

Dated 5th December 2013

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

-and-

OMAHA NOMINEES FOUR (A) LIMITED

-and-

OMAHA NOMINEES FOUR (B) LIMITED

-and-

AVIVA COMMERCIAL FINANCE LIMITED

DEED OF AGREEMENT
made under Section 106 of the
Town & Country Planning Act 1990
relating to 9 King Street,
Twickenham,
TW1 3SD

Paul Evans
Head of South London Legal Partnership
Gifford House
67c St Helier Avenue
Morden
SM4 6HY

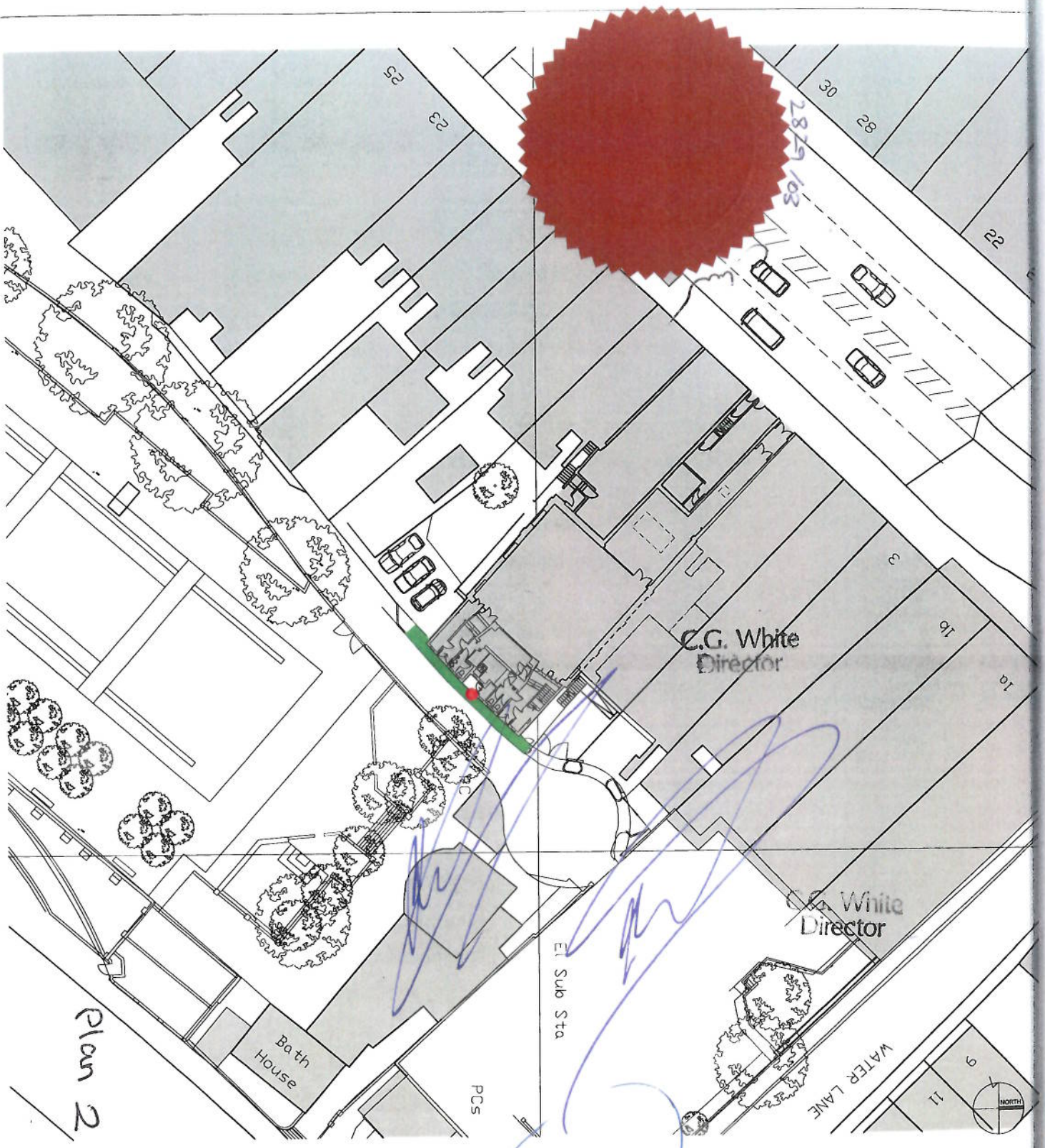
This Deed of Agreement is made the 5th day of December two thousand and thirteen BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham TW1 3BZ ("the Council")
- (2) **OMAHA NOMINEES FOUR (A) LIMITED (Co. Regn. No. 06804300)** and **OMAHA NOMINEES FOUR (B) LIMITED (Co. Regn. No. 06804322)** whose registered offices are situate at 5 Wigmore Street, London, W1U 1PB and (and together called "the Owner")
- (3) **AVIVA COMMERCIAL FINANCE LIMITED** (company registration No **02559391**) whose registered office is situate at 2 Rougier Street, York, YO90 1UU ("the Mortgagee")

INTERPRETATION

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

- "1990 Act" the Town & Country Planning Act 1990
- "Car Club" a club operated and managed by a Car Club Provider in which members can book cars owned by the Car Club Provider
- "Car Club Provider" an organisation accredited in the United Kingdom by CarPlus which provides cars for use by members of a Car Club in consideration of payment thereof such as Zipcar, City Car Clubs or such other car club operating within and with cars located in Twickenham within 750m of the Property as may be approved in writing by the Council
- "Car Plus" the national charity (No. 1093980) promoting responsible car use and which operates an accreditation scheme for Car Clubs
- "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



Plan 2

- EXISTING LAMP POST
- EXCLUSION ZONE

M M Benady Director

M M Benady Director



Rev	Date	Drawn	App	Checked
PLANNING APPLICATION				

Haskoll

Project: QUEENS HALL, TWICKENHAM
 Client: F&C REIT Asset Management
 Title: PLAN 2 LAMP POST REPOSITION PLAN
 Date: APRIL 2013
 Register No: 2886 A_055
 Drawn: JR
 Rev:
 Appr: IW
 Scale: 1:500 @ A4

"LDF"	the policies of the Richmond upon Thames LDF Development Management Plan 2011 and the Core Strategy 2009
"Material Operation"	an operation within the meaning of Section 56 of the 1990 Act;
"Monitoring Fee"	the sum of three hundred and fourteen pounds and fifteen pence (£314.50) being 5% of the Education Contribution
"Occupation"	the first beneficial occupation of the Units created as part of the Development for residential purposes within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) but not including occupation by personnel engaged in construction or fitting out and "Occupy" and "Occupied" shall be construed accordingly
"Occupation Date"	The date when first Occupation takes place and Occupy and other capitalised cognate words shall have the same meaning
"Plan 1"	the plan showing for identification purposes only the Property edged in red and annexed hereto as Plan 1
"Plan 2"	the plan as to the Street Lighting Use annexed hereto as Plan 2
"Planning Application"	a planning application submitted by the Owner on 25 June 2013 to the Council bearing reference number 13/2270/FUL for the partial demolition of existing building and redevelopment/conversion on ground to third floor levels for a mixed use scheme comprising D2

assembly and leisure use together with 2 x two bed flats and 2 x one bed flat

"Planning Permission"

the planning permission granted in respect of the Planning Application

"Previous Undertaking"

the previous unilateral undertaking given on the 5th November 2013 by Omaha Nominees Four (A) Limited & Omaha Nominees Four (B) Limited (1) Aviva Commercial Finance Limited (2) to the Council (3) in respect of planning reference number 13/2770/FUL pursuant to Section 106 of the Act;

"Property"

land and property at 9 King Street, Twickenham, TW1 3SD delineated in red on Plan 1 attached hereto and registered at the Land Registry with title number TGL147463

"Street Lighting Column Relocation Contribution"

the sum of one thousand two hundred and fifty pounds (£1,250) Indexed to be expended by the Council towards Street Lighting Use

"Street Lighting Use"

the relocation of 1 street lighting column on the north side of the rear service road adjacent to the Property the location of which is shown for illustration circled red on Plan 2 and which shall be relocated by the Council to a suitable location in the vicinity of the Property but excluding the area shown in green on Plan 2

"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 and is the local planning authority by whom the planning obligations contained within this Deed are enforceable for the purposes of the 1990 Act.
- (2) This Deed is conditional upon the grant of Planning Permission and the carrying out of a Material Operation pursuant to the Planning Application
- (3) The Owner is registered at the Land Registry with absolute title under title number TGL147463 as the proprietor of the freehold interest in the Property and the Mortgagee is similarly registered as the proprietor of a charge over the Property
- (4) On 25 June 2013 the Owner submitted the Planning Application to the Council. The Planning Application was validated on 27 June 2013.
- (5) The Mortgagee is the registered proprietor of a charge dated 25th November 2009 referred to in entry number C2 of the charges register of Title Number TGL147463 and has agreed to enter into this deed to give its consent to the terms of the Deed
- (6) 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 proviso of primary and secondary school places in the borough
- (7) Policies DM TP2 and DM TP8 of the LDF Development Management Plan 2011 provide that the Council will only approve new development where the transport infrastructure can accommodate it or be adapted to it and new development should be acceptable in terms of traffic generation and traffic impact in the road
- (8) In December 2006 the Council adopted as Supplementary Planning Guidance a Car Club Strategy which provides inter alia that the Council will encourage new car club provision in the locality of a development through the Council's preferred Accredited Car Club Provider or, where appropriate and where capacity exists, affiliation to the preferred Accredited Car Club Providers Car Club

(9) The Previous Undertaking contained obligations imposing miscellaneous obligations (mutatis mutandis) on the same terms as this Deed. Due to an unintended error, the parties acknowledge and agree that this Deed is to supersede the Previous Undertaking which shall absolutely determine on the date of this Deed

The Owner has agreed to enter into this Deed in order to secure the planning obligations contained in it in accordance with LDF so that it may be taken into account as a material consideration in the determination of the Planning Application by the Council

NOW THIS DEED WITNESSETH as follows:-

1. THIS Deed is made pursuant to Section 106 of the 1990 Act and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of Section 106 of the 1990 Act and receipt of a copy of this Deed pursuant to subsection 106(10) of the 1990 Act is hereby acknowledged by the Council
2. This Deed is conditional upon the grant of Planning Permission and the carrying out of a Material Operation.
3. The parties acknowledge and agree that this Deed supersedes and replaces the Previous Undertaking. On the date of this Deed, the Previous Undertaking including each and every obligation therein shall immediately cease and determine absolutely and shall be of no further effect.
4. THE Council hereby COVENANTS with the Owner:-
 - (a) to accept the Owner's covenants contained in Clause 3 hereunder
 - (b) to use Street Lighting Relocation Contribution paid to it pursuant to Clause 3(a)(i) of this Deed towards the Street Lighting Use and for no other purposes whatsoever
 - (c) to use the Education Contribution paid to it pursuant to Clause 3(a)(ii) of this Deed towards the Education Use and no other purpose whatsoever

(d) If the whole or any part of the Education Contribution and Street Lighting Relocation Contribution, remain unexpended after a period of seven (7) years from the date of receipt to reimburse such sums to the original paying party with interest at the contractual rate specified in clause 5(t).

5. Subject to clause 4 below, the Owner hereby covenants with the Council so as to bind its interest in the Property:-

(a) to pay to the Council:

- (i) the Street Lighting Relocation Contribution on or prior to the Commencement Date
- (ii) the Education Contribution on or prior to or upon the Occupation Date;

(b) prior to first Occupation of any Unit on the Property to submit to the DCM details of the name of and correspondence with the Car Club Provider indicating an intention of the Owner to establish that occupiers of each Unit to be constructed as part of the Development shall have membership of that Car Club including a proposed establishment date of his approval and thereafter

- (i) not to Occupy the Units unless and until the Car Club Provider for the Development has been approved by the DCM;
- (ii) upon an application by the purchaser/occupier within six (6) months of first Occupation of each Unit to provide/fund one free annual membership of five (5) years (or in the event that the relevant purchaser/occupier vacates the Unit within said five (5) year period until the expiry of the annual membership for the year in which they vacate the Unit) of the approved Car Club for the first purchaser/occupier of the Unit;
- (iii) upon the first sale and Occupation of each Unit to notify in writing the purchaser/occupier of the availability of the free membership referred to in paragraph (ii) above and how the purchaser/occupier may apply to the Owner and the Car Club for said membership; and

- (iv) in the event that the Car Club Provider is no longer able to provide the Car Club for the Units the Owner shall then use all reasonable endeavours to secure another accredited Car Club Provider for the Development and shall take out replacement memberships for any purchasers/occupiers of the Units within the Development whose five (5) year Car Club membership entitlement (as referred to in paragraph (ii) above) has not at that date expired for such duration of the said five (5) year period as remains unexpired.
 - (c) Not to Occupy or allow any person to Occupy any Unit to be created as part of the Development unless a notice has been served on such person that pursuant to the Council's policies to which reference is made in recital (6) hereof or any other policy replacing the same such person shall not be entitled (unless such 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 a resident's permit to park a vehicle in any marked highway bay or other place within a controlled parking zone within the Council's area nor will the Council enter into a contract (other than individual contracts for one occasion) with such person to park in any car park controlled by the Council
 - (d) to give notice in writing to the DCM of its intention to commence the Development at least seven (7) days before the anticipated Commencement Date
6. Subject to Clause 5(u) below the Mortgagee hereby consents to the Owner completing this Deed with the intention that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a local land charge prior to the execution of the Mortgage
5. GENERAL:-
- Miscellaneous agreements and declarations*
- (a) Nothing contained in this Deed constitutes planning permission

- (b) This Deed takes effect on the date hereof but the planning obligations contained herein at Clause 2 (save for those contained in Clauses 2(d) and (e) above) are conditional on: -
 - (i) the grant of Planning Permission and the carrying out of a Material Operation; and
- (c) 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
- (d) If any provision in this Deed shall be held to be void invalid illegal or unenforceable or if voidable is avoided for any reason including with reference to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010, such provision shall not affect the operation validity legality and enforceability of any other provision of this Deed provided severance therefrom is possible
- (e) 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
- (f) A reference to a clause is a reference to a clause contained in this Deed
- (g) The expressions "the Council" "the Owner" and "the Mortgagee" shall include their respective successors in title and assignees

Local land charge provisions

- (h) 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 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

- (i) 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

- (j) The covenants Deeds 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

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) Subject to sub-clause (a) below 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 the Owner and the Mortgagee

Termination of Release of obligations

- (p) This Deed shall determine and cease to have any further effect (without any further act or deed on the part of either the Council or the Owner) if:
 - (i) the Planning Application is met with refusal; or
 - (ii) the Planning Permission expires prior to the carrying out of a Material Operation; or
 - (iii) having been granted the Planning Permission is 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 the 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;

- (q) No person shall be liable for any breach of an obligation, restriction or covenant contained in this Deed after parting with all or its interest in the Property (or in respect of the relevant part of the Property to which the breach relates), except in respect of any breach subsisting prior to parting with such interest

VAT clauses

- (r) All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof

- (s) 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

- (t) If any of the contributions due under this Deed are not paid to the Council within the timescales set out therein, 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

Indemnity for Mortgagee

- (u) Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provision of this Deed during such period (if any) as it is mortgagee in possession of the Property unless such breach continues during such period as it is a mortgagee in possession

Community Infrastructure Levy Regulations 2010

- (v) Without prejudice to sub-clause 5(b) and (p) above the parties hereto believe the terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) 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

