via electronic mail the sender must also deliver such notice or written communication by recorded delivery post PROVIDED THAT the notice or other written communication is sent to the email address stated and marked as follows for each recipient:

8.2.1. for the First Owner at the address above; or to [patrickcullen@live.co.uk](mailto:patrickcullen@live.co.uk) and [200@sky.com](mailto:200@sky.com);

8.2.2. for the Second Owner at the address above; or [patrickcullen@live.co.uk](mailto:patrickcullen@live.co.uk);

8.2.3. for the Third Owner at the address above and also at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF, marked for the attention of the Head of Planning and quoting the application site name and planning reference;

8.2.4. for the District Council at the address above or to [planning@arun.gov.uk](mailto:planning@arun.gov.uk);

8.2.5. for the County Council at the address above.

8.3. Unless the time of actual receipt is proven a notice demand or communication sent by the following means is to be treated as having been served:

8.3.1. in the case of electronic mail in the absence of evidence of a delay at the time the message was sent TOGETHER WITH confirmation of recorded delivery;

8.3.2. in the case of first class recorded post at the time delivery was signed for;

8.3.3. in the case of delivery by hand at the time delivery was made.

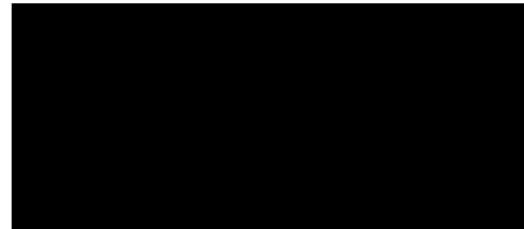
8.4. If a notice demand or any other communication is served after 4:00 pm on a Working Day or on a day that is not a Working Day it is to be treated as having been served on the next Working Day.

9. **Governing law and Jurisdiction**

- 9.1. 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.
- 9.2. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this document has been executed and delivered on the date first stated above.

Executed as a deed by  
**CHALCROFT ASSOCIATES**  
**LIMITED LIABILITY PARTNERSHIP**  
acting by **ALASTAIR WILLIAM**  
**SMYTH** a member in the presence of:



Alastair William Smyth

Witness' signature .....

Name (capital letters) .....

Address .....

Michael Hobbs - Solicitor  
Hobbs Law LLP  
21 Tennyson Road  
Aldwick, Bognor Regis  
West Sussex PO21 2SR

Executed as a deed by  
**ORCHARD ENTERPRISES**  
**(SOUTHERN) LIMITED** acting by  
**DAVID ROBERT GROVES**  
a director in the presence of:



David Robert Groves

Witness' signature .....

Name (capital letters) .....

Address .....

Michael Hobbs - Solicitor  
Hobbs Law LLP  
21 Tennyson Road  
Aldwick, Bognor Regis  
West Sussex PO21 2SR

Executed as a deed by ADAM QUAYLE  
and TAMMY BISHOP  
as attorneys pursuant to a Power of Attorney  
dated 24 April 2024 for on behalf of  
BDW TRADING LIMITED

Signed: [Redacted]

PRINT NAME: Adam Quayle

Signature of Witness [Redacted]

Name of Witness Sitka Konecna

Address BDW Trading Southampton,  
Tollbar Way, Hedge End, SO30 2UK

Signed: [Redacted]

PRINT NAME: Tammy Bishop Ross Snow

Signature of Witness [Redacted]

Name of Witness Sitka Konecna

Address BDW Trading Southampton, Tollbar  
Way, Hedge End, SO30 2UK

Executed as a deed by  
affixing the common seal of  
**ARUN DISTRICT COUNCIL**  
in the presence of:

[Redacted]

SOFINA AHMED LAWYER

Authorised Officer



Executed as a deed  
by affixing the common seal of  
**WEST SUSSEX COUNTY COUNCIL**  
in the presence of:

[Redacted]

Authorised Officer

