

George Turner

From: Chris Tankard
Sent: 06 July 2011 19:14
To: George Turner
Subject: FW: S106 Obligation - 37 Hamilton Road, Twickenham-10/1691/FUL

Attachments: 619301 - 37 hamilton rd.pdf

George

Needs to be sent down to scanning as part of docs relating to this appeal approval

Ta

Chris Tankard
Team Leader (Development Control - North)

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From: Kate Barnes
Sent: 06 July 2011 18:01
To: Isabel Elder
Cc: Roy Summers; Chris Tankard; Robin Oliver; Mary Toffi; Claire Briggs; Land Charges; Mark Taplin
Subject: S106 Obligation - 37 Hamilton Road, Twickenham-10/1691/FUL

Isabel

Following the decision to allow this appeal, the Unilateral Undertaking for this site dated 24 June 2011 has come into effect and I attach a copy for your records.

It provides for:

8 units of social rented housing with a Noms Deed
Clawback contribution for affordable housing off site
Primary education contribution of £10,409
Secondary education contribution of £7399
Health Contribution of £5377
Transport Contribution £65,691
Monitoring Fee £5000
Car club
Withdrawal of parking permits if CPZ established in the next 3 years
Turning Head within the site

Please note that the trigger for the contributions is prior to the occupation of the 15th Market Unit (out of 19) which will need to be carefully monitored.

Land charges- please register as a local land charge.

Regards

Kate

Kate Barnes
Planning Solicitor
Legal & Electoral Services Department
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Document: 5638/619302



619301 - 37
hamilton rd.pdf

Iken Document Number [619302]

DATE **24 June** 2011

UNILATERAL UNDERTAKING

by

HAMILTON LOFTS LTD

and

HERITABLE BANK PLC
(in administration)

to

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND
UPON THAMES**

Pursuant to Section 106 of the Town & Country Planning Act 1990

relating to land known as
37 Hamilton Road
Twickenham, TW2 6SN
Planning Ref: 10/1691/FUL

THIS UNILATERAL UNDERTAKING is made as a Deed the **24** day of **June** 2011

BY

(1) HAMILTON LOFTS LTD (Company registered in England No. 5147307) whose registered office is situated at 20 Mortlake High Street, London, SW14 8JN ("the Owner"); and

(2) HERITABLE BANK PLC in administration (Company registered in Scotland no717) (formerly Heritable Bank Limited) whose principal office is situated at 8 Hill Street, London W1J 5NG acting by one of its Joint Administrators ("the Mortgagee")

TO

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

WHEREAS:

1. The Council is the local planning authority for the purposes of the Planning Act for the area within which the Property is situated and for the purposes of Section 106(9) of the Planning Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
2. The Owner is registered at HM Land Registry as the freehold owner of the Property under title number TGL254436 and subject to the Mortgage but otherwise free from encumbrances, except as stated in the title, and has agreed to enter into this Deed as hereinafter appearing
3. The Owner submitted the Application to the Council on 25 June 2010 and the Council has failed to determine the Application. The Owner subsequently appealed to the Planning Inspectorate against this non-determination by way of an appeal on 21 February 2011 ("the Appeal")
4. The parties have agreed that should the Secretary of State grant planning permission for the Development such planning permission should be granted subject to this Unilateral Undertaking in order to secure a proportion of affordable housing for social rent, the recovery of a further contribution towards affordable housing in the event that higher values than anticipated are achieved on sales, contributions towards education, public realm, health and transport facilities, the provision of a car club space and membership of the car club for all residential units, and a restriction on the grant of parking permits if a controlled parking zone is introduced
5. Core Policies CP16 and CP18 and saved policy HSG19 of the UDP provide that new developments will be expected to contribute to any additional infrastructure and community needs generated by the development and will also have to take account of the requirements in the Planning Obligations Strategy and that developers will have to take into account the potential need to contribute to the provision of primary or secondary school places in the Borough

6. Saved Policy TRN2 of the UDP provides that the Council will only permit new development where it can be demonstrated that the transport infrastructure can accommodate it and will seek in appropriate cases planning advantages appropriate to the site and commensurate to the scale of development
7. Core Policy CP17 of the UDP provides that health and well being in the Borough is important and all new development should encourage and promote healthier communities and places and the Planning Obligations Strategy adopted 6 June 2005 and modified in January 2007 provides that planning can ensure the provision of primary care facilities as part of new residential and commercial developments (including through Section 106 agreements)
8. The Council's Planning Obligations Strategy adopted as Supplementary Planning Guidance in June 2005 and modified in January 2007 outlines and clarifies the Council's current approach, policies and procedures in respect of planning obligations
9. The Owner has entered into this Deed so that the obligations within it may be taken into account in the determination of the Appeal

NOW THIS UNILATERAL UNDERTAKING WITNESSES as follows:

1. In this Unilateral Undertaking the following words and expressions shall have the meanings ascribed to them below:

"Accredited Car Club Provider" means an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment therefor

"Additional Payments" means the amount of seventy four thousand pounds (£74,000) being the sum of (a) the £69,000 of extra contributions in Schedule 2 of this Deed which are over and above the planning obligations set out in the Base Appraisal and (b) the Monitoring Fees of the Council which are over and above the planning obligations set out in the Base Appraisal

"Affordable Housing" means subsidised housing that is available to people who are on a register maintained by the Council and Registered Providers who have properties in the Council's administrative area or (in the absence of such persons) persons who fulfil the occupation criteria of the relevant Registered Provider

"Affordable Housing Price" means a sum payable by the Registered Provider for the Long Lease restricted so as to enable the letting of the Affordable Housing Units at Target Rents as published by and in accordance with TSA guidelines and the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003

"Affordable Housing Units" means the eight (8) residential units of Affordable Housing comprising three (3) 1-bed flats, three (3) 1-bed houses and two (2) 2-bed flats such units to be built as part of the Development and

in accordance with current HCA Housing Quality Indicators in force at the date of the Commencement of Development and to be let at rents not exceeding Target Rents and provided in accordance with the provisions of Schedule 1

"Application" means the planning application filed under the Council's reference 10/1691/FUL and submitted to the Council on 25 June 2010 and as subsequently amended for the conversion of the existing redundant buildings at the Property into 21 flats, the demolition of minor buildings and structures and the construction of 6 new residential units with 24 car parking spaces at the Property

"Average Base Appraisal Value" means the sum of two hundred and thirty three thousand pounds (£233,000) being the total value of Market Unit sales from the Base Appraisal being four million four hundred and thirty thousand pounds (£4,430,000) divided by the number of Market Units

"Base Appraisal" means the Owner's financial appraisal as submitted with the Application

"Base Development Value" means the amount of five million six hundred and fifty seven thousand pounds (£5,657,000) being the sum of (a) the total scheme revenue of £5,580,000 as set out in the Base Appraisal and (b) the £77,000 shortfall between the existing use value and the residual value as set out in the Base Appraisal

"Base Price Index" means the sum of three hundred and nineteen thousand two hundred and twenty one pounds (£319,221) being the average of the values of index from the House Price Index for Maisonettes and Flats for the London Borough of Richmond upon Thames for the months of January 2008 through to October 2008 inclusive as published by the Land Registry

"Car Club" means a local car club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them

"Car Club Space" means the car parking space shown edged green on Plan 2

"Car Plus" the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs

"Commencement of Development" means the date on which the Development commences by the carrying out on the Property pursuant to the Planning Permission of a material operation as specified in Section 56 (4) of the Planning Act

"DCM" means the Council's Development Control Manager for the time being or such other person who may be appointed from time to time to carry out that function

"Development" means the development of the Property in accordance with the Planning Permission

"Disposal Proceeds" means the monetary proceeds of the disposal of any Affordable Housing Unit by the Registered Provider which shall be calculated by deducting the following sums: 1. any monies repaid or repayable to any lender, mortgagee, funder or chargee in accordance with a loan over an Affordable Housing Unit and 2. any monies paid or payable in respect of professional fees or charges in connection with the disposal 3. any VAT or other statutory costs and charges applicable to the disposal or to the disposal proceeds and 4. any capital subsidy contributed by the Registered Provider over and above any grant monies received and SUBJECT ALWAYS to any requirements imposed by the HCA

"Dwelling" means any one of the residential units to be constructed as part of the Development

"Final Development Profit" means seventeen percent (17%) of the Final Gross Margin

"Final Development Value" means the sum of the Sold Development Value and the Unsold Development Value

"Final Gross Margin" means if applicable the amount expressed as a value of the increase from the Base Development Value to the Final Development Value

"Final Net Margin" means if applicable the positive residual amount expressed as a value of the Final Gross Margin after deduction of the Final Development Profit

"Final Net Margin Share" means if applicable fifty percent (50%) of the Final Net Margin

"Final Price Index" means the value of index from the House Price Index for Maisonettes and Flats for the London Borough of Richmond upon Thames as published by the Land Registry or successor for the month in which the Fifteenth Market Unit is Sold

"Further Contribution" means if applicable the sum of the Final Net Margin Share less the Additional Payments provided that the amount of the Further Contribution shall not exceed one hundred and eighty five thousand pounds (£185,000) Indexed to be paid by the Owner to the Council for the provision of Affordable Housing elsewhere in the borough

"HCA" means the Homes and Communities Agency for England being the national housing and regeneration agency formed on 1 December 2008 pursuant to the Housing and Regeneration Act 2008 and shall include any statutory successor of the HCA

"Health Contribution" means the sum of five thousand three hundred and seventy seven pounds (£5,377) Indexed

"Indexed" means 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 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

"Long Lease" means a lease of all the Affordable Housing Units granted for a term of one hundred and twenty five (125) years from the date of its completion at the Affordable Housing Price

"Market Units" means all those nineteen (19) residential units (other than the Affordable Housing Units) forming part of the Development

"Monitoring Fees" means the sum of five thousand pounds (£5,000) for monitoring the planning obligations and assessing the Residential Appraisal Report

"Mortgage" means the legal charge dated 8 February 2005 made between the Owner and the Mortgagee

"Nominations Deed" means a deed of nomination rights substantially in the form set out in schedule 4 to be entered into between the Registered Provider and the Council giving the Council nomination rights in respect of the Affordable Housing Units

"Occupation" means the date on which any part of the Development is occupied for residential purposes (which for the avoidance of doubt shall not include occupation for purposes of fitting out the Development), and the phrases "Occupy", and "Occupied" shall be construed accordingly

"Plan 1" means the plan so marked and annexed hereto

"Plan 2" means the plan so marked and annexed hereto

"Planning Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004).

"Planning Permission" means any planning consent to be granted pursuant to the Appeal and for the avoidance of doubt this shall include any variation or amendment to the Planning Permission granted on a subsequent application under Section 73 of the Planning Act

"Price Index Factor" means the Final Price Index divided by the Base Price Index

"Primary Education Contribution" means the sum of ten thousand four hundred and nine pounds (£10,409) Indexed

"Property" means all that freehold property known as land at 37 Hamilton Road, Twickenham and registered at the Land Registry under title number TGL 254436 and shown edged red on Plan 1

"Public Realm Contribution" means the sum of twenty one thousand two hundred and sixteen pounds (£21,216) Indexed

"Registered Provider" means an independent housing organisation registered under Housing Act 1996 with the HCA and complying with the Council's Supplementary Planning Guidance on Affordable Housing dated 25

February 2003 and first approved in writing by the DCM and "Registered Providers" shall be construed accordingly

"Residential Appraisal Report" means a report to be prepared by the Owner at its own expense identifying the Final Development Value together with a calculation of the Further Contribution (if any)

"Secondary Education Contribution" means the sum of seven thousand three hundred and ninety nine pounds (£7,399) Indexed

"Social Rented Housing" means Affordable Housing to be let at Target Rents

"Sold" means:-

(a) the disposal or legal transfer of a freehold or leasehold interest (where the unexpired term of the leasehold interest is not less than 70 years) in a Market Unit or

(b) the grant of a lease of a Market Unit for a term of not less than 70 years

and which is in either case for a completed transaction as recorded by the Land Registry when formally registered and for valuable consideration and at arms length between a willing vendor and purchaser and with there being no unusual or onerous restrictions and which for the avoidance of doubt shall not include the passing of title by way of an agreement for sale of a freehold or leasehold interest, an agreement for lease, the acquisition of a beneficial interest by way of mortgage or otherwise or any other such transfer and

(c) in the case of the Affordable Housing Units the completion of the grant of a Long Lease

"Sold Development Value" means the aggregate total of the first fifteen Market Units Sold and the sum received by the Owner for the transfer of the Affordable Housing Units to a Registered Provider in accordance with this Deed

"Target Rents" means the TSA Target Rents for the area within which the Property is located for the relevant year or any rent requirements stipulated for Registered Providers by the TSA

"Transport Contribution" means the sum of sixty five thousand six hundred and ninety one pounds (£65,691) Indexed

"TSA" means the Tenants' Services Authority being the government authority set up under the Housing and Regeneration Act 2008 which regulates social housing and includes any statutory successor thereof

"Turning Head" means the vehicular turning head to be provided by the Owner at the entrance to the Property from Hamilton Road for vehicular use by the public the layout of which is shown edged in blue on Plan 2

"Unsold Development Value" means the Average Base Appraisal Value multiplied by four (4) multiplied by the Price Index Factor

- 2 References to any party in this Unilateral Undertaking shall include the successors in title of that party
- 3 This Unilateral Undertaking is made as a Deed pursuant to the Section 106 of the Planning Act, Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972, Section 609 of the Housing Act 1985 and all other powers and enactments which may be relevant to the purpose of giving validity to this Unilateral Undertaking or for facilitating the enforcement of the obligations contained in it with the intent to bind the Owner and the Mortgagee
 - 3.1 Any covenants and restrictions or requirements imposed upon the Owner under this Unilateral Undertaking and falling within the provisions of Section 106 of the Planning Act, shall be deemed to be expressed to be planning obligations to which that said Section shall apply
 - 3.2 For the purposes of Section 106 (9) of the Planning Act, the Council is the local planning authority by whom the planning obligations within this Unilateral Undertaking are enforceable
- 4 Save in respect of clauses 1.2 of Schedule 2 and 1.1 of Schedule 3 which shall take effect on the date hereof this Unilateral Undertaking shall take effect on the date of Commencement of Development
- 5 The Owner hereby covenants with the Council as set out in Schedules 1,2 and 3 hereto
- 6 The Mortgagee hereby consents to the Owner completing this Unilateral Undertaking with the intention that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property is bound by the terms of this Unilateral Undertaking as if it had been executed and registered as a local land charge prior to the execution of the Mortgage
- 7 **IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:**
 - 7.1 That the enforceability of this Unilateral Undertaking shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Unilateral Undertaking or any extension of the time or other indulgences shown by the Council
 - 7.2 That the covenants and stipulations contained in this Unilateral Undertaking are intended to run with the Property and each and every part thereof and to bind the owners thereof from time to time, provided always that the provisions contained in paragraph 1.6 and 1.7 of Schedule 1 and all of Schedule 2 shall not be binding on the individual lessees and/ or occupiers of Dwellings within the Property in their individual capacities as such
 - 7.3 This Unilateral Undertaking is a local land charge and shall accordingly be registered as such by the Council upon its completion

- 7.4 In so far as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking
- 7.5 Save where otherwise expressly stated all covenants given by the Owner under this Unilateral Undertaking shall be complied with entirely at the expense of the Owner
- 7.6 If there is any conflict between the terms of this Unilateral Undertaking and any conditions on the Planning Permission the latter shall take precedence
- 7.7 The covenants undertakings and restrictions contained in this Unilateral Undertaking shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Unilateral Undertaking by or on behalf of the relevant parties hereto or by a subsequent deed of variation to be agreed by the relevant parties
- 7.8 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:
- 7.8.1 The entirety of the Planning Permission shall be quashed revoked or otherwise withdrawn prior to the Commencement of Development OR
- 7.8.2 The entirety of the Planning Permission shall expire prior to the Commencement of Development
- 7.9 Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provisions of this Unilateral Undertaking 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 Unilateral Undertaking arising prior to its becoming mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is mortgagee in possession of the Property
- 7.10 The Owner shall not be bound by any covenants or obligations contained in this Unilateral Undertaking after it has parted with the entirety of its interest in the Property but without prejudice to any breach of covenant subsisting or arising prior to parting with such interest
- 7.11 If any provision in this Unilateral Undertaking is held to be void invalid illegal or unenforceable or if voidable is avoided this shall not affect the operation validity and enforceability of any other provision of this Unilateral Undertaking provided severance therefrom is possible
- 7.12 Reference in this Unilateral Undertaking 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

- 7.13 The construction validity and performance of this Unilateral Undertaking shall be governed by English law
- 7.14 All consideration given in accordance with the terms of this Unilateral Undertaking shall be exclusive of any VAT properly payable in respect thereof and if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Unilateral Undertaking then to the extent that VAT had not been previously charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly
- 7.15 If any of the contributions (other than the Further Contribution) is not paid to the Council within 2 years of Commencement of Development then interest shall be paid on such contribution at the rate of 4% above the base rate of the Bank of England from time to time in force from the date that the contribution became due to the date of actual payment
- 7.16 Nothing in this document shall constitute a claim ranking as an expense of the administration of the Bank as contemplated by paragraph 99(4) of Schedule B1 to the Insolvency Act 1986 or otherwise
- 7.17 The Joint Administrators have entered into and signed this document as agents for or on behalf of the Bank and neither they, their firm, partners, employees, advisers, representatives or agents shall incur any personal liability whatever in respect of any failure on the part of the Bank to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this document. The Joint Administrators are party to this document in their personal capacities only for the purpose of receiving the benefit of the exclusions, limitations, undertakings and covenants in their favour contained in this document
- 7.18 No person who is not a party to this document shall have any rights, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any of the terms of this document, other than any subsequent liquidator of the Bank and each of Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton as current Joint Administrators
- 7.19 Notwithstanding that this document is signed by one of the Joint Administrators only, the Owner hereby expressly agrees that the benefit of the releases and indemnities, and in particular the those included under the paragraphs entitled 'Not an expense of the administration' and 'Exclusion of Joint Administrators' liability' above for the Joint Administrators shall accrue to all the Joint Administrators, Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton

IN WITNESS whereof the parties hereto have executed this document as a Unilateral Undertaking the day and the year first above written

SCHEDULE 1

OBLIGATIONS OF THE OWNER RELATING TO AFFORDABLE HOUSING AND FURTHER CONTRIBUTION

- 1.1 Not to Occupy or permit the Occupation of any of the Market Units prior to the completion of the grant of a Long Lease of all the Affordable Housing Units to a Registered Provider in accordance with the provisions of this Unilateral Undertaking such Long Lease to include all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and not to include any unduly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units for Affordable Housing purposes
- 1.2 Not to complete the grant of the Long Lease to the Registered Provider until the Owner has procured that the Registered Provider enters into a Nominations Deed
- 1.3 Not to Occupy or permit the Occupation of more than nine (9) of the Market Units prior to the completion of construction ready for occupation of all the Affordable Housing Units
- 1.4 From the date of the grant of the Long Lease of the Affordable Housing Units by the Owner to the Registered Provider not to use the Affordable Housing Units for any purposes other than for the provision of Social Rented Housing save that this provision shall:
 - 1.4.1 Not bind any Mortgagee of a Registered Provider or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Registered Provider
 - 1.4.2 Cease to apply to any part of the Affordable Housing Units should such part be transferred to or leased by any Mortgagee of a Registered Provider or any receiver or manager of any Registered Provider appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider
 - 1.4.3 Cease to apply to any part of the Affordable Housing Units where the Registered Provider has disposed of such part pursuant to a right to buy under Part V of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or substitute right applicable or has sold to a tenant with the benefit of a voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation).

PROVIDED ALWAYS that in the event of the occurrence of any of the events anticipated in 1.4.1 to 1.4.3 above the Registered Provider or their mortgagee or charge entering into possession shall provide the Council with written information demonstrating that the Disposal Proceeds received, if any, by the Registered Provider in respect of any sale, lease or other disposal in accordance with this clause and relating to the social housing grant element of the scheme funding

shall be applied exclusively in the London Borough of Richmond upon Thames

- 1.5 To notify the DCM in writing of the date of Occupation of the ninth (9th) Market Unit

Further Contribution

- 1.6 Within one (1) month of the date on which the fifteenth (15th) Market Unit is Sold, the Owner will:
- 1.6.1 calculate the Price Index Factor the Sold Development Value the Unsold Development Value the Final Development Value and if applicable the Final Gross Margin the Final Development Profit the Final Net Margin the Final Net Margin Share and the Further Contribution (if any); and
- 1.6.2 submit the Residential Appraisal Report to the Council no later than three (3) months from the date on which the fifteenth (15th) Market Unit is Sold; and
- 1.6.3 if applicable pay to the Council the Further Contribution within four (4) months from the date on which the fifteenth (15th) Market Unit is Sold
- 1.7 A worked example of the calculation of the Further Contribution set out in 1.6 above is set out below as an example only:

Sold Development Value	£5,012,080
Price Index Factor (Final Price Index/ Base Price Index) Say, £338,374/ £319,221 =	106%
Unsold Development Value (Average Base Appraisal Value x 4 x Price Index Factor) £233,000 x 4 x 106%	£987,920
Final Development Value (Sold Development Value + Unsold Development Value)	£6,000,000
Less Base Development Value	£5,657,000
=	
Final Gross Margin	£343,000
Less Final Development Profit (17% of Final Gross Margin)	£58,310
=	
Final Net Margin	£284,690
Final Net Margin Share (50% of Final Net Margin)	£142,345
Less Additional Payments	£74,000
=	
Further Contribution	£68,345

SCHEDULE 2

OBLIGATIONS OF THE OWNER RELATING TO CONTRIBUTIONS AND TURNING HEAD

Contributions

- 1.1 To pay to the Council the Primary Education Contribution, the Secondary Education Contribution, the Health Contribution, the Public Realm Contribution, the Transport Contribution and the Monitoring Fees prior to the Occupation of the fifteenth (15th) Market Unit and not to Occupy more than fifteen (15) Market Units until such contributions have been paid to the Council.

Turning Head

- 1.2 To construct and complete the Turning Head to adoptable highway standards prior to the Occupation of any part of the Development and thereafter to maintain the Turning Head in good and substantial repair and condition
- 1.3 From the date of practical completion of its construction to allow members of the public with vehicles access to and the use of the Turning Head
- 1.4 Notwithstanding that the Owner shall make the Turning Head available for public use, the Turning Head shall remain part of the Property and not be adopted by the Council as public highway and legal title shall remain vested in the Owner and its successors in title and the Owner shall be entitled to close the Turning Head and exclude any public access thereto on Christmas Day in each year in order to prevent any public or private right of way being acquired thereover by prescription

SCHEDULE 3

OBLIGATIONS OF THE OWNER RELATING TO THE CAR CLUB AND ON STREET PARKING PERMITS

Car Club

- 1.1 Prior to the Commencement of Development to submit to the DCM details of the name of and correspondence with Accredited Car Club Providers indicating the intention of the Owner to establish a Car Club at the Property including a proposed establishment date for his approval and not to Commence the Development unless and until the Accredited Car Club Provider for the Development has been approved by the DCM such consent not to be unreasonably withheld or delayed
- 1.2 Not to occupy or permit or allow the Occupation of any part of the Development until:
 - (i) the car parking space shown edged green on Plan 2 has been clearly marked out on the Property with the words "Car Club Only" to be used

solely for the purpose of parking and storing a vehicle belonging to the Accredited Car Club Provider and used by members of the Car Club and the Owner further undertakes thereafter not to permit or allow the said car parking space to be used for any purpose other than for the parking and storage of the vehicle provided by the Accredited Car Club Provider and used by the members of the Car Club

- (ii) it has procured that each Dwelling forming part of the Development has the right to apply for membership of the Car Club present on the Development (such membership which may thereafter be taken up and maintained on an annual basis by the residents of the Dwellings) and has provided a copy of the final signed and dated contract with the Accredited Car Club Provider to the DCM
 - (iii) it has promoted and advertised to each potential occupier of the Development the value and benefits of membership of a Car Club
 - (iv) it has included a provision in any lease, licence or tenancy agreement to which the Owner is a party and which affects the whole or any part of the Property that each Dwelling shall be entitled to belong to the Car Club at the Property by paying an administrative fee
 - (v) it has arranged an undertaking from the Accredited Car Club Provider for the provision and distribution of marketing literature to residents within 250 metres of the Development that publicises the presence of the Car Club within the Development and the local area and invites such residents to become members of the Car Club also
- 1.3 Following the provision of the Car Club Space, to maintain the Car Club Space in good and substantial repair and to repaint/renew the signage and/or painting of the words "Car Club Space" thereafter
- 1.4 From the date that they join the Car Club, to allow local residents within the vicinity of the Property who have joined the Car Club associated with the Development to access the Car Club Space in order to use the Car Club vehicle and for that purpose only
- 1.5 In the event that the Accredited Car Club Provider is no longer able to provide the Car Club for the Development the Owner shall notify the DCM in writing and shall then use all reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Unilateral Undertaking

Parking Permits

- 1.6 Not to dispose of to any person or Occupy or allow the Occupation of any Dwelling unless a notice in writing has been served on any person who intends to Occupy, buy or take a transfer, lease or licence (as appropriate) of the Dwelling that in the event that the public highway which abuts the Property (and known as Hamilton Road) is designated as a controlled parking zone within three (3) years of the first occupation of any Dwelling that he or she shall not be entitled (unless that person is or 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) to be granted an on street parking permit to park a vehicle in any marked highway bay or other place within the said area designated as a Controlled Parking Zone by the Council

SCHEDULE 4

Form of Nominations Deed

NOMINATION AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2011
BETWEEN [_____] whose registered office is at [_____]
(hereinafter called "the Association") of the one part
and THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
RICHMOND UPON THAMES of Civic Centre, 44 York Street, Twickenham TW1
3BZ (hereinafter called "the Council") of the other part

WHEREAS:

- (1) This Agreement is made pursuant to the terms of the "Principal Agreement" (as defined below) which requires 8 Affordable Housing Units to be provided at the Property, the freehold interest in which is to be transferred/ long leasehold interests of which are to be granted to the Association
- (2) In accordance with the Principal Agreement 8 residential units are to be built in accordance with Planning Permission (dated ref number) for occupation by persons within the Association's charitable objects and the Association has agreed to the Council being given the right to nominate persons to take up occupation of the Units as hereinafter provided
- (3) By a Transfer/Grant of a Long Leasehold Interest of even date herewith the Property was transferred to the Association/the Association acquired the Long Leasehold Interest in the Property

NOW IT IS HEREBY AGREED as follows:-

1. In this Agreement (save where the context otherwise requires or provides) the following words and expressions shall have the following meanings:-

"Availability Notice" means the notices referred to at Sub-clauses (4a) and (b) hereof

"Nomination Notice" means the notice in writing to be given by the Council to the Association of the proposed Nominees which shall include the names of such Nominees and all necessary and relevant information pertaining to such Nominees

"Nominees" means persons nominated by the Council for the purposes of this Agreement

"Principal Agreement" means the Agreement made under Section 106 of the Town and Country Planning Act 1990 made the _____ day of _____ 2011 between X Limited and the Council

"Property" means the Site and the Units

"Relevant Nominee" means a Nominee to whom the Association shall offer a Unit on the Site in accordance with Clause 6 hereof

"Site" means the land and buildings to be erected on the land known as land at 37 Hamilton Road, Twickenham which is part of the land the subject of the Principal Agreement

"Nomination Period" means seven years from the date of practical completion of the Units

"True Voids" means a vacancy created in any of the circumstances set out in the First Schedule hereto under the heading 'definition of a True Void' but

excluding a vacancy arising in any circumstances defined under the heading 'definition of a Non-True void'

"Non-True voids" as defined in the First Schedule hereto

"Units" means the Affordable Housing Residential Units to be managed and provided by the Association on the Site (as set out in the Second Schedule hereto)

2. The Association hereby covenants with the Council that in respect of the initial lettings under this Agreement the Council shall have right to nominate up to 75% of the Units and shall thereafter have the right to nominate up to 50% of Units being True Voids for the Nomination Period unless the Council at its absolute discretion agrees to waive or relinquish such rights of nomination

3. The Association shall give to the Council:-

In the case of an initial letting of any Unit not less than 6 weeks' notice of the projected practical completion date of such Unit and not less than 6 weeks' notice of the actual completion of such Unit and its availability for letting

In the case of any Unit being a True Void becoming subsequently available for letting 5 days' written notice of such availability

4. Within 10 days of the receipt by the Council of any Availability Notice in respect of a Unit the Council shall in respect of such unit serve on the Association a Nomination Notice

5. The Association shall as soon as practicable following receipt of the Nomination Notice offer a tenancy of the said Unit to the Relevant Nominee

6. If (a) no Nomination Notice is served by the Council within the 10 days referred to in clause 5 or (b) the Relevant Nominee refuses or fails to accept the offer of a tenancy within 7 days of such offer in each case the Council shall be entitled to serve one further and subsequent Nomination Notice

7. The procedure for such nominations may at any time during the continuance of this Agreement be varied by agreement between the parties hereto

8. The provisions of this Agreement shall cease to apply to any Unit of which the Association is required compulsorily by legislation to transfer the freehold or to grant a long lease to a tenancy exercising any statutory right to buy or right to acquire such interest in that Unit

9. IT IS HEREBY AGREED AND DECLARED that the provisions of this Agreement shall:-

9.1 not bind any mortgagee of the Association or its successors in title or any receiver or manager (including any administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Association or its successors in title

9.2 cease to apply to any part or the whole of the Unit should such part or the whole be transferred or leased by any mortgagee of the Association or its successors in title 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 the Association or its successors in title

10. Any Notice or demand required or authorised shall be deemed to be served upon the Council if delivered by hand or sent by facsimile transmission or First Class prepaid Recorded Delivery Post to the Council at Civic Centre 44 York Street Twickenham TW1 3BZ addressed for the attention of the Director of Housing (or other authorised Officer) and shall be deemed to be served upon the Association if delivered by hand or sent by facsimile transmission or First Class prepaid Recorded Delivery Post to the Association at its Registered Office

IN WITNESS whereof the Council and the Association have hereunto caused their Common Seals to be affixed the day and year first above written

THE FIRST SCHEDULE
Definition of True Void

- a) Vacancies created through tenant transfer to another Borough where no reciprocal arrangements exist
- b) Vacancies arising through tenant moves to other landlords where no reciprocal arrangements exist
- c) Vacancies arising as a result of the death of a tenant where there is no statutory right to succession
- d) Vacancies arising through tenants buying their own property in the private sector
- e) Vacancies arising as a result of the tenant having been evicted or abandoning a unit
- f) Vacancies arising as a result of a tenant who has been permanently decanted returning to his or her former home
- g) Vacancies arising through tenant transfer within the Association's own stock
- h) Vacancies arising as a result of a tenant who has previously been decanted

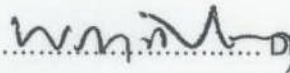
Definition of Non-True Void

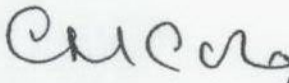
- i) Vacancies arising as a result of a tenant being temporarily decanted and moving to a temporary home
- j) Vacancies arising as a result of a tenant being re-housed via the Housing Association "Homes" scheme or other equivalent
- k) Vacancies arising as a result of a tenant being re-housed by another Borough where a reciprocal arrangement exists

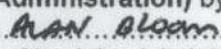
THE SECOND SCHEDULE

8 units of social rented housing


EXECUTED as a DEED
by HAMILTON LOFTS
LIMITED acting by

 Director

 Company Secretary

SIGNED as a DEED by
HERITABLE BANK PLC
(in Administration) by
(a) 
one of its Joint Administrators)
in the presence of: -

 (b)

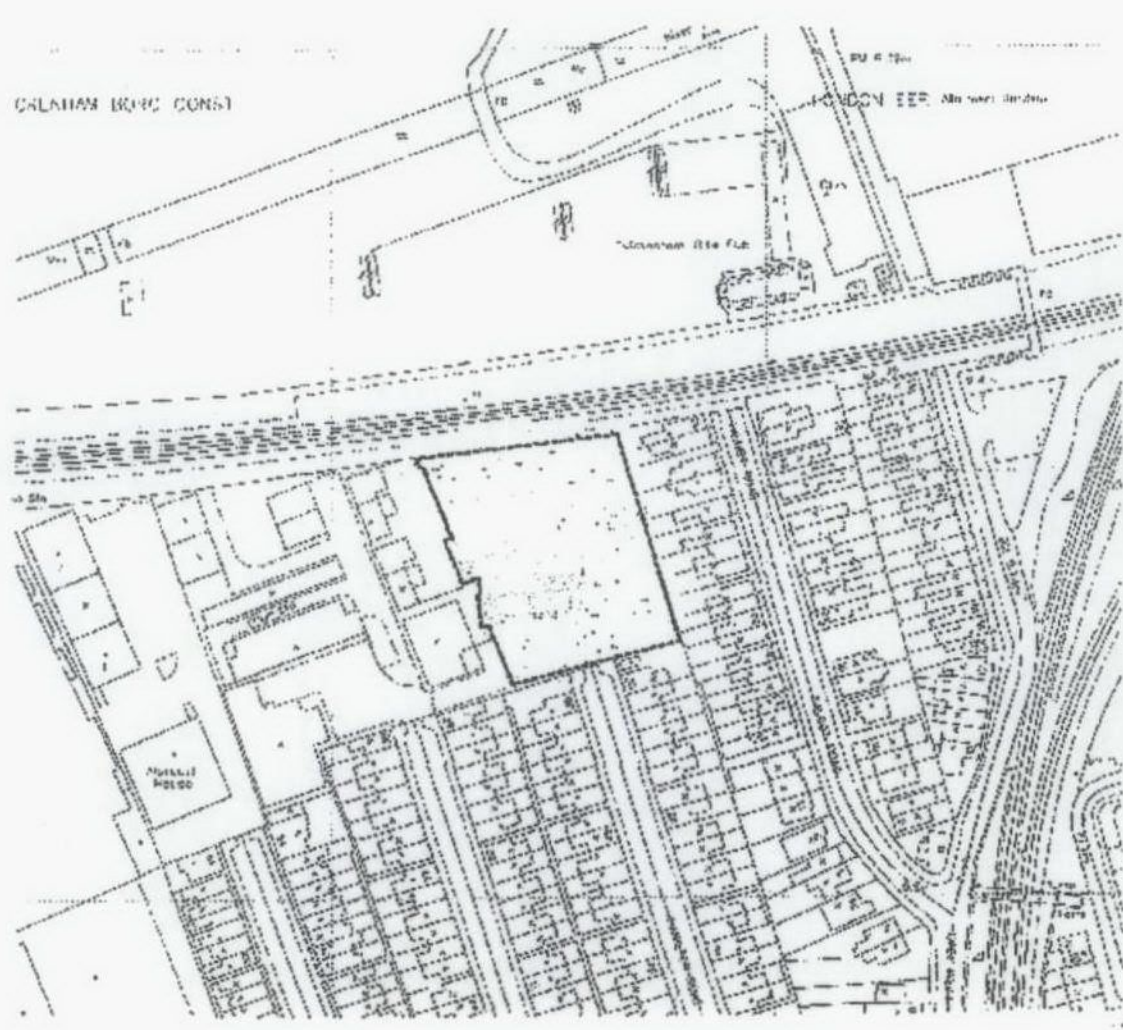
Witness Signature: 

Witness Name: **WILMA GRAHAM**

(please print) **EYENST & YOUNG LLP**
Witness Address: **1 More London Place**
London
SE1 2AF

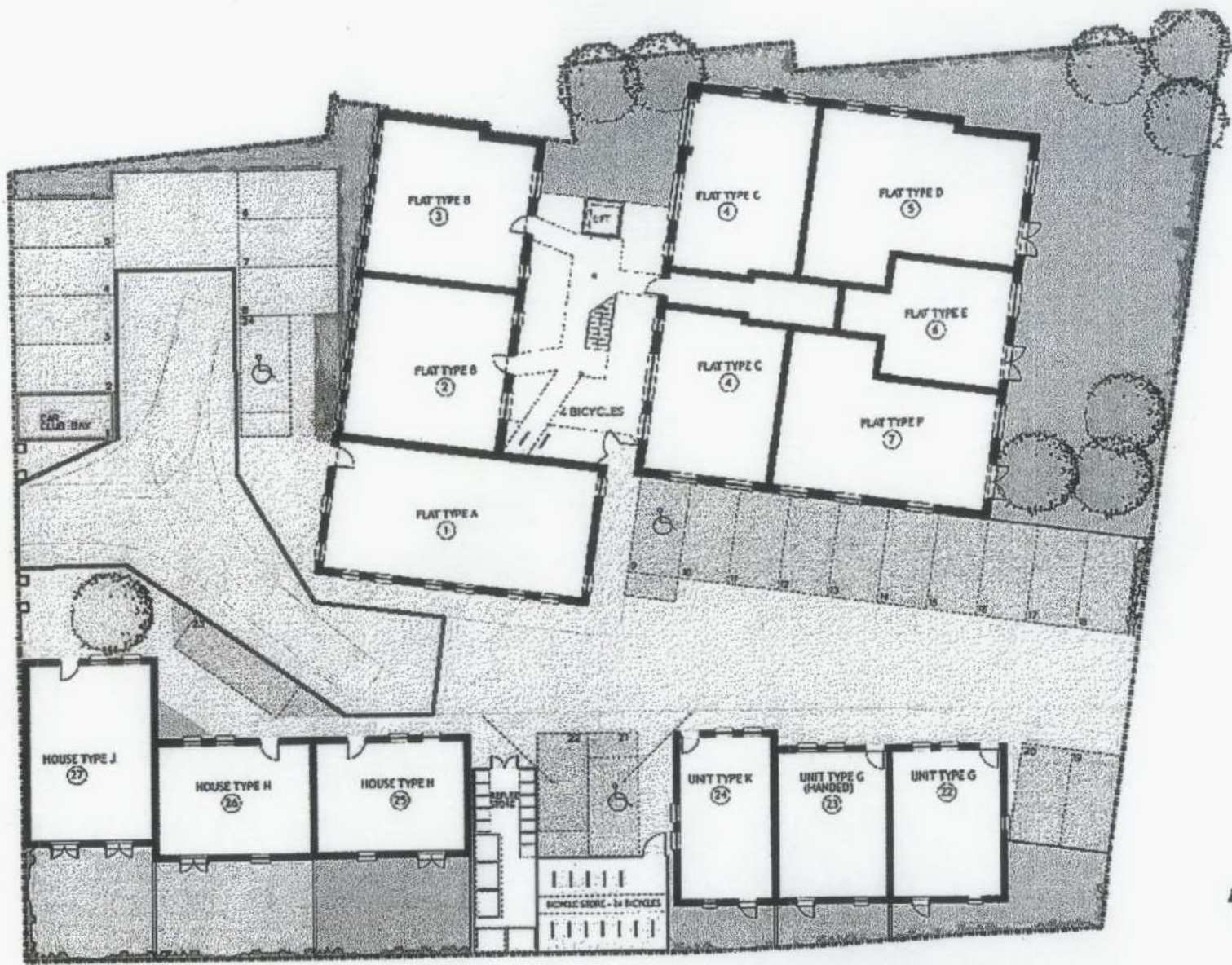
Witness Occupation: **SECRETARY**

W.H.R.
C.M.C.O.
[Signature]



PLAN 1 - Showing Site Location

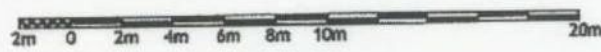
37 HAMILTON ROAD TWICKENHAM 3903
PLANNING APPLICATION scale 1:1250
August 2008



LEGEND

	PEDESTRIAN AREAS MARSHALLS MISTRAL GRANITE AGGREG. SETTS 240x160x80 COLOUR: HARVEST BUFF
	VEHICULAR AREA MARSHALLS MISTRAL PRIORITY GRANITE AGGREG. SETTS 160x160x80 COLOUR: SILVER GREY
	NEW GRASS AND GROUNDCOVER
	PARKING BAYS MARSHALLS MISTRAL PRIORITY GRANITE AGGREG. SETTS 160x160x80 COLOUR: CHARCOAL

Handwritten signature and initials



Turning Hammerhead

Car Club Space

PLAN 2 - Showing Car Club Space, and Turning Hammerhead

37 HAMILTON ROAD TWICKENHAM 3903
 PLANNING APPLICATION scale 1:200
 August 2008

ACANTHUS LW ARCHITECTS
 100% ARCHITECTS

George Turner

From: Chris Tankard
Sent: 06 July 2011 19:14
To: George Turner
Subject: FW: S106 Obligation - 37 Hamilton Road, Twickenham-10/1691/FUL

Attachments: 619301 - 37 hamilton rd.pdf

George

Needs to be sent down to scanning as part of docs relating to this appeal approval

Ta

Chris Tankard
Team Leader (Development Control - North)

t: 084-5612-2660 ext: 4580
e: c.tankard@richmond.gov.uk
www.richmond.gov.uk

From: Kate Barnes
Sent: 06 July 2011 18:01
To: Isabel Elder
Cc: Roy Summers; Chris Tankard; Robin Oliver; Mary Toffi; Claire Briggs; Land Charges; Mark Taplin
Subject: S106 Obligation - 37 Hamilton Road, Twickenham-10/1691/FUL

Isabel

Following the decision to allow this appeal, the Unilateral Undertaking for this site dated 24 June 2011 has come into effect and I attach a copy for your records.

It provides for:

8 units of social rented housing with a Noms Deed
Clawback contribution for affordable housing off site
Primary education contribution of £10,409
Secondary education contribution of £7399
Health Contribution of £5377
Transport Contribution £65,691
Monitoring Fee £5000
Car club
Withdrawal of parking permits if CPZ established in the next 3 years
Turning Head within the site

Please note that the trigger for the contributions is prior to the occupation of the 15th Market Unit (out of 19) which will need to be carefully monitored.

Land charges- please register as a local land charge.

Regards

Kate

Kate Barnes
Planning Solicitor
Legal & Electoral Services Department
T: 020 8487 5006
F: 020 8891 7733
E: k.barnes@richmond.gov.uk
www.richmond.gov.uk

Document: 5638/619302



619301 - 37
hamilton rd.pdf

Iken Document Number [619302]

DATE **24 June** 2011

UNILATERAL UNDERTAKING

by

HAMILTON LOFTS LTD

and

HERITABLE BANK PLC
(in administration)

to

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND
UPON THAMES**

Pursuant to Section 106 of the Town & Country Planning Act 1990

relating to land known as
37 Hamilton Road
Twickenham, TW2 6SN
Planning Ref: 10/1691/FUL

THIS UNILATERAL UNDERTAKING is made as a Deed the **24** day of **June** 2011

BY

(1) **HAMILTON LOFTS LTD** (Company registered in England No. 5147307) whose registered office is situated at 20 Mortlake High Street, London, SW14 8JN ("the Owner"); and

(2) **HERITABLE BANK PLC** in administration (Company registered in Scotland no717) (formerly Heritable Bank Limited) whose principal office is situated at 8 Hill Street, London W1J 5NG acting by one of its Joint Administrators ("the Mortgagee")

TO

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

WHEREAS:

1. The Council is the local planning authority for the purposes of the Planning Act for the area within which the Property is situated and for the purposes of Section 106(9) of the Planning Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
2. The Owner is registered at HM Land Registry as the freehold owner of the Property under title number TGL254436 and subject to the Mortgage but otherwise free from encumbrances, except as stated in the title, and has agreed to enter into this Deed as hereinafter appearing
3. The Owner submitted the Application to the Council on 25 June 2010 and the Council has failed to determine the Application. The Owner subsequently appealed to the Planning Inspectorate against this non-determination by way of an appeal on 21 February 2011 ("the Appeal")
4. The parties have agreed that should the Secretary of State grant planning permission for the Development such planning permission should be granted subject to this Unilateral Undertaking in order to secure a proportion of affordable housing for social rent, the recovery of a further contribution towards affordable housing in the event that higher values than anticipated are achieved on sales, contributions towards education, public realm, health and transport facilities, the provision of a car club space and membership of the car club for all residential units, and a restriction on the grant of parking permits if a controlled parking zone is introduced
5. Core Policies CP16 and CP18 and saved policy HSG19 of the UDP provide that new developments will be expected to contribute to any additional infrastructure and community needs generated by the development and will also have to take account of the requirements in the Planning Obligations Strategy and that developers will have to take into account the potential need to contribute to the provision of primary or secondary school places in the Borough

6. Saved Policy TRN2 of the UDP provides that the Council will only permit new development where it can be demonstrated that the transport infrastructure can accommodate it and will seek in appropriate cases planning advantages appropriate to the site and commensurate to the scale of development
7. Core Policy CP17 of the UDP provides that health and well being in the Borough is important and all new development should encourage and promote healthier communities and places and the Planning Obligations Strategy adopted 6 June 2005 and modified in January 2007 provides that planning can ensure the provision of primary care facilities as part of new residential and commercial developments (including through Section 106 agreements)
8. The Council's Planning Obligations Strategy adopted as Supplementary Planning Guidance in June 2005 and modified in January 2007 outlines and clarifies the Council's current approach, policies and procedures in respect of planning obligations
9. The Owner has entered into this Deed so that the obligations within it may be taken into account in the determination of the Appeal

NOW THIS UNILATERAL UNDERTAKING WITNESSES as follows:

1. In this Unilateral Undertaking the following words and expressions shall have the meanings ascribed to them below:

"Accredited Car Club Provider" means an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment therefor

"Additional Payments" means the amount of seventy four thousand pounds (£74,000) being the sum of (a) the £69,000 of extra contributions in Schedule 2 of this Deed which are over and above the planning obligations set out in the Base Appraisal and (b) the Monitoring Fees of the Council which are over and above the planning obligations set out in the Base Appraisal

"Affordable Housing" means subsidised housing that is available to people who are on a register maintained by the Council and Registered Providers who have properties in the Council's administrative area or (in the absence of such persons) persons who fulfil the occupation criteria of the relevant Registered Provider

"Affordable Housing Price" means a sum payable by the Registered Provider for the Long Lease restricted so as to enable the letting of the Affordable Housing Units at Target Rents as published by and in accordance with TSA guidelines and the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003

"Affordable Housing Units" means the eight (8) residential units of Affordable Housing comprising three (3) 1-bed flats, three (3) 1-bed houses and two (2) 2-bed flats such units to be built as part of the Development and

in accordance with current HCA Housing Quality Indicators in force at the date of the Commencement of Development and to be let at rents not exceeding Target Rents and provided in accordance with the provisions of Schedule 1

"Application" means the planning application filed under the Council's reference 10/1691/FUL and submitted to the Council on 25 June 2010 and as subsequently amended for the conversion of the existing redundant buildings at the Property into 21 flats, the demolition of minor buildings and structures and the construction of 6 new residential units with 24 car parking spaces at the Property

"Average Base Appraisal Value" means the sum of two hundred and thirty three thousand pounds (£233,000) being the total value of Market Unit sales from the Base Appraisal being four million four hundred and thirty thousand pounds (£4,430,000) divided by the number of Market Units

"Base Appraisal" means the Owner's financial appraisal as submitted with the Application

"Base Development Value" means the amount of five million six hundred and fifty seven thousand pounds (£5,657,000) being the sum of (a) the total scheme revenue of £5,580,000 as set out in the Base Appraisal and (b) the £77,000 shortfall between the existing use value and the residual value as set out in the Base Appraisal

"Base Price Index" means the sum of three hundred and nineteen thousand two hundred and twenty one pounds (£319,221) being the average of the values of index from the House Price Index for Maisonettes and Flats for the London Borough of Richmond upon Thames for the months of January 2008 through to October 2008 inclusive as published by the Land Registry

"Car Club" means a local car club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them

"Car Club Space" means the car parking space shown edged green on Plan 2

"Car Plus" the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs

"Commencement of Development" means the date on which the Development commences by the carrying out on the Property pursuant to the Planning Permission of a material operation as specified in Section 56 (4) of the Planning Act

"DCM" means the Council's Development Control Manager for the time being or such other person who may be appointed from time to time to carry out that function

"Development" means the development of the Property in accordance with the Planning Permission

"Disposal Proceeds" means the monetary proceeds of the disposal of any Affordable Housing Unit by the Registered Provider which shall be calculated by deducting the following sums: 1. any monies repaid or repayable to any lender, mortgagee, funder or chargee in accordance with a loan over an Affordable Housing Unit and 2. any monies paid or payable in respect of professional fees or charges in connection with the disposal 3. any VAT or other statutory costs and charges applicable to the disposal or to the disposal proceeds and 4. any capital subsidy contributed by the Registered Provider over and above any grant monies received and SUBJECT ALWAYS to any requirements imposed by the HCA

"Dwelling" means any one of the residential units to be constructed as part of the Development

"Final Development Profit" means seventeen percent (17%) of the Final Gross Margin

"Final Development Value" means the sum of the Sold Development Value and the Unsold Development Value

"Final Gross Margin" means if applicable the amount expressed as a value of the increase from the Base Development Value to the Final Development Value

"Final Net Margin" means if applicable the positive residual amount expressed as a value of the Final Gross Margin after deduction of the Final Development Profit

"Final Net Margin Share" means if applicable fifty percent (50%) of the Final Net Margin

"Final Price Index" means the value of index from the House Price Index for Maisonettes and Flats for the London Borough of Richmond upon Thames as published by the Land Registry or successor for the month in which the Fifteenth Market Unit is Sold

"Further Contribution" means if applicable the sum of the Final Net Margin Share less the Additional Payments provided that the amount of the Further Contribution shall not exceed one hundred and eighty five thousand pounds (£185,000) Indexed to be paid by the Owner to the Council for the provision of Affordable Housing elsewhere in the borough

"HCA" means the Homes and Communities Agency for England being the national housing and regeneration agency formed on 1 December 2008 pursuant to the Housing and Regeneration Act 2008 and shall include any statutory successor of the HCA

"Health Contribution" means the sum of five thousand three hundred and seventy seven pounds (£5,377) Indexed

"Indexed" means 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 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

"Long Lease" means a lease of all the Affordable Housing Units granted for a term of one hundred and twenty five (125) years from the date of its completion at the Affordable Housing Price

"Market Units" means all those nineteen (19) residential units (other than the Affordable Housing Units) forming part of the Development

"Monitoring Fees" means the sum of five thousand pounds (£5,000) for monitoring the planning obligations and assessing the Residential Appraisal Report

"Mortgage" means the legal charge dated 8 February 2005 made between the Owner and the Mortgagee

"Nominations Deed" means a deed of nomination rights substantially in the form set out in schedule 4 to be entered into between the Registered Provider and the Council giving the Council nomination rights in respect of the Affordable Housing Units

"Occupation" means the date on which any part of the Development is occupied for residential purposes (which for the avoidance of doubt shall not include occupation for purposes of fitting out the Development), and the phrases "Occupy", and "Occupied" shall be construed accordingly

"Plan 1" means the plan so marked and annexed hereto

"Plan 2" means the plan so marked and annexed hereto

"Planning Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004).

"Planning Permission" means any planning consent to be granted pursuant to the Appeal and for the avoidance of doubt this shall include any variation or amendment to the Planning Permission granted on a subsequent application under Section 73 of the Planning Act

"Price Index Factor" means the Final Price Index divided by the Base Price Index

"Primary Education Contribution" means the sum of ten thousand four hundred and nine pounds (£10,409) Indexed

"Property" means all that freehold property known as land at 37 Hamilton Road, Twickenham and registered at the Land Registry under title number TGL 254436 and shown edged red on Plan 1

"Public Realm Contribution" means the sum of twenty one thousand two hundred and sixteen pounds (£21,216) Indexed

"Registered Provider" means an independent housing organisation registered under Housing Act 1996 with the HCA and complying with the Council's Supplementary Planning Guidance on Affordable Housing dated 25

February 2003 and first approved in writing by the DCM and "Registered Providers" shall be construed accordingly

"Residential Appraisal Report" means a report to be prepared by the Owner at its own expense identifying the Final Development Value together with a calculation of the Further Contribution (if any)

"Secondary Education Contribution" means the sum of seven thousand three hundred and ninety nine pounds (£7,399) Indexed

"Social Rented Housing" means Affordable Housing to be let at Target Rents

"Sold" means:-

(a) the disposal or legal transfer of a freehold or leasehold interest (where the unexpired term of the leasehold interest is not less than 70 years) in a Market Unit or

(b) the grant of a lease of a Market Unit for a term of not less than 70 years

and which is in either case for a completed transaction as recorded by the Land Registry when formally registered and for valuable consideration and at arms length between a willing vendor and purchaser and with there being no unusual or onerous restrictions and which for the avoidance of doubt shall not include the passing of title by way of an agreement for sale of a freehold or leasehold interest, an agreement for lease, the acquisition of a beneficial interest by way of mortgage or otherwise or any other such transfer and

(c) in the case of the Affordable Housing Units the completion of the grant of a Long Lease

"Sold Development Value" means the aggregate total of the first fifteen Market Units Sold and the sum received by the Owner for the transfer of the Affordable Housing Units to a Registered Provider in accordance with this Deed

"Target Rents" means the TSA Target Rents for the area within which the Property is located for the relevant year or any rent requirements stipulated for Registered Providers by the TSA

"Transport Contribution" means the sum of sixty five thousand six hundred and ninety one pounds (£65,691) Indexed

"TSA" means the Tenants' Services Authority being the government authority set up under the Housing and Regeneration Act 2008 which regulates social housing and includes any statutory successor thereof

"Turning Head" means the vehicular turning head to be provided by the Owner at the entrance to the Property from Hamilton Road for vehicular use by the public the layout of which is shown edged in blue on Plan 2

"Unsold Development Value" means the Average Base Appraisal Value multiplied by four (4) multiplied by the Price Index Factor

- 2 References to any party in this Unilateral Undertaking shall include the successors in title of that party
- 3 This Unilateral Undertaking is made as a Deed pursuant to the Section 106 of the Planning Act, Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972, Section 609 of the Housing Act 1985 and all other powers and enactments which may be relevant to the purpose of giving validity to this Unilateral Undertaking or for facilitating the enforcement of the obligations contained in it with the intent to bind the Owner and the Mortgagee
 - 3.1 Any covenants and restrictions or requirements imposed upon the Owner under this Unilateral Undertaking and falling within the provisions of Section 106 of the Planning Act, shall be deemed to be expressed to be planning obligations to which that said Section shall apply
 - 3.2 For the purposes of Section 106 (9) of the Planning Act, the Council is the local planning authority by whom the planning obligations within this Unilateral Undertaking are enforceable
- 4 Save in respect of clauses 1.2 of Schedule 2 and 1.1 of Schedule 3 which shall take effect on the date hereof this Unilateral Undertaking shall take effect on the date of Commencement of Development
- 5 The Owner hereby covenants with the Council as set out in Schedules 1,2 and 3 hereto
- 6 The Mortgagee hereby consents to the Owner completing this Unilateral Undertaking with the intention that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property is bound by the terms of this Unilateral Undertaking as if it had been executed and registered as a local land charge prior to the execution of the Mortgage
- 7 **IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:**
 - 7.1 That the enforceability of this Unilateral Undertaking shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Unilateral Undertaking or any extension of the time or other indulgences shown by the Council
 - 7.2 That the covenants and stipulations contained in this Unilateral Undertaking are intended to run with the Property and each and every part thereof and to bind the owners thereof from time to time, provided always that the provisions contained in paragraph 1.6 and 1.7 of Schedule 1 and all of Schedule 2 shall not be binding on the individual lessees and/ or occupiers of Dwellings within the Property in their individual capacities as such
 - 7.3 This Unilateral Undertaking is a local land charge and shall accordingly be registered as such by the Council upon its completion

- 7.4 In so far as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking
- 7.5 Save where otherwise expressly stated all covenants given by the Owner under this Unilateral Undertaking shall be complied with entirely at the expense of the Owner
- 7.6 If there is any conflict between the terms of this Unilateral Undertaking and any conditions on the Planning Permission the latter shall take precedence
- 7.7 The covenants undertakings and restrictions contained in this Unilateral Undertaking shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Unilateral Undertaking by or on behalf of the relevant parties hereto or by a subsequent deed of variation to be agreed by the relevant parties
- 7.8 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:
- 7.8.1 The entirety of the Planning Permission shall be quashed revoked or otherwise withdrawn prior to the Commencement of Development OR
- 7.8.2 The entirety of the Planning Permission shall expire prior to the Commencement of Development
- 7.9 Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provisions of this Unilateral Undertaking 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 Unilateral Undertaking arising prior to its becoming mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is mortgagee in possession of the Property
- 7.10 The Owner shall not be bound by any covenants or obligations contained in this Unilateral Undertaking after it has parted with the entirety of its interest in the Property but without prejudice to any breach of covenant subsisting or arising prior to parting with such interest
- 7.11 If any provision in this Unilateral Undertaking is held to be void invalid illegal or unenforceable or if voidable is avoided this shall not affect the operation validity and enforceability of any other provision of this Unilateral Undertaking provided severance therefrom is possible
- 7.12 Reference in this Unilateral Undertaking 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

- 7.13 The construction validity and performance of this Unilateral Undertaking shall be governed by English law
- 7.14 All consideration given in accordance with the terms of this Unilateral Undertaking shall be exclusive of any VAT properly payable in respect thereof and if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Unilateral Undertaking then to the extent that VAT had not been previously charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly
- 7.15 If any of the contributions (other than the Further Contribution) is not paid to the Council within 2 years of Commencement of Development then interest shall be paid on such contribution at the rate of 4% above the base rate of the Bank of England from time to time in force from the date that the contribution became due to the date of actual payment
- 7.16 Nothing in this document shall constitute a claim ranking as an expense of the administration of the Bank as contemplated by paragraph 99(4) of Schedule B1 to the Insolvency Act 1986 or otherwise
- 7.17 The Joint Administrators have entered into and signed this document as agents for or on behalf of the Bank and neither they, their firm, partners, employees, advisers, representatives or agents shall incur any personal liability whatever in respect of any failure on the part of the Bank to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this document. The Joint Administrators are party to this document in their personal capacities only for the purpose of receiving the benefit of the exclusions, limitations, undertakings and covenants in their favour contained in this document
- 7.18 No person who is not a party to this document shall have any rights, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any of the terms of this document, other than any subsequent liquidator of the Bank and each of Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton as current Joint Administrators
- 7.19 Notwithstanding that this document is signed by one of the Joint Administrators only, the Owner hereby expressly agrees that the benefit of the releases and indemnities, and in particular the those included under the paragraphs entitled 'Not an expense of the administration' and 'Exclusion of Joint Administrators' liability' above for the Joint Administrators shall accrue to all the Joint Administrators, Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton

IN WITNESS whereof the parties hereto have executed this document as a Unilateral Undertaking the day and the year first above written

SCHEDULE 1

OBLIGATIONS OF THE OWNER RELATING TO AFFORDABLE HOUSING AND FURTHER CONTRIBUTION

- 1.1 Not to Occupy or permit the Occupation of any of the Market Units prior to the completion of the grant of a Long Lease of all the Affordable Housing Units to a Registered Provider in accordance with the provisions of this Unilateral Undertaking such Long Lease to include all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and not to include any unduly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units for Affordable Housing purposes
- 1.2 Not to complete the grant of the Long Lease to the Registered Provider until the Owner has procured that the Registered Provider enters into a Nominations Deed
- 1.3 Not to Occupy or permit the Occupation of more than nine (9) of the Market Units prior to the completion of construction ready for occupation of all the Affordable Housing Units
- 1.4 From the date of the grant of the Long Lease of the Affordable Housing Units by the Owner to the Registered Provider not to use the Affordable Housing Units for any purposes other than for the provision of Social Rented Housing save that this provision shall:
 - 1.4.1 Not bind any Mortgagee of a Registered Provider or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Registered Provider
 - 1.4.2 Cease to apply to any part of the Affordable Housing Units should such part be transferred to or leased by any Mortgagee of a Registered Provider or any receiver or manager of any Registered Provider appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider
 - 1.4.3 Cease to apply to any part of the Affordable Housing Units where the Registered Provider has disposed of such part pursuant to a right to buy under Part V of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or substitute right applicable or has sold to a tenant with the benefit of a voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation).

PROVIDED ALWAYS that in the event of the occurrence of any of the events anticipated in 1.4.1 to 1.4.3 above the Registered Provider or their mortgagee or charge entering into possession shall provide the Council with written information demonstrating that the Disposal Proceeds received, if any, by the Registered Provider in respect of any sale, lease or other disposal in accordance with this clause and relating to the social housing grant element of the scheme funding

shall be applied exclusively in the London Borough of Richmond upon Thames

- 1.5 To notify the DCM in writing of the date of Occupation of the ninth (9th) Market Unit

Further Contribution

- 1.6 Within one (1) month of the date on which the fifteenth (15th) Market Unit is Sold, the Owner will:
- 1.6.1 calculate the Price Index Factor the Sold Development Value the Unsold Development Value the Final Development Value and if applicable the Final Gross Margin the Final Development Profit the Final Net Margin the Final Net Margin Share and the Further Contribution (if any); and
- 1.6.2 submit the Residential Appraisal Report to the Council no later than three (3) months from the date on which the fifteenth (15th) Market Unit is Sold; and
- 1.6.3 if applicable pay to the Council the Further Contribution within four (4) months from the date on which the fifteenth (15th) Market Unit is Sold
- 1.7 A worked example of the calculation of the Further Contribution set out in 1.6 above is set out below as an example only:

Sold Development Value	£5,012,080
Price Index Factor (Final Price Index/ Base Price Index) Say, £338,374/ £319,221 =	106%
Unsold Development Value (Average Base Appraisal Value x 4 x Price Index Factor) £233,000 x 4 x 106%	£987,920
Final Development Value (Sold Development Value + Unsold Development Value)	£6,000,000
Less Base Development Value	£5,657,000
= Final Gross Margin	£343,000
Less Final Development Profit (17% of Final Gross Margin)	£58,310
= Final Net Margin	£284,690
Final Net Margin Share (50% of Final Net Margin)	£142,345
Less Additional Payments	£74,000
= Further Contribution	£68,345

SCHEDULE 2

OBLIGATIONS OF THE OWNER RELATING TO CONTRIBUTIONS AND TURNING HEAD

Contributions

- 1.1 To pay to the Council the Primary Education Contribution, the Secondary Education Contribution, the Health Contribution, the Public Realm Contribution, the Transport Contribution and the Monitoring Fees prior to the Occupation of the fifteenth (15th) Market Unit and not to Occupy more than fifteen (15) Market Units until such contributions have been paid to the Council.

Turning Head

- 1.2 To construct and complete the Turning Head to adoptable highway standards prior to the Occupation of any part of the Development and thereafter to maintain the Turning Head in good and substantial repair and condition
- 1.3 From the date of practical completion of its construction to allow members of the public with vehicles access to and the use of the Turning Head
- 1.4 Notwithstanding that the Owner shall make the Turning Head available for public use, the Turning Head shall remain part of the Property and not be adopted by the Council as public highway and legal title shall remain vested in the Owner and its successors in title and the Owner shall be entitled to close the Turning Head and exclude any public access thereto on Christmas Day in each year in order to prevent any public or private right of way being acquired thereover by prescription

SCHEDULE 3

OBLIGATIONS OF THE OWNER RELATING TO THE CAR CLUB AND ON STREET PARKING PERMITS

Car Club

- 1.1 Prior to the Commencement of Development to submit to the DCM details of the name of and correspondence with Accredited Car Club Providers indicating the intention of the Owner to establish a Car Club at the Property including a proposed establishment date for his approval and not to Commence the Development unless and until the Accredited Car Club Provider for the Development has been approved by the DCM such consent not to be unreasonably withheld or delayed
- 1.2 Not to occupy or permit or allow the Occupation of any part of the Development until:
 - (i) the car parking space shown edged green on Plan 2 has been clearly marked out on the Property with the words "Car Club Only" to be used

solely for the purpose of parking and storing a vehicle belonging to the Accredited Car Club Provider and used by members of the Car Club and the Owner further undertakes thereafter not to permit or allow the said car parking space to be used for any purpose other than for the parking and storage of the vehicle provided by the Accredited Car Club Provider and used by the members of the Car Club

- (ii) it has procured that each Dwelling forming part of the Development has the right to apply for membership of the Car Club present on the Development (such membership which may thereafter be taken up and maintained on an annual basis by the residents of the Dwellings) and has provided a copy of the final signed and dated contract with the Accredited Car Club Provider to the DCM
 - (iii) it has promoted and advertised to each potential occupier of the Development the value and benefits of membership of a Car Club
 - (iv) it has included a provision in any lease, licence or tenancy agreement to which the Owner is a party and which affects the whole or any part of the Property that each Dwelling shall be entitled to belong to the Car Club at the Property by paying an administrative fee
 - (v) it has arranged an undertaking from the Accredited Car Club Provider for the provision and distribution of marketing literature to residents within 250 metres of the Development that publicises the presence of the Car Club within the Development and the local area and invites such residents to become members of the Car Club also
- 1.3 Following the provision of the Car Club Space, to maintain the Car Club Space in good and substantial repair and to repaint/renew the signage and/or painting of the words "Car Club Space" thereafter
- 1.4 From the date that they join the Car Club, to allow local residents within the vicinity of the Property who have joined the Car Club associated with the Development to access the Car Club Space in order to use the Car Club vehicle and for that purpose only
- 1.5 In the event that the Accredited Car Club Provider is no longer able to provide the Car Club for the Development the Owner shall notify the DCM in writing and shall then use all reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Unilateral Undertaking

Parking Permits

- 1.6 Not to dispose of to any person or Occupy or allow the Occupation of any Dwelling unless a notice in writing has been served on any person who intends to Occupy, buy or take a transfer, lease or licence (as appropriate) of the Dwelling that in the event that the public highway which abuts the Property (and known as Hamilton Road) is designated as a controlled parking zone within three (3) years of the first occupation of any Dwelling that he or she shall not be entitled (unless that person is or 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) to be granted an on street parking permit to park a vehicle in any marked highway bay or other place within the said area designated as a Controlled Parking Zone by the Council

SCHEDULE 4

Form of Nominations Deed

NOMINATION AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2011
BETWEEN [_____] whose registered office is at [_____]
(hereinafter called "the Association") of the one part
and THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
RICHMOND UPON THAMES of Civic Centre, 44 York Street, Twickenham TW1
3BZ (hereinafter called "the Council") of the other part

WHEREAS:

- (1) This Agreement is made pursuant to the terms of the "Principal Agreement" (as defined below) which requires 8 Affordable Housing Units to be provided at the Property, the freehold interest in which is to be transferred/ long leasehold interests of which are to be granted to the Association
- (2) In accordance with the Principal Agreement 8 residential units are to be built in accordance with Planning Permission (dated ref number) for occupation by persons within the Association's charitable objects and the Association has agreed to the Council being given the right to nominate persons to take up occupation of the Units as hereinafter provided
- (3) By a Transfer/Grant of a Long Leasehold Interest of even date herewith the Property was transferred to the Association/the Association acquired the Long Leasehold Interest in the Property

NOW IT IS HEREBY AGREED as follows:-

1. In this Agreement (save where the context otherwise requires or provides) the following words and expressions shall have the following meanings:-

"Availability Notice" means the notices referred to at Sub-clauses (4a) and (b) hereof

"Nomination Notice" means the notice in writing to be given by the Council to the Association of the proposed Nominees which shall include the names of such Nominees and all necessary and relevant information pertaining to such Nominees

"Nominees" means persons nominated by the Council for the purposes of this Agreement

"Principal Agreement" means the Agreement made under Section 106 of the Town and Country Planning Act 1990 made the _____ day of _____ 2011 between X Limited and the Council

"Property" means the Site and the Units

"Relevant Nominee" means a Nominee to whom the Association shall offer a Unit on the Site in accordance with Clause 6 hereof

"Site" means the land and buildings to be erected on the land known as land at 37 Hamilton Road, Twickenham which is part of the land the subject of the Principal Agreement

"Nomination Period" means seven years from the date of practical completion of the Units

"True Voids" means a vacancy created in any of the circumstances set out in the First Schedule hereto under the heading 'definition of a True Void' but

excluding a vacancy arising in any circumstances defined under the heading 'definition of a Non-True void'

"Non-True voids" as defined in the First Schedule hereto

"Units" means the Affordable Housing Residential Units to be managed and provided by the Association on the Site (as set out in the Second Schedule hereto)

2. The Association hereby covenants with the Council that in respect of the initial lettings under this Agreement the Council shall have right to nominate up to 75% of the Units and shall thereafter have the right to nominate up to 50% of Units being True Voids for the Nomination Period unless the Council at its absolute discretion agrees to waive or relinquish such rights of nomination

3. The Association shall give to the Council:-

In the case of an initial letting of any Unit not less than 6 weeks' notice of the projected practical completion date of such Unit and not less than 6 weeks' notice of the actual completion of such Unit and its availability for letting

In the case of any Unit being a True Void becoming subsequently available for letting 5 days' written notice of such availability

4. Within 10 days of the receipt by the Council of any Availability Notice in respect of a Unit the Council shall in respect of such unit serve on the Association a Nomination Notice

5. The Association shall as soon as practicable following receipt of the Nomination Notice offer a tenancy of the said Unit to the Relevant Nominee

6. If (a) no Nomination Notice is served by the Council within the 10 days referred to in clause 5 or (b) the Relevant Nominee refuses or fails to accept the offer of a tenancy within 7 days of such offer in each case the Council shall be entitled to serve one further and subsequent Nomination Notice

7. The procedure for such nominations may at any time during the continuance of this Agreement be varied by agreement between the parties hereto

8. The provisions of this Agreement shall cease to apply to any Unit of which the Association is required compulsorily by legislation to transfer the freehold or to grant a long lease to a tenancy exercising any statutory right to buy or right to acquire such interest in that Unit

9. IT IS HEREBY AGREED AND DECLARED that the provisions of this Agreement shall:-

9.1 not bind any mortgagee of the Association or its successors in title or any receiver or manager (including any administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Association or its successors in title

9.2 cease to apply to any part or the whole of the Unit should such part or the whole be transferred or leased by any mortgagee of the Association or its successors in title 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 the Association or its successors in title

10. Any Notice or demand required or authorised shall be deemed to be served upon the Council if delivered by hand or sent by facsimile transmission or First Class prepaid Recorded Delivery Post to the Council at Civic Centre 44 York Street Twickenham TW1 3BZ addressed for the attention of the Director of Housing (or other authorised Officer) and shall be deemed to be served upon the Association if delivered by hand or sent by facsimile transmission or First Class prepaid Recorded Delivery Post to the Association at its Registered Office

IN WITNESS whereof the Council and the Association have hereunto caused their Common Seals to be affixed the day and year first above written

THE FIRST SCHEDULE
Definition of True Void

- a) Vacancies created through tenant transfer to another Borough where no reciprocal arrangements exist
- b) Vacancies arising through tenant moves to other landlords where no reciprocal arrangements exist
- c) Vacancies arising as a result of the death of a tenant where there is no statutory right to succession
- d) Vacancies arising through tenants buying their own property in the private sector
- e) Vacancies arising as a result of the tenant having been evicted or abandoning a unit
- f) Vacancies arising as a result of a tenant who has been permanently decanted returning to his or her former home
- g) Vacancies arising through tenant transfer within the Association's own stock
- h) Vacancies arising as a result of a tenant who has previously been decanted

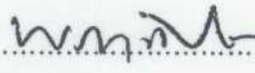
Definition of Non-True Void

- i) Vacancies arising as a result of a tenant being temporarily decanted and moving to a temporary home
- j) Vacancies arising as a result of a tenant being re-housed via the Housing Association "Homes" scheme or other equivalent
- k) Vacancies arising as a result of a tenant being re-housed by another Borough where a reciprocal arrangement exists

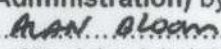
THE SECOND SCHEDULE

8 units of social rented housing


EXECUTED as a DEED
by HAMILTON LOFTS
LIMITED acting by

 Director


Company Secretary

SIGNED as a DEED by
HERITABLE BANK PLC
(in Administration) by
(a) 
one of its Joint Administrators
in the presence of: -

 (b)

Witness Signature: 

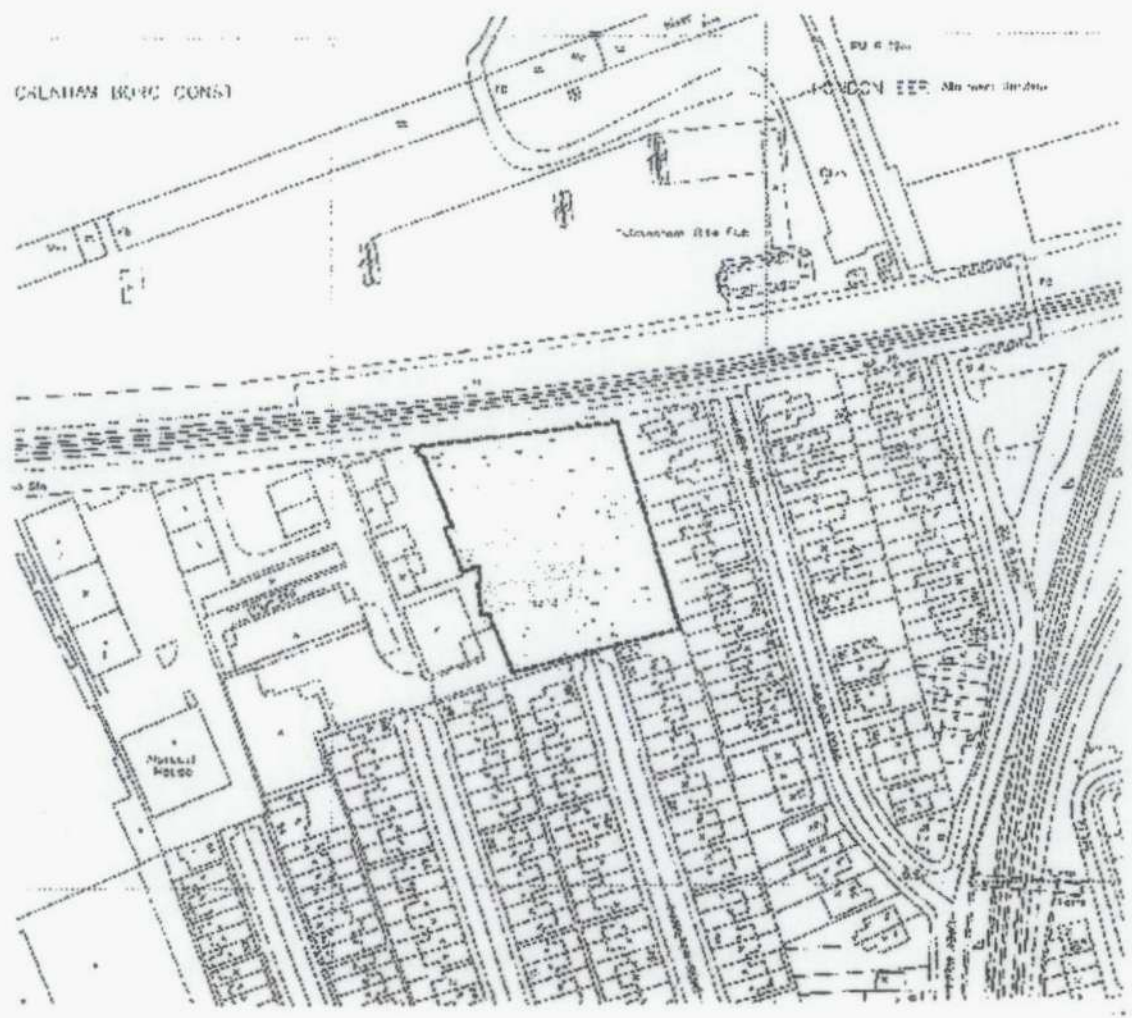
Witness Name: **WILMA GRAHAM**

(please print) **EYENST & YOUNG LLP**
Witness Address: **1 More London Place**
London
SE1 2AF

Witness Occupation: **SECRETARY**

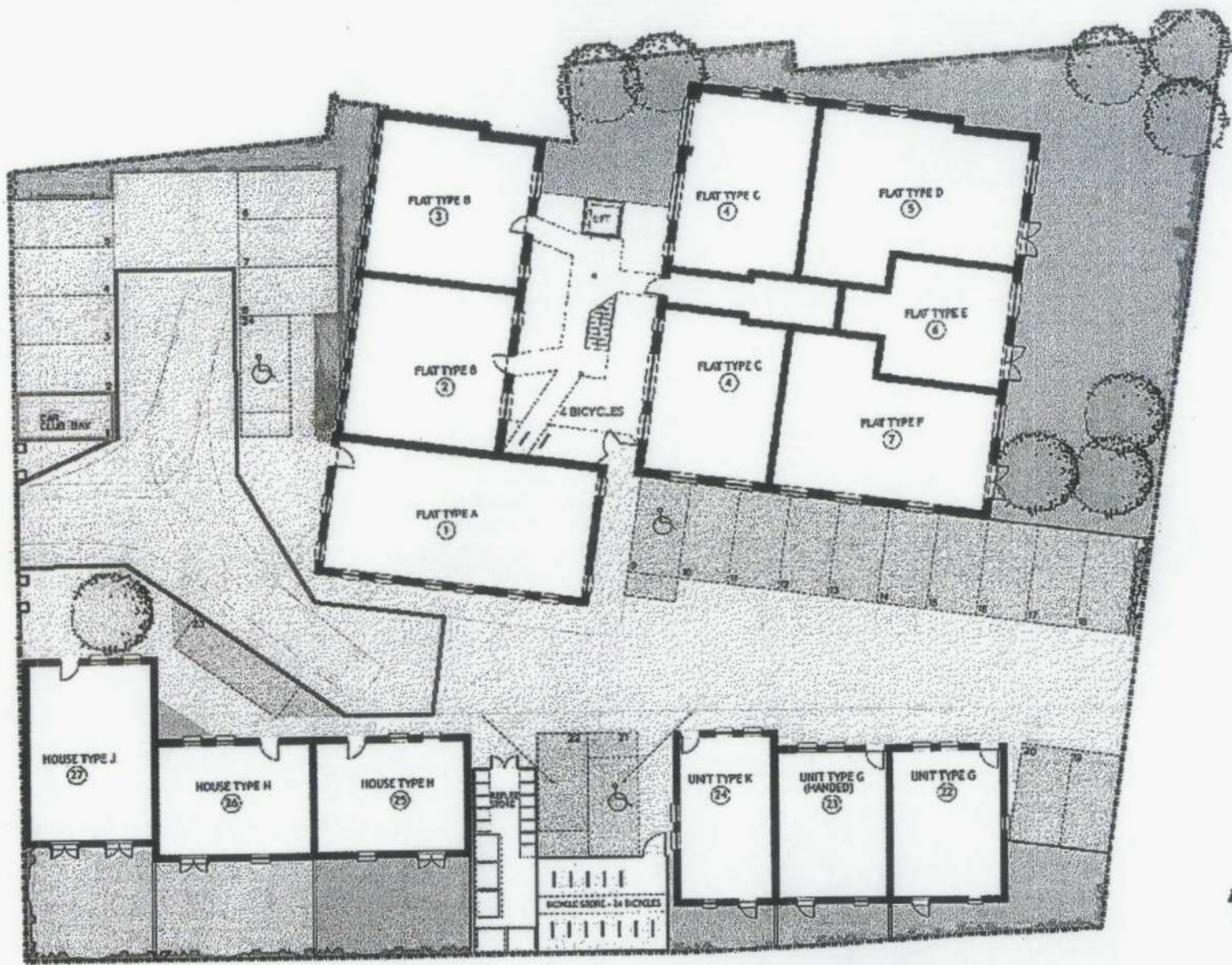
W.H.R.
C.M.C.O.

X
[Handwritten signature]



PLAN 1 - Showing Site Location

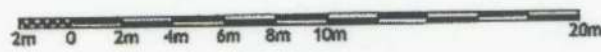
37 HAMILTON ROAD TWICKENHAM 3903
PLANNING APPLICATION scale 1:1250
August 2008



LEGEND

	PEDESTRIAN AREAS MARSHALLS MISTRAL GRANITE AGGREG. SETTS 240x160x80 COLOUR: HARVEST BUFF
	VEHICULAR AREA MARSHALLS MISTRAL PR CIRA GRANITE AGGREG. SETTS 160x160x80 COLOUR: SILVER GREY
	NEW GRASS AND GROUNDCOVER
	PARKING BAYS MARSHALLS MISTRAL PRORA GRANITE AGGREG. SETTS 180x160x80 COLOUR: CHARCOAL

Handwritten signature and initials



Turning Hammerhead

Car Club Space

PLAN 2 - Showing Car Club Space, and Turning Hammerhead

37 HAMILTON ROAD TWICKENHAM 3903
 PLANNING APPLICATION scale 1:200
 August 2008

ACANTHUS LW ARCHITECTS
 www.acanthuslw.com