

### **Supplemental Agreement**

Under Section 106A of the Town and Country Planning Act 1990  
(as amended) relating to land bounded by Hepscoth Road and  
Rothbury Road TSV Building London E9 5HH

Supplemental to Agreements dated 25 October 2019 and 6  
January 2023

- (1) London Legacy Development Corporation
- (2) Taylor Wimpey UK Limited

Dated 28 November 2024

This Deed is made on

28 November

2024

**Between**

- (1) **London Legacy Development Corporation ("LPA")** of Level 9, 5 Endeavour Square, Stratford, London E20 1JN; and
- (2) **Taylor Wimpey UK Limited** incorporated and registered in England and Wales with company number 01392762 whose registered office is Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR ("**Owner**");

**Background:**

- (A) By virtue of the London Legacy Development Corporation (Planning Functions) Order 2022 (effective from 1 October 2012 and made pursuant to powers, inter alia, in the Localism Act 2011) the Local Planning Authority is the local planning authority for the Site for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number NGL328255.
- (C) The Site benefits from the Original Planning Permission and is bound by the terms of the Original S106 Agreement.
- (D) On 25 October 2019 the Original S106 Agreement was entered into between (1) London Legacy Development Corporation Limited (2) Telereal General Property GP Limited (3) British Telecommunications plc (4) Autumnwindow Limited and (5) Telereal General Property Trustee 1 Limited and was varied by the First Variation entered into between the London Legacy Development Corporation (1) and Taylor Wimpey UK Limited (2).
- (E) Planning Permission was granted on 29 October 2019 for the development of the Site and has subsequently been varied by a number of non-material amendments.
- (F) Without prejudice to the terms of the other covenants contained in the Original S106 Agreement the parties have agreed to vary the terms of the Original S106 Agreement as set out in this Deed.
- (G) This Deed is made under Section 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the 2011 Act and all other enabling powers and is supplemental to and varies the Original S106 Agreement.
- (H) The parties agree that the obligations contained in this Deed meet the three tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

**Now this Deed witnesses as follows:**

**Operative Part**

**1. Definitions**

In this Deed the following terms and expressions have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990 (as amended)

"First Variation" means the agreement dated 6 January 2023 made between the London Legacy Development Corporation (1) and Taylor Wimpey UK Limited (2)

"Second Deed of Variation" means this Deed

"Original S106 Agreement" means the agreement entered into pursuant to section 106 of the Act dated 25 October 2019 and made between (1) London Legacy Development Corporation Limited (2) Telereal General Property GP Limited (3) British Telecommunications plc (4) Autumnwindow Limited and (5) Telereal General Property Trustee 1 Limited as varied by the First Variation

"Original Planning Permission" means full planning permission dated 29 October 2019 with reference 17/00222/FUL together with the non material amendment dated 21 July 2021 with reference 20/00397/NMA; the non material amendment dated 6 January 2023 with reference 22/00069/NMA and the non material amendment dated 11 January 2024 with reference 23/00362/NMA and all subsequent variations and amendments thereto

"Site" means the freehold land registered at HM Land Registry under title number NGL328255 and known as the land bounded by Hepscott Road and Rothbury Road TSVC Building London E9 5HH as shown edged red on the plan to the Original S106 Agreement.

"Working Days" means Monday to Friday inclusive but excluding days which are public holidays

1.1 In this Deed:

- (a) the clause headings do not affect its interpretation:
  - (i) unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
  - (ii) 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 Deed as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
    - (B) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
  - (iii) references to the Site include any part of it;
  - (iv) references to any party in this Deed include the successors in title and assigns of that party. In addition, references to the LPA include any successor to its respective statutory functions;
  - (v) "including" means "including, without limitation";

- (vi) any covenant by the Owner or to do any act, matter or thing includes a covenant not to permit or allow the doing of that act, matter or thing; and
- (vii) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.

1.2 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 2. **Effect of this Deed**

2.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the LPA as set out in this Deed.

2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 of the Local Government Act 2000, section 1 Localism Act 2011 and all other enabling powers.

2.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the LPA of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

2.4 The obligations in this Deed will not be enforceable against any statutory undertaker or service provider or other person who acquires any part of the Site or interest therein for the purposes of the supply of heat, cooling, electricity, gas, water, drainage, telecommunication services or public transport services

2.5 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Original Planning Permission, granted after the date of this Deed, whether or not pursuant to an appeal.

2.6 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment or variation to the Original Planning Permission and planning permission is granted pursuant to Section 73 of the 1990 Act then subject to the written confirmation of the LPA to be given prior to the determination of any such planning applications which shall not increase the number of dwellings and shall relate substantially to the same development of the Site as is proposed under the planning application this Deed shall apply and remain in full force in respect of that subsequent application without the need for further agreement to be entered into pursuant to Section 106 or Section 106A of the 1990 Act.

## 3. **Effective Date**

3.1 The provisions of this Deed will become operative on the date of this Deed.

## 4. **Variations of the Original S106 Agreement**

4.1 The parties agree that the Original S106 Agreement shall be varied as set out in the First Schedule.

4.2 The parties further agree and declare that the terms and definitions of the Original S106 Agreement (except as varied by this Deed) are confirmed as if the same were set out in this

Deed in full and that such terms (as so varied) and definitions shall for all purposes (including without limitation for the purposes of section 2 of the Law of Property (miscellaneous Provisions) Act 1989) be deemed to be incorporated into this Deed and shall continue in full force and effect save as amended by this Deed.

4.3 The Owner and the LPA covenant to observe and perform the covenants restrictions and obligations in the Original S106 Agreement as varied by this Deed.

## 5. **Miscellaneous**

5.1 Any agreement obligation covenant or Deed contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or Deed is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.

5.2 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Deed without illegality provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Deed.

5.3 No variation to this Deed shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of a purchaser tenant or residential occupier of any dwelling or their mortgagees shall not be required to vary any part of this Deed nor shall any other party who has no liability under this Deed.

5.4 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Deed shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Deed.

5.5 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Deed then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

5.6 This Deed shall be enforceable as a local land charge and shall be registered immediately by the LPA as such and the LPA covenants with the Owner it will note on the local land charges register when compliance with all of the said obligations has occurred.

5.7 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the LPA in the exercise of its functions in any capacity.

## 6. **Notices**

6.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following or to such other address as one party may notify in writing to the others at any time as its address for service:

- (a) for the Owner it shall be marked for the attention of Land and Planning Director at Taylor Wimpey London BT Brentwood, 1 London Road, Brentwood, Essex, CM14 4QP
- (b) for the LPA it shall be marked for the attention of Anthony Hollingsworth at the LPA address set out above with Ref land bounded by Hepscott Road and Rothbury Road TSVC Building London E9 5HH;

6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by post, on the second Working Day after posting; or
- (c) if sent by recorded delivery, at the time delivery was signed for.

6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served at 9am on the next Working Day.

6.4 If a notice, demand or any other communication is served before 9am on a working day, it is to be treated as having been served at 9am on that Working Day.

## 7. **Determination of disputes**

7.1 If any dispute arises relating to or arising out of the terms of this Deed the provisions of clause 8 of the Original S106 Agreement shall apply.

## 8. **Legal Fees**

8.1 The Owner agrees that they will on completion of this Deed pay the LPA's legal costs reasonably and properly incurred in the negotiation and completion of this Deed (inclusive of any such reasonable costs properly incurred by external lawyers appointed by the LPA in relation to the negotiation and completion of this Deed).

## 9. **Jurisdiction**

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

## 10. **Execution**

The parties have executed this Deed as a deed and it is delivered on the date set out above.

## Schedule 1

### Variation of the Original S106 Agreement

#### 1. Clause 1 - Definitions

1.1 The following definitions shall be added at the relevant place:

**“Charge”** means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units and/or the Additional Affordable Housing Units (or any number of them) in favour of the Chargee;

**“Chargee”** means any mortgagee or chargee of the Affordable Housing Provider, of the Affordable Housing or the Additional Affordable Housing (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;

**“Date of Deemed Service”** means, in each instance where a Chargee has served a Default Notice under clause 18.1.1:

(a) in the case of service by delivery by hand of the Default Notice to the LPA's offices as set out at clause 6.2 during the LPA's office hours, the date on which the Default Notice is so delivered; or

(b) in the case of service by using first class registered post to the LPA's offices as set out at clause 7, the second Working Day after the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) PROVIDED THAT the Chargee is able to evidence that the Default Notice was actually delivered to the LPA (by Royal Mail proof of delivery or otherwise);

**“Default Notice”** means a notice in writing served on the LPA by the Chargee under clause 18.1.1 stating the Chargee's intention to enforce its security over the relevant Affordable Housing and/or Additional Affordable Housing;

**“Intention Notice”** means a notice in writing served on the Chargee by the LPA under clause 18.2 stating that the LPA is minded to purchase the relevant Affordable Housing and/or Additional Affordable Housing;

**“Moratorium Period”** means, in each instance where a Chargee has served a Default Notice under clause 18.1, the period from (and including) the Date of Deemed Service on the LPA of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the LPA);

**“Option”** means the option to be granted to the LPA (and/or its nominated substitute Affordable Housing Provider) in accordance with clause

18.3 for the purchase of the Affordable Housing and/or the Additional Affordable Housing;

**“Sums Due”**

means all sums due to a Chargee of the Affordable Housing and/or the Additional Affordable Housing pursuant to the terms of its charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses;

1.2 The definition of **“Substantial Implementation”** shall be deleted and shall be replaced with:

**“Substantial Implementation”**

means Commencement of Development has occurred in addition to the following:

- (a) the Preparatory Works have been completed;
- (b) all ground works have been completed; and
- (c) construction up to ground floor slab of any Building has been completed (whichever is earlier)

and **“Substantially Implement”** and **“Substantially Implemented”** shall be construed accordingly.”

2. **Clause 2**

2.1 Clause 2.4.3 shall be deleted in its entirety.

2.2 Clause 2.7 shall be deleted and replaced as follows:

“2.7 Subject to clause 18, no obligation in this Agreement shall be binding on or enforceable against a Chargee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Site unless and until such Chargee or any persons deriving title from a Chargee has entered into possession of the Site or part thereof to which such obligation relates.”

3. **New Clause 18 – Chargee in Possession of Affordable Housing**

3.1 A new Clause 18 shall be added and read as follows:

**“18. CHARGE IN POSSESSION OF AFFORDABLE HOUSING**

18.1 If a Chargee or any persons deriving title from a Chargee is seeking to dispose of any Affordable Housing and/or Additional Affordable Housing (as defined in Schedule 2 and 3 respectively) and wishes to benefit from the protection granted by clauses 2.6 and 2.7, a Chargee must:

- 18.1.1 serve a Default Notice on the LPA by delivery by hand to the LPA’s offices, using the address as set out at Clause 7 above during the LPA’s office hours, or using first class registered post to the LPA’s offices in either case addressed to Director of Planning Policy prior to seeking to dispose any Affordable Housing and/or Additional Affordable Housing;



- 18.1.2 when serving the Default Notice, provide to the LPA official copies of the title registers for the relevant Affordable Housing and/or Additional Affordable Housing; and
  - 18.1.3 subject to clause 18.6 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing and/or Additional Affordable Housing before the expiry of the Moratorium Period except in accordance with clause 18.3 below.
- 18.2 From the first day of the Moratorium Period to (but excluding) the date falling one calendar month later, the LPA may serve an Intention Notice on the Chargee.
- 18.3 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing with the LPA), the Chargee will grant the LPA (and/or the LPA's nominated substitute Affordable Housing Provider) an exclusive Option to purchase the relevant Affordable Housing and/or Additional Affordable Housing which shall contain the following terms:
- 18.3.1 the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
  - 18.3.2 the price for the sale and purchase will be agreed in accordance with clause 18.4.2 below or determined in accordance with clause 18.5 below;
  - 18.3.3 provided that the purchase price has been agreed in accordance with clause 18.4.2 below or determined in accordance with clause 18.5 below, but subject to clause 18.3.4 below, the LPA (or its nominated substitute Affordable Housing Provider) may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing and/or Additional Affordable Housing at any time prior to the expiry of the Moratorium Period;
  - 18.3.4 the Option will expire upon the earlier of (i) notification in writing by the LPA (or its nominated substitute Affordable Housing Provider) that it no longer intends to exercise the Option and (ii) the expiry of the Moratorium Period; and
  - 18.3.5 any other terms agreed between the parties to the Option (acting reasonably).
- 18.4 Following the service of the Intention Notice:
- 18.4.1 the Chargee shall use reasonable endeavours to reply to enquiries raised by the LPA (or its nominated substitute Affordable Housing Provider) in relation to the Affordable Housing and/or the Additional Affordable Housing as expeditiously as possible having regard to the length of the Moratorium Period; and
  - 18.4.2 the LPA (or its nominated substitute Affordable Housing Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing and/or Additional Affordable Housing, which shall be the higher of:
    - (i) the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing and/or Additional Affordable Housing contained in Schedule 1 and Schedule 2; and
    - (ii) (unless otherwise agreed in writing between the LPA (or its nominated substitute Affordable Housing Provider) and the Chargee) the Sums Due.

- 18.5 On the date falling 10 Working Days after service of the Intention Notice, if the LPA (or its nominated substitute Affordable Housing Provider) and the Chargee have not agreed the price pursuant to clause 18.4.2 above:
- 18.5.1 the LPA (or its nominated substitute Affordable Housing Provider) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;
  - 18.5.2 if, on the date falling 15 Working Days after service of the Intention Notice, the LPA (or its nominated substitute Affordable Housing Provider) and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute;
  - 18.5.3 the independent surveyor shall determine the price reasonably obtainable referred to at clause 18.4.2(i) above, due regard being had to all the restrictions imposed upon the relevant Affordable Housing and/or Additional Affordable Housing by this Agreement;
  - 18.5.4 the independent surveyor shall act as an expert and not as an arbitrator;
  - 18.5.5 the fees and expenses of the independent surveyor are to be borne equally by the parties;
  - 18.5.6 the independent surveyor shall make his/her decision and notify the LPA, the LPA's nominated substitute Affordable Housing Provider (if any) and the Chargee of that decision no later than 14 days after his/her appointment and in any event within the Moratorium Period; and
  - 18.5.7 the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 18.6 The Chargee may dispose of the relevant Affordable Housing and/or Additional Affordable Housing free from the obligations and restrictions contained in Schedule 1 and Schedule 2 which shall determine absolutely in respect of those Affordable Housing and/or Additional Affordable Housing (but subject to any existing tenancies) if:
- 18.6.1 the LPA has not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
  - 18.6.2 the LPA (or its nominated substitute Affordable Housing Provider) has not exercised the Option and completed the purchase of the relevant Affordable Housing and/or Additional Affordable Housing on or before the date on which the Moratorium Period expires; or
  - 18.6.3 the LPA (or its nominated substitute Affordable Housing Provider) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.
- 18.7 The LPA (and its nominated substitute Affordable Housing Provider, if any) and the Chargee shall act reasonably in fulfilling their respective obligations under clause 18.1 to 18.6 above (inclusive)."

4. **Existing Clause 18 – Execution**

4.1 The Existing Clause 18 (Execution) shall be re-numbered as Clause 19 (Execution).

5. **Schedule 1 - Affordable Housing**

5.1 In paragraph 1 of Schedule 1 the following new definitions shall be added:

**“Revised Affordable Housing Plan”** means the plans annexed to this Agreement at Appendix 6 showing the location of the Revised Affordable Housing Units

**“Revised Affordable Housing Units”** means the Affordable Housing Units to be provided by the Developer in the event that paragraph 3.1A of Schedule 2 applies

5.2 Paragraph 2.1 of Schedule 1 shall be deleted.

5.3 Paragraphs 3.1, 3.2, 3.3 and 3.4 of Schedule 1 shall be deleted and shall be replaced with:

“3.1A. In the event that the Development has Commenced within six (6) months of this Agreement and Substantial Implementation has occurred within twelve (12) months of this Agreement then the Revised Affordable Housing Units shall be provided in accordance with the tenure split shown in the table below:

	London Affordable Rent	Shared Ownership	Total
1 bed	0	5	<b>5</b>
2 bed	5	2	<b>7</b>
3 bed	10	1	<b>11</b>
<b>TOTAL</b>	<b>15</b>	<b>8</b>	<b>23</b>

3.1B. In the event that the Development has not Commenced Development (including establishing site welfare facilities) on or before six (6) months of this Agreement and/or Substantial Implementation has not occurred within twelve (12) months of this Agreement then:

3.1B(a) prior to Substantial Implementation the Developer shall submit to the LPA and obtain its written approval (such approval not to be unreasonably withheld or delayed) of the Affordable Housing Plans; and

3.1B(b) the Affordable Housing Units shall be provided in accordance with the tenure split shown in the table below:

	London Affordable Rent	Shared Ownership	London Living Rent	Total
1 bed	0	17	4	<b>21</b>
2 bed / 3 person	2	4	0	<b>6</b>

2 bed / 4 person	7	3	3	13
3 bed	4	3	3	10
<b>TOTAL</b>	<b>13</b>	<b>27</b>	<b>10</b>	<b>50</b>

5.4 In paragraph 3.5 the words “or the Revised Affordable Housing Plans (as applicable)” shall be added after the “Affordable Housing Plans”.

5.5 In paragraphs 3.6 and 3.7 of Schedule 1 the words “as detailed in either paragraph 3.1A or 3.1B as applicable” shall be added after words “and London Living Rent Housing Units”.

5.6 In paragraph 7.1.1 of Schedule 1 shall be deleted and replaced with:

“7.1.1 Subject to the provisions of 7.1.3 provide two Shared Ownership Units (as shown on the Affordable Housing Plans) as accessible or easily adaptable dwellings for wheelchair users (“the **“Wheelchair Affordable Housing Units”**”). In paragraph 7.1.2 of Schedule 1 the words “In the event that that the provisions of paragraph 3.1B apply”.

5.7 Paragraph 8.3.1 shall be deleted in its entirety and the subsequent numbering shall be amended accordingly.

## 6. **Schedule 2 – Viability Review**

6.1 Schedule 2 shall be deleted in its entirety and replaced with the text in Annexure 2.

## 7. **Schedule 8 – Public Open Space and Play Space**

7.1 In paragraph 1 of Schedule 8:

(a) A new definition shall be added:

**“Public Realm Improvement Contribution”** means £45,000 (Indexed) to be used by the LPA towards the public realm improvement works to facilitate a new crossing on White Post Lane to connect with the new north-south pedestrian and cyclist link connecting Hackney Wick Station and Fish Island”

7.2 In Schedule 8 a new paragraph 5 shall be inserted:

### **“5. PUBLIC REALM IMPROVEMENT CONTRIBUTION**

Prior to the Commencement of Development the Developer shall pay the Public Realm Improvement Contribution to the LPA.”

## 8. **Appendices**

8.1 The plans at Annexure 1 of this Agreement shall be added to the Original S106 Agreement as a new Appendix 6 “Affordable Housing Plans”.

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



EXECUTED as a DEED (but not )  
delivered until the date hereof) by )  
affixing the common seal of )  
LONDON LEGACY DEVELOPMENT )  
CORPORATION in the presence of: )

*ANTHONY HOWINGS JONATH.*  
.....  
Authorised Signatory (name)

*A Howings*  
.....  
Authorised Signatory (signature)

EXECUTED AS A DEED (but not delivered until  
The date hereof) by

TAYLOR WIMPEY UK LIMITED

Acting by its Attorneys  
**Susan Thackeray**

SIGNATURE OF ATTORNEY  
*S Thackeray*  
.....  
in the presence of:

SIGNATURE OF WITNESS  
*H Cole*  
.....

Name: .....  
.....  
Address: **Hope Cole**  
**Taylor Wimpey Manchester**  
**1 Lumsdale Road**  
**Stretford, Mcr**  
**M32 0UT**  
**Tel 0161 884 8900**  
.....  
.....

Occupation:  
*Legal Support*  
.....

SIGNATURE OF ATTORNEY  
*Zoe Horsfield*  
..... **Zoe Horsfield**  
in the presence of:

SIGNATURE OF WITNESS  
*H Cole*  
.....

Name: .....  
.....  
Address: **Hope Cole**  
**Taylor Wimpey Manchester**  
**1 Lumsdale Road**  
**Stretford, Mcr**  
**M32 0UT**  
**Tel 0161 884 8900**  
.....  
.....

Occupation:  
*Legal Support*  
.....

**Annexure 1**  
**Appendix 6 - Affordable Housing Plans**



Notes:  
 • Do not scale from this drawing; work to figure dimensions only.  
 • All information is to be checked on site for accuracy and fit.  
 • Report any discrepancies and omissions to RMA Architects.

H&S Notes - "ERIC" (Eliminate, Reduce, Isolate, Control)



Where RMA services on a project do not include for site inspections and works surveys, RMA do not warrant that as built drawings are a complete and accurate record of what has been constructed.  
 Unless notified specifically by the responsible party, changes made on site to RMA design information has not been incorporated in this drawing.

SCALE BAR: 1:500 @ A1, 1:1000 @ A3  
 0 10 20 30 40m

GENERAL NOTES

Tenure Key

- Private
- Shared Ownership
- London Living Rents (LLR)
- London Affordable Rents (LAR)

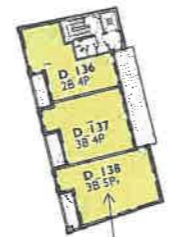
Plot Number

Unit Type

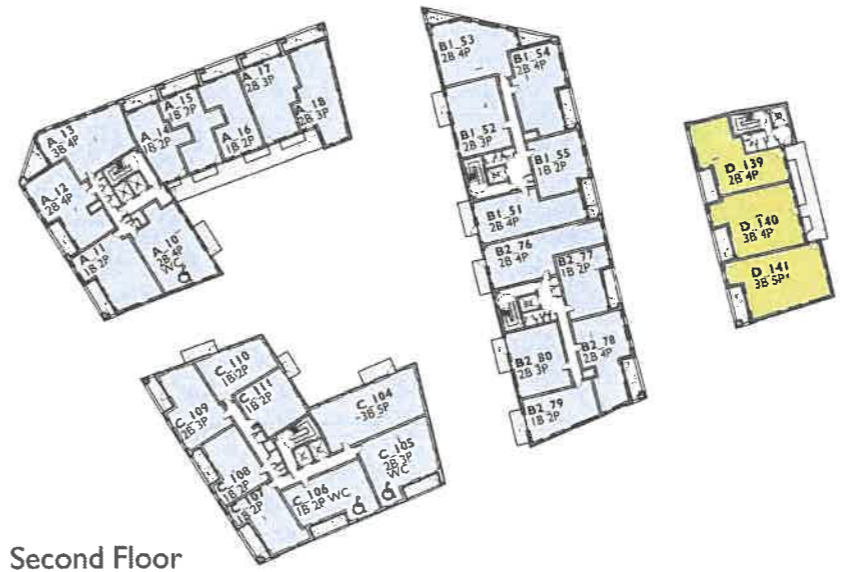
Whechair Accessible units (M43)



Block C  
8 x Shared Ownership  
32 x Private



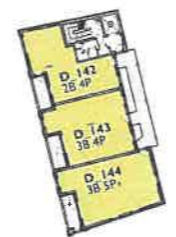
Block D  
15 x London Affordable Rent



Second Floor



Third Floor

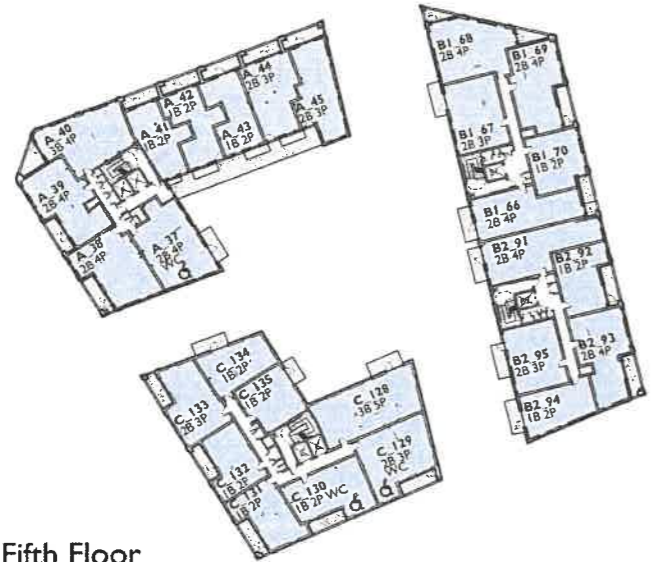


Fourth Floor

AAH

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*[Handwritten signature]*



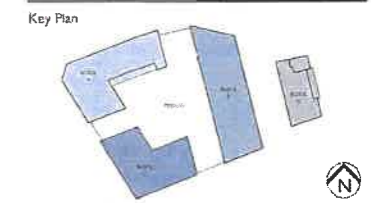
Fifth Floor



Roof

Rev	Date	Description	By	Chkd
P4	29.03.24	Updated to reflect changes to DoV	BS	AM
P3	13.04.22	Updated to reflect NMA 150 unit scheme	CA	AM
P2	24.09.21	Envelope Tender Package	CA	AM
P1	22.04.21	Plot types and tenures addcd	CA	AM
P0	04.02.21	First issued	CA	AM

**RM\_A**  
 Clearwater Yard  
 35 Inverness Street, London, NW1 7HB  
 020 7284 1414, rmaarchitects.co.uk



Project  
**HEPSCOTT / ROTHBURY ROAD, E9 5HH**  
 RMA Project Reference: 2060

Client  
**Taylor Wimpey**

Scale	Date	By	Checked
1:500	FEB 2021	CA	AM

Drawing Title  
**Sitewide Stacker Plan  
 Plot Numbering, Type  
 and Tenure**

Purpose of Issue  
**PLANNING**

File Identifier:  
 21636-RMA-ZZ-00-0500

Status	Revision
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**Annexure 2**  
**Schedule 2 – Viability Review**



## SCHEDULE 2 - VIABILITY REVIEW

### 1. DEFINITIONS

#### **"Actual Build Costs"**

means the actual build costs comprising demolition, construction and external works of the Development incurred at the relevant Review Date supported by evidence of these costs to the LPA's reasonable satisfaction including but not limited to:-

- (a) details of payments made or agreed to be paid in the relevant building contract
- (b) receipted invoices and
- (c) costs certified by the Developer's quality surveyor, costs consultant or agent

and building costs excludes all internal costs of the Developer (but for the avoidance of doubt does not exclude any internal costs of any contractor for the Development) including but not limited to:-

- (a) project management costs
- (b) overheads and administration expenses and
- (c) professional, finance, legal and marketing costs

to be assessed by the LPA

#### **"Additional Affordable Housing Scheme"**

means a scheme prepared in accordance with the provisions of this Schedule if a Development Break Review concludes that Additional Affordable Housing is capable of being provided within the Development and which:-

- (a) confirms which previously intended Private Residential Units are to be converted into Additional Affordable Housing Units
- (b) shows the location, size and internal layout of each Additional Affordable Housing Unit with reference to plans and drawings approved as part of the Planning Application
- (c) provides an indicative timetable for construction and delivery of the Additional Affordable Housing Units and
- (d) identifies any Partial Unit Contribution

#### **"Additional Affordable Housing"**

means Affordable Housing to be provided as part of the Development in addition to the Baseline Affordable Housing Units pursuant to the terms of this Schedule and which shall be subject to the Affordable Housing Cap

#### **"Affordable Housing Cap"**

means 50 percent of the Residential Units provided as Affordable Housing Units in a 60% (Affordable Rented Housing/Social Rented Housing) 40% (Intermediate Housing) tenure split

<b>"Amended Application Stage Build Costs"</b>	means £55,850,000
<b>"Amended Application Stage GDV"</b>	means £78,570,454
<b>"Application Stage Build Costs"</b>	means £55,850,000
<b>"Application Stage GDV"</b>	means £72,997,630
<b>"Average Affordable Housing Values"</b>	means the average value of Affordable Housing Unit floorspace per square metre within the Development at the Review Date based on the relevant information provided to establish the Review Stage GDV and the Estimated GDV to be assessed by the LPA PROVIDED THAT where any disposal or any other relevant transaction relevant to such average value has taken place at a Non Open Market Value then the value of such disposal or other such relevant transaction shall be disregarded and substituted by a value equivalent to that which would have been generated if the disposal other such relevant transaction had been at Open Market Value and/or involving a purchaser or related party not connected to the vendor and/or not at Non Open Market Value even if a lesser value has actually been generated by any such disposal or such other relevant transaction which has taken place at Non Open Market Value
<b>"Average Private Residential Values"</b>	means the average value of Private Residential Unit floorspace per square metre within the Development at the relevant Review Date based on the relevant information provided to establish the Review Stage GDV and Estimated GDV to be assessed by the LPA PROVIDED THAT where any disposal or any other relevant transaction relevant to such average value has taken place at a Non Open Market Value then the value of such disposal or other such relevant transaction shall be disregarded and substituted by a value equivalent to that which would have been generated if the disposal other such relevant transaction had been at Open Market Value and/or involving a purchaser or related party not connected to the vendor and/or not at Non Open Market Value even if a lesser value has actually been generated by any such disposal or such other relevant transaction which has taken place at Non Open Market Value
<b>"Build Costs"</b>	<p>means the build costs comprising construction of the Development supported by evidence of these costs to the LPA's reasonable satisfaction including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) details of payments made or agreed to be paid in the relevant building contract;</li> <li>(b) receipted invoices;</li> <li>(c) costs certified by the Developer's quantity surveyor, costs consultant or agent</li> </ul> <p>but for the avoidance of doubt build costs exclude:</p> <ul style="list-style-type: none"> <li>(i) professional, finance, legal and marketing costs;</li> </ul>

	(ii)	all internal costs of the Developer including but not limited to project management costs, overheads and administration expenses; and
	(iii)	any costs arising from Fraudulent Transactions
<b>"Component(s) of Development"</b>		means a part of the Development including but not limited to:-
	(a)	Private Residential Unit
	(b)	Affordable Housing Unit
	(c)	Workspace
	(d)	any other floorspace
	(e)	property
	(f)	land and
	(g)	any other component at the Development
<b>"Development Break Review Submission"</b>		means the following information to be submitted by the Developer to the LPA on an open book basis:-
	(a)	the applicable Development Viability Information
	(b)	a written statement that applies the applicable Development Viability Information to Formula 1 and Formula 2 thereby confirming whether in the Developer's view any Additional Affordable Housing can be provided and
	(c)	where such written statement confirms that Additional Affordable Housing can be provided, an Additional Affordable Housing Scheme
<b>"Development Break Review"</b>		means the upwards only review of the financial viability of the Development at the Planned Resumption Date applying Formula 1 and Formula 2 to, in accordance with the provisions of this Agreement, determine whether Additional Affordable Housing can be provided as part of the Development
<b>"Development Break"</b>		means a continuous period of 12 months or more after the Substantial Implementation Long Stop Date in which no material construction works take place to materially progress the Development
<b>"Development Viability Information"</b>		means the following information:-
		In relation to Formula 1 and Formula 2:
	(a)	Review Stage GDV
	(b)	Estimated GDV
	(c)	Average Private Residential Values

- (d) Average Affordable Housing Values
- (e) Actual Build Costs and
- (f) Estimated Build Costs

In relation to Formula 3:

- (a) the Late Stage Review Actual GDV;
- (b) the Late Stage Review Actual Build Costs;
- (c) the Late Stage Review Estimated GDV; and
- (d) the Late Stage Review Estimated Build Costs

In relation to Formula 4:

- (a) Average Private Residential Values; and
- (b) Affordable Housing Values

AND including in each case supporting evidence to the LPA's reasonable satisfaction

**"Disposal"**

means:

- (a) the Sale of a Component(s) of the Development;
- (b) the grant of a lease of a term of more than 7 and less than 125 years of a Component of the Development;
- (c) the grant of an assured shorthold tenancy agreement or a short term let in respect of a Component of the Development

and always excluding Fraudulent Transactions and "Dispose" and "Disposed" shall be construed accordingly.

**"Estimated Build Costs"**

means the estimated build costs of the Development remaining to be incurred at the relevant Review Date based on agreed building contracts or estimates provided by the Developer's quantity surveyor or costs consultant including construction and external works and which take into account and are in accordance with the Actual Build Costs to be assessed by the LPA

**"Estimated GDV"**

means the estimated Open Market Value of all the remaining Components of the Development not disposed of at the relevant Review Date based on the relevant information used to assess the Review Stage GDV together with detailed comparable market evidence and taking into account Public Subsidy and Development related income from any other sources to be assessed by the LPA

**"Formula 1"**

means the following formula to be applied at any Development Break Review for determining surplus profit available for Additional Affordable Housing:-

X = Surplus profit available for Additional Affordable Housing

$$X = (A - B) - (C - D) - P$$

A = Updated GDV (£)

B = Application Stage GDV (£)

C = Updated Build Costs (£)

D = Application Stage Build Costs (£)

P = (A - B) \* Y; Developer profit on change in GDV (£)

Y = Target Return (%)

**"Formula 2"**

means the following formula for determining the amount of Additional Affordable Housing where the application of Formula 1 identifies a surplus profit:-

X = Additional Affordable Rented Housing requirement (Habitable Rooms)

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

Y = Additional Intermediate Housing requirement (Habitable Rooms)

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

A = Average value of market housing per m<sup>2</sup> (£)

B = Average value of Affordable Rented Housing per m<sup>2</sup> (£)

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

D = Average Habitable Room size for Development (m<sup>2</sup>)

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

F = 60%

G = 40%

**"Formula 3"**

means the following formula for determining surplus profit available for Additional Affordable Housing to be applied at the Late Stage Review:-

X = Late Stage Review Contribution

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

Where:

A = Late Stage Review Actual GDV (£)

B = Late Stage Review Estimated GDV (£)

C =

- Amended Application Stage GDV (£) where paragraph

3.1A of Schedule 1 applies; or

- Application Stage GDV (£) where paragraph 3.1B of Schedule 1 applies

D = Late Stage Review Actual Build Costs (£)

E = Late Stage Review Estimated Build Costs (£)

F =

- Amended Application Stage Build Costs (£) where paragraph 3.1A of Schedule 1 applies; or
- Application Stage Build Costs (£) where paragraph 3.1B of Schedule 1 applies

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

J = Deficit of £9,230,000

Y = Target Return (%)

**“Formula 4”**

means the following formula for determining the maximum Late Stage Review Contribution where the application of Formula 3 at the Late Stage Review identifies a surplus profit:

X = Maximum Late Stage Review Contribution

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

A = Average Open Market Housing Value (£ per sq m)

B = Average London Affordable Rented Housing Value (£ per sq m)

C = Average Intermediate Housing Value (£ per sq m)

D = Average Habitable Room size for the Development

E = 68 Habitable Rooms, where paragraph 3.1A of Schedule 1 applies; or

the number of Habitable Rooms provided pursuant to this Agreement where paragraph 3.1B of Schedule 1 applies;

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

F = 62 Habitable Rooms, where paragraph 3.1A of Schedule 1 applies; or

the number of Habitable Rooms, where paragraph 3.1B of Schedule 1 applies

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

Split.

**"Fraudulent Transactions"**

means:

- (a) a transaction the purpose of which is to artificially reduce the Late Stage Review Actual GDV and/or artificially increase the Late Stage Review Actual Build Costs; or
- (b) Disposal that is not an arm's length third party bona fide transaction

**"Habitable Room"**

means any room within a Residential Unit the primary use of which is for living, sleeping or dining and which expressly includes kitchens of not less than 13 square metres, living rooms, dining rooms and bedrooms but expressly excludes kitchens with a floor area of less than 13 square metres, bathrooms, toilets, corridors and halls

**"Late Stage Review"**

means the upwards only review of the financial viability of the Development at the Late Stage Review Date applying Formula 3 in accordance with the provisions of this Agreement, to determine whether a Late Stage Review Contribution is payable and which shall be subject to the Affordable Housing Cap being the Maximum Later Stage Review Contribution calculated in accordance with Formula 4

**"Late Stage Review Actual Build Costs"**

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

**"Late Stage Review Actual GDV"**

means the sum of:

- (a) the value of all gross receipts from any Sale of a Component of the Development prior to the Late Stage Review Date;
- (b) the Open Market Value of any Component of the Development that has been otherwise Disposed prior to the Late Stage Review Date but not Sold; and
- (c) all Public Subsidy and any Development related income from any other sources to be assessed by the Council excluding any Public Subsidy repaid by the Developer to the Council and/or the GLA (as applicable)

in respect of which the supporting evidence to be submitted as part of the Development Viability Information shall include documentary evidence of all gross receipts under (a) and evidence of rental values achieved for different Components of the Development under (b)

**"Late Stage Review Contribution"**

means a financial contribution for the provision of off-site Affordable Housing in the LPA's administrative area the precise value of which shall be calculated in accordance with Formula 3 and which shall be subject to the Affordable Housing Cap being the Maximum Later Stage Review Contribution calculated in accordance with Formula 4

<b>"Late Stage Review Date"</b>	means the date at which 75% of the Private Residential Units are sold
<b>"Late Stage Review Estimated Build Costs"</b>	means the estimated Build Costs remaining to be incurred at the Late Stage Review Date
<b>"Late Stage Review Estimated GDV"</b>	means the estimated Open Market Value at the Late Stage Review Date of all remaining Components of the Development that are yet to be Disposed based on detailed comparable evidence
<b>"Late Stage Review Submission"</b>	<p>means the following information to be submitted by the Developer to the LPA on an open book basis:-</p> <ul style="list-style-type: none"> <li>(a) the Development Viability Information;</li> <li>(b) a written statement that applies the applicable Development Viability Information to Formula 3 and Formula 4 (PROVIDED ALWAYS THAT if the result produced by Formula 3 is less than zero it shall be deemed to be zero) thereby confirming whether in the Developer's view a Late Stage Review Contribution is payable;</li> </ul> <p>where such written submission confirms that a Late Stage Review Contribution is payable, the amount of such Late Stage Review Contribution (taking account of the Affordable Housing Cap)</p>
<b>"Memorandum"</b>	means a memorandum made in accordance with paragraph 7 of this Schedule
<b>"Non Open Market Value"</b>	<p>means a value below the Open Market Value, for example due to a disposal or other related transaction:-</p> <ul style="list-style-type: none"> <li>(a) to a purchaser who is connected in any way to the vendor grantor transferor or lessor including (but not confined to) the definition in section 839 of the Income and Corporation Taxes Act 1988</li> <li>(b) which is not an arm's length true value purchase on the usual terms as between a willing vendor grantor transferor or lessor and a willing purchaser and/or</li> <li>(c) where a transaction artificially reduces the value of a Private Residential Unit or Affordable Housing Unit which may include without limitation the following types of transaction:- <ul style="list-style-type: none"> <li>(i) transactions between the Developer and subsidiary companies of the Developer</li> <li>(ii) transactions between the Developer and its employees</li> <li>(iii) transactions involving loans from the Developer</li> <li>(iv) transactions involving other forms of deferred</li> </ul> </li> </ul>



consideration

- (v) transactions involving finance deals but excluding bulk sales of more than one unit as explained further below
- (vi) transactions involving other property not comprised in the Development
- (vii) any transfer or transaction designed to reduce the revenue received from the disposal of the Private Residential Units or Affordable Housing Units;
- (viii) transactions involving renting or granting of a licence to occupy a Private Residential Unit (including for example as private rented sector dwellings or other models)

Provided always that where bulk sales of more than one units are concluded in the ordinary course of business it shall be taken into account that such units are comprised in a bulk sale and that discounts are commonly agreed in bulk sale transactions and they shall not be treated as Non Open Market Value simply by virtue of the individual unit price being lower than if a comparable unit had been sold individually outside of a bulk sale transaction.

**"Open Market Value"**

means the best price at which the disposal being sale or lease or other form of disposal as the case may be and all leasehold interests in the development shall be for a term of not less than 125 years (unless a shorter terms of years has been agreed prior in writing with the LPA) and such relevant interest (which may comprise one or more units) which would have been completed unconditionally for cash consideration at the valuation date at the time of the disposal assuming:-

- (a) the price at which a property will sell or be let in the open market as between a willing purchaser and willing seller OR willing lessor or willing lessees (as the case may be) acting at arm's length
- (b) that prior to the date of valuation (which is to be carried out in accordance with the RICS Valuation Standards) there has been a reasonable period of not less than six months for the marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale and
- (c) where each party has acted knowledgeably prudently and without compulsion

AND excluding Non Open Market Value

**"Partial Unit Contribution"**

means a financial contribution towards Affordable Housing in the LPA's administrative area payable where a Development Break Review identifies a surplus profit but such surplus is insufficient to provide any Additional Affordable Housing Units or cannot deliver a complete number of Additional Affordable Housing

	Units pursuant to Formula 2 (such contribution to be calculated using the floorspace values of the incomplete unit pursuant to Formula 2)
<b>"Planned Resumption Date"</b>	means the anticipated date for resuming the Development following a Development Break
<b>"Public Subsidy"</b>	means any funding from the LPA and the Greater London Authority together with any additional public subsidy secured by the Developer to support the delivery of the Development
<b>"Review Date"</b>	means any and all of the Planned Resumption Date and the Late Stage Review Date
<b>"Review Stage GDV"</b>	means the:- <ul style="list-style-type: none"> <li>(a) value of all gross receipts from any disposal (whether freehold or long leasehold) of a Component of the Development prior to the relevant Review Date and</li> <li>(b) Open Market Value of any Component of the Development that is the subject of an assured shorthold tenancy agreement or any short term let</li> </ul> AND which takes account of Public Subsidy and any Development related income from any other sources to be assessed by the LPA
<b>"RICS Valuation Standards"</b>	means the Royal Institution of Chartered Surveyors Valuation Standards – UK Standards (January 2014) and Global Standards (July 2017) or any successor documents that may be subsequently published
<b>"Sale"</b>	means: <ul style="list-style-type: none"> <li>(a) the sale of a Component(s) of the Development;</li> <li>(b) the grant of a lease of a term of more than 7 but less than 125 years of a Component of the Development,</li> </ul> and "Sold" shall be construed accordingly
<b>"Substantial Implementation Long Stop Date"</b>	means the date 12 months from the date of the Second Deed of Variation
<b>"Target Return"</b>	means the developer profit on Application Stage GDV of 20% on Private Residential Units, 15% on Workspace and 6% on Affordable Housing Units to be assessed on the relevant Review Date
<b>"Updated Build Costs"</b>	means the sum of:- <ul style="list-style-type: none"> <li>(a) Actual Build Costs and</li> <li>(b) Estimated Build Costs;</li> </ul>
<b>"Updated GDV"</b>	means the sum of:- <ul style="list-style-type: none"> <li>(a) Estimated GDV and</li> </ul>

(b) Review Stage GDV

<b>"Viability Review Submissions"</b>	means any and all of, the Development Break Review Submission and the Late Stage Review Submission
<b>"Viability Reviews"</b>	means any and all of the Development Break Review and the Late Stage Review Submission
<b>"Viability Specialist"</b>	means a person or body appointed in accordance with the Schedule who is suitably qualified to advise on viability matters having at least ten years relevant experience

**2. ESTABLISHING SUBSTANTIAL IMPLEMENTATION**

- 2.1 The Developer shall notify the LPA in writing of Substantial Implementation and such notice shall be accompanied by full documentary evidence on an open book basis to enable the LPA to independently assess whether Substantial Implementation has occurred and, if so, when Substantial Implementation occurred.
- 2.2 The Developer shall afford the LPA (and their agents) access to the parts of the Site comprised within the Developer's interests or sufficient control to inspect and assess whether or not any work has been undertaken and whether any work which has been undertaken amounts to Substantial Implementation PROVIDED ALWAYS THAT:-
- 2.2.1 the LPA shall provide the Developer with reasonable written notice of not less than 7 days of its intention to carry out such inspection;
- 2.2.2 the LPA and their agents shall comply fully with the Developer's site rules and regulations applicable as at the time of access throughout the duration of such inspection and with health and safety legislation, policy and best practice; and
- 2.2.3 the LPA and their agents or representatives shall at all times be accompanied by the Developer or its agent or representative.
- 2.3 The LPA shall inspect the parts of the Site comprised within the Developer's interests within 20 Working Days of receiving notice pursuant to paragraph 2.1 and thereafter provide written confirmation to the Developer within 20 Working Days of the inspection date as to whether or not the LPA considers that the works undertaken amount to Substantial Implementation.
- 2.4 Any dispute between the parties concerning whether or not Substantial Implementation has occurred or any failure by the LPA to comply with paragraph 2.3 above may be referred to dispute resolution in accordance with the provisions of Clause 10 of this Agreement.

**3. DEVELOPMENT BREAK REVIEW**

- 3.1 The Developer shall notify the LPA in writing of a Development Break, and shall respond in writing to any written request from the LPA to confirm whether a Development Break has occurred.
- 3.2 Where a Development Break occurs the Developer shall:-
- 3.2.1 not resume the carrying out of the Development (and shall not permit or suffer such resumption) unless and until a Development Break Review has been undertaken and agreed between the Parties or determined by the Viability Specialist in accordance with the relevant provisions of this Schedule;
- 3.2.2 notify the LPA in writing of the Planned Resumption Date, and subsequently advise the LPA in writing of any change to the Planned Resumption Date; and
- 3.2.3 submit the Development Break Review Submission to the LPA prior to but not more than 40 Working Days before the Planned Resumption Date.

4. **LATE STAGE REVIEW**

- 4.1 The Developer shall notify the LPA in writing within 5 Working Days of the occurrence of the Late Stage Review Date.
- 4.2 Not more than 75% of the Private Residential Units shall be Occupied unless and until the Late Stage Review has been undertaken and agreed between the Developer and the LPA or determined by the Expert in accordance with the relevant provisions of this Schedule and Clause 10 but where in the case of any conflict, this Schedule shall prevail.
- 4.3 The Developer shall submit the Late Stage Review Submission to the LPA within 20 Working Days of the Late Stage Review Date.

5. **VIABILITY REVIEWS**

- 5.1 The Developer shall give the LPA not less than 10 Working Days' advance written notice of the date on which any Viability Review Submission is intended to be submitted, and no Viability Review Submission shall be submitted until 10 Working Days following the giving of such advance written notice.
- 5.2 The LPA shall be entitled to instruct external surveyors to act on its behalf to review and assess Viability Review Submissions and undertake the Viability Reviews and the LPA shall be entitled to recover from the Developer:-

5.2.1 its reasonable and properly incurred internal costs (including officer time); and

5.2.2 its reasonable and properly incurred external surveying and legal costs,

incurred in reviewing and assessing Viability Review Submissions and undertaking the Viability Reviews and the Developer will pay such costs within 20 Working Days of receipt of a written request for payment.

- 5.3 Upon receipt of a Viability Review Submission:-

5.3.1 in the event that the LPA requires further information or supporting evidence then the Developer shall provide any reasonably required information to the LPA within 10 Working Days of receiving the relevant request and this process may be repeated until the LPA (as applicable) has all the information it reasonably requires;

5.3.2 the LPA shall confirm in writing to the Developer when it has received a valid and complete Viability Review Submission ("**Validation Date**") but such confirmation shall not amount to agreement of any of the matters contained in the Viability Review Submission nor preclude the LPA from seeking further relevant information during the course of negotiations pursuant to this paragraph 5.3 PROVIDED THAT seeking further relevant information shall not be a reason for delaying the Viability Review if it can be progressed or for completing any other process required by this paragraph if it can be completed without the information requested;

5.3.3 for a period not exceeding 30 Working Days commencing on the Validation Date (unless otherwise agreed between the LPA and the Developer in writing), the Developer and the LPA both acting reasonably and in good faith may review and seek to reach an agreed position on the matters set out in the Viability Review Submission and where agreed between the parties this may result in revisions to the Viability Review Submission;

- 5.3.4 within 40 Working Days of the Validation Date, the LPA shall confirm in writing that either:-
- (a) it rejects (with reasons) the conclusions of the Viability Review Submission ("**Non Acceptance Notice**");
  - (b) it accepts the conclusions of the Viability Review Submission and confirms that there is no surplus to apply towards the provision of Additional Affordable Housing; or
  - (c) it accepts the conclusions of the Viability Review Submission ("**Acceptance Notice**") and in the case of a Development Break Review only the Additional Affordable Housing Scheme shall thereafter be agreed by way of a completed Memorandum pursuant to paragraph 7 below.
- 5.4 In the event that pursuant to paragraph 5.3 above, the Developer and the LPA have not agreed the Viability Review Submission either Party shall be entitled to refer the matter to a Viability Specialist (whose identity shall be agreed between the Developer and the LPA) for determination by notifying the other Party in writing within 10 Working Days of the Non Acceptance Notice of their intention to refer the matter to a Viability Specialist and identifying a Viability Specialist for approval by the other Party ("**Viability Specialist Notice**").
- 5.5 The Viability Specialist shall be appointed jointly by the Developer and the LPA within 20 Working Days of the date of the Viability Specialist Notice (unless otherwise agreed between the LPA and the Developer) or in the event that paragraph 5.6 applies within 20 Working Days of the nomination by the Royal Institute of Chartered Surveyors) and the date the matter is referred shall be referred hereafter as the "**Referral Date**".
- 5.6 In the event that the Developer and the LPA are unable to agree the identity of the Viability Specialist within 10 Working Days of the Viability Specialist Notice then either Party may request the Royal Institute of Chartered Surveyors to nominate a Viability Specialist.
- 5.7 Unless otherwise agreed between the LPA and the Developer or required by the Viability Specialist each shall within a further period of 10 Working Days from the Referral Date submit its evidence and representations to the Viability Specialist in respect of the Viability Review Submission.
- 5.8 In addition to the matters specified in paragraph 5.7, in making his determination the Viability Specialist shall have regard to:-
- 5.8.1 all relevant material submitted to him or her by the LPA and the Developer;
  - 5.8.2 such relevant financial, legal, planning or other matters he or she considers relevant using reasonable care and skill and his professional expertise; and
  - 5.8.3 the provisions of this Agreement and this Schedule, in particular but without prejudice to the generality of the provisions relating to Affordable Housing.
- 5.9 Unless otherwise agreed by the LPA and the Developer or notified to them by the Viability Specialist the Viability Specialist shall be appointed on the basis that, if the Viability Specialist determines that there is surplus profit to apply towards the provision of Additional Affordable Housing, his or her decision shall include an Additional Affordable Housing Scheme (the "**Decision**") which the LPA and the Developer shall thereafter incorporate in a completed Memorandum in accordance with paragraph 7 below.

6. **DELIVERY OF ANY ADDITIONAL AFFORDABLE HOUSING AND PAYMENT OF LATE STAGE REVIEW CONTRIBUTION**

6.1 Where it is agreed or determined pursuant to a Development Break Review that Additional Affordable Housing is required to be provided the Developer shall prior to Occupation of more than 85% of the Private Residential Units:-

6.1.1 make any reasonable amendments to the Development required to accommodate such Additional Affordable Housing and seek any reasonable necessary variations to the Planning Permission and/or details approved pursuant to any conditions imposed thereon;

6.1.2 provide such Additional Affordable Housing in accordance with the Additional Affordable Housing Scheme approved by the LPA or determined by the Viability Specialist and make it available for Occupation; and

6.1.3 pay any Partial Unit Contribution to the LPA in accordance with the Additional Affordable Housing Scheme approved by the LPA or determined by the Viability Specialist.

6.2 The Developer shall not Occupy more than 85% of the Private Dwellings unless and until:-

6.2.1 the requirements of paragraph 6.1 have been satisfied and full and satisfactory evidence of the same has been provided to the LPA; and

6.2.2 any Partial Unit Contribution identified in the Additional Affordable Housing Scheme has been fully paid to the LPA in cleared funds.

6.3 Where it is agreed or determined pursuant to the Late Stage Viability Review that a Late Stage Review Contribution is required:

6.3.1 the Developer shall pay the Late Stage Review Contribution to the LPA within 10 (ten) Working Days of such agreement or determination; and

6.3.2 the Developer shall not Occupy more than 90% (ninety per cent) of the Private Residential Units until the Late Stage Review Contribution has been paid in full to the LPA.

7. **MEMORANDUM**

7.1 Within 15 (fifteen) Working Days of the Acceptance Notice (or the Viability Specialist determining an Additional Affordable Housing Scheme), the Developer and the LPA shall record the Additional Affordable Housing Scheme by completing a Memorandum by each of the LPA and the Developer signing the same (acting by authorised signatories).

7.2 The LPA and the Developer agree that upon completion of a Memorandum, to endorse each engrossed copy of this Agreement with the insertion of the following:-

*"The Parties have agreed the details of the Additional Affordable Housing Scheme by way of a signed Memorandum between the LPA and the Developer dated 20 ".*

7.3 Upon completion of a Memorandum, this Agreement shall be construed such that in the case of Additional Affordable Housing Units being provided:-

7.3.1 the number of Additional Affordable Housing Units shall be included within the definition of Affordable Housing Units;

7.3.2 the number of Private Residential Units shall be reduced by the corresponding number of Additional Affordable Housing Units; and

7.3.3 the obligations in Schedule 1 shall apply to the Additional Affordable Housing to be provided within the Development and shall be construed such that any reference to "**Affordable Housing Units**" shall include the corresponding number of "Additional Affordable Housing" Units to be provided within the Development.

**8. PUBLIC SUBSIDY**

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

**9. MONITORING**

9.1 The Parties acknowledge and agree that as soon as reasonably practicable following completion of this Deed the LPA shall report to the GLA through the London Development Database (or its successor database) the number and tenure of the Baseline Affordable Housing Units by units and Habitable Room.

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

9.2.1 the approval or determination of an Additional Affordable Housing Scheme pursuant to paragraphs 3 and 4 or, if an Additional Affordable Housing Scheme is not required by the LPA, the conclusion of the assessment under paragraphs 3 and 4; and

9.2.2 it being agreed or determined pursuant paragraph 5 that a Late Stage Review Contribution is required,

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

9.3.1 the number and tenure of the Additional Affordable Housing Units by unit numbers and Habitable Room (if any);

9.3.2 any changes in the tenure or affordability of the Affordable Housing Units by unit numbers and Habitable Room;

9.3.3 the amount of any Partial Unit Contribution payable towards offsite Affordable Housing; and

9.3.4 the amount of any Late Stage Review Contribution.