

DATED 21 July 2021

- (1) LONDON LEGACY DEVELOPMENT CORPORATION  
(2) SOUTHERN HOME OWNERSHIP LIMITED

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**SECTION 106A AGREEMENT  
DEED OF VARIATION**  
relating to the development of land adjacent (south) to 1-7  
Dace Road, Fish Island, London E3 2NG  
Supplemental to Agreement dated 5 November 2018

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Pinsent Masons

THIS DEED is made on

21 July

2021

BY:-

- Amend  
Mason's  
LP*
- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of ~~Level 10, 1 Stratford Place, Montfichet Road, London E20 4EJ~~ (the "LPA"); and *Level 9, 5 Endeavour Square, Stratford, London E20 1JN*
- (2) **SOUTHERN HOME OWNERSHIP LIMITED** (Registered Society Number 18521R) whose registered office is at Fleet House, 59-61 Clerkenwell Road, London EC1M 5LA (the "**Applicant**").

**WHEREAS:-**

- (A) By virtue of the London Legacy Development Corporation (Planning Functions) Order 2012 (effective from 1 October 2012 and made pursuant to powers, inter alia, in the 2011 Act) the Local Planning Authority is the local planning authority for the Site for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The Applicant has a freehold interest in the Site registered at the Land Registry with Title Number EGL212613.
- (C) Planning permission was granted by the LPA on 5 November 2018 in respect of the Site under reference number 17/00007/FUL ("**Existing Permission**").
- (D) The Applicant submitted an application to the LPA seeking amendments to schedule 1 (affordable housing) of the Principal Agreement ) and schedule 6 (sustainability) of the Principal Agreement and allocated reference number 19/00307/DOV ("**Variation Application**").
- (E) The Applicant submitted an application to the LPA seeking a non-material amendment to the Existing Permission pursuant to section 96A of the 1990 Act to vary the wording of Condition 31 (Renewable Energy) and allocated reference number 19/00296/NMA ("**NMA Application**").
- (F) The LPA, Dace Smeed Road Limited and Reflex Bridging Limited have previously entered into the Principal Agreement in order to secure the planning obligations contained within the Principal Agreement.
- (G) The LPA and the Applicant have agreed to vary the Principal Agreement in the manner set out in clause 4 and Schedule 1 of this Deed.
- (H) This Deed is supplemental to and varies the Principal Agreement.
- (I) The LPA and the Applicant have agreed to enter into this Deed in order to secure the planning obligations contained in it pursuant to the provisions of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the 2011 Act and all other enabling powers.
- (J) The LPA and the Applicant agree that the obligations contained in this Deed meet the three tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

**1. INTERPRETATION**

In this Deed:-

- 1.1 "**the Principal Agreement**" means the s106 agreement dated 5 November 2018 between the LPA, Dace Smeed Road Limited (Company Number 10125138) and Reflex Bridging Limited (Company Number 07981831);
- 1.2 terms and expressions defined in the Principal Agreement shall have the same meaning in this Deed unless otherwise provided;

- 1.3 any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply;
- 1.4 headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation;
- 1.5 references to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed save where the context provides otherwise;
- 1.6 where the context so requires:-
  - 1.6.1 the singular includes the plural and vice versa;
  - 1.6.2 the masculine includes the feminine and vice versa; and
  - 1.6.3 persons includes bodies corporate associations and partnerships and vice versa;
- 1.7 where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons;
- 1.8 where more than one party enters into any obligation or liability those parties are jointly and severally liable;
- 1.9 words denoting an obligation on a party to do any act, 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 this restriction;
- 1.10 references to any party shall include their respective successors in title and assigns.

## **2. LEGAL EFFECT**

This Deed is made pursuant to the provisions of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the 2011 Act and all other enabling powers.

## **3. PLANNING OBLIGATION INCORPORATING THE PRINCIPAL AGREEMENT**

- 3.1 This Deed shall take effect on the date hereof.
- 3.2 The Applicant agrees to observe and perform all of the covenants agreements restrictions and obligations on the part of the Developer contained in the Principal Agreement subject to this Deed.
- 3.3 The Applicant agrees that the covenants and obligations contained in the Principal Agreement are to continue in full force and effect except as expressly varied by this Deed.

## **4. MODIFICATION**

- 4.1 The Applicant agrees that from the date of this Deed the Principal Agreement shall be varied as set out at Schedule 1 of this Deed.
- 4.2 Except as expressly varied by this Deed the Principal Agreement shall remain in full force and effect.

## **4.3 LEGAL FEES**

The Applicant agrees that they will on completion of this Deed pay the LPA's legal costs reasonably and properly incurred in the negotiation and completion of this Deed (inclusive of any such reasonable costs properly incurred by external lawyers appointed by the LPA in relation to the negotiation and completion of this Deed).

5. **THIRD PARTY RIGHTS**

This Deed gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act and it may be enforced by the successors in title of the parties and by any successor to the Council's statutory functions.

6. **NO WAIVER**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the LPA in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Applicant from any liability under this Deed.

7. **NO FETTER**

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the LPA in the exercise of its functions in any capacity.

8. **JURISDICTION**

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

9. **DELIVERY**

The provisions of this Deed shall be of no effect until this Deed has been dated.

## SCHEDULE 1

### VARIATIONS TO THE PRINCIPAL AGREEMENT

#### 1. SCHEDULE 1 – AFFORDABLE HOUSING

1.1 All the definitions in Schedule 1 paragraph 1 shall be deleted with the exception of "Affordable Housing" ~~and any further definitions referred to within paragraphs 4 – 7 inclusive.~~

The following definitions shall be added to Schedule 1 paragraph 1:

<b>"Affordable Housing Contract"</b>	means as defined in the 1-7 Dace Road Agreement
<b>"Affordable Housing Provider"</b>	means as defined in the 1-7 Dace Road Agreement
<b>"1-7 Dace Road Affordable Housing Units"</b>	means the 50 Residential Units to be provided as Affordable Housing at the 1-7 Dace Road Development in accordance with the 1-7 Dace Road Agreement which for the avoidance of doubt shall comprise: <ul style="list-style-type: none"><li>a) the Relocated Adjacent 1-7 Dace Road Affordable Housing Units;</li><li>b) the 42 Residential Units to be provided as Affordable Housing pursuant to the 1-7 Dace Road Agreement</li></ul>
<b>"1-7 Dace Road Agreement"</b>	means the section 106 agreement between (1) the LPA; (2) Dace Road LLP; (3) Alami International Limited; (4) National Westminster Bank PLC dated 25 January 2018 and as varied by a deed of variation of the same date as this Deed
<b>"1-7 Dace Road Development"</b>	means the site at 1-7 Dace Road, , Fish Island, London E3 2NG which shall be developed in accordance with planning permission 16/00462/FUL for the demolition of all buildings to enable a mixed use re-development of four new blocks ranging in height from five (5) to six (6) storeys (with some single storey elements) to provide 15,768sqm of floorspace (GIA), comprising: 6308 sqm of commercial space (Use Classes B1c, B2 and B8), 110 residential units including affordable housing (Use Class C3) and associated open space, amenity areas, vehicular access, accessible parking, cycle parking and refuse/recycling stores
<b>"Relocated Adjacent 1-7 Dace Road Affordable Housing Units"</b>	means eight (8) of the Residential Units originally to be provided as Affordable Housing at the Development which are now to be provided as Affordable Housing at the 1-7 Dace Road Development in accordance with the 1-7 Dace Road Agreement

1.3 Paragraphs 2 to 7 shall be deleted and replaced with the following as a new paragraph 2:

#### 2. AFFORDABLE HOUSING PROVISION

2.1 None of the Residential Units shall be Occupied until:-

2.1.1 one hundred percent (100%) of the 1-7 Dace Road Affordable Housing Units are:

- (a) completed and made ready for Occupation;
- (b) have been transferred to the Affordable Housing Provider pursuant to the Affordable Housing Contract;

in accordance with the 1-7 Dace Road Agreement.

2. **SCHEDULE 2 – VIABILITY REVIEW**

2.1 The definition of “Deferred Affordable Housing” shall be deleted and replaced as follows:

**“Deferred Affordable Housing”** means the Deferred Affordable Housing Payment

2.2 The definition of “Deferred Affordable Housing Units” shall be deleted.

2.3 The definition of “Deferred Affordable Housing Payment” shall be deleted and replaced as follows:

**“Deferred Affordable Housing Payment”** means a sum of money representing the cost of providing additional Affordable Housing Off Site so as to increase the Affordable Housing provided by the Development (for the avoidance of doubt no Affordable Housing is provided by this Development in accordance with Schedule 1 of this Agreement) up to a cap of fifty per cent (50%) of the Residential Units comprised within the Development in accordance with the requirements of Policy H.2 of the London Legacy Development Corporation Local Plan (adopted July 2020) to be agreed between the Developer and the LPA or determined by the Specialist

2.4 The definition of “Deferred Affordable Housing Scheme” shall be deleted.

2.5 The definition of “Relevant Report” shall be deleted.

2.6 Paragraph 3.1 shall be amended by adding the following wording at the end of the paragraph:

“the Construction Contract and an Unconditional Obligation Certificate (together known as the “**Contract Documents**”).

2.7 Paragraph 3.2 shall be deleted.

2.8 Paragraph 5.1 shall be deleted and replaced as follows:

“The Viability Review shall be accompanied by a Deferred Affordable Housing Payment proposal in the event that the Viability Review demonstrates that a Deferred Affordable Housing Payment can be made.”

2.9 Paragraph 6.3 shall be amended to delete “and/or Deferred Affordable Housing Scheme”.

2.10 Paragraph 7.2 shall be amended to delete “the Deferred Affordable Housing Scheme or”.

2.11 Paragraph 7.3.3 shall be amended to delete “Deferred Affordable Housing Scheme or”.

2.12 Paragraph 8.2 shall be amended to delete “which for the avoidance of doubt shall include representations explaining whether Deferred Affordable Housing could be provided on Site as Deferred Affordable Housing Units”.

- 2.13 Paragraph 8.3.3 shall be amended to delete “, in particular but without prejudice to the generality if the provisions relating to OnSite Deferred Affordable Housing at paragraph 9”.
- 2.14 Paragraph 8.4 shall be amended to delete “a Deferred Affordable Housing Scheme”.
- 2.15 Paragraph 9 shall be deleted.
- 2.16 Paragraph 10.1 shall be deleted and replaced as follows:
- “10.1 If the Specialist determines or the Developer and LPA agree that the Development can support Deferred Affordable Housing:-
- 10.1.1 the Developer shall pay to the LPA the Deferred Affordable Housing Payment prior to First Occupation; and
- 10.1.2 no part of the Development shall be Occupied until the Deferred Affordable Housing Payment has been paid to the LPA.”
- 2.17 Paragraph 11.1.2 shall be amended to delete “Deferred Affordable Housing Scheme or”.
- 2.18 Paragraph 11.1.3 shall be amended to delete “Deferred Affordable Housing Scheme or” and “(as relevant)”.
- 2.19 Paragraph 12.3 shall be deleted and replaced as follows:
- “12.3 If Commencement construction works have not taken place for a period exceeding 12 (twelve) calendar months, then the Developer shall:-“
- 2.20 Paragraph 12.3.3 shall be deleted and replaced as follows:
- “12.3.3 the provisions and covenants on behalf of the Developer in this Schedule shall apply to any subsequent Viability Review(s) and Deferred Affordable Housing and shall be agreed by way of a fresh Memorandum.”
- 2.21 Paragraph 13.1 shall be deleted and replaced as follows:
- “13.1 Within 15 (fifteen) Working Days of the LPA and the Developer agreeing a Deferred Affordable Housing Payment (or the Specialist determining by issuing his decision), the Developer and the LPA shall record the Deferred Affordable Housing Payment by completing a Memorandum by each of the LPA and the Developer signing the same (acting by authorised signatories”
- 2.22 Paragraph 13.2 shall be deleted and replaced as follows:
- “13.2 The LPA and the Developer agree that upon completion of a Memorandum, to endorse each engrossed copy of this Agreement with the insertion of the following:-
- “The Parties have agreed the details of the Deferred Affordable Housing Payment by way of a signed Memorandum between the LPA and the Developer dated 20 “*
- 2.23 Paragraph 13.3.1 shall be deleted.

### 3. SCHEDULE 5 – SUSTAINABILITY

- 3.1 The following definition shall be added to Schedule 5:

**Carbon Offset Contribution** means a financial contribution of £64,339.20 (sixty four thousand and three hundred and thirty nine pounds and twenty

pence) which shall be paid in accordance with paragraph 2 of this Schedule 5

3.2 A new paragraph 4 shall be added to Schedule 5 and will read as follows:

**“4. CARBON OFFSET CONTRIBUTION**

4.1 Further to the satisfaction of the obligation at paragraph 2.4.4 of Schedule 5, the Developer shall pay the Carbon Offset Contribution prior to Occupation of the Development.

4.2 The Development shall not be Occupied until the Carbon Offset Contribution has been paid to the LPA.”



**IN WITNESS** whereof the parties hereto have executed this Deed as a deed the day and year first before written.

**EXECUTED** as a Deed by affixing the )  
common seal of **LONDON LEGACY** )  
**DEVELOPMENT CORPORATION** )  
in the presence of:-

  
.....  
Authorised signatory



**EXECUTED** as a Deed by **SOUTHERN** )  
**HOME OWNERSHIP LIMITED** acting by:- )



  
.....  
Director

  
.....

Director/Secretary