H17-0894-21

Dated 25th April **2022**

(1) South Holland District Council

and

(2) Platform Housing Limited

DEED OF VARIATION

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

Relating to a Section 106 Agreement in respect of land off Station Road, Surfleet, Spalding

SHDC Reference: LD/H17-0894-21

Date 25th April 2022

BETWEEN

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

(2) **PLATFORM HOUSING LIMITED** (Registration Number 8288 - a registered society under the Co-operative and Community Benefit Societies Act 2014) of 1700 Solihull Parkway, Birmingham Business Park, Solihull, B37 7YD ("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) On 23 June 2020 the Council, Ashley King (Developments) Limited and HSBC UK Bank PLC entered into the Original Agreement.

(C) On 31 August 2021 the Owner acquired that part of the Land on which the Affordable Dwellings are constructed as shown edged red on the plan at Annex 1 to this Deed ("the Affordable Housing Land") from the Owner.

(D) The Owner is the registered freehold owner of that part of the Affordable Housing Land on which the Rented Dwellings are constructed under title number LL407750.

(E) This Deed of Variation amends the Original Agreement in relation to the Affordable Housing Land only.

(F) Without prejudice to the terms of the other covenants included in the Original Agreement, the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.

(G) This agreement is made under section 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 off Station Road, Surfleet, Spalding dated 23 June 2020 between the Council, Ashley King (Developments) Limited and HSBC UK Bank PLC

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 Clause 8.9.3 of the Original Agreement is deleted and replaced with the following: -

"*8.9.3 subject to paragraph 1.10.2 of Schedule 3 to this Deed any mortgagee and/or chargee of the Land (or part of the Land as the case may be and includes any mortgagee and/or chargee of individual Dwellings for the avoidance of any doubt) (including the Mortgagee) unless such mortgagee and/or chargee has taken possession of the Land (or any part of the Land as the case may be) when it will then be bound by the obligations of the Owner as if it were a person deriving title from the Owner;*"

4.2 Paragraph 1.11 of Schedule 3 of the Original Agreement is deleted and replaced with the following:

"1.11 The affordable housing provisions in Schedule 3 of this Deed shall not be binding on a Chargee or any persons or bodies deriving title through such Chargee or Receiver PROVIDED THAT:

1.11.1 such 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

1.11.2 if such disposal has not completed within the three month period, the 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."

4.3 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 (so far as practicable and lawful) 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.

H17-0894-21

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

13583

Authorised Signatory

C S Marshall
Deputy Chief Executive

The **COMMON SEAL** of **PLATFORM HOUSING LIMITED** was hereunto affixed in the presence of:-

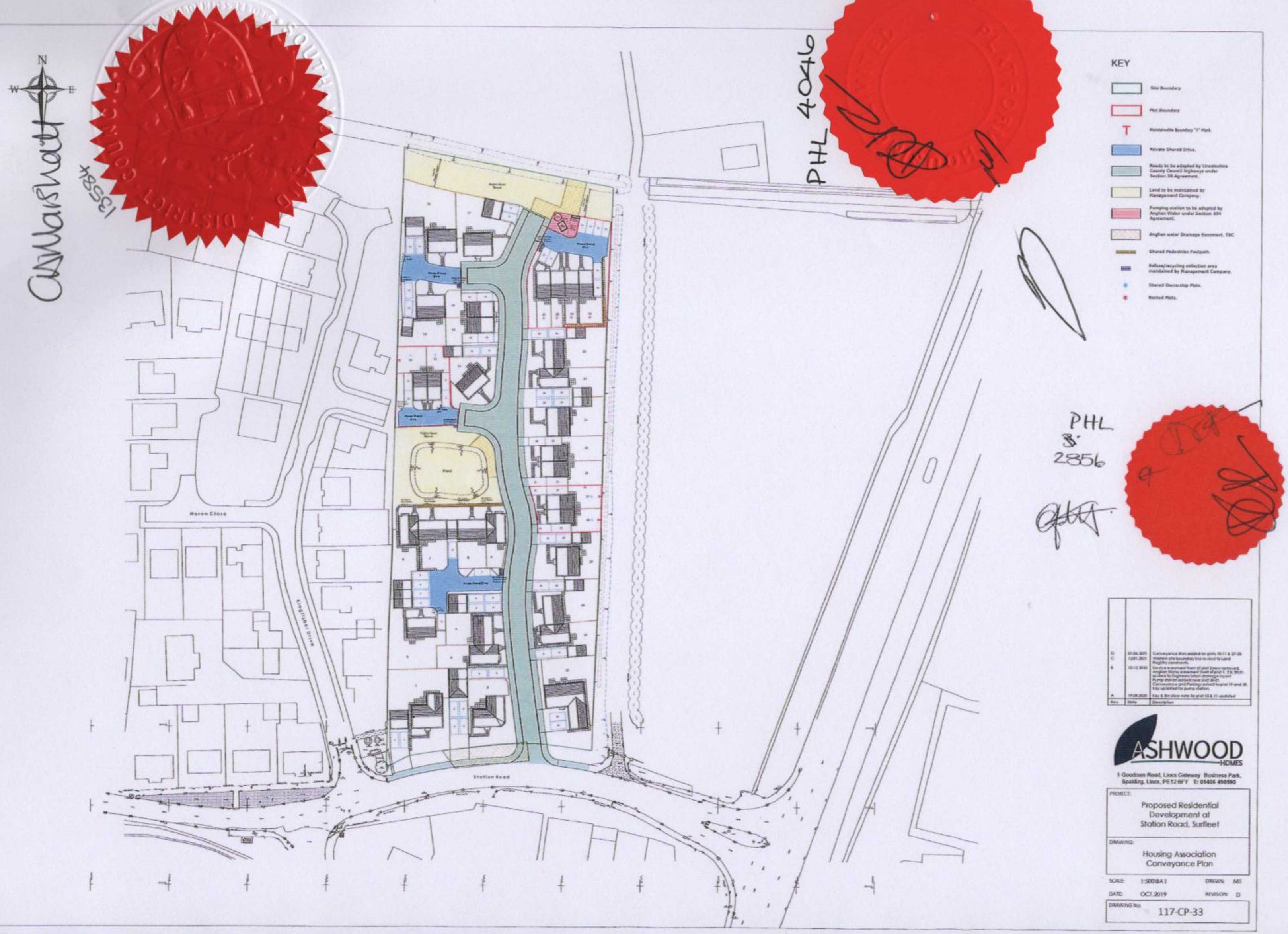
PHL 4046

Dennis Evans
Executive Director (Property)

Marion Duffy
Chief Operations Officer

Authorised Officers

Annex 1 – Plan showing the Affordable Housing Land



PHL 4046

PHL 3. 2856

Rev.	Date	Description
D	31.06.2021	Conveyance Plan added for plots 10-11 & 27-28. Shelton site boundary line revised to Land Registry covenants.
C	12.01.2021	
B	10.12.2020	Service easement front of plot 3 now removed, Anglian Water easement front of plot 1, 2 & 30-31. re-sited to Engineers latest drawings. Insert Pump station added near plot 28-29. Conveyance and Parking revised to plot 19 and 35. Key updated for pump station.
A	19.08.2020	Elec & Brr store note for plot 10 & 11 updated

ASHWOOD HOMES

1 Goodison Road, Lincs Gateway Business Park, Spalding, Lincs, PE12 6FY T: 01406 490590

PROJECT:
Proposed Residential Development at Station Road, Surfleet

DRAWING:
Housing Association Conveyance Plan

SCALE: 1:500@A1 DRAWN: MB

DATE: OCT.2019 REVISION: D

DRAWING No. 117-CP-33