21 July 2021

DATED **2021**

HUNTINGDONSHIRE DISTRICT COUNCIL (1)

and

BPHA LIMITED (2)

and

PRUDENTIAL TRUSTEE COMPANY LIMITED (3)

DEED OF VARIATION

pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 as amended

in respect of development on the east side of London Road, St Ives

Devonshires Solicitors

30 Finsbury Circus
London
EC2M 7DT

DX 33856 Finsbury Square

Ref: HVS/BP1/338
Planning Ref: 0102801/UT

THIS DEED OF VARIATION is made the 21st day of July 2021

B E T W E E N:-

(1) **HUNTINGDONSHIRE DISTRICT COUNCIL** of Pathfinder House, St Mary's Street, Huntingdon, PE29 3TN ("the **Council**"); and

(2) **BPHA LIMITED** (Registered Society No 26751R) of Bedford Heights, Manton Lane, Bedford, MK41 7BJ ("the **Association**"); and

(3) **PRUDENTIAL TRUSTEE COMPANY LIMITED** (Co. Regn. No. 1863305) of 10 Fenchurch Avenue, London EC3M 5AG ("the **Mortgagee**").

Known together as "the **Parties**"

1. Background

1.1 This Deed of Variation ("**Third Deed of Variation**") modifies (and is supplemental to) a Section 106 Agreement dated 5th October 2007 under Section 106 of the Town and Country Planning Act 1990 made between The Council (1) The Cambridgeshire County Council (2) Meyer International Finance and Property PLC (3) David James Miles and James Frederick Miles (4) Lordgate Engineering Limited (5) and Barclays Bank PLC (6) ("the **Original Agreement**")

1.2 The Original Agreement was varied by a Deed of Variation dated 14th December 2010 made between Huntingdonshire District Council (1) Cambridgeshire County Council (2) Stamford Homes Limited (3) and Bedfordshire Pilgrims Housing Association Limited (4) ("the **First Deed of Variation**")

1.3 The Original Agreement and the First Deed of Variation were varied by a Deed of Variation dated 4th May 2011 made between Huntingdonshire District Council (1) Cambridgeshire County Council (2) and Stamford Homes Limited (3) ("the **Second Deed of Variation**") referred to together as the "**Existing Agreements**"

1.4 The Association is the registered proprietor of the freehold estate of the Properties which are registered with title absolute at HM Land Registry under Title number CB358666, which are set out in Appendix 1 and edged red on the plans (the "**Properties**")

1.5 The Mortgagee is the proprietor of registered charges dated 19th September 2012, 28th March 2013 and 11th April 2014 affecting the Properties

1.6 The Council are the local planning authority for the purposes of the 1990 Act for the area within which the Properties are located and are the relevant planning authority by whom the planning obligations contained within this Third Deed of Variation are enforceable.

1.7 The Existing Agreements imposed planning obligations on the Land in relation to the Planning Permission.

1.8 In this Third Deed of Variation the definitions contained in the Existing Agreements apply unless the context otherwise requires.

1.9 The headings in this Third Deed of Variation are for convenience only and do not affect its construction or interpretation.

1.10 If an obligation is owed to or by more than one person that obligation is owed to or by those persons separately jointly or in any combination.

2. ADDITIONAL DEFINITIONS

2.1 Unless the same are given alternative definitions in this Third Deed of Variation the following expressions common to this Third Deed of Variation and the Existing Agreements shall unless the context otherwise requires have the meaning prescribed in the Existing Agreements.

3. OPERATIVE POWERS

3.1 The Parties have agreed to modify the planning obligations in the Existing Agreements in respect of the Properties in the manner hereinafter appearing.

3.2 This Third Deed of Variation is made pursuant to all the powers enabling the Parties to do so and in particular to Section 106 of the 1990 Act and Section 106A(1)(a) of the 1990 Act to the intent that it shall bind the Parties and their successors in title and assigns and any persons claiming under or through them.

3.3 Nothing in this Third Deed of Variation is intended to confer any benefit on any party other than the Parties executing this Third Deed of Variation and any such benefit provided by the Contracts (Rights of Third Parties) Act 1990 are hereby excluded.

4. VARIATION

The Parties hereto agree that the Existing Agreements shall be amended (in respect of the Properties only) as follows:

4.1 Clause 4.9 is to be amended by deleting the words "Market Dwellings" and replacing it with the words "Residential Units".

4.2 Clauses 1.3.1 and 1.3.2 of The Schedule to be deleted in their entirety and replaced with the following:

1.3.1 The Affordable Housing Planning Obligations in this Agreement 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 Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

(a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units; and

(b) 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 Housing Units to another Social Landlord 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

(c) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Planning Obligations in this Agreement which provisions shall determine absolutely.

5. REGISTRATION AS A LOCAL LAND CHARGE

5.1 This Third Deed of Variation shall be registered as a Local Land Charge.

6. COSTS

6.1 The Association agrees that on completion of this Third Deed of Variation the Association shall pay the Council's reasonable legal costs incurred in the negotiation and completion of this Third Deed of Variation.

7. MISCELLANEOUS PROVISIONS

7.1 Save as modified by this Third Deed of Variation the Existing Agreements and every clause of it will continue in full force and affect and will be binding upon the Parties and their successors in title as appropriate.

7.2 If there is any conflict between the terms of this Third Deed of Variation and the Existing Agreement then the terms of this Third Deed of Variation will prevail.

IN WITNESS whereof this Third Deed of Variation has been signed by the Association and sealed by the Council the day and year first before written

THE COMMON SEAL OF
HUNTINGDONSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of:

~~Chief Officer (Legal and Democratic Services)~~
~~Solicitor~~

EXECUTED as a **DEED** by affixing
THE COMMON SEAL OF
BPHA LIMITED
in the presence of

[redacted]

EXECUTED as a **DEED** by affixing
THE COMMON SEAL OF
PRUDENTIAL TRUSTEE
COMPANY LIMITED
in the presence of

[redacted]

APPENDIX 1

"The **Properties**"

Flats 5, 9-11 (odd), 15 and 21-37 (odd), Dunnock Way, St Ives, Huntingdon, PE27 5DH; 2-6 (even), Flats 8-24 (even) and 26-98 (even), Dunnock Way, St Ives, Huntingdon, PE27 5DJ; 1 Goldcrest Road, St Ives, Huntingdon, PE27 5DQ; 12, 14-16, and 22-25 (inclusive) Tern Drive, St Ives, Huntingdon, PE27 5DR and 2, 11, 15 and 21 and 23 Wren Close, St Ives, Huntingdon, PE27 5DW (formerly known as Land on the west side of London Road, St Ives, Huntingdon.)

STANFORDS FOR BUSINESS

Map data



[redacted]

Produced 14 Jul 2020 from the Ordinance Survey MasterMap (Topography) Database and incorporating surveyed revision available at this date.

The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Metres
0 10 20 30 40 50

1:1250

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N

1, Goldcrest Rd, St Ives
PE27 5DQ

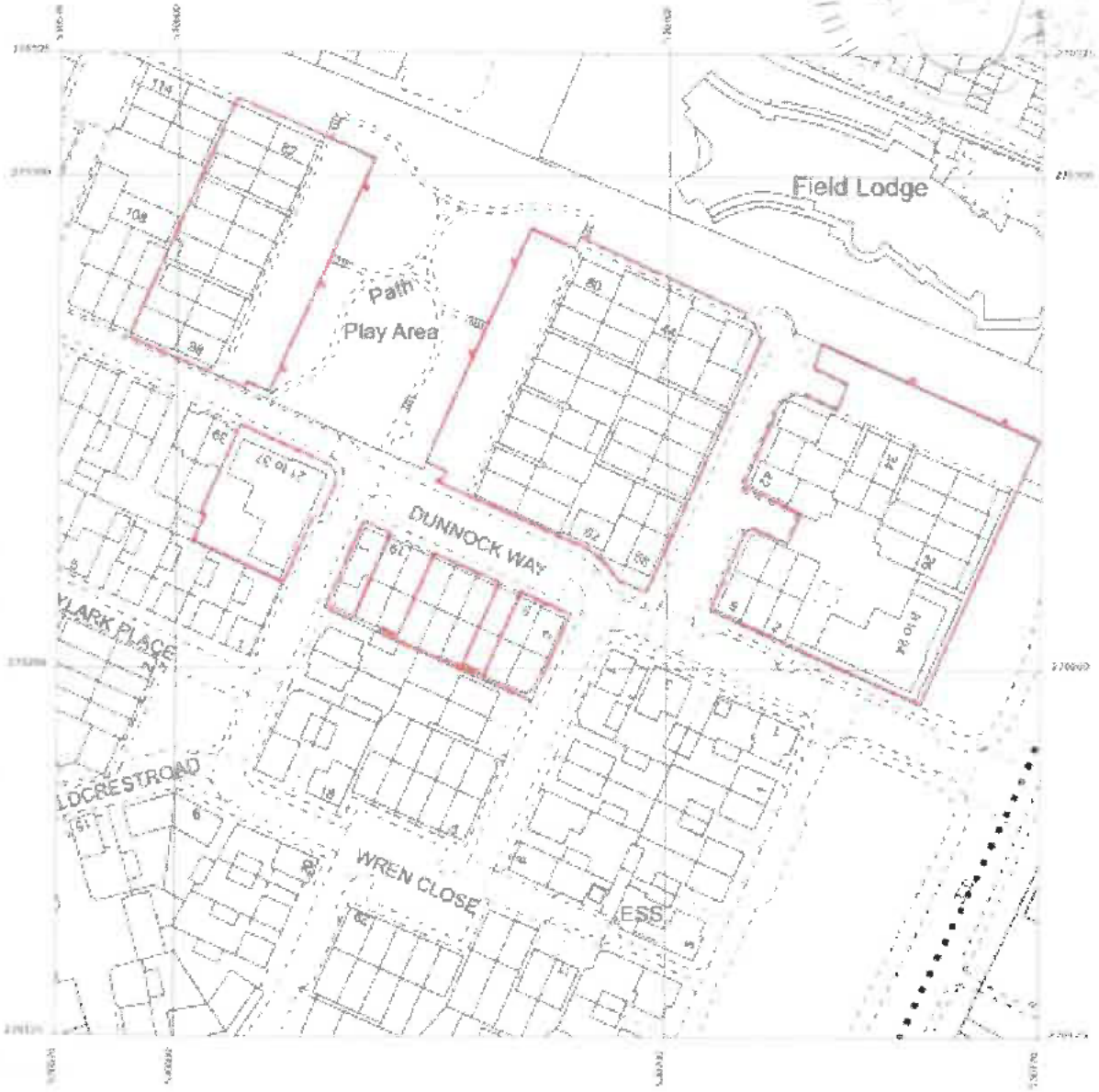
[redacted]

DIRECTOR

[redacted]

[redacted]

STANFORDS FOR BUSINESS



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1, Goldcrest Rd, St Ives
PE27 5DQ

74448

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