**THIS UNILATERAL UNDERTAKING** is made as a Deed the day of two thousand and twenty

**BY**

1. (“the Owner”) [add name / address]

**IN FAVOUR OF**

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham Middlesex TW1 3BZ ("the Council")

**WITH THE CONSENT OF**

1. (“the Mortgagee”) [add name / address]

**INTERPRETATION**

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

“the 1990 Act" the Town & Country Planning Act 1990

“Affordable Housing” means housing provided to persons whose needs are not met by the market and which housing should (a) meet the needs of purchasers and renters at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and (b) include provision for a housing unit to remain at an affordable price for future purchasers and renters unless an occupant purchases his or her interest in accordance with a statutory entitlement

“Affordable Housing Contribution” the sum of £xxx Indexed

“Affordable Housing Fund” Funds allocated to the Council's Housing Capital Programme and used to help fund new affordable housing, or to fund acquisition of land and private properties for this purpose, or for enhanced provision through re-modelling existing affordable units or supported schemes, in pursuance of housing and planning objectives.

"the Development” the development described in the Planning Application

“the HDM” the Council’s Head of Development Management for the time being or such other person as may be appointed from time to time to carry out that function

"Implementation**”** the carrying out of a material operation as defined by Section 56(4) of the Act in relation to the Development but shall not include the following:

1. ground investigatory site survey work
2. site clearance
3. construction of boundary fencing or temporary means of enclosure
4. archaeological investigation
5. works of decontamination or remediation
6. diversion and laying of services
7. temporary display of site notices or advertisements

"Implementation Date" the date on which Implementation occurs

“Indexed” increased in accordance with the formula whereby the Affordable Housing Contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at the date of this Deed and A represents the value of the same index as at the date of payment of the relevant contribution to the Council or in the event that the Retail Prices Index is no longer extant at such time as a calculation falls to be made the BCIS All-in Tender Price Index shall be used instead

“Local Plan” the Council’s Local Plan made pursuant to Part 2 of the Planning and Compulsory Purchase Act 2004

 “Monitoring Fee” the sum of xxx (£xxx) as calculated in accordance with the formula in Appendix 3 to the Council’s Planning Obligations Supplementary Planning Document or any Supplementary Planning Document replacing the same

“Mortgage” the legal charge dated [add the date] and made between (1) the Owner and (2) the Mortgagee and which affects the Property

“Occupation” the full and beneficial occupation of the Residential Units (but this expression shall not include occupation for the purposes of construction or fitting out or for marketing or security purposes) and “Occupied” and “Occupy” shall be construed accordingly

“Occupation Date” first Occupation of a Residential Unit for residential purposes within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) which constitutes Material Operation under section 56(4) (e) of the 1990 Act

"the Planning Application" the application made by the Owner under reference number [*insert number and details of the Planning Application*]

"the Planning Permission" a planning permission that may be granted by the Council pursuant to the Planning Application

"the Property" land and buildings situate at [Insert address] delineated in red on the plan attached hereto

“Residential Unit(s)” the residential unit(s) designated for C3 use as defined within the Use Classes Order to be constructed pursuant to the Development together with any amenity space or any right to use the same (whether common or not with others therewith) and the term “Residential Unit” shall be construed accordingly

“Sale” the sale of the freehold or the grant of a lease for a period of not less than 21 years at a nominal rent

“Sale Date” the completion date of the first Sale of a Residential Unit

“Use Classes Order” the Town and Country Planning (Use Classes) Order 1987 (as amended)

**WHEREAS**:

1. The Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the 1990 Act and for the purpose of Section 106(a) of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
2. The Owner is registered at the Land Registry with absolute title under title number xxx as the proprietor of the freehold interest in the Property and the Mortgagee is similarly registered as the proprietor of the Mortgage
3. The Council supports the Development but is unable or unwilling to approve the Planning Application or to grant the Planning Permission in the absence of this Deed which makes provision for regulating the Development and securing the matters referred to in this Deed
4. Policy LP36 of the Council’s Local Plan provides that the Council expects a contribution towards Affordable Housing from all housing sites, and on sites below the threshold of ‘capable of ten or more units gross’ a financial contribution to the Affordable Housing Fund.
5. The Owner has submitted the Planning Application to the Council and has entered into this Deed in order to secure the planning obligations contained in it in accordance with the Local Plan so that it may be taken into account as a material consideration in the determination of the Planning Application by the Council.

**NOW THIS DEED WITNESSETH** as follows:

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 receipt of a copy of this Deed pursuant to subsection 106(10) of the 1990 Act is hereby acknowledged by the Council

2. THE Owner hereby UNDERTAKES to the Council:-

(a) to provide seven (7) days prior written notice to the HDM:

(i) of the intended Implementation Date and a further written notice of the actual Implementation Date within seven days of the occurrence of the same

(ii) of the Occupation Date or the Sale Date (whichever is sooner)

(b) For the avoidance of doubt it is hereby agreed that if Implementation occurs and the notice required in paragraph 2(a)(i) has not been given then the failure to give notice shall not affect the liability of the Owner to comply with the planning obligations in this Deed

(c) to pay to the Council:

(i) the Affordable Housing Contribution Indexed prior to or on the Occupation Date or the Sale Date (whichever is the sooner) and not to permit the Occupation of the Residential Unit(s) until the Affordable Housing Contribution has been paid to the Council

(ii) on the completion of this Deed its reasonable and proper legal costs in the sum of six hundred pounds(£600) for reviewing and approving this Deed and the Monitoring Fee

3. The Mortgagee hereby consents to the Owner 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 prior to the execution of the Mortgage

4. IT IS HEREBY AGREED and DECLARED:-

*Miscellaneous agreements and declarations*

(a) Nothing contained in this Deed constitutes planning permission

(b) 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

(c) If any provision in this Deed shall be held to be void invalid illegal or unenforceable or if voidable is avoided this shall not affect the operation validity legality and enforceability of any other provision of this Deed provided severance therefrom is possible

(d) Reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and vice versa

 (e) A reference to a clause is a reference to a clause contained in this Deed

(f) The expressions “the Council” and “the Owner” and “the Mortgagee” shall include their respective successors in title and assignees

*Local land charge provisions*

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

*Reference to statutes and statutory instruments*

(h) 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

*Variations*

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

(j) 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

*English law applicable*

(k) The construction validity and performance of this Deed shall be governed by English law

*Effect of revocation of planning permission*

(l) 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

*Waivers not to be of a continuing nature*

(m) 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

*Liability of subsequent Owner and release of former Owner*

(n) 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)

*Contracts (Rights of Third Parties) Act 1999*

(o) 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 the Owner and the Mortgagee

*Indemnity for Mortgagee*

(p) Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provision of this Deed during such period (if any) as it is mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and PROVIDED THAT for the avoidance of doubt it shall not in any event be liable for any breach of this Deed arising prior to its becoming mortgagee in possession of the Property unless such breach continues during such period as it is a mortgagee in possession

*Interest on Late Payments*

(q) If any payment due to the Council under this Deed is paid late, interest will be payable at 4% above the base lending rate of TSB Bank (calculated from time to time) to be calculated from the date payment is due to the date of payment is made

**Signed and Delivered** as a deed by )

**[add name]** )

in the presence of : )

 )

Executed as a deed on behalf of )

**[add name]** )

acting by )

 Duly authorised signatory

**Dated 2020**

[*name of Owner and Mortgagee*]

**-to-**

**THE MAYOR AND BURGESSES OF**

**THE LONDON BOROUGH**

**OF RICHMOND UPON THAMES**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**DEED OF UNILATERAL UNDERTAKING**

**made under Section 106 of the**

**Town & Country Planning Act 1990**

**relating to** [*add address of property*]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Ref: Affordable Housing Contribution UU**