

**SHADOW S106 AGREEMENT
TO BE READ IN CONJUNCTION WITH
PLANNING PERMISSION REFERENCED 2021/6108/P DATED 01 FEBRUARY 2023**

DATED

2023

(1) LIMITED

and

(2) MORTGAGEE PLC/LIMITED

and

(3) LESSEE/TENANT

and

**(4) THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

A G R E E M E N T
relating to LAND BOUNDED BY GRAFTON TERRACE, MAITLAND PARK VILLAS AND
MAITLAND PARK AND
LAND ADJACENT TO MAITLAND PARK VILLAS
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Section 278 of the Highways Act 1980

Andrew Maughan
Borough Solicitor
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

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THIS AGREEMENT is made the day of 2023

B E T W E E N:

- i. **APPLICANT LIMITED** (Co. Regn. No.) whose registered office is at
(hereinafter called "the Owner") of the first part
- ii **MORTGAGEE** of (hereinafter called " ") of the second part
- iii **[INTERESTED PARTY/LEASEHOLDER]** of [] (hereinafter called "the ") of
the third part]
- iv. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of
Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the
fourth part

1. WHEREAS

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title
absolute of the Property under Title Number NGL19328 [subject to a charge to the
Mortgagee].
- 1.2 The Owner is the freehold Owner of and is interested in the Property for the purposes
of Section 106 of the Act.
- 1.3 [List other Parties and their interest in the property]
- 1.4 A Planning Application for the development of the Property was submitted to the
Council and validated on 14 December 2021 and the Council resolved to grant
permission conditionally under reference number 2021/6108/P subject to conclusion
of this legal Agreement.
- 1.5 The Council is the local planning authority for the purposes of the Act for the area in
which the Property is situated and considers it expedient in the interests of the proper

planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

- 1.6 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.
- 1.7 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.8 The Mortgagee as mortgagee under a legal charge registered under Title Number _____ and dated _____ (hereinafter called "the Legal Charge") is willing to enter into this Agreement to give its consent to the same.

2. **DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

- | | | |
|------|---------------------------|---|
| 2.1 | "the Act" | the Town and Country Planning Act 1990 (as amended) |
| 2.4 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.10 | "the Development" | installation of play equipment to form a linear fitness, activity and play trail as shown on drawing numbers:- TM122L20; TM122L21; TM122L22; TM122L24; TM122L25; Design & Access Statement, dated December 2021; Cover letter, dated 14/12/2021; and Arboricultural Impact Assessment dated December 2021 |
| 2.16 | "the Implementation Date" | the date of implementation of the Development by the carrying out of a material operation as |

	defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly
2.20 "Occupation Date"	the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.22 "the Parties"	mean the Council the Owner the Mortgagee and the Lessee
2.23 "the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 14 December 2021 for which a resolution to grant permission has been passed conditionally under reference number 2021/6108/P subject to conclusion of this Agreement
2.24 "Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.25 "the Planning Permission"	a planning permission granted for the Development substantially in the draft form annexed hereto
2.26 "the Property"	the land bounded by Grafton Terrace, Maitland Park Villas and Maitland Park and land adjacent to Maitland Park Villas the same as shown outlined in red on the plan annexed hereto

2.35 “Second Development”

the development permitted under planning referenced 2022/0007/P for the variation of conditions 2 (approved plans and documents), 4 (sample panel of brickwork), 7 (SUDS), 8 (contamination), 10 (hard and soft landscaping), 21 (Home Quality Mark), 22 (CMP), 26 (levels plans), 28 (local employment), 29 (local procurement), 31 (energy efficiency and renewables plan), 34 (solar PV and green roofs) and 39 (substation) of planning permission 2014/5840/P, dated 31/03/2015 (as amended by 2015/6696/P, dated 14/04/2016 and 2019/4998/P, dated 25/09/2020) (for: provision of residential units and replacement Tenants and Residents Association hall across two sites with associated multi-use games area, landscape and associated works, following demolition of Aspen House, gymnasium and garages at Maitland Park Villas and TRA Hall and garages on Grafton Terrace): namely, to amend the play provision strategy

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.

- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6 and hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.
- 3.8 Where any approval, agreement, consent, certificate or expression of satisfaction is to be given by the Council under this Agreement such approval, agreement, consent, certificate or expression of satisfaction shall not be unreasonably withheld or delayed.
- 3.9 The Council shall act reasonably and proportionately when seeking to enforce any of the terms of this Agreement including notifying the Owner of any obligation to which the Council considers has been breached and stating what steps the Council considers to be required in order to bring about compliance with such obligation or obligations and allowing a reasonable period of time to rectify such breaches before taking enforcement action.
- 3.10 It is expressly acknowledged by the Owner that notwithstanding the terms of clause 3.9, it shall Occupy the Development in accordance with the terms of the obligations in this Agreement.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **SIMULTANEOUS DEVELOPMENT**

- 4.1.1 To notify the Council in writing when the Development is Implemented or is about to be Implemented.
- 4.1.2 To notify the Council in writing when the Second Development is implemented or is about to be implemented.
- 4.1.3 To Implement and carry out the Development in conjunction with the Second Development with the aim to complete the Development at the same time as or as soon as possible after completion of the Second Development.
- 4.1.4 In the event of non-compliance with sub-clause 4.1.3 the Owner shall forthwith take any steps required to remedy such non-compliance to ensure:-
 - (a) the Development is completed no later than six months following completion of the Second Development; or
 - (b) in the event the Owner can demonstrate to the Council's reasonable satisfaction that the time period in (a) above is not achievable for reasons beyond its control such longer period as the Council considers reasonable.

5. **NOTICE TO THE COUNCIL/OTHER MATTERS**

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Planning Permission has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause

6.1 hereof quoting the Planning Permission reference 2021/6108/P the date upon which the Development is ready for Occupation.

- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested in writing) provide through its Planning Obligations Monitoring Officer confirmation of compliance and/or (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such request) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2021/6108/P.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

- 6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the Planning Permission reference number 2021/6108/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.
- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

- 6.6 Neither the Owner the or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.
- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development this Agreement shall forthwith determine and cease to have effect.

7. **MORTGAGEE IN POSSESSION**

- 7.1 The Mortgagee hereby consents to the Owner entering into this Agreement and agrees that the security of its charges over the Property shall take effect subject to this Agreement.
- 7.2 The Parties agree that the obligations contained in this Agreement shall not be enforceable against any mortgagee or chargee of the whole or any part of the Property unless it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owner.

8. **JOINT AND SEVERAL LIABILITY**

- 8.1 All Covenants made by the Owner [and the] in this Agreement are made jointly and severally and shall be enforceable as such.

9. **RIGHTS OF THIRD PARTIES**

9.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner [and the Mortgagee] have executed this instrument as their Deed the day and year first before written

OR

IN WITNESS whereof the Council and the Owner have caused their respective common seals to be hereunto affixed [and the Mortgagee has executed this instrument as a Deed] the day and year first before written

EXECUTED AS A DEED BY)
LIMITED)
acting by a Director and its Secretary)
or by two Directors)

.....
Director

.....
Director/Secretary

EXECUTED AS A DEED BY)
)
in the presence of:)

.....
Witness Signature

Witness Name

Address

Occupation

.....

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