

4 MANOR ROAD LIMITED

- and -

KIM MICHAEL SYMES

Unilateral Undertaking pursuant to Section 106 of
the Town and Country Planning Act 1990
and other powers in relation to land known as
4 - 6 Manor Road Teddington, TW11 8BG

Planning Application reference number 18/4156/FUL

Planning Inspectorate reference APP/L5810/W/19/324696

- (E) The Owners wish to construct the Development upon the Site in accordance with the Planning Permission and the obligations contained herein upon the Site.
- (F) The Council is the local planning authority by whom the obligations contained in this Unilateral Undertaking are enforceable.
- (G) On 04 February 2020 the Owners appealed to the Secretary of State on the grounds of non-determination of the Planning Application by the Council. In the event the Secretary of State grants the Planning Permission, the Site shall be bound by the terms of this Unilateral Undertaking and which reflect the offer made by the Owners.

NOW THIS UNILATERAL UNDERTAKING WITNESSES:

1. Definitions and Interpretation

- 1.1 The following words and phrases shall have the following meanings unless the context otherwise requires:

“1990 Act” means the Town and Country Planning Act 1990 (as amended);

“Acts” means section 111 of the Local Government Act 1972, section 16 of the Greater London Council (General Powers) Act 1974, section 33 of the Local Government (Miscellaneous provisions) Act 1982, sections 38 and 278 of the 1980 Act and section 1 of the Localism Act 2011 and in each case any statutory amendment, variation, substitution or re-enactment thereof together with all other statutory powers and acts pursuant to which the Parties hereto shall be empowered to enter into this Deed;

“Affordable Housing” means any affordable housing that is provided as a result of the Viability Review 1 attainable for purchase and/or rent by those households who cannot afford to buy or rent anywhere in the Borough at market housing prices;

“Affordable Housing Cap” means the amount calculated by using Formula 4 in Annex 1 to Schedule 2

“Affordable Housing Contribution” means a financial contribution or contributions for the provision of off-Site Affordable Housing in the Council’s administrative area the precise value of which shall be calculated in accordance with the Formulas in Annex 1 Schedule 2 to this Deed following a Viability Review PROVIDED THAT the quantum of all Affordable Housing Contributions payable in accordance with this Deed shall in aggregate be no higher than the Affordable Housing Cap

“Affordable Housing Scheme” means a scheme to be prepared by the Owners and submitted to the Council which either:

(a) provides the details of the unit size, location and tenure of the Affordable Housing Units to be provided and identifies a Registered Provider who is willing to enter into an agreement in respect of those Affordable Housing Units; or

(b) demonstrates that the Owner has used reasonable endeavors to market the Affordable Housing Units to a Registered Provider and no Registered Provider has agreed to enter into an agreement with the Owners in respect of those Affordable Housing Units

“Appeal” means the planning appeal made by the Owners to the

Secretary of State and allocated the Planning Inspectorate reference APP/L5810/W/19/324696

"Application Build Costs" means the estimated build costs established by the Application Viability Assessment being £5,144,604 (five million one hundred and forty four thousand six hundred and four pounds) comprising the costs of demolition, construction, utility, external, renewable works;

"Application Breakeven GDV" means the estimated gross development value that would be required in order for a profit of 17.5% of gross development value to be achieved as established by the Application Viability Assessment being £13,229,080 (thirteen million two hundred and twenty nine thousand pounds);

"Affordable Housing Units" means Intermediate Housing and Low Cost Rented Housing as herein defined

"Application Viability Appraisal" means the financial viability appraisal relied upon by the Secretary of State as part of the Appeal;

"Average Low Cost Rented Housing Value" means the average value of Low Cost Rented Housing per sq m were such housing to be provided as part of the Development to be assessed by the Council and the Owners;

"Average Dwelling Value" means the average value of Dwellings on a per sq m basis on the Site at the relevant Review Date based on the relevant information provided to establish the Review Stage GDV and the Review Estimated GDV assessed by the Council and the Owners;

"Average Intermediate Housing Value" means the average value of Intermediate Housing per sq m were such housing to be provided as part of the Development to be assessed by the Council and the Owners;

"Borough" means the London Borough of Richmond Upon Thames;

"Completion" means:-

- (a) in respect of any discrete section (element) of the Development completed separately from the other discrete sections (elements) and which is the subject of a certificate of sectional practical completion, the issue of such certificate of sectional practical completion in respect of that discrete section (element) by the Owners' duly appointed architect or other project consultant designated by the Owner for that purpose; and
- (b) in respect of the Development as a whole, the issue of a certificate of practical completion of the Development by the Owner's architect or other project consultant designated by the Owner for that purpose,

and "Complete", "Completed" and "Completion Date" shall be construed accordingly.

"Development Viability Information" means the information required by Formula 3 and/or Formula 4 in the case of Viability Review 1 and Viability Review 2 (as appropriate) and including in each case supporting evidence (including receipted invoices; certified costs; certified copies of sales contracts; best estimates of costs yet to be incurred and value of any unsold space and any other evidence reasonably required by the Council to show any revenue and/or cost incurred in relation to the

Development);

“Development” means the development described in the Planning Application;

“Disabled Persons Badge” means a badge in a prescribed form issued by local authorities for motor vehicles driven by or used for the carriage of disabled persons pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970.

“Dwelling(s)” means any dwelling constructed on the Site pursuant to the Planning Permission;

“Estimated Gross Development Value” means the estimated Gross Development Value of the Development at the date of Viability Review 1 or Viability Review 2 or both as the case may be based Development Viability Information and on detailed comparable market evidence supplied by the Owner

“External Consultant” means the external consultant appointed by the Council to assess the Development Viability Information;

“First Carbon Dioxide Emissions Off-Set Contribution” means the sum of £10,107 (ten-thousand one hundred and seven pounds) to be paid by the Owners to the Council to be used towards carbon dioxide off-setting measures in the Borough;

“Formula 1b” means the formula annexed hereto and labelled "Formula 1b";

“Formula 2” means the formula annexed hereto and labelled “Formula 2”

“Formula 3” means the formula annexed hereto and labelled "Formula 3";

“Formula 4” means the formula annexed hereto and labelled "Formula 4";

“Gross Development Value” means the gross development value for the completed Development being the aggregate value of each of the proposed residential units and uses within the Development with vacant possession;

“Habitable Rooms” means any room within a Dwelling the primary use of which is for living, sleeping or dining and which expressly includes kitchens of 13 square metres or more, living rooms, dining rooms and bedrooms but expressly excludes kitchens with a floor area of less than 13 square metres, bathrooms, toilets, corridors and halls;

“Implementation Date” means the date upon which a material operation as defined in section 56(4) of the 1990 Act shall be first carried out in respect of the Development upon the Site other than (for the purposes of this Unilateral Undertaking and for no other purposes) operations consisting of demolition, site survey, site clearance, archaeological investigations for the purpose of assessing ground conditions, remedial or remediation work in respect of any contamination or other adverse ground conditions, diversion and laying or removal of services, erection of any temporary means of enclosure including fences and hoardings, the temporary display of site notices or advertisements and references to “Implementation” and “Implement” shall be construed accordingly;

“Indexed” in relation to a sum specified in this Deed, means that such sum shall be increased in accordance with the formula whereby the sum 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 relevant contribution to the Council;

“Individual Purchaser(s)”

means any individual purchaser buying any Dwelling within the Development at arm's length who does not acquire any other interest in the building except any interest in any other Dwelling;

“Inspector”

means the Inspector appointed by the Secretary of State to determine the Planning Appeal;

“Intermediate Housing”

means Affordable Housing for sale and rent provided at a cost above social rent but below market levels which may include units but not affordable rented housing.

“Low Cost Rented Housing”

means rented housing provided by a registered provider that has the same characteristics as social rented housing except that it is not required to be let at target rents but is subject to other rent controls that require it to be offered to eligible households in accordance with Part VI of the Housing Act 1996 at a rent that is:

- (a) including service charges, up to 80 per cent of local market rents; and
- (b) excluding service charges, no higher than the benchmark rents published by the GLA annually in accordance with the Mayor's Funding Guidance;

"Market Value"

means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration on the date of valuation assuming:

- (a) a willing seller and a willing buyer;
- (b) that, prior to the date of valuation, the property has been widely marketed;
- (c) that no account is taken of any additional bid by a prospective purchaser with a special interest;
- (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion; and
- (e) on the basis on an arms length transaction.

“Occupation” means the first date upon which any part of the Site is physically occupied for any purpose but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or operations in relation to security operations and the phrases “Occupy” and “Occupied” shall be construed accordingly;

“Parking Bay” means a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use in the locality in which the Development is situated;

“Parking Permits” means a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in a Parking Bay;

“Parties” means the First Owner and the Second Owner;

“Plan 1” means the plan annexed hereto (at Annex 2) marked Plan 1 showing the Site edged red;

“Planning Application” means the planning application submitted by the Owners on 11 December 2018 to the Council bearing reference number

18/4156/FUL for the demolition of 6 Manor Road and erection of three storey building with basement level to create 12 x 2 bed (2B4P) flats. Erection of a 5 storey front/side extension and 2 storey roof extension to 4 Manor Road to facilitate the provision of 9 additional residential apartments (1 x 1 bed and 8 x 2 bed). Associated hard and soft landscaping, cycle and refuse stores and new basement parking;

“Planning Permission” means planning permission in respect of the Development which may be granted by the Secretary of State pursuant to the Appeal;

“Policy Cap” means the maximum Affordable Housing Contribution determined through Formula 4;

“Public Subsidy” means funding from the Council, the GLA or another public organisation to support the delivery of the Development;

“Registered Provider” means any registered provider of social housing within the meaning of section 80(1) of the Housing and Regeneration Act 2008 or successor provision drawn from the Council’s list of Registered Providers of Social Housing;

“Second Carbon Dioxide Contribution” **Carbon Off-Set** means a sum to be calculated in accordance with paragraph 1.2 of Schedule 1 of this Deed;

“Site” means land at 4 - 6 Manor Road Teddington, TW11 8BG and shown edged red on Plan 1 annexed hereto;

“Sold” means the sale of the freehold of a component or the grant of a lease of a component with a term of 125 years or more and subject to nominal rent and “Sale” shall be construed

accordingly;

“Substantial Implementation”

means the Development has been Implemented and the following have occurred:

- (a) the letting of a building contract or contracts for the construction of the Development; and
- (b) the earlier of:
 - (i) the construction of the raised ground floor slab to the front extension to the existing building at 4 Manor Road; and
 - (ii) the demolition of the existing building at 6 Manor Road and the excavation and removal of spoil for the creation of the proposed semi-basement car park area;

“Viability Review”

means Viability Review 1 or Viability Review 2 as the context requires;

"Viability Review 1"

means the upwards only review of the financial viability of the Development on the date that Substantial Implementation occurs using Formula 1b and Formula 2 as the case may be to determine whether Affordable Housing units are to be provided or whether an Affordable Housing Contribution is payable;

"Viability Review Stage Build Costs"

means the estimated build costs of the Development as at Viability Review 1 Date or Viability Review 2 Date as the case may be updated from the Application Build Costs comprising the costs of demolition, construction, utility, external and renewable works incurred and expected to be incurred at the date Substantial Implementation occurs supported by evidence of these costs to the Council's

reasonable satisfaction including but not limited to:

- (a) details of payments made or agreed to be paid in the relevant building contract;
- (b) receipted invoices;
- (c) costs certified by the Owners' quantity surveyors, costs consultant or agent
and for the avoidance of doubt building costs excludes all internal costs of the Owners including but not limited to:
 - (i) project management costs;
 - (ii) overheads and administration expenses;
 - (iii) professional, finance, legal and marketing costs;

"Viability Review 1 Date" means the date 26 months from but excluding the date of grant of the Planning Permission;

"Viability Review 1 Stage GDV" means the estimated Market Value of all the components of the Development at the date that Substantial Implementation occurs together with detailed comparable market evidence and taking into account Public Subsidy and Development related income from any other sources as appropriate.

"Viability Review 2" means the upwards only review of the financial viability of the Development on the Viability Review 2 Date using Formula 3 to determine whether an Affordable Housing Contribution is payable;

"Viability Review 2 Date" means the date on which 15 of the Dwellings are Sold;

"Viability Review 2 Stage GDV" means the estimated Market Value of all the components of the Development at the Viability Review 2 Date together with detailed comparable market evidence and taking into

account Public Subsidy and Development related income from any other sources as appropriate;

“Voids Management Plan” means a plan to be submitted by the Owners and approved by the Council containing details of:

- (a) the management and maintenance regime for voids proposed as part of the Development to mitigate against risk of flooding;
- (b) risk mitigation strategies to prevent such voids becoming blocked;
- (c) strategies to address any blocking of the voids that does occur;

as may be amended from time to time by agreement between the Owners and the Council.

“Working Day” means any day from Monday to Friday inclusive which is not Christmas Day Good Friday or a statutory bank or public holiday and 'Working Days' shall be construed accordingly.

“Zero Carbon Standards” means those standards for carbon zero residential units as set out in the London Plan

In this Unilateral Undertaking (except where the context otherwise requires):

- 1.1 Reference to the masculine feminine and neuter genders shall include other genders.
- 1.2 Reference to the singular include the plural and vice versa unless the contrary intention is expressed.
- 1.3 Reference to natural persons are to include corporations and vice versa.

- 1.4 Headings in this Unilateral Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation.
- 1.5 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule of this Unilateral Undertaking.
- 1.6 Any reference in this Unilateral Undertaking to any statute or to any section of a statute includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.
- 1.7 The expressions “the First Owner” and “the Second Owner” shall include their respective successors in title and assigns and the expression “the Council” shall include their successors in statutory function.
- 1.8 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of such restrictions.
- 1.9 Where in this Unilateral Undertaking a party includes more than one person any obligation of that party shall be joint and several.

2. Statutory Provisions

- 2.1 This Unilateral Undertaking is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Unilateral Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the restrictive covenants and undertakings herein on the part of the Owners are entered into with the intent that subject to clause 5 the same shall be enforceable without limit of time not only against the Owners but also against their successors in title and assigns and any person corporate or

otherwise claiming through or under the Owners an interest or estate created hereafter in the Site or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person.

- 2.2 To the extent only that any of the obligations contained in this Unilateral Undertaking are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in the Acts.

3. Legal Effect

- 3.1 This Unilateral Undertaking shall take effect upon the grant of Planning Permission by the Secretary of State (if applicable) but the obligations contained in the Schedules shall not be enforceable by the Council until the Implementation Date.

4. Obligations of the Owners

- 4.1 The Owners covenant to observe and perform or cause to be observed and performed the obligations contained in the Schedules to this Unilateral Undertaking at the times and in the manner provided therein.
- 4.2 Without prejudice to any other remedy available to the Council, the Owners covenant that no part of the Development shall be Implemented or Occupied (as appropriate) unless and until the obligations contained within the Schedules to this Unilateral Undertaking that are required to be fulfilled before Implementation or Occupation of that part have been complied with.

5. Enforceability of Obligations

- 5.1 The obligations contained in this Agreement shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of

electricity gas water drainage telecommunication services or public transport services.

- 5.2 The obligations contained in this Agreement shall not be binding upon nor enforceable against any future chargee or mortgagee with a charge over the Site unless the chargee or mortgagee takes possession of the Site or part thereof or becomes a mortgagee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the Owners as appropriate.
- 5.3 Any positive planning obligation to pay money or carry out any operations expressed in this Unilateral Undertaking shall not be enforceable against any Individual Purchaser but any restrictions on Occupation expressed in negative form shall be binding against all purchasers but only in relation to those parts of the Site in which they have a legal interest.
- 5.4 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Unilateral Undertaking occurring after it has parted with the whole of its interest in the Site (but without prejudice to the liability of such person for any breach occurring prior to its parting with such interest).

6. Registration

- 6.1 The covenants on behalf of the parties hereto to be observed and performed under this Unilateral Undertaking shall be treated as Local Land Charges and registered in the Register of Local Land Charges for the purposes of the Local Land Charges Act 1975.

7. Site Not To Be Encumbered

- 7.1 The Owners covenant with the Council that they will not encumber nor deal with the Site in any manner whereby any party hereto or successor in title may

be prevented from carrying out their covenants and obligations contained herein.

8. Waiver

- 8.1 No waiver (whether express or implied) by the Council of any breach or default by the Owners in performing or observing any of the covenants undertakings obligations or restrictions contained in this Unilateral Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings obligations or restrictions from acting upon any subsequent breach or default in respect thereof by the Owners.

9. Interest on Late Payment

- 9.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding seven days the Owners shall pay on demand to the Council interest thereon at the interest rate of four per centum per annum above the base lending rate of the National Westminster Bank plc from the date when the same became due until payment thereof.

10. VAT

- 10.1 All consideration given in accordance with the terms of this Unilateral Undertaking shall be exclusive of any VAT properly payable in respect thereof.

11. Notices

- 11.1 Any notice or other communication to be given under or in connection with this Unilateral Undertaking shall be in writing which for this purpose shall not include e-mail and should be addressed as provided in clause 11.3.

11.2 Any such notice or other communication, if so addressed, shall be deemed to have been received as follows:

11.2.1 if delivered by hand, upon delivery at the relevant address;

11.2.2 if sent by first class post, at 9.00 a.m. on the second Working Day after the date of posting; and

except that where any such notice or other communication is or would otherwise be deemed to be received after 5.30 p.m., such notice or other communication shall be deemed to be received at 9.00 a.m. on the next following working day.

11.3 Subject to clause 11.4, the address, relevant addressee and reference for each party are:

For the Council:

Address: Richmond upon Thames Council Civic Centre, 44 York Street, Twickenham TW1 3BZ

Relevant addressee: Head of Development Management

Reference: 18/4156/FUL

For the Owner:

Address: c/o LSGA, 35 Piccadilly, London, W1J OLP

Relevant addressee: Kim Michael Symes

Reference: 4-6 Manor Road 2016 Submission

11.4 A party may give notice of a change to its name, address or relevant addressee for the purposes of this clause provided that such notification shall only be effective on:

11.4.1 the date specified in the notification as the date on which the change is to take place; or

11.4.2 if no date is specified or the date specified is less than five working days after the date on which notice is received or deemed to be

received, the fifth working day after notice of any such change is given.

12. Determination of Disputes

- 12.1 Subject to **clause 12.7**, if any dispute arises relating to or arising out of the terms of this Unilateral Undertaking, the Council or the Owners may give to the other written notice requiring the dispute to be determined under this **clause 12**. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 12.2 For the purposes of this **clause 12** a “Specialist” is a person qualified to act as an expert in relation to the dispute having not less than ten years’ professional experience in relation to developments in the nature of the Development and property in the same locality as the Site and in relation to any dispute arising out of Schedule 2 shall be a person having not less than 15 years’ professional experience in development viability assessment in London. The Specialist (or his/her employer) will not have undertaken any work for the Council in the previous 10 years and nor shall the Specialist (or his/her employer) being engaged in seeking work from the Council as at the date of the appointment.
- 12.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under **clause 12.4**.
- 12.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate

Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

12.5 The Specialist is to act as an independent expert and:

12.5.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

12.5.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

12.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

12.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

12.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

12.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.

12.6 Responsibility for the costs of referring a dispute to a Specialist under this **clause 12**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

12.7 This **clause 12** does not apply to disputes in relation to matters of law or the construction or interpretation of this Unilateral Undertaking which will be subject to the jurisdiction of the courts.

13. Contracts (Rights of Third Parties) Act 1999

13.1 A person who is not named in this Unilateral Undertaking does not have any right to enforce any term of this Unilateral Undertaking under the Contract (Rights of Third Parties) Act 1999.

14. Miscellaneous

14.1 The construction validity and performance of this Unilateral Undertaking shall be governed by English law.

14.2 Each clause, sub-clause or schedule shall be separate distinct and severable from each other to the extent only that if any clause, sub-clause or schedule becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause or schedule shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause or schedule contained herein.

14.3 If the Secretary of State determines that any obligation (or any part of an obligation) contained within this Unilateral Undertaking is not:

- a) necessary to make the Development acceptable in planning terms;
- b) directly related to the Development; or
- c) fairly and reasonably related in scale and kind to the Development;

or states that no weight should be attached to the obligation in the Appeal Decision then the relevant obligation shall immediately (without any further act by the Parties) cease to have any effect to the extent determined by the Inspector in the Appeal Decision.

- 14.4 In the event of the planning obligations contained in this Unilateral Undertaking being modified a note or memorandum thereof shall be endorsed upon this Unilateral Undertaking.
- 14.5 Nothing in this Unilateral Undertaking shall prejudice or affect the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations and the same may be as fully effectively exercised as if it were not a party to this Unilateral Undertaking.
- 14.6 If the Planning Permission shall expire before the Development has begun within the meaning of Sections 91, 92 or 93 of the 1990 Act or is revoked or is otherwise withdrawn without the consent of the Owners or its successors in title but without prejudice to the Council's ability to enforce in respect of any breach occurring prior to such revocation or withdrawal this Unilateral Undertaking shall have no further effect thereupon.
- 14.7 Nothing in this Unilateral Undertaking shall be construed as prohibiting or limiting any right to develop the Site or any part of it in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the relevant Secretary of State on appeal or by reference to him after this date.

15. Community Infrastructure Levy

- 15.1 The Parties are satisfied that the planning obligations given by the Owners set out in this Unilateral Undertaking accord with the three statutory tests set out in Regulation 122(2)(a)-(c) of the Community Infrastructure Regulations 2010 (as amended).

SCHEDULE 1
Owners' Covenants

The Owners covenant with the Council:-

1. CARBON OFF-SET CONTRIBUTION

1.1 Prior to Occupation of the Development, the Owners must pay the First Carbon Dioxide Emissions Off-Set Contribution to the Council.

1.2 Prior to the Sale of 5 Dwellings the Owners shall deliver to the Council a post construction appraisal which shall confirm whether or not the Development's 77% improvement over Part L of the 2013 Building Regulations has been achieved and therefore whether or not the Zero Carbon Standards requirement has been satisfied in full by payment of the First Carbon Offset Contribution and in the event that it has not, to pay the Second Carbon Offset Contribution before 5 Dwellings are Sold, which shall be calculated in accordance with the Council's Local Plan at £95 per tonne.

2. RESTRICTIONS ON PARKING PERMITS

2.1 The Owners covenant and Undertake with the Council as follows:

2.1.1 to ensure that prior to the Occupation of any Dwelling(s), the new occupier of the Dwelling is informed by the Owners of the Council's policy that they shall not be entitled (unless the Occupier is or becomes a holder of a Disabled Person's Badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) to:

2.1.1.1 be granted a Parking Permit to park a vehicle in a Parking Bay and;

2.1.1.2 will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council;

2.1.1.3 to not permit any person to occupy a Dwelling unless and until such person has waived all rights and entitlement to a resident's parking permit in respect of any of the Dwellings (unless the resident concerned becomes entitled to a Disabled Person's Badge) and where such person has been notified by the Owners in accordance with paragraph 2.1.1 that person shall be taken as having waived all rights and entitlement to the resident's parking permit as required by this paragraph.

2.2 The Owners and any successors in title to the Site hereby acknowledge that the provisions in paragraph 2 above will remain permanently.

3. VOIDS MANAGEMENT PLAN

3.1 Prior to Occupation of the Development the Owners shall submit a Voids Management Plan to the Council.

3.2 The Owners shall not Occupy or permit the Occupation of the Development until the Voids Management Plan has been approved by the Council.

3.3 The Owners shall comply and procure compliance with the Voids Management Plan for the lifetime of the Development.

SCHEDULE 2
Viability Review

PART 1: Viability Review 1

The Owners covenant with the Council:-

1. Viability Review 1 Trigger

- 1.1 Where Substantial Implementation has not occurred before the Viability Review 1 Date the Owners will carry out and submit a Viability Review 1 on the date on which Substantial Implementation is achieved in accordance with the provisions of this Part 1 of Schedule 2.
- 1.2 The Owners shall notify the Council in writing of Substantial Implementation and such notice shall be accompanied by full documentary evidence on an open book basis to enable the Council to independently assess whether Substantial Implementation has occurred and, if so, when Substantial Implementation occurred.
- 1.3 Following notification of Substantial Implementation pursuant to paragraph 1.2 of this Part 1 of Schedule 2, the Owners shall afford the Council access to the Site to inspect and assess whether or not the work which has been undertaken amounts to Substantial Implementation provided always that:
 - 1.3.1 the Council shall provide the Owners with reasonable written notice of its intention to carry out such an inspection;
 - 1.3.2 the Council shall comply fully with the Owners' site rules and regulations applicable as at the time of access throughout the duration of such inspection and with health and safety legislation, policy and best practice; and
 - 1.3.3 the Council shall at all times be accompanied by the Owners or their agent.

- 1.4 The Council shall inspect the Site within 15 Working Days of receiving notice pursuant to paragraph 1.2 and thereafter provide written confirmation to the Owners within 10 Working Days of the inspection date as to whether or not the Council considers that the works undertaken amount to Substantial Implementation.

2 Submission of Development Viability Information

- 2.1 If Viability Review 1 is triggered pursuant to paragraph 1 above, the Owners shall submit the relevant Development Viability Information required pursuant to paragraph 1.1 above on an open book basis to the Council within 20 Working Days of Substantial Implementation.
- 2.2 The Owners will give the Council not less than 15 Working Days' advance written notice of the date on which any Development Viability Information is intended to be submitted.

3. Proposals for Affordable Housing or Affordable Housing Contribution

- 3.1 The Owners will submit to the Council together with any applicable Development Viability Information confirmation as to whether in the Owners' view any Affordable Housing units are to be provided or any Affordable Housing Contribution is payable, subject to the Affordable Housing Cap.

4. Assessment of Development Viability Information

- 4.1 The Council may assess any submitted Development Viability Information and assess whether in its view any Affordable Housing units are to be provided or an Affordable Housing Contribution is payable, subject to the Affordable Housing Cap, in accordance with Formula 1b and Formula 2 and for the avoidance of doubt the Council will be entitled to rely on its own evidence in determining inputs into Formula 1b and Formula 2 subject to such evidence being provided to the Owners; the Owners shall have an opportunity to comment thereon and the Council shall have regard to those comments.

- 4.2 The Council may appoint an External Consultant to assess any Development Viability Information they receive.
- 4.3 In the event that the Council and/or any External Consultant requires further Development Viability Information or supporting evidence of the same then the Owners shall provide any information reasonably required to the Council or any External Consultant (as applicable and with copy to the other parties) within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or any External Consultant (as applicable) has all the information it reasonably requires.
- 4.4 The Owners will pay the Council's costs which are reasonably and properly incurred in assessing any Development Viability Information including those of the External Consultant up to a maximum of £3,000 within 20 Working Days of receipt of a written request for payment.
- 4.5 The Council shall be entitled provided that it acts reasonably to notify the Owners in writing of its decision as to whether any Affordable Housing units are to be provided or an Affordable Housing Contribution is due under Viability Review 1.
- 4.6 In the event that the Council fails to deliver its decision within 30 Working Days after receiving all the information that it reasonably requires or delivers the decision and the Owners are not satisfied with the decision then the dispute provisions of clause 12 shall apply and the matter shall be referred to a Specialist for determination.
- 4.7 If the Council or a Specialist pursuant to clause 12 (as applicable) reasonably determines that an Affordable Housing Contribution is payable or that Affordable Housing units are to be provided, the Owners shall pay the Affordable Housing Contribution or, subject to paragraph 6.2 below, provide the Affordable Housing units in accordance with the provisions of this Part 1 of Schedule 2.

5. Payment of Affordable Housing Contribution

5.1 Where it is determined pursuant to paragraph 4.7 above that an Affordable Housing Contribution is payable pursuant to Viability Review 1 the Owners shall pay such Affordable Housing Contribution to the Council prior to Occupation of the Development.

6. Delivery of Affordable Housing

6.1 Subject to paragraph 6.2 below, where it is determined pursuant to paragraph 4.7 of this Part 1 that any Affordable Housing units are to be provided in accordance with Formula 2 the Owners will submit the Affordable Housing Scheme to the Council and the Owners shall complete such Affordable Housing units prior to Occupation of the Development.

6.2 Where it is determined in the Affordable Housing Scheme that no Registered Provider can be identified who is willing to enter into an agreement with the Owners in respect of the Affordable Housing units then the Owners shall pay the Affordable Housing Contribution in accordance with this Part 1.

6.3 Where it is determined that the Affordable Housing Contribution together with Public Grant is insufficient to provide at least one Affordable Housing unit the Owners will pay the Affordable Housing Contribution to the Council

PART 2: Viability Review 2

The Owners covenant with the Council:-

1. Viability Review 2 Trigger

1.1 The Owners will carry out and submit Viability Review 2 on the Viability Review 2 Date in accordance with the provisions of this Part 2 of Schedule 2.

2. Submission of Development Viability Information

- 2.1 The Owners shall submit the relevant Development Viability Information required pursuant to paragraph 1.1 of this Part 2 above on an open book basis to the Council within 20 Working Days of the Viability Review 2 Date.
- 2.2 The Owners will give the Council not less than 15 Working Days' advance written notice of the date on which any Development Viability Information is intended to be submitted.

3. Proposals for Affordable Housing Contribution

- 3.1 The Owners will submit to the Council together with any applicable Development Viability Information confirmation as to whether in the Owners' view any Affordable Housing Contribution is payable.

4. Assessment of Development Viability Information

- 4.1 The Council may assess any submitted Development Viability Information and assess whether in its view an Affordable Housing Contribution is payable, subject to the Affordable Housing Cap in accordance with Formula 3 and Formula 4 and for the avoidance of doubt the Council will be entitled to rely on its own evidence in determining inputs into Formula 3 and Formula 4 subject to such evidence being provided to the Owners; the Owners shall have an opportunity to comment thereon and the Council shall have regard to those comments.
- 4.2 The Council may appoint an External Consultant to assess any Development Viability Information they receive.
- 4.3 In the event that the Council and/or any External Consultant requires further Development Viability Information or supporting evidence of the same then the Owners shall provide any information reasonably required to the Council or any External Consultant (as applicable and with copy to the other parties)

within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or any External Consultant (as applicable) has all the information it reasonably requires.

- 4.4 The Owners will pay the Council's costs which are reasonably and properly incurred in assessing any Development Viability Information including those of the External Consultant up to a maximum of £3,000 within 20 Working Days of receipt of a written request for payment.
- 4.5 The Council shall be entitled provided that it acts reasonably to notify the Owners in writing of its decision as to whether an Affordable Housing Contribution is due under Viability Review 2.
- 4.6 In the event that the Council fails to deliver its decision within 30 Working Days after receiving all the information that it reasonably requires or delivers the decision and the Owners are not satisfied with the decision then the dispute provisions of clause 12 shall apply and the matter shall be referred to a Specialist for determination.
- 4.7 If the Council or a Specialist pursuant to clause 12 (as applicable) reasonably determines that an Affordable Housing Contribution is required the Owners shall pay the Affordable Housing Contribution in accordance with the provisions of this Part 2 of Schedule 2.

5. Payment of Affordable Housing Contribution

- 5.1 Where it is determined pursuant to paragraph 4.7 of this Part 2 that an Affordable Housing Contribution is payable pursuant to Viability Review 2 the Owners shall pay such Affordable Housing Contribution to the Council within 40 Working Days of Occupation of the final Dwelling to be Occupied.

6. Affordable Housing Cap

- 6.1 For the avoidance of doubt, any Affordable Housing units provided and any Affordable Housing Contribution paid pursuant to this Schedule shall in total together never exceed the Affordable Housing Cap.

ANNEX 1

Viability Review Formulae

1. FORMULA 1b (VIABILITY REVIEW 1 – EARLY REVIEW SURPLUS)

X = Surplus profit available for Additional Affordable Housing Units or an Affordable Housing Contribution at Viability Review 1

$$X = (A - B) - (C - D) - P$$

A = Viability Review 1 Stage GDV as determined at the time of review (£)

B = Application Breakeven GDV (£)

C = Viability Review Build Costs as determined at the time of review (£)

D = Application Build Costs as determined at grant of planning permission

P = (A – B) * Y; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the application stage (17.5%)

2. FORMULA 2 (VIABILITY REVIEW 1 - ADDITIONAL AFFORDABLE HOUSING UNITS)

X = Additional Low Cost Rented Housing requirement (habitable rooms)

$$X = ((E * F) \div (A - B)) \div D$$

Y = Additional Intermediate Housing requirement (habitable rooms)

$$Y = ((E * G) \div (A - C)) \div D$$

A = Average value of market housing per m² (£)

B = Average value of Local Cost Rented Housing per m² (£)

C = Average value of Intermediate Housing per m² (£)

D = Average habitable room size for the Development (m²)

E = Surplus profit available for additional affordable housing (as determined in Formula 1b above) (£)

F = Percentage of surplus profit available for additional affordable housing to be used for Low Cost Rented Housing (%)

G = Percentage of surplus profit available for additional affordable housing to be used for Intermediate Housing (%)

3. **FORMULA 3 (VIABILITY REVIEW 2 AFFORDABLE HOUSING CONTRIBUTION)**

X = Affordable Housing Contribution payable at the time of Viability Review 2

$$X = (((A + B) - C - Q) - ((D + E) - F) - P) \times 0.6$$

A = GDV achieved on Sale of 15 Dwellings and GDV from other parts of the development Sold and other income receipts (£)

B = Estimated GDV for parts of the development that are yet to be Sold and other income sources (£)

C = Application Breakeven GDV (or as determined in the Viability 1 Review) (£)

Q = means:

- if Viability Review 1 was carried out and an Affordable Housing Contribution was paid, zero;
- if Viability Review 1 was carried out and an Affordable Housing Contribution was not paid, a positive number equal to the amount by which the figure produced by Formula 1b in Viability Review 1 was less than zero

D = Viability Review Stage Build Costs incurred at the time of review (£)

E = Estimated Build Costs for remainder of the development (£)

F = Application Build Costs determined as part of the assessment of viability at the time planning permission was granted (or as determined in the Viability 1 Review) (£)

P = Developer profit on change in GDV (£); $P = (A + B - C) * Y$;

Y = 17.5 (%)

4. FORMULA 4 (AFFORDABLE HOUSING CAP)

$$\text{Viability Review Cap} = (((A \times D) - (B \times D)) \times E) + (((A \times D) - (C \times D)) \times F)$$

A = Average Dwelling Value per m² (£) as at the date of the relevant Viability Review

B = Average Low Cost Rented Housing Value per m² (£) as at the date of the relevant Viability Review

C = Average Intermediate Housing Value per m² (£) as at the date of the relevant Viability Review

D = Average Habitable Room size of the Development

E = Low Cost Rented Housing shortfall against a requirement for 35% of habitable rooms in the Development to be Low Cost Rented Housing (where 35% is 70% of habitable rooms of Affordable Housing, assuming Affordable Housing comprises 50% of habitable rooms in the Development)

F = Intermediate Housing shortfall against a requirement for 15% of habitable rooms in the Development to be Intermediate Housing (where 15% is 30% of habitable rooms of Affordable Housing, assuming Affordable Housing comprises 50% of habitable rooms in the Development)

ANNEX 2
Plan 1

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year first before written

Executed as a Deed by **4 MANOR ROAD LTD** acting by a director in the presence of:

Director signature

Director name

Witness signature

Witness name

Witness address

Witness occupation

Executed as a Deed by **KIM MICHAEL SYMES** in the presence of :

Signature

Name

Witness signature

Witness name

Witness address

Witness occupation