

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN

and

CALABAR PROPERTIES LIMITED

Planning Obligation by Agreement

Pursuant to Section 106 of the Town and Country Planning Act 1990
and other powers in relation to **11-12 Grenville Street, London, WC1N 1LZ**

WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

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SECTION 106 AGREEMENT

DATED:

2017

BETWEEN:

- (1) The Mayor and Burgesses of the London Borough Of Camden of Town Hall, Judd Street, London WC1H 9LP; and
- (2) Calabar Properties Limited (Company Registration Number 00644513) of Freshwater House, 158-162 Shaftesbury Avenue, London, WC2H 8HR.

RECITALS:

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the administrative area within which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Council is the highway authority for the purposes of the Highways Act 1980.
- (C) The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number NGL914308.
- (D) On [XXXX] the Planning Application was submitted to the Council on behalf of the Owner.
- (E) On [XXXX] the Council resolved to grant the Planning Permission subject to conditions and the prior completion of this Deed.
- (F) This Deed is entered into pursuant to the resolution referred to at Recital (E).
- (G) The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act.
- (H) The Council is satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 Definitions And Interpretation

- 1.1 The following words and phrases shall unless the context otherwise requires bear the following meanings:

1990 Act: means the Town and Country Planning Act 1990 (as amended);

Basement Approval in Principle Application means an application to the Council's highways structural team for an approval in principle of the construction of the basement forming part of the Development which is to be assessed by the Council with a view to ensuring that sufficient loadings are maintained at all times at the interaction of the Development site and the Public Highway so as to ensure that the Public Highway is not compromised at any time during the Construction Phase;

Basement Approval in Principle Contribution means the sum of [XXXX] pounds (£[XXXX]) to be applied by the Council in event of receipt towards the assessment by the Council's highways structural team of the Basement Approval in Principle Application;

CIL Regulations means the Community Infrastructure Levy Regulations 2010 (as amended);

Commencement of the Development means the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed only) operations consisting of: site clearance; demolition works; archaeological investigations; investigations for the purpose of assessing ground conditions; remedial work in respect of any contamination or other adverse ground conditions; diversion and laying of services; any underground works; laying out of accesses (whether temporary or permanent); erection of any temporary means of enclosure/site security; temporary display of site notices or advertisements; and any other preparatory works as may be agreed with the Council and **Commence the Development** shall be construed accordingly;

Construction Management Plan means a plan in respect of the Development setting out the measures that the Owner will adopt in undertaking any demolition at the Site and the construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual to ensure the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

Council means London Borough of Camden as above;

Council's Considerate Contractor Manual means 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;

Deed means this deed of agreement;

Development means the change of use of upper floor offices (B1) to residential (C3) use to provide 5 x residential units (3 x 1 bed and 2 x 2 bed), demolition of existing rear garage and erection of a replacement 2 storey 2 bed mews dwelling with basement extension, consolidation of the existing ground floor retail (A1) and cafe (A3) units to provide a replacement retail/restaurant (A1/A3) unit, external alterations to the main elevation, part mansard roof extension with parapets/chimneys and dormer windows, replacement double glazed sash windows, replacement shopfront, alterations to ground floor entrances and a 1st to 3rd floor rear infill extension with new window openings;

Energy Efficiency and Renewable Energy Plan means a strategy setting out a package of measures to be adopted by the Owner in the management of the Development with a view to reducing carbon energy emissions;

Highway Works means any highways works considered necessary and directly related to the Development;

Highways Contribution means the sum of [XXXX] pounds (£[XXXX]) 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 of works to the public highway and associated measures in the vicinity of the Site;

Occupy means first occupation for the purposes permitted by the Planning Permission but excluding occupation by personnel engaged in construction, fitting-out or decoration or occupation for marketing or display or occupation in relation to security operations and **Occupy, Occupied** and **Occupier** shall be construed accordingly;

Owner means Calabar Properties Limited as above;

Parties means the parties to this Deed and their respective successors and those deriving title under them;

Plan means drawing number [XXXX] annexed to this Deed at Annexure A showing the Site;

Planning Application means the application for the Planning Permission which has been allocated reference number [XXXX] by the Council;

Practical Completion means complete such that it is fit for its intended purpose and available for use [and in the case of the Affordable Housing Units, practical completion as evidenced by the issue of a certificate of completion by an architect, surveyor or other suitably qualified professional person confirming that the construction of the Affordable Housing Unit is complete internally and externally and is suitable and available for Occupation] and **Practically Completed, Completed** and **Completion** shall be construed accordingly;

Planning Permission means a planning permission granted for the Development;

Public Highway means any carriageway footway and/or verge adjoining the Site maintainable at public expense;

Reasonable Endeavours means that (subject to the other terms of this Deed) the Party under such an obligation will be bound to attempt to fulfil the relevant obligation by the expenditure of such reasonable and proportionate effort and/or sums of money and the engagement of such professional or other advisors as in all the circumstances may be reasonable to expect PROVIDED THAT the Party will not be required to issue proceedings (including any appeal) in any court, public inquiry or other hearing;

Residents Parking Bay means 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;

Residents Parking Permit means 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;

Secretary of State means the Secretary of State for Communities and Local Government (or such other person or organisation who has the jurisdiction from time to time to determine the Planning Application) including an inspector who is appointed to act on his behalf;

Section 73 Consent means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the 1990 Act was granted;

Site: means all that land known as 11-12 Grenville Street, London, WC1N 1LZ as shown edged red on the Plan;

Sustainability Plan means a plan including a post construction review securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation;

Working Day: means a day other than a Saturday or Sunday or public holiday in England.

- 1.2 Covenants by any party which comprise more than one person shall be deemed to be joint and several and words importing persons will include firms companies and corporations and vice versa and where expressed in the singular will include the plural and vice versa and words of masculine gender will include the feminine and neuter gender and vice versa.
- 1.3 References in this Deed to any Recital Clause Schedule or Paragraph (or any part of them) shall unless the context otherwise requires be references to a recital clause schedule or paragraph (or any part of them) of this Deed.
- 1.4 References in this Deed to any enactment, regulation or order includes any statutory modification or re-enactment thereof for the time being in force.
- 1.5 Headings in this Deed are for ease of reference only and are not intended to be construed as part of this Deed.
- 1.6 References in this Deed to the Owner shall include any successor to their respective interests in the Site and those deriving title from them.
- 1.7 References in this Deed to the Council shall include any successor to its functions as the local planning authority in relation to the Site and any body to which all or part of its functions may lawfully have been transferred.
- 1.8 No future mortgagee or charge of the Site shall be bound by the obligations contained in this Deed unless it takes possession of the Site (or as part of it) in which case it shall be liable as if it were a successor in title to the Owner in relation to the Site (or the relevant part of it, as the case may be).

2 **Statutory Provisions**

- 2.1 This Deed is entered into pursuant to section 106 of the 1990 Act and is a planning obligation for the purposes of that section with an intent to bind the Site (and each and every part of it) and the Parties subject to the provisions of Clauses 3.2 (conditionality), 6.2 (release upon parting with interest) and 6.6 (circumstances in which this Deed shall fall away).
- 2.2 This Deed is enforceable by (and against) the Council in accordance with Section 106 of the 1990 Act.

3 **Conditionality**

This Deed is conditional upon:-

- (a) the grant of the Planning Permission; and
- (b) the Commencement of the Development

save for XXXX, which shall come into effect upon the date of this Deed and XXXX, which shall come into effect upon the grant of the Planning Permission.

4 **The Owner's Obligations**

- 4.1 The Owner covenants with the Council to carry out the obligations as set out in Schedules 1 to 6 to this Deed.
- 4.2 The Owner covenants with the Council to provide the Council with no less than X Working Days prior written notice of the Commencement of Development.

5 **The Council's Obligations**

The Council covenants with the Owner as set out in Schedule 7 to this Deed.

6 **Agreements and Declarations**

Local Land Charge

6.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such by the Council.

Release

6.2 The Owner shall upon parting:-

- (a) with its interests in any part of the Site be released from all obligations and duties under the terms of this Deed insofar as they relate to or are binding on that part of the Site; and
- (b) with the entirety of its interests in the Site be released from all liabilities whatsoever under the terms of this Deed.

6.3 The releases provided for in Clause 6.2 shall not apply to any prior or existing breach of this Deed as at the date of disposal.

Lapse

6.4 This Deed shall cease to have effect if the Planning Permission is quashed, revoked, modified or expires (without the consent of the Owner), in which case the Council shall (upon written request) effect the cancellation of any entry made in its register of local land charges in respect of this Deed.

Future Development

6.5 Nothing in this Deed shall prohibit or limit the right to develop the Site (or any part of it) in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

Discharge by Performance

6.6 Upon the performance, discharge or other fulfilment of the obligations (or any of them) of the Developer under this Deed, such obligation shall absolutely cease and determine save in respect of any antecedent breach.

6.7 Following the performance and satisfaction of all the obligations contained within this Deed the Council shall effect the cancellation of all entries made in its register of local land charges in respect of this Deed.

Contracts (Rights of Third Parties) Act 1999

6.8 Unless the right of enforcement is expressly granted it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

6.9 This Deed may be rescinded or varied without the consent of a third party to whom an express right to enforce any of its terms has been provided.

Notices

6.10 Any notice to be given to any Party pursuant to this Deed shall be deemed to be sufficiently served if delivered personally or sent recorded delivery service or sent

by facsimile to the Parties at the respective addresses specified above or as otherwise notified in writing by one Party to the other.

Consents and Approvals

- 6.11 Where any consent, approval or expression of satisfaction is required to be given under this Deed, it shall not be unreasonably withheld or delayed.

Individual Occupiers

- 6.12 This Deed shall not be enforceable against individual owner-occupiers or tenants of the Development (including their respective successors in title).

Statutory Undertakers

- 6.13 This Deed shall not be enforceable against any statutory undertakers of the Development (including their respective successors in title).

Dispute Resolution

- 6.14 If there is any dispute between the Parties in respect of any of the matters to be agreed pursuant to this Deed (other than a dispute or difference concerning the meaning or construction of this Deed) such dispute shall be determined in accordance with Clauses [6.14 – 6.21] and either Party to the dispute may at any time require by notice in writing to the other an independent expert to be appointed to resolve the dispute.

- 6.15 The expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to this Deed.

- 6.16 The expert shall be appointed jointly by the Parties and, in the absence of such agreement within one (1) month of service of the notice pursuant to sub-Clause [6.14], be appointed by the President for the time being of the Royal Institution of Chartered Surveyors within one (1) month of an application being made by one of the Parties.

- 6.17 The expert shall invite written representations from each of the Parties and shall make his final determination within one (1) month of his appointment PROVIDED THAT if the expert fails to do so either Party to the dispute may apply to the President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in which case the same procedure shall be repeated.

- 6.18 The findings of the expert shall be final and binding on the Parties except in the case of manifest, material error.

- 6.19 The expert shall act as an expert and not as an arbitrator.

- 6.20 The costs of the dispute shall be payable by the Parties in such proportion as may be determined by the expert and failing such determination to be borne in equal shares by the Parties.

- 6.21 Nothing in Clauses [6.14 – 6.20] shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

Legal Costs

- 6.22 Upon completion of this Deed, the Owner shall pay the Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed in the sum of [XXXX] [(£XXXX)].

Land Outside Control

- 6.23 Nothing in this Deed shall require the performance of any obligation whatsoever in, over or under land outside the ownership or control of the Party to perform the obligation unless such land shall be within the public highway.

CIL Regulations

- 6.24 If a Court or the Secretary of State determines that any obligation contained within this Deed is not:

- (a) necessary to make the Development acceptable in planning terms;
- (b) directly related to the Development; and
- (c) fairly and reasonably related in scale and kind to the Development

then such obligation shall immediately cease and determine (without any further act by the Parties).

- 6.25 The release set out in Clause 6.24 shall not affect the remaining obligations within this Deed which shall continue to have full force and effect.

Mortgagee

- 6.26 This Deed shall not be enforceable against any mortgagee with an interest in the Site unless such mortgagee is in possession.

Section 73 Consent

- 6.27 Unless otherwise agreed between the Parties, if a Section 73 Consent is granted by the Council in relation to the Development, then with effect from the date that each such Section 73 Consent is granted:

- (a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Parties;
- (b) the definitions of Development, Planning Application and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the 1990 Act, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consent

PROVIDED THAT:

- (i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act; and
- (ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent.

Jurisdiction

- 6.28 This Deed is governed by and interpreted in accordance with the law of England.

IN WITNESS whereof the Parties have executed this Deed on the day and year first before written.

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Schedule 1 – Basement Approval in Principle

- 1.1 On or prior to Commencement of the Development to:-
 - (a) Submit the Basement Approval in Principle Application; and
 - (b) Pay the Council the Basement Approval in Principle Contribution.
- 1.2 Not to Commence the Development until such time as:
 - (a) The Council has approved the Basement Approval in Principle Application as demonstrated by written notice to that effect; and
 - (b) The Council has received the Basement Approval in Principle Application Contribution in full.

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Schedule 2 – Car-Free Development

- 1.1 The Owner hereby covenants to use Reasonable Endeavours to ensure that prior to Occupying any part of the Development each new occupant 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.
- 1.2 The Owner for itself and its successors in title to the Site hereby acknowledges that the provision in Clause 1.1 of above will remain in perpetuity.

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Schedule 3 – Construction Management Plan

- 1.1 Prior to Commencement of the Development to provide to the Council for approval a draft Construction Management Plan.
- 1.2 Not to Commence the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.
- 1.3 To ensure that the Development shall not be carried out otherwise than in 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.

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Schedule 4 – Energy Efficiency and Renewable Energy Plan

- 1.1 Prior to Commencement of the Development to submit to the Council for approval the Energy Efficiency and Renewable Energy Plan.
- 1.2 Not to Commence the Development until such time as the Council has approved the Energy Efficiency and Renewable Energy Plan as demonstrated by written notice to that effect.
- 1.3 Not to Occupy or permit Occupation of the Site until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Energy Efficiency and Renewable Energy Plan as approved by the Council have been incorporated into the Site.
- 1.4 Following the Occupation Date the Owner shall manage the Development in accordance with the Energy Efficiency and Renewable Energy Plan as approved by the Council from time to time.

Schedule 5 – Sustainability Plan

- 1.1 Prior to Commencement of the Development submit to the Council for approval the Sustainability Plan.
- 1.2 Not to Commence the Development until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect.
- 1.3 Not to Occupy or permit Occupation of the Site until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Site.
- 1.4 Following the Occupation Date the Owner shall manage the Development in accordance with the Sustainability Plan as approved by the Council from time to time.

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Schedule 6 – Highways Contribution

- 1.1 Prior to [X] to pay to the Council the Highways Contribution in full.
- 1.2 Not to [X] until such time as the Council has received the Highways Contribution in full.

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Schedule 7 – Council's Covenants

1 Use of Contributions

- 1.1 Not to use any sum received pursuant to this Deed otherwise than for the purpose for which it has been paid as specified in this Deed.
- 1.2 Immediately upon receipt, to deposit all sums received pursuant to this Deed into an interest bearing account.
- 1.3 Within twenty eight (28) days of receipt of a request in writing to provide the Owner with an audit account as to how the sums received pursuant to this Deed have been spent.
- 1.4 To repay (together with all accrued interest) to the payee any sums not expended within five (5) years of receipt pursuant to this Deed.

2 Planning Permission

- 2.1 To issue the Planning Permission on completion of this Deed.

Executed as a Deed by)
The Mayor and Burgesses of the)
London Borough of Camden)
whose Common Seal was hereinto)
affixed in the presence of:

sign here: _____
[title of authorised signatory]

print name: _____

sign here: _____
[title of authorised signatory]

print name: _____

Executed as a Deed by)
Calabar Properties Limited)
acting by:)

sign here: _____
Director

print name: _____

sign here: _____
Director/Secretary

print name: _____

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Appendix A - Plan

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