

DATED

A G R E E M E N T

between

THE LONDON BOROUGH OF HILLINGDON
(THE "COUNCIL")

- and -

SANJAY KUMAR

Under Section 106 of the
Town and Country Planning Act 1990
and other Statutes
relating to 14 DEVON WAY, HILLINGDON, UB10 0JS

THIS DEED is made the _____ day of _____
BETWEEN _____

(1) THE COUNCIL OF THE LONDON BOROUGH OF HILLINGDON (CIVIC CENTRE, UXBRIDGE)
(THE "COUNCIL")

and

(2) SANJAY KUMAR (THE "DEVELOPER") OF 14 DEVON WAY, HILLINGDON UB10 0JS

RECITALS

- (1) The Council is the local planning authority for the area within which the Property is situated for the purposes of s106 of the Planning Act and by whom the obligations in this Deed are enforceable
- (2) The Developer is the freehold owner of the Property and is registered at HM Land Registry under title number as the proprietor of the Property with title absolute subject to the Mortgage
- (3) The Application has been submitted to the Council and the parties hereto have agreed to enter into this Deed in order to facilitate and enable the acceptable development of the Property
- (4) The Mortgagee is the registered proprietor of the Mortgage and has agreed to enter into this Deed as hereinafter appearing

- (5) On _____ the Council resolved to grant planning permission for the development of the Property in accordance with the Application subject to the prior completion of this Deed

NOW THIS DEED WITNESSES and IT IS HEREBY AGREED as follows:

DEFINITIONS

1. In this Deed (including the Recitals and Schedules) the following expressions shall unless the context otherwise requires have the meaning ascribed to them below:-

"Application" means the planning application dated _____ and given the Council reference _____ for the development of the Property in the manner described in the application

"Blue Badge Holders" means any persons qualifying for disabled parking permits under the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment no.2) Regulations 2007 (or such relevant regulations as may supersede them)

"Car Club" means a pay-as-you-drive car club offering members access to a vehicle without ownership and which is designed to reduce the levels of car ownership by occupiers of the Development and by residents in the vicinity of the Development

"Chief Planning Officer" means the Chief Planning Officer for the time being of the Council or other person authorised by the Council to carry out that function

"Commencement of Development", "Commence Development" and the like means the carrying out of a material operation at the Property in accordance with Section 56 of the Planning Act SAVE FOR demolition site clearance excavations and the erection of temporary fences and hoardings and temporary buildings moveable structures works plant or machinery and storage areas required temporarily in

connection with and for the duration of operations in on over or under the Property and temporary access to the same

“CPZ” means a Controlled Parking Zone in the vicinity of the Property being a parking scheme established and operated by the Council in which on-street parking in a particular area is restricted to only those vehicles with parking permits issued by the Council for that scheme

"Development" means the development of the Property pursuant to the Planning Permission

"Intended Occupiers" means the first Occupier of the Development or any part of it, but excludes any successors.

“Low Car Housing Scheme” means a development in which Occupiers of the development affected are not entitled to parking permits allowing them or their visitors to park their vehicles within the CPZ in which the Development is located

“Mortgage” means the charge dated _____ in favour of the Mortgagee

“Occupy” (and “Occupation”, “Occupier” “Occupied” and the like means first occupation of any purpose permitted by the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or sales purposes or occupation in relation to security operations

“Plan” means the Plan annexed to this deed at Schedule 2

"Planning Act" means the Town and Country Planning Act 1990 (as amended)

"Planning Permission" means the planning consent to be granted for the Application in the form of the draft annexed to Schedule 3 (Council reference no.) and for the avoidance of doubt the phrase "Planning Permission" shall for the purposes of this Deed include any varied or different planning permission granted on an application under Section 73 of the Planning Act relating to the Planning Permission

"Property" means the land against which this deed may be enforced being all that property known as 14 DEVON WAY, HILLINGDON for the purposes of identification only shown edged bold black on the Plan

"Section 106 Monitoring Officer" means the person for the time being appointed to monitor obligations under s106 of the Planning Act or such other person authorised by the Council to carry out that function

CONSTRUCTION OF THIS DEED

2. References to any party in 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 successor to its statutory functions
3. Words importing the singular shall be construed as importing the plural and vice versa
4. Words importing one gender shall be construed as importing any other gender and words denoting natural persons shall include companies corporations and firms and all such words shall be construed interchangeable in that manner
5. References in this Deed to any statute includes any amendment modification extension consolidation or re-enactment of it 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

6. Covenants made hereunder if made by more than one person are made jointly and severally
7. Where in this Deed any obligation of a party is required to be performed within a specified time limit that obligation shall be deemed to continue after that time limit if the party fails to comply with the obligation within the time limit but without prejudice to any remedy of the enforcing party
8. The headings in this Deed are for reference only and shall not affect construction

LEGAL BASIS

9. This Deed is made pursuant to Section 106 of the Planning Act Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other powers and enactments which may be relevant to the purpose of giving validity to this Deed or for facilitating the enforcement of the obligations contained in it with intent to bind the Developer
10. Any covenants restrictions or requirements in this Deed falling within the provisions of Section 106 of the Planning Act shall be deemed to be expressed to be planning obligations to which that said Section shall apply

CONDITIONALITY

11. Save for the provisions of clause 13 herein which shall take effect immediately the obligations in this Deed are (unless otherwise specified) conditional upon:
 - 11.1 the grant of Planning Permission; and
 - 11.2 Commencement of Development

THE DEVELOPER'S COVENANTS

12. The Developer agrees undertakes and covenants with the Council as set out in the First Schedule
13. The Developer shall pay to the Council on execution of this Deed the legal costs and other professional costs of the Council incurred in the negotiation preparation and execution of this Deed

MISCELLANEOUS

14. The enforceability of this Deed shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Deed or any extension of time or other indulgence shown by the Council
15. The obligations contained in this Deed are intended to run with the Property and each and every part thereof and to bind the owners and occupiers thereof from time to time and this Deed shall accordingly be registrable as a local land charge by the Council
16. No parties to this Deed (save for the Council) shall be deemed to be or act as agent or contractor for the Council in the carrying out of any of the works required by this Deed and no responsibility liability claim demand cost or expense whatsoever claimed in respect of anything done or not done by any of the parties to this Deed (save for any failure of the Council to observe and perform its covenants under this Deed) shall lie against the Council in respect thereof
17. For such period of time as a CPZ shall operate within the area local to the Development:-
 - 17.1 the Development shall be a Low Car Housing Scheme and

- 17.2 no occupier of the Development (save for any Blue Badge Holders) shall be entitled to any permit as may be issued by the Council which would allow any such occupier (or person having any connection whatsoever or relationship with any such occupier whether contractual personal or otherwise) to park any vehicle within the CPZ.
18. Any notices consents agreements approvals expressions of satisfaction or certificates required herein shall be given in writing and shall not be unreasonably withheld or delayed and if given on behalf of the Council shall be under the hand of the Chief Executive of the Council or other authorised officer of the Council and shall be properly served if sent in the case of the Council by first class recorded delivery post addressed to the Chief Planning Officer quoting references and at the Civic Centre of the London Borough of Hillingdon or such other officer as may be notified in writing from time to time by the Council to the other parties to this Deed and in the case of the other parties to their respective addresses as set out above or to their registered or principal office or to the address notified by the parties hereto
20. Words in this Deed denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
21. 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
22. Nothing in this Deed shall be construed so as to fetter any of the Council's powers duties and obligations in its capacity as highway authority and/or local planning authority and the Council's rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed

23. If there is any conflict between the terms of this Deed and any condition on the Planning Permission the latter shall take precedence
24. Save where otherwise specifically expressed within this Deed any costs monies calculation or assessment to be calculated or made in consequence of this Deed shall be as conclusively determined by the Council acting reasonably whose decision (save for manifest error) shall be final and binding on all parties
25. No provisions of this Deed shall be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 (the "1999 Act") and all third party rights as may be implied by law or deemed to be enforceable by the 1999 Act are hereby excluded to the fullest extent permitted by law SAVE THAT FOR THE AVOIDANCE OF DOUBT the exclusion of the 1999 Act shall not prevent any successors in title to any of the parties to this Deed from being able to benefit or enforce any of the provisions of this Deed as provided for by s106 of the Planning Act
26. This Deed shall cease to have effect (insofar only as it has not already been complied with) if prior to Commencement of Development the Planning Permission shall expire or be quashed or revoked
27. Save where otherwise expressly stated all covenants given under this Deed shall be complied with entirely at the expense of the party giving the covenant

MORTGAGEE'S CONSENT

28. The Mortgagee consents to this Deed being entered into with the intention that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property shall be bound by the terms of this Deed as if this Deed had been executed and registered as a local land charge prior to the execution of the Mortgage provided that the Mortgagee shall incur no liability whatsoever to perform any covenants and obligations in this Deed unless it becomes

successor in title or a mortgagee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the Developer

CHANGE IN OWNERSHIP

29. No party shall be bound by any obligations contained in this Deed after they have parted with the entirety of their legal interest in the Property but without prejudice to liability for any breach or liability existing or arising prior to parting with such interest and PROVIDED ALWAYS that this clause shall be of no effect whatsoever in the event of any breach by the party in question of paragraph 10 of the First Schedule
30. The Developer shall give the Council immediate notice of any change in ownership of any of its interests in the Property occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if applicable) together with details of the area of the Property or unit of occupation transferred and with reference to a plan and Land Registry title number (if applicable)
31. This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of a planning application pursuant to section 73 of the Planning Act as if this Deed had been completed pursuant to such an application

DISPUTE PROVISIONS

32. In the event that there shall be any dispute between the parties to this Deed in respect of any matter arising under the terms of this Deed and which dispute the parties are unable to resolve any of the parties may refer the matter to an Expert for determination SAVE THAT in no case shall any point be referred to the Expert which is a point that is in or relates to any matter in the Planning Permission itself (where the Council's determination shall be final)

- 32.1 The Expert shall be a person with knowledge and expertise in the subject matter of the dispute and in the event that the parties cannot agree the identity of the person to be appointed as Expert pursuant to this clause within fifteen (15) working days of one party's notification to the other party of that party's decision to refer the matter to an Expert either party may seek nomination of an Expert by the President for the time being of the appropriate professional body (whose nomination shall be binding on the parties)
- 32.2 The costs of the Expert shall be in the award of the Expert
- 32.3 The Expert shall (save with the agreement of both parties) be restricted to settling disputes
- 32.4 The decision of the Expert (other than in the case of manifest error) shall be binding on the parties
- 32.5 The provisions of this clause 32 do not apply in the case of any dispute or difference arising in connection with any matter covered by this Deed to the extent that the same is a dispute or difference as to a matter of law or which concerns the interpretation of this Deed

JURISDICTION

33. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

EXECUTED AS A DEED but not delivered until the day and year first above written

THE FIRST SCHEDULE
COVENANTS BY THE DEVELOPER

1. Not to occupy or cause or permit or suffer to be occupied the Development or any part thereof (save for the purpose of constructing the same) unless and until the Developer has informed all Intended Occupiers of the Development by formal notice in writing:
 - 1.1 that the Development is a Car Free Housing Development and
 - 1.2 that (save for any Blue Badge Holders) intended and/or any subsequent occupiers of the Development (or any person having any connection whatsoever or relationship with any such occupier whether contractual personal or otherwise and who is resident at the Development) shall not be entitled to any permits from the Council which would allow them to park any motor vehicle within the CPZ
2. The Developer will forthwith confirm in writing to the Council that he has made formal notification in accordance with sub-paragraphs 1.1 and 1.2 above
3. The Developer for itself and its successors in title (other than Blue Badge Holders) hereby waives all rights and entitlement (if any) on the part of the Developer to a parking permit in the CPZ and covenants not to lease or transfer the whole or any part of the Property unless he has included a restrictive covenant in any such lease or transfer which provides that the tenant or owner of the whole or any part of the Property covenants not to apply to the Council for a resident's parking permit for the CPZ
4. To notify the Chief Planning Officer and the s106 Monitoring Officer of the Council in writing quoting planning ref no. of the full postal address of each residential unit which has been created at the Property pursuant to the Planning Permission immediately such address has been established with Royal Mail

5. To give to the Section 106 Monitoring Officer of the Council quoting reference no less than ten working days prior notice of the intended date of Occupation of the Development so as to enable the Council to monitor effectively the performance of the Developer's obligations under this Deed
6. The Developer shall prior to first Occupation of any residential part of the Development use reasonable endeavours to identify an accredited Car Club operator which will operate in relation to the Development and notify the Council of the identity of the Car Club operator as well as submit to the Council a copy of such parts of the contract between itself and the Car Club operator as are necessary to show that a contract has been entered into
7. The Developer shall ensure that once provided the Car Club is not managed and operated other than by an accredited Car Club operator and the Developer shall fund membership of the Car Club for Occupiers of the Developer for three years from first Occupation of the Development.
8. In the event that the Developer is unable to agree reasonable commercial terms (in its sole discretion) with an accredited Car Club operator, the Developer shall notify the Council of the same in accordance with this agreement and provide full and comprehensive details of the endeavours the Developer has made in order to identify a Car Club operator in accordance with clause 6 hereof. If the Council is satisfied the Developer has made reasonable efforts to identify a Car Club operator but has been unable to, the Council shall respectively notify the Developer it no longer requires complying with clause 6 hereof.
8. In carrying out the terms and conditions of this Deed to comply with all applicable statutory enactments and regulations as may from time to time be in force
9. To indemnify and keep indemnified the Council and every person engaged in the business of the Council from and against all actions proceedings claims and

liabilities and demands whatsoever arising either directly or indirectly from the covenants and obligations of the Developer under this Deed

10. Not to assign its interest and responsibilities under this Deed without the prior consent of the Council

THE SECOND SCHEDULE

THE PLAN

The Plan annexed hereto

THE THIRD SCHEDULE

THE PLANNING PERMISSION

As draft planning permission reference attached

EXECUTED AS A DEED by the Council)
by causing its common seal to be affixed)
hereunto in the presence of)

Authorised Signatory

EXECUTED AS A DEED by)

in the presence of)

Director

Director/Secretary

)

in the presence of)

Director

Director/Secretary