

HERBERT
SMITH
FREEHILLS

29 September 2015

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN

and

GROUND GILBEY LIMITED

and

CANAL SIDE PROPERTIES LIMITED

and

ELCROSS ESTATES LIMITED

and

NOMURA INTERNATIONAL PLC

**THIRD SUPPLEMENTAL PLANNING
AGREEMENT**

pursuant to Section 106 and 106A of the Town and Country Planning Act 1990 and other relevant powers relating to the land comprised within the site known as Hawley Wharf, Camden

Herbert Smith Freehills LLP

THIS DEED is made the 29th day of September 2015

BETWEEN:-

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London, WC1H 9LP (the "**Council**");
- (2) **GROUND GILBEY LIMITED** (a company incorporated in the British Virgin Islands with registration number 458429) whose registered office is at Craigmuir Chambers, PO Box 71, Road Town, Tortola, VG1110, British Virgin Islands ("**GGL**"); and
- (3) **CANAL SIDE PROPERTIES LIMITED** (a company incorporated in the British Virgin Islands with registration number 1375210) whose registered office is at Craigmuir Chambers, PO Box 71, Road Town, Tortola, VG1110, British Virgin Island ("**CSP**"); and
- (4) **ELCROSS ESTATES LIMITED** (Company Registration Number 04191579) whose registered address is at 54 – 56 Camden Lock Place, London NW1 8AF ("**EEL**"); and
- (5) **NOMURA INTERNATIONAL PLC** (Company Registration Number 01550505) whose registered office is at 1 Angel Lane, London, EC4R 3AB ("**Nomura**")

WHEREAS:

- (A) On 23 January 2013, GGL, CSP, Network Rail Infrastructure Limited, Canal & River Trust, Irish Bank Resolution Corporation Limited and the Council entered in to the Planning Agreement.
- (B) On 19 February 2015, GGL, CSP, EEL, Nomura and the Council entered in to the First Supplemental Planning Agreement.
- (C) On 30 July 2015, GGL, CSP, EEL, Nomura and the Council entered in to the Second Supplemental Planning Agreement.
- (D) The Council is the local authority for the purposes of Section 106 of the 1990 Act for the area within which the Property is situated.
- (E) GGL is the freehold owner of those parts of the Property under Title Numbers NGL882928, LN178419, NGL789703, NGL789702, LN82827, NGL207568, LN143728, NGL310382, NGL385023, NGL428608, NGL384527, NGL342293, NGL763915, NGL732508, NGL280874, NGL312511, NGL323884, NGL877242, LN144977, NGL721454, NGL697445, NGL710460, NGL709036, NGL896374 NGL 948121 and NGL709037.
- (F) GGL is the leasehold owner of those parts of the Property under Title Numbers NGL889432, NGL903746, NGL864602 and NGL849222.
- (G) CSP is the freehold owner of those parts of the Property under Title Numbers 343656 and 343657.
- (H) EEL is the freehold owner of that part of the Property under Title Number NGL727488.
- (I) As at the date of this Deed, Nomura holds legal charges over the Property as set out in Schedule 1 to this Deed.
- (J) This Deed is entered into for the purpose of amending obligations in the Planning Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 Save where provided otherwise words and expressions used in this Deed have the meaning assigned in the Planning Agreement.

1.2 For the purposes of this Deed the following words and expressions have the meanings assigned:

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

"Area E Permission" means the planning permission granted by the Council for the development of Area E with reference number 2015/1937/P;

"First Supplemental Planning Agreement" means an agreement dated 19 February 2015 between GGL, CSP, EEL, Nomura and the Council entered into pursuant to Section 106 and 106A of the 1990 Act and other relevant powers;

"Implementation" means the date of implementation of the Area E Permission by the carrying out of a material operation as defined in section 56 of the 1990 Act;

"New Part 1" means the new Part 1 of Schedule 1 to the Planning Agreement, as attached at Schedule 2 to this Deed;

"Original Part 1" means the original Part 1 of Schedule 1 to the Planning Agreement;

"Owner" means GGL, CSP and EEL;

"Parties" means the Council, the Owner and Nomura;

"Planning Agreement" means an agreement dated 23 January 2013 between GGL, CSP, Network Rail Infrastructure Limited, Canal & River Trust, Irish Bank Resolution Corporation Limited and the Council entered into pursuant to Section 106 of the 1990 Act and Section 16 of the 1974 Act and other relevant powers;

"Second Supplemental Planning Agreement" means an agreement dated 30 July 2015 between GGL, CSP, EEL, Nomura and the Council entered into pursuant to Section 106 and 106A of the 1990 Act and other relevant powers; and

2. OPERATION OF THIS DEED

2.1 This Deed is supplemental to the Planning Agreement and First Supplemental Planning Agreement and Second Supplemental Planning Agreement and is entered into pursuant to Section 106 and 106A of the 1990 Act and all other powers so enabling.

2.2 The covenants, undertakings and obligations contained in this Deed given to the Council are undertakings and agreements for the purposes of Section 106 of the 1990 Act and are enforceable by the Council as the local planning authority for the area in which the Property is situated.

3. AMENDMENTS TO THE PLANNING AGREEMENT

3.1 Subject to clause 3.2 of this Deed, with effect from the date of Implementation of the Area E Permission, the Parties agree that the Planning Agreement shall be modified as follows:

3.1.1 the Original Part 1 shall be replaced by the New Part 1; and

3.1.2 none of the obligations, covenants or undertakings within the Original Part 1 shall be enforceable by or against the Council, GGL, CSP, EEL or Nomura.

3.2 The Original Part 1 shall continue to be enforceable against CRT and Network Rail.

4. MORTGAGEE

4.1 Nomura hereby consents to the Owner entering into this Deed and subject to clause 4.2 agrees that the security of its charges over the Property shall take effect subject to this Deed and the Planning Agreement and the First Supplemental Planning Agreement and the Second Supplemental Planning Agreement.

4.2 The Parties agree that the obligations contained in this Deed and the Planning Agreement and the First Supplemental Planning Agreement and the Second Supplemental Planning 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.

5. MISCELLANEOUS

5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.

5.2 This Deed is a local land charge and shall be registered as such by the Council.

5.3 GGL, CSP and EEL hereby covenant with the Council that they will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register the Deed in the Charges Register of their titles in the Property and will furnish the Council forthwith on written demand with official copies of such titles to show the entry of this Deed in the Charges Register of those titles.

5.4 The Owner agrees to pay the Council its reasonable legal costs properly incurred in preparing this Deed on or prior to the date of this Deed.

5.5 This Deed is governed by and shall be interpreted in accordance with the law of England.

IN WITNESS whereof the parties have executed this Deed the day and year first above written.

Schedule 1

Company	Property	Title Number	Date of charge
Ground Gilbey Limited	6 Torbay Street, London, NW1 8RR	NGL948121	4 December 2014
Ground Gilbey Limited	8 to 16 Leybourne Road, AJ Autos and 6 Haven Street, 9 Chalk Farm Road, and the land and arches at Hawley Wharf, Leybourne Road and Haven Street, London	NGL849222	30 January 2014
Ground Gilbey Limited	6 Chalk Farm Road, London NW1	NGL207568	30 January 2014
Ground Gilbey Limited	The Caernarvon Castle, 7-8 Chalk Farm Road, London NW1	LN82827	30 January 2014
Ground Gilbey Limited	Land and arches at Leybourne Road	NGL864602	30 January 2014
Ground Gilbey Limited	Land at Leybourne Road, London	NGL877242	30 January 2014
Ground Gilbey Limited	4,6 and 8 Castlehaven Road, London NW1	LN178419	30 January 2014
Ground Gilbey Limited	14,16 and 18 Castlehaven Road, London NW1	LN144977	30 January 2014
Ground Gilbey Limited	1 to 5 Chalk Farm Road, London NW1	LN143728	30 January 2014
Ground Gilbey Limited	Land on the south west side of Haven Street, London	NGL789702	30 January 2014
Ground Gilbey Limited	Land on the south west side of Haven Street, London	NGL789703	30 January 2014
Canal Side Properties Limited	2 Torbay Street, London NW1	343656	30 January 2014
Canal Side Properties Limited	Land and buildings in the rear of 51 and 53 Kentish Town Road	343657	30 January 2014
Ground Gilbey Limited	Waterside House, 47 Kentish Town Road, St Pancras,	NGL709036	30 January 2014

	London NW1 8NX		
Ground Gilbey Limited	Land at Hawley Wharf, London	NGL889432	30 January 2014
Ground Gilbey Limited	1 Water Lane, Kentish Town Road and parking spaces, London NW1 8NZ	NGL721454	30 January 2014
Ground Gilbey Limited	17 Hawley Road, St Pancras, London	NGL323884	30 January 2014
Ground Gilbey Limited	2-3 Water Lane, Kentish Town Road, London NW1	NGL697445 and NGL709037	30 January 2014
Ground Gilbey Limited	James Cameron House, 12 Castlehaven Road, London NW1	NGL882928	30 January 2014
Ground Gilbey Limited	8a Torbay Street, London	NGL342293	30 January 2014
Ground Gilbey Limited	5 Water Lane	NGL896374	30 January 2014
Ground Gilbey Limited	1 Hawley Road, London NW1 8RP	NGL310382	30 January 2014
Ground Gilbey Limited	9-13 (odd) Hawley Road and the sites of 1,3 and 5 Torbay Street, London NW1 8RR	NGL280874	30 January 2014
Ground Gilbey Limited	(New Arches) Leasehold land and airspace at Water Lane, Kentish Town Road and Torbay Street	NGL903746	30 January 2014
Ground Gilbey Limited	3 Hawley Road, London NW1 8RP	NGL385023	30 January 2014
Ground Gilbey Limited	4 Torbay Street, London NW1 8RP	NGL732508	30 January 2014
Ground Gilbey Limited	8 Torbay Street, London NW1 8RP	NGL763915	30 January 2014
Ground Gilbey Limited	5 Hawley Road, London NW1 8RP	NGL428608	30 January 2014
Ground Gilbey Limited	15 Hawley Road, London NW1 8RP	NGL312511	30 January 2014
Ground Gilbey Limited	3, 5 and 7 Hawley Road, London NW1 8RP	NGL384527	30 January 2014
Ground Gilbey Limited	4 Water Lane, London NW1	NGL710460	30 January 2014

Elcross Estates Limited	6 Water Lane and Parking Spaces, NW1 8N2	NGL727488	27 January 2015
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Schedule 2

New Part 1

PART 1
AFFORDABLE HOUSING

RELEVANT DEFINITIONS

"Affordable Housing" means low cost housing comprising Social Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the open market in accordance with the National Planning Policy Framework (March 2012) and successor documents.

"Affordable Housing Units" means the housing units to be constructed within the Development which are Affordable Housing.

"Intermediate Housing" means Affordable Housing at prices and rents (including any service charges and/or management charges) above those of social rent but below market price or rents and which is affordable to households earning no more than £30,000 per annum for one-bedroom homes and no more than £40,000 per annum for two-bedroom homes at the commencement of their occupancy who are in need of intermediate housing in terms set out in paragraph 3.61 of the London Plan (subject to annual reviews) to include shared equity products (i.e. HomeBuy) and other low cost homes for sale and intermediate rent.

"Intermediate Housing Scheme" means the scheme setting out provision of Intermediate Housing within the Development submitted by the Owner and to be approved by the Council in writing ensuring the Intermediate Housing Units are occupied on the following basis unless otherwise agreed by the Council:

- (a) Shared Ownership with an initial equity share offer of at least 25 percent and a rent level of 2 percent (per annum) on the retained equity (unless otherwise agreed in writing by the Council) such levels to be retained in perpetuity subject to incremental increases linked to the retail prices index in accordance with Homes and Communities Agency guidance;
- (b) for all other Intermediate Housing products provision will be on terms to be agreed by the Council in consultation and in consideration of its own policies and those

contained in the London Plan with particular reference to paragraph 3.61 (or its successor policies).

"Intermediate Housing Units" means Affordable Housing Units to be provided as units of Intermediate Housing.

"Market Housing Units" means the housing units to be constructed within the Development which are not Affordable Housing.

"Phase 1 Affordable Housing Units" shall mean 10 Social Rented Units and 4 Intermediate Housing Units.

"Registered Provider" means a registered provider or registered providers of Affordable Housing registered as such by the Regulator.

"Regulator" means the Homes and Communities Agency and any successor organisation.

"Residential Units" means the Market Housing Units and the Affordable Housing Units.

"Social Rented Housing" means Affordable Housing Units for which guideline target rents are determined through the national rent regime such that:

- (a) the total cost of rent and service and management charges meets targets for social rented housing set by the Regulator from time to time;
- (b) is consistent with Camden Supplementary Planning Document "Affordable Housing and Housing in Mixed Use Development" and the requirements of the London Plan in relation to social rented housing; and
- (c) the units are managed by a Registered Provider who has entered into a standard nominations agreement with the Council providing for nominations to the Council in respect of all such units within the Development.

"Social Rented Housing Units" means the Affordable Housing Units to be provided as Social Rented Housing.

"Transfer" means a transfer by way of the grant of a lease for a term of at least 125 years, and **"Transferred"** shall be construed accordingly.

"Wheelchair Accessible Homes" means the two Affordable Housing Units to be delivered as part of the Development that are capable for use by wheelchair users in accordance with the minimum standards set out in the Camden Wheelchair Design Brief 2010.

OPERATIVE PROVISIONS

Delivery of Affordable Housing

1. Unless otherwise agreed by the Council:

(a) the Owner shall provide 12 Social Rented Units and 10 Intermediate Housing Units;

(b) the Social Rented Units will comprise:

	No of Units
1 bedroom	5
2 bedrooms	1
3 bedrooms	5
4 bedrooms	1
Total	12

(c) the Intermediate Housing Units will comprise:

	No of Units
1 bedroom	0
2 bedrooms	10
3 bedrooms	0
4 bedrooms	0
Total	10

2. On or prior to the Implementation Date of Area B (other than the School Site) the Owner shall submit to the Council for approval the Intermediate Housing Scheme.

3. The Owner shall not Implement nor permit Implementation of Area B (other than the School Site) until such time as the Council has approved the Intermediate Housing Scheme as demonstrated by written notice to that effect.
4. The Owner shall commence all works of construction and fitting out necessary to make the Affordable Housing Units as approved by the Council suitable for occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workmanlike manner using good quality materials to the reasonable satisfaction of the Council (as demonstrated by written notification to that effect) in accordance with the specification approved by a Registered Provider.
5. The Owner shall not Occupy or allow Occupation of any part of the Development (other than the School Site) until such time as:
 - (a) the Owner has entered into a binding contract or contracts for the construction and Transfer of the Phase 1 Affordable Housing Units to a Registered Provider; and
 - (b) the works of construction of the Phase 1 Affordable Housing Units have been completed to Shell and Core; and
 - (c) the Phase 1 Affordable Housing Units are fitted out and ready for occupation, each as demonstrated by written notice to that effect from the Council.
6. Following confirmation in writing from the Council that the requirements in **paragraphs 5(a) and (b)** have been met, the restriction on Occupation in **paragraph 5** shall be released in relation to:
 - (a) Area C; and
 - (b) the upper and lower ground floors of the Market Development (and any basements forming the same demise as a unit on the upper or lower ground floors of the Market Development), the Chalk Farm Road Building and the Viaduct Units in Area A,but not in relation to any other part of the Development.

Restrictions applicable after Transfer

7. Following Transfer of the Affordable Housing Units to the Registered Provider and unless otherwise agreed with the Council, the Affordable Housing Units shall not be

otherwise used or Occupied and shall be retained in perpetuity (i) in the case of the Social Rented Housing Units for the provision of Social Rented Housing and (ii) in the case of the Intermediate Housing Units for the provision of Intermediate Housing **PROVIDED THAT** such restrictions shall be released in relation to:

- (a) any Affordable Housing Unit acquired by a tenant exercising a right to acquire pursuant to the Housing Act 1996 (or any statutory successor thereto) or a voluntary grant scheme or similar right; and
- (b) any Intermediate Housing Unit in which a person has staircased his or her interest to 100% of the equity.

8. Unless otherwise agreed by the Council, the Registered Provider shall not dispose of its interest in the Affordable Housing Units or any part thereof other than:

- (a) by way of a mortgage or charge;
- (b) to a tenant of an Affordable Housing Unit exercising a right to acquire pursuant to the Housing Act 1996 (or any statutory successor thereto) or a voluntary grant scheme or similar right; or
- (c) in relation to an Intermediate Housing Unit in which a person has staircased his or her interest to 100% of the equity; or
- (d) to any other Registered Provider registered with the Regulator or any other body organisation or company registered with the Charity Commissioners for England and Wales and approved by the Homes and Communities Agency or the Regulator and the Council.

9. The Owner shall use Reasonable Endeavours to procure that the Registered Provider applies monies received by the Registered Provider in respect of any sale of its interest in the Affordable Housing Units or any part thereof for the provision of Affordable Housing within the London Borough of Camden in the first instance or, in the event the Registered Provider can show to the Council's reasonable written satisfaction that such funds are unable to be applied within the London Borough of Camden, within the North London Region (or successor region).

Wheelchair Accessible Homes

10. The Owner or Registered Provider (as appropriate) shall procure that the fit out works necessary for each Wheelchair Accessible Home are agreed in advance with the

Council's occupational therapist consultant and are carried out to the satisfaction of the Council's occupational therapist consultant.

11. The Wheelchair Accessible Homes shall be retained and maintained as Wheelchair Accessible Homes in accordance with the fit out required pursuant to **paragraph 10**.

Service Charges and Estate Management Charges

12. Occupants of Affordable Housing Units shall be liable to pay service charges and estate management charges (where such charges are applied) **PROVIDED THAT** such charges comply with the rent requirements for Social Rented Housing and Intermediate Housing.
13. The Owner or Registered Provider (as appropriate) shall procure that the service charges and estate management charges for Affordable Housing Units are kept as low as reasonably practicable and do not contravene the rent requirements for Social Rented Housing and Intermediate Housing.
14. Subject to having complied with the requirements of **paragraphs 12 and 13** the actual level of service charge or estate management charge shall be at the discretion of the Owner or Register Provider (as appropriate).

Enforceability of Part 1

15. Save in respect of:
 - (a) any antecedent breach; or
 - (b) any equity interest retained by the Owner in respect of any Intermediate Housing Units,with effect from the date of Transfer of any Affordable Housing Units in accordance with this **Part 1**, the Owner will not be liable for the performance of the obligations in this **Part 1** in relation to those Affordable Housing Units unless and until the Owner re-acquires an interest in the relevant Affordable Housing Units.
16. Upon the Transfer of any Affordable Housing Units and subject to **paragraph 15**, the obligations imposed on the Owner in this **Part 1** in relation to those Affordable Housing Units shall be observed and performed by the Registered Provider and where any obligation is expressed as an obligation on the Owner to procure any act on the part of

the Registered Provider, such obligation shall be construed as an obligation of the Registered Provider to itself perform the obligation in question and the Owner shall be released from such obligation to procure.

17. Subject to the provisions of paragraph (a) – (c) below the provisions in this **Part 1** shall not be binding upon a mortgagee or chargee (the "**AH Chargee**") of the Registered Provider of the Affordable Housing Units nor any receiver appointed by such AH Chargee or on any person deriving title from such AH Chargee in possession PROVIDED that the following conditions have been satisfied:

- (a) in the event of the Registered Provider entering into liquidation or having a receiver or administrative receiver appointed or such steps are taken or legal proceedings are initiated for its winding up or defaults on any other terms of the mortgage or charge so that the AH Chargee exercises its power of sale then any AH Chargee or any such receiver or administrative receiver shall give notice to the Council of its intention to dispose (the "**Default Notice**");
- (b) in the event of receipt of a Default Notice the Council shall be at liberty for a period of six calendar months from receipt of the Default Notice (the "**Specified Period**") to seek to identify another Registered Provider to agree to take a transfer of the Affordable Housing Units; and
- (c) if the Council having failed to locate another Registered Provider ready able and willing to take a transfer of the Affordable Housing Units within the Specified Period then should the AH Chargee or any such receiver or administrative receiver take possession of the Affordable Housing Units as appropriate or otherwise enforce its security in relation to the same at any time thereafter then the Specified Period shall be deemed to have elapsed and the obligations of any AH Chargee and the terms of this Agreement shall be determined in relation to the Affordable Housing Units and shall cease to bind the Affordable Housing Units ALWAYS PROVIDED that any person claiming title from a AH Chargee, receiver or administrative receiver who has obtained title to the Affordable Housing Units after the procedure set out in this paragraph has been followed shall not be bound by the restrictions contained in this **Part 1** as will any person deriving title therefrom.

18. Service of the Default Notice on the Council must be sent to each and all of the following recipients (or their successor position or title) quoting the address of the

property and planning reference 2012/4628/P for the Default Notice to be properly served:

- (a) The Chief Executive;
- (b) The Director of Culture and Environment;
- (c) The Assistant Director Regeneration and Planning;
- (d) The Planning Obligations Monitoring Officer; and
- (e) The Head of Legal Services.

THE COMMON SEAL of THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN was hereunto
affixed in the presence of:



L. Alexander

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Authorized signatory

EXECUTED as a Deed by **GROUND
GILBEY LIMITED** (a company
incorporated in the British Virgin Islands)

by *Darren Toudic*
and *John Germain*
being persons who in accordance with
the laws of the territory are acting under
the authority of the company

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D. Toudic

EXECUTED as a Deed by **CANAL
SIDE PROPERTIES LIMITED** (a company
incorporated in the British Virgin Islands)

by *Darren Toudic*
and *John Germain*
being persons who in accordance with
the laws of the territory are acting under
the authority of the company

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D. Toudic

Signed as a Deed by *Andrew Macken*
acting for and on behalf of **NOMURA
INTERNATIONAL PLC** under a Power
of Attorney dated *24 July 2015*

Attorney's Name:

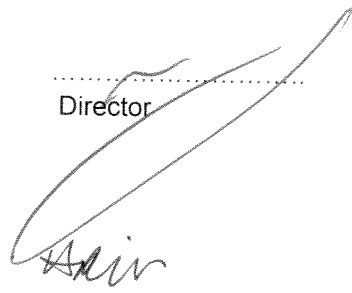
In the presence of *Thomas Cockill*
Witness' name:
Witness' address: *1, Argey*
Lane, London
Witness' occupation: *Self-employed*

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Executed as Deed by **ELCROSS ESTATES LIMITED** acting by ALON SHAMIR
a director, in the presence of

Witness' name: ARIN O'AVIRIAN
Witness' address: 5 STANFORD SQ
SW15 2BP
Witness' occupation: PROJECT MANAGER

.....
Director





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