

THIS DEED is dated *11th December 2019* and made between:

- (1) THE LONDON BOROUGH OF RICHMOND-UPON-THAMES of Civic Centre, 44 York Street, Twickenham, TW1 3BZ (**Council**).
- (2) THE SONS OF DIVINE PROVIDENCE DEVELOPMENTS LIMITED (company registration number 11393450) of 13 Lower Teddington Road, Kingston Upon Thames KT1 4EU (**First Owner**).
- (3) THE SONS OF DIVINE PROVIDENCE (company registration number 4249759) of 13 Lower Teddington Road, Kingston Upon Thames KT1 4EU (**Second Owner**).
- (4) LIFESTYLE RESIDENCES LIMITED (company registration number 10172067) of 131 High Street, Teddington TW11 8HH (**Developer**).
- (5) HAMPTON WICK SENIOR LIMITED of 4<sup>th</sup> Floor, West Wing, Trafalgar Court, Admiral Park, St Peter Port, Guernsey GY1 2JA (**Mortgagee**).

#### **BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The First Owner is the freehold owner of the First Property subject to mortgages in favour of the Mortgagee and the Second Owner but otherwise free from encumbrances.
- (C) The Second Owner is the freehold owner of the Second Property free from encumbrances.
- (D) The Developer has made the Planning Application and is proposing to carry out the Development jointly with the Owners.
- (E) The Mortgagee is the registered proprietor of the charge dated 4 October 2018 referred to in entry number three of the charges register of Title number TGL511553 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (F) The Council resolved at a meeting of its Planning Committee held on 28<sup>th</sup> August 2019 that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

#### **AGREED TERMS**

##### **1. INTERPRETATION**

The following definitions and rules of interpretation apply throughout this Deed:

##### **1.1. Definitions:**

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations: 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; works relating to electrical transformer substation; and any 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 and **Commence** and **Commences** shall be construed accordingly.

**Commencement Date:** the date Development Commences.

**Development:** the development of the Property authorised by the Planning Permission.

**First Property:** the land known as 12 and 14 Station Road and 29 Lower Teddington Road, Hampton Wick, Kingston upon Thames shown coloured yellow on the plan annexed hereto and registered at HM Land Registry with title absolute under title number TGL511553.

**Interest Rate:** means the rate of interest being 4% above the base lending rate of the Bank of England from time to time.

**Occupation:** occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations (and "**Occupy**", "**Occupants**" and "**Occupied**" shall be construed accordingly).

**Owners:** the First Owner and the Second Owner.

**Planning Application:** the application for full planning permission registered by the Council under reference number 19/0111/FUL.

**Planning Permission:** a planning permission to be granted by the Council in respect of the Planning Application.

**Property:** the First Property and the Second Property together shown edged red on the plan annexed hereto.

**Second Property:** the land known as 13 and 19-27 and 31 and 33 Lower Teddington Road Hampton Wick shown coloured pink on the plan annexed hereto and registered at HM Land Registry with absolute title under titles numbered MX451027, MX106436, MX108462, SGL142677, MX194527, MX167234, MX103990 and MX104041.

**TCPA 1990:** the Town and Country Planning Act 1990.

- 1.2. Clause headings shall not affect the interpretation of this Deed.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.11. References to Clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.12. An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

**2. STATUTORY PROVISIONS**

- 2.1. This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 16 of the Greater London Council (General Powers Act) 1974, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2. The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owners with the intention that they bind the interests held by those persons respectively in the Property and their respective successors and assigns.
- 2.3. The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 2.4. To the extent that this Deed contains obligations on the part of the Owners which are not within the descriptions set out in Section 106(1)(a)-(d) of the TCPA 1990 (inclusive) those obligations are undertakings or agreements binding on successors in title of the Owners respectively and persons claiming through or under them within the meaning of Section 16 of the Greater London Council (General Powers) Act 1974.

**3. COVENANTS BY THE OWNER AND THE DEVELOPER**

The Owners and the Developer covenant with the Council to observe and perform the covenants, restrictions and obligations contained in the First Schedule to this Deed.

**4. MORTGAGEE'S CONSENT**

- 4.1. The Mortgagee consents to the completion of this Deed and declares that its interest in the First Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the First Property.
- 4.2. 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 any part of the First Property.

**5. RELEASE AND LIABILITY UNDER THIS DEED**

- 5.1. No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Property or part of its interest in the Property to which the breach

relates, except in respect of any breach subsisting prior to parting with such interest.

5.2. The obligations in the Deed shall not be binding or enforceable against:

- (a) any statutory undertaker or any other person who acquires any part of the Property or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services so long as no other material operation is undertaken save in connection with their statutory duties;
- (b) save for restrictions set out in paragraph 4 of the First Schedule to this Deed the individual owners occupiers of any Independent Senior Living Extra Care Unit or other residential unit to be formed in the implementation of the Development or any mortgagee of an individual Independent Senior Living Extra Care Unit or other residential unit to be provided as part of the Development

**6. DETERMINATION OF DEED**

The obligations in this Deed (with the exception of clause 2) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owners; or
- (c) is quashed following a successful legal challenge.

**7. LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

**8. COUNCIL'S COSTS**

8.1. The Owners shall pay to the Council on or before the date of this Deed:

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.
- (b) the sum of ~~£11,111~~<sup>£1845</sup> as a contribution towards the Council's costs of monitoring the implementation of this Deed.

**9. INTEREST ON LATE PAYMENT**

If any sum or amount has not been paid to the Council by the date it is due, the Owners shall pay the Council interest on that amount at the Interest Rate for the period from the due date to and including the date of payment.

**10. REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

**11. CANCELLATION OF ENTRIES**

11.1. On the written request of the Owners at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

11.2. Following the performance and full satisfaction of all the terms of this agreement or if this Deed is determined pursuant to clause 6 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owners cancel all entries made in the local land charges register in respect of this Deed.

**12. DISPUTES**

12.1. In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

12.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 12.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law

Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

- 12.3. Any expert howsoever appointed:
- (a) shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation;
  - (b) subject to Clause 12.5 act as an expert and not an arbitrator.
- 12.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 12.5. The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

**13. NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

**14. WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**15. FUTURE PERMISSIONS**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other

than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

**16. AGREEMENTS AND DECLARATIONS**

The parties agree that:

- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

**17. VARIATIONS TO PLANNING PERMISSION**

- 17.1. 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 TCPA 1990 as if this Deed had been completed pursuant to such an application.

**18. NOTICES**

- 18.1. Any notice or other communication to be given under this Deed must be in writing and must be:
- (a) delivered by hand; or
  - (b) sent by pre-paid first class post or other next working day delivery service.

or as otherwise specified by the relevant party by notice in writing to each other party.

- 18.2. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**19. THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

**20. GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes



or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof the parties to this Deed have set their common seals the day and year first above written

The common seal of **LONDON BOROUGH OF RICHMOND-UPON-THAMES**

was affixed to this document in the presence of:

[Redacted]

Authorized signatory

*Seal Reg No 29089/3*



Executed as a Deed by **THE SONS OF DIVINE PROVIDENCE DEVELOPMENTS LIMITED** acting by two directors or by one director and its secretary:

[Redacted]

Director

[Redacted]

Director/Secretary

Executed as a Deed by **THE SONS OF DIVINE PROVIDENCE** acting by two directors or by one director and its secretary:

[Redacted]

Director

[Redacted]

Director/Secretary

LIMITED acting by

Director

in the presence of:

.....  
SIGNATURE OF WITNESS

NAME:  
ADDRESS:



Executed as a Deed by  
**HAMPTON WICK SENIOR  
LIMITED** acting by

Director TRIDENT CORPORATE SERVICES  
(NO. 1) LTD  
AS SOLE CORPORATE DIRECTOR

in the presence of:

.....  
SIGNATURE OF WITNESS



NAME: *FELICITY CORNES*  
ADDRESS:



Executed as a Deed by  
**LIFESTYLE RESIDENCES  
LIMITED** acting by

[Redacted Signature]  
Director

in the presence of [Redacted]  
...  
SIGNATURE OF WITNESS

NAME: *Jacquie Moncrieffe*  
ADDRESS: [Redacted]

Executed as a Deed by  
**HAMPTON WICK SENIOR  
LIMITED** acting by

.....  
Director

in the presence of:  
.....  
SIGNATURE OF WITNESS

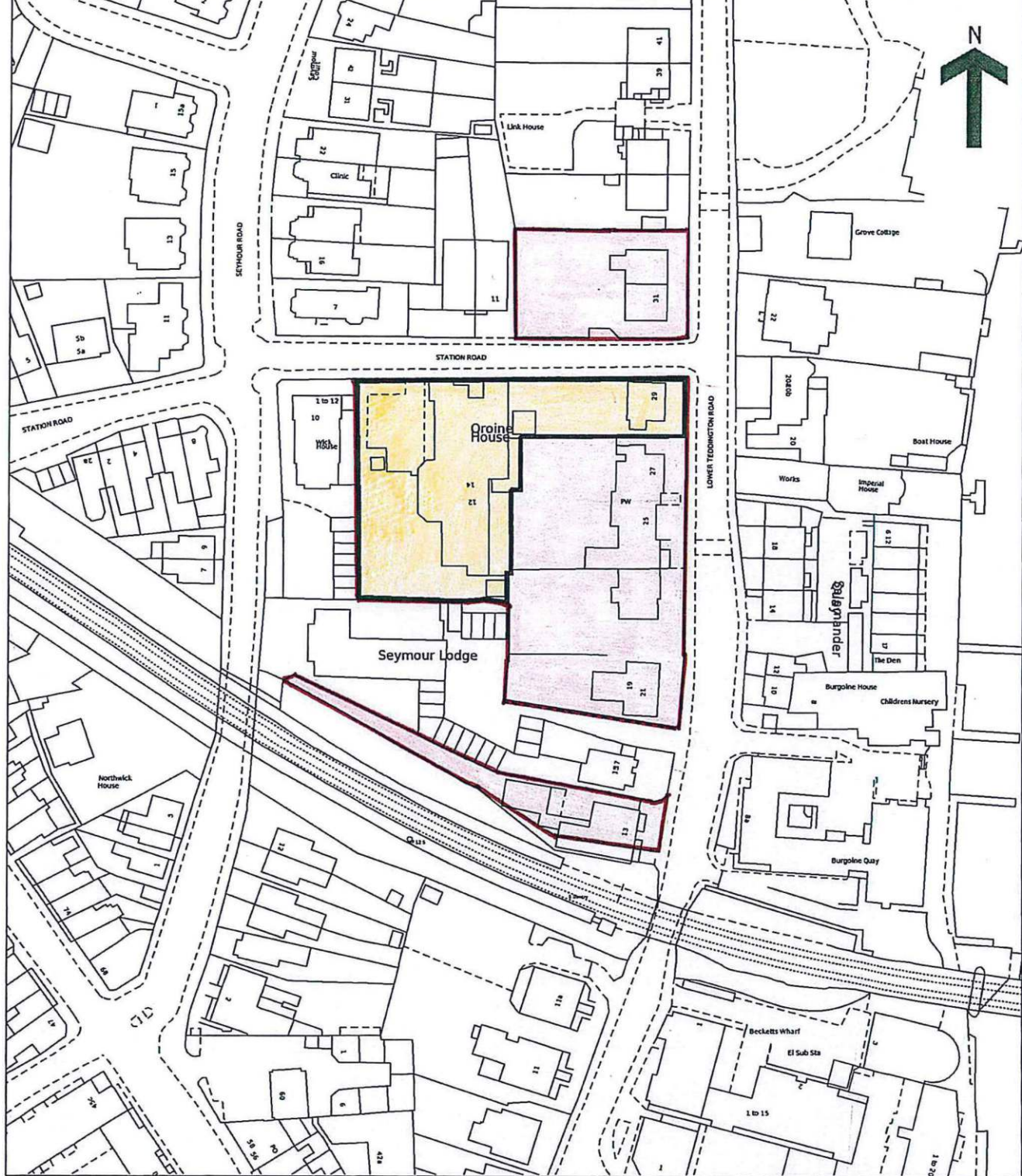
NAME:  
ADDRESS:

HM Land Registry  
Official copy of  
title plan

Title number **TGL511553**  
Ordnance Survey map reference **TQ1769NE**  
Scale **1:1250**  
Administrative area **Richmond upon Thames**



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## **First Schedule Covenants by the Owner and Developer**

### **1. USE OF DEVELOPMENT**

- 1.1. The following Definitions shall have effect for the purposes of paragraphs 1-4 of this First Schedule:

**Affordable Rented Units:** means those 16 residential units to be formed as part of the Development on that part of the Second Property known as 13 and 19-21 Lower Teddington Road Hampton Wick specifically

3 x 1 bed flats and 3 x 2 bed flats at 13 Lower Teddington Road

10 x 1 bed flats at 19-21 Lower Teddington Road

which are to be let to an Eligible Person to be let at no more than the London Affordable Rent (exclusive of service charges) in accordance with the Council's Tenancy Strategy

**Care Package:** means between 2 and 5 hours of care, including Personal Care, per week for every Primary Resident, as determined by the Individual Care Needs Assessment of the Primary Resident and included within the service charge payable by that Primary Resident.

**Care Provider:** means a provider of care services for the Primary Residents who is regulated by the Care Quality Commission.

**Independent Senior Living Extra Care Units:** each of the residential units comprised within that part of the Development to be carried out at that part of the First Property known as 12-14 Station Road Hampton Wick.

**Eligible Person:** means persons nominated by the Council for the purposes of the Nominations Agreement

**Individual Care Needs Assessment:** means the assessment of each Primary Resident by a Care Provider or other operator of the Independent Senior Living Extra Care Units to identify the level and type of Personal Care and other support and assistance they require as set out in the Operational Management Plan and such assessment is to occur prior to first occupation of an Independent Senior Living Extra Care Unit by a Primary Resident and on an ongoing basis throughout the occupation of an Independent Senior Living Extra Care Unit by a Primary Resident.

**London Affordable Rent** means the benchmark rent levels set out in the Mayor of London's "Homes for Londoners : Affordable Homes Programme 2016 – 21 funding guidance" and "Homes for Londoners :

Affordable Homes Programme 2016-21 funding guidance Addendum with updated guidance and arrangements for 2021-22” to be updated annually by CPI inflation plus one per cent.

**Operational Management Plan:** means a plan for the management of the Independent Senior Living Extra Care Units in accordance with paragraphs 1 to 3 of this First Schedule to this deed to be approved from time to time by the Council acting reasonably such approval not to be unreasonably withheld or delayed.

**Personal Care:** means the provision of personal care services including but not limited to the services set out in the Second Schedule to this Deed for people in need of such care by reason of old age or disablement or due to other care needs including support and assistance with activities related to daily living to facilitate fulfilling lives.

**Primary Resident:** means a person who is 65 years in age or older with existing personal, domestic, social, medical, spiritual or emotional care needs as determined by their Individual Care Needs Assessment.

**Qualifying Dependent:** means person or persons (as the case may be) who is or are either a spouse (or persons living as such), family member, or carer of the Primary Resident.

## 2. INDEPENDENT SENIOR LIVING EXTRA CARE UNITS

- 2.1. The First Owner will not Occupy or permit Occupation of any Independent Senior Living Extra Care Unit until 10 of the Affordable Rented Units at 19-21 Lower Teddington Road are available for occupation and other than under an Operational Management Plan.
- 2.2. The Operational Management Plan shall ensure that:
- (a) an occupier of an Independent Senior Living Extra Care Unit is a Primary Resident occupying the Independent Senior Living Extra Care Unit as their sole or primary residence;
  - (b) the Primary Resident within an Independent Senior Living Extra Care Unit must procure a Care Package;
  - (c) a mechanism for monitoring to ensure paragraphs 2.2(a) and (b) of this First Schedule to this Deed are adhered to;
  - (d) a Qualifying Dependent may remain in occupation of an Independent Senior Living Extra Care Unit if the Primary Resident with whom they reside dies notwithstanding that the said Qualifying Dependent may be younger than 65 years of age and/or without any care needs PROVIDED THAT the Qualifying Dependent is occupying the Independent Senior Living Extra Care Unit as their sole or primary residence.

- (e) Primary Residents and Qualifying Dependents shall not be prevented from having overnight temporary visitors.
- 2.3. Following approval of the Operational Management Plan by the Council and Occupation of the Development to:
  - (a) implement the Operational Management Plan as approved;
  - (b) procure that any occupier of an Independent Senior Living Extra Care Unit shall comply with the terms of the approved Operational Management Plan;
- 2.4. The First Owner shall procure that any owner of an Independent Senior Living Extra Care Unit who disposes of their interest in an Independent Senior Living Extra Care Unit shall ensure that such disposal contains a covenant to the effect that the acquiree shall ensure compliance with the terms of the approved Operational Management Plan.
- 3. **PROVISION OF AND NOMINATION TO THE AFFORDABLE RENTED UNITS**
- 3.1. Not to permit the use of the Affordable Rented Units other than as Affordable Housing and occupied as Affordable Rented Housing
- 3.2. Not to permit that part of the Development comprising the Independent Senior Living Extra Care Units to be occupied other than in accordance with Use Class C2 (and any uses ancillary to Use Class C2) of the Town and Country Planning (Use Classes) Order 1987 (as amended) or in accordance with any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modifications.
- 3.3. The Second Owner shall enter into a Nomination Agreement in the form set out in the Third Schedule to this Deed or a substantially similar form in respect of the Affordable Rented Units before the occupation of the Independent Senior Living Extra Care Units
- 4. **RESTRICTION ON THE ISSUE OF CAR PARKING PERMITS**

Not to Occupy or dispose of or allow any person to Occupy or dispose of any or all of the Independent Senior Living Extra Care Units unless a notice has been served on such person that such person shall not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons' Badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons' Act 1970) to be granted a permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing any mechanically propelled vehicle intended or adapted for use on a road or highway to park in any marked highway parking space designated by the Council by a traffic

management order pursuant to statutory or regulatory provision or other place within an existing controlled parking zone (or any controlled parking zone amending or replacing the same) 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.

**5. NOTIFICATIONS**

To provide to the Council written notification seven days prior to its intention to Commence Development and a further written notice of the actual Commencement within seven days of the occurrence of the same;



## **Second Schedule**

### **PERSONAL CARE**

1. Access to on-site support for up to 8 hours each day.
2. Availability of on-call 24/7 emergency support.
3. Provision of room alarms and push button neck lanyard alarms for emergency use.
4. Provision of one meal daily in communal café area.
5. Regular social activities and events programme.

**Third Schedule**

**DATED** \_\_\_\_\_ **2019**

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

**-to-**

**THE SONS OF DIVINE PROVIDENCE (Orione Care)**

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**N O M I N A T I O N   A G R E E M E N T**

**in respect of rented units at  
NOS.13 AND 19-21 LOWER TEDDINGTON ROAD,  
HAMPTON WICK, KT1 4EU  
in the London Borough of Richmond upon Thames**

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**EXD**

R J Mellor  
Head of Legal Services  
London Borough of Richmond upon Thames  
Civic Centre  
44 York Street  
Twickenham, TW1 3BZ

Agreed Draft 07.11.2019

THIS AGREEMENT (made as a Deed) is made the \_\_\_\_\_ day of \_\_\_\_\_ 2019 BETWEEN THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND-UPON-THAMES of the Civic Centre of 44 York Street Twickenham TW1 3BZ (“the Council”) and THE SONS OF DIVINE PROVIDENCE (Orione Care) registered with the Regulator of Social Housing with registered number LH4338, REGISTERED CHARITY with registered number 1088675, and LIMITED COMPANY with registered number 4249759 (“Orione Care”)

WHEREAS

- (1) The Council is a local authority for the purposes of the Local Government Act 1972 and a local housing authority for the purposes of the Housing Act 1985 Part I
- (2) Orione Care is a registered social landlord within the meaning of Section 1 of the Housing Act 1996
- (3) Units are to be built substantially in accordance with Planning Permission (dated 28th AUGUST 2019 – ref number 19/0111/FUL) (as varied or amended) for occupation by persons within Orione Care’s charitable objects and Orione Care has agreed to the Council being given the right to nominate persons to take up occupation of the Units as hereinafter provided

NOW IT IS HEREBY AGREED as follows: -

**1. DEFINITIONS**

- |     |                       |  |
|-----|-----------------------|--|
| 1.1 | “Availability Notice” | means the notices referred to at Sub-clauses 3(a) and (b) hereof   |
| 1.2 | “Nomination Notice”   | means the notice in writing to be given by the Council to Orione Care of the proposed Nominees which shall include the names of such Nominees and all necessary and relevant information pertaining to such Nominees |
| 1.3 | “Nominees”            | means persons nominated by the Council for the purposes of this Agreement  |
| 1.5 | “Property”            | Means the Site   |
| 1.6 | “Relevant Nominee”    | means Nominees to whom Orione Care shall offer a Unit on the Site in accordance with Clause 5 hereof   |

which shall be nominees assessed by Orione Care as appropriate for it to house under its objects, lettings and allocations policies

- 1.7 "Site" means the land and buildings to be erected on the land known as land at NOS. 12-14 STATION ROAD AND 13-33 LOWER TEDDINGTON ROAD, HAMPTON WICK
- 1.8 "Nomination Period" sixty years from the date of practical completion of the Units
- 1.9 "True Voids" a vacancy created in any of the circumstances set out in the First Schedule hereto under the heading "definition of a True Void" but excluding a vacancy arising in any circumstances defined under the heading "definition of a Non-True Void"
- 1.10 "Non-True Voids" as defined in the First Schedule hereto
- 1.11 "Units" means the affordable housing residential units to be managed and provided by Orione Care on the Site (as set out in the Second Schedule hereto)
- 1.12 "RP" means a non-profit registered provider of affordable housing pursuant to the Housing and Regeneration Act 2008
2. Orione Care hereby covenants with the Council
- (i) to construct or procure the construction at the Property of SIXTEEN (16) Affordable Housing Units with the intention of providing low cost housing to rent and to commence renovation of 19/21 Lower Teddington Road on or before

1<sup>ST</sup> SEPTEMBER 2019 subject to any extension of time agreed between the parties hereto and to complete the same by 31<sup>ST</sup> March 2020 and in respect of 13 Lower Teddington Road to commence on or before the 1<sup>ST</sup> September 2024 and to be completed by 1<sup>ST</sup> September 2025 subject to any extension agreed between the parties hereto in accordance with the Planning Permission and to ensure all construction is carried out in a good and workmanlike manner.

(ii) that, subject to subclause (iii), the Council shall have rights to nominate up to 100% of the initial lettings of the Units and shall thereafter have the right to nominate up to 100% of True Voids arising in a calendar year for the Nomination Period unless the Council at its absolute discretion agree to waive or relinquish such rights of nomination. The Definition of a 'True Void' is that contained in the First Schedule hereto

(iii) the parties acknowledge that:

(a) the Council's rights are subject to Orione Care being entitled to give a right of first refusal to five tenants who have been moved from other accommodation and one tenant on their waiting list; and

(b) it is intended that the Units at 19/21 Lower Teddington Road are utilised for independent living for older people and key workers and the Units at 13 Lower Teddington Road are utilised for younger people and key workers

3. Orione Care shall give to the Council: -
  - (a) In the case of an initial letting of any Unit not less than 6 weeks of the actual completion of such Unit and its availability for letting
  - (b) in the case of any Unit being a True Void becoming subsequently available for letting 10 days written Notice of such availability
4. Within 10 days of the receipt by the Council of any Available Notice in respect of a Unit the Council shall in respect of such Unit serve on Orione Care a Nomination Notice
5. Orione Care shall as soon as practicable following receipt of the Nomination Notice offer a tenancy of the said Unit to the Relevant Nominee at a rent no more than the Affordable Rent as contained in the Second Schedule hereto
6. If (a) no Nomination Notice is served by the Council within the 10 days referred to in Clause 4 or (b) Orione Care acting reasonably does not consider the Nominee

appropriate to house or (c) the Relevant Nominee refuses or fails to accept the offer of a tenancy within 7 days of such offer in each case the Council shall be entitled to serve two further and subsequent Nomination Notices **SAVE THAT** where no subsequent Nomination Notices are served within 20 days of the date referred to in clause 4 or the further Relevant Nominees both refuse or fail to accept the offer of a tenancy within 3 days of such offer then Orione Care shall be at liberty to let the unit to persons of its own choosing

7. The procedure for such nominations may at any time during the continuance of this Agreement be varied by agreement between the parties hereto
8. For the avoidance of doubt, the provisions of this Agreement shall cease to apply to any Unit of which Orione Care transfers the freehold/assigns its leasehold interest or grants a long lease to a tenant exercising any statutory right to buy or right to acquire such an interest in that Unit and shall cease to apply to any Unit upon the granting of a Shared Ownership Lease by Orione Care
9. For the avoidance of doubt, IT IS HEREBY AGREED AND DECLARED that the provisions of this Agreement are entered into pursuant to s.33 of the Local Government (Miscellaneous Provisions) Act 1982 and are binding on successors in title but shall: -
  - 9.1 not bind any mortgagee of Orione Care or its successors in title or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to Orione Care or its successors in title
  - 9.2 cease to apply to any part or the whole of the Unit should such part or the whole be transferred or leased by any mortgagee of Orione Care or its successors in title or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to Orione Care or its successors in title
  - 9.3 not bind any individual owner (excluding, for the avoidance of doubt, any owner who is an RP) or occupier of any unit, their successors in title and mortgagees and mortgagees' successors in title
10. Any notice or demand required or authorised shall be deemed to be served on the Council if sent to the Chief Executive of the London Borough of Richmond upon

Official

Thames at its Civic Offices at the address given above and shall be deemed to be duly served on Orione Care and if sent to Orione Care and addressed to the Secretary at its address for the time being as stated above or such other address as may be notified in writing to the Council from time to time PROVIDED ALWAYS that any notice to be served by either party may be served by such party's Solicitors

IN WITNESS whereof the Council and Orione Care have hereunto caused their Common Seals to be affixed the day and year first above written

## FIRST SCHEDULE

### *Definition of True Void*

11. Vacancies created through tenant transfer to another Borough where no reciprocal arrangement exists
12. Vacancies arising through tenant moves to other landlords where no reciprocal arrangement exists
13. Vacancies arising as a result of the death of a tenant where there is no statutory right to succession
14. Vacancies arising through tenants buying their own property in the private sector
15. Vacancies arising as a result of the tenant having been evicted or abandoning a Unit
16. Vacancies arising as a result of a tenant who has been permanently decanted returning to his former home
17. Vacancies arising through tenant transfer within Orione Care's own stock
18. Vacancies arising as a result of a tenant who has previously been decanted

### *Definition of Non-True Void*

19. Vacancies arising as a result of a tenant being temporarily decanted and moving to a temporary home
20. Vacancies arising as a result of a tenant being re-housed via the Housing Association "Homes" scheme or other equivalent
21. Vacancies arising as a result of a tenant being re-housed by another Borough where a reciprocal arrangement exists



## SECOND SCHEDULE

No more than the London Affordable Rent as set out in the Mayor of London's "Homes for Londoners : Affordable Homes Programme 2016 – 21 funding guidance" and "Homes for Londoners : Affordable Homes Programme 2016-21 funding guidance Addendum with updated guidance and arrangements for 2021-22" to be updated annually by CPI inflation plus one per cent.

The following properties to be managed and provided by Orione Care:

- 6 x flats in No.13 Lower Teddington Road
- 10 x flats provided in No.19-21 Lower Teddington Road

Executed as a Deed by **THE SONS OF )**  
**DIVINE PROVIDENCE** acting by two )  
directors or by one director )  
and its secretary ) Director

Director/Secretary

Executed as a deed by the **THE MAYOR AND**  
**BURGESSES OF THE LONDON BOROUGH**  
**OF RICHMOND-UPON-THAMES:**

Authorised signatory

Authorised signatory

**DATED**

11th *December 2019*

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 RELATING TO 12-14 STATION ROAD AND 13 AND 19 TO 33  
LOWER TEDDINGTON ROAD HAMPTON WICK KT1 4HG AND KT1 4EU**

Between

**LONDON BOROUGH OF RICHMOND-UPON-THAMES**

and

**THE SONS OF DIVINE PROVIDENCE DEVELOPMENT LTD**

and

**THE SONS OF DIVINE PROVIDENCE**

and

**LIFESTYLE RESIDENCES LIMITED**

and

**HAMPTON WICK SENIOR LIMITED**

Engrossment 14.11.2019

THIS DEED is dated *11th December 2019* and made between:

- (1) THE LONDON BOROUGH OF RICHMOND-UPON-THAMES of Civic Centre, 44 York Street, Twickenham, TW1 3BZ (**Council**).
- (2) THE SONS OF DIVINE PROVIDENCE DEVELOPMENTS LIMITED (company registration number 11393450) of 13 Lower Teddington Road, Kingston Upon Thames KT1 4EU (**First Owner**).
- (3) THE SONS OF DIVINE PROVIDENCE (company registration number 4249759) of 13 Lower Teddington Road, Kingston Upon Thames KT1 4EU (**Second Owner**).
- (4) LIFESTYLE RESIDENCES LIMITED (company registration number 10172067) of 131 High Street, Teddington TW11 8HH (**Developer**).
- (5) HAMPTON WICK SENIOR LIMITED of 4<sup>th</sup> Floor, West Wing, Trafalgar Court, Admiral Park, St Peter Port, Guernsey GY1 2JA (**Mortgagee**).

#### **BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The First Owner is the freehold owner of the First Property subject to mortgages in favour of the Mortgagee and the Second Owner but otherwise free from encumbrances.
- (C) The Second Owner is the freehold owner of the Second Property free from encumbrances.
- (D) The Developer has made the Planning Application and is proposing to carry out the Development jointly with the Owners.
- (E) The Mortgagee is the registered proprietor of the charge dated 4 October 2018 referred to in entry number three of the charges register of Title number TGL511553 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (F) The Council resolved at a meeting of its Planning Committee held on 28<sup>th</sup> August 2019 that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

#### **AGREED TERMS**

##### **1. INTERPRETATION**

The following definitions and rules of interpretation apply throughout this Deed:

##### **1.1. Definitions:**

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations: 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; works relating to electrical transformer substation; and any 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 and **Commence** and **Commences** shall be construed accordingly.

**Commencement Date:** the date Development Commences.

**Development:** the development of the Property authorised by the Planning Permission.

**First Property:** the land known as 12 and 14 Station Road and 29 Lower Teddington Road, Hampton Wick, Kingston upon Thames shown coloured yellow on the plan annexed hereto and registered at HM Land Registry with title absolute under title number TGL511553.

**Interest Rate:** means the rate of interest being 4% above the base lending rate of the Bank of England from time to time.

**Occupation:** occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations (and "**Occupy**", "**Occupants**" and "**Occupied**" shall be construed accordingly).

**Owners:** the First Owner and the Second Owner.

**Planning Application:** the application for full planning permission registered by the Council under reference number 19/0111/FUL.

**Planning Permission:** a planning permission to be granted by the Council in respect of the Planning Application.

**Property:** the First Property and the Second Property together shown edged red on the plan annexed hereto.

**Second Property:** the land known as 13 and 19-27 and 31 and 33 Lower Teddington Road Hampton Wick shown coloured pink on the plan annexed hereto and registered at HM Land Registry with absolute title under titles numbered MX451027, MX106436, MX108462, SGL142677, MX194527, MX167234, MX103990 and MX104041.

**TCPA 1990:** the Town and Country Planning Act 1990.

- 1.2. Clause headings shall not affect the interpretation of this Deed.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.11. References to Clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.12. An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

**2. STATUTORY PROVISIONS**

- 2.1. This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 16 of the Greater London Council (General Powers Act) 1974, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2. The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owners with the intention that they bind the interests held by those persons respectively in the Property and their respective successors and assigns.
- 2.3. The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 2.4. To the extent that this Deed contains obligations on the part of the Owners which are not within the descriptions set out in Section 106(1)(a)-(d) of the TCPA 1990 (inclusive) those obligations are undertakings or agreements binding on successors in title of the Owners respectively and persons claiming through or under them within the meaning of Section 16 of the Greater London Council (General Powers) Act 1974.

**3. COVENANTS BY THE OWNER AND THE DEVELOPER**

The Owners and the Developer covenant with the Council to observe and perform the covenants, restrictions and obligations contained in the First Schedule to this Deed.

**4. MORTGAGEE'S CONSENT**

- 4.1. The Mortgagee consents to the completion of this Deed and declares that its interest in the First Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the First Property.
- 4.2. 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 any part of the First Property.

**5. RELEASE AND LIABILITY UNDER THIS DEED**

- 5.1. No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Property or part of its interest in the Property to which the breach

relates, except in respect of any breach subsisting prior to parting with such interest.

5.2. The obligations in the Deed shall not be binding or enforceable against:

- (a) any statutory undertaker or any other person who acquires any part of the Property or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services so long as no other material operation is undertaken save in connection with their statutory duties;
- (b) save for restrictions set out in paragraph 4 of the First Schedule to this Deed the individual owners occupiers of any Independent Senior Living Extra Care Unit or other residential unit to be formed in the implementation of the Development or any mortgagee of an individual Independent Senior Living Extra Care Unit or other residential unit to be provided as part of the Development

**6. DETERMINATION OF DEED**

The obligations in this Deed (with the exception of clause 2) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owners; or
- (c) is quashed following a successful legal challenge.

**7. LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

**8. COUNCIL'S COSTS**

8.1. The Owners shall pay to the Council on or before the date of this Deed:

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.
- (b) the sum of ~~£11,111~~<sup>£1845</sup> as a contribution towards the Council's costs of monitoring the implementation of this Deed.



**9. INTEREST ON LATE PAYMENT**

If any sum or amount has not been paid to the Council by the date it is due, the Owners shall pay the Council interest on that amount at the Interest Rate for the period from the due date to and including the date of payment.

**10. REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

**11. CANCELLATION OF ENTRIES**

11.1. On the written request of the Owners at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

11.2. Following the performance and full satisfaction of all the terms of this agreement or if this Deed is determined pursuant to clause 6 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owners cancel all entries made in the local land charges register in respect of this Deed.

**12. DISPUTES**

12.1. In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

12.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 12.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law

Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

- 12.3. Any expert howsoever appointed:
- (a) shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation;
  - (b) subject to Clause 12.5 act as an expert and not an arbitrator.
- 12.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 12.5. The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

**13. NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

**14. WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**15. FUTURE PERMISSIONS**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other

than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

**16. AGREEMENTS AND DECLARATIONS**

The parties agree that:

- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

**17. VARIATIONS TO PLANNING PERMISSION**

- 17.1. 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 TCPA 1990 as if this Deed had been completed pursuant to such an application.

**18. NOTICES**

- 18.1. Any notice or other communication to be given under this Deed must be in writing and must be:
- (a) delivered by hand; or
  - (b) sent by pre-paid first class post or other next working day delivery service.

or as otherwise specified by the relevant party by notice in writing to each other party.

- 18.2. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**19. THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

**20. GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes

or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof the parties to this Deed have set their common seals the day and year first above written

The common seal of **LONDON BOROUGH OF RICHMOND-UPON-THAMES**

was affixed to this document in the presence of:

[Redacted]

Authorized signatory

*Seal Reg No 29089/3*



Executed as a Deed by **THE SONS OF DIVINE PROVIDENCE DEVELOPMENTS LIMITED** acting by two directors or by one director and its secretary:

[Redacted]

Director

[Redacted]

Director/Secretary

Executed as a Deed by **THE SONS OF DIVINE PROVIDENCE** acting by two directors or by one director and its secretary:

[Redacted]

Director

[Redacted]

Director/Secretary

LIMITED acting by

Director

in the presence of:

.....  
SIGNATURE OF WITNESS

NAME:  
ADDRESS:



Executed as a Deed by  
**HAMPTON WICK SENIOR  
LIMITED** acting by

Director TRIDENT CORPORATE SERVICES  
(NO. 1) LTD  
AS SOLE CORPORATE DIRECTOR

in the presence of:

.....  
SIGNATURE OF WITNESS



NAME: *FELICITY CORNES*  
ADDRESS:



Executed as a Deed by  
**LIFESTYLE RESIDENCES  
LIMITED** acting by

[Redacted Signature]  
Director

in the presence of [Redacted]  
...  
SIGNATURE OF WITNESS

NAME: *Jacquie Moncrieffe*  
ADDRESS: [Redacted]

Executed as a Deed by  
**HAMPTON WICK SENIOR  
LIMITED** acting by

.....  
Director

in the presence of:  
.....  
SIGNATURE OF WITNESS

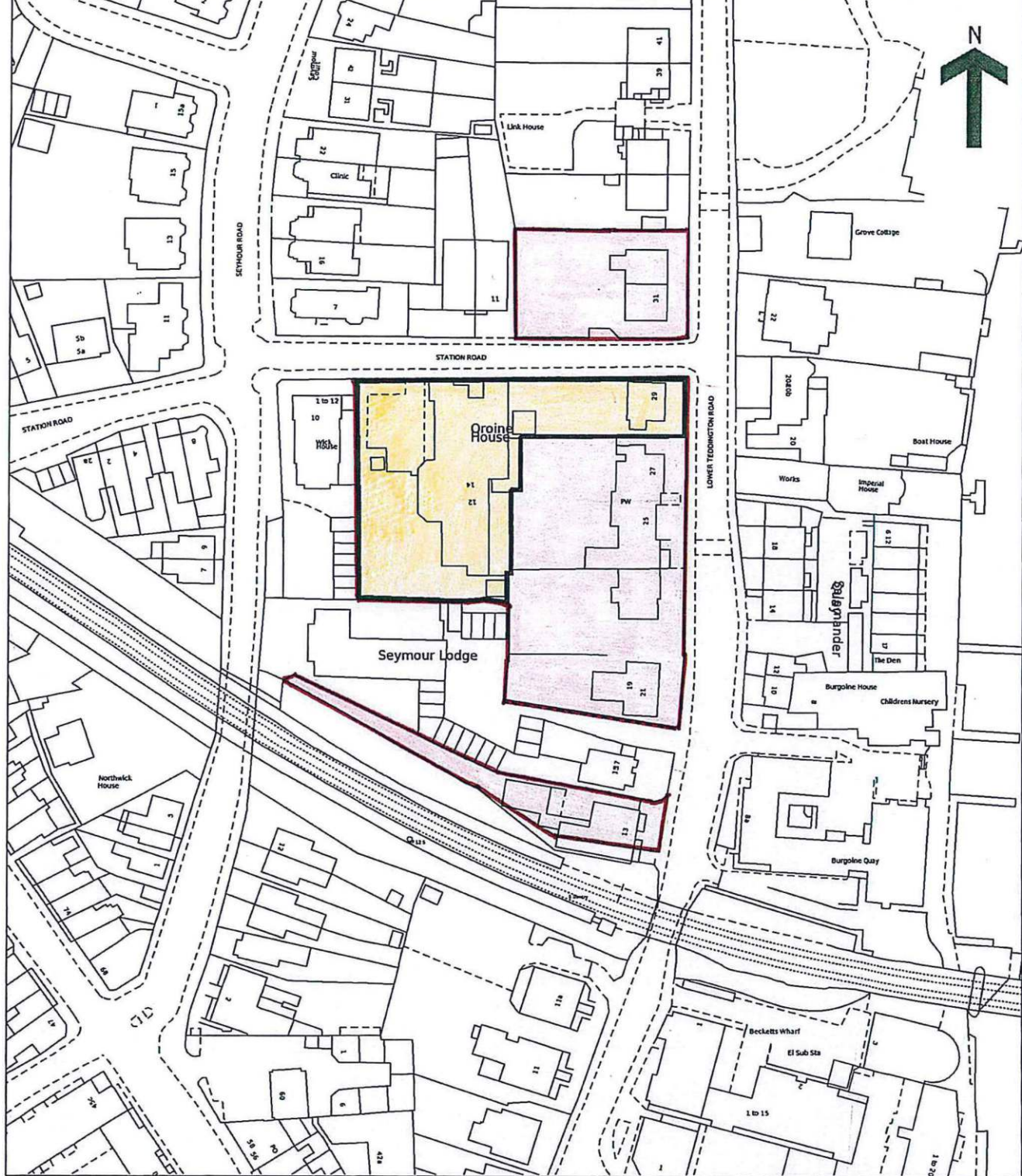
NAME:  
ADDRESS:

HM Land Registry  
Official copy of  
title plan

Title number **TGL511553**  
Ordnance Survey map reference **TQ1769NE**  
Scale **1:1250**  
Administrative area **Richmond upon Thames**



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## **First Schedule Covenants by the Owner and Developer**

### **1. USE OF DEVELOPMENT**

- 1.1. The following Definitions shall have effect for the purposes of paragraphs 1-4 of this First Schedule:

**Affordable Rented Units:** means those 16 residential units to be formed as part of the Development on that part of the Second Property known as 13 and 19-21 Lower Teddington Road Hampton Wick specifically

3 x 1 bed flats and 3 x 2 bed flats at 13 Lower Teddington Road

10 x 1 bed flats at 19-21 Lower Teddington Road

which are to be let to an Eligible Person to be let at no more than the London Affordable Rent (exclusive of service charges) in accordance with the Council's Tenancy Strategy

**Care Package:** means between 2 and 5 hours of care, including Personal Care, per week for every Primary Resident, as determined by the Individual Care Needs Assessment of the Primary Resident and included within the service charge payable by that Primary Resident.

**Care Provider:** means a provider of care services for the Primary Residents who is regulated by the Care Quality Commission.

**Independent Senior Living Extra Care Units:** each of the residential units comprised within that part of the Development to be carried out at that part of the First Property known as 12-14 Station Road Hampton Wick.

**Eligible Person:** means persons nominated by the Council for the purposes of the Nominations Agreement

**Individual Care Needs Assessment:** means the assessment of each Primary Resident by a Care Provider or other operator of the Independent Senior Living Extra Care Units to identify the level and type of Personal Care and other support and assistance they require as set out in the Operational Management Plan and such assessment is to occur prior to first occupation of an Independent Senior Living Extra Care Unit by a Primary Resident and on an ongoing basis throughout the occupation of an Independent Senior Living Extra Care Unit by a Primary Resident.

**London Affordable Rent** means the benchmark rent levels set out in the Mayor of London's "Homes for Londoners : Affordable Homes Programme 2016 – 21 funding guidance" and "Homes for Londoners :



Affordable Homes Programme 2016-21 funding guidance Addendum with updated guidance and arrangements for 2021-22” to be updated annually by CPI inflation plus one per cent.

**Operational Management Plan:** means a plan for the management of the Independent Senior Living Extra Care Units in accordance with paragraphs 1 to 3 of this First Schedule to this deed to be approved from time to time by the Council acting reasonably such approval not to be unreasonably withheld or delayed.

**Personal Care:** means the provision of personal care services including but not limited to the services set out in the Second Schedule to this Deed for people in need of such care by reason of old age or disablement or due to other care needs including support and assistance with activities related to daily living to facilitate fulfilling lives.

**Primary Resident:** means a person who is 65 years in age or older with existing personal, domestic, social, medical, spiritual or emotional care needs as determined by their Individual Care Needs Assessment.

**Qualifying Dependent:** means person or persons (as the case may be) who is or are either a spouse (or persons living as such), family member, or carer of the Primary Resident.

## 2. INDEPENDENT SENIOR LIVING EXTRA CARE UNITS

- 2.1. The First Owner will not Occupy or permit Occupation of any Independent Senior Living Extra Care Unit until 10 of the Affordable Rented Units at 19-21 Lower Teddington Road are available for occupation and other than under an Operational Management Plan.
- 2.2. The Operational Management Plan shall ensure that:
- (a) an occupier of an Independent Senior Living Extra Care Unit is a Primary Resident occupying the Independent Senior Living Extra Care Unit as their sole or primary residence;
  - (b) the Primary Resident within an Independent Senior Living Extra Care Unit must procure a Care Package;
  - (c) a mechanism for monitoring to ensure paragraphs 2.2(a) and (b) of this First Schedule to this Deed are adhered to;
  - (d) a Qualifying Dependent may remain in occupation of an Independent Senior Living Extra Care Unit if the Primary Resident with whom they reside dies notwithstanding that the said Qualifying Dependent may be younger than 65 years of age and/or without any care needs PROVIDED THAT the Qualifying Dependent is occupying the Independent Senior Living Extra Care Unit as their sole or primary residence.

- (e) Primary Residents and Qualifying Dependents shall not be prevented from having overnight temporary visitors.
- 2.3. Following approval of the Operational Management Plan by the Council and Occupation of the Development to:
  - (a) implement the Operational Management Plan as approved;
  - (b) procure that any occupier of an Independent Senior Living Extra Care Unit shall comply with the terms of the approved Operational Management Plan;
- 2.4. The First Owner shall procure that any owner of an Independent Senior Living Extra Care Unit who disposes of their interest in an Independent Senior Living Extra Care Unit shall ensure that such disposal contains a covenant to the effect that the acquiree shall ensure compliance with the terms of the approved Operational Management Plan.
- 3. **PROVISION OF AND NOMINATION TO THE AFFORDABLE RENTED UNITS**
- 3.1. Not to permit the use of the Affordable Rented Units other than as Affordable Housing and occupied as Affordable Rented Housing
- 3.2. Not to permit that part of the Development comprising the Independent Senior Living Extra Care Units to be occupied other than in accordance with Use Class C2 (and any uses ancillary to Use Class C2) of the Town and Country Planning (Use Classes) Order 1987 (as amended) or in accordance with any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modifications.
- 3.3. The Second Owner shall enter into a Nomination Agreement in the form set out in the Third Schedule to this Deed or a substantially similar form in respect of the Affordable Rented Units before the occupation of the Independent Senior Living Extra Care Units
- 4. **RESTRICTION ON THE ISSUE OF CAR PARKING PERMITS**

Not to Occupy or dispose of or allow any person to Occupy or dispose of any or all of the Independent Senior Living Extra Care Units unless a notice has been served on such person that such person shall not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons' Badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons' Act 1970) to be granted a permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing any mechanically propelled vehicle intended or adapted for use on a road or highway to park in any marked highway parking space designated by the Council by a traffic

management order pursuant to statutory or regulatory provision or other place within an existing controlled parking zone (or any controlled parking zone amending or replacing the same) 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.

**5. NOTIFICATIONS**

To provide to the Council written notification seven days prior to its intention to Commence Development and a further written notice of the actual Commencement within seven days of the occurrence of the same;

## **Second Schedule**

### **PERSONAL CARE**

1. Access to on-site support for up to 8 hours each day.
2. Availability of on-call 24/7 emergency support.
3. Provision of room alarms and push button neck lanyard alarms for emergency use.
4. Provision of one meal daily in communal café area.
5. Regular social activities and events programme.

**Third Schedule**

**DATED** \_\_\_\_\_ **2019**

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

**-to-**

**THE SONS OF DIVINE PROVIDENCE (Orione Care)**

---

**N O M I N A T I O N   A G R E E M E N T**

**in respect of rented units at  
NOS.13 AND 19-21 LOWER TEDDINGTON ROAD,  
HAMPTON WICK, KT1 4EU  
in the London Borough of Richmond upon Thames**

---

**EXD**

R J Mellor  
Head of Legal Services  
London Borough of Richmond upon Thames  
Civic Centre  
44 York Street  
Twickenham, TW1 3BZ

Agreed Draft 07.11.2019

THIS AGREEMENT (made as a Deed) is made the \_\_\_\_\_ day of \_\_\_\_\_ 2019 BETWEEN THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND-UPON-THAMES of the Civic Centre of 44 York Street Twickenham TW1 3BZ (“the Council”) and THE SONS OF DIVINE PROVIDENCE (Orione Care) registered with the Regulator of Social Housing with registered number LH4338, REGISTERED CHARITY with registered number 1088675, and LIMITED COMPANY with registered number 4249759 (“Orione Care”)

WHEREAS

- (1) The Council is a local authority for the purposes of the Local Government Act 1972 and a local housing authority for the purposes of the Housing Act 1985 Part I
- (2) Orione Care is a registered social landlord within the meaning of Section 1 of the Housing Act 1996
- (3) Units are to be built substantially in accordance with Planning Permission (dated 28th AUGUST 2019 – ref number 19/0111/FUL) (as varied or amended) for occupation by persons within Orione Care’s charitable objects and Orione Care has agreed to the Council being given the right to nominate persons to take up occupation of the Units as hereinafter provided

NOW IT IS HEREBY AGREED as follows: -

**1. DEFINITIONS**

- |     |                       |  |
|-----|-----------------------|--|
| 1.1 | “Availability Notice” | means the notices referred to at Sub-clauses 3(a) and (b) hereof   |
| 1.2 | “Nomination Notice”   | means the notice in writing to be given by the Council to Orione Care of the proposed Nominees which shall include the names of such Nominees and all necessary and relevant information pertaining to such Nominees |
| 1.3 | “Nominees”            | means persons nominated by the Council for the purposes of this Agreement  |
| 1.5 | “Property”            | Means the Site   |
| 1.6 | “Relevant Nominee”    | means Nominees to whom Orione Care shall offer a Unit on the Site in accordance with Clause 5 hereof   |

which shall be nominees assessed by Orione Care as appropriate for it to house under its objects, lettings and allocations policies

- 1.7 "Site" means the land and buildings to be erected on the land known as land at NOS. 12-14 STATION ROAD AND 13-33 LOWER TEDDINGTON ROAD, HAMPTON WICK
- 1.8 "Nomination Period" sixty years from the date of practical completion of the Units
- 1.9 "True Voids" a vacancy created in any of the circumstances set out in the First Schedule hereto under the heading "definition of a True Void" but excluding a vacancy arising in any circumstances defined under the heading "definition of a Non-True Void"
- 1.10 "Non-True Voids" as defined in the First Schedule hereto
- 1.11 "Units" means the affordable housing residential units to be managed and provided by Orione Care on the Site (as set out in the Second Schedule hereto)
- 1.12 "RP" means a non-profit registered provider of affordable housing pursuant to the Housing and Regeneration Act 2008
2. Orione Care hereby covenants with the Council
- (i) to construct or procure the construction at the Property of SIXTEEN (16) Affordable Housing Units with the intention of providing low cost housing to rent and to commence renovation of 19/21 Lower Teddington Road on or before

1<sup>ST</sup> SEPTEMBER 2019 subject to any extension of time agreed between the parties hereto and to complete the same by 31<sup>ST</sup> March 2020 and in respect of 13 Lower Teddington Road to commence on or before the 1<sup>ST</sup> September 2024 and to be completed by 1<sup>ST</sup> September 2025 subject to any extension agreed between the parties hereto in accordance with the Planning Permission and to ensure all construction is carried out in a good and workmanlike manner.

(ii) that, subject to subclause (iii), the Council shall have rights to nominate up to 100% of the initial lettings of the Units and shall thereafter have the right to nominate up to 100% of True Voids arising in a calendar year for the Nomination Period unless the Council at its absolute discretion agree to waive or relinquish such rights of nomination. The Definition of a 'True Void' is that contained in the First Schedule hereto

(iii) the parties acknowledge that:

(a) the Council's rights are subject to Orione Care being entitled to give a right of first refusal to five tenants who have been moved from other accommodation and one tenant on their waiting list; and

(b) it is intended that the Units at 19/21 Lower Teddington Road are utilised for independent living for older people and key workers and the Units at 13 Lower Teddington Road are utilised for younger people and key workers

3. Orione Care shall give to the Council: -

(a) In the case of an initial letting of any Unit not less than 6 weeks of the actual completion of such Unit and its availability for letting

(b) in the case of any Unit being a True Void becoming subsequently available for letting 10 days written Notice of such availability

4. Within 10 days of the receipt by the Council of any Available Notice in respect of a Unit the Council shall in respect of such Unit serve on Orione Care a Nomination Notice

5. Orione Care shall as soon as practicable following receipt of the Nomination Notice offer a tenancy of the said Unit to the Relevant Nominee at a rent no more than the Affordable Rent as contained in the Second Schedule hereto

6. If (a) no Nomination Notice is served by the Council within the 10 days referred to in Clause 4 or (b) Orione Care acting reasonably does not consider the Nominee



appropriate to house or (c) the Relevant Nominee refuses or fails to accept the offer of a tenancy within 7 days of such offer in each case the Council shall be entitled to serve two further and subsequent Nomination Notices **SAVE THAT** where no subsequent Nomination Notices are served within 20 days of the date referred to in clause 4 or the further Relevant Nominees both refuse or fail to accept the offer of a tenancy within 3 days of such offer then Orione Care shall be at liberty to let the unit to persons of its own choosing

7. The procedure for such nominations may at any time during the continuance of this Agreement be varied by agreement between the parties hereto
8. For the avoidance of doubt, the provisions of this Agreement shall cease to apply to any Unit of which Orione Care transfers the freehold/assigns its leasehold interest or grants a long lease to a tenant exercising any statutory right to buy or right to acquire such an interest in that Unit and shall cease to apply to any Unit upon the granting of a Shared Ownership Lease by Orione Care
9. For the avoidance of doubt, IT IS HEREBY AGREED AND DECLARED that the provisions of this Agreement are entered into pursuant to s.33 of the Local Government (Miscellaneous Provisions) Act 1982 and are binding on successors in title but shall: -
  - 9.1 not bind any mortgagee of Orione Care or its successors in title or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to Orione Care or its successors in title
  - 9.2 cease to apply to any part or the whole of the Unit should such part or the whole be transferred or leased by any mortgagee of Orione Care or its successors in title or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to Orione Care or its successors in title
  - 9.3 not bind any individual owner (excluding, for the avoidance of doubt, any owner who is an RP) or occupier of any unit, their successors in title and mortgagees and mortgagees' successors in title
10. Any notice or demand required or authorised shall be deemed to be served on the Council if sent to the Chief Executive of the London Borough of Richmond upon

Official

Thames at its Civic Offices at the address given above and shall be deemed to be duly served on Orione Care and if sent to Orione Care and addressed to the Secretary at its address for the time being as stated above or such other address as may be notified in writing to the Council from time to time PROVIDED ALWAYS that any notice to be served by either party may be served by such party's Solicitors

IN WITNESS whereof the Council and Orione Care have hereunto caused their Common Seals to be affixed the day and year first above written

## FIRST SCHEDULE

### *Definition of True Void*

11. Vacancies created through tenant transfer to another Borough where no reciprocal arrangement exists
12. Vacancies arising through tenant moves to other landlords where no reciprocal arrangement exists
13. Vacancies arising as a result of the death of a tenant where there is no statutory right to succession
14. Vacancies arising through tenants buying their own property in the private sector
15. Vacancies arising as a result of the tenant having been evicted or abandoning a Unit
16. Vacancies arising as a result of a tenant who has been permanently decanted returning to his former home
17. Vacancies arising through tenant transfer within Orione Care's own stock
18. Vacancies arising as a result of a tenant who has previously been decanted

### *Definition of Non-True Void*

19. Vacancies arising as a result of a tenant being temporarily decanted and moving to a temporary home
20. Vacancies arising as a result of a tenant being re-housed via the Housing Association "Homes" scheme or other equivalent
21. Vacancies arising as a result of a tenant being re-housed by another Borough where a reciprocal arrangement exists

## SECOND SCHEDULE

No more than the London Affordable Rent as set out in the Mayor of London's "Homes for Londoners : Affordable Homes Programme 2016 – 21 funding guidance" and "Homes for Londoners : Affordable Homes Programme 2016-21 funding guidance Addendum with updated guidance and arrangements for 2021-22" to be updated annually by CPI inflation plus one per cent.

The following properties to be managed and provided by Orione Care:

- 6 x flats in No.13 Lower Teddington Road
- 10 x flats provided in No.19-21 Lower Teddington Road

Executed as a Deed by **THE SONS OF )**  
**DIVINE PROVIDENCE** acting by two )  
directors or by one director )  
and its secretary ) Director

Director/Secretary

Executed as a deed by the **THE MAYOR AND**  
**BURGESSES OF THE LONDON BOROUGH**  
**OF RICHMOND-UPON-THAMES:**

Authorised signatory

Authorised signatory

DATED

11th December 2019

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 RELATING TO 12-14 STATION ROAD AND 13 AND 19 TO 33  
LOWER TEDDINGTON ROAD HAMPTON WICK KT1 4HG AND KT1 4EU**

Between

**LONDON BOROUGH OF RICHMOND-UPON-THAMES**

and

**THE SONS OF DIVINE PROVIDENCE DEVELOPMENT LTD**

and

**THE SONS OF DIVINE PROVIDENCE**

and

**LIFESTYLE RESIDENCES LIMITED**

and

**HAMPTON WICK SENIOR LIMITED**

Engrossment 14.11.2019