

**Second Deed of variation under Section 106A of  
the Town and Country Planning Act 1990 (as  
amended) of the Section 106 agreement dated 29  
June 2017 relating to the Land known as Chicken  
Farm, Thorpe Road, Little Clacton, Essex, CO16  
9RZ Planning ref 16/00421/FUL**

**(1) Tendring District Council**

**and**

**(2) Sole Bay Developments Limited**

**and**

**(3) Michael John Rockall and Gillian May**

**Rockall and**

**(4) OSF (UK) I Limited**

**and**

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**(5) Heniam Limited**



This DEED OF VARIATION is made on the 25<sup>th</sup> day of July

2022

#### **PARTIES**

- (1) Tendring District Council of Council Offices, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE (the 'District Council');
- (2) Sole Bay Developments Limited (company registration number 09871190) whose registered office is at 4 Angel Lane, Blythburgh, Suffolk, IP19 9LU ('SBDL');
- (3) Michael John Rockall and Gillian May Rockall of Heronsway, 4 Angel Lane, Blythburgh, Suffolk, IP19 9LU ('Mr & Mrs Rockall');
- (4) OSF (UK) I Limited (company registration number 09581638) whose registered office is at 8 Wimpole Street, London, W1G 9SP ('Mortgagee'); and
- (5) Heniam Limited (company registration number 07093746) whose registered office is at 10 John Street, London, WC1N 2EB ('Mortgagee').

#### **Recitals**

- (A) This Deed of Variation is supplemental to and varies the Section 106 Agreement as varied by the First Deed of Variation
- (B) The District Council is the local planning authority for the purposes of this Deed for the area within which the Application Site is situated and is entitled to enforce this Deed for the purposes of sections 106 and 106A of the 1990 Act.
- (C) The Owner is the freehold owner of the Application Site registered at HM Land Registry under title numbers EX498172 and EX898280 free from any encumbrances that would prevent the Owner from entering into and performing the covenants given in this Deed.
- (D) The Application Site is subject to registered charges in favour of the Mortgagee and which registered charges appear on the charges register for title number EX498172 (at the entries numbered 2 and 3) and for the title number EX898280 (at the entries numbered 2, 3, 4 and 5).
- (E) The Owner entered into the Section 106 Agreement in respect of planning application reference 16/00421/FUL in respect of the Application Site being land known as Chicken Farm, Thorpe Road, Little Clacton, Essex CO16 9RZ.
- (F) Planning permission ("the Planning Consent") was granted by the District Council as Local Planning Authority on 30th June 2017 for the Development set out in planning application reference 16/00421/FUL.
- (G) By the Section 106 Agreement the Owner created planning obligations requiring amongst other things that if the Development is not completed by 20 December 2024 to stop the Development until such time as the Owner submits a Viability Assessment to the District Council for its approval and to determine whether the Owner should be required to pay a percentage of the Deferred Contributions.
- (H) The parties to this Deed of Variation agree that the Section 106 Agreement shall be varied to further extend the date by which the Development must be completed triggering the need for



a Viability Assessment as set out in the Schedule to this Deed and pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 as amended.

## **1. Definitions**

In this Deed the following definitions apply, save where the content otherwise requires words and expressions defined in the Section 106 Agreement shall have the same meaning used in this Deed

**Section 106 Agreement** means the Section 106 Agreement made pursuant to s106 of the 1990 Act dated 29 June 2017 made between (1) the District Council (2) SBDL (3) Mr & Mrs Rockall and (4) Together Commercial Finance Limited relating to planning application reference 16/00421/FUL as varied by the First Deed of Variation

**First Deed of Variation** means the deed of variation made pursuant to s106 and s106A of the 1990 Act dated 9 September 2021 made between (1) Tendring District Council (2) Sole Bay Developments Limited (3) Michael John Rockall and Gillian May Rockall (4) OSF (UK) I Limited and (5) Heniam Limited.

means together SBDL and Mr & Mrs Rockall and their respective successors in title.

**the Owner**



## **2 INTERPRETATION**

- 2.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.2 Unless the context requires otherwise reference in this Deed to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs and schedules are references to those contained in this Deed.
- 2.3 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 2.4 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successor to its statutory functions.
- 2.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.7 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question.
- 2.8 The Interpretation Act 1978 shall apply to this Deed.

## **3 Legal Effect**

- 3.1 This Deed is made pursuant to Section 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under the Section 106 Agreement as varied by this Deed create planning obligations pursuant to Section 106 of the 1990 Act which bind the Application Site and are enforceable by the District Council as Local Planning Authority.





3.3 Notwithstanding any provision of the Section 106 Agreement that may be construed to prevent such variation it is hereby agreed that the Owner and the District Council enter into this Deed with the effect of varying the obligations in the Section 106 Agreement binding those parts of the Application Site in the manner set out in the Schedule to this Deed.

#### **4 Conditionality**

4.1 This Deed shall come into force on the date hereof.

#### **5 Variation of the Section 106 Agreement**

5.1 The parties to this Deed hereby agree that the Section 106 Agreement shall be varied by this Deed and to be read and construed as varied by the provisions set out in the schedule to this Deed.

5.2 The parties confirm that the Section 106 Agreement, as varied by this Deed, is otherwise to continue in full force and effect and be binding on the respective parties thereto.

5.3 This Deed is a Local Land Charge and the District Council shall register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Town and Country Planning Act 1990 as amended.

#### **6 Third parties**

Unless stated to the contrary, nothing in this Deed creates any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999.

#### **7 Governing Law and Jurisdiction**

7.1 This Deed and any dispute or claim arising out of or in connection with it, its subject matter or its formation (including any non-contractual dispute or claim) is governed by, and must be construed in accordance with, the laws of England and Wales.

7.2 The courts of England and Wales have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or its formation (including non-contractual disputes or claims).

#### **8. Costs**

8.1 The Owner agrees that prior to the completion of this Deed he shall pay the District Council's legal costs incurred in the negotiations and completion of this Deed in the sum of £1000 (one Thousand Pounds) (exclusive of Value Added Tax).



## THE SCHEDULE

### VARIATIONS TO THE SECTION 106 AGREEMENT

1. A new clause 2.11 is added to read:

2.11 None of the obligations in this Agreement shall bind owners or mortgagees of any Residential Dwellings nor any statutory undertaker or public authority which acquires any part of the Land or an interest in it for the purposes of its statutory functions

2. Clause 5.5 is deleted and replaced by the following:

If Completion does not occur by 31 March 2026 then all construction works on the Development shall stop and any of the Residential Dwellings that are not Occupied at that time shall not be Occupied unless and until:

5.5.1 an up-to-date Viability Assessment has been carried out and submitted to the District Council for the District Council to evaluate (at the Owner's cost, subject to that cost being reasonable); and

5.5.2 the District Council has confirmed in writing that the up-to-date Viability Assessment submitted pursuant to clause 5.5.1 accords with the definition of Viability Assessment herein.



**IN WITNESS** whereof this deed has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

Executed as a Deed by affixing the Common Seal of Tendring District Council in the presence of:



Authorised signatory



Executed as a deed by **Sole Bay Developments Limited** acting by a director in the presence of

Witness signature:

Name (in BLOCK CAPITALS):

Address:

Occupation:

.....

Director

Executed as a deed by **Michael John Rockall** in the presence of



.....

Michael John Rockall

<p>Witness signature:</p> <p>Name (in BLOCK CAPITALS):</p> <p>Address:</p> <p>Occupation:</p>	
<p>Executed as a deed by <b>Gillian May Rockall</b> in the presence of</p> <p>Witness signature:</p> <p>Name (in BLOCK CAPITALS):</p> <p>Address:</p> <p>Occupation:</p>	<p>.....</p> <p>Gillian May Rockall</p>
<p>Executed as a deed by <b>OSF (UK) I Limited</b> acting by a director in the presence of</p> <p>.....</p>	<p>.....</p> <p>Director</p>
<p>Executed as a deed by <b>Heniam Limited</b> acting by a director in the presence of</p> <p>Witness signature:</p> <p>Name (in BLOCK CAPITALS):</p> <p>Address:</p> <p>Occupation:</p>	<p>.....</p> <p>Director</p>



**IN WITNESS** whereof this deed has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

<p><b>Executed as a Deed by affixing the Common Seal of Tendring District Council in the presence of:</b></p>         <p>Authorised signatory</p>	
<p><b>Executed as a deed by Sole Bay Developments</b></p> 	 <p>Director</p>





<p>Executed as a deed by Michael John Rockall in the presence of [REDACTED]</p>	<p>Michael John Rockall</p> <p>[REDACTED]</p>
<p>Executed as a deed by Gillian May Rockall in the presence of [REDACTED]</p>	<p>Gillian May Rockall</p> <p>[REDACTED]</p>
<p>Executed as a deed by OSF (UK) Limited acting by a director in the presence of</p> <p>Witness signature:</p> <p>Name (in BLOCK CAPITALS):</p> <p>Address:</p> <p>Occupation:</p>	<p>Director</p>
<p>Executed as a deed by Henjam Limited acting by a director in the presence of [REDACTED]</p>	<p>[REDACTED]</p> <p>Director</p>

