

DATED 9TH APRIL 2019

(1) THE QUEEN'S MOST EXCELLENT MAJESTY IN RIGHT OF HER CROWN

and

(2) THE CROWN ESTATE COMMISSIONERS

and

(3) MANSOUR NAMAKI-SHOUSHTARY and FARIBA NAMAKI-SHOUSHTARY

and

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

FIRST DEED OF VARIATION

relating to the Agreement dated 22 December 2016 between
(1) The Queen's Most Excellent Majesty in Right of Her Crown and (2) The Crown Estate
Commissioners and (3) Mansour Namaki-Shoushtary and Fariba Namaki-Shoushtary and
(4) the Mayor and the Burgesses of the London Borough of Camden

under section 106A of the Town and Country Planning Act 1990

Relating to development at premises known as

**12 Gloucester Gate and 12 & 13 Gloucester Gate Mews
London
NW1 4AD**

London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 6007
Fax: 020 7974 2962



THIS DEED is made the 9th day of April 2019

BETWEEN:

1. **THE QUEEN'S MOST EXCELLENT MAJESTY IN RIGHT OF HER CROWN** (hereinafter called "Her Majesty")
2. **THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty acting in the exercise of the powers conferred by the Crown Estate Act 1961 care of 16 New Burlington Place London W1S 2HX (hereinafter called "the Commissioners") of the first part
3. **MANSOUR NAMAHI-SHOUSHTARY and FARIBA NAMAHI-SHOUSHTARY** of 56 Cumberland Terrace London NW1 4HJ (hereinafter called "the Owner") of the second 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 third part

WHEREAS

- A. Her Majesty is registered at the Land Registry as the freehold proprietor with title absolute of the Property under title number NGL904862 and the Commissioners manage the Property in accordance with their powers under the Crown Estate Act 1961.
- B. The Owner is registered at the Land Registry as the leasehold proprietor with title absolute of the Property under title numbers NGL961041 and NGL961020.
- C. Her Majesty and the Commissioners are the freehold owners and the Owner is the leasehold owner of the Property and is interested in the Property for the purposes of Section 106 of the Act.

- D. The Council and Her Majesty and the Commissioners and the Owner entered into the Original Agreement.
- E. The Owner submitted the First Minor Material Amendment Application in respect of development at the Property to amend the Original Planning Permission. The Owner also submitted the Second Application for Listed Building Consent.
- F. The Council has refused the application for the First Minor Material Amendment Application and the Second Application for Listed Building Consent.
- G. The Council's first reason for refusing the First Minor Material Amendment Application was that the proposed development, in the absence of a legal agreement securing a highway contribution for necessary highway works, would fail to secure adequate provision for the safe movement of pedestrians and have an unacceptable impact on the public highway, contrary to policies A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
- H. The Council's second reason for refusing the First Minor Material Amendment Application was that the proposed development, in the absence of a legal agreement securing a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and be detrimental to general highway and pedestrian safety, contrary to policies A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017
- I. The Owner has submitted the Appeal.
- J. The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated 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 the Original Agreement as modified by this Deed.
- K. For that purpose the Owner is willing to enter into this Deed pursuant to the provisions of section 106 and section 106A of the Act.

NOW IT IS HEREBY AGREED and WITNESSED as follows:

1 LEGAL EFFECT AND INTERPRETATION

- 1.1 This Deed is made in pursuance of Sections 106 and 106A of the Act.
- 1.2 This Deed is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner and Commissioners as provided herein and against any person deriving title to any part of the Property from the Owner, Her Majesty and the Commissioners as provided herein and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 1.3 The Commissioners enter into this Deed solely to give effect to the obligations and more particularly solely to consent to the enforcement of the obligations against the Owner's interest in the Property and any person deriving title from the Owner but for no other purpose and for the avoidance of any doubt the Commissioners' agreement to enter into this Deed is without prejudice to the Commissioners' right to negotiate the terms on which the Development is to take place (for example, including but not limited to a licence for alterations, surrender and re-grant of the residential lease, payment of a premium) and shall not be deemed to constitute any consent in respect of the Development (as may be amended) for which the Commissioners' consent is required.
- 1.4 The Commissioners agree to be bound by the terms of this Deed only in the event that the Owner's interest in the Property is determined and if such event occurs the obligations on behalf of the Owner shall be taken to be obligations which are binding on the Commissioners as if such obligations were given by the Commissioners themselves ALWAYS PROVIDED THAT this Deed shall be directly enforceable by the Council against any person deriving title to any part of the Property from Her Majesty in the event Her Majesty disposes of the same.
- 1.5 A covenant made by the Commissioners or implied on behalf of Her Majesty and Her successors or the Commissioners is made or implied by the Commissioners acting in

exercise of the powers of the Crown Estate Act 1961 as a body corporate without imposing liability in any personal or private capacity of any individual Commissioner acting on behalf of the Commissioners and so long only as the Property forms part of the Crown Estate save in relation to any antecedent breach prior to parting with such interest and with the effect from the date on which the Property ceases to form part of the Crown Estate such covenant shall be deemed to be made by the person from time to time entitled to the Property and all liability on the part of Her Majesty and Her Successors or the Commissioners in respect of such covenants shall cease as from such date.

- 1.6 Save as expressly stated otherwise all words and expressions used in this Deed shall have the same meaning as in the Original Agreement.
- 1.7 For the purposes of this Deed the following words and expressions shall have the meanings assigned unless the context states otherwise:

Appeal	the appeal (ref: APP/X5210/W/18/3204334) submitted by the Owner pursuant to Section 78 of the Act against the Council's decision to refuse permission for the First Minor Material Amendment Application and the Second Application for Listed Building Consent
Decision Letter	a letter issued by either the Secretary of State or an Inspector determining the Appeal
this Deed	this first deed of variation to the Original Agreement made pursuant to Sections 106 and 106A of the Act
First Minor Material Amendment Application	the application for planning permission to amend the Original Planning Permission submitted to the Council having reference number 2017/4111/P

First Minor Material Amendment Permission the planning permission to be granted pursuant to the Appeal

Original Agreement the agreement dated 22 December 2016 between (1) Her Majesty and (2) the Commissioners and (3) the Owner and (4) the Council entered into pursuant to Section 106 of the Act

Original Planning Permission the planning permission granted by the Council for development at the Property by a notice dated 22 December 2016 and having the reference number 2016/4549/P

Parties (1) Her Majesty and (2) the Commissioners and (3) the Owner and (4) the Council being the parties to this Deed

Second Application for Listed Building Consent the application for listed building consent in respect of the Property submitted to the Council having reference number 2017/4133/L

2 VARIATION OF THE ORIGINAL AGREEMENT

Subject to Clause 5.1 of this Deed, with effect from the date of this Deed and the grant of the First Minor Material Amendment Permission the Original Agreement shall be varied as follows:

2.1 the following definitions at clause 2 shall be **varied** to the following:

"the Development" erection of a single storey extension connecting 12 Gloucester Gate to mews building and associated alterations pursuant to the: Planning Permission and the Listed Building Consent; or the First Minor Material Amendment Permission and the Second Listed Building Consent

"the Listed Building Consent" the listed building consent granted by the Council pursuant to the Application for Listed Building Consent by a notice dated 22 December 2016 and having the reference number 2016/4554/L

"the Planning Permission" the planning permission granted by the Council pursuant to the Planning Application by a notice dated 22 December 2016 and having the reference number 2016/4549/P

2.2 the following definitions shall be added to the Original Agreement:

"the Appeal" the appeal (ref: APP/X5210/W/18/3204334) submitted by the Owner pursuant to Section 78 of the Act on against the Council's decision to refuse permission for the First Minor Material Amendment Application and the Second Application for Listed Building Consent

"the First Minor Material Amendment Application" the application for planning permission to amend the Planning Permission submitted to the Council having reference number 2017/4111/P

"the First Minor Material Amendment Permission" the planning permission having reference number 2017/4111/P granted pursuant to the Appeal

"the Second Application for Listed Building Consent" the application for listed building consent in respect of the Property submitted to the Council having reference number 2017/4133/L

"the Second Listed Building Consent" the listed building consent having reference number 2017/4133/L granted pursuant to the Appeal

2.3 All references in Clause 5 and Clause 6 of the Original Agreement to "Planning Permission reference 2016/4549/P" shall be deleted and replaced with "Planning Permission reference 2016/4549/P or 2017/4111/P (as relevant)".

2.4 Annexure 2 shall be deleted; and

2.5 in all other respects the Original Agreement (as varied by this Deed) shall continue in full force and effect.

3 MISCELLANEOUS PROVISIONS

3.1 This Deed shall be registered as a Local Land Charge.

3.2 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Deed in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Deed in the Charges Register of the title to the Property.

3.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Deed on or prior to the date of completion of this Deed.

3.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply this Deed.

3.5 This Deed is governed by and shall be interpreted in accordance with the laws of England.

4 INDEMNITY

4.1 In consideration of the Commissioners entering into this Deed the Owner hereby covenants with the Commissioners to observe and perform the obligations herein contained and to indemnify and keep fully indemnified Her Majesty and Her Successors and the Commissioners and their successors from and against all actions proceedings demands costs claims or other liabilities whatsoever arising directly or indirectly by reason of any breach or non-compliance with any condition or obligation or covenant contained within this Deed or by reason of the Commissioners covenanting with the Council in the terms set out in the Deed.

4.2 The Owner covenants with the Commissioners that prior to any disposal of its interest in the Property it shall procure that the disponent enters into a deed of

indemnity with and in favour off the Commissioners in the same terms as those which are set out in clause 4.1.

5 DECISION LETTER

- 5.1 If the Decision Letter concludes that any of the planning obligations set out in the Original Agreement as varied by this Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 and/or paragraph 204 of the National Planning Policy Framework and accordingly attaches little or no weight to that obligation in determining the Appeal then the relevant obligation(s) shall from the date of the Decision Letter immediately cease to have effect in relation to this Deed and the Owners shall be under no obligation to comply with it in relation to the First Minor Material Amendment Permission.

IN WITNESS whereof the Council and the Commissioners have caused their respective Common Seals to be hereunto affixed and the Owner has executed this instrument as their Deed the day and year first before written

THE OFFICIAL SEAL OF THE)
CROWN ESTATE COMMISSIONERS)
was hereto affixed)
and authenticated by)



Robert John Dawson
Authorised by the Crown Estate Commissioners

EXECUTED AS A DEED BY MANSOUR)

NAMAKI-SHOUSHTARY)

in the presence of)

Witness signature

Witness name

Witness Address

Witness Occupation

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EXECUTED AS A DEED BY FARIBA)

NAMAKI-SHOUSHTARY)

in the presence of)

Witness signature

Witness name

Witness Address

Witness Occupation

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THE COMMON SEAL OF THE MAYOR)

AND BURGESSES OF THE LONDON)

BOROUGH OF CAMDEN)

was hereto affixed)

and authenticated by)





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