

THIS UNILATERAL UNDERTAKING is made as a Deed the 21st day of September two thousand and seventeen

BY

(1) CEDAR RIVER DEVELOPMENTS LIMITED (Company Registration Number 07140919) whose registered office is situate at 67 High Street Chobham, Woking, Surrey, GU24 8AF ("the Developer")

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")

WITH THE CONSENT OF

(3) NATIONAL WESTMINSTER BANK PLC (Company Registration Number 929027) whose registered office is situate at 135 Bishopsgate, London, EC2M 3UR and whose address for service is Credit Documentation, PO Box 339, Manchester M60 2AH ("the Mortgagee")

INTERPRETATION

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

"1990 Act"	the Town & Country Planning Act 1990
"1974 Act"	the Greater London Council (General Powers) Act 1974
"1972 Act"	the Local Government Act 1972
"2011 Act"	the Localism Act 2011
"Accredited Car Club Provider"	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
"Appeal"	the appeal lodged under reference APP/L5810/W/17/3169320
"Car Club"	a local 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 for the period of the booking
"Car Plus"	the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs
"CPZ"	the controlled parking zone ES – East Sheen or any controlled parking zone amending or replacing the same
"GPDO"	Town and Country Planning (General Permitted Development) (England) Order 2015 - Schedule 2, Part 3, Class P
"the HDM"	the Council's Head of Development Management for the time being or such other person as may be appointed from time to time to carry out that function
"LDF"	the adopted policies of the Richmond upon Thames Local Development Framework Core Strategy 2009 and Development Management Plan 2011
"Implementation"	<p>the carrying out of a material operation as defined by Section 56(4) of the Act in relation to the Development but shall not include the following:</p> <ul style="list-style-type: none"> (i) ground investigatory Site survey work (ii) construction of boundary fencing (iii) archaeological investigation (iv) works of decontamination or remediation
"Implementation Date"	the date on which Implementation occurs
"Inspector"	the inspector appointed by the Secretary of State to determine the Appeal and to report to the Secretary of State following determination of the Appeal in relation to the refusal of the Planning Application by the Council



NOTES

1. The City of London is a member of the City of London Corporation, which is a local authority for the purposes of the Planning Act 2008.

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FOR PLANNING

SITE BOUNDARY

client	TJ SIMMONS & CO LTD.
project	1A ST LEONARDS RD LONDON SW14 7LY
drawing No	390_B(10)P01
created by	PS
checked by	MW
scale	1:1250
date created	02.03.16
status	EXISTING SITE PLAN

CREATE
Architectural Services
100 Victoria Road, London SW14 7LW
Tel: 020 8876 2000
www.create-architects.co.uk

"Motor Vehicle"	any mechanically propelled vehicles intended or adapted for use on a road and / or highway
"Mortgage"	the legal charge dated 9 th December 2016 and made between (1) the Developer and (2) the Mortgagee and which affects the Property
"Permitted Development"	the permitted development as described in the Prior Approval
"Prior Approval"	a prior approval application submitted by the Owner on 11 th October 2016 to the Council pursuant GPDO bearing reference number 16/3978/GPD16 for the Change of use from B8 (Warehouse and Distribution) to C3 (residential - 6 no. 1 bed flats)
"Prior Approval Permission"	the prior approval permission that may be granted pursuant to the Prior Approval by the Inspector
"the Property"	land and property at 1a St Leonards Road, London, SW14 7LY delineated in red on the plan attached hereto
"Residential Occupier"	any tenant or individual occupier or leasehold Developer of a Residential Unit and for the avoidance of doubt the term "Residential Occupiers": (i) shall be construed accordingly; and (ii) excludes any business or corporate body or bodies
"Residents Parking Permit"	a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a Motor Vehicle to park in a Residents Parking Bay
"Residents Parking Bay"	a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents of the locality on which the Development is situated

"Residential Units"	the residential units designated for C3 use as defined within the Use Classes Order to be constructed pursuant to the Development together with any amenity space or any right to use the same (whether common or not with others therewith) and the term "Residential Unit" shall be construed accordingly
"Secretary of State"	the Secretary of State for Communities and Local government or other person for the time being empowered to determine the Appeal under the 1990 Act
"Use Classes Order"	the Town and Country Planning (Use Classes) Order 1987 (as amended)

WHEREAS:

- (1) The Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the 1990 Act and for the purpose of Section 106(a) of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
- (2) The Developer is registered at the Land Registry with absolute title under title number SY54401 as the proprietor of the leasehold interest in the Property and the Mortgagee is similarly registered as the proprietor of a charge over the Property
- (3) The Council as local planning authority refused to grant prior approval for the Planning Application an Appeal was subsequently lodged by the Developer
- (4) 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
- (5) 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
- (6) The Developer has submitted the Appeal and entered into this Deed in order to secure the planning obligations contained in it in accordance with the LDF so that it may be taken into account as a material consideration in the determination of the Appeal by the Inspector

NOW THIS DEED WITNESSETH as follows:-

1. This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of 1972 Act, Section 16 of the 1974 Act and section 1 of the 2011 Act and any other enabling statutory provisions
2. THE Developer hereby COVENANTS to the Council as set out in the Schedule
3. The Mortgagee hereby consents to the Developer 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

4. GENERAL:-

Miscellaneous declarations

- (a) 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
- (b) A reference to a clause is a reference to a clause contained in this Deed
- (c) The expressions "the Council" "the Developer" and "the Mortgagee" shall include their respective successors in title and assigns
- (d) This Deed takes effect on the date hereof but the planning obligations herein and save for those contained at Clause 2 (a)(ii) above are conditional on:
 - (i) the grant of Prior Approval Permission and the Implementation of the Permitted Development: and
 - (ii) the Secretary of State or his Inspector deciding to allow the Appeal and making an express finding in the letter granting Prior Approval Permission that the planning obligations created by this Deed constitute a material consideration for the purposes of determining the Appeal PROVIDED THAT in the event that the Inspector or Secretary of State expressly declares when determining the Appeal that whilst this Deed is a material consideration in the determination of the Appeal but the permit free obligations within this Deed are not reasonable or necessary to make the Permitted Development acceptable in planning terms (and is therefore not a material consideration for the purposes of determining the Appeal) then (without prejudice to the legal effect of the remainder of this Deed) the requirement to pay the relevant contribution or perform said obligation shall not take effect.

Local land charge provisions

- (e) This Deed is a Local Land Charge and shall be registered in the Council's Register of Local Land Charges immediately on completion thereof

Reference to statutes and statutory instruments

- (f) 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

English law applicable

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

Effect of revocation of Prior Approval Permission

- (h) In the event of the Prior Approval 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 Developer or their successors in title the obligations of the Developer under this Deed shall thereupon cease absolutely

Liability of subsequent Developers and release of former Developers

- (i) The provisions hereof shall be enforceable by the Council against the Developer and all persons who shall have derived title through or under it 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)

Effect of covenant

- (j) Any covenant contained herein whereby the relevant party is not to do an act or thing shall be construed as if it were a covenant not to do or permit or suffer such act or thing to be done and any covenant whereby the relevant party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer such act or thing to be omitted to be done

Contracts (Rights of Third Parties) Act 1999

- (k) 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 be 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 definition of the Council the Developer and the Mortgagee

Indemnity for Mortgagee

- (l) notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of the provisions of this Deed during such period (if any) as it is mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and PROVIDED THAT for the avoidance of doubt it shall not in any event be liable for any breach of this Deed arising prior to its becoming mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is mortgagee in possession of the Property

Variations

- (m) 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
- (n) This Deed shall continue to be valid and enforceable following an amendment or variation to the Prior Approval Permission achieved through the submission of the Planning Application pursuant to Section 73 of the 1990 Act as if this Deed had been completed pursuant to such an application

Termination or Release

- (o) This Deed shall determine and cease to have any further effect (without any further act or Deed on the part of either Council or the Owner) if:
 - (i) the Appeal is dismissed; or
 - (ii) in determining the Appeal, the secretary of State or the Inspector expressly states in his decision letter that this Deed is an immaterial planning consideration or that no weight can be attached to this Deed in determining the Appeal: or
 - (iii) having been granted the Prior Approval Permission is varied or revoked other than at the request of the Owner or the Prior Approval 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.

SCHEDULE

Part I – Parking Permits

1. Not to dispose of to any person or occupy or allow any person to be a Residential Occupier of any Residential Unit to be formed on the Property as a result of the implementation 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 (5) 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) to be granted a Residents Parking Permit to park a Motor Vehicle in any marked highway bay or other place within a CPZ 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 nor will they be entitled to apply for a season ticket to park a Motor Vehicle in any car park controlled by the Council

Part II - Car Club

2. Prior to first Occupation of any Residential Unit:
 - (i) to submit to the HDM details of the name of and correspondence with the Accredited Car Club Provider indicating the intention of the Owner to establish that one Occupier within the Residential Unit that does not have a dedicated car parking space within the Property shall have membership of a Car Club including a proposed establishment date for his approval and not to occupy the Development unless and until the Accredited Car Club Provider for the Development has been approved by the HDM (such approval not to be unreasonably withheld or delayed) and;
 - (ii) within one month of the occupation of each Residential Unit to procure at its own expense that the first occupier of each Residential Unit (limited to membership of one individual) has membership of the approved Car Club for five years and to provide a copy of the final signed and dated contract with the Accredited Car Club Provider to the HDM

- (iii) 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 HDM 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 Deed

Part III – Notifications

- 4. To provide written notification to the HDM seven days prior to the Implementation Date and a further written notice of the actual Implementation Date within seven days of the occurrence of the same
- 5. For the avoidance of doubt it is hereby agreed that if Implementation occurs and the notice required in paragraph 4 Part III of the Schedule has not been given then the failure to give notice shall not affect the liability of the Owner to comply with the planning obligations in this Deed

Part IV – Fees

- 6. On the date hereof to pay to the Council:
 - (i) the sum of six hundred pounds (£600) being its proper and reasonable costs for the preparation and completion of the is Deed; and
 - (ii) the monitoring fee in the sum of two hundred and fifty pounds (£250)

EXECUTED AS A DEED BY)
 CEDAR RIVER DEVELOPMENTS LIMITED)

Acting by) Timothy John SIMMONS
 Director) Managing Director (sole)
 Director/Secretary) ~~XXXXXXXXXX~~

Signed and Delivered as a Deed)
 for and on behalf of National Westminster Bank PLC)
 by a duly authorised Attorney in the presence of:-)
 DALE THOMAS

JTC

[Signature]
 Waryn Freeman

Witness' Signature - Bank Employee

Director /
 Director/ Secretary

DOCUMENTOR
 CREDIT DOCUMENTATION
 REF 4642389 / MOS

