Dated 10th January **2024**

(1) South Holland District Council

and

(2) Seagate Homes (UK) Limited

and

(3) Hampshire Trust Bank Plc

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

Relating to land off Damgate, Holbeach, Spalding

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

SHDC Reference: LD/H09-0372-23

Date 10th January 2024

BETWEEN

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

(2) **SEAGATE HOMES (UK) LIMITED** (Company Registration No. 06620488) of Bulley Davey Ltd, 33 Boston Road South, Holbeach, Spalding, PE12 7LR and of Holbeach Manor, Fleet Road, Holbeach, Spalding, PE12 7AX and of Maples Solicitors LLP, 23 New Road, Spalding, PE11 1DH ("the Owner"); and

(3) **HAMPSHIRE TRUST BANK PLC** (Company Registration No. 1311315) of 55 Bishopsgate, London, EC2N 3AS ("the Mortgagee")

BACKGROUND

(A) The District Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated.

(B) The Owner is the freehold owner of the Land registered at HM Land Registry under Title Number LL316523 which is subject to a Registered Charge in favour of the Mortgagee dated 3 October 2022 referred to in entry number 3 of the charges register of title number LL316523.

(C) On 2 May 2018 the Council and King Bros (Butchers) Limited entered into the Original Agreement.

(D) The parties hereto have agreed to vary the terms of the Original Agreement as set out in this Agreement.

(E) The purpose of this Agreement is to secure an amendment to the affordable housing provisions within the Original Agreement in order to confirm a reduced level of Affordable Housing from 33% to 25% of the total Dwellings to be provided on the Development of the Site pursuant to the S.106A Modification Application and amend the definition of "Affordable Housing Scheme" to allow for flexibility with agreement of the Council.

(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 section 106 and 106A of the 1990 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 1990 Act dated 2 May 2018 relating to land off Damgate, Holbeach, Spalding and made between (1) the Council and (2) King Bros (Butchers) Limited
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the Council and accepted on 18 April 2023 to reduce the number of Affordable Housing from 33% to 25% of the total number of Dwellings to be provided on the Development and allocated reference number H09-0372-23

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 Site 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 1990 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 Site.

3.2 This Deed shall take effect upon the date that it is executed.

4. VARIATIONS TO THE ORIGINAL AGREEMENT

4.1 The following definitions shall be added to the Original Agreement:

"Original Planning Permission"	means the planning permission issued by the District Council and given reference H09-0332-16
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the Council and accepted on 18 April 2023 to reduce the number of Affordable Housing from 33% to 25% of the total number of Dwellings to be provided on

	the Development and allocated reference number H09-0372-23
"S.106A Planning Permission"	means the planning permission issued pursuant to the S.106A Modification Application

4.2 The definition of "Affordable Dwellings" in clause 1 in the Original Agreement shall be deleted and replaced with the followings:

"Affordable Dwellings"	means those Dwellings within the Development comprising Affordable Housing being 25% of the total number of Dwellings to be provided as part of the Development

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

"Affordable Housing Scheme"	means the scheme submitted as part of the Reserved Matters Application for securing the Affordable Housing and detailing the design, mix, size and location of the Affordable Housing to be provided as part of the Development together with the identity of the Affordable Housing Provider of which: (a) 70 % shall be Rented Dwellings; and (b) 30% shall be Intermediate Dwellings (or as otherwise agreed by the Council at its absolute discretion)

4.4 The definition "Application" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"Application"	means the application for Planning Permission for the Development and allocated reference number H09-0332-16 as amended by the S.106A Modification Application

4.5 The definition "Planning Permission" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Permission"	means either the Original Planning Permission as varied by the S.106A Modification Application or such other planning permissions for the Development granted pursuant to section 73 or 96A of the Act

4.6 The definition of "Reserved Matters Application" shall be inserted into Clause 1 to the Original Agreement as follows:

"Reserved Matters Application"	means an application for Reserved Matters Approval pursuant to the Planning Permission

4.7 The definition of "Reserved Matters Approval" shall be inserted into Clause 1 to the Original Agreement as follows:

"Reserved Matters Approval"	means an approval granted by the Council pursuant to the Reserved Matters Application

4.8 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."*

4.9 The draft decision notice for S.106A Planning Permission annexed to this Deed at Schedule 1 shall be added to the Second Schedule of the Original Agreement.

4.10 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'S CONSENT

6.1 The Mortgagee acknowledges and declares 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 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

7. LOCAL LAND CHARGE

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

8. LEGAL COSTS

8.1 The Owner shall pay to the Council on or before the date of this Deed:

(a) the Council their reasonable legal costs of £500 together with all reasonable disbursements that have been incurred in the negotiation and completion of this Deed; and

(b) the sum of £2,750 as a contribution towards the Council's costs in monitoring the implementation 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.

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

12.1 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

EXECUTED as a **DEED** by **SEAGATE HOMES (UK) LIMITED** acting by a Director in the presence of

Signature of Director

Director's Name ADAM MURFET.

Signature of Witness

Witness Name

Witness Address DAVID HICKEN LLB
SOLICITOR
23 NEW ROAD
SPALDING
LINCS
PE11 1DH

Witness Occupation

EXECUTED as a **DEED** by
DARRAN PETER RUSSELL SMITH
as attorney for **HAMPSHIRE TRUST BANK PLC**
under a Power of Attorney dated
13 April 2021 in the presence of

.....
Signature of DARRAN PETER RUSSELL SMITH
as Attorney for HAMPSHIRE
TRUST BANK PLC

Signature of Witness

Witness Name TARA WEATHERSTON

Witness Address

Glovers Solicitors LLP
Fifth Floor, Berkshire House
168-173 High Holborn
London
WC1V 7AA

Witness Occupation PARALEGAL

SCHEDULE 1
DRAFT S.106A PLANNING PERMISSION

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

Seagate Homes
Pudding Lane
Pinchbeck
Spalding
PE11 3TJ

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT

Reference: H09-0372-23 **Date of Decision:**

Applicant: Seagate Homes
Pudding Lane
Pinchbeck
Spalding
PE11 3TJ

Location: Land Off Damgate Holbeach Spalding

Description: Modification of 106 Agreement relating to the reduction of affordable housing from 33% to 25% in accordance with Planning Policy. Planning Approval H09-0332-16

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.

2 The development hereby permitted shall be carried out in accordance with the following approved plans and/or documents:
Application Form
DAM-SH-LP-AR-1000

Reason: For the avoidance of doubt and in the interests of proper planning.

Notes:

Please note all conditions associated with H09-0332-16 remain applicable to the planning permission.

The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance,

ing policies and representations that have been received during the public consultation ercise, and subsequently determining to grant planning permission.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at http://planning.sholland.gov.uk/OcellaWeb/planningSearch

Phil Norman
Head of Planning
South Holland District Council

18th September 2023

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