

DATED

15th March

2012


(1) BAIKAL TRADING E SERVICOS LDA

and

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

AGREEMENT

relating to land known as 44 BEDFORD ROW, LONDON WC1R 4LL  
pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)



THIS AGREEMENT is made the <sup>15<sup>th</sup></sup> day of <sup>March</sup> 2012

**BETWEEN:**

- i. **BAIKAL TRADING E SERVICOS LDA** (incorporated in Madeira) of Rua das Hortas N°1, Edificio do Carmo 5-500, District of Funchal, Portugal, Madeira 90050-024 Funchal and care of Ashfords LLP, Ashford Court, Blackbrook Park Avenue, Taunton, Somerset TA1 2PX (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 Number NGL846352.
- 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 17 December 2010 and given the Council reference number 2010/6761/P.
- 1.4. The Council refused the Planning Application on the 29 July 2011.
- 1.5. The Owner submitted an appeal to the Planning Inspectorate under Section 78 of the Act in respect of the Planning Application which was accepted by the Planning Inspectorate on 15 August 2011 and given reference number APP/X2510/A/11/2158085.

- 1.6 The Council is the local planning and education 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 should Planning Permission be granted.
- 1.7 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.8 By entering this Agreement the Owners accept that the Council does not regard the provisions of the Agreement that relate to the funding of Affordable Housing as sufficient and the parties acknowledge that this issue will be dealt with by the inspector appointed to determine the appeal mentioned at paragraph 1.5

## 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" general needs social rented 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 Affordable Housing Contribution" Means the sum of £154,000 (one hundred and fifty four thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement to be applied by the Council in the event of receipt towards the provision of Affordable Housing within the Borough and in the wards of Holborn and Covent Garden

- 2.4. "the Agreement" this Planning Obligation made pursuant to Section 106 of the Act
- 2.5. "the Certificate of Practical Completion" the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed
- 2.6. "the Deferred Affordable Housing Contribution" the sum of £661,670 (six hundred and sixteen thousand six hundred and seventy pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement to be applied by the Council in the event of receipt towards the provision of Affordable Housing within the Borough and in the wards of Holborn and Covent Garden
- 2.7. "Deficit" a negative figure or figure of zero produced from the Post Construction Viability Assessment by taking the residual site value of the Development and subtracting the sum of Four Million Three hundred and Eighty Seven Thousand Pounds (£4,387,000.00)
- 2.8. "the Development" change of use at part basement and first to fifth floor levels from offices (Class B1) to 18 (2xstudio, 7x1 bed, 7x2 & 2x3 bed) self-contained residential units (Class C3); Retention of offices (Class B1) at part basement and Ground floor level; and associated alterations including replacement windows at basement and ground floor Level, installation of glass balustrade and door at roof Level on south (Sandland Street) elevation as shown on drawing numbers:- S.00; EX.01; EX.02; EX.03; EX.04; EX.05; EX.06; EX.07 Rev B; EX.08; EX.09 Rev A; EX.10 Rev A; EX.11 Rev A; DE.01; DE.02; DE.03; DE.04; DE.05; DE.06; DE.07; DE.08; DE.09; GS.00 Rev B; GS.01 Rev A; GS.02; GA.00; GA.01 Rev A; GA.02 Rev A; GA.03 Rev A; GA.04 Rev A; GA.05 Rev A; GA.06 Rev A; GA.07 Rev C; GA.08 Rev

C; GE.00 Rev B; GE.01 Rev A; GE.02 Rev B; GE.03 Rev A; Marketing Report by Farebrother Chartered Surveyors; BREEAM EcoHomes Report dated November 2010; Revised Energy and Sustainability Report dated February 2011; Letter from Ian Stuart dated 21/02/2011; Economic Appraisal Tool Version 1 dated 21/02/2011; Economic Appraisal Tool Version 2 dated 21/02/2011; Hurford Salvi Carr Schedule of Residential Asking Prices dated 21/02/2011; Report and Valuation by Savills dated February 2011; RIBA Stage C - Formal Cost Plan I, dated 21/02/2011; Property Valuation Report by Savills dated 01/03/2011; Email from David Salvi dated 21/02/2011; 67 Turnmill Street EC1, marketing brochure, as received 02/03/2011; 67 Turnmill Street Schedule of Sales Prices, as received 02/03/2011; Letter from Hurford Salvi Carr dated 04/03/2011.

2.9. "the Education Contribution"

the sum of £28,135 (twenty eight thousand one hundred and thirty five pounds) to be paid to the Council in accordance with the terms of this Agreement and to be applied by the Council in event of receipt for the provision of education needs arising in the London Borough of Camden

2.10. "the Employment Space Contribution"

the sum of £46,750 (forty six thousand seven hundred and fifty pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the provision of supplementary employment space in the vicinity of the Development

2.11. "Energy Efficiency and Renewable Energy Plan"

a strategy 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:-

- a) The incorporation of the measures set out in the submission documents entitled The Revised Energy and Sustainability Report dated February 2011
- b) details of how the Owner will further reduce the Development's carbon emissions from renewable energy technologies located on the Property ensuring the Owner will use Reasonable Endeavours to target a reduction of at least 20% in carbon emissions in relation to the Property using a combination of complementary low and zero carbon technologies;
- c) separate metering of all low and zero carbon technologies to enable the monitoring of energy and carbon emissions and savings;
- d) a building management system being an electronic system to monitor the Development's heating cooling and the hours of use of plant;
- e) measures to enable future connection to a local energy network at the boundary of the Property;
- f) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property



certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on the reduction of carbon emissions contained within its Development Plan;

- g) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation; and
- h) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

2.12. "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

2.13. "Occupation Date"

the date when any part of the Development is occupied and the phrases "Occupy", "Occupied"

and "Occupation" shall be construed accordingly

2.14. "the Parties" mean the Council and the Owner

2.15. "the Planning Application" an outline planning application in respect of the development of the Property submitted to the Council and validated on 17 December 2010 and given reference number 2010/6761/P

2.16. "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

2.17. "the Planning Permission" any planning permission which is granted by the Secretary of State or the Planning Inspectorate for the Development under Planning Inspectorate appeal reference APP/X2510/A/11/2158085

2.18. "Plan 1" the plan marked "the Plan " annexed hereto showing the location of the Property

2.19. "the Post Construction Viability Assessment" an assessment to be undertaken by the Owner and submitted to the Council in accordance with the terms of this Agreement such assessment to

(a) be presented substantially in the same form as the Applicant's viability assessment submitted in February 2011 (entitled Economic Viability Appraisal Tool Version 1 and Version 2) or such other form as agreed by the Council in writing; and

(b) be based on the same percentage developer's return on market housing value and the same percentage contractor's return on affordable housing cost as the Owner's viability assessment submitted in February 2011 or such alternative





percentages as agreed by the Council and the Owner in writing

with a view inter alia to evidence to the Council's reasonable satisfaction the residual site value of the Property such assessment shall include (but not be limited to) the following:-

- (c) a copy of the Owner's viability assessment submitted in February 2011 showing the residual value of the Development as £4,387,000.00;
- (d) receipted invoices; certified costs; certified copies of sales contracts; and best estimates of costs yet to be incurred and value of any unsold space and any other evidence reasonably required by the Council to show any revenue and/or costs incurred in relation to the Development;
- (e) a solicitors certification confirming the sales of Residential Units were arm's length third party bona fide transactions and not-
  - (i) designed to reduce the revenue received from sales of the Residential Units;
  - (ii) confined to transactions between the Owner and subsidiary companies of the Owner
  - (iii) transactions between the Owner and its employees; or
  - (iv) transactions including deferred consideration coverage or loans or finance deals from the Owner;
- (f) payment of £5,000 to cover the Council's costs in verifying the material and information contained within the assessment;

(g) details of any grant funding received in relation to the Development; and

(h) any further information the Council acting reasonably requires

- 2.20. "the Principal Undertaking" the unilateral undertaking entered into pursuant to Section 106 of the Act by the Owner in favour of the Council and dated 10 November 2011
- 2.21. "the Property" the land known as 44 Bedford Row London WC1R 4LL the same as shown edged red on Plan 1
- 2.22. "Public Open Space Contribution" the sum of £21,115 (twenty one thousand one hundred and fifteen pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the improvement maintenance and upkeep of existing public open spaces and/or the obtaining of land to make public open spaces in the vicinity of the Development
- 2.23. "Residents Parking Bay" a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated
- 2.24. "Residents Parking Permit" a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in Residents Parking Bays
- 2.25. "Residential Unit" any unit of residential accommodation constructed as part of the Development and reference to "Residential Units" shall be construed accordingly
- 2.26. "Subsequent Planning Permission" a planning permission that may be granted in the



event of any subsequent planning application for the further development of the Property

2.27. "the Supplementary Undertaking"

The supplementary unilateral undertaking entered into pursuant to Section 106 of the Act by the Owner in favour of the Council and dated 6 January 2012

2.28. "Surplus"

a positive figure produced from the Post Construction Viability Assessment by taking the residual site value of the Development and subtracting the sum of Four Million Three Hundred and Eighty Seven Thousand Pounds (£4,387,000.00)

2.29. "Sustainability Plan"

a plan including a 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 which shall:-

- (a) be based on a Building Research Establishment Environmental Assessment Method assessment with a target of achieving a Very Good Excellent or Outstanding rating and attaining at least 60% of the credits in each of Energy and Water and 40% of the credits in Materials categories;
- (b) contain an Eco Homes Assessment with a target of achieving a Very Good Excellent or Outstanding rating attaining at least 60% of the credits in each of the Energy Water and Materials categories to be carried out by a recognised independent



verification body in respect of the Property;

(c) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable and satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan; and

(d) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation

**3. NOW THIS DEED WITNESSES 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 of interpretation.
- 3.5. It is hereby agreed between the Parties that this Agreement shall take effect on the grant of the Planning Permission.
- 3.6. The Parties save where the context states otherwise shall include their successors in title.
- 3.7. Where any consent, confirmation or agreement of the Council is required pursuant to this Agreement such consent confirmation or agreement shall not be unreasonably withheld or delayed.
- 3.8. The Parties acknowledge and agree that the obligations contained in the Principal Undertaking and the Supplementary Undertaking are revoked and shall not be enforced by the Council
- 3.9. The Parties acknowledge that the obligations contained within this Agreement shall not be binding on individual purchasers of the Residential Units or a mortgagee in possession.
- 3.10. The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.5 for all relevant purposes.

#### **4. OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

##### **4.1. DEFERRED AFFORDABLE HOUSING CONTRIBUTION**



- 4.1.1. To submit the Post Construction Viability Assessment to the Council for approval in writing either;-
- (a) on the date of issue of the Certificate of Practical Completion; or
- (b) at any time after Implementation ALWAYS PROVIDED the Owner has exchanged on the sales for no less than 12 Residential Units and provides sufficient information to the Council to evidence the same.
- 4.1.2. Not to occupy more than 15 Residential Units until such time as the Post Construction Viability Assessment has been submitted to the Council for approval in writing such approval to be provided within seven days of receipt of the Post Construction Viability Assessment
- 4.1.3. Upon the issue of the approval of the Post Construction Viability Assessment the Council will provide to the Owner the following:-
- (a) a certificate specifying the sum ("the Assessment Certified Sum") reasonably and properly expended by the Council in assessing the Post Construction Viability Plan; and
- (b) a certificate specifying the sum ("the Viability Certified Sum") properly assessed by the Council in accordance with the provisions of clause 4 of this Agreement as being recoverable from the Deferred Affordable Housing Contribution under the terms of this Agreement.
- 4.1.4. If the Assessment Certified Sum exceeds the payment made under paragraph (f) of the definition of Post Construction Viability Assessment then the Owner shall within twenty-eight (28) days of the issuing of the said certificate pay to the Council the amount of the excess.
- 4.1.5. In the event the approved Post Construction Viability Assessment shows a Deficit the Viability Certified Sum shall be zero and the Owner shall have no obligation to pay the Deferred Affordable Housing Contribution or any part thereof.

- 4.1.6. In the event the Post Construction Viability Assessment shows a Surplus that is less than two times the Deferred Affordable Housing Contribution the Viability Certified Sum shall be half of the Surplus up to the limit of the Deferred Affordable Housing Contribution.
- 4.1.7. In the event the Post Construction Viability Assessment shows a Surplus that is greater than or equal to two times the Deferred Affordable Housing Contribution the Viability Certified Sum shall be the full amount of the Deferred Affordable Housing Contribution.
- 4.1.8. The Owner shall within 28 days of receipt of the Viability Certified Sum pay to the Council the sum specified within the Viability Certified Sum.
- 4.1.9. If the Viability Certified Sum becomes payable under the terms of this Agreement not to Occupy or permit Occupation of any more than 15 Residential Units until such time as the Council has confirmed receipt of the relevant Viability Certified Sum in writing.

**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 Occupation of the Property until a satisfactory post-completion review 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 Property.
- 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 strict accordance with the



Sustainability Plan as approved by the Council and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

**4.3. ENERGY EFFICIENCY AND RENEWABLE ENERGY PLAN**

- 4.3.1. On or prior to the Implementation Date to submit to the Council for approval the Energy Efficiency and Renewable Energy Plan.
- 4.3.2. Not to Implement nor permit Implementation until such time as the Council has approved the Energy Efficiency and Renewable Energy Plan as demonstrated by written notice to that effect.
- 4.3.3. Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Energy Efficiency and Renewable Energy Plan as approved by the Council have been incorporated into the Property.
- 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 strict accordance with the Energy Efficiency and Renewable Energy Plan as approved by the Council from time to time and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Energy Efficiency and Renewable Energy Plan.

**4.4. FINANCIAL CONTRIBUTIONS**

- 4.4.1. On or prior to the Implementation Date to pay to the Council the Affordable Housing Contribution the Education Contribution the Employment Space Contribution and the Public Open Space Contribution in full.
- 4.4.2. Not to Implement or to permit Implementation until such time as the Council has received the above contributions in full.



4.4.3. It is hereby agreed that in the event that any of the above contributions not having been expended in whole or in part by the Council for the purpose or purposes for which they were paid within 10 years of the date of receipt by the Council then the Council shall return such contributions (or part thereof) remaining unspent to the party by whom they were paid.

**4.5. CAR FREE**

4.5.1. To ensure that prior to occupying any Residential Unit forming part of the Development each new resident of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.

4.5.2. The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.5.1 above will remain permanently.

4.5.3. On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.5.1 of this Agreement.

**4.6 REQUIREMENT TO PROVIDE AFFORDABLE HOUSING**

4.6.1 If at any time after the date of this Agreement:-

- (a) a Subsequent Planning Permission is granted which gives consent to the development of additional residential units;
- (b) any additional floorspace is created on the Property which provides additional residential units; and/or

(c) any additional residential units are created within the Property the Owner shall enter into a s106 agreement with the Council to secure the following:-

4.6.2 That an appropriate percentage of the residential units created under clause 4.6.1 are provided as Affordable Housing (either as on-site contribution, off-site contribution or financial contribution) such percentage to be applied to the aggregate total of the residential units permitted by the Planning Permission and the additional residential units created under clause 4.6.1.

4.6.3 Not to Occupy or allow Occupation of any of the private residential units created under Clause 4.6.1 of this Agreement until such time as the Owner has entered into a s106 obligation to secure the additional units as Affordable Housing (either as on-site contribution, off-site contribution or financial contribution).

**PROVIDED THAT** when calculating the provision of future Affordable Housing (either as on-site, off-site or financial contribution) under Clause 4.6.2 such Affordable Housing provision shall take into account any Deferred Affordable Housing Contribution AND the Affordable Housing Contribution made pursuant to this Agreement.

## **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 2010/6761/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 reasonable and proper 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 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 2010/6761/P.
- 5.6. Payment of the financial contributions pursuant to Clause 4.4 of this Agreement shall be made by the Owner to the Council sending the full amount in the form of a Banker's Draft 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 Contribution relates quoting the Income Code ZN167ZL065 or by Electronic Transfer directly to the Co-Operative Bank plc of 1 Islington High Street London N1 9TR quoting Sort Code 08-90-33 and London Borough of Camden General Account No. 61030019 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by Banker's Draft.
- 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.

- 5.8. Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{Y-X}{X}$$

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- 5.9. All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% per annum above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.
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 2010/6761/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 or its 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. EXPERT DETERMINATION**

- 7.1 Any dispute arising out of the provisions of this Deed shall be referred to a person having appropriate qualifications and experience in such matters (the "Expert") for the determination of that dispute PROVIDED THAT the

provisions of this Clause 7 shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed to the Courts and/or in accordance with the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts for the resolution of any matter arising from the Deed.

7.2 The Expert shall be appointed by the relevant parties to the dispute ("the Relevant Parties") or in default of agreement by a person nominated by the President for the time being of the Royal Institution of chartered Surveyors on the application of any of the parties being a surveyor of no less than 10 years post qualification experience in the specialism of water engineering.

7.3 The decision of the Expert shall be final and binding upon the Relevant Parties and the following provisions shall apply:-

7.3.1 The charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct

7.3.2 The Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision

7.3.3 The Expert shall be entitled to obtain opinions from others if he so wishes

7.3.4 The Expert shall make his decision within the range of any representations made by the Relevant Parties themselves

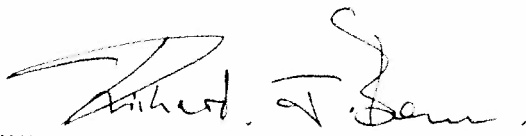
7.3.5 The Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment which shall require a decision in not less than 1 calendar month from the date of appointment of the Expert

## 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 has executed this instrument as a Deed the day and year first before written

Executed as a deed by **BAIKAL** )  
**TRADING E SERVICOS LDA** a )  
company incorporated in Portugal )  
by **Richard John Benn**  
being a person who, in accordance  
with the laws of that territory, is  
acting under the authority of the  
company



.....

Authorised Signatory

BAIKAL TRADING E SERVICOS LDA  
A company

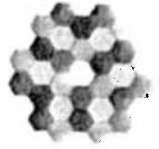
Executed as a deed by **LONDON**  
**BOROUGH OF CAMDEN** by  
affixing it's Common Seal



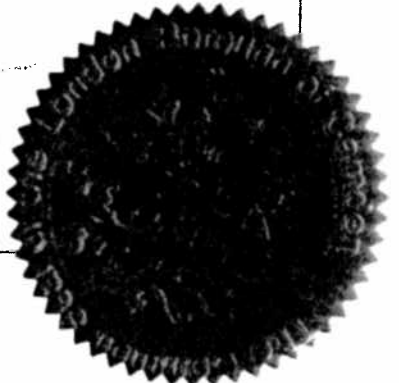
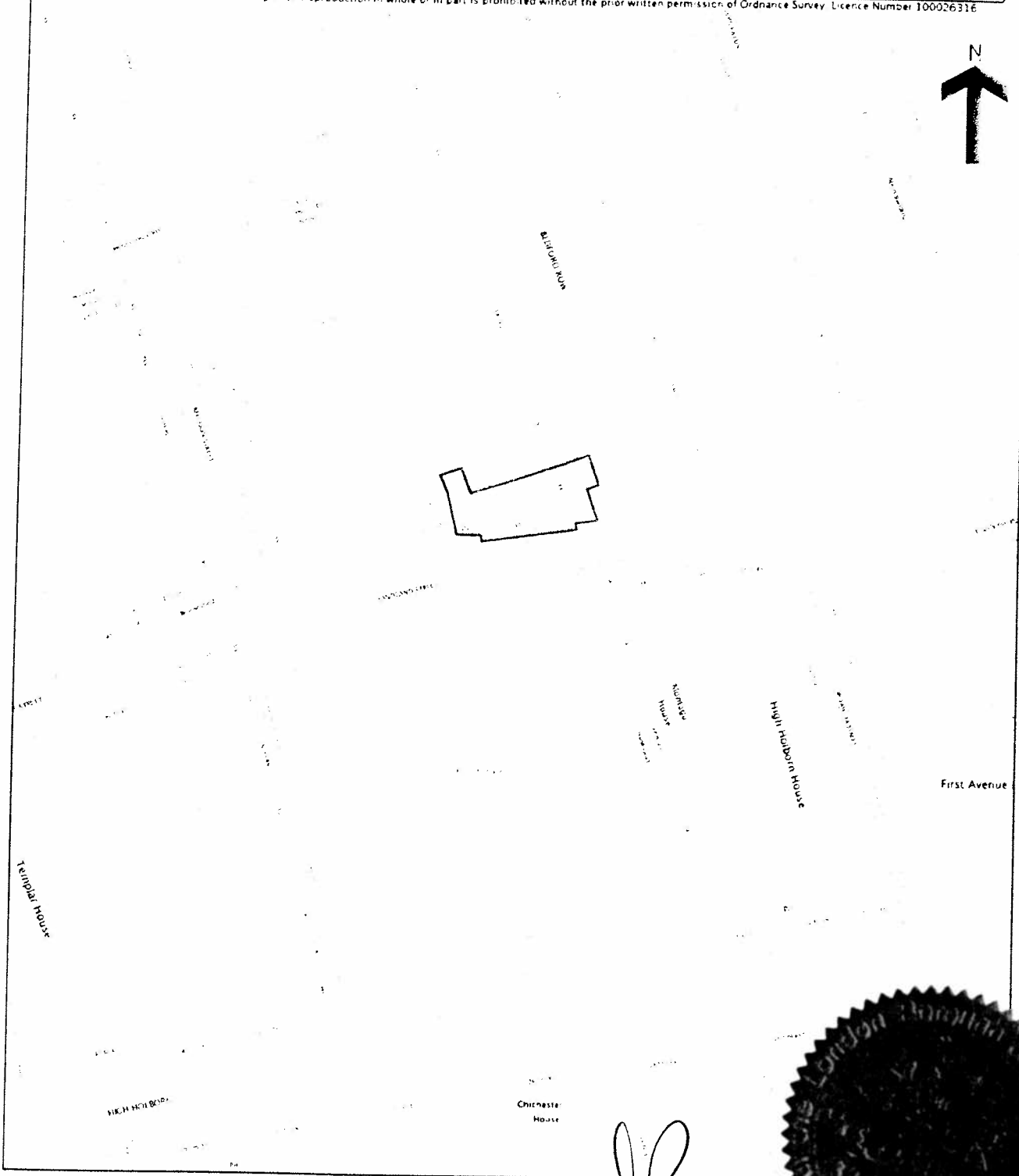
Authorised Signatory

Land Registry  
Official copy of  
title plan

Title number **NGL846352**  
Ordnance Survey map reference **TQ3081NE**  
Scale **1:1250**  
Administrative area **CAMDEN**



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*MR*

the Plan's  
*Richard J. Sem*

This official copy is incomplete without the preceding notes page