

DATED

2018

**(1) MR MARK GOLINSKY**

and

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

**A G R E E M E N T**

relating to land known as

**6 Albert Terrace, London NW1 7SU**

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;**

**Section 1(1) of the Localism Act 2011; and**

**Section 278 of the Highways Act 1980**

Andrew Maughan  
Borough Solicitor  
London Borough of Camden  
Town Hall  
Judd Street  
London WC1H 9LP

Tel: 020 7974 1918

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**THIS AGREEMENT** is made the

day of

2018

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

1. **MR MARK GOLINSKY** whose registered address is at 6 Albert Terrace, London, England, NW1 7SU (hereinafter called "the Owner") of the first part
  
2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second 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 X.
  
- 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 under reference number 2017/2819/P
  
- 1.4 The Council is the local planning authority for the purposes of the Act 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 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.
  
- 1.6 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

## 2 DEFINITIONS

1	"the Act"	the Town and Country Planning Act 1990 (as amended)	
2	"the Agreement"	this Planning Obligation made pursuant to Section 106 of the Act	
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	<b><u>NOW</u></b>
4	"the Construction Management Plan"	a plan setting out the measures that the Owner will adopt in undertaking the partial demolition of the existing building and the construction of the Development 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 (ALWAYS PROVIDED it is specifically acknowledged that such plan may (where the Council considers it appropriate) provide a mechanism for conditional approval subject to subsequent approval of further details as part of the plan where such details are not available at the time of original submission) measures to be included in the plan to include (but not limited to):-	<b><u>THIS</u></b>
		<ul style="list-style-type: none"> <li>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 and offset potential or likely effects and impacts arising from the works to the existing building and the building out of the Development;</li> <li>b. proposals to ensure there are no adverse effects on the conservation area features;</li> <li>c. amelioration and monitoring effects on the health and amenity of local residences site</li> </ul>	

**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 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, 9, and 10 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 **CONTRIBUTIONS**

- 4.1.1 On or prior to the Implementation Date to pay to the Council in full the Construction Management Plan Implementation Support Contribution
- 4.1.2 Not to Implement or to permit Implementation until such time as the Council has received the Construction Management Plan Implementation Support Contribution
- 4.1.3 On or prior to the Implementation Date to pay to the Council in full the Highways Contribution
- 4.1.4 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution

##### 4.2 **CONSTRUCTION MANAGEMENT PLAN**

- 4.2.1 On or prior to the Implementation Date to 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 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 DETAILED BASEMENT CONSTRUCTION PLAN**

- 4.3.1 On or prior to the Implementation Date to provide the Council for approval the Detailed Basement Construction Plan.
- 4.3.2 Not to Implement or allow Implementation of the Development until such time as the Council has approved the Detailed Basement Construction Plan as demonstrated by written notice to that effect.
- 4.3.3 The Owner acknowledges and agrees that the Council will not approve the Detailed Basement Construction Plan unless it demonstrates by way of certification by the suitably qualified engineers from recognised relevant professional body to the Council's reasonable satisfaction that the Development can be constructed safely in light of the ground and water conditions and will not cause any structural problems with the Development.
- 4.3.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in accordance with the requirements of the Detailed Basement Construction Plan and not to permit the carrying out of any works comprised in building out the Development at any time when the requirements of the Detailed Basement Construction Plan are not being complied with and in the event of non-compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps required to remedy such non-compliance.
- 4.3.5 Not to Occupy or permit Occupation of the Development until the Owner has provided a certificate to the Council (signed by the Basement Design Engineer) confirming all measures incorporated in the Detailed Basement Construction Plan as approved by the Council have been incorporated into the Development and if requested by the Owner (or Basement Design Engineer) shall make a statutory declaration to confirm the same.

#### **4.4 HIGHWAYS**

- 4.4.1 On or prior to the Implementation Date to submit to the Council the Level Plans for approval.
- 4.4.2 Not to Implement nor permit Implementation until such time as the Council has approved the Level Plans.
- 4.4.3 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway in accordance with the approved Level Plans.

- 4.4.4 The Council shall act reasonably to liaise with the Owner's project manager for the Development (should the Owner's project manager contact the Council) to establish a programme that aims to have the Highways Works completed by the Council as soon as practically possible after receiving notice from the Owner's project manager that the Development is practically complete or will be practically complete in six (6) months from the date of serving notice and the Council shall use its reasonable endeavours to achieve that aim.
- 4.4.5 On completion of the Highway Works the Council shall, within fourteen (14) days of a written request for the same, provide the Owner with a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.
- 4.4.6 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.
- 4.4.7 If the Certified Sum is less than the Highway Contribution then the Council shall within fourteen (14) days of the issuing of the said certificate pay to the Owner the amount of difference between the Certified Sum and the Highway Contribution.

## **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 2017/2819/P the date upon which the Development will be ready for Occupation.
- 5.3 The Parties 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 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 2017/2819/P.

5.7 Payment of the Contributions pursuant to Clause 4.1 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 2017/2819/P. Electronic Transfer be made directly to the National Westminster Bank of Hampstead Village 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 AIIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

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.

5.11 If the Council has not spent or committed any money, which it has received by way of a Contribution under this Agreement within ten (10) years from the Occupation date, then the Council shall repay that money to the person from whom it was received within 28 days of a written request for the same.

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 Monitoring 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 2017/2819/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 nor its 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 any further effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 6.9 Where any Approval is requested the Council shall use reasonable endeavours to issue the Approval or ask for further information or raise queries within 20 days from request for Approval and the Owner shall, where applicable, respond to any requests or queries within 20 days following which, if the Council are satisfied with the documentation provided or answers received shall give Approval within 20 days of receipt of the same.

## **7. MORTGAGEE EXEMPTION**

- 7.1 The Parties agree that any mortgagee or charge of the whole or any part of the Property shall not be liable for any breach of the obligations in this Agreement unless continuing at a

time when it takes possession of the whole or any part of the Property to which such obligations relate in which case it will be bound by the obligations in relation to that part of the Property as a person deriving title from the Owner.

8. **JOINT AND SEVERAL LIABILITY**

8.1 All Covenants made by the Owner(s) and the 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

10. **JURISDICTION**

10.1 This Agreement is governed by and interpreted in accordance with the law of England and the Parties agree that the courts of England shall have jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

**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** )  
**MR MARK GOLINSKY** )  
**in the presence of:-/** )  
 )

.....  
**Mark Golinsky**

.....  
**Director/Secretary**

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

.....

**Authorised Signatory**

**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**

**Annexure A**  
**The Site Plan**