

Dated

18th November

2019

(1) South Holland District Council

and

(2) Lincolnshire County Council

and

(3) Ashley King (Developments) Limited

DEED OF VARIATION

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

Relating to land at Balmoral Way, Holbeach, Spalding

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

SHDC Reference: LD/H09-0707-19

Date

18th November

2019

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the District Council");
- (2) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YS ("the County Council"); and
- (3) **ASHLEY KING (DEVELOPMENTS) LIMITED** (Company Registration Number 04242280) whose registered office is Manor Farm, Fen Road, Holbeach, Spalding, PE12 8QA ("the Owner")

BACKGROUND

- (A) The District Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Site is situated.
- (B) The County Council is the local education authority for the County of Lincolnshire within which the Site is situated
- (C) The District Council and the County Council are local authorities for the purposes of the 1972 Act and the 2011 Act
- (D) The Owner is the freehold owner of the Land registered at HM Land Registry under Title Number LL131625.
- (E) On 19 February 2018 the parties entered into the Original Agreement.
- (F) The parties hereto have agreed to vary the terms of the Original Agreement as set out in this Agreement.
- (G) 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 to secure the S.73 Variation Application to vary condition 2 of the Original Planning Permission to allow amendments to the approved plans.
- (H) 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.
- (I) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.

- (J) 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 19 th February 2018 relating to land at Balmoral Way, Holbeach, Spalding and made between (1) the District Council; (2) the County Council; and (3) the Owner
"S.73 Variation Application"	means the application for the removal or variation of a condition submitted by the Owner to the District Council on 18 July 2019 for the variation of condition 2 of the Original Planning Permission and allocated reference number H09-0706-19
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the District Council on 18 July 2019 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 H09-0707-19

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 H09-0288-15
"S.73 Variation Application"	means the application for the removal or variation of a condition submitted by the

	Owner to the District Council on 18 July 2019 for the variation of condition 2 of the Planning Permission and allocated reference number H09-0706-19
"S.73 Planning Permission"	means the planning permission issued pursuant to the S.73 Variation Application
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the District Council on 18 July 2019 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 H09-0707-19
"S.106A Planning Permission"	means the planning permission issued pursuant to the S.106A Modification Application

4.2 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 detailed scheme approved in writing by the District Council for the provision of 9 Units of Affordable Housing on the Site in accordance with the Third Schedule (which for the avoidance of doubt shall include 3 No. x 2 bed Units as Shared Ownership Housing (or such other Intermediate Housing as may be agreed in writing with the District Council) and 4 No. x 1 bed Units and 2 No. x 2 bed
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	Units provided as Rented Housing) and which shall include a timetable for the exchange of contracts with a Registered Provider for sale and purchase of the Affordable Housing Units (subject to the terms of the Third Schedule) and such timetable to refer the restriction of the Occupation of the specified number of Market Units until a contract or contracts have been so exchanged
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- 4.3 The definition "Affordable Housing Units" in clause 1 in the Original Agreement shall be deleted and replaced with the following:

"Affordable Housing Units"	means the nine (9) Dwellings to be provided for use as Affordable Housing in accordance with the Third Schedule;
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- 4.4 The definition "Planning Application" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Application"	means the application for Planning Permission for the Development and allocated reference number H09-0288-15 as amended by the S.106A Modification Application or the S.73 Variation Application;
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- 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
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	Modification Application or the S.73 Planning Permission;
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- 4.6 The definition "Chargee" in Clause 1 to the Original Agreement shall be deleted and replaced with the following:

"Chargee"	means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or any administrator appointed by such mortgagee or chargee or any personal appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (including but not limited to a "Housing Administrator" as defined in Section 95 of the Housing and Planning Act 2016) howsoever appointed or any other personal appointed under any security documentation to enable such mortgagee or chargee to realise its security
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- 4.7 Clause 4.12 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

"4.12 No person or party shall be bound by the terms of this Deed or liable for a breach of the restrictions and obligations contained in this Deed:

4.12.1 if it is a statutory undertaker which has an interest in any part of the Site

for the purposes of its undertaking;

4.12.2 any mortgagee and/or chargee of the Site (or part of the Site as the case may be) unless such mortgagee and/or chargee has taken possession of the Site (or any part of the Site as the case may be) when it will then be bound by the obligations of the Owner as if it were a person deriving title from the Owner; and/or

4.12.3 Protected Tenants and individual purchasers, lessees, tenants or occupiers of any Market Dwellings including their mortgagees, chargees or any administrator, receiver, administrative receiver, fixed charge receiver including any receiver appointed under the Law of Property Act 1925 or any person appointed under any security documentation by such mortgagee or chargee (or any person deriving title through such persons) and any successors in title to such persons; and/or

4.12.4 subject to clause 8 of this Deed, an Affordable Housing Provider and/or its Chargee and/or any tenants, occupiers and/or purchasers of any Affordable Dwellings and or their Chargee and any successors in title to the same.

- 4.8 The reference to "4 No.2 bed units" within paragraph 2 of Part C- Affordable Housing of the Third Schedule to the Original Agreement shall be deleted and replaced with "3 No.2 bed Units".
- 4.9 The reference to "4 No. x1 bed units and 4 No.x2 bed units" within paragraph 3 of Part C- Affordable Housing of the Third Schedule to the Original Agreement shall be deleted and replaced with "4 No. x1 bed Units and 2 No.x2 bed Units"
- 4.10 The reference to "twelve (12) Affordable Housing Units" within paragraph 6 of Part C- Affordable Housing of the Third Schedule to the Original Agreement shall be deleted and replaced with "nine (9) Affordable Housing Units".

- 4.11 The references to “twelve (12) Affordable Housing Units within paragraphs 8(a) and 8(b) of Part C- Affordable Housing of the Third Schedule to the Original Agreement shall be deleted and replaced with “nine (9) Affordable Housing Units” respectively.
- 4.12 The draft decision notice for the S.73 Planning Permission and S.106A Planning Permission annexed to this Deed at Schedule 1 shall be added to the Second Schedule of the Original Agreement
- 4.13 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 District Council.

7. LEGAL COSTS

- 7.1 On completion of this Deed, the Owner shall pay to:

7.1.1 the District Council their reasonable legal costs together with all reasonable disbursements that have been incurred in the negotiation and completion of this Deed; and

7.1.2 the County Council their reasonable legal costs together with any reasonable 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.

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

- 11.1 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.

SCHEDULE 1

**DRAFT S.73 PLANNING PERMISSION
AND
DRAFT S.106A PLANNING PERMISSION**

The **COMMON SEAL** of **SOUTH HOLLAND DISTRICT COUNCIL**

was hereunto affixed
in the presence of:

SR Wolstholme - Snr

Authorised Signatory



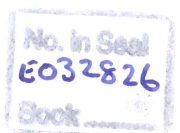
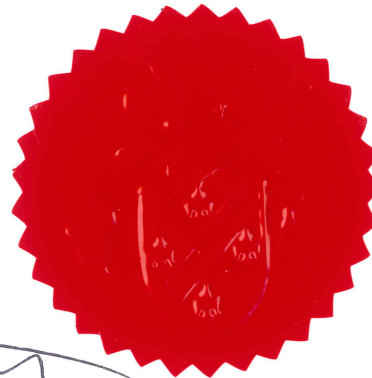
The **COMMON SEAL** of **LINCOLNSHIRE COUNTY COUNCIL**

was hereunto affixed
in the presence of:

[Signature]

Authorised Signatory

Kevin Gibson



EXECUTED as a **DEED** by
ASHLEY KING (DEVELOPMENTS) LIMITED

in the presence of:

[Signature]

Name of Witness:

Signature of Witness:

Address:

Occupation:

IAN CRADOCK
[Signature]
1 GOODISON RD SPALDING
FINANCE DIRECTOR