Draft: 02 December 2016

**DATED 2016**

**(1) SOLOMON BENISTY**

**and**

**(2) BARCLAYS BANK PLC**

**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**

**16 Rosslyn Hill, London NW3 1PD**

**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

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CLS/COM/ESA/1781.

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**THIS AGREEMENT** is made the day of 2016

**B E T W E E N:**

i. **SOLOMON BENISTY** of 16 Rosslyn Hill, London NW3 1PD(hereinafter called “the Owner”) of the first part

ii. **BARCLAYS BANK PLC** (Co. Regn. No. 1026167) of P.O. Box 187, Leeds LS11 1AN (hereinafter called “the Mortgagee”) of the second part

iii. **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

1. **WHEREAS**

* 1. The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Second Property under Title Number LN69814 subject to a charge to the Mortgagee.
  2. The Owner is the freehold Owner of and is interested in the Second Property for the purposes of Section 106 of the Act.
  3. A Planning Application (“the Second Planning Application”) for the development of the Property was submitted to the Council and validated on 27 June 2016 and the Council resolved to grant permission conditionally under reference number 2016/3573/P subject to conclusion of this legal Agreement.
  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.
  5. For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
  6. The Mortgagee as mortgagee under a legal charge registered under Title Number LN69814 and dated 19 August 2008 (hereinafter called “the Legal Charge”) 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 First Application" a planning application in respect of the development of the First Property submitted to the Council on 24 June 2016 for which a resolution to grant permission has been passed conditionally under reference number 2016/3562//P subject to conclusion of this Agreement

2.4 “the First Development” erection of roof extension with front roof light and rear dormer as shown on drawing numbers:- Location plan, Site map, 1243/EP-003, 1243/EE-001, 1243/EE-002, 1243/EE-003, 1243/ES-001, 1243/AP-001, 1243/AP-002, 1243/AE-001, 1243/AE-002, 1243/AE-003, 1243/AS-001

2.10 "the First Property" the land known as 14 Rosslyn Hill London NW3 1PD the same as shown shaded grey on the plan annexed hereto

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 date when any part of the Development is occupied and the phrases “Occupy”, “Occupied” and “Occupation” shall be construed accordingly

2.6 “the Parties” mean the Council the Owner and the Mortgagee

2.7 “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

2.8 "the Planning

Permission" a planning permission granted for the Development substantially in the draft form annexed hereto

2.9 "the Second Application" a planning application in respect of the development of the Second Property submitted to the Council on 27 June 2016 for which a resolution to grant permission has been passed conditionally under reference number 2016/3573/P subject to conclusion of this Agreement

2.10 "the Second Development" erection of roof extension with front roof light and rear dormer as shown on drawings:- Location plan, Site map, 1243/EP-003, 1243/EE-001, 1243/EE-002, 1243/EE-003, 1243/ES-001, 1243/AP-001, 1243/AP-002, 1243/AE-001, 1243/AE-002, 1243/AE-003, 1243/AS-001

2.11 “the Second Property” the land known as 16 Rosslyn Hill London

NW3 1PD the same as shown shaded grey on the plan 2 annexed hereto

3. **NOW THIS DEED WITNESSETH** as follows:-

* 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.
  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. 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.
  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, 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.

* 1. The Council hereby agrees to grant the Planning Permission on the date hereof.
  2. 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:-

**SIMULTANEOUS DEVELOPMENT**

* 1. To notify the Council in writing when the Second Development has commenced or is about to commence.
  2. To complete the Second Development to the reasonable satisfaction of the Council within one (1) year of the earliest of the following two dates namely the Implementation Date for the First Development or the Implementation Date for the Second Development.
  3. Not to occupy or use or permit occupation or use of any part of the Second Development until such time as the First Development has been Implemented and fully completed to the reasonable satisfaction of the Council, such completion to be demonstrated by written notice from the Council to that effect.

5. **NOTICE TO THE COUNCIL/OTHER MATTERS**

* 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.
  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 2016/3573/P the date upon which the Second Development is ready for Occupation.
  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 Second 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.
  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.
  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 Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
  6. Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2016/3573/P.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

* 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, Placeshaping Service, Urban Design and Development Team, 2nd Floor, 5 Pancras Square, London, N1C 4AJ quoting the Planning Permission reference number 2016/3573/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.
  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.

* 1. 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 Owner entering into this Agreement and agrees that the security of its charges over the Property shall take effect subject to this Agreement.

7.2    The Parties agree that the obligations contained in this 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.

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 )**

**SOLOMON BENISTY )**

**in the presence of: )**

**…………………………………………………….**

**Witness Signature**

**Witness Name**

**Address**

**Occupation**

###### EXECUTED as a Deed )

###### By BARCLAYS BANK PLC )

###### by       )

###### in the presence of:- )

**…………………………………………………**

###### THE COMMON SEAL OF THE MAYOR )

**AND BURGESSES OF THE LONDON )**

**BOROUGH OF CAMDEN was hereunto )**

**Affixed by Order:- )**

**………………………………………………**

**Authorised Signatory**