

DATED 29<sup>TH</sup> APRIL 2021

- (1) SOUTH DOWNS NATIONAL PARK AUTHORITY  
(2) WILLIAM NORTHCROFT BUTLER AND JAMES NICHOLAS BUTLER  
(3) H N BUTLER FARMS LIMITED

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**DEED OF VARIATION**

Relating to a Section 106 Agreement dated 16 February 2021  
Land at Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW

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**SHOOSMITHS**

Shoosmiths LLP  
Forum 5  
The Forum  
Parkway  
Whiteley  
Fareham  
PO15 7PA

Ref. M-00874165

**THIS DEED** is made on

2021

**BETWEEN**

- 1 **SOUTH DOWNS NATIONAL PARK AUTHORITY**, of South Downs Centre, North Street, Midhurst, West Sussex GU29 9DH (the **“Authority”**), and
- 2 **WILLIAM NORTHCROFT BUTLER** of The Cart House East Meon, Petersfield GU32 1HW and **JAMES NICHOLAS BUTLER** of Whitewool Farm, East Meon, Petersfield GU32 1HW (the **“Owner”**)
- 3 **H N BUTLER FARMS LIMITED**, a company incorporated in England and Wales (company number 00554785) whose registered office is at Whitewool Farm, East Meon, Petersfield GU32 1HW (the **“Tenant”**)

**BACKGROUND**

- (A) The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title number SH21605 at the date of this Deed
- (B) The Tenant occupies the Site under the terms of a lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler ‘N’ Settlement and (2) H N Butler Farms Limited
- (C) The Authority is the local planning authority for the purposes of the Act for the area in which the Site is situated
- (D) The Authority, the Owner and the Tenant entered into the Principal Deed on 16 February 2021 in connection with the Application for planning permission to carry out the Development of the Site
- (E) Planning Permission for the Development was granted on 17 February 2021
- (F) This Deed of Variation is supplemental to and varies the Principal Deed with the effect that the Principal Deed has immediate effect and is no longer conditional upon Commencement of the Development

The parties agree as follows

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 Save where expressly stated otherwise, words and expressions used in this Deed of Variation including the Recitals shall have the same meaning as defined in the Principal Deed
- 1.2 Unless the context otherwise requires, references in this Deed of Variation to "the parties" shall mean the parties to this Deed of Variation
- 1.3 Where in this Deed of Variation the following defined terms are used they shall have the following meanings

**“Principal Deed”** the Section 106 Agreement between (1) South Downs National Park Authority (2) William Northcroft Butler and

- 1 4 Where in this Deed of Variation reference is made to any clause, paragraph or Schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or Schedule or recital in this Deed of Variation
- 1 5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1 6 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 1 7 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 1 8 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all Instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it
- 1 9 References to any party to this Deed of Variation shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council (in its capacity as local planning authority) the successors to its respective statutory functions
- 1 10 Insofar as any clause or clauses of this deed of variation are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed of Variation

## **2 VARIATION OF THE PRINCIPAL DEED**

- 2 1 The parties agree that with effect from the date of this Deed of Variation the Principal Deed shall be modified in accordance with the further provisions of this Clause 2 and the parties covenant to observe and perform or cause to be observed and performed their obligations contained in the Principal Deed as amended by this Deed of Variation
- 2 2 In Clause 1 of the Principal Deed
- 2 2 1 the definition of "Commencement Date" shall be amended by the addition of the words  
", Commencement" after "Commence",
- 2 2 2 a new definition of "Operational" shall be inserted with the meaning "in relation to the Development, that the Development is in existence and is functioning in accordance with the Landscape and Ecological Management Plan"
- 2 3 Clause 4 1 of the Principal Agreement shall be deleted and replaced as follows
- "4 1 This Agreement will take effect immediately upon completion of this Agreement "*

2 4 Paragraph 3 2 of Schedule 1 to the Principal Deed shall be amended by the addition of the words "(Subject to Paragraph 5 6 of this Schedule)" at the beginning of the paragraph

2 5 New Paragraph 5 6 and 5 7 and 5 8 shall be inserted into Schedule 1 to the Principal Deed as follows

*"5 6 For avoidance of doubt, the Tenant and/or the Owner may enter into any one or more Allocation Agreements prior to Commencement of the Development and/or prior to the Development being Operational PROVIDED ALWAYS THAT in the event that such Allocation Agreement requires Nitrate Mitigation prior to Capacity being made available through the Development the Tenant and/or the Owner shall confirm in writing to the Authority for the Authority's written approval (which must include a signed plan and a Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 where appropriate) the action they intend to take to ensure that such requirement for Nitrate Mitigation is met by taking land within the ownership of the Tenant and/or Owner out of agricultural use at a minimum rate of 36 2 kgTN/yr per hectare such rate to be subject to a proportionate and reasonable assessment at the relevant time based on current Natural England published guidance and any other material considerations until the earlier of*

*5 6 1 the expiry of the lifetime of all such off-site developments which have entered into Allocation Agreements and rely upon the Site for Nitrate Mitigation, or*

*5 6 2 Capacity being made available through the Development and being Allocated to all such off-site developments pursuant to paragraph 5 8,*

*AND FOR THE AVOIDANCE OF DOUBT the aggregate Allocation of the Allocation Agreements shall not exceed the Capacity*

*5 7 In the event that the provisions of Paragraph 5 6 apply, the Tenant and/or the Owner shall comply with the provisions of Clause 3 1 by submitting a copy of each Allocation Agreement entered into along with a Capacity Monitoring Report within twenty working days of*

*5 7 1 entering into the Allocation Agreement (in which case the Capacity Monitoring Report shall be modified as necessary to confirm the Nitrate Mitigation requirements of the Qualifying Development and the area of land taken out of agricultural use to meet such Nitrate Mitigation requirements), and*

*5 7 2 Capacity being made available through the Development and being Allocated to the Qualifying Development pursuant to paragraph 5 8*

*5 8 Within 20 Working Days following Capacity being made available through the Development the Tenant and/or the Owner shall in relation to each and every Allocation Agreement entered into pursuant to Paragraph 5 6, Allocate the requisite portion of the Capacity in the Development to the relevant off-site development(s) and shall submit a Capacity Monitoring Report to the Authority confirming this in accordance with Paragraph 5 7 2"*

### **3 THIRD PARTIES**

3 1 No term of this Deed of Variation shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed (or a successor in title to such person)

**4 EXECUTION**

- 4.1 The parties have executed this Deed of Variation as a deed and it is delivered on the date set out at the front of this Deed of Variation.
- 4.2 This Deed of Variation may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**5 JURISDICTION**

- 5.1 This Deed of Variation is governed by and shall be implemented in accordance with the law of England.
- 5.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or settle any disputes, which may arise out of or in any way relate to this Deed of Variation or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

**IN WITNESS** whereof the parties have executed this Deed of Variation and delivered it on the day and year first above written.

THE COMMON SEAL of

SOUTH DOWNS NATIONAL

PARK AUTHORITY was hereunto affixed

in the presence of:



SIGNED AS A DEED by



WILLIAM NORTHCROFT BUTLER

in the presence of

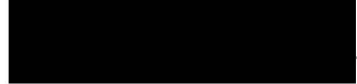
Greg Adlam .....

(full name of witness)

(signature)

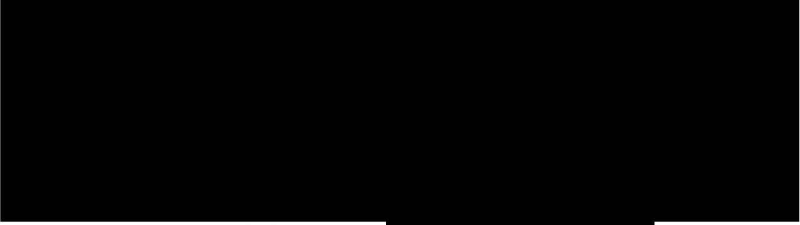


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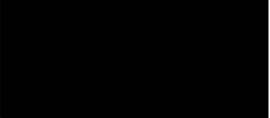


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SIGNED AS A DEED by



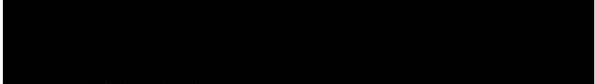
JAMES NICHOLAS BUTLER

in the presence of

Greg Adlam .....

(full name of witness)

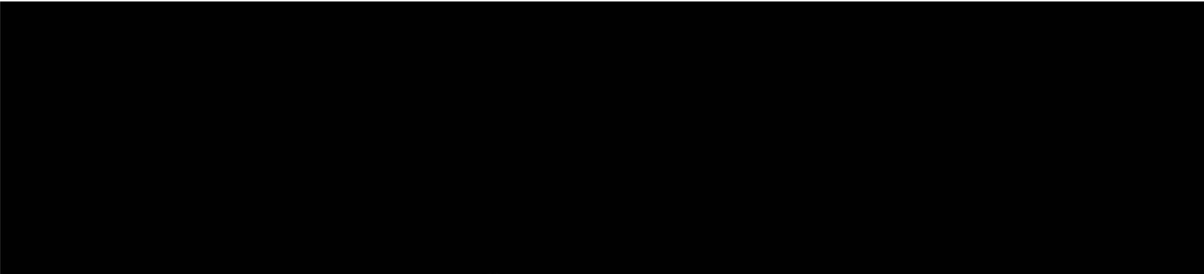
(signature)



(signature of witness)



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SIGNED AS A DEED by

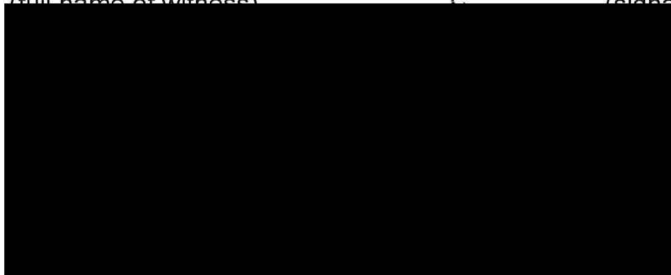
H N BUTLER FARMS LIMITED

in the presence of

..... *Greg Adlan* .....

(full name of witness)

(signature)



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