

DATED

10 OCTOBER

2016

(1) 180 KENTISH TOWN DEVELOPMENTS LIMITED

and

(2) CIMB BANK BERHAD

and

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

A G R E E M E N T
relating to land known as

**180 Kentish Town Road
London
NW5 2AE**

**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 5647
Fax: 020 7974 2962

CLS/PK/1781.756 (final)

THIS AGREEMENT is made the 10th day of October 2016

BETWEEN:

1. **180 KENTISH TOWN DEVELOPMENTS LIMITED** (registered under company number 09721442) whose registered office is 37 Warren Street, London, W1T 6AD (hereinafter called "the Owner") of the first part
2. **CIMB BANK BERHAD** (incorporated in Malaysia) being a company registered in the United Kingdom under number FC022225) and whose address is 27 Knightsbridge, London, SW1X 7LY (hereinafter called "the Mortgagee") 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 Owner is registered at the Land Registry as the freehold proprietor with title absolute of the Property under title number NGL219533 subject to a charge to the Mortgagee.
- 1.2 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 The Planning Application for the Development of the Property was submitted to the Council and validated on 6th November 2015 and the Council resolved to grant permission conditionally under reference number 2015/6246/P subject to conclusion of this legal Agreement.
- 1.4 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.

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

1.6 The Mortgagee as mortgagee under a legal charge registered under title number NGL219533 and dated 29th January 2016 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 | "this Agreement" | this planning obligation made pursuant to Section 106 of the Act |
| 2.3 | "Annex 1" | the annex to this Agreement and marked "Annex 1" |
| 2.4 | "Annex 2" | the annex to this Agreement and marked "Annex 2" |
| 2.5 | "the Development" | change of use of ground and basement floors from use class A4 (drinking establishment) to use class A3 (restaurant) as shown on drawing numbers Site location plan; 001; 002; 003; 004; Planning Statement dated 6th November 2015; Public House Assessment dated 27th November 2016 by Fleurets |
| 2.6 | "the GPDO 2015" | the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended from time to time or any order |

revoking and re-enacting that Order with or without modification)

- 2.7 "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
- 2.8 "Occupation Date" the first date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.9 "the Parties" the Council, the Owner and the Mortgagee
- 2.10 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 6th November 2015 for which a resolution to grant permission has been passed conditionally under reference number 2015/6246/P subject to conclusion of this Agreement
- 2.11 "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
- 2.12 "the Planning Permission" a planning permission granted for the Development substantially in the draft form at Annex 1 hereto

- 2.13 "the Property" the land known as 180 Kentish Town Road, London, NW5 2AE the same as shown edged red on the plan at Annex 2 hereto
- 2.14 "the Use Classes Order" the Town and Country Planning (Use Classes) Order 1987 (as amended from time to time or any order revoking and re-enacting that Order with or without modification)

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.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1. Upon Implementation of the Planning Permission at the Property any planning permission otherwise granted under article 3 of the GPDO 2015 shall be of no effect in respect of any change of use of that part (or part thereof) of the Property comprising the Development AND FOR THE AVOIDANCE OF DOUBT the Owner shall not use (or permit the use of) that part of the Property comprising the Development other than as a use within use class A3 (restaurant) of the Use Classes Order unless otherwise permitted by an express grant of planning permission by the Council or the Secretary of State.

4.2. In the event of breach of the obligation at clause 4.1 hereof to cease immediately the occupation of that part of the Property comprising the Development and not to occupy that part of the Property comprising the Development otherwise than for the use permitted by the Planning Permission.

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 14 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 2015/6246/P the date upon which the Development is ready for Occupation.

5.3 The Owner and the Council shall act in good faith and shall co-operate with each other 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 reasonable and proper 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.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Borough Solicitor a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.6 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.7 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.
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 2015/6246/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 or is modified (other than by agreement with or at the request of the Owner) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

7. **MORTGAGEE EXEMPTION**

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. **RIGHTS OF THIRD PARTIES**

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)
180 KENTISH TOWN DEVELOPMENTS)
LIMITED)
acting by a Director and its Secretary)
or by two Directors)

Director Name: (CAPITALS))

Director Signature:)

Director/Secretary Name (CAPITALS))

Director/Secretary Signature:)

CHRISTOPHER PRICE



NICHOLAS STURTON



EXECUTED AS A DEED BY
CIMB BANK BERHAD *Head of London Branch*
acting by a ~~Director and its Secretary~~ *Branch*
or by two Directors

Director Name: (CAPITALS))

Raja Noorma Binti Raja Othman
Head of London Branch
CIMB Bank Berhad, London Branch (FC022225)

Director Signature:)

RAJA NOORMA RAJA OTHMAN

Witnessed by: HEAD OF LEGAL
Director/Secretary Name (CAPITALS))

Asmihan Ibrahim
Head of Legal
CIMB Bank Berhad, London Branch (FC022222)

Director/Secretary Signature:)

ASMIHAN IBRAHIM

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

R. Alexander
.....

Authorised Signatory



ANNEX 1

draft planning permission

Woods and Rye Othman
in London Branch
London Branch (03332)

Azura
Ltd

CgMs Limited
7th Floor, 140 London Wall,
London,
EC2Y 5DM

Tel 020 7974 4444
Fax 020 7974 1930
Textlink 020 7974 6866

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

Application Ref: **2015/6246/P**

7 April 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:
180 Kentish Town Road
London
NW5 2AE

DECISION
Proposal:
Change of use of ground and basement floors from use class A4 (drinking establishment) to use class A3 (restaurant).
Drawing Nos: Site location plan; 001; 002; 003; 004; Planning Statement dated 6th November 2015; Public House Assessment dated 27th November 2016 by Fleurets.

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 The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan; 001; 002; 003; 004; Planning Statement dated 6th November 2015; Public House Assessment dated 27th November 2016 by Fleurets.

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

- 3 Before the use commences, a scheme for the ventilation of and the extraction of fumes from the premises to an adequate outlet level, including details of sound attenuation for any necessary plant shall be submitted to and approved by the local planning authority in writing. The use shall not be carried out otherwise than in accordance with any approval given and shall thereafter be maintained in effective order to the reasonable satisfaction of the Council.

Reason: To safeguard the amenities of the neighbouring premises and the area generally in accordance with the requirements of policies CS5, CS7 and CS14 of the London Borough of Camden Local Development Framework Core Strategy and policies DP12, DP24, DP25, DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 4 Before the relevant part of development commences, details of the refuse and recycling collection and the storage of waste and recycling on site shall be submitted to and approved by the Council and the approved details shall be implemented from first occupation of the new units and permanently maintained and retained thereafter.

Reason: To safeguard the amenities of the neighbouring premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP12, DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 5 No music shall be played within the unit that is the subject of this permission so as to be audible outside the unit.

Reason: To safeguard the amenities of the neighbouring premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP12, DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 6 Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

Reason: To safeguard the amenities of the [adjoining] premises [and the area generally] in accordance with the requirements of 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.

- 7 The use hereby permitted shall not be carried out outside the following times 11.00am to 23.00pm Mondays to Sundays and Bank Holidays.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the premises shall be used for no other use than that falling within Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987.

Reason: In order to maintain the character and function of the premises and the Kentish Town Centre as a whole in accordance with policies CS5 and CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 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.

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

Culture and Environment Directorate

DRAFT

DECISION

ANNEX 2

plan identifying the Property

Site Location Plan
180 Kentish Town Road NW5 2AE



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Scale 1:1250



DATED 10 OCTOBER 2016

(1) 180 KENTISH TOWN DEVELOPMENTS LIMITED

and

(2) CIMB BANK BERHAD

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(3) THE MAYOR AND BURGESSES OF
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