

DATED

13 January

2020

(1) KALEMINSTER LIMITED

and

(2) PEBBLEAIM LIMITED

and

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

AGREEMENT

relating to land known as

BARRIE HOUSE 28 ST EDMUND'S TERRACE LONDON NW8 7QH

pursuant to

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

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

Section 111 of the Local Government Act 1972; Section 278 of the Highways Act 1980 and

Section 1(1) of the Localism Act 2011

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*Subscribed by the
Higher Court of
England and Wales
13/1/20*

THIS AGREEMENT is made the 13th day of January 20~~19~~ 20

BETWEEN:

- A. **KALEMINSTER LIMITED** (Co. Regn. No. 01818675) whose registered office is at The Old Barn Ox Lane Tenterden Kent TN30 6NG (hereinafter called "the Freeholder") of the first part
- B. **PEBBLEAIM LIMITED** (Co. Regn. No. 01829956) whose registered office is at 1 Landsdowne Road London W11 3AL (hereinafter called "the Leaseholder") of the second part
- C. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third 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 LN147889, NGL361000 and NGL957277.
 - 1.2 The Freeholder is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
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- 1.3 The Leaseholder is registered at the Land Registry as the leasehold proprietor with Title absolute of part of the Property under Title Number NGL605675.
 - 1.4 The Leaseholder is the leasehold owner of and is interested in part of the Property for the purposes of Section 106 of the Act.
 - 1.5 The Freeholder and the Leaseholder shall hereinafter be jointly referred to as the "Owner".

- 1.6 A Planning Application for the development of the Property was submitted to the Council and validated on 6 February 2018 under reference number 2018/0645/P.
- 1.7 The Council refused the Planning Application on 10 May 2019.
- 1.8 An appeal under section 78 of the Act in respect of the refusal of the Planning Application was submitted by the Owner to the Planning Inspectorate and was given reference number APP/X5210/W/19/3240401.
- 1.9 The Council is the local planning authority for the purposes of the Act and is the local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972, Section 278 of the Highways Act 1980 and Section 1(1) of the Localism Act 2011 for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

1.10 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.11 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.

2. **DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

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| 2.1 | "the Act" | the Town and Country Planning Act 1990 (as amended) |
| 2.2 | "Affordable Housing" | low cost housing including social rented housing and intermediate 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 |

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| 2.3 | "Affordable Housing Contribution" | the sum of £418,912 (four hundred and eighteen thousand nine hundred and twelve 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 towards the provision of Affordable Housing in the London Borough of Camden |
| 2.4 | "the Agreement" | this planning obligation made pursuant to Section 106 of the Act |
| 2.5 | "the Burland Category of Damage" | an industry recognised category of structural damage as specified at para 4.29 of the Council's Planning Guidance 4: Basements (as may be amended) an extract of which is set out in the Second Schedule annexed hereto |
| 2.6 | "the Certificate of Practical Completion" | the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed |
| 2.7 | "Construction Management Plan" | <p>a plan setting out the reasonable measures that the Owner will adopt in undertaking the demolition of the existing buildings and the construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual and in the form of the Council's Pro Forma Construction Management Plan as set out in the First Schedule hereto to ensure the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):-</p> <p>(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 buildings or structures on the Property and the building out of the Development;</p> |

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| | | <p>(ii) amelioration and monitoring effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;</p> <p>(iii) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);</p> <p>(iv) the inclusion of a waste management strategy for handling and disposing of construction waste; and</p> <p>(v) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as reasonably required from time to time</p> |
| 2.8 | "the Construction Management Plan Implementation Support Contribution" | the sum of £7,565 (seven thousand five hundred and sixty five pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the review and approval of the draft Construction Management Plan and verification of the proper operation of the approved Construction Management Plan during the Construction Phase |
| 2.9 | "the Construction Phase" | <p>the whole period between:-</p> <p>(i) the Implementation Date; and</p> <p>(ii) the date of issue of the Certificate of Practical Completion</p> <p>and for the avoidance of doubt includes any demolition</p> |
| 2.10 | "the Council's Considerate Contractor Manual" | the document produced by the Council from time to time entitled "Guide for Contractors Working in Camden" relating |

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| | | to the good practice for developers engaged in building activities in the London Borough of Camden |
| 2.11 | "Detailed Basement Construction Plan" | <p>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 Parmarbrook dated May 2018 submitted with the Planning Application and to include the following key stages:-</p> <ol style="list-style-type: none"> 1. 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, 2. 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:- <ol style="list-style-type: none"> (a) that the design plans have been undertaken in strict accordance with the terms of this Agreement incorporating proper design and review input into the detailed design phase of the Development and |

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| | | <p>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</p> <p>(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</p> <p>(c) that a letter of professional certification is provided confirming that the design plans have been undertaken in strict accordance with this Agreement and that the detailed measures set out in sub-clauses (i)-(vii) below have been incorporated correctly and appropriately and are sufficient in order to achieve the objectives of the Detailed Basement Construction Plan;</p> <p>(i) to use 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);</p> <p>(ii) to prepare 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</p> |
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| | | <p>assumptions with appropriate monitoring control risk assessment contingency measures and any other methodologies associated with the basement and the basement temporary works;</p> <p>(iii) to prepare 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;</p> <p>(iv) that the Basement Design Engineer is 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;</p> <p>(v) that provides 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</p> |
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| | | <p>groundwater);</p> <p>(vi) that provides 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,</p> <p>(vii) that provides 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.</p> <p>3. 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,</p> <p>4. 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 strict accordance with the terms of this Agreement and</p> |
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| | | <p>have appropriately and correctly incorporated the provisions of sub-clauses (i)-(vii) 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.</p> <p>5. 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 of this Agreement.</p> <p>6. 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.</p> |
| 2.12 | "the Development" | <p>redevelopment of existing two-storey porter's lodge and surface level car park to construct a part four, part five storey extension (lower ground, ground and 3/4 storey's) to Barrie House including excavation of a basement level, to provide 9 self-contained residential flats (1 x 1 bed, 6 x 2 bed and 2 x 3 bed units), cycle parking, refuse and recycling stores, hard and soft landscaping and relocated off-street car parking spaces as shown on drawing numbers: E_00</p> |

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| | | <p>rev A; E_20 rev A; E_21 rev B; E_22 rev A; E_23 rev A; E_24 rev A; E_25 rev A; P_20 rev C; P_21 rev D; P_22 rev C; P_23 rev C; P_24 rev C; P_25 rev A; P_30; P_31; P_32; P_33; P_34; P_35; P_36; P_37; P_38; P_39; P_51; P_52; P_56; Preliminary Ecological Appraisal produced by Eight Associates dated January 2019; Ground Source Heat Pump Feasibility Study produced by Cundall dated October 2018; Overheating Analysis produced by Eight Associates dated September 2018; Report on the Impact on Trees produced by John Cromar's Arboricultural Company Limited dated September 2018; Sustainability Statement Issue no. 3 produced by Eight Associates dated September 2018; Landscape Proposal rev D produced by Exterior Architecture dated September 2018; Energy Assessment Issue no. 2 produced by Eight Associates dated September 2018; Basement Impact Assessment produced by Parmarbrook dated May 2018; Secant Piled Retaining Wall Design for Temporary and Permanent Conditions produced by Parmarbrook dated June 2018; Daylight and Sunlight Report produced by Malcolm Halls dated May 2018; Design and Access Statement produced by Marek Wojciechowski Architects dated November 2017; SuDS Assessment produced by Motion dated January 2018; Acoustic Report produced by Emtec dated December 2017; Draft Construction Management Plan produced by RPS dated December 2017; Planning Statement produced by Montague Evans dated February 2018; Covering letter produced by Montague Evans dated February 2018</p> |
| 2.13 | "the Energy Efficiency and Renewable Energy Plan" | <p>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 limited to) the following:-</p> <p>(a) the incorporation of the measures set out in the submission document entitled Energy Assessment and dated 21 September 2018 by Eight Associates to</p> |

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| | | <p>achieve a 19% reduction in carbon dioxide emissions beyond the Part L 2013 baseline;</p> <p>(b) 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 19% in carbon emissions in relation to the Property using a combination of complementary low and zero carbon technologies;</p> <p>(c) separate metering of all low and zero carbon technologies to enable the monitoring of energy and carbon emissions and savings;</p> <p>(d) a building management system being an electronic system to monitor the Development's heating cooling and the hours of use of plant;</p> <p>(e) include a pre-Implementation design-stage review of the Development by an appropriately qualified and recognised independent professional in respect of the Property including full design stage standard assessment procedure (SAP) calculations certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan are achievable in the Development and reasonably satisfy the aims and objectives of the Council's strategic policies on the reduction of carbon emissions contained within its Development Plan;</p> <p>(f) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent professional in respect of the</p> |
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| | | <p>Property (including but not limited to photographs, installation contracts and full as-built SAP 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</p> <p>(g) 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</p> |
| 2.14 | "the Highways Contribution" | <p>the sum of £10,000 (ten thousand 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 carrying out of works to the public highway and associated measures in the vicinity of the Property and as are required due to the Development ("the Highways Works") these to include costs associated with the following:-</p> <p>(a) damage to the public highway during the Construction Phase and</p> <p>(b) any other highway works the Council acting reasonably considers necessary as a direct result of the Development</p> <p>all works will be subject to final measure and any level adjustment required and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs</p> |
| 2.15 | "the Implementation Date" | the date of implementation of the Development by the |

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| | | carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly |
| 2.16 | "Neighbouring Properties" | known as the existing properties comprised in Barrie House, 16 Kingsland, 72 Kingsland and 30 – 36 (consecutive) St Edmunds Terrace |
| 2.17 | "Occupation Date" | the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" "Occupying" "Occupier" and "Occupation" shall be construed accordingly |
| 2.18 | "the Parking Spaces" | the ten car parking spaces provided at the Property shown edged orange on the plan annexed hereto |
| 2.19 | "the Parties" | mean the Council and the Owner |
| 2.20 | "the Planning Application" | a planning application in respect of the Development of the Property submitted to the Council and validated on 6 February 2018 under reference number 2018/0645/P |
| 2.21 | "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 |
| 2.22 | "the Planning Permission" | any planning permission granted for the Development by the Secretary of State under reference APP/X5210/W/19/3240401 pursuant to the appeal against the refusal of the Planning Application |
| 2.23 | "the Property" | the land known as Barrie House 29 St Edmund's Terrace London NW8 7QH the same as shown edged red on the plan annexed hereto |
| 2.24 | "the Public Highway" | any carriageway footway and/or verge adjoining the Property maintainable at public expense |
| 2.25 | "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 |
| 2.26 | "Residents Parking Permit" | a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle |

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| | | to park in Residents Parking Bays |
| 2.27 | "the Secretary of State" | the Secretary of State for Housing, Communities and Local Government (or their successors) entitled to determine planning appeals including any appointed inspector |
| 2.28 | "the Sustainability Plan" | <p>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:-</p> <p>(a) achieve the targets set out in the Planning Application document entitled Sustainability Statement issue number 2 and dated 19 February 2017 by Eight Associates</p> <p>(b) include a design stage Building Research Establishment Environmental Assessment Method ("BREEAM") review report completed by a licensed BREEAM assessor in respect of the Property with a target of achieving an Excellent rating and attaining at least 60% of the credits in each of Energy and Water and 40% of the credits in Materials categories;</p> <p>(c) include a pre-Implementation review by an appropriately qualified recognised and independent professional in respect of the Development certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and reasonably satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan;</p> <p>(d) details of maintenance and management relative to sustainability measures included in the Sustainability Plan;</p> <p>(e) measures to secure a post construction review of the Development by an appropriately qualified recognised</p> |

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| | | <p>and independent professional (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</p> <p>(f) 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</p> |
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3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 of the Act, and is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972, Section 278 of the Highways Act 1980 and Section 1(1) of the Localism Act 2011 and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 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 on 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 capped" housing in accordance with Clauses 4.2.1, 4.2.2 and 4.2.3 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 The Owner hereby covenants with the Council on or prior to the Implementation Date to pay to the Council the Affordable Housing Contribution.

4.1.2 The Owner hereby covenants with the Council 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 a Residents Parking Permit to park a vehicle in a Residents Parking Bay;
- (ii) buy a contract to park within any car park owned, controlled or licensed by the Council; and
- (iii) at any time to park any vehicle in the Parking Spaces save that the parking of a vehicle in the Parking Spaces for the purposes of moving into or out of a residential unit (being part of the Development) at the commencement or end

of any Occupation of a residential unit will not be deemed to breach this obligation.

- 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 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).
- 4.2.3 Not to permit any owner or occupier of any residential unit (being part of the Development) to park any vehicle in the Parking Spaces (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) save that the parking of vehicles in the Parking Spaces for the purposes of moving into or out of a residential unit at the commencement or end of any Occupation of a residential unit will not be deemed to breach this obligation.
- 4.2.4 The Owner for itself and its successors in title to the Property hereby acknowledges that the provisions in Clauses 4.2.1, 4.2.2 and 4.2.3 above will remain permanently.
- 4.2.5 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 Clauses 4.2.1, 4.2.2 and 4.2.3 of this Agreement.
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4.3 CONSTRUCTION MANAGEMENT PLAN

- 4.3.1 On or prior to the Implementation Date to:
- (i) pay to the Council the Construction Management Plan Implementation Support Contribution in full; and
 - (ii) submit to the Council for approval a draft Construction Management Plan.

4.3.2 Not to Implement nor allow Implementation of the Development until such time as the Council has:

- (i) received the Construction Management Plan Implementation Support Contribution in full; and
- (ii) approved the Construction Management Plan as demonstrated by written notice to that effect.

4.3.3 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 approved 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 a suitably qualified engineer from a recognised relevant professional body confirming 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 ENERGY EFFICIENCY AND RENEWABLE ENERGY PLAN

- 4.5.1 On or prior to the Implementation Date to submit to the Council for approval the Energy Efficiency and Renewable Energy Plan.
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- 4.5.2 Not to Implement nor permit Implementation until such time as the Council has approved the Energy Efficiency and Renewable Energy Plan as demonstrated by written notice to that effect.
- 4.5.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures detailed in the Energy Efficiency and Renewable Energy Plan as approved by the Council have been incorporated into the Development.

4.5.4 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 Energy Efficiency and Renewable Energy Plan as approved by the Council from time to time and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Energy Efficiency and Renewable Energy Plan.

4.6 HIGHWAYS CONTRIBUTION

4.6.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.

4.6.2 Not to Implement or to allow Implementation until such time as the Council has received the Highways Contribution in full.

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

4.6.4 On completion of the Highway Works the Council shall provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.

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

4.6.6 If the Certified Sum is less than the Highway Contribution then the Council shall within twenty eight days of the issuing of the said certificate pay to the Owner the amount of the difference between the Certified Sum and the Highway Contribution.

4.7 SUSTAINABILITY PLAN

4.7.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.

- 4.7.2 Not to Implement nor permit Implementation until such time as the Council has approved the Sustainability Plan as demonstrated by written notice to that effect.
- 4.7.3 Not to Occupy or permit Occupation of the Development until a post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in Sustainability Plan as approved by the Council have been incorporated into the Development.
- 4.7.4 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 Sustainability Plan as approved by the Council from time to time and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

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 Planning Permission 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 2018/0645/P the date upon which the Development will be ready for Occupation.
-
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any reasonable requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the

Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.

- 5.5 Where any approval, agreement, consent, certificate or expression of satisfaction is to be given by any of the Parties under this Agreement, such approval, agreement, consent, certificate or expression of satisfaction shall not be unreasonably withheld or delayed.
- 5.6 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.7 Submission of any plan or document for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full plan or document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the planning reference 2018/0645/P.
- 5.8 Payment of the Affordable Housing Contribution, the Construction Management Plan Implementation Support Contribution and the Highways Contribution pursuant to Clause 4.1, 4.3 and 4.6 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable) the owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2018/0645/P. Electronic Transfer to be made directly to National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.

5.9 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

5.10 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement (apart from the legal costs referred to at clause 6.3) shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AllRP") figure last published by the Office for National Statistics at the date hereof is the denominator ("X") and the last AllRP figure published before the date such payment or application is made ("Y") less the last published AllRP figure at the date hereof ("X") is the numerator so that

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

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

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

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Placeshaping Service, Urban Design and Development Team, 2nd Floor, 5 Pancras Square, London, N1C 4AJ and sent to planning obligations on PlanningObligations@camden.gov.uk quoting the planning reference number

2018/0645/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.
- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of Development this Agreement shall forthwith determine and cease to have effect.

6.9 The obligations contained in clause 4 of this Agreement shall not be enforceable against any owners or occupiers of individual residential units within the Development or any statutory undertakers who acquire any part of the Property for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transportation services save for the obligations contained in clauses 4.2, 4.4, 4.5 and 4.7 which shall be enforceable against any owners or occupiers of individual residential or commercial units within the Development.

6.10 If a Court or the Secretary of State determines that any obligation contained in this Agreement is contrary to Regulation 122 of the Community Infrastructure Levy Regulations 2010 such that no weight can be given to it, then such obligation shall immediately cease and determine (without any further act by the Parties to this Agreement) PROVIDED THAT the release set out in this clause shall not affect the remaining obligations or covenants within this Agreement which shall continue to have full force and effect.

7. JOINT AND SEVERAL LIABILITY

7.1 All covenants made by the Owner(s) in this Agreement are made jointly and severally and shall be enforceable as such.

8. RIGHTS OF THIRD PARTIES

8.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

9. MORTGAGEE EXEMPTION

9.1 The Parties agree that the obligations contained in this Agreement shall not be enforceable against any mortgagee or chargee (or any receiver (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Property unless it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owner.

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner has executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY)
KALEMINSTER LIMITED)
acting by a Director and its Secretary)
or by two Directors in the presence of:)

Director

Witness Signature
Director/Secretary

Witness Address:
CHARLES RUSSELL SPEECHLYS LLP
5 FLEET PLACE
LONDON
EC4M 7RD

EXECUTED AS A DEED BY)
PEBBLEAIM LIMITED)
acting by a Director and its Secretary)
or by two Directors in the presence of:)

Director

Witness Signature
Director/Secretary

Witness Address:
CHARLES RUSSELL SPEECHLYS LLP
5 FLEET PLACE
LONDON
EC4M 7RD

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

Authorised Signatory



THE FIRST SCHEDULE
Pro Forma
Construction Management Plan

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

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

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

Please use the minimum requirements (also available at the link above) as guidance for what is required in the Construction Management Plan and then download the pro-forma Construction Management Plan.

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

THE SECOND SCHEDULE
The Burland Category of Damage

| Category of damage | Description of typical damage | Approximate crack width (mm) | Limiting tensile strain ϵ_{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 4.29 of the Camden Planning Guidance: Basements



Rev C
01/12/19
Issued for 1608
Car Parking Spaces Indicated

Rev B
26/09/19
Issued for 1606
Site Boundary Indicated

Rev A
01/04/18
Issued for Planning
Site Boundary Indicated

Rev -
04/01/18
Issued for Planning
Site Boundary Indicated

PLANNING

Project No. 16033

Client Kalaminster Ltd.

Date October 2017

Scale 1:1250 @ A4

Project 1 Barrie House, 29 St Edmund's Terrace NW8 7QH

Drawing Title Site Location Plan

Drawing No. Rev. E_00 C

Drawn TMC

Approved AA

Signed AA

Marek Wojciechowski Architects Ltd.

66-63 Macaulay Street W19 5BP T: 020 890 5156 www.marekwojciechowski.co.uk

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N

B 4A

DATED

13 January

2019 20

(1) KALEMINSTER LIMITED

and

(2) PEBBLEAIM LIMITED

and

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

A G R E E M E N T

relating to land known as

BARRIE HOUSE 28 ST EDMUND'S TERRACE LONDON NW8 7QH

pursuant to

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

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

Section 111 of the Local Government Act 1972; Section 278 of the Highways Act 1980 and

Section 1(1) of the Localism Act 2011

Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 5826

CLS/COM/LN/1800.1194
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