

DATED 9th August 2022

- (1) ARUN DISTRICT COUNCIL
- (2) FUTURE GROUP DEVELOPMENT LIMITED
- (3) BELVEDERE SECURITY LIMITED

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

Relating to

Land at the rear of Inglenook Hotel 253-255 Pagham Road Pagham (known as Land
lying to the West of Pagham Road, Bognor Regis)

Planning Ref(s): P/58/19/PL

Appeal Ref: W/4001476

Arun District Council
The Civic Centre
Maltravers Road
LITTLEHAMPTON
BN17 5LF
DX57406 LITTLEHAMPTON

Ref: 8824

Date: 9th August 2022

PARTIES:

- 1 **ARUN DISTRICT COUNCIL** of The Civic Centre, Maltravers Road, LITTLEHAMPTON BN17 5LF ("the Council")
- 2 **FUTURE GROUP DEVELOPMENT LIMITED** incorporated and registered in England and Wales with company number 13175698 whose registered office is at 303 Goring Road, Goring-By-Sea, Worthing, England, BN12 4NX ("the Owner")
- 3 **BELVEDERE SECURITY LIMITED** a company incorporated in England and Wales (registered number 09175130) and whose registered office is at 3rd Floor, The News Building, 3 London Bridge Street, London, SE1 9SG ("the Mortgagee")

WHEREAS

1. The Council is the Local Planning Authority for the area in which the Property is situated.
2. The Former Owner transferred title number WSX400712 (comprising the Property in the Section 106 Unilateral Undertaking) to the Owner on 24 September 2021.
3. The Owner is the freehold owner of the Property which is registered with the Land Registry under title number WSX400712 subject to a legal charge in favour of the Mortgagee dated 24 September 2021.
4. The Mortgagee has the benefit of a legal charge over the Property and has agreed to enter into this Deed to give its consent to the terms set out herein.
5. On 4 July 2019 the Former Owner entered into the Section 106 Unilateral Undertaking in favour of the Council in connection with Planning Application number P/58/19/PL. Following completion of that Deed Planning Permission was granted pursuant to the Appeal Decision.
6. This Deed is supplemental to and to the extent that its contents so provide, varies the Section 106 Unilateral Undertaking to the extent only that the Section 106 Unilateral Undertaking relates to the Property.

7. The provisions of this Deed bind the Property, the parties to this Deed and their successors in title.
8. The Owner, the Council and the Mortgagee have entered into this Deed pursuant to the provisions of the Operative Acts upon the terms and conditions hereinafter appearing.
9. The Owner, the Council and the Mortgagee have agreed to amend the Section 106 Unilateral Undertaking.
10. This is made as a Deed.

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

- 1.1 In this Deed unless otherwise stated the following expressions shall where the context so admits have the following meanings:

1.1.1 **"Appeal Decision"** means the decision of the Planning Inspector dated 18 December 2020 granting Planning Permission for the Development pursuant to appeal reference W/4001476.

1.1.2. **"Former Owner"** means Anthony Stephen Honour being the former owner of the Property.

1.1.3. **"Property"** means the land at the rear of Inglenook Hotel 253-255, Pagham Road, Pagham (known as Land lying to the West of Pagham Road, Bognor Regis), registered at the Land Registry under title number WSX400712.

1.1.4. **"Operative Acts"** means Sections 106 and 106A of the Act and Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and Section 8, 9 and 609 of the Housing Act 1985

1.1.5 **"Planning Permission"** means the planning permission issued on 18 December 2020 pursuant to the Appeal Decision under appeal reference W/4001476.

1.1.6. **"Section 106** means the Deed dated 4 July 2019
Unilateral Undertaking" by the Former Owner in favour of the Council in
relation to the Planning Permission.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Section 106 Unilateral Undertaking 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 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 Unilateral Undertaking with the intention that the

planning obligations contained in the Section 106 Unilateral Undertaking shall also apply to development to be undertaken 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 in accordance with Section 106 of the Act as local planning authority against the Owner.

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

3. Commencement

This Deed shall come into effect on the date hereof.

4. Variation of the Section 106 Unilateral Undertaking

4.1 The parties agree that the Section 106 Unilateral Undertaking shall be varied as follows:

4.1.1		The definition of 'Planning Permission' in clause 1.1 shall be amended as follows: <i>"means a Planning Permission for the Development pursuant to the Planning Application".</i>
4.1.2		A new definition of 'Section 73 Consent' shall be inserted in clause 1.1 as follows: <i>"Section 73 Consent means any approval or consent given by the Council under Section 73 of the TCPA 1990."</i>
4.1.3		A new definition of 'Planning Obligations' shall be inserted in clause 1.1 as follows: <i>'Planning Obligations means the obligations set out in clause 3 and "Planning Obligation" shall be construed accordingly'.</i>
4.1.4		A new clause 13 shall be inserted as follows: <i>13.1 Subject to clauses 13.2 and 13.5 below, if any Section 73 Consent is granted after the date of this Section 106 Unilateral Undertaking:</i> <i>13.1.1 the Planning Obligations in this Section 106 Unilateral Undertaking shall relate to and bind such Section 73 Consent; and</i> <i>13.1.2 the definitions of Planning Application, Development and Planning Permission shall be construed to include reference to (respectively) the planning application for the</i>

		<i>Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself;</i> <i>13.2 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;</i> <i>13.3 to the extent that any of the Planning Obligations in this Section 106 Unilateral Undertaking have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;</i> <i>13.4 the provisions of this clause 13 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or Planning Obligations of or contained within this Section 106 Unilateral Undertaking;</i> <i>13.5 The Council reserves the right to insist upon the completion of a separate Planning Obligation by Section 106 Unilateral Undertaking in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.</i>

5. Continuation of the terms of the Section 106 Unilateral Undertaking

It is hereby agreed and declared by the Council, the Owner and the Mortgagee that saving and excepting as expressly provided for by the provisions of this Deed the covenants and provisions contained in the Section 106 Unilateral Undertaking 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 Council's reasonable legal costs and disbursements in connection with this Deed.

7. Mortgagee consent

- 7.1 The Mortgagee hereby consents to the completion of this Deed and agrees that the security of the mortgage over the Property shall take effect subject to this Deed. For the avoidance of doubt the Mortgagee shall only be bound by the Owner's obligations in this Deed in the event that it becomes a mortgagee in possession of the Property.

8. Miscellaneous

- 8.1 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.
- 8.2 Upon completion this Deed shall be registered as a Local Land Charge by the Council.

9. 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 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:

Seal Book No. 332/222.

EXECUTED as a DEED by (BRIAN HEARN)

FUTURE GROUP DEVELOPMENT LIMITED

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS) WINSTON CHEVR

Address 3 EIGHT ROAD

WORTHING, BN14 9HQ

EXECUTED as a DEED by

BELVEDERE SECURITY LIMITED

in the presence of:-



Signature of witness



Name (in BLOCK CAPITALS) CLAUDIA...CATRVOO.....

Address THE NEWS BUILDING, 3 LONDON.....

BRIDGE STREET, LONDON, SE1 9SG.....

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