

Dated 4<sup>th</sup> December 2012

**CROWTON PROPERTIES LIMITED**

-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 the Queen Dowager,  
49 North Lane, Teddington, TW11 0HU**

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**THIS UNILATERAL UNDERTAKING** is made as a Deed the 4<sup>th</sup>

day of *December* two thousand and twelve **BY**

(1) **CROWTON PROPERTIES LIMITED (Co. Regn. No. 00782053)** whose registered offices are situate at Crowton House, The Broadway Crowborough, East Sussex TN6 1DA ("the Owner")

**IN FAVOUR OF**

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

**INTERPRETATION**

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

- |                                   |  |
|-----------------------------------|--|
| "1990 Act"                        | the Town & Country Planning Act 1990   |
| "Affordable Housing Contribution" | the sum of one hundred and thirty three thousand pounds (£133,000) Indexed towards the Affordable Housing Use  |
| "Affordable Housing Use"          | in relation to the Affordable Housing Contribution towards affordable housing provision within the administrative area of the Council  |
| "Commencement of Development"     | 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

"Commencement Date"

the date of Commencement of Development

"Contributions"

the sum of one hundred and sixty seven  
thousand seven hundred and ninety seven  
pounds (£161,497) being the combined sum of  
the Affordable Housing Contribution and the  
Education Contribution

"DCM"

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

"Development"

the development of the Property described in  
the Planning Application

"the Education Contribution"

the sum twenty eight thousand four hundred  
and ninety seven pounds (£28,497) being the  
combined sum of the Primary Education  
Contribution and the Secondary Education  
Contribution towards the Education Use

"Education Use"

in relation to the Education Contribution for the  
provision of education facilities within its  
administrative area of the Council

"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 the date hereof and A  
represents the value of the same index as at the

“Units” all of the residential units to be created as part of the Development

**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 MX123763 as the proprietor of the freehold interest in the Property
- (3) Policy CP 15 of the LDF Core Strategy 2009 and policy DM HO 6 of the LDF Development Management Plan provides that the Council may consider a financial contribution to its Affordable Housing Fund as an alternative to on-site provision
- (4) Policy CP18 of the LDF Core Strategy 2009 provides that the Council will ensure the provision of schools, pre-schools and other educational facilities meet the need for additional educational resources any new development may generate and developers will have to take into account the potential need to contribute to the provision of primary and secondary school places in the borough

**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 this Deed is conditional upon the grant of planning permission pursuant to the pending Appeal
2. THE Owner hereby UNDERTAKES to the Council:-

- (a) to pay to the Council the Contributions at or before the earlier of
  - i) the first Occupation of any of the Units; and
  - ii) one year from the Commencement Date
- (b) to give notice in writing to the DCM of its intention to commence the Development at least seven (7) days before the Commencement Date
- (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 six hundred pounds and eighty (£680)

3. GENERAL:-

*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" shall include their respective successors in title and assignees

*Local land charge provisions*

- (g) This Deed is a Local Land Charge and may be registered in the Council's Register of Local Land Charges by the Council immediately on completion thereof PROVIDED THAT The Council will, upon written request by the Owner or a Mortgagee if applicable effect a cancellation of any entry made in the Local Land Charges Register in regard to this Deed forthwith after the obligations of the Owner and/or the Mortgagee hereunder have been wholly performed or discharged

*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 memorandum to be endorsed upon or annexed to this Deed by or on behalf of the relevant parties hereto or by a subsequent deed of variation
- (j) This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of the First Planning Application and the Second Planning Application 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) 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 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 the Council will repay to the Owner such monies as have been paid to it pursuant to the obligations contained within this Deed to the extent that they remain unspent

*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 freehold interest in such land)

*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 and the Owner

*Release*

- (p) This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the Owner if a Material Start has not taken place within 3 years of the date of this Deed or the Planning Permission having been granted shall be varied or revoked other than at the request of the Owner or the Planning Permission having been granted is quashed following a successful legal challenge and in any such case any sums paid by the Owner under 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

*VAT clauses*

- (q) all consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof
- (r) if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been 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

*Interest on late payment*

- (s) if any of the Contributions are not paid to the Council within the timescales stipulated in paragraph 2(a) then interest shall be paid on such contribution at the rate of 4% above the Bank of England base rate from time to time in force from the date that the contribution became due to the date of actual payment

*Community Infrastructure Levy Regulations 2010*

- (t) The terms of this deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly and reasonably related in scale and kind to the Development

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



Executed as a deed by )

**CROWTON PROPERTIES LIMITED** )

Acting by : )

*M. Turner*

.....  
Director

*Brenda Turner*

.....  
Director/Secretary