

**THIS DEED OF AGREEMENT** is made the *4<sup>th</sup>* day of *September*  
two thousand and thirteen **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) CHENSON CONSULTANTS LIMITED** (Company Registration Number SC272375) whose office is situate at 3 PROSPECT PLACE, ARNHALL BUSINESS PARK, WESTHILL, ABERDEENSHIRE, AB32 6SY ("the Owner")

## **INTERPRETATION**

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

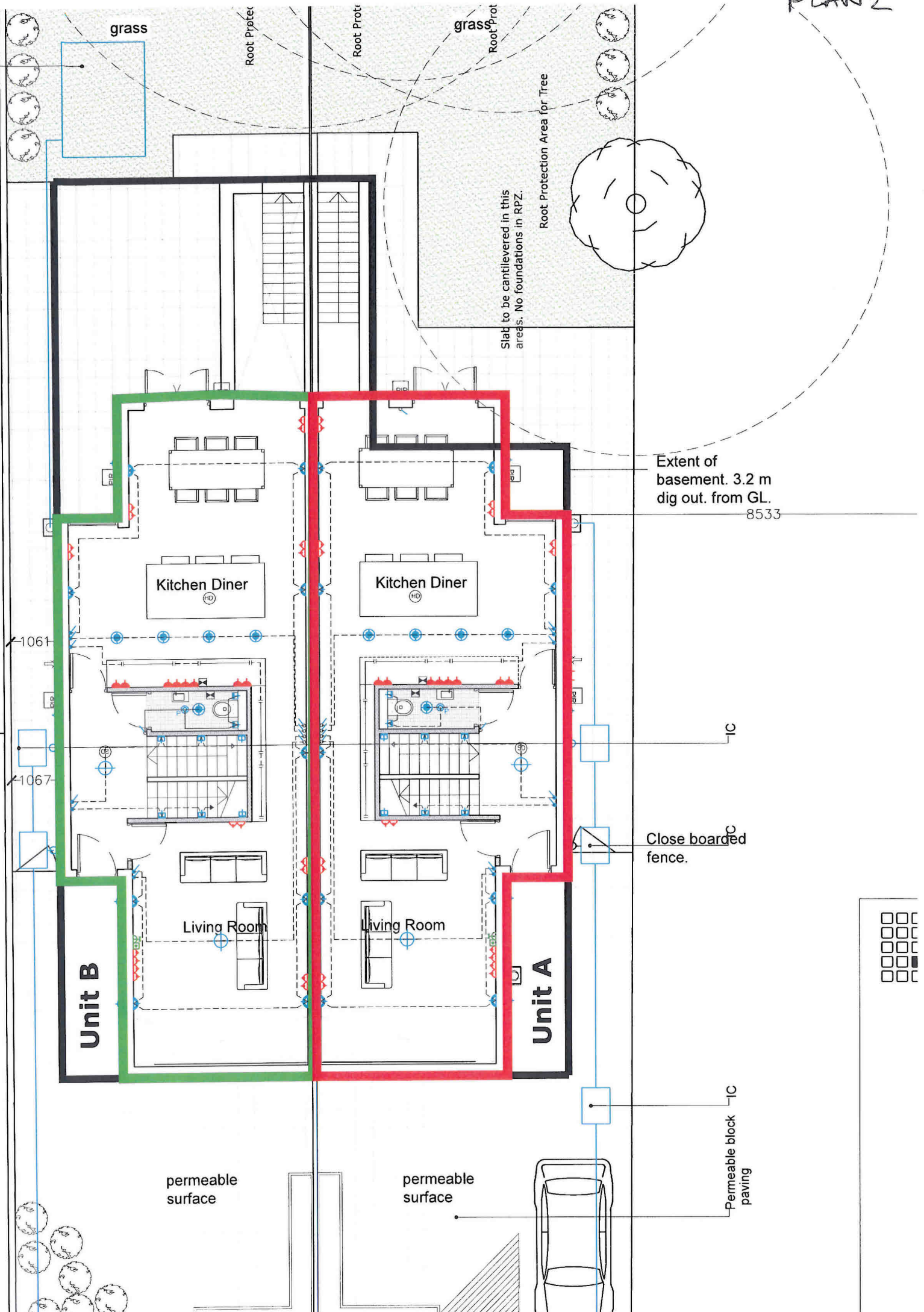
"the 1990 Act"	the Town & Country Planning Act 1990
"Accredited Car Club Provider"	an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment thereof
"Affordable Housing Contribution"	the sum of two hundred and eleven thousand pounds (£211,000) Indexed
"Affordable Housing Use"	in relation to the Affordable Housing Contribution towards affordable housing provision within the administrative area of the Council
"Car Club"	a local club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them for the period of the booking
"Car Plus"	the national charity (No. 1093980) promoting responsible car use and which operates an accreditation scheme for Car Clubs
"the DCM"	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
"the Development"	the development described in the Planning Permission
"Indexed"	the index of Retail Prices (All Items) published by the Office for National Statistics
"LDF"	the adopted policies of the Richmond upon Thames Local Development Framework Core Strategy 2009 and 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 hundred and fifty pounds (£250)
"Occupation"	the full and beneficial occupation of a Unit (but this expression shall not include occupation for the purposes of construction or fitting out or for marketing or security purposes) and "Occupied" and "Occupy" shall be construed accordingly
"Occupation Date"	first Occupation of either Unit for residential purposes within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)
"the Planning Application"	a planning application submitted to the Council on 17 August 2012 bearing reference number 12/2674/FUL for the demolition of existing single storey

TWICKENHAM PARISH







grass

Root Protec

Root Protec

grass

Root Protec

Root Protection Area for Tree

Slab to be cantilevered in this areas. No foundations in RPZ.

Extent of basement. 3.2 m dig out. from GL.

8533

Kitchen Diner

Kitchen Diner

Living Room

Living Room

Unit B

Unit A

Close boarded fence.

permeable surface

permeable surface

Permeable block paving





	dwelling with accommodation in roof and replacement with two storey building with accommodation in roof and basement to create two single dwellinghouses
"the Planning Permission"	a planning permission to be granted by the Council pursuant to the Planning Application
"the Property"	land known as Fairhurst, Arlington Road, Twickenham, TW1 2BG shown edged red on Plan 1
"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
"Sale Date"	the completion date and the receipt of the proceeds of sale in respect of the first Sale of either Unit
"Unit A"	the unit shown edged red on Plan 2
"Unit B"	the unit shown edged green on Plan 2
"Units"	the self-contained residential units forming part of the Development comprising of Unit A and Unit B and the term "Unit" shall be construed accordingly

**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 MX412264 as the proprietor of the freehold interest in the Property
- (3) The Council as local planning authority has resolved under delegated powers to approve the Planning Application and grant planning permission for the Development subject to the completion of an agreement under Section 106 of the 1990 Act to secure a financial contribution towards affordable housing the provision of a car club and a restriction on availability of on-street parking to one parking permit in the Controlled Parking Zone within which the Property is located

- (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) 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
- (6) In December 2006 the Council adopted as Supplementary Planning Guidance a Car Club Strategy which provides inter alia that the Council will encourage new car club provision in the locality of a development through the Council's preferred Accredited Car Club Provider or, where appropriate and where capacity exists, affiliation to the preferred Accredited Car Club Providers Car Club

**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 covenants with the Council as set out in Schedule 1
3. THE Council covenants with the Owner as set out in Schedule 2
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 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 First Planning Application and the Second 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 paragraphs 5 and 6 of Schedule 1 of this Deed is not paid to the Council within the timescales stipulated therein, then interest shall be paid on such contribution at the rate of 4% above the 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

*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 fairly and reasonably related in scale and kind to the Development

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 OWNER**

#### **Part I- Car Club**

- 1.1 Prior to a Material Start the Owner shall select an Accredited Car Club Provider and shall thereafter notify the DCM.
- 1.2 The Owner agrees not to occupy or permit or allow the Occupation of either Unit until:
  - 1.2.1 the Owner has procured at its own expense that each Unit forming part of the Development is provided with a welcome pack from the Approved Car Club (one per household) notified to the DCM under paragraph 1.1 above
  - 1.2.2 it has promoted and advertised to each potential occupier of the Units the value and benefits of membership of a Car Club and continues to do so in perpetuity from the date of first Occupation and
  - 1.2.3 it has paid to the Accredited Car Club Provider the membership fee payable to the Accredited Car Club Provider for each Unit for a period in perpetuity from the date of first Occupation; and
  - 1.2.4 it has included a provision in any lease, licence or tenancy agreement affecting the whole or part of the Property that each Unit should seek to belong to the Car Club at the Property.
- 1.3 In the event that the Car Club is no longer able to provide the Car Club for the Development the Owner shall notify the Council in writing and shall then use all reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Deed. If having used reasonable endeavours a contract cannot be secured on terms no more onerous than those set out in Schedule 3 then the obligations imposed in paragraph 1.2 of this Schedule 2 shall cease to apply.

#### **Part II – Car Parking Permits**

2. Not to Occupy or dispose of or allow any person to Occupy or dispose of Unit A 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 (5) 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 no more than one 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

3. Not to Occupy or dispose of or allow any person to Occupy or dispose of Unit B 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 (5) 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 III - Occupation of the Units**

4. Not to permit Occupation of any Unit until the charge dated 1 August 2008 upon the Property registered until title number MX412264 in favour of HSBC BANK PLC of 8 Canada Square, London, E14 5HQ has been discharged and reference to it removed from the Charges Register of title number MX412264

### **Part IV- Contributions and Notifications**

5. To pay to the Council the Affordable Housing Contribution within fifteen (15) days of the Occupation Date or the Sale Date (whichever is sooner)
6. In the event that the Occupation Date has not occurred within two years of a Material Start then to pay:
  - (i) the Affordable Housing Contribution and;
  - (ii) an additional sum which is a sum equal to the difference between the payment of the Affordable Housing Contribution and a sum arrived at by increasing the Affordable Housing Contribution by the percentage by which the Index has been increased between the date hereof and the date payment is received by the Council (and for the purpose of calculating the increase the Index for which most recent official figures published by the Office for National Statistics are available shall be deemed to be the index prevailing at the date the payment is due)
7. 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

### **Part V – Non Enforcement**

8. None of the obligations covenants and restrictions contained in this Deed shall be enforceable against:

- (i) any owner-occupier or tenant of either of the Units nor against those deriving title from such owner-occupier or tenant
- (j) (ii) a mortgagee or chargee of any person specified in subparagraph (i) above of this Deed or any receiver or manager (including administrative receiver) duly appointed by such mortgagee or chargee or any successor in title or any mortgagee of any such unit who becomes a mortgagee in possession

#### **Part VI- Costs**

9. On the date hereof to pay the Monitoring Fee

### **SCHEDULE 2**

#### **COVENANTS BY THE COUNCIL**

##### **Part I -Contribution**

- 1 To accept the Owner's covenants contained in Schedule 1 hereof
- 2 To use the Affordable Housing Contribution paid to it pursuant to paragraph 4 of Schedule 1 of this Deed towards the Affordable Housing Use
- 3 That it accepts receipt of the Owner's payment of six hundred and eighty pounds (£680) for the Council's reasonable and proper legal costs in the preparation and completion of this Deed
- 4 That it acknowledges receipt of a copy of this Deed for the purposes of Section 106 (10) of the 1990 Act

### **SCHEDULE 3**

#### **HEADS OF TERMS WITH THE ACCREDITED CAR CLUB PROVIDER**

**Land known as Fairhurst, Arlington Road, Twickenham, TW1 2BG**

##### **Terms of Agreement**

- The Accredited Car Club Provider is to become the "official car club of Fairhurst, Arlington Road"
- The Accredited Car Club Provider will provide a code that will allow future residents to claim their membership on Occupation of the Units .

- The Accredited Car Club Provider will operate normal systems, processes and policies with regard to registration, bookings, payment/billing, cleaning and maintenance of its nearby cars.
- The Owner will market the service to all new residents and tenants in the completed Development in welcome packs and at all appropriate opportunities.
- Agreement is initially just for the Site with any further developments undertaken by the Owner being evaluated on a case by case basis.

**Commercial Terms**

The Owner will:

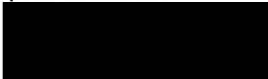
- Contribute £300 (plus VAT) per Unit for a lifetime membership for the 2 Units. The total payable is therefore £600 (plus VAT) (or such other standard fee as is reasonably charged by a Car Club). Payment is due before the first Occupation of the first Unit; and
- This rate is fixed for the duration of the Planning Permission to give a clear outline to the Owner what their liability is in relation to fulfilling this condition

The Accredited Car Club Provider will provide one lifetime membership per Unit in the Development.

**[Fees**

*Please note, the lifetime membership fee is based on fees provided by the car club provider on the date hereof. If fees vary at a later date, The Owner will be responsible for paying them].*

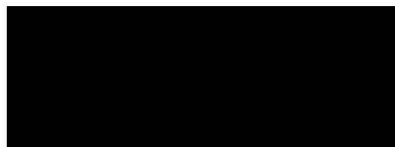
THE COMMON SEAL of the MAYOR  
AND BURGESSES )  
OF THE LONDON BOROUGH OF )  
RICHMOND UPON THAMES was )  
hereunto affixed in the presence of:- )



Authorised Officer

Seal Reg. No. 2765/03

EXECUTED AS A DEED BY )  
CHENSON CONSULTANTS LIMITED )  
in the presence of )



Authorised signatory

**Dated** 4th September 2013

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

-and-

**CHENSON CONSULTANTS LIMITED**

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**DEED OF AGREEMENT  
made under Section 106 of the  
Town & Country Planning Act 1990  
relating to Fairhurst, Arlington Road,  
Twickenham, TW1 2BG**

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Paul Evans  
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