

MJA/1323

DATED _____ **2018**

London Legacy Development Corporation
07 AUG 2018
Received

- (1) LONDON LEGACY DEVELOPMENT CORPORATION**
- (2) 52-54 WHITE POST LANE LLP**
- (3) CLOSE BROTHERS LIMITED**

**SECTION 106A AGREEMENT
SECOND DEED OF VARIATION**
relating to the development of 52-54 White Post Lane,
London E9 5EN
**Supplemental to the Principal Agreement of 20 April 2016
and First Deed of Variation of 12 December 2017**

BY:-

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ (the "**LPA**"); and
- (2) **52-54 WHITE POST LANE LLP** (Company Number 0C361199) of First Floor Kirkdale House, Kirkdale Road, Leytonstone, London E11 1HP (the "**Owner**"); and
- (3) **CLOSE BROTHERS LIMITED** (Company Number 195626) of 10 Crown Place, London EC2A 4FF (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 LPA 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 Number EGL211423.
- (C) The Mortgagee has a charge over the Site registered under Title Number EGL211423.
- (D) The Developer submitted an application to the LPA seeking a proposed deed of variation for modifications to Schedule 1 (Affordable Housing) Section 106 agreement attached to planning permission 15/00416/FUL and allocated reference number 18/00304/DOV ("**S106 Application**").
- (E) The LPA, the Owner, KH Savoy Investments Limited (Company Number 07037124) and Mr Bagels Limited (Company Number 06789960) have previously entered into the Principal Agreement in order to secure the planning obligations contained within the Principal Agreement.
- (F) The LPA, the Owner and the Mortgagee have previously entered into the First Deed of Variation in order to secure variations to Schedule 1 (Affordable Housing) and Schedule 2 (Viability) of the Principal Agreement.
- (G) This Deed varies and is supplemental to the Principal Agreement and First Deed of Variation.
- (H) The LPA, the Owner and the Mortgagee agree to modify the Principal Agreement as varied by the First Deed of Variation in the manner set out in this Deed.

1. INTERPRETATION

In this Deed:-

- 1.1 "**the Principal Agreement**" means the s106 agreement dated 20 April 2016 between the LPA, the Owner, KH Savoy Investments Limited (Company Number 07037124) and Mr Bagels Limited (Company Number 06789960);
- 1.2 "**the First Deed of Variation**" means the deed of variation dated 12 December 2017 between the LPA, the Owner and the Mortgagee";
- 1.3 terms and expressions defined in the Principal Agreement as varied by the First Deed of Variation shall have the same meaning in this Deed unless otherwise provided;

- 1.4 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;
- 1.5 headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation;
- 1.6 references to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed save where the context provides otherwise;
- 1.7 where the context so requires:-
 - 1.7.1 the singular includes the plural and vice versa;
 - 1.7.2 the masculine includes the feminine and vice versa; and
 - 1.7.3 persons includes bodies corporate associations and partnerships and vice versa;
- 1.8 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;
- 1.9 where more than one party enters into any obligation or liability those parties are jointly and severally liable;
- 1.10 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;
- 1.11 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 contained in the Principal Agreement as varied by the First Deed of Variation subject to this Deed.
- 3.3 The Owner agrees that the covenants and obligations contained in the Principal Agreement as varied by the First Deed of Variation are to continue in full force and effect except as expressly varied by this Deed.

4. MODIFICATIONS

- 4.1 The Owner agrees that from the date of this Deed the Principal Agreement as varied by the First Deed of Variation shall be varied as follows:
 - 4.1.1 The words "None of" in Clause 2.1 of Schedule 1 (Affordable Housing) shall be replaced with the words "Not more than forty-four units."
- 4.2 Except as expressly varied by this Deed the Principal Agreement shall remain in full force and effect.

5. **LEGAL FEES**

The Developer agrees that it 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).

6. **MORTGAGEE'S CONSENT**

6.1 The Mortgagee acknowledges and declares that:

6.1.1 this Deed has been entered into by the Owner with its consent;

6.1.2 the Site shall be bound by the obligations contained in this Deed and the Principal Agreement as varied by the First Deed of Variation;

6.1.3 the security of the Mortgagee over the site shall take effect subject to this Deed and the Principal Agreement as varied by the First Deed of Variation.

6.2 The Mortgagee and any subsequent mortgagee shall be liable only for any breach of the provisions of this Deed during such period as he is Mortgagee in possession of the site.

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.

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:-)

[Signature]
.....
Authorised signatory *Clyn Gannon* #2063

EXECUTED as a Deed by 52-54 WHITE)
POST LANE LLP acting by:-)

[Signature]
.....
Member

[Signature]
.....
Member

EXECUTED as a Deed by CLOSE)
BROTHERS LIMITED acting by:-)

.....
Director

.....
Director

Executed by Close Brothers Limited as a Deed pursuant to a Power of Attorney dated 16th December 2017 (filed at Land Registry Head Office under reference CAB/Close Brothers Limited/2018 pursuant to a facility letter dated 16th January 2018)

[Signature]
.....
Authorised Signatory
LEN BOYD
.....
Name of Signatory

[Signature]
.....
Authorised Signatory
Sidra Aslam
.....
Name of Signatory

[Signature]
.....
Witnessed by
Terence O'Sullivan
.....
Name of Witness

[Signature]
.....
Witnessed by
Terence O'Sullivan
.....
Name of Witness

10 Crown Place, London EC2A 4FT 10 Crown Place, London EC2A 4FT