

DATED 27TH JUNE 2024

(1) KICKING HORSE 3 LIMITED

and

(2) NEUTROLLA LP, S.A.R.L.

and

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

A G R E E M E N T

relating to land known as

The Black Cap, 171 Camden High Street, Camden Town NW1 7JY

pursuant to

Section 106 of the Town and Country Planning Act 1990 (as amended);

Section 16 of the Greater London Council (General Powers) Act 1974;

Section 111 of the Local Government Act 1972; and

Section 1(1) of the Localism Act 2011

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

G:\case files/culture & env/planning/s106 Agreements (2023/5228/P)
CLS/COM/1800.
s106 v2

THIS AGREEMENT is made the 27th day of June 2024

B E T W E E N:

- A. **KICKING HORSE 3 LIMITED** (incorporated in Jersey) of 23 Pier Road, St Helier, Jersey, JE2 4XW (hereinafter called "the Owner") of the first part
- B. **NEUTROLLA LP, S.A.R.L.** (incorporated in Luxembourg) of Airport Center-A, 1st Floor, 5 Rue Heienhaff, L-1736 Senningerberg, Luxembourg (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

1. **WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with title absolute of the Property under Title Number NGL67384 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 Owner has submitted an application to the Council for a CLOPUD in respect of the Proposed Use of the Property (each as defined in clause 2 of this Agreement). The Council validated this application on 8 January 2024 and has resolved to grant the CLOPUD subject to the conclusion of this Agreement.
- 1.4 The Council is the local planning authority for the purposes of the Act, and is the local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974; Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 for the area in which the Property is situated.

1.5 Further to the resolution made by the Council (as referred to at clause 1.3 above) the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.7 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL67384 and dated 20 January 2017 is willing to enter into this Agreement to give its consent to the same.

2. DEFINITIONS

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

2.1	"the Act"	means the Town and Country Planning Act 1990 (as amended)
2.2	"the Agreement"	means this Planning Obligation made pursuant to Section 106 of the Act
2.3	"the Ancillary Accommodation"	<p>means the six (6) rooms of ancillary accommodation to be provided on the second and third floors of the Property as shown on drawing numbers GHA-XX-XX-DR-A-2001 P01 and GHA-XX-XX-DR-A-2002 P01 comprising:</p> <p>(a) five (5) rooms of accommodation with bathrooms on the second floor as identified as bedrooms 1-5 (inclusive) on drawing number GHA-XX-XX-DR-A-2001 P01; and</p> <p>(b) one (1) room of accommodation with bathroom on the third floor as identified as bedroom 7 on drawing number GHA-XX-XX-DR-A-2002 P01</p>
2.4	"Annual Report"	<p>means an annual report that includes the following details in respect of each relevant preceding 12 month period:</p> <p>(a) details of the operator(s) who is responsible for the</p>

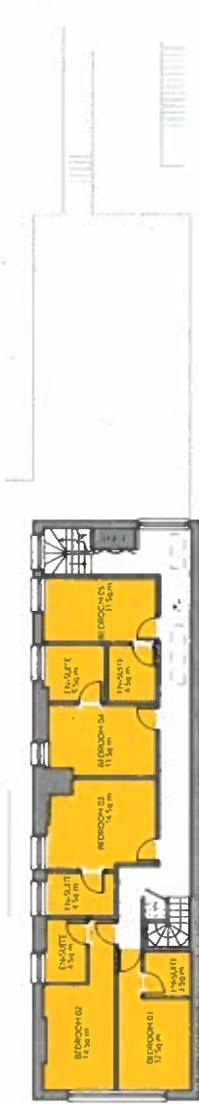
		<p>management of the Ancillary Accommodation and the Management Room;</p> <p>(b) details of the take-up of the Performer Accommodation and the Ancillary Accommodation (as the case may be) by Performers;</p> <p>(c) details of the take-up of the Ancillary Accommodation by paying customers as 'bed and breakfast' accommodation on a month-by-month basis; and</p> <p>(d) confirmation that the Owner has complied with the restrictions and obligations set out in this Agreement;</p>
2.5	"Booking Period"	means the period of three (3) months before any Performance Date
2.6	Check-in-Facility	means a facility to be provided on the ground floor of the Property for the purposes of requiring Occupiers to check-in before they are granted access to the Ancillary Accommodation
2.7	"CLOPUD"	means the Certificate of Lawfulness of Proposed Use or Development to be granted pursuant to application reference number 2023/5228/P
2.8	"Employee"	means a person who is employed (on a full-time or a part-time basis) at the Property in relation to the Proposed Use
2.9	"External Access"	means the external means of access to the upper floors of the Property as shown on drawing numbers GHA-XX-XX-DR-A-2000 P01 and GHA-XX-XX-DR-A-2001 P01
2.10	"the Management Room"	means the management room (office and accommodation) with bathroom (not being any part of the Ancillary Accommodation) to be provided on the third floor of the Property as shown on drawing number GHA-XX-XX-DR-A-2002 P01 to be made available and retained for use by

		Employees
2.11	"Occupation Date"	means the date when any part of the Ancillary Accommodation or Management Room is first occupied in relation to the Proposed Use and the phrases "Occupy", "Occupied", "Occupying" and "Occupation" shall be construed accordingly
2.12	"the Parties"	means the Council the Owner and the Mortgagee
2.13	"Performance Date"	means the date when the Performer is scheduled to perform at the Property as recorded in their contract or any other means pursuant to which their services have been engaged by, or on behalf of, the Owner;
2.14	"Performer"	means any person(s) who is booked (on a paid or unpaid basis) by, or on behalf of, the Owner to perform at the Property for the purposes of providing entertainment for others including (without limitation) comedians, singers and dancers
2.15	"the Performer Accommodation"	means one room of the Ancillary Accommodation
2.16	"Planning Obligations Monitoring Officer"	means a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to Section 106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.17	"the Property"	means the land known as The Black Cap, 171 Camden High Street, Camden Town NW1 7JY the same as shown edged red on drawing number GHA-XX-XX-DR-A-0001 P01
2.18	"the Proposed Use"	means the proposed mixed use of the Property certified as being the lawful use of the Property by the CLOPUD

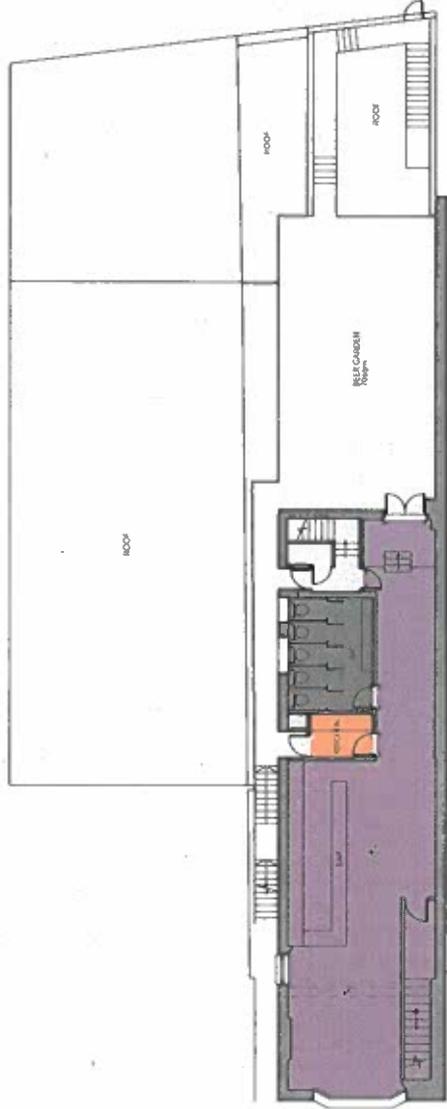
2.19	"the Venues"	means the bar on the ground floor of the Property as shown on drawing number GHA-XX-XX-DR-A-2000 P01 and the pub on the first floor of the Property as shown on drawing number GHA-XX-XX-DR-A-2001 P01 and "Venue" means either one of them
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3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972 and Section 1(1) of the Localism Act 2011 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.
- 3.2 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.
- 3.3 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.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the commencement of the Proposed Use and



02 Second Floor Plan
1200



01 First Floor Plan
1200

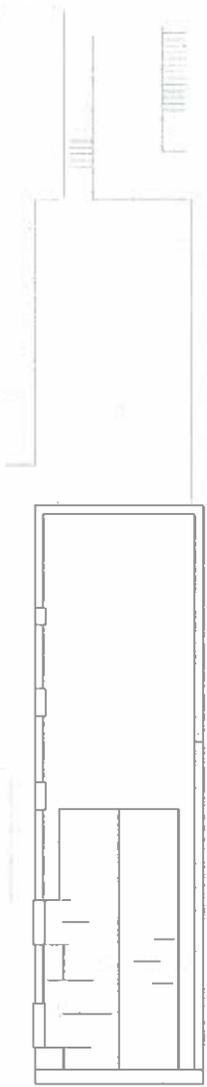
**GOLDSTEIN
HEATHER**
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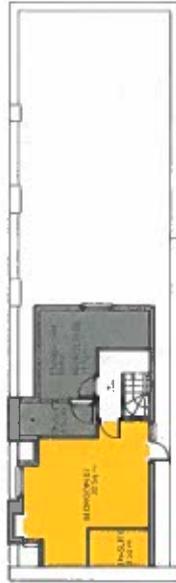
Revision	Drawn	Date	Rev	Project
	RB6	26.10.23	PO1	The Black Cap

Drawing title:
**First and Second Floor
Proposed Plans**

Job No. 23006
Drawg No. GHA-XX-XX-DR-A-2001 1: 200@A3
Scale: Rev. P01



RF Roof Plan
1:200



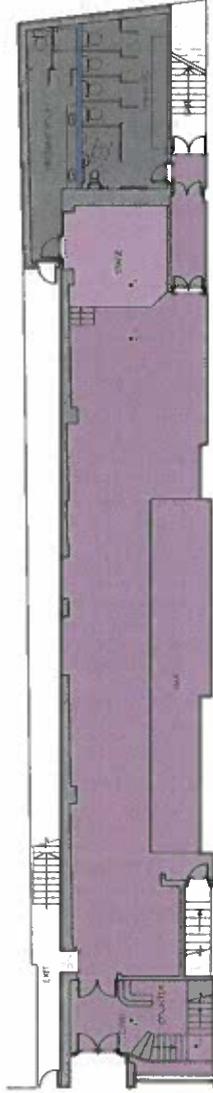
03 Third Floor Plan
1:200

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Revision
Drawn RBo
Date 26.10.23
Rev P01
Project: The Black Cap

Drawing title: Third floor and Roof Proposed Plans
Job No. 23006
Drwg No. GHA-XX-XX-DR-A-2002
Scale: 1:200@A3
Rev P01

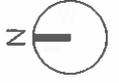


00 Ground Floor Plan
1:200



B1 Basement Plan
1:200

Revision



Drawn
RBo

Date
26.10.23

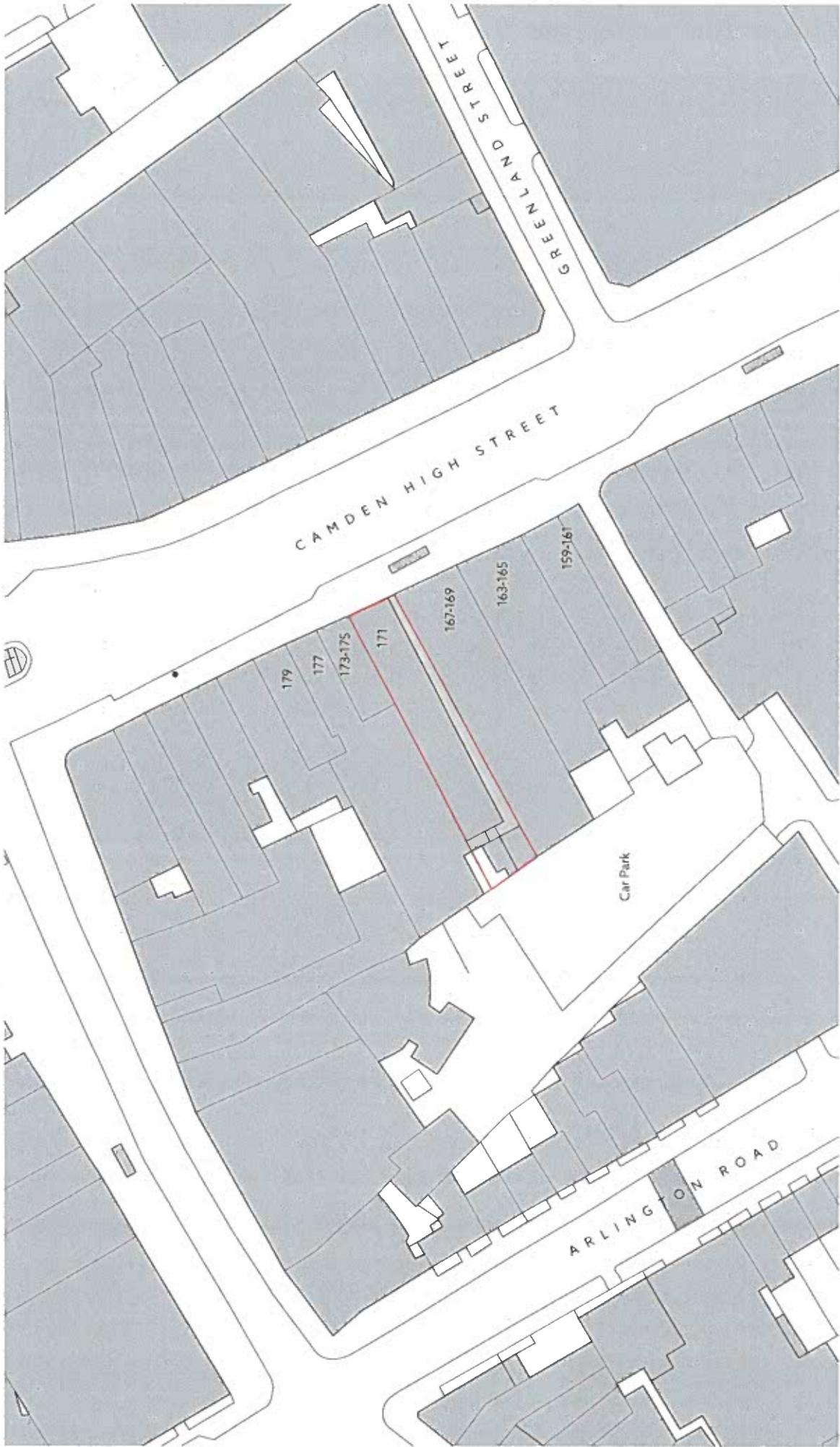
Rev
P01

Project:
The Black Cap



Drawing title:
**Basement and Ground Floor
Proposed Plans**

Job No. 23006
Drwg No. GHA-XX-XX-DR-A-2000
Scale: 1:200@A3
Rev. P01



shall bind the Property throughout the period in which the Proposed Use is being carried on at the Property.

3.6 The Council hereby agrees to grant the CLOPUD on the date hereof.

3.7 The Parties save where the context states otherwise shall include their successors in title.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **ACCESS TO THE ANCILLARY ACCOMMODATION AND MANAGEMENT ROOM**

4.1.1 The Owner shall not commence the Proposed Use unless and until a Check-in Facility has been provided and is available for use.

4.1.2 The Owner shall ensure that all Occupiers who have booked the Ancillary Accommodation (or any part of it) are checked-in via the Check-in Facility PROVIDED THAT this obligation shall only apply at times when the Check-in Facility is open in accordance with clause 4.1.3.

4.1.3 To ensure that the Check-in Facility is open at all times when the Venues are open.

4.2 **ANCILLARY ACCOMMODATION**

4.2.1 Not to use the Ancillary Accommodation otherwise than by Performers or by paying customers as 'bed and breakfast' accommodation ancillary to the Proposed Use on a short term basis (to be booked on a nightly basis and for no more than 21 consecutive nights).

4.2.2 To ensure that Performers shall be offered the Performer Accommodation at the time they are booked (by, or on behalf of, the Owner) to perform at the Venues and the offer shall be made for the nights they are booked to perform at the Venues (so that if a Performer is being booked to perform on Thursday, Friday and Saturday nights the offer should be made to that Performer for Thursday, Friday and Saturday nights).

- 4.2.3 To ensure that Performers shall be given priority for the use of the Performer Accommodation and the Owner shall use reasonable endeavours to ensure that the Performer Accommodation is available for Performers on their Performance Dates.
- 4.2.4 To ensure that an offer to book the Performer Accommodation on a Performer's Performance Date(s) shall not be made to anyone other than the relevant Performer(s) prior to the start of the Booking Period in respect of the relevant Performance Date(s) and the Performer Accommodation should only be offered for Occupation by paying customers during the Booking Period in respect of the relevant Performance Date(s)).
- 4.2.5 To ensure that the Performer Accommodation is made available for booking by the general paying public during the Booking Period in respect of a Performer's Performance Dates if it has not been booked by Performer(s) before the commencement of the Booking Period in respect of the relevant Performance Date(s).
- 4.2.6 To ensure that Performers shall be offered the use of the Performer Accommodation at a discount of at least twenty percent (20%) against the rack/published rate for the Ancillary Accommodation, which applies at the time when the relevant Performer is booked by, or on behalf of, the Owner.
- 4.2.7 In the event that a Performer requests accommodation for their Performance Dates but the Performer Accommodation is already fully booked, to use reasonable endeavours to offer the use of any other Ancillary Accommodation that has not at that time been booked to the Performer at a discount of at least twenty percent (20%) against the rack/published rate for the Ancillary Accommodation which applies at the time when the relevant Performer is booked by, or on behalf of, the Owner.
- 4.2.8 To ensure that all Occupiers of the Ancillary Accommodation (whether Performers or other paying customers) shall check in to the Ancillary Accommodation using the Check-in Facility.

4.2.9 To monitor the External Access so as to ensure that the Ancillary Accommodation continues to be used as ancillary accommodation (ancillary to the Proposed Use) and that access to the Ancillary Accommodation shall be via the Venues, and that the External Access shall only be used in limited circumstances (eg when the Venues are very busy and so access via the Venues is impractical).

4.2.10 To encourage booking of the Ancillary Accommodation by patrons of the Venues.

4.2.11 To ensure that the Ancillary Accommodation is used only for purposes that are ancillary to the Proposed Use.

4.2.12 Within 28 days of receipt of a request in writing from the Council, and for so long as the Property is in use for the Proposed Use, to submit an Annual Report to the Council PROVIDED THAT:

(a) the first written request by the Council shall not be submitted to the Owner before the first anniversary of the Occupation Date; and

(b) each subsequent written request by the Council shall not be submitted to the Owner earlier than 12 months after the immediately preceding request.

4.3 MANAGEMENT ROOM

4.3.1 The Management Room shall not be used or Occupied other than by Employees (or Performers) as ancillary accommodation (ancillary to the operation of the Venues and in accordance with the Proposed Use).

4.4 USE OF THE VENUES

4.4.1 Unless otherwise agreed in writing by the Council, not to use the Venues otherwise than as a cabaret/dance venue, club, bar/community space and public house in accordance with the CLOPUD and for the benefit and inclusion of the LGBTQ+ community and all communities PROVIDED THAT, for the avoidance of any doubt, this obligation shall not prevent any lawful ancillary uses and/or other uses that do not require planning permission.

5. **NOTICE TO THE COUNCIL/OTHER MATTERS**

- 5.1 The Owner shall give written notice to the Council on or prior to the commencement of the Proposed Use specifying that commencement of the Proposed Use has taken place or is about to take place.
- 5.2 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable written requests of the Council to have access to any part of the Property or any reasonable requests in writing to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.3 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.4 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Borough Solicitor a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.5 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the reference 2023/5228/P.

5.6 Payment of any contribution pursuant to Clause 5.4 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable) 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 reference 2023/5228/P. Electronic Transfer be made directly to 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.

5.7 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Placeshaping Service, Urban Design and Development Team, 2nd Floor, 5 Pancras Square, London, N1C 4AJ and sent to planning obligations on PlanningObligations@camden.gov.uk quoting reference number 2023/5228/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

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

6.3 The Owner agrees to pay the Council its proper and reasonable legal costs (amounting to £3,210) incurred in preparing this Agreement and its monitoring fees (amounting to £1,750) on or prior to the date of completion of the Agreement.

- 6.4 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 Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

7. **MORTGAGEE EXEMPTION**

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

8. **RIGHTS OF THIRD PARTIES**

8.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner and the Mortgagee have executed this instrument as their deed the day and year first before written

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

Alexander

.....

Authorised Signatory



EXECUTED AS A DEED BY)
KICKING HORSE 3 LIMITED)
acting by a Director and its Secretary)
or by two Directors or by a Director in)
the presence of a witness)

Billy Buchanan

.....

Director



.....

Director/Secretary

.....

In the presence of:

Witness signature:



Witness name:

Nigel Turpin

Witness address:

31 Haverscroft Industrial Estate

New Road

Attleborough

Norfolk, NR17 1YE

Company Secretary

Witness occupation:

**EXECUTED AS A DEED BY
NEUTROLLA LP S.À.R.L.
a Company incorporated in Luxembourg**

acting by **ALESSANDRO MAIOCCI**



.....
Authorised Signatory

being a person who in accordance with
the laws of the territory is acting under
the authority of the company