

THIS UNDERTAKING executed as a Deed is given this 20<sup>th</sup> day of December Two Thousand And Thirteen

BY:

- (1) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA of the Town Hall, Hornton Street, London W8 7NX ("the Owner")

TO:

- (2) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA of the Town Hall, Hornton Street, London W8 7NX ("the Council")

WHEREAS:-

- A. The Council is the local planning authority for the administrative area of the Royal Borough of Kensington and Chelsea for the purposes of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act")
- B. The Owner as Housing Authority is registered at the Land Registry with freehold title absolute in respect of the Land (together with other land) under title number NGL 238176
- C. The Owner has made the Planning Application to the Council and provides this Undertaking for planning obligations relating to the Development to enable planning permission to be granted ("this Undertaking")

NOW THIS DEED WITNESSES AS FOLLOWS:-

1. INTERPRETATION

- 1.1. In this Undertaking the following words and expressions shall unless the context otherwise requires have the following meanings:-

WORDS AND EXPRESSIONS

MEANINGS

"Affordable Housing"

means residential Social Rented Housing provided to meet the local housing needs of the Owner to specified eligible households whose needs are not met by the market

"Affordable Housing Units"

means the 7 (seven) residential units forming part of the Development to be used only as Social Rented Housing shown for identification purposes only on Plan 2

"Boxing Facility"

means the replacement boxing club (use class D2) forming part of the Development

<b>"Development"</b>	means the development referred to in the Planning Application and as described in Schedule 1 hereto
<b>"Education Contribution"</b>	means the sum of £70,647.12 (seventy thousand six hundred and forty seven pounds and twelve pence) payable to the Council for the Education Facilities Provision
<b>"Education Facilities Provision"</b>	means the provision of new educational facilities and/or the improvement of and/or support and/or subsidy of educational facilities for primary and secondary school places within the administrative area of the Royal Borough of Kensington and Chelsea or such other facilities as may be required as determined by the Council in its absolute discretion
<b>"Executive Director"</b>	means the Executive Director of Planning and Borough Development and shall be deemed to mean the officer for the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment
<b>"Implementation"</b>	means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation within the meaning of Section 56 of the Act (but which for the purpose of this definition shall exclude Preparatory Operations) and material operations shall be construed as being carried out at the earliest date on which any material operation is begun and <b>"Implement"</b> and <b>"Implemented"</b> shall be construed accordingly
<b>"Land"</b>	means the land at Grenfell Tower, Grenfell Road, London W11 ITG shown for identification purposes only hatched black on Plan 1
<b>"Monitoring Fee"</b>	means the financial contribution in the sum of £1,766.18. (one thousand seven hundred and sixty six pounds and eighteen pence) payable to the Council on the date of completion of this Undertaking to monitor compliance with or default of the covenants and obligations contained within this Deed by the Planning Obligations Monitoring Officer
<b>"Monitoring Officer"</b>	means any officer of the Council from time to time allocated to deal with the monitoring of planning obligations and covenants provided by section 106 of the Act
<b>"Nursery Facility"</b>	means the replacement nursery (use class D1) forming part of the Development
<b>"Occupation"</b>	means occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and



**"Occupy"** and **"Occupied"** shall be construed accordingly

**"Parking Permit"**

a permit issued by the Council to residents allowing the parking of a vehicle in a residents parking bay on the highway within the area of the Council but not including a disabled person's "purple badge" issued pursuant to Section 21 Chronically Sick and Disabled Persons Act 1970

**"Plan 1 "**

means the plan attached to this Undertaking showing the Land

**"Plan 2"**

means the plan attached to this Undertaking showing the location of Affordable Housing Units

**"Planning Application"**

means the planning application numbered PP/12/04097 for the Development

**"Planning Permission"**

means any planning permission which may be granted pursuant to the Planning Application

**"Preparatory Operations"**

means an operation or item of work of or connected with or ancillary to archaeological investigation, exploratory boreholes and trial pits, survey of existing structures, demolition, site clearance and/or site preparation, site reclamation and site remediation works, diversion, decommissioning and/or laying of services for the supply or carriage of water, sewerage, gas, electricity, telecommunications or other media or utilities, the erection of fences, hoardings and for the avoidance of doubt such hoardings must benefit from express or deemed consent under the Town and Country (Control of Advertisements) Regulations 2007 and scaffolding and construction of temporary access and service roads, and other works and site establishment preparatory to the commencement of construction including temporary and/or permanent extinguishment and closure of public rights of way

**"Social Rented Housing"**

means rented housing owned and managed by the Owner as the statutory Housing Authority for its administrative area

- 1.2. Words in this Undertaking importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.3. Words in this Undertaking of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa
- 1.4. References in this Undertaking 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

- 1.5. Covenants given hereunder if made by more than one person are given jointly and severally
- 1.6. Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or knowingly suffer any infringement of the restriction
- 1.7. Headings contained in this Undertaking are for reference purposes only and are not incorporated into this Undertaking and shall not be deemed to be an indication of the meaning of the parts of this Undertaking to which they relate
- 1.8. References to any party to this Undertaking shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the successors to their respective statutory functions
- 1.9. Where in this Undertaking reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Undertaking

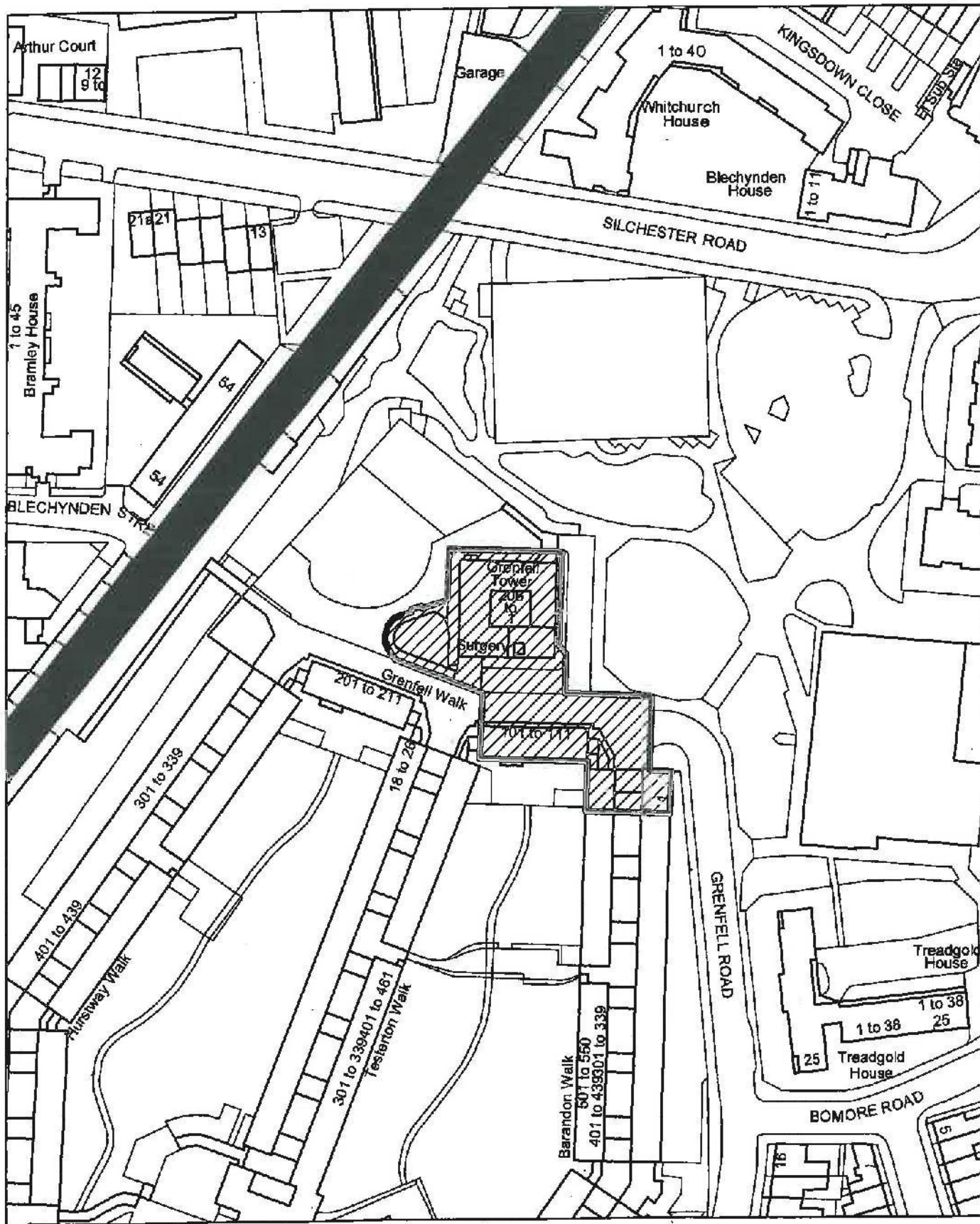
## **2. LEGAL EFFECT**

- 2.1. This Undertaking is made pursuant to Section 106 of the Act and all other powers so enabling
- 2.2. The covenants restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and his successors in title and which binds each and every part of the Land
- 2.3. The terms of this Undertaking come into effect on the date of this Undertaking other than Clause 3.2 which will come into effect upon the grant of the Planning Permission
- 2.4. Nothing contained or implied in this Undertaking shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of their functions as Local Planning Authority and their rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be as fully and effectually exercised
- 2.5. Insofar as any provision in this Undertaking are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Undertaking
- 2.6. No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Undertaking 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
- 2.7. Nothing in this Undertaking shall be construed as a grant of planning permission



PLAN 1

# Grenfell Tower, Grenfell Road, LONDON, W11 1TH



© Crown copyright  
and database rights  
2013 Ordnance Survey  
100021668



1:1,250

Planning Support

The Royal Borough of Kensington and Chelsea  
The Town Hall, Holland Street, London, W8 7AG



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

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- 2.8. The covenants restrictions and obligations herein shall be enforceable without any limit of time against the Owner and any successors in title and assigns of the Owner or any person claiming title through or under the Owner to the Land or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person **PROVIDED THAT** no person shall be liable for any breach of the covenants restrictions or obligations contained in this Undertaking occurring after he has parted with the whole of his interest in the Land or the part in respect of which such breach occurs save and without prejudice to the rights of the Council in relation to any subsisting antecedent breach of those covenants restrictions or obligations prior to the parting of such interest
- 2.9. In accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 it is hereby declared that none of the terms of this Undertaking shall in the absence of any express provision to the contrary be construed as being enforceable by any third party
- 2.10. This Undertaking is governed by and interpreted in accordance with the Law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

**3. THE OWNER'S COVENANTS**

- 3.1 The Owner covenants with the Council to pay on the date of this Undertaking the Monitoring Fee and the Council's reasonable and proper costs incurred in the preparation and settlement of this Undertaking
- 3.2 The Owner hereby covenants with the Council to observe and perform and cause to be observed and performed the undertakings covenants and restrictions contained in Schedule 2

**4. FURTHER TERMS**

The covenants in this Undertaking shall be treated and registered as local land charges for the purposes of the Local Land Charges Act 1975

**5. NOTICE PROVISIONS**

- 5.1 The Owner shall not Implement the Planning Permission unless not less than ten (10) working days prior written notice of its intention to Implement the Planning Permission has been given to the Executive Director and
- 5.2 The Owner shall give the Executive Director immediate written notice of any change in ownership of any of the interests in the Land and such notice shall give details of the transferee's or lessee's full name and registered office (if a company or usual address if not)
- 5.3 Any notice agreement or approval required under this Undertaking shall be in writing and delivered either personally or by recorded delivery post and shall be addressed to:-



5.3.1 in the case of the Council to the Executive Director at The Royal Borough of Kensington and Chelsea, The Town Hall, Hornton Street, London W8 7NX

5.3.2 in the case of the Owner to the Director for Housing at The Royal Borough of Kensington and Chelsea, The Town Hall, Hornton Street, London W8 7NX

**6. OWNER'S CAPACITY TO ENTER INTO THIS UNDERTAKING**

The Owner hereby warrants that it has full power to enter into this Undertaking and that it has obtained all necessary consents from any mortgagee chargee or any other person having a title or right in the Land

**7. VAT**

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

7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Undertaking 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

**8. REVOCATION**

This Undertaking shall cease to have effect (insofar as it has not already been complied with and save for any obligations which are already outstanding) if the Planning Permission shall be quashed or revoked without the consent of the Owner or if the Planning Permission shall expire prior to Implementation

**9. COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010**

For the purposes of the Community Infrastructure Levy Regulations 2010 ("the Regulations"), the Owner hereby affirms that the obligations imposed in this Undertaking are necessary to make the Developments acceptable in planning terms, directly related to the Developments and are fairly and reasonably related in scale and kind to the Developments, so as to satisfy the tests in Regulation 122(2) of the Regulations.

**IN WITNESS** of which this Undertaking has been executed on the first date before written

## **SCHEDULE 1**

### **DESCRIPTION OF THE DEVELOPMENT**

Refurbishment of existing Grenfell Tower including new external cladding and fenestration, reconfiguration of lower 4 levels to provide 7 new residential units (use class C3), replacement nursery (use class D1), and boxing club (use class D2) facilities, external public realm works, redevelopment and change of use of two existing garages to refuse collection area and bicycle store.



## **SCHEDULE 2**

The Owner hereby covenants with the Council as follows:-

### **1. PARKING PERMITS**

- 1.1 Not to apply to the Council for a Parking Permit in respect of any of the Affordable Housing Units nor to knowingly permit any owner or occupier of the Land to apply to the Council for a Parking Permit and if such a permit is issued in respect of any of the Permit Free Residential Units it shall be surrendered to the Council within 7 days of written demand
- 1.2 That all material used for advertising or marketing the for letting or sale of the Affordable Housing Units will notify prospective owners and occupiers that they will not be entitled to apply for a Parking Permit in respect of the Affordable Housing Units
- 1.3 That in respect of every lease granted assigned transferred or otherwise provided after the date of this Undertaking in respect of the Affordable Housing Units the following covenant or a covenant of substantially the same nature of it shall be imposed (or a covenant of substantially the same nature in respect of any tenancy agreement licence or other instrument entitling Occupation of the Affordable Housing Unit):

"the lessee for himself and his successors in title being the owner or owners for the time being of the terms of years hereby granted hereby covenant with the lessor and separately with the Mayor and Burgesses of the Royal Borough of Kensington and Chelsea ("the Council") not to apply for nor knowingly permit an application to be made by any person residing in the premises to the Royal Borough of Kensington and Chelsea for a resident's parking permit (save for a disabled person's "purple badge" issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) in respect of such premises and if such a permit is issued then it shall be surrendered within 7 days of written request to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999, section 1"

- 1.4 To send to the Executive Director a certified copy of the lease for the Land within 10 working days of the grant of the first future lease in respect of the Affordable Housing Unit

### **2 FINANCIAL CONTRIBUTIONS**

- 2.1 To pay the Education Contribution to the Council no less than seven working days prior to the Implementation of the Planning Permission and not to Implement or permit the Implementation of the Planning Permission until the Education Contribution has been paid to the Council and its receipt has been acknowledged in writing by the Executive Director

3. **AFFORDABLE HOUSING**

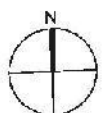
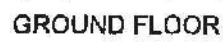
- 3.1 Not to Occupy or Permit the Occupation of any of the Affordable Housing Units forming the Development other than as Social Rented Housing SAVE THAT in respect of any Affordable Housing Unit where an occupant of any of the Affordable Housing Units has exercised a statutory right to acquire the whole of the freehold or of a leasehold estate under the Housing Act 1996 and in such event this restrictive covenant shall thereupon determine and be of no further effect in relation to such Affordable Housing Unit(s)
- 3.2 Not to Occupy or permit the Occupation any of the Affordable Housing Units forming the Development until the Nursery Facility and Boxing Facility are both ready and available for Occupation and so confirmed in writing by the Executive Director

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THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE ROYAL )  
BOROUGH OF KENSINGTON )  
AND CHELSEA was hereunto )  
affixed in the presence of:- )

  
BUSINESS SUPPORT MANAGER





DATED 20<sup>th</sup> December 2013

**THE MAYOR AND BURGESSES OF  
THE ROYAL BOROUGH OF  
KENSINGTON AND CHELSEA**

-to-

**THE MAYOR AND BURGESSES OF  
THE ROYAL BOROUGH OF  
KENSINGTON AND CHELSEA**

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**UNDERTAKING**

Made pursuant to Section 106 of the Town and  
Country Planning Act 1990 (as amended by the  
Planning and Compensation Act 1991)

**Re: Grenfell Tower, Grenfell Road, London  
W11 1TH**

**PP/12/04097**

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Tasnim Shawkat  
Bi-Borough Director of Law  
The Royal Borough of Kensington and Chelsea  
The Town Hall  
Hornton Street  
London W8 7NX

Ref: HS/3000(TMOland)