

DEED OF VARIATION

THIS DEED is made the 13th day of August Two thousand and twenty four

BETWEEN:

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall Station Road Clacton - On -Sea Essex CO15 1SE ("the Council") and
- (2) **ORWELL BUILD (CLACTON) LIMITED** (Company no. 13525009) whose registered office is situated at Eldo House Kempson Way Bury St Edmunds Suffolk IP32 7AR ("the Land owner")

together referred to as 'the parties'

WHEREAS:

- A The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Land is situated.
- B The Landowner is the freehold owner of the Land which is registered at H M Land Registry under title number EX815314 free from any encumbrances that would prevent the Owner from entering into this Deed of Variation.
- C By a Deed (hereinafter called "the Principal Unilateral Undertaking Deed") and annexed hereto as Appendix A) dated 15th December 2021 pursuant to the 1990 Act between the Landowner and the Council, the Landowner agreed to undertake certain obligations and to make certain payments to the Council in connection with the proposed Development of the Land within Title Number EX815314 and known as Mayfield 93 Station Road Clacton – On - Sea pursuant to the Planning Permission.
- D The Landowner has applied to the Council to vary the conditions of the payments under The Principal Unilateral Undertaking Deed before commencement of the Development described in the Planning Permission.

- E The Council has resolved to vary conditions of payments referred to in Recital D as set out in this Deed of Variation..
- F The expressions in this Deed of Variation have the meaning ascribed to them in the Principal Unilateral Undertaking Deed save as expressly provided in this Deed of Variation.

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

'1990 Act'	Town and Country Planning Act 1990 (as amended)
'Planning Permission'	planning permission granted by the Council on 4 April 2022 under planning reference 21/01562/FUL pursuant to the Planning Application for the Development of the Land.
'Principal Unilateral Undertaking Deed'	a unilateral undertaking dated 15 December 2021 made under Section 106 of the 1990 Act and given by Orwell Build (Clacton) Limited to the Council in respect of the Planning Permission and annexed to this Deed as Appendix A.

2. NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

- 2.1. This Deed of Variation is supplemental to the Principal Unilateral Undertaking Deed and is made pursuant to Sections 106 and 106A of the 1990 Act and all other relevant enabling provisions. The covenants in this Deed of Variation are planning obligations for the purposes of the 1990 Act.
- 2.2 The Council is the local planning authority capable of enforcing the obligations in the Principal Unilateral Undertaking Deed and this Deed of Variation

- 2.3. The parties to this Deed of Variation do not intend that any of the terms of this Deed of Variation will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it
- 2.4. The Landowner covenants to pay the reasonable legal and administrative costs of the Council in respect of the preparation, negotiation, completion and monitoring of this Deed of Variation, in the sum of £1,090.00 (One Thousand and Ninety Pounds) payable on completion
- 2.5. The parties to this Deed of Variation hereby agree and covenant with each other that from the date of this Deed of Variation the Principal Unilateral Undertaking Deed shall be varied in accordance with the following Schedule of Variation.
- 2.6. This Deed of Variation shall be read in conjunction with the Principal Unilateral Undertaking Deed.
- 2.7. Save as hereby varied all other obligations and terms of the Principal Unilateral Undertaking Deed shall continue in full force and effect
- 2.8. This Deed of Variation shall be registered as a Local Land Charge by the Council If required.
- 2.9. If any provision of this Deed of Variation shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed of Variation shall not in any way be deemed to be affected or impaired
- 2.10. Words and expressions defined in the Principal Unilateral Undertaking Deed shall, unless the context or the express terms of this Deed of Variation otherwise require, bear the same meaning in this Deed of Variation.
- 2.11. 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

SCHEDULE OF VARIATION

1. The wording contained in paragraph 2. of the Fifth Schedule of The Principal Unilateral Undertaking Deed shall be deleted in its entirety and replaced with the following wording:

“ Not to first Occupy cause or permit the first Occupation of a Dwelling on the Land forming part of the Development unless and until the said Public Open Space Contribution has been paid to the Council.

2. A new paragraph 3. shall be added to the Fifth Schedule of the Principal Unilateral Undertaking Deed as follows and the existing paragraph 3. shall be renumbered paragraph 4:

‘To notify the Council in writing of the first Occupation of a Dwelling on the Land forming part of the Development ten (10) working days prior to the said first Occupation.’

3. The following definitions shall be added to the Fifth Schedule of the Principal Unilateral Undertaking Deed to be inserted before paragraph 1. of that Schedule:

‘In this Fifth Schedule the following expressions have the following meanings:

‘Dwelling’ means a house or self-contained flat constructed as part of the Development and “Dwellings” shall be construed accordingly

‘Occupation’ means beneficial occupation for the purposes permitted by the Planning Permission and shall not include (i) occupation for the construction of the Development (ii) daytime occupation by workmen involved in the construction of the Development (iii) in so far as such uses are ancillary to the construction of the Development (a) the use of finished buildings for sales purposes for use as temporary offices or for show homes or (b) for the storage of plant and materials or (c) use for security operations; and “Occupy” and “Occupied” shall mutatis mutandis be construed accordingly



APPENDIX A

The Principal Unilateral Undertaking Deed
Dated 15th December 2021

