

Dated 19th March 2024

Deed of Variation of s 106 Unilateral Undertaking

(1) LEISURE FAME LIMITED

AND

(2) TENDRING DISTRICT COUNCIL

under sections 106 and 106A of the Town and Country Planning Act 1990

relating to land at the rear of 820 and 824 St Johns Road, Clacton-

On-Sea (CO16 8BS)

Planning reference 22/01400/DOVU5 (relating to Planning Permission reference
18/00379/OUT)

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THIS DEED OF VARIATION is made on

19th March

2024

BETWEEN

- (1) LEISURE FAME LIMITED (Co. Regn. No. 01488164) of 37 Clacton Road, St. Osyth, Clacton-On-Sea CO16 8PA. (the **Owner**); and
- (2) TENDRING DISTRICT COUNCIL of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE (the **Council**)

Herein after referred to as 'the Parties'

WHEREAS:

- A The Council is the local planning authority for the purposes of this Deed for the area in which the Site is situated to the extent that the same lies within the jurisdiction of a local planning authority and they are the appropriate statutory body to enforce this Deed for the purposes of sections 106 and 106A of the 1990 Act.
- B The Owner is the freehold owner of that part of the Site registered at H M Land Registry under title number EX186887 free from any encumbrances that would prevent the Owner from entering into this Deed.
- C On 29th November 2018 the Owner together with John Wallace and Sharon June Wallace (the 1st landowner) and Lloyds Bank PLC (the Lender) entered into a unilateral undertaking in favour of the Council in respect of planning application reference number 18/00379/OUT ("the Original Undertaking") and the Council subsequently granted Planning Permission for the Development on 18th December 2018 subject to conditions and the Original Undertaking.
- D All reserved matters have been approved by the Council and the Development has now been completed and the individual Dwellings have been transferred to the owners and occupiers of those Dwellings which are now registered at H M Land Registry under new title numbers together with two further titles out of the Site which have been registered to statutory undertakers.
- E The 1st landowner and the Lender no longer have an interest in the Site and the Owner remains the freehold owner of the common areas of the Site excluding that part of the Site referred to in recital D above and is therefore entering into this Deed as the Owner responsible for the discharge of the Planning Obligations contained in Schedule 1 of the Original Undertaking.
- F The Council received the Public Open Space Contribution on 8 November 2019 discharging the covenants in Schedule 1 of the Original Undertaking however the Owner and the Council agree that the Public Open Space Contribution should be varied so that the contribution can be used for a different play area.
- G The Owner and the Council have agreed to vary the terms of the Original Undertaking as set out in this Deed for that purpose.

IT IS AGREED THAT:

1 Interpretation

- 1.1 In this Deed all words and phrases defined in the Original Undertaking shall have the same meanings in this Deed save where the context otherwise dictates and save for the following words and phrases which shall have the following meanings:

Original Undertaking means the unilateral undertaking made pursuant to s106 of the 1990 Act and given by John Wallace and Sharon June Wallace (1) Leisure Fame Limited (2) and Lloyds Bank PLC (3) dated 29 November 2018 in favour of the Council in respect of the Planning Permission;

Planning Obligations means those planning obligations in the Original Undertaking

2 Interpretation

- 2.1 Words importing one gender shall be construed as meaning any other gender;
- 2.2 Words in the singular include the plural and vice versa;
- 2.3 References to clauses and schedules are reference to clauses and schedules within this Undertaking only;
- 2.4 A reference to a person includes a company or any legal entity.
- 2.5 Wherever there is more than one person named as a party and/or 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.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it and "statutory requirement" shall be construed accordingly.
- 2.8 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions and any duly appointed employee or agent of the Council or such successor.

3 Obligations and statutory powers

- 3.1 This Deed is made pursuant to s106 and s106A of the 1990 Act to vary the Original Undertaking and the obligations in the Original Undertaking as varied by this Deed constitute

planning obligations for the purposes of the 1990 Act and it is acknowledged by the Parties that the obligations contained within it are binding on the Site and are enforceable by the Council as local planning authority against the Owner of the Site and against its successors in title in respect of its interests in each and every part of the Site.

- 3.2 To the extent that any of the obligations contained in this Deed and which vary the obligations in the Original Undertaking are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

4 Variations to the Original Undertaking

- 4.1 Without prejudice to the other Planning Obligations in the Original Undertaking which shall continue in full force and effect (save as varied by this Deed) the Parties to this Deed agree that from the date of this Deed the Original Undertaking shall be amended as set out in this Deed.

- 4.2 The obligations and covenants in the Original Undertaking as varied by this Deed relate to the Site, are planning obligations to which the statutory provisions in clause 3 apply and are for the purposes of regulation 122 of the Community Infrastructure Regulations 2010 necessary, directly related to and fairly and reasonably related in scale and kind to the development of the Site.

- 4.3 **The Original Undertaking shall be amended as follows:**

4.3.1 In Schedule 1 paragraph 1 of the definition of **“Public Open Space Contribution Purposes”** shall be deleted in its entirety and replaced with the following wording:

- 4.4 **“Public Open Space Contribution Purposes”** means the use of the Public Space contribution towards enhancement of the Priory Meadow play area, Park Road, St Osyth including the provision of additional play equipment.”

5 Owner’s covenants

- 5.1 The Owner covenants with the Council that it will observe and perform the covenants restrictions and obligations on its part contained in the Original Undertaking as varied by this Deed.
- 5.2 The Owner will on completion of this Deed agree to pay to the Council its reasonable legal costs incurred in the negotiation, preparation and completion of this Deed.

6 Miscellaneous

- 6.1 This Deed shall be registered as a local land charge by the Council;
- 6.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Undertaking confers or purports to confer any right to enforce any of the terms of this Undertaking on any person who is not a party hereto;
- 6.3 This Deed is governed by the laws of England and Wales.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

