

Deed of Variation

relating to land at North Sea Hotel, Sea Road, Felixstowe, Suffolk

Dated:

25th July

2019

EAST SUFFOLK COUNCIL (1)
SUFFOLK COUNTY COUNCIL (2)
SEA ROAD DEVELOPMENTS (3)
MASLOW 2 LIMITED (4)

Mrs H J Slater
Solicitor, Head of Legal and Democratic Services
East Suffolk Council
East Suffolk House
Riduna Park, Station Road
Melton
IP12 1RT

Ref JB/DC/18/3478/VOC

DATE

25th July

2019

PARTIES

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("the Council").
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX ("the County Council")
- (3) **SEA ROAD DEVELOPMENTS LIMITED** (Co. Regn. No. 108651624) of Unit 8a, Bourne Court, Unity Trading Estate, Southend Road, Woodford Green, IG8 8HD ("the Owner")
- (4) **MASLOW 2 LIMITED** (Co. Regn. No. 10963508) of 11th Floor, 200 Aldersgate Street, London, EC1A 4HD ("the Chargee")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The County Council is also a local planning authority and the local highway authority (except for trunk roads) for the area in which the Site is situated.
- 3 The Owner is the freehold owner of the Site which is registered at the Land Registry under title number SK129343
- 4 The Chargee has an interest in the Site by virtue of a Registered Charge dated 20 July 2018
- 5 The Chargee was not party to the Existing Agreement

- 6 The Chargee is willing to enter into this Deed to give their consent to and bind their interest in the SiteThe Owner has applied for the Variation of Condition Application
- 7 The Site is subject to the Existing Agreement completed under the Existing Permission which is attached to this Deed at Appendix One
- 8 The Council has requested and the County Council, the Owner, and the Chargee have agreed without prejudice to enter into this Deed in order to vary the terms of the Existing Agreement as hereinafter appears and to secure the planning obligations contained in the Existing Agreement

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

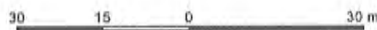
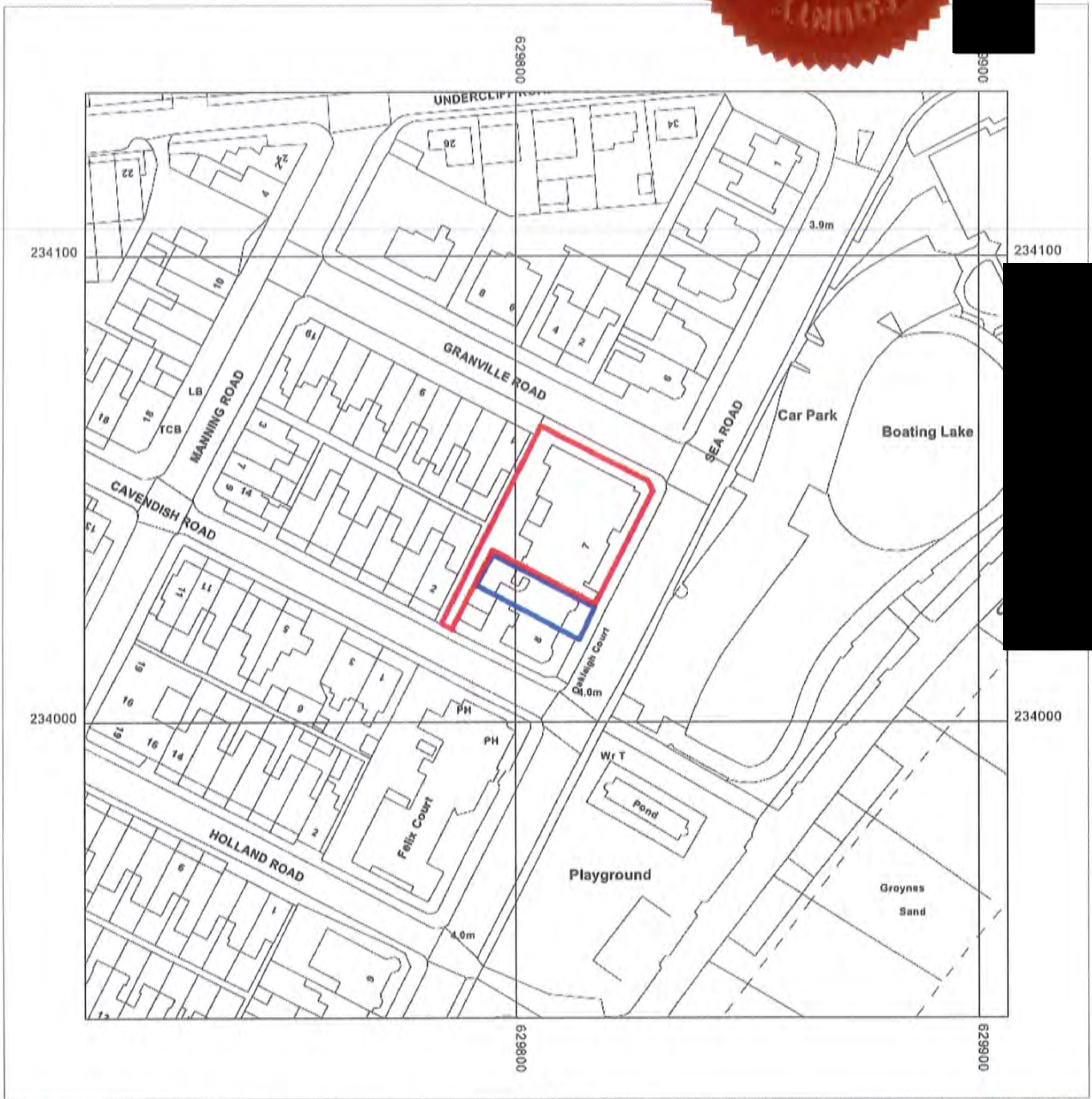
For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Third Schedule:

- | | |
|-----------------------|---|
| “Act” | the Town and Country Planning Act 1990 as amended; |
| “Existing Agreement” | the Section 106 Agreement dated 7 July 2015 made between the Council, the County Council and Ponders End Investments PLC |
| “Existing Permission” | the planning permission relating to the Site granted by the Council on 8 July 2015 under reference number DC/15/0151/FUL as varied by the Council on 3 May 2016 under |

	reference number DC/16/0917/VOC
“Plan”	the plan attached to the Existing Agreement labelled Plan 1
“Site”	the land described in the First Schedule, Part 2 against which this Deed may be enforced as shown edged red for identification purposes only on the Plan;
“Variation of Condition Application”	the application for the variation of condition validated by the Council on 20 August 2018 for the Development and allocated reference number DC/18/3478/VOC

2 CONSTRUCTION OF THIS DEED

- 2.1 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.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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.
- 2.4 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.



Scale 1:1250



Supplied by: National Map Centre Herts
 Licence number: 100031961
 Produced: 14/01/15
 Serial number: 1454486

The North Sea Hotel
 7 Sea Road
 Felixstowe
 Suffolk
 IP11 2AU

Plot centre co-ordinates: 629807, 234036
 Download file: Print52610_1454486
 Project name: kmitchell_searoad

- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive 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 Directive or deriving validity from it.
- 2.6 Any 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 and the County Council the successors to their respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use all reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 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 powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed that are planning obligations pursuant to Section 106 of the Act are enforceable by the Council and the County Council as the local planning authority against the Owner and their successors in title.

4 CONDITIONALITY

The provisions set out in the Third Schedule of this Deed are conditional upon:

- (i) the grant of the Variation of Condition Application

and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed

5 THE OWNER'S COVENANTS

- 5.1 The Parties covenant and agree that the Existing Agreement shall be varied as set out in the Third Schedule but otherwise the Existing Agreement shall remain in full force and effect

6 MISCELLANEOUS

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.2 This Deed shall be registrable as a local land charge by the Council.

- 6.3 Where the agreement, approval, consent or expression of satisfaction is required or requested by the Owner from the Council and/or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services (or the officer of the Council fulfilling such functions) and on behalf of the County Council by the Director of Resource Management or any officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 6.5 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.
- 6.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the 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.
- 6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or that part of the Site in respect of which such breach occurs)

but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause.

- 6.8 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 Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 6.9 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 6.10 The Owner covenants from the date that this Deed takes effect to allow the Council and the County Council, and their respectively duly authorised officers or agents at all reasonable times following at least three days' prior notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.
- 6.11 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 6.12 The Applicant covenants to pay the Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.
- 6.13 The Applicant covenants to pay the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed

7 WAIVER

No waiver (whether expressed or implied) by the Council or the County Council or the Owner 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 or the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

8 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

9 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.

10 ISSUE OF VARIATION OF CONDITION PERMISSION

The Council agrees to issue the Variation of Condition Permission in the form of the draft attached to the Second Schedule of this Deed on the date of this Deed or as soon as is practicable thereafter.

11 CHARGE

The Chargee hereby consents to the Owner entering into this Deed and acknowledges that from the date hereof the Site shall be bound by the planning obligations restrictions and undertakings contained herein and if the Chargee becomes a mortgagee in possession of the Site or any part thereof it shall be bound by the provisions of the Existing Agreement and this Deed and the Chargee further agrees that in the event that it becomes a mortgagee in possession it will not carry out or procure the Development or any part of the Development without performing and observing the terms and obligations contained in this Deed.

4. 18-017 403A Rev P.01 (Proposed rear access way elevation);
5. 18-017 300 Rev P.01 (Proposed ground floor plan);
6. 18-017 301 Rev P.01 (Proposed first floor plan);
7. 18-017 302 Rev P.01 (Proposed second floor plan);
8. 18-017 303 Rev P.01 (Proposed third floor plan);
9. 18-017 304 Rev P.01 (Proposed fourth floor plan);
10. 18-017 305 Rev P.01 (Proposed roof plan).



Mr McCafferty
SADA Architecture
Sada Architecture Ltd
First Floor
26C George Street
St. Albans
AL3 4ES
United Kingdom

Planning Permission

Town and Country Planning Act 1990

The Town and Country Planning (Development Management Procedure) (England) Order 2015

Our reference	DC/18/3478/VOC
Date valid	20 August 2018
Site	North Sea Hotel, 7 Sea Road, Felixstowe
Parish	Felixstowe
Proposal	Variation of condition 2 of application - DC/15/0151/FUL - Demolition of vacant nightclub premises and the erection of new building with commercial floorspace on the ground floor and 21 self-contained flats over.

Permission is hereby **granted** by East Suffolk Council as Local Planning Authority for the purposes of the Town and Country Planning Act 1990, for **development in complete accordance** with the application shown above, the **plan(s) and information contained in the application**, and subject to compliance with the following conditions as set out below. Your further attention is drawn to any informatives that may have been included.

In determining the application, the council has given due weight to all material planning considerations including policies within the development plan as follows:

Conditions:

There are no conditions.

Informatives:

LEGAL ADDRESS East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT
DX: 41400 Woodbridge

POSTAL ADDRESS Riverside, 4 Canning Road, Lowestoft NR33 0EQ
DX: 41220 Lowestoft

1. Although site investigation has not previously identified any contamination associated with this site, if any contamination is encountered anywhere on the site during the development, it must be reported to the Local Planning Authority. Where remediation is necessary a scheme shall be prepared and agreed in writing with the Local Planning Authority prior to any works which may disseminate or bury the contaminant or put any site operative at risk.
2. This application is subject to a Section 106 Agreement which is subject to a variation to reflect the amended drawing numbers subject to this permission.
3. It is an offence to drive across a footway except at a made up vehicular crossing. The existing vehicular access, on Granville Road, would now appear to require the dropped kerbing width to be extended. Such works, to extend dropped kerbs, would require permission from Suffolk County Council as Local Highway Authority. Information about gaining such permission can be found on the SCC website <https://www.suffolk.gov.uk/roads-and-transport/parking/apply-for-a-dropped-kerb/>
4. Note: It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the Highway Authority.

Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by the County Council or its agents at the applicant's expense.

The County Council's East Area Manager must be contacted on Telephone: 01728 652400. Further information can be found at: www.suffolk.gov.uk/environment-and-transport/highways/dropped-kerbs-vehicular-accesses/

A fee is payable to the Highway Authority for the assessment and inspection of both new vehicular crossing access works and improvements deemed necessary to existing vehicular crossings due to proposed development.

Yours sincerely,



Philip Ridley BSc (Hons) MRTPI | Head of Planning & Coastal Management
East Suffolk Council

Date:

LEGAL ADDRESS East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT
DX: 41400 Woodbridge

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Please read notes below

Note

Most work, including change of use, has to comply with Building Regulations. Have you made an application or given notice before work is commenced?

Town and Country Planning Act 1990

Notification to be sent to an applicant when a local planning authority refuse planning permission or grant it subject to conditions

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
Planning applications: Sections 78 and 79 Town & Country Planning Act 1990

Listed Building applications: Section 20, 21 and 22 Planning (Listed Buildings and Conservation Areas) Act 1990.

Advertisement applications: Section 220 and 221, Town and Country Planning Act 1990
Regulation 15 Town & Country Planning (Control of Advertisements) Regulations 1989.
- If an enforcement notice has been/is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier.
- As this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed

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development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice

DRAFT

DRAFT

LEGAL ADDRESS East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT
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DX: 41220 Lowestoft

SECOND SCHEDULE

Draft Variation of Condition Permission

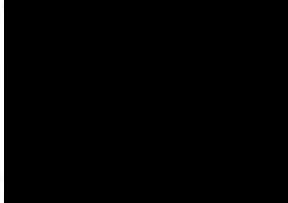
THIRD SCHEDULE

In clause 1 (Definition of the Existing Agreement)

In definition for the 'Application' add in additional wording "and the application for the variation of condition 2 of the Planning Permission validated by the Council on 20 August 2018 for the Development and allocated reference number DC/18/3478/VOC brief details of which are set out in the First Schedule"

1. Add the First Schedule Part 2 of this Deed into the Second Schedule of the Existing Agreement
2. Add the Second Schedule of this Deed into the Second Schedule of the Existing Agreement

THE COMMON SEAL OF
EAST SUFFOLK COUNCIL
was affixed in the presence of:



Authorised Officer

Authorised Officer

THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL
was affixed in the presence of:



Authorised Officer

EXECUTED AS A DEED by
SEA ROAD DEVELOPMENTS LIMITED
acting by its Director
in the presence of:

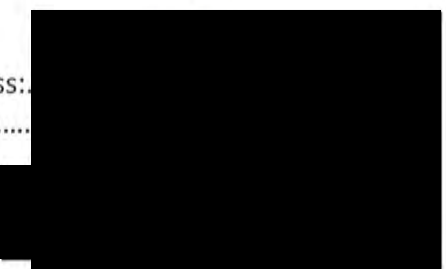


Director

Signature of Witness:

Name of Witness:.....

Address of Witness



SIGNED AS A DEED BY
MASLOW 2 LIMITED

in the presence of:

Signature

Signature...

