

**PLANNING OBLIGATION RELATING TO THE DEVELOPMENT OF LAND COMPRISING  
112A GREAT RUSSELL STREET LONDON WC1 B3NP**

**PARTIES**

- |   |           |                                                                                                                                                                                |
|---|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Owner     | GRS LIMITED incorporated in the Isle of Man under company registration number 000051V of 2a Lord Street, Douglas, Isle of Man, IM1 2BD                                         |
| 2 | Mortgagee | <b>AVIVA COMMERCIAL FINANCE LIMITED</b><br><br>incorporated in England and Wales under company registration number 2559391 of Sentinel House 37 Surrey Street Norwich NR1 3 UY |
| 3 | Council   | <b>CAMDEN COUNCIL</b> of Town Hall Judd Street London WC 1H 8ND                                                                                                                |

**RECITALS**

- |   |                                                                                                                                                                          |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated.                                                  |
| B | The Owner is registered as owner of the Site with leasehold absolute title at the Land Registry under title number NGL723841                                             |
| C | By a legal charge dated 10 1 2007 the Mortgagee has a registered charge in respect of the Site                                                                           |
| D | The Owner has submitted the Planning Application to the Council and the Council has determined to grant the Planning Permission subject to completion of this Deed.      |
| E | The Council is satisfied that the planning obligations contained in this Deed are in the interests of the proper planning of the area within which the Site is situated. |

## **OPERATIVE PROVISIONS**

### **1 Definitions and interpretation**

- 1.1 Unless the contrary intention appears, the following definitions apply:
- 1.2 Save where this Deed specifies otherwise or where the context so requires the singular includes the plural and vice versa and references in this Deed to any party shall include the successors in title to that party's interest in the Site or part thereof.
- 1.3 Where in this Deed reference is made to a clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital of or to or (in the case of a plan) attached to this Deed.
- 1.4 The titles and headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 1.5 All covenants on the part of the Owner are given for the benefit of the Council and all covenants on the part of the Council are given for the benefit of the Owner.
- 1.6 Where any party covenants not to act, such covenant shall include an obligation not to permit or suffer such an act by another person.
- 1.7 All references in this deed to statutes, statutory instruments, regulations and other legislation shall include their successor, amended or replacement provision.
- 1.8 All references in this Deed to a particular title of officer or post at the Council shall include successor or replacement officers or posts.
- 1.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or the Outline Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 1.10 Where reference is made to a sum payable "(Index Linked)" the sum to be paid shall be calculated by applying the following formula:-

$$A = (B \times C) \div D$$

Where

A = the amount payable after index linking

B = the sum referred to in the relevant clause (being £n Clause 11.1 £in Clause 12.1 and £n Clause 13.1)

C = the figure for the Relevant Index published for the last month immediately before the date to which the sum is to be Index Linked to (being in each case the date of payment to the Council)

D = the figure for the Relevant Index published in respect of the last complete month immediately before 20 November 2009

1.11 Relevant Index means the All Items Index of Retail Prices published by the Office for National Statistics save that for the purposes of Clause 11.1 it shall be the Road Construction Tender Price Index published by the Department for Business Innovation and Skills (or any successor Ministry) provided that (in either case) when no such index exists the Relevant Index shall be the index which replaces the same or is the nearest equivalent thereto as may be reasonably specified by the Council

## 2 **Statutory Authorities**

2.1 This Deed is expressed to be made pursuant to Section 106 of the Act to the intent that the provisions of this Deed shall bind the Site and the parties to this Deed and all persons deriving title through or under them.

2.2 Clauses 11 to 16 and each and every covenant on the part of the Owner contained therein are planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council.

2.3 The Council enters into this Deed in its capacity as local planning authority only.

2.4 Subject to Clause 3 the Owner covenants with the Council to observe perform and comply with Clauses 11 to 16.

2.5 Subject to clause 3 the Council covenants with the Owner to observe perform and comply with Clauses 8.1.2 and 17.

## 3 **Conditionality**

3.1 This Deed shall only take effect upon the issue of the Planning Permission

3.2 If the Planning Permission is quashed or shall expire by effluxion of time or shall otherwise be revoked withdrawn or modified without the agreement of the parties

before any part of the Development is begun on the Site, then this Deed shall absolutely determine and become null and void.

#### **4 Liability**

4.1 The Owner and its successors in title and assigns shall upon parting with the whole or any part of their interest in the Site cease to have any obligation or liability under the terms of this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to any antecedent or subsisting breach of this Deed prior to parting with such interest

4.2 The Council hereby covenants with the Owner that it will upon reasonable request (and subject to payment of the Council's reasonable and proper professional costs and charges in connection with certification) such costs not in any event to exceed £1,000 (ONE THOUSAND POUNDS) certify compliance or partial compliance with the provisions of this Deed and if so requested will execute a deed of discharge or partial discharge from the relevant provision(s) of this Deed, and procure that a note thereof will be registered on the register of local land charges maintained by the Council.

4.3 The Mortgagee consents to the Owner entering into this Deed and acknowledges that this Deed binds the Site and agrees that its interests are bound by the planning obligations contained herein PROVIDED THAT the Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner.

4.5 The parties agree with one another to act reasonably and in good faith in the fulfilment of the objectives of this Deed.

4.6 Insofar as any clause of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

#### **5 Dispute Resolution**

5.1 In the event of any Dispute arising between the parties (including a failure to achieve agreement where agreement is required by the terms hereof), the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least one representative from each party

- 5.2 If the parties are unable to resolve the Dispute amicably pursuant to clause 5.1, (whether because a party fails to comply with clause 5.1 or otherwise) one party may by serving notice on the other party (the "Notice") refer the Dispute to an Expert, whose decision shall (save in the case of manifest error) be final and binding on all parties.
- 5.3 The Notice must specify:
- 5.3.1 The nature, basis and brief description of the Dispute; and
- 5.3.2 The clause of this Deed pursuant to which the Dispute has arisen.
- 5.4 The Dispute Resolution Procedure shall apply to any reference of a Dispute to the Expert.
- 5.5 If the parties are unable to agree as to the appointment of an Expert within seven days of one party serving Notice on the other then such Expert shall be appointed by the Chairman of the Planning and Environment Bar Association on the application of either party.
- 5.6 The costs of the reference to and the appointment of the Expert shall be borne equally by the parties.
- 5.7 Each party shall bear their own costs of preparing and submitting evidence to the Expert save that the Expert shall have the power to determine how costs are to be awarded in circumstances where he finds that one party has acted unreasonably.
- 5.8 In following the process in this clause 5, the Owner and the Council shall use all reasonable endeavours to procure that the Expert determines the Dispute as quickly as is reasonably practicable and the Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum reasonably practicable timescale allowing for the nature and complexity of the Dispute. .

## **6 Registration as local land charge and discharge**

- 6.1 The Council shall as soon as practicable following the completion of this Deed register this Deed as a local land charge for the purposes of the Local Land Charges Act 1975.
- 6.2 On the complete performance of any one or more planning obligations under this Deed and on receipt of satisfactory documentary evidence the Council shall issue

written confirmation that the identified planning obligations have been achieved and record the same against the entry made pursuant to clause 6.1.

- 6.3 Upon determination of this deed pursuant to clause 3.2 or otherwise, the Council shall record such determination against the entry made pursuant to clause 6.1.

## **7 Fetter of discretion**

- 7.1 Nothing in this Deed shall prejudice the exercise of any statutory power duty or discretion by the Council.

- 7.2 Nothing in this Deed shall prevent further planning applications being made to the Council for development of the Site and in the event that planning permission is granted for such development, this Deed shall not prevent the carrying out of that development.

## **8.1 Application of contributions**

- 8.1.1 The Council may at any time refund to the payer the financial contribution paid pursuant to clauses 11.1 12.3 13.1 or any part of such contribution together with interest calculated at the Base Rate from the date of payment to the Council to the date of refund should the Council determine at any date subsequent to the date of this Deed that the financial contribution or part is not required for the purpose for which it has been paid.

- 8.1.2 The Council may either spend a contribution or sum it has received under this Deed itself or pass it to a third party to spend on its behalf provided that such contribution or sum may only be applied by the third party for the purpose for which it was paid to the Council and the Council shall procure that the third party complies with the relevant terms of this Deed in relation to such sum or contribution.

## **9. Exclusion of third party rights**

None of the provisions of this Deed are intended to or will confer any benefit on or be enforceable by (pursuant to the Contracts (Rights of Third parties) Act 1999) a person who is not a party to this Deed.

## **10. Notices**

Unless otherwise agreed in writing:

- 10.1 Notices shall be in writing and delivered by hand or first class post to the Owner at the registered office of the Owner to the Mortgagee at its registered office address and to the Council at addressed to the Director of Regeneration and Planning at the principal office as the Council may from time to time occupy.

## **PLANNING OBLIGATIONS**

### **11. Pedestrian and Environment Improvement Contribution**

- 11.1 Upon occupation of the Hotel to pay to the Council the sum of £ TBA (Index Linked) by way of contribution towards the cost of the Council carrying out or funding an Improvement Scheme.

### **12. Transport**

#### **12.1 Workplace and Guest Travel Plan**

(i) To develop and run the Hotel in a manner that discourages the use of cars by guests and staff to develop a Workplace and Guest Travel Plan that is acceptable to the Council

(ii) To pay the Council fees in relation to the monitoring of the Workplace and Guest Travel Plan in the sum of £ (TBA)

#### **12.2 Car Free Agreement**

To enter into a car free agreement in a form acceptable to the Council

#### **12.3 Highways Improvements Contribution**

Upon completion of this Deed to pay to the Council the sum of £TBA (Index Linked) by way of a contribution towards the costs of carrying out or funding off-site highway works within three kilometres of the Site or for Public Transport Objectives (or both).

### **13. Open Space Contribution**

- 13.1 Upon occupation of the Hotel to pay to the Council the sum of £14,226 (Index Linked) by way of contribution towards the cost of the Council improving Open Space amenities within the Borough

### **14. Construction Management Plan**

- 14.1 Not to implement or carry out any works pursuant to the planning permission save in accordance with the Construction Management Plan (including Construction Logistics Plan) approved by the Council

15. **Apprenticeships Employment Strategy and Local Procurement**

- 15.1 To adhere to the Apprenticeships(1/£3million build cost), Employment and Local Procurement Policies approved by the Council.

16 **Hotel Management Plan**

- 16.1 To adhere and ensure the adherence by future owners to the Hotel Management Plan (including Delivery and Servicing Plan) approved by the Council

17. **Council's Covenants and Acknowledgements**

The Council covenants to observe, perform and comply with and where appropriate acknowledges this clause 17.

17.1 **Contributions**

- 17.1.1 The Council shall apply any sums received under this Deed to the purposes for which the same has been paid

- 17.1.2 Any sum which is paid to the Council pursuant to Clauses 11.1. 12.3 and 13.1 shall (together with interest calculated at the Base Rate from the date of payment to the date of reimbursement) be reimbursed by the Council to the payer to the extent that it has not within seven (7) years of the date of payment been applied in connection with the purpose for which it has been paid

- 17.1.4 Not to expend or apply any money paid pursuant to Clauses 11.1 12.3 and 13.1 without first affording the Owner an opportunity to comment upon the Improvement Scheme to be funded (in whole or in part) by such money and the Council shall give due and proper consideration to any such comments received and further provided that any expenditure by the Council shall secure reasonable value for money.

18. **Mortgage Indemnity**

The Owner covenants to keep the Mortgagee indemnified against all proceedings, costs, claims and expenses arising from any breach or non-observance by the Owner of the covenants restrictions and obligations contained in this Deed.



**In witness** whereof this Deed has been executed as a Deed the day and year first before written

Executed as a Deed for and on behalf of )  
**GRS LIMITED** )  
a company incorporated in the )  
Isle of Man by **EDWARD NORMAN BOWERS** )  
and **JOHN ANTHONY MURPHY** being persons )  
who in accordance with the laws of that )  
territory are acting under the authority )  
of the company )

..... )  
**EDWARD NORMAN BOWERS** )

..... )  
**JOHN ANTHONY MURPHY** )

**SIGNED AS A DEED on behalf of AVIVA COMMERCIAL**  
**FINANCE LIMITED** by  
and )  
being persons who are acting under the authority of the Company:

.....  
Authorised Signatory Authorised Signatory

The COMMON SEAL of Camden Council  
was hereunto )  
Affixed in the presence of:- )

MAYOR

BOROUGH SOLICITOR

DATED

**GREAT RUSSEL STREET LIMITED**

**THE GOVERNOR AND COMPANY OF THE STANDARD BANK ISLE OF MAN**

**CAMDEN BOROUGH COUNCIL**

**Agreement under Section 106 of the Town and Country Planning Act 1990  
Relating to the Development of  
112a Great Russell Street London WC1B 3NP**