

DATED

13 JUNE

2014

**(1) WEST HAMPSTEAD SQUARE LLP**

and

**(2) NETWORK RAIL INFRASTRUCTURE LIMITED**

and

**(3) NATIONAL ASSET LOAN MANAGEMENT LIMITED**

and

**(4) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN**

and

**(5) WHS DEVELOPMENTS LIMITED**

**A G R E E M E N T**

relating to land known as

**187-199 WEST END LANE, LONDON NW6 2LJ**  
pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended)

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**DEED OF VARIATION**

Relating to the Agreement dated 30<sup>th</sup> March 2012  
between

the Mayor and the Burgesses of the London Borough of Camden and Domaine  
Developments Limited and Network Rail Infrastructure Limited and Ballymore Properties  
Limited and IBRC Asset Finance Plc and Irish Bank Resolution Corporation Limited

under section 106 of the Town and Country Planning Act 1990 (as amended) and Section  
278 of the Highways Act 1980

Relating to development at premises known as

**187-199 West End Lane London NW6 2LJ**

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Andrew Maughan  
Borough Solicitor  
London Borough of Camden  
Town Hall  
Judd Street  
London WC1H 9LP

Tel: 020 7974 1918  
Fax: 020 7974 1920

CLS/PK/1685.2493 (v8)



THIS AGREEMENT is made on the 13<sup>th</sup> day of June 2014

**BETWEEN**

1. **WEST HAMPSTEAD SQUARE LLP** (registered under company number OC385953) whose registered office is at St. Johns House, 5 South Parade, Summertown, Oxford, Oxfordshire, OX2 7JL (hereinafter called "the First Freeholder") of the first part
2. **NETWORK RAIL INFRASTRUCTURE LIMITED** (registered under company number 2904587) whose registered office is at Kings Place 90 York Way London N1 9AG (hereinafter called "the Second Freeholder") of the second part
3. **NATIONAL ASSET LOAN MANAGEMENT LIMITED** (incorporated in Ireland) of Treasury Building, Great Canal Street, Dublin 2, Ireland (hereinafter called "the Mortgagee") of the third part
4. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fourth part
5. **WHS DEVELOPMENTS LIMITED** (registered under company number 08527389) whose registered office is at St. Johns House, 5 South Parade, Summertown, Oxford, Oxfordshire, OX2 7JL (hereinafter called "the Second Mortgagee") of the fifth part

**WHEREAS:**

- 1.1 The Council and Domaine Developments Limited and Network Rail Limited and Ballymore Properties Limited and IBRC Asset Finance Plc and Irish Bank Resolution Corporation Limited entered into the Existing Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 278 of the Highways Act 1980
- 1.2 The Council and Domaine Developments Limited and Network Rail Infrastructure Limited and Ballymore Properties Limited and IBRC Asset Finance Plc and Irish Bank Resolution Corporation Limited (In Special Liquidation) and National Asset

Loan Management Limited entered into the First Deed of Variation pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended).

- 1.3 Domaine Developments Limited, Ballymore Properties Limited, IBRC Asset Finance Plc and Irish Bank Resolution Corporation (In Special Liquidation) no longer have an interest in the Property for the purposes of Section 106 of the Act.
- 1.4 The First Freeholder is registered at the Land Registry as the freehold proprietor with Title absolute of part of the Property under Title Number NGL940038 subject to a charge to the Mortgagee.
- 1.5 The Second Freeholder is the registered at the Land Registry as the freehold proprietor with title absolute of part of the Property under title number NGL829579.
- 1.6 The First Freeholder is the freehold owner of and is interested in part of the Property for the purposes of Section 106 of the Act.
- 1.7 The Second Freeholder is the freehold owner of and is interested in part of the Property for the purposes of Section 106 of the Act.
- 1.8 The First Freeholder and the Second Freeholder shall hereinafter be collectively referred to as "the Owner".
- 1.9 The Mortgagee and the Second Mortgagee and the Second Freeholder have the benefit of charges over the First Freeholder's interest in the Property and are willing to enter into this Agreement to give their consent to the same.
- 1.10 The Council is the local planning authority for the purposes of the Act and considers it expedient in the interests of the proper planning of its area that the Development of the Property should be restricted or regulated in accordance with this Agreement.
- 1.11 A new Planning Application in respect of the Property and to amend the Original Planning Permission was submitted to the Council by the Owner and validated on 3<sup>rd</sup> December 2013 which the Council resolved to grant permission conditionally under reference 2013/6627/P subject to the conclusion of this Agreement.

1.12 This Agreement is made by virtue of the Town and Country Planning Act 1990 Section 106 and Section 106A (as amended) and is a planning obligation for the purposes of that section.

1.13 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.

## 2. INTERPRETATION

2.1 All words and phrases defined in the Existing Agreement shall have the same meaning in this Agreement 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 Agreement.

2.2 All references in this Agreement to clauses in the Existing Agreement are to clauses within the Existing Agreement.

2.3 In this Agreement the following expression shall unless the context otherwise states have the following meaning now allocated to it.

2.3.1 "this Agreement" this Second Deed of Variation

2.3.2 "the Existing Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 30<sup>th</sup> March 2012 made between the Council and Domaine Developments Limited and Network Rail Infrastructure Limited and Ballymore Properties Limited and IBRC Asset Finance Plc and Irish Bank Resolution Corporation Limited

2.3.3 "the First Deed of Variation" the deed of variation made under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 15<sup>th</sup> July 2013 made between the Council and Domaine Developments Limited and Network Rail Infrastructure Limited and Ballymore Properties Limited and IBRC Asset

Finance Plc and Irish Bank Resolution Corporation Limited (In Special Liquidation) and National Asset Loan Management Limited

2.3.4 "the Original Planning Permission"

the planning permission granted by the Council on 30<sup>th</sup> March 2012 under reference number 2011/6129/P for redevelopment of site to create seven new buildings between five and twelve storeys in height to provide 198 residential units (Class C3), retail, financial and professional services and food and drink floorspace (Class A1, A2, A3 and A4), flexible employment/healthcare floorspace (Class B1/D1) along with associated energy centre, storage, parking, landscaping and new public open space (existing buildings to be demolished). (Class B1/D1) along with associated energy centre, storage, parking, landscaping and new public open space (existing buildings to be demolished) as shown on drawing numbers Site location plan; MP\_01; MP\_02; MP\_03 A; MP\_04 A; MP\_05 A; MP\_06 A; MP08; PL\_01; PL\_02; PL\_03 A; PL\_04; PL\_05; PL\_06; PL\_07 C; ELE\_01; ELE\_02; ELE\_03; ELE\_04; ELE\_05; ELE\_06; ELE\_07 B; ELE\_08; SS\_01 A; SS\_02 A; SS\_03; SS\_04; BA01; BA02; BB01; BC01; BD01; BE01; BF01; BG01 A; BC02; RET01; Landscape and Public Realm Strategy November 2011

2.3.5 "the Second Planning Permission" the planning permission granted by the Council on 15<sup>th</sup> July 2013 under reference number 2013/1924/P for variation of condition 11 (approved drawings) of planning permission

granted on 30<sup>th</sup> March 2012 under reference number 2011/6129/P to provide alterations to approved elevations including window layout

- 2.4 Where in this Agreement 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 of this Agreement.
- 2.5 Headings are for ease of reference only and are not intended to be construed as part of this Agreement and shall not be construed as part of this Agreement and shall not effect the construction of this Agreement.
- 2.6 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 2.7 References in this Agreement to the Owner the Mortgagee the Second Mortgagee and the Second Freeholder (in its capacity as the beneficiary of a charge over the First Freeholder's interest in the Property) shall include their successors in title.

### 3. **COMMENCEMENT**

Without prejudice to the effect of Clause 3.5 in the Existing Agreement and Clause 3.1 of the First Deed of Variation the provisions in this Second Deed of Variation shall take effect on Implementation of the planning permission granted under reference number 2013/6627/P

### 4. **VARIATION TO THE EXISTING AGREEMENT**

- 4.1 The following definitions contained in the Existing Agreement shall be varied as follows:

"2.23 "the Development"	variation of planning permission dated 30 <sup>th</sup> March 2012 under reference number 2011/6129/P (redevelopment of site to create seven new buildings between five and twelve storeys in height to provide 198 residential units (Class C3), retail, financial and professional services and food and drink floorspace (Class
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A1, A2, A3 and A4), flexible employment/healthcare floorspace (Class B1/D1) along with associated energy centre, storage, parking, landscaping and new public open space (existing buildings to be demolished).(Class B1/D1) along with associated energy centre, storage, parking, landscaping and new public open space (existing buildings to be demolished) as shown on drawing numbers Site location plan; MP\_01; MP\_02; MP\_03 A; MP\_04 A; MP\_05 A; MP\_06 A; MP08; PL\_01; PL\_02; PL\_03 A; PL\_04; PL\_05; PL\_06; PL\_07 C; ELE\_01; ELE\_02; ELE\_03; ELE\_04; ELE\_05; ELE\_06; ELE\_07 B; ELE\_08; SS\_01 A; SS\_02 A; SS\_03; SS\_04; BA01; BA02; BB01; BC01; BD01; BE01; BF01; BG01 A; BC02; RET01; Landscape and Public Realm Strategy November 2011) to further vary condition 11 (as varied by the planning permission granted by the Council on 15<sup>th</sup> July 2013 under reference number 2013/1924/P for variation of condition 11 (approved drawings) to provide alterations to approved elevations including window layout) and to vary condition 13 (London Underground structures) to provide alteration to entrances and layouts at ground floor level block A-E and alteration to fenestration and layouts to all level block F and G and alteration to landscaping as shown on drawings (Prefix-12-316) PL10-D, PL11-D, PL12-D, PL13-D, PL14-D; PL16-B, PL17-A, PL20-B, PL25, PL26, PL27-B, PL28-A, PL29-B, PL30, PL31, PL33, PL34, PL35, PL36, PL37; Design and Access Statement Addendum by wcec architects; Schedule of Affordable Apartments - Approved Section 73 Application (ref: 2013/1924/P); Schedule of Affordable



Apartments - Section 73 Application; 12-316  
WHS - Comparison of Non Residential Areas"

- "2.52 "the Planning Permission" the planning permission under reference number 2013/6627/P to be issued by the Council in substantially the form of the draft annexed hereto"
- "2.50 "the Planning Application" the application for Planning Permission in respect of the Property submitted on 15<sup>th</sup> October 2013 by the Owner and given reference number 2013/6627/P"
- 4.2 That part of the plan entitled "Plan 5" appended to the Existing Agreement (and as varied by Clause 4.4 of the First Deed of Variation) indicating the Wheelchair Accessible Units shall be removed from the Existing Agreement and have no further effect from the date hereof and the plan entitled "Plan 5" indicating the Wheelchair Accessible Units at Blocks E, F and G annexed to this Second Deed of Variation shall be appended to the Existing Agreement and shall be in full force and effect from the date hereof
- 4.3 The words "2011/6129/P" in clause 5.2 of the Existing Agreement (as varied by the First Deed of Variation) shall be deleted and replaced with "2013/6627/P".
- 4.4 The words "2011/6129/P" in clause 5.6 of the Existing Agreement (as varied by the First Deed of Variation) shall be deleted and replaced with "2013/6627/P".
- 4.5 The words "2011/6129/P" in clause 6.1 of the Existing Agreement (as varied by the First Deed of Variation) shall be deleted and replaced with "2013/6627/P".
- 4.6 The words "2011/6129/P" in clause 6.10 of the Existing Agreement (as varied by the First Deed of Variation) shall be deleted and replaced with "2013/6627/P".
- 4.7 The draft planning permission reference 2013/6627/P annexed to this Agreement shall be treated as annexed to the Existing Agreement (as varied by the First Deed of Variation) in addition to the existing annexures.

- 4.8 In all other respects the Existing Agreement (as varied by the First Deed of Variation and this Second Deed of Variation shall continue in full force and effect.

5. **PAYMENT OF THE COUNCIL'S LEGAL COSTS**

The Owner agrees to pay the Council (on or prior to completion of this Agreement) its reasonable legal costs incurred in preparing this Agreement

6. **REGISTRATION AS LOCAL LAND CHARGE**

This Agreement shall be registered as a Local Land Charge.

7. **MORTGAGEE'S CONSENT**

The Mortgagee, the Second Mortgagee and the Second Freeholder acknowledge and declare that this Agreement has been entered into by the First Freeholder with their consent and that the Property shall be bound by the obligations contained in this Agreement and the Existing Agreement (as modified) and that the security of the Mortgagee, the Second Mortgagee and the Second Freeholder over the Property shall take effect subject to this Agreement and the Existing Agreement (as modified) PROVIDED THAT the Mortgagee, the Second Mortgagee and the Second Freeholder (in its capacity as the beneficiary of a charge over the First Freeholder's interest in the Property) shall otherwise have no liability under this Agreement or the Existing Agreement unless they take possession of the Property in which case they too would be bound by the obligations as if they were a person deriving title from the First Freeholder.

8. **RELEASE**

Neither the First Freeholder, the Second Freeholder, the Mortgagee or the Second Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement or the Existing Agreement (as modified) in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

9. **INDEMNITY**

The First Freeholder shall indemnify and keep indemnified the Second Freeholder against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising from any breach of the Owner's obligations in this Agreement save in relation to any obligation falling solely on the Second Freeholder.

IN WITNESS WHEREOF the Council has caused its Common Seal to be hereunto affixed and the First Freeholder and the Second Freeholder and the Mortgagee and the Second Mortgagee have caused this Agreement to be executed as a Deed the day and year first above written.

EXECUTED AS A DEED BY  
WEST HAMPSTEAD SQUARE LLP  
acting by a Director and its Secretary  
or by two Directors

Director Name: (CAPITALS)

Director Signature:

Director/Secretary Name (CAPITALS)

Director/Secretary Signature:

JOHN MULLRYAN

DAVID PEARSON

EXECUTED AS A DEED BY  
affixing the common seal of  
NETWORK RAIL INFRASTRUCTURE  
LIMITED  
~~acting by a Director and its Secretary  
or by two Directors~~

Director Name: (CAPITALS)

Director Signature:

Director/Secretary Name (CAPITALS)

Director/Secretary Signature:

*PRESENT WHEN THE COMMON SEAL OF*

~~EXECUTED AS A DEED BY  
NATIONAL ASSET LOAN MANAGEMENT  
LIMITED  
acting by a Director and its Secretary  
or by two Directors~~

Director Name: (CAPITALS)

Director Signature:

Authorised Signatory as approved  
by a resolution of the board of  
Network Rail Infrastructure Limited  
on 21 February 2013

ASSISTANT COMPANY SECRETARY

PAULA FLINTER

Authorised Signatory

CATHAL DE BARRA

Authorised Signatory

APPROVED FOR SEALING

3,

Director/Secretary Name (CAPITALS) ) .....

Director/Secretary Signature: ) .....

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

*T. Knowles*  
.....  
Authorised Signatory



EXECUTED AS A DEED BY )  
WHS DEVELOPMENTS LIMITED )  
acting by a Director and its Secretary )  
or by two Directors )

Director Name: (CAPITALS) ) *JOHN MULRYAN*.....

Director Signature: ) *[Signature]*.....

Director/Secretary Name (CAPITALS) ) *DAVID PEARSON*.....

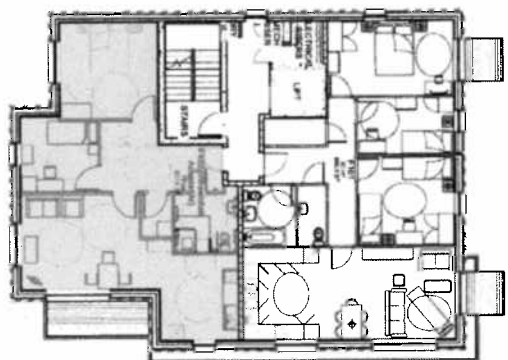
Director/Secretary Signature: ) *[Signature]*.....

RA  
CMB

2nd Floor Unit E203  
3rd Floor Unit E303  
4th Floor Unit E403



1st Floor Unit F102  
2nd Floor Unit F202  
3rd Floor Unit F302



## Ground Floor Unit G001

