

Dated

31st July

2024

TENDRING DISTRICT COUNCIL

-and-

SCOTT RESIDENTIAL LTD

-and-

ESSEX COUNTY COUNCIL

**DEED OF VARIATION OF PLANNING OBLIGATION
UNDER SECTION 106A
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to Land East of Henderson Road, Thorpe-le-
Soken, Essex
Planning reference 24/00087/DOVU5
(relating to 21/01397/FUL and 23/00304/VOC)

THIS DEED OF VARIATION is dated

31st July

2024

PARTIES:

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE (referred to as "the Council")
- (2) **SCOTT RESIDENTIAL LTD** (Co. Regn. No. 07061198) of Suite 5 Oyster House, Severalls Lane, Colchester CO4 9PD (referred to as "the Owner"); and
- (3) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex, CM1 1HQ ("the County Council")

together referred to as "the Parties"

INTRODUCTION

- (A) The Council and the County Council are the local planning authorities for the purposes of the 1990 Act for the area within which the Site is located
- (B) On 31 January 2023 the Original Agreement was entered into in respect of the Planning Application for the Development of the Site.
- (C) The Owner is the freehold owner of the Site having acquired the Site from Strutt and Parker (Farms) Limited which is registered at H M Land Registry under title number AA57254 free from any encumbrances that would prevent it from entering into this Deed.
- (D) Liana Enterprises Limited no longer hold a registered charge over the Site.
- (E) On 10 February 2023 the Council granted Planning Permission for the Development of the Site pursuant to the Planning Application subject to conditions and the Original Agreement.
- (F) On 25 April 2023 the Council granted the Section 73 Planning Permission for the Development of the Site subject to conditions and the Original Agreement the latter secured by Clause 10 of the Original Agreement where the definition of Planning Permission is construed to include any permission granted under section 73 of the 1990 Act.

- (G) The Owner has requested the Council to vary the Original Agreement in particular Schedules 2 and 5 which relate to Affordable Housing as set out in the provisions of this Deed
- (H) The Council has resolved to agree to this request provided the Parties enter into this Deed
- (E) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

1. DEFINITIONS

In this Deed the following expression has the following meaning:

Original Agreement	An agreement dated 31 January 2023 made under Section 106 of the 1990 Act between (1) TENDRING DISTRICT COUNCIL (2) STRUTT AND PARKER (FARMS) LIMITED (3) LIANA ENTERPRISES LTD(4) ESSEX COUNTY COUNCIL containing planning obligations enforceable by the Council and the County Council relating to the Planning Permission (reference 21/01397/FUL) and the Section 73 Planning Permission (reference 23/00304/VOC)
--------------------	--

Section 73 Planning Permission	means the planning permission granted by the Council on 25 April 2023 under reference 23/00304/VOC to allow a variation of condition 15 of 21/01397/FUL to amend the wording as follows: Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the carriageways and footways serving that dwelling, have been constructed to at least base course level or better, in accordance with the approved details. The approved details shall be implemented in full prior to the occupation of the 28th dwelling. Reason - To ensure that roads and footways are constructed to an acceptable standard and to ensure that satisfactory access is provided for residents and the public, in the interests of highway safety.
--------------------------------	--

2. LEGAL BASIS

- 2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106 and Section 106A of the 1990 Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council and the County Council.

3. VARIATION

- 3.1 With effect from the date of this Deed the Parties agree to vary the Original Agreement as set out in the Schedule to this Deed.
- 3.2 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Site as varied by this Deed.

4. OTHER PROVISIONS

- 4.1 On completion the Owner will pay the Council's and the County Council's reasonable legal costs in connection with this Deed.
- 4.2 the Owner warrants that it has full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site.
- 4.3 On completion the Council shall register this Deed in its Register of Local Land Charges.
- 4.4 This Deed shall be governed by and construed in accordance with the laws of England and each of the Parties hereby submits to the exclusive jurisdiction of the English Courts.

- 4.5 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.
- 4.7 If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provision of this Deed shall not in any way be deemed to be affected or impaired.
- 4.8 Words and expressions defined in the Original Agreement shall, unless the context or the express terms of this Deed otherwise require, bear the same meaning in this Deed.

SCHEDULE

VARIATION OF THE ORIGINAL AGREEMENT

- 1 The Parties agree that as from the date hereof the definitions of “Contributions” and “Index” and “Index Linked” in clause 1.1 of the Original Agreement shall be amended as follows:

“Contributions” means the Library Contribution and the Healthcare Contribution and the RAMS Contribution and the Affordable Housing Contribution (all as defined in the Schedules to this Agreement);

“Index” means (1) in relation to the (a) RAMS Contribution; (b) Open Space Contribution; and (c) Affordable Housing Contribution; the “All Items” index figure of the Index of Retail Prices (RPI All Items Index) published by the Office of National Statistics or any such alternative index or comparable measure of price inflation as the Council reasonably requires; and (2) in relation to the Healthcare Contribution the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-Housing (PUBSEC) or any such alternative index as the Council reasonably requires.

“Index Linked” means (1) in relation to the (a) RAMS Contribution; (b) Open Space Contribution; (c) the Healthcare Contribution; and (d) Affordable Housing Contribution; increased in respect of each contribution by applying the RPI All Items Index published by the Office for National Statistics using the formula $A = B \times C$ divided by D where:

A = the amount actually payable;

B = is the amount specified as payable;

C = is the RPI All Items Index two months before the date of payment;

and

D = is the RPI All Items Index two months before the date of this Agreement;

- 2 The Parties agree that as from the date hereof the definition of "Market Dwellings" in clause 1.1 of the Original Agreement shall be deleted in its entirety.

- 3 The Parties agree that as from the date hereof the following amendments shall be made to clause 2 of the Original Agreement:

3.1 the words 'Subject to the provision of the Second Schedule to this Agreement in relation to a Chargee (as defined in the Second Schedule)' in clause 2.7 shall be deleted;

3.2 the words 'Market Dwellings' in clause 2.9 shall be deleted and replaced with 'Dwellings';

3.3 clause 2.10 shall be deleted in its entirety and clause 2.11 shall be renumbered clause 2.10;

- 4 The Parties agree that as from the date hereof all definitions shall be deleted from the definition section within Part One of Schedule 2 of the Original Agreement save for the definition of 'NPPF' and the definition of 'Affordable Housing' which shall be amended as follows:

"Affordable Housing" means housing as defined in Annex 2 of the National Planning Policy Framework (NPPF) as may be amended from time to time.

- 5 The Parties agree that as from the date hereof paragraphs 1, 2, 3, 4 and 5 of Part One of Schedule 2 and Part Two of Schedule 2 of the Original Agreement shall be deleted in their entirety and shall have no further effect.
- 6 The Parties agree that as from the date hereof Schedule 5 of the Original Agreement shall be deleted in its entirety and shall have no further effect.
- 7 The Parties agree that as from the date hereof the following definitions shall be added to the definition section within Part One of Schedule 2 of the Original Agreement as follows:

"Affordable Housing Contribution" means the sum of Five Hundred and One Thousand Eight Hundred and Ninety Five Pounds (£501,895.00) Index Linked.

"Affordable Housing Contribution Purpose" means the use of the Affordable Housing Contribution towards the provision of Affordable Housing in the district of Tendring.

- 8 The Parties agree that as from the date hereof the provisions of Part One of Schedule 2 of the Original Agreement shall be amended by the insertion of the new paragraphs as follows:

The Owner hereby covenants with the Council as follows:

1. Not to Occupy or allow cause or permit to be Occupied more than Fifteen (15) of the Dwellings unless and until the Affordable Housing Contribution has been paid to the Council.

2. Payments shall be marked for the attention of the Section 106 Officer, Tendring District Council, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE and notification via email to obligations@tendringdc.gov.uk.

3. The Council covenants with the Owner:

- 3.1 To use the Affordable Housing Contribution solely for the Affordable Housing Contribution Purpose.
- 3.2 If any part of the Affordable Housing Contribution has not been spent or committed by the Council within five (5) years of receipt that part of the Affordable Housing Contribution shall be returned to the Owner along with interest that has accrued on that unused part (calculated using the SONIA Rate from the date of payment until the date the unexpended part is actually repaid) upon receipt of a request in writing to do so received by the Council no sooner than the 5th anniversary of the date of the payment.







