

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 Warwick Nursery Barnham Road Eastergate West Sussex PO20
3RT

Planning Ref: BN/188/22/PO

Arun District Council

The Civic Centre
Maltravers Road
LITTLEHAMPTON
BN17 5LF
DX57406 LITTLEHAMPTON

Ref: 9433

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.
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 WSX433038.
- 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 have the following meanings:

1.1.1 **"Application"** means the application for outline planning permission allocated reference number BN/153/20/PL and which was granted permission on 10 December 2021;

1.1.2 **"Deed"** means this deed of variation;

1.1.3 **"Section 106 Agreement"** means the section 106 agreement dated 26 November 2021 made between Arun District Council (2) West Sussex County Council and (3) Landacre (Eastergate) Limited 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/188/22/PO;

1.1.5 **"Second Planning Application"** means the application made pursuant to section 73 of the Act for the variation of conditions imposed under the permission granted pursuant to the Application relating to conditions 2 (approved plans) and 30 (Part B M(4) Category 2 and 3) by the Owner and given Council reference BN/157/22/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 AMEND paragraph 2.1 (c) of Schedule 1 by adding the words "to the County Council" after the word "full" at the end of the paragraph.

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

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

4.1.5 to AMEND the definition of "**Nominations Agreement**" in Schedule 2 by REPLACING the word 'Housing' with the word 'Rent'.

4.1.6 to AMEND paragraph 5.2 of Schedule 2 (Affordable Housing Obligations) by:

- (a) SUBSTITUTING the word "of" between the words "lease" and "transfer" with the word "or";
- (b) CAPITALISING the word "owner" at the end of the first line; and
- (c) SUBSTITUTING the words "the Owner shall" at the end of the second line with the word "to"

4.1.7 to SUBSTITUTE the wording in paragraph 7.1(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"

4.1.8 to ADD definitions in Schedule 5 (Financial Contributions) in the appropriate alphabetical places as follows:

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

*" **"Pro-Rata Basis"** means in relation to paragraph 19 of this Schedule:*

$$A = (B/C) \times D$$

where:

A = the proportion of the relevant District Council Contribution payable

B = the number of Residential Units Occupied

C = the total number of Residential Units permitted by the Permission (44)

D = the amount of the relevant District Council Contribution payable for the entire Development as set out in this Deed"

4.1.9 to SUBSTITUTE paragraph 19.1 for the following:

"If at any time prior to Occupation of the 33rd Residential Unit:

(a) works to construct any Residential Units cease for a period in excess of 12 consecutive months; and

(b) there are no completions of sale of any of the Residential Units (which for the avoidance of doubt does not include the marketing or use of any Residential Unit as a showroom) during the period referred to in subparagraph (a) above;

then the District Council may (acting reasonably) request in writing a payment from the Owner of the District Council Contributions such quantum to be calculated on the Pro-Rata Basis PROVIDED THAT the Owner has also been provided an opportunity to make written representations in relation to the calculation and or justification of such request for payment within 15 Working Days to the District Council and which the District Council must consider and respond to in writing and IN THE EVENT a dispute remains between the relevant parties then the provisions of Clause 21 of this Deed shall apply and FOR THE AVOIDANCE OF DOUBT any such pro-rata sums that are agreed shall be payable within 15 Working Days of the date of written agreement."

4.1.10 to ADD the following paragraphs 3.2 and 3.3 in Schedule 6:

"3.2 Within 28 days of a written request by the Owner the Council shall

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

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

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.

Handwritten text, possibly a signature or initials, located in the upper left quadrant of the page.

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:

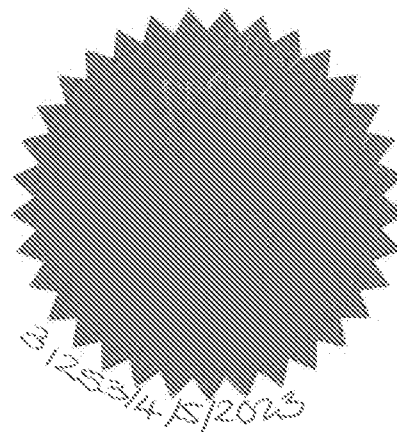


Name: EDWARD O'BRIEN, PROPERTY LAWYER

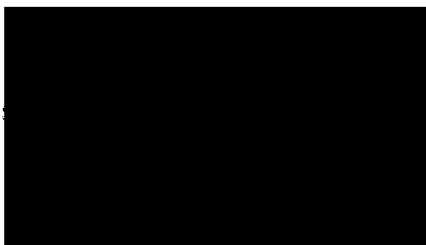
Seal Book No. 96/2023

THE COMMON SEAL of)

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



Authori

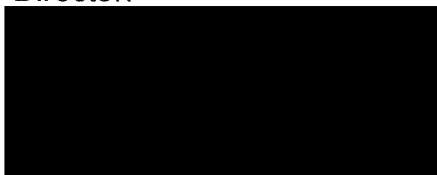


Seal Book No: }

EXECUTED as a DEED by

ELIVIA HOMES LIMITED

Director:



in the presence of:

Signature of witness



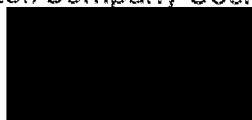
Name (in BLOCK CAPITALS)ALICE HUMPHRIES

Address.....50 NEW ROAD.....

.....STOKENCHURCH.....

.....HP14 3SQ.....

Director/Company Secretary



In the presence of:

Signature of witness



Name (in BLOCK CAPITALS)ALICE HUMPHRIES

Address.....50 NEW ROAD.....

.....STOKENCHURCH.....

.....HP14 3SQ.....