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The Queen's Walk
London, SE1 2AA

The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea
Town Hall
Horton Street
London W8 7NX

MB Kensington Limited (company number 09711140)
30 Broadwick Street
London W1F 8JB

Tesco Stores Limited (company number 00519500)
Tesco House
Shire Park
Kestrel Way
Welwyn Garden City
AL7 1GA

Greenoak UK Secured Lending II S.a.r.l.
51 Avenue John F Kennedy
1855 Luxembourg

Dated: 5 June 2020

To whom it may concern,

LAND AT 100 AND 100A WEST CROMWELL ROAD

SECTION 106 AGREEMENT DATED ON OR ABOUT THE DATE OF THIS LETTER AND MADE BETWEEN (1) THE GREATER LONDON AUTHORITY; (2) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA; (3) MB KENSINGTON; (4) TESCO STORES LIMITED; AND (5) GREENOAK UK SECURED LENDING II S.A.R.L (THE "S106 AGREEMENT")

PROCEDURE FOR REQUESTING AN EXTENSION OF THE "SUBSTANTIAL IMPLEMENTATION TARGET DATE"

1. BACKGROUND

- 1.1 Unless defined in this letter defined terms used have the same meaning given in the S106 Agreement.
- 1.2 This letter relates to the S106 Agreement and it has been agreed by each of the GLA, the Council, the Owner, the Leasehold Owner and the Mortgagee (together the "**Parties**").
- 1.3 Key dates and events that are relevant to the content of this letter are:
 - 1.3.1 On 9 March 2020 Pinsent Masons LLP (solicitors for the GLA) prepared and dispatched hard copy engrossments of the S106 Agreement for execution by the Parties.
 - 1.3.2 On 12 March the World Health Organisation declared the Covid-19 virus outbreak a pandemic.

- 1.3.3 On 16 March the Prime Minister of the UK advised everyone in the UK against 'non-essential' travel and contact and requested homeworking where possible. UK schools were closed from 20 March.
- 1.3.4 On 23 March the Prime Minister announced a lockdown whereby people were informed they should only leave their homes in very limited circumstances. People were also told they should practice 'social distancing' when outside of their homes by keeping at least two metres apart at all times. Whilst construction sites were not mandated to shut down many developers and contractors were required to do so due to staff and supply shortages and the practical difficulties of maintaining social distancing on site. The Mayor of London stated that construction sites should stop work, unless the work was for safety purposes.
- 1.4 In light of the events referred to at 1.3.2 to 1.3.4 above the Owner requested that the Substantial Implementation Target Date be delayed. The GLA and Council accept that it is possible that the Covid-19 pandemic could cause delays to the works that are necessary to achieve Substantial Implementation and that this could be of no fault on the part of the Owner. However, the GLA and Council do not agree that a delay to, or extension of, the Substantial Implementation Target Date should apply automatically.
- 1.5 Given the nature of the movement restrictions imposed by the UK Government it is not currently easy to amend, re-engross and re-circulate paper originals of a revised S106 Agreement. Manuscript amendments have therefore been made by Town Legal LLP to the S106 Agreement prior to completion as set out in Appendix 1 to this letter. The Parties hereby confirm that the listed amendments are agreed and take effect as if the signatories for each Party had each initialled all of the changes.
- 1.6 The Parties further agree that all of the plans included within the Schedules of the S106 Agreement are approved whether or not they have been initialled by each signatory. The drawing numbers of those plans are listed in Appendix 2.
- 1.7 With specific reference to the amendment to the definition of "Substantial Implementation Target Date" the Parties agree that the provisions set out in paragraph 2 below shall apply.
2. **PROCEDURE FOR THE OWNER MAKING A REQUEST FOR A DELAY TO THE SUBSTANTIAL IMPLEMENTATION TARGET DATE**
- 2.1 If the Owner considers that progress towards achieving Substantial Implementation by the Substantial Implementation Target Date is being impeded by the Covid-19 pandemic and the Owner considers that this means that it will, or is likely to, need to make a request to the GLA and the Council to extend the Substantial Implementation Target Date it shall, as soon as reasonably practicable, provide notice of this to the GLA and the Council.
- 2.2 If the Owner wishes to request an extension to the Substantial Implementation Target Date it shall by notice in writing to the GLA and Council make that request (a "**Substantial Implementation Target Date Delay Request**") and such notice must be submitted at the same time as, or as soon as reasonably practicable following, the notice that is served under paragraph 2.1.
- 2.3 A notice served pursuant to paragraphs 2.1 or 2.2 shall comply with the requirements of sub-clauses 5.2 to 5.6 of the S106 Agreement.
- 2.4 A Substantial Implementation Target Date Delay Request:
- 2.4.1 must relate to delays that are directly as a result of the Covid-19 pandemic;

- 2.4.2 may not request any period of delay which is in excess of the delay which is directly attributable to the Covid-19 pandemic; and
- 2.4.3 must include at least the following:
 - (a) the proposed new date for the Substantial Implementation Target Date;
 - (b) the reasons why the delay(s) has occurred and why this is directly as a result of the Covid-19 pandemic; and
 - (c) appropriate evidence to substantiate the reasons provided for the Substantial Implementation Target Date Delay Request.
- 2.5 Upon receipt of a Substantial Implementation Target Date Delay Request the GLA and the Council shall review it and by the date which is 20 Working Days from their respective receipt of it they shall respond either:
 - 2.5.1 confirming agreement to the new Substantial Implementation Target Date proposed by the Owner and paragraph 2.6 shall apply; or
 - 2.5.2 proposing a different Substantial Implementation Target Date and:
 - (a) if the Owner agrees to the new Substantial Implementation Target Date proposed paragraph 2.6 shall apply; or
 - (b) if the Owner does not agree to the new Substantial Implementation Target Date proposed by the GLA, the Council and the Owner shall all use their reasonable endeavours to agree a mutually acceptable new Substantial Implementation Target Date (and if they can reach agreement paragraph 2.6 shall apply), but if they are unable to do so any of them may refer the matter to an expert for determination pursuant to clause 12 of the S106 Agreement; or
 - 2.5.3 requesting further information from the Owner in relation to any matter contained within the Substantial Implementation Target Date Delay Request and paragraph 2.7 shall apply; or
 - 2.5.4 to decline, with reasons, agreement to the New Substantial Implementation Target Date on the basis that the Substantial Implementation Target Date should remain as it is prior to the relevant Substantial Implementation Target Date Delay Request having been made and paragraph 2.8 shall apply.
- 2.6 If this paragraph 2.6 applies each of the GLA, the Council and the Owner shall all affix to their respective copies of the S106 Agreement a memorandum in the form set out in Appendix 3 and the Owner shall notify the other Parties of the agreed change.
- 2.7 If this paragraph 2.7 applies the Owner shall provide the further information requested (a "**Further Information Submission**") and the provisions of paragraph 2.5 shall apply mutatis mutandis to that Further Information Submission and if the GLA and/or the Council request further information again the Owner shall have discretion to either:
 - 2.7.1 provide the further information requested and terms of this paragraph 2.7 shall repeat until the GLA, the Council and the Owner have reached agreement as to what the new Substantial Implementation Target Date should be (and in which case paragraph 2.6 shall apply); or
 - 2.7.2 refer the matter to an expert for determination pursuant to clause 12 of the S106 Agreement.

2.8 If this paragraph 2.8 applies the Owner may refer the matter to an expert for determination pursuant to clause 12 of the S106 Agreement.

2.9 If a dispute is referred to the expert pursuant to clause 12 of the S106 Agreement and the expert determines that a new Substantial Implementation Target Date should apply then the parties shall affix to their respective copies of the S106 Agreement a memorandum in the form set out in Appendix 3 and the Owner shall notify the other Parties of the agreed change.

3. **IF THE GLA AND THE COUNCIL HAVE A DIFFERING VIEW UNDER THE PROCESS SET OUT IN PARAGRAPH 2**

3.1 If at any point in the decision making process set out in paragraph 2 the GLA and the Council have a differing view as to the decision that should be made the view of the GLA shall prevail and that shall be the decision that is communicated to the Owner PROVIDED THAT the GLA shall have regard to the opinion of the Council if that has been provided at least five Working Days prior to the date upon which the GLA is required to respond to the Owner.

4. **REASONABLENESS AND GOOD FAITH**

4.1 All notices, actions (including but not limited to the referring of any matter to dispute resolution pursuant to clause 12 of the S106 Agreement) and consents given or provided pursuant to the terms of this letter shall be taken or provided reasonably and in good faith.

5. **GLA AND COUNCIL'S COSTS**

5.1 The Owner agrees to pay the GLA's and the Council's costs which are reasonably and properly incurred in assessing and determining any Substantial Implementation Target Date Delay Request including those of any external consultant(s) appointed by the GLA and/or the Council within 20 Working Days of receipt of a written request for payment.

6. **SIGNATURE OF THIS LETTER IN COUNTERPARTS**

6.1 The Parties agree this letter may be signed in counterpart.

7. **SIGNATURES CONFIRMING AGREEMENT**

7.1 The undersigned confirm each Party's agreement to the content of this letter.

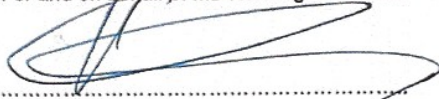
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For and on behalf of the Greater London Authority

.....

For and on behalf of the Mayor and Burgesses of the Royal Borough of Kensington and Chelsea

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For and on behalf of MB Kensington Limited



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For and on behalf of Tesco Stores Limited

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For and on behalf of Greenoak UK Secured Lending II S.a.r.l

APPENDIX 1

LIST OF AUTHORISED MANUSCRIPT AMENDMENTS¹

1. The following amendments shall be made to sub-section (d) of the definition of "Additional Affordable Housing Scheme":

"(d) sets out the amount (if any) of any financial contribution also payable towards offsite Affordable Housing if paragraph ~~Error! Reference source not found: 3.7~~ of Schedule 3 applies"

2. The following amendment shall be made to the definition of "Substantial Implementation Target Date":

"means the date 24 months from but excluding the date of grant of the Planning Permission unless a later date is requested by the Owner and agreed by the GLA and the Council pursuant to the terms of a letter dated on the same date as, and signed by all of the parties to, this Deed"

3. The following amendment shall be made to Clause 3.2:

"The Owner hereby covenants to pay the Monitoring Fees to the Council ~~on the date the Planning Permission is granted~~ no later than 10 Working Days prior to Implementation of the Development."

4. The following amendments shall be made to paragraph 1.7.2 of Schedule 3:

"the GLA has confirmed in writing pursuant to paragraph ~~Error! Reference source not found: 3.6~~ of this Schedule 3 its agreement with the Council that no Additional Affordable Housing Units are required; or"

5. The following amendments shall be made to paragraph 1.7.3 of Schedule 3:

"if the GLA has confirmed in writing pursuant to paragraph ~~Error! Reference source not found: 3.6~~ of this Schedule 3 that Additional Affordable Housing Units are required, the GLA has confirmed pursuant to paragraph ~~Error! Reference source not found: 3.6~~ of this Schedule 3 its approval of an Additional Affordable Housing Scheme."

6. The following amendments shall be made to paragraph 3.7 of Schedule 3:

"If it is determined pursuant dispute resolution (Clause 12), or the Council's assessment pursuant to paragraph 3.5 of this Schedule 3~~Schedule 3~~ concludes, and the GLA has confirmed in writing its agreement with such conclusion in accordance with paragraph ~~Error! Reference source not found: 3.6~~ above, that:-"

7. The following amendments shall be made to paragraph 4.1.2 of Schedule 3:

"paid any remaining surplus profit pursuant to paragraph ~~Error! Reference source not found: 3.7~~ of this Schedule 3 to the Council towards the delivery by the Council of Affordable Housing."

8. The following amendments shall be made to paragraph 5.1 of Schedule 3:

"The Council covenants with the GLA to report to the GLA through the London Development Database the information in paragraph 5.2 below (to the extent applicable) as soon as reasonably practicable after the GLA's confirmation in writing pursuant to paragraph ~~Error! Reference source not found: 3.6~~ of this Schedule 3 that the Additional Affordable Housing Scheme is approved."

¹ Deletions shown in strike-through and new text shown in underlining

9. The following amendments shall be made to paragraph 5.2.3 of Schedule 3:

"5.2.3 the amount of any financial contribution payable towards the delivery by the Council of Affordable Housing pursuant to paragraph ~~Error! Reference source not found-3.6~~ of this Schedule 3."

10. The following amendments shall be made to Formula 1a at Appendix 4:

"C = Percentage change in the Land Registry House Price Index for new build properties for the Council's administrative area from ~~grant of Planning Permission 3 February 2020~~ to Review Date (using the latest index figures publicly available) (%)"

*"F = Percentage change in the BCIS All in Tender Index ("**BCIS TPI**") from ~~grant of Planning Permission 3 February 2020~~ to Review Date (using the latest index figures publicly available) (%)"*

"Notes: -

(A-B) represents the change in GDV of the Market Housing Units of the ~~d~~Development from the date of ~~planning permission 3 February 2020~~ to the date of review."

(D-E) represents the change in build costs of the Market Housing Units of the ~~d~~Development from the date of ~~planning permission 3 February 2020~~ to the date of the review."

11. The execution block of the Greater London Authority shall be amended so that it reads as follows:

*"Executed and delivered)
for and on behalf of the)
Greater London Authority by:)*

.....
Authorised Signatory

.....
NAME (BLOCK)

.....
Position

.....
Authorised Signatory

.....
NAME (BLOCK)

.....
Position"

APPENDIX 2

PLANS ATTACHED TO THE S106 AGREEMENT DEEMED TO BE AGREED AS IF INITIALLED BY ALL PARTIES

1. Appendix 1 – Land Ownership Plan

- a. 1969-JMP-MP-02-SK-A-0304_Rev 1

2. Appendix 2 – Affordable Housing Plans

- a. 1969-JMP-MP-00-DR-A-3005_Rev8
- b. 1969-JMP-MP-0M-DR-A-3004_Rev6
- c. 1969-JMP-MP-01-DR-A-3010_Rev7
- d. 1969-JMP-MP-01-DR-A-3015_Rev3
- e. 1969-JMP-MP-02-DR-A-3020_Rev4
- f. 1969-JMP-MP-03-DR-A-3030_Rev4
- g. 1969-JMP-MP-04-DR-A-3040_Rev4
- h. 1969-JMP-MP-05-DR-A-3050_Rev4
- i. 1969-JMP-MP-06-DR-A-3060_Rev4
- j. 1969-JMP-MP-07-DR-A-3070_Rev4
- k. 1969-JMP-MP-08-DR-A-3080_Rev4
- l. 1969-JMP-MP-09-DR-A-3090_Rev3
- m. 1969-JMP-MP-10-DR-A-3100_Rev3
- n. 1969-JMP-MP-11-DR-A-3110_Rev3
- o. 1969-JMP-MP-12-DR-A-3120_Rev3
- p. 1969-JMP-MP-13-DR-A-3130_Rev3

3. Appendix 3 – Other S106 Plans

- a. Plan 3 – Community Leisure Facility - 1969-JMP-MP-XX-SK-A-0211_Rev1
- b. Plan 4 – Public Open Space, Building 2 and Building 7B - 1969-JMP-MP-XX-ST-DR-L-1500_Rev1
- c. Plan 5 - WCR Healthy Streets Scheme – TfL Plan titled “Indicative Area of Works” and dated 28/02/2020
- d. Plan 6 – Earls Court Northern Access Route - 1969-JMP-MP-0B-SK-A-0218_Rev1
- e. Plan 7A – Extent of Building 2 Basement Slab for Substantial Implementation - 1969-JMP-MP-0B-SK-A-0308

- f. Plan 7B - Extent of Building 7B Ground Floor Slab for Substantial Implementation - 1969-JMP-MP-0B-SK-A-0309

APPENDIX 3

MEMORANDUM

SECTION 106 AGREEMENT DATED [XX] 2020 AND MADE BETWEEN (1) THE GREATER LONDON AUTHORITY; (2) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA; (3) MB KENSINGTON; (4) TESCO STORES LIMITED AND (5) GREENOAK UK SECURED LENDING II S.A.R.L (THE "PARTIES" AND THE "S106 AGREEMENT")

New Substantial Implementation Target Date

[In accordance with the process set out in a letter signed by the Parties the GLA, the Owner and the Council have agreed that the Substantial Implementation Target Date should be as amended to: [DATE]]

or

[Following the process set out in Clause 12 of the S106 Agreement the expert determined that the Substantial Implementation Target Date should be as amended to: [DATE]]