

DATED

30 NOVEMBER

2018

TENDRING DISTRICT COUNCIL (1)

AND

RICHARD ARTHUR SARGEANT, TIMOTHY ROBERT SARGEANT, DAVID RICHARD SARGEANT  
AND ANDREW IAN SARGEANT (2)

AND

LLOYDS BANK PLC (3)

AND

THE AGRICULTURAL MORTGAGE CORPORATION PLC (4)

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**DEED OF VARIATION**

Pursuant to Section 106 and Section 106A of the  
Town and Country Planning Act 1990

Relating to:

Land at The Priory, St Osyth, Clacton-on-Sea, Essex, CO16 8NZ

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**SHOOSMITHS**

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THIS Agreement is given on the

30<sup>TH</sup> day of NOVEMBER 2018

**BETWEEN:**

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE (**"the Council"**); and
- (2) **RICHARD ARTHUR SARGEANT, TIMOTHY ROBERT SARGEANT, DAVID RICHARD SARGEANT AND ANDREW IAN SARGEANT** all of The Prior, St Osyth, Clacton-on-Sea, Essex CO16 8NY (**"the Owner"**) and
- (3) **LLOYDS BANK PLC** (Company Registration Number 2065) whose registered office is at 25 Gresham Street, London EC2V 7HN (**"the First Mortgagee"**) and
- (4) **THE AGRICULTURAL MORTGAGE CORPORATION PLC** (Company Registration Number 234742) whose registered office is at Charlton Place, Charlton Road, Andover, Herts SP10 1RE (**"the Second Mortgagee"**)

**BACKGROUND**

- (A) The Council is a local planning authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Property is situated and by whom the obligations contained in this Agreement are enforceable.
- (B) The Owner is the freehold owner of the part of the Property registered under HM Land Registry Title Number EX688873, EX860324, EX628040 and EX39317.
- (C) The First Mortgagee has a registered charge dated the 29 July 2002 over the part of the Property with HM Land Registry Title Number EX688873.
- (D) The Second Mortgagee has a registered charge dated the 1 August 2012 over the part of the Property with HM Land Registry Title Numbers EX860324, EX628040 and EX39317.
- (E) The Owner submitted the Original Applications to the Council on 27<sup>th</sup> April 2016 and permission was granted by the Council subject to completion of the Original Agreement.
- (F) The Parties have entered into this Agreement in order to secure the planning obligations contained in this Deed.

**OPERATIVE TERMS**

**1 DEFINITIONS**

For the purposes of this Agreement the following expressions shall have the following meanings (except where the context otherwise requires):

<b>"the Act"</b>	means the Town and Country Planning Act 1990 (as amended);
<b>"Original Agreement"</b>	means the agreement dated 14 March 2018 made under Section 106 of the Act between the Council, the Owner, the First Mortgagee and the Second Mortgagee relating to the development at The Priory, St Osyth, Clacton-on-Sea, Essex, CO16 8NZ;

**"Original Applications"** means the applications submitted by the Owners to the Council on the 27<sup>th</sup> April 2016 and given references 16/00671/FUL and 16/00656/FUL by the Council respectively.

1.1 In this deed the words and expressions in the Original Agreement shall have the same meanings ascribed to them therein unless otherwise stated or the context so admits.

## **2 RECITALS**

2.1 References to the masculine, feminine and neuter genders shall include the other genders.

2.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.

2.3 References to natural persons are to include corporations and vice versa.

2.4 The reference to any statute or section of statute includes any statutory re-enactment or modification.

2.5 Headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation.

2.6 The expressions "the Owner", "the Council", "the First Mortgagee" and "the Second Mortgagee" shall include their respective successors in title and assigns as well as any successor in statutory function.

2.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement

## **3 STATUTORY PROVISIONS**

3.1 This Deed is made pursuant to the provision of sections 106 of the 1990 Act, section 106A of the 1990 Act, section 111 of the Local Government Act 1972, and any other enabling powers.

3.2 The obligations in this Deed shall be enforceable by the Council against the Owner.

3.3 This Deed is supplemental to the Original Agreement which shall continue in full force and effect.

3.4 This Deed shall come into effect upon the date of this Deed.

3.5 Where any obligation under the Original Agreement as varied by this Deed shall be deemed to have been complied with under the Original Agreement then it shall be deemed to have been complied with as varied by this Deed.

## **4 VARIATION TO THE ORIGINAL AGREEMENT**

4.1 Save as expressly varied by this Deed the Original Agreement shall remain in full force and effect.

4.2 The parties to this Deed agree that the Original Agreement shall be varied from the date hereof as contained in the First Schedule.

**5 COSTS**

5.1 The Owner shall pay to the Council on or before the date of completion of this Deed, the Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

**6 THIRD PARTIES**

6.1 It is not intended that any term of this document is enforceable by a third party under Section 1 of the Contracts (Rights of Third Parties) Act 1999 except where expressly provided and (if applicable) the parties to this document may rescind or vary the document without the third party's consent.

**7 JURISDICTION**

7.1 All disputes and claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the Court of England to which the parties irrevocably submit.

**8 DELIVERY**

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

**IN WITNESS** whereof the parties hereto have executed this Agreement on the day and year first before written

## SCHEDULE 1

### VARIATIONS TO THE ORIGINAL AGREEMENT

1. The following shall be inserted into the Original Agreement as a new paragraph 15:

#### **15 SECTION 73 APPLICATIONS**

15.1. In the event that any new planning applications are made in respect of the Proposed 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;

15.1.1. The obligations in this Deed shall (in addition to binding the Property in respect of the Planning Permissions) relate and bind the Property in respect of any planning permission granted pursuant to Section 73 of the Act; and

15.1.2. The definitions of Applications, Proposed Development and Planning Permissions shall be assumed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s).

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining that any application(s) made under Section 73 of the Act require a new supplemental deed pursuant to Section 106 of the Act or an agreement modifying the Original Agreement pursuant to Section 106 of the Act AND FOR THE AVOIDANCE OF DOUBT it shall be at the absolute discretion of the Council to determine whether a new or supplemental deed is required pursuant to s.106 of the Act or whether the Original Agreement needs to be varied on receipt of an application pursuant to Section 73 of the Act.

15.1.3. This Deed shall be endorsed with the following words in respect of any future Section 73 Applications:

"the obligations in this Deed relate to and bind the Property in respect of which a new planning permission referenced (\_\_\_\_\_) has been granted pursuant to Section 73 of the Town & Country Planning Act 1990 (as amended)"

Signed as a deed by )

**RICHARD ARTHUR SARGEANT** )



In the presence of:



Signature of witness



Name (in BLOCK CAPITALS)

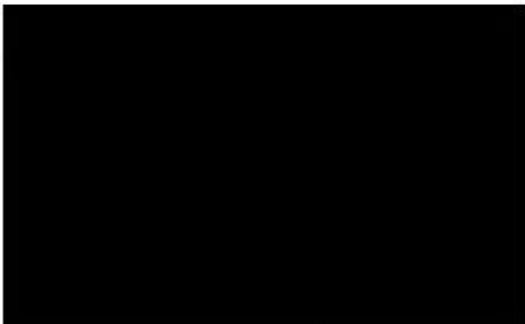
Address



.....

Signed as a deed by

**TIMOTHY ROBERT SARGEANT**



In the presence of:



Signature of witness



Name (in BLOCK CAPITALS)

Address



.....

Signed as a deed by

**DAVID RICHARD SARGEANT**

)  
)



In the presence of:

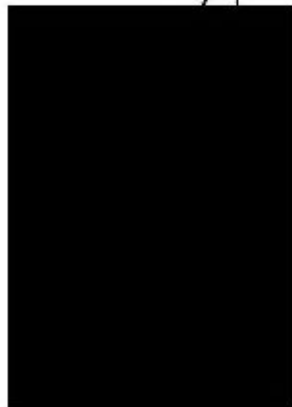


Signature of witness



Name (in BLOCK CAPITALS)

Address



Signed as a deed by

**ANDREW IAN SARGEANT**

)  
)

In the presence of:



Signature of witness



Name (in BLOCK CAPITALS)

Address





SIGNED AND DELIVERED as a Deed

by

as Attorney for and on behalf of

**THE AGRICULTURAL MORTGAGE CORPORATION PLC**

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

**EXECUTED as a DEED**

by

as Attorney for and on behalf of

**LLOYDS BANK PLC**

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

**EXECUTED as a DEED by affixing the seal** )

**of TENDRING DISTRICT COUNCIL** )

in the presence of:

[Redacted Signature]

Authorised Signatory /

