

DATED

2 MAY

2018

(1) PIANO FACTORY LIMITED

and

(2) OBAR CAMDEN LTD

and

(3) GREENWOOD CAPITAL EUROPE LIMITED

and

(4) THE HOPE LEASE LIMITED

and

(5) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN

A G R E E M E N T

relating to land known as

Koko 1A Camden High Street, Hope & Anchor PH 74 Crowndale Road,
1 Bayham Street and 65 Bayham Place
London
NW1 7JE

pursuant to

Section 106 of the Town and Country Planning Act 1990 (as amended) and
Section 16 of the Greater London Council (General Powers) Act 1974 and
Section 111 of the Local Government Act 1972 and
Section 1(1) of the Localism Act 2011

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London Borough of Camden
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Judd Street
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CLS/PK/1800.496 (final)

THIS AGREEMENT is made the 2nd day of May 2018

B E T W E E N:

1. **PIANO FACTORY LIMITED** (BVI company No. 1940876) and whose registered address is at Ritter House, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands (hereinafter called "the Freeholder") of the first part
2. **OBAR CAMDEN LTD** (company number 04962866) whose registered address is 191 Stonhouse Street, London, SW4 6BB (hereinafter called the "the First Leaseholder") of the second part
3. **GREENWOOD CAPITAL EUROPE LIMITED** (incorporated in Cyprus under number HE172569) of Akropolis, 59-61, 3rd Floor, Flat/Office 301, Strovolos, 2012, Nicosia, Cyprus and whose correspondence address is 20 Spyrou Kyprianou Avenue, CHAPO, CENTRAL, 3rd Floor, CY1075, Nicosia, Cyprus (hereinafter called "the Mortgagee") of the third part
4. **THE HOPE LEASE LIMITED** (registered under company number 09773675) whose registered office is at 191 Stonhouse Street, London, England, SW4 6BB (hereinafter called "the Second Leaseholder") of the fourth part
5. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fifth part

1. **WHEREAS**

- 1.1 The Freeholder is registered at the Land Registry as the freehold proprietor with title absolute of the Property under title numbers 244741 and NGL366315.
- 1.2 The First Leaseholder registered at the Land Registry as the leasehold proprietor with title absolute of part of the Property under title number NGL833027 subject to a charge to the Mortgagee and is the beneficiary of an agreement for lease of the Property registered by unilateral notice under title number 244741.

- 1.3 The Second Leaseholder is registered at the Land Registry as the leasehold proprietor with title absolute of part of the Property under title numbers NGL956486 and NGL958755.
- 1.4 The Freeholder and the First Leaseholder and the Second Leaseholder are interested in the Property for the purposes of Section 106 of the Act.
- 1.5 The Freeholder and the First Leaseholder and the Second Leaseholder are hereinafter collectively known as “the Owner”.
- 1.6 The Planning Application for the Development of the Property was submitted to the Council and validated on 30 October 2017 and the Council resolved to grant permission conditionally under reference number 2017/6058/P subject to conclusion of this legal Agreement.
- 1.7 The Council is the local planning authority for the purposes of the Act and 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 should be restricted or regulated in accordance with this Agreement.
- 1.8 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act and the other local authority powers herein mentioned.
- 1.9 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.
- 1.10 The Mortgagee as mortgagee under a legal charge registered under title number NGL833027 and dated 20th January 2017 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
- 2.2 "Affordable Housing" low cost housing that meets the needs of people who cannot afford to occupy homes available in the open market in accordance with the National Planning Policy Framework and successor documents
- 2.3 "this Agreement" this planning obligation made pursuant to Section 106 of the Act and the other local authority powers herein mentioned
- 2.4 "the Burland Category of Damage" an industry recognised category of structural damage as specified at para 2.30 of Camden Planning Guidance 4: Basements and lightwells (as amended from time to time) and shown in the Fourth Schedule annexed hereto
- 2.5 "Business Parking Bay" a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by businesses of the locality in which the Development is situated
- 2.6 "Business Parking Permit" a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in a Business Parking Bay
- 2.7 "the Certificate of Practical Completion" the certificate issued by the Owner's contractor or architect or project manager certifying that the Development has been completed

2.8 “the Construction Apprentice
Default Contribution”

the sum of £7,500 (seven thousand five hundred pounds) to be paid by the Owner to the Council in lieu of construction apprentice provision.

2.9 “the Construction Apprentice
Support Contribution”

the sum of £1,700 (one thousand seven hundred pounds) per apprentice to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council to support the recruitment and training of apprentices

2.10 “Construction Management Plan”

a plan setting out the measures that the Owner will adopt in undertaking 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 annexed 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):-

- (i) 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 Construction Phase;

- (ii) proposals to ensure the protection and preservation of the listed building during the Construction Phase;
- (iii) proposals to ensure there are no adverse effects on the conservation area features during the Construction Phase;
- (iv) proposals to ensure there are no adverse effects on the neighbouring listed building(s) during the Construction Phase;
- (v) amelioration and monitoring effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction during the Construction Phase;
- (vi) 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) during the Construction Phase;
- (vii) the inclusion of a waste management strategy for handling and disposing of construction waste during the Construction Phase; and

(viii) 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 during the Construction Phase;

2.11 “the Construction Management Plan and Demolition Management Plan Implementation Support Contribution”

the sum of £7,564.50 (seven thousand five hundred and sixty-four pounds and fifty 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 the event of receipt for the review and approval of the draft Demolition Management Plan and Construction Management Plan and verification of the proper operation of the approved Demolition Management Plan and Construction Management Plan during the Demolition Phase and Construction Phase, respectively

2.12 “the Construction Phase”

the whole period between

- (i) the Implementation Date and
- (ii) the date of issue of the Certificate of Practical Completion

2.13 “the Council’s Considerate Contractor Manual”

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

- 2.14 "Deferred Housing Contribution" the sum of £304,373 (three hundred and four thousand three hundred and seventy-three pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement to be applied by the Council in the event of receipt towards the provision of Affordable Housing within the London Borough of Camden
- 2.15 "Deficit" a negative figure or figure of zero produced from the Post-Construction Viability Assessment by taking the residual site value of the Development and subtracting the sum of £15,057,000 (fifteen million and fifty-seven thousand pounds)
- 2.16 "Demolition" any works of demolition of the Existing Buildings at the Property as referred to in the Planning Permission and associated site clearance and references to "Demolish" shall be construed accordingly
- 2.17 "Demolition Date" the date Demolition commences
- 2.18 "Demolition Management Plan" a plan setting out the measures that the Owner will adopt in undertaking the Demolition of the Existing Buildings using good site practices in accordance with the Council's Considerate Contractor Manual and (insofar as is relevant to Demolition) in the form of the Council's Pro Forma Demolition Management Plan and Construction Management Plan as set out in the First Schedule annexed hereto to ensure the Demolition 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):-

- (i) 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 Demolition Phase;
- (ii) proposals to ensure the protection and preservation of the listed building during the Demolition Phase;
- (iii) proposals to ensure there are no adverse effects on the conservation area features during the Demolition Phase;
- (iv) proposals to ensure there are no adverse effects on the neighbouring listed building(s) during the Demolition Phase;
- (v) amelioration and monitoring effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction during the Demolition Phase;
- (vi) 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) during the Demolition Phase;

(vii) the inclusion of a waste management strategy for handling and disposing of construction waste during the Demolition Phase; and

(viii) 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 during the Demolition Phase

2.19 "Demolition Phase"

the whole period between:

- (i) the Demolition Date; and
- (ii) the Implementation Date

2.20 "Detailed Basement Construction Plan"

a plan setting out detailed information relating to the design and construction of the basement forming part of the Development with a view to minimising any or all impacts of the basement on neighbouring properties and the water environment and to provide a programme of detailed mitigating measures to be undertaken and put in place by the Owner with the objective of maintaining the structural stability of the Property and neighbouring properties as described in the "Basement Impact Assessment" by RSK dated 26 October 2017 submitted with the Planning Application (incorporating the

recommendations of the audit of such document by the Council) and to include the following key stages:-

(i) the Owner to appoint an independent suitably certified engineer (qualified in the fields of geotechnical and or structural engineering) from a recognised relevant professional body having relevant experience of sub-ground level construction commensurate with the Development (“the Basement Design Engineer”) AND for details of the appointment to be submitted to the Council for written approval (and the Owner to confirm that any change in Basement Design Engineer during the Construction Phase with the Council in advance); and

(ii) the Basement Design Engineer to formulate the appropriate plan to fulfil the requirements of the Detailed Construction Basement Plan and at all times during the Construction Phase to ensure the following: -

(a) that the design plans have been undertaken in accordance with the terms of this Agreement incorporating proper design and review input into the detailed design phase of the Development and ensuring that appropriately conservative modelling relating to the local ground conditions and local water environment and structural condition of neighbouring properties have been incorporated into the final design; and

(b) that the result of these appropriately conservative figures ensure that that the Construction Phase will be undertaken without any impact on the structural integrity of the neighbouring properties beyond “Negligible” with reference to the Burland Category of Damage; and

(c) that the Basement Design Engineer having confirmed that the design plans have been undertaken in accordance with this Agreement and includes a letter of professional certification confirming this and that the detailed measures set out in sub-clauses (1) - (7) below have been incorporated correctly and appropriately and are sufficient in order to achieve the objectives of the Detailed Basement Construction Plan;

(1) reasonable endeavours to access and prepare a detailed structural appraisal and conditions survey of all the neighbouring properties to be undertaken by an independent suitably qualified and experienced chartered surveyor (and for details to be offered if this is not undertaken in full or part);

(2) a method statement detailing the proposed method of ensuring the safety and stability of neighbouring properties throughout the Construction Phase including temporary works sequence drawings and assumptions with

appropriate monitoring control risk assessment contingency measures and any other methodologies associated with the basement and the basement temporary works;

(3) detailed design drawings incorporating conservative modelling relating to the local ground conditions and local water environment and structural condition of neighbouring properties prepared by the Basement Design Engineer for all elements of the groundworks and basement authorised by the Planning Permission together with specifications and supporting calculations for both the temporary and permanent basement construction works;

(4) the Basement Design Engineer to be retained throughout the Construction Phase to inspect approve and undertaking regular monitoring of both permanent and temporary basement construction works throughout their duration and to ensure compliance with the plans and drawings as approved by the building control body;

(5) measures to ensure the on-going maintenance and upkeep of the basement forming part of the Development and any and all associated drainage and/or ground

water diversion measures in order to maintain structural stability of the Property the neighbouring properties and the local water environment (surface and groundwater);

(6) measures to ensure ground water monitoring equipment shall be installed prior to Implementation and retained with monitoring continuing during the Construction Phase and not to terminate monitoring until the issue of the Certificate of Practical Completion (or other time agreed by the Council in writing); and,

(7) amelioration and monitoring measures of construction traffic including procedures for co-ordinating vehicular movement with other development taking place in the vicinity and 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.

(iii) the Owner to appoint a second independent suitably certified engineer (qualified in the fields of geotechnical and/or structural engineering) from a recognised relevant professional body having relevant experience of sub-ground level construction commensurate with the Development (“the Certifying Engineer”) (from the same company as the Basement

Design Engineer if the Owner so thinks fit) and for details of the appointment of the Certifying Engineer to be submitted to the Council for written approval in advance; and,

(iv) for the Certifying Engineer to review the design plans and offer a 2 page review report to the Council confirming that the design plans have been formulated in accordance with the terms of this Agreement and have appropriately and correctly incorporated the provisions of sub-clauses (1)-(7) above and are sufficient to achieve the objectives of the Detailed Basement Construction Plan AND should any omissions, errors or discrepancies be raised by the Certifying Engineer then these to be clearly outlined in the report and thereafter be raised directly with the Basement Design Engineer with a view to addressing these matters in the revised design plans.

(v) Only thereafter shall the Owner submit the agreed finalised version of the Detailed Basement Construction Plan to the Council for its written approval with a letter of professional certification from the Certifying Engineer confirming that the Detailed Basement Construction Plan is an approved form and has been formulated in accordance with the terms and clauses of this Agreement.

(vi) The Owner to respond to any further questions and requests for further information about the submitted plan from the Council AND IN THE EVENT that a further technical assessment be required then the Owner agrees

to reimburse the Council for any costs expended which requires the instruction of an independent assessment in order to resolve any unresolved issues or technical deficiencies in the Council's consideration of the submitted plan

2.21 "the Development"

redevelopment involving change of use from offices (Class B1) and erection of 5 storey building at the corner of Bayham Street and Bayham Place to provide pub at ground floor and Private Members Club (Class Sui Generis) on upper floors following demolition of 65 Bayham Place, 1 Bayham Street (façade retained) and 74 Crowndale Road (façades retained), including enlargement of basement and sub-basement, retention of ground floor and basement of Hope & Anchor PH (Class A4), change of use at 1st and 2nd floor from pub (Class A4) to Private Members Club (Class Sui Generis), mansard roof extension to 74 Crowndale Road, creation of terraces at 3rd and 4th floor level, relocation of chillers and air handling unit to 3rd floor plant enclosure with additional plant (5x a/c condensers and 1 cooling unit) at roof level, erection of glazed canopy to Camden High Street and Crowndale Road elevation and erection of 4th floor glazed extension above roof of Koko to provide restaurant and bar to Private Members Club (Sui Generis) as shown on drawing numbers Site location plan: AHA/KKC: EX/0002; Existing drawings: AHA/KKC: EX/0001; GA/098; GA/099; GA/100; GA/101; GA/102; GA/103; GA/104; GA/105; GA/200; GA/201; GA/202; GA/203; GA/300; GA/301; GA/302; GA/304; EX/306; Demolition drawings: AHA/KKC: DM/098 B;

DM/099 B; DM/100 C; DM/101 B; DM/102 B;
DE/103 A; DM/104 A; DM/106; DM/200; DM/201
A; DM/202 A; DM/203 A; DM/300; DM/301;
DM/302; DM/303 B; DM/306 Proposed drawings:
AHA/KKC: GA/001 A; GA/098 B; GA/099 B;
GA/100 C; GA/101 C; GA/102 C; GA/103 A;
GA/104 B; GA/105 C; PR/200 A; GA/201 B;
GA/202 A; GA/203 B; PR/300; PR/301 B;
PR/302; PR/303; PR/306; PR/309; PR/310;
DET/500; DET/530; DET/580; PR 210; PR 211;
PR 212; PR 213; GA/311; GA/100DDA
Supporting documents: Basement Impact
Assessment prepared by RSK dated October
2017; Structural Methodology Statement and
Basement Impact Assessment prepared by
Heyne Tillett Steel dated 27/10/2017; Design
and access statement prepared by Archer
Humphryes Architects dated October 2017; Draft
Construction Management Plan dated 17th
October 2017; Daylight and Sunlight Report
prepared by GVA dated October 2017; Delivery
and servicing management plan prepared by
ADL Traffic Engineering dated October 2017;
Transport statement prepared by ADL Traffic
Engineering dated October 2017; Travel plan
prepared by ADL Traffic Engineering dated
October 2017; Economic Statement prepared by
Indigo Planning dated October 2017; Statement
of Community Engagement Addendum; Planning
and Listed Building Statement prepared by
Indigo Planning dated October 2017; Heritage
statement prepared by Stephen Levrant Heritage
Architecture dated October 2017; Economic
Viability Appraisal prepared by ULL Property
dated 27th October 2017; Air quality
Assessment prepared by RSK dated October

2017; Designing out Crime- Addendum –Option B (including access drawings); Appendix H – Drainage Strategy Report rev.02 prepared by Heyne Tillett Steel dated January 2018;; Overheating Analysis Koko Private Members' Club prepared by Eight Associates dated 11/08/2017; Overheating Analysis Koko Rooftop prepared by Eight Associates dated 03/03/2017; Energy Assessment prepared by Eight Associates dated 21/12/2017; BREEAM 2014 Refurbishment & Fit Out prepared by Eight Associates dated 18.10.2017; BREEAM 2014 New Construction prepared by Eight Associates dated 18.10.2017; BREEAM Ecology report prepared by Eight Associates dated 23/10/2017; Biodiversity Management Plan prepared by Eight Associates dated 24/10/2017; Rapid Health Impact Assessment dated 31/08/17; Schedule of works Rev A prepared by Archer Humphryes Architects dated October 2017; Noise Emission Assessment prepared by Scotch Partners dated October 2017; GIA & GEA Area Schedule prepared by Archer Humphryes Architects dated 08/12/17; Operational Management Plan prepared by Indigo dated October 2017 Council's background papers: Basement Impact Assessment Audit prepared by Campbell Reith dated February 2017; Independent Viability Review prepared by BPS dated February 2018

2.22 “the Energy Efficiency and

Renewable Energy Plan” 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 through (but not be limited to) the following: -

- (i) incorporation of the measures set out in the submission document entitled “Energy Assessment” dated 21 December 2017 by Eight Associates to achieve a 9.4% reduction in CO2 emissions beyond the Part L 2013 baseline;
- (ii) further details (including detailed drawings, any necessary surveys and system specifications) of how the Owner will reduce the Development’s carbon emissions from renewable energy technologies located on the Property ensuring the Owner will target a reduction of at least 2.2% in carbon emissions in relation to the Property using a combination of complementary low and zero carbon technologies;
- (iii) separate metering of all low and zero carbon technologies to enable the monitoring of energy and carbon emissions and savings;
- (iv) a building management system being an electronic system to monitor the Development’s heating cooling and the hours of use of plant;
- (v) measures to enable future connection to a local energy network at the boundary of the Property including:
 - (a) safeguarded space for a future heat exchanger;
 - (b) provisions made in the building fabric and/or design (such as soft-

points in the building plant room walls) to allow pipes to be routed through from the outside to a later date;

(c) the provision of domestic hot water isolation valves to facilitate the connection of an interfacing heat exchanger;

(d) provision for external buried pipework routes to be safeguarded to a nearby road or similar where connection to the DHN would be made.

(vi) include a pre-Implementation design-stage review by an appropriately qualified and recognised independent professional in respect of the Property including Full Design stage NCM calculations certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on the reduction of carbon emissions contained within its Development Plan;

(vii) measures to secure a post-construction review of the Development by an appropriately qualified and recognised independent professional in respect of the Property (including but not limited to photographs, installation contracts and full NCM calculations certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan

have been achieved in the Development and will be maintainable in the Development's future management and occupation; and

- (viii) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

2.23 "the Existing Buildings"

65 Bayham Place and 1 Bayham Street (except for façade) and other structures existing at the Property at the date hereof;

2.24 "Free Membership"

a full membership for 12 calendar months only of the Private Members Club providing the same rights, privileges and benefits granted to a person holding a full membership at no cost, charge or expense to a Qualifying Person

2.25 "the Highways Contribution"

the sum of £37,431.47 (thirty-seven thousand four hundred and thirty-one pounds and forty-seven 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"):

- (i) to remove and reinstate the existing crossover adjacent to the Development;
- (ii) to repair the footway adjacent to the Development;
- (iii) install a dropped kerb to that part of the Public Highway adjacent to the entrance to the Property; and

(iv) any other works required as a direct result of the Development (such works as considered necessary by the Council)

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 excludes any statutory undertaker's costs

2.26 "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 other than Demolition, operations consisting of archaeological investigations, remedial work in respect of any contamination, diversion and laying of services and references to "Implementation" and "Implement" shall be construed accordingly

2.27 "King's Cross Construction Skills Centre"

the Council's flagship skills construction training skills centre providing advice and information on finding work in the construction industry

2.28 "the Level Plans"

plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway

2.29 "Local Procurement Code"

the code annexed to the Fifth Schedule hereto

2.30 "Noise Management Plan"

a plan to be prepared by the Owner for submission to the Council (for approval by the Council) in accordance with the 'Agent for Change' principles set out in the Mayor's Cultural

and Night Time Economy SPG (or successor document) setting out measures to ensure that the Private Members Club shall incorporate appropriate mitigation to ensure that its commercial operation is sufficiently protected against noise emanating from the operation of the Koko music venue

2.31 "Occupation Date"

the first date when any part of the Development is occupied for a purpose permitted by the Planning Permission and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly

2.32 "the Parks and Open Space Contribution"

the sum of £1,817.76 (one thousand eight hundred and seventeen pounds and seventy-six 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 the event of receipt towards the provision and improvement of public open spaces, outdoor sport and recreational facilities in the vicinity of the Development in the London Borough of Camden

2.33 "the Parties"

the Council, the Owner and the Mortgagee

2.34 "the Planning Application"

a planning application in respect of the development of the Property submitted to the Council and validated on 30 October 2017 for which a resolution to grant permission has been passed conditionally under reference number 2017/6058/P subject to conclusion of this Agreement

2.35 "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

2.36 "the Planning Permission"

a planning permission granted for the Development substantially in the draft form at the Second Schedule annexed hereto

2.37 "the Post-Construction Viability Assessment"

an assessment to be undertaken by the Owner and submitted to the Council in accordance with the terms of this Agreement such assessment to:

-
- (i) be presented substantially in the same form as the Owner's viability assessment submitted to the Council on 30 October 2017 entitled "Economic Viability Appraisal and Report" or such other form as agreed by the Council in writing; and
- (ii) be based on the same percentage of developer's return on floorspace (being part of the Development) value and the same percentage contractor's return on affordable housing cost as the Owner's viability assessment submitted on 30 October 2017 entitled "Economic Viability Appraisal and Report" or such alternative percentages as agreed by the Council in writing

with a view inter alia to evidence to the Council's reasonable satisfaction the residual

site value of the Property such assessment shall include (but not be limited to) the following:

-
- (iii) a copy of the Owner's viability assessment submitted on 30 October 2017 entitled "Economic Viability Appraisal and Report" showing the residual value of the Development as £8,186,000 (eight million one hundred and eighty-six thousand pounds);
- (iv) receipted invoices; certified costs; certified copies of sales contracts; details of any agreed terms for leases (to include rents payable) such leases to include any leases for the whole of the Development or any part thereof taking effect after the date of this Agreement and best estimates of costs yet to be incurred and value of any unsold space and any other evidence reasonably required by the Council to show any revenue and/or costs incurred in relation to the Development;
- (v) a solicitor's certification confirming that the sale, lease, assigning, sub-letting, grant of a licence, given control to any person of or otherwise demised of not less than 50% of the floorspace forming part of the Development were arm's length third party bona fide transactions and not:
 - (a) designed to reduce the revenue received from sales of the floorspace forming part of the Development;

- (b) confined to transactions between the Owner and subsidiary companies of the Owner;
- (c) transactions between the Owner and its employees; or
- (d) transactions including deferred consideration coverage or loans or finance deals from the Owner;

(vi) payment of £6,000 (six thousand pounds) to cover the Council's costs in verifying the material and information contained within the assessment;

(vii) details of any grant funding received in relation to the Development whether related to Affordable Housing or any other aspect of the Development;

(viii) any further information the Council acting reasonably requires

2.38 "Private Members Club

the private members club being part of the Development as approved under the Planning Permission

2.39 "Private Members Club Management Plan"

the plan prepared by the Owner setting out a package of measures to be adopted by the Owner in the management of the Private Members Club (to include the roof bar and restaurant, the Koko dome and roof terraces and the immediate vicinity outside the Private Members Club) to ensure the minimisation of harm to amenity of properties in the vicinity of the Development to include:

- (i) provision for an initial substantial review of the plan within six months of the Occupation Date ensuring the plan is updated upon receipt of results of the review and further approved in writing by the Council;
- (ii) a mechanism for monitoring and reviewing of the plan on the first anniversary of the Occupation Date;
- (iii) measures to ensure subsequent reviews on the third and fifth anniversary of the Occupation Date using the initial survey referred to in (ii) for baseline monitoring, ensuring the plan is updated where required upon receipt of results of the review and further approved in writing by the Council
- (iv) a mechanism in place to advise the Council of direct contact details and any subsequent changes;
- (v) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

2.40 "the Property"

the land known as Koko 1A Camden High Street, Hope & Anchor PH 74 Crowndale Road, 1 Bayham Street and 65 Bayham Place, London, NW1 7JEX the same as shown edged red on the plan at the Third Schedule annexed hereto

2.41 "the Public Highway"

any carriageway footway and/or verge adjoining the Property maintainable at public expense

- 2.42 "Qualifying Person" a person being a local entrepreneur and/or working for, representing or associated with a local start-up organisation based in the London Borough of Camden
- 2.43 "School Liaison Plan" a plan to be prepared by the Owner for submission to the Council (for approval by the Council) setting out details of liaison between local schools in the vicinity of the Development in the London Borough of Camden to include the details set out at the Seventh Schedule annexed hereto
- 2.44 "Surplus" a positive figure produced from the Post-Construction Viability Assessment by taking the residual site value of the Development and subtracting the sum of £15,057,000 (fifteen million and fifty-seven thousand pounds)
- 2.45 "the Sustainability Plan" 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 which shall: -
- (i) achieve the targets set out in the submission document entitled "Energy Assessment" dated 21 December 2017 by Eight Associates;
 - (ii) include a design stage Building Research Establishment Environmental Assessment Method (BREEAM) review report completed by a licensed BREEAM assessor in respect of the:

- (a) new build parts of the Development having a target of achieving not less than Excellent rating and attaining at least 60% of the credits in the “Energy” category and 60% in the “Water” category and 40% of the credits in the “Materials” category;
 - (b) the refurbished parts of the Development with a target of achieving not less than a “Very Good” rating (and in any case not less than 66.8%) and attaining at least 60% in the “Energy” category, 40% in “Materials” and 60% in the “Water” category
- (iii) include a pre-Implementation review by an appropriately qualified recognised and independent professional in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and satisfy the aims and objectives of the Council’s strategic policies on sustainability contained within its Development Plan;
- (iv) details of maintenance and management relative to sustainability measures included in the Sustainability Plan;
- (v) measures to secure a post construction review of the Development by an appropriately qualified recognised and independent professional in respect of the Property (including a written report,

photographs and installation contracts)
certifying that the measures incorporated
in the Sustainability Plan have been
achieved in the Development and will be
maintainable in the Development's future
management and occupation; and

- (vi) identifying means of ensuring the
provision of information to the Council
and provision of a mechanism for review
and update as required from time to time

2.46 "the Travel Plan"

a plan setting out a package of measures to be
adopted by the Owner in the management of the
Property with a view to inter alia reducing trips in
motor vehicles to and from the Property and
promoting the use of environmentally friendly
transport incorporating (but not limited to) the
following: -

- (i) the elements set out in the Sixth
Schedule hereto;
- (ii) provision for an initial substantial review
of the plan within three months of the
Occupation Date ensuring the plan is
updated upon receipt of results of the
review and further approved in writing by
the Council;
- (iii) a mechanism for monitoring and reviewing
of the plan on the first anniversary of the
Occupation Date;
- (iv) measures to ensure subsequent reviews
on the third and fifth anniversary of the
Occupation Date using the initial survey

referred to in (ii) for baseline monitoring, ensuring the plan is updated where required upon receipt of results of the review and further approved in writing by the Council

- (v) provision for the appointment of Travel Plan Co-ordinator prior to the Occupation Date and a mechanism in place to advise the Council of direct contact details and any subsequent changes in the post;
- (vi) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

2.47 “the Travel Plan Monitoring Contribution”

the sum of £6,244 (six thousand two hundred and forty-four 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 approve the Owner’s Travel Plan over a six-year period from the date of first Occupation of the Development

2.48 “the Travel Plan Co-ordinator”

an appropriately qualified and/or experienced person appointed by the Owner to deliver the objectives of the Travel Plan and be responsible for the coordination, implementation, reporting and review of the Travel Plan with a view to securing an ongoing process of continuous improvement

NOW THIS DEED WITNESSETH as follows: -

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, 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 and is a planning obligation for the purposes of Section 106 of the Act 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 or 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, 10 and 11 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 Demolition Date, the Implementation Date and the Occupation Date as herein provided.
- 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 and to any person deriving title through or under that Party and in the case of the Council the successor to its statutory functions.

3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause ~~4.2~~ for all relevant purposes. 4.1 (PK)

4. OBLIGATIONS OF THE OWNER

The Owner hereby covenants with the Council as follows: -

4.1 **CAR FREE**

4.1.1 To ensure that prior to Occupying any part of the Development each new occupier 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:

- (i) be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay;
- (ii) be granted a Business Parking Permit to park a vehicle in a Business Parking Bay;
- (iii) buy a contract to park within any car park owned, controlled or licensed by the Council.

4.1.2 Not to Occupy or use (or permit the Occupation or use of) any part of the Development at any time during which the occupier of that part holds a Business Parking Permit to park a vehicle in a Business Parking Bay, holds a Residents Parking Permit to park a vehicle in a Residents Parking Bay or is permitted to park a vehicle in any car park owned, controlled or licensed by the Council unless the occupier is the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970).

4.1.3 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.1.1 and 4.1.2 in this Agreement shall continue to have effect in perpetuity.

4.1.4 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the commercial units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those commercial units that in the Owner's

opinion are affected by the Owner's obligation in Clause 4.1.1 and 4.1.2 of this Agreement.

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 Not to amend the approved Construction Management Plan without the further written approval of the Council.

4.2.4 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.

4.2.5 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the approved Construction Management Plan (as may be amended from time to time in accordance with this Agreement) and not to permit the carrying out of any works comprised in the Construction Phase at any time when the requirements of the approved Construction Management Plan (as may be amended from time to time in accordance with this Agreement) 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 CONTRIBUTIONS

4.3.1 On or prior to the Demolition Date to pay to the Council in full the Construction Management Plan and Demolition Management Plan Implementation Support Contribution, the Parks and Open Space Contribution and the Highways Contribution.

4.3.2 Not to Demolish or to permit Demolition until such time as the Council has received in full the Construction Management Plan and Demolition Management Plan Implementation Support Contribution, the Parks and Open Space Contribution and the Highways Contribution.

4.3.3 On or prior to the Occupation Date to pay to the Council the Travel Plan Monitoring Contribution in full.

4.3.4 Not to Occupy or to permit Occupation until such time as the Council has received the Travel Plan Monitoring Contribution in full.

4.4 DEFERRED HOUSING CONTRIBUTION

4.4.1 The Parties agree that notwithstanding the remaining sub-clauses in this clause 4.4 of this Agreement the Owner may at any time following Implementation pay the Council the Deferred Housing Contribution in full.

4.4.2 To submit the Post-Construction Viability Assessment to the Council for approval in writing on the later date of the following: -

(i) on the date of issue of the Certificate of Practical Completion; or

(ii) at such time as the Owner has exchanged contracts on the sale, lease, assigning, sub-letting, grant of a licence, given control to any person of or otherwise demised of not less than 75% of the floorspace forming the Development and provides sufficient information to the Council (in the opinion of the Council) to evidence the same.

4.4.3 Not to complete on the sale, lease, assigning, sub-letting, grant of a licence, given control to any person of, or otherwise demised of more than 75% of the floorspace forming the Development until such time as the Post-Construction Viability Assessment has been submitted to the Council for approval in writing.

4.4.4 Upon issue of approval of the Post-Construction Viability Assessment the Council will provide to the Owner the following: -

- (i) a certificate specifying the sum (“the Assessment Certified Sum”) reasonably and properly expended by the Council in assessing the Post-Construction Viability Assessment; and
- (ii) a certificate specifying the sum (“the Viability Certified Sum”) properly assessed by the Council in accordance with the provisions of this Agreement as being recoverable from the Deferred Housing Contribution under the terms of this Agreement.

4.4.5 If the Assessment Certified Sum exceeds the payment made under clause 2.37(vi) (Post-Construction Viability Assessment) of this Agreement then the Owner shall within twenty-eight (28) days of the issuing of the said certificate pay to the Council the amount of the excess.

4.4.6 In the event the approved Post-Construction Viability Assessment shows a Deficit the Viability Certified Sum shall be zero and the Owner shall have no obligation to pay the Deferred Housing Contribution or any part thereof.

4.4.7 In the event the Post-Construction Viability Assessment shows a Surplus that is less than two times the Deferred Housing Contribution the Viability Certified Sum shall be half of the Surplus up to the limit of the Deferred Housing Contribution.

4.4.8 In the event the Post-Construction Viability Assessment shows a Surplus that is greater than or equal to two times the Deferred Housing Contribution the Viability Certified Sum shall be the full amount of the Deferred Housing Contribution.

4.4.9 The Owner shall within 28 days of receipt of the Viability Certified Sum pay to the Council the sum specified within the Viability Certified Sum.

4.4.10 Not to Occupy or permit Occupation of any more than 75% of the floorspace forming part of the Development until such time as the Council has confirmed receipt of the Viability Certified Sum or the Deferred Housing Contribution in full in writing.

4.5 **DEMOLITION MANAGEMENT PLAN**

4.5.1 On or prior to the Demolition Date to submit to the Council for approval a draft Demolition Management Plan.

4.5.2 Not to Demolish nor allow Demolition of the Existing Buildings until such time as the Council has approved the Demolition Management Plan as demonstrated by written notice to that effect.

4.5.3 Not to amend the approved Demolition Management Plan without the further written approval of the Council.

4.5.4 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 the Demolition Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

4.5.5 To ensure that throughout the Demolition Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the approved Demolition Management Plan (as may be amended from time to time in accordance with this Agreement) and not to permit the carrying out of any works comprised in Demolition of the Existing Buildings at any time when the requirements of the approved Demolition Management Plan (as may be amended from time to time in accordance with this Agreement) 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.

4.6 **DETAILED BASEMENT CONSTRUCTION PLAN**

4.6.1 On or prior to the Implementation Date to provide the Council for approval the Detailed Basement Construction Plan.

4.6.2 Not to Implement nor 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.

4.6.3 Not to amend the approved Detailed Basement Construction Plan without the further written approval of the Council.

4.6.4 The Owner acknowledges and agrees that the Council will not approve the Detailed Basement Construction Plan unless it demonstrates by way of certification by a

suitably qualified engineer from a 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 control ground movements such that impact on the neighbouring properties is limited to "Negligible" in accordance with the Burland Scale annexed hereto.

4.6.5 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in accordance with the requirements of the approved Detailed Basement Construction Plan (as may be amended from time to time in accordance with this Agreement) and not to permit the carrying out of the Construction Phase at any time when the requirements of the approved Detailed Basement Construction Plan (as may be amended from time to time in accordance with this Agreement) 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.

4.6.6 Not to Occupy or permit Occupation of the Development until a satisfactory post-completion review has been submitted to and approved by the Council in writing by way of certification by a suitably qualified engineer from a recognised relevant professional body confirming that the measures incorporated in the Detailed Basement Construction Plan as approved by the Council (as may be amended from time to time in accordance with this Agreement) have been incorporated into the Development.

4.6.7 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in accordance with the Detailed Basement Construction Plan as approved by the Council (as may be amended from time to time in accordance with this Agreement) and in the event of any breach shall forthwith take any steps required to remedy such non-compliance.

4.7 **ENERGY EFFICIENCY AND RENEWABLE ENERGY PLAN**

4.7.1 On or prior to the Implementation Date to submit to the Council for approval the Energy Efficiency and Renewable Energy Plan.