

Dated

7th June

2024

(1) South Holland District Council

and

(2) Michael Ernest Chapman and James Michael Chapman

and

(3) Loosegate Developments (Long Sutton) Limited

and

(4) Paragon Development Finance Limited

SECOND DEED OF VARIATION

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

**Relating to two Section 106 Agreements and a Deed of Variation
in relation to land between Seagate Road and
Wisbech Road (B1359), Long Sutton, Spalding**

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

SHDC Reference: LD/H11-0349-23

Date

7th June

2024

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the District Council");
- (2) **MICHAEL ERNEST CHAPMAN** of 1 Delph Fields, Long Sutton, Spalding, PE12 9BJ and **JAMES MICHAEL CHAPMAN** of Piper Lodge, 61 Station Road, Long Sutton, Spalding, PE12 9BS ("the First Owner"); and
- (3) **LOOSEGATE DEVELOPMENTS (LONG SUTTON) LIMITED** (Company Registration No. 13084947) of Browns Yard, Seas End Road, Moulton Loosegate, Spalding, PE12 6JX ("the Second Owner")
- (4) **PARAGON DEVELOPMENT FINANCE LIMITED** (Company Registration No. 03901943) of Level 25, 20 Fenchurch Street, London, EC3M 3BY ("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 First Owner is the freehold owner of the Land registered at HM Land Registry under Title Number LL120247 which is subject to an option to purchase contained in an agreement dated 12 May 2021 between the First Owner and the Second Owner and referred to in entry number 3 of the charges register of title number LL120247.
- (C) The Second Owner is the freehold owner of the Land registered at HM Land Registry under Title Number LL413017 which is subject to a registered charge in favour of the Mortgagee dated 13 June 2022 referred to in entry number 4 of the charges register of title number LL413017.
- (D) On 26 September 2019 the Council and the First Owner entered into the Original Agreement (Outline).
- (E) On 10 February 2022 the Council and the First Owner entered into the Original Agreement (Full).
- (F) On 9 March 2022 the Council and the First Owner entered into the First Deed of Variation that varied the Original Agreement (Outline).

- (G) On 11 April 2023 the Second Owner submitted the Section 106A Modification Application to the Council.
- (H) The purpose of this Agreement is to secure the removal to the affordable housing provisions within the Original Agreement (Outline) as varied by the First Deed of Variation and the Original Agreement (Full) pursuant to the S.106A Modification Application.
- (I) Without prejudice to the terms of the other covenants contained in the Original Agreement (Outline) as varied by the First Deed of Variation and the Original Agreement (Full) the parties have agreed to vary the terms of the Original Agreement (Outline) as varied by the First Deed of Variation and the Original Agreement (Full) 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 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:

"First Deed of Variation"	means the agreement made under sections 106 and 106A of the 1990 Act dated 9 March 2022 relating to land between Seagate Road and Wisbech Road, Long Sutton, Spalding and made between (1) the Council and (2) the First Owner
"Original Agreement (Outline)"	means the agreement made under section 106 of the 1990 Act dated 26 September 2019 relating to land between Seagate Road and Wisbech Road (B1359), Long

	Sutton, Spalding and made between (1) the Council and (2) the First Owner
"Original Agreement (Full)"	means the agreement made under section 106 of the 1990 Act dated 10 February 2022 relating to land on the east side of Seagate Road, Long Sutton, Spalding and made between (1) the Council and (2) the First Owner
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Second Owner to the Council and accepted on 11 April 2023 to remove of Affordable Housing provisions to be provided via the provisions of the Original Agreement (Outline) as varied by the First Deed of Variation and the Original Agreement (Full) and allocated reference number H11-0349-23

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 (Outline) and the Original Agreement (Full) 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 References to the Original Agreement (Outline) shall be read as the Original Agreement as varied by the First Deed of Variation.
- 2.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.5 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.

- 2.6 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.
- 2.7 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 (OUTLINE) AS VARIED BY THE FIRST DEED OF VARIATION

- 4.1 The following definitions shall be added to the Original Agreement (Outline):

"First Deed of Variation"	means the agreement made under sections 106 and 106A of the 1990 Act dated 9 March 2022 relating to land between Seagate Road and Wisbech Road, Long Sutton, Spalding and made between (1) the Council and (2) the First Owner
"Original Agreement (Outline)"	means the agreement made under section 106 of the 1990 Act dated 26 September 2019 relating to land between Seagate Road and Wisbech Road (B1359), Long Sutton, Spalding and

	made between (1) the Council and (2) the First Owner
"S.106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Second Owner to the Council and accepted on 11 April 2023 to remove of Affordable Housing provisions to be provided via the provisions of the Original Agreement (Outline) as varied by the First Deed of Variation and allocated reference number H011-0349-23

4.2 The following definitions in clause 1 in the Original Agreement (Outline) shall be deleted in their entirety:

- 4.2.1 "Affordable Dwellings"
- 4.2.2 "Affordable Housing"
- 4.2.3 "Affordable Housing Contribution"
- 4.2.4 "Affordable Housing Provider"
- 4.2.5 "Affordable Housing Scheme"
- 4.2.6 "Affordable Rent Dwelling"
- 4.2.7 "Chargee"
- 4.2.8 "Design and Quality Standards"
- 4.2.9 "Eligible Household"
- 4.2.10 "Intermediate Dwellings"
- 4.2.11 "Intermediate Rent Dwelling"
- 4.2.12 "Market Dwelling"
- 4.2.13 "the Nomination Agreement"
- 4.2.14 "Protected Person"
- 4.2.15 "Rented Housing"

4.3 Clause 8.10 of the Original Agreement (Outline) shall be deleted in its entirety.

- 4.4 The covenants in Schedule 3 paragraph 1 relating to "Affordable Housing" in the Original Agreement (Outline) shall be deleted in their entirety.
- 4.5 The covenants in Schedule 4 paragraph 1 relating to "Affordable Housing" in the Original Agreement (Outline) shall be deleted in their entirety.
- 4.6 Schedule 5 in the Original Agreement (Outline) shall be deleted in its entirety.
- 4.7 Annex A in the Original Agreement (Outline) shall be deleted in its entirety.
- 4.8 In all other respects the Original Agreement (Outline) (as varied by this Deed) shall remain in full force and effect.

5. VARIATIONS TO THE ORIGINAL AGREEMENT (FULL)

- 5.1 The following definitions shall be added to the Original Agreement (Full):

"Original Agreement (Full)"	means the agreement made under section 106 of the 1990 Act dated 10 February 2022 relating to land on the east side of Seagate Road, Long Sutton, Spalding and made between (1) the Council and (2) the First Owner
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- 5.2 The following definitions in clause 1 in the Original Agreement (Full) shall be deleted in their entirety:

- 5.2.1 "Adjoining Site"
- 5.2.2 "Affordable Dwellings"
- 5.2.3 "Affordable Housing"
- 5.2.4 "Affordable Housing Contribution"
- 5.2.5 "Affordable Housing Provider"
- 5.2.6 "Affordable Housing Scheme"
- 5.2.7 "Affordable Rent Dwelling"

- 5.2.8 "Eligible Household"
- 5.2.9 "Homes England"
- 5.2.10 "Intermediate Dwellings"
- 5.2.11 "Market Dwelling"
- 5.2.12 "the Nomination Agreement"
- 5.2.13 "Protected Person"
- 5.2.14 "Rented Dwellings"
- 5.2.15 "Shared Ownership Dwellings"
- 5.2.16 "Shared Ownership Lease"
- 5.2.17 "Social Rented Housing"

- 5.3 Clause 9.9 of the Original Agreement (Full) shall be deleted in its entirety.

- 5.4 The covenants in Schedule 3 paragraph 1 relating to "Affordable Housing" in the Original Agreement (Full) shall be deleted in their entirety.

- 5.5 The covenants in Schedule 4 paragraph 1 relating to "Affordable Housing" in the Original Agreement (Full) shall be deleted in their entirety.

- 5.6 Schedule 5 in the Original Agreement (Full) shall be deleted in its entirety.

- 5.7 Annex A in the Original Agreement (Full) shall be deleted in its entirety.

- 5.8 In all other respects the Original Agreement (Full) (and as varied by this Deed) shall remain in full force and effect.

- 6. THE OWNERS' COVENANTS**
- 6.1 The First Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement (Outline) and the Original Agreement (Full) as varied by this Deed.
- 6.2 The Second Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement (Outline) and the Original Agreement (Full) as varied by this Deed.

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 Second 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.

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 First Owner or the Second Owner (as applicable).

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. CONSENT OF THE MORTGAGEE

- 11.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Second Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall otherwise have no liability under this Deed.

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:

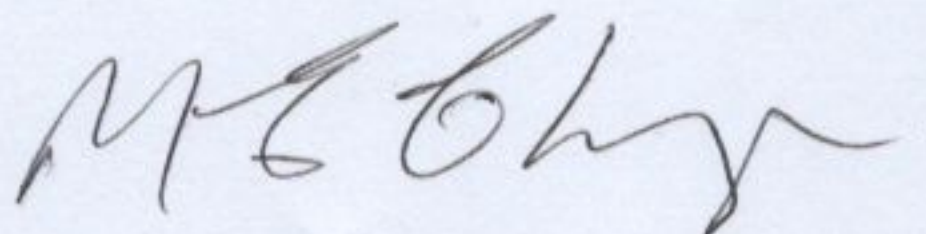
Juan King
AD Housing

Authorised Signatory



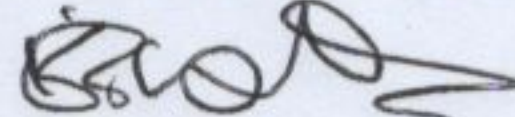
SIGNED as a **DEED** by

MICHAEL ERNEST CHAPMAN



in the presence of:

Name of Witness **KAREN ROBERTS**

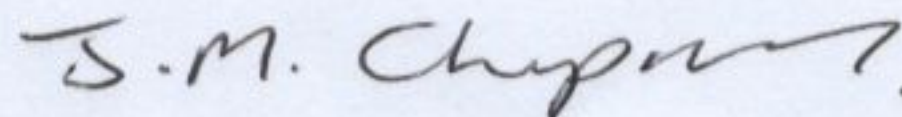
Signature of witness 

Address Mossop & Bowser (Solicitors)
Abbots Manor 10 Spalding Road
Occupation Holbeach, Lincs, PE12 7LP

SECRETARY

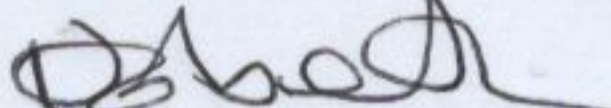
SIGNED as a **DEED** by

JAMES MICHAEL CHAPMAN



in the presence of:

Name of Witness **KAREN ROBERTS**

Signature of witness 

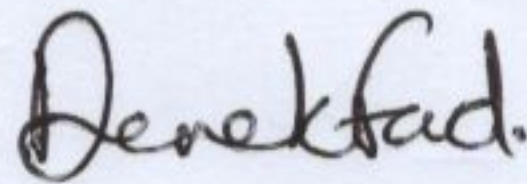
Address Mossop & Bowser (Solicitors)
Abbots Manor 10 Spalding Road
Occupation Holbeach, Lincs, PE12 7LP

SECRETARY

**EXECUTED as a DEED by
LOOSEGATE DEVELOPMENTS
(LONG SUTTON) LIMITED**

acting by a Director and its
Secretary or two Directors

Signature of Director

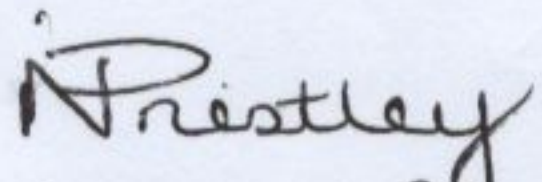


Signature of Secretary/Director



**EXECUTED as a DEED by
PARAGON DEVELOPMENT
FINANCE LIMITED** acting by
An Attorney in the presence of a witness




NICOLE PRIESTLEY

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