

DATED

27 May

2016

(1) CHEADLE PROPERTIES (CHARLOTTE HOLDINGS) LIMITED

-and-

(2) KAHUNA LIMITED

-and-

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

SECOND DEED OF VARIATION

Relating to the Original Agreement dated 5 September 2013 between (1) KCB Geotechnics SDN BHD and (2) the Mayor and Burgesses of the London Borough of Camden (as varied by the First Deed of Variation dated 13 October 2015 between (1) Kahuna Limited (2) Arvon Limited and (3) the Mayor and Burgesses of the London Borough of Camden)
under section 106A of the Town and Country Planning Act 1990 (as amended)
Relating to development at premises known as
74 CHARLOTTE STREET LONDON W1T 4QH

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

Tel: 020 7974 5680
Fax: 020 7974 1920

1781.327

THIS AGREEMENT is made on the 27 day of May 2016

BETWEEN

1. **CHEADLE PROPERTIES (CHARLOTTE HOLDINGS) LIMITED**
(incorporated in British Virgin Islands) of Nemours Chambers, Road Town, Tortola, British Virgin Islands and whose address in the United Kingdom is at WSH International Investments Limited, TVP 2, 300 Thames Valley Park Drive, Reading, Berkshire RG6 1PT and marked for the attention of Marc Bradley (hereinafter called "the Owner") of the first part
2. **KAHUNA LIMITED** (incorporated in the Isle of Man under company number 011384V) whose registered office is at 18 Athol Street Douglas Isle of Man IM1 1JA and whose address for service in England and Wales is The Factory, Tennis Court, 9 Winchester Square, London, SE1 9BP (hereinafter called "the Developer") 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

WHEREAS:

- 1.1 The Council and KCB Geotechnics SDN BHD entered into the Original Agreement.
- 1.2 The Council and Kahuna Limited entered into the First Deed of Variation.
- 1.3 The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute under title number 128797.
- 1.4 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106(9) of the Act.
- 1.5 The Owner and the Developer entered into a development agreement dated 6 November 2015 for the development of the Property.

- 1.6 The Council is the local planning authority for the purposes of the Act and considers it expedient in the interests of the proper planning of its area that the Development should be restricted or regulated in accordance with this Agreement.
- 1.7 The Original Planning Permission was amended by planning permission 2015/4499/P issued to permit the Minor Material Amendments.
- 1.8 A further planning application pursuant to section 73 of the Act in respect of the Property was submitted to the Council by the Developer and validated on 20 November 2015 for which the Council resolved to grant permission conditionally under reference 2015/6507/P subject to the conclusion of this Agreement.
- 1.9 This Agreement is made by virtue of the Town and Country Planning Act 1990 Section 106 (as amended) and is a planning obligation for the purposes of that section enforceable by the Council.
- 1.10 Without prejudice to the terms of the other covenants contained in the Original Agreement as varied by the First Deed of Variation the parties hereto have agreed to vary the terms of the Original Agreement as varied by the First Deed of Variation as hereinafter provided.

2. INTERPRETATION

- 2.1 All words and phrases defined in the Original Agreement as varied by the First Deed of Variation shall have the same meaning in this Agreement save where the context otherwise dictates and for the avoidance of any doubt the Original Agreement as varied by the First Deed of Variation shall remain in full force and effect save as varied by this Agreement.
- 2.2 All references in this Agreement to clauses in the Original Agreement as varied by the First Deed of Variation are to clauses within the Original Agreement as varied by the First Deed of Variation.
- 2.3 In this Agreement the following expressions shall unless the context otherwise states have the following meanings now allocated to them.

2.3.1 "Agreement"

this second deed of variation

2.3.2 "the First Deed of Variation" the deed of variation made under the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 13 October 2015 made between the Council, Kahuna Limited and Arvon Limited for the variation of planning permission under reference number 2012/2133/P (as granted on appeal, reference APP/X5210/A/13/2193888) and as amended by s96A permissions 2015/0975/P, 2015/3528/P and 2015/3756/P to variation of condition 2 (development in accordance with approved plans) for demolition of building behind retained four storey front façade and redevelopment for a 5 storey building that includes a new mansard roof level with rear terrace, a rear terrace at second floor level, plus excavation to form a basement level with front lightwell, to accommodate restaurant (Class A3) at basement and ground floors and 4 x residential flats on upper floors to be communally accessed from Charlotte Mews namely to remove part of the retained front façade and rebuilt it as shown on drawing numbers Drawing Nos: Superseded: (PL)016-C, (PL)020-B and (PL)021-B Revised: 57802 / 402-08 Rev B, 57802/100-10, 57802/100-20 and 57802/100-21

2.3.4 "Original Agreement"

the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 5 September 2013 made between the Council and KCB Geotechnics SDN BHD

2.3.5 "the Original Planning Permission"

means the planning permission granted on appeal on 03 September 2013 under reference 2012/2133/P allowing the planning permission under reference number 2012/2133/P (as granted on appeal, reference APP/X5210/A/13/2193888) for demolition of building behind retained four storey front façade and redevelopment for a 5 storey building that includes a new mansard roof level with rear terrace, a rear terrace at second floor level, plus excavation to form a basement level with front lightwell, to accommodate restaurant (Class A3) at basement and ground floors and 4 x residential flats on upper floors to be communally accessed from Charlotte Mews as shown on drawing numbers Site location plan; (PL)002; (PL)003-A; (PL)004-A; (PL)005-A; (PL)006-A; (PL)007; (PL)008; (PL)009-A; (PL)010-A; (PL)011-A; (PL)12-A; (PL)13-B; (PL)014-B; (PL)15-B; (PL)016-C; (PL)017-B; (PL)018-B; (PL)019-B; (PL)20-B; (PL)021-B; (PL)022; (PL)023-A; Daylight/Sunlight report by GVA dated 17 February 2012; Lifetime Homes Statement by Darling

Associates; Heritage Statement by Montagu Evans dated March 2012; Environmental Noise Study by GPC dated February 2012; Structural Engineer's Report by Michael Barclay Partnership dated 16 February 2012; Statement of Community Involvement by Grayling; Planning Statement by CBRE dated February 2012; Energy Statement Report by GPC dated 16/02/12; Design and Access Statement by Darling Associates dated February 2012 Rev. 2; and Construction Management Plan by Roxylight London Ltd dated 10 February 2012 and as amended by s96A permissions 2015/0975/P, 2015/3528/P and 2015/3756/P

- 2.4 Where in this Agreement reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital of this Agreement.
- 2.5 Headings are for ease of reference only and are not intended to be construed as part of this Agreement and shall not be construed as part of this Agreement and shall not affect the construction of this Agreement.
- 2.6 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 2.7 References in this Agreement to the Owner shall include their successors in title provided that the Owner shall not be bound by the obligations contained in this Agreement after it has parted with its whole interest in the Property or the part in respect of which any breach occurs but without prejudice to liability for any breach committed prior to the time it disposed of its interest in the Property.

3. VARIATION TO THE ORIGINAL AGREEMENT AS VARIED BY THE FIRST DEED OF VARIATION

- 3.1 The following definitions contained in the Original Agreement as varied by the First Deed of Variation shall be varied as follows:

3.1.1 "Development" variation of condition 2 (development in accordance with approved plans) and removal of condition 13 (installation of PV panels) granted on appeal under reference 2012/2133/P dated 20/09/13 and amended by 2015/4499/P dated 13/10/15, for demolition of building behind retained four storey front façade and redevelopment for a 5 storey building that includes a new mansard roof level with rear terrace, a rear terrace at second floor level, plus excavation to form a basement level with front lightwell, to accommodate restaurant at basement and ground floors and 4 residential flats on upper floors, namely to allow installation of a winter garden and 4 projecting balconies on rear elevation. (RECONSULTATION DUE TO REMOVAL OF CONDITION 13) as shown on drawing numbers: Superseded Plan Nos. 57802/100-03A Rev D; 57802/100-04A Rev B; 57802/100-05A Rev A; (PL)014-B; (PL)015-B; (PL)016-C; 57802/100-11A Rev D; (PL)018-B; (PL)019-B; (PL)020-B; 57802/100-21 Rev B; (PL)022; (PL)023-A Revised Plan Nos.

57802/100-03A Rev E; 57802/100-04A Rev C; 57802/100-05A Rev B; 57802/100-06 Rev B; 57802/100-07 Rev B; 57802/100-10; 57802/100-11A Rev E; 57802/100-20; 57802/100-21 Rev C; 57802/402-08 Rev B

- 3.1.2 "Planning Application" the application for Planning Permission in respect of the Property submitted on 13 November 2015 by the Developer and given reference number 2015/6507/P
- 3.1.3 "Planning Permission" the planning permission under reference number 2015/6507/P to be issued by the Council in the form of the draft annexed hereto
- 3.2 After the words "2012/2133/P" in clause 5.2 of the Original Agreement the words "or "2015/6507/P" (as the case may be)" shall be inserted.
- 3.3 After the words "2012/2133/P" in clause 5.6 of the Original Agreement the words "or "2015/6507/P" (as the case may be)" shall be inserted.
- 3.5 All references to the Owner in clauses 4, 5, and 6.4 of the Original Agreement as varied by the First Deed of Variation not already discharged as at the date of this Agreement shall be deemed to refer to the Developer.
- 3.6 The draft planning permission reference 2015/6507/P annexed to this Agreement shall be treated as annexed to the Original Agreement as varied by the First Deed of Variation in addition to the existing annexures.
- 3.7 In all other respects the Original Agreement as varied by the First Deed of Variation in addition to the existing annexures shall continue in full force and effect.

4. INDEMNITY

- 4.1 The Developer shall indemnify the Owner against all liabilities, actions, costs, claims, demands, or expenses for which the Owner may become liable arising out of any failure by the Developer to perform any of its obligations under this Agreement or the Original Agreement as varied by the First Deed of Variation.

5. COUNCIL'S ACKNOWLEDGEMENT OF DISCHARGE OF COVENANTS]

- 5.1 The Council hereby acknowledges that the covenants set out in clauses 4.1, 4.2, 4.5(i), 4.5(ii), 4.6(ii), 4.10, 4.15 and 6.3 of the Original Agreement as varied by the First Deed of Variation have been discharged and the Developer and the Owner shall have no further liability in respect of these obligations.

6. PAYMENT OF THE COUNCIL'S LEGAL COSTS

- 6.1 The Developer agrees to pay the Council (on or prior to completion of this Agreement) its reasonable legal costs incurred in preparing this Agreement

7. REGISTRATION AS LOCAL LAND CHARGE

- 7.1 This Agreement shall be registered as a Local Land Charge by the Council.

8. COMMENCEMENT

- 8.1 The provisions in this Agreement shall take effect on the Council's approval of the Planning Permission (reference number 2015/6507/P) and upon implementation of the Planning Permission (reference number 2015/6507/P) but for the avoidance of doubt without prejudice to the effect of clause 3.5 in the Original Agreement.

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

EXECUTED as a Deed on behalf of

CHEADLE PROPERTIES (CHARLOTTE HOLDINGS)
LIMITED)

a company incorporated in)
the BRITISH VIRGIN ISLANDS by)

ALASTAIR STOREY)
)

.....
Authorised Signatory

being a person who in accordance)
with the laws of that territory is)
acting under the authority of)
the company

EXECUTED as a Deed on behalf of
KAHUNA LIMITED)

a company incorporated in)
the ISLE OF MAN by)

)
)

FOR TALBOT DIRECTORS LIMITED

.....
Authorised Signatory

MICHAEL RIDDELL
DIRECTOR

being a person who in accordance)
with the laws of that territory is)
acting under the authority of)
the company

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

.....
Authorised Signatory



74 Charlotte Street London W1T 4QH



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.

Mr. Henry Courtier
Pegasus Group
23 Hanover Square
London
W1S 1JB

Application Ref: **2015/6507/P**
Please ask for: **Kristina Smith**
Telephone: 020 7974 4986

17 March 2016

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Variation or Removal of Condition(s) Granted

Address:
74 Charlotte Street
London
W1T 4QH

DECISION

Proposal:

Variation of condition 2 (development in accordance with approved plans) and removal of condition 13 (installation of PV panels) granted on appeal under reference 2012/2133/P dated 20/09/13 and amended by 2015/4499/P dated 13/10/15, for demolition of building behind retained four storey front façade and redevelopment for a 5 storey building that includes a new mansard roof level with rear terrace, a rear terrace at second floor level, plus excavation to form a basement level with front lightwell, to accommodate restaurant at basement and ground floors and 4 residential flats on upper floors, namely to allow installation of a winter garden and 4 projecting balconies on rear elevation.
(RECONSULTATION DUE TO REMOVAL OF CONDITION 13)

Drawing Nos:

Superseded Plan Nos. 57802/100-03A Rev D; 57802/100-04A Rev B; 57802/100-05A Rev A; (PL)014-B; (PL)015-B; (PL)016-C; 57802/100-11A Rev D; (PL)018-B; (PL)019-B; (PL)020-B; 57802/100-21 Rev B; (PL)022; (PL)023-A

Revised Plan Nos. 57802/100-03A Rev E; 57802/100-04A Rev C; 57802/100-05A Rev B; 57802/100-06 Rev B; 57802/100-07 Rev B; 57802/100-10; 57802/100-11A Rev E; 57802/100-20; 57802/100-21 Rev C; 57802/402-08 Rev B

Director of Culture & Environment



The Council has considered your application and decided to grant permission subject to the following condition(s):

Condition(s) and Reason(s):

- 1 Condition 2 of the planning permission granted on 20th September 2013 under reference number 2012/2133/P shall be replaced by the following condition:

The development hereby permitted shall be carried out in accordance with the following approved plans: (PL)001; (PL)002; (PL)003-A; (PL)004-A; (PL)005-A; (PL)006-A; (PL)007; (PL)008; (PL)009-A; (PL)010-A; 57802/100-03A REV E; 57802/100-04A REV C; 57802/100-05A REV B; 57802/100-06 REV B; 57802/100-07 REV B; 57802/100-10; 57802-11A REV E; (PL)018-B; (PL)019-B; 57802/100-20; 57802/100-21 REV C; (PL)022; (PL)023-A; 14069(PL)19; 14068(PL)06; 14068(PL)16; 57802/402-08 REV B

Informative(s):

- 1 Reasons for granting permission.

The proposed balconies to the rear elevation at second, third and fourth floor levels are considered subordinate in scale and location to the host building and are of appropriate design by virtue of the proposed materials which would match the already approved materials of planning permission ref. 2012/2133/P.

The winter garden and replacement of window with door to Apartment 1 is considered acceptable as it is contained within the building and would not be visible from neighbouring properties or the public realm.

Due to the location of the proposed balconies they are not considered to significantly harm the amenity of adjoining properties, both of which are in commercial use.

Evidence has been provided to demonstrate that CFSH Level 3 can be met without PV panels and Condition 13 can therefore be removed from planning permission ref. 2012/2133/P.

The proposal is considered to preserve the character of the conservation area. Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area, under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Enterprise and Regulatory Reform Act 2013.

One objection was received prior to making this decision which has been duly taken into account prior to making this decision. The planning history of the site has been taken into account when reaching this decision.

As such, the proposed development is in general accordance with policies CS5

and CS14 of the London Borough of Camden Local Development Framework Core Strategy, and policies DP24, DP25 and DP26 of the London Borough of Camden Local Development Framework Development Policies. The proposed development also accords with policies 7.4 and 7.6 and 7.8 of the London Plan 2015 and paragraphs 14, 17 56-66 and 126-141 of the National Planning Policy Framework.

- 2 This approval under Section 73 of the 1990 Act effectively varying the relevant condition of the previous planning permission is subject otherwise to the same terms, drawings, conditions (and obligations where applicable) as attached to the previous planning permission. This includes condition 1 providing for a 3 year time period for implementation which for the avoidance of doubt commences with the date of the original decision (and not this variation).

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.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Culture & Environment

DECISION

DATED

27 May

2016

(1) CHEADLE PROPERTIES (CHARLOTTE HOLDINGS) LIMITED

-and-

(2) KAHUNA LIMITED

-and-

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

SECOND DEED OF VARIATION

Relating to the Original Agreement dated 5 September 2013 between (1) KCB Geotechnics SDN BHD and (2) the Mayor and Burgesses of the London Borough of Camden (as varied by the First Deed of Variation dated 13 October 2015 between (1) Kahuna Limited (2) Arvon Limited and (3) the Mayor and Burgesses of the London Borough of Camden)
under section 106A of the Town and Country Planning Act 1990 (as amended)
Relating to development at premises known as
74 CHARLOTTE STREET LONDON W1T 4QH

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

Tel: 020 7974 5680
Fax: 020 7974 1920

1781.327