

**DATED**

**2018**

**(1) DOME ASSETS LIMITED**

**and**

**(2) BANK OF CYPRUS UK LIMITED**

**Planning obligation by way of unilateral undertaking under section 106 of the Town & Country Planning Act 1990 relating to land known as**

**26 Netherhall Gardens  
London  
NW3 5TL**

THIS UNDERTAKING is made the                      day of                      2018

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

1.     **DOME ASSETS LIMITED** (registered under company number 03263736) whose registered office is at 4 South Ealing Road, London, W5 4QA (hereinafter called "the Owner") of the first part
  
2.     **BANK OF CYPRUS UK LIMITED** (registered under company number 04728421) whose registered office is at 27-31 Charlotte Street, London, W1T 1RP (hereinafter called "the Mortgagee") 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 377857 subject to a charge to the Mortgagee.
  
- 1.2    The Owner is the freehold owner of the Property and is interested in the Property for the purposes of Section 106 of the Act.
  
- 1.3    The Planning Application for the Development of the Property was submitted to the Council and validated on 31 January 2017 under reference number 2017/0579/P.
  
- 1.4    By a decision letter dated 11 April 2018 The Mayor and Burgesses of the London Borough of Camden ("the Council") gave notice of refusal of the Planning Application and the Owner submitted the Appeal.

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 and Section 111 of the Local Government Act 1972 for the area in which the Property is situated.

- 1.5    This deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972 and any other enabling powers.

- 1.6 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 1.7 This deed shall come into effect on the date of grant of the Planning Permission.
- 1.8 The obligations contained in this deed are enforceable by the Council in accordance with section 106 of the Act.
- 1.9 The Mortgagee as mortgagee under a legal charge registered under title number 377857 and dated 2 January 2014 is willing to enter into this Undertaking to give its consent to the same.
- 1.10 In the event of the Secretary of State's Appeal decision states that one or more of the planning obligations in this Undertaking fail(s) to satisfy regulation 122 of the Community Infrastructure Levy Regulations 2010 then the Parties agree that the relevant obligation(s) shall not be enforceable under the terms of this Undertaking

2. **DEFINITIONS**

In this Undertaking 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 "the Appeal" the appeal by the Owner to the Secretary of State under Section 78(1) of the Act against the Council's refusal of the Planning Application for the Development at the Property such appeal having the reference number APP/X5210/W/18/3204394.
- 2.3 "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.

- 2.4 "Affordable Housing Contribution" the sum of £79,248.78 (seventy-nine thousand two hundred and forty-eight pounds and seventy-eight pence) to be paid by the Owner to the Council in accordance with the terms of this Undertaking and to be applied by the Council in the event of receipt towards the provision of Affordable Housing in the London Borough of Camden
- 2.5 "this Undertaking" this planning obligation made pursuant to Section 106 of the Act and made under other powers herein specified
- 2.6 AIIRP All Items Index of Retail Prices
- 2.7 "the Burland Category of Damage" an industry recognised category of structural damage as specified at para 3.25 of Camden Planning Guidance 4: Basements and lightwells (as amended from time to time) and shown at Annex 3 hereto
- 2.8 "the Certificate of Practical Completion" the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed
- 2.9 "Construction Management Plan" a plan setting out the measures that the Owner will adopt in undertaking the 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 at Annex 1 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 demolition of the Existing Building or structures on the Property and the building out of the Development;

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

2.10 "the Construction Phase"

the whole period between

- (i) the Implementation Date and

(ii) the date of issue of the Certificate of Practical Completion

2.11 "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

2.12 "the Development"

erection of a four storey (plus basement) detached property to provide 5 flats (4 x 2 bedroom and 1 x 3 bedroom), including front and rear roof terraces, hard and soft landscaping, boundary treatment and 3 car parking spaces, following demolition of the existing building (Class C3) as shown on drawing numbers  
Existing Drawings: 04009\_JA12\_P\_00\_001;  
04009\_JA12\_P\_UG\_001; 04009\_JA12\_P\_LG\_001;  
04009\_JA12\_P\_01\_001; 04009\_JA12\_P\_02\_001;  
04009\_JA12\_S\_AA\_001; 04009\_JA12\_E\_N\_001;  
04009\_JA12\_E\_S\_001; 04009\_JA12\_E\_E\_001;  
04009\_JA12\_E\_W\_001; G100\_P\_RF\_001  
Demolition Drawings: 04009\_JC20\_P\_00\_001;  
04009\_JC20\_P\_LG\_001; 04009\_JC20\_P\_01\_001;  
04009\_JC20\_P\_02\_001; 04009\_JC20\_E\_N\_001;  
04009\_JC20\_E\_S\_001; 04009\_JC20\_E\_E\_001;  
04009\_JC20\_E\_W\_001 Proposed drawings: C645\_  
S\_CC\_001 B; S\_AA\_001 B; P\_RF\_001 B;  
P\_LG\_001 B; P\_03\_001 B; P\_02\_001 B; P\_01\_001  
B; P\_00\_001 B; E\_W\_001 B; E\_S\_001 B; E\_N\_001  
B; E\_E\_001 B; E\_W\_002 B

2.13 "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 Development 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 Site Analytical Services dated January 2015 and the basement impact assessment by Sinclair Johnston dated June 2014 and the structural design and construction statement by Sinclair Johnston dated January 2017 submitted with the Planning Application 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 in advance (and for the Owner to confirm that any change in Basement Design Engineer during the Construction Phase with the Council in advance of any appointment); 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 to ensure the following:-
  - (a) that the design plans have been undertaken in strict accordance with the terms of this Undertaking 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;

(b) that the result of these appropriately conservative figures ensure that that the Development will be undertaken without any impact on the structural integrity of the Neighbouring Properties beyond "Slight" 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 strict accordance with this Undertaking and includes a letter of professional certification confirming this and that the detailed measures set out in sub-clauses 1 - 7 (inclusive) 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 at the Property 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 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”) 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 two-page review report to the Council confirming that the design plans have been formulated in strict accordance with the terms of this Undertaking and have appropriately and correctly incorporated the provisions of sub-clauses 1 – 7 (inclusive) 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 strict accordance with the terms and clauses of this Undertaking

(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

2.14 "the Existing Buildings"

the buildings existing at the Property and being part of the Development at the date hereof

2.15 "the Highways Works Contribution"

the sum of £9,951.80 (nine thousand nine hundred and fifty-one pounds and eighty pence) to be paid by the Owner to the Council in accordance with the terms of this Undertaking 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 repave the footway and vehicular crossover and re-instate the kerbing directly adjacent to the Property; and

(ii) 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

- 2.16 "the Implementation Date" the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly
- 2.17 "the Level Plans" plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway
- 2.18 "the Monitoring Fees" subject to Clause 1.9 of this Undertaking either the sum of £2,860 (two thousand eight hundred and sixty pounds) or £2,288 (two thousand two hundred and eighty-eight pounds)
- 2.19 "Neighbouring Properties" the properties known as 24A Netherhall Gardens and 28 Netherhall Gardens neighbouring the Property
- 2.20 "Occupation Date" the first date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.21 "the Parties" the Council, the Owner and the Mortgagee
- 2.22 "the Planning Application" a planning application in respect of the Development of the Property submitted to the Council and validated under reference number 2017/0579/P
- 2.23 "Planning Obligations Monitoring Officer" a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to Section 106 of the Act to whom all notices, correspondence, approvals etc. must be sent in the manner prescribed at clause 6.1 hereof

- 2.24 "the Planning Permission" any planning permission granted for the Development by the Secretary of State pursuant to the Appeal
- 2.25 "the Property" the land known as 26 Netherhall Gardens, London, NW3 5TL the same as shown edged red on the plan at Annex 2 hereto
- 2.26 "the Public Highway" any carriageway footway and/or verge adjoining the Property maintainable at public expense
- 2.27 "Residents 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 residents of the locality in which the Development is situated
- 2.28 "Residential Unit" a residential flat within the Development
- 2.29 "Residents 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 Residents Parking Bays
- 2.30 "Secretary of State" the Secretary of State having responsibility for determining appeals in relation to England and shall include any person appointed by the Secretary of State to determine the Appeal

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

- 3.1 This Undertaking is given 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 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 Undertaking and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Undertaking shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Parties save where the context states otherwise shall include their successors in title.
- 3.7 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. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

##### 4.1 **AFFORDABLE HOUSING CONTRIBUTION**

- 4.1.1 On or prior to the Implementation Date to pay to the Council the Affordable Housing Contribution.
- 4.1.2 Not to Implement or to permit Implementation until such time as the Council has received the Affordable Housing Contribution.

##### 4.2 **CAR CAPPED**

- 4.2.1 To ensure that prior to occupying any Residential Unit (being 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 more than one (1) Residents Parking Permit per Residential Unit to park a vehicle in a Residents Parking Bay; or
- (ii) buy more than one (1) contract to park within any car park owner, controlled or licensed by the Council per Residential Unit.

4.2.2 Not to occupy or use (or permit the occupation or use of) any Residential Unit (being part of the Development) at any time during which the occupier of the Residential Unit holds more than one (1) Residents Parking Permit per Residential Unit to park more than one (1) vehicle in a Residents Parking Bay or holds more than one (1) contract to park a vehicle in any car park owned, controlled or licensed to the Council per Residential Unit 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.

4.2.3 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.2.1 and 4.2.2 in this Undertaking shall continue to have effect in perpetuity.

4.2.4 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 Residential Units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those Residential Units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.2.1 and 4.2.2 of this Undertaking.

4.2.5 The Owner for itself and its successors in title to the Property hereby agree to include a provision into a Lease of any Residential Unit restricting use of the Residential Unit so that any occupier 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 more than one (1) Residents Parking Permit per Residential Unit to park a vehicle in a Residents Parking Bay; or
- (ii) buy more than one (1) contract to park within any car park owner, controlled or licensed by the Council per Residential Unit.



#### **4.3 CONSTRUCTION MANAGEMENT PLAN**

- 4.3.1 On or prior to the Implementation Date to submit to the Council for approval a draft Construction Management Plan.
- 4.3.2 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.
- 4.3.3 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.
- 4.3.4 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.

#### **4.4 DETAILED BASEMENT CONSTRUCTION PLAN**

- 4.4.1 On or prior to the Implementation Date to provide the Council for approval the Detailed Basement Construction Plan.
- 4.4.2 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.
- 4.4.3 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 Neighbouring Properties nor the Development itself.

4.4.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the 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.

4.4.5 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 have been incorporated into the Development.

4.4.6 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 strict accordance with the Detailed Basement Construction Plan as approved by the Council and in the event of any breach shall forthwith take any steps required to remedy such non-compliance.

#### 4.5 **HIGHWAYS WORKS**

4.5.1 On or prior to the Implementation Date to:-

- (i) pay to the Council the Highways Works Contribution in full; and
- (ii) submit to the Council the Level Plans for approval.

4.5.2 Not to Implement or to allow Implementation until such time as the Council has:-

- (i) received the Highways Works Contribution in full; and
- (ii) approved the Level Plans as demonstrated by written notice to that effect.

4.5.3 For the avoidance of doubt the Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate and does not undertake any responsibility in connection with any required statutory undertakers works and that the Highways Works Contribution excludes any statutory undertaker's costs.

4.5.4 On completion of the Highway Works the Council may provide to the Owner a

certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.

- 4.5.5 If the Certified Sum exceeds the Highway Works Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

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

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2017/0579/P the date upon which the Development is ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Undertaking and further shall indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Undertaking 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 Borough

Solicitor 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 to the Council for approval by the Council under the terms of this Undertaking shall be made by the Owner to the Council sending the full document and any appendices in electronic format to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this and citing the specific clause of this Undertaking to which such plan relates quoting the planning reference 2017/0579/P.
- 5.7 Payment of the financial contribution pursuant to Clause 4 (Obligations of the Owner) of this Undertaking shall be made by the Owner to the Council sending the full amount in the form of a banker's draft to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Undertaking and citing the specific clause of this Undertaking to which such Contribution relates quoting the planning application reference 2017/0579/P or by electronic transfer directly to the National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by banker's draft.
- 5.8 All consideration given in accordance with the terms of this Undertaking 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 Undertaking upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.9 Any sums referred to in this Undertaking as payable or to be applied by any party other than the Council under this Undertaking shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Undertaking a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items Index 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

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

5.10 All costs and expenses payable to the Council under this Undertaking shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

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

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or Undertaking to be served under or in connection with this Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Undertaking and shall cite the clause of the Undertaking to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, 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 2017/0579/P and in the case of any notice or approval or Undertaking from the Council this shall be signed by a representative of the Council's Environment Department.

6.2 This Undertaking 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 Undertaking on or prior to the date of completion of the Undertaking and the Monitoring Fees within 14 (fourteen days) of the date of issue of the Planning Permission and in the event of receipt of the Monitoring Fees the Council agrees to use the Monitoring Fees for administration related to the provisions of this Undertaking

6.4 The Owner hereby covenants with the Council that it will within 28 days from the date of the Planning permission apply to the Chief Land Registrar of the Land Registry to register this Undertaking in the charges register of the title to the Property and will

furnish the Council forthwith on written demand with official copies of such title to show the entry of this Undertaking in the charges register of the title to the Property.

- 6.5 Nothing contained or implied in this Undertaking 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 Undertaking
- 6.6 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Undertaking 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 Undertaking (other than those contained in this sub-clause) shall not have any effect until this Undertaking 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 Undertaking with or at the request of the Owner) this Undertaking shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Undertaking.
- 6.9 If in relation to any of the planning obligations provided under Clause 4 (Obligations of the Owner) of this Undertaking the Secretary of State (or any person appointed by the Secretary of State) in determining the Appeal states in his or her decision letter that the obligation does not comply with all the tests set out in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) (such that it does not constitute a reason for granting the Planning Permission) then that obligation or those obligations shall not apply and shall be unenforceable.

7. **MORTGAGEE EXEMPTION**

The Mortgagee hereby consents to the completion of this Undertaking and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.

8. **RELEASE**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with its interest.

8. **RIGHTS OF THIRD PARTIES**

No provisions of this Undertaking shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

9. **JURISDICTION**

This Undertaking 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 Undertaking or its subject matter or formation.

10. **EXECUTION**

This Undertaking may be executed in any number of Counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Undertaking.

**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 )  
DOME ASSETS LIMITED )  
acting by a Director and its Secretary )  
or by two Directors )

Director Name: (CAPITALS) )

FRSXOS KAIMAKAMIS

Director Signature: )



Director/Secretary Name (CAPITALS) )

FRSXOS KAIMAKAMIS

Director/Secretary Signature: )



EXECUTED AS A DEED BY )  
BANK OF CYPRUS UK LIMITED )  
acting by its duly authorised signatories )

Signature: )

.....

Name (in BLOCK CAPITALS): )

.....

Position: )

.....

Witnessed By: )

.....

Signature: )

.....

Name (in BLOCK CAPITALS): )

.....

Position: )

.....

Witnessed By: )

.....



## ANNEX 1

### **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:-

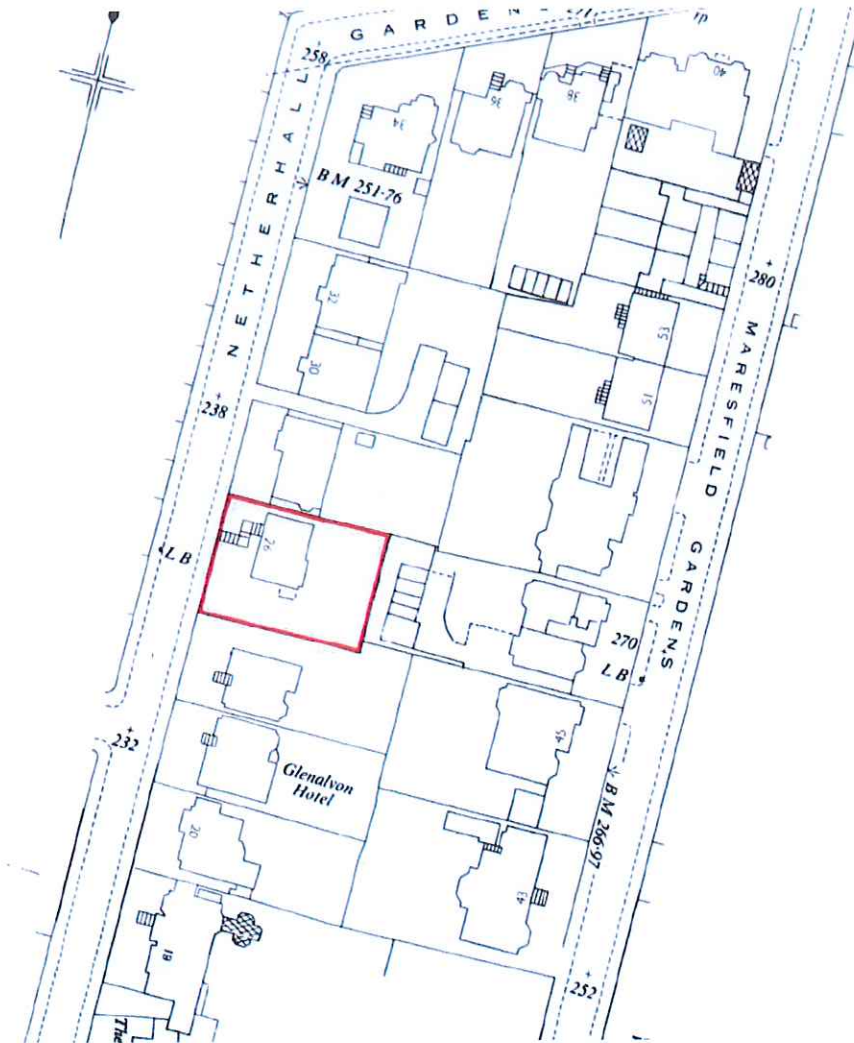
<https://www.camden.gov.uk/ccm/content/environment/planning-and-built-environment/two/planning-applications/making-an-application/supporting-documentation/planning-obligations-section-106/>

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 Undertaking that may be required for things such as road closures or hoarding licences**

ANNEX 2

plan of the Property



### Annex 3

#### The Burland Category of Damage

Category of damage	Description of typical damage	Approximate crack width (mm)	Limiting tensile strain $\epsilon_{lim}$ (per cent)
0 Negligible	Hairline cracks of less than about 0.1 mm are classed as negligible	<0.1	0.0-0.05
1 Very slight	Fine cracks that can easily be treated during normal decoration. Perhaps isolated slight fracture in building. Cracks in external brickwork visible on inspection	<1	0.05-0.075
2 Slight	Cracks easily filled. Redecoration probably required. Several slight fractures showing inside of building. Cracks are visible externally and some repointing may be required externally to ensure weathertightness. Doors and windows may stick slightly.	<5	0.075-0.15
3 Moderate	The cracks require some opening up and can be patched by a mason. Recurrent cracks can be masked by suitable lining. Repointing of external brickwork and possibly a small amount of brickwork to be replaced. Doors and windows sticking. Service pipes may fracture. Weathertightness often impaired.	5-15 or a number of cracks > 3	0.15-0.3
4 Severe	Extensive repair work involving breaking-out and replacing sections of walls, especially over doors and windows. Windows and frames distorted, floor sloping noticeably. Walls leaning or bulging noticeably, some loss of bearing in beams. Service pipes disrupted.	15-25 but also depends on number of cracks	>0.3
5 Very severe	This requires a major repair involving partial or complete rebuilding. Beams lose bearings, walls lean badly and require shoring. Windows broken with distortion, Danger of instability.	Usually > 25 but depends on number of cracks	

Damage Category Chart (CIRIA C580)

Extract from para 2.30 of the Camden Planning Guidance 4: Basements and Lightwells

