

Deed of Variation

**Under Section 106A of the Town And Country Planning Act 1990
relating to land known as 101 Camley Street, London N1C 4PF**

Dated *24th March* **2016**

Midlands Progress Limited
(the Leaseholder)

B. Webber Holdings Limited
(the Freeholder)

(Together, the Owners)

Bank of Scotland PLC
(the Mortgagee)

Aragorn Properties Corp
(Aragorn)

**The Mayor and Burgesses of
the London Borough of Camden**
(the Council)

Deed of Variation

Under Section 106A of the Town And Country Planning Act 1990 relating to land known as 101 Camley Street, London N1C 4PF ("the Property")

Dated *24th March 2016*

Between

- (1) **Midlands Progress Limited** incorporated in Isle of Man of Millennium House, Victoria Road, Douglas, Isle of Man, IM2 4RW whose address for service in the UK is Shaw Corporation, 42 Langham Street, London, W1W 7AT ("the Leaseholder")
- (2) **B. Webber Holdings Limited** (Co. Regn. No. 01018917) whose registered office is at Suite 1, 1st Floor, 1 Duchess Street London W1W 6AN ("the Freeholder")

together with the Leaseholder ("the Owners")

- (3) **Bank of Scotland PLC** (Scot. Co. Regn. No. SC327000) of Credit Fulfilment, Level 5, 110 St Vincent Street, Glasgow G2 5ER ("the Mortgagee")
- (4) **Aragorn Properties Corp** (BVI company number 1891388) whose registered office is at Craigmuir Chambers, Road Town, Tortola, VG1110 British Virgin Islands c/o Leumi Overseas Trust Corporation Limited, PO Box 510, Ground Floor, 2 Hill Street, St Helier, Jersey JE4 5TR ("Aragorn")
- (5) **The Mayor and Burgesses of the London Borough of Camden** of Town Hall, Judd Street, London WC1H 9LP ("the Council")

Recitals

- A. The Property is subject to the planning obligations contained in the Existing Agreement.
- B. The Owners have agreed with the Council that the Existing Agreement be varied in accordance with the terms of this Deed.
- C. The Freeholder is registered at HM Land Registry as the freehold proprietor with Title Absolute under Title Number NGL950455.
- D. The Leaseholder is registered at HM Land Registry as the leasehold proprietor with Title Absolute under Title Number NGL371242.
- E. The Council is the local planning authority able to enforce the provisions of this Deed.
- F. This Deed contains obligations which are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended).
- G. The Council and the Freeholder (at the time holding a leasehold interest) entered into the Existing Agreement dated 18 March 2015 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).

- H. Aragorn have entered an agreement for sale of the Property.
- I. Without prejudice to the terms of the other covenants contained in the Existing Agreement the parties hereto have agreed to vary the terms of the Existing Agreement as hereinafter provided.
- J. The Mortgagee as mortgagee under legal charges registered under HMLR title number NGL371242 and dated 26 March 2015, and registered under HMLR title number NGL950455 and dated 27 March 2015 is willing to enter into this Deed of give its consent to the same.

1 INTERPRETATION

- 1.1 All words and phrases defined in the Existing Agreement shall have the same meaning in this Deed save where the context otherwise dictates and for the avoidance of any doubt the Existing Agreement shall remain in full force and effect save as varied by this Deed.
- 1.2 Where in this Deed reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital in the Existing Agreement.
- 1.3 Headings are for ease of reference only and are not intended to be construed as part of this Deed and shall not be construed as part of this Deed and shall not affect the construction of this Deed.
- 1.4 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 1.5 References in this Deed to the Owners shall include their successors in title.

2 DEFINITIONS

- 2.1 In this Deed the following expression shall unless the context otherwise states have the following meaning now allocated to it:

Commuted DAHC Sum	means the sum of £2,943,336 (two million nine hundred and forty three thousand three hundred and thirty six pounds)
Deed	this Deed of Variation made pursuant to Section 106A of the Act
Existing Agreement	means the section 106 agreement dated 18 March 2015 between the Parties entered in connection with the grant of planning permission with reference number 2014/4385/P

- 2.2 The Definitions in the Existing Agreement apply in this Deed.

3 PAYMENT ON COMPLETION OF THIS DEED

- 3.1 On the completion of this Deed, the Owners will pay to the Council the Commuted DAHC Sum for the provision of Affordable Housing within the London Borough of Camden.
- 3.2 If this Deed is quashed in part or in whole:

- (a) the Council shall repay the whole of the Commuted DAHC Sum to the Owners within 30 days of the decision to quash this Deed being made; and
- (b) the provisions of clause 4.11 of the Existing Agreement will continue to apply; and
- (c) Clause 3.1 of this Deed shall be of no continuing effect.

4 CONDITIONAL VARIATION OF THE EXISTING AGREEMENT

- 4.1 If the Owners Implements Construction (which shall include commencement of works on the basement slab) on or before 18 months of the date of this Deed then the provisions of clause 4.11 of the Existing Agreement shall be deleted and shall no longer apply.
- 4.2 If the Owners do not Implement Construction within 18 months of the date of this deed:
 - (a) the provisions of clause 4.11 of the Existing Agreement shall continue to apply; and
 - (b) in calculating the Deferred Affordable Housing Contribution payable under clause 4.11 of the Existing Agreement no account shall be taken of the payment of the Commuted DAHC Sum paid by the Owners under this Deed and the Owners shall be liable to pay to the Council the whole of any Deferred Affordable Housing Contribution calculated in accordance with clause 4.11 of the Existing Agreement - such calculation to be on the basis the Commuted DAHC Sum has not been paid - AND for the avoidance of doubt there will be no obligation to repay the Commuted DAHC in these circumstances.

5 OWNERS' COVENANT

- 5.1 The Owners further agrees and declares that the Development can viably (in accordance with the definition set out in the National Planning Practice Guidance) provide 26.3% of the total gross external floor area of the residential accommodation as Affordable Housing in addition to paying the Commuted DAHC Sum to the Council and the Owners expressly agrees that such acknowledgement shall be taken into account in relation to any future assessment of viability at the Development.
- 5.2 The Owners further agree and declare that it will not make nor permit the making of an application under section 106BA of the Town and Country Planning Act 1990 (as amended).
- 5.3 Subject to a formally given written agreement for an extension of time by the Council the Owners agrees to use Reasonable Endeavours to ensure the issue of the Certificate of Practical Completion and for Occupation to have commenced within 24 months of Implementing Construction.
- 5.4 Neither the Owners nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Deed in respect of any period during which they no longer have an interest in the Property but without prejudice to liability for any breach committed prior to the time they disposed of their interest.

6 COMMENCEMENT

- 6.1 Without prejudice to the effect of Clause 3.5 in the Existing Agreement the provisions in this Deed shall take effect upon completion of this Deed.

7 MORTGAGEE EXEMPTION

- 7.1 The Mortgagee hereby consents to the Owners entering into this Deed and agrees that the security of its charges over the Property shall take effect subject to this Deed.
- 7.2 The Parties agree that the obligations contained in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the Property until it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owners.

8 PAYMENT OF THE COUNCIL'S LEGAL COSTS

- 8.1 The Owners agree to pay the Council (prior to completion of this Deed) its reasonable legal costs incurred in preparing this Deed not exceeding £2,000.

9 REGISTRATION AS LOCAL LAND CHARGE

- 9.1 This Deed shall be registered as a Local Land Charge.

10 THIRD PARTIES

- 10.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

11 JOINT AND SEVERAL LIABILITY

- 11.1 All Covenants made by the Owners in this Deed and the Existing Agreement are made jointly and severally and shall be enforceable as such.

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owners and Mortgagee and Aragorn have executed this instrument as their Deed the day and year first before written

THE COMMON SEAL OF)
MIDLANDS PROGRESS LIMITED)
 was hereunto affixed)
 in the presence of:)
 acting by a Director and its Secretary)
 or by two Directors)



J B Oates


 Director

[Handwritten signature]

 Director/Secretary

EXECUTED as a deed by
THE COMMON SEAL OF)
B. WEBBER HOLDINGS LTD)
was hereunto affixed)
in the presence of:)
acting by a Director and its Secretary)
or by two Directors)
in the presence of:

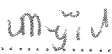

Director


.....
Director C. EVERS DEN
WITNESS:
380 Kenton Road
Harrow
HA3 8DP

.....
Director/Secretary
WITNESS ADDRESS:

EXECUTED AS A DEED BY)
BANK OF SCOTLAND PLC)
acting by its attorney)
in the presence of:)


PETER WARD
920530


.....
Witness signature

USMAN MASJO
.....
Witness name

.....
Witness address

KMP2 Team
Lloyds Bank
21/23 Hill Street
Mayfair
London W1J 5JW

Signed as deed on behalf of **ARAGORN**)
PROPERTIES CORP, a company)
incorporated in British Virgin Islands, by)
Barren Toudic)
and *John Germain* being persons who, in)
accordance with the laws of that territory, are)
acting under the authority of the company:)

Signature *Barren Toudic*

Print name *Barren Toudic*

Signature _____

Print name *John Germain*

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:)



R. Alexander
.....
Authorised Signatory

