

Dated

20

SOUTH HOLLAND DISTRICT COUNCIL (1)

and

ACCENT HOUSING LIMITED (2)

DEED OF VARIATION
under Section 106A of the Town and Country Planning Act 1990
Section 1 of the Localism Act 2011
Sections 111 and 120 of the Local Government Act 1972 and other
statutory provisions relating to land at Millfield Nursery,
Spalding Common, Spalding

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THIS AGREEMENT is made the day of

20

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE (the **Council**) of the first part and
- (2) **ACCENT HOUSING LIMITED** (registered under the Co-Operative and Community Benefit Societies Act 2014 with Registration Number 19229R) whose registered office is Charlestown House, Acorn Park Industrial Estate, Charlestown, Shipley, West Yorkshire, BD17 7SW (the **Owner**)

1 INTERPRETATION

In this Agreement unless the context indicates otherwise

- 1.1 Any reference to the parties or any other legal or natural person shall include his her its or their heirs assigns and successors in title and in the case of any local authority shall also include any successor in function
- 1.2 Any covenants obligations or other commitments given by more than one party shall be joint and several
- 1.3 Where an Owner is not a body corporate then neuter words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers
- 1.4 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 DEFINITIONS

The words and expressions below shall mean as follows:-

Act means the Town and Country Planning Act 1990 and that and any other reference to the Act shall include any amending or replacing legislation for the time being in force

Commencement of Development means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) and "Commence Development" shall be construed accordingly

Development means the development of the Land in accordance with the Planning Permission

Land means the land situate at Millfield Nursery, Spalding Common, Spalding shown edged red on Plan Number 1 in respect of which the Section 73 Application has been made

Parties means the Council and Owner

Plan Number 1 means the plan annexed to this Agreement and numbered 1 (SITE PLAN)

Planning Permission means any permission given in respect of the Section 73 Application

Previous Agreement means the agreement pursuant to Section 106 of the Act between (1) South Holland District Council and (2) Jojos Beheer BV in relation to the Land dated 05 March 2018 as varied by the Deed of Variation and Release dated 22 September 2021; and

Section 73 Application means the application made to the Council (reference number [REDACTED]) to develop the Land with [description of development]

WHEREAS:-

- 2.1 The Owner is registered at the Land Registry as proprietor of freehold LL148860 in respect of that part of the Land free from incumbrances.
- 2.2 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:

3 INTERPRETATION

- 3.1 Headings are for ease of reference only and are not intended to be construed as part of this Deed and shall not be construed as part of this Deed and shall not affect the construction of this Deed.
- 3.2 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 3.3 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 3.4 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 3.5 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 3.6 The provisions of the Previous Agreement in relation to its interpretation and in relation to statutory provisions interests bound disputes liability notices and jurisdiction apply to this Deed except to the extent that they are expressly varied by this Deed

4 VARIATIONS TO THE PREVIOUS AGREEMENT

- 4.1 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.
- 4.2 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;

5 AGREEMENTS AND DECLARATIONS

- 5.1 It is agreed between the parties that the terms of this Deed shall apply to and bind the Land
- 5.2 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
- 5.3 This Deed is registrable as a local land charge and shall be registered as such by the Council

- 5.4 Nothing in this Deed entitles a person who is not a party to this Deed to enforce any term of this Deed
- 5.5 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
- 5.6 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
- 5.7 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 Owner) 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:-)

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

Member/Secretary

DRAFT