

DATED

19th December.

2024

FOXES PROPERTY 3 S.A R.L. (1)

And

**ON
TENDERING DISTRICT COUNCIL (2)**

And

TRIMONT EUROPE LIMITED (3)

DEED OF VARIATION

**Pursuant to Section 106A of the Town and Country Planning Act 1990
(as amended) relating to Land South West of Horsley Cross Roundabout
Clacton Road Horsley Cross Essex CO11 2NZ**

Bexley Beaumont Limited
Centurion House,
129 Deansgate,
Manchester M3 3WR
www.bexleybeaumont.com

THIS DEED is made this 19th day of December 2024

BETWEEN:-

1. **FOXES PROPERTY 3 S.A R.L.** (incorporated in Luxembourg)(OE ID: OE009832) of 1 Allee Scheffer, L-2520, Luxembourg, Grand Duchy Of Luxembourg and registered with the Luxembourg Trade and Companies Register (Registre de Commerce et des Sociétés, Luxembourg) under number B264761 hereinafter referred to as the **(Owner)**;

AND

2. **TENDERING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE hereinafter referred to as the **("Council")**;

AND

3. **TRIMONT EUROPE LIMITED of Welbeck Works** (company no. 08687097) 33 Welbeck Street, London, England, W1G8EX (the **"Mortgagee"**).

INTRODUCTION

- (1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and the authority who is entitled to enforce the obligations contained in this Deed.
- (2) The Owner is the freehold owner of the Site which is registered at H M Land Registry under Title Number AA21588 subject to the Charge in favour of the Mortgagee, and free from any encumbrances that would prevent the Owner from entering into this Deed.
- (3) The Mortgagee is the registered proprietor of the charge dated 27th October 2023 referred to in entry number 3 of the charges register of title number

AA21588 (the “**Charge**”) and has agreed to enter into this Deed to give its consent to the terms of this Deed.

- (4) On 12 November 2020 the Council granted planning permission to develop the Site under the Original Outline Planning Permission subject to conditions and the Original Section 106 Agreement.
- (5) On 28 September 2022 the Council granted the Reserved Matters Approval under planning reference 22/01042/DETAIL.
- (6) On 31 March 2023 the Council granted detailed planning permission under planning reference 22/01047/FUL (“Second Planning Permission”) in respect of part of the Site with a corresponding undertaking by deed dated 31 March 2023 (“Unilateral Undertaking”) to secure covenants contained therein.
- (7) The Owner has made an application to the Council given reference 24/00490/VOC under Section 73 of the 1990 Act for Variation of Condition 17 (Workplace Travel Plan) and Condition 18 (Employee Transport Service Phase 1) and deletion of Condition 19 (Employee Transport Service Phase 2) of application 19/01706/OUT, which application has not yet been determined by the Council.
- (8) The Owner offers this Deed in support of facilitating the ability to bring forward the Site and confirms the covenants contained in this Deed are necessary to make the Development acceptable in planning terms; directly relates to the Development; and fairly and reasonably relates in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).

- (9) The Owner has agreed to offer this Deed to regulate the Development and to give effect to the terms of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

“Development”	means the development granted by the Original Outline Planning Permission and the Second Planning Permission and any subsequent permissions granted under Section 73 of the 1990 Act in respect of those planning permissions.
“the 1990 Act”	means the Town and Country Planning Act 1990 as amended;
“Original Outline Planning Permission”	means the outline planning permission under reference 19/01706/OUT granted by the Council on the 12 th November 2020 for the development of the Site for employment development, comprising Phase

	1 for 15,350 sqm of B2 development rising to a maximum building height of 21.7m and Phase 2 for up to 18,117 sqm of B1c / B2 and B8 uses rising to a maximum building height of 12m, together with associated access, landscaping, parking and drainage pond
“Original Section 106 Agreement”	means the agreement made pursuant to section 106 of the 1990 Act in relation to the Site dated 10th November 2020 between (1) Robert Fairley Limited (the former owner of the Site); (2) Anglia Maltings (Holdings) Limited (the former owner of the Site); and (3) the Council to regulate the development granted under the Original Outline Planning Permission;
“Reserved Matters Approval”	means the approval by the Council on 28 September 2022 of the reserved matters in respect of the Original Planning Permission under planning reference 22/01042/DETAIL for the Site.

"Second Planning Permission"	means the permission under reference 22/01047/FUL granted by the Council on the 31st March 2003 for Proposed erection of three buildings (use classes Eg (iii), B2 and B8), a new access and highway works, parking and servicing and hard and soft landscaping
"Site"	means the Site as defined in both the Original Section 106 Agreement and the Unilateral Undertaking
"Unilateral Undertaking"	means the deed by unilateral undertaking made pursuant to section 106 of the 1990 Act in relation to the Site dated 31 March 2023 offered by (1) Anglia Maltings (Holdings) Limited (the former owner of the Site); to (2) the Council to regulate the development granted under the Second Planning Permission;
"Working Days"	means any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between

	Christmas Day and New Year's Day;
--	-----------------------------------

1 CONSTRUCTION OF THIS DEED

- 1.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.5 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 against each individually unless there is an express provision otherwise.
- 1.6 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.
- 1.7 References 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 respective statutory functions.

- 1.8 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.10 Unless defined differently in this Deed or the context otherwise requires a term defined in the Original Section 106 Agreement and the Unilateral Undertaking shall have the same meaning in this Deed.

2 LEGAL BASIS

- 2.1 This Deed is supplemental to the Original Section 106 Agreement and the Unilateral Undertaking 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 Section 1 of the Localism Act 2011 and all other enabling acts.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed creates planning obligations under Section 106 of the Act and are enforceable by the Council against the Owner with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.
- 2.3 The Council, the Owner and the Mortgagee acknowledge and declare that this Deed has been entered into by the Owner and the Mortgagee with their consent and that the Site shall be bound by the obligations contained in this Deed and that the Charge or the security of any future mortgage or charge over the Site (or any part of it) shall take effect subject to this Deed PROVIDED THAT the Mortgagee or any future mortgagee or chargee (or the successors in title to such Mortgagee mortgagee or chargee or any receiver or manager appointed by such Mortgagee mortgagee or chargee) of the Site (or any part of the Site) shall have no liability under this Deed unless it takes possession of the

Site or the relevant part of it in which case it too will be bound by the obligations as if it were a person deriving title from the Owner (and it shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach after it has parted with or released its interest in the Site).

3 CONDITIONALITY

This Deed takes effect upon the date hereof.

4 THE VARIATION TO THE ORIGINAL SECTION 106 AGREEMENT AND THE UNILATERAL UNDERTAKING

- 4.1 The parties agree that the Original Section 106 Agreement and the Unilateral Undertaking shall be varied in accordance with the provisions of Schedule 1 of this Deed but the Original Section 106 Agreement and the Unilateral Undertaking shall in all other respects remain and continue to apply with full force and effect.

5 MISCELLANEOUS

- 5.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 5.2 The contents of this Deed shall be registered as a Local Land Charge pursuant to Section 106(11) of the 1990 Act.
- 5.3 Any notices to be given under this Deed must be in writing and shall be deemed to have been properly served if: a) delivered by hand or b) sent by pre-paid first class post or other next working day delivery service to the principal address or registered office (as appropriate) of the relevant party and for the avoidance of doubt the address for service for the Council is as follows:

- 5.3.1 the Council's address at the head of this Deed and notices shall be marked for the attention of the Council's Head of Planning and Building Control ref 22/01047/FUL

and via email to obligations@tendringdc.gov.uk marked for the attention of the S106 Officer;

- 5.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 5.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Original Outline Planning Permission and the Second Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 5.6 No person shall be liable for any breach of the provisions of this Deed in respect of the whole or any part of the Site after it shall have parted with its ownership of the whole or part of the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 5.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Original Outline Planning Permission and the Second Planning Permission) granted (whether or not on appeal) before or after the date of this Deed.
- 5.8 This Deed shall not be binding upon any and all statutory undertakers who have as part of their statutory undertaking any interest in the Site.
- 5.9 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all

statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

6 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7 OWNERSHIP

7.1 The Owner shall provide the Council written notice within 14 (fourteen) days of any change in ownership of any of its interest in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of individual buildings forming part of the Development.

7.2 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Site.

8 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.

9 COSTS

On completion of this Deed the Owner shall pay to the Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Deed

10 JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England.

11 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

SCHEDULE 1

Variations to the Original Section 106 Agreement

The Original Section 106 Agreement shall be varied and construed as follows;

1. To insert the following wording in a new clause 6 and 7 of the Original Section 106 Agreement;

6. FUTURE MORTGAGEES

- 6.1 *The Council and Owner acknowledge and declare that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of any future mortgage or charge over the Site (or any part of it) shall take effect subject to this Deed PROVIDED THAT any future mortgagee or chargee (or the successors in title to such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee) of the Site (or any part of the Site) shall have no liability under this Deed unless it takes possession of the Site or the relevant part of it in which case it too will be bound by the obligations as if it were a person deriving title from the Owner (and it shall not be liable for any pre-existing*

breach arising prior to the date it enters into possession nor for any breach that occurs after it has parted with or released its interest in the Site).

7. SECTION 73 VARIATION

7.1 In the event that any new planning permission is granted by the Council pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties:

7.1.1 The obligations in this Agreement shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself; and

7.1.2 The definitions of Planning Application, Development and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and

7.1.3 This Agreement shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act

whether by way of a new agreement or supplemental deed pursuant to Section 106 or Section 106A of the 1990 Act.

The Unilateral Undertaking shall be varied and construed as follows:

- 2. To insert the following wording in a new clause 12 and 13 of the Unilateral Undertaking;**

12 FUTURE MORTGAGEES

- 12.1 *The Council and Owner acknowledge and declare that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of any future mortgage or charge over the Site (or any part of it) shall take effect subject to this Deed PROVIDED THAT any future mortgagee or chargee (or the successors in title to such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee) of the Site (or any part of the Site) shall have no liability under this Deed unless it takes possession of the Site or the relevant part of it in which case it too will be bound by the obligations as if it were a person deriving title from the Owner (and it shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach that occurs after it has parted with or released its interest in the Site).*

13. SECTION 73 VARIATION

13.1 In the event that any new planning permission is granted by the Council pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties:

13.1.1 The obligations in this Deed shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself; and

13.1.2 The definitions of Planning Application, Development and Planning Permission in this Deed shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and

13.1.3 This Deed shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Deed relate to and bind the Site in respect of which a new planning permission referenced has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Deed and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 or Section 106A of the 1990 Act.





