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IT DOES NOT CONTAIN ALL REQUIRED OBLIGATIONS IN THE SPD.

DATED

May 2024

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act  
1990

relating to the development of land at

LONDON BOROUGH OF REDBRIDGE (COUNCIL) (1)

[ ] LIMITED (OWNER) (2)<sup>1</sup>

[ ] (MORTGAGEE) (3)

London Borough of Redbridge

Town Hall

128-142 High Road

Ilford

Essex, IG1 1DD

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<sup>1</sup> Add other parties with interests in the Site

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DATE

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#### PARTIES

- (1) LONDON BOROUGH OF REDBRIDGE of the Town Hall, 128 – 142 High Road, Ilford, IG1 1DD of ("Council")
- (2) [ ] a company incorporated in England and Wales (registration number<sup>2</sup>), ("Owner")
- (3) [ ] a company registered in England and Wales (registration number ) and whose registered office address is [ ];

#### RECITALS

- A The Council is the local planning authority for the purposes of the 1990 Act and the local highway authority<sup>3</sup> for the purposes of the 1980 Act<sup>4</sup> for the area in which the Site is situated and the authority who is entitled to enforce the obligations contained in this Deed
- B The Owner<sup>4</sup> is the freehold owner of the Site at HM Land Registry under titles numbers [ ]
- C The Owner submitted the Planning Application to the Council and the Council resolved on [ ]<sup>5</sup> to grant the Planning Application subject to the Owner first entering into this Deed
- D The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development in the event that the Planning Permission is granted.
- E The parties have agreed to enter into this Deed in order to secure the Planning Obligations contained in this Deed with the intention that the Planning Obligations be enforced by the Council against the Owner and its successors in title to the Site.
- F The Council is satisfied that the Planning Obligations are necessary to ensure that the Development is acceptable in planning terms, directly related to the Development and are fairly and reasonably related in scale and kind to the Development and satisfy the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)
- G The Mortgagee has a registered charge over the title numbers listed in Clause 16 and agrees to bind its interest in the Site in accordance with the terms of this Deed

#### NOW THIS DEED WITNESSES AS FOLLOWS<sup>6</sup>:

##### OPERATIVE PART

<sup>2</sup> Adapt if a private individual or other entity

<sup>3</sup> If any TfL highway is affected, the recital will need to specify the extent of Council highway and of TfL highway separately

<sup>4</sup> If more than one Owner, refer to them as Owner 1, 2 etc. and to them collectively as the Owners. There could also be a separate "Developer" party

<sup>5</sup> Set out whether committee or delegated decision

<sup>6</sup> If Foreign jurisdiction company, the Council should also obtain a foreign legal opinion

## 1 DEFINITIONS

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

<b>"1972 Act"</b>	<b>the Local Government Act 1972;</b>
<b>"1974 Act"</b>	<b>the Greater London Council (General Powers) Act 1974;</b>
<b>"1980 Act"</b>	<b>the Highways Act 1980;</b>
<b>"1982 Act"</b>	<b>the Local Government (Miscellaneous Provisions) Act 1982;</b>
<b>"1990 Act"</b>	<b>the Town and Country Planning Act 1990;</b>
<b>"2008 Act"</b>	<b>the Housing and Regeneration Act 2008;</b>
<b>"2011 Act"</b>	<b>the Localism Act 2011;</b>
<b>"Acts"</b>	Section 106 and 106A of the 1990 Act, Section 16 of the 1974 Act, Section 33 of the 1982 Act, Sections 38 and 278 of the 1980 Act, Section 111 of the 1972 Act and section 1 of the 2011 Act and in each case any statutory amendment, variation, substitution or re-enactment thereof together with all other statutory powers and Acts pursuant to which the parties hereto shall be empowered to enter into this Deed;
<b>"Additional Affordable Housing Scheme"</b>	means a scheme to be prepared by the Owner and submitted to the Council in accordance with this schedule detailing the Additional Affordable Housing Units to be provided and which: <ul style="list-style-type: none"><li>(a) confirms which Open Market Housing Units are to be converted into Additional Affordable Housing Units and to which tenure(s);</li><li>(b) contains 1:50 plans showing the location, size and internal layout of each Additional Affordable Housing Unit;</li><li>(c) provides an indicative timetable for construction and delivery of the Additional Affordable Housing Units;</li><li>(d) sets out the amount (if any) of any financial contribution also payable towards offsite Affordable Housing if paragraph 3.6 of this schedule applies;</li></ul>
<b>"Additional Affordable Housing Units"</b>	means the Open Market Housing Units to be converted to Affordable Housing pursuant to the Additional Affordable Housing Scheme to be approved under paragraph 4 of this schedule;
<b>"Affordable Housing"</b>	housing including Affordable Rented Housing, Social Rented Housing and Shared Ownership Units provided to Eligible Households for sale or rent whose needs are not met by the market and which housing should: (a) meet the needs of Eligible Purchasers or Eligible Renters including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and (b) include provision for the home to remain at an affordable price for future Eligible Purchasers or Eligible Renters, or, if

**Commented [LA1]:** Thanks for including a clear set of acceptable affordable tenures.

these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision;

**"Affordable Housing Distribution Plan"**

means Plan [ ], showing the Affordable Housing Units thereon;

**Commented [LA2]:** Is there a clause that says that these plans must be provided please. Really helps to understand what the offer is.

**"Affordable Housing Mix"**

means the tenure and housing mix and bedroom size as set out below [or any different combination thereof as agreed in writing by the Council];

	1 Bed	2 Bed	3 Bed	4 Bed	Total
Shared Ownership Units					
Affordable Rented Housing Units					
Social Rented Units					
Total					

**Commented [LA3]:** This is really helpful, thanks for including it so clearly. I often have to search and search the planning documents to find this info and then it is not clear what has been officially agreed.

**"Affordable Housing Provider"**

a registered provider of social housing within the meaning of Section 80 of the 2008 Act and approved in writing by the Council and as registered with the Regulator of Social Housing;

**"Affordable Housing Target Tenure Split"**

means:

- (a) a minimum of 60 per cent (by Habitable Room) of the Affordable Housing Units to be provided as Social Rented Housing or London Affordable Rented Housing; and
- (b) a minimum of 40 per cent (by Habitable Room) of the Affordable Housing Units to be provided as London Living Rent Housing or London Shared Ownership Housing;

**Commented [LA4]:** Thanks for making this so clear and explicit.

**"Affordable Housing Units"**

any Dwelling that is required to be an Affordable Rented Housing Unit, Social Rented Housing Unit or Shared Ownership Unit under this Deed;

**"Affordable Rented Housing"**

Dwellings which are let by an Affordable Housing Provider to Eligible Households who are eligible for Social Rented Housing and on Affordable Rent Terms;

**"Affordable Rented Housing Units"**

the [ ] Affordable Housing Units in accordance with the Affordable Housing Mix;

**"Affordable Rent Terms"**

tenancies which are subject to rent controls that require a rent of no more than 80% (eighty per cent) of the local market rent (including service charge

**Commented [LA5]:** Not sure about this. What is 80% local market rent? says who? where is this figure coming from? Is there a defined place - ie. a Government or GLA data base that sets what the average is and hence how the 80% figure is come by? Way too important to leave to interpretation by a developer..... Would we be allowed to say that it could not be higher than the local Housing Allowance. That would be FANTASTIC as it would be genuinely affordable and sustainable.....

<sup>7</sup>There is some overlap with London Affordable Rented Housing. It is likely that the latter will apply for GLA referable applications. The same applies to Shared Ownership

	where applicable) and for which the rents shall be subject to an annual percentage increase of CPI+1% thereafter, based upon the CPI rate published for the preceding September;
<b>"Affordable Workspace"</b>	means the [Class ] floorspace of the Development to be provided in accordance with the Workspace Provider Business Plan (and as located at [ ]);
<b>"Affordable Workspace Units"</b>	means the units to be provided for Affordable Workspace and shown on Plan [ ]
<b>"Application Stage Build Costs"</b>	means [ ] being the estimated cost of demolition, construction, external works and assumed contingency allowance in respect of the Development as determined by the Application Stage Viability Appraisal;
<b>"Application Stage GDV"</b>	means being the estimated gross development value of the Development established by the Application Stage Viability Appraisal and which takes into account any Public Subsidy;
<b>"Application Stage Viability Appraisal"</b>	means the financial viability appraisal dated [ ], titled [ ] and prepared by [ ] that is an independent assessment by the Council of the applicant's viability analysis;
<b>"Apprentice or Apprentices"</b>	a person aged 16 years or over who is undertaking on-the-job training and who is also studying for a nationally recognised qualification or an NVQ in one of the building trades such as (but not limited to) electrical, brick laying, plastering, plumbing and carpentry;
<b>"Apprenticeship Support Contribution"</b>	means the sum of £[ ] (number pounds) BCIS Index Linked to be used by the Council towards the support of Apprentices;
<b>"Architect"</b>	Means [ ] of [ ] or such other reputable architect appointed in respect of the Development pursuant to paragraph 4 of Schedule 12
<b>"Assessment Costs"</b>	the Council's reasonable and proper costs incurred in negotiating and assessing the Updated Appraisal (agreed with the Owner or determined by an Expert)
<b>"Average Intermediate Housing Value"</b>	means the average value of London Living Rent Housing, the Discounted Market Rent Housing or London Shared Ownership Housing floorspace per square metre (as applicable) at the Relevant Review Date based on the relevant information provided to establish the Early Stage Review GDV or Late Stage Review Estimated GDV (as applicable) to be assessed by the Council and the Owner;
<b>"Average Low Cost Rent Housing Value"</b>	means the average value of London Affordable Rented Housing or London Social Rented Housing floorspace per square metre (as applicable) at the Relevant Review Date based on the relevant information provided to establish

**Commented [LA6]:** Yes good to get the caveat about service charges in.

**Commented [LA7]:** I'm not sure that this is exact enough.... isn't it still open to interpretation by an unscrupulous developer.... where are they getting the data about the average value from.....? Is there a Government approved data source that can be referenced please? So there is no room for doubt....

the Early Stage Review GDV or Late Stage Review Estimated GDV (as applicable) to be assessed by the Council and the Owner

**“Average Open Market Housing Value”**

means the average value of Open Market Housing Unit floorspace per square metre on the Site at the Relevant Review Date based on the relevant information provided to establish the Early Stage Review GDV or the Late Stage Review Estimated GDV (as applicable) to be assessed by the Council and the Owner;

**Commented [LA8]:** Again this is way to vague....

**“BCIS Index Linked”**

at the date when the said sum becomes due (the Due Date) it shall be increased in accordance with the change in the 'All-in Tender Price Index' published from time to time by Building Cost Information Service of the RICS and increased by the relevant location factor (Redbridge) between the date of this Deed and the Due Date.

This shall be calculated by applying the following formula:

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Deed

B = the figure shown in the relevant Index most recently published prior to the date the payment is made under this Deed

C = the figure shown in the relevant Index most recently published prior to the date of this Deed

D = the recalculated sum payable;

**“BNG Land”**

means the land on which the BNG Works are being carried out to meet the BNG Requirement;

**“BNG Legal Agreement”**

means a Section 106 Agreement, Conservation Covenant Agreement or such other appropriate legal agreement (determined by the Council) which shall, among any other relevant provisions/details required in respect of the BNG Works contain:

- a) details of the BNG Works;
- b) a programme for the carrying out, maintenance and management of the BNG Works for the BNG Period;
- c) an obligation on the BNG Landowner (and their successors in title) to maintain, manage and monitor the BNG Works for the BNG Period;
- d) details of reporting arrangements for submission of monitoring reports to the Council to enable it to monitor compliance with and the

effectiveness of the management and maintenance of the BNG Works;

- e) mechanisms for dealing with BNG Works remedial measures, that may be required, which shall include details of Council step-in rights (with a mechanism for recovering any associated costs);
- f) details of the Council's fees for monitoring and enforcing the BNG Works and a covenant by the BNG Landowner to pay such fees;
- g) details of arrangements for the Council approval of any required changes to the BNG Works and for their management and monitoring;
- h) appropriate dispute resolution provisions;
- i) details of any consent or licences required to deliver and maintain the BNG Works;
- j) any relevant funding arrangements;

**BNG Landowner** means the owner(s) of the BNG Land;

**BNG Period** means a period not less than 30 (thirty) years commencing on the date of Practical Completion of the BNG Works ;

**"BNG Requirement"** means the mandatory requirement as set out Schedule 7A of the TCPA 1990 (introduced by the Environment Act 2021) to deliver at least a 10% (ten percent) biodiversity net gain for the Development exceeding the pre development biodiversity value of the Development onsite habitat;

**"BNG Works"** means the habitat creation/enhancement works to meet the BNG Requirement on the BNG Land;

**"Build Costs"** means the build costs comprising construction of the Development supported by evidence of these costs to the Council's reasonable satisfaction including but not limited to:

- (a) details of payments made or agreed to be paid in the relevant building contract;
- (b) receipted invoices;
- (c) costs certified by the Owner's quantity surveyor, costs consultant or agent but for the avoidance of doubt build costs exclude:
  - (i) professional, finance, legal and marketing costs;
  - (ii) all internal costs of the Owner including but not limited to project management costs, overheads and administration expenses; and
  - (iii) any costs arising from Fraudulent Transactions;



**“Carbon Off-set Fund<sup>8</sup> Contribution”**

means a contribution “A” (to be CPI Indexed Linked) calculated in accordance with the following formula as a summation of the residential and the commercial elements of the scheme, minus the Carbon Offset Initial Contribution, according to the formula  $A = (E + F) - G$

**Residential part (“E”)**

$$R \times Y \times Z = E$$

Where:

R = Actual carbon emissions (in tonnes) for the residential part

**Commercial part (“F”)**

$$C \times Y \times Z = F$$

Where:

C = Actual carbon emissions (in tonnes) for the commercial part

Y is the number of years for which the contribution is payable, being 30 years  
Z is the cost of carbon per tonne taken from the GLA Carbon Offset Funds guidance (paragraph 2.7) being £95 per tonne of carbon dioxide (published in 2022) (uprated by CPI) and provided that the Carbon Off-set Contribution may be zero (or if negative shall be deemed to be zero) and shall not exceed in total £[ ];

**“Carbon Offset Initial Contribution”**

means a sum “G” of £[ ] (to be CPI Index Linked) being 50% the total sum “A” payable in respect of the Development based on the shortfall in projected carbon savings against a zero carbon regulated carbon saving target as set out in the energy statement submitted with the Planning Application;

**“Carbon Offset Report”**

means a revised energy report to be submitted to demonstrate actual carbon emissions of the Development and which shall set out the amount of the Carbon Offset Final Contribution;

**“Car Club”**

means a car club operating in the vicinity of the Site promoted by the Owner pursuant to the Car Club Management Scheme which Occupiers of the Dwellings may join as members, to provide its members with access to, or share facilities of, a private car on a short term basis as and when required subject to availability

**“Car Club Bays”**

the [number in words] (number in digits) car parking bays to be provided on the Site edged [ ] on Plan [ ] for the purposes of establishing a Car Club and for the sole use thereof;

**“Car Club Management Scheme”**

means a scheme to provide a Car Club to include details of the Car Club, the Car Club Operator, the contract with the Car Club Operator including the financial arrangements in place whereby the Owner shall fund one Car Club

<sup>8</sup> Rename this “Carbon Offset Final Contribution” if a “Carbon Offset Initial Contribution” is collected

	Membership for each Dwelling, and the funding and provision of cars for the sole use of the Car Club;
<b>"Car Club Membership"</b>	free membership of the Car Club for a period of 3 (three) years, such membership to exclude hire and fuel charges which shall be payable by the member according to usage;
<b>"Car Club Operator"</b>	the operator of the Car Club being a company approved by the Council in writing;
<b>"Career Guidance"</b>	<p>a programme undertaken by the Owner and their agents employees contractors and sub-contractors to provide career guidance to Residents and school and college students within the London Borough of Redbridge and to include the following:</p> <ul style="list-style-type: none"> <li>(a) engagement with local schools and colleges to promote the construction industry as a career option for young people; and</li> <li>(b) attendance at job fairs and other employment events organised by Work Redbridge for Business to provide Residents with information about opportunities available during the Construction Phase and information in respect of the construction sector generally;</li> </ul>
<b>"Chargee"</b>	any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;
<b>"Commencement of Development"</b>	the carrying out of any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development with the exceptions (for the purposes of this Deed only) of demolition, site clearance, investigation of ground conditions and remedial work archaeological work, demolition, diversion laying construction enlargement repair maintenance or cleansing of services to serve the Site, environmental investigation and remediation works, site and soil surveys, erection of a contractor's work compound, erection of a site office, pegging out of roads or paths, construction of temporary access and service roads, temporary display of site notices or advertisements and erection of fencing to the site boundary and "Commence Development" and "Commence" shall be construed accordingly; <sup>9</sup>
<b>"Commencement of Development"</b>	the carrying out of any material operation (as defined in Section 56(2) and (4) of the 1990 Act) forming part of the Development out and "Commence Development" and "Commence", "Implement", "Implemented" and other cognate expressions shall be construed accordingly; <sup>10</sup>
<b>"Component"</b>	<ul style="list-style-type: none"> <li>(a) Open Market Housing Units;</li> <li>(b) Affordable Housing Units;</li> </ul>

<sup>9</sup> Version with carve-outs

<sup>10</sup> Version without carve-outs

	<ul style="list-style-type: none"> <li>(c) Additional Affordable Housing Units;</li> <li>(d) commercial units;</li> <li>(e) any other floorspace;</li> <li>(f) property; and</li> <li>(g) land;</li> </ul>
<b>“Conservation Covenant Agreement”</b>	means a deed of covenant between a landowner and a Responsible Body for the long term conservation of an area of land;
<b>“Construction Phase”</b>	the period of the Development between the Commencement of Development and Practical Completion;
<b>“Construction Training and Skills Contribution”</b>	means the sum of £[ ] ( ) BCIS Index Linked to be paid to the Council and applied towards construction phase training and job brokerage;
<b>“Controlled Parking Zone”</b>	an order creating a resident permit parking area in relation to public highways within the vicinity of the Development pursuant to section 45(2) of the Road Traffic Regulation Act 1984;
<b>“CPI Index Linked”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in respect of financial contributions, that at the date when the said sum becomes due ("the Due Date") it shall be increased in accordance with the change in the 'Consumer Price Index' ("CPI") published from time to time by the Office of National Statistics between the date of this Deed and the Due Date: and</li> <li>(b) in respect of rent levels, they shall be adjusted in accordance with the change in the 'Consumer Price Index' published from time to time by the Office of National Statistics between the date of this Deed and the date on which the rent is set, plus 1% per annum or such other rate of annual change as the GLA may publish from time to time including within the "Affordable Housing Capital Funding Guide", updated by the GLA in October 2023, and updated or replacement guidance</li> </ul>
<b>“Cultural Action Plan”</b>	Per SPD – definition needed
<b>“Developer”</b>	means [name of developer] (company registration number XXX) of [company address]
<b>“Development”</b>	means [description of the planning application as validated] <sup>11</sup>

Commented [AS9]: Do we require this and is it needed?

<sup>11</sup> Insert description of development

**“Development Viability Information”**

means

- (a) in respect of Formula 1b:
  - (i) Early Stage Review GDV; and
  - (ii) Early Stage Review Build Costs;
- (b) in respect of Formula 2:
  - (i) Average Open Market Housing Value
  - (ii) Average Low Cost Rent Housing Value; and
  - (iii) Average Intermediate Housing Value; in respect of Formula 3:
- (i) Late Stage Review Actual GDV;
- (ii) Late Stage Review Actual Build Costs;
- (iii) Late Stage Review Estimated GDV; and
- (iv) Late Stage Review Estimated Build Costs; and
- (d) in respect of Formula 4:
  - (i) Average Open Market Housing Value
  - (ii) Average Low Cost Rent Housing Value; and
  - (iii) Average Intermediate Housing Value

and including in each case supporting evidence to the Council's reasonable satisfaction

**“Discounted Market Rent Housing”**

means housing offered to Eligible Renters at a rent that is not more than 80 per cent of market rent and on the basis that average annual housing costs, including rent and Service Charges:

- (a) must not exceed 28 per cent of the relevant annual gross income upper limit (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income) specified in the London Plan Annual Monitoring Report; and
- (b) in respect of the following sizes of units, must not exceed 28 per cent of the corresponding annual gross income upper limit below (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income):
  - (i) one-bedroom: £30,564; [Figures to be checked and updated ]
  - (ii) two-bedroom: £33,948;
  - (iii) three-bedroom: £37,332; and
  - (iv) four-bedroom: £40,752

**“Disposal”**

means:

- (a) the Sale of a Component(s) of the Development;

**Commented [LA10]:** DMR seems to have the same 80% definition as the affordable rent? Needs a clear definition of what the 80% is of....

- (b) the grant of a lease of a term of less than 125 years of a Component of the Development; or
- (c) the grant of an assured shorthold tenancy Deed or a short term let in respect of a Component of the Development

ALWAYS excluding Fraudulent Transactions and "Dispose", "Disposals" and "Disposed" shall be construed accordingly;

<b>“Dwelling”</b>	any individual dwelling forming part of the Development but not any common parts serving such dwelling;
<b>“Early Stage Review Build Costs”</b>	means the sum of: <ul style="list-style-type: none"> <li>(a) the estimated Build Costs remaining to be incurred; and</li> <li>(b) the Build Costs actually incurred at the Early Stage Review Date</li> </ul>
<b>“Early Stage Review Date”</b>	means the date of the submission of the Development Viability Information pursuant to paragraph 2 of part 2 of Schedule 3;
<b>“Early Stage Review GDV”</b>	means the sum of <ul style="list-style-type: none"> <li>(a) the estimated Market Value at the Early Stage Review Date of all Components of the Development based on detailed comparable evidence; and</li> </ul> <p>means the formula identified as "Formula 1b" within the annex to this schedule all Public Subsidy and any Development related income from any other sources to be assessed by the Council excluding any Public Subsidy repaid by the Owner to the Council and/or the GLA (as applicable);</p>
<b>“Eligible Household”</b>	means an Eligible Purchaser or Eligible Renter;
<b>“Eligible Purchaser”</b>	means a purchaser or purchasers whose Household Income at the date of purchasing the relevant London Shared Ownership Housing Unit does not exceed the relevant upper limit specified in the latest London Plan Annual Monitoring Report such amount at the date of this Deed being £[90,000] <sup>12</sup> ;
<b>“Eligible Renter”</b>	means an existing private or social tenant or tenants without sufficient combined current savings to purchase a home in the local area and whose Household Income at the date of renting the relevant London Living Rent Housing Unit or Discounted Market Rent Housing Unit (as appropriate) does not exceed the relevant upper limit specified in the latest London Plan Annual Monitoring Report such amount at the date of this Deed being £[66,000] <sup>13</sup> and who meets the other criteria (if any) specified in the latest London Plan Annual Monitoring Report;

**Commented [LA11]:** Do we have to have LLR

<sup>12</sup> To be updated as necessary

<sup>13</sup> To be updated as necessary

<b>“Energy Performance Indicators”</b>	means the relevant energy performance indicators as set out in the GLA Energy Monitoring Guidance in relation to each stage of the Development i.e. the ‘planning-stage’, the ‘as-built stage’ and the ‘in-use stage’;
<b>“Epping Forest Special Area of Conservation Mitigation Strategy”</b>	means the “Epping Forest Special Area of Conservation (SAC) Mitigation Strategy” document, which includes the Strategic Access Management and Monitoring (SAMM) Strategy and the Natural Greenspace Improvement Strategy (NGIS) as a Suitable Alternative Natural Greenspace Strategy (SANG) to protect land known as the Epping Forest Special Area of Conservation;
<b>“Escrow Account”</b>	means an interest-bearing instant access deposit account with the Escrow Bank in the joint names of the Owner and the Council;
<b>“Escrow Agent”</b>	means [person] of [company] or such other reputable firm of solicitors as may be appointed jointly by the Owner and the Council;
<b>“Escrow Bank”</b>	means [ Bank plc XXX] or such other reputable bank agreed by the Owner and the Council;
<b>“Escrow Letter<sup>16</sup>”</b>	means a letter setting out details of the establishment and operation of the Escrow Account, payments into and withdrawals from the Escrow Account and such other matters as may be agreed between the Council and the Owner;
<b>“Escrow Sum”</b>	means the sum of £ (pounds) Index Linked to be used towards the Heritage Assets Works;
<b>“European Site”</b>	means all that land designated on 1 April 2005 under Article 4(4) of Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna known as the Epping Forest Special Area of Conservation;
<b>“External Consultant”</b>	means the external consultant(s) appointed by the Council to assess the Development Viability Information;
<b>“Formula 1b”</b>	means the formula identified as "Formula 1b" within the annex to this schedule;
<b>“Formula 2”</b>	means the formula identified as "Formula 2" within the annex to this schedule;
<b>“Formula 3”</b>	means the formula identified as "Formula 3" within the annex to this schedule;
<b>“Formula 4”</b>	means the formula identified as "Formula 4" within the annex to this schedule;
<b>“Fraudulent Transaction”</b>	<p>(a) a transaction the purpose or effect of which is to artificially reduce the Late Stage Review Actual GDV and/or artificially increase the Late Stage Review Actual Build Costs; or</p> <p>(b) a Disposal that is not an arm's length third party bona fide transaction;</p>
<b>“Greater London Authority”</b>	the Greater London Authority or any successor to its function (and GLA shall be construed accordingly);

**“GLA Energy Monitoring Guidance”**

means the London Plan Guidance Document: ‘Be Seen’ energy monitoring guidance dated September 2021 or any successor guidance;

**“Habitable Room”**

any room intended to be used for sleeping, cooking, living or eating purposes and excluding bathrooms, toilets, corridors, service areas, laundries, hallways and utility areas;

**Commented [LA12]:** It would be good to be clear that a kitchen-diner is counted as one habitable room. To be counted as two habitable rooms the kitchen needs its own door and a wall separating it from the living dining area.

**“Heritage Assets”**

means the listed buildings, historic parks and gardens, trees and archaeology and conservation areas at or in the vicinity of the Site and as shown on Plan [ ]<sup>14</sup> and which includes their settings and the term “Heritage Asset” shall be construed accordingly;

**“Heritage Assets Management Plan”<sup>15</sup>**

- (a) Programmes of repair, restoration or maintenance of the Heritage Assets
- (b) Provision of Heritage Public Access Areas
- (c) Improved signage to and from the Heritage Assets
- (d) Recording and interpretation panels and historical information
- (e) Public open days
- (f) Production and implementation of conservation area character appraisals
- (g) Measures for preservation or investigation and recovery of archaeological remains and sites
- (h) Display of archaeological sites
- (i) Dissemination of historic environment information for the public and for schools education
- (j) Research
- (k) Sustainability improvements
- (l) Such other measures and initiatives agreed with the Council’s urban design and conservation team

**“Heritage Assets Public Access Areas”**

means the areas of the Heritage Assets to which members of the public will have access [following completion of the Heritage Assets Public Access Works] as shown on Plan [ ];

**“Heritage Assets Public Access Areas Works”**

means the works to be undertaken by or on behalf of the Owner so as to provide the Heritage Public Access Areas and comprising the following:

**“Heritage Assets Works”**

means the works of repair, restoration and maintenance of any Heritage Asset;

**“Highway Works”<sup>16</sup>**

means the:

<sup>14</sup> To be defined / specified as applicable for the application.

<sup>15</sup> This lists all the items in the SPD. Some of them may need further definitions/details.

<sup>16</sup> This will need to be adapted to suit the application in question.

- [provision, removal or relocation of street furniture]
- [vehicle access widening works]

shown coloured [ ] for identification purposes only on Plan [ ] pursuant to the Section 278 Agreement

**"Household"** means, in relation to a person "A", A and all other persons who would, after purchasing a London Shared Ownership Housing Unit or renting a London Living Rent Housing Unit (as appropriate) share that London Shared Ownership Housing Unit or London Living Rent Housing Unit with A and one another as the only or main residence of both A and such other persons;

**"Household Income"** means:

- (a) in relation to a single Eligible Purchaser or a single Eligible Renter, the gross annual income of that Eligible Purchaser's or Eligible Renter's Household; and
- (b) in relation to joint Eligible Purchasers or joint Eligible Renters, the combined gross annual incomes of those Eligible Purchasers' or Eligible Renters' Households;

**"Housing Zone Loan"** a loan from the Mayor of London's fund for homebuilding in various designated Home Zones within London of which Ilford Town Centre is one;

**"Interest"** interest at 3% (three per cent) above the base lending rate of the Bank of England from time to time;

**"Intermediate Housing"** means London Living Rent Housing, Discounted Market Rent Housing, London Shared Ownership Housing or all or any of them (as the context requires);

**"Landscape Architect"** means of or such other reputable landscape architect appointed in respect of the Development pursuant to paragraph 4 of Schedule 12

**"Labour Return"** a written monitoring report detailing and recording the following:

- (a) the amount of Local Labour recruited, employed, engaged and/or hired by the Owner their contractors and sub-contractors to carry out the Development or any part thereof;
- (b) the details of Local Businesses that have secured contracts for the carrying out of the Development or any part thereof; and
- (c) the details of employment of Apprentices in accordance with paragraph 6(c)(ii) of the Second Schedule;

**"Late Stage Review Actual Build Costs"** means the Build Costs incurred at the Late Stage Review Date which for the avoidance of doubt shall exclude any contingency allowance;

**Commented [LA13]:** Good I am glad DMR this is an intermediate.... otherwise it slips into the affordable rent category.



<b>“Late Stage Review Actual GDV”</b>	<p>means the sum of:</p> <p>(a) the value of all gross receipts from any Sale of a Component of the Development prior to the Late Stage Review Date;</p> <p>(b) the Market Value of any Component of the Development that has been otherwise Disposed prior to the Late Stage Review Date but not Sold; and</p> <p>(c) all Public Subsidy and any Development related income from any other sources to be assessed by the Council excluding any Public Subsidy repaid by the Owner to the Council and/or the GLA (as applicable)</p> <p>in respect of which the supporting evidence to be submitted as part of the Development Viability Information shall include documentary evidence of all gross receipts under (a) and evidence of rental values achieved for different Components of the Development under (b);</p>
<b>“Late Stage Review Cap”</b>	means the cap on the Late Stage Review contribution as calculated in accordance with Formula 4;
<b>“Late Stage Review Contribution”</b>	means a financial contribution for the provision of off-site Affordable Housing in the Council's administrative area the precise value of which shall be calculated in accordance with Formula 3 and which shall be subject to the Late Stage Review Cap;
<b>“Late Stage Review Date”</b>	means the date on which 75 per cent of the Residential Units have been Disposed as determined by the Council pursuant to paragraph 7.3 of Part 2 of Schedule 3;
<b>“Late Stage Review Estimated Build Costs”</b>	means the estimated Build Costs remaining to be incurred at the Late Stage Review Date;
<b>“Late Stage Review Estimated GDV”</b>	means the estimated Market Value at the Late Stage Review Date of all remaining Components of the Development that are yet to be Disposed based on detailed comparable evidence;
<b>“Local Area”</b>	the London Borough of Redbridge;
<b>“Local Businesses”</b>	any business, trade, service, profession or industry whose established place of business is within the London Borough of Redbridge;
<b>“Local Labour”</b>	any person or persons aged 18 years or over who is a Resident;
<b>“Local Procurement Strategy”</b>	a strategy (or any revision to it approved in writing by the Council) to maximise opportunities for Local SMEs to access contracts for goods and services required during the Construction Phase of the Development such strategy to detail initiatives for how the 20 (twenty) per cent local procurement target

from Local SMEs during the Construction Phase of the Development shall be achieved including an agreement to provide details of any tender for contracts and contracting opportunities to any Local SMEs held on a supplier list (if any) held by the Council, a commitment to advertise locally any tender for contract and contracting opportunities, the timing for the implementation of any initiatives together with mechanisms for monitoring the success (or otherwise) of such initiatives;

**“Local SMEs”** independent business organisations based within the London Borough of Redbridge with fewer than 250 employees;

**“London Affordable Rented Housing”<sup>17</sup>** means rented housing provided by an Affordable Housing Provider that has the same characteristics as Social Rented Housing except that it is not required to be let at Target Rents but is subject to other rent controls that require it to be offered to eligible households in accordance with Part VI of the Housing Act 1996 at a rent that is:

(a) including Service Charges, up to 80 per cent of local market rents; and

(b) excluding Service Charges, no higher than the benchmark rents published by the GLA annually in accordance with the Mayor's Funding Guidance;

**Commented [LA14]:** Please can I see the source of this definition....

**“London Affordable Rented Housing Units”** means the [ ] Affordable Housing Units shown on Plan ( ) comprising [ ] Habitable Rooms to be made available for London Affordable Rented Housing in accordance with [this Deed together with any Additional Affordable Housing Units which are to be delivered as London Affordable Rented Housing;

**“London Living Rent Housing”** means rented housing provided by an Affordable Housing Provider that is required to be offered to Eligible Renters on a time-limited tenancy at rents not exceeding the relevant maximum rents published by the GLA annually and on the basis that average annual housing costs, including rent and Service Charges must not exceed 28 per cent of the relevant annual gross income upper limit (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income) specified in the London Plan Annual Monitoring Report;

**Commented [LA15]:** Do we have to have this type?

**“London Living Rent Housing Units”** means any Affordable Housing Units to be made available for London Living Rent Housing in accordance with this Deed;

**“London Plan”** means the London Plan adopted in [March 2021] as revised from time to time;

**“London Plan Annual Monitoring Report”** means the monitoring report published annually by the Mayor of London reviewing the progress being made in implementing the policies and addressing the objectives of the London Plan or any replacement GLA guidance or policy;

<sup>17</sup> See earlier footnote on “Affordable Rented Housing”

**"London Shared Ownership Housing"**

means housing offered to Eligible Purchasers to be occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the 2008 Act (or any amended or replacement provision) where the shared ownership lessee for the time being has the right to carry out Staircasing and dispose of the unit on the open market and on the basis that average annual housing costs, including Service Charges and mortgage payments (assuming reasonable interest rates and deposit requirements):

- (a) must not exceed 28 per cent of the relevant annual gross income upper limit (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income) specified in the London Plan Annual Monitoring Report; and
- (b) in respect of the following sizes of units, must not exceed 28 per cent of the corresponding annual gross income upper limit below (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income):
  - (i) one-bedroom: £48,079;
  - (ii) two-bedroom: £66,544;
  - (iii) three-bedroom: £37,332<sup>18</sup>; and
  - (iv) four-bedroom: £40,752

and "London Shared Ownership Lease" and "London Shared Ownership Lessee" shall be construed accordingly;

**"London Shared Ownership Housing Units"**

means the [ ] Affordable Housing Units as shown on Plan A comprising [ ] Habitable Rooms to be made available for London Shared Ownership Housing in accordance with this Deed together with any Additional Affordable Housing Units which are to be delivered as London Shared Ownership Housing;

**"Low Cost Rent Housing"**

means Social Rented Housing, London Affordable Rented Housing or both (as the context requires);

**"Market and Marketed"**

a binding contract has been entered into with an Affordable Housing Provider in relation to the acquisition of no less than a 125 (one hundred and twenty five) year leasehold interest in the Affordable Housing Units unless otherwise agreed in writing by the Council

**"Market Housing Units"**

means dwellings which are not Affordable Housing Units

**Commented [LA16]:** Why do we need this term as another definition.... just gets confusing....

<sup>18</sup> Amount for 3 and 4 bedroom properties to be updated.

<b>"Market Value"</b>	<p>means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration on the Relevant Review Date based on detailed comparable market evidence, including evidence of rental values achieved for any Component of the Development which has been Disposed but not Sold, to be assessed by the Council and assuming:</p> <ul style="list-style-type: none"> <li>(a) a willing seller and a willing buyer;</li> <li>(b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the Deed of the price and terms and for the completion of the sale;</li> <li>(c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and</li> <li>(d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion;</li> </ul>
<b>"Mayor's Funding Guidance"</b>	means the "Affordable Housing Capital Funding Guide", updated by the GLA in October 2023, and any updated or replacement guidance
<b>"Monitoring Fee"</b>	means the sum of £[ ] ( pounds) [CPIS index linked] <sup>19</sup> to cover the Council's costs of monitoring and implementing the Planning Obligations;
<b>"Motor Vehicle"</b>	any mechanically propelled vehicles including a motor cycle intended or adapted for use on a road and/or highway;
<b>"Occupation"</b>	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, stocking fitting out or decoration or occupation for marketing or display or occupation in relation to security operations (and Occupy, Occupants and Occupied shall be construed accordingly);
<b>"Occupation Date"</b>	[means the date on which any part of the Development (or any part or phase) is first occupied for the purposes set out in the Planning Permission excluding occupation for the purposes of fitting out or marketing the Development (or any part or phase) and the terms "Occupy", "Occupied", "Occupier" and "Occupation" shall be construed accordingly];
<b>"Open Market Housing Units"</b>	means the Residential Units comprising [Number] Habitable Rooms which are to be sold or let on the open market and which are not Affordable Housing Units;
<b>"Open Space"</b>	means those parts of the Site shown for the purpose of identification edged [ ] on the Open Space Plan to be provided as public access open space by the Owner in accordance with the provisions of Schedule 10;

<sup>19</sup> Only indexed if not payable on completion – see clause 8.1

<b>“Open Space Phasing Plan”</b>	means [ ], <sup>20</sup>
<b>“Open Space Plan”</b>	means Plan No [ ] annexed at Schedule [ ];
<b>“Open Space Method Statement”</b>	means a statement setting out the timing for construction of the Open Space and detailing the phases of the Development within which the Open Space will be made available to the public for access on foot from the Implementation Date but which may for the avoidance of doubt be amended as the construction of the Development progresses with the prior written approval of the Council;
<b>“Open Space Specification”</b>	means a detailed specification for the design, construction, materials and works to construct the Open Space including all furniture, lighting and drainage;
<b>“Operational Phase”</b>	the period of the Development post Practical Completion where the Development or any part of the Development is ready for use and Occupation and in respect of the provisions of paragraph 3 of the schedule 3 of this Deed this term can relate to information being submitted in respect of a part or any number of parts or the whole of the Development ;
<b>"Parking Bay"</b>	a parking place designated by the Council by an Order under the Road Traffic Regulation Act 1984 and under the Road Traffic Act 1991 or other relevant legislation for use by residents of the locality in which the Development is situated;
<b>"Parking Permit"</b>	a parking permit issued by the Council in accordance with their rules under Section 54(2) of the Road Traffic Act 1984 allowing a Motor Vehicle to park in a Parking Bay;
<b>“Plan [number]”</b>	means the plan marked as Plan [ ] as appended at Schedule [ ];
<b>“Plan 1”</b>	means the plan annexed hereto at the first Schedule and marked “Plan 1”;
<b>“Plan 2”</b>	means the plan annexed hereto at the first Schedule and marked “Plan 2”; <sup>26</sup>
<b>“Plan A”</b>	Plan showing the location of the London Affordable Rent, Shared Ownership and Open Market flats for each floor of the scheme;
<b>“Planning Application”</b>	means the application for planning permission for the Development and allocated reference [ ] and the term “Application” shall be construed accordingly;
<b>“Planning Obligations</b>	means the Owner’s obligations set out within this Deed;

<sup>20</sup> Insert phasing as appropriate. This is relevant for estate regeneration schemes or strategic multi-phase development, where retained or first phase residents and users need at least some access to open space prior to overall completion.

<b>“Planning Permission”</b>	means the planning permission granted by the Council for the Development [a copy of which is appended hereto];
<b>“Practical Completion”</b>	<p>a) the date that a certificate of practical completion is issued pursuant to a building contract or contracts in respect of the relevant part of the Development or the date on which the Development or the relevant part of the Development is practically completed in accordance with the building contract or contracts and “Practically Complete(d)” shall be construed accordingly;</p> <p>b) With respect of BNG works, means practical completion of the BNG Works as evidenced by written notice of an ecologist or other appropriate professional acting for the [Owner/BNG Landowner];</p>
<b>“Public Art”</b>	<p>means the works of art to be provided as part of the Development comprising</p> <p>(a) the Public Art Stand-alone Works and other works and initiatives aimed at enhancing the range of arts and cultural opportunities in the Borough and including any works integrated within the Public Realm Land ; and</p> <p>(b) as part of the Cultural Action Plan;</p>
<b>“Public Art Action Plan”</b>	<p>the document to be prepared by the Owner and submitted to the Council for its written approval in accordance with paragraph of Schedule [ ] and which shall include the following details:</p> <p>(a) engagement with local residents and businesses</p> <p>(b) recommendations from the Council’s urban design and regeneration teams</p> <p>(c) the proposed locations for the Public Art to be installed in</p> <p>(d) the form of proposed work(s) of Public Art or individualised art and design solutions incorporated into the fabric of the Development;</p> <p>(e) information and design of the art work(s);</p> <p>(f) the proposed delivery programme for the installation of the Public Art;</p> <p>(g) on-going arts programmes and partnerships with local galleries and cultural art exchange programmes; and</p> <p>(h) works to be undertaken for the maintenance of the Public Art</p> <p>(i) any other programmes and initiatives as agreed with the Council and which shall conform with the Cultural Action Plan;</p>
<b>“Public Art Delivery Costs”</b>	£ ( pounds) Index Linked;
<b>“Public Art Standalone Costs”</b>	means the Public Art comprising the incorporation of stand-alone, temporary or permanent works of art within the Development or the use of individualised art and design solutions which are incorporated into the fabric of the Development at the locations shown on the Public Art Action Plan (with potential opportunities to include seating, paving, railings, wayfinding,

	landscape structures, lighting and manifestations to foyers/entrances to buildings
<b>"Public Realm Financial Contribution"</b>	the plan to be submitted by the Owner to the Council setting out, with evidence, the Public Realm Works Sum incurred by the Owner in undertaking the Public Realm Works;
<b>"Public Realm Land"</b>	means the land shown on which the Public Realm Works are to be carried out and edged [ ] on Plan [ ]
<b>"Public Realm Works"</b>	<p>means the</p> <ul style="list-style-type: none"> <li>• Landscaping</li> <li>• Planting</li> <li>• Paving<sup>21</sup></li> </ul> <p>and the long-term management thereof to be carried out in accordance with the principles of the Public Realm Works Management Plan shown coloured [ ] for identification purposes only on Plan [ ] pursuant to the Section 278 Agreement</p>
<b>"Public Realm Works Management Plan"</b>	a detailed scheme for the laying out, provision and management in perpetuity of the Public Realm Land and Public Realm Works which shall have been approved by the Council
<b>"Public Realm Works Sum"</b>	the sum of no less than £ (    pounds) toward the carrying out by the Owner of the Public Realm Works
<b>"Public Subsidy"</b>	means funding from the Council and/or the GLA together with any additional public subsidy secured by the Owner to support the delivery of the Development;
<b>"Redbridge Business and Enterprise Service"</b>	means the organisation within the Council which leads on business support, business growth and development of business workspace in the administrative area of the Council;
<b>"Regulator for Social Housing"</b>	means the executive non-departmental public body sponsored by the Department for Housing Communities and Local Government to create sustainable communities and also to regulate registered providers of social housing or any successor body and where appropriate will include the Homes and Communities Agency and Homes England and their predecessor bodies;
<b>"Relevant Review Date"</b>	means the Early Stage Review Date or the Late Stage Review Date (as the context requires);
<b>"Rent Guidance"</b>	means the Guidance on Rents for Social Housing and the Direction on the Rent Standard 2014 issued by the Department of Communities and Local

<sup>21</sup> Specific details to be included on a case by case basis

	Government in May 2014 or such other replacement guidance or direction or legislation;
<b>"Rent Nominations Agreement"</b>	<p>the rent nominations agreement to be entered into pursuant to paragraph 10 of Part 1 of Schedule 3 between the Council and the Affordable Housing Provider</p> <p>in a form to be provided by the Council such agreement to include nominations rights in favour of the Council to nominate households in need to Affordable Housing;</p>
<b>"Rent Standard"</b>	means the standard relating to rent set by the Regulator of Social Housing from time to time having regard to the Welfare Reform and Work Act 2016, the Rent Guidance and the Direction on the Rent Standard 2014 issued by the Department for Communities and Local Government in May 2014 together with the Rent Standard Guidance published by the Department for Communities and Local Government in April 2015 or such other replacement guidance or direction or legislation;
<b>"Reportable Unit"</b>	means a reportable unit as determined by reference to the GLA Energy Monitoring Guidance;
<b>"Resident"</b>	<p>a person who is resident in the Local Area, such residency to be proven by the production of two valid proofs of address which are no more than three (3) months old, for example:</p> <ul style="list-style-type: none"> <li>(a) council tax statement; or</li> <li>(b) utility bills; or</li> <li>(c) bank statements; or</li> <li>(d) other correspondence from government or state bodies;</li> </ul>
<b>"Residential Travel Plan"</b>	means a residential travel plan broadly in the form of that submitted as part of the Planning Application together with any revisions and/or such other measures required by and agreed in writing by the Council;
<b>"Residential Units"</b>	means the [ ] units of residential accommodation to be provided as part of the Development comprising the Open Market Housing Units and the Affordable Housing Units;
<b>"Responsible Body"</b>	means a body (which may include a local authority) designated by the Government as a responsible body able to enter into a Conservation Covenant Agreement with landowners;
<b>"Sale"</b>	(a) the sale of the freehold of a Component; or

**Commented [LA17]:** It isn't clear anywhere that the Council has nomination rights on the affordable and social rent tenure homes....?



- (b) the grant of a lease of a Component with a term of 125 years or more and subject to nominal rent

and “Sold” shall be construed accordingly;

<b>“SMM Contribution”</b>	means the sum of £[ ] (£255.84 per dwelling) Index Linked payable to the Council as a financial contribution towards the maintenance, improvement, management, access management and monitoring of the European Site to mitigate the recreational impact of the Development on the European Site in accordance with the Epping Forest Special Area of Conservation (SAC) Mitigation Strategy;
<b>“SANG Contribution”</b>	means the sum of £[ ] (£1,892.20 per dwelling) Index Linked payable to the Council as a financial contribution towards the provision of Suitable Alternative Natural Green Space within the Borough as identified within the Epping Forest Special Area of Conservation (SAC) Mitigation Strategy;
<b>“Section 38 Agreement”</b>	means an agreement to be completed between the Council and the Owner pursuant to Section 38 of the 1980 Act and other powers relating to the [Highway Works] [and/or Public Realm Works]
<b>“Section 278 Agreement”</b>	means an agreement to be completed between the relevant highway authority and the Owner pursuant to Section 278 of the 1980 Act and other powers relating to the [Highway Works] [and/or Public Realm Works]
<b>“Service Charges”</b>	means all amounts payable by a tenant or owner (as appropriate) of the relevant London Affordable Rented Housing Unit, London Living Rent Housing Unit or London Shared Ownership Housing Unit as part of or in addition to the rent and directly or indirectly for services, repairs, maintenance, improvements, insurance and/or the landlord's costs of management in relation to that London Affordable Rented Housing Unit, London Living Rent Housing Unit or London Shared Ownership Housing Unit
<b>“Serviced Condition”</b>	in relation to the land to be used for the Affordable Housing Units, the provision of roads, sewers, gas, water, electricity and telecommunications to the boundary to be necessary and adequate so as to enable such land to be Occupied;
<b>“Shared Ownership Costs”</b>	costs that do not exceed 40% (forty per cent) of Net Household Income;
<b>“Shared Ownership Terms”<sup>22</sup></b>	the Dwelling is let:  (a) In accordance with 'shared ownership arrangements' within the meaning of section 70(4) of the 2008 Act; and

<sup>22</sup> Check whether the application is London Shared Ownership. However this type is likely to be relevant for non GLA referable schemes

- (b) On a lease in the form of the Homes and Communities Agency or Homes England standard lease on terms where:
- (i) The percentage of the value of the Dwelling paid as a premium on the day in which a lease is granted under the shared ownership arrangement does not exceed 75 (seventy five) per cent of the market value (where the market value at any time is the price which the Dwelling might reasonably be expected to fetch if sold at that time on the open market);
  - (ii) On the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than 3 (three) per cent of the value of the unsold interest; and
  - (iii) In any given year the annual rent payable does not increase by more than the percentage increase in the CPI<sup>23</sup> for the year to September immediately preceding the anniversary of the day on which the lease was granted plus one per cent;

The annual expenditure on aggregate rent, mortgage and service charges do not exceed Shared Ownership Costs;

**"Shared Ownership Units"**<sup>24</sup>

Dwellings let through an Affordable Housing Provider on Shared Ownership Terms;

**"Site"**

the land against which this Deed may be enforced and being as shown edged red on Plan 1 and as set out in the First Schedule;

**"Social Rented Housing"**

Dwellings which are let by an Affordable Housing Provider on Social Rented Terms and at Target Rent;

**"Social Rented Housing Units"**

the [ ] Affordable Housing Units which shall be provided as Social Rented Housing;

**"Social Rented Terms"**

Rent for which guideline target rents are determined through the national rent regime and for which the rents shall be subject to an annual percentage increase of a maximum of CPI+1% thereafter, based upon the CPI rate published for the preceding September;

**"Staircasing"**

means the acquisition by a London Shared Ownership Lessee of additional equity in a London Shared Ownership Housing Unit up to a maximum of 100 per cent equity and "Staircased" shall be construed accordingly;

**"Substantial Implementation"**

means the occurrence of the following in respect of the Development:

<sup>23</sup> Would probably define this in the main agreement.

<sup>24</sup> Check whether the application is London Shared Ownership. However this type is likely to be relevant for non GLA referable schemes

- (a) completion of all ground preparation works and all site-wide enabling works; and
- (b) completion of the foundations for the core of any one building and its construction to ground floor slab

<b>"Substantial Implementation Target Date"</b>	means the date 18 months from but excluding the date of grant of the Planning Permission;
<b>"Target Rents"</b>	means rent for Social Rented Housing conforming with the formula rent set out in the Guidance on Rent for Social Housing published by the Department for Housing, Communities and Local Government in May 2014 (or any replacement guidance issued by the Ministry of Housing, Communities and Local Government or any successor body) and subject to the limit on rent changes and rent caps set out therein;
<b>"Target Return"</b>	means profit on value of % ( per cent) as determined within the Application Stage Viability Appraisal being the blended profit of the Open Market Housing Units, the Affordable Housing Units and any other Component of the Development as a percentage of gross development value;
<b>"Television Consultant"</b>	a suitable body or person approved by the Confederation of Aerial Industries or by the Office of Communications;
<b>"Television First Survey"</b>	a baseline television survey carried out by the Television Consultant to establish the levels of television reception for the properties (commercial and residential) in the Television Survey Area prior to the Commencement of Development;
<b>"Television Mitigation Measures"</b>	television mitigation measures required in respect of the impact on television reception within the Television Survey Area and which shall have been approved in writing by the Council and submitted in accordance with Paragraph 8 of the Third Schedule and which shall result in the improvement of an external signal so that the television reception returns to at least the level which was established in the Television First Survey or in the event that the external signal does not return to the level established in the Television First Survey such measures to set out solutions to return to the level established in the TelevisionFirst Survey to include an in-house property solution such as the installation of an alternative television service, the re-pointing of the existing antenna to another transmitter or the relocation of the existing antenna or the installation of a higher gain antenna;
<b>"Television Second Survey"</b>	a survey carried out by the Television Consultant to establish the level of television reception to the properties within the Television Survey Area;
<b>"Television Surveys"</b>	means together the Television First Survey, the Television Second Survey and the Television Third Survey;
<b>"Television Survey Area"</b>	such area as shall be agreed in writing by the Council;

<b>"Television Third Survey"</b>	a final survey carried out by the Television Consultant to check that the Television Mitigation Measures have rectified any adverse impact the Development had on properties within the Television Survey Area television reception to at least to the level identified in the Television First Survey;
<b>"Transfer"</b>	means a transfer of the freehold land under title number ( ) to the Owner dated [ ];
<b>"Travel Plan"</b>	means measures and initiatives to be undertaken by the Owner in the management of the Development as approved by the Council pursuant to Schedule [ ] and any later reviews thereof with the aim of reducing journeys by Motor Vehicles to and from the Site and promoting public and other alternative and environmentally friendly transport ; the terms "Residential Travel Plan" and "Commercial Travel Plan" shall mean respectively the Travel Plan for the Residential Units and the Commercial Units;
<b>"Travel Plan Monitoring Fee"</b>	means the sum of £[ ] [ ] pounds) to be applied by the Council for administering and monitoring the Travel Plan in relation to the Development , including undertaking and implementing travel plan surveys and reviews thereof, providing guidance to Travel Plan Co-ordinators and the overall compliance with the requirements of the Travel Plan;
<b>"Travel Plan Survey"</b>	Any survey of the Travel Plan undertaken by the Owner in accordance with Schedule [ ] and subsequent reviews thereof
<b>"TRICS"</b>	means the "Trip Rate Information Computer System" database maintained by the TRICS Consortium
<b>"Working Day"</b>	means a day other than a Saturday or Sunday, Christmas Day, Good Friday or bank holiday; <sup>25</sup>
<b>"Work Experience Placements"</b>	non-paid work experience placements lasting a minimum of two weeks in length for local unemployed people training for or interested in a career in construction and/or school and college students nominated by Work Redbridge for Business;
<b>"Work Placement Programme"</b>	a work placement programme for the provision of a minimum of 25 Work Experience Placements facilitated by the Owner and their agents employees contractors and sub-contractors and Career Guidance during the Construction Phase of the Development;
<b>"Work Redbridge for Business"</b>	the Job Brokerage Service operated by the London Borough of Redbridge which identifies suitably qualified and/or experienced job-seekers and matches candidates to suitable job vacancies or such other successor body from time to time;
<b>"Workspace Provider"</b>	means a workspace provider being a company or organisation approved by Redbridge Business and Enterprise Service;

<sup>25</sup> Defined as "means any day of the week other than Saturday, Sunday or a bank holiday or a public holiday in England" in our UU template

**“Workspace  
Provider  
Business Plan”**

means a business plan setting out:-

- (a) how the Affordable Workspace Units will be designed, fitted out and used flexibly for a range of Occupiers, uses and tenures;
- (b) the Workspace Provider to be engaged by the Owner to assist with the design, delivery and on-going Occupancy of the Affordable Workspace;
- (c) how the Affordable Workspace Units will be provided so as to be affordable by users of the Affordable Workspace;
- (d) details of the rent with arrangements to ensure that the rent is set at a level that is affordable and available throughout the letting of the Affordable Workspace Units;
- (e) Heads of Terms and conditions and/or agreement for lease for the users of the Affordable Workspace Units including terms as to subletting and to ensure security of tenure in accordance with the Landlord and Tenant Act 1954;
- (f) requirements for the Workspace Provider to fit out the Affordable Workspace in accordance with an agreed specification (as per (g) below);
- (g) proposed specification for the construction of the Affordable Workspace;
- (h) any other information that the Council may reasonably require;

for a period of at least 10 (ten) years from the date of first Occupation of the Affordable Workspace ;

## **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 its respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 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.

## **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to the Acts.
- 3.2 The covenants, Undertakings, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and undertakings pursuant to Section 16 of the 1974 Act and are enforceable by the Council as local planning authority against the Owner and the Owner's successors in title and assignees and which bind the Site.
- 3.3 To the extent only that any of the obligations in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in the Acts.

## **4 CONDITIONALITY**

- 4.1 This Deed is conditional upon:
- (i) the grant of the Planning Permission; and
  - (ii) the Commencement of Development
- save for the provisions of Clauses [8.1, 8.3, 10, 11, 12, 13, 14 and 15] which shall come into effect immediately upon completion of this Deed.<sup>26</sup>

## **5 THE OWNER'S COVENANTS**

- 5.1 The Owner covenants with the Council as set out in the [Third, Fourth and Fifth] Schedules.

## **6 THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owner as set out in the [Third Fourth and Fifth] Schedules.

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<sup>26</sup> Adapt as necessary

## **7 WARRANTY**

- 7.1 The Owner warrants that it has full power to enter into this Deed and that no person other than the Owner has any legal or equitable interest in the Site or whose consent is necessary to make the Deed binding on the Site and the Owner and any estates and interests therein.

## **8 MISCELLANEOUS**

- 8.1 The Owner shall pay to the Council on completion of this Deed:
- 8.1.1 the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed; and
  - 8.1.2 the Monitoring Fee.
- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.3 This Deed shall be registrable as a local land charge by the Council.
- 8.4 Where the agreement, approval, consent or expression of satisfaction is required to be given or reached or taken by any party under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and when considering any request to the Council from the Owner pursuant to paragraph c of the definition of Provided the reasonableness of the Affordable Housing Provider's behaviour in not entering into a binding contract as requested by the Owner shall be taken into account.
- 8.5 Any notice made under the terms of this Deed is to be made in writing and shall be deemed to have been properly served if sent by recorded delivery or delivered by hand and signed for by the following officer at the addresses specified in this Deed and addressed as follows:
- (a) in relation to the Council to be given or served at the address given in this Deed and addressed to the Strategic Head of Planning and Building Control; and
  - (b) in relation to the Owner to its registered office for the time being for the attention of the Company Secretary at the address on the first page hereof
- For the avoidance of doubt any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Strategic Head of Development and Building Control.
- 8.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall following a request in writing from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.7 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.
- 8.8 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.
- 8.9 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.10 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them other than paragraphs 4 & 5 of the Third Schedule.
- 8.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

- 8.12 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 its functions as a local authority.
- 8.13 The Owner will on the completion of this Deed register a notice of the terms of this Deed on the Charges Register of the Owner's title numbers referred to in Recital (B) and will inform the Council's solicitors in writing as soon as such registration has been notified by HM Land Registry and will supply the Council's solicitors at no expense to the Council or its solicitors with copies of such registration
- 8.14 If the Owner has not completed the registration in accordance with Clause 8.13, the Owner hereby consents to the Council making an application to register a notice of the terms of this Deed on the Charges Register of the Owner's title numbers referred to in Recital (B) and to pay the Council's reasonable costs and disbursements in respect thereof and the Council will inform the Owner's solicitors in writing as soon as such registration has been notified by the Land Registry.

#### **9 NO WAIVER**

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**

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed (other than the ongoing On-Street Parking Permit Capping obligations contained in paragraphs 3 to 6 of the Third Schedule) have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan SAVE FOR in relation to the Disposal of individual Dwellings to individual private owners.

#### **11 INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

#### **12 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

#### **13 DISPUTE PROVISIONS**

- 13.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed 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 to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.



13.3 Any expert howsoever appointed:

- (a) 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;
- (b) subject to Clause 13.6 act as an expert and not an arbitrator.
- (c) shall in reaching his decision take due and proper account of Planning Policy

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 The Owner or the Council may elect when giving notice under Clause 13.1 or 13.2 for the Expert to act as an arbitrator under the Arbitration Act 1996.

#### **14 JURISDICTION**

This Deed 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.

#### **15 DELIVERY**

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.

#### **16 NOTICES**

16.1 Not to do any of the following until it has given the Council at least 7 Working Days' notice of the date on which it intends to do so save that if any longer notice period is specified in any of the Schedules to this Deed, such longer notice shall be given<sup>27</sup>

16.1.1 Commence the Development

16.1.2 Substantially Commence the Development;

16.1.3 first Occupy:

- (a) any part of the Development;
- (b) the first Dwelling;
- (c) any Market Housing Units;
- (d) more than 25% of the Market Housing Units;
- (e) [more than 50% of the Market Housing Units;
- (f) more than 80% of the Market Housing Units;

16.1.4 Dispose of more than 75% of the Market Units;

16.2 To give the Council notice immediately following the occurrence of:

16.2.1 any of the events referred to in paragraphs 1(a) (b), (c) and (d);

16.2.2 Practical Completion; and

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<sup>27</sup> Where applicable

16.2.3 Commencement of the marketing of the London Shared Ownership Housing Units.

## **17 INDEXATION**

All sums of money payable in accordance with this Deed to the Council other than those referred to in clause 8.1.1 shall be adjusted by being BCIS Index Linked or CPI Index Linked as set out in this Deed.

## **18 MORTGAGEE**

18.1 The Mortgagee has a registered charge over the Site by virtue of [ ] in respect of title number [ ] at HM Land Registry.

18.2 The Mortgagee joins herein to consent to the terms of this Deed and to the registration against the above title pursuant to clauses 8.13 and 8.14 but without liability save in the event that it become successor in title to the Owner before the obligations contained in this Deed have been performed in full.

## **19 FURTHER SECTION 73 CONSENTS**

19.1 Subject to the provisions of this Clause 19, if any Section 73 Consent is granted after the date of this Deed:

19.1.1 The planning obligations in this Deed shall automatically relate to and bind such Section 73 Consent from the date of the grant of the Section 73 Consent (in addition to continuing the Site in respect of the Planning Permission) without the need to enter into any subsequent deed of variation or new agreement pursuant to section 106 or section 106A of the 1990 Act;

19.1.2 The definitions of Planning Application, Development and Planning Permission in this Deed shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself (as applicable); and

19.1.3 This Deed shall be endorsed by the following words in respect of any Section 73 Consent  
“the Planning Obligations and undertakings in the Deed relate to and bind the Site in respect of which a new planning permission reference [ ] has been granted pursuant to Section 73 of the 1990 Act (as amended)”.

### **PROVIDED THAT**

19.2 nothing in this clause shall fetter the discretion of the Council in determining any planning application(s) for a Section 73 Consent and the appropriate planning obligations and undertakings required in connection with the determination of the same;

19.3 To the extent that any of the planning obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent and

19.4 the Council reserves the right at its discretion to insist upon the completion of a separate planning obligation deed of agreement pursuant to Section 106 and Section 106A of the 1990 Act in connection with any Section 73 Consent if the Council considers it necessary to do so.

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

**SCHEDULE 1  
PLANS**

Plan 1: The Site

Plan 2:

Plan 3:

The freehold/leasehold land at [ ] registered at the HM Land Registry under title numbers [ ]

DRAFT

**SCHEDULE 2**  
**THE OWNER'S COVENANTS WITH THE COUNCIL**

The Owner covenants with the Council as follows:<sup>28</sup>

**1. TV RECEPTION MITIGATION**

- 1.1. Not to Commence Development until it has submitted the Television First Survey (completed no later than 10 Working Days prior to its submission)
- 1.2. Report in writing to the Council the details of any complaints received from owners and occupiers of properties in the Television Survey Area about their television reception being adversely affected within ten Working Days of receipt together with details of the Television Mitigation Measures to be undertaken in respect of any complaint regarding television reception considered by the Television Consultant to have been adversely affected by the Development and the timescale for carrying out the measures
- 1.3. As soon as reasonably practicable following the Structural Completion of the Development the Owner shall:
  - 1.3.1. carry out the Television Second Survey and submit the results to the Council in writing within 10 Working Days and shall not allow the Occupation of the Development until this had been done;
  - 1.3.2. in the event that the Television Second Survey results show a reduction in the quality of the television reception from that which existed at the date of the Television First Survey to one or more of the properties in the Television Survey Area (and that this is in the opinion of the Television Consultant due to the Development), carry out and complete the Television Mitigation Measures to the written satisfaction of the Council within a timescale agreed with the Council having regard to the type of mitigation measures required and shall not permit the Occupation of the Development until this has been done
- 1.4. Within 6 weeks of the satisfactory completion of the Television Mitigation Measures (if any) the Owner shall:
  - 1.4.1. carry out the Television Third Survey and submit the results to the Council in writing within 10 Working Days and shall not permit the Occupation of the Development until this has been done;
  - 1.4.2. in the event that the Television Third Survey results show a reduction in the quality of the television reception from that which existed at the date of the Television First Survey to one or more of the properties in the Television Survey Area and that this is in the opinion of the Television Consultant is due to the Development, the Owner shall carry out and complete further Television Mitigation Measures to the properties affected to the written satisfaction of the Council in a timescale to be agreed with the Council
- 1.5. FOR THE AVOIDANCE OF DOUBT all costs associated with the appointment of the Television Consultant, the conducting of the Television Surveys and any required Television Mitigation Measures shall be borne entirely by the Owner.

**2. EPPING FOREST SAC HABITATS MITIGATION**

**2.1. SAMM CONTRIBUTION**

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<sup>28</sup> Other general financial contributions can be included here

2.1.1. The Owner(s) shall pay the SAMM Contribution to the Council within 60 days of Commencement of Development.

2.1.2. After 60 days following Commencement, the Owner(s) shall not further Commence or permit Commencement of the Development unless and until the SAMM Contribution has been paid to the Council.

**2.2. SANG CONTRIBUTION**

2.2.1. The Owner(s) shall pay the SANG Contribution to the Council within 60 days of Commencement of Development.

2.2.2. After 60 days following Commencement, the Owner(s) shall not further Commence or permit Commencement of the Development unless and until the SANG Contribution has been paid in full to the Council.

DRAFT

**SCHEDULE 3**  
**AFFORDABLE HOUSING AND VIABILITY REVIEW**  
**PART 1**

The Owner covenants with the Council as follows:

**A PROVISION OF AFFORDABLE HOUSING - REASONABLE ENDEAVOURS TO SECURE FUNDING**

1. Prior to the Commencement of Development, the Owner shall use all reasonable endeavours to secure a Housing Zone Loan or grant funding and or other additional funding from the GLA the purpose of which is to maximise the quantum of Affordable Housing Units on the Site and shall provide written evidence of the same to the Council.

**B PROVISION**

**B1. Base Provision**

1. to Provide the Affordable Housing Units before first Occupation of any Market Housing Units
2. not to Occupy any Market Housing Units until the Base Affordable Housing Units have been Provided

**B2. Affordable Housing Minimum and Maximum Provision**

3. To Provide the Affordable Housing Units in accordance with paragraphs 1,2 and 4 of Part 1 of this Third Schedule.
4. The Affordable Housing Units and Additional Affordable Housing Units shall together not exceed [35]<sup>35</sup> per cent (by Habitable Room) of the Residential Units PROVIDED THAT the tenure split of the Affordable Housing Units across the Development accords with the Affordable Housing Target Tenure Split as are agreed with the Council (or determined by the Expert) to be reasonable.

**Commented [LA18]:** Don't like the requirement not to exceed 35%.... a minimum of 35% would be better.

**C AFFORDABLE HOUSING PROVISION**

The Owner covenants with the Council as follows:

5. to Practically Complete the Affordable Housing Units in accordance with the Affordable Housing Distribution Plan and Affordable Housing Mix and make them ready for Occupation before first Occupation of the Market Housing Units
6. to Market the Affordable Housing Units prior to the first Occupation of [50% (fifty percent)/75% (seventy five per cent)] of the Market Housing Units
7. not to Occupy [any/ of the Market Housing Units until the Affordable Housing Units have been Practically Completed in accordance with paragraph 1 of this Schedule
8. not to Occupy more than [49% (forty-nine per cent)/74% (seventy four per cent) of the Market Housing Units until the Affordable Housing Units have been Marketed in accordance with paragraph 2 of this Schedule

**D AFFORDABILITY**

**Affordability Controls**

9. subject to paragraph 7, not to Occupy any Dwellings:
  - (a) other than as London Shared Ownership Units where:
    - (i) they are shown as London Shared Ownership Units; or
    - (ii) they are shown as London Shared Ownership Units forming part of any Additional Affordable Housing Scheme;

or

- (b) other than as London Affordable Rented Housing Units
- (c) they are shown as London Affordable Rented Housing Units forming part of any Additional Affordable Housing Scheme

#### Nominations

- 10. that any Shared Ownership Units to be Provided shall be allocated in accordance with the GLA scheme for first steps (also known as 'share to buy' ) or their successors in title but subject to the Council having rights to nominate Residents from the Local Area
- 11. that the London Affordable Rented Housing Units forming part of the Additional Affordable Housing to be Provided shall be:-
  - 11.1. maintained and managed by the Affordable Housing Provider; and
  - 11.2. allocated in accordance with the Rent Nominations Agreement

unless otherwise agreed in writing by the Council

**Commented [LA19]:** Is this the affordable rent and the social rent... links back to the definitions.... The Council get nominations on both....

## **Part 2: Affordable Housing Review**

### **Early Stage Review**

#### **A.1 EARLY VIABILITY REVIEW TRIGGER**

- 1.1 The Owner shall notify the Council in writing of the date on which it considers that the Substantial Implementation has been achieved no later than 10 Working Days after such date and such notice shall be accompanied by full documentary evidence on an open book basis to enable the Council to independently assess whether the Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 1.2 No later than five Working Days after receiving a written request from the Council, the Owner shall provide to the Council any additional documentary evidence reasonably requested by the Council to enable it to determine whether the Substantial Implementation has been achieved on or before the Substantial Implementation Target Date.
- 1.3 Following the Owner's notification pursuant to paragraph 1.1 of this schedule the Owner shall afford the Council access to the Site to inspect and assess whether or not the works which have been undertaken achieve the Substantial Implementation PROVIDED ALWAYS THAT the Council shall:
  - (a) provide the Owner with reasonable written notice of its intention to carry out such an inspection;
  - (b) comply with relevant health and safety legislation; and
  - (c) at all times be accompanied by the Owner or its agent.
- 1.4 No later than 20 Working Days after the Council receives
  - (a) notice pursuant to paragraph 1.1 of part 2 of this schedule ; or
  - (b) if the Council makes a request under paragraph 1.2 of part 2 of this schedule , the additional documentary evidence,the Council shall inspect the Site and thereafter provide written confirmation to the Owner within 10 Working Days of the inspection date as to whether or not the Council considers that the Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 1.5 If the Council notifies the Owner that the Council considers that the Substantial Implementation has not been achieved then this paragraph shall continue to apply mutatis mutandis until the Council has notified the Owner pursuant to paragraph 1.4 of part 2 of this schedule that the Substantial Implementation has been achieved.
- 1.6 The Owner shall not Occupy the Development or any part thereof until:
  - (a) the Council has notified the Owner pursuant to paragraph 3.4. of part 2 of this schedule that the Substantial Implementation has been achieved on or before the Substantial Implementation Target Date;
  - (b) the Council has notified the Owner pursuant to paragraph 3.4 of part 2 of this schedule that no Additional Affordable Housing Units are required; or



- (c) If the Council notifies the Owner pursuant to paragraph 3.4 of part of this this schedule that Additional Affordable Housing Units are required, an Additional Affordable Housing Scheme has been approved pursuant to paragraph 3.4 or 3.5 of part 2 of this schedule.

## **A.2 SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

- 2.1 Where the Substantial Implementation has not occurred before the Substantial Implementation Target Date (as determined by the Council under paragraph 1.4 of this part of this schedule or pursuant to dispute resolution in accordance with clause 13 above:
  - (a) the Owner shall submit the following information no later than 20 Working Days after the date on which the Owner is notified pursuant to paragraph 1.4 or 1.6 of this part of this schedule that the Substantial Implementation has been achieved, on the basis that the Council may make such information publicly available:
    - (i) the Development Viability Information for Formula 1b and Formula 2;
    - (ii) a written statement that applies the applicable Development Viability Information to Formula 1b (PROVIDED ALWAYS THAT if the result produced by Formula 1b is less than zero it shall be deemed to be zero) and Formula 2 thereby confirming whether in the Owner's view any Additional Affordable Housing Units can be provided; and
    - (iii) where such written statement confirms that Additional Affordable Housing Units can be provided, an Additional Affordable Housing Scheme; and
  - (b) paragraphs A3 and A4 of this part of this schedule shall apply.

## **A.3 ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

- 3.1 The Council shall assess the information submitted pursuant to paragraph 2 of this schedule and assess whether in its view Additional Affordable Housing Units are required to be delivered in accordance with Formula 1b and Formula 2 and for the avoidance of doubt the Council will be entitled to rely on its own evidence in determining inputs into Formula 1b and Formula 2 subject to such evidence also being provided to the Owner.
- 3.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 2 of this schedule.
- 3.3 In the event that the Council and/or an External Consultant requires further Development Viability Information or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in their view Additional Affordable Housing Units are required to be delivered in accordance with Formula 1b and Formula 2.
- 3.4 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 2 of this part of this schedule, the Council shall notify the Owner in writing of the Council's decision as to whether any Additional Affordable Housing Units are required and whether the submitted Additional Affordable Housing Scheme is approved.
- 3.5 Where the Council concludes that Additional Affordable Housing Units are required but the Owner's initial submission concluded otherwise, the Owner shall provide an Additional Affordable Housing Scheme to the Council for approval (such approval not to be unreasonably withheld or delayed)

within 10 Working Days of the date on which it receives the Council's notice pursuant to paragraph 3.4 of this part of this schedule.

3.6 If the Council's assessment pursuant to paragraph 3.4 of this schedule concludes that

- (a) a surplus profit arises following the application of Formula 1b but such surplus profit is insufficient to provide any Additional Affordable Housing Units pursuant to Formula 2; or
- (b) a surplus profit arises following the application of Formula 1b but such surplus profit cannot deliver a whole number of Additional Affordable Housing Units pursuant to Formula 2;

then in either scenario the Owner shall pay any such surplus profit allocable to any incomplete Additional Affordable Housing Unit to the Council as a financial contribution towards offsite Affordable Housing.

3.7 The Owner shall pay the Council's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 2 of this schedule including those of the External Consultant within 20 Working Days of receipt of a written request for payment.

#### **A.4 DELIVERY OF ADDITIONAL AFFORDABLE HOUSING**

4.1 Where it is determined pursuant to paragraph 3.4 part of this of this schedule that one or more Additional Affordable Housing Units are required the Owner shall not Occupy more than 80% of the Open Market Housing Units unless and until it has:

- (a) practically completed all of the Additional Affordable Housing Units in accordance with the Additional Affordable Housing Scheme approved by the Council and made them available for Occupation; and
- (b) paid any remaining surplus profit pursuant to paragraph 3.6 of this part of this schedule to the Council towards the delivery of offsite Affordable Housing within the Council's administrative area.

4.2 The Parties agree that the terms of Part 1 of this schedule shall apply mutatis mutandis to the provision of any Additional Affordable Housing Units.

#### **B Late Stage Review**

##### **B.5 LATE STAGE VIABILITY REVIEW TRIGGER**

5.1 The Owner shall notify the Council in writing of the anticipated Late Stage Review Date not less than 20 Working Days in advance of that date.

##### **B.6 SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

6.1 No later than 20 Working Days after the Late Stage Review Date notified to the Council pursuant to paragraph 5 of this schedule, the Owner shall submit the following information on the basis that the Council may make such information publicly available:

- (a) the Development Viability Information for Formula 3 and Formula 4; and
- (b) a written statement that applies the applicable Development Viability Information to Formula 3 (PROVIDED ALWAYS THAT if the result produced by Formula 3 is less than zero it

shall be deemed to be zero) and Formula 4 thereby confirming whether in the Owner's view any Late Stage Review Contribution is payable and, if so, how much.

**B.7 ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

- 7.1 The Council shall assess the Development Viability Information submitted pursuant to paragraph 6 of this part of this schedule and assess whether in its view a Late Stage Review Contribution is payable in accordance with Formula 3 subject to the Late Stage Review Cap as calculated in accordance with Formula 4 and, if so, how much and the Council will be entitled to rely on its own evidence in determining inputs into Formula 3 and Formula 4 subject to such evidence also being provided to the Owner.
- 7.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 6 of this part of this schedule.
- 7.3 In the event that the Council and/or an External Consultant requires further Development Viability Information or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in its view any Late Stage Review Contribution is required in accordance with Formula 3 subject to the Late Stage Review Cap as calculated in accordance with Formula 4.
- 7.4 If the Council and/or External Consultant determines following receipt of the information submitted pursuant to paragraph 6 of this part of this schedule that the Late Stage Review Date has not occurred, the Council may require the Owner to promptly submit additional information pursuant to paragraph 6 of this schedule or to re-submit the information required under paragraph 6 of this schedule upon the occurrence of the Late Stage Review Date (as determined by the Council).
- 7.5 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 6 of this part of this schedule, the Council shall notify the Owner in writing of its decision as to whether any Late Stage Review Contribution is required and, if so, how much.
- 7.6 If the Council notifies the Owner pursuant to paragraph 7.5 of this part of this schedule that a Late Stage Review Contribution is required:
- (a) the Owner shall pay the Late Stage Review Contribution to the Council within 10 Working Days of the date on which such notice is received; and
  - (b) the Owner shall not Occupy more than [85] per cent of the Residential Units until the Late Stage Review Contribution has been paid in full to the Council.
- 7.7 The Owner shall pay the Council's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 7 of this schedule including those of the External Consultant within 20 Working Days of receipt of a written request for payment.
- 7.8 The Owner shall not Occupy more than 80 per cent of the Residential Units until the Council has notified the Owner in writing of its decision as to whether any Late Stage Review Contribution is required pursuant to paragraph 7.5 of this schedule.

**C. PUBLIC SUBSIDY**

- 8.1 Nothing in this Deed shall prejudice any contractual obligation on the Owner to repay or reimburse any Public Subsidy using any surplus profit that is to be retained by the Owner following the application of Formula 2 and Formula 3.

**D.9 MONITORING**

- 9.1 The Parties acknowledge and agree that as soon as reasonably practicable after each of:

- (a) the approval of the Additional Affordable Housing Scheme pursuant to paragraph 3.4 or .3.5 of this schedule or, if an Additional Affordable Housing Scheme is not required by the Council, the conclusion of the assessment under paragraph 3.4 of this schedule; and
- (b) the Council's notification pursuant to paragraph 7.5 of this schedule that a Late Stage Review Contribution is required

the Council shall report to the GLA through the London Development Database the following information (to the extent applicable):

- (a) the number and tenure of the Additional Affordable Housing Units (if any);
- (b) any changes in the tenure or affordability of the Affordable Housing Units;
- (c) the amount of any financial contribution payable towards offsite Affordable Housing pursuant to paragraph 3.6 of this schedule; and
- (d) the amount of the Late-Stage Review Contribution.

#### ANNEX TO THIRD SCHEDULE

##### FORMULA 1b (Surplus profit available for Additional on-site affordable housing)

"Surplus profit" =  $((A - B) - (C - D)) - P$

##### Where:

**A** = Early Stage Review GDV (£)

**B** = Application Stage GDV (£)

**C** = Early Stage Review Build Costs (£)

**D** = Application Stage Build Costs (£)

**P** =  $(A - B) * Y$

**Y** = Target Return (%)

##### Notes:

(A – B) represents the change in GDV from the date of planning permission to the date of review.

(C – D) represents the change in build costs from the date of planning permission to the date of review.

P represents Owner profit on change in GDV.

#### FORMULA 2 (Additional affordable housing)

X = Additional [London Affordable Rented Housing / Social Rented Housing] requirement (Habitable Rooms)

$$X = ((E * F) \div (A - B)) \div D$$

Y = Additional [London Living Rent Housing / London Shared Ownership] requirement (Habitable Rooms)

$$Y = ((E * G) \div (A - C)) \div D$$

#### Where:

A = Average Open Market Housing Value (£ per m<sup>2</sup>)

B = Average Low Cost Rent Housing Value (£ per m<sup>2</sup>)

C = Average Intermediate Housing Value (£ per m<sup>2</sup>)

D = Average Habitable Room size for the Development being m<sup>2</sup>

E = Surplus profit available for Additional Affordable Housing Units as determined in Formula 1b (£)

F = Percentage of surplus profit available for Additional Affordable Housing Units to be used for Low Cost Rent Housing (%)

G = Percentage of surplus profit available for Additional Affordable Housing Units to be used for Intermediate Housing (%)

#### Notes:

(A – B) represents the difference in average value of market housing per m<sup>2</sup> and average value of Social Rented Housing and London Affordable Rented Housing per m<sup>2</sup> (£).

(A – C) represents the difference in average value of market housing and average value of London Living Rent Housing and London Shared Ownership Housing per m<sup>2</sup> (£).

(E \* F) represents the surplus profit to be used for Low Cost Rent Housing (£).

(E \* G) represents the surplus profit to be used for Intermediate Housing (£).

(E \* F) ÷ (A – B) represents the additional Low Cost Rent Housing requirement (m<sup>2</sup>).

(E \* G) ÷ (A – C) represents the additional Intermediate Housing requirement (m<sup>2</sup>).

### FORMULA 3 (Surplus profit available for affordable housing contribution)

X = Late Stage Review Contribution

$$X = ((A + B - C) - (D + E - F) - P) * 0.6$$

#### Where:

A = Late Stage Review Actual GDV (£)

B = Late Stage Review Estimated GDV (£)

C =

- Application Stage GDV (£), where Development Viability Information for Formula 1b and 2 was not required to be submitted pursuant to paragraph [5] of this schedule ; or
- Early Stage Review GDV (£) as determined by the Council pursuant to paragraph [6.4] of this schedule , where Development Viability Information for Formula 1b and 2 was submitted pursuant to paragraph [5] of this schedule

D = Late Stage Review Actual Build Costs (£)

E = Late Stage Review Estimated Build Costs (£)

F =

- Application Stage Build Costs (£), where Development Viability Information for Formula 1b and 2 was not required to be submitted pursuant to paragraph [5] of this schedule ; or
- Early Stage Review Build Costs (£) as determined by the Council pursuant to paragraph [6.4] of this schedule , where Development Viability Information for Formula 1b and 2 was submitted pursuant to paragraph [5] of this schedule

P =  $(A + B - C) * Y$

Y = Target Return (%)

#### Notes:

(A + B - C) represents the change in GDV from the date of the planning permission (or previous review if triggered) to the Late Stage Review Date.

(D + E - F) represents the change in build costs from the date of the planning permission (or previous review if triggered) to the Late Stage Review Date.

P represents Owner profit on change in GDV.

0.6 represents the 60 per cent of the surplus profit to be used by the Council for additional affordable housing, after the Owner's profit (P) has been deducted.

#### FORMULA 4 (Late Stage Review Cap)

X = Late Stage Review Cap

$$X = (((A * D) - (B * D)) * E) + (((A * D) - (C * D)) * F)$$

#### Where:

A = Average Open Market Housing Value (£)

B = Average Low Cost Rent Housing Value (£)

C = Average Intermediate Housing Value (£)

D = m<sup>2</sup>, being the average Habitable Room size for the Development

E =

- Habitable Rooms, where Additional Affordable Housing Units were not required to be provided pursuant to paragraph [6.4] of this schedule ; or
- The actual number, less than Habitable Rooms, where Additional Affordable Housing Units were required to be provided pursuant to paragraph [6.4] of this schedule,

being the shortfall in Low Cost Rent Housing (by Habitable Room) when compared with the Affordable Housing Target Tenure Split.

F =

- Habitable Rooms, where Additional Affordable Housing Units were not required to be provided pursuant to paragraph [6.4] of this schedule ; or
- The actual number, less than Habitable Rooms, where Additional Affordable Housing Units were required to be provided pursuant to paragraph [6.4] of this schedule ,

being the shortfall in Intermediate Housing (by Habitable Room) when compared with the Affordable Housing Target Tenure Split.



**SCHEDULE 4  
HIGHWAYS AND TRANSPORT**

**Part 1: Highway Works (Council)**

1. The Owner covenants to enter into a Section 278 Agreement with the Council in respect of the Highway Works prior to Commencement of the Development.
2. There shall be no Commencement unless and until the Owner has entered into the Section 278 Agreement with the Council.
3. The Owner shall Practically Complete the Highway Works in accordance with the Section 278 Agreement with the Council prior to Occupation of the Development.
4. There shall be no Occupation unless and until the Owner has Practically Completed the Highway Works in accordance with the Section 278 Agreement.
5. The Owner covenants to enter into a Section 38 Agreement with the Council (as highway authority) for the adoption of any of the Highway Works<sup>29</sup> as the Council considers necessary prior to Commencement of the Development.
6. There shall be no Commencement unless and until the Owner has entered into the Section 38 Agreement with the Council.

**Part 2: Highway Works (TfL)**

1. The Owner covenants to enter into a Section 278 Agreement with TfL in respect of the Highway Works prior to Commencement of the Development and provide evidence to the Council of completion of such Agreement.
2. There shall be no Commencement unless and until the Owner has entered into the Section 278 Agreement with TfL and has provided evidence to the Council thereof that the Highway Works have been completed prior to Occupation and to the satisfaction of TfL.
3. The Owner shall Practically Complete the Highway Works in accordance with the Section 278 Agreement with TfL prior to Occupation of the Development.
4. There shall be no Occupation unless and until the Owner has Practically Completed the Highway Works in accordance with the Section 278 Agreement with TfL and the Owner has provided evidence to the Council that the Highway Works have been Practically Completed to the satisfaction of TfL.

**Part 3: Travel Plans**

1. The Owner shall prepare at its own cost and submit to the Council for its written approval prior to Occupation of the Dwellings and Commercial Units as the case may be:
  - (a) the Residential Travel Plan, and
  - (b) the Commercial Travel Plan.

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<sup>29</sup> If necessary.

2. The Owner shall not Occupy any Residential Unit or Commercial Unit before the relevant Travel Plan has been approved in writing by the Council.
3. The Owner shall fully implement the Residential Travel Plan and the Commercial Travel Plan as approved in writing by the County Council from first Occupation of any Residential Unit or Commercial Unit (as the case may be) for the lifetime of the Development.
4. The Owner shall:
  - 4.1. procure a Travel Survey to a specification to be agreed by the Council but which would allow inclusion on the TRAVL or TRICS databases following within one year after Commencement of the Development;
  - 4.2. not later than two years after the first Travel Survey submit a revised travel plan (which shall be prepared having regard to the results of the said survey) to the Council for its approval
  - 4.3. implement and observe the requirements and obligations set out in the Travel Plan as revised and agreed in writing by the Council pursuant to paragraph 4.2 (or such amended plan as may be agreed by the Council and the Owner from time to time) for as long as any part of the Development shall be Occupied.
5. The Owner shall:
  - 5.1. nominate a sustainable travel coordinator who is an employee of the Owner who will be responsible for the Travel Plan during the lifetime of the Development
  - 5.2. require the sustainable travel coordinator to liaise with the tenants and occupiers of the Development to establish monitoring arrangements to annually review the effectiveness of the Travel Plan during the lifetime of the Development and to provide such information to the Council;
  - 5.3. in the event that the monitoring arrangements show deficiencies in the Travel Plan to require the sustainable travel coordinator to use Reasonable Endeavours to identify and implement additional initiatives; and
  - 5.4. encourage occupiers of the Development to implement and observe the Travel Plan in accordance with their obligations under paragraph 1.

#### **Part 4: On-Street Parking Permit Capping**

1. Not to allow the Occupation of any Dwelling until the potential Occupier of such Dwelling has been notified of the restrictions set out in paragraphs 4 and 5 of this Third Schedule and to procure that these restrictions are included in any freehold transfer, lease, tenancy, option, licence or other disposal of a Dwelling to any residential Occupier.
2. A Dwelling shall not be used and/or Occupied by any Occupier who has at the date they use and/or Occupy the Dwelling a Parking Permit or a contract to park a Motor Vehicle in any car park owned controlled or licensed by the Council unless such Occupier is or becomes entitled to be a holder of a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 and for the avoidance of doubt any Occupier whilst residing using and or Occupying a Dwelling will not be eligible to have and shall not purchase or procure the purchase of a Parking Permit within any Controlled Parking Zone operated by the Council following the date of this Deed within the Local Area.

3. To ensure that prior to Occupying any Dwelling each new Occupier of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Parking Permit and will not be able to buy a contract to park a Motor Vehicle within any car park owned, controlled or licensed by the Council.
4. The Owner for itself and its successors in title to the Site hereby acknowledges that the provisions in paragraphs 3, 4 and 5 above will remain permanently and will be enforceable against individual Occupiers.

#### **Part 5: Car Club**

1. Prior to first Occupation of any Dwelling the Owner shall at its own cost prepare and submit to the Council for its written approval the Car Club Management Scheme and shall not first Occupy or permit first Occupation of any Dwelling until the Car Club Management Scheme has been approved in writing by the Council.
2. At its own cost to lay out, construct and Practically Complete the Car Club Bays for the Development to the Council's reasonable satisfaction prior to first Occupation of any Residential Unit.
3. Not to Occupy any Residential Unit until the Car Club Bays have been Practically Completed in accordance with paragraph 19 of this Third Schedule.
4. Enter into an agreement with a Car Club Operator for the establishment of a Car Club so that the Car Club becomes operational and is available prior to first Occupation of any of the Dwellings and shall notify the Council as soon as possible once the agreement has been entered into;
5. Notify in writing the first household of each Dwelling of their entitlement to a Car Club Membership from the date of first Occupation;
6. Not to first Occupy or permit first Occupation of any Dwelling prior to notifying each first household in accordance with the requirements of paragraph 22 of this Third Schedule;
7. Within 30 (thirty) Working Days of the first Occupation of a Dwelling to notify the Council that the first household of the relevant Dwelling has been notified in accordance with the requirements of paragraph 22 of this Third Schedule;
8. Provide to the first household of each Dwelling the Car Club Membership on first Occupation of the Dwelling provided that:
  - (a) the first household of the relevant Dwelling has confirmed to the Owner that it wishes to accept the proposal made under paragraph 3 of this Part 5 of Schedule [ ]; and
  - (b) the relevant member of each first household of the relevant Dwelling is legally entitled to drive a Motor Vehicle.

#### **Part 6: Bicycle Credit**

1. To provide to the first household of each Dwelling the Bicycle Credit on first Occupation of the Dwelling provided that the first household of the relevant Dwelling has confirmed to the Owner that it wishes to accept the Bicycle Credit.

2. Not to permit first Occupation of any Dwelling until the Bicycle Credit has been made provided to the first household in the event that the first household has confirmed to the Owner that it wishes to accept the Bicycle Credit.

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**SCHEDULE 5  
PUBLIC REALM AND PUBLIC ART**

**PART 1: PUBLIC REALM**

The Owner covenants with the Council as follows:

1. To submit the Public Realm Works Management Plan to the Council for its written approval prior to Commencement of Development.
2. To enter into a Section 278 Agreement with the Council in respect of the Public Realm Works prior to Commencement of the Development.
3. There shall be no Commencement unless and until (a) the Council has provided its written consent to the Public Realm Works Management Plan; and (b) the Owner has entered into the Section 278 Agreement with the Council in respect of the Public Realm Works.
4. To Practically Complete the Public Realm Works in accordance with the Section 278 Agreement in respect of the Public Realm Works and in accordance with the Public Realm Management Plan approved pursuant to paragraph 3 of this Schedule prior to Occupation of the Development.
5. There shall be no Occupation unless and until the Owner has Practically Completed the Public Realm Works in accordance with the Section 278 Agreement and the Public Realm Management Plan.
6. To manage and maintain the Public Realm Works in accordance with the Public Realm Management Plan in perpetuity and subject to paragraph 8 below, shall ensure that access is provided to the Public Realm Land on a daily basis for 24 hours per day to members of the public and emergency services by foot, bicycle<sup>36</sup> [or vehicle] as appropriate in accordance with the Public Realm Management Plan.
7. The obligations in paragraph 7 will be subject to: (i) closure in emergencies; (ii) closure for one day per year so as to assert rights of proprietorship preventing public or private rights being created by means of prescription or other legal processes.<sup>37</sup>
8. To submit the Public Realm Costing Plan to the Council for its written approval on Practical Completion of the Public Realm Works [and in any event not later than first Occupation of the Development].
9. There shall be no Occupation unless and until the Owner has submitted to the Council the Public Realm Costing Plan and it has received the Council's written approval in writing of the same.
10. That from the date of Practical Completion of the Public Realm Works, it will maintain the Public Realm Works in perpetuity to the reasonable satisfaction of the Council in accordance with the Public Realm Works Management Plan or any amendments and updates thereto as agreed in writing by the Council.
11. To enter into a Section 38 Agreement with the Council (as highway authority) for the adoption of any of the Highway Works as the Council considers necessary prior to Commencement of the Development.
12. There shall be no Commencement unless and until the Owner has entered into the Section 38 Agreement with the Council.
13. In the event that the Council has agreed in writing with the Owner that the Council rather than the Owner will contract to provide the Public Realm Works, the Owner shall pay the Council the Public Realm Financial Contribution prior to [Commencement].
14. There shall be no [Commencement] unless and until the Owner has paid the Public Realm Financial Contribution to the Council

## **PART 2: PUBLIC ART**

The Owner covenants with the Council as follows:

1. To submit the Public Art Action Plan to the Council for its written approval prior to Commencement of Development and this shall provide for Public Art to be incorporated at the Site
2. There shall be no Commencement until the Council has approved the Public Art Action Plan.
3. That the total cost to be incurred by the Owner in the development of the Public Art Action Plan and the procurement and installation of the Public Art (with the installation to be undertaken as per the delivery programme which is to be included in the Public Art Action Plan) shall be not less than the Public Art Delivery Costs
4. That the total cost to be incurred by the Owner in the provision of Stand-alone Work(s) shall be not less than the Public Art Standalone Costs
5. Prior to the Practical Completion of the Development the Owner will procure the completion, placing and unveiling of the Stand-Alone Work(s) commissioned in accordance with the Public Art Action Plan.
6. There shall be no Occupation of the Development other than in accordance with the Public Art Action Plan as approved pursuant to paragraph 1 above or as amended with the Council's written agreement.

**SCHEDULE 6**  
**HISTORIC ENVIRONMENT AND HERITAGE**

**Part 1: Heritage Assets Management Plan**

The Owner covenants with the Council as follows:

1. To submit the Heritage Assets Management Plan to the Council for its written approval prior to Commencement of Development.
2. There shall be no Commencement unless and until the Council has provided its written approval to the Heritage Assets Management Plan.
3. To Practically Complete the Heritage Assets Public Access Areas Works in accordance with the Heritage Assets Management Plan approved pursuant to paragraph 1 of this Schedule prior to Occupation of the Development.
4. There shall be no Occupation unless and until the Owner has Practically Completed the Heritage Assets Management Public Access Works in accordance with the Heritage Assets Management Plan.
5. To manage and maintain the Heritage Assets Public Access Areas and Heritage Assets Public Access Areas Works in accordance with the Heritage Assets Management Plan in perpetuity and subject to paragraph 8 below, to ensure that access is provided to the Heritage Assets Public Access Areas on a daily basis for 24 hours per day to members of the public and emergency services by foot, bicycle [or vehicle] as appropriate in accordance with the Heritage Assets Management Plan.
2. 6. The obligations in paragraph 7 will be subject to: (i) closure in emergencies; (ii) closure for one day per year so as to assert rights of proprietorship preventing public or private rights being created by means of prescription or other legal processes
1. That from the date of Practical Completion of the Heritage Assets Public Access Areas Works, it will maintain the Heritage Assets Public Access Areas in perpetuity to the reasonable satisfaction of the Council in accordance with the Heritage Assets Management Plan or any amendments and updates thereto as agreed in writing by the Council.

**Part 2 Escrow Account**

The Owner covenants with the Council as follows:

1. To submit its proposed programme for the Heritage Assets Works to the Council [for its written approval] prior to Commencement of Development
2. To provide the Council with a draft Escrow Letter for approval and thereafter to procure that the Escrow Letter is signed by the Owner and the Council and delivered to the Escrow Agent within [ ( ) Working Days of approval of the Heritage Assets Works by the Council] .
3. To procure at its own cost and with no liability on the Council that the Escrow Account is established in the joint names of the Owner and the Council and is available to receive deposits of monies within [ ] ( ) Working Days of approval of the Heritage Assets Works by the Council and to provide the Council with written confirmation thereof.
4. There shall be no Commencement unless and until the Council has provided its written consent to the proposed Heritage Assets Works and the Owner has complied with paragraph 3 above.

5. The Escrow Account shall be managed and maintained by the Escrow Agent in accordance with the Escrow Letter unless otherwise agreed in writing by the parties.
6. The Owner and the Council may draw down monies from the Escrow Account in accordance with the terms of the Escrow Letter.
7. The Owner shall be responsible for paying the professional fees incurred by the Escrow Agent in managing and maintaining the Escrow Account. For the avoidance of doubt, the Escrow Account will only operate on the basis that it will not be in overdraft and that no account charges, interest or any other expenses will be borne by the Council.
8. The Owner shall undertake and Practically Complete the Heritage Assets Works to the satisfaction of the Council prior to Occupation of the Development.
9. There shall be no Occupation until the Owner has complied with paragraph 8 above.
10. The parties agree that the Escrow Account shall be closed by the Escrow Agent as soon as reasonably practicable following the Council's written confirmation that the Owner has complied with paragraph 8 above, in which case any credit balance in the Escrow Account at that time may be drawn down.



**SCHEDULE 7**  
**AFFORDABLE AND FLEXIBLE WORKSPACE**

**Part 1: Provision of Affordable Workspace**

1. The Owner covenants with the Council as follows:-
  - 1.1. that it will engage and work with Redbridge Business and Enterprise Service regarding the provision of the Affordable Workspace;
  - 1.2. to submit the proposed Workspace Provider Business Plan to the Council for its written approval prior to Commencement of the Development;
  - 1.3. not to Commence the Development until the Council has approved the proposed Workspace Provider Business Plan in writing, including incorporation of any amendments required by the Council following the submission under paragraph 1.2 above;
  - 1.4. to Practically Complete the Affordable Workspace in accordance with the Workspace Provider Business Plan;
  - 1.5. to make the Affordable Workspace available for Occupation of users of the Affordable Workspace prior to Occupation of any Market Housing Units;
  - 1.6. not to Occupy any Market Housing Units until the Affordable Workspace has been Practically Completed and been made available for occupation for users of the Affordable Workspace; and
  - 1.7. that following its Practical Completion the Affordable Workspace Units shall be retained as Affordable Workspace and shall not be occupied other than as Affordable Workspace in accordance with the Workspace Provider Business Plan.

**Part 2: Affordable Workspace Contribution**

1. The Owner will pay the Affordable Workspace Contribution to the Council prior to [commencement of the Development] [Occupation] if the Council is satisfied that it is not viable for the Owner to provide any or all of the Affordable Workspace as part of the Development.
2. The payment of the Affordable Workspace Contribution will be additional to any Affordable Workspace where the Owner has provided some Affordable Workspace Units as part of the Development but which is insufficient to meet the requirements of the Council's Local Plan.
3. The Owner shall not [Commence the Development] [Occupy the Development] until it has paid the Affordable Workspace Contribution.

**Part 3: Monitoring and Review**

1. This section is to be developed

**SCHEDULE 8  
CARBON OFF-SET FUND**

- 1.1 The Owner shall pay the Council the Carbon Off- set Fund Contribution prior to Commencement of Development.
- 1.2 There shall be no Commencement until the Owner has paid the Carbon Off-Set Contribution to the Council.

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**SCHEDULE 9  
LOCAL LABOUR AND APPRENTICES**

**Part 1**

**1.1 The Owner Shall:**

- 1.1.1** use reasonable endeavours to ensure that a minimum of 20% of the total number of employees employed;
- (i) for the Construction Phase of the Development is Local Labour;
  - (ii) for the Operational Phase of the Development is Local Labour;
- 1.1.2** notify Work Redbridge for Business or any other subsequent organisation of all vacancies for employees, self-employed, sub-contractors, apprenticeships, training opportunities and any other form or type of employment or service arising from construction or operational use of the Development:
- (i) before and throughout the Construction Phase of the Development and Operational Phase of the Development; and
  - (ii) such notice of any vacancies to be given as soon as reasonably practicable and in any event within five Working Days of a vacancy becoming available;
- 1.1.3** submit the following to the manager at Work Redbridge for Business no less than 3 (three) months before Commencement (and not to Commence until they have been submitted and approved in writing by the Council);
- (i) a full and detailed labour plan for the full duration of the Construction Phase projecting the number of vacancies and identifying what skills/trade requirements, employment and services are needed for the Development throughout the Construction Phase;
  - (ii) a programme for the employment of Apprentices at a minimum of 1 apprentice per £3m construction build cost during the Construction Phase in construction or related building trades (to include bricklaying (if any) carpentry, electrical, plumbing and plastering) for its written approval such programme to include a timetable for the recruitment of the Apprentices and provision for the replacement of any Apprentice who leaves their apprenticeship within four months of its start date ("the Apprenticeship Programme");
- 1.1.4** submit the following to the manager at Work Redbridge for Business no less than 3 (three) months before the Operational Phase Occupation (and not to Occupy until they have been submitted and approved in writing by the Council) a full and detailed labour plan for any Operational Phase Occupation projecting the number of vacancies and identifying what skills/trade requirements, employment and services are needed for the Development throughout the Operational Phase at least three months before the any relevant Operational Phase Occupation (and not to Occupy the any relevant Operational Phase of the Development until the labour plan has been submitted);
- 1.1.5** fully co-operate with Work Redbridge for Business following submission of the labour plans (paragraphs 1.1.3 and 1.1.4 above) to broker Local Labour into job vacancies;
- 1.1.6** provide Work Redbridge for Business with the Labour Return every 3 (three) months during the Construction Phase and in respect of the relevant Operational Phase; and
- 1.1.7** appoint and provide to Work Redbridge for Business the details of a single point of contact in respect of the provision of Local Labour and Apprentices.

**Part 2**

## 1.2 Construction Training and Skills Contribution

- 1.2.1 Prior to Commencement the Owner shall pay to the Council the Construction Training and Skills Contribution.
- 1.2.2 The Owner shall not Commence or permit Commencement unless and until the Construction Training and Skills Contribution has been paid to the Council.

## 1.3 Apprenticeship Support Contribution

- 1.3.1 Prior to Commencement the Owner shall pay to the Council the Apprenticeship Support Contribution.
- 1.3.2 The Owner shall not Commence or permit Commencement unless and until the Apprenticeship Support Contribution has been paid to the Council.

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**SCHEDULE 10**  
**LOCAL PROCUREMENT**

**Commented [AS20]:** Do we require this in the SPD?

**1.1 The Owner Shall**

- 1.1.1 use its reasonable endeavours to ensure that it, its agents contractors and sub-contractors achieve 20% local procurement averaged across the entire construction procurement spend on all goods and services by the Owner or its agents, contractors and sub-contractors in respect of the construction of the Development.
- 1.1.2 achieve this by:
  - (i) before Commencement, submitting to the Council for its written approval the Local Procurement Strategy (and not Commencing the Development until the Local Procurement Strategy has been submitted to and approved in writing by the Council);
  - (ii) using its reasonable endeavours to ensure that the Owner its agents contractors and subcontractors (as the case may be) implement and comply with the Local Procurement Strategy until the Construction Phase is complete; and
  - (iii) Including in any tender documentation for the Development provided to its agents contractors and sub-contractors details of the provisions of this paragraph;
- 1.1.3 within the timescales set out in the Local Procurement Strategy provide a report detailing the performance of the Owner its agents contractors and sub-contractors in achieving the 20% local procurement target including details of:
  - (iv) all Local SMEs sent a tender enquiry or a tender invitation by the Owner its agents contractors or sub-contractors together with details of the tender inquiry or tender invitation and the outcome;
  - (v) all Local SMEs who are suppliers of goods and services that are used by the Owner its agents contractors or subcontractors together with the value of the goods and services and types of goods and services.

**SCHEDULE 11**  
**OPEN SPACE**

**Commented [AS21]:** We can review this as the Public Land Charter from GLA has an approach on public realm

1.1 The Owner shall provide and retain the Open Space [Public Access Area] [Rooftop Garden] in accordance with this clause 11 for the life of the Development.

1.2 The Owner shall:

- 1.2.1 Submit to the Council for approval the Open Space Specification and Open Space Method Statement prior to the Implementation Date and shall not Implement the Planning Permission until the Open Space Phasing Plan and Open Space Specification have been approved;
- 1.2.2 Construct the Open Space in accordance with the approved Open Space Specification and the approved Open Space Method Statement (as the same may have been varied from time to time with the prior written approval of the Council);
- 1.2.3 Not allow Occupation of the Development until the Open Space has been completed to the reasonable satisfaction of the Council.

1.3 The Owner covenants to:-

- 1.3.1 cleanse, maintain and keep in repair and working order the surface of and the lighting and drainage to the Open Space together with any furniture (as approved by the Council) and hard and soft landscaping (as approved by the Council);
- 1.3.2 cleanse, maintain and keep in repair and working order any furniture and structures which have been approved by the Council;
- 1.3.3 cleanse maintain and keep in repair and working order the hard and soft landscaping which have been approved by the Council;
- 1.3.4 keep the Open Space unobstructed (save for such tables, chairs or other items as may subject to prior approval by the Council) and open to the public for access on foot for recreational purposes (which access may be gained by members of the public free of charge) at all times from the date of Completion of the Development PROVIDED THAT this obligation shall not be deemed to be breached by closure in the case of:
  - a) Force Majeure;
  - b) the requirement to carry out maintenance, cleaning renewal and necessary or required works, or works of restaurant and café fitting (where permitted) or other structural or non-structural alteration, except that any works under this sub-paragraph shall be undertaken in such a way as to cause minimum disruption to the public, and in any event shall not continue for more than 48 hours without the prior written approval of the Council, save in the case of Force Majeure;
  - c) occasional temporary closure (not exceeding one day's length at any time in any calendar year) for sufficient time to assert rights of proprietorship preventing public or private rights from coming into being by means of prescription or other process of law;
- 1.3.5 keep the Open Space properly insured and in the event of damage, pay out any insurance payments on making good such damage;
- 1.3.6 maintain full insurance against all third party public liability claims in relation to the Open Space in a sum of not less than £5,000,000 in respect of any one claim.

1.4 For the avoidance of doubt, the Open Space shall remain private land and shall not become public highway or public Open Space unless otherwise agreed with the Council.

- 1.5 In the event that the carrying out of development on the Site authorised by any necessary planning permission granted after the date of this Deed requires the closure of part or the whole of the Open Space, the obligations set out above relating to the Open Space shall cease to apply (or shall be varied or modified to the extent permitted by the relevant permissions or consent) upon the commencement of the development authorised by that planning permission that so requires such closure

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**SCHEDULE 12**  
**RETENTION OF ARCHITECTS**

1. The Owner covenants with the Council to use reasonable endeavours to ensure that the Architect continues to be employed as the lead architect for the Development throughout the Construction Phase until Practical Completion. For the avoidance of doubt this obligation does not require the Owner to continue to employ more than one architectural practice throughout the Construction Phase until Practical Completion of the Development.
2. The Owner covenants with the Council to use reasonable endeavours to ensure that the Landscape Architect continues to be employed as the landscape architect for the Development throughout the Construction Phase until Practical Completion of the Development.
3. The Owner covenants with the Council that the Architect and Landscape Architect shall either produce, or oversee the production of, a detailed set of construction and landscape drawings and the Owner shall inform the Council of the production of the said drawings within 10 (ten) Working Days of their production.
4. In the event that changes to the Architect and/or Landscape Architect become necessary the Owner shall give the Council at least 30 (thirty) Working Days' notice of the Owner's intention to employ a replacement architect(s) and/or landscape architect(s) (as the case may be) and shall appoint a replacement architect(s) and/or landscape architect(s) of similar repute to the Architect and Landscape Architect (as the case may be) and of appropriate repute for the relevant part of the Development and shall notify the Council of such appointment(s) within 10 (ten) Working Days of the appointment(s).



**SCHEDULE 13  
ENERGY**

**Part 1 – Carbon Offset Contribution**

1. The Owner shall pay the Council the Carbon Offset Initial Contribution prior to Commencement of Development.
2. There shall be no Commencement until the Owner has paid the Carbon Offset Initial Contribution to the Council
3. Prior to Occupation of the Development the Owner shall submit to the Council for approval a Carbon Offset Report and shall pay to the Council (within 10 Working Days of approval of the Carbon Offset Report and prior to Occupation of the Development) the Carbon Offset Final Contribution (if any).
4. There shall be no Occupation unless and until the Carbon Offset Final Contribution has been paid to the Council.

**Part 2 – GLA Monitoring**

1. Within 8 (eight) weeks following the grant of the Planning Permission, the Owner shall submit accurate and verified estimated Energy Performance Indicators to the GLA's energy monitoring portal.
2. The Owner shall not Commence or permit Commencement of the Development until the Owner has used reasonable endeavours to submit accurate and verified estimated Energy Performance Indicators to the GLA via the GLA's energy monitoring portal.
3. Prior to Occupation of each Reportable Unit (or any part thereof) the Owner shall:
  - 3.1. submit to the GLA updated Energy Performance Indicators for the relevant Reportable Unit; and
  - 3.2. confirm to the GLA that suitable monitoring devices have been installed and maintained for the monitoring of the in-use Energy Performance Indicators.
4. The Owner shall not Occupy or permit Occupation of each Reportable Unit until the Owner has complied with paragraph 3 of this Part 2 of this Schedule in respect of that Reportable Unit; and
5. For a period of 5 (five) years following first Occupation of the Development or following the end of the Defects Liability Period (whichever is later) the Owner shall on an annual basis use reasonable endeavours to submit to the GLA updated Energy Performance Indicators for each Reportable Unit.
6. If the monitoring undertaken pursuant to paragraph 5 of this Part 2 of this Schedule shows that the Energy Performance Indicators submitted pursuant to paragraph 3 of this Schedule have not been or are not being met, the Owner shall:
  - 6.1. use reasonable endeavours to determine the reasons for under-performance;
  - 6.2. submit an action plan to the GLA identifying measures which would be reasonably practicable to implement and a proposed timescale for implementation of the same; and
  - 6.3. following agreement of the measures with the GLA, implement the same as soon as reasonably practicable,

PROVIDED THAT, for the avoidance of any doubt, upon expiration of either five (5) years from first Occupation of the Development or the end of the Defects Liability Period (whichever is later), paragraphs 1 – 6 of this Part 2 of this Schedule shall absolutely determine and cease to be of any further legal effect subject to any antecedent breach of the provisions.

**SCHEDULE 14  
BIODIVERSITY NET GAIN**

***The developer will be required to provide regular reports on the on-site and off-site biodiversity gains. A monitoring fee will be charged by the Planning Service. This will be written into a future legal agreement/Section 106 agreement***

1. The [Owner] covenants to procure that the BNG Landowner enters into the BNG Legal Agreement in respect of BNG Land prior to Commencement of the Development.
2. The [Owner] shall not Commence the Development unless and until the BNG Landowner has entered into the BNG Legal Agreement in respect of the BNG Works.
3. [ The BNG Works shall be Practically Completed on the BNG Land in accordance with the BNG Legal Agreement prior to [Occupation of the Development].<sup>30</sup>
4. The [Owner] shall not [Occupy or permit Occupation of the Development] unless and until the BNG Works have been Practically Completed in accordance with the BNG Agreement.<sup>31</sup>

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<sup>30</sup> This paragraph is optional and may be varied. The timescale of the delivery of BNG works may be included within the BNG Legal Agreement itself

<sup>31</sup> This paragraph is optional and may be varied. The timescale of the delivery of BNG works may be included within the BNG Legal Agreement itself

**EXECUTED<sup>32</sup>** as a deed by

affirming the

Common seal of

[ ]

In the presence of :

\_\_\_\_\_

Authorised Signatory

**EXECUTED AS A DEED** by affixing

**THE CORPORATE SEAL** of

**THE MAYOR AND BURGESSES**

**OF THE LONDON BOROUGH OF REDBRIDGE**

Hereto affixed in the presence of:

Assistant Director - Assurance

.....

<sup>32</sup> Execution clauses to be adapted as necessary

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