

DATED

14 JUNE

2016

(1) EMPYREAN FORTRESS LIMITED

-and-

(2) ALDERMORE BANK PLC

-and-

(3) SUNMIST LIMITED

-and-

(4) ROSEFROST LIMITED

-and-

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

A G R E E M E N T
relating to land known as
Ground Floor, 19 Fortress Road, London NW5 1AD
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

14th

day of

JUNE

2016

B E T W E E N:

- i. **EMPYREAN FORTESS LIMITED** (Co. Regn. No.7752635) whose registered office is at 32 Junction Road First Floor, Roydon Mansions London N18 5RE (hereinafter called "the Owner") of the first part
- ii. **ALDERMORE BANK PLC** (Co. Regn No. 947662) of 1st Floor Block B, Western House, Peterborough Business Park, Lynch Wood, Petersborough PE2 6FZ (hereinafter called "the First Mortgagee") of the second part
- iii. **SUNMIST LIMITED** (Co. Regn No. 8913876) care of CVS Solicitors LLP, 17 Albemarle Street, London W1S 4HP (hereafter called "the Second Mortgagee") of the third part
- iv. **ROSEFROST LIMITED** (Co. Regn No. 8913892) care of CVS Solicitors LLP, 17 Albemarle Street, London W1S 4HP (hereafter called "the Third Mortgagee") of the fourth part
- v. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fifth part

WHEREAS

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute under title number 324866 subject to a charge to the First Mortgagee, Second Mortgagee and Third Mortgagee.
- 1.1 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.2 The Application for Prior Approval in relation to the Development of the Property pursuant to the Town and Country Planning (General Permitted Development) Order 2015 (as amended) was submitted to the Council and validated on 19 April 2016 and

the Council resolved to grant approval under reference number 2016/1894/P subject to conclusion of this legal Agreement.

- 1.3 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.
- 1.4 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.5 The First Mortgagee as mortgagee under a legal charge registered under Title Number 324866 and dated 5 June 2015 is willing to enter into this Agreement to give its consent to the same.
- 1.6 The Second Mortgagee as mortgagee under a legal charge registered under Title Number 324866 and dated 30 December 2014 is willing to enter into this Agreement to give its consent to the same.
- 1.7 The Third Mortgagee as mortgagee under a legal charge registered under Title Number 324866 and dated 30 December 2014 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 Prior Approval Application" application for prior approval in relation to the Development of the Property submitted to the Council and validated on 19 February 2016 for which a resolution to grant approval has been passed under reference number 2016/1894/P subject to conclusion of this Agreement
- 2.4 "the Development" Change of use from retail (Class A1) to 2x residential units (Class C3) pursuant to Class M of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) pursuant to the Prior Approval as shown on drawing numbers:- 1012/100; -21; -22; -23; -24; Contaminated Land Assessment parts 1 & 2; Flood Risk Assessment; Impact Assessment; & Transport Statement.
- 2.4 "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
- 2.5 "Occupation Date" the first date when any part of the Development is occupied (save for the purposes of this Agreement occupation for the purposes of carrying out works, marketing or security) pursuant to the Prior Approval for residential purposes within Class C3 and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.6 "the Parties" the Council and the Owner, the First Mortgagee, the Second Mortgagee and the Third Mortgagee

- 2.8 "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
- 2.9 "the Prior Approval " a prior approval granted for the Development substantially in the draft form annexed hereto
- 2.10 "the Property" the land known as Ground Floor, 19 Fortess Road, London NW5 1AD the same as shown edged red on the plan annexed hereto
- 2.11 "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
- 2.12 "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

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 or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 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 Prior Approval 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 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.

- 4.2 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.
- 4.3 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.

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 Development 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 planning reference 2016/1894/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 reference number 2016/1894/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 First Mortgagee, the Second Mortgagee or Third 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.

7. **MORTGAGEE EXEMPTION**

7.1 The First Mortgagee the Second Mortgagee and the Third Mortgagee each hereby consents to the completion of this Agreement and agrees to the Development being 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 the First Mortgagee the Second Mortgagee and the Third Mortgagee each 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**

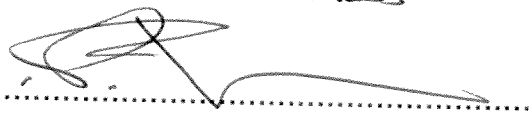
8.1 All Covenants made by the Owner(s) and the First Mortgagee, the Second Mortgagee and the Third Mortgagee in this Agreement are made jointly and severally and shall be enforceable as such.


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, the First Mortgagee, the Second Mortgagee and the Third Mortgagee have executed this instrument as their Deed the day and year first before written


EXECUTED AS A DEED BY
EMPYREAN FORTESS LIMITED
acting by a Director and ~~its Secretary~~
~~or by two Directors~~ WITNESS


.....
Director

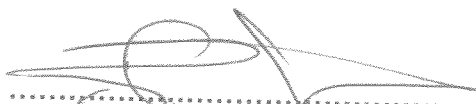
 ANTHONY KNAUER, 1 VAUGHAN AVENUE
.....
Director/Secretary WITNESS HORNCHURCH, ESSEX, RM12 6SL

EXECUTED AS A DEED by the
Attorney Authorised on behalf of
ALDERMORE BANK PLC

.....
Duly Authorised Signatory


STEVE PRYDDERCH

EXECUTED AS A DEED BY
SUNMIST LIMITED
By
in the presence of:-


.....

WITNESS: NICHOLAS CHAMALAMPELIS
15 VOLSELEY ROAD, LONDON N8 8RR

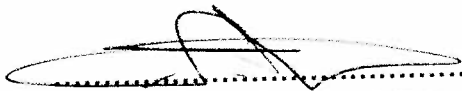

DIRECTOR

CONTINUATION OF SECTION 106 AGREEMENT FOR
GROUND FLOOR, 19 FORTRESS ROAD, LONDON NW5 1AD

EXECUTED AS A DEED BY
ROSEFROST LIMITED
By
in the presence of:-

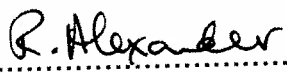
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DIRECTOR


WITNESS NICHOLAS CHARALAMBOS
15 WOLSELEY ROAD, LONDON N8 8YR

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

)
)
)
)


.....
Authorised Signatory



R. Alexander (as ALEXANDER)

NORTHGATE SE GIS Print Template

19 Fortess Road. London NW5 1AD



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CG Architects
221 East Barnet Road
Barnet
Herts
EN4 8QS

Application Ref: **2016/1894/P**
Please ask for: **Carlos Martin**
Telephone: 020 7974 **2717**

8 June 2016

Dear Sir/Madam

DRAFT DECISION

In accordance with section 60 (2B) and (2C) of the Town and Country Planning Act 1990
(as amended by section 4(1) of the Growth and Infrastructure Act 2013)

Process set out by condition M.2 of Part 3 of Schedule 2 Class M of the Town and Country
Planning (General Permitted Development) Order 1995 (as amended by SI 2008 No. 2362
and SI 2013 No. 1101 and SI 2014 No. 564)

Certificate of Lawfulness (Proposed) Prior Approval granted

The Council, as local planning authority, hereby confirm that their **prior approval is granted** for the proposed development at the address shown below, as described by the description shown below, and in accordance with the information that the developer provided to the local planning authority:

Address of the proposed development:

**Ground floor
19 Fortress Road
London
NW5 1AD**

Description of the proposed development:

Change of use from retail (Class A1 or A2) to residential use (Class C3) and alterations to front elevation.



Details approved by the local planning authority:

Drawing Nos: 1012/100; -21; -22; -23; -24; Contaminated Land Assessment parts 1 & 2; Flood Risk Assessment; Impact Assessment; & Transport Statement.

Reason for approval:

- 1 In the event that additional significant contamination is found at any time when carrying out the approved development it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of the Environment Agency's Model Procedures for the Management of Contamination (CLR11), and where mitigation is necessary a scheme of remediation must be designed and implemented to the satisfaction of the local planning authority before any part of the development hereby permitted is occupied.

Reason: To protect future occupiers of the development from the possible presence of ground contamination arising in connection with the previous industrial/storage use of the site in accordance with 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.

- 2 Prior to commencement of development the developer must either submit evidence that the building was built post 2000 or an intrusive pre-demolition asbestos survey in accordance with HSG264 and a mitigation plan to reduce risks to potential occupiers.

Reason: To ensure the proper investigation and, where necessary, risk mitigation of the site in the interests of the amenities of the locality and the future occupants of the site in accordance with 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):

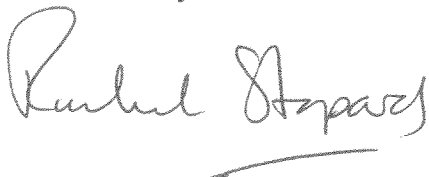
- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 6941).
- 2 Your proposals may be subject to control under the Party Wall etc Act 1996 which covers party wall matters, boundary walls and excavations near neighbouring buildings. You are advised to consult a suitably qualified and experienced Building Engineer.

- 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 The correct street number or number and name must be displayed permanently on the premises in accordance with regulations made under Section 12 of the London Building (Amendments) Act 1939.
- 5 Under Section 25 of the GLC (General Powers) Act 1983, the residential accommodation approved is not permitted for use as holiday lettings or any other form of temporary sleeping accommodation defined as being occupied by the same person(s) for a consecutive period of 90 nights or less. If any such use is intended, then a new planning application will be required which may not be approved.
- 6 You are advised that this proposal will be liable for the Mayor of London's Community Infrastructure Levy (CIL) and the Camden CIL as the additional floorspace exceeds 100sqm GIA or one unit of residential accommodation. Based on the information given on the plans, the Mayor's CIL Charging Schedule and the Camden Charging Schedule, the charge is likely to be £????(???sqm x £50) for the Mayor's CIL and £????(???sqm x £500/£450/£250/£175/£150/£45/£40/£30/£25 using the relevant rate for uplift in that type of floorspace) for the Camden CIL.

This amount is an estimate based on the information submitted in your planning application. The liable amount may be revised on the receipt of the CIL Additional Information Requirement Form or other changes in circumstances. Both CIL's will be collected by Camden after the scheme has started and could be subject to surcharges for failure to assume liability or submit a commencement notice PRIOR to commencement and/or for late payment. We will issue a formal liability notice once the liable party has been established. CIL payments will also be subject to indexation in line with the construction costs index.

Your attention is drawn to the notes attached to this notice which tell you about your Rights of Appeal and other information.

Yours faithfully



Rachel Stopard
Director of Supporting Communities

It's easy to make, pay for, track and comment on planning applications on line. Just go to www.camden.gov.uk/planning.

It is important to us to find out what our customers think about the service we provide. To help us in this respect, we would be very grateful if you could take a few moments to complete our online survey at the following website address: www.camden.gov.uk/dmfeedback. We will use the information you give us to help improve our services.

DATED

14 JUNE

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