Dated 13 October **2021**

(1) South Holland District Council

and

(2) Loosegate Developments Limited

and

(3) Lendinvest Security Trustees Limited

and

(4) Susan Ann Pratt and Janet Haresign

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

Relating to land on the south side of Wignals Gate, Holbeach, Spalding

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

SHDC Reference: LD/H09-0059-21

Date 13 October 2021

BETWEEN

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

(2) **LOOSEGATE DEVELOPMENTS LIMITED** (Company Registration number 10809941) of Browns Yard, Seas End Road, Moulton Loosegate, Spalding, PE12 6JX ("the Owner");

(3) **LENDINVEST SECURITY TRUSTEES LIMITED** (Company Registration Number 08743617) of 8 Mortimer Street, London, W1T 3JJ ("the Mortgagee"); and

(4) **SUSAN ANN PRATT** of 34 Cranmore Lane, Holbeach, Spalding, PE12 7HT and **JANET HARESIGN** of 37 Wignals Gate, Holbeach, Spalding, PE12 7HL ("the Chargees").

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 LL387705.

(C) The Mortgagee is the registered proprietor of the registered charge dated 8th May 2019 at entry number 5 of the charges register of Title Number LL387705

(D) The Chargees are the registered proprietor of the registered charge dated 30 November 2018 at entry number 3 of the charges register of Title Number LL387705

(E) On 14 August 2018 the Council and the Chargees entered into the Original Agreement.

(F) On 24 February 2020 the parties entered into the First Deed of Variation.

(G) The parties hereto have agreed to vary the terms of the Original Agreement as amended by the First Deed of Variation as set out in this Deed.

(H) The purpose of this Deed is to secure an amendment to the payment timeframe for the Education Contribution.

(I) Without prejudice to the terms of the other covenants contained in the Original Agreement as varied by the First Deed of Variation the parties have agreed to

vary the terms of the Original Agreement as varied by the First Deed of Variation as set out in this Deed.

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

(K) This Deed is made under section 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:

"First Deed of Variation"	means the agreement dated 24 February 2020 made under sections 106 and 106A of the Act relating to land on the south side of Wignals Gate, Holbeach, Spalding and made between (1) the Council (2) the Owner (3) the Mortgagee and (4) the Chargees
"Original Agreement"	means the agreement dated 14th August 2019 made under section 106 of the Act relating to land on the south side of Wignals Gate, Holbeach, Spalding and made between (1) the Council and (2) the Chargees

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 date that it is executed

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 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 The following Clause shall be inserted after Clause 8.12 of the Original

Agreement to the Original Agreement:

"It is agreed between the parties that were 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 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."*

4.3 Paragraph 2.1 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

"*2.1 Not to Occupy or permit the Occupation of more than 75% of the Dwellings unless and until the Education Contribution has been paid to the Council in full."*

4.4 In all other respects the Original Agreement (as varied by the First Deed of Variation this Deed) shall remain in full force and effect.

5. THE OWNERS' COVENANTS

5.1 The Owner covenant 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

11. MORTGAGEE'S CONSENT

11.1 The Mortgagee acknowledges that this Deed has been entered into by the Owner with their consent and that the Land is bound by the obligations contained in the Original Agreement (as varied by the First Deed of Variation and this Deed) and that the security of the Mortgagee over the Land registered under Title Number LL387705 shall take effect subject to it **PROVIDED THAT** the Mortgagee shall have no liability under the Original Agreement (as varied by the First Deed of Variation and this Deed) unless it takes possession of the Land in which case it too will be bound by the obligations in the Original Agreement (as varied by the First Deed of Variation and this Deed) as it was if it was a person deriving title from the Owner

12. CHARGEES CONSENT

12.1 The Chargees acknowledge that this Deed has been entered into by the Owner with their consent and that the Land is bound by the obligations contained in the Original Agreement (as varied by the First Deed of Variation and this Deed) and that the security of the Chargees over the Land registered under Title Number LL387705 shall take effect subject to it **PROVIDED THAT** the Chargees shall have no liability under the Original Agreement (as varied by the First Deed of Variation and this Deed) unless it takes possession of the Land in which case it too will be bound by the obligations in the Original Agreement

(as varied by the First Deed of Variation and this Deed) as it was if it was a person deriving title from the Owner

13. 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.

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

Authorised Signatory

13453

EXECUTED as a **DEED** by **LOOSEGATE DEVELPMENTS LIMITED** acting by a Director and its Secretary or two Directors

Director

Secretary/Director

EXECUTED as a **DEED** by
LENDINVEST SECURITY TRUSTEES
LIMITED acting by ~~a Director and~~ its attorney
~~Secretary or two Directors~~

in the presence of:

~~Director~~

~~Secretary/Director~~

SARAH HOLMES
17 Ely Vale Way
BS1 3EY
Solicitor

SIGNED as a **DEED** by
SUSAN ANN PRATT
in the presence of:

Name of Witness: F. J TROTMAN
Signature of Witness:
Address: THE OLD RAVENS CLOUGH PUB PE12 8SL
Occupation: ACUPUNCTURIST

SIGNED as a **DEED** by
JANET HARESIGN
in the presence of:

Name of Witness: F. J. TROTMAN
Signature of Witness:
Address: THE OLD RAVENS CLOUGH PUB PE12 8SL
Occupation: ACUPUNCTURIST