DATED

PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 RELATING TO LAND AT 27 BASSETT ROAD, LONDON, W10 AND 41 BRAMLEY ROAD, LONDON, W10 6SZ

between

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

HAYLEY DAWES LIMITED

PUNCH PARTNERSHIPS (PTL) LIMITED

HOUSE BARS LIMITED

NINO LIMITED

DEUTSCHE TRUSTEE COMPANY LIMITED
THIS DEED is dated

(1) The Royal Borough of Kensington and Chelsea of Town Hall, Hornton Street, London, W8 7NX ("Council").

(2) Hayley Dawes Limited (Co. Regn. No. 08497491) of 27 Bassett Road London W10 6LB ("Hayley Dawes").

(3) Punch Partnerships (PTL Limited) (Co. Regn. No. 3512363) of Jubilee House Second Avenue Burton upon Trent Staffs DE14 2WF ("Punch")

(4) House Bars Limited (Co. Regn. No. 5647829) of 91 Philbeach Gardens London SW5 9EU ("House Bars")

(5) Nino Limited (Co. Regn. No. 9015082) of 33 Holborn London EC1N 2HT ("Nino")

(6) Deutsche Trustee Company Limited (Co. Regn. No. 33823) of Winchester House 1 Great Winchester Street London EC2N 2DB ("Deutsche")

BACKGROUND

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

(B) Hayley Dawes is the freehold owner of Bassett Road subject to a mortgage in favour of Nino.

(C) Punch is the freehold owner of Bramley Road subject to a mortgage in favour of Deutsche.

(D) House Bars is the leasehold owner of Bramley Road.

(E) Hayley Dawes and House Bars have made the Bassett Road Planning Application and the Bramley Road Planning Application respectively

(F) The Council resolved at its meeting on [DATE] that the Bassett Road Planning Permission and the Bramley Road Planning Permission should be granted subject to the completion of this deed.

(G) Nino is the registered proprietor of the charge dated 18th August 2015 relating to the Bassett Road Property and has to enter into this deed to give its consent to the terms of this deed.

(H) Deutsche is registered proprietor of the charge dated 3rd November 2003 relating to the freehold of Bramley Road Property and has agreed to enter into this deed to give its consent to the terms of this deed
AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

**Bassett Road Planning Application**: the application for planning permission registered by the Council on [DATE] under reference number [NUMBER].

**Bramley Road Planning Application**: the application for planning permission registered by the Council on [DATE] under reference number [NUMBER].

**Bassett Road Planning Permission**: the planning permission to be granted by the Council in respect of the Bassett Road Planning Application in the draft form attached as Annex A.

**Bramley Road Planning Permission**: the planning permission to be granted by the Council in respect of the Bramley Road Planning Application in the draft form attached as Annex B.

**Bassett Road Property**: all that property known as 27 Bassett Road London W10 6LB registered with absolute title under title number LN 158166.

**Bramley Road Property**: all that property known as 41 Bramley Road London W10 6SZ

**Executive Director**: means the Council's Executive Director of Planning and Borough Development and shall be deemed to mean the officer for the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment

**Implementation** - shall have the meaning provided in Section 56 (1) of the TCPA 1990

"HMO Units" means each of the 16 HMO units being the development authorised by the Bramley Road Planning Permission and "HMO Unit" shall mean any one of those permitted.

**Occupation**: means occupation for the purposes permitted by the Bassett Road Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly.

"Parking Permit" means a permit issued by the Council to residents allowing the parking of a vehicle in a residents parking bay on the highway within the area of the Council but not including a disabled person's "purple badge" issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

"Works" the building operations necessary to provide the HMO Units.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to writing or written includes fax but not e-mail OR excludes faxes and e-mail.

1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.
1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. **STATUTORY PROVISIONS**

2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000 and any other enabling powers.

2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. **CONDITIONALITY**

With the exception of clauses 2, 3, 4-5 to 22 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission.

4. **COVENANTS TO THE COUNCIL**

Hayley Dawes and House Bars covenant with the Council to observe and perform the covenants, restrictions and obligations as provided in the Schedule.

5. **COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010**

For the purposes of the Community Infrastructure Levy Regulations 2010 ("the Regulations") the parties to this agreement hereby affirm that the obligations imposed in this Undertaking are necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and are fairly and reasonably related in scale and kind to the proposed development, so as to satisfy the tests in Regulation 122(2) of the Regulations.
6. **Mortgagee's Consent**

6.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

6.2 The Mortgagee enters into this deed solely to give its consent and shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

7. **Release**

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

8. **Determination of Deed**

The obligations in this deed (with the exception of clause 10) shall cease to have effect if before Implementation of the Bramley Road Planning Permission either the Bramley Road Planning Permission or the Bassett Road Planning Permission:

   (a) expires;
   
   (b) is varied or revoked other than at the request of the Owner; or
   
   (c) is quashed following a successful legal challenge.

9. **Local Land Charge**

This deed is a local land charge and shall be registered as such by the Council.

10. **Council's Costs**

The Owner shall pay to the Council:

   (a) On or before the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.
   
   (b) Prior to the Implementation of the Bramley Road Permission the sum of £[AMOUNT] as a contribution towards the Council's costs of monitoring the implementation of this deed.
11. **OWNERSHIP**

The Owner warrants that no person other than the Owner [and the Mortgagee] has any legal or equitable interest in the Property.

12. **REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

13. **CANCELLATION OF ENTRIES**

On the written request of the Owner at any time after each of the obligations have been performed or otherwise discharged (and subject to the payment of the Council’s reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

14. **DISPUTE RESOLUTION**

14.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing.
that takes place or twenty-eight working days after he has received any file or written representation.

14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

14.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

15. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

16. **WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. **FUTURE PERMISSIONS**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Bassett Road Property or the Bramley Road Property in accordance with any planning permission (other than the Bassett Road Planning Permission or the Bramley Road Planning Permission or modification, variation or amendment thereof) granted after the date of this deed.

18. **AGreements AND DECLARATIONS**

The parties agree that:

(a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and

(b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.
19. **NOTICES**

19.1 Any notice to be given under this deed must be in writing and must be:

(a) delivered by hand; or

(b) sent by pre-paid first class post or DX or recorded delivery post or other delivery service.

19.2 Any notice to be given under this deed must be sent to the relevant party as follows:

(a) to the Council addressed to the Executive Director at the Town Hall, Hornton Street, London, W8 7NX;

(b) to Hayley Dawes Limited at 27 Bassett Road, London, W10 6LB, marked for the attention of Hayley Dawes;

or as otherwise specified by the relevant party by notice in writing to each other party.

19.3 Any notice given in accordance with clause 19.1 and clause 19.2 will be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

(b) if sent by pre-paid first class post or DX or other delivery service, at 9.00 am on the second Working Day after posting.

19.4 A notice given under this deed shall not be validly given if sent by e-mail.

19.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. **THIRD PARTY RIGHTS**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.
21. **VALUE ADDED TAX**

21.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

21.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

22. **GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.
Schedule 1

1. House Bars will give at least ten Working Days notice to the Executive Director:

   (a) of the intended Implementation of the Bramley Road Planning Permission.

   (b) the completion of the Works to allow for occupation of the HMO Units.

2. There shall be no Occupation of the Bassett Road Property as a single dwelling house until the substantial completion of the Works.

3. The Council shall have the right to enter and inspect Bassett Road and Bramley Road at any time on a Working Day during normal business hours subject only to such reasonable health and safety requirements that it is requested to observe.

4. In respect of the Bramley Road Property from the Implementation of the Bramley Road Planning Permission:

   4.1.1 Not to apply to the Council for a Parking Permit in respect of any HMO Unit nor to knowingly permit any owner or occupier of any HMO Unit to apply to the Council for a Parking Permit and if such a permit is issued in respect of any HMO Unit it shall be surrendered to the Council within 7 days of written demand

   4.1.2 That all material used for advertising or marketing any HMO Unit for letting or sale will notify prospective owners and occupiers that they will not be entitled to apply for a Parking Permit in respect of that HMO Unit.

   4.1.3 That in respect of every lease granted assigned transferred or otherwise provided after the date of this Deed in respect of any HMO Unit the following covenant or a covenant of substantially the same nature of it shall be imposed (or a covenant of substantially the same nature in respect of any tenancy agreement licence or other instrument entitling occupation of any HMO Unit):

"the lessee for himself and his successors in title being the owner or owners for the time being [of the terms of years hereby granted] hereby covenant with the lessor and separately with the Mayor and Burgesses of the Royal Borough of Kensington and Chelsea ("the Council") not to apply for nor knowingly permit an application to be made by any person residing in the premises to the Royal Borough of Kensington and Chelsea for a resident's parking permit (save for a disabled person's "purple badge" issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) in respect of such premises and if such a permit is issued then it shall be surrendered
within 7 days of written request to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999 Section 2"

4.1.4 to send to the Executive Director a certified copy of the transfers, leases or tenancies within 10 working days of the transfer or the grant or transfer of any lease or tenancy in respect of any HMO Unit

5. In respect of the Bassett Road Property from the Implementation of the Bassett Road Planning Permission

5.1.1 Not to apply to the Council for more than one Parking Permit in respect of the Bassett Road Property nor to knowingly permit any owner or occupier of the Bassett Road Property to apply to the Council for more than one Parking Permit and if more than one permit is issued in respect of the Bassett Road Property it shall be surrendered to the Council within 7 days of written demand

5.1.2 That all material used for advertising or marketing the Bassett Road Property for letting or sale will notify prospective owners and occupiers that they will not be entitled to apply for more than one Parking Permit in respect of the Bassett Road Property

5.1.3 That in respect of every lease granted assigned transferred or otherwise provided after the date of this Deed in respect of the Bassett Road Property the following covenant or a covenant of substantially the same nature of it shall be imposed (or a covenant of substantially the same nature in respect of any tenancy agreement licence or other instrument entitling occupation of the HMO Unit):

"the lessee for himself and his successors in title being the owner or owners for the time being [of the terms of years hereby granted] hereby covenant with the lessor and separately with the Mayor and Burgesses of the Royal Borough of Kensington and Chelsea ("the Council") not to apply for nor knowingly permit more than one application to be made by any person residing in the premises to the Royal Borough of Kensington and Chelsea for a resident's parking permit (save for a disabled person's "purple badge" issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) in respect of such premises and if more than one permit is issued then it shall be surrendered within 7 days of written request to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999 Section 2"

5.1.4 to send to the Executive Director a certified copy of the transfers, leases or tenancies within 10 working days of the transfer or the grant or transfer of any lease or tenancy in respect of the Bassett Road Property

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The Common Seal of the MAYOR AND BURGESSSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA was hereunto affixed in the presence of:-

Executed as a deed by HAYLEY DAWES LIMITED acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director OR its secretary] ........................................... [SIGNATURE OF FIRST DIRECTOR] [SIGNATURE OF SECOND DIRECTOR OR SECRETARY] [Director OR Secretary]

Executed as a deed by PUNCH PARTNERSHIPS (PTL) LIMITED acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director OR its secretary] ........................................... [SIGNATURE OF FIRST DIRECTOR] [SIGNATURE OF SECOND DIRECTOR OR SECRETARY] [Director OR Secretary]

Executed as a deed by HOUSE BARS LIMITED acting by [NAME OF FIRST DIRECTOR] ........................................... [SIGNATURE OF FIRST DIRECTOR]
FIRST DIRECTOR], a director and
[NAME OF SECOND DIRECTOR
OR SECRETARY], [a director OR its
secretary]

[DIRECTOR]

........................................

[SIGNATURE OF SECOND
DIRECTOR OR SECRETARY]

[Director OR Secretary]

Executed as a deed by NINO
LIMITED acting by [NAME OF
FIRST DIRECTOR], a director and
[NAME OF SECOND DIRECTOR
OR SECRETARY], [a director OR its
secretary]

........................................

[SIGNATURE OF FIRST
DIRECTOR]

[Director]

........................................

[SIGNATURE OF SECOND
DIRECTOR OR SECRETARY]

[Director OR Secretary]
Annex A.  Draft Bassett Road Planning Permission
Annex B.  Draft Bramley Road Planning Permission