

Dated

9 March 2021

2021

(1) South Holland District Council

and

(2) Churchfield Developments Ltd

DEED OF VARIATION

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

**Relating to land at the former South View Primary School,
Albion Street, Crowland**

THIS AGREEMENT IS SIGNED IN COUNTERPART

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

SHDC Reference: LD/H02-0408-21

Date

9 March 2021

2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **CHURCHFIELD DEVELOPMENTS LTD** (Company Registration No. 06040924) of 15 Station Road, St. Ives, Cambridgeshire, PE27 5BH ("the Owner")

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) On 30 June 2020 the Council and the Owner entered into the Original Agreement.
- (C) The Owner has submitted to the Council the Modification Application to amend the triggers for the Affordable Housing contained in the Original Agreement
- (D) 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.
- (E) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.
- (F) This agreement 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 the former South View Primary School,
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	Albion Street, Crowland dated 30 June 2020 and made between (1) the Council and (2) the Owner
"Modification Application"	means the application for the modification of the planning obligations contained in the Original Agreement and submitted by the Owner to the Council on 19 April 2021 and allocated the Council's reference number H02-0408-21

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 its 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.

4. VARIATIONS TO THE ORIGINAL AGREEMENT

4.1 The Following definitions shall be added to the Original Agreement

"Original Agreement"	means the agreement made under section 106 of the Act relating to the former South View Primary School, Albion Street, Crowland dated 30 June 2020 and made between (1) the Council and (2) the Owner
"Modification Application"	means the application for the modification of the planning obligations contained in the Original Agreement and submitted by the Owner to the Council on 19 April 2021 and allocated the Council's reference number H02-0408-21

4.2 The definition of "Planning Permission" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Permission"	means the Original Planning Permission or the Section 73 Permission granted by the Council for the Development pursuant to the Applications or such other planning permissions for the Development granted pursuant to sections 73 or 96A of the 1990 Act
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4.3 The following Clause shall be inserted after Clause 8.12 of the Original Agreement to the Original Agreement:

“8.13 *It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the Act this Deed shall continue to bind the Development and shall be in full force and effect subject to and in accordance with the provisions contained herein and shall in addition bind the Development in respect of any subsequent planning permission granted pursuant to section 73 of the Act **AND PROVIDED THAT** in the event that upon receipt of an application under section 73 of the Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council should retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.”*

4.4 Paragraph 1.1 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

“Not to Occupy or permit the Occupation of more than 80% of the Market Dwellings until the construction of all Affordable Dwellings have been commenced in accordance with the Affordable Housing Scheme and written notification of that commencement has been received by the Council.”

4.5 Paragraph 1.2 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

“Not to Occupy or permit the Occupation of more than 80% of the Market Dwellings until the construction of the Rented Housing has been certified Practically Complete and has been transferred to the Affordable Housing Provider and the Discounted Market Sales Dwellings are ready for Occupation

4.6 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. LOCAL LAND CHARGE

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

7. COUNCIL'S COSTS

- 7.1 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

8. VAT

- 8.1 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.

9. THIRD PARTY RIGHTS

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

10. JURISDICTION

- 10.1 This Deed is governed by and interpreted in accordance with the laws of England and Wales

11. EXECUTION AND DELIVERY

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

12. COUNTERPART

This Deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicated original, but all the 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
CHURCHFIELD DEVELOPMENTS
LTD acting by a Director and its
Secretary or two Directors

Signature of Director

X 

X

Signature of Secretary/Director

X 

X