

DATED

2018



# ISLINGTON

GIVEN BY

1. [ ]
2. [ ]

TO

3. THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON

In respect of Contributions for the provision of Affordable Housing and to offset Carbon Dioxide Emissions

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Unilateral Planning Obligation  
made under Section 106 Town and Country Planning Act 1990

- relating to -

Land at [ ]

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Planning Reference: P[ ]

Peter Fehler  
Acting Director of Law & Governance  
Resources Directorate  
Islington Council Offices  
7 Newington Barrow Way  
London N7 7EP

**THIS UNILATERAL PLANNING OBLIGATION** is given on

**2018**

**BY:**

1. [ ] a company registered in England and Wales under registration number ... whose registered office is [ ] ("**Owner**");

and

2. [ ] (a company registered in England and Wales under registration number ...) whose registered office is [ ] ("**Mortgagee**")

**TO:**

3. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON**  
Town Hall, Upper Street, London N1 2UD ("**Council**")

[and the Owner and the Mortgagee shall together be known as the Parties.]

**RECITALS**

- (A) The Council is the local planning authority for purposes of the Act for the area in which the Site is located.
- (B) The Owner is the registered proprietor of the freehold of the Site with title absolute under Title Number [ ] [subject to a legal charge in favour of the Mortgagee dated [ ]].
- (C) The Application has been submitted to the Council and the Owner [and Mortgagee] wish the Site to be bound by this Deed in the event that Planning Permission is granted.

**OPERATIVE PROVISIONS**

**1 DEFINITIONS**

In this Deed, the following words and expressions shall where the context permits have the following meanings:

<b>Act</b>	the Town and Country Planning Act 1990;
<b>Affordable Housing</b>	social rented and/or intermediate housing which is designed to meet the needs of households whose incomes are not sufficient to allow them to access decent and appropriate housing;
<b>Affordable Housing Contribution</b>	£[            (            pounds)] to be spent by the Council on the provision of any one or more types of Affordable Housing, as determined by the Council acting in its absolute discretion;
<b>Application</b>	the application for detailed planning permission for the Development submitted to the Council and allocated Council reference number P[    ];
<b>Carbon Offset Contribution</b>	£[            (            pounds)] to be spent by the Council on the reduction of carbon dioxide emissions from the existing building stock in the Borough of Islington;
<b>Commencement</b>	the date on which any material operation (as defined by section 56(4) of the Act) forming part of the Development begins to be carried out and the terms “Commence” and “Commenced” shall be construed accordingly;
<b>Development</b>	the development referred to in the Application comprising [    ] in accordance with the documents submitted with the Application;
<b>Interest</b>	interest at 4% (four percent) above the base rate for the time being of Barclays Bank plc;
<b>Occupation</b>	occupation for the purposes permitted by the Planning Permission and the terms “Occupy”, “Occupant” and “Occupied” shall be construed accordingly;
<b>Planning Permission</b>	a planning permission granted pursuant to the Application;

**Residents' Parking Bay** a parking place designated in an order under section 45(2) of the Road Traffic Regulation Act 1984 for the use of designated residents in the London Borough of Islington;

**Residents' Parking Permit** a permit issued by the Council to park a motor vehicle in a Residents' Parking Bay;

**Site** the land at [ ] which is registered at the Land Registry under Title Number [ ] against which this deed may be enforced and shown for identification purposes edged red on the plan attached to this Deed.

## **2 Construction of this Deed**

- 2.1 Where in this Deed reference is made to a clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of one gender include any other gender and words denoting actual persons include companies, corporations and firms.
- 2.4 Headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.6 Any reference to a statute shall include any modification, extension or re-enactment of that statute from time to time for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that statute or deriving validity from it.

2.7 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.

### **3 Legal Basis**

3.1 This Deed is made pursuant to Section 106 of the Act, Section 1 of the Localism Act 2011, Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974 and all other powers so enabling.

3.2 This Deed contains planning obligations for the purposes of Section 106 of the Act and the Council is the local planning authority by whom the obligations are enforceable.

### **4 Conditionality**

Save in respect of those obligations in this Deed which are specified as having either immediate or earlier effect this Deed is conditional upon the grant of the Planning Permission.

### **5 Owner's Obligations**

The Owner covenants with the Council to observe and perform the obligations contained in Schedule One.

### **6 Legal Effect**

6.1 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Deed shall be registrable as a local land charge by the Council.

6.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.4 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed, revoked or otherwise withdrawn or it

expires by effluxion of time before Commencement or (without the consent of the Owner) it is modified by any statutory procedure.

6.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6.7 Nothing contained or implied by this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of their functions as local planning authority and their rights, powers, duties and obligations under all public and private statutes, byelaws and regulations.

6.8 The Owner and Mortgagee each covenant that they have full power to enter into this Deed and bind themselves to the covenants and obligations contained in it and that this Deed has been properly executed by them.

6.9 The Owner covenants that it is the freehold owner of the Site and that the Site is free from mortgages, charges or other financial encumbrances [other than the legal interest of the Mortgagee referred to in Recital B above] and that there is no other person having any legal interest in the Site.

6.10 The Owner agrees to indemnify and keep the Council fully indemnified against all claims, demands, actions, costs and expenses for which the Council may become liable arising out of any failure by it or them to perform any of the obligations contained in this Deed.

6.11 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

## **7 Waiver**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

## **8 Change of Ownership**

The Owner undertakes to give the Council immediate written notice of any change in ownership of any of their interests in the Site occurring before the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

## **9 Interest**

The Owner undertakes that any money payable to the Council pursuant to this Deed shall be paid in full without deduction or set-off and if not paid on the date due shall in every case bear Interest on so much thereof as shall from time to time be due and owing from the date the payment was due to actual payment.

## **10 Notices**

10.1 Any such notice or other communication, if so addressed, shall be deemed to have been received if delivered in accordance with the provisions of section 196 of the Law of Property Act 1925.

10.2 Any notice required under this Deed shall be in writing and, where given to the Council, shall be addressed to The S106 Planning Obligations Team at Strategic Planning and Regeneration, Town Hall, Upper Street, London N1 2UD and sent by email to [s106@islington.gov.uk](mailto:s106@islington.gov.uk).

10.3 Any notice required to be given to the Owner under this Deed shall be in writing and shall be addressed to the Owner at the address stated above on page 2 of this Deed. [The Owner's email address for other correspondence is: .]

10.4 Any notice required to be given to the Mortgagee under this Deed shall be in writing and shall be addressed to at the address stated above on page 2 of this Deed.

## **11. [Mortgagee's Consent**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site or it appoints a receiver or administrative receiver (as such terms are defined in the mortgage) over the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.]

**EXECUTED AS A DEED** and delivered as such on the date first written.



**SCHEDULE ONE**  
**(Planning Obligations)**

**1 Notices**

- 1.1 The Owner agrees to give the Council not less than 14 days' prior written notice of Commencement in the form attached to this Deed at Schedule Two.
- 1.2 The Owner will not Commence or permit Commencement of the Development until the notice referred to in paragraph 1.1 above has been duly given.

**2. Contributions**

- 2.1 The Owner agrees to pay the Affordable Housing Contribution and the Carbon Offset Contribution to the Council on or before Commencement.
- 2.2 The Owner agrees that the Council shall be solely entitled in its absolute discretion to decide the type of Affordable Housing to be provided as a result of the Affordable Housing Contribution.
- 2.3 The Owner agrees that the Council may spend up to 5% (five per cent) of the Affordable Housing Contribution and up to 5% (five per cent) of the Carbon Offset Contribution on the costs of implementing and monitoring compliance with this Deed which sum shall not include the legal costs incurred in approving this Deed.
- 2.4 The Owner will not Commence or permit Commencement of the Development until it has paid the Affordable Housing Contribution and the Carbon Offset Contribution to the Council in full.

**3 Car Free Development**

- 3.1 The Owner covenants with the Council that the Site shall not be used and/or Occupied by an Occupant who has a permit to park a motor vehicle in a Residents' Parking Bay within the London Borough of Islington except in the following circumstances:

- 3.1.1 the Occupant is or becomes entitled to be a holder of a disabled persons badge pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or;
- 3.1.2 the Occupant has held a Residents Parking Permit to park a motor vehicle in a Residents' Parking Bay within the London Borough of Islington for a continuous period of at least one year immediately before they use and/or occupy the Site
- 3.2 The Owner shall procure that the restrictions set out in paragraph 3.1 of this schedule are included in any lease agreement for lease option licence tenancy or other disposal of the Site to any person and in all material used for advertising or marketing the Site

**SCHEDULE TWO**  
**(Form of notification)**

To: Developer Obligations Team  
Planning Policy  
Environment and Regeneration  
2<sup>nd</sup> Floor Islington Town Hall  
[S106@islington.gov.uk](mailto:S106@islington.gov.uk)  
Upper Street  
London N1 2UD  
**Date: [dd/mm/yyyy]**

**Notice of Commencement**

Dear Developer Obligations Team,

**[address of development]**  
**[planning application number]**

This letter serves as notice of the date of Commencement of the above mentioned planning permission at the above address in accordance with paragraph 1 of Schedule 1 of the associated Unilateral Planning Obligation agreement:

*Schedule one (Planning Obligations)*

*1 NOTICES*

*1.1 The Owner agrees to give the Council not less than 14 days' prior written notice of Commencement in the form attached to this Deed at Schedule Two.*

We hereby confirm that we/our client intends to Commence the Development on [date of Commencement]. Commencement is defined as "the date on which any material operation (as defined by section 56(4) of the Act) forming part of the Development begins to be carried out and the terms 'Commence' and 'Commenced' shall be construed accordingly;"

We confirm that demand notices, acknowledgement notices and discharge notices should be issued to the below person and address.

[address of liable party]  
[email address of liable party]  
[address of agent if relevant]  
[email address of agent]

Yours faithfully,  
[name]

**EXECUTED as a DEED** by

[ ]

.....

In the presence of

.....

Witness Name: [ ]

Witness Address: [ ]

[OR if not an individual]

**EXECUTED as a DEED** on behalf of

[ ] **LIMITED** by

Director \_\_\_\_\_

and

Secretary/Director \_\_\_\_\_

*(delete as appropriate)*

Signed and Delivered as a deed on )

the date of this Deed for and on behalf )

of [ ] )

by duly authorised attorney )

in the presence of : -

Signature of witness: \_\_\_\_\_

Name of witness: \_\_\_\_\_

Address: \_\_\_\_\_