

DATED 22nd March **2019**

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF LEWISHAM (1)**

- and -

CATFORD HOMES LIMITED (2)

AGREEMENT

under Section 106 of the Town & Country Planning Act 1990
relating Catford Timberyard, 161 Rushey Green, London, SE6 4BD

Kath Nicholson
Head of Law
London Borough of Lewisham
Town Hall
Catford
London SE6 4RU

Legal Ref: 87114/KZC
Planning App: DC/17/103748
PINS Appeal Ref: APP/C5690/W/18/3207059

This DEED is made the 22nd day of March 2019
BETWEEN

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM** of Town Hall Catford London SE6 4RU ("the Council")

(2) **CATFORD HOMES LIMITED** (Co. Regn. No. 09886685) of 5 Technology Park, Colindeep Lane, Colindale, London, United Kingdom, NW9 6BX ("the Owner")

together "the Parties"

WHEREAS

- (1) The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated.
- (2) The Owner is registered with title absolute to the Land which is registered at the Land Registry under Title Number LN62363.
- (3) The Council by a decision notice dated 16 January 2018 refused to grant planning permission for the Application.
- (4) The Owner appealed the decision to refuse planning permission to the Secretary of State pursuant to section 78 of the Act. The Appeal has been given reference APP/C5690/W/18/3207059 by the Planning Inspectorate and will heard by way of a public inquiry commencing on 19 March 2019.
- (5) The Council is a local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974 ("the 1974 Act") and for the purpose of Section 1 of the Localism Act 2011 ("the 2011 Act") and is further a local highway authority for the purposes of the Highways Act 1980 ("the 1980 Act").

- (6) The Council and the Owner have agreed to enter into this Deed for the purpose of securing the performance of the obligations set out in this Deed.

Interpretation

1. Except where the context requires otherwise this Deed shall be interpreted in accordance with Schedule 1.

Statutory Provisions

2. The obligations on the Parties created by this Deed are planning obligations for the purposes of Section 106 of the Act and in so far as they fall within the terms of the said Section 106 are enforceable by the Council pursuant to the said Section 106 and in so far as any obligation in this Deed falls outside of the scope of Section 106 of the 1990 Act they are entered into and are enforceable pursuant to Section 16 of the 1974 Act and/or Section 111 of the Local Government Act 1972 and/or Section 1 of the 2011 Act and/or Section 278 of the 1980 Act.

Enforcing Authority

3. The Council is the local planning and highways authority by whom the obligations in this Deed are enforceable.

Coming into Effect

4. This Deed will take effect on the today's date, save for Clause 6 which shall take effect on the Commencement Date except in relation to any covenants and obligations in this Deed expressed to require compliance before Commencement of Development.

Effect of this Agreement

- 5.1 This Deed shall (subject to paragraph 10 of Schedule 5 and clauses 4 5.2 and 5.3) bind the Parties hereto and the Owner's successors in title to each and every part of the Land and assigns but no person shall be

- liable for any breach of the covenants, restrictions or obligations contained in this Deed occurring after they have parted with their interest in the Land or the part in respect of which such breach occurs except in respect of any prior or subsisting breach of covenant under the terms of this Deed.
- 5.2 This Deed shall not bind any statutory undertaker or other person who acquires any part of the Land or interest therein for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.
- 5.3 No mortgagee or chargee shall be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the mortgagee or chargee is in possession of all or any part of the Land.
- 5.4 This Deed shall not bind any bona fide individual owners or occupiers of individual Residential Units (save for Schedule 2 and paragraph 5 of Schedule 5) or bona fide occupiers or tenants of the Non-Residential Floorspace
- 5.4 The requirement to observe and perform the obligations contained in this Deed is conditional upon the Inspector or Secretary of State concluding that the obligation or requirement meets the statutory requirements of the Community Infrastructure Regulations 2010 (as amended) and with particular reference to regulation 122 that any such obligation is necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development and, if in determining the Appeal, the Secretary of State or the Inspector expressly states in his/her decision letter that any individual obligation within this Deed does not comply with regulation 122 of the Community Infrastructure Regulations 2010 that/those obligations(s) will be irrevocably removed from this Deed and shall cease to have effect immediately.

The Owner's Covenants

6. In respect of the Land, the Owner hereby covenants with the Council as follows:-

- 6.1 to comply with the obligations given by the Owner set out in Schedules 2 to 7 inclusive;
- 6.2 to give the Council written notice of the anticipated date on which Commencement of Development is expected to occur at least 5 Working Days prior to its anticipated occurrence;
- 6.3 prior to Commencement of Development to inform the Council in writing of the name and contact details of the person charged with ensuring compliance with this Deed and keep the Council informed of any changes to those details;
- 6.4 to give the Council written notice within 5 Working Days of any change in ownership of any of its interests in the Land before the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land purchased by reference to a plan SAVE THAT this provision shall not apply (i) to any bona fide disposal of an individual Residential Unit and (ii) to any disposal to a bona fide tenant/occupier of the Non-Residential Floorspace and (iii) any disposal to a statutory undertaker.

The Council's Covenants

7. The Council hereby covenants with the Owner as follows to comply with the obligations given by the Council set out in Schedules 2 to 8 inclusive in this Deed.

Termination

8. This Deed will determine and cease to have effect if the Planning Permission:

- 8.1 is quashed revoked or otherwise withdrawn at any time;
- 8.2 expires without having been implemented;
- 8.3 is superseded by another planning permission (unless in the case of this clause 8.3 the Council and Owner agree otherwise);
- 8.4 the Appeal is dismissed.

Invalidity

- 9. If any provision of this Deed shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provisions shall not affect the other provisions of this Deed and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect and the parties hereunto agree to take all reasonable steps to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves as far as reasonably practicable the legal social and environmental objectives of the invalid or unenforceable provision.

Notices

- 10. Where under this Deed any consent, approval or application for the same is required to be sought or details, request or notice is required to be given:
 - 10.1 the consent, approval or application for the same or details, request or notice shall be in writing and shall be delivered personally or sent by pre-paid first class or recorded delivery post;
 - 10.2 the address for service of any such consent, approval or application for the same or details, request or notice as aforesaid shall:
 - 10.2.1 in the case of the Council in the absence of any indication to the contrary provided for in this Deed be the Head of

Planning Services at London Borough of Lewisham 5th
Floor Laurence House 1 Catford Road London SE6 4SW;

10.2.2 in the case of the Owner be the address aforementioned
or such other address as notified to the Council in writing
from time to time by the Owner;

Dispute Resolution

11. If any dispute or difference shall arise between the Council and the Owner as to the construction or meaning of this Deed or their respective rights duties and obligations under this Deed or as to any matter arising out of or in connection with the subject matter of this Deed then:

11.1 the Council or the Owner may serve the other Party with the Determination Notice;

11.2 the Independent Person shall be appointed by agreement between the Parties or (if within 10 (ten) Working Days after service of the Determination Notice the Parties have been unable to so agree) by such one of the following persons as the Parties shall agree to be appropriate having regard to the nature of the dispute or difference in question:-

11.2.1 the Chairman for the time being of the Bar Council;

11.2.2 the President for the time being of the Royal Institute of British Architects;

11.2.3 the President for the time being of the Royal Institution of Chartered Surveyors;

11.2.4 the President for the time being of the Institution of Chartered Arbitrators;

11.2.5 the President for the time being of the Institute of Chartered Accountants in England and Wales;

- 11.2.6 the President for the time being of the Law Society;
- 11.2.7 the President for the time being of the Institution of Civil Engineers; or
- 11.2.8 (in each such case) the duly appointed deputy of such President or any other person authorised by him or her to make appointments on his or her behalf.

11.3 if within 15 (fifteen) Working Days after service of the Determination Notice the Parties have been unable to agree which of the persons referred to in clause 11.2 is appropriate to appoint the Independent Person then the Independent Person shall be appointed on the application of any of the Parties by the President for the time being of the Law Society or his or her duly appointed deputy or any other person authorised by him or her to make appointments on his or her behalf;

11.4 The Independent Person is to act as an independent expert and not arbitrator and:

11.4.1 each Party may make written representations within 10 Working Days of his/her appointment and will copy the written representations to the other party;

11.4.2 each Party is to have a further 10 Working Days to make written comments on the other's representations and will copy the written comments to the other party;

11.4.3 the Independent Person is to be at liberty to call for such written evidence from the Parties and to seek such legal or other expert assistance as he or she may reasonably require;

11.4.4 the Independent Person is not to take oral representations from the parties without giving both Parties the opportunity to be present and to give evidence and to cross-examine each other;

11.4.5 the Independent Person is to have regard to all representations and evidence before him/her when making his/her decision, which is to be in writing, and is to give reasons for his/her decision; and

11.4.6 the Independent Person is to use all reasonable endeavours to publish his/her decision within 30 Working Days of his/her appointment;

11.4.7 the Independent Person's decision shall be final and binding upon the Parties (except in the case of manifest error or fraud); and

11.4.8 the costs of the Independent Person shall be borne equally by the Parties to the dispute or in such other proportions as the Independent Person may direct and if one Party shall pay more than their due share, they may recover the excess from the other as a debt.

11.5 In relation to matters arising in connection with Schedule 6, if the Independent Person determines that Additional Affordable Housing Units or a Completion Surplus Payment requirement is triggered, his or her decision shall include a calculation of the quantum of the same.

Rights of Third Parties Exclusion

12. Save in the case of successors in title to and persons deriving title from the Owner (who are bound by this Deed) a person who is not a Party to this Deed will not have any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999. For the avoidance of doubt this will be the case even where the terms are expressed to be for the benefit of another party, nor will any such third party have any rights of approval in regard to or over any future variations to this Deed.

Local Land Charge

13. It is agreed that (subject to clause 4, paragraph 10 of Schedule 5 and clauses 5.2, 5.3 and 5.4) this Deed is intended to be enforceable against any person deriving title from or under the Owner and the Council shall register this Deed in its register of Local Land Charges.

Agreements and Declarations

14. It is hereby agreed and declared as follows:-
- 14.1 nothing in this Deed shall derogate from any of the rights powers and duties of the Council pursuant to any of its statutory functions;
 - 14.2 the failure of the Council at any time to require performance by the other parties of any provisions of this Deed shall in no way affect the right of the Council to require subsequent performance of that provision;
 - 14.3 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

Legal Fees

15. The Owner shall on the date of this Deed pay to the Council the sum of up to £3,000 towards the legal costs included in the preparation and completion of this Deed. For the avoidance of doubt, no VAT is payable on such legal costs.

Monitoring Contribution

16. The Owner and the Council hereby jointly and severally covenant with each other as follows:
- 16.1 the Owner shall pay the Monitoring Contribution to the Council prior to Commencement of Development; and
 - 16.2 the Council shall apply the Monitoring Contribution towards the

costs it incurs in employing the Monitoring Officer.

Variation

17. The terms of this Deed shall be capable of being varied by a deed of variation executed by the Parties (or their successors in title).

Payment of Interest

18. It is hereby agreed and declared that in the event of late payment of any sums due under this Deed the Owner shall pay interest on such sum at the rate of 4% above the base rate from time to time in force of the National Westminster Bank plc from the date such sum falls due to the date of actual payment.

Index Linking

19. Save as otherwise provided all obligations which are a Financial Contribution shall be Index Linked.

Governing Law and Jurisdiction

20. This Deed is governed by and interpreted in accordance with the law of England (as they are applied in England) and the parties submit to the non-exclusive jurisdiction of the courts of England.

Financial Contributions

21. Where sums of money are to be paid to the Council and applied to the costs of certain works, measures or other items then, for the avoidance of doubt, such costs shall be taken to include and may be applied to all reasonable and proper costs and expenses associated with or incidental to the items in question including (but not being limited to) assessment work on the feasibility of works or measures, design fees, professional fees, management and maintenance costs, tendering costs and agreements with third parties (including transport operators and other statutory organisations) and contractors associated with such works measures or other items and the costs of any statutory orders or other

consents required in connection with or associated with such works, measures or other items.

Evidence

22. Where in this Deed the Owner is under an obligation to achieve a stated outcome then within 20 (twenty) Working Days of receipt of a written request made by the Council to the Owner, the Owner shall provide to the Council such written evidence as may be reasonably required by the Council to demonstrate the steps taken by each of them to achieve such outcome.

Approvals

23. Where an Approval is required by the Owner from the Council under the terms of this Deed such Approval must be in writing unless expressly stated otherwise within this Deed and must not be unreasonably withheld or delayed.

IN WITNESS whereof the Parties hereto have hereunto set their hands and seals the day and year first before written

Schedule 1 - Interpretation

1. The following words shall have the following meanings except where the context requires otherwise:-

"Act"	means the Town and Country Planning Act 1990.
"Actual Inputs"	<p>means the following:</p> <p>(a) the actual build costs including demolition, diversion and provision of utilities, any necessary infrastructure and highway works incurred at the Completion Viability Review Date;</p> <p>(b) actual sales values, offices rental values and ground rents which have been achieved at the Completion Viability Review Date;</p> <p>(c) for any Components of the Development which have not yet been Sold, the estimated Market Value of those Components; and</p> <p>(d) any other items which either:</p> <p>(i) are agreed between the Council and the Owner; and/or</p> <p>(ii) have changed since the Appeal Stage Viability Assessment including</p>

	but not limited to additional Community Infrastructure Levy, contributions made pursuant to this Deed and any changes in values and costs for the Development resulting from the Early Stage Review.
"Additional Affordable Housing Scheme"	<p>means a scheme to be prepared by the Owner and submitted to the Council in accordance with Schedule 5 of this Deed detailing the Additional Affordable Housing Units to be provided and which:</p> <ul style="list-style-type: none"> (a) confirms which Open Market Housing Units are to be converted into Additional Affordable Housing Units and to which tenure(s); (b) contains 1:50 plans showing the location, size and internal layout of each Additional Affordable Housing Unit; (c) provides an indicative timetable for construction and delivery of the Additional Affordable Housing Units; and (d) sets out the amount (if any) of any financial contribution also payable towards offsite Affordable Housing if paragraph 4.6 of Schedule 6 applies.
"Additional Affordable Housing Units"	means the Open Market Housing Units to be converted to Affordable Housing pursuant to the Additional Affordable Housing Scheme to be

	approved under paragraph 4 of Schedule 6 of this Deed.
"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market and which housing should (a) meet the needs of eligible purchasers or renters including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and (b) include provision for the home to remain at an affordable price for future eligible purchasers or renters, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.
"Affordable Housing Provider"	means: <ul style="list-style-type: none"> (a) a provider of Affordable Housing registered under section 111 of the Housing and Regeneration Act 2008 (or such other relevant previous or amended or replacement statutory provision); (b) an approved development partner of Homes England (or any successor agency) which is eligible to obtain grant funding; or (c) any other body specialising in the provision of Affordable Housing;

	in each case either nominated or approved by the Council (such approval not to be unreasonably withheld or delayed).
"Affordable Housing Units"	means 24 per cent of the Residential Units within the Development which are to be provided as Affordable Housing in accordance with Schedule 5 and "Affordable Housing Unit" shall be construed accordingly.
"Affordable Rent"	means the sum of the rent element and the Service Charge payable from the date of first Occupation in respect of the relevant Affordable Rent Unit which shall not exceed the lower of 80% of the Market Rent or the Local Housing Allowance Levels SAVE THAT such rent may be increased annually by an amount equal, by percentage, to the change in the Consumer Price Index between the figure published in the September immediately before the rent review and the figure published in the preceding September (plus a maximum of 1% where Affordable Housing Provider can justify this additional increase to the Council's reasonable satisfaction) for the relevant year or such other rental basis as may be agreed by the Council provided that the increase in inflation shall not in any circumstances require a rent which when added to the Service Charge results in a total sum in excess of 80% Market Rent at the time of payment.
"Affordable Rent Unit"	means those Affordable Housing Units let at the Affordable Rent.

"Appeal"	means the appeal lodged with the Secretary of State against the refusal of the planning permission for the Application and assigned APP/C5690/W/18/3207059 as an appeal reference by the Planning Inspectorate.
"Application"	means the application for planning permission made by the Owner dated 22 September 2018 and registered by the Council with reference number DC/17/103748 in respect of the Land.
"Appeal Stage Build Costs"	means £8,714,345 (Eight Million Seven Hundred and Fourteen Thousand Three Hundred and Forty Five Pounds) being the estimated costs of demolition, construction, external works and assumed contingency allowance in respect of the Development as determined by the Appeal Stage Viability Assessment.
"Appeal Stage GDV"	means £14,698,055 (Fourteen Million Six Hundred and Ninety Eight Thousand and Fifty Five Pounds) being the estimated gross development value of the Development established by the Appeal Stage Viability Assessment.
"Appeal Stage Viability Assessment"	means the financial viability assessment carried out by Urban Delivery dated January 2018 who reviewed the Application Stage Viability Appraisal.
"Application Stage Viability Appraisal"	means the viability appraisal undertaken by James R Browne and Co Ltd for the Application and dated 22 September 2017.
"Approval"	means any approval, agreement, consent, authority or expression of satisfaction by a Party

	or duly authorised person acting on their behalf following submission of the relevant plan, document, details, request or any other matter by another Party under the terms of this Deed and "Approve" shall be construed accordingly.
"Average Affordable Rent Unit Value"	means the average value of Affordable Rent Unit floorspace per square metre comprised in the Development at the Early Stage Review Date based on the relevant information provided to establish the Early Stage Review GDV and to be assessed by the Council and the Owner.
"Average Open Market Housing Value"	means the average value of Open Market Housing Unit floorspace per square metre comprised in the Development at the Early Stage Review Date based on the relevant information provided to establish the Early Stage Review GDV and to be assessed by the Council and the Owner.
"Average Shared Ownership Housing Value"	means the average value of Shared Ownership Unit floorspace per square metre comprised in the Development at the Early Stage Review Date based on the relevant information provided to establish the Early Stage Review GDV and to be assessed by the Council and the Owner.
"Benchmark Land Value"	means the sum of £754,000 (seven hundred and fifty four thousand pounds).
"Carbon Offset Contribution"	means the sum of £27,913 (Twenty Seven Thousand Nine Hundred and Thirteen Pounds) to be paid to the Council by the Owner in relation to the Development to account for the shortfall set out in the Energy Statement in terms of meeting the London Plan requirement for major

	residential development to achieve zero carbon emissions. The sum has been calculated on the basis of the shortfall in reduction of tonnes of CO2 (Regulated) in the residential areas of the Development at an off-set payment rate of £1,800 (one thousand eight hundred pounds) per tonne.
"Car Club"	means a car club to be operated within the vicinity of the Development in order to enable residents of the Development to have access (whether solely or with others) to a car on a short term basis as and when required subject to availability, fees and membership rules.

<p>"Commencement of Development"</p>	<p>means the date on which a material operation (as defined in Section 56(4) of the Act) is undertaken pursuant to the Planning Permission save for (for the purpose of this Deed and for no other purpose) those operations consisting of:</p> <ul style="list-style-type: none"> (a) demolition of any existing buildings or structures on the Land; (b) site clearance and site reclamation works; (c) ground investigation and site remediation works; (d) archaeological investigation; (e) construction of boundary fencing or hoardings; (f) noise attenuation works; (g) laying and diversion of services and service media and works to or in respect of statutory utilities equipment; (h) construction of temporary accesses; (i) construction of temporary accommodation; (j) landfill gas works; (k) munitions probing and/or clearance; (l) any other works or activities required by a condition attached to the Planning Permission to be undertaken at the Land before Commencement may occur; <p>all of which shall not constitute "Commencement" under this definition, and Commencement in relation to the Development (or part thereof) shall be construed accordingly.</p>
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"Commencement Date"	means the date on which Commencement of the Development first occurs.
"Completed"	means the issue of a certificate of practical completion of the Development (or such specified part) by the Owner or the Owner's contractor, architect or consultant (as the case maybe) and "Complete" or "Completed" in relation to the Development (or part thereof) shall be construed accordingly.
"Completion Viability Review"	<p>means a viability review which:</p> <p>(a) updates the Variable Inputs in the Appeal Stage Viability Assessment with the Actual Inputs;</p> <p>(b) incorporates the Fixed Inputs; and</p> <p>(c) compares the Residual Land Value for the Development against the Benchmark Land Value for the Development at the time that such review is carried out,</p> <p>in order to establish if a Completion Surplus Payment may be payable.</p>
"Completion Review Date"	means the date on which the Completion Viability Review is undertaken in accordance with the terms of this Deed.
"Completion Surplus Payment"	<p>means the sum that may be payable by the Owner to the Council pursuant to paragraph 7.7 of Schedule 6, calculated in accordance with the following:</p> $A = (B - C) - D \times 0.6$ <p>A = Completion Surplus Payment</p>

	<p>B = Residual Land Value C = Benchmark Land Value D = Target Return</p> <p>The multiplication by 0.6 represents 60% of any amount resulting from the application of the above formula shall be payable to the Council as a financial contribution towards offsite Affordable Housing in the Borough of Lewisham and the remaining 40% shall be retained by the Owner and the total amount payable is SUBJECT ALWAYS TO the maximum provision of Affordable Housing for the Development in paragraph 1 of Schedule 6.</p>
"Component"	<p>means a part of the Development as authorised by the Planning Permission including but not limited to:</p> <ul style="list-style-type: none"> (a) Open Market Housing Units; (b) Affordable Housing Units; (c) Additional Affordable Housing Units; (d) Non-Residential Floorspace; (e) any other floorspace; (f) property; and (g) land.
"Controlled Parking Zone"	<p>means a Council administered permit controlled zone (whether existing or to be introduced in the future) imposing restrictions on vehicles parking within the public highway introduced pursuant to an order made under the Road Traffic Regulation Act 1984 or such other statutory power as may be used to introduce such parking restrictions.</p>

"Consumer Price Index"	means the Index of Consumer Prices published by the Office for National Statistics on behalf of HM Government (or any successor mechanism for calculating inflationary change to that index from time to time).
"Council's Area"	the Council's administrative area.
"Determination Notice"	means a notice served pursuant to clause 11.1 requiring the referral of any dispute or difference between the Parties to the Independent Person.
"Development"	means demolition of existing buildings at Catford Timber Yard, 161 Rushey Green, SE6 and the construction of an eight-storey building to provide 42 residential units and 261 sqm (B1a) office space, together with the provision of disabled parking, play area and landscaping.
"Development Viability Information"	<p>means</p> <p>(a) in respect of Formula 1b:</p> <p>(i) Early Stage Review GDV; and</p> <p>(ii) Early Stage Review Build Costs;</p> <p>(b) in respect of Formula 2:</p> <p>(i) Average Open Market Housing Value;</p> <p>(iii) Average Affordable Rent Housing Value;</p> <p>(iii) Average Shared Ownership Housing Value,</p>

	and including in each case supporting evidence to the Council's reasonable satisfaction.
"Disposal"	<p>means:</p> <ul style="list-style-type: none"> (a) the Sale of a Component(s) of the Development; (b) the grant of a lease of a term of less than 125 years of a Component of the Development; or (c) the grant of an assured shorthold tenancy agreement or a short term let in respect of a Component of the Development <p>ALWAYS excluding Fraudulent Transactions and "Dispose", "Disposals" and "Disposed" shall be construed accordingly.</p>
"Early Stage Review Build Costs"	<p>means the sum of:</p> <ul style="list-style-type: none"> (a) the estimated Build Costs remaining to be incurred; and (b) the Build Costs actually incurred <p>at the Early Stage Review Date.</p>
"Early Stage Review Date"	means the date of the submission of the Development Viability Information pursuant to paragraph 3 of Schedule 6.
"Early Stage Review GDV"	means the sum of:

	<p>(a) the estimated Market Value at the Early Stage Review Date of all Components of the Development based on detailed comparable evidence; and</p> <p>(b) all Public Subsidy and any Development related income from any other sources to be assessed by the Council excluding any Public Subsidy repaid by the Owner to the Council and/or the GLA (as applicable).</p>
"Energy Strategy"	means the 'Energy Strategy Report' dated 22 September 2017 and authored by Price and Myers and updated by the 'Energy and Carbon Savings' document dated 20 March 2019 and authored by Jaw Sustainability.
"External Consultant"	means the external consultant(s) appointed by the Council to assess the Development Viability Information and to assess the information pursuant to paragraphs 4.2, 6 or 7.3 (as applicable) of Schedule 6
"Financial Contribution"	means the Monitoring Contribution and the Carbon Offset Contribution.
"Finally Determined"	means the Proceedings have been finally disposed of such that all statutory periods have expired without any further applications being made to the relevant determining authority/Court or tribunal of competent jurisdiction.

<p>"Fixed Inputs"</p>	<p>means (unless the Owner and Council agree otherwise) the following:</p> <p>(a) Target Return;</p> <p>(b) professional fees of 12%;</p> <p>(c) the costs of financing assuming a 100% debt model with a 6.75% rate of borrowing;</p> <p>(d) acquisition costs including stamp duty at 3.75%, agent's fees at 1% and legal fees at 0.5% on Residual Land Value;</p> <p>(e) disposal fees including residential marketing costs at 1.5%, sales agency at 1%, commercial letting agency fee at 10% and legal costs of sale at £60,000;</p> <p>(f) purchaser's costs at 1.5% agency and legal fees plus appropriate Stamp Duty Land Tax to apply to all commercial uses and capitalised ground rents (if applicable).</p>
<p>"Force Majeure"</p>	<p>means fire, flood or other exceptionally adverse weather conditions, malicious damage, terrorist action, decree of Government, Court Order or adverse legal proceedings, contractor insolvency, unforeseen exceptional site or ground conditions or other exceptional event, cause or circumstance outside the reasonable control of the Owner or their respective contractors or agents, and which adversely affects the ability of either to perform any</p>

	obligation in relation to the works provided for in this Deed PROVIDED THAT the same could not reasonably have been avoided or provided against, is not due to negligence or default of the relevant party, and is mitigated against in accordance with the principles of common law to reduce any delay so far as reasonably practicable.
"Formula 1b"	means the formula identified as "Formula 1b" within the annex to Schedule 6.
"Formula 2"	means the formula identified as "Formula 2" within the annex to Schedule 6.
"Fraudulent Transactions"	<p>means:</p> <p>a) a transaction which is not at arm's length the purpose or effect of which is to artificially reduce the gross development value and/or artificially increase the actual and estimated build costs; and/or</p> <p>b) a Disposal of a Component of the Development that is not an arm's length third party bona fide transaction,</p> <p>examples of which include but are not confined to non-arm's length transactions between the Owner and subsidiary or related or group companies of the Owner or Disposals between the Owner and its employees or transactions including deferred consideration coverage or</p>

	non-arm's length loans or finance deals from the Owner.
"GLA"	means the Greater London Authority or any successor in statutory function.
"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 13 square metres or more, 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.
"Highways Agreement"	<p>means an agreement between the Owner and the relevant highway authority pursuant to section 278 of the Highways Act 1980 and any other relevant enabling powers to secure the carrying out of the Highway Works and which agreement will (unless otherwise agreed between the Owner and the relevant highway authority) require the following:</p> <p>(a) the relevant highway authority to carry out or procure the carrying out of the Highway Works (and subject to following due process for temporary highway closure and procurement of contractors) as soon as is reasonably practicable following receipt of the payment referenced in subparagraph (b)(i) by the Owner;</p> <p>(b) the Owner to pay the following:</p> <p>(i) the estimated cost of the relevant Highway Works no later than 20 Working</p>

	<p>Days following Commencement of Development;</p> <p>(ii) any reasonable costs incurred by the relevant highway authority in carrying out the Highway Works that are in excess of the estimated costs of the relevant Highway Works referred to in subparagraph (b)(i) above; and</p> <p>(c) the relevant highway authority to repay any monies paid to it for the purpose of carrying out the relevant Highway Works which are in excess of the costs of carrying out those works.</p>
"Highways Works"	<p>means works to the highway required by Transport for London (TfL) comprising of:</p> <p>(a) minor kerb alterations to the traffic island opposite the site access on Rushey Green;</p> <p>(b) kerb realignment to the southern side of the vehicle crossover to the site access where it meets Rushey Green;</p> <p>(c) provision of tactile paving either side of the vehicular crossover to Rushey Green to address pedestrian desire lines;</p> <p>(d) necessary improvements to the southbound bus stop to the north of the</p>

	<p>Land to ensure it is suitable for use by disabled people; and</p> <p>(e) any other highway works required to satisfy the Road Safety Audit.</p>
"Income Threshold"	<p>means the average total gross household income levels to be used when assessing occupancy eligibility criteria under Paragraph 8 of Schedule 5 of this Deed in respect of a Shared Ownership Unit should be affordable to households with an income which does not exceed:</p> <p>(a) £36,795 in respect of 1 bedroom units;</p> <p>(b) £42,663 in respect of 2 bedroom units;</p> <p>(c) £59,810 in respect of 3 bedroom units,</p> <p>and these figures will be increased (or decreased) in accordance with changes in income levels and house prices in the borough prevailing at the time when determining the grant of the Shared Ownership Lease".</p>
"Independent Person"	<p>means a person independent of either the Council or the Owner who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter.</p>
"Index Linked"	<p>means adjusted by an amount equal, by percentage to the change in the RPI between the</p>

	date of the RPI figure last published at the date of this Deed and the Index figure last published at the date on which the relevant contribution or part thereof is payable.
"Inspector"	means the planning inspector appointed by the Secretary of State to determine the Appeal.
"the Land"	means the land edged red on the Plan registered at Land Registry under Title Number LN62363.
"Lewisham Home Search"	means the choice based letting scheme operated by the Council for the allocation of Affordable Housing.
"Local Housing Allowance Levels"	means the rental allowance rate for a property of the size and in the location of the relevant Affordable Rent Unit calculated by reference to the tables maintained by the Valuation Office Agency (or such equivalent means of calculation that may vary or replace it) as updated from time to time.
"London Plan Income Threshold"	means the average total gross household income levels to be used when assessing occupancy eligibility criteria under Schedule 5 of this Deed in respect of a Shared Ownership Unit such that it should be affordable to households with an income which does not exceed £90,000 (ninety thousand pounds) (which for the avoidance of doubt is the GLA's 2018 threshold) or such other threshold set out by the GLA as the applicable income threshold for the relevant

	Shared Ownership Unit at the time of the relevant disposal.
"Market Rent"	the average level of rent payable in the Council's Area being the estimated amount (when extrapolated across the Council's Area) for which a property of comparable size and type should let on the date of valuation between a willing lessor and a willing lessee in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion.
"Market Value"	<p>means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration on the Early Stage Review Date or the Completion Viability Review Date (as applicable) based on detailed comparable market evidence, including evidence of rental values achieved for any Component of the Development which has been Disposed but not Sold, to be assessed by the Council and assuming:</p> <ul style="list-style-type: none"> (a) a willing seller and a willing buyer; (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market)

	<p>for the agreement of the price and terms and for the completion of the sale;</p> <p>(c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and</p> <p>(d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion.</p>
"Monitoring Contribution"	means the sum of £3,250 (three thousand, two hundred and fifty pounds) as a contribution towards the Council's costs of employing the Monitoring Officer.
"Monitoring Officer"	means an officer employed by the Council whether as an employee or as a contractor (irrespective of the duration of the contract term) whose role will include monitoring compliance with the planning obligations contained in this Deed.
"Non-Residential Floorspace"	means the floorspace in the Development authorised for use for purposes other than as a Residential Unit.
"Occupation"	means the first date when any part of the Development is occupied (which for the avoidance of doubt shall not include occupation for construction or fitting out or marketing or security of the Development) and the phrases

	"Occupy" "Occupied" and "Occupation" (where used) shall be construed accordingly.
"Open Market Housing Units"	means the Residential Units comprised in the Development which are to be sold or let on the open market and which are not Affordable Housing Units.
"Plan"	means the plan showing the Land being the Site on which the Development may be carried out, and appended to this Deed at Appendix 2.
"Planning Permission"	means the planning permission granted by the Inspector pursuant to the Appeal.
"Proceedings"	means an application under the Town and Country Planning Act 1990 (as may be amended) or such equivalent statutory provision or other legal proceedings in respect of the Planning Permission including an application to a higher court appealing against a judgment in respect of an application made under above, given in a lower court.
"Public Subsidy"	means funding from the Council and/or the GLA together with any additional public subsidy secured by the Owner to support the delivery of the Development.
"Road Safety Audit"	means the stage 1 road safety audit issued by Transport to London on 4 July 2017 and the designer's response dated 13 July 2017.
"Residents' Parking Bay"	means a parking place designated in an order under section 45(2) of the Road Traffic Regulation Act 1984 for the use of designated

	residents in the Borough of Lewisham which is located outside but in the immediate vicinity of the Development.
"Residents' Parking Permit"	means a permit issued by the Council to park a motor vehicle in a Residents' Parking Bay.
"Residential Units"	means the residential units to be comprised in the Development as authorised by the Planning Permission and includes the Affordable Housing Units and the Open Market Housing Units and "Residential Unit" shall be construed accordingly.
"Residual Land Value"	means the amount remaining once the gross development costs of the Development are deducted from its gross development value and the Target Return has been deducted for the Owner.
"Retail Price Index"	means the Index of Retail Prices (all items) published by the Office for National Statistics on behalf of HM Government (or any successor mechanism for calculating inflationary change to that index from time to time).
"Sale"	means: (a) the sale of the freehold of a Component; or (b) the grant of a lease of a Component with a term of 125 years or more and subject to nominal rent; and "Sold" shall be construed accordingly.

<p>"Secretary of State"</p>	<p>the Secretary of State for Housing, Communities and Local Government or such other Minister of Her Majesty's Government for the time being having or discharging the functions of the Secretary of State for the purposes of the Act.</p>
<p>"Service Charge"</p>	<p>means the amount payable by the occupant of any Affordable Housing Unit for all communal services, repairs, maintenance, improvements insurance of the building and curtilage plus estate management costs and ground rent to the extent that the costs have been reasonably incurred and remain at a reasonable level that will remain affordable for occupants.</p>
<p>"Shared Ownership Lease"</p>	<p>means a lease substantially in a form approved or published by Homes England (formerly HCA) whereby the tenant having paid an initial premium calculated by reference to a maximum of 25% of the Market Value of the particular Affordable Housing Unit pays a rent in respect of the remaining equity held by the Owner plus (if appropriate) a reasonable Service Charge and whereby the tenant may in successive tranches purchase up to 100% of the equity in the Affordable Housing Unit PROVIDED THAT the rent per annum will:</p> <p>a) initially be at a level not exceeding 2.75% of the full Market Value of the Affordable Housing Provider's retained share of the relevant dwelling; and</p>

	(b) not be at a level which is in conflict with any applicable Homes England restrictions relating to charges payable by the tenant.
"Shared Ownership Occupier"	means a person who occupies a Shared Ownership Unit which he/she is part renting and part purchasing under a Shared Ownership Lease and is an eligible person in accordance with the criteria set out in paragraph 8 of Schedule 5.
"Shared Ownership Units"	means any Affordable Housing Units disposed of subject to a Shared Ownership Lease and to a Shared Ownership Occupier;
Sub-Regional Authorities	means the councils for each of the London Boroughs of Bexley, Bromley, Greenwich, Lewisham and Southwark and "Sub-Regional Authority" shall mean any one of them
"Substantial Implementation"	<p>means that the Development has been implemented and that the following has been achieved:</p> <p>(a) entry into a building contract for the Development;</p> <p>(b) completion of ground preparation works;</p> <p>(c) foundations for the core of the Development; and</p> <p>(d) completion of below ground works having reached ground floor slab level,</p> <p>and "Substantially Implemented" shall be construed accordingly.</p>

<p>"Substantial Implementation Target Date"</p>	<p>means the date 24 months from but excluding the date of grant of the Planning Permission and which will be extended day for day by:</p> <p>(a) any period to account for any Proceedings which shall continue to extend until those Proceedings are Finally Determined with the result that the Planning Permission is not quashed; and/or</p> <p>(b) any period of delay caused by Force Majeure.</p>
<p>"Target Return"</p>	<p>means profit on value of 18.73 per cent (%) as determined within the Appeal Stage Viability Assessment as being the blended profit of the Open Market Housing Units, the Affordable Housing Units and any other Component of the Development as a percentage of gross development value.</p>
<p>"Transfer"</p>	<p>means, in relation to the transfer of the legal interest in the Affordable Housing Units to an Affordable Housing Provider, a transfer that accords with and/or (as applicable) includes the following:</p> <p>a) transfer of freehold or no less than a 125-year lease;</p> <p>b) a grant of full and free rights of access both pedestrian and vehicular from the public highway or roads intended to become public highway to the Affordable Housing Units;</p>

	<p>c) a grant of full and free rights to the passage of services (gas, electric, water, telecommunications (as applicable to the Development) through service media on the Development up to and abutting the boundary to the Affordable Housing Units all such Services to be connected to the mains; and</p> <p>d) as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Open Market Housing Units.</p>
"Variable Inputs"	<p>means the following:</p> <p>(a) anticipated build costs including demolition, diversion and provision of utilities and any necessary infrastructure and highway works; and</p> <p>(b) anticipated sales values, office rental values and ground rents; and</p> <p>(c) any other items which either:</p> <p>(i) are agreed between the Council and the Owner; and/or</p> <p>(ii) have changed since the Appeal Stage Viability Assessment including but not limited to additional Community Infrastructure Levy, contributions made pursuant to this Deed and any changes in values and costs for the</p>

	Development resulting from the Early Stage Review.
"Welcome Pack"	means the welcome pack that will be issued to all new residents which contains information about the Development, the area, shops and facilities and which must detail the car free nature of the Development and any variations of the same agreed with the Council.
"Working Day"	means any day from Monday to Friday inclusive which is not Christmas Day, Good Friday, a statutory holiday or a day between Christmas Day and New Year's Day.

2. In this Deed:

- 2.1 the headings are for ease of reference and shall not affect interpretation;
- 2.2 words importing one gender include all other genders and words importing the singular include the plural and vice versa;
- 2.3 references to persons include bodies corporate and vice versa;
- 2.4 references to clauses, paragraphs, parts and schedules are references to the clauses, paragraphs, parts and schedules of this Deed so numbered except that (unless otherwise specified) reference in a schedule to a paragraph or a part is reference to the paragraph or part in that schedule so numbered;
- 2.5 references to "the Owner" shall include its successors in title and assigns and the expression "the Council" shall include any successor local planning authority exercising planning powers under the Act;

2.6 reference to a statute, a statutory provision or a statutory instrument includes reference to:

2.6.1 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

2.6.2 any statutory amendment, modification or re-enactment thereof for the time being in force;

2.7 where any expiry date falls on a Saturday, Sunday or public holiday then the period concerned shall expire on the next normal Working Day;

2.8 any covenant not to do any act or thing includes a covenant not to allow permit or acquiesce to the doing of that act or thing by persons under the control of the person on whom the covenant is binding;

2.9 any covenant to do any act or thing includes covenant to procure the doing of that act or thing by any other person;

2.10 where two or more people form a party to this Deed the covenants given by them may be enforced against them all jointly or against each or any of them individually and against their and each of their personal representatives;

2.11 "including" means "including without limitation".

SCHEDULE 2

PARKING PERMITS

The Owner hereby covenants with the Council as follows:

1. The Owner shall procure that any licence, lease, transfer, or tenancy agreement between the Owner and any licensee, lessee, transferee, or tenant in respect of any Residential Unit shall contain covenants on the part of the licensee, lessee, transferee or tenant that no occupier of such a Residential Unit shall apply for a Residents' Parking Permit save where such person is or becomes entitled to be a disabled persons badge holder issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970;
2. The Owner shall within 20 Working Days of receipt of a written request from the Council provide to the Council a copy (certified by a solicitor) of the form of covenant required in compliance with the Owner's obligation under paragraph 1 above together with confirmation that such covenant has been so incorporated into each such licence, lease, transfer or tenancy agreement as shall have been entered into as at the date of the Council's request.
3. Save where the application is made by or on behalf of a person who fulfils the criteria in paragraph 1 of this Schedule, no application shall be made to the Council for a Residents' Parking Permit which a person is entitled to apply for in respect of any Residential Unit and if any Residents' Parking Permit is issued in respect of any Residential Unit it shall be surrendered to the Council within 5 Working Days of written demand made by or on behalf of the Council.
4. That the Welcome Pack shall detail that no Occupier of any Residential Unit may apply for or hold a Residents' Parking Permit unless that Occupier fulfils the exemption criterion set out in paragraph 1 of this Schedule.
5. The Owner shall submit the Welcome Pack to the Council for its approval in so far as it relates to compliance with the above paragraph

4 prior to publication of the Welcome Pack and the Owner may not publish the Welcome Pack either electronically or in hard copy until such approval has been given. The Council is to provide approval or reason as to why the approval cannot be given (" the Response") within 20 Working Days of receiving the Welcome Pack and/or any updates or revisions to it. If the Response is not given, in the timeframe set out above, approval will be deemed to have been given by the Council.

6. The Owner shall include in primary marketing literature relating to the Residential Units that no Occupier of such a Residential Unit shall be able to apply for or hold a Residents' Parking Permit unless that Occupier fulfils the exemption criterion in paragraph 1 of this Schedule.

SCHEDULE 3

HIGHWAY WORKS

The Owner hereby covenants with the Council as follows:

1. not to Commence the Development until the Owner has entered into the Highways Agreement for the Highway Works with the relevant highways authority.

SCHEDULE 4

CAR CLUB

The Owner hereby covenants with the Council as follows:

1. Prior to Occupation of the Development to enter into an agreement with a car club operator to provide the offer of three years free membership to residents of the Development (who comply with the eligibility criteria of the Car Club) and to provide a copy of the said agreement to the Council.
2. The Owner shall permit the residents of the Development (who comply with the eligibility criteria of the Car Club) free membership (one membership per Residential Unit) of the Car Club for 3 years from the date of first Occupation of each of the Residential Units (subject to the residents complying with the rules of the Car Club and a Car Club being provided in accordance with paragraph 1 of this Schedule).

SCHEDULE 5

AFFORDABLE HOUSING

The Owner hereby covenants with the Council as follows:

AFFORDABLE HOUSING - CONSTRUCTION:

1. to construct and complete the Affordable Housing Units in accordance with the plans approved pursuant to the Planning Permission and so that there is no material difference in generic quality, levels of materials and workmanship affecting the external appearance of the building between the Affordable Housing Units and the Open Market Housing Units and so that four of the Affordable Rent Housing Units fully complies with the requirements of Part M4(3)(2)(b) of Schedule 1 to the Building Regulations 2010.
2. to notify the Council immediately in writing once the Affordable Housing Units are available for disposal by the Affordable Housing Provider.
3. not to Occupy more than 75% (by number of units to the nearest whole unit) of the Open Market Housing Units unless and until it has:
 - (a) constructed 100% of the Affordable Housing Units so that they are in a condition capable of being let to tenants of the Affordable Housing Provider; and
 - (b) Transferred the unencumbered legal interest of the Affordable Housing Units with full title guaranteed to an Affordable Housing Provider; and
 - (b) given the Council written notice of the date when the first Occupation of the Open Market Housing Units is intended to

occur which notice shall be given not be less than 10 Working days prior to such Occupation first occurring.

AFFORDABLE HOUSING SIZE AND TENURE MIX

4. the Owner will provide the Affordable Housing Units in the size and tenure mix set out in the table below (unless the Council otherwise agrees in writing to such other size and tenure mix):

Bed/Person	Affordable Rent	Shared Ownership	Total
Studio	0	0	0
1 bed/2 person	4	1	5
2 bed/3 person	3	1	4
3 bed/4 person	0	1	1
TOTAL	7	3	10

AFFORDABLE HOUSING – GENERAL

5. with the intent to bind the Affordable Housing Units only and subject to paragraph 10 of this Schedule, not to use or Occupy any of the Affordable Housing Units for any purpose other than as Affordable Housing.

AFFORDABLE RENT UNITS

6. not to Occupy an Affordable Rent Unit otherwise than by a person chosen (in the following order of priority):
- 6.1 in accordance with the arrangements provided for in Lewisham Home Search; or
 - 6.2 in the event that Lewisham Home Search ceases to exist or is replaced and in place of the same a successor or replacement

agreement or set of arrangements exists in the order of priority provided for in such successor agreement or set of arrangements;
or

- 6.3 in the event that the Lewisham Home Search ceases to exist and at any relevant time there is no agreement to succeed or replace it then such other person(s) as may be approved by the Council (such approval not to be unreasonably withheld or delayed).
7. not to let or otherwise permit the letting of an Affordable Rent Unit to any person other than at an Affordable Rent in respect of each Affordable Rent Unit.

SHARED OWNERSHIP UNITS

8. unless paragraph 10 of this Schedule applies, not to grant a Shared Ownership Lease otherwise than under a procedure which gives priority to persons in the order below:
- 8.1 existing Council and housing association tenants;
- 8.2 households registered for rehousing with one of the Sub-Regional Authorities;
- 8.3 existing home owners whose current housing is unsuitable because of the disability of a member of the household and for whom suitable and affordable alternatives are not available on the open market;
- 8.4 all other households who are resident or employed in one of the Sub-Regional Authorities and unable to afford to buy on the open market;
- 8.5 any person meeting the disposal criteria set by the Affordable Housing Provider,

and, subject to paragraph 9 of this Schedule, in all cases being persons who do not exceed the Income Threshold.

9. where the Owner can demonstrate to the satisfaction of the Council that a Shared Ownership Unit has been marketed for a continuous period of at least 3 months and where a prospective purchaser still cannot be found who meets the Income Threshold then that Shared Ownership Unit may then be sold to any person who fulfils one of the criterion set out in paragraph 8 and meets the London Plan Income Thresholds instead of the Income Thresholds.

IMMUNITY FROM ENFORCEMENT

10. The provisions of this Schedule shall:

10.1 not bind any mortgagee or chargee of such of the Land as comprises the Affordable Housing Units or any part or parts thereof or any Residential Unit(s) erected thereon (or any receiver (including an administrative receiver) 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 (each a "Receiver")) or any person or bodies deriving title through or under or at the direction or requirement of any such mortgagee or chargee or Receiver and in the event of any such mortgagee, chargee or Receiver exercising a power of sale over such of the Land as comprises the Affordable Housing Units or any part or parts thereof or any Residential Unit(s) erected thereon (or otherwise enforcing its security thereover) the provisions of this Deed shall cease to apply to such of the Land as comprises the Affordable Housing Units or the part of it over which the powers are exercised or enforced (as the case may be) PROVIDED ALWAYS THAT any such mortgagee, chargee or Receiver has first notified the Council of its wish to exercise its statutory power of sale and if within 4 months of such notification the mortgagee or chargee or Receiver, having used reasonable endeavours, shall have been unable to enter into a contract for sale of the Affordable Housing Units to an Affordable Housing Provider for a consideration not

less than the amount due and outstanding under the terms of the relevant security documentation;

10.2 cease to apply to any Affordable Housing Unit in respect of which the tenant has exercised a right to buy or acquire under the provisions of the Housing Act 1996 or the Housing Act 1985 (or any other form of Right to Buy or Acquire (whether contractual or statutory or voluntary) promoted by Homes England and/or GLA (or any such successor agency) or where the tenant purchases such unit pursuant to a voluntary grant scheme under Section 21 of the Housing Act 1996 including any Act re-enacting or modifying any such provisions or where a person acquires an interest in the Affordable Housing Unit under a right arising from any voluntary scheme entered into by the Affordable Housing Provider under section 64 Housing and Planning Act 2016 or otherwise; or

10.3 cease to apply to any Affordable Housing Units in respect of which a Shared Ownership Lease has been granted and where a Affordable Housing Provider or their successor shall have disposed of 100% of the equity under the terms of such lease and shall not bind a Shared Ownership Occupier who is disposing on the open market in accordance with its rights and obligations under that lease nor bind the mortgagee or chargee or Receiver of a Shared Ownership Occupier.

SCHEDULE 6

VIABILITY REVIEW

Early Stage Review

1. AFFORDABLE HOUSING CAP

- 1.1 The maximum amount of Affordable Housing the Owner may be required to provide in the Development and/or to pay a contribution in lieu to the Council towards offsite Affordable Housing under this Deed shall not, when combined with the Affordable Housing provided pursuant to the further provisions of this Deed, exceed an amount which would equate to either more than 50% of (a) the Habitable Rooms comprised in the Development or (b) the Residential Units comprised in the Development, being provided as Affordable Housing.

2. EARLY VIABILITY REVIEW TRIGGER

- 2.1 The Owner shall notify the Council in writing of the date on which it considers that Substantial Implementation has been achieved no later than 10 (ten) Working Days after such date and such notice shall be accompanied by full documentary evidence on an open book basis to enable the Council to independently assess whether Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 2.2 No later than 5 (five) Working Days after receiving a written request from the Council, the Owner shall provide to the Council any additional documentary evidence reasonably requested by the Council to enable it to determine whether Substantial Implementation has been achieved on or before the Substantial Implementation Target Date.
- 2.3 Following the Owner's notification pursuant to paragraph 2.1 of this Schedule, the Owner shall afford the Council access to the Land to

inspect and assess whether or not Substantial Implementation has been achieved PROVIDED ALWAYS THAT the Council shall:

- (a) provide the Owner with reasonable prior written notice of its intention to carry out such an inspection and the date(s) on which the Council require access to the Land;
- (b) comply with relevant health and safety legislation; and
- (c) at all times be accompanied by the Owner or its appointed contractor or agent.

2.4 No later than 20 Working Days after the Council receives:

- (a) notice pursuant to paragraph 2.1 of this Schedule; or
- (b) if the Council makes a request under paragraph 2.2 of this Schedule, the additional documentary evidence,

the Council shall inspect the Land and thereafter provide written confirmation to the Owner within 10 (ten) Working Days of the inspection date as to whether the Council considers that Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.

2.5 If the Council notifies the Owner that the Council considers that Substantial Implementation has not been achieved, then this paragraph 2 shall continue to apply mutatis mutandis until the Council has notified the Owner pursuant to paragraph 2.4 of this Schedule or an Independent Person determines that Substantial Implementation has been achieved.

2.6 Any dispute between the Council and the Owner concerning whether or not Substantial Implementation has been achieved may be referred to

an Independent Person in accordance with the dispute resolution procedure in clause 11 of this Deed.

2.7 The Owner shall not Occupy the Development or any part thereof until any one of the following has occurred:

- (a) the Council has notified the Owner pursuant to paragraph 2.4 of this Schedule (or the Independent Person has determined pursuant to clause 11) that Substantial Implementation has been achieved on or before the Substantial Implementation Target Date; or
- (b) the Council has notified the Owner pursuant to paragraph 4.4 of this Schedule (or in circumstances where there is a disagreement, subject to the provisions set out in paragraph 4.5 of this Schedule, the Independent Person has determined pursuant to clause 11) that no Additional Affordable Housing Units are required; or
- (c) In circumstances where the Council notifies the Owner pursuant to paragraph 4.4 of this Schedule (or in circumstances where there is a disagreement, subject to the provisions set out in paragraph 4.5 of this Schedule, the Independent Person has determined pursuant to clause 11) that Additional Affordable Housing Units are required, the Additional Affordable Housing Scheme has been approved by the Council or the terms of the Additional Affordable Housing Scheme have been determined by an Independent Person in accordance with the dispute resolution procedure in clause 11 of this Deed.

3. SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION

3.1 Where Substantial Implementation has not been achieved before the Substantial Implementation Target Date (as determined by the Council

under paragraph 2.4 of this Schedule or pursuant to dispute resolution in accordance with clause 11):

3.1.1 the Owner shall submit the following information no later than 20 Working Days after the date on which the Owner is notified pursuant to paragraph 2.4 (or determined by Independent Person in accordance with clause 11) of this Schedule that Substantial Implementation has been achieved, on the basis that the Council may make such information publicly available:

- (a) the Development Viability Information for Formula 1b and Formula 2;
- (b) a written statement that applies the applicable Development Viability Information to Formula 1b (PROVIDED ALWAYS THAT if the result produced by Formula 1b is less than zero it shall be deemed to be zero) and Formula 2 thereby confirming whether in the Owner's view any Additional Affordable Housing Units can be provided; and
- (c) where such written statement confirms that Additional Affordable Housing Units can be provided, an Additional Affordable Housing Scheme,

and paragraphs 4 and 5 of this Schedule shall apply.

4. ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION

4.1 The Council shall assess the information submitted pursuant to paragraph 3 of this Schedule and assess whether in its view Additional Affordable Housing Units are required to be provided in the

Development in accordance with Formula 1b and Formula 2 and for the avoidance of doubt the Council will be entitled to rely on its own evidence in determining inputs into Formula 1b and Formula 2 subject to such evidence also being provided to the Owner.

- 4.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 3 of this Schedule.
- 4.3 In the event that the Council and/or an External Consultant requires further Development Viability Information or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in their view Additional Affordable Housing Units are required to be provided in the Development in accordance with Formula 1b and Formula 2.
- 4.4 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 3 of this Schedule, the Council shall notify the Owner in writing of the Council's decision as to whether any Additional Affordable Housing Units are required to be provided in the Development and whether the submitted Additional Affordable Housing Scheme is approved.
- 4.5 Where the Council or its External Consultant concludes that there is a requirement for Additional Affordable Housing Unit and its findings as to either whether or not there is, in fact, such a requirement on the viability evidence submitted is different to the findings of the Owner in its submission of the Development Viability Information as submitted pursuant to paragraph 3, then the External Consultant (or the Council, as appropriate) must provide full reasons and evidence to the Owner and the Owner may then:

- (a) accept the findings of the External Consultant or Council; or
- (b) produce further supporting evidence to the Council or its External Consultant within 10 Working Days and both Parties shall then use reasonable endeavours to agree whether there is a requirement for Additional Affordable Housing Units, and if so, the quantum of the Additional Affordable Housing Units within a further 10 Working Days from receipt of additional supporting evidence provided by the Owner to the Council under this paragraph 4.5(b) and in circumstances where the Owner and the Council remain in disagreement on such matters then either Party may refer the matter to the Independent Person for determination pursuant to clause 11.

4.6 If following the agreement of the Parties or determination by the Independent Person as to the appropriate viability inputs for the purposes of Formula 1b and Formula 2, this Schedule concludes that:

4.6.1 a surplus profit arises following the application of Formula 1b but such surplus profit is insufficient to provide any Additional Affordable Housing Units pursuant to Formula 2; or

4.6.2 a surplus profit arises following the application of Formula 1b but such surplus profit cannot deliver a whole number of Additional Affordable Housing Units pursuant to Formula 2,

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

4.7 The Owner shall pay the Council's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 3 and 4.3 of this Schedule including those of the External Consultant within 20 Working Days of receipt of a written request for payment.

5 DELIVERY OF ADDITIONAL AFFORDABLE HOUSING

- 5.1 This paragraph 5 only applies where it has been agreed between the Parties or determined by the Independent Person that Additional Affordable Housing Units are to be provided in the Development.
- 5.2 The Owner shall construct the Additional Affordable Housing Units in the Development in accordance with the location and size and tenure mix identified in the Additional Affordable Housing Scheme as approved by the Council or determined by the Independent Person.
- 5.3 Subject to paragraph 5.2 and any other relevant provisions that expressly apply to provision of the Additional Affordable Housing Units, the Parties agree that the terms of Schedule 5 (Affordable Housing) shall otherwise apply mutatis mutandis to the provision of any Additional Affordable Housing Units
- 5.4 The Owner shall not Occupy more than 85% of the Open Market Housing Units (rounded to the nearest whole unit) unless and until it has:
- 5.1.1 Completed all of the Additional Affordable Housing Units in accordance with the Additional Affordable Housing Scheme approved by the Council or determined by the Independent Person and made them available for Occupation; and
 - 5.1.2 where applicable, paid any remaining surplus profit pursuant to paragraph 4.6 of this Schedule to the Council towards the delivery of offsite Affordable Housing within the Council's administrative area.

Completion Review

6 COMPLETION VIABILITY REVIEW SUBMISSION

- 6.1 The Owner shall notify the Council in writing of the anticipated date of Completion of the Development not less than 20 Working Days in advance of that date.
- 6.2 No later than 20 Working Days after the Council has confirmed that Completion of the Development has been achieved, the Owner shall submit a Completion Viability Review to the Council, and shall do so on an open book basis and recognising that the Council may make such information publicly available.

7 ASSESSMENT OF COMPLETION DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION

- 7.1 The Council shall assess the information submitted pursuant to paragraph 6 of this Schedule and assess whether in its view a Completion Surplus Payment is required to be paid to the Council.
- 7.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 6 of this Schedule.
- 7.3 In the event that the Council and/or an External Consultant requires further information or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in their view a Completion Surplus Payment is required to be paid.
- 7.4 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 6 of this Schedule, the Council shall notify the Owner in writing of the

Council's decision as to whether any Completion Surplus Payment is required to be paid to the Council, and if so, what it considers the quantum of that payment to be.

7.5 Where the Council or its External Consultant concludes that there is a requirement for a Completion Surplus Payment and its findings as to either whether or not there is, in fact, such a requirement, is different to the findings of the Owner in its submission of the Completion Viability Review as submitted pursuant to paragraph 6, then the External Consultant (or the Council, as appropriate) must provide full reasons and evidence to the Owner and the Owner may then:

- (a) accept the findings of the External Consultant or Council; or
- (b) produce further supporting evidence to the Council or its External Consultant within 10 Working Days and both Parties shall then use reasonable endeavours to agree whether there is a requirement for the Completion Surplus Payment to be paid to the Council, and if so, the quantum of that payment within a further 10 Working Days from receipt of additional supporting evidence provided by the Owner to the Council under this paragraph 7.5(b) and in circumstances where the Owner and the Council remain in disagreement on such matters then either Party may refer the matter to the Independent Person for determination pursuant to clause 11.

7.6 If the Parties agree, or the Independent Person determines, that a Completion Surplus Payment is required then:

- 7.6.1 the Owner shall pay the Completion Surplus Payment to the Council within 10 Working Days of the date on which the Parties agree, or the Independent Person determines, that the Completion Surplus Payment is payable and the quantum of such payment; and

7.6.2 the Owner shall not Occupy more than 85 per cent of the Residential Units (to the nearest whole unit) until the Completion Surplus Payment has been paid in full to the Council.

7.7 The Owner shall pay the Council's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 6 and 7.3 (as applicable) of this Schedule including those of the External Consultant within 20 Working Days of receipt of a written request for payment.

8 PUBLIC SUBSIDY

Nothing in this Deed shall prejudice any contractual obligation on the Owner to repay or reimburse any Public Subsidy using any surplus profit that is to be retained by the Owner.

ANNEX TO SCHEDULE 6

VIABILITY FORMULAS

FORMULA 1b (Surplus profit available for additional on-site Affordable Housing)

$$\text{"Surplus profit"} = ((A - B) - (C - D)) - P$$

Where:

A = Early Stage Review GDV (£)

B = Appeal Stage GDV (£)

C = Early Stage Review Build Costs (£)

D = Appeal Stage Build Costs (£)

P = $(A - B) * Y$

Y = Target Return (%)

Notes:

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

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

P represents developer profit on change in GDV.

FORMULA 2 (Additional affordable housing)

X = Additional Affordable Housing requirement (Habitable Rooms)

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

Where:

A = Average Open Market Housing Value (£ per m²)

B = Average Affordable Rent Housing Value (£ per m²)

C = Average Shared Ownership Housing Value (£ per m²)

D = Average Habitable Room size for the Development being 17.22m²

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

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

Notes:

(A – B+C) represents the difference in average value of market housing per m² and average value of an Affordable Rent Unit and the Shared Ownership Unit per m² (£).

(E * F) represents the surplus profit to be used for Additional Affordable Housing (£).

(E * F) ÷ (A – B+C) represents the additional Affordable Housing requirement (m²).

SCHEDULE 7

CARBON OFFSETTING

The Owner hereby covenants with the Council as follows:

1. to pay to the Council the Carbon Offset Contribution in respect of the Development prior to Occupation of the Development.
2. not to Occupy the Development until the Carbon Offset Contribution has been paid to the Council.

SCHEDULE 8
COUNCIL'S COVENANTS

The Council hereby covenants with the Owner:

1. subject to clause 23, to use all sums received from the Owner under the terms of this Deed for the purposes for which they are to be paid.
2. to provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed following a written request.

APPENDIX 1
SITE LOCATION PLAN

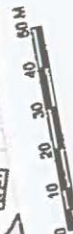




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4819324

dwg no. 1519-01

1:1250



SITE LOCATION PLAN

den SE6 4BD

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF LEWISHAM was hereunto)
affixed in the presence of:-)


Head of Law

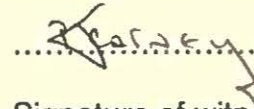
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SIGNED AS A DEED BY)
CATFORD HOMES LIMITED)
in the presence of:)


Owner

) PAULA CARNEY.....
)

Full name of witness


.....

Signature of witness

PEAR TREE COTTAGE,.....

SWALE HALL LANE,.....

GLATTON, RICHMOND. TW9 6HL

Address

CHARTERED SURVEYOR.....

Occupation

THE UNIVERSITY OF CHICAGO
LIBRARY
1100 EAST 58TH STREET
CHICAGO, ILL. 60637

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