

DATED

2019

**(1) NYRAFF LIMITED**

and

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

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

relating to land known as

**OMEGA HOUSE, 67 - 74 SAFFRON HILL LONDON EC1N 8QX**

pursuant to

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

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

**Section 111 of the Local Government Act 1972;**

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

**Section 278 of the Highways Act 1980**

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

Tel: 020 7974 4125  
CLS/COM/00.1800.1233

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**THIS AGREEMENT** is made the

day of

2019

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

- A. **NYRAFF LIMITED** (Co. Regn. No. 02006187) whose registered office is at 2 Madrid Road, London, SW13 9PD (hereinafter called "the Freeholder") of the first part
- B. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

1. **WHEREAS**

- 1.1 The Freeholder is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL332887.
- 1.2 The Freeholder is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 17 October 2018 under reference number 2018/5028/P.
- 1.4 The Council refused the Planning Application on 2 May 2019.
- 1.5 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/19/3240315.
- 1.6 The Council is the local planning authority for the purposes of the Act and is the local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

1.7 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.

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

## 2. **DEFINITIONS**

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

2.1	"the Act"	the Town and Country Planning Act 1990 (as amended)
2.2	"Affordable Rent"	An affordable rent for the Jewellery Workspace to be calculated by the Owner based on a figure of 70% of the mean average for B1(c) of Use Classes Order market rents paid by jewellery sector tenants occupying equivalent B1(c) workshop space in the Hatton Garden area over the preceeding 12 month period and such rental rate to be approved in writing by the Council
2.3	"the Agreement"	this Planning Obligation made pursuant to Section 106 of the Act
2.4	"the Certificate of Practical Completion"	the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed
2.5	"Construction Management Plan"	a plan setting out the measures that the Owner will adopt in undertaking the demolition of any existing structures 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

		<p>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> <ul style="list-style-type: none"> <li>(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 structures on the Property and the building out of the Development;</li> <li>(ii) proposals to ensure there are no adverse effects on the conservation area features;</li> <li>(iii) amelioration and monitoring effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;</li> <li>(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);</li> <li>(v) the inclusion of a waste management strategy for handling and disposing of construction waste; and</li> <li>(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</li> </ul>
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2.6	"the Construction Management Plan Implementation Support Contribution"	the sum of £3,136 (three thousand one hundred thirty-six 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
2.7	"the Construction Phase"	the whole period between  (i) the Implementation Date and  (ii) the date of issue of the Certificate of Practical Completion  and for the avoidance of doubt includes the demolition of any existing structures
2.8	"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
2.9	"the Development"	erection of additional storey at fifth floor level and erection of additional storey at second floor level (rear/Onslow Street side) to office building (Use B1a) as shown on drawing numbers:- 1815/100A; 1815/101; 1815/102; 1815/103; 1815/110; 1815/111; 1815/112; 1815/113; 1815/114; 1815/199; 1815/200B; 1815/210; 1815/211; 1815/212B; 1815/214C; 1815/214D
2.10	"the Highways Contribution"	the sum of £8,496.33 (eight thousand, four hundred and ninety six pounds and thirty three pence) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of

		<p>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) repaving the footway directly adjacent to the Property; and</p> <p>(b) any other 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 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>
2.11	"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
2.12	"Jewellery Workspace"	<p>the 200.5 square metres of net internal floor space within the Development as shown on the attached Jewellery Workspace Location Plan which are to be used exclusively for purposes within Class B1 (c) of the Use Classes Order and to be offered for rent (and for all subsequent new leases) for a minimum period of 12 months and to remain at an Affordable Rent for the lifetime of the Development and at all times the Owner must meet the following minimum requirements:-</p> <p>a. the provision of the accommodation to be to shell and core level with the following additional specification:-</p>

		<p>(i) the provision of durable floor covering over the entire floorspace;</p> <p>(ii) the provision of lighting; heating; energy supply; painted walls and ceilings; telephone sockets and WC's on every floor: and</p> <p>(iii) to ensure the standard is suitable for the intended jewellery occupiers</p> <p>b. if the above is not provided a rent free period must be offered to any jewellery sector tenants in lieu.</p> <p>For the avoidance of doubt the required area of 200.5 square metres shall not include the jewellery floorspace of 90.3 square metres required under the Agreement entered between Nyraff Limited and the Council dated 21 November 2017 as varied by the Deed of Variation dated 16 May 2019</p>
2.13	"Jewellery Workspace Marketing Plan"	<p>A plan setting out a package of measures to be adopted by the Owner in marketing the Jewellery Workspace within a clear 12 month period commencing on the date of approval of the plan by the Council and to include:-</p> <p>a. the marketing particulars and specification of the Jewellery Workspace to be offered at the Affordable Rent;</p> <p>b. details of how and where the Jewellery Workspace will be marketed;</p> <p>c. While the Jewellery Workspace is unoccupied by a tenant or tenants to prepare a report at four month intervals from the date of commencement of the marketing period (with the Owner to inform the Council of the date in writing) with details of the marketing efforts made by the Owner in accordance with the approved Jewellery Workspace Marketing Plan during the previous four months to market the Jewellery Workspace to secure a suitable tenant AND such details to be submitted to the Council's Planning</p>

		Monitoring Officer on the six occasions at the 4, 8, 12, 16, 20 and 24 month intervals during the agreed 24 month marketing period OR until such time that a suitable tenant for the Jewellery Workspace is secured by the Owner
2.14	"Jewellery Workspace Payment in Lieu"	The sum of £[TBC] ([TBC] pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and in the event of receipt to be applied by the Council for the development or retention of jewellery businesses in the Hatton Garden area
2.15	"the Level Plans"	plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway
2.16	"Occupation Date"	the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.17	"the Parties"	mean the Council and the Owner
2.18	"the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 17 October 2018 under reference number 2018/5028/P
2.19	"Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.20	"the Planning Permission"	any planning permission granted for the Development by the Secretary of State under reference APP/X5210/W/19/3240315 pursuant to the appeal against the refusal of the Planning Application



2.21	"the Property"	the land known as Omega House, 67 - 74 Saffron Hill London EC1N 8QX the same as shown shaded grey on the plan annexed hereto
2.22	"the Public Highway"	any carriageway footway and/or verge adjoining the Property maintainable at public expense

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 as aforesaid, and is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6 and 7 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.

- 3.6 The Parties save where the context states otherwise shall include their successors in title.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **CONSTRUCTION MANAGEMENT PLAN**

4.1.1 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.

4.1.2 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.

4.1.3 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.

4.1.4 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.

## **4.2 HIGHWAYS CONTRIBUTION**

- 4.2.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.
- 4.2.2 On or prior to the Implementation Date to submit to the Council the Level Plans for approval.
- 4.2.3 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution in full.
- 4.2.4 Not to Implement nor permit Implementation until such time as the Council has approved the Level Plans.
- 4.2.5 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate.
- 4.2.6 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.
- 4.2.7 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.

## **4.3 JEWELLERY WORKSPACE**

- 4.3.1 Not to Occupy or permit first Occupation of the Development until the Jewellery Workspace Marketing Plan has been submitted to the Council for approval as demonstrated by written notice to that effect.
- 4.3.2 Not to Occupy or permit Occupation of any part of the Jewellery Workspace except for a use being solely for purposes relating to the local jewellery trade falling within class B1(c) of the Use Classes Order for the lifetime of the Development at an Affordable Rent.

- 4.3.3 It is agreed by the Parties that for the avoidance of doubt clause 4.3.2 shall apply to all subsequent assignments of the lease and sub-lettings of the Jewellery Workspace.
- 4.3.4 The Jewellery Workspace shall be used for the lifetime of the Development for no other purpose other than purposes relating to the local jewellery trade within Class B1(c) of the Use Classes Order AND in the event of any part of the Jewellery Workspace being used for a purpose not falling within Class B1(c) as workspace solely for purposes relating to the local jewellery trade then Occupation of the Development shall cease forthwith.
- 4.3.5 Not to Occupy or permit Occupation of any other part of the Development unless the Jewellery Workspace is let or available to let in accordance with the Jewellery Workspace Marketing Plan on the terms set out in sub-clauses 4.3.2, 4.3.3 and 4.3.4 of this Agreement.
- 4.3.6 In the event that the Owner has not found a suitable tenant for the Jewellery Workspace within the agreed 24 month marketing period and the Owner:-
- (i) provides the evidence of active marketing that has taken place during that 24 month period in accordance with the approved Jewellery Workspace Marketing Plan; and
  - (ii) makes the payment in full of the Jewellery Workspace Payment in Lieu to the Council;

then the Council following review shall confirm in writing that the Jewellery Workspace floorspace shall revert to B1(a) use of the Use Classes Order (as amended) and all obligations stated under clause 4.3 shall cease to have further effect.

## **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 2018/5028/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 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 indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its 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 for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2018/5028/P.
- 5.7 Payment of the Construction Management Plan Implementation Support Contribution and Highways Contribution pursuant to Clauses 4.1 and 4.2 respectively 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 2018/5028/P. Electronic Transfer be made directly to the National Westminster Bank of Hampstead Village quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.

- 5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.9 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

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

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

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, 2<sup>nd</sup> Floor, 5 Pancras Square, London, N1C 4AJ and sent to planning obligations on [PlanningObligations@camden.gov.uk](mailto:PlanningObligations@camden.gov.uk) quoting the planning reference number 2018/5028/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.

7. **RIGHTS OF THIRD PARTIES**

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

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

.....  
**Director**

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

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

.....  
**Authorised Signatory**



**THE FIRST SCHEDULE  
Pro Forma  
Construction Management Plan**

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

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

<https://beta.camden.gov.uk/web/guest/construction-management-plans>

Please use the Minimum Requirements (also available at the link above) as guidance for what is required in the CMP and then download the Construction Management Plan

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