

Dated

11<sup>th</sup> August

2024/5

SOUTH HOLLAND DISTRICT COUNCIL (1)

and

ACCENT HOUSING LIMITED (2)

and

COUNTRY COURT CARE HOMES LIMITED (3)

and

SCENIC HOMES LTD (4)

and

OXANE PARTNERS LIMITED (5)

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**DEED OF VARIATION**

**under Section 106A of the Town and Country Planning Act 1990**

**VARIATION TO A PLANNING OBLIGATION DATED 5 MARCH 2018 AS  
VARIED BY A DEED OF VARIATION AND RELEASE DATED 22  
SEPTEMBER 2021**

**Relating to land at Millfield Nursery,  
Spalding Common, Spalding**

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THIS AGREEMENT is made the 11<sup>th</sup> day of August 2024

# BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE (the **Council**);
- (2) **ACCENT HOUSING LIMITED**, a Registered Society, registered under the Co-operative and Community Benefit Societies Act 2014 with registration number IP19229R, whose registered office is at 3rd Floor Scorex House, 1 Bolton Road, Bradford, BD1 4AS (the **First Owner**);
- (3) **COUNTRY COURT CARE HOMES LIMITED** (Company Registration No. 03253377) whose registered officer is care of Duncan & Toplis Limited, Enterprise Way, Pinchbeck, Spalding, PE11 3YR (the **Second Owner**);
- (4) **SCENIC HOMES LTD** (Company Registration No. 12032712) whose registered office is Suite 7, 12 Enterprise Way, Pinchbeck, Spalding, Lincolnshire, PE11 3YR (the **Third Owner**); and
- (5) **OXANE PARTNERS LIMITED** (Company Registration No. 08662744) of Kemp House 152 City Road, London, EC1V 2NX (the **Chargee**).

# RECITALS

- (A) On 5 March 2018 the Council entered into a Planning Obligation with JoJoS BEHEER BV (the "**Original Owner**") made pursuant to Section 106 of the Act relating to the Land as varied by a Deed of Variation and Release dated 22 September 2021 made between (1) the Council and (2) the Original Owner ("the **Previous Agreement**").
- (B) The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and is capable of enforcing the obligations in the Previous Agreement.
- (C) The First Owner is a successor in title to the Original Owner and is the freehold owner of the Land registered at the Land Registry under title number LL411665.
- (D) The Second Owner is the freehold owner of the Land registered under title number LL412719 which is subject to a Registered Charge in favour of the Mortgagee dated 18 May 2022 referred to in entry number 4 of the charges register of title number LL412719.
- (E) The Third Owner is the freehold owner of the Land registered under title number LL148860
- (F) The First, Second and Third Owner shall be collectively referred to as the Owners
- (G) Without prejudice to the terms of the other covenants contained in the Previous Agreement the Parties have agreed to vary the terms of the Previous Agreement utilising the Council's powers at Section 106A of the Act.

NOW THIS DEED WITNESSES as follows:

# 1 INTERPRETATION

In this Agreement unless the context indicates otherwise

- 1.1 **Previous Agreement:** means the Deed dated 5 March 2018 made pursuant to Section 106 of the Act relating to the Land made between (1) the Council and (2) the Original Owner as varied by a Deed of Variation and Release dated 22 September 2021 made between (1) the Council and (2) the Original Owner

**Parties:** means the Council and the Owners

- 1.2 Unless the context requires otherwise, all words and phrases defined in the Previous Agreement shall have the same meaning in this Deed (except to the extent that they are expressly varied in this Deed).
- 1.3 References in this Deed to the 'Owners' shall include its respective successors in title to the Land.
- 1.4 References in this Deed to the "Council" shall include any successor to its functions as local planning authority.
- 2.5 References in this Deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 2.6 The headings throughout this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement.
- 2.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Deed.
- 2.8 References to the singular shall include the plural and vice versa.

## 2 STATUTORY POWERS

This Deed is made pursuant to section 106 of the Act and any other enabling powers and is supplemental to the Previous Agreement and it is acknowledged by the parties that the obligations contained within this Deed are binding on the Land and are enforceable by the Council as local planning authority against the Owners and against its successors in title to the same extent as the Previous Agreement in respect of its interest in each and every part of the Land provided always that no person shall be liable for any breach of any covenant or obligation in this Deed after it has parted with all of its interest in the Property or the part of the Property in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

## 3 VARIATIONS TO THE PREVIOUS AGREEMENT

- 3.1 It is agreed between the Parties to this Deed that the terms of the Previous Agreement shall be supplemented and varied as set out in this section of this Deed.
- 3.2 The definition of "Chargee" at paragraph 1 of the Previous Agreement shall be deleted and replaced with the following:

**"Chargee"**

*means any mortgagee or chargee of the Affordable Housing Provider (or any number of them) and any receiver (including an administrative receiver) and manager 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 or any successors in title to such mortgagee chargee or administrator;*

- 3.3 Paragraph 1.8 of Schedule 3 of the Previous Agreement shall be deleted in its entirety and replaced with the following:

*The provisions in this Deed shall not be binding on a Chargee **PROVIDED THAT** such Chargee shall first give written notice to the Council of its intention to dispose of any or all of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units 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** if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions in this Deed which provisions shall determine absolutely.*

#### **4 AGREEMENTS AND DECLARATIONS**

- 4.1 It is agreed between the parties that the terms of this Deed shall apply to and bind the Land.
- 4.2 In all other respects the Parties and confirm that the planning obligations in the Previous Agreement (as varied by this Deed) shall remain in full force and effect in respect of the Land.
- 4.3 On completion of this Deed the First Owner shall pay to the Council their reasonable legal costs that have been incurred in the negotiation and completion of this Deed.
- 4.4 This Deed is registrable as a local land charge and shall be registered as such by the Council.
- 4.5 Nothing in this Deed entitles a person who is not a party to this Deed to enforce any term of this Deed.
- 4.6 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 4.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 4.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.

**IN WITNESS** whereof this Deed is executed as a deed by the parties and delivered the day and year first before written

The **COMMON SEAL** of  
**SOUTH HOLLAND DISTRICT COUNCIL**  
 was hereunto affixed in the presence of:-

Authorised Signatory

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

Member/Secretary

**EXECUTED** as a Deed  
 for and on behalf of  
**COUNTRY COURT CARE  
 HOMES LIMITED**  
 In the presence of:

.....  
 Director

Witness signature:

Witness name: **ALEXANDRA KADJENAVEC**

Witness address: **Olympus House, Staniland Way, Wellingborough, Peterborough, PE4 6NA**

Witness occupation: **Solicitor**

**EXECUTED** as a Deed  
 for and on behalf of  
**OXANE PARTNERS LIMITED**

.....  
 Authorised Signatory

Name: **NIKOLAY NAYDENOV**

In the presence of:

Witness signature:

Witness name: **Muhammad Sunaf Haroon**

Witness address: **77 New Cavendish Street, London W1W 6XB, U.K.**

Witness occupation: **Loan Servicing Specialist.**

**EXECUTED** as a Deed  
for and on behalf of  
**SCENIC HOMES LTD**

In the presence of:

Witness signature:

Witness name:

Witness address:

Witness occupation:

Director

T. ~~Cunning~~  
TONI CUNNINGTON  
MCP SOLICITORS, CAMRASCAN HOUSE, 1515 WAY  
MINERVA BUSINESS PARK PETERBOROUGH PE2 6QR  
TRAINEE LEGAL EXECUTIVE