

DATED 24 NOVEMBER 2021

(1) ESSENTIAL LIVING (SWISS COTTAGE) LIMITED

and

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

DEED OF VARIATION

**varying the Agreement entered into on 24 August 2015
under section 106 of the Town and Country Planning Act 1990 (as amended)
relating to land known as
100 AVENUE ROAD, LONDON NW3 3HF**

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CLS/COM/LMM/1800.

THIS AGREEMENT is made the 24th day of November 2021

BETWEEN:

- i. **ESSENTIAL LIVING (SWISS COTTAGE) LIMITED** (incorporated in Jersey under Company Registration Number 111589) of 2nd Floor, Gaspe House, 66-72 Esplanade, St Helier, Jersey, JE1 1GH (hereinafter called "the Owner") of the first part
- ii. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

1. WHEREAS

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Numbers NGL590790, NGL896502 and NGL832601.
- 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 Original Permission (as defined in clause 2.2 of this Agreement) was granted by the Secretary of State for Communities and Local Government on appeal (appeal reference APP/X5210/W/14/3001616) on 18 February 2016. The Original Agreement (as defined in clause 2.2 of this Agreement) was entered into on 24 August 2015.
- 1.4 The Original Agreement was varied by the First Supplemental Agreement on 4 August 2020.
- 1.5 The S.106A Application (as defined in clause 2.2 of this Agreement) was submitted to the Council and validated on 18 January 2021.
- 1.6 The S.106A Application was refused by the Council on 23 March 2021 and the Owner on 10 May 2021 submitted the Appeal.

- 1.7 Following the Case Management Conference held on 6 September 2021 and following the preparation and agreement of the statement of common ground by the Parties (the "Statement of Common Ground") it was agreed by the Parties that some of the modifications to the Original Agreement should be made whether or not the Condition (as defined at sub clause 2.2(d) of this Agreement) is satisfied, given that they are matters of common ground between the Parties and have been agreed as part of the Appeal process during the preparation of evidence. These modifications are set out in Part B of Clause 3. The Parties' intention is that these modifications should take effect on the date of the Appeal Decision, whether or not the Condition is satisfied.
- 1.8 The remainder of the proposed modifications, which are set out at Part A of Clause 3, are the modifications which relate to the issues on which the Parties have not reached agreement as part of the Appeal process and are therefore matters that remain to be decided by the Inspector pursuant to the Appeal. These modifications are therefore subject to the Condition and will only take effect if the Condition is satisfied. The Parties' intention is that these modifications should take effect on the date of the Appeal Decision, subject to satisfaction of the Condition.
- 1.9 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 this Agreement.
- 1.10 Without prejudice to the terms of the other covenants contained in the Original Agreement the Parties have agreed to vary the terms of the Original Agreement as provided in this Agreement.

2. INTERPRETATION

- 2.1 All words and phrases defined in the Original Agreement shall have the same meaning in this Agreement save where otherwise provided or where the context otherwise dictates and for the avoidance of any doubt the Original Agreement shall remain in full force and effect save as varied by this Agreement.
- 2.2 In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

- a. "Agreement" this Deed of Variation
- b. "Appeal" the appeal under S.106B of the Act submitted by the Owner on 10 May 2021 and allocated reference APP/X5210/Q/21/3276844
- c. "Appeal Decision" the decision letter issued by the Inspector determining the Appeal
- d. "Condition" the Secretary of State allowing the Appeal
- e. "First Supplemental Agreement" the Agreement under S.106A of the 1990 Act (as amended) dated 4 August 2020 entered into between the Parties in relation to the Original Permission
- f. "Inspector" the inspector appointed by the Secretary of State for Levelling Up, Housing and Communities to determine the Appeal
- g. "Original Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 24 August 2015 entered into between the Parties and Mount Street Loan Solutions LLP in relation to the Original Permission
- h. "Original Application" the application submitted in respect of the Original Development under reference number 2014/1617/P
- i. "Original Permission" the planning permission granted by the Secretary of State for Communities and Local Government on appeal (appeal reference APP/X5210/W/14/3001616) on 18 February 2016 for the Original Development pursuant to the Original Application

- j. "Original Development" the development of the Property pursuant to the Original Permission
- k. "Parties" means the Council and the Owner and "Party" means any one of them
- l. "S.106A Application" The application to which the Council has allocated reference number 2021/0025/P submitted pursuant to S.106A of the Act to modify clause 3.2 of the Original Agreement and related definitions and clauses
- m. "Secretary of State" the Secretary of State for Levelling Up Housing and Communities

2.3 This Agreement is supplemental to the Original Agreement and the First Supplemental Agreement and creates planning obligations for the purpose of Section 106 of the Act and it is acknowledged by the Parties that the obligations contained within it are binding on the Property and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.

2.4 The land bound by the obligations in this Agreement is the Property.

2.5 The modifications set out in Part A of Clause 3 are agreed subject to the satisfaction of the Condition and they shall only take effect in the event that the Condition is satisfied. If the Condition is satisfied the modifications set out in Part A of Clause 3 shall take effect on the date of the Appeal Decision.

2.6 The modifications set out in Part B of Clause 3 are not subject to the satisfaction of the Condition and they shall take effect on the date of the Appeal Decision, whether or not the Condition is satisfied.

- 2.7 In the event that the Original Agreement as varied by the First Supplemental Agreement ceases to have effect this Agreement shall also cease to have effect.
- 2.8 For the avoidance of doubt nothing in this Agreement is intended to have the effect of duplicating or double counting any of the obligations in the Original Agreement as varied by the First Supplemental Agreement.
- 2.9 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 2.10 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 2.11 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 2.12 The Parties save where the context states otherwise shall include their successors in title and in the case of the Council any successor to its statutory functions.
- 2.13 The Council shall act reasonably and proportionately when seeking to enforce any of the terms of this Agreement including notifying the Party in default of such breach and allowing a reasonable period of time for the defaulting Party to either remedy the breach or invoke the dispute provisions pursuant to clause 7 of the Original Agreement.

3. VARIATION OF THE ORIGINAL AGREEMENT

PART A MODIFICATIONS

Subject to the satisfaction of the Condition the Original Agreement shall be varied as follows:

- 3.1 The modification of clause 3.2.1 and clause 3.2.2 by the deletion in each case of the reference to "the Intermediate Housing Scheme";

3.2 The modification of clause 3.2.3 by:

The deletion of the term "Affordable Housing Units" and its replacement by the term "Discounted Market Rent Housing Units";

The deletion of the term "Affordable Housing" and its replacement by the term "Discount Market Rent Housing"; and

The deletion of the words "in accordance with the specification approved by a Registered Provider";

3.3 The deletion of clauses 3.2.4, 3.2.5, 3.2.6 and 3.2.7;

3.4 The modification of clause 3.2.10 to read:

"the Owner shall ensure that the Discounted Market Rent Housing Units shall not be otherwise used or Occupied and shall be retained for no purpose other than for the provision of Discounted Market Rent Housing unless otherwise agreed in writing by the Council Provided Always that this restriction shall not prevent the Owner from disposing of all or any of the Discounted Market Rent Housing Units with the burden of such restriction";

3.5 The deletion of clause 3.2.11;

3.6 The deletion of the following definitions, namely:

Affordable Housing Units,
Affordable Rent Housing,
Affordable Rent Housing Units,
Discounted Market Rent Period,
Intermediate Housing,
Intermediate Housing Scheme,
Intermediate Housing Units,
Registered Provider; and
Shared Ownership.

- 3.7 The modification of the Discounted Market Rent Housing Units Marketing Plan definition by the deletion of the words "during the Discounted Market Rent Period".
- 3.8 The modification of Clause 3.15.1 by: the deletion of the words "7 years after Implementation" in the first line and their replacement with the words "15 years from Practical Completion".
- 3.9 The modification of Clause 3.15.2 by: the deletion of the words "7 years after Implementation" in the first line and their replacement with the words "15 years from Practical Completion".

PART B MODIFICATIONS

- 3.10 The modification of the definition of "Additional Affordable Housing" by the deletion of the figure "50%" and its replacement with the figure "100%". The modified definition of "Additional Affordable Housing Contribution" shall read:

"Additional Affordable Housing Contribution"

means 100% of any Surplus which is identified pursuant to a Disposal Viability Assessment to be used by the Council for the provision of Affordable Housing within the London Borough of Camden.

- 3.11 The deletion of the definition of "Disposal Viability Assessment" and its replacement with the following new definition of "Disposal Viability Assessment":

"Disposal Viability Assessment"

means an assessment which shall:-

(a) be carried out by the Owner in respect of the Development and submitted to the Council in accordance with the terms of this Agreement such assessment to be based on a gross development value represented by the difference in value between the achieved sale price of each

unit less the value of the equivalent unit on a build for rent basis; and

(b) identifies whether there is any Surplus; and in the event that there is a Surplus calculates the amount which is 100% of that amount and due to the Council by way of an Additional Affordable Housing Contribution.

3.12 The deletion of the definition Original Viability Assessment

3.13 The deletion of the definition of "Post Construction Viability Review" and its replacement with the following new definition of "Post Construction Viability Review":

"Post Construction Viability Review" means an assessment carried out by an independent surveyor on behalf of the Owner in respect of the entire Development which shall:-

(a) calculate the gross development value on the following basis:

Gross Market Rent X 5% YP and to include the estimated value of the commercial and community uses estimated value of the Discount Market Rent Housing Units and known payments for the affordable housing where applicable.

(b) identify whether there is any Surplus as follows:

i) in the event that the Post Construction Viability Review Condition is not satisfied the Gross Development Value of the consented scheme at breakeven as agreed in the Statement of Common Ground to be £215,560,031 will be

subtracted from Gross Development Value assessed through the Post Construction Viability Review.

or

(ii) in the event that the Post Construction Viability Review Condition is satisfied the Gross Development Value of the proposed scheme at breakeven as agreed in the Statement of Common Ground to be £217,815,135 will be subtracted from the Gross Development Value assessed through the Post Construction Viability Review;

and

(c) in the event that there is a Surplus calculate the amount which is 50% of that amount and due to the Council by way of a Deferred Affordable Housing Contribution.

AND FOR THE AVOIDANCE OF DOUBT two worked examples are attached as Appendix 2 to this Agreement, the first providing a worked example of such calculation in the event that the Post Construction Viability Review Condition is not satisfied, and the other providing a worked example of such calculation in the event that the Post Construction Viability Review Condition is satisfied.

3.14 The insertion of the following new definition:

**"Post Construction Viability
Review Condition"**

the condition that the appeal under S.106B of the Act submitted by the Owner on 10 May 2021 and allocated reference APP/X5210/Q/21/3276844 is allowed.

3.15 The deletion of the definition of "Surplus" and its replacement with the following new definition of "Surplus":

"Surplus" means a positive figure produced from (as appropriate):-

- (a) a Post Construction Viability Review pursuant to Clause 3.16 of this Agreement; or
- (b) a Disposal Viability Assessment pursuant to Clause 3.15 of this Agreement

3.16 The modification of Clause 3.15.1 by the deletion of the words "more than 20% of the total floor area of the" in the second line.

3.17 The modification of Clause 3.15.2 by the deletion of the words "more than 20% of the total floor area of the" in the second line.

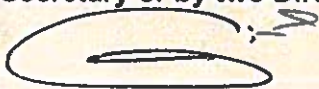
3.18 The deletion of Appendix 2 of the Original Agreement and its replacement with the new Appendix 2 attached as the Appendix to this Agreement.

4. REGISTRATION AS LOCAL LAND CHARGE

4.1 This Agreement shall be registered as a Local Land Charge.

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner has executed this instrument as a Deed the day and year first before written.

EXECUTED AS A DEED BY)
ESSENTIAL LIVING (SWISS COTTAGE))
LIMITED acting by a Director and its)
Secretary or by two Directors)



..... STACY LITHE

Director



..... SIMON MORRIS

Director/Secretary (ALTERNATE TO
CAROL KEENAN)

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



R. Alexander

.....
Authorised Signatory

APPENDIX

Worked examples to be inserted as Appendix 2 of the Original Agreement

"APPENDIX 2

Worked Examples of Calculation of Deferred Housing Contribution pursuant to Clause 3.16 of this Agreement

Worked example of calculation of Deferred Housing Contribution in the event that the Post Construction Viability Review Condition is not satisfied:

Review GDV less Application GDV = Surplus
50% of Surplus is payable to the Council.

Review GDV: to be calculated as follows:

[Gross Market Rent] x 5% YP (20)

+ Retail GDV

= Total Review GDV

Application GDV: £217,815,135

Example:

£15,000,000 x 5% YP (20) = £300,000,000

+ Retail GDV (example): 5,419,200

Total Review GDV = £305,419,200

Application GDV: £217,815,135

Surplus: £305,419,200 - £217,815,135 = £87,604,065

50% of Surplus = £43,802,033 due to the Council"

Worked example of calculation of Deferred Housing Contribution in the event that the Post Construction Viability Review Condition is satisfied:

Review GDV less Application GDV = Surplus
50% of Surplus is payable to the Council.

Total Review GDV: to be calculated as follows:

[Gross Market Rent per sqft in Block A and Block B] x 5% YP (20)

+ Retail GDV

+ Affordable Housing Sale

= Total Review GDV

Application GDV: £215,560,031

Example:

Gross Rent Received of x 11,000,000x 5% YP (20) = £220,000,000

+ Retail GDV (example): 5,419,200

+ Affordable Housing Sale (example): £8,170,000

Total Review GDV = £233,589,200

Application GDV: £215,560,031

Surplus: £233,589,200- £215,560,031 = £18,029,169

50% of Surplus = £9,014,584.5 due to the Council