

Dated

4th June

2009

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF BRENT

—and—

MARY DEVELOPMENTS LTD

—and—

ALLIED IRISH BANKS PLC

DEED OF AGREEMENT

made under Section 106 of the Town and Country
Planning Act 1990 Section 111 of the Local Government Act 1972 Section 16 of the
Greater London Council (General Powers) Act 1974
and all other enabling powers relating to Land known as
The Constitutional Hall, St Mary's Road, Harlesden NW10

Terry Osborne
Borough Solicitor
Legal Services
London Borough of Brent
Town Hall Annexe
Forty Lane
Wembley
Middlesex HA9 9HD

Ref: TSV/610/703/S106

THIS DEED OF AGREEMENT is made the 4th day of June Two thousand and nine

BETWEEN

THE MAYOR AND THE BURGESSES OF THE LONDON BOROUGH OF BRENT of Town Hall Forty Lane Wembley Middlesex HA9 9HD ('the Council') of the first part; and

MARY DEVELOPMENTS LIMITED (Co.Regn.No 06326740) of Unit 10, Invicta Business Park, London Road, Wrotham, Kent TN15 7RJ ('the First Owner') of the second part; and

ALLIED IRISH BANKS PLC of Thirteenth Floor, St Helens 1 Undershaft, London ('the First Mortgagee') of the third part

INTERPRETATION

IN this Deed the following words and expressions shall have the following meanings:-

- | | |
|--------------------------|--|
| 'the 1990 Act' | the Town and Country Planning Act 1990 |
| 'the Affordable Housing' | subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available in the open market and is defined in paragraph 6.3 of the First Schedule |
| 'Affordable Dwellings' | All of the dwellings comprising either a mixture of Intermediate Affordable Units the size of which shall be |
| | (i) 10 Intermediate Affordable Units comprising |
| | 4 x 1 bedroom flats |
| | 6 x 2 bedroom flats, and |
| | (ii) 28 Social Rented Units comprising |
| | 9 x 2 bedroom flats |
| | 17 x 3 bedroom flats |
| | 2 x 4 bedroom flats |
| | Or 38 Social Rented Units |
| 'the Contributions' | the sums referred to in Paragraph 1 of the First Schedule |

'the Considerate Constructors Scheme'	the voluntary Code of Considerate Practice adopted by participating construction companies, [and everyone involved on the construction site], or any subsequent body with the same function
'the Development'	the development permitted by the Planning Permission or a Varied Planning Permission
'D1 Community Facility'	means the 162m ² of community facility (use class D1) which forms part of the Development
'Housing Association'	shall have the meaning given in paragraph 6.8 of the First Schedule
'the Homes & Communities Agency'	the Homes & Communities Agency of 110 Buckingham Palace Road London SW1W 9SA and any statutory successor
'the Index'	the All Items Index of Retail Prices published by the Central Statistical Office or any replacement thereof
Intermediate Affordable Units	the Affordable Dwellings which are provided at prices and rents above those of social rent but below market price or rents and which will meet the criteria set out in the definitions of affordable housing and social rented housing contained in Annex B to Planning Policy Statement 3 (PPS3) Housing (2006) and for the avoidance of doubt can include shared equity products shared as Shared Ownership Units other low costs homes for sale and intermediate rent



Rev A

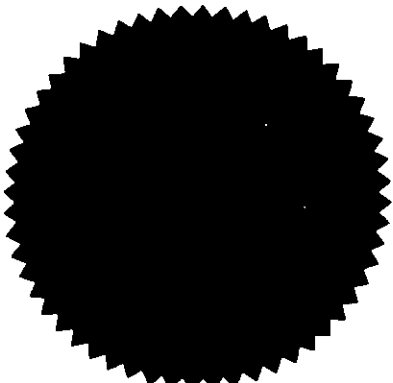
STM/E 01

LOCATION PLAN 1:1250@A3

ST MARY'S ROAD LONDON NW10 4AL



CHASSAY
LAST



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'the Land'	that part of the land shown outlined in red on the Plan being land lying on the north west side of St Mary's Road, Willesden and registered at Land Registry under title number NGL815905
'Material Operation'	material operation as defined in Section 56(4) of the Act for the commencement of the Development
'Material Start'	the undertaking of a Material Operation
'the Plan'	the plan annexed hereto
'the Planning Application'	the planning application for the Development received on 5 th June 2008 bearing reference number 08/1629 brief details of which are erection of a 3,4,5 and 6 storey building comprising 162msq community facility (Use Class D1) on the ground floor, 38 self contained flats (affordable), 3 disabled parking spaces, 38 cycle spaces, formation of new vehicular access onto St Mary's Road NW10, communal garden and associated landscaping
'Planning Permission'	planning permission issued pursuant to the Planning Application
'Practical Completion'	the date of issue of a Certificate of Practical Completion of the Development (if issue of such Certificate is required by the relevant contract for construction of the Development) or otherwise construction of shell and core buildings within a wind and watertight envelope with staircase and lift shafts (if applicable) in situ and services provided to each floor
'Resident'	any person who occupies a Dwelling
'Residents Parking Permit'	A Parking Permit issued by the Council under Section 45(2) of the Road Traffic Regulation Act 1984 for the use of designated residents in the locality

'Shared Ownership Units'	the Intermediate Affordable Units which are initially part rented and part purchased or like scheme
'Social Rented Units'	Affordable Dwellings let at rents which comply with the target rents set annually by the Homes & Communities Agency or such successor body
'Varied Planning Permission'	any planning permission issued pursuant to an application to vary or further vary any of the conditions in the Planning Permission
'Visitors Parking Permit'	A Parking Permit issued by the Council under Section 45(2) of the Road Traffic Regulation Act 1984 for the use of visitors in the locality

WHEREAS:

- (1) THE Council is the Local Planning Authority for the administrative area of the London Borough of Brent within which the Land is situate for the purposes of the Town and Country Planning Act 1990 and is the Local Planning Authority by whom the obligations contained herein are enforceable.

Recital of owner's interest (s)

- (2) THE Owner is the estate owner in fee simple of the Land
- (3) THE Council's Planning Committee at a meeting on 7th October 2008 resolved that planning permission should be granted for the Development subject to the prior or contemporaneous completion of this Agreement;
- (4) THE Mortgagee is the chargee of a charge on the Land;
- (5) THE parties have agreed that the residential part of the Development shall be 100% Affordable Housing and car free

NOW THIS DEED WITNESSETH as follows:

1. THIS Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 16 of the Greater London Council (General Powers) Act 1974 and all other enabling powers and the covenants herein on the part of the Owner are entered into with the intent that the same shall be enforceable without limit of time not only against the Owner but also against its successors in title and any person corporate or otherwise claiming through or under it an interest or estate in the Land or any part or parts thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by it.

2. THE obligations herein on the part of the Owner are planning obligations for the purposes of Section 106 of the 1990 Act

Conditions Precedent

3. CLAUSES 4(b) and (c) and 5 of this Agreement shall only take effect upon:-
- (a) the grant by the Council of Planning Permission; and
 - (b) a Material Start being made to the Development

General Clauses

4. THE Owner COVENANTS with the Council:-
- (a) on the execution hereof to pay the Council's legal and other professional costs incurred in respect of the preparation and completion of this Agreement;
 - (b) to pay any legal and other professional costs incurred by the Council in monitoring or enforcing the performance of the Owner's obligations under this Agreement
 - (c) to fulfil the obligations on its behalf contained in the First Schedule hereto;

Inflation clause

- (d) the amount of the Contribution set out in Paragraph 1 of the First Schedule shall be index linked from the date of the committee decision (7th October 2008) ('the Indexed Amount') which is an amount being equal to the Contribution multiplied by a figure being A divided by B where B is the last Index figure published on 7th October 2008 and A is the last Index figure published before the date such payment is made, .SAVE THAT if the Indexed Amount is less than the Contribution then the contribution shall be payable
5. (a) THE Council agrees to accept the Owner's Covenants contained in the First Schedule.
- (b) THE Council covenants with the Owner to hold the monies set out in Paragraph 1 of the First Schedule in an interest bearing bank account of the Council

Mortgagee's consent

6. THE First Mortgagee hereby consents to the giving of the obligations on the part of the Owner herein contained and the First Mortgagee hereby agreed to be bound by the said obligations.

Indemnity for mortgagees

7. THE First Mortgagee shall only be directly liable for the breach of any of the obligations contained in this agreement during any such periods as it is a mortgagee in possession of the Land

Arbitration clauses

8. THE Owner and the Council hereby agree that any differences and questions which arise between the parties in connection with the interpretation of this Deed shall be referred for determination by an independent person in accordance with the following provisions:-
- (a) where such dispute relates to the construction of this or any other deed or document it shall be referred to a solicitor or barrister agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Law Society; and
 - (b) in any reference to an independent person under this clause such person shall, unless the parties otherwise agree, act as expert and not as an arbitrator.

9. IT IS HEREBY AGREED and DECLARED:

Miscellaneous agreements and declarations

- (a) 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 as Local Authority and its rights, powers, duties and obligations under all public and private statutes, by-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed;
- (b) if any provision or part of any provision in this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions or parts of provisions hereof shall not, in any way, be deemed thereby to be affected or impaired;

Local land charge provisions

- (c) this Agreement shall be registered in the Council's Register of Local Land Charges immediately on completion thereof;

Registration at Land Registry

- (d) the Owner will at its own expense make an application to the Land Registry for registration of this Deed on the Title Register for the Land and will inform the Council's Legal Services Section once registration has been effected;

Reference to statutes and statutory instruments

- (e) references in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force;

Liability of subsequent owners and release of former owners

- (f) the provisions hereof shall be enforceable by the Council against the Owner and all persons who shall have derived title through or under the Owner in respect of the Land or part of the Land (but so that no person shall be liable to the Council for any breach of the provisions hereof committed after such person has parted with all of its interest in the Land);

English law applicable

- (g) the construction validity and performance of this Deed shall be governed by English law;

Contracts (Rights of Third Parties) Act 1999

- (h) No person shall acquire any rights under the Contracts (Rights of Third Parties) Act 1999 by virtue of this Deed

Obligation to act reasonably

- (i) where by this Deed any approval or consent is required to be given by any party hereto, any such approval or consent shall not be unreasonably withheld or delayed;

Service of notices

- (j) all notices served pursuant to this Deed shall be in writing and shall be deemed duly served if delivered or sent:-
 - (i) in the case of any notice to be served on the First Owner to the address set out in this Agreement or such other address as may be notified to the parties from time to time and
 - (ii) in the case of any notice to be served on the First Mortgagee to the address set out in this Agreement or such other address as may be notified to the parties from time to time and

- (iii) in the case of any notice to be served on the Council to the Council at Brent House, 349-357, High Road, Wembley, Middlesex, HA9 6BZ to be marked for the "Attention of The Section 106 Monitoring Officer, Planning Services"

Effect of revocation of planning permission

- (k) in the event of planning permission for the Development being revoked by the Council or any other authority having powers in relation to planning matters the obligations of the Owner under this Deed shall thereupon cease absolutely;

Waivers not to be of a continuing nature

- (l) no waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner;

Headings

- (m) the headings in this agreement are for information only and shall not be used in the interpretation of this Deed.

D1 Community Facility

- (o) None of the obligations or provisions of this Deed (save for the obligations in paragraph 3 of the First Schedule) shall be enforceable against the owners/tenants/occupiers (including their respective funders) of the D1 Community Facility

IN WITNESS whereof with the intent that these presents should be executed as a Deed the parties hereto have duly executed and delivered the same the day and year first before written.

FIRST SCHEDULE
Covenants by Owner

1.0 TO PROVIDE FINANCIAL CONTRIBUTIONS

1.1 To pay to the Council the total sum of Two Hundred and Twenty Three Thousand Two Hundred Pounds (£223,200) of which

- (a) 60% of the total sum shall be payable upon a Material Start being made; and
- (b) 40% of the total sum shall be payable on the date being two years after the date of the Material Start

such sum to be utilised by the Council towards the provision and/or improvement of all or some of the following

- (a) education facilities in the Borough
- (b) sustainable transport in the local area
- (c) sport and/or open space in the area

1.2 To pay to the Council upon Practical Completion of the Development the sum of Fifty Thousand Pounds (£50,000) or any reduced sum to be agreed in writing by the Council to be utilised by the Council towards off-site community facilities unless an independent financial appraisal shows a return on the Development of less than 15% of the total cost.

2.0 TO GIVE NOTICE OF COMMENCEMENT OF DEVELOPMENT

Not to commence the implementation of the Development by the making of a Material Start until it has given to the Council 10 working days' notice in writing of its intention so to do.

3.0 SUSTAINABILITY STRATEGY

3.1 To commission and prepare a Sustainability Strategy in consultation with the Council which shall include:

- (a) achieving a higher carbon-index or SAP rating than the Building Regulations minimum;
- (b) a low energy, user controlled lighting system; and
- (c) water saving appliances (taps, WC cisterns) to reduce overall water demand

- (d) measures to deal with surface water run-off and to avoid risk of flooding
- 3.2 To submit to the Council no later than four months (unless otherwise agreed in writing by the Council) prior to a Material Start being made:
- (a) the Sustainability Strategy, demonstrating how the measures above and others listed in the Sustainability Development Checklist (TP6 form) submitted with the application are integrated into the scheme and
 - (b) score at least 50% 'Very Positive' on the London Borough of Brent's Sustainability Development Checklist
 - (c) an indicative BREEAM sustainable assessment so as to demonstrate that the Development will be constructed to such specification as to achieve a Code for Sustainable Homes level 3 rating
- 3.3 Not to make a Material Start unless and until the Sustainability Strategy has been approved in writing by the Council.
- 3.4 Prior to first occupation of the Development the Owner shall commission at its own expense a review by a BRE-approved independent body ("the Assessor") with a view to determining whether in respect of the Development:
- (i) the measures set out in the Sustainability Strategy which shall include measures relating to the reuse of buildings, energy and water conservation and/or subsequently negotiated or stipulated in the consent have been achieved; and
 - (ii) a Code for Sustainable Homes level 3 rating has been achieved
- 3.5 If a review by the Assessor pursuant to paragraph 3.4 above determines that any of the measures set out in the Sustainability Strategy have not in fact been implemented and/or "a Code for Sustainable Homes level 3 rating has not been met the Owner shall either submit for the approval of the Council proposed measures for remedying such shortcomings and/or carrying out compensatory measures so as to secure an acceptable or comparable level of sustainability within the Development and thereafter implement the approved compensatory measures, or (if and to the extent the Council agrees that it is impractical for any reason to implement such measures) pay to the Council a sum equivalent to the cost at that date of carrying out the measures in the Sustainability Strategy not implemented and/or achieving a Code for Sustainable Homes level 3 rating which such shall be utilised by the Council towards the provision of measures towards securing sustainability on other sites within the Borough.

3.6 The approved Sustainability Strategy (or as amended) shall be fully implemented and maintained for the lifetime of the Development unless otherwise agreed in writing with the Council

4.0 RENEWABLE ENERGY

4.1 To commission and prepare a strategy to demonstrate that 20% of the site's carbon emissions can be offset through on-site renewable energy generation.

4.2 To fully implement the strategy and maintain it for the lifetime of the Development unless otherwise agreed in writing by the Council

4.3 If it is demonstrated to the Council's satisfaction that it is not feasible to fulfil the obligation in paragraph 4.1 to pay to the Council a sum equivalent to the cost at that date of carrying out such measures which sum shall be utilised by the Council towards the provision of measures promoting renewable energy supply on other sites in the Borough

5.0 CONSIDERATE CONSTRUCTORS SCHEME

5.1 Prior to a Material Start being made the developer shall join, and for the period of construction, adhere to the requirements of the Considerate Constructors Scheme

6.0 AFFORDABLE HOUSING

6.1 Not to Occupy or allow to be Occupied the Affordable Dwellings unless the Affordable Dwellings are in the ownership of a Housing Association either by way of freehold or 125 year leasehold

6.2 The Affordable Dwellings shall be used only as affordable housing (as defined in paragraph 6.3 of this Schedule) and to meet the objectives of a Housing Association save that it is hereby declared that the provisions of this paragraph shall:

(a) not bind any mortgagee of a Housing Association or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Housing Association;

(b) cease to apply to any part or the whole of the Land should such part or the whole be transferred or leased by any mortgagee of a Housing Association exercising its power of sale under any mortgage or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Housing Association;

(c) cease to apply to any completed Affordable Dwellings where a Housing Association shall be required to dispose of the same pursuant to a right

to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 16 of the Housing Act 1996 or any similar or substitute right applicable;

- (d) cease to apply to any completed Affordable Dwellings where a Housing Association sells to a tenant pursuant to a voluntary grant scheme under Section 21 of the Housing Act 1996 or any amendment or replacement thereof;
- (e) not bind any person to whom a Housing Association grants a shared ownership lease of a completed Affordable Dwelling nor any successor in title to any such person;
- (f) not bind any mortgagee of any person to whom a Housing Association grants a shared ownership lease of a completed Affordable Dwelling or any receiver appointed by such mortgagee or any person deriving title through such mortgagee;
- (g) not bind any lessee of a Shared Ownership Unit who has purchased 100% of the equity of that unit or any person deriving title through or under such lessee other than a Housing Association deriving title through or under such lessee;
- (h) not bind any statutory undertaker or authority, other than the Council, which acquires any part of the Land for the sole purposes of its statutory undertaking or functions;

6.3 An affordable dwelling is defined as Affordable Housing where it has the smallest number of rooms appropriate to alleviate the needs of a household in unsuitable accommodation, and

- (1) it is used to accommodate such a household and that household could only meet the payments on a mortgage of 100% of the open market price of the dwelling by expending more than one-third of its gross income, or could only pay the open market rent on the dwelling by expending more than 35% of its net income, and
- (2) the actual rent, or mortgage payments payable on the dwelling are equivalent to those payable for similar accommodation provided by registered social landlords elsewhere in the London Borough of Brent (as set out in the annual housing strategy)

6.4 The Affordable Dwellings shall comprise either 10 Intermediate Affordable Units and 28 Social Rented Units or 38 Social Rented Units

6.5 The Owner shall comply with Homes & Communities Agency funding standards including Design and Quality Standards April 2007 and Lifetime Homes Standards in respect of all the Affordable Dwellings

- 6.6 The Affordable Dwellings shall be allocated to persons in accordance with present and future West London funding arrangements
- 6.7 The Shared Ownership Units shall be disposed of in accordance with the Council's shared ownership nomination agreement with the Housing Association
- 6.8 For the purposes of this Schedule, a Housing Association means a body;
- (a) registered pursuant to the Housing and Regeneration Act 2008 as a social landlord with the Homes & Communities Agency and
 - (b) is listed within the following list (which may be revised by agreement from time to time); Acton Housing Association, Asra (Greater London) Housing Association, Catalyst Housing Group, Family Mosaic Housing Association, Genesis Housing Group, Hyde Housing Association, Metropolitan Housing Trust, Network Housing Group, Notting Hill Housing Group, and in each case any subsidiary who is registered with the Homes & Communities Agency

7. PARKING PERMITS

The Owner will:-

- 7.1 (a) in writing inform each Resident of the residential part of the Development that he or she will not be entitled to a Residents Parking Permit or Visitors Parking Permit to allow the parking of a motor car within the Controlled Parking Zone (CPZ) operating in the locality within which the Land is situated save that if he or she is (or subsequent to occupation becomes) entitled to be a holder of Disabled Persons Badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970, a right which would require satisfactory proof by the Council, then he or she shall be entitled to a Resident's Parking Permit; and
- (b) ensure that there shall be procured in any licence transfer lease or tenancy agreement with the Owner of the residential part of the Development in respect of an Affordable Dwelling a notification informing each Resident that he or she will not be entitled to a Residents Parking Permit or Visitors Parking Permit to allow the parking of a motor car within the Controlled Parking Zone (CPZ) operating in the locality within which the Land is situated save that if he or she is (or subsequent to occupation becomes) entitled to be a holder of a Disabled Persons Badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970, a right which would require satisfactory proof by the Council, then he or she shall be entitled to a Resident's Parking Permit; and

(c) certify on notice in writing to the Council the date/s upon which paragraphs 7.1(a) and (b) have been complied with in respect of the initial release and occupation of the Affordable Dwellings.

7.2 The Owner covenants with the Council that neither it nor any Resident of the residential part of the Development will apply for a Residents or Visitors Parking Permit (save as provided for in clauses 7.1(a) and (b) in respect of disabled persons) and if issued with such Parking Permit to surrender it to the Council within 7 working days of receiving it.

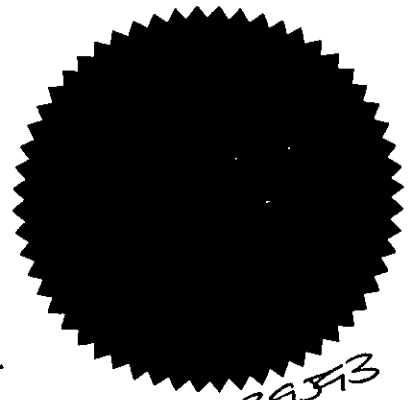
7.3 Where clause 7.2 is breached by a Resident, then that clause shall only be enforceable against that particular Resident and not against the Owner or any previous Resident.

7.4 For the avoidance of doubt covenants 7.1(a) and (b) have to be complied with regarding each and every new and subsequent Resident of the residential part of the Development as well as in respect of every initial Resident of the Affordable Dwellings.

8.0 PROVISION OF CLASS D1 COMMUNITY SPACE

8.1 Prior to first occupation of any part of the development to provide no less than 162 sqm of publicly accessible community space as shown on drawing STMR/PO1-Rev F such community space to be available to rent prior to first occupation and to be only used for the purposes set out in Class D1 of the Town and Country Planning (Use Classes) Order 1987 as amended by statutory instrument 2005/84

THE COMMON SEAL of THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF BRENT was hereunto)
affixed in the presence of:-)



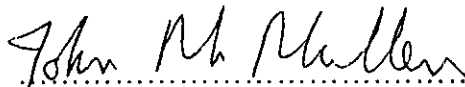
RuVile
.....
~~Borough Solicitor/Solicitor~~

EXECUTED AS A DEED by MARY DEVELOPMENTS LIMITED acting by two directors:)
or a director and its secretary)

[Signature]
[Signature]
.....
Director

.....
Director/Secretary

EXECUTED AS A DEED by **ALLIED**)
IRISH BANKS PLC acting)
of its authorised signatory:)


.....
Authorised Signatory