

DATED

2021

DEED OF VARIATION

UNDER SECTIONS 106 AND 106A TOWN AND COUNTRY PLANNING ACT
1990

RELATING TO LAND AT KERNEL COURT, GUILDFORD GU1 4UD

- (1) THE COUNCIL OF THE BOROUGH OF GUILDFORD
- (2) BAE SYSTEMS PENSION FUNDS TRUSTEES LIMITED
- (3) KERNEL COURT LIMITED
- (4) GCP ASSET BACKED INCOME(UK) LIMITED
- (5) INVESTEC BANK PLC

Ref: KER001/0001/SR/GM

Dated

day of

2021

- (1) THE COUNCIL OF THE BOROUGH OF GUILDFORD the principal administrative office of which is at Millmead House, Millmead, Guildford, Surrey GU2 4BB (the "**Council**");
- (2) BAE SYSTEMS PENSION FUNDS TRUSTEES LIMITED (CRN: 00753964) whose registered office is at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, GU14 6YU (the "**Owner**");
- (3) KERNEL COURT LIMITED (CRN: 10582674) whose registered office is at 4 Greengate Cardale Park Harrogate North Yorkshire HG3 1GY the "**Developer**";
- (4) INVESTEC BANK PLC (CRN: 00489604) registered in England and Wales whose registered office is at 30 Gresham Street London EC2V 7QP (the "**Mortgagee**");

collectively referred to herein as the "**Parties**".

WHEREAS

- (A) On 29 November 2018 the Council, the Co-Operative Group Limited and the Developer entered into the Original Agreement in respect of the Development.
- (B) On 1 July 2019 the Council, the Co-Operative Group Limited, the Developer, GCP Asset Backed Income (UK) Limited and the Mortgagee entered into the First Deed of Variation to the Original Agreement.
- (C) The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (D) The Owner is the registered freehold proprietor of the Land which is registered at the Land Registry under Title Number SY223194 with title absolute and free from encumbrances (subject to those matters listed in the Charges Register).
- (E) The Developer is lessee of the Land under a 150 year lease dated 27 November 2018 which is registered at the Land Registry under Title Number SY858904.
- (F) The Mortgagee is the proprietor of a legal charge dated 1 April 2019 and registered at the Land Registry under Title Number SY858904, and has agreed to enter into this deed to give consent to the terms of this deed.
- (G) The Owner and the Developer are the persons against whom the Original Agreement and the First Deed of Variation is enforceable in accordance with section 106A of the 1990 Act.
- (H) The Council and the Developer have agreed to enter into this Second Deed of Variation to make the Variation Development acceptable in planning terms in the circumstances of the Covid-19 pandemic.
- (I) The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act.

NOW THIS DEED WITNESSES:

1. Definitions

- 1.1 The capitalised terms used herein will have the meaning ascribed to them in the Original Agreement (as amended by the First Deed of Variation), as well as those meanings ascribed in the table below:

“First Deed of Variation”	means the deed of variation, in respect of the Original Agreement, dated 1 July 2019 and made between the Council, the Co-Operative Group Limited, the Developer, GCP Asset Backed Income (UK) Limited and the Mortgagee.
“Land”	means the Land at Kernel Court, Walnut Tree Close, Guildford against which this Deed may be enforced shown edged with a red line on Plan 1.
“Original Agreement”	means the section 106 agreement in respect of the Land and made between the Council, the Co-Operative Group Limited and the Developer dated 29 November 2018.
“Plan 1”	means the Plan annexed hereto.
“Second Deed of Variation”	means this deed to vary the the Original Agreement (as amended by the First Deed of Variation).
“Variation Development”	means the following development permitted by the Variation Permission: “Demolition of existing structures and construction of a part-4, part-5, part-7, part-8 storey student accommodation building (Sui Generis) and a basement plus part-4, part-5 storey Co-Living accommodation building (Sui Generis) with associated works including, parking, access, landscaping, plant, cycle and refuse enclosure. (Amendment to Planning Permission 18/P/01155 for an increase in Co-Living building from 4 to 5 stories (approximately 550mm in height) and an increase in Co-Living units from 85 to 113)”.
“Variation Permission”	means the planning permission granted by the Council with reference number 19/P/00267 and dated 4 July 2019.

2. INTERPRETATION

- 2.1 Where in this deed reference is made to a clause, paragraph, schedule or plan it is to a clause, paragraph, schedule or plan in this deed except where otherwise provided in this deed or where the context otherwise requires.
- 2.2 A reference to any statute or statutory provision will be construed as a reference to the same as it may from time to time be amended, modified or re-enacted.

3. STATUTORY PROVISIONS

This deed is made pursuant to sections 106 and 106A the 1990 Act and sections 111 and 135 Local Government Act 1972 and section 1 of the Localism Act 2011 (as amended) and all other powers enabling and the covenants and undertakings herein are entered into with the intent that the same shall be enforceable without limit of time against the Parties (in accordance with this deed) and against their successors in title and assigns and any person corporate or otherwise claiming an interest or estate created after the date hereof in the Land or any part or parts thereof as if that person had also been an original covenanting party to such of the covenants and undertakings which relate to the interest or estate for the time being held by that person.

4. VARIATION

4.1 The Parties hereby acknowledge and agree that:

- (a) the terms and provisions of the Original Agreement (as amended by the First Deed of Variation) will be amended as set out in Schedule 1.

5. COUNCIL LEGAL COSTS

5.1 The Owner and Developer hereby covenant and the Mortgagee consents that the Owner shall on or before completion of this deed pay the Council's reasonable costs of £[•] in the preparation and negotiation of this deed.

6. MORTGAGEE CONSENT

6.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Land shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land.

6.2 The parties hereto agree the Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land.

7. MISCELLANEOUS

7.1 IT IS HEREBY AGREED AND DECLARED that:

- (a) The covenants in this deed will be treated as Local Land Charges and registered at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975;
- (b) Nothing in this deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its statutory functions under private or public statutes by-laws orders and regulations;
- (c) Unless varied by this deed, where any dates or periods of time under the Original Agreement are calculated by reference to the date of the Original Agreement, those periods of time or dates will continue to be calculated by reference to the date of the Original Agreement;
- (d) If any provision in this deed is in whole or in part found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability will not affect the validity or enforceability of any of the remaining provisions of this deed;
- (e) In accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 it is hereby declared that none of the terms of this deed will in the absence of any express provision to the contrary be construed as being enforceable by any third party;
- (f) This deed is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England;
- (g) This deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

IN WITNESS WHEREOF the Parties hereto have executed this deed the day and year first before written

SCHEDULE 1

VARIATION TO THE ORIGINAL AGREEMENT

1. Variation

- 1.1 At paragraph 7.4 of the First Schedule to the Original Agreement, the words “The Owner and the Developer hereby covenant with the Borough Council that the Co-Living Accommodation shall not be Occupied by persons in Full Time Education” will be deleted and replaced by the words “The Owner and the Developer hereby covenant with the Borough Council that from the expiration of 5 (five) years from the date of First Occupation of the Co-Living Accommodation the Co-Living Accommodation shall not be Occupied by persons in Full Time Education.”

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of **THE COUNCIL**)
OF THE BOROUGH OF GUILDFORD)
in the presence of:-)

Authorised Signatory

[Execution block for BAE]

EXECUTED as a DEED
by
KERNEL COURT LIMITED
acting by a Director

in the presence of:
Director

Witness Signature:

Name: (Block capitals).....

Address:
.....

Occupation:

EXECUTED and **DELIVERED** by
INVESTEC BANK PLC acting by its duly appointed authorised signatories
under a power of attorney dated 20 May 2019
as follows:

.....
Authorised Signatory

.....
Authorised Signatory

in the presence of:

in the presence of:

.....
Witness
Full Name:
Address:
Occupation:

.....
Witness
Full Name:
Address:
Occupation: