H02-0452-20

Dated 12th August **2020**

(1) TINA ELIZABETH HUNTER-SHAW

and

(2) JANE MARGARET VEES

and

(3) HELEN VICTORIA FYFE

and

(4) ROGER JACKSON SPEECHLEY

and

(5) SOUTH HOLLAND DISTRICT COUNCIL

and

(6) LINCOLNSHIRE COUNTY COUNCIL

DEED OF VARIATION
Sections 106 and 106A of the Town and Country Planning Act 1990

Relating to a Section 106 Agreement for land east of Crease Drove, Crowland

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

SHDC Reference: LD/H02-00452-20

Date 12TH August 2020

BETWEEN

(1) **TINA ELIZABETH HUNTER-SHAW** of Field Farm, Wheatley Road, Clayworth, Retford, DN22 9AL; and

(2) **JANE MARGARET VEES** of 29 Peterborough Road, Crowland, Peterborough, PE6 0BB; and

(3) **HELEN VICTORIA FYFE** of 71 Knowles Hill Road, Newton Abbott, Devon TQ12 2PP; and

(4) **ROGER JACKSON SPEECHLEY** of 3 Aston Park, Aston Rowant, Thame, Oxon, OX49 5SW

(jointly referred to as "the Owner"); and

(5) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and

(6) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln LN1 1YL ("the County Council").

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 LL262755.

(C) On 21st August 2017 the Owner entered into the Original Agreement by way of Unilateral Undertaking in favour of the Council and the County Council.

(D) The purpose of this Deed is to secure amendments to the Affordable Housing provisions within the Original Agreement to reflect a change in tenure from Social Rented Units to Affordable Rented Units and to also incorporate an appropriate mortgagee exclusion clause in relation to the Affordable Housing Units.

(E) 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.

(F) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.

(G) 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 east of Crease Drove, Crowland dated 21st August 2017 and by (1) the Owner to (2) the Council and (3) the County Council

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 District Council and the County 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 implementation of planning permission for reserved matters reference H02-0079-20 dated 11 June 2020.

4. VARIATIONS TO THE ORIGINAL AGREEMENT

4.1 The definition "Affordable Housing Units" in clause 1 in the Original Agreement shall be deleted and replaced with the following:

"Affordable Housing Units"	means affordable housing as described in Annex 2 of the National Planning Policy Framework dated February 2019, or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede and will include Intermediate Ownership Units and Affordable Rented Units or such other form of tenure and mix of affordable housing as may be reasonably agreed with the Council in writing.

4.2 The phrase "RSL" in Clause 1 in the Original Agreement shall be deleted and replaced with the following:

"Affordable Housing Provider"	means (a) a body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) (b) a provider (pursuant to Part 2 of the Housing and Regeneration Act 2008) registered with Homes England or (c) an alternative affordable housing provider (including but not limited to a housing trust or company, a community land trust or an almshouses society) which has been approved by the Council in writing (such approval not to be unreasonably withheld or delayed).

4.3 The phrase "Social Rented Units" in Clause 1 in the Original Agreement shall be deleted and replaced with the following:

"Affordable Rented Units"	means an Affordable Dwelling rented to an Eligible Household by a local authority or an Affordable Housing Provider subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) and where the rent and service charge must not exceed the local housing allowance for the relevant area which is reviewed annually and "Affordable Rent" shall be construed accordingly.

4.4 The phrase "Affordable Housing Scheme" shall be inserted in clause 1 in the Original Agreement as follows:

"Affordable Housing Scheme"	means the scheme for securing the Affordable Housing Units and detailing the design, tenure,

	mix, size and location of the Affordable Housing Units to be provided as part of the Development together with the identity of the Affordable Housing Provider.

4.5 The phrase "Eligible Household" shall be inserted in clause 1 in the Original Agreement as follows:

"Eligible Household"	means a household whose housing needs are not met by the market at a low cost enough for them to afford. Determined with regard to local incomes and local house prices and who will be proposed as the owners and/or occupiers of an Affordable Housing Unit in accordance with a Nomination Agreement **AND FOR THE AVOIDANCE OF DOUBT** no national or local prioritisation criteria shall apply in respect of Intermediate Ownership Units where those provisions would prevent it from being included on Homes England's National Affordable Housing Programme or any successor programme approved by the Council in writing.

4.6 The phrase "Homes England" shall be inserted in clause 1 in the Original Agreement as follows:

"Homes England"	means the executive non-departmental public body, sponsored by the Ministry of Housing Communities and Local Government and trading as Homes England or such successor body for the time being having or being entitled

	to exercise the power to regulate affordable housing providers now conferred on such organisation under the Housing and Regeneration Act 2008 or any legislation replacing or amending the same.

4.7 A new clause 6.8 shall be inserted into the Original Agreement as follows and the remainder of clause 6 shall be renumbered as appropriate in the Original Agreement;

6.8 "The provisions of Part 1 of the Second Schedule of the Original Agreement and in this Deed shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver appointed by such mortgagee or charge) 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 (each a Receiver) of the whole or any part of the Affordable Housing Unit or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

(1) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit; and

(2) shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit to another registered provider or the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all approved principal monies, interest and costs and expenses; and

(3) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Unit free from the provisions at Part 1 of the Second Schedule in the Original Agreement and in this Deed which provisions shall determine absolutely."

4.8 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. COUNTY COUNCIL'S COSTS

8.1 On completion of this Deed the Owner shall pay to the County 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 District 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.

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

SCHEDULE 1

DRAFT DECISION NOTICE (H02-0452-20)

0452-20

SOUTH HOLLAND DISTRICT COUNCIL

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

Admin 01775 764723
DC Officers 01775 761161
Facsimile 01775 762937

planningadvice@sholland.gov.uk

www.sholland.gov.uk

Rg+P Ltd.
Waterloo House
71 Princess Road West
Leicester
LE1 6TR

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference: H02-0452-20 **Date of Decision:**

Applicant: Longhurst Group
Axiom House
Cottesmore Close
Peterborough
PE3 9TP

Location: Land At Crease Drove Crowland

Description: Modification of 106 Agreement to reflect the requirement for flexibility on the affordable housing requirement - planning approval H02-0723-16

South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):

1 South Holland District Council hereby approve the Modification of the Agreement in accordance with the application and details submitted under s.106A of the Town and Country Planning Act 1990.

Notes:

The determined plans are:
Application Form
100-220/(P)005B

DC_DRAFT_DECISION_ODP.DOT

Phil Norman
Planning and Building Control Manager
South Holland District Council

8th July 2020

BUILDING REGULATIONS:
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

The **COMMON SEAL** of **SOUTH HOLLAND DISTRICT COUNCIL** was hereunto affixed in the presence of:-

Authorised Signatory

The **COMMON SEAL** of **LINCOLNSHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:-

Authorised Signatory

EVAN GRIFFITHS

No. in Seal
6033828
Book

EXECUTED AS A DEED by
TINA ELIZABETH HUNTER-SHAW

In the presence of a Witness:

Signature.....

Witness Name:

Address:

Occupation:

EXECUTED AS A DEED by
JANE MARGARET VEES

In the presence of a Witness:

Signature.....

Witness Name:

Address:

Occupation:

EXECUTED AS A DEED by
HELEN VICTORIA FYFE

In the presence of a Witness:

Signature.....

Witness Name:

Address:

Occupation:

EXECUTED AS A DEED by
ROGER JACKSON SPEECHLEY

In the presence of a Witness:

Signature.....

Witness Name:

Address:

Occupation: