

DATED

2017

(1) [FREEHOLDER] LIMITED

and

(2) [LEASEHOLDER]

and

(3) MORTGAGEE PLC/LIMITED

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

Kingsgate Primary School, Kingsgate Road, London NW6 4LB

pursuant to

Section 106 of the Town and Country Planning Act 1990 (as amended);

Section 16 of the Greater London Council (General Powers) Act 1974;

Section 111 of the Local Government Act 1972; and

Section 1(1) of the Localism Act 2011

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London WC1H 9LP

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CLS/COM/WB/1800.

s106

THIS AGREEMENT is made the _____ day of _____ 2017

B E T W E E N:

- A. **[FREEHOLDER] LIMITED** (Co. Regn. No. _____) whose registered office is at _____ (hereinafter called “[the Owner/the Freeholder]”) of the first part
- B. **[LEASEHOLDER] LIMITED** (Co. Regn. No. _____) whose registered office is at _____ (hereinafter called “the Leaseholder”) of second part
- C. **MORTGAGEE** of _____ (hereinafter called “ _____ ”) of the third part
- D. **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

1. **WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number _____ [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 A Planning Application for the development of the Property was submitted to the Council and validated on 16 March 2017 and the Council resolved to grant permission conditionally under reference number 2017/1100/P subject to the conclusion of this legal Agreement.
- 1.4 The Council is the local planning authority for the purposes of the Act and and is the local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 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 _____ and dated _____ 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 Certificate of Practical Completion"	the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed
2.4	"Construction Management Plan" [CMP – 02]	a plan setting out the measures that the Owner will adopt in undertaking the construction of the Development (which for the avoidance of doubt excludes demolition, muck out and below ground works) using good site practices in accordance with the Council's Considerate Contractor Manual and in the form of the Council's Pro Forma Construction Management Plan as set out in the First Schedule hereto to ensure the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):- a) a statement to be submitted to Council giving

		<p>details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate and offset potential or likely effects and impacts arising from the building out of the Development;</p> <p>b) amelioration and monitoring effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;</p> <p>c) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);</p> <p>d) the inclusion of a waste management strategy for handling and disposing of construction waste; and</p> <p>e) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time</p>
2.5	"the Construction Management Plan Implementation Support Contribution"	the sum of £3,840 (three thousand eight hundred and forty pounds) 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 the event of receipt for the review and approval of the draft Construction Management Plan and verification of the proper operation of the approved Construction Management Plan during the Construction Phase

2.6	“the Construction Phase”	<p>the whole period between:</p> <ul style="list-style-type: none"> a) the Implementation Date and b) the date of issue of the Certificate <p>and for the avoidance of doubt includes the demolition of the existing buildings at the Property</p>
2.7	“the Council’s Considerate Constructor Manual”	<p>the document produced by the Council from time to time entitled “Guide for Contractors Working in Camden” relating to the good practice for developers engaged in building activities in the London Borough of Camden</p>
2.8	“Demolition Date”	<p>means the date of commencement of demolition of existing buildings at the Property which shall include any muck out and below ground works and “Demolition” and “Demolish” shall be construed accordingly</p>
2.9	“Demolition Management Plan” [CMP – 01]	<p>a plan setting out the measures that the Owner will adopt in undertaking the Demolition of the existing buildings at the Property using good site practices in accordance with the Council’s Considerate Contractor Manual and in the form of the Council’s Pro Forma Construction Management Plan as set out in the First Schedule hereto to ensure that Demolition can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):-</p> <ul style="list-style-type: none"> a) a statement to be submitted to Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate

		<p>and offset potential or likely effects and impacts arising from Demolition;</p> <p>b) amelioration and monitoring effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;</p> <p>c) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);</p> <p>d) the inclusion of a waste management strategy for handling and disposing of construction waste; and</p> <p>e) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time</p>
2.10	"the Development"	<p>demolition of existing single storey extensions and replacement with new single storey extensions to provide new school hall, library space, disabled WC and entrance space as shown on the site location plan and drawing numbers: (As existing:) 596-E-000, 596-E-001, 596-E-002, 596-E-003, 596-E-004, 596-E-005, (as proposed:) 596-P-001, 596-P-002, 596-P-003/ A, 596-P-004/ A, 596-P-005/ A, 596_A_500/ T2;</p> <p>and supporting documents: 596-P-006 Tree Impact Plan, Tree Constraints Assessment by Wharton Arboriculture dated 3.56.15 ref 030615 0369 TCA V1 003, 596-A-500/T2 trees, Proposed Drainage Plan, School Travel Plan and</p>

		Design & Access Statement dated 23.3.2017 Rev A
2.11	"the Highways Contribution"	<p>the sum of £3,690.45 (three thousand six hundred and ninety pounds 45 pence) 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"):-</p> <p>a) the removal of all temporary features installed during the enabling and construction phases including temporary accesses and loading bays;</p> <p>b) any other works the Council acting reasonably requires as a direct result of the Development</p> <p>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 <u>excludes any statutory undertakers costs</u></p>
2.12	"the Implementation Date"	<p>the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act save that for the purposes of this Agreement the following shall be deemed not to be material operations: Demolition; site or soil investigations; ground investigations; muck out and below ground works; site survey works; works of decontamination; site clearance; relocation of services, utilities and public infrastructure; erection of site hoardings and references to "Implementation" and "Implement" shall be construed accordingly</p>
2.13	"the Levels Plans"	plans demonstrating the levels at the interface of the

		Development the boundary of the Property and the Public Highway
2.14	"Occupation Date"	the date when any part of the Development is occupied on except occupation for construction or for fitting out, marketing, repair or security purposes and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.15	"the Parties"	mean the Council the Owner and the Mortgagee
2.16	"the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 16 March 2017 for which a resolution to grant permission has been passed conditionally under reference number 2017/1100/P subject to conclusion of this Agreement
2.17	"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
2.18	"the Planning Permission"	a planning permission granted for the Development substantially in the draft form annexed hereto
2.19	"the Property"	the land known as Kingsgate Primary School, Kingsgate Road, London NW6 4LB the same as shown shaded grey on the plan annexed hereto
2.20	"the Public Highway"	any carriageway footway and/or verge adjoining the Property maintainable at public expense

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 is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 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, and 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 [CMP – 01] DEMOLITION MANAGEMENT PLAN

- 4.1.1 On or prior to the Demolition Date to submit to the Council for approval a draft Demolition Management Plan.
- 4.1.2 Not to Demolish nor allow Demolition until such time as the Council has approved the Demolition Management Plan as demonstrated by written notice to that effect.
- 4.1.3 The Owner acknowledges and agrees that the Council will not approve the Demolition Management Plan unless it demonstrates to the Council's reasonable satisfaction that Demolition can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

4.2 [CMP – 02] CONSTRUCTION MANAGEMENT PLAN

- 4.2.1 On or prior to the Implementation Date to:
 - (i) pay to the Council the Construction Management Plan Implementation Support Contribution in full; and
 - (ii) submit to the Council for approval a draft Construction Management Plan.
- 4.2.2 Not to Implement nor allow Implementation of the Development until such time as the Council has:
 - (i) received the Construction Management Plan Implementation Support Contribution in full; and
 - (ii) approved the Construction Management Plan as demonstrated by written notice to that effect.
- 4.2.3 The Owner acknowledges and agrees that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

4.2.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non compliance with this sub-clause the Owner shall forthwith take any steps required to remedy such non-compliance.

4.3 HIGHWAYS CONTRIBUTION

4.3.1 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.

4.3.2 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.

4.3.3 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.

4.3.4 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.

4.3.5 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 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 2017/1100/P the date upon which the Development will be 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 jointly and severally 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.
- 5.5 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.
- 5.6 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 2017/1100/P.

5.7 Payment of the Highways Contribution pursuant to Clause 4.8 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable) The owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2017/1100/P. Electronic Transfer be made directly to National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.

5.8 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.

5.9 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AllRP") figure last published by the Office for National Statistics at the date hereof is the denominator ("X") and the last AllRP figure published before the date such payment or application is made ("Y") less the last published AllRP figure at the date hereof ("X") is the numerator so that

$$A = B \frac{Y-X}{X}$$

5.10 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, Placeshaping Service, Urban Design and Development Team, 2nd Floor, 5 Pancras Square, London, N1C 4AJ and sent to planning obligations on PlanningObligations@camden.gov.uk quoting the planning reference number 2017/1100/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 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.
- 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(s) [and the] 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

OR

IN WITNESS whereof the Council and the Owner have caused their respective common seals to be hereunto affixed [and the Mortgagee has executed this instrument as a Deed] the day and year first before written

THE COMMON SEAL OF/)
EXECUTED AS A DEED BY)
LIMITED)
was hereunto affixed)
in the presence of:-/)
acting by a Director and its Secretary)
or by two Directors)

.....
Director

.....
Director/Secretary

EXECUTED AS A DEED BY)
)
in the presence of:)

.....
Witness Signature

Witness Name:

Address:

Occupation:

THE FIRST SCHEDULE
Pro Forma
Construction Management Plan

The Council has produced a pro-forma Construction Management Plan that can be used to prepare and submit a Construction Management Plan to meet technical highway and environmental health requirements. This document should be prepared, submitted and receive approval from the Council well in advance of works starting.

The pro-forma Construction Management Plan can be found on the Council's website at:-

<https://www.camden.gov.uk/ccm/content/environment/planning-and-built-environment/two/planning-applications/making-an-application/supporting-documentation/planning-obligations-section-106/>

Please use the Minimum Requirements (also available at the link above) as guidance for what is required in the CMP and then download the Construction Management Plan

It should be noted that any agreed Construction Management Plan does not prejudice further agreement that may be required for things such as road closures or hoarding licences