

Dated

22nd January 2020

~~2019~~

(1) SOUTH HOLLAND DISTRICT COUNCIL

and

**(2) DAVID RALPH HULL, MARGARET JANE HULL,
CHRISTOPHER RICHARD HULL AND PETER DAVID HULL**

and

(3) AMJ CONSTRUCTION LTD

and

(4) NATIONAL WESTMINSTER BANK PLC

DEED OF VARIATION

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

**Relating to land at Keston Nurseries, Mill Green Lane,
Pinchbeck, Spalding, Lincolnshire**

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

Date

22nd January 2020

~~2019~~

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the **District Council**");
- (2) **DAVID RALPH HULL, MARGARET JANE HULL, CHRISTOPHER RICHARD HULL AND PETER DAVID HULL** of Keston Nurseries, Mill Green Road, Spalding, Lincolnshire PE11 3PU ("the **Owners**");
- (3) **AMJ CONSTRUCTION LTD** (Company Registration Number 05316345) of East Haddon Grange, East Haddon, Northampton, Northamptonshire, NN6 8DR ("the **Developer**"); and
- (4) **NATIONAL WESTMINSTER BANK PLC** (Company Registration Number 929027) whose registered office is at ²⁵⁰135 Bishopsgate, London ^{EC2M 4AA}EC2M 3UR and whose address for service is Credit Documentation, PO Box 33Q, Manchester M60 2AH ("the **Mortgagee**").

BACKGROUND

- (A) The District Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) The Owners are the freehold owners of the Land registered under Title Numbers LL175268 and LL185321.
- (C) The Mortgagee is the registered proprietor of legal charges dated 5th January 2012 and 9th July 2012, registered under Title Numbers LL175268 and LL185321 and is willing to enter into this Deed to give its consent to the same.
- (D) On 22nd February 2018, the District Council, the Owners, the Developer and the Mortgagee entered into the Original Agreement.
- (E) On 25th March 2019, the District Council, the Owners, the Developer and the Mortgagee entered into the First Deed of Variation in order to reduce the Affordable Housing to 25% (from 33%) of the total Dwellings to be provided on the Development of the Land.
- (F) The parties hereto have agreed to vary the terms of the Original Agreement (as varied by the First Deed of Variation) as set out in this Agreement.

- (G) The purpose of this Agreement is to secure an amendment to the trigger points for Occupation for a number of the Affordable Dwellings to be provided on the Land as part of the Development.
- (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 Act and is supplemental to the Original Agreement.

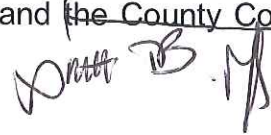
NOW THIS DEED WITNESSES AS FOLLOWS:

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 Act relating to land at Keston Nurseries, Mill Green Lane, Pinchbeck, Spalding, Lincolnshire and made between (1) the District Council; (2) the Owners; (3) the Developer; and (4) the Mortgagee and dated 25 th March 2019
"Original Agreement"	means the agreement made under section 106 of the Act relating to land at Keston Nurseries, Mill Green Lane, Pinchbeck, Spalding, Lincolnshire and made between (1) the District Council; (2) the Owners; (3) the Developer; and (4) the Mortgagee dated 22 nd February 2018;

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~~ ^{its} 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 Paragraphs 1.2 and 1.3 of Schedule 3 of the Original Agreement shall be deleted in their entirety and replaced with the following wording:

“1.2 Not to Occupy or permit the Occupation of:

1.2.1 the 35th Market Dwelling to be provided on the Land as part of the Development until the construction of Affordable Dwellings 61 to 73 (inclusive) (as shown indicatively on the Affordable Housing Plan) has commenced in accordance with the Affordable Housing Scheme and written notification of that commencement has been received by the Council; and

1.2.2 the 40th Market Dwelling to be provided on the Land as part of the Development until the construction of Affordable Dwellings 49 to 60 (inclusive) (as shown indicatively on the Affordable Housing Plan) has commenced in accordance with the Affordable Housing Scheme and written notification of that commencement has been received by the Council; and

1.3 Not to Occupy or permit the Occupation of more than 52 Market Dwellings until the construction of all Affordable Dwellings has been certified Practically Complete and has been transferred or disposed of by way of long leasehold to the Affordable Housing Provider or potential purchaser(s) (as the case may be)”.

4.2 A new definition “Affordable Housing Plan” shall be inserted in alphabetical order in clause 1 in the Original Agreement as follows:

“Affordable Housing Plan”	means the plan annexed hereto and marked “Affordable Housing Plan” showing the indicative location of the Affordable Dwellings and SUBJECT ALWAYS to any variations or amendments as the Owners or Developer shall make at their sole discretion and approved by the Council
---------------------------	--

	(such approval not to be unreasonably withheld or delayed)
--	--

4.3 The plan annexed to this Deed and marked "Affordable Housing Plan" shall be added as Schedule 5 to the Original Agreement.

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.

and 

5. THE OWNERS' COVENANTS

5.1 The Owners 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 District Council.

7. COUNCIL'S COSTS

7.1 On completion of this Deed, the Owners shall pay to the District 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 Owners and not the District 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 Owners with their consent and that the Land is bound by the obligations contained in the Original Agreement (as varied by this Deed) and that the security of the Mortgagee over the Land registered under Title Numbers LL175268 and LL185321 shall take effect subject to it **PROVIDED THAT** the Mortgagee shall have no liability under the Original Agreement (as varied by 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 this Deed) as it was if it was a person deriving title from the Owners

12. 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



SIGNED by **DAVID RALPH HULL**

in the presence of:

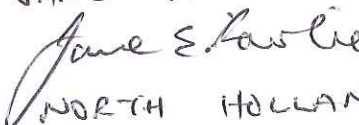
) 
)

Name of Witness:

Signature of Witness:

Address:

Occupation:

) JANE FAIRLIE
) 
) NORTH HOLLAND
MILL GREEN RD
PINCHBECK
REGULATORY & TECHNICAL
ADVISORY MANAGER

SIGNED by **MARGARET JANE HULL**

in the presence of:

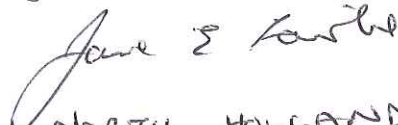
) 
)

Name of Witness:

Signature of Witness:

Address:

Occupation:

) JANE FAIRLIE
) 
) NORTH HOLLAND
MILL GREEN RD
PINCHBECK
REGULATORY & TECHNICAL
ADVISORY MANAGER

SIGNED by

CHRISTOPHER RICHARD HULL

in the presence of:

)
)
) 

Name of Witness:

Signature of Witness:

Address:

Occupation:

) JANE FAIRLIE
) Jane E Low GP
) NORTH HOLLAND
MILL GREEN RD
PINCHBECK
REGULATORY & TECHNICAL
ADVISORY MANAGER

SIGNED by PETER DAVID HULL

in the presence of:

)
) 

Name of Witness:

Signature of Witness:

Address:

Occupation:

) JANE FAIRLIE
) Jane E Fairlie
) NORTH HOLLAND
MILL GREEN RD
PINCHBECK
REGULATORY & TECHNICAL
ADVISORY MANAGER

SIGNED by AMJ CONSTRUCTION LTD

in the presence of:

) 
)

Name of Witness:

Signature of Witness:

Address:

Occupation:

) Jenny Gee
) J. Gee
17 GORSE ROAD, SPREATION
NN6 8JQ
PROJECT ADMINISTRATOR

SIGNED and **DELIVERED** as a Deed)

for and on behalf of)

NATIONAL WESTMINSTER BANK PLC)

By a duly authorised Attorney)

in the presence of: *Richard Simpson* .)


Witness Signature – Bank employee



Tina Bardsley

DOCUMENTOR
CREDIT DOCUMENTATION

REF 5897423/mob