

Dated

21 NOT December

2021

(1) South Holland District Council

and

(2) Henry John William Bingham

and

(3) Lloyds Bank Plc

DEED OF VARIATION

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

**Relating to land on the north east side of
Main Road, Quadring, Spalding (Crossroads Nurseries)**

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

SHDC Reference: LD/H15-0538-21

Date

21 December

2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **HENRY JOHN WILLIAM BINGHAM** of Crossroad Nurseries, Main Road, Quadring, Spalding, PE11 4PJ ("the Owner"); and
- (3) **LLOYDS BANK PLC** (Company Registration No. 2065) of Department No. 3282, Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton, WV9 5HZ ("Mortgagee")

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) On 12 September 2019 the Council, Susan Victoria Bingham and Lloyds Bank Plc entered into the Original Agreement.
- (C) The Owner has since the grant of the Planning Permission purchased the whole of the site from the previous owner and is now the registered proprietor at the Land Registry under title numbers LL342454 and LL377027 and is the Owner for the purposes of the Original Agreement.
- (D) The Mortgagee is the registered proprietor of the charge dated 27 February 2021 referred to in entry number 2 of the charges register of title number LL342454.
- (E) The Owner has submitted to the Council the Modification Application to amend the triggers for the Affordable Housing, Education Contribution and Healthcare Facilities Contribution contained in the Original Agreement
- (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 agreement is made under Sections 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:

"Original Agreement"	means the agreement made under section 106 of the Act relating to land on the north east side of Main Road, Quadring, Spalding (Crossroads Nurseries) dated 12 September 2019 and made between (1) the Council and (2) Susan Victoria Bingham and (3) Lloyds Bank Plc
"Modification Application"	means the application for the modification of the planning obligations contained in the Original Agreement and submitted by the Owner to the Council on 13 May 2021 and allocated the Council's reference number H15-0538-21

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 Council, successors to its 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.

4. VARIATIONS TO THE ORIGINAL AGREEMENT

- 4.1 The Following definitions shall be added to the Original Agreement

"Original Agreement"	means the agreement made under section 106 of the Act relating to land on the north east side of Main Road, Quadring, Spalding (Crossroads Nurseries) dated 12 September 2019 and made between (1) the Council and (2) Susan Victoria Bingham and (3) Lloyds Bank Plc
"Modification Application"	means the application for the modification of the planning obligations contained in the Original Agreement and submitted by the Owner to the Council on 13 May 2021 and allocated the Council's reference number H15-0538-21

- 4.2 The definition of "Chargee" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Chargee"	means a mortgagee or chargee (or any receiver) including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver
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- 4.3 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 to be 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
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- 4.4 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.”*

- 4.5 Clause 12 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

“The sums referred to in the Schedules shall be linked to the Index to the intent that the actual amounts to be paid shall be the amounts of the relevant payments as set out in Schedules Three and Four divided by the Index figure last published prior to 19 September 2019 multiplied by the Index figure last published before the due date for payment and “Indexation” shall be construed accordingly.”

- 4.6 The description of the Land at Schedule 1 of the Original Agreement shall be amended to insert the following title number on the second line "LL377027" following title number LL342454.

- 4.7 Paragraph 1.1 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

“Prior to the Commencement of the tenth (10th) Dwelling the Affordable Housing Scheme shall be submitted to the Council in writing for approval, such approval not to be unreasonably withheld or delayed.”

- 4.8 Paragraph 1.2 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

“Not to Occupy or permit the Occupation of more than 27 Market Dwellings

until the construction of all Affordable Dwellings have been Commenced in accordance with the Affordable Housing Scheme”

- 4.9 Paragraph 1.3 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

“Not to Occupy or permit the Occupation of more than 36 Market Dwellings until the construction of all Affordable Dwellings have been certified Practically Complete and have been transferred to the Affordable Housing Provider”

- 4.10 Paragraph 1.11 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

"1.11 any Chargee of the Affordable Dwelling(s) shall first give not less than three (3) months' written notice to the Council of any intention to exercise its power of sale and shall use reasonable endeavours throughout that time to secure the transfer of the Dwellings to another Affordable Housing Provider or the Council but nothing herein shall require a Chargee to act contrary to its duties under the charge or mortgage and nor shall the Chargee be required to complete a disposal unless the consideration payable is sufficient to repay the outstanding amount due under the mortgage or charge plus all interest and costs incurred Provided That said Chargee shall have first offered the Affordable Dwelling(s) which it intends to sell to the Affordable Housing Provider or to the Council and such disposal has not completed within 3 months of the date of offer then the provisions of this Schedule 3 shall not be binding upon any Chargee disposing of the Affordable Dwelling(s) in exercise of its power of sale nor shall they bind any purchaser from or successor in title to such Chargee."

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

“Not to Occupy or permit the Occupation of more than 35 Dwellings unless and until the Education Contribution has been paid to the Council in full.”

- 4.12 Paragraph 3.1 of Schedule 3 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

“Not to Occupy or permit the Occupation of more than 35 Dwellings unless and until the Healthcare Facilities Contribution has been paid to the Council in full.”

- 4.8 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 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. 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 as a **DEED** by

HENRY JOHN WILLIAM BINGHAM 

In the presence of:

Name of Witness **ANDREW M. JACKSON**

Signature of Witness 

Address **132 MAIN ROAD QUADRING PE11 4PW**

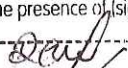
Occupation **FARMER**

SIGNED as a **DEED** by

as authorised signatory for

Lloyds Bank plc

in the presence of (signature of witness)

EXECUTED AS A DEED	
BY CASE HANDLER as authorised signatory for Lloyds Bank plc in the presence of (signature of witness)	Per Pro Lloyds Bank plc
	
Wobaston Rd, Wolverhampton WV9 5HZ	

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