

DEED OF VARIATION

Under Sections 73 and 106 of the Town and Country Planning Act 1990 as amended

N E J B FULLER, A R FULLER, J D B FULLER, D C FULLER (1)

AND

CHARLES STREET COMMERCIAL INVESTMENTS LTD (2)

to

TENDRING DISTRICT COUNCIL (3)

RE: land west of The Street, Little Clacton, Essex (19/00093/DETAIL)

THIS Deed of Variation and Undertaking is made the 16 day of October Two Thousand and nineteen

**BY:**

- (1) **NIGEL EDMUND JAMES BARRINGTON FULLER, ADRIAN ROBERT FULLER, JULIA DAWN BARRINGTON FULLER AND DAVID CHARLES FULLER** of The Oaks, Clacton Road, Weeley Heathy, Clacton on Sea, Essex CO16 9EF ("the Owner")
- (2) **CHARLES STREET COMMERCIAL INVESTMENTS LIMITED** (Co Regn No. 1739793) whose registered office is situate at Lake View, Lakeside, Cheadle, SK8 3GW ("the Mortgagee")

**IN FAVOUR OF**

- (i) **TENDRING DISTRICT COUNCIL** of Council Offices, Thorpe Road, Weeley, Clacton on Sea, Essex CO16 9AJ (hereinafter called "the Council")
- (ii) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex CM1 1QH ("the County Council")
- (iii) **NHS ENGLAND** of Essex Area Team, Swift House, Hedgerow Business Park, Colchester Road, Chelmsford, Essex CM2 5PF ("NHS England")

**WHEREAS:**

- A. This Deed of Variation and Undertaking seeks to vary the Unilateral Undertaking dated 2 December 2016 relating to the Original Application
- B. The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Site is situated and the Council may enforce the terms of this Deed of Variation and Undertaking
- C. The Owner is the owner of the Site which forms the land registered at the Land Registry with Freehold Title Absolute under Title Numbers EX939994 and EX735782

- D. The Mortgagee has charges dated 13 November 2017 and 5 November 2018 registered against Title Numbers EX939994 and EX735782
- E. South East Developments Ltd (Co Regn No. 07117313) whose registered office is situate at Middleborough House, 16 Middleborough, Colchester, Essex CO1 1QT has submitted the Application to the Council
- G. The Unilateral Undertaking as varied by this Deed of Variation and Undertaking and contains obligations which bind the Site
- H. The Owner is varying the Unilateral Undertaking as set out herein so that it shall apply to the Original Application

## 1. DEFINITIONS

1.1 In this deed the following words and expressions have the following meanings: -

- "Application"** means an application for approval of reserved matters following outline approval and allocated reference 19/00093/DETAIL
- "Original Application"** means the Planning Application reference number 15/01550/OUT
- "Unilateral Undertaking"** means the unilateral undertaking dated 2 December 2016 given by Nigel Edmund James Barrington Fuller, Adrian Robert Fuller, Julia Dawn Barrington Fuller and David Charles Fuller to (1) the Council (2) Essex County Council (3) NHS England relating to development permitted under the Original Application

- 1.2 In this Deed of Variation and Undertaking the definitions contained in the Original Application apply unless the context otherwise requires
- 1.3 The headings are for convenience only and do not affect its construction or interpretation
- 1.4 References to a clause are references (unless otherwise stated) to a clause in this deed of variation
- 1.5 Words of one gender include all other genders and any reference to a person includes a reference to a company authority board department or other body
- 1.6 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
- 1.7 References to "statute" are references to a statute or statutory provision for the time being in force and any regulations order by-laws or other subordinate legislation made under any such statute or statutory provision from time to time

## **2. VARIATION OF UNILATERAL UNDERTAKING**

- 2.1 The Owner confirms that the covenants and conditions contained in the Unilateral Undertaking except as varied by this Deed of Variation and Undertaking are to continue in full force and effect
- 2.2 The Unilateral Undertaking shall be varied in the manner set out in the Schedule to this Deed of Variation and Undertaking
- 2.3 This Deed incorporates the terms of the Unilateral Undertaking save as varied by this Deed of Variation and Undertaking
- 2.4 The Unilateral Undertaking shall continue in full force and effect as varied by this Deed of Variation and Undertaking

### **3. COSTS**

3.1 The Owner agrees to pay all reasonable and proper legal fees and disbursements incurred by the Council in the sum of Three hundred and fifty pounds (£350.00) in connection with the preparation negotiation and completion of this Deed of Variation and Undertaking

### **4 MISCELLANEOUS**

4.1 The construction validity and performance of this Deed of Variation and Undertaking shall be governed by English law

4.2 Each clause and sub clause shall be separate, distinct and severable from each other to the extent only that if any clause or sub clause becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause or sub clause shall be held by a court of law in the United Kingdom to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause or sub clause be valid shall apply without prejudice to any other clause or sub clause contained herein

4.3 It is not intended that this Deed of Variation and Undertaking should give rights to a third party arising by virtue of the Contracts (Rights of Third Parties) Act 1999

4.4 This Deed of Variation and Undertaking may be executed in any number of counterparts and by different parties hereto on separate counterparts and each of those counterparts when executed and delivered shall constitute an original but all the counterparts together shall constitute one and the same instrument

### **5. MORTGAGEE'S CONSENT**

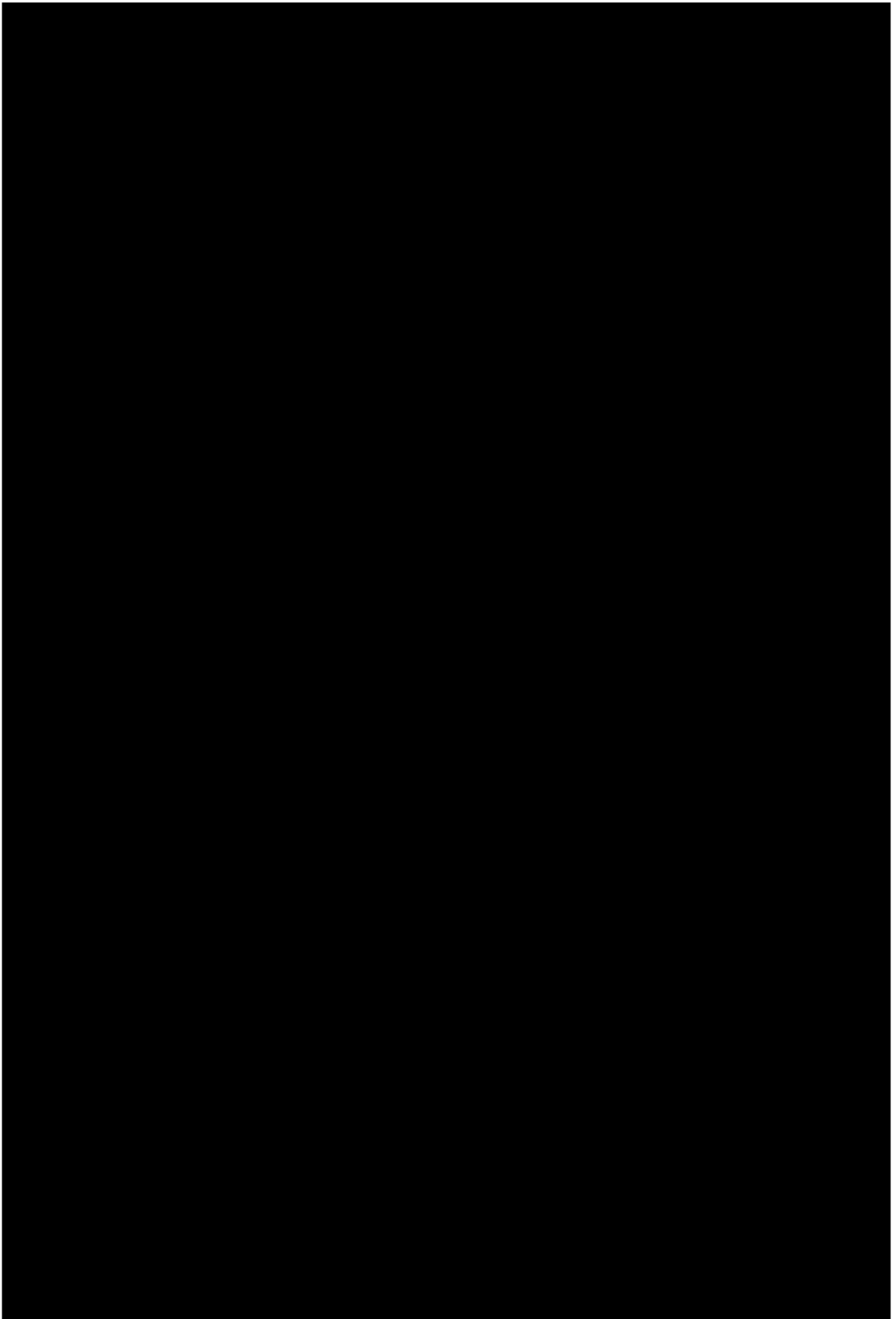
The Mortgage acknowledges and declares that this Deed of Variation and Undertaking has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed of Variation and Undertaking and that the security of the mortgages over the Site shall take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

**IN WITNESS WHEREOF** the Owner has executed this Deed of Variation and Undertaking as a deed and it is intended to be and shall be delivered on the date of this Deed of Variation and Undertaking

**SIGNED AS A DEED BY**



A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes or dates. A faint, curved line is visible above the redaction, possibly indicating a signature or a mark.



## THE SCHEDULE

1. **Schedule 3 paragraph 1 Definition of "Affordable Housing Dwelling"** of the Unilateral Undertaking shall be deleted and replaced with the following:

"means seven one bed roomed almshouse style dwellings in the location shown on the Affordable Housing Plan and in accordance with standards acceptable to Homes England at the date of the Commencement of Development and which shall be designed to meet Lifetime Homes Standards (as in force at 5 July 2010) provided that if there is any conflict between such Lifetime Homes Standard requirements and the detailed design of the Development set out in the Planning Application then the latter shall prevail;"

2. **Schedule 3 paragraph 1 Definition of "Homes and Communities Agency"** of the Unilateral Undertaking shall be deleted and replaced with the following:

"means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body"



EXECUTED as a DEED by  
CHARLES STREET COMMERCIAL  
INVESTMENTS LTD

Acting by two directors or by a director

And its secretary

