

DATED 19<sup>th</sup> DECEMBER 2013

UNILATERAL UNDERTAKING

(1) DAMSONETTI UK LIMITED (IN RECEIVERSHIP)

and

(2) INVESTEC BANK PLC

and

(3) AUGUSTINES ROAD LTD

and

(4) MARK ROBERT DOWNHAM AND ANTHONY LAVERN SPENCER

relating to land known as

4 ST. AUGUSTINE'S ROAD  
LONDON  
NW1 9RN

Planning Appeal/References:  
2013/210/P and app/x5210/a/13/2204277

**IWG**  
Ingram Winter Green

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FD 619646-ENGROSSMENT UNILATERAL UNDERTAKING

THIS UNILATERAL UNDERTAKING is made the 19<sup>th</sup> day of DECEMBER 2013

BY:-

- (1) **DAMSONETTI UK LIMITED (IN RECEIVERSHIP)** (registered under company number 03873918) whose registered office is at 1 Heliport House, 38 Lombard Road, London, SW11 3RP acting by the Receiver (hereinafter called "the Developer") of the first part
- (2) **INVESTEC BANK PLC** (registered under company number 004489604) whose registered address is 2 Gresham Street, London, EC2V 7QP (hereinafter called "the Mortgagee") of the second part
- (3) **AUGUSTINES ROAD LTD** (registered under company number 08091235) whose registered address is Suite 2, Fountain House, 1A Elm Park Stanmore, Middlesex, United Kingdom, HA7 4AU (hereinafter called the "the Interested Party" of the third part)
- (4) **MARK ROBERT DOWNHAM** and **ANTHONY LAVERN SPENCER** both of 27-31 Charing Cross Road, London WC2H 0AU (collectively hereinafter called "the Receiver") of the fourth part

TO:-

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council")

**WHEREAS**

- 1.1 Network Rail Infrastructure Limited is the unregistered freehold proprietor of part of the Property subject to a lease to the Developer registered under title number NGL904681.
- 1.2 The Developer is registered at the Land Registry as the freehold proprietor with title absolute of part of the Property under title number NGL904675 subject to a charge to the Mortgagee and subject to a contract for sale to the Interested Party.

- 1.3 The Developer is registered at the Land Registry as the leasehold proprietor with title absolute of part of the Property under title number NGL904681 subject to a charge to the Mortgagee and subject to a contract for sale to the Interested Party.
- 1.4 The Interested Party is the beneficiary of a contract for sale dated 7<sup>th</sup> June 2012 registered by a unilateral notice in the charges register of the register of title in each of the titles numbered NGL904675 and NGL904681.
- 1.5 By an appointment dated 10 June 2011 **Mark Robert Downham** and **Anthony Lavern Spencer** were appointed to be Law of Property Act 1925 Receivers of the Property.
- 1.6 The Developer (acting by the Receiver) is the part freehold owner and part leasehold owner of and is interested in the Property for the purposes of Section 106 of the Act and the Developer and the Interested Party and the Receiver shall hereinafter together be called "the Owner".
- 1.7 The Planning Application for the development of the Property was submitted to the Council and validated on 4<sup>th</sup> March 2013.
- 1.8 By a decision letter dated 22<sup>nd</sup> August 2013 the Council gave notice of refusal to grant planning permission for the Development and an appeal against refusal of planning permission was submitted under Section 78 of the Act to the Planning Inspectorate and the appeal has been assigned the reference number APP/X5210/A/13/2204277 ("the Appeal").
- 1.9 The Council is the local planning authority for the purposes of the Act and local highway authority for the area in which the Property is situated.
- 1.10 The Owner gives this undertaking by way of this Deed in order to secure the planning obligations contained in this Deed.
- 1.11 The Mortgagee as mortgagee under a legal charge registered under title numbers NGL904675 and NGL904681 and dated 17<sup>th</sup> April 2008 is willing to enter into this Deed to give its consent to the same.

1.12 This Deed shall take effect only in the event of Planning Permission being granted.

2. **DEFINITIONS**

In this Deed 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)  |
| 2.2 | "Affordable Housing"                      | low cost housing including Social Rented Housing and/or Intermediate Housing that meets the needs of people who cannot afford to occupy homes available on the open market in accordance with the National Planning Policy Framework and successor documents   |
| 2.3 | "the Certificate of Practical Completion" | the certificate issued by the Owner's contractor or architect or project manager certifying that the Development has been completed  |
| 2.4 | "Construction Management Plan"            | <p>a plan setting out the measures that the Owner will adopt in undertaking the construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual to ensure the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):-</p> <p>(i) a statement to be submitted to Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate and offset</p> |

potential or likely effects and impacts arising from the demolition of the Existing Buildings or structures on the Property and the building out of the Development;

- (ii) incorporation of the provisions set out in the First Schedule annexed hereto;
- (iii) incorporation of the provisions set out in the Second Schedule annexed hereto;
- (iv) proposals to ensure there are no adverse effects on the conservation area features
- (v) effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;
- (vi) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);
- (vii) the inclusion of a waste management strategy for handling and disposing of construction waste; and
- (viii) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time

2.5 "the Construction Phase"

the whole period between:

- (i) the Implementation Date; and
- (ii) the date of issue of the Certificate of Practical Completion

2.6 "the Council's Considerate Contractor Manual"

the document produced by the Council from time to time entitled "Guide for Contractors Working in

Camden" relating to the good practice for developers engaged in building activities in the London Borough of Camden

- 2.7 "the Deed" this planning obligation made pursuant to Section 106 of the Act
- 2.8 "the Deferred Affordable Housing Contribution" the sum payable by the Owner to the Council in accordance with clause 4.11 of this Agreement
- 2.9 "the Development" erection of five storey building to create 9 residential units comprising 2x 2 bedroom and 7x 3 bedroom flats. (Class C3) ~~as shown on drawing numbers Site Location Plan; 1913-00-SK-0100 Rev P02; 0101 Rev P01; 0102 Rev P01; DR-0101 Rev P02; 0102 Rev P02; 0103 Rev P02; 0104 Rev P02; 0105 Rev P02; 0106 Rev P02; 0401 Rev P02; 0402 Rev P02; 0601 Rev P02; 0602 Rev P02; 0603 Rev P02; 0604 Rev P02; 0610 Rev P02; Design and Access Statement by CZWG Architects dated February 2013; Daylight and Sunlight Report by GL Hearn dated 20<sup>th</sup> February 2013; Code for Sustainable Homes Report by Callao Housing Consultancy dated January 2013; Energy Statement by SRS Partnership dated 27<sup>th</sup> February 2013; Planning Statement by Cunnane Town Planning dated February 2013~~
- 2.10 "the Education Contribution" the sum of £48,680 (forty-eight thousand six hundred and eighty pounds) to be paid by the Owner to the Council in accordance with the terms of this Deed towards education needs arising in the London Borough of Camden
- 2.11 "the Energy Efficiency and Renewable Energy Plan" a strategy setting out a package of measures to be adopted by the Owner in the management of the

Development with a view to reducing carbon energy emissions through (but not be limited to) the following:-

- (i) incorporation of the measures set out in the submission document entitled Energy Statement by SRS Partnership dated 27<sup>th</sup> February 2013;
- (ii) details of how the Owner will further reduce the Development's carbon emissions from renewable energy technologies located on the Property ensuring the Owner will use reasonable endeavours to target a reduction of at least 20% in carbon emissions in relation to the Property using a combination of complementary low and zero carbon technologies;
- (iii) separate metering of all low and zero carbon technologies to enable the monitoring of energy and carbon emissions and savings;
- (iv) a building management system being an electronic system to monitor the Development's heating cooling and the hours of use of plant;
- (v) measures to enable future connection to a local energy network at the boundary of the Property;
- (vi) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on the reduction of carbon emissions contained within its Development Plan;

- (vii) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation; and
- (viii) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

- 2.12 "the Environmental Improvements Contribution" the sum of £18,000 (eighteen thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Deed towards the provision of pedestrian cycling and environmental improvements in the vicinity of the Development.
- 2.13 "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
- 2.14 "Intermediate Housing" Affordable Housing which is above target rents but is substantially below open market levels and is affordable to people who at the commencement of their occupancy are in need of intermediate housing in terms set out in paragraph 3.61 of the London Plan (subject to annual reviews) to include shared ownership and other sub-market rent as agreed in writing by the Council



- 2.15 "the Highways Contribution" the sum of £31,529 (thirty-one thousand five hundred and twenty-nine pounds) to be paid by the Owner to the Council in accordance with the terms of this Deed towards the carrying out of works to the public highway and associated measures in the vicinity of the Property such works to include the following ("the Highways Works"):
- (i) removal of 2 (two) crossovers adjacent to the Property;
  - (ii) repaving of crossovers adjacent to the Property; and
  - (iii) any other works required as a direct result of the Development (such works as considered necessary by the Council)
- all works will be subject to final measure and any level adjustment required and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertaker's costs
- 2.16 "the Level Plans" plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway
- 2.17 "Occupation Date" the first date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.18 "the Parties" the Owner and the Mortgagee
- 2.19 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 4<sup>th</sup> March 2013 under reference number 2013/1210/P

- 2.20 "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
- 2.21 "the Planning Permission" any planning permission granted for the Development by the Secretary of State or any person appointed by the Secretary of State pursuant to the appeal under reference number APP/X5210/A/13/2204277 of the Council's refusal of the Planning Application
- 2.22 "the Post-Construction Viability Assessment"
- an assessment to be undertaken by the Owner and submitted to the Council in accordance with the terms of this Deed such assessment to:-
- (a) be presented substantially in the same form as the Owner's viability assessment submitted to the Council on June 2013 entitled 2 St Augustines Road, London NW1 Affordable Housing Statement or such other form as agreed by the Council in writing; and
  - (b) be based on the same percentage developer's return on market housing value (being not less than 20%) and the same percentage contractor's return on affordable housing cost as the Owner's viability assessment submitted on June 2013 entitled 2 St Augustines Road, London NW1 Affordable Housing Statement or such alternative percentages as agreed by the Council in writing
- with a view inter alia to evidence to the Council's reasonable satisfaction the residual site value of the Property such assessment shall include (but not be limited to) the following:-

- (c) a copy of the Owner's viability assessment submitted on June 2013 entitled 2 St Augustines Road, London NW1 Affordable Housing Statement showing the residual value of the Development as £311,000.00 (three hundred and eleven thousand pounds);
- (d) receipted invoices; certified costs; certified copies of sales contracts; and best estimates of costs yet to be incurred and value of any unsold space and any other evidence reasonably required by the Council to show any revenue and/or costs incurred in relation to the Development;
- (e) a solicitor's confirmation that to the best of his knowledge the sales of the residential units forming part of the Development were arm's length third party bona fide transactions and not:-
  - (i) designed to reduce the revenue received from sales of the residential units forming part of the Development;
  - (ii) confined to transactions between the Owner and subsidiary companies of the Owner;
  - (iii) transactions between the Owner and its employees; or
  - (iv) transactions including deferred consideration coverage or loans or finance deals from the Owner
- (f) details of any grant funding received in relation to the Development whether related to Affordable Housing or any other aspect of the Development;
- (g) any further information the Council

- reasonably requires
- (h) payment of £5,000 (five thousand pounds) or such other reasonable cost as the Council may require to cover the Council's costs in verifying the material and information contained within the assessment
- 2.23 "the Property" the land known as 4 St. Augustine's Road, London, NW1 9RN the same as shown shaded grey on the plan at the Third Schedule annexed hereto
- 2.24 "the Public Open Space Contribution" the sum of £18,827 (eighteen thousand eight hundred and twenty-seven pounds) to be paid by Owner to the Council in accordance with the terms of this Deed towards the improvement maintenance and upkeep of existing public open spaces and/or nature conservation improvements to parks and open space and/or the obtaining of land to make public open spaces in the vicinity of the Development
- 2.25 "Residents Parking Bay" a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated
- 2.26 "Residents Parking Permit" a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in Residents Parking Bays
- 2.27 "the Public Highway" any carriageway footway and/or verge adjoining the Property maintainable at public expense
- 2.28 "Social Rented Housing" Affordable Housing units available for rent in perpetuity such that:-

- (i) the total cost of rent and service and management charges meets targets for Social Rented Housing set by the Regulator from time to time;
- (ii) is consistent with Camden Supplementary Planning Document "Affordable Housing and Housing in Mixed-Use Development" and the requirements of the London Plan in relation to Social Rented Housing; and
- (iii) the units are managed by a Registered Provider who has entered into a standard nominations Deed with the Council providing for nominations to the Council in respect of all such units within the Development

2.29 "Surplus"

a positive figure produced from the Post-Construction Viability Assessment by taking the residual site value of the Development based on a 20% profit on total GDV and subtracting the sum of £1,400,000.00 (one million four hundred thousand pounds)

~~2.30 "the Sustainable Infrastructure Contribution"~~

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~~the sum of £15,000 (fifteen thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Deed towards the provision of sustainable infrastructure in the vicinity of the Development~~

~~2.34~~ "the Sustainability Plan"  
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a plan securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation based which shall include:-

- (i) an assessment under the Code for Sustainable Homes achieving at least Level 4 and attaining at least 58% in the Energy category, 83% in the Water category and a

- least 50% in the Materials category;
- (ii) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan; and
  - (iii) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan; and
  - (iv) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation

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

- 3.1 This Deed 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 Deed and shall not be taken into account in its construction or interpretation.
- 3.5 Save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Deed shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Parties save where the context states otherwise shall include their successors in title.
- 3.7 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.2 for all relevant purposes.

#### 4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

##### 4.1 **AFFORDABLE HOUSING**

##### 4.1.1 If at any time after the date of this Deed:-

- (i) any planning permission is granted for the further development of the Property which gives consent for the development of additional residential units or additional floorspace for residential purposes;
- (ii) any additional floorspace is created on the Property for residential purposes; and/or

(iii) any additional residential units are created within the Property any of which exceeds the Council's minimum requirement for Affordable Housing as set out in the Council's "Camden Development Policies (adopted November 2010)" the Owner shall enter into a s106 Deed with the Council to secure the following:-

4.1.2 That an appropriate percentage of the residential units created under clause 4.1.1 are provided as Affordable Housing (either as on-site contribution, off-site contribution or financial contribution) such percentage to be applied to the aggregate total of the residential units permitted by the Planning Permission and the additional residential floorspace created under clause 4.1.1.

4.1.3 Not to Occupy or allow Occupation of any of the additional residential floorspace created under Clause 4.1.1 of this Deed until such time as the additional residential floorspace has been provided as Affordable Housing (either as on-site contribution, off-site contribution or financial contribution).

#### 4.2 **CAR FREE**

4.2.1 The Owner hereby covenants with the Council to ensure that prior to occupying any residential unit forming part of the Development each new resident of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.

4.2.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.2.1 above will remain permanently.

4.2.3 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.2.1 of this Deed.

#### 4.3 **ENVIRONMENTAL IMPROVEMENTS CONTRIBUTION**

4.3.1 On or prior to the Implementation Date to pay to the Council the Environmental Improvements Contribution in full.



- 4.3.2 Not to Implement or to permit Implementation until such time as the Council has received the Environmental Improvements Contribution in full.

#### **4.4 CONSTRUCTION MANAGEMENT PLAN**

- 4.4.1 On or prior to the Implementation Date to provide the Council for approval a draft Construction Management Plan.
- 4.4.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.
- 4.4.3 The Owner acknowledges and agrees that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.
- 4.4.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps required to remedy such non-compliance.

#### **4.5 EDUCATION CONTRIBUTION**

- 4.5.1 On or prior to the Implementation Date to pay to the Council the Education Contribution.
- 4.5.2 Not to Implement or to permit Implementation until such time as the Council has received the Education Contribution.

#### **4.6 HIGHWAYS**

- 4.6.1 On or prior to the Implementation Date to:-

- (i) pay to the Council the Highways Contribution in full; and
- (ii) submit to the Council the Level Plans for approval.

4.6.2 Not to Implement or to allow Implementation until such time as the Council has:-

- (i) received the Highways Contribution in full; and
- (ii) approved the Level Plans as demonstrated by written notice to that effect.

4.6.3 For the avoidance of doubt the Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate and does not undertake any responsibility in connection with any required statutory undertaker's works and that the Highways Contribution excludes any statutory undertaker's costs.

4.6.4 On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.

4.6.5 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

#### **4.7 ENERGY EFFICIENCY AND RENEWABLE ENERGY PLAN**

4.7.1 On or prior to the Implementation Date to submit to the Council for approval the Energy Efficiency and Renewable Energy Plan.

4.7.2 Not to Implement nor permit Implementation until such time as the Council has approved the Energy Efficiency and Renewable Energy Plan as demonstrated by written notice to that effect.

4.7.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Energy Efficiency and Renewable Energy Plan as approved by the Council have been incorporated into the Property.

4.7.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being

managed in strict accordance with the Energy Efficiency and Renewable Energy Plan as approved by the Council from time to time and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Energy Efficiency and Renewable Energy Plan.

#### 4.8 PUBLIC OPEN SPACE CONTRIBUTION

4.8.1 The Owner hereby covenants with the Council on or prior to the Implementation Date to pay to the Council the Public Open Space Contribution.

4.8.2 The Owner hereby covenants with the Council not to Implement or to permit Implementation until such time as the Council has received the Public Open Space Contribution.

#### 4.9 SUSTAINABILITY PLAN

4.9.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.

4.9.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect.

4.9.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Property.

4.9.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

#### ~~4.10 SUSTAINABLE INFRASTRUCTURE CONTRIBUTION~~

~~4.10.1 The Owner hereby covenants with the Council on or prior to the Implementation Date to pay to the Council the Sustainable Infrastructure Contribution.~~

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~~4.10.2 The Owner hereby covenants with the Council not to Implement or to permit Implementation until such time as the Council has received the Sustainable Infrastructure Contribution.~~

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4.11 DEFERRED AFFORDABLE HOUSING CONTRIBUTION

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4.11.1 The Parties agree that notwithstanding the remaining clauses in clause 4.11 of this Deed the Owner may at any time following Implementation pay the Council the Deferred Affordable Housing Contribution in full.

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4.11.2 To submit the Post-Construction Viability Assessment to the Council for approval in writing either:-

- (i) on the date of issue of the Certificate of Practical Completion; or
- (ii) at any time after Implementation ALWAYS PROVIDED the Owner has exchanged on the sales for no less than five residential units forming part of the Development and provides sufficient information to the Council to evidence the same.

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4.11.3 Not to complete on the sale of more than five residential units until such time as the Post-Construction Viability Assessment has been submitted to the Council for approval in writing.

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4.11.4 The Deferred Affordable Housing Contribution shall be calculated by multiplying the Surplus (if any) by 50% PROVIDED THAT the maximum sum payable shall not exceed £394,850.00.

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4.11.5 Where the Council has issued a certificate showing a sum due by way of Deferred Affordable Housing Contribution:-

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4.11.5.1 To pay the Deferred Affordable Housing Contribution within 28 days of service of a demand; and

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4.11.5.2 not to Occupy or permit Occupation of any more than five residential units until such time as the Owner has paid the Deferred Affordable Housing Contribution in full

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 Development 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 planning reference 2013/1210/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 Deed 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 Submission of any plan under Clause 4 for approval by the Council under the terms of this Deed shall be made by the Owner to the Council sending the full document and any appendices in electronic format to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Deed and citing the specific clause of this Deed to which such plan relates quoting the planning reference 2013/1210/P.
- 5.6 Payment of the financial contributions pursuant to Clause 4 of this Deed shall be made by the Owner to the Council sending the full amount in the form of a Banker's Draft to the Planning Obligations Monitoring Officer referring to the names dates and

Parties to this Deed and citing the specific clause of this Deed to which such Contribution relates quoting the Income Code ZN797 ZL065 or by Electronic Transfer directly to the Co-Operative Bank plc of 1 Islington High Street London N1 9TR quoting Sort Code 08-90-33 and London Borough of Camden General Account No. 61030019 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by Banker's Draft.

5.7 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Deed upon presentation of an appropriate value added tax invoice addressed to the Owner.

5.8 Any sums referred to in this Deed as payable or to be applied by any party other than the Council under this Deed shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Deed a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

5.9 All costs and expenses payable to the Council under this Deed shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

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 Deed to be served under or in connection with this Deed and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Deed and shall cite the clause of the Deed 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 reference number 2013/1210/P.

- 6.2 This Deed shall be registered as a Local Land Charge.
- 6.3 The Owner hereby covenants with the Council that it will within 28 days from the date the Planning Permission is granted apply to the Chief Land Registrar of the Land Registry to register this Deed 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 Deed in the Charges Register of the title to the Property
- 6.4 Nothing contained or implied in this Deed 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.
- 6.5 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Deed 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.
- 6.6 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by Deed with or at the request of the Owner) this Deed shall forthwith determine and cease to have effect.
- 6.7 The Owner agrees to pay to the Council:-
- (i) On or prior to completion of this Deed the Council's reasonable and proper legal and disbursement costs incurred in connection with this Deed; and

- (ii) Within 14 days of the Planning Permission the monitoring fees of £4,120.00

7. **MORTGAGEE EXEMPTION AND RECEIVER'S LIABILITY**

- 7.1 The Mortgagee hereby consents to the completion of this Deed and agrees to the same being registered at the Land Registry as provided in Clause 6.3 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.
- 7.2 The Receiver is acting as agent for the Developer and neither the Receiver nor the Receiver's firm nor any person acting on their behalf shall incur any personal liability whatsoever arising directly or indirectly under this Deed or any instrument or document entered into under or in connection with it.

8. **JOINT AND SEVERAL LIABILITY**

- 8.1 All Covenants made by the Owner in this Deed 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 Deed.



IN WITNESS whereof the Owner and the Mortgagee have executed this instrument as their  
Deed the day and year first before written

EXECUTED AS A DEED BY  
DAMSONETTI UK LIMITED  
acting by Mark Robert Downham  
joint LPA Receiver pursuant to  
powers granted to him by Clause 7  
of a Legal Charge dated 17 April 2008  
in favour of Investec Bank Plc  
in the presence of:

)  
)  
)  
)  
)  
)  
)  
)

*[Handwritten signature]*

Signed

.....

Witness

.....

Signed

*S.E. Wall*

Name

STEPHEN ERWIN WALL

Address

35 NEW BRIDGE STREET  
LONDON EC4V 6BW


Occupation

CHARTERED SURVEYOR


EXECUTED and DELIVERED by  
INVESTEC BANK PLC  
acting by its duly appointed authorised  
signatories under a power of attorney  
dated 4 June 2013 as follows:

  
.....  
Authorised Signatory


In the presence of:

  
.....  
Witness:

KATHRYN INCH  
.....  
Witness Name:  
Investec Bank plc  
Gresham Street  
London  
EC2V 7QP  
Witness Address:

  
.....  
Authorised Signatory

In the presence of:

  
.....  
Witness:

KATHRYN INCH  
.....  
Witness Name:  
Investec Bank plc  
Gresham Street  
London  
EC2V 7QP  
Witness Address:

EXECUTED AS A DEED BY )  
AUGUSTINES ROAD LTD )  
acting by a Director in the presence of )

Director Name: (CAPITALS) )

Director Signature: )



Witness

Signed

Name

Address

Occupation

  
.....  
  
.....  
Paul Gaffney  
.....  
Job (p1660)  
.....  
Job (p1660)  
.....  
11 job (conf)  
.....  
Location  
.....  
Property Consultant  
.....

## THE FIRST SCHEDULE

### **Construction Management Plan Air Quality and Carbon Reduction**

Requirements to control and minimise NO<sub>x</sub>, PM<sub>10</sub>, CO<sub>2</sub> emissions from construction sites and avoid nuisance and dust complaints.

A method statement shall be prepared and adopted as part of the Construction Management Plan to minimise gaseous and particulate matter emissions generated during the Construction Phase. The method statement shall identify the specific measures which will be implemented to control air pollution emissions during each of the following stages of the Construction Phase: (a) demolition; (b) ground breaking; and (c) construction/build.

The Construction Phase shall be carried out in accordance with the Best Practise Guidance Note "Control of dust and emissions from construction and demolition" published by London Councils, 2006. The risk rating of the site shall be defined in the method statement and determined using the risk assessment methodology in the Best Practise Guidance. Techniques to control dust from construction activities and emissions from vehicles and plant, and undertake air quality monitoring, shall conform to the 'medium' or 'high' risk categories outlined in the Best Practice Guidance.

The following best practise measures shall be included as a minimum in the method statement:-

#### A - Techniques to control PM<sub>10</sub> and NO<sub>x</sub> emissions from vehicles and plant

- a) Low emission plant fitted with catalysts, diesel particulate filters or similar devices shall be used;
- b) Plant shall be well maintained, with routine servicing of plant and non-road mobile machinery (NRMM) to be completed in accordance with the manufacturers recommendations;
- c) Avoid the use of diesel or petrol powered generators and use mains electricity or battery powered equipment;
- d) Non-road mobile machinery (NRMM) shall use ultra low sulphur tax-exempt diesel and be fitted with appropriate exhaust after-treatment such as catalysts, diesel particulate filters as stated on the approved list managed by the Energy Saving Trust. Details of the plant and control equipment shall be included in the method statement.

- e) All construction vehicles shall comply with the Euro 4 emissions standard and where possible use low emission fuels and alternative technology.
- f) Plant and vehicles shall be located way from the closest receptors or house in closed environments where possible.

#### B - Techniques to control dust emissions from construction and demolition

- a) Keep site fencing, barriers and scaffolding clean using wet methods;
- b) Buildings to be demolished shall be wrapped
- c) Provide easily cleaned hard standing for vehicles and clean using wet sweeping methods;
- d) Provide the use of wheel-wash facilities near the site exit. Fit wheel-washes with rumble grids to dislodge accumulated dust and mud prior to leaving the site to avoid carrying dust or mud off the site;
- e) Inspect internal haul routes for integrity and instigate necessary repairs to the surface as soon as reasonably practicable;
- f) Routinely clean the Public Highways and accesses using wet sweeping methods especially during dry periods;
- g) Impose and signpost maximum speed limits of 10 mph on surfaced haul routes and work areas within the Site;
- h) Ensure all vehicles carrying loose or potentially dusty material to or from the site are fully sheeted;
- i) Store materials with the potential to produce dust away from site boundaries;
- j) Sheet, seal or damp down stockpiles of excavated material held on site;
- k) Any loose materials brought onto the site shall be protected by appropriate covering
- l) The site shall be dampened down during the working day and again at the end of the day to reduce the amount that is re-suspended dust.
- m) Ensure water suppression is used during demolition operations;
- n) Ensure mobile crushing and screening plant and cement batching plant which are regulated under the Local Air Pollution Prevention and Control regime operate in compliance with a Part B Permit. This shall be submitted to the local authority prior to operation.
- o) Site personnel shall be trained in dust mitigation and a manager shall be present for managing dust on site.

### C - Air Quality Monitoring

- a) Throughout the Construction Phase continuous particulate matter (PM10) monitoring shall be undertaken. Two instruments will be deployed at the site boundary in a transect orientated to the prevailing wind direction, with a third monitor located at the nearest sensitive receptor. One monitor shall be co-located with an anemometer.
- b) Adequate quality assurance/quality control procedures shall be in place including monitor maintenance and calibration as well and data checking. PM10 data shall be collected automatically on an hour basis.
- c) A trigger action level for PM10 concentrations of  $200\mu\text{g.m}^{-3}$  (15 minute average) shall be used to identify incidences of elevated dust emissions at the site boundary. The development site shall comply with the trigger action throughout the demolition and construction phases.
- d) An on-site alert system (email or SMS) shall be in place to notify appropriate staff that the trigger action level has been reached. Immediate and appropriate measures can be put in place to rectify abnormal particulate emissions. A procedure shall be established to deal with abnormal dust emissions. All incidences of abnormal particulate emissions leading to breaches of the trigger action level, shall be documented in the site log book (date and time), with details of the action take to remediate dust emissions.
- e) An e-mail specifying details of any alert to be sent out to the Council's air quality officer as soon as practicable following any breach of the site trigger action level.
- f) An electronic report shall be submitted to the Council's air quality officer every three months summarising the following information from each monitoring site – 24 hour average PM10 concentration, date and time of any breach of the trigger action level with the 15 minute mean concentration, prevailing wind direction and details of the cause of elevated dust emissions and mitigation measures.
- g) The Council shall be notified of any changes to the location and operation of dust PM10 monitoring instrumentation.

- h) A 24-hour phone hotline shall be set up so that residents can complain about high dust or PM10 levels directly to the developer.

The following items shall be included in the method statement:

- a) A specific timetable identifying the start and finish dates of each phase, including dust generating activities and PM10 monitoring.
- b) An inventory of stationary and fugitive dust, PM10 and NOx emission sources with an explanation of how these will be mitigated in accordance with the London Council's Best Practise Guidance.
- c) A map identifying the location of dust generating activities, plant equipment associated with emissions to air and PM10 monitors.
- d) An air quality monitoring protocol prepared in accordance with the requirements of section C.

#### D - Techniques to reduce CO<sub>2</sub> emissions from construction vehicles

A commitment from the Owner that contractors' vehicles involved in construction and demolition work will adopt 'green fleet management practices' that will result in a 10% reduction in tail-pipe CO<sub>2</sub> emissions over the duration of the construction phase. A green fleet management plan included in the method statement identifying measures to improve vehicle efficiency and reduce CO<sub>2</sub> emissions from construction vehicles. This could include the use of fuel monitoring equipment in vehicles, eco-driver training, accreditation with FORS (Freight Operator Recognition Scheme run by TfL) or SAFED (Safe and Fuel Efficient Driving run by the DfT) and use of low carbon vehicles such as hybrid electric, electric and bio-methane.

## THE SECOND SCHEDULE

### **Construction Management Plan Highway Measures**

A Construction Management Plan outlines how construction work will be carried out and how this work will be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations and minimising the impact on local amenity. A Construction Management Plan should cover both demolition and construction phases of development. Details of the Construction Management Plan will relate to the scale and kind and location of the development and they should assess the impact on transport and on local amenity including road user amenity. Should any one of these criteria be considered not to be relevant, then specific justification, as to why that particular criterion is not relevant, will need to be provided. The Construction Management Plan should demonstrate that the following has been considered and where necessary the impacts mitigated:

*(Note the term 'vehicles' used here refers to all vehicles associated with the implementation of the development, e.g. demolition, site clearing, delivering of plant, material and construction, staff parking etc)*

- a) A brief description of the site, surrounding area and development proposals for which the Construction Management Plan applies.
- b) Proposed start and end dates for each phase of construction.
- c) The proposed working hours within which vehicles will arrive and depart.
- d) The access arrangements for vehicles.
- e) Proposed routes for vehicles between the site and the Transport for London Road Network (TLRN). Consideration should also be given to weight restrictions, low bridges and cumulative affects of construction on the highway. A map of the TLRN can be downloaded from the following site:-  
[http://www.tfl.gov.uk/assets/downloads/TFL\\_Base\\_Map\\_Master.pdf](http://www.tfl.gov.uk/assets/downloads/TFL_Base_Map_Master.pdf)
- f) Typical sizes of all vehicles and the approximate frequency and times of day when they will need access to the site, for each phase of construction.
- g) Swept path drawings for any tight manoeuvres on vehicle routes to the site.
- h) Details (including accurate scaled drawings) of any highway works necessary to enable construction to take place.
- i) Parking and loading arrangement of vehicles and delivery of materials and plant to the site.

- j) Details of proposed parking bays suspensions and temporary traffic management orders.
- k) Proposed overhang (if any) of the public highway (scaffolding, cranes etc.).
- l) Details of hoarding required or any other occupation of the public highway.
- m) Details of how pedestrian and cyclist safety will be maintained, including any proposed alternative routes (if necessary), and any Banksman arrangements.
- n) Details of how traffic associated with the Development will be managed in order to reduce congestion.
- o) Details of any other measures designed to reduce the impact of associated traffic (such as the use of construction material consolidation centres).
- p) Details of how any significant amounts of dirt or dust that may be spread onto the public highway will be cleaned or prevented.
- q) Details of consultation on a draft Construction Management Plan with local residents, business, local groups (e.g. residents/tenants and business associations) and Ward Councillors. Details should include who was consulted, how the consultation was conducted and the comments received in response to the consultation. In response to the comments received, the Construction Management Plan should then be amended where appropriate and where not appropriate a reason should be given why not. The revised Construction Management Plan should also include a list of all the comments received. You are advised to check your proposed approach to consultation with the Council before carrying it out.
- r) Details of any Construction Working Group that will be set up, addressing the concerns of surrounding residents, as well as contact details for the person responsible for community liaison on behalf of the developer, and how these contact details will be advertised to the community.
- s) Details of any schemes such as the "Considerate Contractors Scheme" that the project will be signed up to should form part of the consultation and be notified to the Council. Contractors will also be required to follow the "Guide for Contractors Working in Camden" also referred to as "Camden's Considerate Contractor's Manual"
- t) Details of other construction sites in the local area and how your Construction Management Plan takes into consideration the cumulative effects of construction local to your site.
- u) All contractors and sub-contractors operating HGVs must meet all of the following conditions:-



- 1) Operators must be a member of TfL's Fleet Operator Recognition Scheme ([www.tfl.gov.uk/fors](http://www.tfl.gov.uk/fors)) or similar at the Bronze level.
- 2) All drivers must have undertake cycle awareness training such as the Safe Urban Driver module through FORS or similar.
- 3) All vehicles associated with the construction of the Development must:
  - i. Have Side Guards fitted, unless it can be demonstrated to the reasonable satisfaction of the Employer, that the Lorry will not perform the function, for which it was built, if Side Guards are fitted.
  - ii. Have a close proximity warning system fitted comprising of a front mounted, rear facing CCTV camera (or Fresnel Lens where this provides reliable alternative), a Close Proximity Sensor, an in-cab warning device (visual or audible) and an external warning device to make the road user in close proximity aware of the driver's planned manoeuvre.
  - iii. Have a Class VI Mirror
  - iv. Bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- v) Any other relevant information with regard to traffic and transport.
- w) The Construction Management Plan should also include the following statement:-  
*"The agreed contents of the Construction Management Plan must be complied with unless otherwise agreed with the Council. The project manager shall work with the Council to review this Construction Management Plan if problems arise in relation to the construction of the Development. Any future revised plan must be approved by the Council and complied with thereafter."*

**It should be noted that any agreed Construction Management Plan does not prejudice further Deed that may be required for things such as road closures or hoarding licences**

# THE THIRD SCHEDULE

## PLAN OF THE PROPERTY

Scale @ A4  
1:1250

