

DATED 18 February 2016

(1) 18 LYNDHURST ROAD LIMITED

and

(2) JACOB ROWAN NELL and MARINA NIKOLAEVNA NELL

and

(3) CLYDESDALE BANK PLC

and

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

A G R E E M E N T
relating to land known as
FLAT 1 18 LYNDHURST ROAD LONDON NW3 5NL
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)

Andrew Maughan
Borough Solicitor
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 5680
Fax: 020 7974 1920

1781. 373

THIS AGREEMENT is made the 18 day of February 2016

BETWEEN:

1. **18 LYNDHURST ROAD LIMITED** (Co. Regn. No.1699375) whose registered address is at 18 Lyndhurst Road, Hampstead, London NW3 5NL (hereinafter called "the Freeholder") of the first part
2. **JACOB ROWAN NELL and MARINA NIKOLAEVNA NELL** of Flat 1, 18 Lyndhurst Road, London NW3 5NL (hereinafter both called "the Leaseholder") of second part
3. **CLYDESDALE BANK PLC** of Mortgage Services P.O Box 3105 Clydebank Glasgow G60 9AU (hereinafter called "the Mortgagee") of third part
4. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fourth part

WHEREAS

- 1.1 The Freeholder is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL586150 and is interested in the Property for the purposes of Section 106 of the Act.
- 1.2 The Leaseholder is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL864482 subject to a charge of the Mortgagee and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 The Freeholder and the Leaseholder shall herein after be referred to as "the Owner"
- 1.4 A Planning Application for the Development of the Property was submitted to the Council and validated on 05 June 2015 and the Council resolved to grant permission conditionally under reference number 2015/3219/P subject to conclusion of this legal Agreement.

1.5 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.

1.6 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.

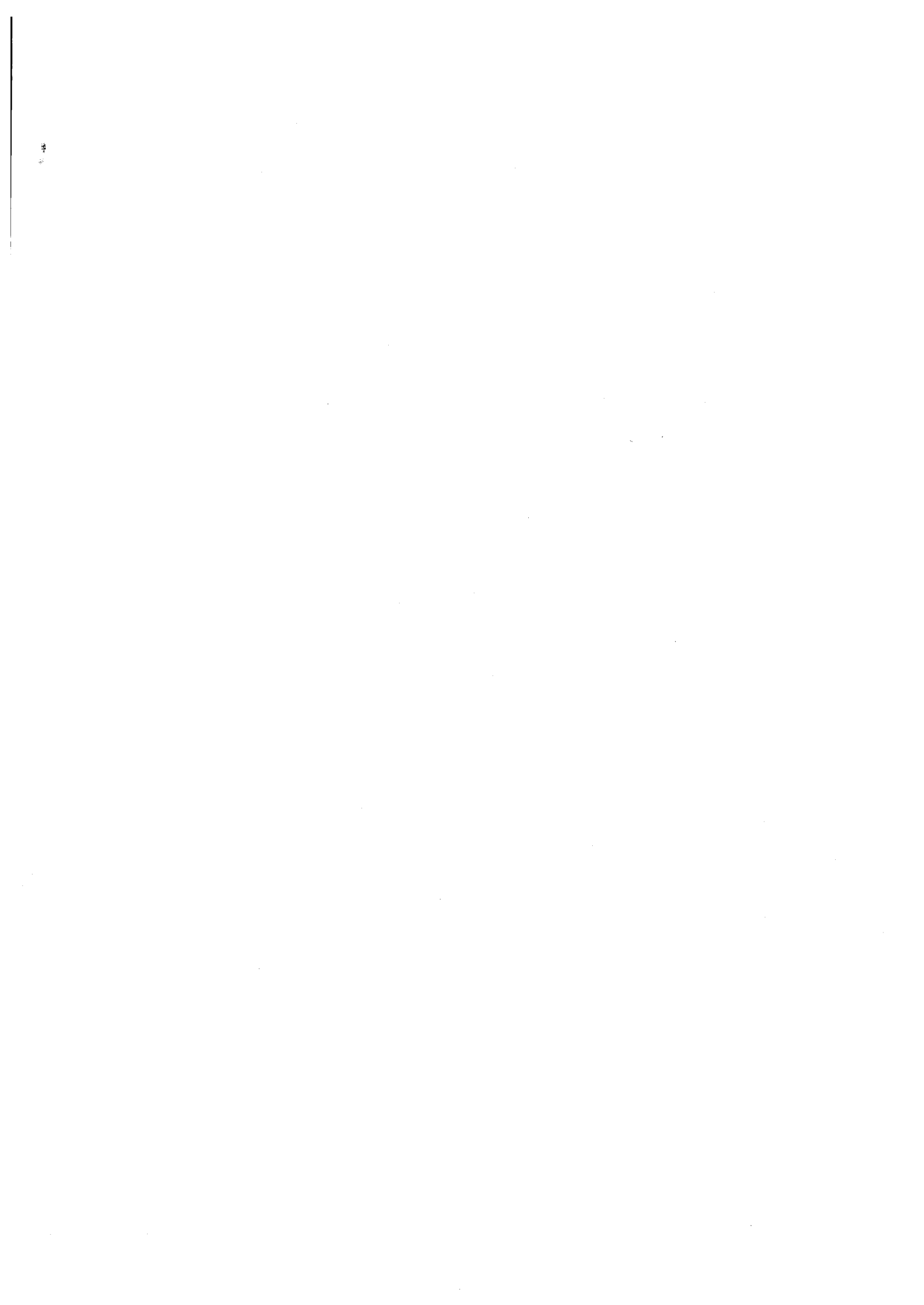
1.7 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.8 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL864482 and dated 16 January 2015 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" proposed lower ground floor and ground floor extension and garden building as shown on drawing numbers P.001, P.002, P.003, P.004, P.005, P.006, P.007-B, P.009-D, P.010-C, P011-C, P.012-D, P014, Basement Impact Assessment Screening and Scoping report, prepared by Conisbee dated 19 May 2015, Arboricultural and Planning Impact Assessment Report, prepared by Ashmore Arboricultural Services Limited, dated 14th September 2015.



2.4 "the Highways Contribution"

the sum of £7000.00 (seven thousand pounds only) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in event of receipt for the carrying out works to the public highway and associated measures in the vicinity of the Property such works to include the following ("the Highways Works"):-

- (a) repaving and repairs to Lyndhurst Road
- (b) reduction of the Cross over on Lyndhurst Gardens
- (c) any other works the Council acting reasonably requires as a direct result of the Development

all works will be subject to final measure and any level adjustment required and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

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 05 June 2015 for which a resolution to grant permission has been passed conditionally under reference number 2015/3219/P subject to conclusion of this Agreement
- 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 Permission" a planning permission granted for the Development substantially in the draft form annexed hereto
- 2.10 "the Property" the land known as Flat 1 18 Lyndhurst Road London NW3 5NL the same as shown shaded grey on the plan annexed hereto
- 2.11 "the Public Highway" any carriageway footway and/or verge adjoining the Property maintainable at public expense
- 2.12 "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

2.13 "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 of 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**

The Owner hereby covenants with the Council as follows:-

4.1. **CAR FREE**

4.1.1. 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.

4.1.2. 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.

4.1.3. 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.

4.2. **HIGHWAYS**

4.2.1. On or prior to the Implementation Date to:-

- (i) pay to the Council the Highways Contribution in full; and
- (ii) submit to the Council the Level Plans for approval.

4.2.2. Not to Implement or to allow Implementation until such time as the Council has:-

- (i) received the Highways Contribution in full; and
- (ii) approved the Level Plans as demonstrated by written notice to that effect.

4.2.3. For the avoidance of doubt the Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate and does not undertake any responsibility in connection with any required statutory undertakers works and that the Highways Contribution excludes any statutory undertakers costs.

4.2.4. On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.

4.2.5. If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

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 2015/3219/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.

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 2015/3219/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 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.

7. **MORTGAGEE EXEMPTION**

7.1 The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.

8. **JOINT AND SEVERAL LIABILITY**

8.1 All Covenants made by the Owner in this Agreement are made jointly and severally and shall be enforceable as such.

9. **RIGHTS OF THIRD PARTIES**

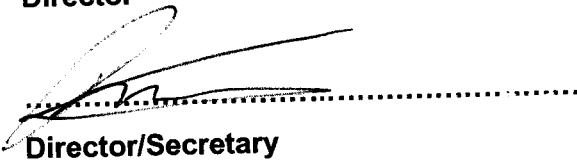
9.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

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

EXECUTED AS A DEED BY)
18 LYNDHURST ROAD LIMITED)
in the presence of:)
acting by a Director and its Secretary)
or by two Directors)

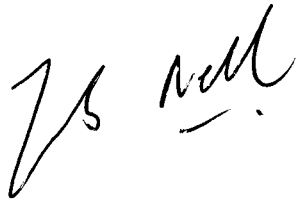


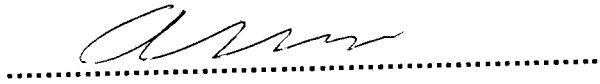
Director



Director/Secretary

EXECUTED AS A DEED BY)
JACOB ROWAN NELL)
in the presence of:)





Witness Signature

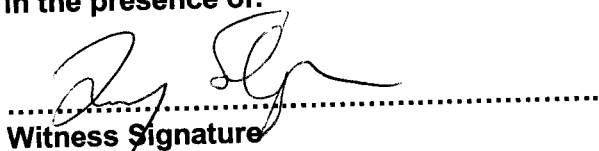
Witness Name ANTON HEESE

Address HEATHURST, LONDON, NW3 1AN

Occupation BANKER

EXECUTED AS A DEED BY)
MARINA NIKOLAEVNA NELL)
in the presence of:)





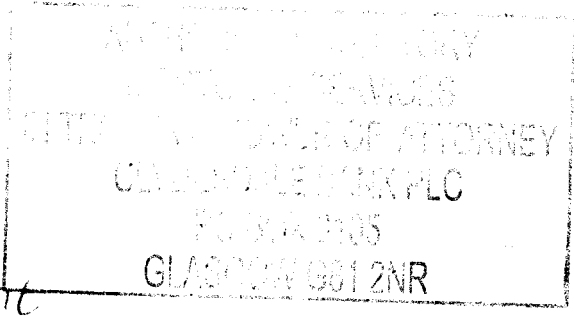
Witness Name LUCY SOLYMAR

Address 60 Daleham Gardens, London, NW3 5DA

Occupation Psychotherapist

CONTINUATION SECTION 106 AGREEMENT IN RELATION TO FLAT 1 18 LYNDBURST ROAD
LONDON NW3 5NL

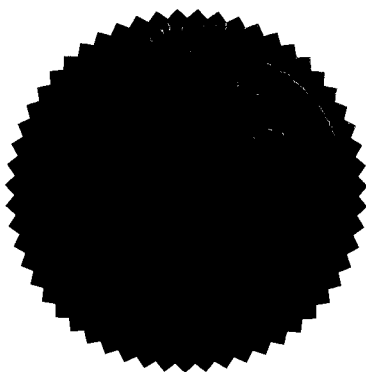
EXECUTED as a Deed
By CLYDESDALE BANK PLC
By
in the presence of:-



Andy Clarke ANDY CLARKE
Solicitor
.....
Kerr Grant Kerr Grant
Service Officer

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

R. Alexander
.....
Authorised Signatory



18 Lyndhurst Road London NW3 5NL



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planning@camden.gov.uk
www.camden.gov.uk/planning

Application Ref: **2015/3219/P**

26 January 2016

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:

**Flat 1
18 Lyndhurst Road
London
NW3 5NL**

Proposal:

DECISION
Erection of lower ground floor and ground floor extension and garden building.
Drawing Nos: P.001, P.002, P.003, P.004, P.005, P.006, P.007-B, P.009-D, P.010-C,
P.011-C, P.012-D, P.014, Basement Impact Assessment Screening and Scoping report,
prepared by Conisbee dated 19 May 2015, Arboricultural and Planning Impact Assessment
Report, prepared by Ashmore Arboricultural Services Limited, dated 14th September 2015.

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 policies DP24 and DP25 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

P.001, P.002, P.003, P.004, P.005, P.006, P.007-B, P.009-D, P.010-C, P011-C, P.012-D, P014, Basement Impact Assessment Screening and Scoping report, prepared by Conisbee dated 19 May 2015, Arboricultural and Planning Impact Assessment Report, prepared by Ashmore Arboricultural Services Limited, dated 14th September 2015.

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

- 4 Notwithstanding the provisions of Class E of the Schedule of the Town and Country Planning (Use Classes) Order, 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the garden annexe shall not be used as an independent residential unit.

Reason: To ensure that the future occupation of the building does not adversely affect the adjoining premises/immediate area by reason of traffic congestion and excessive on-street parking pressure in accordance with policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 5 No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies CS14 and CS15 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.

- 6 Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policy CS15 of the London Borough of Camden Local Development Framework Core Strategy.

- 7 A 1.8 metre high screen, details of which shall have been submitted to and approved in writing by the local planning authority, shall be erected on the northern elevation adjacent to the terrace prior to commencement of use of the terrace and shall be permanently retained.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 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).
- 2 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.

- 3 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.
- 4 You are advised in regard to condition 7, the use of a glazed privacy screen is not acceptable. Details to be provided shall include the provision of a screen of different materials.

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

DRAFT

Culture and Environment Directorate

DECISION

DATED

18 February

2016

(2) 18 LYNDHURST ROAD LIMITED

and

(2) JACOB ROWAN NELL and MARINA NIKOLAEVNA NELL

and

(3) CLYDESDALE BANK PLC

and

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

A G R E E M E N T
relating to land known as
FLAT 1 18 LYNDHURST ROAD LONDON NW3 5NL
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)

Andrew Maughan
Borough Solicitor
London Borough of Camden
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