

DATED 15 September

2009

**(1) JCC VENTURES LIMITED**

**and**

**(2) DAME VIVIEN LOUISE DUFFIELD and  
DAVID TERRENCE DIGBY HARREL and  
MICHAEL ARTHUR TRASK and  
SIR MARK AUBREY WEINBERG and  
CAROLINE DELETRA**

**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  
341 to 359 (odd) Finchley Road and 27 Lymington Road, London  
pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended) and  
Section 278 of the Highways Act 1980**

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

**Tel: 020 7974 2463  
Fax: 020 7974 2962**

**CLS/COM/CJ/1685.261  
V10**

THIS AGREEMENT is made the 15 day of September 2009

**B E T W E E N:**

1. **JCC VENTURES LIMITED (formerly CDF PROJECTS LIMITED)** (Co. Regn. No. 05679146) whose registered office is at Studio 3, Chelsea Manor Studios, Flood Street, London SW3 5SR (hereinafter called "the Owner") of the first part
2. **DAME VIVIEN LOUISE DUFFIELD** of 39, Quai Wilson, Geneva 1201, Switzerland and **DAVID TERRENCE DIGBY HARREL** of 33 Ursula Street, London SW11 3DW and **MICHAEL ARTHUR TRASK** of 54 Beaconsfield Road, London SE3 7LG and **SIR MARK AUBREY WEINBERG** of 11 Addison Road, London W14 8DT and **CAROLINE DELETRA** of 349, Route De Tussy, 1254 Geneva, Switzerland all as Trustees of the Clore Duffield Foundation (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

**WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL889649 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 16 June 2009 and the Council resolved to grant permission conditionally under reference number 2009/2914/P subject to conclusion of this legal Agreement.
- 1.4 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.

- 1.5 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.
- 1.6 For that purpose 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 NGL889649 and dated 17 January 2007 (hereinafter called "the Legal Charge") 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 | "the Agreement"      | this Planning Obligation made pursuant to Section 106 of the Act  |
| 2.3 | "the Application"    | a planning application in respect of the development of the Property submitted to the Council and validated on 16 June 2009 for which a resolution to grant permission has been passed conditionally under reference number 2009/2914/P subject to conclusion of this Agreement |
| 2.4 | "Affordable Housing" | low cost housing provided by a Registered Social Landlord or the Council to people nominated by the   |

- Council through its housing allocation scheme who cannot afford to rent or buy homes available in the open market
- 2.5 "Affordable Housing Contribution"
- A sum to be determined by the Council by reference to the Viability Appraisal and the Council's Affordable Housing Policies applicable at the date of this Agreement 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 towards the provision of Affordable Housing in the London Borough of Camden
- 2.6 "the Certificate of Practical Completion"
- the certificate issued by the Owner's [contractor/architect/project manager] certifying that the Development has been completed
- 2.7 "the Community Access Plan"
- a plan setting out arrangements for the provision of access to the Development and its equipment, courses and facilities for local community organisations and local residents which shall include details of the times during which the facilities will be available to those organisations and residents how access will be achieved and the cost of access during these specified times being equal to charges made for similar client groups at equivalent Council managed or owned facilities

**2.8 "the Council's Affordable  
Housing Policies"**

policies adopted by the Council in the development plan regarding the provision of Affordable Housing in the London Borough of Camden

**2.9 "the Council's Considerate  
Contractor Manual"**

the document produced by the Council from time to time entitled "Guide for Contractors Working in Camden" relating to the good practice for developers engaged in building activities in the London Borough of Camden

**2.10 "Construction Management Plan"**

a plan setting out the measures that the Owner will adopt in undertaking the demolition of the existing buildings at the Property and the construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual to ensure the Construction Phase of the Development can be carried out safely and with minimal impact on and disturbance to the surrounding environment and highway network including (but not limited to):-

- (i) a statement to be submitted to Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate and offset potential or likely effects and impacts arising

from the demolition of the Existing Buildings or structures on the Property and the building out of the Development;

- (ii) incorporation of the provisions set out in the ~~First Schedule~~ annexed hereto
- (iii) incorporation of the provisions set out in the ~~Second Schedule~~ annexed hereto
- (iv) effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;
- (v) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);
- (vi) the inclusion of a waste management strategy for handling and disposing of construction waste; and
- (vii) identifying means of ensuring the provision of information to the

Council and provision of a mechanism for monitoring and reviewing as required from time to time

**2.11 "the Construction Phase"**

the whole period between

- (i) the Implementation Date and
- (ii) the date of issue of the Certificate of Practical Completion

and for the avoidance of doubt includes the demolition of the Existing Buildings

**2.12 "the Development"**

Demolition of all buildings (including 14 flats) on site and its redevelopment for mixed-use purposes comprising: 9-storey residential block of 14 flats (Class C3); 3-storey community centre building incorporating; multi-purpose hall, nursery, classrooms, cafe, cinema, dance studios, rehearsal studios, recording studio, piazza and associated ancillary uses (Class D1); ancillary car parking and servicing; and associated works including landscaping. as shown on drawing numbers PLANS: Existing: Prefix 0790 PE:- 001 Site Plan; 100 Lower Ground Floor (Basement) Plan; 101 Ground Floor Plan; 102 First Floor Plan; 103 Second Floor Plan; 104 Third Floor Plan; 160 Site Elevations, Proposed: Prefix 0790 PO:- 100 Site Plan; 101 rev A Lower Ground Floor (Basement) Plan; 102 rev A JCC Mezzanine Floor Plan; Residential Ground Floor Plan; 103 JCC Ground

Floor Plan; Residential First Floor Plan; 104 JCC First Floor Plan; Residential 2nd to 8th Floor Plan; 105 Roof Floor Plan; 150 Cross Section A-A; 151 Cross Section C-C; 152 Long Section D-D; 160 Street Elevations 161 Finchley Road Elevation - Section through piazza; 162 Southeast Elevation; 163 Southwest Elevation; 164 Northwest Elevation; 165 Residential Elevations; Prefix 0790 P:- 2001 rev A Residential entrance and typical floor layout; Air Quality Assessment (Faber Maunsell - Aecom, May 2009) Biodiversity Survey Report (Faber Maunsell - Aecom, June 2009) BREEAM Bespoke Pre-assessment (Norman Disney & Young, May 2009) Code for Sustainable Homes Pre-assessment (Norman Disney & Young, May 2009) Daylight/Sunlight Assessment (GIA, May 2009) Design & Access Statement (Lifschutz Davidson Sandilands, June 2009) Energy Strategy (Norman Disney & Young, June 2009) Noise Impact Assessment (Cole Jarman, June 2009) Outline Travel Plan (Faber Maunsell - Aecom, May 2009) Planning Statement (DP9, June 2009) Planning Drawings at A3 Site Investigation Survey (Crossfield Consulting Ltd, April 2007) Statement of Community Involvement (Weber Shandwick, June 2009) Transport Assessment (Faber Maunsell - Aecom, May 2009) Waste Management Plan (Faber Maunsell - Aecom, May 2009)

2.13 "the Energy Efficiency and  
Renewable Energy Plan"

a plan (including a post construction report) setting out a package of measures to be adopted by the Owner in the implementation and the management of the Development with a view to reducing carbon energy emissions across the site by at least 36.6% [35.3% (41.5% from the residential element and 14% from the community centre) from energy efficiency measures and a further 2% from solar thermal panels and photovoltaics] beyond the energy requirements of Parts F and L of the Building Regulations 2000 introduced with effect from 30 November 2006 and non-regulated energy benchmarks including

- a) final U-values, air permeability and mechanical services strategy demonstrating carbon dioxide savings beyond the energy requirements under Parts F and L of the Building Regulations 2000 introduced with effect from 30 November 2006 and addressing the matters for further investigation identified in the Energy Strategy by Norman Disney & Young dated 12th June 2009 with a view to improving upon the measures submitted at application stage in order to lower the baseline carbon dioxide emissions

- b) details of measures on the eastern, southern and western elevations to prevent internal over heating
- c) further justification for the heating strategy for the residential element based on carbon dioxide emissions for the residential element once final energy demand calculations are made
- d) demonstrating on a plan and providing the space and pipe work in the plant room and to the property boundary to enable the future connection to a local energy network
- e) location and details , including thermal store and heat and electricity distribution of the photo voltaic and solar thermal panels,
- f) a meter on each carbon dioxide saving technology for monitoring purposes
- g) the Jewish Community Centre (not the residential element) is to join the Camden Climate Change Alliance with the aim of information exchange and education

- such plan to be substantially in accordance with document submitted with the Application and entitled *Energy Strategy* by Norman Disney & Young, dated June 2009

Contribution"

the sum of £47,762.24 (forty seven thousand, seven hundred and sixty two pounds and twenty four pence) 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 event of receipt for the carrying out works to the public highway and associated measures in the vicinity of the Property such works to include the following: removal of the existing vehicular crossovers on Finchley Road, construction of a new double width crossover on Lymington Road and repaving the footway adjacent to the site on both Finchley Road and Lymington Road ("the Highways Works") Provided That all works will be subject to final measure and any level adjustment required and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

2.15 "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 provided that for the purposes of this definition only none of the following operations shall be deemed to constitute a material operation namely:

- (a) ground investigations and site survey work;

- (b) construction of boundary fencing or hoardings;
  - (c) archaeological investigations;
  - and references to "Implementation" and "Implement" shall be construed accordingly
  
- 2.16 "King's Cross Construction" the Council's flagship skills construction centre providing advice and information on finding work in the construction industry
  
- 2.17 "Local Procurement Code" the code annexed to the ~~Third Schedule~~ hereto
  
- 2.18 "the Level Plans" plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway
  
- 2.19 "Occupation Date" the first date when any part of the Development is occupied for the purposes permitted by the Planning Permission but not including occupation for the purposes of construction, fitting out, security, marketing or training and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
  
- 2.20 "the Parties" mean the Council the Owner and the Mortgagee
  
- 2.21 "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

**2.22 "the Planning Permission"**

a planning permission granted for the Development substantially in the draft form annexed hereto

**2.23 "the Property"**

the land known as 341 to 359 (odd) Finchley Road and 27 Lymington Road, London the same as shown edged in red on the plan annexed hereto

**2.24 "the Public Highway"**

any carriageway footway and/or verge adjoining the Property maintainable at public expense

**2.25 "Registered Social Landlord"**

a registered social landlord registered as such by the Tenant Services Authority who has entered into an agreement with the Council to secure the units of Affordable Housing as accommodation for people nominated by the Council through its housing allocation scheme

**2.26 "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

# 341 to 359 (odd) Finchley Road and 27 Lymington Road London



VLD

H/-/H

2.27 "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

2.28 "the Service Management Plan"

a plan setting out a package of measures to be adopted by the Owner and approved by the Council from time to time for the management of the deliveries and servicing to the Development with the objectives of minimising conflicts of movements between service vehicles, cars and pedestrians and minimising damage to amenity from such servicing and deliveries which shall include inter alia the following:-

- (a) a requirement for delivery vehicles to unload from a specific suitably located area;
- (b) details of the person/s responsible for directing and receiving deliveries to the Property
- (c) measures to avoid a number of delivery vehicles arriving at the same time
- (d) likely frequency and duration of servicing movements and measures to be taken to avoid any conflicts;
- (e) likely nature of goods to be delivered;

- (f) the likely size of the delivery vehicles entering the Property;
- (g) measures taken to ensure pedestrian management and public safety during servicing
- (h) measures taken to address servicing movements on and around the Property with a view inter alia to combining and/or reducing servicing and minimise the demand for the same
- (i) provision of swept path drawings to ascertain manoeuvring when entering and exiting the Property in accordance with the drawings submitted and agreed with the Council;
- (j) statement setting out how pedestrian and highway safety will be maintained during servicing movements;
- (k) details of arrangements for refuse storage and servicing; and
- (l) 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

2.29 "the 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 based on a Building Research Establishment Environmental Assessment Method assessment with a target of achieving an Excellent or Outstanding rating and attaining at least 52% of the credits in Energy and using reasonable endeavours to attain 60% of the credits in Energy and 100% in Water and 50% of the credits in Materials categories and at least Level 4 of the Code for Sustainable Homes 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

2.30 "the TFL Contribution"

the sum of twenty thousand pounds (£20,000) to be used by Transport for London towards capital improvements to the transport infrastructure in the vicinity of the Property such as upgrading bus stops in that area

2.31 "the Travel Plan"

a plan setting out a package of measures to be adopted by the Owner in the management of the Property which shall be substantially in accordance with the Outline Travel Plan submitted with the Application (Faber Maunsell – Aecom, May 2009) and incorporating the elements set out in the **Fourth Schedule**

hereto with a view to inter alia reducing trips in motor vehicles to and from the Property by residents as well as staff and users of the community centre and promoting the use of environmentally friendly transport

**2.32 "the Viability Appraisal"**

an appraisal of the Development prepared in accordance with the guidance set out in the London Plan Affordable Housing Development Control Toolkit so far as it is suitable for retrospective assessment but using, where they have been realised, actual costs (including construction, land acquisition and holding costs) losses or profits which will determine the extent to which the Development as a whole would have been viable if provision of an appropriate proportion of Affordable Housing had been incorporated into it and consequently the amount of Affordable Housing Contribution to be payable in relation to the Development

**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 includes (unless otherwise stated) 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 Implementation Date.
- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.
- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause ~~4.12~~ for all relevant purposes.
- 3.9 Where under this Agreement the consent, agreement, approval or expression of satisfaction is required from the Council such consent, agreement, approval or expression of satisfaction shall not be unreasonably withheld or delayed.

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

The Owner hereby covenants with the Council as follows:-

## **4.1 HIGHWAYS CONTRIBUTION**

### **4.1.1 On or prior to the Implementation Date to:-**

- (i) pay to the Council the Highways Contribution in full; and
- (ii) submit to the Council the Level Plans for approval.

### **4.1.2 Not to Implement or to allow Implementation until such time as the Council has:-**

- (i) received the Highways Contribution in full; and
- (ii) approved the Level Plans as demonstrated by written notice to that effect.

### **4.1.3 For the avoidance of doubt the Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate and does not undertake any responsibility in connection with any required statutory undertakers works and that the Highways Contribution excludes any statutory undertakers costs.**

---

### **4.1.4 On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.**

### **4.1.5 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.**

## **4.2 TFL CONTRIBUTION**

### **4.2.1 On or prior to the Implementation Date to pay to the Council the TFL Contribution in full.**

### **4.2.2 Not to Implement or permit Implementation of the Development until such time as the Council has received the TFL Contribution in full.**

## **4.3 LOCAL EMPLOYMENT**

4.3.1 In carrying out the works comprised in the Construction Phase of the Development the Owner shall use its reasonable endeavours to ensure that no less than 15% of the work force is comprised of residents of the London Borough of Camden.

4.3.2 In order to facilitate compliance with the requirements of clause 4.3.1 above the Owner shall use its reasonable endeavours to work in partnership with (i) King's Cross Construction; and (ii) take the following specific measures namely, to ensure:-

- a) all contractors and sub-contractors provide information about all vacancies arising as a result of the Construction Phase of the Development to King's Cross Construction;
- b) King's Cross Construction is notified of all vacancies arising from the building contract for the Development for employees self-employees contractors and sub-contractors;
- c) that King's Cross Construction is supplied with a full labour programme for the lifetime of the Development (with six-monthly updates) demonstrating (i) what skills and employment are needed through the life of the programme, and (ii) measures to ensure that these needs are met as far as possible through the provision of local labour from residents of the London Borough of Camden; and
- d) the Council is provided with a detailed six-monthly labour return for monitoring the employment and self employment profile of all workers referred by Kings Cross Construction and employed during the Construction Phase but only insofar as this shall not involve a breach of any legal requirement or duty as regards the holding and use of such information and data.

4.3.3. During the Construction Phase the Owner shall use its reasonable endeavours to provide training opportunities on site for employees resident within the London Borough of Camden and specifically to use its reasonable endeavours to provide a six-monthly statement setting out the details of candidates employed to Kings Cross Construction but only insofar as this

shall not involve a breach of any legal requirement or duty as regards the holding and use of such information and data.

#### **4.4 LOCAL PROCUREMENT**

- 4.4.1 Prior to Implementation to agree with the Council a programme both during the Construction Phase and subsequent to Occupation to provide opportunities for local businesses to bid/tender for the provision of goods and services to the Development in accordance with the Council's Local Procurement Code.
- 4.4.2 On or prior to Implementation to use reasonable endeavours to meet with the Council's Labour Market and Economy Service's Local Procurement Team at least one month in advance of tendering contracts to agree the specific steps that will be taken to give effect to the Local Procurement Code.
- 4.4.3 To use its reasonable endeavours ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in accordance with the requirements of the Local Procurement Code and in the event of non compliance with this sub-clause the Owner shall upon written notice from the Council forthwith take any steps required by the Council to remedy such non-compliance.
- 4.4.4 To use reasonable endeavours to provide opportunities for local businesses to bid/tender for the provision of facilities management services and other post construction supply of goods and services.

#### **4.5 CONSTRUCTION MANAGEMENT PLAN**

- 4.5.1 On or prior to the Implementation Date to provide the Council for approval a draft Construction Management Plan
- 4.5.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.