**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:-

"1990 Act" the Town & Country Planning Act 1990

“Air Quality Contribution” means the sum of \*\*\* pounds (£ ) Indexed to be used by the Council towards air quality measures, including measures that are designed to raise awareness of air quality issues in the vicinity of the site.

“Carbon Emissions Offset Contribution” means the sum of the formular T x Y x Z \*\*\*\*\*\*\* pounds (£ ) Indexed where

* T is the shortfall (measured in tonnes of carbon dioxide per annum) against the target to secure a one hundred percent (100%) reduction in regulated emissions.
* Y is the number of years for which the contribution is payable, being thirty (30) years
* Z is the cost of carbon per tonne as set out in the Council’s Sustainable Construction Checklist Supplementary Planning Document, being ninety-five pounds (£95) per tonne of carbon dioxide (unless otherwise superseded by another figure as adopted by the Council)

"Development” the development described in the Planning Application

 “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

“Health Contribution” the sum of [ ] pounds (£ ) Indexed

“Indexed” increased in accordance with the formula whereby the relevant contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at [ ] 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

### “Material Start” the carrying out in relation to the Development 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

"Monitoring Fee" the sum of xxx (£xx) 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

"Planning Application" a planning application submitted by the Owner on [ ] to the Council bearing reference number [ ] for [ ] at the Property

“Play space contribution” means the sum of \*\*\*\*\* pounds (£ ) Indexed to be used by the Council towards the provision, accessibility and maintenance of play space, open space and / or playing fields in the Borough.

"Property" land known as land and property at

delineated in red on the plan attached hereto

 “Transport Contribution” the sum of [ ] pounds (£ ) Indexed

“Travel Plan Monitoring Fee” means a sum of \*\*\*\* pounds (£ ) Indexed being the Councils reasonable and proper costs for monitoring the implementation of the Travel plan

**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 of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable and this Deed is conditional upon the grant of Planning Permission pursuant to the Planning Application
2. The Owner is registered at the Land Registry with absolute title under title number [ ] as the proprietor of the freehold interest in the Property and the Mortgagee is similarly registered as the proprietor of a charge over the Property
3. **Highway contribution**: Policy LP44 of the Council’s Local Plan provides that new development will be expected not to have a severe impact on the operation, safety or accessibility to the local or strategic highway networks, and any impacts arising from the development itself or the cumulative effects of development should be mitigated through the provision of necessary works or contribution towards relevant transport improvements.
4. **Travel Planning**: Policy LP 44 of the Council’s Local Plan provides that developments will be expected to mitigate the impact of development on the highway network and maximise travel by sustainable transport, including personalised travel planning.
5. **Social infrastructure**: Policies LP28 and LP30 of the Council’s Local Plan provides that new development should be acceptable in terms of potential impacts on existing social and community infrastructure and mitigation should be provided where necessary to ensure there is sufficient capacity to accommodate the needs arising from the new development
6. **Carbon offset**: Policy LP22 of the Council’s Local Plan requires new developments to provide contributions towards renewable and low carbon energy generation, where the development does not meet the necessary sustainability credentials.
7. **Open / Play space**: Policy LP31 of the Council’s Local Plan provides new developments should cater for the open space, playing fields and play space needs of the development. Where it is not feasible or practical to provide onsite provision the Council expects financial contributions to either fund off-site provision or improvements and enhancements of existing facilities to mitigate the impacts of new development.
8. **Air Quality:** Policy LP10 of the Council’s Local Plan provides that new developments may be required to provide financial contributions towards air quality measures where a proposed development is not air quality neutral or mitigation measures do not reduce the impact upon poor air quality
9. 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 is conditional upon the grant of planning permission pursuant to the Planning Application by the Council
2. THE Owner hereby UNDERTAKES to the Council:-

(a) to pay to the Council the Health Contribution, the Air Quality Contribution, the Carbon Emissions Offset Contribution, the Play Space Contribution, the Travel Plan Contribution and the Transport Contribution together with 90% of the Monitoring Fee within one (1) year of a Material Start

(b) to give notice in writing to the HDM of its intention to commence the Development at least seven (7) days before making a Material Start

(c) on the date hereof to pay to the Council the Council’s reasonable and proper legal costs in the preparation and completion of this Deed in the sum of four hundred pounds(£400) together with 10% of 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**

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DEED OF UNILATERAL UNDERTAKING

**made under Section 106 of the**

**Town & Country Planning Act 1990**

**relating to**

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Ref: Contributions UU