

DATED

11th December 2014

KARAWANA HOLDINGS LIMITED (1)

- and -

HSBC PRIVATE BANK (UK) LIMITED (2)

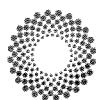
TO

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

Planning Obligation by way of Unilateral Undertaking in
relation to appeal reference APP/X5210/A/14/2218243

and made under Section 106 of the Town and Country
Planning Act 1990 (as amended) relating to land known as

29 New End, London NW3 1JD



howard kennedy

Howard Kennedy LLP

No.1 London Bridge
London SE1 9BG

T: +44 (0)20 3755 6000

F: +44 (0)20 3650 7000

DX 144370 Southwark 4

www.howardkennedy.com

Date: 11 December 2014

THIS UNILATERAL UNDERTAKING is given this 11th day of December 2014 pursuant to section 106 of the Town and Country Planning Act 1990 (as amended)

BY

1. **KARAWANA HOLDINGS LIMITED** (Company no. 344319, incorporated in British Virgin Islands) care of Howard Kennedy, solicitors of No. 1 London Bridge, London, SE1 9BG ("the Owner")
2. **HSBC PRIVATE BANK (UK) LIMITED** (Company Registration Number 499482) whose registered office is at 8 Canada Square London E14 5HQ and of 78 St James's Street London SW1A 1JB ("the Mortgagee")

TO

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN of 2nd Floor, 5 Pancras Square, c/o Town Hall, Judd Street, London WC1H 9JE ("the Council")

WHEREAS

- (1) The Council is the local planning authority for the purposes of the Act for the area within which the Property is situated and by which the obligations contained in this Undertaking are enforceable
- (2) The Owner is the owner of the freehold interest in the Property as registered at the Land Registry under title number NGL681828 subject to a charge dated 25 July 2008 to the Mortgagee.
- (3) The Planning Application and the CAC Application were refused by the Council and the Appeal and the CAC Appeal are to be heard at Public Inquiry commencing on second December 2014
- (4) To address certain reasons for refusal as cited on the Council's decision notice refusing the Planning Application and refusing the CAC Application the Owner and Mortgagee give this Undertaking to the Council

NOW THIS DEED WITNESSES the following:-

1.1 INTERPRETATION

In this Undertaking the following words and expressions shall have the following meanings assigned to them:

"Act" the Town and Country Planning Act 1990 (as amended)

"Affordable Housing" low cost housing that meets the needs of people who cannot afford to occupy homes available in the open market in accordance with the National Planning Policy Framework and successor documents

"Appeal" the appeal against refusal of the Planning Application submitted to the Secretary of State and referenced APP/ X5210/A/14/2218243

"Appeal Decision" the formal decision letter issued by the Planning Inspectorate conveying the determination of the Appeal by the Inspector

"Assumed Existing Use Value" £6,867,159 (six million eight hundred and sixty seven thousand and one hundred and fifty nine pounds)

"CAC Application" the application for conservation area consent in respect of the Property accorded reference 2012/3092/P.

"CAC Appeal" the appeal against refusal of the CAC Application submitted to the Secretary of State and referenced APP/X5210/E/14/2218267

"Certificate of Practical Completion" the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed

"CIL Regulations" the Community Infrastructure Levy Regulations 2010 (as amended)

"Commencement" the carrying out of a material operation as defined in section 56(4) of the Town and Country Planning Act 1990 in respect of the Development at the Property save that for the purposes of this Undertaking only any single act or combination of the following shall not cause Commencement to occur and references to Commence and Commencement shall be construed accordingly:-

1. demolition;
2. site investigations or surveys;
3. archaeological works;
4. site decontamination;

5. excavation works;
6. clearance of the Property;
7. erection of hoardings and fences;
8. works connected with infilling; or

"Conservation Area Consent" conservation area consent granted pursuant to the CAC Appeal

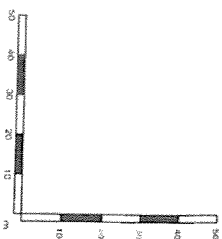
"Contingent Affordable Housing Contribution" the sum of £4,683,504 (four million six hundred and eighty three thousand and five hundred and four pounds) to be paid by the Owner to the Council in accordance with the conditional provisions of Clause 4.6 hereof and to be held by the Council for the purpose of being applied by the Council in the event of receipt towards the provision of Affordable Housing in the London Borough of Camden

"Contingent Viability Assessment" An assessment contingently to be undertaken by the Owner, and submitted to the Council in accordance with the terms of this Undertaking such assessment to:-

- (a) Subject to the Proviso set out below in this definition presented substantially in the same form as the Owner's viability assessment prepared in October 2014 by HEDC or such other form as may further to a request by the Owner be agreed by the Council in writing:
- (b) be based on the same percentage developer's return on market housing value as the Owner's viability assessment referred to in (a) above or such alternative percentages as may be agreed by the Council in writing with a view inter alia to evidence the residual site value of the Property such assessment to include (but not be limited to) the following:-
- (c) a copy of the Owner's viability assessment referred to in (a) above showing the residual value of the Development as £4,886,966 [four million eight hundred and eighty six thousand nine hundred and sixty six] pounds
- (d) best available evidence of any costs actually incurred at the date of the Contingent Viability Assessment; certified copies of sales contracts (if any); and best estimates of costs yet to be incurred



Plan 1



29 Mary End
Hamstead
London NW3

KSR
1974/10/10

1

2

and value of 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) payment of £5,000 to cover the Council's costs (if any) if they decide to seek to verify the material and information contained within the assessment
- (f) any further information the Council acting reasonably requires

"Construction Management Plan" a plan setting out the measures that the Owner will adopt in undertaking the demolition of the Existing Buildings 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 possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):-

- i. A statement to be submitted to the 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 hereto;
- iii. Incorporation of the provisions set out in the Second Schedule hereto;
- iv. Effects on health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;
- v. Amelioration and monitoring measures over the 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 amendment to normal traffic arrangements (if any);
- vi. Measures to show management of traffic and the safeguarding of pedestrian access
- vii. The inclusion of a waste management strategy for handling and disposing of construction waste; and

- viii. 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
- ix. Hours of operation during the carrying out of the Development

"Construction Phase" the whole period between

- i. the start of demolition of the Existing Buildings in connection with the Development or the Commencement Date whichever shall occur first
and
- ii. the date of issue of the Certificate of Practical Completion

"Contribution" the Education Contribution or the Public Realm Contribution as the context indicates and
"Contributions" shall be construed accordingly

"Deficit" a negative figure or figure of zero produced from the Contingent Viability Assessment by taking the residual site value of the Development and subtracting the Assumed Existing Use Value

"Development" erection pursuant to the Planning Permission of a 7 storey block upon the Property to provide 17 self-contained residential units (Class C3) (comprising 2 X studio 5 X 2 bedroom 6 X 3 bedroom and 4 X 4 bedroom units) with associated roof terraces plus new vehicular access and basement parking for 17 cars new pedestrian access refuse store and substation on front boundary wall green roofs communal open space and landscaping following demolition of existing nurses hostel (Sui Generis) as shown on the drawings approved by the Planning Permission

"Education Contribution" the sum of £134,973 (one hundred and thirty four thousand and nine hundred and seventy three pounds) to be applied by the Council in the event of receipt for the provision of education needs arising in the London Borough of Camden

"the Energy Efficiency and Renewable Energy Plan" a strategy setting out a package of measures to be adopted 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 document entitled Energy Strategy dated 9 March 2012;
- (b) any details of how the Owner will reduce the Development's carbon emissions from renewable energy technologies located on the Property ensuring the Owner will take reasonable steps to target a reduction of at least 25% in carbon emissions in relation to the Property using a combination of complementary low and zero carbon technologies;
- (c) details of the size and specification of the Combined Heat and Power (CHP) system, including details and method of installation of CHP unit(s) and full energy calculations justifying the size of the CHP and limiting the use of electricity for any heating as reasonable;
- (d) an air quality assessment prior to the use of CHP system;
- (e) separate metering of all low and zero carbon technologies to enable the monitoring of energy and carbon emissions and savings;
- (f) a building management system being an electronic system to monitor heating cooling and the hours of use of plant;
- (g) measures to enable future connection to a local energy network at the boundary of the Property;
- (h) include a review (to be carried out within three months of Commencement 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 should reasonably be achievable in the Development
- (i) 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 generally been achieved in the Development

- (j) 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

"Existing Buildings" the nurses hostel existing at the Property as at the date of this Undertaking

"the Inspector" the Inspector appointed to determine the Appeal

"Monitoring Fee" means the sum of £515 (five hundred and fifteen pounds) per obligation payable in accordance with this Undertaking to be used by the Council towards the monitoring of the obligations secured by this Undertaking

"Occupation Date" the date when any part of the Development is occupied pursuant to the Planning Permission but does not include occupation for the purposes of construction, fitting out, marketing or provision of security and the phrases "Occupy" "Occupied" and "Occupation" shall be construed accordingly

"Planning Application" the planning application for the Development as submitted to the Council on 13 June 2012 and accorded reference 2012/3089/P

"Plan 1" means the drawing annexed to this Undertaking showing the Property hatched in black and marked Plan 1

"Planning Obligations Monitoring Officer" a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to section 106 of the Act and to whom all payments and notices must be sent in the manner prescribed at clauses [4.6 and 5.5] hereof

"Planning Permission" means planning permission granted pursuant to the Appeal;

"Property" means the land known as 29 New End, London NW3 1JD and shown hatched black on the Plan 1

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

"Public Realm Contribution" the sum of £12,000 (twelve thousand pounds) to be applied by the Council in the event of receipt for the provision of various pedestrian cycle and public realm improvements in the vicinity of the Development

"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 Property is situated

"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

"Surplus" a positive figure produced from the Contingent Viability Assessment by taking the residual site value of the Development and subtracting the Assumed Existing Use Value

"the Sustainability Plan" a plan securing the incorporation of sustainability measures in the carrying out of the Development which shall include:-

- (a) an assessment under the Code for Sustainable Homes achieving at least Level 4 and attaining at least 50% of the credits in each of the Energy Water and Materials categories;
- (b) include a review (to be carried out within three months of Commencement 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 should reasonably be achievable in the Development
- (c) 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 generally been achieved in the Development and how they will be maintained in future management and occupation

"Undertaking" this planning obligation by way of unilateral undertaking

- 1.2 Words importing one gender shall be construed as importing another gender
- 1.3 Words importing the singular shall be construed as importing the plural and vice versa
- 1.4 Where any party comprises more than one person the obligations and liability of those persons under this Undertaking shall be joint and several obligations as shall any obligations given by more than one party
- 1.5 The expression "the Owner" shall (subject to the provisions of this Undertaking) include respective successors in title and assigns (or those otherwise deriving a legal interest in the Property) of each as shall any reference to any person company trust body or association
- 1.6 Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments thereunder
- 1.7 The Contributions payable pursuant to this Undertaking this shall if paid be paid TOGETHER WITH if such payment or application is made more than three months from the date of this Undertaking 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

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

X

2. LEGAL EFFECT

- 2.1 The Owner acknowledges that the obligations in clause 4 of this Undertaking are planning obligations made pursuant to section 106 of the Act and are enforceable as provided in clause 4 by the Council in accordance with the provisions of section 106(3) of the Act against the Owner as provided for by this Undertaking and (subject to clauses 2.3, 5.10 and 7 below) successors in title and persons deriving title under each and shall bind the interests held by those persons in the Property
- 2.2 This Undertaking is a Local Land Charge and shall be registered as such.

- 2.3 No person shall be liable for any breach of the obligations in clause 4 of this Undertaking or other provisions of this Undertaking after it shall have either parted with its entire interest in the Property or the part of the Property in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest

3. Conditional Entry into Force

With exception of this clause 3 hereof, none of the terms or provisions of this Undertaking will have operative effect unless and until the Appeal and the CAC Appeal shall be upheld and the Planning Permission and Conservation Area Consent have been duly granted.

4. OBLIGATIONS

Subject to the Appeal having been upheld and Planning Permission having thereby been duly granted the Owner covenants with the Council as follows:-

4.1 MONITORING FEE

- 4.1.1 To pay to the Council the Monitoring Fee in respect of each of the eight obligations at 4.2 to 4.9 below which binds the Development prior to commencement of the Construction Phase

4.2 CONSTRUCTION WORKING PARTY

- 4.2.1 To set up a construction working party ("Construction Working Party") with the local community and schools which may be affected by the Development no less (unless otherwise agreed in writing by the Council) than eight weeks before the Construction Phase is scheduled to begin

Four weeks prior to the submission of the Construction Management Plan to the Council for its written approval a draft of the final version of the Construction Management Plan is to be made available to the Construction Working Party for its comment

- 4.2.2. To invite the following to become members of the Construction Working Party: representatives of the neighbouring residential properties, the neighbouring schools and Christchurch, local community groups, local business or business organisations and ward councillor PROVIDED ALWAYS that the Construction Working Party shall consist of a maximum of ten (10) persons (unless agreed otherwise by the Council and the Owner.

- 4.2.3 To hold regular (at least monthly) meetings with the Construction Working Party prior to and during the Construction Phase regarding the progress of the Development **ALWAYS PROVIDED** that any member of the Construction Working Party shall be entitled on

reasonable grounds by giving written notice of not less than 10 days to the Liaison Officer to request a meeting of the Construction Working Party(except in an emergency in which case such notice can specify a shorter period) be convened and a meeting of the Construction Working Partyso convened if in response to such request shall consider matters specified in the notice as requiring discussion **AND PROVIDED ALSO** that if the Construction Working Party decide to meet less frequently than is provided above then meetings of the working group shall be convened at such intervals as the Construction Working Party decides;

- 4.2.4 To ensure that the Project Manager for the Development together with (when requested by such Project Manager) the Chartered geotechnical engineer and/or Chartered structural engineer for the Development shall attend all meetings of the Construction Working Party
- 4.2.5 To permit up to two other persons as nominated by the Council to attend meetings of the Construction Working Party
- 4.2.6 To appoint a person ("the Liaison Officer") responsible for liaising with the owners and or occupiers of the residences institutions and business in the locality of the Development about the operation of the Construction Working Party such person to organise and attend all meetings of the Construction Working Party
- 4.2.7 To arrange an appropriate venue within easy walking distance of the Property (which may be the Property itself) for each meeting of the Construction Working Party
- 4.2.8 To give a maximum of seven (7) days notice by email or in writing of the time and place and date of each meeting of the Construction Working Party to all members of such Construction Working Party
- 4.2.9 Accurate minutes should be kept of all meetings and the meetings should be chaired by the Liaison Officer or other such representative.
- 4.2.10 To provide at its' own expense throughout the Construction Phase:-
 - (a) a telephone complaints service that shall be available for 24 hours per day to local residents such line to be staffed by a representative of the Owner having control over the Construction Phase during all periods of construction activity and an answer phone service outside periods of construction activity a telephone complaints service that shall be available to local residents; and

- (b) a fully operable and accessible computer web-site setting out information about the progress of the Construction Phase and measures being taken to limit its impact on the amenity of the local community (with particular emphasis being placed on identifying key dates when "high impact" construction activities are programmed to take place and the measures designed to address such impacts)

and the Owner shall expeditiously take any action reasonably necessary to deal with any such reasonable complaints (and shall give each meeting of the Construction Working Group written information about any such complaints received and action taken in respect of them)

4.3 PUBLIC REALM CONTRIBUTION

- 4.3.1 Subject to the Inspector determining in the Appeal Decision that the Public Realm Contribution is necessary in order to make the Development acceptable and so complies with Regulation 122 of the CIL Regulations to pay to the Council the Public Realm Contribution prior to Commencement of the Development

4.4 EDUCATION CONTRIBUTION

- 4.4.1 Subject to the Inspector determining in the Appeal Decision that the Education Contribution is necessary in order to make the Development acceptable and so complies with Regulation 122 of the CIL Regulations to pay to the Council the Education Contribution prior to Commencement of the Development

4.5 RESIDENTS PARKING PERMITS

Subject to the Inspector determining in the Appeal Decision that the restrictions on Residents Parking Permits as are the subject of this clause 4.5 are necessary in order to make the Development acceptable and so determining that such restrictions comply with Regulation 122 of the CIL Regulations the Owner hereby covenants with the Council:

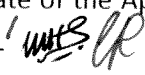
- 4.5.1 Prior to Occupation of any residential unit forming part of the Development to inform each resident of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) 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; and
- 4.5.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in sub-clause 4.5.1 above will remain for so long as the Development remains upon the Property.

4.5.3 Within five (5) days of 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 and which are affected by the Owner's obligation in sub-clause 4.5.1 above of this Undertaking.

4.6 **CONTINGENT VIABILITY ASSESSMENT**

Any obligations in this clause 4.6 shall only apply if and to the extent that the Inspector concludes in the Appeal Decision that it is a planning obligation that meets the requirements of Regulation 122 of the CIL Regulations and without which the Planning Permission would not otherwise be granted

4.6.1.1 The contingent obligations contained in this clause 4.6 shall only take effect

(a) if at the expiration (subject to clause 4.6.1.2 below) of a period of one year and eight months from the date of the Appeal Decision commencement of the Construction Phase has not occurred, ^{and / or} 

(b) if the Development has not been the subject of a Certificate of Practical Completion within thirty six months of commencement of the Construction Phase

4.6.1.2 In the event that the Construction Management Plan has been submitted to the Council pursuant to clause 4.7 below but has not been approved by the Council within three months of submission the period referred to in 4.6.1.1(a) above shall stop running until such time as the Construction Management Plan is approved

4.6.2 Subject to the condition set out in clause 4.6.1 above having been satisfied then the following obligation shall come into effect and be enforceable by the Council:-

4.6.2.1 Within twenty working days of the date of the Commencement of the Development the Owner shall submit the Contingent Viability Assessment to the Council

4.6.2.2 In the event that the Council has not within thirty working days from the date of the receipt by the Council's Planning Obligations Monitoring Officer of the Contingent Viability Assessment notified the Owner in writing that it wishes to question the Contingent Viability Assessment ("a Question

Notice”) then the provisions of 4.6.2.4 onwards of this clause 4.6 shall apply

- 4.6.2.3 In the event that the Council has served a Question Notice on the Owner within the said period of thirty working days from the date of the submission by the Owner of the Contingent Viability Assessment then the Owner shall use reasonable endeavours to seek to agree the details of the Contingent Viability Assessment with the Council by discussion directly or through appointed representatives and shall act in good faith and cooperate with the Council in order to reach agreement; any agreed alternative to the submitted Contingent Viability Assessment shall be referred to as the Agreed Viability Assessment
- 4.6.2.4 If as a result of the application of the provisions of this clause 4.6 a sum becomes recoverable from the Contingent Affordable Housing Contribution such sum shall be referred to as the Viability Sum
- 4.6.3.1. In the event the Contingent Viability Assessment or if applicable the Agreed Viability Assessment shows a Deficit the Viability Sum shall be zero and the Owner shall have no obligation to pay the Contingent Affordable Housing Contribution or any part thereof
- 4.6.3.2 In the event the Contingent Viability Assessment or if applicable the Agreed Viability Assessment shows a Surplus that is less than two times the Contingent Affordable Housing Contribution the Viability Sum shall be half of the Surplus up to the limit of the Contingent Affordable Housing Contribution
- 4.6.3.3 In the event the Contingent Viability Assessment or if applicable the Agreed Viability Assessment shows a Surplus that is greater than or equal to two times the Contingent Affordable Housing Contribution the Viability Sum shall be the full amount of the Contingent Affordable Housing Contribution

- 4.6.4 The Owner shall within 28 days of the calculation of the Viability Sum in accordance with clause 4.6 above pay the Viability Sum to the Council

4.7 CONSTRUCTION MANAGEMENT PLAN

Subject to the Inspector determining in the obligations contained in this clause 4.7 and relating to the Construction Management Plan are necessary in order to make the Development acceptable and so complies with Regulation 122 of the CIL Regulations:-

- 4.7.1 Prior to the beginning of the Construction Phase or to the Commencement of the Development (whichever shall occur first) to provide to the Council for approval a draft Construction Management Plan
- 4.7.2 Not to begin the Construction Phase or Commence Development until such time as the Council acting reasonably has approved the Construction Management Plan as demonstrated by written notice to that effect
- 4.7.3 The owner acknowledges and agrees that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal reasonable impact on and disturbance to the surrounding environment and highway network
- 4.7.4 To ensure that throughout the Construction Phase the Development shall not (save if otherwise agreed by the Council) be carried out otherwise than in accordance with the requirements of the Construction Management Plan and not (save if otherwise agreed by the Council) to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non-compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps required to remedy such non-compliance

4.8 ENERGY EFFICIENCY AND RENEWABLE ENERGY PLAN

Subject to the Inspector determining in the Appeal Decision that the Energy Efficiency and Renewable Energy Plan is necessary in order to make the Development acceptable and so complies with Regulation 122 of the CIL Regulations

4.8.1. Prior to Commencement of Development to submit to the Council for approval the Energy Efficiency and Renewable Energy Plan.

4.8.2 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 and during Occupation to ensure that the Development is being managed in accordance with the Energy Efficiency and Renewable Energy Plan as approved by the Council from time to time and in the event of non-compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps required to remedy such non-compliance

4.9 SUSTAINABILITY PLAN

Subject to the Inspector determining in the Appeal Decision that the Sustainability Plan is necessary in order to make the Development acceptable and so complies with Regulation 122 of the CIL Regulations

4.9.1 Prior to Commencement of Development to submit to the Council for approval the Sustainability Plan.

4.9.2 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 and during Occupation to ensure that the Development is being managed in accordance with the Sustainability Plan as approved by the Council from time to time and in the event of non-compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps required to remedy such non-compliance

5. DECLARATION

It is hereby declared as follows:

5.1 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than Planning Permission granted pursuant to the Appeal as provided for by this Undertaking) granted (whether or not on appeal) after the date of this Undertaking

- 5.2 This Undertaking is a local land charge for the purposes of the Local Land Charges Act 1975 and the Developer shall provide an executed copy of it to the Council for the purpose of enabling the Council to register it as such.
- 5.3 If the Planning Permission shall at any time be revoked or quashed or cancelled or modified (other than at the request of or with the consent of the Owner) then this Undertaking shall then determine and cease to have effect.
- 5.4 In so far as any clause or clauses of this Undertaking are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforcement of the remaining provisions of this Undertaking.
- 5.5 The Owner shall give written notice to the Council prior to the Construction Phase beginning specifying that the date that the Construction Phase has taken or is about to take place.
- 5.6 The Owner shall give written notice to the Council prior to Commencement of the Development specifying the date that the Commencement of the Development has taken or is about to take place.
- 5.7 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 5.8 hereof quoting planning reference 2012/3089/P the date upon which the Development is scheduled to be ready for Occupation.
- 5.8 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 Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to the Undertaking and shall cite the clause of the Undertaking 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 2012/3089/P
- 5.9 For the avoidance of doubt the provisions of this Undertaking (other than those contained in this sub-clause) shall not have any effect until this Undertaking has been dated.
- 5.10 No person who is an owner or occupier of a single residential unit only within the Development shall have any liability under this Undertaking save with regard to clause 4.5
- 5.11 Submission of any document for approval by the Council under the terms of this Undertaking shall be made by 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 Undertaking and citing the specific clause of this Undertaking to which such plan relates quoting the planning reference 2012/3089/P.

- 5.12 All costs and expenses payable to the Council pursuant to this Undertaking shall bear interest at the rate of 4% 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.
- 5.13 All consideration given in accordance with the terms of this Undertaking 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 Undertaking upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.14 All payments pursuant to Clause 4 of this Undertaking shall be made by the Owner sending to the Council 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 Undertaking and citing the specific clause of this Undertaking to which such payment relates quoting planning reference 2012/3089/P 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.
- 5.15 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 during the carrying out of the Development to any part of the Property upon reasonable notice
- 5.16 This Deed is governed by and interpreted in accordance with the Law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

6. THIRD PARTIES

A person (other than the Council and any successor in functions thereto of either) who is not a party to this Undertaking has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Undertaking.

7. MORTGAGEE

7.1 The Mortgagee is party to this Undertaking for the purpose of consenting to the provisions hereof binding the Property but for the avoidance of doubt neither the Mortgagee nor any other mortgagee shall have any liability in respect of this Undertaking save if it has become a mortgagee in possession of the Property ~~and For the Avoidance of Doubt the Bank shall only be liable for any breach of this Undertaking if it has itself caused the breach whilst in possession and it shall not be liable for any pre-existing breach~~

7.2 No mortgagee shall have any liability under this Undertaking unless it takes possession of the interest in the Property over which it has a charge in which case it too will be bound by the obligations as if it were a person deriving title from the mortgagor.

IN WITNESS to the above Owner and the Mortgagee has each executed each this Undertaking the day and year first above written

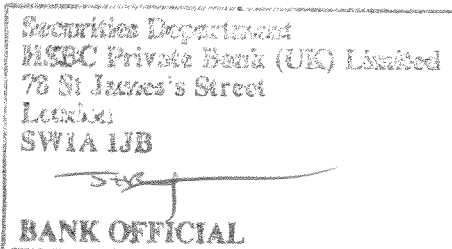
Attorney
SIGNED as a DEED by ADAM JAMES BROOKES
Director, HSBC PRIVATE BANK (UK)
LIMITED

in presence of:

Signature of Witness

Name (in block capitals) SUSTIN LEONEN

Address 78 ST. JAMES'S STREET
LONDON
SW1A 1JB



SIGNED as a DEED by Michael H Shore
Director, KARAWANA HOLDINGS LIMITED

in presence of:

Signature of Witness

Name (in block capitals) Christine Hereward

Address Howard Kennedy
No 1 London Bridge
SE1

FIRST SCHEDULE

Construction Management Plan Air Quality and Carbon Reduction

Requirements to control and minimise NO_x, PM₁₀, CO₂ emissions from construction sites and avoid nuisance and dust complaints.

A method statement shall be prepared and adopted as part of the Construction Management Plan to minimise gaseous and particulate matter emissions generated during the Construction Phase. The method statement shall identify the specific measures which will be implemented to control air pollution emissions during each of the following stages of the Construction Phase: (a) demolition; (b) ground breaking; and (c) construction/build.

The Construction Phase shall be carried out in accordance with the Best Practise Guidance Note "Control of dust and emissions from construction and demolition" published by London Councils, 2006. The risk rating of the site shall be defined in the method statement and determined using the risk assessment methodology in the Best Practise Guidance. Techniques to control dust from construction activities and emissions from vehicles and plant, and undertake air quality monitoring, shall conform to the 'medium' or 'high' risk categories outlined in the Best Practice Guidance.

The following best practise measures shall be included as a minimum in the method statement:-

A - Techniques to control PM₁₀ and NO_x emissions from vehicles and plant

- a) Low emission plant fitted with catalysts, diesel particulate filters or similar devices shall be used;

- b) Plant shall be well maintained, with routine servicing of plant and non-road mobile machinery (NRMM)
- c) Take reasonable steps to avoid the use of diesel or petrol powered generators and use mains electricity or battery powered equipment;
- d) Non-road mobile machinery (NRMM) shall use ultra low sulphur tax-exempt diesel and be fitted with appropriate exhaust after-treatment such as catalysts, diesel particulate filters as stated on the approved list managed by the Energy Saving Trust. Details of the plant and control equipment shall be included in the method statement.
- e) All construction vehicles shall comply with the Euro 4 emissions standard and where possible use low emission fuels and alternative technology.
- f) Plant and vehicles shall be located way from the closest receptors or house in closed environments where possible.

B - Techniques to control dust emissions from construction and demolition

- a) Keep site fencing, barriers and scaffolding clean using wet methods;
- b) Buildings to be demolished shall be wrapped
- c) Provide easily cleaned hard standing for vehicles and clean using wet sweeping methods;
- d) Provide the use of wheel-wash facilities near the site exit. Fit wheel-washes with rumble grids to dislodge accumulated dust and mud prior to leaving the site to avoid carrying dust or mud off the site;
- e) Inspect internal haul routes for integrity and instigate necessary repairs to the surface as soon as reasonably practicable;
- f) Routinely clean the Public Highways and accesses using wet sweeping methods especially during dry periods;
- g) Impose and signpost maximum speed limits of 10 mph on surfaced haul routes and work areas within the Site;
- h) Ensure all vehicles carrying loose or potentially dusty material to or from the site are fully sheeted;
- i) Store materials with the potential to produce dust away from site boundaries;

- j) Sheet, seal or damp down stockpiles of excavated material held on site;
- k) Any loose materials brought onto the site shall be protected by appropriate covering
- l) The site shall be dampened down during the working day and again at the end of the day to reduce the amount that is re-suspended dust.
- m) Ensure water suppression is used during demolition operations;
- n) Ensure mobile crushing and screening plant and cement batching plant which are regulated under the Local Air Pollution Prevention and Control regime operate in compliance with a Part B Permit. This shall be submitted to the local authority prior to operation.
- o) Site personnel shall be trained in dust mitigation and a manager shall be present for managing dust on site.

C - Air Quality Monitoring

- a) Throughout the Construction Phase continuous particulate matter (PM10) monitoring shall be undertaken. Two instruments will be deployed at the site boundary in a transect orientated to the prevailing wind direction, with a third monitor located at the nearest sensitive receptor. One monitor shall be co-located with an anemometer.
- b) Adequate quality assurance/quality control procedures shall be in place including monitor maintenance and calibration as well as data checking. PM10 data shall be collected automatically on an hour basis.
- c) A trigger action level for PM10 concentrations of $200\mu\text{g.m}^{-3}$ (15 minute average) shall be used to identify incidences of elevated dust emissions at the site boundary. The development site shall comply with the trigger action throughout the demolition and construction phases.
- d) An on-site alert system (email or SMS) shall be in place to notify appropriate staff that the trigger action level has been reached. Immediate and appropriate measures can be put in place to rectify abnormal particulate emissions. A procedure shall be established to deal with abnormal dust emissions. All

incidences of abnormal particulate emissions leading to breaches of the trigger action level, shall be documented in the site log book (date and time), with details of the action take to remediate dust emissions.

- e) An e-mail specifying details of any alert to be sent out to the Council's air quality officer as soon as practicable following any breach of the site trigger action level.
- f) An electronic report shall be submitted to the Council's air quality officer every three months summarising the following information from each monitoring site – 24 hour average PM10 concentration, date and time of any breach of the trigger action level with the 15 minute mean concentration, prevailing wind direction and details of the cause of elevated dust emissions and mitigation measures.
- g) The Council shall be notified of any changes to the location and operation of dust PM10 monitoring instrumentation.
- h) A 24-hour phone hotline shall be set up so that residents can complain about high dust or PM10 levels directly to the developer.

The following items shall be included in the method statement:

- a) A specific timetable identifying the start and finish dates of each phase, including dust generating activities and PM10 monitoring.
- b) An inventory of stationary and fugitive dust, PM10 and NOx emission sources with an explanation of how these will be mitigated in accordance with the London Council's Best Practise Guidance.
- c) A map identifying the location of dust generating activities, plant equipment associated with emissions to air and PM10 monitors.
- d) An air quality monitoring protocol prepared in accordance with the requirements of section C.

D - Techniques to reduce CO₂ emissions from construction vehicles

A commitment from the Owner that contractors' vehicles involved in construction and demolition work will adopt 'green fleet management practices' that will result in a 10% reduction in tail-pipe CO₂ emissions over the duration of the construction phase. A green fleet management plan included in the method statement identifying measures to improve vehicle efficiency and reduce CO₂ emissions from construction vehicles. This could include the use of fuel monitoring equipment in vehicles, eco-driver training, accreditation with FORS (Freight Operator Recognition Scheme run by TfL) or SAFED (Safe and Fuel Efficient Driving run by the DfT) and use of low carbon vehicles such as hybrid electric, electric and bio-methane.

SECOND SCHEDULE

Construction Management Plan Highway Measures

A Construction Management Plan outlines how construction work will be carried out and how this work will be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations and minimising the impact on local amenity. A Construction Management Plan should cover both demolition and construction phases of development. Details of the Construction Management Plan will relate to the scale and kind and location of the development and they should assess the impact on transport and on local amenity including road user amenity. Should any one of these criteria be considered not to be relevant, then specific justification, as to why that particular criterion is not relevant, will need to be provided. The Construction Management Plan should demonstrate that the following has been considered and where necessary the impacts mitigated:

(Note the term 'vehicles' used here refers to all vehicles associated with the implementation of the development, e.g. demolition, site clearing, delivering of plant, material and construction, staff parking etc)

- a) A brief description of the site, surrounding area and development proposals for which the Construction Management Plan applies.
- b) Proposed start and end dates for each phase of construction.
- c) The proposed working hours within which vehicles will arrive and depart.
- d) The access arrangements for vehicles.
- e) Proposed routes for vehicles between the site and the Transport for London Road Network (TLRN). Consideration should also be given to weight restrictions, low bridges and cumulative affects of construction on the highway. A map of the TLRN can be downloaded from the following site:-
http://www.tfl.gov.uk/assets/downloads/TFL_Base_Map_Master.pdf
- f) Typical sizes of all vehicles and the approximate frequency and times of day when they will need access to the site, for each phase of construction.

- g) Swept path drawings for any tight manoeuvres on vehicle routes to the site.
- h) Details (including accurate scaled drawings) of any highway works necessary to enable construction to take place.
- i) Parking and loading arrangement of vehicles and delivery of materials and plant to the site.
- j) Details of proposed parking bays suspensions and temporary traffic management orders.
- k) Proposed overhang (if any) of the public highway (scaffolding, cranes etc.).
- l) Details of hoarding required or any other occupation of the public highway.
- m) Details of how pedestrian and cyclist safety will be maintained, including any proposed alternative routes (if necessary), and any Banksman arrangements.
- n) Details of how traffic associated with the Development will be managed in order to reduce congestion.
- o) Details of any other measures designed to reduce the impact of associated traffic (such as the use of construction material consolidation centres).
- p) Details of how any significant amounts of dirt or dust that may be spread onto the public highway will be cleaned or prevented.
- q) Details of consultation on a draft Construction Management Plan with local residents, business, local groups (e.g. residents/tenants and business associations) and Ward Councillors. Details should include who was consulted, how the consultation was conducted and the comments received in response to the consultation. In response to the comments received, the Construction Management Plan should then be amended where appropriate and where not appropriate a reason should be given why not. The revised Construction Management Plan should also include a list of all the comments received. You are advised to check your proposed approach to consultation with the Council before carrying it out.
- r) Details of any Construction Working Group that will be set up, addressing the concerns of surrounding residents, as well as contact details for the person responsible for community liaison on behalf of the developer, and how these contact details will be advertised to the community.
- s) Details of any schemes such as the "Considerate Contractors Scheme" that the project will be signed up to should form part of the consultation and be notified to the Council. Contractors will also be required to follow the "Guide

for Contractors Working in Camden" also referred to as "Camden's Considerate Contractor's Manual"

- t) Details of other construction sites in the local area and how your Construction Management Plan takes into consideration the cumulative effects of construction local to your site.
- u) Any other relevant information with regard to traffic and transport.
- v) The Construction Management Plan should also include the following statement:

"The agreed contents of the Construction Management Plan must be complied with unless otherwise agreed with the Council. The project manager shall work with the Council to review this Construction Management Plan if problems arise in relation to the construction of the Development. Any future revised plan must be approved by the Council and complied with thereafter."

It should be noted that any agreed Construction Management Plan does not prejudice further agreement that may be required for things such as road closures or hoarding licences