

<b>"Private Residential Units"</b>	means the Residential Units which are neither: <ul style="list-style-type: none"> <li>(a) Affordable Rented Housing Units provided pursuant to paragraph 2 of Schedule 3; nor</li> <li>(b) Affordable Housing Reappraisal Units provided pursuant to Schedule 4;</li> </ul>
<b>"Reasonable Endeavours"</b>	that it is agreed by the Parties that the Developer under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this Agreement the Developer will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may reasonably be expected of a competent commercial developer in the context of the Development (or part of the Development);
<b>"Refusal Notice"</b>	means a notice prepared by the LPA confirming which Submitted Document it is refusing to Approve and enclosing the Report Amendments;
<b>"Registered Charges"</b>	means the registered charges referred to in Recital C;
<b>"Report Amendments"</b>	means those amendments to the Submitted Document that the LPA requires to be made to enable it to Approve such Submitted Document together with brief reasons why it requires those amendments to be made to enable it to Approve such Submitted Document;
<b>"Residential Unit"</b>	means a residential unit provided as part of the Development;
<b>"RPI"</b>	means the Retail Prices Index all items published by the Office for National Statistics or any official publication substituted for it;
<b>"Second Mortgagee"</b>	means Ulster Bank Ireland Limited (NI Company Number R002103) of 2 Linenhall Street, Belfast BT2 8BA;
<b>"Site"</b>	means the land shown edged red on Plan 1;
<b>"Submitted Document"</b>	means any document, report, review, strategy and other information required to be submitted to the LPA for Approval pursuant to this Agreement;
<b>"Third Mortgagee"</b>	means The Royal Bank Of Scotland Public Limited Company (Scot Company Number SC090312) of 10th Floor, 280 Bishopsgate, London EC2M 4RB;
<b>"Utility Undertaker"</b>	means any provider of gas, electricity, energy water, sewage, heating, cooling or telecommunications services occupying premises within the Site for the purposes of supplying any one or more of those services to any member of the public or any occupier of premises within the Site;

<b>"Working Day"</b>	means a day other than a Saturday or Sunday or public holiday in England or the period between 24 December and 1 January inclusive;
<b>"Zone"</b>	means Zone 1 Zone 2 Zone 3 or Zone 4 (as applicable);
<b>"Zone 1"</b>	means that part of the Site shown on Plan 3 hatched red (with closely spaced lines) identified as "Phase 1" including the land shaded grey identified as Block A;
<b>"Zone 2"</b>	means that part of the Site shown on Plan 3 hatched red (with widely spaced lines) identified as "Phase 2";
<b>"Zone 3"</b>	means that part of the Site shown on Plan 3 shaded grey identified as "Phase 3";
<b>"Zone 4"</b>	means that part of the Site shown on Plan 3 shaded orange known as "Phase 4".

1.2 In this Agreement:

- 1.2.1 unless otherwise indicated reference to any:
- (a) Clause, Schedule or Appendix is to a Clause of, Schedule to or Appendix to this Agreement;
  - (b) paragraph is to a paragraph of a Schedule to this Agreement;
  - (c) reference within a Schedule to a paragraph is to a paragraph of that Schedule;
  - (d) table is to a table of a Schedule or Appendix to this Agreement;
  - (e) Recital is to a Recital to this Agreement; and
  - (f) Plan is to a plan annexed to this Agreement;
- 1.2.2 references to any statute or statutory provision include references to:
- (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement;
  - (b) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
  - (c) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force;
- 1.2.3 headings, the table of contents and titles to the plans are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of the Agreement to which they relate;
- 1.2.4 any notice, notification, Consent, request, statement or details to be made, given or submitted under or in connection with this Agreement shall be made or confirmed in writing and neither Party shall not unreasonably withhold or delay the giving or making of the same;

- 1.2.5 references to the Site include any part of it;
  - 1.2.6 references to the LPA comprise the London Legacy Development Corporation in its capacity as local planning authority and include its successors to the functions of the LPA;
  - 1.2.7 references to the Council include its statutory successors to the functions pursuant to which the Council has entered into this Agreement;
  - 1.2.8 subject to Clauses 2.6 and 2.7 references to the Developer include:
    - (a) at the date of this Agreement, Neptune Wharf Ltd;
    - (b) persons deriving title from the Developer; and
    - (c) the Developer's successors, assigns, transferees;
  - 1.2.9 "including" means "including without limitation";
  - 1.2.10 unless otherwise indicated references to the singular include the plural and references to the plural include the singular and words importing any gender include every gender;
  - 1.2.11 unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa;
  - 1.2.12 any obligation, covenant, undertaking or agreement by the Developer or LPA not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit or allow the doing of that act or thing;
  - 1.2.13 save where expressly stated to the contrary, where in this Agreement there is reference to using Reasonable Endeavours to achieve an outcome, upon written request by the LPA at reasonable intervals (not to exceed more than once every 3 (three) months), within 10 (ten) Working Days of such request reasonable evidence of the steps taken to achieve such outcome shall be provided in documentary form (where possible) to the LPA.
- 1.3 The Interpretation Act 1978 shall apply to this Agreement.
- 1.4 If any provision of this Agreement is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Agreement is (if and to the extent that it may properly and lawfully be construed as such) to be unaffected.
- 1.5 Where in this Agreement any matter is referred to dispute resolution under Clause 11 the findings of the Expert shall (save in relation to manifest error) be final and binding on the Parties and such findings shall be deemed to constitute the required Approval or other Consent for the purposes of this Agreement.

## 2. **EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to:-
  - 2.1.1 section 106 of the 1990 Act;
  - 2.1.2 sections 201(1) and (2), 205 and 206 of the 2011 Act;
  - 2.1.3 section 111 of the 1972 Act;
  - 2.1.4 section 16 of the 1974 Act;

- 2.1.5 section 1 of the 2011 Act; and
- 2.1.6 all other powers so enabling.
- 2.2 So far as the obligations, covenants and undertakings in this Agreement are given by or to the LPA then the same are entered into pursuant to the relevant powers referred to in Clause 2.1 and such obligations, covenants and undertakings shall be enforceable by or against the LPA.
- 2.3 So far as the obligations, covenants and undertakings in this Agreement are given by or to the Council then the same are entered into pursuant to the relevant powers referred to in Clause 2.1 and such obligations, covenants and undertakings shall be enforceable by or against the Council.
- 2.4 The obligations, covenants and undertakings on the part of the Developer in this Agreement are planning obligations pursuant to and for the purposes of section 106 of the 1990 Act and (so far as the same are entered into with or given to the Council) are obligations, covenants or undertakings in pursuance of section 16 of the 1974 Act and are given so as to bind the Developer's freehold interest in the Developer's Land and, subject to Clauses 2.6 and 2.7 the said obligations, covenants and undertakings on the part of the Developer are entered into with the intent that they shall be enforceable not only against the Developer but also against any successors in title to or assigns of the Developer and/or any person claiming through or under the Developer an interest or estate in the Developer's Land (other than a Utility Undertaker insofar as and to the extent that the relevant Utility Undertaker is occupying the relevant part of the Developer's Land in its capacity as a Utility Undertaker) as if that person had been an original covenanting party in respect of such interest for the time being held by it and insofar as any such obligations, covenants and undertakings are not capable of falling within section 106 of the 1990 Act are entered into as obligations, covenants and undertakings in pursuance of sections 201(1) and (2), 205 and 206 of the 2011 Act.
- 2.5 Save to the extent that the same would be lawful nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the LPA or the Council of any of its statutory powers functions or discretions.
- 2.6 No person shall be liable for any breach of any of the obligations, covenants and undertakings or other provisions of this Agreement after parting with its interest in the Site or its interest in respect of that part of the Site on which the breach occurs but without prejudice to liability for any subsisting breach arising before parting with that interest and no persons within either paragraph (b) or (c) of Clause 1.2.8 shall (where such person acquires title to part only of the Development) be liable for any obligation in relation to any part of the Development that has not been acquired by such person.
- 2.7 No obligation in this Agreement shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Site or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgagee, receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Site or part thereof to which such obligation relates.
- 2.8 This Agreement is a local land charge and shall be registered as such by the Council.
- 2.9 This Agreement and the obligations, covenants and undertakings which it contains shall lapse and be extinguished automatically if (and from the date that) the Planning Permission lapses without the Development being Commenced or is otherwise revoked, withdrawn or (without the consent of the Developer) modified.
- 2.10 Other than the Planning Permission and subject to paragraph 2.11 of Schedule 1 nothing in this Agreement shall prohibit or limit the right to develop any part of the Site

in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.

**3. CONDITIONALITY**

Save where expressly provided to the contrary this Agreement is conditional upon and shall not take effect until the Planning Permission has been granted.

**4. THE DEVELOPER'S COVENANTS**

4.1 The Developer on behalf of itself and its successors in title to the Developer's Land covenants with the LPA and (in respect of clauses 7.3, 8 and 15.1.4, paragraphs 2.2, 2.12, 2.13 and 4.3 of Schedule 1 and paragraphs 5.1.4 and 5.15 of Schedule 3) separately with the Council that it shall:

4.1.1 perform and Comply with, and shall procure performance of and Compliance with, each and every of the obligations, covenants and undertakings on the part of the Developer contained in this Agreement;

4.1.2 not encumber or otherwise deal with its interest in the Developer's Land or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out; and

4.1.3 notify the LPA of the Anticipated Commencement Date not less than five Working Days prior to the actual Commencement of Development.

4.2 No Development shall be Commenced until either:

4.2.1 the Developer has discharged the Registered Charges so that they are no longer registered against the freehold title of the Developer's Land and the Developer shall evidence compliance with this paragraph by providing the LPA with copies of the relevant deeds of release and Land Registry applications prior to the Commencement of Development; or

4.2.2

(a) the Developer has discharged the Registered Charges so that they are no longer registered against the freehold title of the School Site and the Developer shall evidence compliance with this paragraph by providing the LPA with copies of the relevant deeds of release and Land Registry applications prior to the Commencement of Development; and

(b) the Mortgagees have entered into a supplemental deed under s106 of the 1990 Act consenting to the Developer entering into this Agreement and confirming that they will not incur any liability for any breach of obligations contained in this Agreement unless and until and except to the extent that such breach is committed or continuing at a time when it becomes a mortgagee in possession of that part of the Developer's Land (or any part thereof).

4.3 It is acknowledged by the Parties that in the event Development is Commenced in breach of clause 4.2, and without prejudice to any other right or remedies available to the LPA, the LPA shall consider making an order under section 97 of the 1990 Act to revoke the Planning Permission.

4.4 If the LPA makes an order under section 97 of the 1990 Act to revoke the Planning Permission in the circumstances envisaged in clause 4.3 above, the Developer shall:

- 4.4.1 notify the LPA in writing that it does not object to it;
  - 4.4.2 procure that any other party with an interest in the Developer's Land notifies the LPA in writing that it does not object to it; and
  - 4.4.3 not procure or encourage any other party to object to it.
- 4.5 If the Planning Permission is revoked in the circumstances envisaged in clause 4.3 above, the Developer hereby waives its right to any compensation under section 107 of the 1990 Act.

5. **THE LPA'S AND THE COUNCIL'S COVENANTS WITH THE DEVELOPER**

- 5.1 The LPA covenants with the Developer that it shall procure performance of and Compliance with, each and every of the obligations, covenants and undertakings on the part of the LPA contained in this Agreement.
- 5.2 The Council covenants with the Developer that it shall procure performance of and Compliance with, each and every of the obligations, covenants and undertakings on the part of the Council contained in this Agreement.
- 5.3 Subject to Clause 5.4 the LPA covenants with the Developer that it shall use all sums received from the Developer under the terms of this Agreement for the purposes specified in this Agreement for which they are paid.
- 5.4 Where any payment is made by the Developer to the LPA pursuant to the terms of this Agreement the LPA may, where it is not the authority with the statutory duty or functions to expend such monies and/or in the interests of administrative efficiency, pay such monies to the competent authority which has the statutory duty to discharge the functions for which the monies were paid ("**Other Statutory Authority**") and upon payment of monies to such Other Statutory Authority the LPA's requirement to comply with Clause 5.3 shall cease to apply in respect of those monies.
- 5.5 Upon payment of monies to an Other Statutory Authority pursuant to Clause 5.4 the LPA shall seek assurances from that Other Statutory Authority that the monies shall be applied by that Other Statutory Authority for the purposes for which they have been paid.
- 5.6 The LPA covenants with the Developer that as soon as reasonably practicable following the completion of this Agreement it shall issue the Planning Permission.

6. **NOTICES**

- 6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given and shall conclusively be deemed to have been received on:
  - 6.1.1 if delivered by hand, the next Working Day after the day of delivery; and
  - 6.1.2 if sent by first class post or recorded delivery post, the day two Working Days after the date of posting.
- 6.2 The address for any notice or other written communication shall be within the United Kingdom only and shall be as specified below or such other address as shall be specified by the Party upon whom the notice is to be served to the other Parties by not less than five Working Days' notice:-

**LPA:**

Director of Planning Policy and Decisions (For the Attention of: Anthony Hollingsworth)  
London Legacy Development Corporation – Planning Policy and Decisions Team  
Level 10  
1 Stratford Place  
Montfichet Road  
London E20 1EJ

**Council:**

The S106 Monitoring Officer  
London Borough of Tower Hamlets  
Mulberry Place  
5 Clove Crescent  
East India E14 2BG

**Developer:**

The Directors, Neptune Wharf Ltd  
14 Holywell Row  
London EC2A 4JB

with a copy to either one of:

(a) Amphlett Lissimore Bagshaws LLP  
Greystoke House  
80-86 Westow Street  
London SE19 3AF (ref: MG.73994.Neptune)

or

(b) Amphlett Lissimore Bagshaws LLP  
DX34150 Norwood North  
(ref: MG.73994.Neptune)

- 6.3 Any notice or other written communication to be given by the LPA or the Council shall be deemed valid and effectual if on its face it is signed on behalf of the LPA or the Council (as the case may be) by an officer or duly authorised signatory.

**7. SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT**

- 7.1 Where in the opinion of the Developer any obligation, covenant, undertaking or other provision on the part of the Developer contained in this Agreement has been satisfied wholly or in part, the Developer shall be entitled to apply to the LPA for a notification to that effect, and where the relevant obligation, covenant, undertaking or other provision has been satisfied (wholly or in part) the LPA shall within 20 Working Days of receipt of the application by the Developer issue a notification to such effect.
- 7.2 Where in the opinion of the LPA, any obligation, covenant, undertaking or other provision on the part of the LPA contained in this Agreement has been satisfied wholly or in part, the LPA shall be entitled to apply to the Developer for a notification to that effect, and where the relevant obligation, covenant, undertaking or other provision has been satisfied (wholly or in part) the Developer shall within 20 Working Days of receipt of the application by the LPA issue a notification to such effect.
- 7.3 Where in the opinion of the Council, any obligation, covenant, undertaking or other provision on the part of the Council contained in this Agreement has been satisfied wholly or in part, the Council shall be entitled to apply to the Developer for a notification to that effect, and where the relevant obligation, covenant, undertaking or

other provision has been satisfied (wholly or in part) the Developer shall within 20 Working Days of receipt of the application by the Council issue a notification to such effect.

## 8. VERIFICATION AND ENFORCEMENT

The Developer shall permit the LPA and the Council and their authorised employees agents surveyors and other representatives to enter upon the Developer's Land and any buildings erected thereon pursuant to the Development at reasonable times and upon reasonable prior notice of at least seven Working Days (except in the case of emergency) for the purpose of verifying whether or not the obligations contained in this Agreement are being performed and complied with **PROVIDED THAT** the LPA or (as the case may be) the Council shall make good any damage caused by the LPA or the Council and its authorised employees, agents, surveyors and other representatives during the carrying out of such verification.

## 9. APPROVAL

9.1 The LPA shall confirm whether or not it Approves a Submitted Document within:

9.1.1 30 (thirty) Working Days of receipt of the Submitted Document from the Developer, or

9.1.2 where the LPA decides that it needs to report the Submitted Document to its planning committee, 50 (fifty) Working Days of receipt of the Submitted Document

**PROVIDED THAT** where paragraph 9.1.2 applies, the LPA shall notify the Developer of such reporting to its planning committee within 30 (thirty) Working Days of receipt of the Submitted Document from the Developer and **FURTHER PROVIDED THAT** in the event the LPA confirms that it does not Approve the Submitted Document the LPA shall issue a Refusal Notice and in the event the LPA does not provide the confirmation within the 30 (thirty) Working Days or 50 (fifty) Working Days (as applicable) the provisions of Clause 10.4 shall apply.

## 10. REFUSAL NOTICE

10.1 Not more than five Working Days from receipt of the Refusal Notice the Developer shall confirm to the LPA whether it accepts the Report Amendments.

10.2 In the event the Developer confirms that it does accept the Report Amendments the following provisions shall apply:

10.2.1 within 10 (ten) Working Days of the LPA's receipt of such confirmation the Developer shall submit the revised Submitted Document incorporating the Report Amendments to the LPA for Approval;

10.2.2 the LPA shall by no later than the LPA Response Date confirm to the Developer whether or not it Approves the revised Submitted Document;

10.2.3 in the event the LPA refuses to Approve the revised Submitted Document the matter shall be determined in accordance with Clause 11.

10.3 In the event the Developer confirms that it does not accept the Report Amendments the following provisions apply:

10.3.1 not more than 10 (ten) Working Days after such confirmation the Developer and the LPA shall meet to discuss the Report Amendments and the Submitted Document;

- 10.3.2 in the event the Developer and the LPA do not reach agreement at the meeting on how to amend the Submitted Document such that the LPA can Approve it the provisions of Clause 11 shall apply;
- 10.3.3 in the event the Developer and the LPA do reach agreement at the meeting on how to amend the Submitted Document such that the LPA can Approve it, not more than 10 (ten) Working Days following the meeting the Developer shall submit the revised Submitted Document to the LPA for Approval and the LPA shall by no later than the LPA Response Date confirm to the Developer whether or not it Approves the revised Submitted Document **PROVIDED THAT** in the event the LPA refuses to Approve the revised Submitted Document the provisions of Clause 11 shall apply.
- 10.4 In the event the LPA does not Approve the Submitted Document or issue a Refusal Notice within the time period specified in Clause 9 the following provisions shall apply:
- 10.4.1 not more than five Working Days after the expiry of the time period for such Approval being made the Developer and the LPA shall meet to discuss the Submitted Document;
- 10.4.2 in the event the Developer and the LPA do not reach agreement at the meeting on whether the Submitted Document needs amending such that the LPA can Approve it the provisions of Clause 11 shall apply;
- 10.4.3 in the event the Developer and the LPA do reach agreement at the meeting on whether the Submitted Document needs to be amended such that the LPA can Approve it:
- (a) where the Submitted Document does need to be amended, not more than 10 (ten) Working Days following the meeting the Developer shall submit the revised Submitted Document to the LPA for Approval and the LPA shall by no later than the LPA Response Date confirm to the Developer whether or not it Approves the revised Submitted Document **PROVIDED THAT** in the event the LPA refuses to Approve the revised Submitted Document the provisions of Clause 11 shall apply; or
  - (b) where the Submitted Document does not need to be amended, the LPA shall by no later than the LPA Response Date confirm to the Developer whether or not it Approves the revised Submitted Document **PROVIDED THAT** in the event the LPA refuses to Approve the revised Submitted Document the provisions of Clause 11 shall apply.
- 10.5 The LPA and the Developer may agree in writing to increase or decrease the number of Working Days in which the actions required by Clauses 10.1 to 10.4 (inclusive) are required to be undertaken if considered appropriate in all the circumstances.

## 11. DISPUTE RESOLUTION

- 11.1 One party may by serving notice on all the other parties (the "Notice") refer a Dispute to an Expert for determination.
- 11.2 The Notice must specify:
- 11.2.1 the nature, basis and brief description of the Dispute;
  - 11.2.2 the Clause or paragraph of a Schedule or Appendix pursuant to which the Dispute has arisen; and

11.2.3 the proposed Expert.

11.3 In the event that the Parties are unable to agree whom should be appointed as the Expert within 10 (ten) Working Days after the date of the Notice then either Party may request the President of the Law Society (except where Clause 11.7 provides otherwise) to nominate the Expert at their joint expense.

11.4 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the Parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.

11.5 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the Dispute and in any event not more than 20 (twenty) Working Days from the date of his appointment to act.

11.6 The Expert will be required to give notice to each of the said Parties inviting each of them to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.

11.7 Where the Parties are unable to agree whom should be appointed as the Expert, either Party may request that the following nominate the Expert at their joint expense:

11.7.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the Expert;

11.7.2 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;

11.7.3 if such dispute shall relate to matters requiring a specialist chartered civil engineer or specialist transport adviser, the President of the Institution of Civil Engineers to nominate the Expert;

11.7.4 if such dispute shall relate to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert; and

11.7.5 in all other cases, the President of the Law Society to nominate the Expert.

## 12. **NO WAIVER**

No waiver (whether expressed or implied) by the LPA and/or the Council of any breach or default by the Developer in performing or Complying with any of the obligations, covenants or undertakings contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the LPA and/or the Council from enforcing any of the said obligations, covenants or undertakings or from acting upon any subsequent breach or default in respect thereof by the Developer.

## 13. **DUTY TO ACT REASONABLY AND IN GOOD FAITH**

The Parties agree with one another to act reasonably and in good faith in the fulfilment of this Agreement.

**14. EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties to this Agreement do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

**15. THE LPA'S COSTS**

15.1 The Developer agrees that it will:

15.1.1 on completion of the Agreement pay £28,000 plus VAT towards the LPA's legal costs incurred in the negotiation and completion of this Agreement (inclusive of any such costs incurred by external lawyers appointed by the LPA in relation to the negotiation and completion of this Agreement); and

15.1.2 on Commencement of Development pay £24,875 plus VAT towards the LPA's costs incurred in the review of development appraisals and viability assessments in connection with the Development (inclusive of any such costs incurred by external surveyors appointed by the LPA and their subcontractors);

15.1.3 on Commencement of Development pay the LPA's monitoring costs in the sum of £11,600; and

15.1.4 on completion of the Agreement pay £7,000 towards the Council's legal costs incurred in the negotiation and completion of this Agreement.

**16. FINANCIAL CONTRIBUTIONS AND INDEXATION**

16.1 Where, pursuant to this Agreement, a payment or financial contribution is to be made, such payment or financial contribution shall be paid in accordance with the triggers and provisions for payment set out in and in accordance with all relevant provisions of this Agreement.

16.2 All payments or financial contributions to be paid pursuant to this Agreement will be increased by reference to the amount of the quarterly increase in the Index from the date of this Agreement until the date such sums are paid.

16.3 Where any sum or value is referred to in this Agreement (but is not the subject of a payment) such sum or value shall be increased by the increase of the Index from the date of this Agreement until the date the sum or value falls to be considered or applied.

**17. JURISDICTION AND LEGAL EFFECT**

17.1 This Agreement shall be governed by and interpreted in accordance with the law of England.

17.2 The provisions of this Agreement (other than this Clause 17.2 which shall be effective in any event) shall be of no effect until this Agreement has been dated.

**18. EXECUTION**

The Parties have executed this Agreement as a deed and it is delivered on the date set out at the front of this Agreement.

## SCHEDULE 1

### EDUCATION

#### DEFINITIONS

**"Contractual Completion Date"**

means the date falling six months from and including the date of service of a valid Council School Notice or (as the case may be) a valid LPA School Notice or such earlier date as may be agreed between the Council and the Developer (in the event that a valid Council School Notice has been served) or the LPA and the Developer (in the event that a valid LPA School Notice has been served);

**"Council School Notice"**

means a written notice served by the Council on the Developer requiring the grant of the School Lease and the School Easement to the Council (or its nominated Education Provider) in accordance with the provisions of this Schedule and such notice may only be validly served:

(a) if accompanied by evidence of approval to construct the School through the Council's Cabinet, Board, Executive Team or such other Committee as may be authorised to approve this matter (or equivalent evidence from the nominated Education Provider);

(b) if the Council has submitted and secured the LPA's approval to the School Specification and Details Guide pursuant the Conditions on or before a date two (2) years from the date of ~~this Agreement~~; *Commencement of Development*

(c) if the notice includes confirmation of the programme for implementation of the opening of the School, including the anticipated appointment of the principal contractor; and-

(d) on or before a date five (5) years from the date of ~~this Agreement~~; and *Commencement of Development*

(e) *if Development has Commenced*; means the Service Head - Legal Services or such firm of solicitors as shall be notified in writing by the Council to the Developer from time to time;

**"Council's Solicitors"**

**"Education Contribution"**

means the sum of £348,253 (Indexed);

**"Education Provider"**

means an education provider which is authorised by the Department for Education to provide non-fee paying, all-ability education to children of school age;

**"Lease Completion"**

means completion of the grant of the School Lease and the School Easement pursuant to this Schedule if a valid Council School Notice or a valid LPA School Notice is served;

**"Legislation"**

means any statute or any order, instrument or regulation made under it, or any notice or order issued by a government department, the legislative making institutions of the European Union, a United Kingdom Government minister or a local public regulatory or other authority;

<b>"LPA's Solicitors"</b>	means such firm of solicitors as shall be notified in writing by the LPA to the Developer from time to time;
<b>"LPA School Notice"</b>	means a written notice served by the LPA on the Developer requiring the grant of the School Lease and the School Easement to the LPA (or its nominated Education Provider) in accordance with the provisions of this Schedule and such notice may only be validly served: <ul style="list-style-type: none"> <li>(a) if accompanied by evidence of approval to construct the School through the LPA's Cabinet, Board, Executive Team or such other Committee as may be authorised to approve this matter (or equivalent evidence from the nominated Education Provider);</li> <li>(b) if the notice includes confirmation of the programme for implementation of the opening of the School, including the anticipated appointment of the principal contractor; and-</li> <li>(c) on or before a date eight (8) years from the date of this Agreement; and</li> <li>(d) <i>if development has commenced;</i></li> </ul>
<b>"MUGA"</b>	means a multi-use games area with a site area of at least 780 square metres provided in accordance with the requirements of the relevant DfE Guidance including security lighting and sports lighting;
<b>"Required Condition"</b>	means fully cleared and remediated site with services available for connection up to the boundary of the site;
<b>"School"</b>	means a primary school for non-fee paying pupils only including a MUGA appropriate for the age range of children at the School;
<b>"School Access Land"</b>	means the land edged and hatched blue on Plan 4;
<b>"School Easement"</b>	means an easement in respect of the School Access Land in substantially the form set out in Appendix 2;
<b>"School Lease"</b>	means a 999 year lease at a peppercorn rent of the School Site to the Council or the LPA (as applicable) in substantially the form set out in Appendix 1;
<b>"School Lease Surrender Sum"</b>	means: <ul style="list-style-type: none"> <li>(a) the higher of: <ul style="list-style-type: none"> <li>(i) £2,180,000 (Indexed); and</li> <li>(ii) the market value of the School Lease as at the date the School Lease Surrender Sum falls due to be paid as assessed by a Member or Fellow of the Royal Institute of Chartered Surveyors being a chartered valuation surveyor appointed by the Developer, such valuer owing a duty of care to the LPA (the "Surrender Valuer") and acting in an independent capacity in accordance with the Royal Institute of Chartered Surveyors Valuation – Professional Standards (the Red Book) January 2014 as may be updated from</li> </ul> </li> </ul>

*[Handwritten signatures and notes in blue ink, including 'J Bell', 'commencement of Development', and 'if development has commenced']*

time to time

less

- (b) the amount of Education Contribution that has been paid to the LPA as at the date the School Lease Surrender Sum falls due to be paid;

**"School Site"** means the site edged green on Plan 4 being 0.44 hectares (1.09 acre);

**"School Site Sum"** means:

- (a) £2,180,000 (Indexed)

less

- (b) the amount of Education Contribution that has been paid to the LPA as at the date the School Site Sum falls due to be paid;

**"Service Media"** means all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and any other apparatus;

**"Standard Conditions"** means Part 1 of the Standard Commercial Property Conditions (Second Edition);

**"Substantially Commenced"** means that the construction of the superstructure has been commenced.

## 1. INTERPRETATION

1.1 This Schedule incorporates the Standard Conditions. If there is any conflict between the Standard Conditions and the express provisions of this Agreement, the express provisions of this Agreement shall prevail. Terms used or defined in the Standard Conditions have the same meanings when used in this Agreement and vice versa.

1.2 In and for the purpose of this Schedule:-

1.2.1 any reference to any statute or order or to any provision of any statute or order is construed as including reference to any statutory modification or re-enactment of such statute, order or provision and to any relevant regulations or statutory instruments made under or in connection with any such statute, order or provision and from time to time in force;

1.2.2 where the context so admits the expressions "**Council**" and "**LPA**" and "**Developer**" shall include their respective successors in title and assigns and if at any time the Council or the LPA or the Developer shall consist of more than one person any obligations which they have under this Agreement or which they undertake shall be enforceable against them all jointly or against each individually;

1.2.3 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement are to be unaffected.

## 2. SCHOOL SITE

2.1 Subject to paragraph 2.6, the School Site shall be used exclusively for non-fee paying education and ancillary uses (including the construction of the School).

- 2.2 If a valid Council School Notice is served (unless prior to the Contractual Completion Date the Council subsequently serves notice in writing that it has resolved not to construct the School on the School Site):-
- 2.2.1 the Lease shall be in the form of the School Lease and the School Easement shall be in the form of the School Easement but to include such amendments (if any) to the School Lease and/or the School Easement as either the Council or the Developer may reasonably request of the other in writing to reflect any modifications to or introduction of Legislation or requirements of the Land Registry made in any such case after the date of this Agreement (any such request to be made as soon as reasonably practicable after a valid Council School Notice has been served) **BUT** (save as required by law) neither the Developer nor the Council shall be entitled to require any amendment which shall impose any additional or greater burden upon any other party to the School Lease and/or the School Easement or its successors in title or which shall lessen the rights of any party to the School Lease or its successors in title;
- 2.2.2 the Developer shall procure that engrossments of the School Lease and the School Easement and a counterpart of the School Lease and the School Easement shall be prepared by the Developer's solicitors and an engrossment of the counterparts shall be delivered to the Council's Solicitors not less than 5 working days prior to the Contractual Completion Date;
- 2.2.3 Lease Completion shall take place on the Contractual Completion Date. The Contractual Completion Date shall also be the "completion date" for the purposes of the Standard Conditions;
- 2.2.4 upon Lease Completion:
- (a) the Council shall procure that the engrossed counterpart of the School Lease and the School Easement duly executed by the Council is delivered to the Developer's solicitors; and
- (b) the Developer shall procure that the engrossed counterpart of the School Lease and the School Easement duly executed by the Developer is delivered to the Council's solicitors;
- 2.2.5 the School Lease will be for a term which is expressed in the School Lease to commence on and from the Contractual Completion Date;
- 2.2.6 the Developer shall grant the School Lease with full title guarantee;
- 2.2.7 no deposit shall be payable and Standard Condition 2.2 shall not apply;
- 2.2.8 the School Site shall be let with vacant possession on Lease Completion and in the Required Condition;
- 2.2.9 the Developer shall provide to the Council a reliance letter or letters in respect of all reports and surveys relation to the ground condition at the School Site so as to give the Council the same level of reliance on such reports as enjoyed by the Developer and to be in such form as first approved in writing by the Council (such approval not to be unreasonably withheld or delayed);
- 2.2.10 the Developer shall provide a collateral warranty from all contractors or consultants appointed in connection with the carrying out and monitoring of any remediation works undertaken at the School Site in such form as is first approved by the Council (such approval not to be unreasonably withheld or delayed); and

2.2.11 it is agreed between the Parties that the freehold owner of the School Access Land shall grant the School Easement on the Contractual Completion Date immediately following completion of the School Lease and this obligation (together with the preceding obligations in this paragraph 2.2 insofar as they relate to the School Easement) shall (pursuant to clause 2.4 and 4.1) bind the Developer's successors in title to the School Access Land.

2.3 In the event that:

2.3.1 the Council can no longer serve a valid Council School Notice; or

2.3.2 a Council School Notice is served but the Council subsequently serves notice in writing before the grant of the School Lease that it has resolved not to construct the School on the School Site

the LPA shall be entitled (but not obliged) to serve the LPA School Notice.

2.4 If a valid LPA School Notice is served (unless prior to the Contractual Completion Date the LPA subsequently serves notice in writing that it has resolved not to construct the School on the School Site):-

2.4.1 the Lease shall be in the form of the School Lease and the School Easement shall be in the form of the School Easement but to include such amendments (if any) to the School Lease and/or the School Easement as either the LPA or the Developer may reasonably request of the other in writing to reflect any modifications to or introduction of Legislation or requirements of the Land Registry made in any such case after the date of this Agreement (any such request to be made as soon as reasonably practicable after a valid LPA School Notice has been served) BUT (save as required by law) neither the Developer nor the LPA shall be entitled to require any amendment which shall impose any additional or greater burden upon any other party to the School Lease and/or the School Easement or its successors in title or which shall lessen the rights of any party to the School Lease or its successors in title;

2.4.2 the Developer shall procure that engrossments of the School Lease and the School Easement and a counterpart of the School Lease and the School Easement shall be prepared by the Developer's solicitors and an engrossment of the counterparts shall be delivered to the LPA's Solicitors not less than 5 working days prior to the Contractual Completion Date;

2.4.3 Lease Completion shall take place on the Contractual Completion Date. The Contractual Completion Date shall also be the "completion date" for the purposes of the Standard Conditions;

2.4.4 upon Lease Completion:

(a) the LPA shall procure that the engrossed counterpart of the School Lease and the School Easement duly executed by the LPA is delivered to the Developer's solicitors; and

(b) the Developer shall procure that the engrossed counterpart of the School Lease and the School Easement duly executed by the Developer is delivered to the LPA's solicitors;

2.4.5 the School Lease will be for a term which is expressed in the School Lease to commence on and from the Contractual Completion Date;

2.4.6 the Developer shall grant the School Lease with full title guarantee;

- 2.4.7 no deposit shall be payable and Standard Condition 2.2 shall not apply;
- 2.4.8 the School Site shall be let with vacant possession on Lease Completion and in the Required Condition;
- 2.4.9 the Developer shall provide to the LPA a reliance letter or letters in respect of all reports and surveys relation to the ground condition at the School Site so as to give the LPA the same level of reliance on such reports as enjoyed by the Developer and to be in such form as first approved in writing by the LPA (such approval not to be unreasonably withheld or delayed);
- 2.4.10 the Developer shall provide a collateral warranty from all contractors or consultants appointed in connection with the carrying out and monitoring of any remediation works undertaken at the School Site in such form as is first approved by the LPA (such approval not to be unreasonably withheld or delayed); and
- 2.4.11 it is agreed between the Parties that the freehold owner of the School Access Land shall grant the School Easement on the Contractual Completion Date immediately following completion of the School Lease and this obligation (together with the preceding obligations in this paragraph 2.4 insofar as they relate to the School Easement) shall (pursuant to clause 2.4 and 4.1) bind the Developer's successors in title to the School Access Land.

2.5 In the event that:

- 2.5.1 the LPA can no longer serve a valid LPA School Notice; or
- 2.5.2 a LPA School Notice is served but the LPA subsequently serves notice in writing before the grant of the School Lease that it has resolved not to construct the School

the Developer shall pay the School Site Sum to the LPA.

2.6 The restriction in paragraph 2.1 of this Schedule shall cease to apply to the School Site in the following circumstances:

2.6.1 where:

- (a) the LPA can no longer serve a valid LPA School Notice; or
- (b) a LPA School Notice is served but the LPA subsequently serves notice in writing before the grant of the School Lease that it has resolved not to construct the School

and the Developer has paid the School Site Sum to the LPA; or

- 2.6.2 where the School Lease has been granted and the term of the School Lease has been terminated in accordance with clause 9 of the School Lease and the Developer has paid the School Lease Surrender Sum to the LPA.

2.7 Where either:

- 2.7.1 the School Site Sum is paid to the LPA pursuant to paragraph 2.5 of this Schedule; or
- 2.7.2 the School Lease Surrender Sum is paid to the LPA pursuant to clause 9.2 of the School Lease

the LPA shall apply such sum (the "**School Site Contribution**") in accordance with the provisions of paragraphs 2.8 to 2.10 below.

- 2.8 For a period of 3 years from the receipt of the School Site Contribution, the LPA shall apply the School Site Contribution (or part thereof) exclusively towards the provision of works and/or improvements and/or other measures to primary education facilities and/or secondary education facilities within the LPA's Area.
- 2.9 For a period of 1 year from the expiry of the period referred to in paragraph 2.8 the LPA shall:
- 2.9.1 apply any remaining part of School Site Contribution exclusively towards the provision of Affordable Housing in such part of the area which falls within both the LPA's Area and the Council's Area; and
- 2.9.2 use Reasonable Endeavours to secure for the Council 100% of nomination rights in respect of any Affordable Housing provided under paragraph 2.9.1.
- 2.10 For a period of 1 year from the expiry of the period referred to in paragraph 2.9 the LPA shall:
- 2.10.1 apply any remaining part of School Site Contribution exclusively towards the provision of Affordable Housing in the LPA's Area; and
- 2.10.2 use Reasonable Endeavours to secure for the Council not less than 50% of nomination rights in respect of Affordable Housing provided under paragraph 2.10.1.
- 2.11 In the event that the School Site becomes free from the restriction in paragraph 2.1 of this Schedule due to the operation of paragraph 2.6, the Developer shall:
- 2.11.1 no later than 6 months from the date on which the restriction falls away meet with the LPA (or if the LPA is not available to meet during that period, to open discussions with the LPA) regarding Approval of a list of alternative appropriate land uses and parameters for development on the School Site; and
- 2.11.2 use Reasonable Endeavours to submit a detailed planning application for the development of the School Site in accordance with one of the alternative appropriate uses and within the development parameters Approved by the LPA within 18 months from the date of the LPA's Approval pursuant to paragraph 2.11.1 above
- PROVIDED THAT** the Developer shall not apply for or implement any planning permission for an alternative use or development on the School Site until it has paid the School Site Contribution to the LPA.
- 2.12 The Developer covenants and warrants that at the date of the School Lease there shall be no Service Media on under or over the School Site and no rights, restrictions (other than any restrictions arising directly from primary, secondary or other legislation or bye-laws) or covenants affecting the School Site that would prohibit, prevent or restrict its use as a School.
- 2.13 From the date of this Agreement until the date of the School Lease the Developer will allow free access to the School Site to the Council and the LPA for the purposes of site investigations and surveys upon forty eight (48) hours written notice save in respect of emergency.

### 3. PROTECTION OF OPTION CONTAINED IN THIS SCHEDULE

3.1 The Council and the LPA shall jointly within one month of the date of this Agreement:-

3.1.1 make an application to protect the option to acquire the School Lease granted by this Schedule by registration of a unilateral notice at the Land Registry (as appropriate); and

3.1.2 provide satisfactory evidence of such application to the Developer's Solicitors

and shall within 10 working days of receipt of the completion of registration of such application provide the Developer's Solicitors with satisfactory evidence of such registration.

### 4. EXCLUSION OF THE LANDLORD AND TENANT ACT 1954

4.1 The Council confirms that in relation to the tenancy to be created by the School Lease and prior to entering into this Agreement:-

4.1.1 the Developer served on the Council a notice complying with the requirements of section 38A(3) of the Landlord and Tenant Act 1954;

4.1.2 the Council or a person duly authorised by the Council made a statutory declaration (the "**Council's Statutory Declaration**") complying with the requirements of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

4.2 Where the Council's Statutory Declaration was made by a person other than the Council the Council confirms that the declarant was duly authorised to make the Council's Statutory Declaration on the Council's behalf.

4.3 The Developer and the Council agree that sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 shall be excluded in relation to the tenancy to be created by the School Lease.

4.4 The LPA confirms that in relation to the tenancy to be created by the School Lease and prior to entering into this Agreement:-

4.4.1 the Developer served on the LPA a notice complying with the requirements of section 38A(3) of the Landlord and Tenant Act 1954;

4.4.2 the LPA or a person duly authorised by the LPA made a statutory declaration (the "**LPA's Statutory Declaration**") complying with the requirements of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

4.5 Where the LPA's Statutory Declaration was made by a person other than the LPA the LPA confirms that the declarant was duly authorised to make the LPA's Statutory Declaration on the LPA's behalf.

4.6 The Developer and the LPA agree that sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 shall be excluded in relation to the tenancy to be created by the School Lease.

### 5. EDUCATION CONTRIBUTION

5.1 Unless the School has been Substantially Commenced, the Developer shall pay the Education Contribution to the LPA upon the Commencement of Development and

there shall be no Commencement of Development until the Education Contribution has been paid to the LPA.

- 5.2 In the event that the School is Substantially Commenced within the period of three (3) years commencing on the date of the School Lease, the Developer shall be entitled to serve written notice on the LPA requesting repayment of any Education Contribution paid pursuant to paragraph 5.1 and the LPA shall repay the Education Contribution within 6 months of the date of the Developer's notice.
- 5.3 Where the Education Contribution is paid to the LPA the LPA shall apply the Education Contribution exclusively towards works and/or improvements and/or other measures to provide primary education facilities and/or secondary education facilities within the LPA's Area and the Council's Area.

## SCHEDULE 2

### FAMILY HOUSING

#### DEFINITIONS

**"Family Housing Report"** means a detailed plan for the delivery and layout of Family Housing Units within Zone 3 identifying which Residential Units within that Zone will be provided as Family Housing Units together with a written statement detailing the steps the Developer has taken to comply with its obligation in paragraph 1.2.

#### 1. FAMILY HOUSING

- 1.1 Not less than 5% of Residential Units constructed in Zone 3 shall be provided as Family Housing Units.
- 1.2 The Developer shall use Reasonable Endeavours when preparing reserved matters applications for Zone 3 to increase the quantum of Family Housing Units beyond the minimum provision of 5% required by paragraph 1.1 above in line with planning policy in force at the relevant date.
- 1.3 No applications for the approval of reserved matters in Zone 3 shall be submitted before the Developer has secured the LPA's Approval to the Family Housing Report.

### SCHEDULE 3

#### AFFORDABLE HOUSING

##### DEFINITIONS

- "Affordable Housing"** means housing including Social Rented Housing, Affordable Rented Housing and Intermediate Housing, provided to eligible households whose needs are not met by the market, and which housing should (a) meet the needs of eligible households 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 households, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision;
- "Affordable Housing Contract"** means a binding contract or contracts between the Developer and the Affordable Housing Provider for the construction and transfer of Affordable Housing Units to the Affordable Housing Provider;
- "Affordable Housing Provider"** means a provider of Affordable Housing Approved in respect of the Development pursuant to paragraph 1.1 of this Schedule;
- "Affordable Housing Units"** means the Affordable Rented Housing Units to be provided pursuant to paragraph 2 of this Schedule and the On Site Affordable Housing Reappraisal Units (if any) to be provided pursuant to Schedule 4;
- "Affordable Rented Housing"** means rented housing that has the same characteristics as Social Rented Housing except that it is outside the National Rent Regime, but is subject to other rent controls that require it to be offered to eligible households at a rent of up to 80 per cent of local market rents;
- "Affordable Rented Housing Units"** means Affordable Housing Units to be made available for Affordable Rented Housing;
- "Affordable Rents"** means the weekly rents set out in the table below:

Size	Weekly Rent (inc Service Charge) on first letting of an Affordable Rented Housing Unit
1 bed	£169.85
2 bed	£198.32
3 bed	£218.76
4 bed	£250.01

subject to an annual percentage rent increase by reference to the amount of the annual increase in the Retail Price Index (RPI) + 0.5% (calculated from the date of this Agreement and based on the annual RPI rate published for the preceding September), or such other rate of annual increase as shall be published by the HCA under their Rent Standard Guidance,

including any rate published by the HCA pursuant to the consultation entitled "The Regulatory Framework for Social Housing in England from April 2012 Annex A: Rent Standard Guidance");

<b>"Grant Funding"</b>	means any capital funding provided by the HCA, GLA or any other public body for the delivery of additional Affordable Housing in the Development;
<b>"Homes and Communities Agency" or "HCA"</b>	means the organisation empowered to regulate registered providers of Affordable Housing under the Housing and Regeneration Act 2008 or any successor body having functions currently exercised by the Homes and Communities Agency;
<b>"Intermediate Housing"</b>	means submarket housing which is above Target Rents but below open market levels and which housing includes schemes such as Shared Ownership Housing or shared equity housing, intermediate rent and rent to buy housing provided always that such schemes meet the affordability criteria as referred to in the supporting text of Policy 3.10 of the London Plan 2011;
<b>"Intermediate Units"</b>	means any On Site Affordable Housing Reappraisal Units to be made available for Intermediate Housing pursuant to Schedule 4;
<b>"Lifetime Home Standards"</b>	means the incorporation of the 16 design standards which together create a flexible blue print for accessible and adaptable housing published by the Joseph Rowntree Foundation Lifetime Homes Group and which standards incorporate all of the Part M Building Regulations and relevant parts of the Housing Corporation Design and Quality Standards;
<b>"Model Form of Lease"</b>	means the model forms of lease for Intermediate Housing published by the HCA from time to time;
<b>"National Rent Regime"</b>	means the regime under which the social rents of tenants of social housing are set, with particular reference to the Guide to Social Rent Reforms (March 2001) and the Rent Influencing Regime Guidance (October 2001);
<b>"On Site Affordable Housing Reappraisal Units"</b>	has the meaning given to it in Schedule 4;
<b>"Perpetuity"</b>	means a minimum term of One Hundred and Twenty Five years from the date of first Occupation of an Affordable Housing Unit;
<b>"Rents and Nominations Agreement"</b>	means the rents and nominations agreement(s) to be entered into between the Council and the Affordable Housing Provider substantially in the form attached at Appendix 3 of this Agreement;
<b>"Shared Ownership Housing"</b>	means a unit occupied partly for rent and partly by way of owner occupation on shared ownership terms as defined in section 2(6) of the Housing Act 1996 where the lessee for the time being has the right to carry out staircasing and dispose of the unit on the open market in accordance with the provisions of the Model Form of Lease;

- "Social Rented Housing"** means rented housing for which guideline target rents are determined through the National Rent Regime;
- "Social Rented Units"** means any On Site Affordable Housing Reappraisal Units to be made available for Social Rented Housing pursuant to Schedule 4;
- "Target Rents"** means rents calculated in accordance with the formula set out in the *Guide to Social Rent Reforms in the Local Authority Sector* published by the Department of the Environment, Transport and the Regions in March 2001 or such amended formula published by the Government from time to time and also in accordance with any documents published by the HCA giving effect to such formula or amended formula.

**1. AFFORDABLE HOUSING PROVIDER**

1.1 Prior to the Commencement of Development the Developer shall submit to the LPA and obtain its Approval to a list of companies or organisations involved in the provision of Affordable Housing who if Approved shall be capable of being Affordable Housing Providers for the Development PROVIDED THAT no Approval shall be required for any of the registered providers within the Peabody group of companies.

1.2 The Developer will:

1.2.1 proceed diligently and with all due expedition to negotiate and enter into an Affordable Housing Contract in respect of:

- (a) the Affordable Rented Housing Units to be provided pursuant to paragraph 2 of this Schedule; and
- (b) any On Site Affordable Housing Reappraisal Units to be provided pursuant to Schedule 4;

1.2.2 notify the LPA within 10 Working Days of entering into an Affordable Housing Contract.

**2. MINIMUM AFFORDABLE HOUSING PROVISION**

2.1 Not less than 11 Family Housing Units within Block C and Block I shall be provided as Affordable Rented Housing Units.

2.2 Not more than than 220 Private Residential Units shall be Occupied until:

2.2.1 the Affordable Rented Housing Units to be provided pursuant to paragraph 2.1 are Completed; and

2.2.2 such Affordable Rented Housing Units have been transferred to the Affordable Housing Provider pursuant to the Affordable Housing Contract.

**3. AFFORDABLE RENTS AND AFFORDABILITY CRITERIA**

3.1 The rents (inclusive of service charge) charged for the first letting of any Affordable Rented Housing Unit shall not exceed the applicable Affordable Rent PROVIDED THAT the Developer shall obtain the written agreement of the LPA as to the amounts of the weekly rents and the LPA shall act reasonably when agreeing any proposed revisions to these weekly rents.

3.2 The rents (inclusive of service charge) on subsequent lettings and tenancy renewals of any Affordable Rented Housing Unit (which for the avoidance of doubt shall not

include tenancies which are continuing after a probationary period) shall not exceed the applicable Affordable Rent unless otherwise agreed in writing with the LPA.

- 3.3 The rent payable by the occupant of any Social Rented Unit shall not exceed the Target Rent, such rent to be calculated at the start of each tenancy and during the term of each tenancy the rent shall be increased annually by no more than the annual change in the RPI plus 0.5%.
- 3.4 The cost of rent and/or mortgage payments and service and estate charges in relation to any Intermediate Units shall not exceed the general affordability criteria for Shared Ownership Housing published by the Greater London Authority from time to time.

#### 4. GRANT FUNDING

- 4.1 The Developer shall:
- 4.1.1 use Reasonable Endeavours to secure Grant Funding;
  - 4.1.2 notify the LPA of the outcome of any such application for Grant Funding within 10 Working Days of receipt of the same;
  - 4.1.3 if Grant Funding is secured, notify the LPA as to the quantum, tenure and proposed location of the additional Affordable Housing to be provided in the Development.
- 4.2 The LPA shall provide such non-financial support as may be reasonably requested by the Developer in respect of any applications for Grant Funding pursuant to Paragraph 4.1 above.
- 4.3 If Grant Funding is offered or secured subject to conditions that would prevent the Developer from complying with any of the obligations in this Schedule, the Developer and the LPA shall meet to discuss any amendments to the said obligations which would be necessary to deliver additional Affordable Housing in the Development with such Grant Funding PROVIDED THAT there shall be no obligation on the LPA to agree to any such amendments even if this results in the Grant Funding not being available.
- 4.4 If Grant Funding is made available for the delivery of any Intermediate Housing within the Development, the Developer shall within the later of 28 (twenty-eight) days of receipt of such Grant Funding or Commencement of Development in the Zone to which the Grant Funding relates notify the LPA which units of Affordable Housing are being delivered with the assistance of such funding (a "**Grant Funded Unit**").
- 4.5 The Developer shall provide the LPA with an annual return in respect of the Staircasing of any Grant Funded Units which shall contain details of:
- 4.5.1 the amount of each Staircasing payment;
  - 4.5.2 the amount of equity in each Grant Funded Unit owned by the Occupier before such Staircasing payment was made;
  - 4.5.3 the amount of additional equity acquired by the Occupier in each such Grant Funded Unit; and
  - 4.5.4 the Developer's costs incurred in relation to the Staircasing of each such Grant Funded Unit to be deducted for the purposes of paragraph 4.6 below.
- 4.6 Subject to the terms of any grant agreement with any body or other binding funding conditions providing Grant Funding, the balance of any payment received by the Developer in respect of the Staircasing of a Grant Funded Unit less the Developer's

reasonably and properly incurred costs in relation to such Staircasing (including but not limited to legal and other professional fees) shall be applied by the Developer towards the provision of additional Affordable Housing within the LPA's Area.

5. **GENERAL**

5.1 The Developer hereby covenants with and undertakes to the LPA (and in respect of paragraphs 5.1.4 and 5.1.5 the Council) that the Developer will in respect of Affordable Housing Units:

5.1.1 not Occupy or cause or permit to become Occupied the Affordable Housing Units for any purpose other than for Affordable Housing in Perpetuity;

5.1.2 provide that 10% of the Affordable Housing Units are accessible or easily adaptable for wheelchair users across all tenures and unit sizes, and provide details including 1:50 floor plans of the proposed wheelchair accessible dwellings to the LPA for Approval prior to commencement and notify the LPA at least nine months prior to their Completion;

5.1.3 provide the Affordable Housing Units to London Design Standards and Lifetime Home Standards;

5.1.4 either:

(a) ensure that the Affordable Housing Contract imposes a requirement on the Affordable Housing Provider to deliver a duly executed Rents and Nominations Agreement to the Council within 6 months of date of the Affordable Housing Contract; or

(b) if at any time the Developer is the Affordable Housing Provider for the Development and there is no Affordable Housing Contract the Developer shall deliver to the Council a duly executed Rents and Nominations Agreement.

5.1.5 subject to the reasonable availability of such information and data protection legislation that binds both the Developer and any Affordable Housing Provider, procure that the Affordable Housing Provider provides an annual return to the LPA and the Council with details of:

(a) in respect of each letting of an Affordable Rented Housing Unit or a Social Rented Unit:

(i) the tenant;

(ii) the household income of such tenant;

(iii) the ethnicity of such tenant;

(iv) the location of the tenant's previous accommodation by local authority area; and

(v) the tenant's present occupation; and

(b) in respect of the initial letting only of an Intermediate Unit the information required pursuant to paragraphs (i) to (v) above

**PROVIDED THAT** the LPA and the Council shall keep any information provided pursuant to this paragraph 5.1.5 confidential subject to any legal obligation on the LPA and/or the Council to disclose such information.

- 5.2 The provisions of this Schedule will not bind:
- 5.2.1 any mortgagee or chargee of the Affordable Housing Provider nor any mortgagee or charge of the owner for the time being of any leasehold interest in any of the Affordable Housing Units nor any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by such mortgagee or chargee of such Affordable Housing Provider or owner and who exercises any power of sale
  - 5.2.2 any person who has acquired 100% of the equity in an Intermediate Unit through Staircasing;
  - 5.2.3 any person who exercises any right to buy or acquire an Affordable Housing Unit pursuant to a right under the Housing Act 1985 or the Housing Act 1996 or any other statutory power; or
  - 5.2.4 any person or body deriving title through or from any of the parties mentioned in paragraphs 5.2.1 to 5.2.3.
- 5.3 The Developer will procure that the Transfer of any Intermediate Units to an Affordable Housing Provider imposes a requirement that when granting a lease of an individual Intermediate Unit the Affordable Housing Provider will use the appropriate Model Form of Lease.
- 5.4 Upon the transfer of the Affordable Housing Units (or any of them) to an Affordable Housing Provider the obligations imposed on the Developer in this Schedule in relation to those Affordable Housing Units shall be observed and performed by the Affordable Housing Provider and where any obligation is expressed as an obligation on the Developer to procure any act on the part of the Affordable Housing Provider, such obligation shall be construed as an obligation of the Affordable Housing Provider to itself perform the obligation in question.

## 6. RESTRICTION ON OCCUPATION OF AFFORDABLE HOUSING UNITS

- 6.1 Unless otherwise agreed by the LPA and subject to the terms of this Schedule and any Rents and Nominations Agreement:
- 6.1.1 no Affordable Rented Unit provided under the terms of this Schedule shall be Occupied other than as an Affordable Rented Unit and all occupational leases and tenancies of such units shall include a provision preventing sub-letting and underletting save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Affordable Rented Unit;
  - 6.1.2 no Social Rented Unit shall be Occupied other than as Social Rented Housing and all occupational leases and tenancies of such units shall include a provision preventing sub-letting and underletting save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Social Rented Unit;
  - 6.1.3 no Intermediate Unit shall be Occupied other than as Intermediate Housing pursuant to the appropriate Model Form of Lease save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or

tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Intermediate Unit,

in each case for so long only as the need exists for the tenure of Affordable Housing in question, such need to be determined by the LPA, and in the event that the LPA agrees with the Developer (or any person nominated by the Developer for that purpose) that the need no longer exists for the Affordable Housing Units in question then those Affordable Housing Units may be sold on the open market as Private Residential Units.

## SCHEDULE 4

### AFFORDABLE HOUSING REAPPRAISAL

#### DEFINITIONS

- "Achieved Sales Value"** means the aggregate value of the Sold Private Residential Units and any accompanying car parking spaces referred to in each Affordable Housing Reappraisal taking into account the values referred to in paragraphs 2.5.2(a) to (d) (less any reasonable incentives incurred in the construction and sale of such units);
- "Affordable Housing Reappraisal"** means a reappraisal of the ability of the Development to deliver a level of Affordable Housing above the minimum level required to be provided pursuant to Schedule 3 and which shall be carried out in accordance with and contain the information required by paragraph 2 of this Schedule;
- "Affordable Housing Reappraisal Units"** means the additional units of Affordable Housing (if any) to be provided in accordance with the provisions of this Schedule as identified in the Approved Affordable Housing Reappraisals;
- "Affordable Housing Units"** has the meaning given to it in Schedule 3;
- "Grant Funding"** has the meaning given to it in Schedule 3;
- "Habitable Room"** means any room within a Residential Unit the primary use of which is for living, sleeping or dining and includes kitchens larger than 13m including living rooms, bedrooms and dining rooms but excludes halls, corridors, bathrooms and lavatories;
- "On Site Affordable Housing Reappraisal Units"** means any Affordable Housing Reappraisal Units to be provided within the Development pursuant to this Schedule 4;
- "Projected Sales Values"** means as at the date the Affordable Housing Reappraisal is prepared, the aggregate values which the Private Residential Units and any car parking spaces situated within the Development:
- (a) (in the case of Sold units and spaces) have achieved taking into account the values referred to in paragraphs 2.5.2(a) to (d) as set out in the Affordable Housing Reappraisal; and
  - (b) (in the case of units and spaces not yet Sold) would reasonably be expected to achieve (less any reasonable incentives) taking account of the Achieved Sales Values set out in any previous Approved Affordable Housing Reappraisal
- divided by the total Saleable Area of Private Residential

	Units;
<b>"Saleable Area"</b>	means the net Saleable area (excluding all common areas) of each Private Residential Units measured in square feet;
<b>"Sale"</b>	means any of the following in respect of each individual Private Residential Unit and/or Car Parking Space: <ul style="list-style-type: none"> <li>(a) disposal of the freehold;</li> <li>(b) disposal of a leasehold;</li> <li>(c) grant of a tenancy for occupation; or</li> <li>(d) disposal on a shared ownership or shared equity basis</li> </ul> to an independent third party and "Sold" and "Saleable" shall be construed accordingly;
<b>"Surplus"</b>	means fifty percent (50%) of the amount by which the Achieved Sales Value exceeds the Trigger Level;
<b>"Trigger Value"</b>	means £474/ft <sup>2</sup> (Indexed);
<b>"Viability Appraisal"</b>	means a reappraisal of the ability of the Development to deliver Affordable Housing undertaken pursuant to paragraph 4 of this Schedule;
<b>"Viability Appraisal Scheme"</b>	means a scheme based on the Approved Viability Appraisal specifying: <ul style="list-style-type: none"> <li>(a) the percentage and number of Affordable Housing Units which can be viably delivered within the Development;</li> <li>(b) the location, distribution, sizes and tenures of the Affordable Housing within the Development together with an explanation of how the Development complies with the London Housing Design Guide;</li> <li>(c) the percentage and location of units of Affordable Housing within the Development which will be wheelchair accessible; and</li> <li>(d) details of how the proposed design of the Affordable Housing ensures that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the Private Residential Units of similar size within the Development;</li> </ul>
<b>"Voluntary Affordable Housing Unit"</b>	means a Private Residential Unit which the Developer has provided as Affordable Housing;
<b>"Voluntary Affordable Rented Unit"</b>	means a Voluntary Affordable Housing Unit which the Developer has provided as Affordable Rented Housing;

**"Voluntary Intermediate Unit"** means a Voluntary Affordable Housing Unit which the Developer has provided as Intermediate Housing;

**"Voluntary Social Rented Unit"** means a Voluntary Affordable Housing Unit which the Developer has provided as Social Housing.

**1. LPA'S COSTS**

1.1 The Developer shall pay the LPA's reasonable and pre-agreed costs (including the costs of any consultants appointed by the LPA) incurred in reviewing, commenting on and approving any information submitted to the LPA pursuant to this Schedule.

**2. AFFORDABLE HOUSING REAPPRAISAL**

2.1 Within 28 days of:

2.1.1 the one hundred and twenty fifth (125th) Sale of a Private Residential Unit (the "**First Affordable Housing Reappraisal**");

2.1.2 the two hundred and fiftieth (250th) Sale of a Private Residential Unit (the "**Second Affordable Housing Reappraisal**"); and

2.1.3 the Sale of 95% of the Private Residential Units in Zones 1, 2 and 3 (the "**Final Affordable Housing Reappraisal**")

the Developer shall submit an Affordable Housing Reappraisal to the LPA for Approval together with any fee agreed in accordance with paragraph 1 of this Schedule to cover the LPA's costs of reviewing the Affordable Housing Reappraisal.

2.2 The Developer shall notify the LPA in writing as soon as possible following the date on which the triggers in each of paragraphs 2.1.1 to 2.1.3 have occurred and the LPA shall appoint a consultant to review the anticipated Affordable Housing Reappraisal within the 28 day period following receipt of such notice.

2.3 Within 28 days of the later of:

2.3.1 receipt of an Affordable Housing Reappraisal pursuant to paragraph 2.1 above; and

2.3.2 the expiry of the 28 day period referred in paragraph 2.2 above

the LPA shall notify the Developer in writing either that the Affordable Housing Reappraisal is approved or that there is a Dispute, and if there a Dispute either Party may refer such Dispute to an Expert pursuant to clause 11 of this Agreement.

2.4 The Developer covenants that:

2.4.1 not more than 175 Private Residential Units shall be Sold until the First Affordable Housing Reappraisal has been Approved in writing by the LPA pursuant to paragraph 2.3 above or by the Expert pursuant to clause 11;

2.4.2 not more than 300 Private Residential Units shall be Sold until the Second Affordable Housing Reappraisal has been Approved in writing by the LPA pursuant to paragraph 2.3 above or by the Expert pursuant to clause 11; and

2.4.3 not more than 97% Private Residential Units shall be Sold until the Final Affordable Housing Reappraisal has been Approved in writing by the LPA pursuant to paragraph 2.3 above or by the Expert pursuant to clause 11.

2.5 Each Affordable Housing Reappraisal shall:

- 2.5.1 consider all Private Residential Units and car parking spaces Sold at the date of submission of the report;
- 2.5.2 set out the amount of any Surplus and contain such information necessary to calculate the Surplus, including:
  - (a) the date of Sale and actual sale value as registered or to be registered at the Land Registry for each such Private Residential Unit (excluding any Voluntary Affordable Housing Units) and car parking space net of reasonable incentives incurred;
  - (b) the date of Sale and actual initial equity sale value as registered or to be registered at the Land Registry for each Voluntary Intermediate Unit (if any);
  - (c) the value attributed by the Developer to the retained equity element of each Voluntary Intermediate Unit (if any) and details of rental income paid in respect of the retained equity;
  - (d) the value attributed by the Developer to each Voluntary Affordable Rented Unit and Voluntary Social Rented Unit (if any) including details of rental income;
  - (e) the total Achieved Sales Value of the Private Residential Units and car parking spaces considered by the report;
  - (f) the total Saleable Area of each unit of Private Residential Units considered by the Affordable Housing Reappraisal;
  - (g) the Indexed Trigger Level;
  - (h) calculations used to arrive at the Surplus.
- 2.5.3 set out the level of additional Affordable Housing which the Developer proposes to provide funded by Surplus pursuant to Paragraph 2.7 of this Schedule;
- 2.5.4 set out the level of additional Affordable Housing which the Developer proposes to provide as calculated pursuant to paragraph 2.6 of this Schedule;
- 2.5.5 set out the amount of any Grant Funding available for Development; and
- 2.5.6 set out the calculations used to arrive at the Projected Sales Value per sq foot

and shall include any evidence used to establish the Projected Sales Value set out within the Affordable Housing Reappraisal.

2.6 The level of additional Affordable Housing specified in the Affordable Housing Reappraisal shall be derived as follows:

for every £1.70/ft<sup>2</sup> (Indexed) by which at the time of the Affordable Housing Reappraisal the Projected Sales Value per sq foot for the Development exceeds the Trigger Value, the amount of Affordable Housing to be provided shall increase by 3 Habitable Rooms;

- 2.7 Any Surplus identified in the First Affordable Housing Reappraisal and Second Affordable Housing Reappraisal must be applied towards additional Affordable Housing and the Developer shall set out in the relevant Affordable Housing Reappraisal the quantum of additional Affordable Housing being funded by the Surplus and the calculations used to arrive at this quantum.
- 2.8 The Developer shall set out in the relevant Affordable Housing Reappraisal the following information in respect of the additional Affordable Housing to be provided pursuant to paragraphs 2.6 and 2.7:
- 2.8.1 the unit size mix;
- 2.8.2 the tenure mix; and
- 2.8.3 the proposed location which may (subject to the Approval of the LPA) include a proposal to locate such additional Affordable Housing Off Site but within Fish Island PROVIDED THAT it is agreed and acknowledged that as a condition of Approving any proposal to locate additional Affordable Housing Off Site but within Fish Island the LPA shall be entitled to require that an agreement is entered into under s106 of the 1990 Act to the effect that the provisions of Schedule 3 of this Agreement shall apply to any such units.
- 2.9 Any Surplus identified in the Final Affordable Housing Reappraisal must be paid to the LPA within 28 days of the date of Approval of the Final Affordable Housing Reappraisal.
- 2.10 Any Surplus paid to the LPA pursuant to paragraph 2.9 of this Schedule shall be applied by the LPA in accordance with paragraphs 2.11 and 2.12.
- 2.11 For a period of 3 years from receipt of the Surplus pursuant to paragraph 2.9 the LPA shall:
- 2.11.1 apply such Surplus (or part thereof) exclusively towards the provision of Affordable Housing in such part of the area which falls within both the LPA's Area and the Council's Area; and
- 2.11.2 use Reasonable Endeavours to secure for the Council 100% of nomination rights in respect of any Affordable Housing provided under paragraph 2.11.1.
- 2.12 For a period of 2 years from the expiry of the period referred to in paragraph 2.11 the LPA shall:
- 2.12.1 apply any remaining part of the Surplus exclusively towards the provision of Affordable Housing in the LPA's Area; and
- 2.12.2 use Reasonable Endeavours to secure for the Council not less than 50% of nomination rights in respect of Affordable Housing provided under paragraph 2.12.1.
- 2.13 The information provided in the Affordable Housing Reappraisal shall be kept confidential by the LPA and shall not be disclosed to any third party save with the consent of the other parties to this Agreement or where the LPA is required to disclose the information as a matter of law provided that in the event the LPA is required to disclose such information to the public or some other third party and that information is not already in the public domain it will ensure that all figures sums and calculations set out are redacted on the basis that they represent commercially sensitive information.

**3. PROVISION OF ADDITIONAL AFFORDABLE HOUSING**

3.1 The following provisions shall apply if any Approved Affordable Housing Reappraisal specifies that additional Affordable Housing is to be provided:

3.1.1 the number of Residential Units provided as Affordable Housing Reappraisal Units will be not less than the figure specified in any Approved Affordable Housing Reappraisal PROVIDED THAT the total percentage of Affordable Housing Units provided as part of the Development is not required for the purposes of this Agreement to exceed 25% of the Residential Units comprised within the Development;

3.1.2 not more than 350 Private Residential Units shall be Occupied until:

- (a) the Affordable Housing Reappraisal Units are Completed; and
- (b) the Affordable Housing Reappraisal Units have been transferred to an Affordable Housing Provider pursuant to an Affordable Housing Contract;

3.1.3 the provisions of Schedule 3 shall apply to any On Site Affordable Housing Reappraisal Units.

**4. VIABILITY APPRAISAL IF DEVELOPMENT NOT COMMENCED WITHIN 24 MONTHS**

4.1 If Development has not Commenced within 24 months of the date of this Agreement, then the Development shall not Commence before a Viability Appraisal and Viability Appraisal Scheme has been submitted to and Approved in writing by the LPA. Thereafter, Affordable Housing shall be provided in the Development in accordance with such approved Viability Appraisal and Viability Appraisal Scheme.

## SCHEDULE 5

### FOOTBRIDGE AND SAFEGUARDING

#### DEFINITIONS

- "Bridge Notice"** a written notice served by the LPA on the Developer informing the Developer of its intention to construct a bridge over the Hertford Union Canal to connect into the Safeguarded Area (or part thereof) and such notice may only be validly served if accompanied by:
- (a) evidence of approval to construct the bridge through the LPA's Board, Executive Team or Committee;
  - (b) a specification for the bridge; and
  - (c) a programme for implementation of the bridge;
- "Footbridge"** means the Roach Road footbridge over the Herford Union Canal;
- "Footbridge Contribution"** means the sum of £250,000 (Indexed);
- "Footbridge Enhancement Works"** means works to widen and enhance the Footbridge;
- "Safeguarded Area"** means the area shown edged blue on Plan 5.

#### 1. SAFEGUARDING

##### 1.1 Subject to paragraph 1.2:

1.1.1 no development or works of construction (temporary or permanent) shall be undertaken on the Safeguarded Area other than the hard and soft landscaping works authorised by the Planning Permission provided that subject to paragraph 1.1.2 the Developer shall be entitled to store plant, materials and/or other machinery on the Safeguarded Area during the construction of the Development; and

1.1.2 upon service of a Bridge Notice the Developer shall grant to the LPA or its nominee such property rights and/or easements over the Safeguarded Area as shall be necessary to carry out and complete the works to construct the bridge and to thereafter retain the bridge on the Safeguarded Area.

##### 1.2 In the event that a Bridge Notice has not been served within the period of six (6) years from the date of this Agreement:

1.2.1 the Developer shall be released from its obligation to grant any property rights and/or easements over the Safeguarded Area pursuant to paragraph 1.1.2; and

1.2.2 the restriction in paragraph 1.1.1 shall cease to apply to the Safeguarded Area.

#### 2. FOOTBRIDGE CONTRIBUTION

##### 2.1 Prior to the Commencement of Development the Developer shall pay the Footbridge Contribution to the LPA.

- 2.2 No Private Residential Units shall be Occupied until the Developer has:
- 2.2.1 paid the Footbridge Contribution to the LPA; and
  - 2.2.2 granted to the LPA or its nominee such property rights and easements as shall be necessary to carry out and retain the Footbridge Enhancement Works on the Developer's Land.
- 2.3 Where the Footbridge Contribution is paid to the LPA the LPA shall apply the Footbridge Contribution exclusively towards the Footbridge Enhancement Works and/or other works to enhance connectivity across the Hertford Union Canal towards the Site.
- 2.4 The LPA shall return to the Developer any sums from the Footbridge Contribution that remain contractually uncommitted or unspent as at the tenth anniversary of payment by the Developer.

## SCHEDULE 6

### TRANSPORT

#### DEFINITIONS

- "Local Transport Contribution"** means the sum of £330,000 (Indexed);
- "Sustainable Transport Improvements"** means pedestrian, cycle or wayfinding improvements in the vicinity of the Site to be identified in advance by the LPA.

#### 1. LOCAL TRANSPORT CONTRIBUTION

- 1.1 No Development shall be Commenced until the Developer has paid the Local Transport Contribution to the LPA.
- 1.2 The LPA shall apply the Local Transport Contribution exclusively towards Sustainable Transport Improvements.

## SCHEDULE 7

### TRAVEL PLAN

#### DEFINITIONS

- "Initial Monitoring Period"** means six months after first Occupation in the Zone to which the Zonal Travel Plan relates until 36 months after first Occupation of the final Building to be Completed in such Zone;
- "Modal Split Targets"** means the modal split targets identified in each Approved Zonal Travel Plan;
- "Sustainable Transport Measures"** means measures to promote sustainable transport and encourage behavioural change (which may include the provision of physical infrastructure in order to encourage greater travel by walking and cycling) **PROVIDED THAT** such measures are in accordance with the requirements of regulation 122(2) of the Community Infrastructure Levy Regulations 2010;
- "Travel Plan Monitoring"** means monitoring of each Zonal Travel Plan by carrying out the following monitoring of travel to and from the Zone which shall as a minimum include the following:
- (a) carrying out representative surveys of the modal split of visitors to the Zone (including staff) together with details of where those who have travelled by vehicle (for all or part of their journey) have parked;
  - (b) monitoring of the usage of the car parking which is available for use in the Zone;
  - (c) monitoring of the usage of cycle parking facilities by visitors to, and employees of, the Zone;
- "Travel Plan Monitoring Officer"** means a person appointed by the Developer in respect of each Zone to monitor and promote the success in meeting the targets set out in each Zonal Travel Plan;
- "Travel Plan Monitoring Report"** a report setting out the data and information gathered during the Travel Plan Monitoring undertaken during the Travel Plan Review Period in respect of each Zonal Travel Plan and such report shall include:
- (a) details of trip generation rates;
  - (b) details of mode share and change in mode share over time;
  - (c) details of how effectively the Zonal Travel Plan has operated within the previous period;
  - (d) any data and information necessary for the purposes of determining whether or not the Modal Split Targets have been achieved; and

- (e) (where the objectives and/or targets specified in the Zonal Travel Plan have not been met) a proposed revision to the Zonal Travel Plan for Approval by the LPA setting out additional and/or enhanced measures to bridge any shortfall in achieving the objectives and targets of the Zonal Travel Plan together with a timetable for implementing such measures;

**"Travel Plan Review Period"** means initially the period of 6 months commencing on first Occupation in the relevant Zone and thereafter annually on a rolling basis;

**"Zonal Travel Plan"** means a travel plan for a Zone to be submitted to the LPA for Approval pursuant to paragraph 1 of this Schedule.

## 1. ZONAL TRAVEL PLANS

- 1.1 Development in each of Zone 1, Zone 2, Zone 3 and Zone 4 shall not Commence until:
- 1.1.1 a Zonal Travel Plan for such Zone has been submitted to and Approved by the LPA;
  - 1.1.2 the Developer has appointed a Travel Plan Monitoring Officer for such Zone and notified the LPA of the name and contact details of such officer.
- 1.2 The Zonal Travel Plans for Zone 1, Zone 2 and Zone 3 shall contain separate measures, commitments, targets and plans for each of the authorised land uses within those Zones.
- 1.3 The Zonal Travel Plan for Zone 4 shall contain measures, commitments, targets and plans applicable to the authorised School use.
- 1.4 The Zonal Travel Plans to be submitted pursuant to paragraph 1.1 shall:
- 1.4.1 comply with TfL 'Travel Planning for new development in London' or such other best practice guidance as shall apply at the date of submission of the Zonal Travel Plan;
  - 1.4.2 contain clear commitments to measures, including investigation of potential additional measures;
  - 1.4.3 set out a clear process for review, consultation and approval of changes (and specifically targets) with the LPA;
  - 1.4.4 have obtained a 'Passed' score in the online Travel Plan assessment tool 'ATTRBUTE';
  - 1.4.5 contain measures aimed at:
    - (a) positively influencing the travel behaviour of residents, employees and other users of the Development by promoting alternative travel modes to the car including initiatives to reduce reliance on the car and over time reduce car parking On Site;
    - (b) encouraging travel by cycle, on foot and by public transport by highlighting their accessibility, availability and reviewing cycle