

DATED

20 May

2015

(1) EMPYREAN FORTRESS LIMITED

and

(2) BANK ONE LIMITED

and

(3) SUNMIST LIMITED

and

(4) ROSEFROST LIMITED

and

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

**A G R E E M E N T**

relating to land known as  
19 Fortress Road, London NW5 1AD  
pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended)

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

Tel: 020 7974 1918

Fax: 020 7974 2962

CLS/COM/ESA/1781.77

FINAL



THIS AGREEMENT is made the 20<sup>th</sup> day of May 2015

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

- i. **EMPYREAN FORTESS LIMITED** (Co. Regn. No. 7752635) whose registered office is at 9th Floor Hill House 17 Highgate Hill London N19 5NA (hereinafter called "the Owner") of the first part
- ii. **BANK ONE LIMITED** (incorporated in Mauritius) of P.O Box 485, 16 Sir W Newton St, Port Louis, Mauritius and care of Wayne Leighton LLP, 3rd Floor, Elizabeth House, 54/58 High Street, Edgware, HA8 7EJ and care of Alpha Lending Solutions LLP, of 7 Europa Studios, Victoria Road, London, NW10 6ND (hereinafter called "the First Mortgagee") of the second part
- iii. **SUNMIST LIMITED** (Co. Regn. No. 8913876) care of CVS Solicitors Llp, 17 Albemarle Street, London W1S 4HP (hereinafter called "the Second Mortgagee") of the third part
- iv. **ROSEFROST LIMITED** (Co. Regn. No. 8913892) care of CVS Solicitors Llp, 17 Albemarle Street, London W1S 4HP (hereinafter called "the Third Mortgagee") of the fourth part
- iv. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fifth 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 324866 subject to a charge to the First, Second and Third 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 8 December 2014 and the Council resolved to grant permission conditionally under reference number 2014/6976/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 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.6 The First Mortgagee as mortgagee under a legal charge registered under Title Number 324866 and dated 17 October 2014 (hereinafter called "the Legal Charge") is willing to enter into this Agreement to give its consent to the same.
- 1.7 The Mortgagee as mortgagee under a legal charge registered under Title Number 324866 and dated 25 November 2014 (hereinafter called "the Legal Charge") is willing to enter into this Agreement to give its consent to the same.
- 1.8 The Mortgagee as mortgagee under a legal charge registered under Title Number 324866 and dated 25 November 2014 (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 Development"
- mansard roof extension to provide a 2-bed self contained unit, rear extension at 1st floor level including use of rear 2nd floor roof as a terrace with surrounding black railings, installation of rear rooflight at 1st floor level, alterations to enlarge rear windows, and installation of new windows. as shown on drawing numbers:- PL200.001, PL 200.002, PL 200.010, PL 300.011, R 300.012, PL 200.018, PL 200.019, R 300.020, R 300.022, R 300.023, PL 200.029, PL 200.030, R 300.031, R 300.032, PL 200.032a, R 300.033, PL 200.040, R 300.041, R 300.042, R 300.043, R 300.044, PL 200.045, PL 200.050, PL 200.051, PL 200.052, Design and access Statement, Lifetime Home Statement
- 2.4 "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
- 2.5 "Occupation Date"
- the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.6 "the Parties"
- mean the Council the Owner the First Second and Third Mortgagee
- 2.7 "the Planning Application"
- a planning application in respect of the development of the Property submitted to the Council and validated on 8 December 2014 for which a resolution to grant permission has been passed conditionally under reference number

2014/6976/P subject to conclusion of this Agreement

2.8 "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

2.9 "the Planning Permission"

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

2.10 "the Property"

the land known as 19 Fortess Road London NW5 1AD the same as shown shaded grey on the plan annexed hereto

2.11 "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

2.12 "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

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving

title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.

- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7 and 8 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 4.1 for all relevant purposes.

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

- 4.1 The Owner hereby covenants with the Council 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.

- 4.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.1 above will remain permanently.
- 4.3 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 4.1 of 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 Planning Permission 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 the Planning Permission reference 2014/6976/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 indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations



contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.

5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.

5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2014/6976/P.

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

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the Planning Permission reference number 2014/6976/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 the First, Second and Third Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.
- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development this Agreement shall forthwith determine and cease to have effect and upon written request of the Owner the Council will forthwith effect cancellation of the entries made in the register of the Local Land Charges in respect of this Agreement.

## 7. **MORTGAGEE EXEMPTION**

- 7.1 The First Mortgagee, the Second Mortgagee and the Third Mortgagee hereby consents to the Owner entering into this Agreement and agrees that the security of its charges over the Property shall take effect subject to this Agreement.

7.2 The Parties agree that the obligations contained in this Agreement shall not be enforceable against any mortgagee or chargee of the whole or any part of the Property unless it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owner.

8. **RIGHTS OF THIRD PARTIES**

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

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

EXECUTED AS A DEED BY  
EMPYREAN FORTESS LIMITED  
acting by a Director and its Secretary  
or by two Directors

)  
)  
)  
)



NICHOLAS CHARALAMBOUS

.....  
Director

.....  
Director/Secretary WITNESS



DAVID CHAN

S OLD STABLE MAUS

LONDON N5 2LR

CONTINUATION OF SECTION 106 AGREEMENT IN RELATION TO 19 FORTESS ROAD  
LONDON NW5 1AD

Signed as a deed on behalf of

**BANK ONE LIMITED**

a company incorporated in Mauritius

by LEKHRAJ ANAND GOPEE

and by .....

being persons who, in accordance with  
the laws of that territory are acting under the  
authority of the Company

Signature of (LEKHRAJ ANAND GOPEE)

Authorised Signatory

Signature of (

RAJACHANDRAN C P  
Authorised Signatory  
Deputy Chief Executive Officer

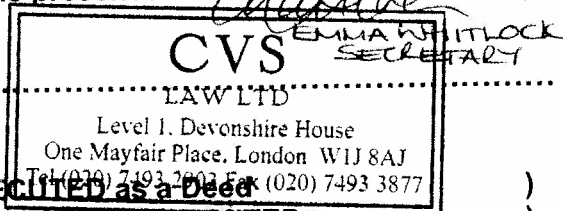
A 12

EXECUTED as a Deed

By **SUNMIST LIMITED**

by

in the presence of:-

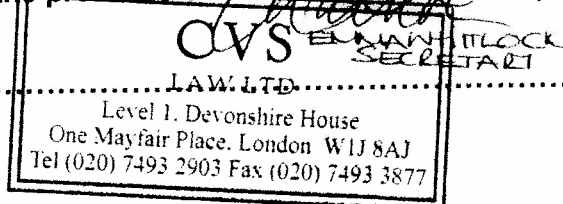


EXECUTED as a Deed

By **ROSEFROST LIMITED**

by

in the presence of:-



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

R. Alexander

Authorised Signatory



# NORTHGATE SE GIS Print Template



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Empyrean Fortess Ltd  
Fao. Mr Nick Charalambous/Anja  
Sylvester  
9th Floor  
Hill House  
17 Highgate Hill  
London  
N19 5NA

Application Ref: **2014/6976/P**

10 April 2015

Dear Sir/Madam

**DRAFT**  
**FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION**  
Town and Country Planning Act 1990 (as amended)

**DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT**

Address:  
**19 Fortess Road**  
**London**  
**NW5 1AD**

**DECISION**  
Proposal:

Mansard roof extension to provide a 2-bed self contained unit, rear extension at 1st floor level including use of rear 2nd floor roof as a terrace with surrounding black railings, installation of rear rooflight at 1st floor level, alterations to enlarge rear windows, and installation of new windows.

Drawing Nos: PL200.001, PL 200.002, PL 200.010, PL 300.011, R 300.012, PL 200.018, PL 200.019, R 300.020, R 300.022, R 300.023, PL 200.029, PL 200.030, R 300.031, R 300.032, PL 200.032a, R 300.033, PL 200.040, R 300.041, R 300.042, R 300.043, R 300.044, PL 200.045, PL 200.050, PL 200.051, PL 200.052, Design and access Statement, Lifetime Home Statement.

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans

PL200.001, PL 200.002, PL 200.010, PL 300.011, R 300.012, PL 200.018, PL 200.019, R 300.020, R 300.022, R 300.023, PL 200.029, PL 200.030, R 300.031, R 300.032, PL 200.032a, R 300.033, PL 200.040, R 300.041, R 300.042, R 300.043, R 300.044, PL 200.045, PL 200.050, PL 200.051, PL 200.052, Design and access Statement, Lifetime Home Statement.

Reason:

For the avoidance of doubt and in the interest of proper planning.

- 4 The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Reasons for granting permission.

The proposed mansard extension is acceptable in terms of scale and location in relation to the host building and is of an appropriate design by virtue of its size and proposed materials. The mansard roof would be set in slightly to retain the butterfly



roof design to the rear of the building. The rear extension to first floor level with a terrace above is subordinate in terms of size and location to the three storey host building and would comply with Camden Planning Guidance. The simple design would not be viewed as a distraction in context with the rear of the host and adjacent properties, and would enhance the character and appearance of the host and neighbouring buildings.

Whilst the development will have some impact in terms of raising the height of the host building, such an extension in this location is not considered harmful to the character or appearance of the host building or the streetscene given the context where it is located with neighbouring buildings featuring similar mansard extensions.

The window adjacent to the proposed first floor extension serves a bathroom. The proposed extension and mansard roof, by reason of its size and location, it would not significantly harm the amenity of any adjoining residential occupiers in terms of loss of light, outlook, enclosure or privacy.

No objections were received prior to making this decision. The site's planning and appeal history has been taken into account when coming to this decision.

As such, the proposed development is in general accordance with policies CS5 and CS14 of the London Borough of Camden Local Development Framework Core Strategy, and policies DP24 and DP26 of the London Borough of Camden Local Development Framework Development Policies. The proposed development also accords with policies 7.4 and 7.6 of the London Plan 2011; and paragraphs 14, 17 and 66 of the National Planning Policy Framework.

- 2 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 6941).
- 3 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Compliance and Enforcement team [Regulatory Services], Camden Town Hall, Argyle Street, WC1H 8EQ (Tel. No. 020 7974 4444 or on the website <http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-the-environmental-health-team.en> or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.
- 4 Your proposals may be subject to control under the Party Wall etc Act 1996 which covers party wall matters, boundary walls and excavations near neighbouring buildings. You are advised to consult a suitably qualified and experienced Building

Engineer.

- 5 Your attention is drawn to the fact that there is a separate legal agreement with the Council which relates to the development for which this permission is granted. Information/drawings relating to the discharge of matters covered by the Heads of Terms of the legal agreement should be marked for the attention of the Planning Obligations Officer, Sites Team, Camden Town Hall, Argyle Street, WC1H 8EQ.
- 6 The correct street number or number and name must be displayed permanently on the premises in accordance with regulations made under Section 12 of the London Building (Amendments) Act 1939.
- 7 Under Section 25 of the GLC (General Powers) Act 1983, the residential accommodation approved is not permitted for use as holiday lettings or any other form of temporary sleeping accommodation defined as being occupied by the same person(s) for a consecutive period of 90 nights or less. If any such use is intended, then a new planning application will be required which may not be approved.
- 8 The Mayor of London introduced a Community Infrastructure Levy (CIL) to help pay for Crossrail on 1st April 2012. Any permission granted after this time which adds more than 100sqm of new floorspace or a new dwelling will need to pay this CIL. It will be collected by Camden on behalf of the Mayor of London. Camden will be sending out liability notices setting out how much CIL will need to be paid if an affected planning application is implemented and who will be liable.

The proposed charge in Camden will be £50 per sqm on all uses except affordable housing, education, healthcare, and development by charities for their charitable purposes. You will be expected to advise us when planning permissions are implemented. Please use the forms at the link below to advise who will be paying the CIL and when the development is to commence. You can also access forms to allow you to provide us with more information which can be taken into account in your CIL calculation and to apply for relief from CIL.

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

We will then issue a CIL demand notice setting out what monies needs to be paid when and how to pay. Failure to notify Camden of the commencement of development will result in a surcharge of £2500 or 20% being added to the CIL payment. Other surcharges may also apply for failure to assume liability and late payment. Payments will also be subject to indexation in line with the construction costs index.

Please send CIL related documents or correspondence to [CIL@Camden.gov.uk](mailto:CIL@Camden.gov.uk)

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

Culture and Environment Directorate

**DRAFT**

**DECISION**





DATED

20 May

2015

(1) EMPYREAN FORTRESS LIMITED

and

(2) BANK ONE LIMITED

and

(3) SUNMIST LIMITED

and

(4) ROSEFROST LIMITED

and

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

**A G R E E M E N T**

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Act 1990 (as amended)

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