

HL.

DATE

28th October

2009

UNILATERAL UNDERTAKING

by

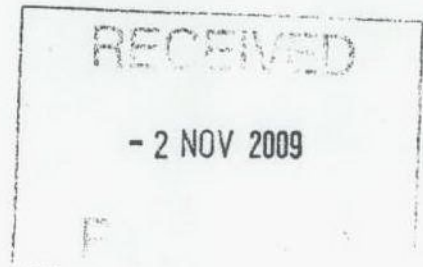
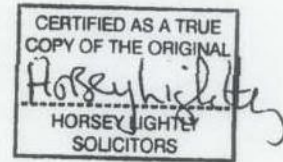
HAMILTON LOFTS LTD

and

HERITABLE BANK PLC  
(in administration)

to

THE COUNCIL OF  
THE LONDON BOROUGH OF RICHMOND UPON THAMES



Relating to land known as

37 Hamilton Road  
Twickenham

Pursuant to Section 106 of the Town and Country Planning Act 1990

THIS UNILATERAL UNDERTAKING is made as a Deed the *28th of October* of 2009

BY:

(1) HAMILTON LOFTS LTD (Company registered in England no5147307) whose registered office is situated at 20 Mortlake High Street, London, SW14 8JN ("the Owner"); and

(2) HERITABLE BANK PLC in administration (Company registered in Scotland no717) (formerly *Heritable Bank Limited*) whose principal office is situated at 8 Hill Street, London W1J 5NG acting by one of its Joint Administrators ("the Mortgagee").

TO:

(3) THE COUNCIL OF THE LONDON BOROUGH OF RICHMOND UPON THAMES of Civic Centre, 44 York Street, Twickenham TW1 3BZ ("the Council")

WHEREAS:

1. The Council is the Local Planning Authority for the purposes of the Planning Act for the area within which the Property is situated.
2. The Owner is registered at HM Land Registry as the freehold owner of the Property under the title number TGL254436 and subject to the Mortgage but otherwise free from encumbrances, except as stated in the title, and has agreed to enter into this Unilateral Undertaking as hereinafter appearing.
3. The Owner has submitted the Application to the Council and the Application was validated by the Council on 26 August 2008.
4. The Owner subsequently appealed to the Planning Inspectorate for non-determination of the Application on 12 August 2009.
5. The Owner enters into this undertaking so that should the Planning Inspectorate allow the Appeal and thereby grant planning permission for the Development such planning permission should be granted subject to this Unilateral Undertaking in order to facilitate and enable:
  - a. The provision of Social-Rented Housing on the Property;
  - b. The making of certain financial contributions by the Owner to the Council; and
  - c. The delivery of on-site public space improvements.

NOW THIS UNILATERAL UNDERTAKING WITNESSES as follows:

1. In this Unilateral Undertaking the following words and expressions shall have the meanings ascribed to them below:

"Accredited Car Club Provider" means 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 therefor

"Affordable Housing " means subsidised housing that is available to people who are on a register maintained by the Council and Registered Social Landlords who have properties in the Council's administrative area or (in the absence of such persons) persons who fulfil the occupation criteria of the relevant Registered Social Landlord

"Affordable Housing Price" means a sum payable by the Registered Social Landlord for the Affordable Housing Units restricted so as to enable the letting of the Affordable Housing Units at Target Rents as published by and in accordance with TSA guidelines

"Affordable Housing Units" means the 8 residential units of Affordable Housing to be built as part of the Development and in accordance with current HCA Housing Quality Indicators in force at the date of the Commencement of Development and will be provided in accordance with the provisions of **Schedule 1**.

"Amenity Contribution" means the contribution to improvements to the public realm, open space, children's play facilities and playing fields to the north of the Property in accordance with **Schedule 2**.

"Appeal" means the appeal submitted by the Owner to the Council under PINS references: APP/L5810/A/09/2110641 & APP/L5810/E/09/2110657.

"Application" means the planning application filed under the Council's references 08/2870/FUL & 08/3000/CAC and submitted to the Council and as subsequently amended and which relates to the Property.

"Car Club" means a a local car 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

"Car Club Space" means the car parking space shown edged green on the attached plan marked "Plan 1"

"Car Plus" the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs

"Commencement of Development" means the date on which the Development commences by the carrying out on the site pursuant to the Planning Permission of a material operation as specified in Section 56 (4) of the 1990 Act.

"Controlled Parking Zone" means an area where parking is restricted by Traffic Regulation Orders or Traffic Management Orders in accordance with signs placed on all vehicular entry points to the area (except in designated parking bays or where otherwise signed).

"DCM" means the Council's Development Control Manager for the time being or such other person who may be appointed from time to time to carry out that function

"Development" means the development of the Property in accordance with the Planning Permission which seeks to convert existing redundant industrial buildings into 21 flats, demolish minor buildings and structures and construct 6 new residential units, with 24 car parking spaces.

"Dwelling" means any one of the residential units to be constructed as part of the Development.

"Education Contribution" means the contribution towards education facilities in accordance with the provision set out in **Schedule 2**.

"HCA" means the Homes and Communities Agency for England being the national housing and regeneration agency formed on 1 December 2008 pursuant to the Housing and Regeneration Act and shall include any statutory successor of the HCA

"Indexed" means adjusted 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 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

"Long Lease" means a lease for a term exceeding 99 years from the date of its completion at the Affordable Housing Price and consistent with the term of the leases for the Market Units.

"Market Units" means those residential units (other than the Affordable Housing Units ) forming part of the Development.

"Mortgage" means the legal charge dated 8 February 2005 made between the Owner and the Mortgagee.

"Nominations Deed" means a deed of nomination rights in a standard form acceptable to the Registered Social Landlord and the Council to be entered into between the Registered Social Landlord and the Council giving the Council nomination rights in respect of the Affordable Housing Units.

"Occupation" means the date when a part of the Development is occupied as a Dwelling (which for the avoidance of doubt shall not include occupation for purposes of fitting out the Development), and the phrases "Occupy", and "Occupied" shall be construed accordingly.

"the Parties" mean the Owner and the Council.

"Planning Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004).

"Planning Permission" means the planning consent granted pursuant to the Appeal and for the avoidance of doubt this shall include any variation or amendment to the Planning Permission granted on application under Section 73 of the Planning Act.

"Primary Healthcare Contribution" means the contribution towards facilities or services for the purposes of primary healthcare in accordance with the provision set out in Schedule 2.

"Property" means all that freehold property known as land at 37 Hamilton Road, Twickenham and registered at the Land Registry under title number TGL 254436.

"Registered Social Landlord" means any body registered as a social landlord as defined in Part 1 of the Housing Act 1996 with the HCA and complying with the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003 and "Registered Social Landlords" shall be construed accordingly.

"Social Rented Housing" means Affordable Housing to be let at Target Rents

"Target Rents" means the TSA Target Rents for the area within which the Property is located for the relevant year or any rent requirements stipulated for Registered Social Landlords by the TSA.

"Transfer Deed" means a transfer deed between the Owner and the Registered Social Landlord by which the Affordable Housing Units are transferred to the Registered Social Landlord at the Affordable Housing Price

"Transport Contribution" means the contribution towards improvements to local transport facilities in accordance with the provision set out in Schedule 2

"TSA" means the Tenants' Services Authority being the government authority set up under the Housing and Regeneration Act 2008 which regulates social housing

- 2 References to any party in this Unilateral Undertaking shall include the successors in title of that party.
- 3 This Unilateral Undertaking is made pursuant to the Section 106 of the Planning Act, Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972, Section 609 of the Housing Act 1985 and all other powers and enactments which may be relevant to the purpose of giving validity to this Unilateral Undertaking or for facilitating the enforcement of the obligations contained in it with the intent to bind the Owner.
  - 3.1 Any covenants and restrictions or requirements imposed upon the Owner, under this Unilateral Undertaking and falling within the provision of Section 106 of the Planning Act, shall be deemed to be expressed to be planning obligations to which that said Section shall apply.
  - 3.2 For the purposes of Section 106 (9) of the Planning Act, the Council is the local Planning Authority by whom the planning obligations within this Unilateral Undertaking are enforceable.

This Unilateral Undertaking shall take effect on the date of Commencement of Development

- 4 The Owner hereby undertakes to the Council to fulfil the obligations on its part contained in the Schedules hereto.
- 5 The Mortgagee hereby consents to the Owner completing this Unilateral Undertaking and agrees that notwithstanding its charge the Property is subject to the terms hereof.
- 7 It is hereby agreed and declared as follows:
  - 7.1 That the enforceability of this Unilateral Undertaking shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Unilateral Undertaking or any extension of the time or other indulgences shown by the Council.
  - 7.2 That the covenants and stipulations contained in this Unilateral Undertaking are intended to run with the Property and each and every part thereof and to bind the owners thereof from time to time, provided always that such provision shall not be enforceable against the lessees and/ or occupiers of Dwellings or Offices within the Property in their individual capacity as such and provided further that this proviso shall not apply to the provisions of Schedule 1 hereto.
  - 7.3 This Unilateral Undertaking shall accordingly be registered as a local land charge by the Council.
  - 7.4 Following compliance with all of its obligations under this Unilateral Undertaking, the Owner shall write to the Council confirming the same and requesting that a note to this effect is placed on the Local Land Charges Register.
  - 7.5 In so far as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking.
  - 7.6 Save where otherwise expressly stated all covenants given by the Owner under this Unilateral Undertaking shall be complied with entirely at the expense of the Owner.
  - 7.7 If there is any conflict between the terms of this Unilateral Undertaking and any conditions on the Planning Permission the latter shall take precedence.
  - 7.8 The covenants undertakings and restrictions contained in this Unilateral Undertaking shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Unilateral Undertaking by or on behalf of the relevant parties hereto or by a subsequent deed of variation to be agreed by the relevant parties.

- 8 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:
  - 8.1 The entirety of the Planning Permission shall be quashed revoked or otherwise withdrawn prior to the Commencement of Development or
  - 8.2 The entirety of the Planning Permission shall expire prior to the Commencement of Development or
  - 8.3 The entirety of the Planning Permission shall be quashed or revoked within three months of its grant or
  - 8.4 (for the avoidance of doubt) the Planning Permission shall not be granted.
- 9 Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provisions of this Unilateral Undertaking during such period if any as it is mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and provided that for the avoidance of doubt it shall not in any event be liable for any breach of this Unilateral Undertaking arising prior to its becoming mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is mortgagee in possession of the Property.
- 10 The Owner shall not be bound by any covenants or obligations contained in this Unilateral Undertaking after they have parted with the entirety of their interest in the Property but without prejudice to any breach of liability existing or arising prior to parting with such interest.
- 11 In the event that there shall be any dispute between Parties, in respect of any matter arising under the terms of this Unilateral Undertaking, such a dispute shall be referred upon the applications of any of the Parties to an independent expert agreed upon by the Parties at their joint expense in equal proportions or failing such an agreement nominated upon the applications of any of the Parties by the President for the time being of the Royal Institute of Chartered Surveyors and such independent expert shall act as arbitrator and not expert in accordance with the provisions of the Arbitrations Act 1996. The expert shall be subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 days from the date of appointment to act. The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 working days written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 5 working days in respect of any such submission and material and his decision shall be given in writing within 28 days of his appointment with reasons and in the absence of manifest error shall be binding on the said parties.
12. Nothing in this document shall constitute a claim ranking as an expense of the administration of the Mortgagee as contemplated by paragraph 99(4) of Schedule B1 to the Insolvency Act 1986 or otherwise.

13. The Joint Administrators have entered into and signed this document as agents for or on behalf of the Mortgagee and neither they, their firm, partners, employees, advisers, representatives or agents shall incur any personal liability whatever in respect of any failure on the part of the Mortgagee to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this document. The Joint Administrators are party to this document in their personal capacities only for the purpose of receiving the benefit of the exclusions, limitations, undertakings and covenants in their favour contained in this document.
  
14. No person who is not a party to this document shall have any rights, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any of the terms of this document, other than any subsequent liquidator of the Bank and each of Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton.
  
15. Notwithstanding that this document is signed by one of the Joint Administrators only, the parties hereby expressly agree that the benefit of the releases and indemnities, and in particular the those included under the paragraphs entitled 'Not an expense of the administration' and 'Exclusion of Joint Administrators' liability' above for the Joint Administrators shall accrue to all the Joint Administrators, Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton.



## SCHEDULE 1

### Affordable Housing

- 1.1 The Owner will prior to the Occupation of any of the Market Units use all reasonable endeavours to complete a Transfer Deed or the grant of a Long Lease of all the Affordable Housing Units to a Registered Social Landlord in accordance with the provisions of this Unilateral Undertaking and such Transfer Deed or Long Lease to include all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and not to include any unduly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units for Affordable Housing purposes. The disposal may in the Owners sole discretion be by way of sale or demise of the Affordable Housing Units and subsequent completion of the construction of the Affordable Housing Units pursuant to a building contract between the Owner or an associate company of the Owner and the relevant Registered Social Landlord or by sale or demise of the Affordable Housing Units once constructed and ready for occupation.
- 1.2 The Owner shall use all reasonable endeavours to procure that at or prior to completion of the Transfer Deed or Long Lease to the Registered Social Landlord the Registered Social Landlord enters into a Nominations Deed.
- 1.3 The Owner will not Occupy or permit the Occupation of more than 10 of the Market Units prior to the completion of construction ready for occupation of all the Affordable Housing Units.
- 1.4 From the date of Transfer Deed or Long Lease of the Affordable Housing Units as the case may be by the Owner to the Registered Social Landlord the Affordable Housing Units shall not be used for any purposes other than for the provision of Social Rented Housing save that this provision shall:
  - 1.4.1 Not bind any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Registered Social Landlord
  - 1.4.2 Cease to apply to any part of the Affordable Housing Units should such part be transferred or leased by any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Social Landlord
  - 1.4.3 Cease to apply to any part of the Affordable Housing Units where the Registered Social Landlord has disposed of any part pursuant to a right to buy under Part V of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or substitute right applicable or has sold to a tenant with the benefit of voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation).
- 1.5 The Owner will notify the DCM in writing of the date of occupation of the 10<sup>th</sup> Market Unit

## SCHEDULE 2

### Contributions

- 1.1 The Owner will pay to the Council £21,216 Indexed prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Amenity Contribution.
- 1.2 The Owner will pay to the Council £17,800 Indexed prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Education Contribution.
- 1.3 The Owner will pay to the Council £5,377 Indexed prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Primary Healthcare Contribution.
- 1.4 The Owner will construct a vehicular turning head at the entrance to the property from Hamilton Road for vehicular use by the public, prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Transport Contribution.
- 1.5 The turning head will be constructed and maintained to adopted highway standards.
- 1.6 Notwithstanding that the Owner shall make the turning head available for public use, the turning head shall remain part of the Property for legal title which shall remain vested in the Owner and its successors in title and the Owner shall be entitled to close the turning head and exclude any public access thereto on Christmas Day in each year in order to prevent any public or private right of way being acquired thereover by prescription.
- 1.7 Prior to the first Occupation of any of the Dwellings, the Owner will submit to the DCM details of the name of and correspondence with Accredited Car Club Providers indicating the intention of the Owner to establish a Car Club Space at the Property including a proposed establishment date. The Owner undertakes to the Council to use reasonable endeavours to market and sell one car parking space within the Development to an Accredited Car Club Provider, such sale to be by way of a lease at an open market premium and rent and on terms otherwise reasonably acceptable to the Owner. If no Accredited Car Club Provider completes the purchase of such a lease prior to Occupation of the 27<sup>th</sup> Dwelling then provided the Owner has used reasonable endeavours to market the said car parking space to Accredited Car Club Providers then the obligations under this paragraph 1.7 shall absolutely cease and determine and the Owner shall be free to dispose of the said car parking space as it sees fit.
- 1.8 Subject to the sale of one car parking space within the Development to an Accredited Car Club Provider in accordance with paragraph 1.7 and subject to the Accredited Car Club Provider complying with its covenants in the lease of the Car Club Space, the Owner undertakes to:
  - 1.8.1 mark out the car parking space shown edged green on the attached plan marked "Plan 1" on the Property with the words "Car Club Only" used solely for the purpose of parking and storing a vehicle

- belonging to the Accredited Car Club Provider and used by members of the Car Club
- 1.8.2 promote and advertise to each potential occupier of the Development the value and benefits of membership of a Car Club
  - 1.8.3 to procure through the Accredited Car Club Provider the provision and distribution of marketing literature to residents within 250 metres of the Development that publicises the presence of the Car Club within the Development and the local area and invites such residents to become members of the Car Club also
  - 1.8.4 to maintain the Car Club Space in good and substantial repair and to repaint/renew the signage and/or painting of the words "Car Club Space" thereafter
  - 1.8.5 from the date that they join the Car Club, to allow local residents within the vicinity of the Property who have joined the Car Club associated with the Development to access the Car Club Space in order to use the Car Club vehicle and for that purpose only
- 1.9 Subject to the sale of one car parking space within the Development to an Accredited Car Club Provider in accordance with paragraph 1.7, the Owner undertakes to notify the DCM in writing in the event that the Accredited Car Club Provider is no longer able to provide the Car Club for the Development and to use all reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Deed
- 1.10 The Owner hereby undertakes to the Council that IF the public highway as abuts the Property known as Hamilton Road shall be designated as a Controlled Parking Zone by the Council prior to the (a) first Occupation of a Dwelling or (b) completion of the sale, transfer or lease of a Dwelling THEN prior to such Occupation or completion of such sale, transfer or lease the Owner shall serve a Notice on the person who intends to Occupy, buy or take a transfer or lease (as appropriate) and the term "Notice" in this paragraph shall mean a notice informing the recipient of the notice that he or she 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 an on street parking permit to park a vehicle in any marked highway bay or other place within an area designated as a Controlled Parking Zone by the Council.

IN WITNESS whereof the Parties hereto have executed this Deed the day and the year first above written

Executed as a Deed by Hamilton Lofts Ltd acting by

Wm. T. [Signature] Director

C. NICOLE Company Secretary

SIGNED as a DEED by )  
HERITABLE BANK PLC )  
(in Administration) by )  
(a) Patrick Brazill )  
one of its Joint Administrators)  
in the presence of:

(b) X P. Bryjill

X Witness Signature: [Signature]

Witness Name: Julie Kurchell

(please print)

Witness Address: ERNST & YOUNG LLP  
1 More London Place,

Witness Occupation: London,  
SE1 2AF.



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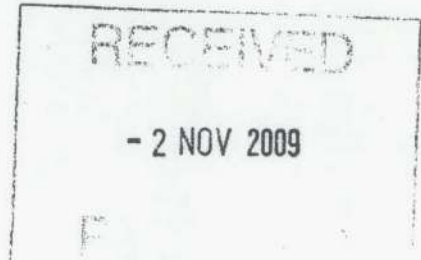
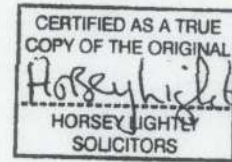
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This Unilateral Undertaking shall take effect on the date of Commencement of Development

- 4 The Owner hereby undertakes to the Council to fulfil the obligations on its part contained in the Schedules hereto.
- 5 The Mortgagee hereby consents to the Owner completing this Unilateral Undertaking and agrees that notwithstanding its charge the Property is subject to the terms hereof.
- 7 It is hereby agreed and declared as follows:
  - 7.1 That the enforceability of this Unilateral Undertaking shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Unilateral Undertaking or any extension of the time or other indulgences shown by the Council.
  - 7.2 That the covenants and stipulations contained in this Unilateral Undertaking are intended to run with the Property and each and every part thereof and to bind the owners thereof from time to time, provided always that such provision shall not be enforceable against the lessees and/ or occupiers of Dwellings or Offices within the Property in their individual capacity as such and provided further that this proviso shall not apply to the provisions of Schedule 1 hereto.
  - 7.3 This Unilateral Undertaking shall accordingly be registered as a local land charge by the Council.
  - 7.4 Following compliance with all of its obligations under this Unilateral Undertaking, the Owner shall write to the Council confirming the same and requesting that a note to this effect is placed on the Local Land Charges Register.
  - 7.5 In so far as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking.
  - 7.6 Save where otherwise expressly stated all covenants given by the Owner under this Unilateral Undertaking shall be complied with entirely at the expense of the Owner.
  - 7.7 If there is any conflict between the terms of this Unilateral Undertaking and any conditions on the Planning Permission the latter shall take precedence.
  - 7.8 The covenants undertakings and restrictions contained in this Unilateral Undertaking shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Unilateral Undertaking by or on behalf of the relevant parties hereto or by a subsequent deed of variation to be agreed by the relevant parties.

- 8 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:
  - 8.1 The entirety of the Planning Permission shall be quashed revoked or otherwise withdrawn prior to the Commencement of Development or
  - 8.2 The entirety of the Planning Permission shall expire prior to the Commencement of Development or
  - 8.3 The entirety of the Planning Permission shall be quashed or revoked within three months of its grant or
  - 8.4 (for the avoidance of doubt) the Planning Permission shall not be granted.
- 9 Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provisions of this Unilateral Undertaking during such period if any as it is mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and provided that for the avoidance of doubt it shall not in any event be liable for any breach of this Unilateral Undertaking arising prior to its becoming mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is mortgagee in possession of the Property.
- 10 The Owner shall not be bound by any covenants or obligations contained in this Unilateral Undertaking after they have parted with the entirety of their interest in the Property but without prejudice to any breach of liability existing or arising prior to parting with such interest.
- 11 In the event that there shall be any dispute between Parties, in respect of any matter arising under the terms of this Unilateral Undertaking, such a dispute shall be referred upon the applications of any of the Parties to an independent expert agreed upon by the Parties at their joint expense in equal proportions or failing such an agreement nominated upon the applications of any of the Parties by the President for the time being of the Royal Institute of Chartered Surveyors and such independent expert shall act as arbitrator and not expert in accordance with the provisions of the Arbitrations Act 1996. The expert shall be subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 days from the date of appointment to act. The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 working days written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 5 working days in respect of any such submission and material and his decision shall be given in writing within 28 days of his appointment with reasons and in the absence of manifest error shall be binding on the said parties.
12. Nothing in this document shall constitute a claim ranking as an expense of the administration of the Mortgagee as contemplated by paragraph 99(4) of Schedule B1 to the Insolvency Act 1986 or otherwise.

13. The Joint Administrators have entered into and signed this document as agents for or on behalf of the Mortgagee and neither they, their firm, partners, employees, advisers, representatives or agents shall incur any personal liability whatever in respect of any failure on the part of the Mortgagee to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this document. The Joint Administrators are party to this document in their personal capacities only for the purpose of receiving the benefit of the exclusions, limitations, undertakings and covenants in their favour contained in this document.
  
14. No person who is not a party to this document shall have any rights, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any of the terms of this document, other than any subsequent liquidator of the Bank and each of Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton.
  
15. Notwithstanding that this document is signed by one of the Joint Administrators only, the parties hereby expressly agree that the benefit of the releases and indemnities, and in particular the those included under the paragraphs entitled 'Not an expense of the administration' and 'Exclusion of Joint Administrators' liability' above for the Joint Administrators shall accrue to all the Joint Administrators, Margaret Elizabeth Mills, Patrick Joseph Brazzill, Alan Robert Bloom and Thomas Merchant Burton.

## SCHEDULE 1

### Affordable Housing

- 1.1 The Owner will prior to the Occupation of any of the Market Units use all reasonable endeavours to complete a Transfer Deed or the grant of a Long Lease of all the Affordable Housing Units to a Registered Social Landlord in accordance with the provisions of this Unilateral Undertaking and such Transfer Deed or Long Lease to include all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and not to include any unduly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units for Affordable Housing purposes. The disposal may in the Owners sole discretion be by way of sale or demise of the Affordable Housing Units and subsequent completion of the construction of the Affordable Housing Units pursuant to a building contract between the Owner or an associate company of the Owner and the relevant Registered Social Landlord or by sale or demise of the Affordable Housing Units once constructed and ready for occupation.
- 1.2 The Owner shall use all reasonable endeavours to procure that at or prior to completion of the Transfer Deed or Long Lease to the Registered Social Landlord the Registered Social Landlord enters into a Nominations Deed.
- 1.3 The Owner will not Occupy or permit the Occupation of more than 10 of the Market Units prior to the completion of construction ready for occupation of all the Affordable Housing Units.
- 1.4 From the date of Transfer Deed or Long Lease of the Affordable Housing Units as the case may be by the Owner to the Registered Social Landlord the Affordable Housing Units shall not be used for any purposes other than for the provision of Social Rented Housing save that this provision shall:
  - 1.4.1 Not bind any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Registered Social Landlord
  - 1.4.2 Cease to apply to any part of the Affordable Housing Units should such part be transferred or leased by any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Social Landlord
  - 1.4.3 Cease to apply to any part of the Affordable Housing Units where the Registered Social Landlord has disposed of any part pursuant to a right to buy under Part V of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or substitute right applicable or has sold to a tenant with the benefit of voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation).
- 1.5 The Owner will notify the DCM in writing of the date of occupation of the 10<sup>th</sup> Market Unit

## SCHEDULE 2

### Contributions

- 1.1 The Owner will pay to the Council £21,216 Indexed prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Amenity Contribution.
- 1.2 The Owner will pay to the Council £17,800 Indexed prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Education Contribution.
- 1.3 The Owner will pay to the Council £5,377 Indexed prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Primary Healthcare Contribution.
- 1.4 The Owner will construct a vehicular turning head at the entrance to the property from Hamilton Road for vehicular use by the public, prior to the first Occupation of the 17<sup>th</sup> Market Unit by way of the Transport Contribution.
- 1.5 The turning head will be constructed and maintained to adopted highway standards.
- 1.6 Notwithstanding that the Owner shall make the turning head available for public use, the turning head shall remain part of the Property for legal title which shall remain vested in the Owner and its successors in title and the Owner shall be entitled to close the turning head and exclude any public access thereto on Christmas Day in each year in order to prevent any public or private right of way being acquired thereover by prescription.
- 1.7 Prior to the first Occupation of any of the Dwellings, the Owner will submit to the DCM details of the name of and correspondence with Accredited Car Club Providers indicating the intention of the Owner to establish a Car Club Space at the Property including a proposed establishment date. The Owner undertakes to the Council to use reasonable endeavours to market and sell one car parking space within the Development to an Accredited Car Club Provider, such sale to be by way of a lease at an open market premium and rent and on terms otherwise reasonably acceptable to the Owner. If no Accredited Car Club Provider completes the purchase of such a lease prior to Occupation of the 27<sup>th</sup> Dwelling then provided the Owner has used reasonable endeavours to market the said car parking space to Accredited Car Club Providers then the obligations under this paragraph 1.7 shall absolutely cease and determine and the Owner shall be free to dispose of the said car parking space as it sees fit.
- 1.8 Subject to the sale of one car parking space within the Development to an Accredited Car Club Provider in accordance with paragraph 1.7 and subject to the Accredited Car Club Provider complying with its covenants in the lease of the Car Club Space, the Owner undertakes to:
  - 1.8.1 mark out the car parking space shown edged green on the attached plan marked "Plan 1" on the Property with the words "Car Club Only" used solely for the purpose of parking and storing a vehicle

- belonging to the Accredited Car Club Provider and used by members of the Car Club
- 1.8.2 promote and advertise to each potential occupier of the Development the value and benefits of membership of a Car Club
  - 1.8.3 to procure through the Accredited Car Club Provider the provision and distribution of marketing literature to residents within 250 metres of the Development that publicises the presence of the Car Club within the Development and the local area and invites such residents to become members of the Car Club also
  - 1.8.4 to maintain the Car Club Space in good and substantial repair and to repaint/renew the signage and/or painting of the words "Car Club Space" thereafter
  - 1.8.5 from the date that they join the Car Club, to allow local residents within the vicinity of the Property who have joined the Car Club associated with the Development to access the Car Club Space in order to use the Car Club vehicle and for that purpose only
- 1.9 Subject to the sale of one car parking space within the Development to an Accredited Car Club Provider in accordance with paragraph 1.7, the Owner undertakes to notify the DCM in writing in the event that the Accredited Car Club Provider is no longer able to provide the Car Club for the Development and to use all reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Deed
- 1.10 The Owner hereby undertakes to the Council that IF the public highway as abuts the Property known as Hamilton Road shall be designated as a Controlled Parking Zone by the Council prior to the (a) first Occupation of a Dwelling or (b) completion of the sale, transfer or lease of a Dwelling THEN prior to such Occupation or completion of such sale, transfer or lease the Owner shall serve a Notice on the person who intends to Occupy, buy or take a transfer or lease (as appropriate) and the term "Notice" in this paragraph shall mean a notice informing the recipient of the notice that he or she 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 an on street parking permit to park a vehicle in any marked highway bay or other place within an area designated as a Controlled Parking Zone by the Council.



IN WITNESS whereof the Parties hereto have executed this Deed the day and the year first above written

Executed as a Deed by Hamilton Lofts Ltd acting by

Wm. T. [Signature] Director

C. Nicole Company Secretary

SIGNED as a DEED by )  
HERITABLE BANK PLC )  
(in Administration) by )  
(a) Patrick Brassill )  
one of its Joint Administrators)  
in the presence of:

(b) X P. Bryjill

X Witness Signature: [Signature]

Witness Name: Julie Lurchell

(please print)

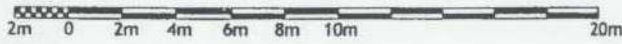
Witness Address: ERNST & YOUNG LLP  
1 More London Place,

Witness Occupation: London,  
SE1 2AF.



**LEGEND**

	PEDESTRIAN AREAS MARSHALLS MISTRAL GRANITE AGGREG. SETTS 240x160x80 COLOUR: HARVEST BUFF
	VEHICULAR AREA MARSHALLS MISTRAL PRIORA GRANITE AGGREG. SETTS 160x160x80 COLOUR: SILVER GREY
	NEW GRASS AND GROUND COVER
	PARKING BAYS MARSHALLS MISTRAL PRIORA GRANITE AGGREG. SETTS 160x160x80 COLOUR: CHARCOAL



**PLAN 1**

**SITE PLAN AS PROPOSED / UNILATERAL UNDERTAKING** PL112 A

37 HAMILTON ROAD TWICKENHAM 3903  
 PLANNING APPLICATION scale 1: 200  
 August 2008

ACANTHUS