

DATED

3 February

2021

(1) 254 KILBURN HR LLP (in administration)

-and-

(2) OAKNORTH BANK PLC

-and-

(3) ARRON KENDALL and SIMON ROBERT THOMAS

-and-

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

DEED OF VARIATION

Relating to the Agreement dated 22 December 2016
Between the Mayor and the Burgesses of the
London Borough of Camden,
254 Kilburn High Road LLP and Hemnall Limited (as varied by the First Deed of Variation
dated 18 September 2018 the Second Deed of Variation dated 4 December 2019 and the
Third Deed of Variation dated 30 June 2020) under section 106A of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as
254 KILBURN HIGH ROAD LONDON NW6 2BS

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

Tel: 020 7974 5826

CLS/COM/LN/1800.1580
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THIS AGREEMENT is made on the 3rd day of February 2021

BETWEEN

1. **254 KILBURN HR LLP** (LLP Regn. No. OC414736) (in administration) whose registered office is at Suite 2, Fountain House, 1a Elm Park Stanmore, Middlesex, United Kingdom HA7 4AU (hereinafter called "the Owner"), acting by the Administrators, of the first part
2. **OAKNORTH BANK PLC** (Co. Regn. No. 8595042) of 3rd Floor, 57 Broadwick Street, Soho, London W1F 9QS (hereinafter called "the Mortgagee") of the second part
3. **ARRON KENDALL** and **SIMON ROBERT THOMAS** both care of Moorfields Advisory Limited, 20 Old Bailey, London EC4M 7AN (hereinafter called "the Administrators") 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

WHEREAS:

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL806238 subject to a charge to the Mortgagee.
- 1.2 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL806238 and dated 23 February 2017 is willing to enter into this Agreement to give its consent to the same.
- 1.4 The Administrators have been appointed pursuant to powers conferred under the Insolvency Act 1986 on 7 December 2020 as administrators of the Owner and have powers conferred on an administrator to act for the Owner and take action in respect of the Property.

1.4 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 (as permitted by planning permission reference 2015/2775/P) should be restricted or regulated in accordance with this Agreement.

1.5 The Council, 254 Kilburn High Road LLP and Hemnall Limited entered into an Agreement dated 22 December 2016 pursuant to Section 106 of the Town and Country Planning Act 1990. The Agreement has been subsequently varied by a Deed of Variation dated 18 September 2018 a Deed of Variation dated 4 December 2019 a Deed of Variation dated 20 June 2020 and letter dated 5 October 2020 (Existing Agreement).

1.6 The Owner has requested the Council agree a further variation to the Section 106 Agreement and the Council has agreed to do so as herein provided.

1.7 This Agreement 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.

1.8 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 reference in this Agreement to clauses in the Existing Agreement are to clauses within the Existing Agreement.

2.3 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.

2.4 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.

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

2.6 References in this Agreement to the Owner and Mortgagee shall include their successors in title.

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

"Existing Agreement"	the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 22 December 2016 between the Council, 254 Kilburn High Road LLP and Hemnall Limited as subsequently varied by a Deed of Variation dated 18 September 2018 a Deed of Variation dated 4 December 2019 a Deed of Variation dated 20 June 2020 and letter dated 5 October 2020
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3. VARIATION TO THE EXISTING AGREEMENT

3.1 Clause 4.1.5 and 4.1.6 of the Existing Agreement shall be deleted and replaced with the following clauses:-

4.1.5 Not to occupy or allow occupation of more than 58% (being 26 in number) of the market housing units or any other part of the Development until such time as:

- (i) the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years;

- (ii) the works of construction conversion and fitting out of the Affordable Housing units have been completed in accordance with the requirement of Sub-Clause 4.1.3 hereof.

4.1.6 In the event that the Affordable Housing Units have not been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years by **8 March 2021** (the Owner, acting by the Administrators, having used reasonable endeavours to secure such transfer) the Owner shall not occupy or allow occupation of more than 75% (being 34 in number) of the market housing units or any other part of the Development until such time as:

- (i) the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years;
- (ii) the works of construction conversion and fitting out of the Affordable Housing units have been completed in accordance with the requirement of Sub-Clause 4.1.3 hereof.

4.1.7 The Administrators, subject always to fulfilling their statutory obligations and duties to realise the Property for the benefit of the Mortgagee and to act in best interest of the creditors of the Owner as a whole, hereby confirm that they shall use all reasonable endeavours to procure:

- (i) completion of the construction conversion and fitting out of the Affordable Housing Units in accordance with the requirements of Sub-Clause 4.1.3; and
- (ii) the transfer or demise of the Affordable Housing Units to a Registered Provider in accordance with the requirements of Sub-Clause 4.1.5 (i) and 4.1.6(i);

as soon as reasonable practicable.

4.1.8 To ensure that the Affordable Housing Units are constructed, occupied and used solely as Affordable Housing so as to provide accommodation for eligible households in need of Affordable Housing.

3.2 Clause 4.1.8 of the Existing Agreement will be deleted and replaced with the following clause:

4.1.8 To ensure that the Affordable Housing Units are constructed, occupied and used solely as Affordable Housing so as to provide accommodation for eligible households in need of Affordable Housing and to enter into a nominations agreement with the Council in respect of the Affordable Rented Housing Units such agreement to be agreed between the Council and Registered Provider acting reasonably.

3.3 Clause 6.9 of the Existing Agreement will be deleted and replaced with the following clause:

6.9 Subject to the provisions of paragraph (i) – ^{iv}~~(iii)~~ below the restrictions ^{lbc} contained in Clause 4.1 hereof shall not be binding upon a mortgagee or chargee or a receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (“the Chargee”) or on any person or bodies deriving title from such Chargee PROVIDED that the following conditions have been satisfied:-

- i) The Chargee shall give notice in writing to the Council of its intention to dispose of the Affordable Housing Units (“the Default Notice”).
- ii) In the event of receipt of a Default Notice the Council shall be at liberty for a period of three calendar months from receipt of the Default Notice (or such longer period as may be agreed between the Chargee and the Council) (“the Specified Period”) to arrange for another Registered Provider to complete the transfer of the Affordable Housing Units for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses with a view to ensuring that the Affordable Housing Units remain units of Affordable Housing;
- iii) the Chargee shall use reasonable endeavours during the Specified Period to assist the Council in arranging completion of a transfer of the Affordable Housing Units and reply to enquiries raised in relation to the Affordable Housing Units as expeditiously as possible; and

- iv) If the Council having failed to arrange another Registered Provider to complete a transfer of the Affordable Housing Units within the Specified Period then the Specified Period shall be deemed to have elapsed and the Chargee may dispose of the Affordable Housing Units free from the provisions of clause 4.1 which shall determine absolutely

3.4 Clause 6.10 of the Existing Agreement will be deleted and replaced with the following clause:

Clause 6.1 of this Agreement shall apply to service of the Default Notice with the requirement that the Default Notice shall be addressed to each and all of the following recipients (for the avoidance of doubt the parties agree that it is intended that only a single original Default Notice is required to be sent to the Council's registered office addressed to each of the 6 recipients referred to below at (a) – (f) in the address line) quoting the address of the property and planning reference 2015/2775/P with a copy of the same notice sent by email to the Planning Obligations Monitoring Officer:-

- (a) The Chief Executive;
- (b) Chief Planning Officer;
- (c) The Borough Solicitor;
- (d) The Head of Development Management;
- (e) The Housing Commissioning and Partnership Manager; and
- (f) The Planning Obligations Monitoring Officer.

3.4 Clause 6.11(i) of the Existing Agreement will be deleted and replaced with the following clause:

(i) exercises a right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) or exercises any statutory right to buy (or any equivalent contractual right)

3.5 Clause 6.12 of the Existing Agreement shall be deleted and replaced with:

The Registered Provider shall ensure that any monies received by the Registered Provider in respect of any sale, long lease or other disposal of the Affordable Housing Units pursuant to clause 6.11 of this Agreement (but net of the reasonable and proper costs of the disposal and net of any monies that the Registered Provider is required to pay to any mortgagee of the Affordable Housing Units) is applied exclusively for the provision of Affordable Housing in the London Borough of Camden or, in the event the Registered Provider can show to the Council's reasonable written satisfaction that such funds are unable to be applied within the London Borough of Camden in the North London Region (or successor region).

3.6 A new clause 3.8 and 3.9 shall be added to the Existing Agreement in the following terms:

3.8 The Council shall act reasonably and proportionately when seeking to enforce any of the terms of this Agreement including notifying the Owner of any obligation to which the Council considers has been breached and stating what steps the Council considers to be required in order to bring about compliance with such obligation or obligations and allowing a reasonable period of time to rectify such breaches before taking enforcement action.

3.9 The obligations in this Agreement shall only be enforceable against any Owner to the extent that such obligations directly relate to the interest it holds in the Development at the time of any such breach.

3.7 In all other respects the Existing Agreement (as varied by this Agreement) 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 Agreement shall take effect on the date hereof.

5. PAYMENT OF THE COUNCIL'S LEGAL COSTS

5.1 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

6.1 This Agreement shall be registered as a Local Land Charge

7. MORTGAGEE EXEMPTION

7.1 The Mortgagee hereby consents to the completion of this Deed and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 of the Existing Agreement 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.

8. ADMINISTRATORS LIABILITY

8.1 The Administrators are acting as agents of the Owner and shall have no personal liability under or in connection with the Existing Agreement, or this Agreement, or under any document executed pursuant to this Agreement, nor in relation to any related matter or claim howsoever, whenever and wherever arising.

IN WITNESS WHEREOF the Council has caused their Common Seals to be affixed and the Owner and the Mortgagee has caused this Agreement to be executed as a Deed the day and year first above written.

EXECUTED AS A DEED FOR AND ON BEHALF
OF 254 KILBURN HR LLP (in administration) by
Arianna Keval..... Its administrator,
pursuant to powers conferred under the
Insolvency Act 1986, in the presence of:

.....
Signed in name of 254 KILBURN
HR LLP
.....

Signed in Administrator's own
name

.....

Name DANIELLE KEVALL

Address 20 DUNKIN COURT, MILDON KE4 4NS, MKS 64C

Occupation DIRECTOR

EXECUTED AS A DEED BY
OAKNORTH BANK LIMITED
by
in the presence of:-

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)
)
)
.....

.....

ALEXANDRA SHAN,
11 MORLAND AV, LEICESTER, LE2 2PF.
COMMUNICATIONS MGR.

EXECUTED AS A DEED FOR AND ON BEHALF
OF THE ADMINISTRATORS by
Arianna Keval....., on behalf of them
both, in the presence of:

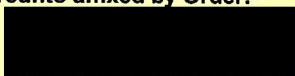
.....
Administrator

.....

DANIELLE KEVALL
DANIELLE KEVALL
20 DUNKIN COURT MILDON KE4 4NS MKS 64C
DIRECTOR

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

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Authorised Signatory

DATED

3 February

2021

(1) 254 KILBURN HR LLP (in administration)

-and-

(2) OAKNORTH BANK PLC

-and-

(3) ARRON KENDALL and SIMON ROBERT THOMAS

-and-

**(4) THE MAYOR AND THE BURGESSES OF
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