

DATED *27 February* 2015

**(1) ATHLONE HOUSE LIMITED**

**and**

**(2) HSBC PRIVATE BANK (UK) LIMITED**

**and**

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

**A G R E E M E N T**  
relating to land known as  
**ATHLONE HOUSE**  
**HAMPSTEAD LANE LONDON N6 4RU**  
pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended)

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

Tel: 020 7974 1918  
Fax: 020 7974 2962

THIS AGREEMENT is made the 27 day of February 2015

**BETWEEN:**

1. **ATHLONE HOUSE LIMITED** (incorporated in Guernsey) of La Tonnelle House PO Box 141 Les Banques St Simpson GY1 3HS Channel Islands whose address for service in the United Kingdom is care of Withers LLP 16 Old Bailey London EC4M 7EG (hereinafter called "the Owner") of the first part
2. **HSBC PRIVATE BANK (UK) LIMITED** (Co. Regn. No. 00499482) of 8 Canada Square London E14 5HQ (hereinafter called "the Mortgagee") of the second part
3. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third part

1. **WHEREAS:**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL846333 subject to a charge to the Mortgagee.
- 1.2 The Owner is the freehold Owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 28 October 2013 under reference number 2013/7242/P.
- 1.4 The Council did not determine the application by 23 December 2013 i.e. within 8 weeks of its submission and validation.
- 1.5 An appeal under Section 78 of the Act in respect of the Planning Application was submitted to the Planning Inspectorate on 20 June 2014 and given reference number APP/X5210/A/14/2220872.
- 1.6 The Council considered the Planning Application and resolved on 31 July 2014 that had an appeal against non-determination not been made to the Secretary of State, it would have refused Full Planning Permission.
- 1.7 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.
- 1.8 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.9 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL846333 and dated 9 February 2006 is willing to enter into this Agreement to give its consent to the same.

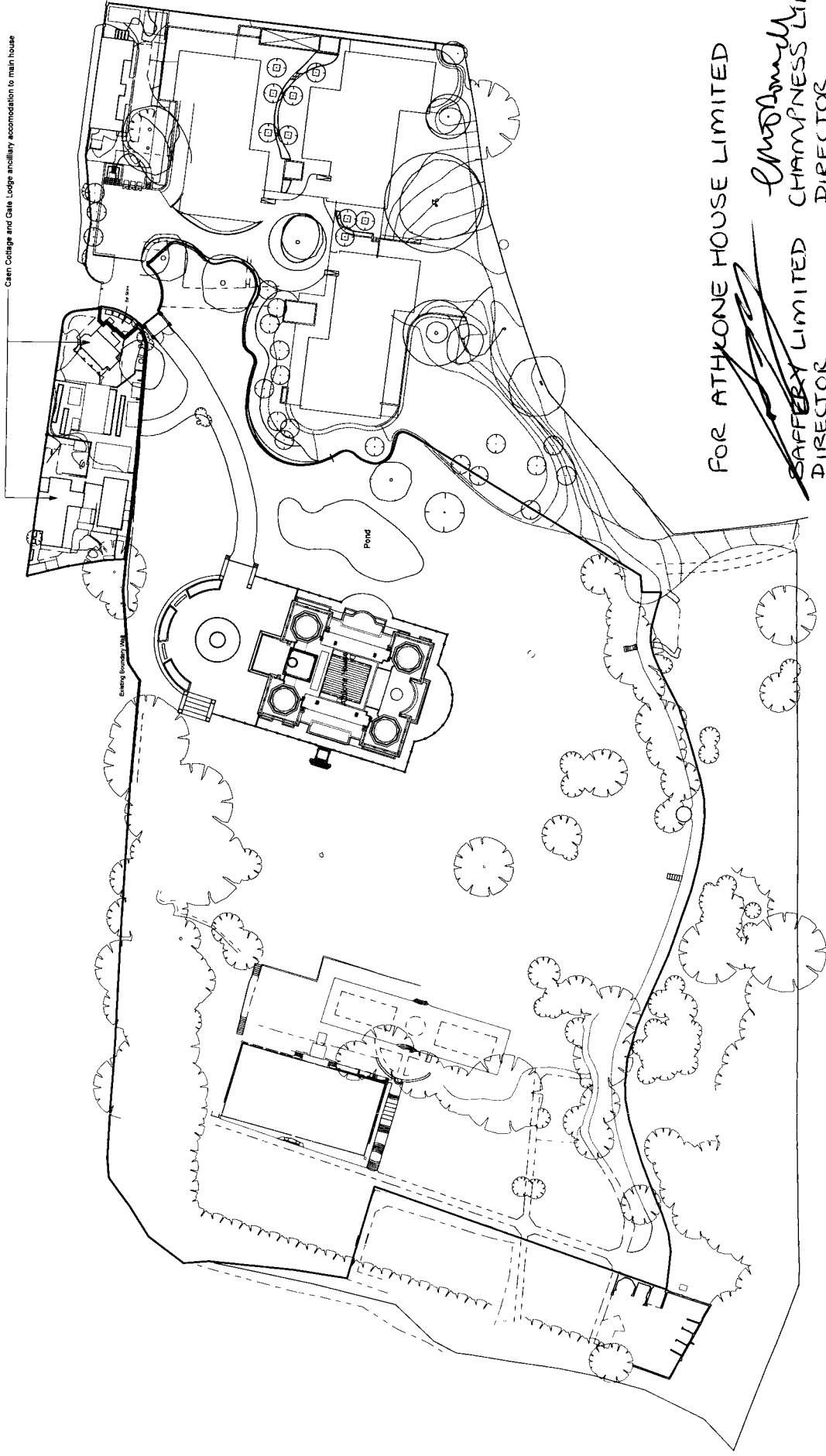
## 2. DEFINITIONS

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

- 2.1 "the Act" the Town and Country Planning Act 1990 (as amended)
- 2.2 ""the Agreement" this Planning Obligation made pursuant to Section 106 of the Act
- 2.3 "the Development" demolition of Athlone House and the erection of an 8 bedroom single dwelling house (Class C3) together with ancillary underground parking, swimming pool and plant room and associated landscaping  
  
as shown on drawing numbers: 5201/101A, 102A, 103, 104A, 105, 106, 107, 108, 109, 110, 111A, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 029; JFAL-9135-07/J, 06A/B, 06B/B, 08, 09/B Design and Access Statement October 2013 Rev D; Planning statement October 2013; Heritage statement and NPPF analysis October 2013; Landscape and visual impact assessment October 2013; Historical landscape appraisal October 2013; Tree quality survey October 2013; Ecological survey October 2013; Energy statement October 2013; Code for Sustainable Homes pre-assessment October 2013; Summary condition report Sep 2013; Preliminary budget estimate Oct 2013; Market evidence May 2013; Basement Impact Assessment May 2013 (by Price and Myers); Desk study and BIA report June 2013 (by GEA); Flood risk assessment Rev E October 2013; Transport statement October 2013; Noise survey May 2013; Planning Statement Addendum 14th May 2014; 5201/140 (May 2014); Area information- May 2014 (as revision to P.40 of DAS).
- 2.4 "the Decision" The decision made by the Council communicated by written notice to the Owner in relation to whether or not to approve the Sustainability Plan
- 2.5 "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
- 2.6 "Occupation Date" the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.7 "the Parties" mean the Council the Owner and the Mortgagee
- 2.8 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 28 October 2013 reference number 2013/7242/P
- 2.9 "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
- 2.10 "the Planning" any planning permission granted for the Development by the Secretary of State or the Planning Inspectorate in respect of the

	Permission"	appeal of the Council's refusal of the Planning Application under Planning Inspectorate reference APP/X5210/A/14/2220872
2.11	"the Property"	the land known as Athlone House Hampstead Lane London N6 4RU the same as shown edged red on the plan annexed hereto
2.12	"Reasonable Endeavours"	where there is a reasonable endeavours obligation in this Agreement the Owner shall be bound to attempt to fulfil the relevant obligations by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable and where the Owner cannot fulfil the objective of the obligation in full or in part then on the Council's request the Owner shall provide an explanation of the steps it has undertaken in carrying out its reasonable endeavours obligations
2.13	"Sustainability Plan"	<p>a plan including a pre-assessment and post construction review securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation based on the following:-</p> <ul style="list-style-type: none"> <li>(a) measures identified in the documents entitled 'A Code for Sustainable Homes' pre-assessment dated May 2014 and 'Planning Submission of Energy Statement' dated May 2014; and</li> <li>(b) achieving at least Level 4 under the Code for Sustainable Homes and attaining at least 50% of the credits in each of the Energy Water and Materials categories; including measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation</li> <li>(c) an energy efficiency and renewable energy strategy (including a post construction report) setting out a package of measures to be adopted by the Owner in the management of the Development with a view to reducing carbon energy emissions through (but not be limited to) the following:- <ul style="list-style-type: none"> <li>(i) measures identified in the documents entitled A Code for Sustainable Homes pre-assessment dated May 2014 and Planning Submission of Energy Statement dated May 2014;</li> <li>(ii) full details on how the Owner will comply with Building Regulations Part L1A 2013 maximums;</li> <li>(iii) details in relation to how the Owner will further reduce the Development's carbon emissions</li> </ul> </li> </ul>

Clear Cottage and Gate Lodge ancillary accommodation to main house



FOR ATHLONE HOUSE LIMITED

*R Alexander*  
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*Charmandy*  
CHAFFERTY LIMITED  
DIRECTOR

PROJECT: Athlone House  
TITLE: Site Plan as Proposed  
SCALE: 1:500 @ A1  
DATE: May 2013  
DRAWING NO.: 5201/102 rev A  
DRAWN BY: AG/TG

A 23.10.13 Updated to reflect change to JPA Landscape drawing AG  
Rev. Date Description  
AG/TG

Adjacent Properties and Boundaries are shown for illustrative purposes only and have not been surveyed unless otherwise stated.  
All areas shown are approximate and should be verified before forming the basis of a decision.  
Do not scale other than for Planning Application purposes.  
All dimensions must be checked by the contractor before commencing work on site.  
No deviation from this drawing will be permitted without the prior written consent of the Architect.  
The copyright of this drawing remains with the Architect and may not be reproduced in any form without prior written consent.  
Ground Floor Slabs, Foundations, Sub-Structures, etc. All work below ground level is shown provisionally. Inspection of ground conditions is essential prior to work commencing.  
Reassessment is essential when the ground conditions are apparent, and redesign may be necessary in the light of soil conditions found. The responsibility for establishing the soil and subsoil conditions rests with the contractor.

from renewable energy technologies located on the Property.

- (d) The Sustainability Plan shall include any amendments or alterations that may be made or approved and any further or replacement Sustainability Plan that shall be submitted or approved.

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

- 3.1 This Agreement is made in pursuance of Section 106 of the Act and all other relevant powers of the Council, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 4.1, 4.2, 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 Parties save where the context states otherwise shall include their successors in title.

4. **Obligations of the Owner**

The Owner hereby covenants with the Council as follows:-

**SUSTAINABILITY PLAN**

- 4.1 Prior to the Implementation Date to submit to the Council for approval the Sustainability Plan;
- 4.2 Not to Implement nor permit Implementation until the Sustainability Plan as submitted or as modified or substituted has been approved by the Council as demonstrated by written notice to that effect;
- 4.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Property;
- 4.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council for the time being and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements

of the Sustainability Plan as so approved . The Owner may submit changes to the measures from time to time. If the changes are approved by the Council hereunder, the Sustainability Plan shall thereafter take effect subject to the approved changes.

**5. Project Architect**

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

- (a) submit any further drawings required to be submitted under or in connection with the Planning Permission unless such drawings have been prepared by Robert Adam of Adam Architecture of 9 Upper High Street Winchester Hampshire SO23 8UT;
- (b) implement or carry out any works forming part of the construction of the Development at any time when Robert Adam of Adam Architecture is not employed by the Owner as project architect; and
- (c) occupy or permit Occupation of any part of the Development until such time as the Council has confirmed in writing that it has received written certification from Robert Adam of Adam Architecture that the Development has been carried out and completed in accordance with the Planning Permission and any details approved pursuant to the conditions contained within the Planning Permission.

**6. Notice to the Council/Other Matters Agreed**

6.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.

6.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2013/7242/P the date upon which the Development is ready for Occupation.

6.3 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.

6.4 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.

6.5 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.

6.6 Submission of any plan or other document for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer

referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the planning reference 2013/7242/P.

6.7 The Council shall not withhold such approval unreasonably and shall notify the Owner of the Decision in relation to such approval within a reasonable time such time not to be more than one month following the Owner's submission of the Sustainability Plan or of any modifications to it.

6.8 It is agreed that the Council's decision and any other dispute under this Agreement shall be subject to expert determination in the event of any dispute in relation to it.

6.9 All costs and expenses payable to the Council under this Agreement 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.

## 7. **Expert Determination**

7.1 An Expert is a person appointed in accordance with this clause to resolve any dispute in relation to the Decision;

7.2 The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of his appointment;

7.3 If the parties are unable to agree on an Expert or the terms of his appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the Royal Town Planning Institute to appoint an Expert of repute with experience in planning matters relating to sustainability;

7.4 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of two months of the matter being referred to the Expert;

7.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then

(a) either party may apply to Royal Town Planning Institute to discharge the Expert and to appoint a replacement Expert with the required expertise; and

(b) this clause shall apply to the new Expert as if he were the first Expert appointed;

7.6 The parties are entitled to make submissions to the Expert and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision;

7.7 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination;

7.8 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause;

7.9 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the dispute which may include any issue involving the interpretation of any provision of this Agreement, his jurisdiction to determine the matters and issues referred to him and/or his terms of reference. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud;



- 7.10 The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs]. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct;
- 7.11 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching his determination.
8. **IT IS HEREBY AGREED AND DECLARED by the parties hereto that: -**
- 8.1 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 2013/7242/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.
- 8.2 This Agreement shall be registered as a Local Land Charge.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 8.7 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.
- 8.8 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.

9. **Mortgagee Exemption**

9.1 The 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.

9.2 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.


9.3 The Mortgagee shall only be liable for any breach of this Deed whilst in possession and it shall not be liable for any pre-existing breach.

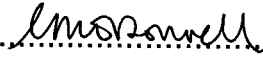
10. **Rights of Third Parties**

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

IN WITNESS whereof the Council has caused its common seal to be hereunto affixed and the Mortgagee and the Owner have executed this instrument as a Deed the day and year first before written

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

  
.....  
Director ← SAFFERY LIMITED

  
.....  
Director/Secretary - CHAMPNESS LIMITED

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

.....

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

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

*R Alexander*

.....

Authorised Signatory

