

Dated

3rd May

2019

HOWARTH HOMES (FARNHAM CLOSE) LIMITED

and

CLOSE BROTHERS LIMITED

to

LONDON BOROUGH OF HILLINGDON

Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990

in relation to development at Securitas House (formerly Lovell House), High Street, Uxbridge (reference 32215/APP/2018/501)

Deed of Planning Obligation as a Unilateral Undertaking

THIS DEED is made on

3rd May

2019

By:

- (1) **HOWARTH HOMES (FARNHAM CLOSE) LIMITED** a company incorporated in England and Wales (company registration number 08436104) whose registered office is situated at 54 Oxford Road, Denham, Uxbridge UB9 4DN (the **Owner**); and
- (2) **CLOSE BROTHERS LIMITED** (Co. Regn. No. 195626) of 10 Crown Place, London EC2A 4FT (the **Mortgagee**)

To:

- (3) **LONDON BOROUGH OF HILLINGDON** of The Civic Centre, High Street, Uxbridge, Middlesex UB8 1UW (the **Council**)

Introduction

- (A) The Council is the Local Planning Authority for the purposes of the Act for the administrative area in which the Site is situated.
- (B) The Owner is the registered freehold proprietor of the Site which is registered with HM Land Registry under title number NGL508409
- (C) The Owner has submitted the Planning Application to the Council.
- (D) On 20 March 2019 the Council's Central & South Planning Committee resolved to grant the Planning Permission subject to the prior completion of this Deed.
- (E) The obligations secured by the Deed will take effect only as specified herein.

NOW THIS DEED WITNESSES as follows

1 Definitions and Interpretation

In this Deed the following words and expressions shall where the context so requires or admits have the following meanings:

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

Affordable Housing means subsidised housing available through a Registered Provider (or other social landlord as the Council's Deputy Chief Executive and Director of Residents Services shall have approved in writing beforehand) to persons who cannot afford to rent or buy houses generally available on the open market

Affordable Housing Contribution means the sum of £100,000 (One Hundred Thousand Pounds) to be provided in accordance with **Schedule 1** towards the off-site provision of Affordable Housing within the Authority's Area

Authority's Area means the administrative area of the Council

Commencement of Development means the date on which any material operation as defined in Section 56(4) of the Act forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination adverse ground conditions repair construction of temporary fencing or hoardings, services diversions, site clearance and demolition and "Commence" and "Commencement" shall be construed accordingly

Deputy Chief Executive and Director of Residents Services means the Council's Deputy Chief Executive and Director of Resident Services or such person as the Council designates as undertaking this role

Development means the development of the Site pursuant to the Planning Permission comprising the conversion of existing the undercroft parking and basement area to provide 7 residential units comprising 2 x studio, 4 x 1 bedroom and 1 x 2 bedroom units with associated works

Dwelling means any dwelling (including house, flat or maisonette) together with associated garden, garage, driveway and/or parking spaces constructed as part of the Development

Index Linked means the application of the formula at clause 10 of this Deed and "Indexation" and "Index Linking" and "Indexation" shall be construed accordingly

Occupation means first occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration or occupation solely for marketing or display purposes or occupation in relation to security operations within the Site

Parking Permit means a resident's parking permit (which for the avoidance of doubt does not include a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 as amended) referred to in Schedule 12, issued by the Council

Plan means the plan attached to this Deed as Annex 1

Planning Application means the planning application which has been allocated reference 32215/APP/2018/501 by the Council

Planning Permission means a planning permission granted pursuant to the Planning Application

Project Management and Monitoring Sum means the sum of £5,000.00 (Five Thousand Pounds) to be used by the Council at its discretion for its costs incurred in administering, monitoring, reviewing and implementing this Deed;

Registered Provider means a registered provider of social housing as defined in the Housing and Regeneration Act 2008 and who is approved as a registered provider of social housing by the Greater London Authority (or any successors in functions)

Specified Date means the date upon which an obligation arising under this Deed is due to be performed

Site means all that land shown for identification purposes only edged red on the Plan

2 Construction of this Deed

- 2.1 Where in this Deed reference is made to any 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 the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Words indicating an obligation on a party to this Deed to do any act include an obligation to procure that it be done and words indicating a restriction on a party to this Deed include an obligation not to cause permit or allow infringement of the restriction.
- 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 an Act of Parliament shall include any modification extension or re-enactment of that Act 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 Act or deriving validity from it.
- 2.7 References in this Deed to the Owner shall include the successors in title to the Owner and to any person deriving title through or under the Owner and any references in this Deed to the Council shall include successors to its relevant statutory functions.

3 Legal Basis

This Deed is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2000, section 16 of the Greater London Council (General Powers) Act 1974 and all other powers so enabling.

4 The Owner's Obligations

The Owner covenants with the Council to observe and perform the obligations and restrictions in this Deed, including those contained in the Schedules.

5 Conditions of this Deed

- 5.1 Those covenants given by the Owner in this Deed which constitute planning obligations for the purposes of Section 106 of the Act shall be enforceable by the Council as the Local Planning Authority in accordance with the provisions of Section 106 of the Act against the Owner and any person deriving title from the Owner in respect of the land intended to be bound by the relevant planning obligations.

- 5.2 No person shall be liable for breach of any covenant or planning obligation created by this Deed after that person has parted with all that person's interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant or planning obligation arising due to the act or omission of that person prior to that party parting with such interest.
- 5.3 No person shall be liable for breach of any planning obligation created by this Deed in so far as that person's interest in the Site is that of a statutory undertaker which has acquired part of the Site for the purposes of constructing or operating facilities which serve the Development.
- 5.4 The obligations in this Deed will not be enforceable against any persons whose interest in the Land; (i) is comprised solely of that of an occupier or owner of a Dwelling in private occupation (save to extent that this Deed prevents such owner or occupiers from applying for parking Permit) or (ii) is that of a statutory/utilities undertaker who has acquired an interest in the land for purposes related solely to its functions, powers and duties as a provider of utilities' apparatus and services.
- 5.5 No person who is not a party to this Deed (**third party**) has or shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term under this Deed and no consent of any third party shall be required under that Act to any cancellation or variations of this Deed.
- 5.6 In the event that the Planning Permission expire or is revoked or is modified without the Owner's consent or is quashed following legal challenge this Deed shall cease to have effect.
- 5.7 Nothing in this Deed shall be construed as a prohibition or limitation of 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.
- 5.8 This Deed is capable of and may be registered as a local land charge in the Register of Local Land Charges maintained by the Council.
- 5.9 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions in any capacity.
- 6 Council's Legal Expenses and Monitoring Costs**
- 6.1 The Owner covenants with the Council to pay the Council's reasonable and properly incurred legal expenses incurred in the negotiation, preparation and execution of this Deed.
- 6.2 Prior to Commencement of Development the Owner will pay to the Council the Project Management and Monitoring Sum. For the avoidance of doubt the Project Management and Monitoring Sum shall be in addition to the costs referred to in sub-clause 6.1 above.
- 7 VAT**
- 7.1 All consideration given in accordance with the terms of this Deed will be exclusive of any VAT properly payable thereof.

- 7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed to the extent that VAT had not previously been charged in respect of that supply, the person making the supply will have the right to issue a VAT invoice to the person to whom the supply was made and the VAT will be paid accordingly.

8 Waiver and Severability

- 8.1 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 or all of the relevant terms or conditions or from acting upon any of the relevant terms or conditions or from acting upon any subsequent breach or default.

- 8.2 Insofar as any provisions in this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Deed which shall remain in effect.

9 Jurisdiction

This Deed is governed by and interpreted in accordance with the Law of England and Wales.

10 Indexation

The Owner agrees with the Council that any sums payable by the Owner under this Deed shall be increased by the application of the formula $A=B \times C/D$ where:

- (a) A is the sum actually payable on the Specified Date;
- (b) B is the original sum mentioned in this Deed;
- (c) C is the Index of Retail Prices (All Items) for the month 2 months before the Specified Date;
- (d) D is the Index of Retail Prices (All Items) for the month 2 months before the date of this Deed; and
- (e) C/D is equal to or greater than 1.

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 in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

12 Interest

All costs, payments and expenses payable to the Council under this Deed shall bear interest at the rate of 4% above the base rate of HSBC Bank PLC from time to time being charged from the date such payment is due until the payment is received by the Council.

SCHEDULE 1

AFFORDABLE HOUSING CONTRIBUTION

The Owner hereby covenants and agrees with the Council as follows:

1. Prior to Commencement of Development to pay to the Council the Affordable Housing Contribution; and
2. Not to Commence or cause or allow or permit Commencement of Development of any part of the Development before the Affordable Housing Contribution is paid.

SCHEDULE 2

PARKING PERMITS

The Owner covenants and agrees with the Council as follows:-

- 1 Upon completion of this Deed not to apply to the Council for a Parking Permit in respect of any Dwelling nor to knowingly permit any owner or occupier of the Dwelling to apply to the Council for a Parking Permit and if such a permit is issued in respect of the Dwelling it shall be surrendered to the Council within seven (7) days of written demand.
- 2 That all material used for advertising or marketing the Dwellings for letting or sale will notify prospective owners and occupiers that they will not be entitled to apply for a Parking Permit.
- 3 That in respect of every freehold transfer or lease granted assigned transferred or otherwise provided in respect of the Dwelling the following covenant 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 Dwelling):

"the transferee/lessee for himself and his successors in title being the owner or owners for the time being [of [plot No. []]/the terms of years hereby granted] hereby covenant with the transferor/lessor and separately with the Mayor and Burgesses of the London Borough of Hillingdon ("the Council") not to apply for nor knowingly permit an application to be made by any person residing in the premises to the London Borough of Hillingdon for a parking permit (save for the display of badges on motor vehicles used by disabled persons issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 as amended) and if such a permit is issued then it shall be surrendered within seven (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 1"

THE COMMON SEAL OF THE MAYOR AND
BURGESSES OF THE LONDON BOROUGH
OF HILLINGDON was affixed to this Deed in the
presence of:

Authorised Officer

Executed as a DEED by HOWARTH HOMES (FARNHAM
CLOSE) LIMITED

Director:



In the presence of:-

Witness Name: Holly Masini

Witness Signature: 

Witness Address: 94 Raynton Drive, Hayes, Middlesex, UB4 8BG.

~~Executed by Close Brothers Limited as a Deed pursuant to a
Power of Attorney dated 14th December 2018 (filed at Land
Registry Head Office under reference CAS/2018/01 pursuant to a
facility letter dated 14th January 2019).~~

~~Authorised Signatory~~

~~Authorised Signatory~~

~~Name of Signatory~~

~~Name of Signatory~~

~~Witnessed by~~

~~Witnessed by~~

~~Name of Witness~~

~~Name of Witness~~

~~10 Crown Place, London EC2A 4FT~~

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Authorised Signatory

Lee Daniel
Name of Signatory


Witnessed by

Morgan Sullivan
Name of Witness


Authorised Signatory

GARY FLETCHER

Name of Signatory


Witnessed by

Morgan Sullivan
Name of Witness

10 Crown Place, London EC2A 4FT 10 Crown Place, London EC2A 4FT

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PROPOSALS		AMASIA ARCHITECTS LTD	
LOVELL HOUSE 271 HIGH STREET LIVADICE		AMASIA ARCHITECTS LTD 271 HIGH STREET LIVADICE CV35 9EF T: 01452 20879	
DATE: MAY 2017		DRAWN BY: A1	
SITE LOCATION AND BLOCK PLAN		PROJECT NO: AAL-17-157-002	