

Deed of Variation
relating to
Land at Windroos Nursery,
Worthing Road, Littlehampton,
West Sussex

Dated 24 December 2019

Arun District Council (1)
West Sussex County Council (2)
Windroos Developments Limited (3)
HSBC Bank Plc (4)

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THIS DEED is dated 24 December

2019

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers, Road, Littlehampton, West Sussex, BN17 5LF ("ADC")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex, PO19 1RQ ("WSCC")
- (3) **WINDROOS DEVELOPMENTS LIMITED** (Isle of Man company registration number 132377C) whose registered office is at Dandara Group Head Office, Isle of Man Business Park, Coill Road, Braddan, Isle of Man, IM2 2SA and whose address for service is care of Dandara Limited (Southern), Roman House, South Hampshire Industrial Park, Totton, Southampton, SO40 3SA (the "Owner")
- (4) **HSBC BANK PLC** (Co. Reg No. 14259) whose registered office is at 8 Canada Square, London, E14 5HQ and whose address for service is Securities Processing Centre, P O Box 6304, Coventry, CV3 9JY (the "Mortgagee")

BACKGROUND

- (A) ADC is the local planning authority and the local authority responsible for provision of public open space, equipped play space and sport and recreation facilities and is the local housing authority for the area in which the Land is situated.
- (B) WSCC is the strategic planning authority, local highway authority, local education authority, local library authority, local waste authority and local fire authority for the area in which the Land is situated
- (C) On 14 September 2011 Stuart David Lyons, Marcia Elizabeth Lyons, Michael Bernard Catchpole, ADC and WSCC entered into the Original Agreement and on 28 September 2011 ADC granted the Planning Permission.
- (D) On 5 May 2017 ADC gave the Reserved Matters Approval which permitted eighty four (84) Residential Units to be provided on the Land pursuant to the Planning Permission.
- (E) On 3 October 2018 the Owner became the freehold owner of the Land which is now registered at the Land Registry with title absolute under title number WSX49366 subject to a charge dated 12 March 2019 in favour of the Mortgagee. The Mortgagee and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (F) Commencement of Development took place on 23 April 2019.
- (G) ADC acknowledges that the Owner has complied with its obligations to offer the Affordable Housing Units under Schedule 6 of the Original Agreement and no offers by Registered Providers were made during the first offer period or the second offer period. The Owner has agreed to sell the Affordable Housing Units to ADC subject to the completion of this Deed. If ADC does not purchase the Affordable Housing Units the Owner will pay the Affordable Housing Commuted Sum in accordance with paragraph 2.3 of Schedule 6 of the Original Agreement as varied by this Deed.
- (H) Without prejudice to the terms of the other covenants contained in the Original Agreement and to give effect to the agreement between the Owner and ADC referred to in Recital G above the parties have agreed to vary the terms of Original Agreement as set out in this Deed.
- (I) This Deed is made under section 106A of the Act and is supplemental to the Original Agreement.

AGREED TERMS

1 Interpretation

The following definitions and rules of interpretation apply in this Deed.

1.1 Definitions:

Original Agreement: the agreement made pursuant to section 106 of the Act dated 14 September 2011 between Stuart David Lyons, Marcia Elizabeth Lyons, Michael Bernard Catchpole, ADC and WSCC

Planning Permission: the outline planning permission granted by ADC on 28 September 2011 under reference LU/229/10 pursuant to the Application

Reserved Matters Approval: the decision notice given by ADC on 5 May 2017 under reference LU/201/16/RES approving all matters reserved for further determination under the Planning Permission

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

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

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of ADC or WSCC the successors to its respective statutory functions.

1.8 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.

1.9 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.

1.10 Unless the context otherwise requires, references to clauses are to the clauses of this Deed.

1.11 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.

1.12 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 Statutory provision

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3 Variations to Original Agreement

3.1 From the date of this Deed:

- (a) the Original Agreement shall be varied as set out in Schedule 1 to this Deed;
- (b) save as varied in accordance with this Deed the Original Agreement shall remain in full force and effect; and
- (c) the variation of the Original Agreement pursuant to this Deed shall not affect the validity of any act taken by any party to comply with or discharge any obligation contained in the Original Agreement and any matters which have been approved under the Original Agreement or obligations which have been complied with or discharged pursuant to the Original Agreement shall be deemed to have been approved under the Original Agreement as varied by this Deed or complied with or discharged pursuant to the Original Agreement as varied by this Deed (as the case may be).

4 Mortgagee's Consent

The Mortgagee hereby consents to the Owner entering into this Deed but shall not under any circumstances be liable for any breach of the Original Agreement (as varied by this Deed) nor for any costs incurred by ADC or WSCC as a result of such breach unless the Mortgagee has caused such breach while in possession; irrespective of whether or not the Mortgagee shall have caused such breach it shall have no liability after the Mortgagee has discharged the charge dated 12 March 2019 or has disposed of the Owner's interest in the Land whether by sale or otherwise.

5 Local land charge

This Deed shall be registered as a local land charge.

6 WSCC's costs

ADC shall pay to WSCC on or before the date of completion of this Deed, WSCC's reasonable and proper legal costs together with all disbursements reasonably and properly incurred by WSCC in connection with the preparation and completion of this Deed.

7 Value Added Tax

7.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly paid.

7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

8 Third party rights

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

9 Governing Law

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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1
Variations to the Original Agreement

1 Variations to the Original Agreement

1.1 Clause 2 of the Original Agreement shall be amended by:

- (a) deleting clause 2.24 ("Waste Management Services Contribution")
- (b) deleting the definition of "Affordable Housing" at clause 2.10 and replacing it with:

"Affordable Housing" means housing that complies with the definition of "Affordable housing " set out in Annex 2 of the NPPF
- (c) adding following definitions (in the appropriate order):

"Affordable Housing Commuted Sum" means the sum of one million one hundred and twenty thousand pounds (£1,120,000) being eighty thousand pounds (£80,000) for each Affordable Housing Unit

"Affordable Housing Unit" means any Residential Unit for use as Affordable Housing in accordance with Schedule 6 and "Affordable Housing Units" shall mean all of them

"Affordable Rent" means a rent that complies with the definition of "Affordable housing for rent" set out in Annex 2 of the NPPF and with the rent standard for affordable rent set by the Regulator for Social Housing from time to time

"Chargee" means any mortgagee or chargee from time to time or any receiver (including 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 of the whole or any part of the Affordable Housing Unit(s) or any persons or bodies deriving title through such mortgagee or chargee or receiver

"District" means the local government district of Arun in the county of West Sussex

"NPPF" means the National Planning Policy Framework first published on 27 March 2012 and updated on 19 February 2019 and shall include any subsequent revisions or replacement thereof

"Management Company" means a company or other body established or appointed by the Owner to manage and maintain the Public Open Space

"Qualifying Occupier" means persons who qualify for Affordable Housing within Schedule 6 of this Agreement and including residents of the Arun District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income or in the case of any starter homes who meet the statutory criteria for occupation of any such dwellings

"Residential Unit" means an individual dwelling comprised in the Development

"RP" means: a body registered as a provider of social housing under Part 2 of the Housing and Regeneration Act 2008 or such other body as may be constituted for under any legislation replacing that provision and which body is approved by ADC

"Social Rent" means a rent that complies with the definition of "Affordable housing for rent" set out in Annex 2 of the NPPF and with the rent standard for social rent set by the Regulator for Social Housing from time to time

"Market Housing Unit" means any Residential Unit that is not an Affordable Housing Unit'

and the existing definitions shall be renumbered accordingly.

1.2 Clause 4 of the Original Agreement shall be amended by:

(a) deleting clause 4.2 and replacing it with:

'4.2 No party (including the Applicant) shall be liable for any breach of this Agreement after that party shall have parted with their interest in the Land or that part of the Land to which such breach relates.'

(b) inserting the following clause after clause 4.2:

'4.3 This Agreement shall not be enforceable against:

4.3.1 owner-occupiers or tenants of individual Market Housing Units (including their mortgagees or chargees) or those deriving title from such persons;

4.3.2 owner-occupiers or tenants of individual Affordable Housing Units (including their mortgagees or chargees) or those deriving title from such persons but excluding the provisions of paragraph 1.4 of Schedule 6; and

4.3.3 any statutory undertaker or authority which acquires any part of the Land or interest in it for the purposes of its statutory undertaking or functions'

1.3 Clause 6 of the Original Agreement shall be amended by deleting clauses 6.4 and 6.5 and replacing them with:

'6.4 Within three (3) months of the date on which the works specified in clause 6.3 are completed the Owner shall either:

6.4.1 transfer the freehold estate in the Public Open Space to the Management Company; or

6.4.2 procure the management and maintenance of the Public Open Space by the Management Company'

1.4 Clause 7 of the Original Agreement shall be amended by:

(a) in clause 7.1.1 the figure £35,000 shall be deleted and replaced by 'thirty two thousand three hundred and seven pounds and sixty nine pence (£32,307.69)'

(b) in clause 7.1.2 the figure £20,592 shall be deleted and replaced by 'nineteen thousand and eight pounds' (£19,008)'

(c) in clause 7.1.3 the figure £37,557 shall be deleted and replaced by 'thirty four thousand six hundred and sixty eight pounds (£34,668)'

(d) in clause 7.1.4 the figure £140,000 shall be deleted and replaced by 'one hundred and twenty nine thousand two hundred and thirty pounds and seventy seven pence (£129,230.77)'

1.5 Clause 8 of the Original Agreement shall be amended by:

(a) deleting the word 'and' in clause 8.1.2; and

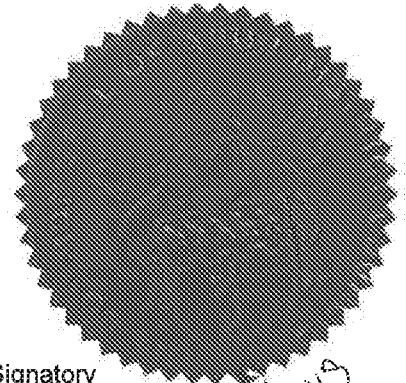
(b) deleting clause 8.1.3

1.6 Schedule 6 of the Original Agreement shall be deleted and replaced by the provisions attached to this Deed as Annexure 1.

SEALED with the COMMON SEAL
of ARUN DISTRICT COUNCIL
in the presence of:



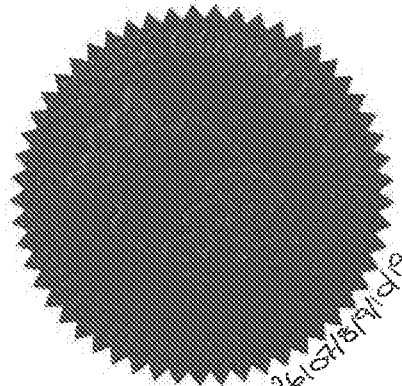
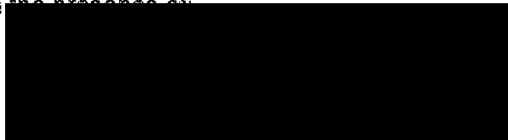
SALLY SUGDEN
CONTRACTS LAWYER



Authorised Signatory

29/5/2019

SEALED with the COMMON SEAL
of WEST SUSSEX COUNTY COUNCIL
in the presence of:



Authorised Signatory

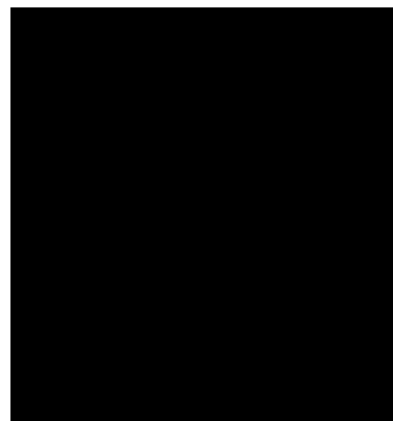
26/07/2019/19/19

Executed as a deed by **WINDROOS DEVELOPMENTS LIMITED** a company incorporated in the Isle of Man acting by **PETER KEVIN COWIN** and **ANTHONY JOSEPH CAGNEY** who in accordance with the laws of that territory is/are acting under the authority of the company;

Signature in the name of the company
Windroos Developments Limited

Signature of

Authorised signatory/signatories



Executed as a deed by HSBC BANK PLC)
acting by an authorised signatory of its duly)
authorised attorney HSBC UK BANK PLC,)
pursuant to a power of attorney granted to)
HSBC UK Bank plc dated 1 July 2018.)

Authorised signatory:)

..... for and on behalf
of HSBC UK BANK PLC pursuant to a power
of attorney granted to

..... HSBC UK Bank

plc dated 12 JUNE 2019.

in the presence of:

Witness Signature

Witness Name:

Sylvie Soussamian
HSBC UK Bank plc

Witness Address:

Corporate Banking Real Estate
4th Floor

Witness Occupation

120 Edmund Street
Birmingham
B3 2QZ

Annexure 1
SCHEDULE 6: Affordable Housing provisions applicable to the Development

The Owner agrees with ADC:-

1 Obligation to provide affordable housing

1.1 to provide the Affordable Housing Units as follows:

Tenure	Number	Property Mix	Plots
Affordable Rent	14	12 x 2-bedroom apartments	73 – 84
		2 x 2-bedroom houses	51, 52

1.2 to procure that the Affordable Housing Units are completed no later than the date on which the last of the Market Housing Units is completed;

1.3 (unless otherwise agreed in writing with ADC) not to Occupy or allow or permit the Occupation of more than twenty five per cent (25%) of the Market Housing Units without first having procured the disposal of the Affordable Housing Units (either freehold or leasehold for a period of not less than one hundred and twenty five (125) years) to ADC on such terms as the parties may agree but which ensure the Affordable Housing Units are and remain bound by the obligations in this Schedule (subject to paragraphs 2, 4.2 and 5 of this Schedule).

1.4 with effect from the date on which the Affordable Housing Units are completed (and subject to paragraphs 2, 4.2 and 5 of this Schedule) the Affordable Housing Units shall not be Occupied other than by Qualifying Occupiers and for the avoidance of doubt this restriction shall apply not just to the first occupier of any of the Affordable Housing Units but to all subsequent occupiers of them.

2 Commuted Sum

2.1 Paragraphs 2.1 to 2.3 of this Schedule 6 shall only apply in the event the Affordable Housing Units have not been disposed of to ADC prior to the Occupation of twenty five per cent (25%) of the Market Housing Units.

2.2 In the event the Owner pays the Affordable Housing Commuted Sum to ADC in accordance with paragraph 2.3 of this Schedule 6 then the Affordable Housing Units shall thereafter be released from the obligations contained in this Schedule 6 which shall cease and determine absolutely.

2.3 The Affordable Housing Commuted Sum shall be payable to ADC in full prior to the Occupation of twenty five per cent (25%) of the Market Housing Units

3 Nomination rights

3.1 In the event the Affordable Housing Units are disposed of to an RP to procure that the RP grants nomination rights to ADC on first occupation of one hundred per cent (100%) of the Affordable Housing Units and at least seventy five per cent (75%) on each subsequent Occupation (PROVIDED THAT if ADC do not accept such offer then the RP shall in seeking to allocate Affordable Housing Units have regard as far as possible to the following criteria:

- (a) any family association in the said administrative area in accordance with relevant housing association policies
- (b) any period of ordinary residence in the said administrative area not immediately before the date on which any unit of accommodation becomes vacant

- (c) any employment opportunity in the locality
- (d) any other connection with the locality

But so that for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by the body responsible for the allocation of the Affordable Housing Units from time to time)

4 Further provisions

- 4.1 Nothing in this Deed shall be construed as imposing or otherwise implying any obligation on ADC to grant or make available any public subsidy or other financial support (or to assist the Owner or Applicant in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units;
- 4.2 The provisions of this Schedule above shall cease to bind any of the Affordable Housing Units if in relation to that Affordable Housing Unit:
 - (a) a statutory right to buy or right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment or replacement thereof or any additional statutory scheme) has been exercised; and
 - (b) in the event of any dispute as to whether any proposed occupier of any Affordable Housing Unit is a Qualifying Occupier the matter shall be determined by ADC (acting reasonably)

5 Mortgagee in Possession

- 5.1 The provisions relating to the Affordable Housing Units in this Deed shall not be binding on a Chargee PROVIDED THAT any Chargee shall prior to seeking to dispose of all or any of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give written notice to ADC of its intention to dispose and:
 - (i) in the event that ADC responds within four weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard it as an Affordable Housing Unit(s) then the Chargee shall use reasonable endeavours to complete such transfer provided that the Chargee shall be under no obligation to dispose of the Affordable Housing Unit(s) for an amount less than the sum outstanding under the terms of the relevant security documentation together with all accrued costs, interest and expense
 - (ii) if ADC does not serve its response to the notice served within four (4) weeks then the Chargee shall be entitled to dispose of Affordable Housing Unit(s) free of the restrictions set out in this Schedule 6 which shall determine absolutely in respect of such Affordable Housing Unit(s)
 - (iii) if ADC or any other person cannot within four (4) weeks of the date of service of its response complete such transfer of the Affordable Housing Unit(s) then provided that the Chargee shall have complied with its obligations in paragraph (i) of this further proviso then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 6 which shall determine absolutely in respect of such Affordable Housing Unit(s)