

Dated 6th November 2023

EASTERN IRON WORKS LIMITED

-to-

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH
OF HAVERING**

**DEED OF UNILATERAL UNDERTAKING
made under Section 106 of the
Town & Country Planning Act 1990**

THIS UNILATERAL UNDERTAKING is made as a Deed the Sixth day of November two thousand and twenty three

BY

Eastern Iron Works Limited (Company Registration Number 10413409) whose registered office is situated at 16 Great Queen Street, Covent Garden, London, WC2B 5AH ("the Owner")

IN FAVOUR OF

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING
Town Hall, Main Road, Romford, RM1 3BD ("the Council")

WHEREAS:

- (1) The Council is the local planning authority for its administrative area within which the Property is situated for the purposes of the 1990 Act and for the purpose of Section 106 of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable. This Deed is conditional on the Inspector deciding to allow the Appeal and making an express and unequivocal finding that the Carbon Offset Contribution is reasonable and necessary to make the Development acceptable in planning terms.
- (2) The Owner is registered at the Land Registry with absolute title under title numbers EGL99651 and EGL461858 as the proprietor of the freehold interest in the Property and warrants that subject to the entries disclosed is otherwise free of encumbrances
- (3) The Owner has submitted to the Council the Planning Application which the Council refused on 16 January 2023
- (4) The Owner has submitted the Appeal and enters into this Deed in order to overcome some of the Council's reasons for refusal of the Development
- (5) The Owner considers that the planning obligations contained in this Deed are (i) necessary to make the Development acceptable in planning terms (ii) directly relate to the proposed Development and (iii) that they are fairly and reasonably related in scale and kind to the Development

NOW THIS DEED WITNESSES as follows:

1. Definitions:

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

"1990 Act"	means the Town & Country Planning Act 1990 (as amended)
"Appeal"	means the appeal to the Secretary of State for Levelling Up, Housing and Communities following the

refusal of the Planning Application by the Council and given appeal reference APP/B5480/W/23/3322009

"BCIS General Building Cost Index" means the building cost information service general build cost index published by the Royal Institution of Chartered Surveyors from time to time

"BCIS Indexed" means any adjustment of the calculation of the payment of the Carbon Offset Contribution by applying the following formula:

A = B/C = D where;

A = the sum specified in this Deed in pounds sterling;

B = the figure shown in the BCIS General Build Cost Index for the period immediately prior to the date upon which the Carbon Offset Contribution is required to be paid pursuant to this Deed;

C = the figure shown in the BCIS General Build Cost Index for the period immediately prior to the date of this Deed; and

D = the recalculated sum in pounds sterling applying under this Deed

PROVIDED THAT if the BCIS General Build Cost Index becomes no longer maintained by the Royal Institution of Chartered Surveyors that said formula shall be applied mutatis mutandis (so far as it concerns periods after it ceases to be maintained) by reference to such other equivalent publication or Index as may be agreed from time to time with the Council and "BCIS Indexation" shall be construed accordingly

"Commencement of Development" means the carrying out of a material operation as defined in Section 56(4) of the 1990 Act save that such shall not include works of demolition; works of site clearance; ground investigations; site survey works; laying of services and service media; construction of temporary accesses; archaeological investigation; landscaping works off the public highway; and noise attenuation works; any temporary marketing suite or sales facility; erection of boards advertising the Development; ecological surveys; erection of site fencing and other site security and/or temporary means of enclosure, reference to Commencement of Development shall include the terms "Commenced" and "Commences the Development"

"Carbon Offset Contribution"	means the sum of thirty one thousand nine hundred and twenty pounds (£31,920.00) BCIS Indexed to be paid by the Owner to the Council in accordance with Schedule 1 that will be used by the Council towards Carbon offsetting
"Deed"	means this deed of undertaking
"Development"	means the development described in the Planning Application reference P1585.22
"Director"	means the Council's Director of Planning for the time being or such other person as may be appointed from time to time to carry out that function
"Inspector"	means an Inspector appointed by the Secretary for Levelling Up, Housing and Communities to determine the Appeal
"Monitoring Fee"	means the sum of one thousand pounds (£1,000.00) RPI Indexed payable by the Owner to the Council in accordance with Clause 4 of this Deed and to be used by the Council following receipt for the monitoring of the Owner's obligation and covenant in this Deed
"Parties"	means the parties to this Deed and "Party" shall mean the relevant one of the Parties as the context requires
"Planning Application"	means the planning application submitted by the Owner on 27/09/2022 to the Council bearing reference number P1585.22 for Demolition of all buildings and redevelopment to provide a hotel (within Use Class C1) at ground floor and part three and part four storeys over; together with premises at ground floor for the display or retail sale of goods, other than hot food (Use Class E(a)); and/or for the sale of food and drink for consumption (mostly) on the premises (Use Class E(b)), and/or for the provision of financial services, professional services or other appropriate services in a commercial, business or service locality (Use Class E(c)) at the Property
"Property"	means land situate at 11 Station Road, Upminster, RM14 2SJ known as land and property as delineated in red on the plan attached hereto at Schedule 2
"Reasonable Endeavours"	means that the Owner must exert itself to take all those reasonable steps which a prudent and determined person acting in their own interests and anxious to achieve the desired objective would take and for the avoidance of doubt includes the ability to demonstrate that the Owner has taken serious and detailed consideration of its contractual commitment pursuant to this Deed and has utilised such methods as are in their own interests and likely to achieve the

desired result and recognising that such performance is of material importance that the result is achieved

"Retail Price Index"

means the retail price all items index published by the Office of National Statistics from time to time

"RPI Indexed"

means any adjustment of the calculation of the payment of the relevant sum by applying the following formula:

$A \times B/C = D$ where:

A = the sum specified in this Deed in pounds sterling;

B = the figure shown in the Retail Price Index for the period immediately prior to the date upon which the relevant sum is required to be paid pursuant to this Deed

C = the figure shown in the Retail Price Index for the period immediately prior to the date of this Deed;

D = the recalculated sum in pounds sterling applying under this Deed

PROVIDED THAT if the Retail Price Index becomes no longer maintained by the Office of National Statistics the said formula shall be applied mutatis mutandis (so far as it concerns periods after it ceases to be maintained) by reference to such other equivalent publication or index as may be agreed from time to time with the Council and 'RPI Indexation' shall be construed accordingly

"Working Days"

means any day Monday to Friday inclusive which is not Christmas Day, Good Friday or statutory Bank Holiday and "Working Day" shall be construed accordingly

2. In this Deed:

- 2.1.1 references to clauses, schedules, paragraphs, plans and drawings are unless otherwise stated references to clauses schedules paragraphs plans and drawings to this Deed and headings to clauses of this Deed do not affect the interpretation or construction of this Deed;
- 2.1.2 words importing one gender will be construed as importing any other gender and words importing the singular will be construed as importing the plural and vice versa;
- 2.1.3 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa;

- 2.1.4 references to the Owner or such other party to this Deed shall include the successor in title and assignees of that party and covenants restrictions obligations and liabilities of an Owner comprising more than one person are joint and several;
- 2.1.5 references to the Council shall include any successor to its function as local planning authority for the area within which the Property is located;
- 2.1.6 any covenant not to do any act or thing includes an obligation not to knowingly permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by another person;
- 2.1.7 where the agreement, approval, consent, confirmation or an expression of satisfaction is required by, the Owner or the Council under the terms of this Deed that agreement, approval, consent, confirmation or satisfaction shall be in writing and shall not be unreasonably withheld or delayed;
- 2.1.8 where there is a requirement in this Deed that works are to be carried out and completed to the satisfaction of the Council or any officer of the Council then this means carried out in accordance with the reasonable specifications and to the reasonable satisfaction of the Council;
- 2.1.9 in the absence of any contrary provision references to statutes, bye-laws, regulations, order or, delegated legislation as is issued under statutory authority shall include any modification extension or re-enactment thereof for the time being in force and shall include such instruments orders plans and regulations for the time being made issued or given or made pursuant to the same power or deriving validity from that power;
- 2.1.10 the word 'including' shall mean 'including without limitation or prejudice to the generality of' any description defining term or phrase preceding that word and the word 'include' and its derivatives shall be construed accordingly;
- 2.1.11 the planning obligations herein shall, subject to any provisions to the contrary set out in this Deed, be enforceable by the Council against the Owner and its successors and assigns as if those persons had been the original covenanting party in the respect of that interest for the time being held by them

3. Variations

- 3.1 The covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a subsequent deed of variation

- 3.2 This Deed shall continue to be valid and enforceable following an amendment or variation of a condition attached to the Planning Permission achieved through the grant of a planning permission pursuant to Section 73 of the 1990 Act as if this Deed had been completed pursuant to such an application

4. English law applicable

- 4.1 The construction validity and performance of this Deed shall be governed by English law

5. Effect of revocation of planning permission

- 5.1 This Deed is given by the Owner on the condition that in the event of the planning permission being revoked by the Council or any other authority having powers in relation to planning matters or otherwise withdrawn or modified by any statutory procedure or quashed as a result of legal action without the consent of the Owner or their successors in title the obligations of the Owner under this Deed shall thereupon cease absolutely and in that event any moneys that have been paid by the Owner pursuant to the obligations contained within this Deed shall be repaid to the Owner by the Council forthwith together with interest at the Base Rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment

6. Waivers not to be of a continuing nature

- 6.1 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

7. Liability of subsequent Owner and release of former Owner

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

8. Contracts (Rights of Third Parties) Act 1999

8.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed is to have the benefit of or is capable of enforcing any term in this Deed and no party is to have any rights to enforce this Deed other than those falling within the definitions of the Council and the Owner

9. Local land charge provisions

9.1 This Deed is a Local Land Charge registrable by the Council in the Council's Register of Local Land Charges immediately on completion thereof

9.2 Nothing contained in this Deed constitutes planning permission

9.3 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 bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed

9.4 If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not be (in any way deemed thereby to be) affected or impaired.

Dispute Resolution

10.1 Subject to Clause 10.2 in the event of any dispute or difference arising between the Parties to this Deed touching or concerning any matter or thing arising out of this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and shall receive representations from the Parties in dispute and his decision shall be final and binding on the Parties to the dispute or difference (except in the case of manifest error or fraud) and his costs shall be payable by the Parties to

the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one Party shall bear more than their due proportion they may recover the excess from the other as a debt).

- 10.2 In the absence of agreement between the Parties or difference as to the professional qualifications of the person to be appointed pursuant to Clause 10.1 or as to the appropriate professional body within 10 Working Days after any Party has given to the other Parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to Clause 10.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any Party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one Party shall bear more than their due proportion they may recover the excess from the other as a debt).
- 10.3 If the expert appointed under Clause 10.1 or Clause 10.2 relinquishes his appointment or dies or if for any reason it becomes apparent that he will be unable to complete his duties under the provisions of Clause 10.1 and Clause 10.2 (as applicable) the Parties to the dispute or difference may apply for the nomination of a new person in his place (and the provisions of Clause 10.1 or Clause 10.2 (as applicable) will operate in relation to that application) and this procedure may be repeated as many times as may be necessary.

11.1 NOW THIS DEED WITNESSETH as follows:-

- 11.1 THIS Deed is made pursuant to Section 106 of the 1990 Act and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of Section 106 of the 1990 Act and is conditional upon the grant of planning permission pursuant to the Planning Appeal
- 11.2 For the avoidance of doubt nothing herein contained shall prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a

Local Authority and all such rights, powers, duties and obligations under all public or private statutes, bye-laws, orders, regulations and otherwise may be as fully and effectually exercised in relation to the Development of the Property and any other subject matter of this Deed as if this Deed had not been executed by the Council.

11.3 The Owner shall pay to the Council on or before completion of this Deed the reasonable legal fees and disbursements of the Council incurred in connection with the negotiation, preparation and completion of this Deed;

11.4 The Owner shall pay to the Council prior to Commencement of the Development the Monitoring Fee RPI Indexed;

11.5 All notices given or served or required to be given or served under this Deed shall be given or served as follows:

(a) by personal delivery by hand (in which case service is immediate)

(b) by first class post (in which case service takes place on the second day after posting)

11.6 The address for service of notices for the Council shall be at the Council's address at the head of this Deed and notices shall be marked for the attention of the Council's Director and shall also be emailed to infrastructureplanning@havering.gov.uk

12 THE OWNER HEREBY UNDERTAKES to the Council to perform and observe its obligations set out in Schedule 1 and elsewhere in this Deed and:

12.1 to give notice in writing to the Director of its intention to commence the Development at least seven (7) days before the Commencement of Development

13. The Owner hereby consents to completing this Deed with the intention that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a local land change

IN WITNESS whereof the Owner has executed this Deed as a Deed on the day and year first before written

EXECUTED as a deed by **EASTERN IRON**
WORKS LIMITED



acting as one director in the presence of:-

Director

Witness' signature: 

Name:  

Address: 

Occupation: PERSONAL ASSISTANT

SCHEDULE 1

Carbon Offset Contribution

- (a) to pay the Carbon Offset Contribution to the Council prior to Commencement of the Development; and
- (b) not to commence or suffer or permit the Commencement of the Development until it has paid the Carbon Offset Contribution to the Council in full.

SCHEDULE 2
Plan



— Site boundary



- NOTE
1. The Landscaping details please refer to Landscape Architect drawings
 2. The Architectural detail building information is Stockwell Drawn 21 PL021000 series drawings.
 3. For detailed sections and elevations please refer to Stockwell Drawings PL021000 series drawings
 4. A color map to have a maximum gradient of 1:18

Author	Simon Hill	01
Designer	Simon Hill	02
Drawn	Simon Hill	03



11 Station Road, Uppington
 1547 PL021000

Client
 Eastern Iron Works Ltd

From
 11 Station Road, Uppington

Drawn
 Location Plan as existing

Project name
 PL021000 2

Date
 15/04/2014

CD/PL
 15/04/2014

Drawn
 15/04/2014

Checked
 15/04/2014

Drawn by
 Simon Hill

Checked by
 Simon Hill

0 30 60m
 This document is for the use of the client and is not to be used for any other purpose. It is not to be used for any other purpose. It is not to be used for any other purpose. It is not to be used for any other purpose.

