

DATED

8 March

2019

**(1) HOLMES ASSETS LIMITED**

-and-

**(2) MIZRAHI TEFAHOT BANK LIMITED**

-and-

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

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**DEED OF VARIATION**

Relating to the Agreement dated 25 May 2017  
Between the Mayor and the Burgesses of the  
London Borough of Camden,  
Ruth Gilbert and Andrew Gilbert and Kathryn Burke, and Henry Bertrand Holdings Limited  
under section 106 of the Town and  
Country Planning Act 1990 (as amended)  
Relating to development at premises known as  
**52 Holmes Road, London NW5 3AB**

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Andrew Maughan  
Head of Legal Services  
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THIS DEED is made on the 8<sup>th</sup> day of March 2019

**BETWEEN**

- A. **HOLMES ASSETS LIMITED** (Co. Regn. No. 10965570) whose registered office is at Hallswelle House, 1 Hallswelle Road, London NW11 0DH (hereinafter called "the Owner") of the first part
- B. **MIZRAHI TEFAHOT BANK LIMITED** (incorporated in Israel) of 30 Old Broad Street, London EC2N 1HT (hereinafter called "the Mortgagee") of the second part
- C. **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:**

- 1.1 The Council, Ruth Gilbert and Andrew Gilbert and Kathryn Burke, and Henry Bertrand Holdings Limited entered into an Agreement dated 25 May 2017 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).
- 1.2 The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute under title number NGL740205 subject to a charge to the Mortgagee.
- 1.3 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106(9) of the Act.
- 1.1 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL740205 and dated 1 February 2018 is willing to enter into this Deed to give its consent to the same.
- 1.2 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 Deed.
- 1.3 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 13

July 2018 for which the Council resolved to grant permission conditionally under reference 2018/3318/P subject to the conclusion of this Deed.

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

1.5 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 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.

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

2.3 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 of this Agreement.

2.4 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 Agreement and shall not effect the construction of this Deed.

2.5 Unless the context otherwise requires references to the singular shall include the plural and vice versa.

2.6 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 4, 5, 6 and 7 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Deed shall become binding upon the Owner upon the Implementation Date.

2.7 References in this Deed to the Owner and Mortgagee shall include their successors in title.

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

2.8.1 "Deed" this Deed of Variation made pursuant to Section 106A of the Act

2.8.2 "Existing Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 25 May 2017 made between the Council and Ruth Gilbert and Andrew Gilbert and Kathryn Burke, and Henry Bertrand Holdings Limited

2.8.3 "the Original Planning Permission" means the planning permission granted by the Council on 25 May 2017 referenced 2016/1986/P allowing the demolition of existing building and replacement with a new build mixed use development of 6 storeys (plus basement) comprising of 9 self-contained units (8x2 bed and 1x3 bed) on floors 1-5 and 377sq.m of industrial employment space (B1c) on the basement and ground floors as shown on the site location plan and drawing numbers: (4158/P/1)100; 110; 111; 112; 115; 116; 200 Rev G; 201 Rev C; 202 Rev D; 203 Rev B; 204 Rev E; 205 Rev C; 206 Rev B; 207 Rev D; 208 Rev C; 210 Rev C; 211 Rev C; 212 Rev D; 213 Rev D; 220 Rev D; 230 Rev C; 231 Rev B; 232; 235 Rev A, Design & Access Statement dated April 2016, letter dated 26/08/2016 from Andrew Gilbert, Sustainable Drainage Systems (SuDs) Appraisal (ref: 132847-R1(1)) dated 01/09/2016, Sustainability Statement dated 01/09/2016,

Ecology Statement dated 26/08/2016, Basement Impact Assessment dated 30/08/2016, Revised Energy Statement (ref: 712445R(02) dated 12/08/2016, Daylight and Sunlight Report dated June 2016, Preliminary Risk Assessment dated March 2016, Planning Statement dated April 2016, Transport Statement dated March 2016 and Energy Statement dated 05/04/2016.

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

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

#### **3.1.1 "Development"**

shall mean the development authorised by the planning permission with reference 2016/1986/P dated 25 May 2017 as amended by:

Variation of Condition 2 (approved plans) of 2016/1986/P dated 25/05/2017 for Demolition of existing building and replacement with a new build mixed use development of 6 storeys (plus basement) comprising of 9 residential units and 377sq.m of industrial employment space (B1c).

**CHANGES INCLUDE** amendments to lighwells, basement, fire exit, lobbies, plant, increase in commercial floorspace, introduction of resesses to elevations, additional glazing, revision of unit layouts, increase in residential floorspace as shown on the drawing numbers:

Approved plans: 1715 PL2 200 (F) Lower Ground Floor Plan As Proposed 1-100 at A3 30-10-18; 1715 PL2 201(J) Ground Floor Plan As Proposed 1-100 at A3 28-11-18; 1715 PL2 202 (G) First Floor Plan As Proposed 1-100 at A3 25-11-18; 1715 PL2 203 (D) Second to Fourth

Floor Plan As Proposed 1-100 at A3 25-11-2018; 1715 PL2 204 (D) Fifth Floor Plan As Proposed 1-100 at A3 31-10-18; 1715 PL2 205 (C) Roof Plan As Proposed 1-100 at A3 30-10-18; 1715 PL2 E 900 (C) Front Elevation As Proposed 1-100 at A3 22-09-18 ; 1715 PL2 E 901 (E) Rear Elevation As Proposed 1-100 at A3 22-09-18; 1715 PL2 E 902 (C) Side (Eastern) Elevation As Proposed 1-100 at A2 22-09-18; 1715 PL2 E 903 (B) Side (Western) Elevation As Proposed 1-100 at A2 22-09-18; 1715 PL2 S 800 (B) Section A-A As Proposed 1-100 at A2 12-02-18.

Superseded plans: 4158 P 203 B Basement Floor Plan; 4158 P 204 E Ground Floor Plan 4158 P 205 C First Floor Plan; 4158 P 206 B 2nd - 4th Floor; 4158 P 207 D 5th Floor Plan; 4158 P 208 C Roof Plan; 4158 P 210 C Front Elevation; 4158 P 211 C Rear Elevation; 4158 P 212 D East Elevation; 4158 P 213 D West Elevation; 4158 P 220 D Section AA; 4158 P 240-241-242 D and 243 E CGIs.

3.1.2 "Planning Permission" the planning permission for the Development under reference number 2018/3318/P granted by the Council in the form of the draft annexed hereto

3.1.3 "Planning Application" the application for Planning Permission in respect of the Property submitted on 13 July 2018 by the Owner and given reference number 2018/3318/P

3.2 The following new definition shall be added to the Clause 2 (Definitions) of the Existing Agreement:-

2.3 "Affordable Housing Contribution" the sum of £ £5,962.50 (five thousand nine hundred and sixty-two pounds and fifty pence) to be paid by the Owner to the Council in accordance with the terms of this Agreement to be applied by the Council in the event of receipt towards the provision of Affordable Housing within the London Borough of Camden

3.3 The numbering of Clause 2 (Definitions) of the Existing Agreement shall be re-numbered accordingly.

3.4 The following new clause 4.12 shall be added to the Clause 4 (Obligations of the Owner) of the Existing Agreement:-

**4.12 AFFORDABLE HOUSING CONTRIBUTION**

4.12.1 On or prior to the Implementation Date to pay to the Council the Affordable Housing Contribution in full.

4.12.2 Not to implement or to permit implementation until such time as the Council has received the Affordable Housing Contribution in full.

3.5 The following underlined wording shall be added to clause 5.7 of the Existing Agreement as follows:

5.7 Payment of the Highways Contribution pursuant to Clause 4.2 of this Agreement and the Affordable Housing Contribution pursuant to Clause 4.12 of this Agreement shall be made by the Owner to the Council sending the full amount via (where practicable) electronic transfer. The Owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2016/1986/P. Electronic Transfer be made directly to the National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.



3.6 All references in Clause 5 and Clause 6 of the Existing Agreement to "Planning Permission reference 2016/1986/P" shall be replaced with "Planning Permission reference 2018/3318/P".

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

#### **4. COMMENCEMENT**

4.1 Without prejudice to the effect of Clause 3.5 in the Existing Agreement the provisions in this Deed shall take effect on the Implementation of the Planning Permission referenced 2018/3318/P.

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

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

#### **6. REGISTRATION AS LOCAL LAND CHARGE**

6.1 This Deed shall be registered as a Local Land Charge

#### **7. MORTGAGEE EXEMPTION**

7.1 The Mortgagee hereby consents to the Existing Agreement (as varied by this Deed) and to the same being registered at the Land Registry as provided in Clause 6 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.

7.2 The Parties agree that the obligations contained in the Existing Agreement (as varied by this Deed) shall not be enforceable against any mortgagee or chargee of the

whole or any part of the Property unless it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owner.

IN WITNESS WHEREOF the Council has caused its Common Seal to be affixed, and the Owner and the Mortgagee have caused this Deed to be executed as a Deed the day and year first above written.

EXECUTED AS A DEED BY  
HOLMES ASSETS LIMITED acting by a director )  
in the presence of:- )

[Redacted signature]

[Redacted signature] RENATA TRUSZKOWSKA  
Director witness signature and name

FLAT 35 CAPRICORN COURT, LONDON, HA8 5FN  
Director/Secretary witness address

ACCOUNTANT  
witness occupation

EXECUTED AS A DEED by )  
and )  
on behalf of )  
MIZRAHI TEFAHOT BANK LIMITED )

[Redacted signature] MATTHEW PLAX  
HEAD OF CORPORATE BANKING  
Authorised Signatory AUTHORISED SIGNATORY

[Redacted signature] ELTON HILLMAN  
AUTHORISED SIGNATORY HEAD OF CREDIT  
MIZRAHI TEFAHOT BANK LIMITED  
LONDON BRANCH

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

[Redacted signature]  
Duly Authorised Officer

