

THIS DEED OF AGREEMENT is made the 23<sup>rd</sup> day of April 2018

**BETWEEN**

(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"); and

(2) **BEEHCROFT DEVELOPMENTS LIMITED** (company registration number 01798684) of 1 Church Lane Wallingford OX10 0DX (the "Owner")

**WHEREAS:**

- (1) the Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the Town and Country Planning Act 1990 and for the purposes of Section 106(9) of the 1990 Act is the local planning authority by which the planning obligations contained within this Deed are enforceable
- (2) The Owner is registered at the Land Registry as the proprietor of the freehold interest the Property with title absolute under title number TGL400447
- (3) The Owner has submitted the Application to the Council and the Council has agreed to approve the Application subject to conditions and to the obligations contained in this Deed
- (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, and Policy CP15 of the LDF Core Strategy and policy DM HO6 of the LDF Development Management Plan provide that the Council may consider a financial contribution to its Affordable Housing fund as an alternative to on-site provision. Further Policy DM S12 of the said LDF resists the loss of social infrastructure unless it can be demonstrated that the existing facilities are being adequately re-provided.

**INTERPRETATION**

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

- "1972 Act" the Local Government Act 1972
- "1974 Act" the Greater London Council (General Powers) Act 1974
- "1990 Act" the Town and Country Planning Act 1990 (as amended)
- "2011 Act" the Localism Act 2011
- "Affordable Housing" subsidised housing made available through a Registered Provider to persons nominated by

the Council whose incomes are insufficient to enable them to afford to rent or buy housing locally on the open market

“Affordable Housing Contribution”

the sum of three hundred and fifty thousand pounds (£350,000) Indexed

“Application”

the planning application submitted on 7<sup>th</sup> September 2016 and bearing planning reference 16/3552/FUL and resolved to be approved by the Council on 13 December 2017 for the conversion and extension of the existing convent buildings (following demolition of some mid-20th century extensions), together with new build apartments and houses, to provide a total of 23 residential retirement units, an estate managers office and meeting rooms, parking landscaping and associated works, with access via Ham Common

“Community Access Plan”

means a written plan setting out arrangements for access to and use of the Walled Garden by the general public and access to and use of the Meeting Rooms by community groups and others for Community Purposes which shall include:

1. provision for the payment of a nominal charge for the use of the Meeting Rooms to cover the cost of opening closing and cleaning the same after use;

2. provision for access to and the use of the Meeting Rooms for not less than 3 hours per day and on not less than 3 days a week;

3. provision of access to and the use of the Walled Garden by the general public on the same basis as the Meeting Rooms other than in respect of the charge referred to in point 1 above;

4. the respective roles and responsibilities of the Owner and users of the Meeting Rooms (and rules in respect of the use of the same) which shall as a minimum include:

4.1 provision for the Owner to ensure that the Meeting Rooms are well maintained clean and fit for use;

4.2 provision for users of the Meeting Rooms to leave the same clean and tidy after use; and

4.3 provision for users of the Meeting Rooms to be respectful of the needs of residents and the local community;

5. arrangements for the publication of the availability of the Meeting Rooms including periodic advertisements in the local press (together with the publication of a telephone number for the booking of the Meeting Rooms) and the establishment of a website containing information about the Meeting Rooms and arrangements for the booking of the same

"Community Purposes"

use for meeting rooms which use shall include (but shall not be limited to) use for dinners, parties, stage performances, public performances, public functions, sports and social clubs and events, card clubs, social/health clubs, dance classes and dances, social charitable and fund-raising events, jumble sales, musical and artistic events and exhibitions, and uses ancillary thereto

"Deed"

this deed of agreement

"Development"

the development described in the Application

"Disabled Persons Badge"

a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Person's Act 1970 (or any legislation which may replace or supersede it)

"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

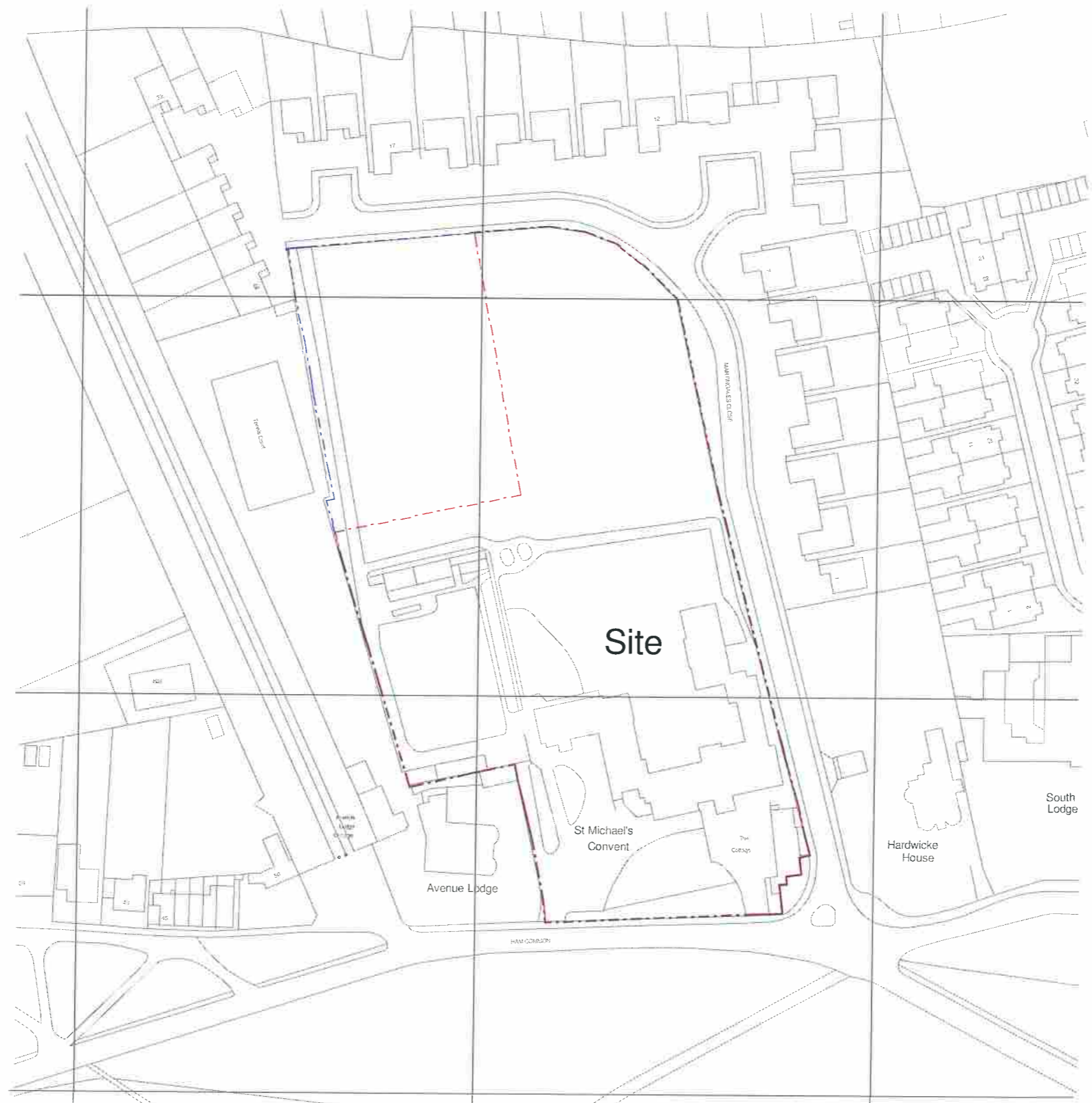
"Indexed"

increased in accordance with the formula whereby the Affordable Housing Contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) (or such other index as may replace it from time to time) as at the date of this Deed and A represents the value of the same index as at the date the Affordable Housing Contribution is due to be paid to the Council

"LDF"

the adopted policies of the Richmond upon Thames Local Development Framework Core Strategy 2009 and Development Management Plan 2011

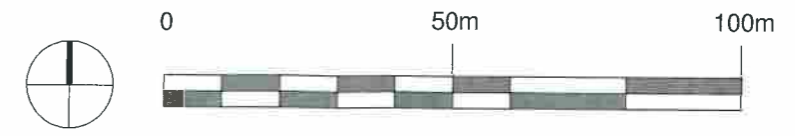
"Plan 1"



*[Handwritten Signature]*  
 Angèle Saiz  
 1/17

--- Ownership Boundary  
 --- Planning Application Boundary

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**Beechcroft**

CDM REGULATIONS 2015. All current drawings and specifications for the project must be read in conjunction with the Designer's Hazard and Environment Assessment Record. All intellectual property rights reserved.

Rev	Date	Description

Dwn	Ckd	Drawn	ed
		Checked	PD
		Date	Feb '17
		Scale @ A3	1:1250

**St Michael's Convent, Ham**  
 Site Location Plan

**AA6250 R1-2001**  
 PLANNING

**PRP**

"Plan 2"

*Handwritten signature*

*Angie Sans*

*1/17*



- Meeting Rooms
- Walled Garden
- Path
- Planning Application Boundary Line



Drawn: HJ  
 Checked: PJ  
 Date: April 2016  
 Scale: A0 1:200

St Michael's Convent, Ham  
 Plan 2

PRP

"Material Start"	the carrying out in relation to the Development of a material operation as defined in Section 56(4) of the Act save that (for the purpose of this Agreement only) the following works shall not constitute a material operation namely, works of demolition; works of site clearance; ground investigations; site survey works; construction of temporary accesses; erection of temporary hoarding and other means of enclosure related to the construction phase; notices and advertising in relation to construction works; and works of archaeological investigation
"Meeting Rooms"	the area shown edged with blue and marked as such on Plan 2
"Monitoring Fee"	the sum of £ <u>3,984.00</u>
"Occupation"	full and beneficial occupation of the Property (save that this expression shall not include occupation for the purposes of construction or fitting out or for marketing or security purposes) and "Occupy" and "Occupied" shall be construed accordingly
"Occupation Date"	first Occupation for residential purposes within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)
"Parking Permit"	a parking permit (whether for residential or visitor use) for a Permit Parking Bay
"Permit 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)
"Plan 1"	the plan attached hereto entitled 'Site Location Plan' dated February 2017 with drawing reference 'AA6250 R1-2001'
"Plan 2"	the plan attached hereto entitled 'Plan 2' dated April 2018
"Planning Permission"	planning permission to be granted by the Council pursuant to the Application
"Practical Completion"	practical completion (excluding any snagging or other smaller items of work ordinarily falling to be completed by a contractor after the issue of a certificate of practical completion under a

*S.H.P.  
B.L.K.  
M.P.*

building or works contract) as evidenced by a certificate issued by the Owner's architect project manager or other professional under such contract (and "Practically Complete" and "Practically Completed" shall be construed accordingly)

"Property"	land known as land at St Michael's Convent, 56 Ham Common, Ham, Richmond, Surrey TW10 7JH shown edged with red on Plan 1
"Residential Unit"	a unit of residential (C3) accommodation forming part of the Development (and "Residential Units" shall be construed accordingly)
"Substantial Implementation"	means:  <ol style="list-style-type: none"><li>1. the completion of all ground preparation works for the new build element of the Development; and</li><li>2. the completion of all foundations for the new build element of the Development; and</li><li>3. the completion of the construction of the ground floor of the new build element of the Development (to include all external walls and ceilings)</li></ol>
"Walled Garden"	the area edged with green and marked as such on Plan 2

**NOW THIS DEED WITNESSETH** as follows:

1. THIS Deed is made pursuant to Section 106 of the 1990 Act Section 16 of the 1974 Act, Section 111 of the 1972 Act and Section 1 of the 2011 Act and all other enabling powers and the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act insofar as they fall within the terms of Section 106 of the Act.
2. THE Owner covenants with the Council in the terms set out in this Deed including Schedules 1 – 6 (inclusive) to this Deed.
3. THE Council covenants with the Owner in the terms set out in this Deed including Schedule 7 to this Deed.
4. **IT IS HEREBY AGREED and DECLARED:**

*Miscellaneous agreements and declarations*

- (a) Nothing contained or implied in this Deed constitutes planning permission or 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

- (b) 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
- (c) Reference to the masculine feminine and neuter genders shall include all other genders and reference to the singular shall include the plural and vice versa
- (d) A reference to a clause is a reference to a clause contained in this Deed
- (e) The expressions the "Council" and the "Owner" shall include their respective successors in title and assignees

*Local land charge provisions*

- (f) This Deed is a local land charge and shall be registered as such in the Council's register of local land charges immediately on completion hereof

*Reference to statutes and statutory instruments*

- (g) References in this Deed to any statute or statutory instrument shall include and refer to any statute or statutory instrument amending consolidating or replacing the same

*Variations*

- (h) 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
- (i) This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of a planning application pursuant to Section 73 of the 1990 Act and the grant of a planning permission granted pursuant to such application (a "Section 73 Planning Permission") and on the assumption that this Deed had been completed contemporaneously with the grant of such Section 73 Planning Permission (and references in this Deed to Planning Permission are construed as references to the Section 73 Planning Permission and references in this Deed to the Development are construed as references to the development permitted by the Section 73 Planning Permission (the "Section 73 Development") with the intent that the planning obligations and covenants contained in this Deed shall have effect in relation to the implementation of the Section 73 Planning Permission and the carrying out of the Section 73 Development as they do in relation to the implementation of the Planning Permission and the carrying out of the Development.

*English law applicable*



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

*Effect of revocation of planning permission*

- (k) In the event of the Planning Permission being revoked by the Council or revoked or quashed any other authority having powers in relation to planning matters or otherwise modified by any statutory procedure without the consent of the Owner or its successors in title the obligations of the Owner under this Deed shall thereupon cease absolutely

*Waivers not to be of a continuing nature*

- (l) 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 thereof by the Owner

*Liability of subsequent owners and release of former owners*

- (m) The provisions hereof shall be enforceable by the Council against the Owner and its successors in title and assigns 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 interest in such land)

*Contracts (Rights of Third Parties) Act 1999*

- (n) 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

*Notices*

- (o) Any notice to be given under this Deed must be in writing and be delivered by hand or sent by pre-paid first class post or other next working day delivery service and shall be given to the Council at its address shown at the beginning of this Deed marked for the attention of the HDM and in the case of the Owner at its address shown at the beginning of this Deed or (in either case) such other address for service as either party may notify by notice in writing to the other

*CIL Regulations 2010 (as amended)*

- (p) The parties hereto agree that 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 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.

*Costs*

- (q) On the date hereof the Owner shall pay to the Council the sum of £2,500 being the Council's reasonable legal costs incurred in the preparation negotiation and completion of this Deed
- (r) Within one month of a Material Start the Owner shall pay to the Council the Monitoring Fee

*Disputes*

- (s) All differences and disputes which may arise between the parties hereto concerning this Deed shall:
  - (i) where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;
  - (ii) where the difference or dispute relates to the carrying out of works of construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practicing in a leading firm of surveyors or civil engineers based in the south east of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute.
  - (iii) If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practicing in the south east of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses (i) or (ii) hereto is applicable
  - (iv) Except as aforesaid any expert appointed pursuant to sub-clauses (i) or (ii) or (iii) or any other person shall:
    - (A) on his appointment serve written notice thereof on the parties in dispute;
    - (B) consider any written representations by or on behalf of those parties which are received by him within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;
    - (C) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;
    - (D) have an unfettered discretion to determine the reference to him;
    - (E) serve notice of his determination as soon as he has made it;

- (F) give full and clear reasons for his decision;
- (G) be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error)
- (t) This Deed shall not be enforceable against individual owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission or against those deriving title from them save in respect of the provisions of Schedule 2 and Schedule 3 which shall be enforceable against such owner-occupiers and tenants;
- (u) this Deed shall not be enforceable against statutory undertakers which shall take a transfer lease or easement over any part of the Property for the purpose of providing services (including gas water electricity and drainage) to the Development
- (v) This Deed shall have effect on the date hereof Provided Always That the provisions of Schedules 2 – 7 (inclusive) are conditional upon:
  - (i) the grant of the Planning Permission; and
  - (ii) the Commencement of Development
- (w) Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- (u) Where the agreement, approval, consent or expression of satisfaction is required by either party from the other under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed

**IN WITNESS** whereof the parties have executed this agreement as a deed and delivered it the day and year first before written

## SCHEDULE 1

### Notification Requirements

1. The Owner hereby covenants to give to the Council:
  - 1.1 Not less than seven (7) days prior written notice of a Material Start
  - 1.2 Written notice of a Material Start within seven (7) days of the occurrence of the same.
  - 1.3 Written Notice of the Substantial Implementation of the Development within seven days of the occurrence of the same.
  - 1.4 Written notice of the Occupation Date of any Residential Unit within seven (7) days of the occurrence of the same.
  - 1.5 Written notice of the Occupation of the tenth (10<sup>th</sup>) Residential Unit to be Occupied within seven (7) days of the occurrence of the same.
  - 1.6 Subject to the matters referred to in paragraph 1 of Schedule 6 occurring and the provisions of Schedule 6 having effect written notice of the Occupation of the fifteenth (15<sup>th</sup>) Residential Unit to be Occupied within seven (7) days of the occurrence of the same.

## SCHEDULE 2

### Restriction on Parking Permits for Residential Units

1. Not to make an application for a Parking Permit in respect of any Residential Unit or knowingly permit the Owner or any Occupier of a Residential Unit to make such an application and further not to make an application to the Council to enter into a contract (other than individual contracts for one occasion) to park a motor vehicle in any car park controlled by the Council PROVIDED ALWAYS THAT the provisions of this paragraph shall not apply to a person who is the holder of a Disabled Persons Badge
2. In any case where an application is made as aforesaid and a Parking Permit is issued to the Owner or any Occupier of a Residential Unit or a contract (of the type referred to above) is entered into such Owner or Occupier shall surrender such Parking Permit to the Council or terminate such contract with the Council (or in the case of a Parking Permit issued to or contract entered into by a third party to procure that the same is surrendered or terminated) within 7 days of written demand by the Council.
3. Not to Occupy or dispose of any interest in any Residential Unit or cause or permit any person to be an Occupier of a Residential Unit or dispose of any interest in a Residential Unit unless and until a notice in writing has been served on such person to the effect that such person shall not:
  - 3.1 be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons Badge) to be granted a Parking Permit in respect of the Residential Unit; or
  - 3.2 be entitled to enter into a contract (other than individual contracts for one occasion) with the Council to park a motor vehicle in any car park controlled by the Council
4. That all materials used for advertising or marketing the Residential Units for letting or sale shall notify prospective owners and occupiers that they will not be entitled to apply for a Parking Permit or buy a contract to park within a car park owned or controlled by the Council (other than in the circumstances set out in paragraph 3.1 and 3.2 above).
5. That in respect of every lease tenancy agreement licence or other disposition proposed to be granted or otherwise created by the Owner in respect of any Residential Unit and which would entitle any person to be an Occupier of a Residential Unit the Owner shall impose the following covenant (or a covenant in substantially the like terms) on the lessee tenant licensee or other disponent in every lease tenancy agreement licence or other disposition namely:

*"the lessee for himself and his successors in title being the owner for the time being of the terms of years hereby granted hereby covenants with the lessor and separately with the Mayor and Burgesses of the London Borough of Richmond upon Thames ("the Council") not to apply for or knowingly permit an application to be made by any person residing in the premises to the Council for a Parking Permit in respect of such premises and if a Parking Permit is issued then it shall be surrendered within 7 days of written request to do so from the Council and this covenant shall be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999 Provided Always That this provision shall not apply to a person*

*who is the holder of a disabled person badge issued pursuant to section 21 of the Chronically Sick and Disabled Person Act 1970 (or such other legislation as may supersede it and provide for the issue of disabled persons parking badges/permits)".*

6. Upon receipt of a written request from the Council to provide to the Council such information as the Council may reasonably require to enable it to be satisfied as to compliance with the provisions of this Schedule 2.

**SCHEDULE 3**

**Minimum age occupancy**

Not to Occupy or allow or permit any person (other than a person of age 55 or over) to Occupy any of the Residential Units.

## SCHEDULE 4

### Community use of Walled Garden and Meeting Rooms

1. To insure and keep insured the Meeting Rooms and Walled Garden against loss or damage by fire and such other risks as the Owner may determine in the full reinstatement value thereof (including fees and VAT) and if the Meeting Rooms and Walled Garden or any part thereof are damaged or destroyed by any of the insured risks the Owner shall subject to obtaining all necessary consents and approvals forthwith utilize the insurance monies received (making up any shortfall out of its own monies) in rebuilding and reinstating the Meeting Rooms and Walled Garden or the part so damaged or destroyed as soon as reasonably practicable.
2. Not to use or permit the Walled Garden to be used other than as a garden and not to use or permit the Meeting Rooms to be used other than for the Community Purposes.
3. To keep and maintain the Meeting Rooms and Walled Garden in good repair and condition.
4. To keep and properly maintain the fences and walls on the boundary of the Walled Garden in good repair and condition.
5. To keep and maintain the Walled Garden tended and properly landscaped and in a clean and tidy condition.
6. Not to cause or permit any nuisance to take place in the Meeting Rooms and/or in the Walled Garden.
7. Not to cause or permit the Meeting Rooms or Walled Garden to be used for residential purposes except in cases of national or local emergency brought about by natural disasters such as storm flood or fire and then on a short term basis only.
8. To allow the public access in accordance with the Community Access Plan on foot and with or without perambulators, wheelchairs and mobility scooters over and along the path shown coloured brown on the Plan 2 for the purpose of:
  - 8.1 gaining access to and egress from and using and enjoying the Walled Garden; and
  - 8.2 gaining access to and egress from the Meeting Rooms.
9. Not later than six months after a Material Start at its own cost and expense to prepare and submit to the Council the Community Access Plan for the Council's written approval.
10. Not to Occupy or cause or permit to be Occupied any Residential Unit until the Community Access Plan has been approved by the Council in writing.
11. Subject to paragraph 12 below at all times to comply with the provisions of the approved Community Access Plan including (without prejudice to the generality thereof) to permit and allow community groups and others the right to use the Meeting Rooms for Community Purposes at the times and on the terms contained in the approved Community Access Plan.



12. In the event any uses being undertaken or carried out pursuant to paragraph 2 of this Schedule in the reasonable opinion of the Owner do or threaten to create a nuisance THEN the Owner shall be permitted to take all reasonable steps to control and/or stop such uses AND following such action shall within 7 days notify the Council in writing of the events and reasons for taking such action.
13. In the event the Owner complies with the provisions of paragraph 12 of this Schedule the Owner shall not be liable under paragraph 6 of this Schedule.

**SCHEDULE 5**

**Affordable Housing Contribution**

1. To pay to the Council the Affordable Housing Contribution on or before the Occupation Date and not to Occupy or permit or allow to be Occupied any Residential Unit unless and until the Affordable Housing Contribution has been paid to the Council.

**SCHEDULE 6**  
**Viability Review**

**Definitions**

For the purpose of this Schedule (and to the extent that the following terms are also used elsewhere in this Deed) the following terms shall have the meanings ascribed to them below and any capitalised terms used in this Schedule which are not defined in this Schedule but are defined in Clause 1 of this Deed shall have the meanings ascribed to them in Clause 1 of this Deed:

“Additional Affordable Housing Contribution”	means a sum equal to fifty per centum (50%) of the Surplus
“Base Rate”	means the Bank of England official dealing rate as set by the Monetary Policy Committee
“CIL”	means Community Infrastructure Levy charged on development pursuant to the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended)
“Commercial Floorspace”	means floorspace within the Development other than residential floorspace
“Developer’s Profit”	means a sum equal to twenty per centum (20%) of the Development Value
“Development Costs”	means the aggregate of the undermentioned costs necessarily and reasonably incurred in undertaking the Development up to the Review Date: <ol style="list-style-type: none"><li>1. the costs of securing the Planning Permission and the grant of all approvals and consents required pursuant to the conditions of the Planning Permission;</li><li>2. the cost of complying with all planning obligations specified in this Deed (other than the obligation to pay the Affordable Housing Contribution and the obligations in this Schedule);</li><li>3. all bond costs and approval and supervision fees payable under any highways agreement entered into in respect of the Development;</li><li>4. site investigation and survey costs and the cost of remediation and decontamination works;</li><li>5. demolition and construction costs (including diversion and provision of utilities) and the cost of all necessary highway works on and outside the Property;</li><li>6. building regulation fees;</li><li>7. insurances;</li><li>8. warranty costs;</li><li>9. marketing, disposal and legal costs and fees necessarily incurred;</li></ol>

10. all other reasonable professional costs and fees reasonably and necessarily incurred;
11. irrecoverable VAT;
12. Interest Costs;
13. all other costs reasonably and necessarily incurred in undertaking the Development;

and where contracts have been let and/or expenditure committed or incurred with unconnected third parties on an arm's length basis such costs shall represent actual agreed tender prices or expenditure committed or incurred (including any known variations) Provided That where the final costs under any such contracts are not known then such final costs shall represent a reasonable estimate of such final costs;

and where contracts have been let and/or expenditure committed or incurred with connected third parties or otherwise than on an arm's length basis then such costs shall represent reasonable estimates on the assumption that the same are procured from unconnected third parties on an arm's length basis;

and where contracts have not been let and/or other items of expenditure have not yet been committed or incurred then such costs shall represent reasonable estimates on the assumption that the same are procured from unconnected third parties on an arm's length basis;

Provided Always That in determining development costs no item shall be counted more than once

"Development Value"

means the aggregate of the following:

1. the consideration paid on the sale of the freehold interest or the grant of a Long Lease (as the case may be) in each of the Residential Units;
2. (in the case of any Residential Unit which has not been sold at the Review Date) the estimated Market Value at the Review Date of all unsold Residential Units on the assumption of a sale of the freehold interest or the grant of a Long Lease (as the case may be);
3. (in the case of any Residential Unit which has not been the subject of a freehold sale at the Review Date) the estimated Market Value at the Review Date of the freehold interest in all such unsold Residential Units on the assumption of a sale of the freehold interest;
4. the consideration paid on the sale of the freehold interest and any premium paid on the grant of a leasehold interest in all Commercial Floorspace;
5. (in the case of any Commercial Floorspace which has not been the subject of a freehold sale at the Review Date) the estimated Market Value at the Review Date of the freehold interest in all unsold Commercial Floorspace on the assumption of a sale of the freehold interest;
6. all rental income licence fees and other income received from the

use and/or Occupation of the Property including (but not limited to):

- (i) any existing buildings and structures situated on the Property;
- (ii) that part of the Property not covered by existing buildings or structures;
- (iii) the Residential Units and Commercial Floorspace constructed on the Property; and
- (iv) that part of the Property upon which the Development shall be constructed including buildings structures and land not covered by buildings (but excluding Residential Units and Commercial Floorspace);

during the period up to and including the Review Date.

Provided That where any consideration paid under paragraphs 1, or 4 are not payable under an arm's length transaction at Market Value then the Market Value specified in paragraphs 2 and 5 respectively shall be substituted for the consideration paid

"Interest Costs" means interest accruing on the Land Cost and the Development Costs from the date of this Deed until the Review Date on a cash flow basis with interest accruing and being compounded quarterly at a rate of four and three quarter per centum (4.75%) above Base Rate on the aggregate of such costs after income from Development Value is first offset

"Land Cost" means the sum of fourteen million pounds (£14,000,000);

"Long Lease" means a long lease granted in consideration of the payment of a premium at a ground rent and with no unusually onerous covenants and conditions

"Review Date" means the earlier of:  
1. the date of Practical Completion of the tenth (10<sup>th</sup>) Residential Unit; or  
2. the date of exchange of contracts for the sale of the tenth (10<sup>th</sup>) Residential Unit;

"Surplus" means such sum (if a positive figure) as shall be calculated by applying the undermentioned formula at the Review Date:

$$£A - (B + C + D)$$

where A is the Development Value;

B is the Land Cost;

C is the Development Costs; and

D is the Developer's Profit

"Viability" means a written financial assessment and appraisal of the viability of the Development on an open book basis with the purpose of

Assessment” determining the Development Value the Development Costs the Developer’s Profit the Surplus (if any) and (in the event of a Surplus) the Additional Affordable Housing Contribution;

#### **Condition for a Viability Review**

1. In the event that Substantial Implementation shall not have occurred on or before the date two (2) years after the grant of the Planning Permission then the provisions of this Schedule shall have effect.
2. For the avoidance of doubt if Substantial Implementation shall have occurred on or before the date two (2) years after the grant of the Planning Permission then the provisions of this Schedule shall be of no effect and the Owner shall be under no obligation to the Council to carry out a Viability Review or pay an Additional Affordable Housing Contribution to the Council.

#### **Calculation and payment of Additional Affordable Housing Contribution**

3. On the Review Date the Owner shall at its own cost and expense undertake and prepare in good faith a Viability Assessment and the Owner shall deliver the same to the Council within one month of the Review Date together with all supporting financial information
4. Upon receiving a written request from the Council to provide further financial or other supporting information in relation to the submitted Viability Assessment as the Council shall reasonably require (including in the case of any Residential Unit which shall not have been sold at the Review Date details of the consideration contained in any contract exchanged for the disposal of an interest in such Residential Unit which has not been completed) the Owner shall promptly deliver the same to the Council.
5. On delivery of the Viability Assessment to the Council the Owner and the Council shall each use reasonable endeavours to agree the specified matters referred to in the definition of the Viability Assessment and in particular the Surplus (if any) and (in the event of a Surplus) the Additional Affordable Housing Contribution.
6. The fees and costs of any independent valuer appointed by the Council to assess the Viability Assessment and advise the Council upon the same shall be paid by the Owner to the Council within twenty one (21) days of a written demand such fees to be capped at £10,000 (Ten Thousand Pounds) (exclusive of VAT).
7. If following the expiry of six (6) weeks after the delivery of the Viability Assessment to the Council the Owner and the Council have failed to agree the Viability Assessment then either the Owner or the Council may refer any difference or dispute between them for determination by an expert in the manner provided in Clause 5(s)
8. If the Owner and the Council agree or the expert (appointed under clause 5(s)) determines an amount of Additional Affordable Housing Contribution payable then the same shall be paid by the Owner to the Council within one month of such agreement (or determination).
9. The Owner shall not Occupy or cause of permit to be Occupied more than fifteen (15) Residential Units until:

- 9.1 the Viability Assessment has been agreed or determined (in the manner provided by clause 5(s)); and
- 9.2 (in the event of a Surplus) the Additional Affordable Housing Contribution has been paid to the Council.

## SCHEDULE 7

### Council's Covenants

1. To use the Affordable Housing Contribution and any Additional Affordable Housing Contribution towards the provision of Affordable Housing.
2. The Council covenants with the Owner that it will repay to the Owner such amount of the Affordable Housing Contribution paid to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the Council of such payment
3. The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.



**THE COMMON SEAL of the MAYOR  
AND BURGESSES  
OF THE LONDON BOROUGH OF  
RICHMOND UPON THAMES** was  
hereunto affixed in the presence of:-

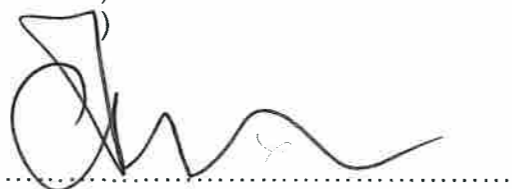


Authorised Officer

Seal Reg. No. 28756/03



**EXECUTED as a Deed by  
BEEHCROFT DEVELOPMENTS  
LIMITED** acting by two directors  
or a director and the company  
secretary:-

)  
)  
)  
)  
)  
  
.....

Director

Director / Company Secretary

  
.....

Dated 23 April 2018

THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF RICHMOND

-and-

BEECHCROFT DEVELOPMENTS LIMITED

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**DEED OF AGREEMENT**

made under Section 106 of the  
Town and Country Planning Act 1990  
Section 16 of the Greater London Council (General  
Powers) Act 1974  
and other powers  
relating to land known as St Michael's Convent, 56  
Ham Common, Ham, Richmond, Surrey TW10 7JH

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Ref: LEG/JRQ