

**DATED**

21<sup>st</sup> March

**2022**

**(1) SOUTH NORFOLK DISTRICT COUNCIL**

**(2) LEWIS NICHOLLS ASSOCIATES LIMITED**

**(3) JOHN HENRY HOPE and VALERIE PHYLLIS HOPE**

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**AGREEMENT**

**UNDER SECTIONS 106 AND 106A OF THE TOWN  
AND COUNTRY PLANNING ACT 1990**

**relating to land north of Heath Farm, Caistor Lane,  
Caistor St Edmund, Norfolk**

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**THIS AGREEMENT** is made on

21<sup>st</sup> March

2022

**BETWEEN:-**

- (1) **SOUTH NORFOLK DISTRICT COUNCIL** of South Norfolk House, Cygnet Court, Long Stratton, Norwich, NR15 2XE (the "**District Council**");
- (2) **LEWIS NICHOLLS ASSOCIATES LIMITED** of Sixty Six, North Quay, Great Yarmouth, NR30 1HE (the "**Owner**"); and
- (3) **JOHN HENRY HOPE and VALERIE PHYLLIS HOPE** of Heath Farm, Caistor Lane, Caistor St Edmund, Norwich, Norfolk, NR14 8RB (the "**Chargee**");

together the "**Parties**" and reference to "**Party**" shall be construed accordingly.

**INTRODUCTION:**

- (A) For the purposes of the 1990 Act, the District Council is the local planning authority for the area within which the Land is located and the authority who is entitled to enforce the obligations contained in this Deed of Variation.
- (B) The Owner is the freehold owner of the Land, which is registered at HM Land Registry under title number NK352589 and acquired the Land from the Chargee who were the previous owners of the Land on 11 February 2022 and an application to register the Owners as the freehold owners of the Land is pending at HM Land Registry.
- (C) The Chargee has the benefit of a charge over title number NK352589 dated 11 February 2022 and has agreed to enter into this Deed to consent to its interest in the Land being bound by the Original Agreement as varied by this Deed of Variation.
- (D) On 26 October 2015, the District Council and the Chargee entered into the Original Agreement to secure planning obligations on 11 December 2015 and the First Planning Permission was granted pursuant to the Appeal.
- (E) The Owner submitted the S73 Application to the District Council which was received on 1 October 2021.
- (F) The Owner now wishes to vary the Original Agreement so that it also binds the S73 Permission and any subsequent variations to the First Planning Permission or the S73 Permission pursuant to applications made under section 73 of the 1990 Act and for the mix of Affordable Housing to be delivered pursuant to the Draft Affordable Housing Agreement to be varied to allow the inclusion of two person Affordable Housing Units to be shared equity rather than rent.
- (G) The Parties agree to enter into this Deed of Variation to vary the Original Agreement as set out in this Deed of Variation.

**NOW THIS AGREEMENT WITNESSES** as follows:

**OPERATIVE PART**

**1. DEFINITIONS**

- 1.1 In this Deed of Variation including in the recitals the following terms and expressions have the following meanings (and in all other respects words



used herein shall have the meanings assigned to them in the Original Agreement);

<b>"Deed of Variation"</b>	means this deed of variation;
<b>"Development"</b>	development of the Land carried out pursuant to the Planning Permission and/or the S73 Permission;
<b>"Draft Affordable Housing Agreement"</b>	means the draft affordable housing agreement annexed to the Original Agreement;
<b>"First Application"</b>	means the application submitted to the District Council and given reference number 2014/1302;
<b>"Original Agreement"</b>	the Section 106 Agreement dated 26 October 2015 entered into between the District Council and the Previous Owners;
<b>"the First Planning Permission"</b>	means the planning permission dated 11 December 2015 granted pursuant to the Appeal and subject to the Original Agreement;
<b>"S73 Permission"</b>	means the planning permission granted by the District Council for the S73 Application;
<b>"S73 Application"</b>	means the planning application submitted to the District Council and allocated reference number 2021/2207 for erection of 16 dwellings (5 affordable, 11 market) and proposed access to the south of Caistor Lane without complying with condition 2 previously imposed on the approval of reserved matters 2018/2232 on 19 July 2019 pursuant to condition 1 on planning permission 2014/1302 dated 11 December 2015 to amend the layout and dwelling types including amendments to the S106 to permit the S73 application and amendments to the affordable housing mix;

1.2 In this Deed of Variation:

1.2.1 where a Schedule to this Deed of Variation lists further definitions the defined terms shall have the meanings set out in that Schedule

1.2.2 the clause headings do not affect its interpretation:

- (a) unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed of



Variation and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

- (b) references to any statute or statutory provision include references to:
  - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed of Variation as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
  - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- (c) references to the Land include any part of it;
- (d) references to any party in this Deed of Variation include the successors in title of that party. In addition, references to the District Council include any successor local planning authority exercising planning powers under the 1990 Act;
- (e) "including" means "including, without limitation"; and
- (f) any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;

1.3 The parties to this Deed of Variation do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it;

1.4 Words and expressions defined in the Original Agreement shall, unless the context or the express terms of this Deed of Variation otherwise require, bear the same meaning in this Deed of Variation.

## **2. EFFECT OF THIS DEED OF VARIATION**

2.1 This Deed of Variation varies the Original Agreement and relates to and bind the Owner's interest and is made pursuant to sections 106 and 106A of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Deed of Variation are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the District Council.

## **3. CONDITIONALITY**

The obligations contained in Clause 4 and the Schedule of this Deed of Variation shall come into full force and effect as from the date of this Deed.

## **4. VARIATION OF THE ORIGINAL AGREEMENT**

4.1 Subject to Clause 3, the District Council and the Owner agree that from the date of this Deed of Variation, the Original Agreement and the Draft Affordable Housing Agreement shall be varied as set out in the Schedule of this Deed of Variation;





4.2 The Original Agreement and the Draft Affordable Housing Agreement shall from the date of this Deed of Variation take effect and be read and constructed as varied by the Schedule to this Deed of Variation; and

4.3 The Parties confirm that the covenants, rights, obligations and conditions contained in the Original Agreement (save as varied by this Deed of Variation) shall continue in full force and effect.

5. **LOCAL LAND CHARGE**

This Deed of Variation shall be enforceable as a local land charge and shall be registered immediately by the District Council as such and the District Council covenants with the Owner it will note on the local land charges register when compliance with all of the said obligations has occurred.

6. **WARRANTY**

The Owner covenants and warrants that in respect of its interests in the Land to the District Council that it has full power to enter into this Deed of Variation and there is no other person having a charge over or any other interest in the Land other than as set out in this Deed of Variation whose consent is necessary to make this Deed of Variation binding on the Land and all estates and interests therein.

7. **SEVERABILITY**

If any provision of this Deed of Variation is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed of Variation shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of this Deed of Variation without illegality provided that any party may seek the consent of the other or others to the termination of this Deed of Variation on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Deed of Variation.

8. **WAIVER**

The failure by any Party to enforce at any time or for any period any one or more of the terms or conditions of this Deed of Variation shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Deed of Variation.

9. **COSTS OF THIS DEED OF VARIATION**

Upon completion of this Deed of Variation the Owner covenants to pay to the District Council its reasonable and proper legal costs in a sum not to exceed One Thousand Five Hundred Pounds (£1,500) (no VAT) in connection with the preparation, negotiation and completion of this Deed of Variation.



**10. JURISDICTION**

This Deed of Variation is to be governed by the courts of England and Wales and interpreted in accordance with the law of England.

**11. CHARGEES' CONSENT**

The Chargee acknowledges and declares that this Deed of Variation has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in the Original Agreement as varied by the Deed of Variation and that the security of its charge over the Land shall take effect subject to the Original Agreement as varied by this Deed of Variation PROVIDED THAT the Chargee shall otherwise have no liability under the Original Agreement as varied by this Deed of Variation unless it takes possession of the Land in which case it too will be bound by the obligations as if it were the person deriving title from the Owner.

**12. EXECUTION**

The Parties have executed this Deed of Variation as a deed and it is delivered on the date set out above.



## SCHEDULE

### Variations to the Original Agreement

1. The definitions set out in clause 1.1 of this Deed of Variation shall be inserted at Clause 1.1 of the Original Agreement.
2. The definition of "Application" in Clause 1.1 of the Original Agreement shall be deleted and replaced by the following definition:

"Application"	means the applications for planning submitted to the District Council being the First Application and the S73 Application as the context may permit.
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3. The definition of "Development" in Clause 1.1 of the Original Agreement shall be deleted and replaced by the following definition:

"Development"	means the development carried out pursuant to the First Planning Permission or the S73 Permission as the context permits.
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4. The definition of "Planning Permission" in Clause 1.1 of the Original Agreement shall be deleted and replaced by the following definition:

"Planning Permission"	means the development granted by the District Council being the First Planning Permission or the S73 Permission as the context permits.
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5. The following provision should be added in as a new Clause 12 to the Original Agreement:

"12. In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Agreement shall be to the new planning permission granted pursuant to Section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act".



6. The first paragraph of Part 1 of the Schedule to the Original Agreement shall be deleted and replaced with the following:

"Not to Complete (or allow to be Completed) the number of Market Housing Units comprised in the Development as indicated in column 1 of the table set out below in accordance with the planning permission granted for the Development until there have been built and completed ready for occupation the number of Affordable Housing Units indicated in column 2 pursuant to an Agreement to have been entered into with the District Council under section 106 of the 1990 Act substantially in the form annexed and marked "Draft Affordable Housing Agreement".

7. The words "LEGAL CHARGE – Under Sections 8 and 9 of the Housing Act 1985 on the front page of the Draft Affordable Housing Agreement shall be deleted.
8. Clauses 3 and 4 of the Draft Affordable Housing Agreement shall be deleted.
9. The words "Unless otherwise in agreed in writing with the District Council" shall be inserted at the beginning of paragraph 1 of the Schedule to the Draft Affordable Housing Agreement.
10. The table in paragraph 1 of the Schedule of the Draft Affordable Housing Agreement shall be amended as follows:

Plot No	PROPERTY TYPE	TENURE
01	2 bedroom bungalow	Rent
02	2 bedroom bungalow	Rent
03	1 bedroom house	Rent
04	1 bedroom house	Shared Equity Housing
05	1 bedroom house	Shared Equity Housing

11. The following should be added in the abbreviation section of paragraph 1 of the Schedule of the Draft Affordable Housing Agreement under "rent":

"shared equity = Dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition of the initial share and upon a payment equating to the additional equity being purchased payable to the Council or the Provider as the case may be





(or such other body as the Council may elect). Such payment to be based on the actual market value as at the date of acquisition of the additional equity".



**IN WITNESS** whereof the parties hereto have executed this Deed of Variation on the day and year first before written.

**EXECUTED as a DEED by affixing  
THE COMMON SEAL of  
SOUTH NORFOLK DISTRICT COUNCIL**  
In the presence of:-



)  
)  
)



\_\_\_\_\_  
Authorised Signatory

**EXECUTED as a DEED by  
LEWIS NICHOLLS ASSOCIATES LIMITED)**  
Acting by : )



ANDY NICHOLLS  
DIRECTOR

Signature of Witness



Name of Witness

CHRIS RICE MAN

Address of Witness

2 ASH CLOSE WYMONDHAM NR IS ORR

Occupation of Witness

BUILDER



**EXECUTED** as a **DEED** by  
**JOHN HENRY HOPE**  
In the presence of :

)  
)  
)

[Redacted]

Signature of Witness

[Redacted]

Name of Witness

JOANNE MARIE COEDAN

Address of Witness

NORTH BARN, MURGETH

Occupation of Witness

MELCS.

**EXECUTED** as a **DEED** by  
**VALERIE PHYLLIS HOPE**  
In the presence of :

[Redacted]

Signature of Witness

[Redacted]

Name of Witness

JOANNE MARIE COEDAN

Address of Witness

NORTH BARN, MURGETH

Occupation of Witness

[Redacted]

