H16-0646-24
~~H01-0647-24~~

Dated 12th March **2025**

(1) South Holland District Council

and

(2) Accent Housing Limited

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

Relating to land on the east side of
Spalding Common, Spalding
(Former Millfield Nursery Site)

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

SHDC Reference: LD/~~H16-0646-24~~

H16-0646-24
~~H01-0647-24~~

Date 12th March 2025

BETWEEN

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

(2) **ACCENT HOUSING LIMITED** (Registered Society No. 19229R) of 3rd Floor Scorex House, 1 Bolton Road, Bradford, BD1 4AS ("the Owner")

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) The Owner is the freehold owner of the Land registered at HM Land Registry under Title Number LL411665.

(C) On 5 March 2018 the Council and Jojo Beheer B.V. entered into the Original Agreement.

(D) On 22 September 2021 the Council and Jojo Beheer B.V. entered into the First Deed of Variation that varied the Original Agreement.

(E) The Owner has submitted to the Council the Section 106A Modification Application to amend the obligations in the Original Agreement to allow for annual rent increases.

(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:

H16-0646-24
~~H01-0647-24~~

"First Deed of Variation"	means the agreement made under section 106 and 106A of the Act relating to land at Millfield Nursery, Spalding Common, Spalding dated 22 September 2021 and made between (1) the Council and (2) Jojo Beheer B.V.
"Original Agreement"	means the agreement made under section 106 of the Act relating to land at Millfield Nursery, Spalding Common, Spalding dated 5 March 2018 and made between (1) the Council and (2) Jojo Beheer B.V.
"Section 106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the Council and accepted on 30 July 2024 to amend the Affordable Housing provisions to allows for annual rent increased and allocated reference number H16-0646-24

2. CONSTRUCTION OF THIS DEED

2.1 Clause headings are for reference only and shall not affect the interpretation of this Deed.

2.2 References to the Original Agreement shall be read as the Original Agreement as varied by the First Deed of Variation.

2.3 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.

2.4 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.

2.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.6 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.

2.7 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.

2.8 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

First Deed of Variation"	means the agreement made under section 106 and 106A of the Act relating to land at Millfield Nursery, Spalding Common, Spalding dated 22 September 2021 and made between (1) the Council and (2) Jojo Beheer B.V.
"Original Agreement"	means the agreement made under section 106 of the Act relating to land at Millfield Nursery, Spalding Common, Spalding dated 5 March 2018 and made between (1) the Council and (2) Jojo

H16-0646-24
~~H01-0647-24~~

	Beheer B.V.
"Section 106A Modification Application"	means the application for the modification or discharge of planning obligations submitted by the Owner to the Council and accepted on 30 July 2024 to amend the Affordable Housing provisions to allows for annual rent increased and allocated reference number H16-0646-24

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

"Affordable Rent Dwelling"	means an Affordable Dwelling rented to an Eligible Household by a local authority or an Affordable Housing Provider subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) or the local housing allowance for the area (subject to review in accordance with Schedule 3 paragraph 1.11)

4.3 The definition of Chargee in Clause 1.1 to the Original Agreement shall be deleted.

4.4 The wording at Paragraph 1.7.2 of Schedule 3 of the Original Agreement shall be deleted and replaced with *"not used"*.

4.5 The wording at Paragraph 1.8 of Schedule 3 of the Original Agreement shall be deleted and replaced with:

"1.8 The affordable housing provisions in this Agreement shall not be binding on 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 PROVIDED THAT:

1.8.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

1.8.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Agreement which provisions shall determine absolutely."

4.6 The wording at Paragraph 1.9 of Schedule 3 of the Original Agreement shall be deleted and replaced with *"not used"*.

4.7 A new paragraph shall be inserted into the Original Agreement at Schedule 3 as paragraph 1.11 as follows:

"1.11 Affordable Rent Dwelling shall meet the following requirements:

1.11.1 the initial rent (including service charges if applicable) shall be no more than 80% of the local market rent or the local

housing allowance (whichever is the lower).

1.11.2 during the term of a tenancy the rent may be subject to one annual rent review per year of the tenancy.

1.11.3 at the commencement of a new tenancy the starting rent must be the initial rent as defined in paragraph 1.11.1 above."

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

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 Council.

7. COUNCIL'S COSTS

7.1 The Owners shall pay to the Council on or before the date of this Deed:

(a) the Council's reasonable legal costs of £625 together with all disbursements (if any) incurred in connection with the preparation, completion and registration of this Deed; and

(b) the sum of £424 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 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.

H16-G646-24
~~H01-0647-24~~

10. JURISDICTION

10.1 This Deed is governed by and interpreted in accordance with the laws of England and Wales

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:-

135091

Authorised Signatory

AD Housing

EXECUTED as a **DEED** by **affixing the COMMON SEAL of ACCENT HOUSING LIMITED** in the presence of:

30687

.....

~~Member~~/Secretary