



Liverpool
City Council

DATED 4th September 2018

Ref: LS/2051.794/17F/3307

LIVERPOOL CITY COUNCIL

And

CARO DEVELOPMENTS CLEGG STREET LIMITED

And

TOGETHER COMMERCIAL FINANCE LIMITED

S.106 Agreement

RE: Planning Application Ref: 17F/3307

Land at Clegg Street L5 3SP

J McLoughlin

City Solicitor

Liverpool City Council

THIS DEED is made the 4th day of September 2018

BETWEEN:

Parties

1. Liverpool City Council of Cunard Building, Water Street, Liverpool, L3 1AH ("The Council" and the "First Owner")
2. Caro Developments Clegg Street Limited (company number: 10769743) whose registered office is at 33 Netherfield Road North, Liverpool, L5 3TA ("The Second Owner")
3. Together Commercial Finance Limited (company number: 2058813) whose registered office is at Lake View, Lakeside, Cheadle, SK8 3GW ("The Mortgagee")

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and the freehold owner of the Land registered with the Land Registry under title number MS456601 AND MS456598
2. The Second Owner is the freehold owner of the Land registered with the Land Registry under title number MS456603.
3. The Mortgagee is Mortgagee of the Land under a legal charge dated 31st August 2017 registered with the Land Registry under entry C4: C5: C6: and C7 of title number MS456603 and made between the Mortgagee and the Second Owner.
4. The Second Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
5. The Council resolved on 3rd April 2018 to grant the Planning Permission subject to the prior completion of this Deed.
6. From herein reference to "the Owner" shall be reference to the Second Owner and they shall be liable for obligations assigned to "The Owner" under this deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"

the Town and Country Planning Act 1990 (as amended)

“Application”	the application for planning permission registered by the Council on 10th November 2017 and allocated reference number 17F/3307.
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out and “Commence Development” and “Commence” shall be construed accordingly.
“Development”	the development of the Land to erect a part eight, part seven, part six and part five storey residential development of 93 flats and 2 studios after demolition of existing buildings with associated access, servicing, parking and landscaping as set out in the Application.
“Index”	all items index figure of the Index of Retail Prices published by the Office for National Statistics or any successor, Ministry or Department.
“Land”	the land at Clegg Street L5 3SP registered at HM Land Registry under Title Number MS456603 and MS456601 and MS456598 against which this Deed may be enforced shown for identification edged in red on the attached Plan.
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by persons engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
“Plan”	the plan attached to this Deed at the Third Schedule.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed 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 Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed 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 the successors to their respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act and section 111 of the Local Government Act 1972.
- 3.2. The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.
- 3.3. The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

4. CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1, 7.2, 10, 13, 14 and 15 which shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

- 5.1. The Owner covenants with the Council as set out in the First Schedule.

6. THE COUNCIL'S COVENANTS

- 6.1. The Council covenants with the Owner as set out in the Second Schedule.

7. MISCELLANEOUS

- 7.1. The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,000 (ONE THOUSAND POUNDS).
- 7.2. The Owner shall pay to the Council upon the completion of this Deed the sum of £3770 (THREE THOUSAND SEVEN HUNDRED AND SEVENTY POUNDS) for the Council's Planning Department's costs in preparation, execution and monitoring thereof.

- 7.3. No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.4. This Deed shall be registrable as a local land charge by the Council.
- 7.5. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.6. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7. Insofar as any clause or clauses of this Deed 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 Deed.
- 7.8. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.9. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.10. This Deed shall not be enforceable against owner-occupiers (or their mortgagees) or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.11. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.12. Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.13. The Owner shall give to the Council not less than 14 days prior written notice of the intended Commencement of the Development.
- 7.14. The Owner shall give to the Council not less than 14 days prior written notice of the intended Occupation of the Development.

8. MORTGAGEE'S CONSENT

- 8.1. The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed

unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9. WAIVER

- 9.1. No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

- 10.1. The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of the interests in the Land before all the obligations have been discharged so that the local authority can trace successors in title. The written notice should give details of the transferee's name and address, together with details of the land or unit to which the interest applies.

11. INDEXATION

- 11.1. Any sum referred to in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

12. NOTICES

- 12.1. Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by pre-paid first class post, or recorded delivery.
- 12.2. Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
- 12.3. Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Planning Manager at Cunard Building, Water Street, Liverpool L3 1AH quoting the Planning Application reference.
- 12.4. Where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

13. DISPUTE PROVISIONS

- 13.1. In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed, at the agreement of all parties, such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 13.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties in equal shares.
- 13.3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 13.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 13.5. The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.
- 13.6. This clause 13 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

14. JURISDICTION

- 14.1. This Deed is to be governed by and interpreted in accordance with the law of England and Wales.

15. DELIVERY

- 15.1. The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

First Schedule

The Owner's Covenants with the Council

1. Defined Terms

“Commuted Sum”

the amount comprising the First Commuted Sum Payment and the Second Commuted Payment means £95,000.00 (NINETY FIVE THOUSAND POUNDS) in lieu for the provision or enhancement of public open space or public realm works in the vicinity of the Development, if not paid within one year after the date of this Deed the amount shall be calculated in accordance with the following formula:

£95,000.00 (NINETY FIVE THOUSAND POUNDS) multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed.

“First Commuted Sum Payment”

the amount of £47,500.00 (forty seven thousand and five hundred pounds) in lieu for the provision or enhancement of public open space or public realm works in the vicinity of the Development, if not paid within one year after the date of this Deed the amount shall be calculated in accordance with the following formula:

£47,500.00 (forty seven thousand and five hundred pounds) multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed.

“Second Commuted Sum Payment”

the amount of £47,500.00 (forty seven thousand and five hundred pounds) in lieu for the provision or enhancement of public open space or public realm works in the vicinity of the Development, if not paid within one year after the date of this Deed the amount shall be calculated in accordance with the following formula:

£47,500.00 (forty seven thousand and five hundred pounds) multiplied by the Index for the month immediately preceding the date of payment and

divided by the Index for the month immediately preceding the date of this Deed.

“Public Art Contribution”

the amount of £3772.00 (three thousand seven hundred and seventy two thousand pounds) towards the provision of Public Art to be entirely at the discretion of the Council in terms of size nature artistic influence within the vicinity of the Development as the Owner and Council may agree, if not paid within one year after the date of this Deed the amount shall be calculated in accordance with the following formula:

£3772.00 (three thousand seven hundred and seventy two thousand pounds) multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed.

“Street Tree Sum”

the amount of £76,000.00 (SEVENTY SIX THOUSAND POUNDS) in respect of the provision and maintenance of street trees in the vicinity of the Development, if not paid within one year after the date of this Deed the amount shall be calculated in accordance with the following formula:

£76,000.00 (SEVENTY SIX THOUSAND POUNDS) multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed.

“The Car Park Survey Contribution”

the amount of £20,000.00 (twenty thousand pounds) towards a car parking survey and implementation of any required parking controls and Traffic Regulation Orders, if not paid within one year after the date of this Deed the amount shall be calculated in accordance with the following formula:

£20,000.00 (twenty thousand pounds) multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed.

“Pedestrian and Cycle Connectivity

Improvement Contribution”

the amount of £20,000.00 (twenty thousand pounds) towards the improvement of pedestrian and cyclist connectivity, if not paid within one year after the date of this Deed the amount shall be calculated in accordance with the following formula:

£20,000.00 (twenty thousand pounds) multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this Deed.

2 Payment of Contributions

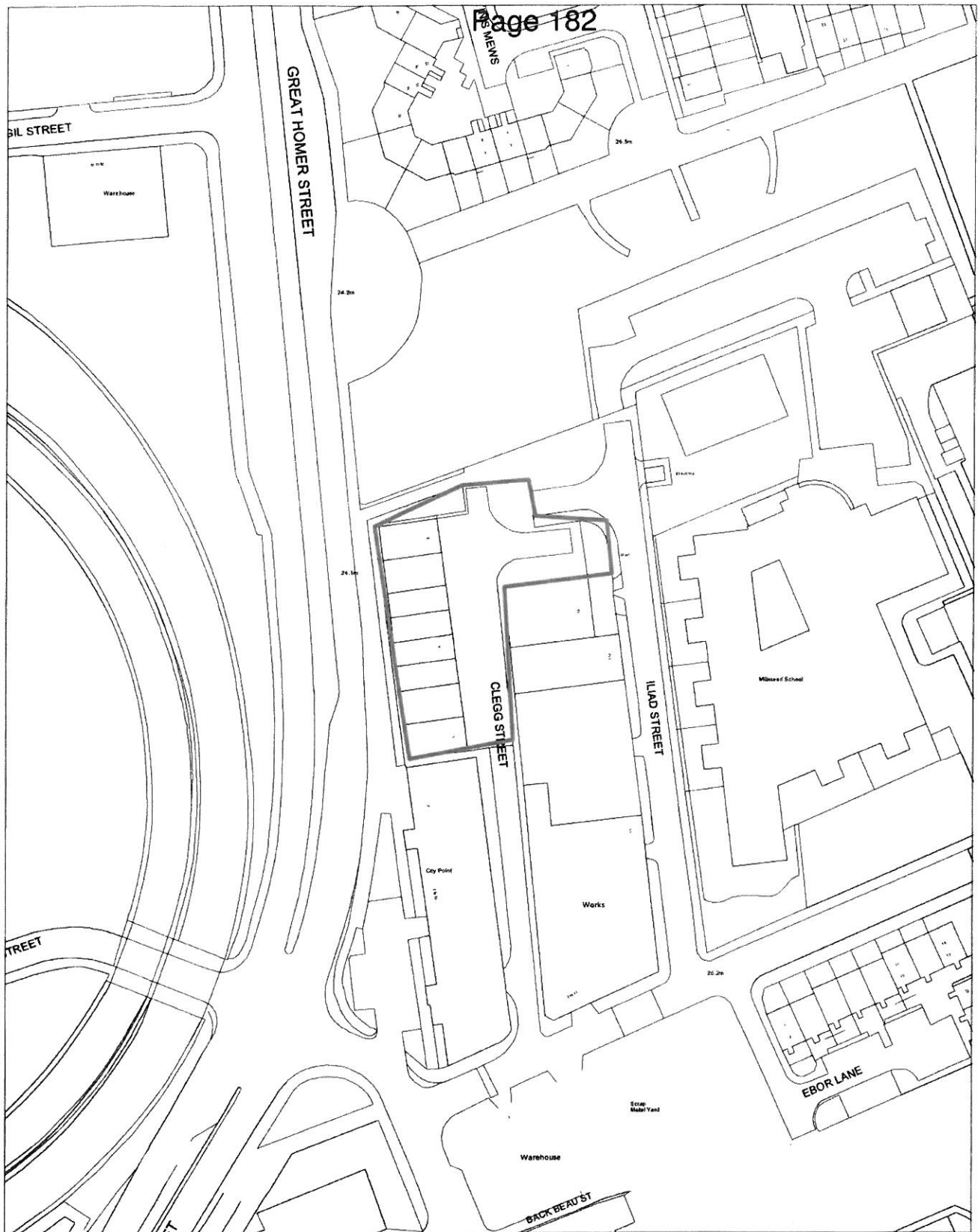
- 2.1 The Owner shall pay to the Council the First Commuted Sum prior to Commencement of the Development and Development shall not Commence until this obligation has been satisfied.
- 2.2 The Owner shall pay to the Council the Second Commuted Sum prior to the occupation of the first unit of the Development and the Development shall not be occupied until this obligation has been satisfied. The Owner shall pay to the Council the Street Tree Sum prior to Commencement of the Development and Development shall not Commence until this obligation has been satisfied.
- 2.3 The Owner shall pay to the Council the Public Art Contribution prior to Commencement of Development and Development shall not Commence until this obligation has been satisfied.
- 2.4 The Owner shall pay to the Council the Car Park Survey Contribution prior to Commencement of Development and Development shall not Commence until this obligation has been satisfied.
- 2.5 The Owner shall pay to the Council the Pedestrian and Cycle Connectivity Improvement Contribution prior to Commencement of Development and Development shall not Commence until this obligation has been satisfied.

Second Schedule

Council's Covenants

1. The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
2. The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the council has properly entered into a contract for the expenditure of the money) within five years of the date of receipt by the council of such payment.

Third Schedule
Plan



— Application Site

Scale: 1:1250 @ A4

Planning & Building Control Service

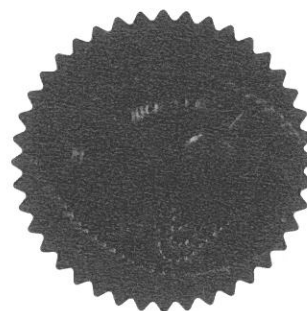
Application: 17F/3307

Address: Clegg Street L5

Date: Apr 2018

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Ordnance Survey 100018351

THE COMMON SEAL of the)
LIVERPOOL CITY COUNCIL)
was hereunto affixed:-)



Principal
Assistant City Solicitor

Seal No.
97.18

Signed as a deed by)

CARO DEVELOPMENTS CLEGG STREET
LIMITED)

In the presence of:)

Witness:

(Signature)

Ian Mauley

(Name)

IAN MAULEY

(Address)

40 33 NETHERFIELD ROAD NORTH

LIVERPOOL

L5 3TA

(Occupation)

FINANCIAL CONTROLLER

Executed as a deed by)

TOGETHER COMMERCIAL FINANCE LIMITED)

acting by an attorney in the)

presence of a witness

Attorney

(Signature)

(Name)

KENNY MOSER

Witness:

(Signature)



(Name)

FRICHE WATSON

(Address)

LAKE VIEW, LAKEVIEW

CHICAGO, IL

SK8 3GW

(Occupation)

COMPANY DIRECTOR