

DATED

31st March

2011

(1) ATHLONE HOUSE LIMITED

and

(2) HSBC PRIVATE BANK (UK) LIMITED

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
ATHLONE HOUSE
HAMPSTEAD LANE LONDON N6 4RU
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)

Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 1918
Fax: 020 7974 2962

THIS AGREEMENT is made the 31st day of March 2011

B E T W E E N:

1. **ATHLONE HOUSE LIMITED** (incorporated in Guernsey) of La Tonnelle House PO Box 141 Les Banques St Simpson GY1 3HS Channel Islands whose address for service in the United Kingdom is care of Withers Solicitors 16 Old Bailey London EC4M 7EG (hereinafter called "the Owner") of the first part
2. **HSBC PRIVATE BANK (UK) LIMITED** (Co. Regn. No. 499482) of 78 St James's Street London SW1A 1JB (hereinafter called "the Mortgagee") of the second part
3. **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 NGL846333 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 A Planning Application for the development of the Property was submitted to the Council and validated on 21 October 2009 under reference number 2009/3413/P.
- 1.4 A Conservation Area Consent Application in association with the development of the Property was submitted to the Council and validated on 21 October 2009 under reference number 2009/3422/C.
- 1.5 The Council resolved to refuse the Planning Application on 12 April 2010.

- 1.6 The Council resolved to refuse the Conservation Area Consent Application on 12 April 2010.
- 1.7 An appeal under Section 78 of the Act in respect of the Planning Application was submitted to the Planning Inspectorate on 27 August 2010 and given reference number APP/X5210/A/10/2135357.
- 1.8 An appeal under Section 20(2)(a) of the Planning (Listed Building and Conservation Area) Act 1990 in respect of the Conservation Area Consent Application was submitted to the Planning Inspectorate on 27 August 2010 and given reference number APP/X5210/E/10/2135359.
- 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 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.11 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL846333 and dated 9 February 2006 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" | the Town and Country Planning Act 1990 (as amended) |
| 2.2 | "Affordable Housing" | low cost housing including Social Rented Housing and Intermediate Housing that meets the needs of people who cannot afford to occupy homes available in the open market in |

accordance with Government policy statement PPS3 and successor documents

2.3 "the Agreement" this Planning Obligation made pursuant to Section 106 of the Act

2.4 "the Conservation Area Consent Application" an application for Conservation Area Consent in respect of the development of the Property submitted to the Council and validated on 21 October 2009 under reference number 2009/3422/C

2.5 "the Conservation Area Consent" any consent granted in relation to the Development by the Secretary of State or the Planning Inspectorate in respect of the Council's refusal of the Application for Listed Building Consent under Planning Inspectorate reference APP/X5210/E/10/2135359

2.6 "the Development" erection of 8 bedroom single dwelling house (Class C3) together with ancillary staff and guest accommodation and underground parking following the demolition of Athlone House as shown on drawing numbers: Site Location Plan 101/2b; 5021/02A; 03F; 04G; 05F; 06G; 07F; 08F; 09J; 19A; 20; 21E; 22D; 23D; 24D; 25B; 26D; 27D; 28A; 29; 30 A; 31 A; 32 B; 33 A; 34 A; 35; 36; 37;38; 39; 40; 41; 42; 43; 851.001.001 revC, 002 revB, 003 revJ; 851.002.001 revA, 002 revA, 003 revA, 005 revA and 851.040.003 revD

(i) Conservation Area Consent
demolition of Athlone House in association with erection of 8 bedroom single dwelling house

(Class C3) together with ancillary staff and guest accommodation and underground parking as shown on drawing numbers: Site Location Plan 101/2b; 5021/02A, 29, 30A, 31A, 32B, 33A, 34A, 35

2.7 "Energy Efficiency and Renewable Energy Strategy"

a strategy (including a post construction report) setting out a package of measures to be adopted by the Owner in the management of the Development with a view to reducing carbon energy emissions through (but not be limited to) the following:-

- (i) measures identified in the documents entitled *Planning Statement and Sustainability Assessment* dated May 2009 and *Sustainability Assessment* July 2009;
- (ii) full details on how the Owner will achieve improvement on 2010 Part L Building Regulation maximums;
- (iii) details of how the Owner will further reduce the Development's carbon emissions from renewable energy technologies located on the Property;

2.8 "the Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly

- 2.9 "Occupation Date" the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.10 "the Parties" mean the Council the Owner and the Mortgagee
- 2.11 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 21 October 2009 reference number 2009/3413/P
- 2.12 "Planning Obligations Monitoring Officer" a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
- 2.13 "the Planning Permission" any planning permission granted for the Development by the Secretary of State or the Planning Inspectorate in respect of the appeal of the Council's refusal of the Planning Application under Planning Inspectorate reference APP/X5210/A/10/2135357
- 2.14 "the Property" the land known as Athlone House Hampstead Lane London N6 4RU the same as shown edged red on the plan annexed hereto
- 2.15 "Off-Site Affordable Housing" new residential units of Affordable Housing to be created in connection with this Agreement at 59-61 Oak Grove London NW2 3LS or an alternative location within the London Borough of Camden the use of such units to be secured so that in their totality they meet the following

requirements (unless otherwise agreed by the Council in writing in accordance with the requirements of this Agreement:-

- (a) the total area of units to comprise not less than 505 square metres of gross internal area and not less than 400 square metres of net internal area (excluding communal areas);
- (b) all units to be “new” residential units i.e. not consisting of units currently in housing use or created out of existing housing accommodation;
- (c) all units to be accommodated on a site or sites within the following wards:- Highgate; Hampstead Town; Kentish Town; Frognal and Fitzjohns; Haverstock; Belsize; Fortune Green; West Hampstead; Swiss Cottage; Camden Town with Primrose Hill and Cantelowes unless the Owner can provide the Council with adequate justification for the acceptance of suitable sites outside these wards which the Council may approve in writing;

2.16 “Reasonable Endeavours

where there is a reasonable endeavours obligation in this Agreement the Owner shall be bound to attempt to fulfil the relevant obligations by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable and where the Owner cannot fulfil the objective of the

obligation in full or in part then on the Council's request the Owner shall provide an explanation of the steps it has undertaken in carrying out its reasonable endeavours obligations

2.17 "Registered Provider"

a registered social landlord providing Affordable Housing registered as such by the Regulator who has entered into a nominations agreement with the Council to secure Affordable Housing created as part of the Development (but not comprised within it) as accommodation for people nominated by the Council through its housing allocation scheme

2.18 "Regulator"

means the Office for Tenants and Social Landlords (also known as the Tenant Services Authority or TSA) and any successor organisation

2.19 "Sustainability Plan"

a plan including a pre-assessment and post construction review securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation based on the following:-

- (a) measures identified in the documents entitled *Planning Statement and Sustainability Assessment* dated May 2009 and *Sustainability Assessment* July 2009; and
- (b) attaining at least Level 3 of the Code for Sustainable Homes but to use Reasonable Endeavours to reach Level 4 of the Code for Sustainable Homes and at least 60% of the credits in each of

the Energy and Water categories and at least 20% of the credits in the Materials category to be carried out by a recognised independent verification body in respect of the Property

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 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 or interpretation.
- 3.5 This Agreement shall come into effect on the date that Planning Permission is granted.
- 3.6 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 **OFF-SITE AFFORDABLE HOUSING**

4.1.1 Not to Implement nor permit Implementation of any part of the Development until such time as the Owner has received written notice from the Council that in the reasonable opinion of the Council each and every of the following steps have been carried out and completed:-

4.1.1.1 With reference to the sites that the Council has agreed in writing shall form the whole of the Off-Site Housing provision the Owner has submitted full details of such sites to the Council for approval such details to include the following:-

- (a) the name and location of the said sites;
- (b) the planning status of the said sites;
- (c) ownership details of the said sites;
- (d) steps that the Owner has taken to acquire the said sites or to secure their transfer for a term of no less than 125 years to a Registered Provider or confirmation (a) of their ownership by a Registered Provider and (b) that such Registered Provider has been provided with sufficient funds to construct the relevant amount of Affordable Housing and a contract has been let to provide the relevant amount of Affordable Housing
- (e) an account of the suitability of the said sites for accommodating the Off-Site Housing as provided for under this Agreement;
- (f) indicative design of the proposals;
- (g) such further information as the Council may reasonably require.

4.1.1.2 The sites identified by the Owner as being capable of accommodating the Off Site Housing have been approved in writing by the Council under the provisions of this Agreement as sites, which in the reasonable opinion of the Council are suitable for accommodating the total floorspace of the Off-Site Housing.

4.1.1.3 In respect of each and every site forming part of the Off-Site Housing the Owner and/or the owner of the Off Site Housing has applied for and been granted planning permission enabling the construction of the approved Off-Site Housing.

4.1.1.4 In the event that an obligation under Section 106 of the Act is required to secure Affordable Housing within the Off-Site Housing the Owner and/or the owner of each and every site forming part of the Off-Site Housing has entered into a Section 106 Agreement with the Council so as to secure the use in perpetuity of the site(s) for the purpose of Affordable Housing to the reasonable satisfaction of the Council ALWAYS PROVIDED the totality of such agreements shall ensure that the tenure mix of the totality of the Affordable Housing on the Off Site Housing Sites shall provide for at least 60 per cent (60%) net internal area of the floorspace thereof to be Social Rented Housing.

4.1.2 Not to Occupy or permit the Occupation of the Development for any purpose until such time as the Owner has received written notice from the Council that in the reasonable opinion of the Council the Owner has demonstrated to the Council's reasonable satisfaction that the Owner has carried out or secured the carrying out at its own expense of all works of construction, conversion and fitting out necessary to make all of the sites incorporated in the Off-Site Housing (as approved) suitable for use as Affordable Housing Units in accordance with a specification that has been agreed by the Council and that the works have been completed ready for Occupation in a good and workmanlike manner.

4.1.3 Not to Occupy or permit the Occupation of the Development for any purpose until such time as the Owner has received written notice from the Council that in the reasonable opinion of the Council the Owner has demonstrated to the Council's

reasonable satisfaction that the owner of the Off Site Housing has entered into a Section 106 Agreement with the Council securing the use of the Affordable Housing Units for Affordable Housing and that the said Affordable Housing Units have been transferred to a Registered Provider for a term of no less than 125 years.

4.2 SUSTAINABILITY PLAN

- 4.2.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.
- 4.2.2 Not to Implement nor permit Implementation until such time as the Council has approved the Sustainability Plan as demonstrated by written notice to that effect.
- 4.2.3 Not to Occupy or permit the Occupation of the Development until a satisfactory post-completion report has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Development.
- 4.2.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in accordance with the Sustainability Plan as approved by the Council and shall not Occupy or permit Occupation of the Development otherwise than in accordance with the requirements of the Sustainability Plan.

4.3 ENERGY EFFICIENCY AND RENEWABLE ENERGY STRATEGY

- 4.3.1 On or prior to the Implementation Date to submit to the Council for approval the Energy Efficiency and Renewable Energy Strategy.
- 4.3.2 Not to Implement nor permit Implementation until such time as the Council has approved the Energy Efficiency and Renewable Energy Strategy as demonstrated by written notice to that effect.
- 4.3.3 Not to Occupy or permit the Occupation of the Development until a satisfactory post-completion report has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Energy Efficiency and Renewable Energy Strategy as approved by the Council have been incorporated into the Development.

- 4.3.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in accordance with the Energy Efficiency and Renewable Energy Strategy as approved by the Council and shall not Occupy or permit Occupation of the Development otherwise than in accordance with the requirements of the Energy Efficiency and Renewable Energy Strategy.

4.4 **PROJECT ARCHITECT**

- 4.4.1 Unless otherwise agreed in writing by the Council (such agreement not to be unreasonably withheld or delayed) not to:-

- (a) submit any further drawings required to be submitted under or in connection with the Planning Permission unless such drawings have been prepared by Robert Adam of Adam Architecture of 9 Upper High Street Winchester Hampshire SO23 8UT;
- (b) Implement or carry out any works forming part of the construction of the Development at any time when Robert Adam of Adam Architecture is not employed by the Owner as project architect; and
- (c) Occupy or permit Occupation of any part of the Development until such time as the Council has confirmed in writing that it has received written certification from Robert Adam of Adam Architecture that the Development has been carried out and completed in accordance with the Planning Permission and any details approved pursuant to the conditions contained within the 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 Implementation Date specifying that Implementation of the Development has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause

6.1 hereof quoting planning reference 2009/3413/P the date upon which the Development is ready for Occupation.

- 5.3 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 requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 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.
- 5.5 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 planning reference 2009/3413/P.

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, Urban Design and Renewal, Planning and Public Protection, Culture and

Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2009/3413/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 incurred in preparing this Agreement 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 on written demand 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 the nor the Mortgagee 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.

- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Owner) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

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.

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 Mortgagee and the Owner have executed this instrument as a Deed the day and year first before written

EXECUTED AS A DEED BY)
ATHLONE HOUSE LIMITED)
acting by a Director and its Secretary)
or by two Directors)

.....
Director FOR SAPPERY LIMITED

.....
Director/Secretary FOR CHAMPNESS LIMITED

CONTINUATION OF SECTION 106 AGREEMENT RELATING TO
ATHLONE HOUSE, HAMPSTEAD LANE, LONDON N6 4RU

EXECUTED AS A DEED BY)
HSBC PRIVATE BANK (UK) LIMITED)
by)
in the presence of:-)

.....

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



Authorised Signatory



IN WITNESS WHEREOF this document which is intended to take effect as a deed has
been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day
and year first above written.

SIGNED AND DELIVERED

by

STEPHEN JOHN ALCHIN

Attorney of
HSBC Private Bank (UK) Limited

in the presence of: NATHAN JAMES PATMORE

Witness:

Address:

Occupation:

(UOM 1Pk x 50)

Securities Department
HSBC Private Bank (UK) Limited
7200 ...
London
SW1A 1SD

BANK OFFICIAL

POD 12!



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DATE 20/10/09
SCALE 1/1250 @ A3
DWG NO. 101/2b
CUT NO.
revised by

ADDRESS A THORNE HOUSE, HAMSTEAD LANE
(LONDON)
PROJECT SITE BOUNDARY

FOR SAFFERY LIMITED
DIRECTOR

LIMITED

DATED 31st March

2011

(1) ATHLONE HOUSE LIMITED

and

(2) HSBC PRIVATE BANK (UK) LIMITED

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

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