

DATED 18 July 2023

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) ELIVIA HOMES LIMITED (Owner)

DEED OF VARIATION UNDER
SECTIONS 106 AND 106A OF THE
TOWN AND COUNTRY PLANNING
ACT 1990

Relating to land at The Boweries Barnham Road Eastergate West Sussex PO20
3RT

Planning Ref: BN/187/22/PO

Arun District Council

The Civic Centre
Maltravers Road
LITTLEHAMPTON
BN17 5LF
DX57406 LITTLEHAMPTON

Ref: 9432

Date: 18 July 2023

PARTIES:

- 1 **ARUN DISTRICT COUNCIL** of The Civic Centre, Maltravers Road,
LITTLEHAMPTON BN17 5LF ("**the Council**")
- 2 **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street,
Chichester, PO19 1RQ ("**the County Council**")
- 3 **ELIVIA HOMES (SOUTHERN) LIMITED** of Apollo House, Mercury Park,
Wycombe Lane, Wooburn Green, High Wycombe HP10 0HH (Co. Regn. No.
05011077-
02703219) ("**the Owner**")

WHEREAS

- A1. The Council is the Local Planning Authority for the area in which the Land is situated.
- A2. The County Council is a county planning authority and the highway authority, and the authority responsible for the provision of libraries and fire and rescue services.
- A3. The Owner is the registered owner of the Land registered at the Land Registry under title WSX215048.
- A4. The Owner has submitted the Second Planning Application to the Council and separately the Section 106 Variation Application to the Council.
- A5. This Deed is supplemental to and to the extent that its contents so provide, varies the Section 106 Agreement to the extent only that the Section 106 Agreement relates to the Land.
- A6. The provisions of this Deed bind the Land, the parties to this Deed and their successors in title.
- A7. The Owner, the County Council and the Council have agreed to amend the Section 106 Agreement.
- A8. This is made as a Deed under Section 106 and 106A of the Town and Country Planning Act 1990.

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

1.1 The words and phrases in this Deed shall have the same meanings as those contained in the Section 106 Agreement unless otherwise expressly varied by this Deed and the following expressions shall where the context so admits the following meanings:

- | | | |
|-------|--|--|
| 1.1.1 | “Application” | means the application for outline planning permission allocated reference number BN/135/20/PL and which was granted permission on 12 October 2021; |
| 1.1.2 | “Deed” | means this deed of variation; |
| 1.1.3 | “Section 106 Agreement” | means the section 106 agreement dated 12 October 2021 made between (1) Arun District Council (2) West Sussex County Council and (3) Brian Edward Medlock and Jill Medlock pursuant to the Application; |
| 1.1.4 | “Section 106 Variation Application” | means the application to modify the Section 106 Agreement by this Deed and made pursuant to section 106A of the Act by the Owner and given Council reference BN/187/22/PO; |
| 1.1.5 | “Second Planning Application” | means the application made pursuant to section 73 of the Act for the variation of condition imposed under the permission granted pursuant to the Application and relating to condition 2 (approved plans) ^{Ex} by the Owner and given Council reference BN/155/22/PL; and |
| 1.1.6 | “Second Planning Permission” | means the planning permission granted in respect of the Second Planning Application which for the avoidance of doubt is not dependant on the Section 106 Variation Application. |

1.2 Unless the context otherwise requires, all words and phrases defined in the Section 106 Agreement shall have the same meaning in this Deed.

1.3 Clause heading shall not affect the interpretation of this Deed.

- 1.4 A **“person”** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 A reference to a **“company”** shall include any company, corporation or other body corporate, where and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 1.8 A reference to any party shall include that party’s representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.9 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.
- 1.10 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.
- 1.11 A reference to **“writing”** and **“written”** does not include fax or email.
- 1.12 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.
- 1.13 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. Legal Basis

- 2.1 This Deed is made under Section 106 and 106A of the Act and its purpose is to vary the Section 106 Agreement with the intention that the planning obligations contained in the Section 106 Agreement shall apply to the Development to be undertaken in accordance with the permission granted pursuant to the Application save for any variations contained within this Deed.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations under Section 106 and Section 106A of the Act and are enforceable by the Council (and County Council (as appropriate)) in accordance with Section 106 of the Act as local planning authorities against the Owner.

- 2.3 The planning obligations contained in this Deed shall bind the Land.

3. Commencement

This Deed shall come into effect on the date of this Deed first mentioned herein.

4. Variation of the Section 106 Agreement

- 4.1 The parties agree that the Section 106 Agreement shall be varied as follows:

- 4.1.1 ADD a new Clause 24 entitled "**Section 73 Consent**" with the following words:

"In the event that the District Council shall at any time after the grant of the Permission grant a planning permission pursuant to a further application made under section 73 of the Act in respect of conditions on the Permission (and for no other purpose whatsoever) references in this Deed to the Application and to the Development and the Permission shall be deemed to include any such subsequent planning application and planning permissions granted and this Deed shall then take effect and be read and construed accordingly and FOR THE AVOIDANCE OF DOUBT where the District Council deems it appropriate the District Council may require a further agreement under section 106 of the Act to secure additional or varied obligations concerning the Permission."

- 4.1.2 to ADD the following definitions into Schedule 1 (Highways and Transport) in the relevant alphabetical position:

*"**Non-Dedication Management Strategy**" means the strategy for the management of the Dedication Land if it is not dedicated as highway submitted to and approved by the County Council in accordance with paragraph 1.2 of this Schedule (as may be revised from time to time by agreement between the Owner and the County Council) which must include:*

- (a) details of and specification for the required management and maintenance arrangements;*
- (b) details of the management body responsible for maintenance;*
- (c) details of the frequency of maintenance; and*
- (d) repair and renewal arrangements;"*

- 4.1.3 To REMOVE paragraph 1.1 in Schedule 1 (Highways and Transport) and replace it with the following:

"1.1 The Owner covenants:

- 1.1.1 Unless paragraph 1.2 applies, not to Commence Development unless and until a Highways Agreement has been entered into;*

1.1.2 Unless paragraph 1.2 applies, not to Occupy or permit Occupation of the Development unless and until the Highways Works have been carried out and completed to Completion Certificate Standard; and

1.1.3 Unless paragraph 1.2 applies, to use reasonable endeavours to carry out such necessary works as may be required to secure the issue of the Final Certificate in respect of the Highways Works as soon as reasonably practicable after the date upon which the Highways Agreement is entered into."

4.1.4 to ADD a new paragraph 1.2 in Schedule 1 (Highways and Transport) as follows and consequently AMEND existing paragraph numbering 1.2 to become 1.3:

"1.2 If the parties agree that the Dedication Land cannot be dedicated as highway and the Highways Agreement (if a Highways Agreement is entered into) does not therefore contain provisions for the for the dedication of the Dedication Land as highway for use by the public without limitation, then the Owner must:

- (a) submit a Non-Dedication Management Strategy to the County Council for approval prior to Occupation of the Development;
- (b) not Occupy the Development until such Non-Dedication Management Strategy has been approved by the County Council; and
- (c) ensure the Dedication Land is managed and maintained in accordance with the Non-Dedication Management Strategy,

PROVIDED THAT the obligations listed in this paragraph 1.2 shall fall away in the event that the County Council adopts the road (including the Dedication Land) constructed as all or part of the Highways Works in accordance with the terms of any Highways Agreement or through any other lawful means of adoption"

4.1.5 to ADD a new paragraph 3 and 4 in Schedule 1 (Highways and Transport) as follows and consequently AMEND existing paragraph numbering 3 to become 5:

"3. Provision of Public Access

3.1 Unless otherwise agreed with the District Council and the County Council in writing, and subject always to the provisions in paragraph 4 of this Schedule One, the Owner covenants to allow full public access (meaning vehicular, pedestrian or cycle access) to the Dedication Land at all times from the earlier of either dedication of the Dedication Land

or disposal of the final Residential Unit and to ensure there is nothing to prevent or impede such access at any time.

4. Dedication Land

4.1 Unless otherwise agreed with the District Council and the County Council in writing, on Completion of the Dedication Land in accordance with the Highways Agreement (if any) or the Non Dedication Management Strategy to retain the Dedication Land for the purpose for which it was secured (namely as the main access road across the Land that connects to the adjoining land to the east and west), and not to use it for any other purpose, in perpetuity."

4.1.6 to AMEND paragraph 2.1.3 of Schedule 1 by adding the words "to the County Council" after the word "full" at the end of the paragraph.

4.1.7 to AMEND paragraph 2.3 of Schedule 1 by replacing the word "District" with the word "County" in the penultimate line of the paragraph

4.1.8 to AMEND paragraph 2.4 of Schedule 1 by replacing the word "District" with the word "County" in the second line of the paragraph

4.1.9 to AMEND the definition of "**Affordable Housing Unit(s)**" in Schedule 2 by REPLACING the words "a Shared Ownership Unit" with the words "an Intermediate Unit" at the end of the definition.

4.1.10 to ADD the following definition into Schedule 2 (Affordable Housing Obligations) in the relevant alphabetical position:

"Intermediate Unit" includes Shared Ownership units, relevant equity loans, shared equity and other low cost homes for sale (at a price equivalent to at least 20% below local market value)"

4.1.11 to SUBSTITUTE the wording in paragraph 5.1(d) of Schedule 2 for the following wording:

"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 Land or any persons or bodies deriving title through such mortgagee or Chargee or Receiver PROVIDED THAT:

(i) such mortgagee or Chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable housing Land 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 Land to another registered provider or to the Council for a consideration not

less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

(ii) 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 Land free from the provisions of this Schedule and which provisions shall determine absolutely"

4.1.12 to SUBSTITUTE the words "the Occupation of more than 50%" in paragraph 2.2 of Schedule 3 with the words "first Occupation";

4.1.13 to SUBSTITUTE the words "Condition 8" in paragraph 3.1(a) of Schedule 3 with the words "Condition 12";

4.1.14 to ADD definitions in Schedule 4 (Financial Contributions) in the appropriate alphabetical places as follows:

"County Council Contributions" means the Fire and Rescue Contribution, Highways Contribution, Library Contribution, Nursery Contribution, Primary School Contribution, Secondary School Contribution, SEND Contribution and Sixth Form Contribution"

"District Council Contributions" means those contributions set out in this Schedule which are not County Council Contributions;"

4.1.15 In paragraph 16.1 in Schedule 4 (Financial Contributions) to insert the words "District Council" between the word "outstanding" and the word "Contributions" in the penultimate line of the paragraph

4.1.16 In paragraph 16.2 in Schedule 4 (Financial Contributions) to insert the words "the District Council" between the word "of" and the word "Contributions" in the third line of the paragraph

4.1.17 to DELETE paragraph 16.3 in Schedule 4 (Financial Contributions) and REPLACE it with the following:

"16.3 The Pro Rata Contribution shall be calculated as follows:

$$X = [(A - B)/C] \times D$$

Where:

X = the amount of the Pro Rata Contribution

A = the total amount of all District Council Contributions

B = the total amount of District Council Contributions already paid

C = 30 (being the maximum number of Residential Units that are authorised by the Permission

D = the total number of units that have been Occupied on the date of service of the Pro Rata Contribution Notice"

4.1.18 to ADD the following paragraphs 2.2 in Schedule 5 (Councils' Covenants):

"2.2 Within 28 days of a written request by the Owner the District Council shall:

2.2.1 provide written evidence of the payment of a Contribution for the purposes for which it was made; and

2.2.2 repay any unspent Contributions to the Owner within 10 years of the date of payment of the Contribution or Contributions.

4.1.19 to DELETE the words "County Council" from the definition of the Police Services Contribution in Schedule Four and REPLACE it with the words "District Council"

4.1.20 to DELETE all references to "County Council" in paragraph 8 of Schedule Four and REPLACE all references with the words "District Council"

5. Continuation of the terms of the Section 106 Agreement

It is hereby agreed and declared by the Council, the Owner and the County Council that saving and excepting as expressly provided for by the provisions of this Deed the covenants and provisions contained in the Section 106 Agreement shall continue to have full force and effect.

6. Costs

6.1 The Owner covenants with the Council prior to the completion of this Deed to pay to the Council the sum of £1750.00 being the Council's reasonable legal costs and disbursements in connection with this Deed.

6.2 The Owner covenants with the County Council prior to completion of this Deed to pay to the County Council the sum of £ 700.00 (Seven Hundred Pounds) being the County Council's reasonable legal costs and disbursements in connection with this Deed.

7. Miscellaneous

7.1 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.

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

8. Governing Law and Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the jurisdiction of the courts of England.

This Agreement is executed as a deed by the parties and is delivered and takes effect on the date at the beginning hereof:

THE COMMON SEAL of ARUN)
DISTRICT COUNCIL)
was affixed to this deed in the)
presence of:)



Authorised Signatory:



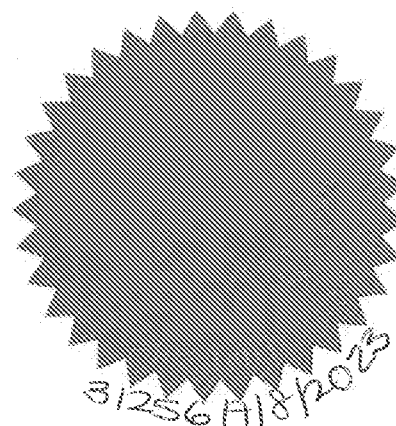
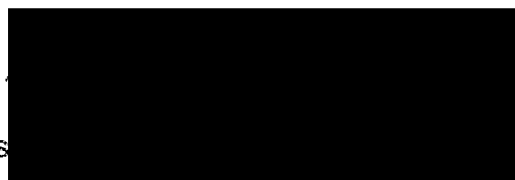
Name: EDWARD CRANE, PROPERTY LAWYER

Seal Book No. 97/623

THE COMMON SEAL of)

WEST SUSSEX COUNTY COUNCIL)
was affixed to this deed in the presence of:)

Authoris



Seal Book No: }

EXECUTED as a DEED by

ELIVIA HOMES LIMITED

Director:

[Redacted Signature]

in the presence of:

Signature of witness ...

[Redacted Signature]

Name (in BLOCK CAPITALS) .. ALICE HUMPHRIES

Address.... 50 NEW ROAD

..... STOKENCHURCH

..... HP14 3SQ

Director/Company Secretary

[Redacted Signature]

In the presence of:

Signature of witness ...

[Redacted Signature]

Name (in BLOCK CAPITALS) .. ALICE HUMPHRIES

Address.... 50 NEW ROAD

..... STOKENCHURCH

..... HP14 3SQ