

DATED

17 January

2023

(1) BABERGH DISTRICT COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) HILLS RESIDENTIAL CONSTRUCTION LIMITED

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FURTHER DEED OF VARIATION OF A SECTION 106  
AGREEMENT DATED 8 FEBRUARY 2018

RELATING TO

land east of The Constable Country Medical Centre, Heath  
Road, East Bergholt, Suffolk

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THIS AGREEMENT is made on

17 January

2023

**BETWEEN:**

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (the "**District Council**");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (the "**County Council**");
- (3) **HILLS RESIDENTIAL CONSTRUCTION LIMITED** (Co. Regn. No. 03919214) of Bridge Mill House, Brook Street, Colchester, Essex CO1 2UZ (the "**the Owner**")

Together known as "**the Parties**"

**BACKGROUND:**

- (A) The District Council and the County Council are the local planning authorities for the area within which the Site is situated and are the authorities entitled to receive and enforce the planning obligations contained in the Original S106 Agreement as amended pursuant to the provisions of Section 106 of the Act.
- (B) The Owner is the freehold owner of the whole of the Site which is currently pending registration at HM Land Registry.
- (C) On 8<sup>th</sup> February 2018 the District Council the County Council Michael George Harris and James George Harris ("the Previous Owner") and the Owner entered in to the Original S106 Agreement in connection with the Development of the Site pursuant to the Outline Permission which was issued by the District Council on the same date.
- (E) The Parties together with the Previous Owner entered into the First Deed of Variation on 7 December 2021 to ensure that the Development carried out pursuant to the RM Approval which was issued by the District Council on 8 December 2021 became subject to the planning obligations contained within the Original S106 Agreement.
- (F) The Owner has made the Section 73 Application to the District Council and the District Council is minded to grant the Section 73 Permission subject to this further deed of variation which the Parties enter into for the purposes of ensuring that Development carried out pursuant to the Section 73 Permission shall comply with and be bound by the provisions of the Original S106 Agreement as varied by the First Deed of Variation.

**IT IS HEREBY AGREED**

1. In this Deed where the context so admits all words and expressions shall have the same meanings as given in the Original S106 Agreement but in addition the following terms have the following meanings:

<b>"First Deed of Variation"</b>	means the deed dated 7 December 2021 which was entered into by the Parties and the Previous Owner pursuant to section 106 and 106 A of the Act;
<b>"Original S106 Agreement"</b>	means the agreement by deed dated 8 February 2018 which was entered into by the Parties and the Previous Owner pursuant to section 106 of the Act;
<b>"Outline Permission"</b>	means the outline planning permission dated 13 February 2020 with the reference B/16/01092 subject to the Original S106 Agreement;
<b>"RM Approval"</b>	means the approval of reserved matters (access, layout, scale, design and landscaping) following the Outline Permission for the Development (defined in the Original S106 Agreement) dated 8 December 2021 with the reference DC/20/04663;
<b>"Section 73 Application"</b>	means the application for planning permission under section 73 of the Act validated by the District Council on 17 December 2021 with reference DC/21/06805;
<b>"Section 73 Permission"</b>	means the planning permission which may be granted by the District Council pursuant to section 73 of the Act under reference DC/21/06805;
<b>"Site"</b>	means the land east of The Constable County Medical Centre, Heath Road, East Bergholt, Suffolk which is shown for identification purposes only edged red on the Plan attached to the Original S106 Agreement.

## 2. CONSTRUCTION OF THIS DEED

- 2.1 In this Deed, expressions defined in the Original S106 Agreement and used in this Deed have the meaning set out in the Original S106 Agreement or where applicable in the First Deed of Variation. The rules of interpretation set out in the Original S106 Agreement apply to this Deed.

3. **LEGAL BASIS**

- 3.1 This Deed is supplemental to the Original s106 Agreement as amended and is made pursuant to the provisions of Section 106 and Section 106A of the Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, and all other enabling powers;
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council in the case of covenants made with them as local planning authorities against the Owners and their successors in title;
- 3.3 The Original S106 Agreement as varied by the First Deed of Variation shall continue in full force and effect (as varied by this Deed).

4. **COMMENCEMENT**

- 4.1 Save in respect of Clause 7 which will become operative on the date of this Deed, clause 5.1 shall come into effect upon the date of grant of the Permission.

5. **VARIATIONS TO THE ORIGINAL S106 AGREEMENT**

- 5.1 The Parties agree to vary the Original S106 Agreement (as varied by the First Deed of Variation) as follows:

- 5.1.1 The definition of "*Development*" in the Original Agreement shall be amended to read:

*"the development of the Site in accordance with the Planning Permission OR the Section 73 permission"*

- 5.1.2 The definition of "*Planning Permission*" in the Original Agreement shall be amended to read:

*"the planning permission granted by the District Council pursuant to the Application OR the S.73 Permission"*

- 5.1.3 A new definition of "*S.73 Permission*" shall be added to the Original Agreement as set out above under clause 1 and as follows:

*"the planning permission which may be granted by the District Council pursuant to section 73 of the Act under reference DC./21/06805"*

- 5.1.4 A new clause 19 shall be added to the Original Agreement (as varied by the First

Deed of Variation)

19.1 In the event that any new planning applications are made in respect of the Development pursuant to Section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to Section 73 of the Act:

19.1.1 the planning obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission shall also bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and

19.1.2 the definitions of "Application" and "Development" and where the context so admits any reference to "Planning Permission" shall be assumed to include references to any applications under Section 73 of the Act, the planning permissions granted there under and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this Clause 19 shall fetter the discretion of the District Council in determining any applications under Section 73 of the Act and the appropriate nature and/or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act (whether by way of a new Deed or supplemental Deed pursuant to Section 106 of the Act or a modification pursuant to Section 106A of the Act).

**6. THE OWNER'S COVENANTS**

6.1 The Owner hereby covenants with the District Council and the County Council for themselves and their respective successors in title and assigns to the Site that the Site and any Development carried out under the Section 73 Permission shall be bound by and subject to the terms of the Original S106 Agreement as if references to the Planning Permission in the Original S106 Agreement were references to the Section 73 Permission.

**7. COSTS**

7.1 On completion of this Deed the Owner shall pay the District Council's reasonable legal costs associated with the drafting, negotiation and completion of this Deed and pay the County Council's reasonable legal costs associated with the drafting, negotiation and completion of this Deed.

8. **GOVERNING LAW**

8.1 This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

9. **JURISDICTION**

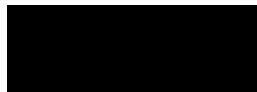
9.1 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

10. **DELIVERY**

10.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**THIS DEED** has been executed and delivered as a Deed by the Parties on the date first above written

THE COMMON SEAL of )  
BABERGH DISTRICT COUNCIL )  
was hereunto affixed in the presence of: )



Authorised Signatory

THE COMMON SEAL of  
SUFFOLK COUNTY COUNCIL  
was affixed in the presence of:

)  
)  
)



[Redacted signature]

Attesting Officer

EXECUTED as a DEED by  
HILLS RESIDENTIAL  
CONSTRUCTION LIMITED  
In the presence of:

)  
)  
)  
)

[Redacted signature]

/s/ )Director Signature

Witness Signature: >

[Redacted signature]

Witness Name: X

[Redacted name]

Witness Address:

[Redacted address]

Witness Occupation: y

[Redacted occupation]