

DATED

30 OCTOBER

2019

(1) ST JOHNS WOOD ERUV COMMITTEE

and

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

AGREEMENT

relating to land known as
the 'North Westminster Eruv'

pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Section 278 of the Highways Act 1980

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G:\case files\culture & env\planning\lmm\s106 Agreements (2016/2892/P)
CLS/COM/LMM/1685.

THIS AGREEMENT is made the 30th day of October 2019

BETWEEN:

- i. **ST JOHNS WOOD ERUV COMMITTEE** whose registered address is at ONE Vine Street, London W1J OAH (hereinafter called "the Developer") of the first part
- ii. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the other part

1. **WHEREAS**

- 1.1 The Developer applied for Planning Permission for the purposes of Section 106 of the Act and which was submitted to the Council and validated on 28 June 2016 and the Council resolved to grant permission conditionally under reference number 2016/2892/P subject to conclusion of this legal Agreement.
- 1.2 The Council is the local planning authority for the purposes of the Act 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.
- 1.3 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.
- 1.4 For that purpose the Developer 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	"the Agreement"	this Planning Obligation made pursuant to Section 106 of the Act
2.3	"the Community Engagement Plan"	a plan to ensure the Developer educates the local community about the Eruv including by organising public meetings to take place during the five year period following the completion of the Development, such meetings to take place no less than every six months for the first two years of that five year period and no less than once a year for the following three years of that five year period, such meetings to be advertised in the local (Camden area) press at which the background to and details of an Eruv can be fully explained and presented with any questions answered to ensure there is sufficient information should people wish to know about what the Development is and what its purpose is and which will be based on the Design Heritage and Access Statement submitted as part of the Planning Application.
2.4	"the Development"	Erection of pairs of poles with clear wire between the poles at 12 locations across the Borough forming part of the North Westminster 'ERUV' as comprised within the Planning Permission (following revisions-after consultations- to pole locations 15 a/b, 23 a/b, 24 a/b; new pole locations 15.1 a/b, 25A a and removal of pole locations 25 a/b, 27 a/b, 28 a/b) as shown on drawing numbers 881.001 rev. B, 881.002 rev. B, 881.15 rev. C, 881.15.1, 881.16 rev. A, 881.17A EAST rev. A, 881.17B WEST

		rev. A, 881.18A WEST, 881.18B EAST, 881.19A NORTH, 881.19B EAST, 881.20 rev. B, 881.21 rev. B, 881.22 rev. A, 881.23 rev. D, 881.24 rev. A, 881.25A rev. A, 881.51A and Design, Heritage and Access Statement ref: NWE.881
2.5	"Eruv"	an area within which observant Jews can carry or push objects on the Sabbath or other High Holy Days without violating a Jewish law prohibiting carrying or pushing except within the home or other private area
2.6	"the Highways Contribution"	<p>the sum of £19,581.56 (nineteen thousand five hundred and eighty one pounds fifty six pence) to be paid by the Developer to the Council in accordance with the terms of this Agreement and to be applied by the Council in event of receipt for the acquisition of the Poles carrying out works to the public highway and associated measures in immediate or close vicinity of the Property caused by or consequent to the Development such works to include the following ("the Highways Works"):-</p> <ul style="list-style-type: none"> (i) erecting and supplying the Poles and Wires; (ii) repaving and repair works to the Public Highway following the erection of the Poles and Wires; (iii) replacing and maintaining the Poles and Wires; and; (iv) any other works the Council acting reasonably requires as a direct result of the Development <p>and provided further that all works will be</p>

		subject to joint supervision by the Developer and 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 <u>excludes any statutory undertakers costs</u>
2.7	"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
2.8	"the Management Plan"	<p>a plan to secure that:</p> <ul style="list-style-type: none"> a) the Developer will be responsible for inspecting the Poles and Wires on a weekly basis; b) the Poles and Wires shall be checked for structural stability annually, from the date the last post is installed and the report submitted to the Council;; c) subject to the provisions of (e) hereof the Poles shall be maintained by the Council on behalf of the Developer (to the extent that such maintenance reasonably necessary and is not carried out pursuant to (d) thereof), who shall pay the Council based on the rates charged by its contractor plus officers time charged at 11%; d) the Developer is to employ a contractor approved by the Council to undertake maintenance of the Wires to a method of working approved by the Council acting reasonably;

		<p>e) the Developer's approved contractor shall be responsible for maintaining the Wires;</p> <p>f) the Developer shall inform the Council when material works to the Poles or Wires is required;</p> <p>g) the Developer needs to provide confirmation to the Council that it has public liability insurance of 5 million pounds;</p> <p>h) the Developer shall not unreasonably withhold any permit for the Council to use the Poles and Wires for the erection of signs should an existing sign be obscured by the erection of the Poles and Wires (or any of them)</p>
2.9	"the Parties"	mean the Council and the Developer
2.10	"the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 28 June 2016 for which a resolution to grant permission has been passed conditionally under reference number 2016/2892/P subject to conclusion of this Agreement
2.11	"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
2.12	"the Planning Permission"	a planning permission granted for the Development substantially in the draft form

		annexed hereto or pursuant to a Variation Application
2.13	"the Poles"	the poles comprised within the Development
2.14	"the Property"	the land on which the Poles are to be located, identified in red on the plans annexed hereto for indicative purposes only
2.15	"the Public Highway"	any carriageway footway and/or verge adjoining the Property maintainable at public expense
2.16	"Variation Application"	means an application submitted pursuant to section 73 of the Act to remove or vary a condition attached to the Planning Permission
2.17	"the Wires"	the wires comprised within the Development

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 shall be enforceable by the Council against the Developer as provided herein and against and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.

- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7 and 8 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 Developer upon the Implementation Date.
- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.

4. **OBLIGATIONS OF THE DEVELOPER**

The Developer hereby covenants with the Council as follows:-

4.1 **HIGHWAYS CONTRIBUTION**

- 4.1.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.
- 4.1.2 Not to Implement or to allow Implementation until such time as the Council has received the Highways Contribution in full.
- 4.1.3 For the avoidance of doubt the Developer 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.
- 4.1.4 On completion of the Highway Works the Council will provide to the Developer a certificate specifying the sum ("the Certified Sum") reasonably and properly expended by the Council in carrying out the Highway Works.
- 4.1.5 If the Certified Sum exceeds the Highway Contribution then the Developer shall

within 28 days of the issuing of the said certificate pay to the Council the amount of the excess.

- 4.1.6 if the Certified Sum is less than the Highways Contribution the Council shall credit such sum to the Developer and it will be taken into account in relation to any other charges or licence fees payable by the Developer within 12 months of the date hereof or will be refunded to the Developer as soon as reasonably practicable after that period

4.2 **COMMUNITY ENGAGEMENT PLAN**

- 4.2.1 Prior to the Implementation Date the Developer shall submit to the Council for approval the draft Community Engagement Plan.
- 4.2.2 The Developer shall not Implement or permit Implementation until the Community Engagement Plan has been approved by the Council (as demonstrated by written notice to that effect) such approval not to be unreasonably withheld or delayed.
- 4.2.3 The Developer shall not carry out the Development or use or retain or permit the use or retention of the Development other than in strict accordance with the Community Engagement Plan as approved and in the event of material non-compliance with this paragraph the Developer shall upon written request from the Council forthwith take any steps reasonably required by the Council to remedy such non-compliance.

4.3 **MANAGEMENT PLAN**

- 4.3.1 Prior to the Implementation Date the Developer shall submit to the Council for approval the draft Management Plan.
- 4.3.2 The Developer shall not Implement or permit Implementation until the Management Plan has been approved by the Council (as demonstrated by written notice to that effect) such approval not to be unreasonably withheld or delayed.
- 4.3.3 The Developer shall not carry out the Development or use or retain or permit the use or retention of the Development other than in strict accordance with the Management

Plan as approved and in the event of material non-compliance with this paragraph the Developer shall upon written request from the Council forthwith take any steps reasonably required by the Council to remedy such non-compliance.

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

- 5.1 The Developer 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 21 days following completion of the Development the Developer shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting the Planning Permission reference 2016/2892/P the date upon which the Development is ready for Occupation.
- 5.3 The Developer 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 Developer 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 Developer's possession (at the Developer's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Developer 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 reasonably incurred expenses or liability arising to the Council in respect of breach by the Developer 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 Developer 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 save that such payments will not be required in relation to the certificates or notices referred to in clause 3 or 4 hereof.

- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Developer 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 2016/2892/P .
- 5.7 Payment of the Highways Contribution pursuant to Clause 4.8 of this Agreement shall be made by the Developer to the Council sending the full amount via electronic transfer (where practicable). The Developer 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 2016/2892/P Electronic Transfer be made 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.
- 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 (if any) properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Developer.
- 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 AllIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AllIRP 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, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the Planning Permission reference number 2016/2892/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 Developer 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 being no more than £2,330 and its monitoring costs of no more than £1,716 (£4,046 in total).
- 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 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.
- 6.7 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. LICENCE

7.1 The Council:

(a) in exercise of its powers under Sections 50 (1) and 94 of the 1991 Act (insofar as it is amended by the 2004 Act) and Section 178 of the 1980 Act and all other enabling powers; and

(b) in consideration of the agreement on the part of the Developer and the conditions herein contained or referred to and on the part of the Developer to be observed and performed

Hereby permits the Developer at any time after the date hereof for the Licence Period and subject to the performance and observance by the Developer of the conditions provisions and agreements herein contained or referred and to the provisos:

- a. To retain the Poles and Wires in on or upon the various streets and pavements at the locations within the Development and
- b. To inspect and carry out non-structural maintenance adjustment and repair of the Poles and Wires following their erection (for the avoidance of doubt the Developer shall not carry out any structural maintenance adjustment or repairs of the Poles or Wires as this shall be carried out by the Highway Authority) and

- c. To execute any works required for or incidental to the Licence carried out under (a) or (b) of this subclause and subject to the Management Plan

7.2 This Licence

(a) is given without prejudice to the provisions of part 3 of the 1991 Act (as amended by Part 4 of the 2004 Act) as to the making of requirements by any relevant authority or apparatus owner (if any) or as to the settlement of a plan and section and the execution of works in accordance with them;

(b) does not dispense the Developer from obtaining any other consent licence or permission which may be required; and

(c) does not authorise the installation of apparatus for the use of which the licence of the Secretary of State is required unless and until that licence has been granted and

(d) is granted subject to any Third Party Rights

- 7.3 The Developer acknowledges that the provision of Schedule 3 to the 1991 Act (as amended by Schedule 1 of the 2004 Act) apply to this Licence insofar as the Poles and Wires are concerned and should the Wires be liable to breakage then the Council shall be at liberty to permit the Developer to use thicker wire to enable the Council to more effectively comply with its duty of care as Highway Authority with respect to the safety of highway users

- 7.4 The Developer shall (and in consideration of the permissions by the Council herein granted hereby agrees with the Council that it the Developer will or shall) procure that during the Licence Period

- a. observes the Management Plan or any variation of it in accordance with the provisions herein and that any works necessary are carried out to the reasonable satisfaction of the Council in accordance with plans drawings specifications method statements and timetables approved by the Council acting reasonably before any relevant works commence and where necessary with the benefit of and in accordance and compliance with all necessary planning and other permissions consents and approvals affording the Council such facilities as may be reasonably necessary for inspecting the Poles and Wires and to ensure that the terms of this Licence are being and will continue to be complied with and will

ensure that the course of any such works the highway is kept free from mud soil and litter and without prejudice to the foregoing obligations will ensure:

- b. that the Poles and Wires are securely fixed installed erected and maintained in accordance with the Management Plan and with methods acceptable to the Council acting reasonably and
- c. that the Poles and Wires do not cause or become a nuisance to the owners or occupiers of any premises in the vicinity or members of the public passing along the highway and that if any such nuisance arises the Developer shall notify the Council and shall take any steps the Council reasonably requires to ensure that the nuisance is abated as soon as reasonably practicable at the Developer's cost
- d. ensure that each Pole is labelled for identification purposes throughout the Licence Period and that such labelling complies at all times and in respects with the Council's reasonable requirements in that regard
- e. remove the Poles or Wires or such part or parts thereof as the Council shall direct in writing from the Highways if the Council considers that such removal is necessary
 - (i) for the purpose of its exercise of its functions as Highway Authority Traffic Authority or Street Authority for the highway and/or
 - (ii) (in the interests of public safety and in the event of the Council invoking either of the aforementioned provisions the Council shall serve not less than 21 days' written notice on the Developer (which shall include the date of the notice) upon the Licensee requiring such removal **PROVIDED ALWAYS** that in case of urgency or emergency the Developer shall effect such removal within such reasonable period being shorter than 21 days after service of notice on the Developer as the Council shall stipulate and such shall be required to be in writing except in the event of emergency

7.5 The Council may serve a Termination Notice on the Developer if either of the following events occur:

- (a) the Developer commits a material breach of this Licence which is not capable of remedy;

(b) the Developer commits a material breach of this Licence which is capable of remedy but the Developer fails to remedy the material breach within a reasonable period having been served by the Council with written notice of the material breach requiring remedy of the breach

8. **RIGHTS OF THIRD PARTIES**

8.1 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 Developer has executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY)

St Johns Wood Eruv Committee)
acting by a Director ~~and its Secretary~~)
~~or by two Directors~~)

X DANIEL GOLDWATER

Director

Signature DC Goldwater

OR WITNES

Director/Secretary in the presence of:-

Full Name Jennifer Weider J. Weider
Address 37 Grove End Road
London NW8 9NG

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

K. Alexander

.....
Authorised Signatory

