H22-0886-20

Dated 8th September **2021**

(1) South Holland District Council

And

(2) RTW Construction & Developments Limited

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

Relating to residential development on land on the south side of High Road, Weston, Spalding (known as Dean Close/Small Drove, Weston)

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

SHDC Reference: LD/H22-0886-20

Date 8th September 2021

BETWEEN

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

(2) **RTW CONSTRUCTION AND DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 11885020 whose registered office is at Unit 4 Edison Court Spalding Lincolnshire PE11 3FX ("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 21 August 2017 the Council, Susan Ward and Seagate Homes (UK) Ltd entered into the Original Agreement.

(C) The Owner is the freehold owner of the Land registered at the Land Registry under title number LL391533 and is the Owner for the purposes of the Original Agreement and the First Deed of Variation.

(D) The First Deed of Variation was dated 7 August 2020 which was to secure amendments to the affordable housing provisions.

(E) The Owner has submitted to the Council the S73A Application to vary condition 2 to allow amendments to previously approved plans.

(F) Without prejudice to the terms of the other covenants contained in the Original Agreement as varied by the First Deed of Variation the parties have agreed to vary the terms of the Original Agreement as varied by the First Deed of Variation as set out in this Deed.

(G) This Deed is made under sections 106 and 106A of the Act and is supplemental to the Original Agreement as amended by the First Deed of Variation.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"First Deed of Variation"	means the agreement made under section 106A of the Act relating to land off Dean Close/Small Drove, Weston, Spalding dated 7 August 2020 and made between (1) the Council, (2) PJ Seagate Homes Weston Ltd and (3) Lendinvest Security Trustees Limited
"Original Agreement"	means the agreement made under section 106 of the Act relating to land off Dean Close/Small Drove, Weston, Spalding dated 21 August 2017 and made between (1) the Council, (2) Susan Ward and (3) Seagate Homes (UK) Ltd
"S73A Application"	means the application submitted under S73A of the Act received by the Council on 12 October 2020 for the variation of condition 2 of the Original Planning Permission and allocated Council reference number H22-0886-20
"S73A Permission"	means the planning permission to be issued pursuant to the S73A Application substantially in the form as the attached draft at Schedule 1
"S106A Modification Application"	means the application submitted under S106A of the Act received by the Council on 11 March 2020 to reduce the level of Affordable Housing to 25% on the

	Development and allocated Council reference number H22-0231-20 and approved by the Council on 7 August 2020

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 Recital (C) in the Introduction section in the Original Agreement shall be deleted and replaced with the following:

"The Owner has the benefit of the Planning Application for the Development of the Land as varied by references H22-0231-20 and H22-0886-20"

4.2 The Following definitions shall be added to the Original Agreement

"Original Planning Permission"	means the planning permission for the Development of the Land issued by the Council on 21 August 2017 and allocated Council reference number H22-0202-16
"S73A Application"	means the application submitted under S73A of the Act received by the Council on 12 October 2020 for the variation of condition 2 of the Original Planning Permission and allocated Council reference number H22-0886-20
"S73A Permission"	means the planning permission for the Land to be issued pursuant to the S73A Application substantially in the form as the attached draft at Schedule 1
"S106A Modification Application"	means the application submitted under S106A of the Act received by the Council on 11 March 2020 to reduce the level of Affordable Housing to 25% on the Development and allocated Council reference number H22-0231-20 and approved by the Council on 7 August 2020

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

4.4 The definition of "Planning Application" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Application"	means the application for planning permission for the Development and allocated reference number H22-0202-16 as varied by application H22-0231-20 or the S73A Application

4.5 The definition of "Planning Permission" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Permission"	means either the Original Planning Permission as varied by the S106A Modification Application or the S73A Permission or such other planning permissions for the Development granted pursuant to section 73 or 96A of the Act

4.6 Clause 8.10 to the Original Agreement shall be deleted and replaced as follows:

"8.10 The provisions of paragraph 1 (Affordable Housing) of Schedule 3 of this Deed 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:

8.10.1 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 Affordable Housing 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

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

4.7 The following Clause shall be inserted after Clause 8.12 of 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 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."*

4.8 Paragraph 1.5.3 of Schedule 3 to the Original Agreement shall be deleted.

4.9 Paragraph 1.7.2 of Schedule 3 to the Original Agreement shall be deleted and the remaining sub-paragraph numbers in paragraph 1.7 shall be renumbered accordingly.

4.10 Paragraph 1.8 of Schedule 3 to the Original Agreement shall be deleted and the remaining paragraph numbering in Schedule 3 shall be renumbered accordingly.

4.11 The draft decision notice for the S.73A Permission annexed to this Deed at Schedule 1 shall be added to the Original Agreement as a new Schedule 2A.

4.12 In all other respects the Original Agreement (as varied by the First Deed of Variation and 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 the First Deed of Variation and this Deed.

6. CONDITIONALITY

6.1 This Deed is conditional upon the grant of the S73A Permission and Commencement of Development.

7. LOCAL LAND CHARGE

7.1 This Deed shall be registerable as a local land charge by the Council.

8. COUNCIL'S COSTS

8.1 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

9. VAT

9.1 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.

10. THIRD PARTY RIGHTS

10.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

11. JURISDICTION

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

12. EXECUTION AND DELIVERY

12.1 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.

SCHEDULE 1

PLANNING PERMISSION (H22-0886-20)

ISSUED UNDER S.73A APPLICATION (to be inserted as Schedule 2A of the Original Agreement as varied by the First Deed of Variation)

Studio 11 Architecture
The Boathouse
Harbour Square
Nene Parade
Wisbech
PE13 3BH

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

Admin 01775 764723
DC Officers 01775 761161
Facsimile 01775 762937

planningadvice@sholland.gov.uk

www.sholland.gov.uk

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference: H22-0886-20 **Date of Decision:**

Applicant: Rtw Construction & Development Ltd.
C/O Studio 11 Architecture
The Boathouse
Nene Parade
Wisbech
PE13 3BH

Location: Land Off Dean Close/Small Drove Weston Spalding

Description: Residential Development of 1, 2, 3 and 4 bed houses and bungalows - approved under H22-0202-16. Modification of Condition 2 to allow amendments to previously approved plans.

South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):

1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Accompanying H22-0202-16:

293.SK2.01H
5278-1
Flood Risk Assessment (prepared by SM Hemmings, Revision A, dated 31st March 2016)
Drainage Strategy (prepared by SM Hemmings, Revision A, dated 19th July 2016)
Heritage Statement (prepared by Studio 11 Architecture, dated February 2016)

Accompanying H22-0886-20:

514.LP.01
514.Dov.P.01 Rev B
514.Dun.P.01 Rev B
514.Fal.P.01 Rev B
514.Her.P.01 Rev A
514.Kin.P.01 Rev C
514.Mer.P.01 Rev B
514.Nig.P.01 Rev C
514.Osp.P.01 Rev B
514.Pea.P.01 Rev B
514.Per.P.01 Rev B
514.Rob.P.01 Rev C
514.Sta.P.01 Rev B
514.Swa.P.01 Rev C
514.Woo.P.01 Rev B
514.Wre.P.01 Rev C
514.SinG.P.01 Rev B
514.DouG.P.01 Rev B
514.TriG.P.01 Rev B
514.TwiG.P.01 Rev B
514.LD.01
514.LD.02
514.LD.03
514.LD.04
514.LD.05
514.LD.06
514.BT.01 Rev B
514.BT.02 Rev C
514.BT.03 Rev A
514.BT.04 Rev A
514.BT.05 Rev B
1615/01-J
1615/02-F
1615/03-C
1615/04
1615/05-F
1615/06-A
1615/06-C
SD/002-H
SD003-G
SD/004-D
514.CSL.01 Rev B
514.PMP.01 Rev C
293.MRP.01
Management Plan for General Planting, Public Open Space, Refuse/ Recycling Collection Points & Parking Courts (prepared by Studio 11 Architecture, dated January 2019)
Construction Method Statement (prepared by Seagate Homes, ref. JMG 10/2018)
Phase 1 Desktop Report (prepared by Humberside Materials Laboratory Limited, dated September 2016)

Site Investigation Report (prepared by Humberside Materials Laboratory Limited, dated November 2016)

Reason: For the avoidance of doubt and in the interests of proper planning.

2 The scheme of landscaping and tree planting shown on dwg. no's. 514.LD.01, 514.LD.02, 514.LD.03, 514.LD.04, 514.LD.05 and 514.LD.06 shall be carried out and completed in its entirety during the first planting season following practical completion of the development. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set.
This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

3 The scheme of boundary treatment shown on dwg. no's. 514.BT.01 Rev B, 514.BT.02 Rev C, 514.BT.03 Rec A, 514.BT.04 Rev A and 514.BT.05 Rev B shall be implemented in full before the development is first brought into use and retained thereafter.

Reason: In the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity of nearby occupiers.
This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

4 Before each dwelling is occupied the roads and/or footways providing access to that dwelling, for the whole of its frontage, from an existing public highway, shall be constructed to a specification to enable them to be adopted as Highways Maintainable at the Public Expense, less the carriageway and footway surface courses. The carriageway and footway surface courses shall be completed within three months from the date upon which the erection is commenced of the penultimate dwelling.

Reason: To ensure that a safe and suitable standard of vehicular and pedestrian access is provided for residents throughout the construction period of the development and that the roads and footways are completed within a reasonable period following completion of the dwellings.
This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire Local Plan, 2019.

5 No dwellings shall be commenced before the first 50 metres of estate road from its junction with the public highway of Dean Close, as shown on drawing number 293.SK2.01H dated 20 July 2016 (accompanying application ref. H22-0202-16), has been completed.

Reason: To ensure construction and delivery vehicles, and the vehicles of site personnel may be parked and/or unloaded off the existing highway, in the interests of highway safety and the amenity of neighbouring residents.
This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire

Local Plan, 2019.

6 The development shall be carried out in accordance with the approved drainage scheme and no dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with the approved phasing. The approved scheme shall be retained and maintained in full in accordance with the approved details.

Reason: To ensure that the permitted development is adequately drained without creating or increasing flood risk to land or property adjacent to, or downstream of, the permitted development.
This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

7 The means of foul water disposal shall be implemented in full before the development hereby permitted is first brought into use.

Reason: To ensure that the site is adequately drained and to avoid pollution.
This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

8 The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (Revision A, dated 31 March 2016) (accompanying application ref. H22-0202-16) and in particular the following mitigation measure detailed within:

-Finished floor levels shall be set no lower than 3.2mAOD.

The mitigation measures shall be fully implemented prior to occupation.

Reason: To ensure that the development does not increase the risk of flooding or be at risk of flooding.
This Condition is imposed in accordance with Policies 3 and 4 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

Notes:

The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and by identifying matters of concern within the application and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at http://planning.sholland.gov.uk/OcellaWeb/planningSearch

Should unexpected contamination be discovered on the site at any time, the applicant is advised to contact the District Council's Environmental Protection department immediately.

This planning permission is subject to an Agreement under Section 106 of the Town & Country Planning Act 1990 dated 21 August 2017 (as modified in the Deed of Variation dated **********) and can only be implemented as a consequence of meeting the provisions of that Agreement.

Phil Norman
Planning Manager
South Holland District Council

6th August 2021

BUILDING REGULATIONS:
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

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

13456

Authorised Signatory

EXECUTED as a **DEED** by **RTW CONSTRUCTION & DEVELOPMENTS LIMITED** acting by a Director :-

Signature of Director .....

In the presence of a Witness

Signature.....

Witness Name: – JAMES MASSOR-MACHAM

Address: OF RENDEZVOUS, Lynn Road, Wisbech, PE14 7AL

Occupation: Manager