

Dated

19th July

2022

(1) SOUTH HOLLAND DISTRICT COUNCIL

and

(2) ASHLEY KING (DEVELOPMENTS) LIMITED

and

(3) HSBC UK BANK PLC

DEED OF VARIATION

Sections 106 and 106A of the Town and Country Planning Act 1990

Relating to a Section 106 Agreement at James Road, Crowland

THIS AGREEMENT IS SIGNED IN COUNTERPARTS

**South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE**

SHDC Reference: LD/H02-0406-22

Date

19th July

2022

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **ASHLEY KING (DEVELOPMENTS LIMITED)** (Company registration number 04242280) whose registered office is 1 Goodison Road, Lincs Gateway Business Park, Spalding, Lincolnshire, England PE12 6FY ("the Owner").
- (3) **HSBC UK BANK PLC** (Company registration number 09928412) whose registered office is 1 Centenary Square, Birmingham, B1 1HQ ("the Mortgagee").

BACKGROUND

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the Land registered under title number LL404792
- (C) The Mortgagee has the benefit of a charge dated 07 May 2021 and registered on 04 June 2021 against title number LL404792 as listed at entry 1 of the Charges Register of the freehold title.
- (D) On 12 December 2019 the Council entered into the Original Agreement with Crowland Parish Council and Seagate Homes Crowland Limited.
- (E) The purpose of this Deed is to secure amendments to include a mortgagee protection clause within the Original Agreement
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.
- (G) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.
- (H) This Deed is made under sections 106 and 106A of the Act and is supplemental to the Original Agreement.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Original Agreement"	means the agreement made under section 106 of the Act relating to land at James Road, Crowland and made between (1) the Council (2) Crowland Parish Council and (3) Seagate Homes Crowland Limited dated 12 December 2019
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2. CONSTRUCTION OF THIS DEED

- 2.1 Unless the context otherwise requires and save as herein varied all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.
- 2.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 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
- 2.5 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.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Land or any part thereof and in the case of the Council, successors to their functions.

3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers with the intent that the covenants and obligations shall run with the Land.
- 3.2 This Deed shall take effect upon the date that it is dated.

4. **VARIATIONS TO THE ORIGINAL AGREEMENT**

- 4.1 A new clause is to be added after clause 16 as follows:

17. **MORTGAGEE**

Any mortgage or charge over the Land or any part of it created following completion of this Deed shall take effect subject to this Deed **PROVIDED THAT** any such mortgagee or chargee with an interest in the Land from time to time shall have no liability under this Deed unless it takes possession of the Land or any part of it pursuant to the relevant mortgage or charge in which case it too will be bound by the obligations of this Deed as if it were a person deriving title from the Owner.

- 4.2 In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

5. **THE OWNER'S COVENANTS**

- 5.1 The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

6. **MORTGAGEE CONSENT**

- 6.1 The Mortgagee acknowledges that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the Mortgagee over the Land shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall otherwise have no liability under this Deed (and for the avoidance of doubt no liability under the Original Agreement) unless it takes possession of the Land

in which case it too will be bound by the obligations as if it were a person deriving title from the Owner and **FURTHER PROVIDED THAT** the Mortgagee shall only be liable for any breach of the obligations in this Deed (or in the Original Agreement) if such a breach was caused by the Mortgagee whilst in possession of the Land and shall not be liable for any pre-existing breach.

7. LOCAL LAND CHARGE

7.1 This Deed shall be registerable as a local land charge by the Council.

8. COUNCIL'S COSTS

8.1 On completion of this Deed, the Owner shall pay to the Council their reasonable legal costs together with all disbursements that have been incurred in the negotiation and completion of this Deed.

9. VAT

9.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner and not the Council.

10. THIRD PARTY RIGHTS

10.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

11. JURISDICTION

11.1 This Deed is governed by and interpreted in accordance with the laws of England.

12. EXECUTION AND DELIVERY

This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written.

13. COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicated original, but all counterparts together shall constitute the one agreement.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

The **COMMON SEAL** of **SOUTH
HOLLAND DISTRICT COUNCIL**

was hereunto affixed

in the presence of:-



Authorised Signatory

**SIGNED as a DEED by
ASHLEY KING (DEVELOPMENTS)LIMITED**

Director Signature.....

In the presence of a Witness:

Signature.....

Witness Name:

Address:

Occupation:

IN WITNESS WHEREOF this document
which is intended to take effect as a Deed
has been duly executed by a duly authorised
Official of **HSBC UK Bank plc** as Attorney of
HSBC UK Bank plc on the date and year first
above written.

SIGNED as a DEED)

By:)

)

As Attorney for
HSBC UK BANK PLC

In the presence of:

Witness (Signature):

Name (IN BLOCK CAPITALS):

Witness Address:

Witness Occupation: