

THIS AGREEMENT is made as a Deed the *20th* day of *June* two thousand and nineteen

BETWEEN

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

and

THE LONDON DIOCESAN FUND (a company registered under number 00150856) whose registered office is at Diocesan House, 36 Causton Street London SW1P 4AU ("the First Owner")

and

THE INCUMBENT OF THE BENEFICE OF ALL SAINTS HAMPTON IN THE COUNTY OF MIDDLESEX IN THE DIOCESE OF LONDON AND HIS SUCCESSORS of Diocesan House 36 Causton Street London SW1P 4AU ("the Second Owner")

WHEREAS:

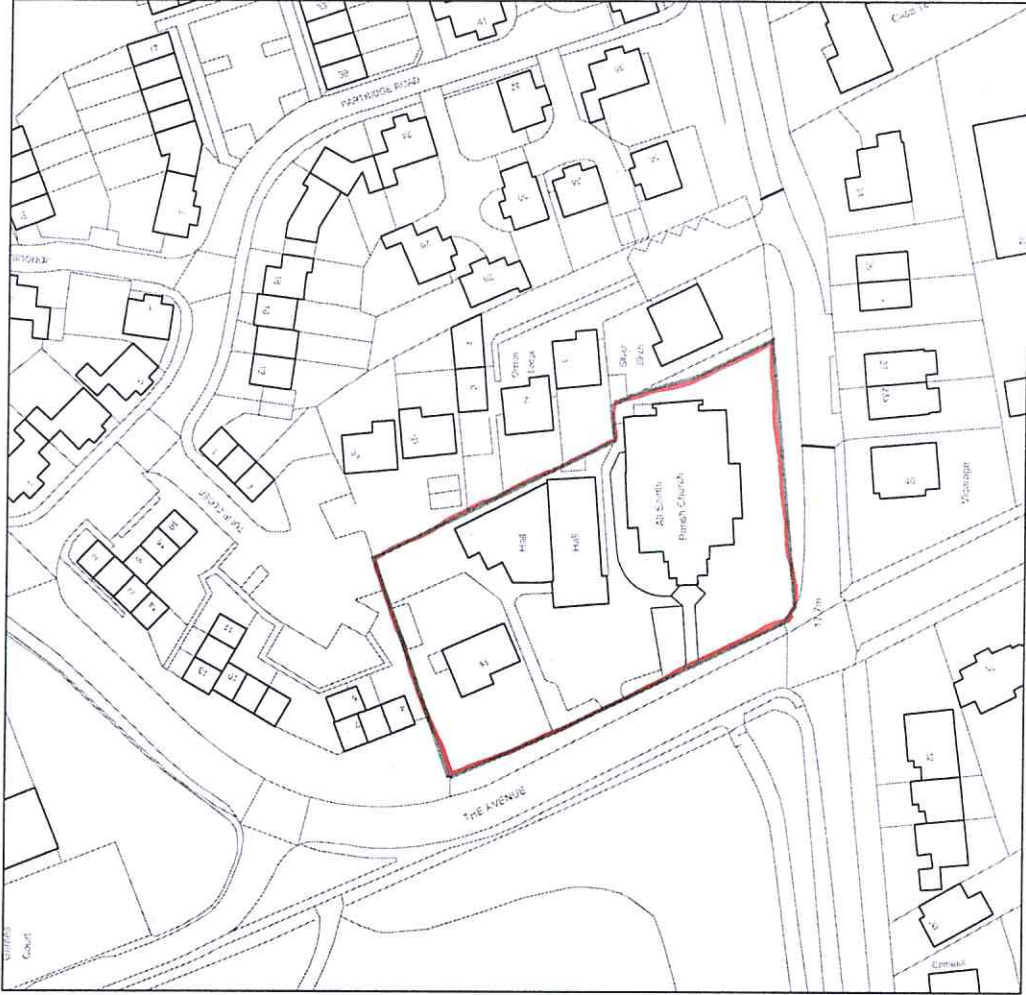
- (1) The Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the 1990 Act and for the purpose of Section 106 of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable and this Deed is conditional upon the grant of Planning Permission pursuant to the Planning Application.
- (2) The First Owner is registered at the Land Registry with absolute title as the proprietor of the freehold interest in the Property registered under title number MX365265.
- (3) The Second Owner is registered at the Land Registry with absolute title as the proprietor of the freehold interest in the Property registered under the number TGL276627.
- (4) The Second Owner has submitted the Planning Application to the Council and the Owners have entered into this Deed in order to secure the planning obligations contained in it in accordance with the Council's Local Plan.
- (5) The Second Owner has obtained from the Consistory Court of the Diocese of London a faculty dated 29th April 2019 authorizing the Second Owner to enter into this Agreement insofar as it relates to the Property registered under the number TGL276627

NOW THIS DEED WITNESSETH as follows:-

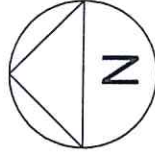
1. INTERPRETATION

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

“1990 Act”	the Town & Country Planning Act 1990 (as amended);
“Development”	the development described in the Planning Application;
“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;
“Narthex”	means the new entrance lobby to the church to be constructed pursuant to the Planning Permission;
“Material Start”	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; the erection of fences and hoardings and construction of temporary access and service roads; noise attenuation works; and other works and site establishment preparatory to the commencement of construction, including any operations permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015;
“Occupation”	the full and beneficial occupation of a Unit (but this expression shall not include occupation for the purposes of construction or fitting out or for marketing or security purposes) and “Occupied” and “Occupy” shall be construed accordingly;
“Owners”	means together the First Owner and the Second Owner;
“Planning Application”	a planning application validated by the Council on 6 th February 2018 bearing reference number 18/0315/FUL for the demolition of the existing



[Handwritten signature]



date	rev	revision/author/checker	drawn	OS	project	purpose of issue
Nov 18	A	Red line adjusted in south east corner	checked		All Saints' Church The Avenue Hampton	PLANNING
			scale	1:1250	drawing	drawing no
			date	MAR 16	LOCATION PLAN	L1137/2.4/01
						rev
						A

church hall and the bungalow on the Property and erection of four dwellings a new entrance lobby ("Narthex") to the church a new church hall incorporating one two-bedroomed flat on the first floor creation of a new crossover and associated hard and soft landscaping 12 off-street parking spaces cycle refuse and recycling stores;

"Planning Permission"

a planning permission granted by the Council pursuant to the Planning Application;

"Property"

land known as 44 The Avenue and All Saints Parish Church The Avenue Hampton TW12 3RG delineated in red on the plan attached hereto;

"Units"

the residential units to be constructed as part of the Development.

2. STATUTORY PROVISIONS

THIS Deed is made pursuant to Section 106 of the 1990 Act and all other relevant powers and the obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act insofar as they fall within the terms of that section.

3. CONDITIONALITY

WITH the exception of the heading to this Deed, the recitals hereto Clauses 1, 2, 3, 4(c),4(d) and 5 which take effect immediately this Deed takes effect on the grant of Planning Permission and a Material Start.

4. OWNERS' COVENANTS

THE Owners hereby COVENANT and AGREE with the Council:-

- (a) Not to Occupy more than 60% of the Units until the new church hall and Narthex elements in the Development have been completed and are ready for normal occupation and use;
- (b) Not to Occupy the new church hall to be constructed in the implementation of the Development until a community use agreement has been completed with the Council incorporating the elements in the Schedule to this Deed in a form to be agreed by the parties hereto or in default of agreement in accordance with Clause 5(o) of this Deed;
- (c) To give prior written notice to the HDM of its intention to commence the Development at least seven (7) days before making a Material Start;
- (d) On the completion of this Deed to pay the Council's legal costs in preparing this Deed in the sum of £900 and a monitoring fee in the sum of

£741 for the Council's administrative costs in monitoring the fulfilment of the planning obligations in this Deed.

5. 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 First Owner" and "the Second Owner" shall include their respective successors in title and assigns;
- (d) 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;

Local land charge provisions

- (e) 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;

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;

Liability of subsequent owner and release of former owner

- (h) The provisions hereof shall be enforceable by the Council against the Owners and all persons who shall have derived title through or under them in respect of their respective 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 or part of the land to which the breach relates);

Effect of covenant

- (i) 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

- (j) 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 and the Owners;

Termination or Release

- (k) 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 Owners) if having been granted the Planning Permission is varied or revoked other than at the request of the Owners or the Planning Permission having been granted is quashed following a successful legal challenge and in any such case any sums paid by the Owners under this Deed shall be repaid to the Owners 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;

Interest on late payment

- (l) If any payment due under Clause 2(a) as this Deed is not paid to the Council within the timescales stipulated therein, then interest shall be paid on such contribution at the rate of 4% above the base rate of Barclays Bank plc from time to time in force from the date that the contribution became due to the date of actual payment;

Community Infrastructure Levy

- (m) The terms of this deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure 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 relate in scale and kind to the Development and the Council confirms that in relation to any 'relevant infrastructure' (as defined by Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended)) which is provided for or funded by this Deed since 6 April 2010 no more than four obligations pursuant to Section 106 of the Act have been entered into which provide for any such infrastructure project or type of infrastructure;

Variation of planning permission

- (n) the provisions of this Deed shall apply to any planning permission granted pursuant to section 73 of the Act which varies the Planning Permission as if such new planning permission had fallen within the term "Planning Permission" as originally defined within this Deed and shall similarly apply to any non-material amendment to the Planning Permission permitted pursuant to section 96A of the Act;


Resolution of Disputes

- (o) 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 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 ("the Expert") 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 subject to the following provisions:
 - (i) 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;
 - (ii) 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; and
 - (iii) the costs of any reference of any dispute shall be paid jointly by the Owner and the Council unless otherwise determined in the independent person's award.

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

The Common Seal of the **London Borough of Richmond upon Thames** was hereunto affixed in the presence of:




Authorized signatory



Seal register number: 29018/3

EXECUTED as a **DEED** on behalf of the **London Diocesan Fund** by:



Authorized signatory 

EXECUTED as a **DEED** under Seal by the **Reverend Gareth Kevin Wardell** **The Incumbent Of The Benefice Of All Saints Hampton In The County Of Middlesex In The Diocese Of London** in the presence of



Witness 

Name PAULA WILLIAMS

Address 21 BROAD LANE, HAMPTON, TW12 3AL

Occupation RETIRED CIVIL SERVANT

SCHEDULE

(Elements to be included in Community Use Agreement)

Hours of use: A minimum commitment of not less than 52 qualifying bookings per year, with a qualifying booking having a minimum length of one hour and a maximum length of four hours. Where a booking is in excess of four hours, this shall be recordable as two qualifying bookings.

Access: The facilities to be made available to the general public including organised clubs, organisations and for casual use (being availability for any individuals or groups to book up for use on a "pay as you go" basis, where space is available). Access subject to compliance with the terms of use of the facilities at all times.

Charges: *[To be agreed but sufficient to support the operation of the hall. The agreement should provide for any surplus to be either put towards the operation of the Church or into a contingency fund towards any necessary repairs or upgrades to the Hall. Such charges to be in line with the charges for comparable facilities in the local area.]*

Management responsibilities:

- to resource, control and ensure the routine maintenance of the facilities to provide for the community use of the facilities;
- make the facilities available at the specified times (as a minimum);
- ensure provisions of heat, light, water and such other amenities as are required for the intended use of the facilities;
- ensure the facilities comply with all requirements for access for disabled access as are in force at the time of the agreement; and
- cover the cost of gas, fuel, electricity, water, rates and taxes that may be attributable to the use of the facilities.

Dated *20th June* 2019

The London Diocesan Fund

-and-

**The Incumbent Of The Benefice Of All
Saints Hampton In The County Of
Middlesex In The Diocese Of London
And His Successors**

-and-

**The Mayor and Burgesses of the London
Borough of Richmond upon Thames**

**DEED OF AGREEMENT
made under Section 106 of the
Town & Country Planning Act 1990
relating to All Saints Parish Church The
Avenue Hampton TW12 3RG**

Ref CS LEG GRC 217/1694