

THIS DEED OF AGREEMENT is made the *10th* day of *October* 2014

**B E T W E E N**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham Middlesex, TW1 3BZ (the "Council")
- (2) **DATBLYGAU DAVIES DEVELOPMENTS LIMITED** (company registration No.4184996) whose office is situate at Cawdor Garage, Newcastle Emlyn, Carmarthenshire SA38 9BJ (the "First Owner") and
- (3) **DAVID KEVIN LEWIS DAVIES** and **RACHEL ANNE MARGRETTA DAVIES** both of Llys Cawdor Carmarthen Rd Newcastle Carmarthenshire SA38 9DA (together called the "Second Owner")
- (4) **DAVIES WHITTON ROAD LIMITED** (company registration No.9030071) whose office is situate at Cawdor Garage, Newcastle Emlyn, Carmarthenshire SA38 9BJ (the "Third Owner")

**INTERPRETATION**

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

- |                                |  |
|--------------------------------|--|
| "1990 Act"                     | the Town and Country Planning Act 1990   |
| "Achieved Net Sales Price"     | the aggregate of the prices paid for the sales of each of the Units on the basis of the sale of the freehold or the grant of a Long Leasehold Interest (as the case may be) in each case at Open Market Value at the date the Units were disposed of and in the event that any of the Units have not been sold by the date of the Review then together with the estimated Open Market Value of all of the Units which have not been disposed of at that date on the assumption that such Units are were sold on a freehold basis |
| "Affordable Housing Agreement" | the agreement dated 26 March 2014 entered into between the Council (1) Richmond upon Thames Churches Housing Trust Limited (2) and National Westminster Bank PLC (3) relating to the Harvey Road Property under the provisions of section 106 of the Town and Country Planning Act 1990  |

"Affordable Housing Contribution"	<p>the lowest of the under-mentioned amounts:</p> <p>(1) The Surplus;</p> <p>(2) The Harvey Road Development Cost; and</p> <p>(3) Nine hundred and twenty thousand six hundred and sixty eight pounds (£920,668) Indexed</p>
"DCM"	<p>the Council's Development Control Manager for the time being or such other person as may be appointed from time to time to carry out that function</p>
"Development"	<p>the development described in (and authorised by) the Planning Permission</p>
"Development Costs"	<p>the aggregate of the financial contributions paid to the Council under paragraph 5 of Schedule 1 to this Agreement; the construction costs of the Development which (where contracts have been let) shall represent actual tender prices and professional fees incurred and (where contracts have not been let) estimated construction costs calculated by reference to information published by the Building Cost Information Service and estimated professional fees; the cost of development finance for the construction of the Development; any other costs properly and necessarily incurred in undertaking the development (including the remediation of contamination and the diversion of utilities); together with marketing and disposal costs and fees; and a developers profit equal to twenty per centum (20%) of the Gross Development Value</p>
"Education Contribution"	<p>the sum of forty two thousand seven hundred and forty six pounds (£42,746) Indexed towards the Education Use</p>
"Education Use"	<p>use towards the provision of education within the administrative area of the Council</p>

“Gross Development Value”

the aggregate of the Achieved Net Sales Price and the Open Market Value of the freehold of the Property retained by the Owners Provided That

(1) where a Unit is intended to be sold on a freehold basis but has not been sold and an estimate of such Open Market Value has been included in the Achieved Net Sales Price then such estimate shall not also be included as freehold property retained by the Owners; and

(2) where a Unit is intended to be sold on the basis of the grant of a Long Leasehold Interest but such interest has not been granted and an estimate of such Open Market Value has been included in the Achieved Net Sales Price on the assumption that such Unit is sold on a freehold basis then such estimate shall not also be included as freehold property retained by the Owners

“Harvey Road Development”

the development described in (and authorised by) the Harvey Road Planning Permission

“Harvey Road Planning Permission”

the planning permission dated 9 April 2014 granted by the Council for the erection of 9 affordable housing units (5 x three bedroom houses, 3 x four bedroom houses and 1 x five bedroom house) on the Harvey Road Property (bearing the Council’s reference number 10/1865/FUL)

“Harvey Road Property”

land known as land to the rear of 42-48 Harvey Road Twickenham

“Harvey Road Development Cost”

the estimated cost at the date of the Review of Substantially Completing the construction (including materials, labour and professional fees but excluding the cost of the land) of 9 affordable housing units on the Harvey Road Property

"Health Care Use"	use towards the provision of health facilities within the administrative area of the Council
"Health Contribution"	the sum of two thousand five hundred pounds and forty seven pence (£2,500.47) Indexed towards the Health Care Use
"Indexed"	increased in accordance with the formula whereby the relevant contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at July 2012 and A represents the value of the same index as at the date of payment of the relevant contribution to the Council
"Land Value"	nine hundred thousand pounds (£900,000) increased by reference to the percentage increase in the Land Registry's House Price Index for the London Borough of Richmond upon Thames between January 2009 and the date of the Review
"LDF"	the adopted policies of the Richmond upon Thames Local Development Framework Core Strategy 2009 and Development Management Plan 2011
"Long Leasehold Interest"	a lease of a minimum term of 99 years at a peppercorn rent and with no unusually onerous covenants and conditions
"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; archaeological investigation; and landscaping works on the public highway
"Monitoring Fee"	5% of the combined sum of the Education, Health, Public Realm and Transport Contributions being five thousand, four hundred and eighteen pounds and twenty-six pence (£5,418.26)

# H. M. LAND REGISTRY

NATIONAL GRID PLAN  
GREATER LONDON

TQ1573

SECTION J

Scale 1/1250

BOROUGH of RICHMOND UPON THAMES

The boundaries shown by dotted lines have been plotted from the plans on the deeds. The title plan may be updated from later survey information.



TQ1573 SE  
TQ1573 NE

Old Reference MIDDLESEX XX 12 AF

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*Handwritten signatures and notes:*  
TGL 139217  
KING'S COLLEGE  
Crown

**TITLE No. TGL 139217**



"Occupation"	in relation to the Development the full and beneficial occupation of each of the Units (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
"Open Market Value"	the best price which might reasonably be expected to be obtained at arm's length for an interest in a Unit or other relevant part of the Property at the date of disposal
"Owners"	the First Owner the Second Owner and the Third Owner together
"Planning Application"	a planning application submitted to the Council on 2 July 2010 bearing reference number 10/1864/FUL for the erection of 9 houses
"Planning Permission"	planning permission granted pursuant to the Planning Application
"Property"	land known as land to the rear of 84 Whitton Road Twickenham shown edged with red on the plan attached hereto
"Public Realm Contribution"	the sum of eleven thousand five hundred and sixty six pounds and eighty pence (£11,566.80) Indexed towards the Public Realm Use
"Public Realm Use"	use for the provision of and improvements to the public realm within the Council's administrative area
"Review"	a written financial viability assessment and appraisal of the Development on an open book basis with the purpose of determining the Gross Development Value the Development Costs the Land Value the Surplus the Harvey Road Development Cost and the Affordable Housing Contribution
"Substantially Completed"	the substantial completion of all of the units of residential development comprised in the Harvey Road Development such that each unit has been constructed to include all walls (with windows and doors installed) roof, the provision of all internal services and the completion of all internal plastering

"Surplus"	painting and other finishes (and "Substantially Completing" shall be construed accordingly)
"Transport Contribution"	the sum (if a positive figure) achieved by the deduction from the Gross Development Value of the Development Costs and the Land Value
"Transport Use"	the sum of fifty one thousand five hundred and fifty two pounds (£51,552) Indexed towards the Transport Use
"Units"	use towards the provision of transport improvements within the administrative area of the Council
"Valuer"	all those nine self-contained residential units forming part of the Development and "Unit" shall be construed accordingly
	a member of the Royal Institution of Chartered Surveyors of not less than ten years relevant experience in the valuation of residential property

**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 First Owner is registered at the Land Registry with absolute title under title number TGL133965 as the proprietor of the freehold interest in that part of the Property known as 84 and 86 Whitton Road
- (3) The Second Owner is registered at the Land Registry with absolute title under title number TGL139217 as the proprietor of the freehold interest in that part of the Property known as land lying to the north east of Whitton Road, Twickenham
- (4) The Third Owner is registered at the Land Registry with absolute title under title number TGL405864 as the proprietor of the freehold interest in that part

of the Property known as land on the north east side of Whitton Road, Twickenham

- (5) On 26 July 2012 the Council as local planning authority resolved to approve the Planning Application and grant planning permission for the Development subject to the prior completion of a deed of planning obligation under section 106 of the 1990 Act to secure financial contributions towards education, health, transport and the public realm, the sale of development land to the rear of 42-48 Harvey Road, Whitton (10/1865/FUL) to a housing association and the substantial completion of 9 affordable housing units for affordable rent on the land to the rear of 42-48 Harvey Road Whitton and the restriction of parking permits within the Community Parking Zone within which the Property is located
- (6) Policy CP18 of the LDF Core Strategy 2009 provides that the Council will ensure the provision of schools, pre-schools and other educational facilities, meet the need for additional educational resources any new development may generate and developers will have to take into account the potential need to contribute to the provision of primary and secondary school places in the borough
- (7) Policies DM TP2 and DM TP8 of the LDF Development Management Plan 2011 provide that the Council will only approve new development where the transport infrastructure can accommodate it or be adapted to it and new development should be acceptable in terms of traffic generation and traffic impact in the road
- (8) Policy CP17 of the LDF Core Strategy 2009 provides that health and wellbeing in the Council's area is important and all new developments should encourage and promote healthier communities and places
- (9) Policy CP16 of the LDF Core Strategy 2009 provides that new development will be expected to provide for additional infrastructure and community needs generated by the development

**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 binding the Owners and their successors in title to the Property and enforceable by the Council as local planning authority
2. THE Owners hereby jointly and severally covenant with the Council as set out in Schedule 1 and Schedule 2
3. THE Council covenants with the Owners as set out in Schedule 3
4. 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 Owners" 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 First Owner the Second Owner the Third 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 Owners and/or any mortgagee 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 grant of a further planning permission 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 Owners or their successors in title the obligations of the Owners under this Deed shall thereupon cease absolutely and in that event the Council will repay to the Owners 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 Owners 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 Owners

*Liability of subsequent Owners and release of former Owners*

- (o) The provisions hereof shall be enforceable by the Council against the Owners and all persons who shall have derived title through or under them in respect of 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 save in respect of any antecedent breach)

*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 Owners

*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 operation as defined in Section 56(4) of the 1990 Act has not taken place within 3 years of the Planning Permission having been granted or the Planning Permission shall be varied or revoked other than at the request of the Owners or the Planning Permission having been granted is quashed following a successful legal challenge and in any such case any sums paid by the Owners under this Deed shall be repaid to the Owners by the Council forthwith together with interest at the Base Rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment

*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 contributions payable under paragraph 4 of Schedule 1 of this Deed are not paid to the Council within the timescale there stipulated then interest shall be paid on such contributions at the rate of 4% above the Bank of England base rate from time to time in force from the date that the contributions became due to the date of actual payment

*Community Infrastructure Levy Regulations 2010*

- (u) The terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and are fairly and reasonably related in scale and kind to the Development

*Conditionality*

- (v) This Deed is conditional on the grant and issue of the Planning Permission

*Release*

- (w) 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, except in respect of any breach subsisting prior to parting with such interest

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

**SCHEDULE 1**

**COVENANTS BY THE OWNERS**

**Part I – Car Parking Permits**

1. Not to Occupy or dispose of or allow any person to Occupy or dispose of any of the Units to be created as part of the Development unless a notice has been served on such person that pursuant to the Council's policies to which reference is made in recital (6) hereof or any other policy replacing the same 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 resident's permit to park a vehicle in any marked highway bay or other place within a controlled parking zone 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

## **Part II - Notifications**

2. To give notice in writing to the DCM of its intention to commence the Development at least seven (7) days before making a Material Start and to give a further notice in writing to the DCM of the actual date on which a Material Start occurs within seven (7) days of the occurrence of the same

## **Part III – Restriction on Occupation and Financial Contributions**

3. Not to Occupy or permit the Occupation of more than 5 of the Units within the Development until:
  - 3.1 the Harvey Road Development has been Substantially Completed to the reasonable satisfaction of the Council; or
  - 3.2 the Owners have paid to the Council the Affordable Housing Contribution
4. To pay to the Council the Education Contribution, the Health Contribution, the Public Realm Contribution, the Transport Contribution and the Monitoring Fee within one (1) year of a Material Start

## **Part IV - Costs**

5. On the date hereof to pay the Council's reasonable and proper legal costs in the preparation, negotiation, completion and registration of this Deed in the sum of £950

## **SCHEDULE 2**

### **REVIEW**

1. The Owners shall notify the Council in writing of the transfer of the fifth Unit.
2. At any time after the transfer of the fifth Unit the Owners may by notice in writing to the Council undertake a Review to determine the Surplus (if any) and the amount of the Affordable Housing Contribution
3. On completion of the Review the Owners shall deliver a copy of the Review (with supporting material) to the Council and shall use reasonable endeavours to agree with the Council the Surplus (if any) and the Affordable Housing Contribution

4. If within one month of the delivery of the Review to the Council the Owners and the Council have not agreed the amount of the Surplus (if any) and the Affordable Housing Contribution then either the Owners or the Council may refer the same to a Valuer to be agreed between the Owners and the Council and failing agreement as to the identity of such Valuer then a Valuer to be nominated on the application of either the Owners or the Council by the President for the time being of the Royal Institute of Chartered Surveyors, who shall act as an expert.
5. If the Owners Occupy or permit the Occupation of more than 5 Units without paying the Affordable Housing Contribution to the Council then the provisions of paragraphs 2-4 of this Schedule shall additionally have effect so as to permit the Council to undertake a Review, to determine the Surplus (if any) and the Affordable Housing Contribution, submit the same to the Owners, use reasonable endeavours to agree the same with the Owners and on failing to reach agreement on any of the same with the Owners to refer the matters in dispute to the Valuer for determination in the manner referred to and for this purpose the Owners shall (at the request of the Council) provide such information (including without limitation information relating to the Gross Development Value, Development Costs and the Harvey Road Development Cost) as the Council shall reasonably require to enable it to undertake the Review.
6. If the Owners Occupy or permit the Occupation of more than 5 Housing Units without paying the Affordable Housing Contribution to the Council then the Owners shall pay the Affordable Housing Contribution to the Council within two months of the Affordable Housing Contribution being agreed between the Owners and the Council or otherwise determined by the Valuer in the manner referred to together with interest at four per centum (4%) over the base rate of Barclays Bank PLC for the period from the date on which more than 5 Units were first Occupied until the date of payment.

### SCHEDULE 3

#### COVENANTS BY THE COUNCIL

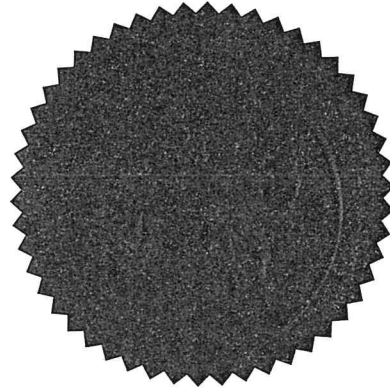
##### Part I - Contributions

- 1.1 to use the Education Contribution paid to it pursuant to paragraph 4 of Schedule 1 to this Deed towards Education Use
- 1.2 to use the Health Contribution paid to it pursuant to paragraph 4 of Schedule 1 to this Deed towards Health Care Use

1.3 to use the Public Realm Contribution paid to it pursuant to paragraph 4 of Schedule 1 to this Deed towards Public Realm Use

1.4 to use the Transport Contribution paid to it pursuant to paragraph 4 of Schedule 1 to this Deed towards Transport Use

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



*C. Wain*

Authorised Officer

Seal Reg. No. *3040/03*

EXECUTED as a DEED by )  
DATBLYGAU DAVIES )  
DEVELOPMENTS )  
LIMITED )  
acting by two directors )

Director *[Signature]*

Director *[Signature]*

SIGNED AS A DEED by )  
DAVID KEVIN LEWIS DAVIES )  
in the presence of: )

*[Signature]* XDKLD

Witness signature *[Signature]*

Witness name *Tom Lewis*

Witness address *Brown Hill, Rowland Road, Cammerley, SABIIN*

SIGNED AS A DEED by  
RACHEL ANNE MARGRETTA DAVIES  
In the presence of:

)  
) x *PAW*  
) *ADavies*

Witness signature ✓ *N Jones*

Witness name ✓ *N. Jones*

Witness address ✓ *Pantrliwddulais*  
*Talgarreg*  
*Llanclysul*  
*SA44 4XN*

EXECUTED as a DEED by  
DAVIES WHITTON  
ROAD LIMITED  
acting by two directors

)  
)  
)  
)

Director ✓



Director ✓

*ADavies*

Dated 10 October 2014

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

DATBLYGAU DAVIES  
DEVELOPMENTS LIMITED

DAVID KEVIN LEWIS DAVIES AND RACHEL  
ANNE MARGRETTA DAVIES

-and-

DAVIES WHITTON ROAD LIMITED

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DEED OF AGREEMENT  
made under Section 106 of the  
Town and Country Planning Act 1990  
relating to  
Land to the rear of 84 Whitton Road  
Twickenham

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