H05-0066-22

Dated 22 June 2022

(1) South Holland District Council

and

(2) Platform Housing Limited

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

Relating to Section 106 Agreement at land off
50 Fleet Road, Fleet, Spalding

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

SHDC Reference: LD/H05-0066-22

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Date 22 June. 2022

BETWEEN

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

(2) **PLATFORM HOUSING LIMITED** of Unit 1700 Solihull Parkway, Birmingham, B37 7YD ("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) The Owner is the freehold owner of the Land registered under title number LL397014 and LL148694

(C) On 12 January 2018 the Council and Trevor John Morriss entered into the Original Agreement.

(D) On 3 December 2021 the Owner purchased the Land from Trevor John Morriss via a sub-sale to Shadow Rise Investments Limited and is the registered proprietor at the Land Registry under title numbers LL148694 and LL397014 and is now the Owner for the purposes of the Original Agreement.

(E) Without prejudice to the terms of the other covenants included in the Original Agreement, the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.

(F) This agreement is made under section 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 off

	50 Fleet Road, Fleet, Holbeach, Spalding dated 12 January 2018 between the Council and Trevor John Morriss

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

"Planning Permission"	means the outline planning permission to be granted by the Council for the Development pursuant to the Application or such other planning permissions for the Development granted pursuant to sections 73 or 96A of the 1990 Act

4.2 Clause 8.10 of the Original Agreement is deleted and replaced with the following:

"8.10 The affordable housing provisions in Schedule 3 of this Deed shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee 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 Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:*

8.10.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings and 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 Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

8.10.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Agreement which provisions shall determine absolutely"

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 1.8 of Schedule 3 in the Original Agreement shall be deleted.

4.5 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 (so far as practicable and lawful) 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

11. 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.

H05-0066-22

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

Authorised Signatory CA Mashew
Deputy Chief Executive

The **COMMON SEAL** of **PLATFORM HOUSING LIMITED** was hereunto affixed in the presence of:-

PHL
4107

Authorised Officers

Dennis Evans
Executive Director
(Property)

Jon Cocker
Chief Information Officer
Technology