

THIS UNILATERAL UNDERTAKING is made as a Deed the 12th day of December two thousand and seventeen

BY

- (1) **CAF NOMINEES LIMITED** (Company Registration Number 01222415) whose registered office is situate at 25 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4TA ("the Owner")

AND GIVEN TO

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

INTERPRETATION

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

"the 1990 Act"	the Town & Country Planning Act 1990
"Affordable Housing Contribution"	the sum of fifty thousand pounds (£50,000) Indexed
"the Development"	the development described in the Planning Application
"the HDM"	the Council's Head of Development Management for the time being or such other person as may be appointed from time to time to carry out that function
"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) as at the date of this Deed and A represents the value of the same index as at the date of payment of the Affordable Housing Contribution to the Council

"LDF"	the saved policies of the Richmond upon Thames LDF Development Management Plan 2011
"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; and noise attenuation works
"Monitoring Fee"	the sum of two thousand five hundred pounds (£2,500) being 5% of the Affordable Housing Contribution
"Occupation"	the full and beneficial occupation of the 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
Occupation Date	first Occupation of any Residential Unit for residential purposes within Use Class C3 of the Town and Country Planning (Use Classes) Order 2015 (as amended) which constitutes Material Operation under section 56(4) (e) of the 1990 Act
"the Planning Application"	a planning application submitted to the Council on 23 rd June 2017 bearing reference number 17/1550/FUL for the demolition of existing building and erection of part two storey/part four storey building to provide 9 residential flats (6 x 1 bed, 3 x 2 bed) and a new basement level to facilitate the provision of underground parking and associated hard and soft landscaping, cycle and refuse stores. New boundary treatment and alterations to existing vehicular access and dropped kerb.
"the Planning Permission"	a planning permission that may be granted by the Council pursuant to the Planning Application

"the Property"	land known as land at The Firs, Church Grove, Hampton Wick KT1 4AL and shown edged red on the plan attached hereto
"Residential Unit"	any residential unit forming part of the Development and "Residential Units" shall be construed accordingly
"Sale"	the sale of the freehold or the grant of a lease for a period of not less than 21 years at a nominal rent and "Sold" shall be construed accordingly
"Sale Date"	the completion date of the first Sale of the first Residential Unit to be Sold

WHEREAS:

- (1) The Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the 1990 Act and for the purpose of Section 106(a) of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
- (2) The Owner is registered at the Land Registry with absolute title under title number MX236269 as the proprietor of the freehold interest in the Property
- (3) The Council supports the Development but is unable or unwilling to approve the Planning Application or to grant the Planning Permission in the absence of this Deed which makes provision for regulating the Development and securing the matters referred to in this Deed
- (4) Policy CP 15 of the LDF Core Strategy and policy DM HO 6 of the LDF Development Management Plan provides that the Council may consider a financial contribution to its Affordable Housing Fund as an alternative to on-site provision
- (5) The Owner has submitted the Planning Application to the Council and has entered into this Deed in order to secure the planning obligations contained in it in accordance with the LDF so that it may be taken into account as a material consideration in the determination of the Planning Application by the Council.

NOW THIS DEED WITNESSETH as follows:-

1. THIS Deed is made pursuant to Section 106 of the 1990 Act and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of Section 106 of the 1990 Act and receipt of a copy of this Deed pursuant to subsection 106(10) of the 1990 Act is hereby acknowledged by the Council

2. THE Owner hereby UNDERTAKES to the Council:-
 - (a) to provide seven (7) days prior written notice to the HDM:
 - (i) of its intention to commence the Development before making a Material Start
 - (ii) of the Occupation Date or the Sale Date (whichever is sooner)

 - (b) to pay to the Council:
 - (i) the Affordable Housing Contribution and the Monitoring Fee prior to or on the Occupation Date or the Sale Date (whichever is the sooner) and not to permit the Occupation of the Residential Unit until the Affordable Housing Contribution has been paid to the Council
 - (ii) the Council's reasonable and proper legal costs in the preparation and completion of this Deed in the sum of seven hundred pounds (£700)

3. IT IS HEREBY AGREED and DECLARED:-

Miscellaneous agreements and declarations

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

 - (b) Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and its rights powers duties and obligations under all public and private statutes bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed

 - (c) If any provision in this Deed shall be held to be void invalid illegal or unenforceable or if voidable is avoided this shall not affect the operation validity legality and enforceability of any other provision of this Deed provided severance therefrom is possible

 - (d) Reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and vice versa

 - (e) A reference to a clause is a reference to a clause contained in this Deed

 - (f) The expressions "the Council" and "the Owner" shall include their respective successors in title and assignees

Local land charge provisions

- (g) This Deed is a Local Land Charge and shall be registered by the Council in the Council's Register of Local Land Charges immediately on completion thereof
- (h) The Council will, upon written request by the Owner or a Mortgagee if applicable effect a cancellation of any entry made in the Local Land Charges Register in regard to this Deed forthwith after the obligations of the Owner and/or the Mortgagee hereunder have been wholly performed or discharged

Reference to statutes and statutory instruments

- (i) References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

Variations

- (j) The covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Deed by or on behalf of the relevant parties hereto or by a subsequent deed of variation
- (k) This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of the Planning Application pursuant to Section 73 of the 1990 Act as if this Deed had been completed pursuant to such an application

English law applicable

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

Effect of revocation of planning permission

- (m) In the event of the Planning Permission being revoked by the Council or any other authority having powers in relation to planning matters or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or their successors in title the obligations of the Owner under this Deed shall thereupon cease absolutely and in that event the Council will repay to the Owner such monies as have been paid to it pursuant to the obligations contained within this Deed to the extent that they remain unspent

Waivers not to be of a continuing nature

- (n) 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 thereto by the Owner

Liability of subsequent Owner and release of former Owner

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

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

Contracts (Rights of Third Parties) Act 1999

- (p) The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed is to have the benefit of or is capable of enforcing any term in this Deed and no party is to have any rights to enforce this Deed other than those falling within the definitions of the Council and the Owner

Release

- (q) This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the Owner if a Material Start has not taken place within 3 years of the date of this Deed or the Planning Permission having been granted shall be varied or revoked other than at the request of the Owner or the Planning Permission having been granted is quashed following a successful legal challenge and in any such case any sums paid by the Owner under this Deed shall be repaid to the Owner by the Council forthwith together with interest at the Base Rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment

VAT clauses

- (r) all consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof
- (s) if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

Interest on late payment

- (t) if any of the Affordable Housing Contribution due under Clause 2(b)(i) 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 Bank of England base rate from time to time in force from the date that the contribution became due to the date of actual payment

IN WITNESS whereof with the intent that these presents should be executed as a deed the Owner has hereto have duly executed the same the day and year first before written

Executed as a deed for and on behalf of)
CAF NOMINEES LIMITED)
Acting by)

Director [Redacted]
~~Director/Secretary~~ [Redacted]

Dated 12.12 . 2017

CAF NOMINEES LIMITED

-to-

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

**UNILATERAL UNDERTAKING
made under Section 106 of the
Town & Country Planning Act 1990
relating to The Firs, Church Grove, Hampton
Wick, KT1 4AL**

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

KB/217/1641

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