

DATED 02 February 2021 ~~2020~~

(1) LONDON LEGACY DEVELOPMENT CORPORATION

(2) WALLIS ROAD HOMES LIMITED

(3) OAKNORTH BANK PLC

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SECTION 106A AGREEMENT  
DEED OF VARIATION  
relating to the development of land at 75 – 89 Wallis Road  
and 59 Berkshire Road, Hackney, London, E9 5LN

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Pinsent Masons

THIS DEED is made on 02 FEBRUARY 2021. ~~2020~~

BY:-

- (1) LONDON LEGACY DEVELOPMENT CORPORATION of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ (the "LPA");
- (2) WALLIS ROAD HOMES LIMITED (Company Number 11475010) whose registered office is at Manderley, Lower South Park, South Godstone, Godstone RH9 8LF (the "Owner"); and
- (3) OAKNORTH BANK PLC (Company Number 08595042) whose registered office is at 57 Broadwick Street, London W1F 9QS (the "Mortgagee").

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 Owner has a freehold interest in the Site registered at the Land Registry with Title Numbers EGL295006 and EGL153665 relating to the Site.
- (C) The Mortgagee has a charge dated 26 September 2018 over the Site registered under Title Numbers EGL295006 and EGL153665.
- (D) Planning permission was granted by the LPA on 16 August 2017 in respect of the Site under reference number 15/00338/FUL ("Planning Permission").
- (E) The Owner submitted an application to the LPA seeking amendments to of the Principal Agreement and allocated reference number 20/00287/DOV ("Deed of Variation Application").
- (F) The LPA and M&D Silk Properties Limited previously entered into the Principal Agreement in order to secure the planning obligations contained within the Principal Agreement.
- (G) The LPA and the Owner have agreed to vary the Principal Agreement in the manner set out in clause 5 of this Deed.
- (H) This Deed is supplemental to and varies the Principal Agreement.
- (I) The LPA and the Owner 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 Owner 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 16 August 2017 between the LPA and M&D Silk Properties Limited;
- 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 Owner agrees to observe and perform all of the covenants agreements restrictions and obligations on the part of M&D Silk Properties Limited contained in the Principal Agreement subject to this Deed.
- 3.3 The Owner 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. MORTGAGEE'S CONSENT**

- 4.1 The Mortgagee acknowledges and declares that:-
- 4.1.1 this Deed has been entered into by the Owner with its consent;
- 4.1.2 the Land shall be bound by the obligations contained in the Principal Agreement as varied by this Deed; and
- 4.1.3 the security of the Mortgagee over the Site shall take effect subject to the Principal Agreement as varied by this Deed.

4.2 The Mortgagee consents to the Owner entering this Deed PROVIDED THAT the Mortgagee shall be liable only for any breach of the provisions in the Principal Agreement as varied by this Deed during such period as it is a mortgagee in possession of the Site (or any part thereof to which such obligation relates) and shall not be liable for any breach after it has parted with its interest in the Site (or any part thereof to which such obligation relates) but without prejudice to any antecedent or subsisting breach which occurred prior to parting with such interest.

5. **MODIFICATION**

5.1 The Owner agrees that from the date of this Deed the Principal Agreement shall be varied as described at Schedule 1.

5.2 Except as expressly varied by this Deed the Principal Agreement shall remain in full force and effect.

6. **LEGAL FEES**

The Owner 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).

7. **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.

8. **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 Developer from any liability under this Deed.

9. **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.

10. **JURISDICTION**

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

11. **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. DEFINITIONS

1.1 The following definition shall be added:

"Sums Due" means all sums due to a mortgagee or chargee of the Affordable Housing Units pursuant to the terms of its charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses

#### 2. CLAUSE 2.4.2

2.1 shall be deleted and replaced with the following:

"except for paragraph 7 of Schedule 1 which shall apply (subject to paragraph 6.2 of Schedule 1), individual owners and occupiers of the Affordable Housing Units and their individual mortgagees and chargees"

#### 3. CLAUSE 2.4.3

3.1 shall be deleted and replaced with the following:

"any mortgagee or chargee of an Affordable Housing Provider nor any mortgagee or chargee of the owner for the time being of any leasehold interest in any of the Affordable Housing Units nor any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by such mortgagee or chargee of such Affordable Housing Provider or owner nor any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (including any administrator and including a housing administrator) (each a Receiver) and who exercises any power of sale unless it takes possession of the Site (in whole or in part) in which case it too will be bound by the obligations as if it were a person deriving title from the Developer and in order for such mortgagee or chargee or Receiver of an Affordable Housing Provider to sell the Affordable Housing Units free from restrictions of this Agreement then the procedure set out in paragraph 6.2 of Schedule 1 must first have been followed"

#### 4. PARAGRAPH 6.2.1(B) OF SCHEDULE 1

4.1 shall be deleted and replaced with the following:

"the said mortgagee or receiver has used its reasonable endeavours to first dispose of the Affordable Housing Units to an Affordable Housing Provider and provided written details of such reasonable endeavours to the LPA and for the avoidance of doubt such mortgagee chargee or receiver shall not be under any obligation to dispose of the Affordable Housing Units for a sum less than the Sums Due"

#### 5. PARAGRAPH 6.2.1(C) OF SCHEDULE 1

5.1 shall be deleted and replaced with the following:

"if the said mortgagee chargee or receiver shall not have completed on the transfer of the said Affordable Housing Units or any part thereof in accordance with paragraph 6.2.1(b) above within the said three month period the said mortgagee chargee or the receiver may (but without imposing any obligation on the said mortgagee chargee or receiver) dispose

of the Affordable Housing Units (which have not by that time been disposed of to such Affordable Housing Provider) on the open market free of the provisions of this Agreement which shall determine absolutely in respect of those Affordable Housing Units only"

**6. PARAGRAPH 3 OF SCHEDULE 6**

6.1 shall be deleted and replaced with the following:

"3.1 The Developer will appoint their own design monitoring architect directly, in consultation with the LPA and will not retain the Architect. The Design Monitoring Costs are not and will not become payable. The Developer will pay the fees of their own design monitoring architect direct;

3.2 The Developer shall notify the LPA immediately if at any point the appointed design monitoring architect is not retained to oversee the delivery of the design quality of the Development and alternative arrangements for the obligations set out in paragraph 3.1 shall be agreed with the LPA."

**7. PARAGRAPH 4 OF SCHEDULE 6**

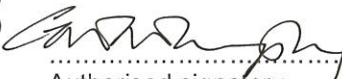
7.1 shall be deleted and replaced with the following:

"4.1 The Development shall not Commence until the Developer has provided satisfactory evidence to LPA of the design monitoring architect appointed by the Developer referred to in paragraph 3 of this Schedule and that the design monitoring architect will be retained to oversee the delivery of the design quality of the Development in accordance with the Approved Drawings.

4.2 No development shall be carried out in accordance with any changes to the detailed design for the Development as prepared by the Architect unless agreed in writing by the LPA and the LPA may require the design monitoring architect to approve any subsequent changes in writing before the LPA gives its own written approval under this paragraph."

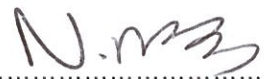
IN WITNESS whereof the parties hereto have executed this Deed as a deed the day and year first before written.

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

)  
)  
)  
)  
  
.....  
Authorized signatory





EXECUTED as a Deed by WALLIS ROAD  
HOMES LIMITED

)  
)  
  
.....  
Director

  
.....  
Director/Secretary

EXECUTED as a Deed by OAKNORTH  
BANK PLC

)  
)  
  
.....  
Director ANKUR SINGH

Authorized signatory in the  
presence of:  
  
.....  
Director/Secretary Signature of witness:  
Name: Emma Backhouse  
Address: 2 Mayfield Road, E8 4PB  
Occupation: solicitor

