

THIS DEED OF AGREEMENT is made the 31st day of March 2018

B E T W E E N

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

- (2) **NICHOLAS KINGSBURY** of Fiddlers Green, High Barn Road, Effingham, Leatherhead, Surrey KT24 5PX ("**the Owner**")

- (3) **BARCLAYS BANK PLC** (company registration No. 1026167) whose registered office is situate at 1 Churchill Place, London, E14 5HP ("**the Mortgagee**")

INTERPRETATION

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

- "1974 Act" the Greater London Council (General Powers) Act 1974

- "1972 Act" the Local Government Act 1972

- "1990 Act" the Town & Country Planning Act 1990 (as amended)

- "2011 Act" the Localism Act 2011

- "Affordable Housing Contribution" the contribution payable by the Owner towards the provision of affordable housing in the Council's administrative

area in the event that the Further Viability Assessment concludes that the Development is viable and can support an Affordable Housing Contribution towards the Affordable Housing Use. The Affordable Housing Contribution shall be the equivalent of 40% of the Surplus (as generated by the application of the London Borough of Richmond Affordable Housing SPD.

“Affordable Housing Use”

in relation to the Affordable Housing Contribution towards the provision of affordable housing which meets the Council’s priority housing needs

“Business Operator”

a person or company operating a business from a Business Unit

“Business 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 Business Parking Bay

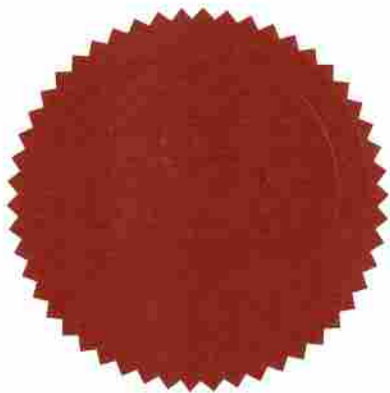
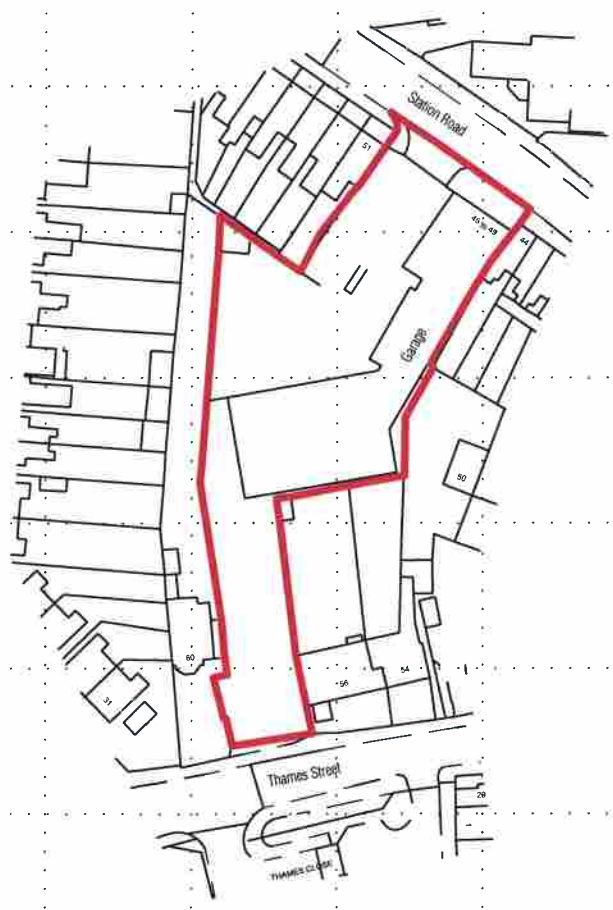
“Business Parking Bay”

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

BARCLAYS BANK PLC
LENDING OPERATIONS
P.O. BOX 299
BIRMINGHAM B1 3PF



WOK
[Signature]



— PLANNING APPLICATION BOUNDARY

PLANNING

| | | |
|--|----------------------|--------------------|
| Project 45-49 STATION ROAD, HAMPTON | | |
| Drawing SITE LOCATION PLAN | | |
| Drawing No. SRH-01 | Scale 1:1250 @ A1 | Date 28.10.2015 |

CLIVE CHAPMAN
ARCHITECTS
SUSTAINABILITY CONSULTANTS
4 SEL PIE ISLAND
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TW1 3DY
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“Business Units”

the business units designated for B1a or Sui Generis 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 “Business Unit” shall be construed accordingly

“CPZ”

a controlled parking zone in operation on the highways on which the Property abuts

“the Development”

the development described in the Planning Permission

“Developer’s Profit”

a return to the Developer of 20% of the Gross Development Value

“Disabled Persons Badge”

a disabled person’s badge issued pursuant to Section 21 of the Chronically Sick and Disabled Person’s Act 1970

“Further Viability Assessment”

a viability assessment to be carried out for the whole Development in the same format and in general conformity with the approach taken in the Viability Assessment

“Gross Development Costs”

all reasonable costs incurred by the developer in carrying out the development including site preparation costs, construction & finance costs, legal fees, sales fees, letting and other professional fees and miscellaneous and other costs

“Gross Development Value”

gross development value of the completed Development being the aggregate value of each of the proposed Residential Units and uses within the Development with vacant possession

“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

“Implementation”

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 and the terms “Implement” and “Implemented” shall be construed accordingly

| | |
|----------------------------|---|
| "Implementation Date" | the date on which Implementation occurs |
| "LDF" | the adopted policies of the Richmond Upon Thames Local Development Framework Core Strategy 2009 and Development Management Plan 2011 |
| "Mortgage" | the legal charge dated 22 nd April 2014 and made between (1) the Owner and (2) the Mortgagee and which affects the Property recorded at HM Land Registry under title number TGL300414 |
| "Motor Vehicle" | any mechanically propelled vehicles intended or adapted for use on a road and / or highway |
| "Occupation" | the full and beneficial occupation of either a Business Unit or a Residential Unit for its purpose pursuant to the Use Classes Order and "Occupied" and "Occupy" shall be construed accordingly |
| "the Planning Application" | a planning application submitted to the Council on 30 th October 2015 bearing reference number 15/4581/FUL for the demolition of all site buildings and redevelopment of the site for a mixed use development comprising a new car showroom with associated workshops (sui generis), office accommodation (Use |

Class B1a) and six three-bedroom residential dwellings (Use Class C3)

"the Planning Permission"

a planning permission granted by the Council pursuant to the Planning Application subject to the prior completion of this Deed

"the Property"

land known as land and property known as 45-49 Station Road, Hampton, TW12 2BU shown edged red on the plan attached hereto

"Residential Occupier"

any tenant or individual occupier or leasehold owner of the Residential Unit and for the avoidance of doubt the term "Residential Occupier" 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

“Substantial Implementation”

that the Planning Permission has been implemented and the Occupation of 75% of the Residential Units has occurred

“Surplus”

the amount of the Gross Development Value less Gross Development Costs of the development and Developers Profit agreed in accordance with Part 1 of Schedule One herein less the benchmark land value as set out in the Viability Assessment provided always that such costs and values are reasonable for development viability appraisal undertaken at this stage in development delivery in accordance with a review mechanism secured in connection with the grant of planning

“Use Classes Order”

the Town and Country Planning (Use Classes) Order 2015 (as amended)

“Viability Assessment”

the report on the financial viability of the Development prepared by HEDC Ltd submitted in confidence to the Council in relation to the Planning Application and to which the Council had proper regard in determining the Planning Application

WHEREAS:

- (A) 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 against the Property
- (B) The Owner is the freehold owner of the Property registered at the Land Registry with absolute title under title number TGL300414 as the proprietor of the freehold interest in the Property and the Mortgagee is similarly registered as the proprietor of the Mortgage over the Property
- (C) At its meeting on 6th September 2017 the Council’s Planning Committee resolved to approve the Planning Application and grant the Planning Permission subject to the prior completion of a deed of planning obligation under section 106 of the 1990 Act to secure the planning obligations now contained in this Deed
- (D) Policy CP 15 of the LDF Core Strategy 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
- (E) 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

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, section 1 of the 2011 Act and any other enabling powers 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. THE obligations of the Owner are conditional on:
 - (a) the grant of Planning Permission; and
 - (b) Implementation
3. THE Owner hereby covenants with the Council as set out in Schedule One.
4. THE Council covenants with the Owner as set out in Schedule Two.
5. 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 subject to clause 6(z)
6. IT IS HEREBY AGREED and DECLARED:-

Miscellaneous agreements and declarations

 - (a) Nothing contained in this Deed constitutes planning permission
 - (b) Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and its rights powers duties and obligations under all public and private statutes bye-laws and

regulations may be as fully and effectually exercised as if the Council were not a party to this Deed

- (c) If any provision in this Deed shall be held to be void invalid illegal or unenforceable or if voidable is avoided this shall not affect the operation validity legality and enforceability of any other provision of this Deed provided severance therefrom is possible
- (d) Reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and vice versa
- (e) A reference to a clause is a reference to a clause contained in this Deed
- (f) The expressions "the Council" "the Owner" and "the Mortgagee" shall include their respective successors in title and assignees

Local land charge provisions

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

- (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 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

- (k) This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning 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

Dispute Provisions

- (l) that in the event of any dispute arising in respect of any matter contained in this Deed save as to matters regarding its legal construction then unless the relevant part of the Deed indicates to the contrary the same shall be referred to an expert being an independent person to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors and such expert shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties hereto and whose costs shall be in his award

- (m) that the expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) days from the date of his appointment to act

- (n) that the expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten (10) working days written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further five (5) working days in respect of any such submission and material and his decision shall be given in writing

within twenty eight (28) days of this appointment with reasons and in the absence of manifest error shall be binding on the said parties

- (o) the costs of any reference of any dispute shall be paid jointly in equal shares by the Owner and the Council unless otherwise determined in the independent person's award

English law applicable

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

Effect of revocation of planning permission

- (q) 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 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 to the extent that they remain unspent

Waivers not to be of a continuing nature

- (r) No waiver (whether express or implied) by any party to this Deed of any breach or default by any party to this Deed in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent any party to this Deed from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the party in question

Liability of subsequent Owner and release of former Owner

- (s) The provisions hereof shall be enforceable by the Council against the Owner and all persons who shall have derived title through or under them in respect of the Property (but so that no person shall be liable to

the Council for any breach of the provisions committed after such a person has parted with all of its interest in such land)

Contracts (Rights of Third Parties) Act 1999

- (t) 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

- (u) 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 Implementation 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 to the extent that they remain unspent

VAT clauses

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

- (x) If any of the Affordable Housing Contribution is not paid to the Council within timescale stipulated in the paragraph 1.2(d)(i) Part I of

Schedule One this Deed 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

- (y) 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

Indemnity for Mortgagee

- (z) Notwithstanding the terms contained herein the Mortgagee shall not be liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or part of the Property

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

SCHEDULE ONE

COVENANTS BY THE OWNER

Part I- Affordable Housing Contribution

- 1.1 The Parties acknowledge that the financial viability of the Development has been assessed using the Viability Assessment which indicates that the provision of affordable housing in the Development will not be financially viable at the date of the Planning Permission.
- 1.2 The Parties agree as follows:
- (a) Upon Substantial Implementation (the "Trigger Date"), the Owner will appoint a consultant at the Owner's cost to prepare and submit to the Council the Further Viability Assessment (the "Re-Assessment"), and the Council shall appoint an assessor to review the Re-Assessment (and the Owner shall meet the Council's costs incurred in connection with the Re-Assessment in full within 14 Working Days of the Council issuing an invoice of the said costs incurred).
 - (b) The Owner and the Council shall each use their reasonable endeavours to ensure the inputs for the Re-Assessment shall be agreed between the Council's assessor and the Owner's assessor as soon as practicable and in any event within one month of the Trigger Date and for the avoidance of doubt the benchmark land value applied in the Re-Assessment shall be that which was agreed in the Viability Assessment (namely one million ^{seven} ~~nine~~ hundred and ^{sixty four} ~~eleven~~ thousand pounds [£1,764000] with further appropriate indexation applied) the aforementioned methodology not causing the Owner to be penalised from carrying out site enabling works.
 - (c) Within 14 days of the agreement of the inputs for the Re-Assessment to complete the Re-Assessment and submit the same to the Council for its approval together with such supporting information as is reasonably necessary to enable the Council and its advisors to assess



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the Re-Assessment.

- (d)
 - (i) in the event that the Council approves the Further Viability Assessment and the Further Viability Assessment indicates that the scheme will produce a Surplus, the Owner shall pay the Affordable Housing Contribution to the Council within 2 months of the date of receiving the Council's approval of the Further Viability Assessment that confirms the agreed amount of Affordable Housing Contribution in writing
 - (ii) in the event that the Council does not approve the Re-Assessment then, for the avoidance of doubt, any dispute between the Parties as to the Further Viability Assessment and/or Re-Assessment or the amount of the Affordable Housing Contribution shall be resolved in accordance with the provisions of Clauses 6(l)-(o) of this Deed and the Owner shall pay the amount determined by the expert for the Affordable Housing Contribution to the Council within 2 months of the date of receiving the determination in writing of the expert in accordance with clause 6(n) or such period as otherwise agreed between the Parties

Part II – Car Parking Permits

- 2.1 To notify any person who is to be a Residential Occupier of any Residential Unit to be formed on the Property as a result of the implementation of the Development prior to their first Occupation that pursuant to the Council's policies to which reference is made in recital (E) hereof or any other policy replacing the same such person shall in the event that a CPZ is established in the future 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 Residents Parking Bay or other place within the 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 eligible for a season ticket to park a Motor Vehicle in any car park controlled by the Council

- 2.2 Not to dispose of to any person or occupy or allow any person to be a first Residential Occupier of any Residential Unit to be formed on the Property as a result of the implementation of the Development unless such notice has been served
- 2.3 To notify any person who is to be a Business Operator of any Business Unit to be formed on the Property as a result of the implementation of the Development prior to their first Occupation that pursuant to the Council's policies to which reference is made in recital (E) hereof or any other policy replacing the same such person shall in the event that a CPZ is established in the future not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons' Badge) to be granted a Business Parking Permit to park a Motor Vehicle in any Business Parking Bay or other place within the 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 eligible for a season ticket to park a Motor Vehicle in any car park controlled by the Council
- 2.4 Not to dispose of to any person or occupy or allow any person to be a first Business Operator of any Business Unit to be formed on the Property as a result of the implementation of the Development unless such notice has been served

Part III– Payments

3. To pay to the Council its reasonable and proper legal costs in the preparation and completion of this Deed in the sum of one thousand pounds (£1500) on the date hereof

Part IV – 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 IV of of Schedule One 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

SCHEDULE TWO

COVENANTS BY THE COUNCIL

Part 1 – Payments

1. To accept the Owner's obligations in Schedule One of this Deed
2. To use any affordable housing contribution paid to it pursuant to paragraph 1.2(d)(i) part I of Schedule One of this Deed (if applicable) towards the affordable housing use

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

~~COUNCIL'S ATTESTATION CLAUSE TO BE ADDED~~
THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF RICHMOND UPON THAMES
was hereto affixed in the presence of:

Authorised Signatory



SIGNED AND DELIVERED as a deed by
NICHOLAS KINGSBURY
in the presence of :

)
) N. Kingsbury
)
)

NICHOLAS KINGSBURY.

EXECUTED AS A DEED by
as Attorney of
BARCLAYS BANK PLC
acting by:

)
)
) Michelle Altos
)

in the presence of :

KAREN SWAN HOOBERTS

~~Authorised Signatory~~

Michelle Altos

| Business Banking QRC | INITIALS | DATE |
|----------------------|----------|------|
| | MS | 07 |

Dated

21st March

2018

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

-and-

NICHOLAS KINGSBURY

-and-

BARCLAYS BANK PLC

**DEED OF AGREEMENT
made under Section 106 of the Town &
Country Planning Act 1990 and Section 16 of
the Greater London Council (General
Powers) Act 1974 relating to 45-49 Station
Road, Hampton, TW12**

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