

DATED 16 August 2017

(1) LONDON LEGACY DEVELOPMENT CORPORATION

(2) M&D SILK PROPERTIES LIMITED

PLANNING OBLIGATION BY AGREEMENT
made pursuant to section 106 of the Town and Country
Planning Act 1990
and all other powers enabling
relating to 75-89 Wallis Road and 59 Berkshire Road,
Hackney, London E9 5LN

CERTIFIED TO BE A TRUE AND COMPLETE
COPY OF THE ORIGINAL
DATED THIS 16 DAY OF 8 2017
Pinsent Masons LLP *Pinsent Masons LLP*



Pinsent Masons

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THIS AGREEMENT is made on 16 August

2017

BETWEEN:-

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ (the "LPA");
- (2) **M&D SILK PROPERTIES LIMITED** (Company Number 07435199) whose registered office is at Burnetts, 2 Fauna Close, Stanmore, Middlesex HA7 4PX (the "Owner"); and
- (3) **NATIONWIDE BUILDING SOCIETY** of Nationwide House, Pipers Way, Swindon LSN38 1NW (the "Mortgagee").

WHEREAS:-

- (A) The LPA exercises the functions of the local planning authority for the Site pursuant to The London Legacy Development (Planning Functions) Order 2012 and is the local planning authority by whom the obligations contained in this Agreement are enforceable.
- (B) The Owner has a freehold interest in the Site registered at the Land Registry with Title Numbers EGL295006 and EGL153665 relating to the Site.
- (C) The Mortgagee is the registered proprietor of the charge dated 29 April 2016 referred to in entry number 3 of the charges register of Title Number EGL295006 and has agreed to enter into this deed to give its consent to the terms of the Agreement.
- (D) The Planning Application was validated by the LPA on 24 July 2015.
- (E) On 22nd March 2016 the LPA resolved that it was minded to grant the Planning Permission subject to (inter alia) the completion of this Agreement.
- (F) The Parties agree that the obligations contained in this Agreement meet the three tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
- (G) Accordingly, the Parties have agreed to enter into this Agreement in order to secure the planning obligations contained in it pursuant to the provisions of section 106 of the 1990 Act and all other powers enabling.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 In this Agreement (which shall include the Recitals, Schedules and Appendices hereto) the following words and expressions have the following meanings:-

"1990 Act"	means Town and Country Planning Act 1990
"Agreement"	means this deed made pursuant to section 106 of the 1990 Act and other enabling powers
"Anticipated Commencement Date"	means the date on which the Developer reasonably considers in all the circumstances that the Development will be Commenced
"Building"	means a building comprised in the Development
"Commencement"	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and "Commence" and "Commenced" shall be construed accordingly

"Commencement Date"	means the date upon which the Development is Commenced
"Completed"	completed in all material respects such that a certificate of practical completion in relation to building works is issued under industry standard construction contracts for the Development and "Complete" and "Completion" shall be construed accordingly
"Comply"	means to implement, comply, fulfil and/or discharge or procure implementation, compliance, fulfilment and/or discharge and "Compliance" shall be construed accordingly
"Condition"	means a condition of the Planning Permission
"Consent"	means any of the following: approval, agreement, licence, authorisation, confirmation, certification, expression of satisfaction, consent, permission, or any other kind of authorisation howsoever expressed
"Council"	means the London Borough of Hackney and its successor in function
"Developer"	shall have the meaning ascribed to it in Clause 1.2.7
"Development"	means the development of the Site and all other operations and/or works authorised by the Planning Permission
"Dispute"	means any dispute, issue, difference or claim as between the Parties in respect of any matter contained in or arising from or relating to this Agreement or the Parties' obligations and rights pursuant to it (other than in respect of any matter of law)
"Expert"	means an independent expert appointed in accordance with the provisions of Clause 10 to determine a Dispute
"First Occupation"	means first Occupation of the Development or any part thereof
"Highway Authority"	means the Council and/or TfL or their successors in function
"Index"	means the Index of Retail Prices
"Indexed"	means in relation to a sum that it is to be increased in accordance with Clauses 15.2 and 15.3
"Index of Retail Prices"	means the Index of Retail Prices published by the Office of National Statistics or if the same shall cease to be published such alternative related index agreed by the LPA and the Developer
"Interest"	means interest at 3% above the base lending rate of Barclays Bank Plc from time to time
"Occupy" and "Occupation"	means beneficial occupation for any purpose for which the Planning Permission has been granted in respect of the relevant unit, building, structure or part of the Site but not including occupation for the purposes of construction, fit out or marketing
"Off Site"	means on land outside the Site
"On Site"	means on land within the Site

"Parties"	means the parties to this Agreement and the word "Party" shall mean any one of them
"Plan 1"	means the plan attached at Schedule 10 of this Agreement showing the Site
"Plan 2"	means the plan attached at Schedule 11 of this Agreement showing the Rubber Works Complex
"Plan 3"	means the plan attached at Schedule 12 of this Agreement showing the Play Areas
"Plan 4"	means the plan attached at Schedule 13 of this Agreement showing the Common Areas
"Planning Application"	means the application for planning permission submitted to the LPA and given reference number 15/00338/FUL by the LPA for demolition of some existing buildings, extension and alteration of buildings retained, and erection of new part four (4) storey with basement and part five (5) storey building with a maximum parapet height of 21.8m AOD to provide 2951m ² (GIA) of commercial space (use class B1, with up to 700m ² A1 and D1 use) with yard area, 44 residential dwellings (4 x studios, 15 x 1 bed, 15 x 2 bed and 10 x 3 bed), upper level amenity areas, cycle parking and refuse/recycling stores
"Planning Permission"	means the planning permission which may be granted subject to conditions for the proposals within the Planning Application and the form of which is attached at Schedule 14Schedule 13
"Private Residential Units"	means Residential Units which are neither Affordable Rented Housing Units or Shared Ownership Units provided pursuant to paragraph 3 of Schedule 1
"Reasonable Endeavours"	means that it is agreed by the Parties that the Developer under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this Agreement the Developer will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may reasonably be expected of a competent commercial developer in the context of the Development (or part of the Development)
"Requisite Consents"	means such grant of planning permission under the 1990 Act, Traffic Regulation Orders, Traffic Management Orders and/or other Consents under the Highways Act 1980 and/or the obtaining of Consents (statutory or otherwise) including the grant or acquisition of necessary land interests as in each case are necessary for the relevant purpose
"Residential Unit"	means a residential unit provided as part of the Development
"Site"	means the land shown edged red on Plan 1
"Superstructure"	means any part of the Development built above the foundation
"TfL"	means Transport for London or its successor in function

- "Utility Undertaker"** means any provider of gas, electricity, energy water, sewage, heating, cooling or telecommunications services occupying premises within the Site for the purposes of supplying any one or more of those services to any member of the public or any occupier of premises within the Site
- "Working Day"** means a day other than a Saturday or Sunday or public holiday in England or the period between 24 December and 1 January inclusive

1.2 In this Agreement:-

1.2.1 unless otherwise indicated reference to any:-

- (a) Clause, Schedule or Appendix is to a Clause of, Schedule to or Appendix to this Agreement;
- (b) paragraph is to a paragraph of a Schedule to this Agreement;
- (c) reference within a Schedule to a paragraph is to a paragraph of that Schedule;
- (d) Part is to a part of an Appendix to this Agreement;
- (e) Table is to a table of an Appendix to this Agreement;
- (f) Recital is to a Recital to this Agreement; and
- (g) Plan, is to a plan annexed to this Agreement as an Appendix;

1.2.2 references to any statute or statutory provision include references to:-

- (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement;
- (b) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
- (c) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force;

1.2.3 headings, the table of contents and titles to the plans are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of the Agreement to which they relate;

1.2.4 any notice, notification, Consent, request, statement or details to be made, given or submitted under or in connection with this Agreement shall be made or confirmed in writing and neither Party shall not unreasonably withhold or delay the giving or making of the same;

1.2.5 references to the Site include any part of it;

1.2.6 references to the LPA comprise the London Legacy Development Corporation in its capacity as local planning authority and include its successors to the functions of the LPA;

1.2.7 subject to Clauses 2.4, 2.5 and 2.6 references to the Developer in this Agreement include:-

- (a) the Owner;

- (b) persons deriving title from the Owner; and
 - (c) the Owner's successors, assigns, transferees;
- 1.2.8 references to the LPA include its successor bodies in function;
- 1.2.9 **"including"** means **"including without limitation"**;
- 1.2.10 unless otherwise indicated references to the singular include the plural and references to the plural include the singular and words importing any gender include every gender;
- 1.2.11 unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa;
- 1.2.12 any obligation, covenant, undertaking or agreement by the Developer or LPA not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit or allow the doing of that act or thing;
- 1.2.13 save where expressly stated to the contrary, where in this Agreement there is reference to using Reasonable Endeavours to achieve an outcome, upon written request by the LPA at reasonable intervals (not to exceed more than once every 3 (three) months, within 10 (ten) Working Days of such request reasonable evidence of the steps taken to achieve such outcome shall be provided in documentary form (where possible) to the LPA;
- 1.2.14 the Plans attached to this Agreement form part of the Agreement.
- 1.3 The Interpretation Act 1978 shall apply to this Agreement.
- 1.4 If any provision of this Agreement is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Agreement is (if and to the extent that it may properly and lawfully be construed as such) to be unaffected.
- 1.5 Where in this Agreement any matter is referred to dispute resolution under Clause 10 the findings of the Expert shall (save in relation to manifest error) be final and binding on the Parties and such findings shall be deemed to constitute the required Approval or other Consent for the purposes of this Agreement.
- 1.6 Where in this Agreement the fulfilment of an obligation, covenant or undertaking on the part of the Developer is subject to the obtaining or securing of Requisite Consents the Developer shall:-
- 1.6.1 use Reasonable Endeavours to secure or obtain the Requisite Consents where the obligation relates to matters to be carried out or conducted On Site; and
 - 1.6.2 endeavour in good faith (but without being required to pay any material financial consideration in addition to bearing the reasonable and proper cost of the works which are the intended subject of the Requisite Consents or being obliged to take any proceedings (or appeal) in any court public inquiry or other hearing) to secure or obtain the Requisite Consents where the obligation relates to matters to be carried out or conducted Off Site
- PROVIDED THAT** if the Developer in relation to a Requisite Consent of its own volition and independently of the terms of this Agreement pays or has paid a material financial consideration in order to secure that Requisite Consent it shall not be able to rely upon the fact of having done so to use this Clause 1.6 to avoid or limit the obligation, covenant or undertaking under this Agreement for which that Requisite Consent is required.
- 1.7 The Developer and the Second Owner covenant to be jointly and severally liable for the performance and compliance with each and every of the obligations, covenants and undertakings contained in this Agreement.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act and (insofar as this Agreement does not contain planning obligations), sections 201(1) and (2), 205 and 206 of the Localism Act 2011 and all other powers so enabling.
- 2.2 So far as the obligations, covenants and undertakings in this Agreement are given by or to the LPA then the same are entered into pursuant to the relevant powers referred to in Clause 2.1 and such obligations, covenants and undertakings shall be enforceable by or against the LPA.
- 2.3 Subject to Clauses 2.4, 2.5 and 2.6 the obligations, covenants and undertakings on the part of the Developer in this Agreement are planning obligations pursuant to and for the purposes of section 106 of the 1990 Act and are given so as to bind the Developer's freehold interest in the Site and the said obligations, covenants and undertakings on the part of the Developer are entered into with the intent that they shall be enforceable not only against the Developer but also against any successors in title to or assigns of the Developer and/or any person claiming through or under the Developer an interest or estate in the Site as if that person had been an original covenanting party in respect of such interest for the time being held by it and insofar as any such obligations, covenants and undertakings are not capable of falling within section 106 of the 1990 Act are entered into as obligations, covenants and undertakings in pursuance of sections 201(1) and (2), 205 and 206 of the Localism Act 2011.
- 2.4 The obligations contained within this Agreement shall not be binding upon nor enforceable against:-
- 2.4.1 a Utility Undertaker insofar as and to the extent that the relevant Utility Undertaker is occupying the relevant part of the Site in its capacity as a Utility Undertaker;
 - 2.4.2 except for paragraph 5 of Schedule 1 which shall apply (subject to paragraph 4.2 of Schedule 1), individual owners and occupiers of the Affordable Housing Units and their individual mortgagees and chargees;
 - 2.4.3 any mortgagee or chargee of an Affordable Housing Provider unless it takes possession of the Site (in whole or in part) in which case it too will be bound by the obligations as if it were a person deriving title from the Developer and in order for such mortgagee or chargee of an Affordable Housing Provider to sell the Affordable Housing Units free from restrictions of this Agreement then the procedure set out in paragraph 6.2 of Schedule 1 must first have been followed;
 - 2.4.4 individual owners and occupiers of the Private Residential Units and their individual mortgagees and chargees;
 - 2.4.5 individual occupiers or lessees of individual units of Workspace who are in physical Occupation of such units;
- save to the extent that the same would be lawful nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the LPA of any of its statutory powers functions or discretions.
- 2.5 No person shall be liable for any breach of any of the obligations, covenants and undertakings or other provisions of this Agreement after parting with its interest in the Site or its interest in respect of that part of the Site on which the breach occurs but without prejudice to liability for any subsisting breach arising before parting with that interest.
- 2.6 No obligation in this Agreement shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Site or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgagee, receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Site or part thereof to which such obligation relates.

- 2.7 The LPA shall request registration of this Agreement as a local land charge by the Council or its respective statutory successor in function.
- 2.8 This Agreement and the obligations, covenants and undertakings which it contains shall lapse and be extinguished automatically if (and from the date that) the Planning Permission lapses without the Development being Commenced or is otherwise quashed, revoked, withdrawn or (without the consent of the Developer) modified.
- 2.9 Subject to Clause 2.10 other than the Planning Permission nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.
- 2.10 If the LPA agrees pursuant to an application under section 73 of the 1990 Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the LPA in their determination of such an application for the new planning permission indicate that consequential amendments are required to this Agreement to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission.

3. CONDITIONALITY

3.1 This Agreement is conditional upon:-

- 3.1.1 the grant of the Planning Permission; and
- 3.1.2 the Commencement of Development

save for the provisions of this Clause 3, Clauses 2, 6, 10, 12, 14, 17 and 18 which shall come into effect immediately upon completion of this Deed.

4. THE DEVELOPER'S COVENANTS WITH THE LPA

- 4.1 The Developer on behalf of themselves and their successors in title to the Site covenant with the LPA that they shall:-
- 4.1.1 perform and Comply with, and shall procure performance of and Compliance with, each and every of the obligations, covenants and undertakings on the part of the Developer contained in this Agreement;
 - 4.1.2 not encumber or otherwise deal with their interests in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out; and
 - 4.1.3 notify the LPA of the Anticipated Commencement Date prior to the actual Commencement of Development and such notice shall only be given where there is a genuine prospect of Development being Commenced within 21 (twenty-one) days of the notice and the notice shall confirm and provide evidence that this is the case.

5. THE LPA'S COVENANTS WITH THE DEVELOPER

- 5.1 The LPA covenants with the Developer that it shall procure performance of and Compliance with, each and every of the obligations, covenants and undertakings on the part of the LPA contained in this Agreement.

- 5.2 Subject to Clause 5.5, the LPA covenants with the Developer that it shall use all sums received from the Developer under the terms of this Agreement for the purposes specified in this Agreement for which they are paid.
- 5.3 The LPA shall provide to the Developer such evidence, as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Agreement.
- 5.4 The LPA covenants with the Developer that it will pay to the Developer (or the person who made the payment if not the Developer) such amount of any payment made by the Developer to the LPA under this Agreement which has not been expended or committed in accordance with the provisions of this Agreement within ten (10) years of the date of receipt by the LPA of such payment together with interest.
- 5.5 Where any payment is made by the Developer to the LPA pursuant to the terms of this Agreement the LPA may, where it is not the authority with the statutory duty or functions to expend such monies and/or in the interests of administrative efficiency, pay such monies to the competent authority which has the statutory duty to discharge the functions for which the monies were paid ("**Other Statutory Authority**") and upon payment of monies to such Other Statutory Authority the LPA's requirement to comply with Clause 5.2 shall cease to apply in respect of those monies.
- 5.6 Upon payment of monies to an Other Statutory Authority pursuant to Clause 5.5 the LPA shall seek assurances from that Other Statutory Authority that the monies shall be applied by that Other Statutory Authority for the purposes for which they have been paid.

6. NOTICES

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

LPA:

Address: Director of Planning Policy and Decisions
London Legacy Development Corporation – Planning
Policy and Decisions Team
Level 10
1 Stratford Place
Montfichet Road
London E20 1EJ

For the attention of: Anthony Hollingsworth

Owner:

Address: M&D Silk Properties Limited
Burnetts
2 Fauna Close
Stanmore
Middlesex

HA7 4PX

For the attention of: David Silk

Mortgagee:

Address: Nationwide Building Society
Nationwide House
Pipers Way
Swindon
LSN38 1NW

For the attention of: Company Secretary

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

7. SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT

7.1 Where in the opinion of the Developer any obligation, covenant, undertaking or other provision on the part of the Developer contained in this Agreement has been satisfied wholly or in part, the Developer shall be entitled to apply to the LPA for a notification to that effect, and where the relevant obligation, covenant, undertaking or other provision has been satisfied (wholly or in part) the LPA shall as soon as reasonably practicable issue a notification to such effect.

7.2 Where in the opinion of the LPA, any obligation, covenant, undertaking or other provision on the part of the LPA contained in this Agreement has been satisfied wholly or in part, the LPA shall be entitled to apply to the Developer for a notification to that effect, and where the relevant obligation, covenant, undertaking or other provision has been satisfied (wholly or in part) the Developer shall as soon as reasonably practicable issue a notification to such effect.

8. VERIFICATION AND ENFORCEMENT

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

9. THE MORTGAGEE

9.1 The Mortgagee acknowledges and declares that:-

9.1.1 this Agreement has been entered into by the Developer with its consent;

9.1.2 the Site shall be bound by the obligations contained in this Agreement; and

9.1.3 the security of the mortgagee over the Site shall take effect subject to this Agreement.

9.2 Any mortgagee shall be liable only for any breach of the provisions of this Agreement during such period as he is a mortgagee in possession of the Site.

10. DISPUTE RESOLUTION

10.1 One party may by serving notice on all the other parties (the "**Notice**") refer a Dispute to an Expert for determination.

- 10.2 The Notice must specify:-
- 10.2.1 the nature, basis and brief description of the Dispute;
 - 10.2.2 the Clause or paragraph of a Schedule or Appendix pursuant to which the Dispute has arisen; and
 - 10.2.3 the proposed Expert.
- 10.3 In the event that the Parties are unable to agree whom should be appointed as the Expert within 10 (ten) Working Days after the date of the Notice then either Party may request the President of the Law Society (except where Clause 10.7 provides otherwise) to nominate the Expert at their joint expense.
- 10.4 The Expert shall act as an expert and not as an arbitrator and his decision (the "**Decision**") will (in the absence of manifest error) be final and binding on the Parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- 10.5 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the Dispute and in any event not more than 20 (twenty) Working Days from the date of his appointment to act.
- 10.6 The Expert will be required to give notice to each of the said Parties inviting each of them to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
- 10.7 Where the Parties are unable to agree whom should be appointed as the Expert, either Party may request that the following nominate the Expert at their joint expense:-
- 10.7.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the Expert;
 - 10.7.2 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;
 - 10.7.3 if such dispute shall relate to matters requiring a specialist chartered civil engineer or specialist transport adviser, the President of the Institution of Civil Engineers to nominate the Expert;
 - 10.7.4 if such dispute shall relate to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert; and
 - 10.7.5 in all other cases, the President of the Law Society to nominate the Expert.

11. **NO WAIVER**

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

12. DUTY TO ACT REASONABLY AND IN GOOD FAITH

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

13. EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

14. THE LPA'S COSTS

14.1 The Developer agrees that it will on completion of the Agreement pay:-

14.1.1 the LPA's legal costs incurred in the negotiation and completion of this Agreement (inclusive of any such costs incurred by external lawyers appointed by the LPA in relation to the negotiation and completion of this Agreement); and

14.1.2 the LPA's reasonable costs incurred in the review of development appraisals and viability assessments in connection with the Development (inclusive of any such costs incurred by external surveyors appointed by the LPA).

15. FINANCIAL CONTRIBUTIONS AND INDEXATION

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

15.2 All payments or financial contributions to be paid pursuant to this Agreement will be increased by reference to the amount of the quarterly increase in the Index from the date of the committee meeting until the date such sums are paid (unless otherwise stated in this Agreement).

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

16. INTEREST

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

17. JURISDICTION AND LEGAL EFFECT

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

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

18. EXECUTION

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

SCHEDULE 1

AFFORDABLE HOUSING

1. DEFINITIONS

"Affordable Housing"		means housing including Social Rented Housing, Affordable Rented Housing and Intermediate Housing, provided to eligible households whose needs are not met by the market, and which housing should (a) meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices and (b) include provision for the home to remain at an affordable price for future eligible households, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision
"Affordable Housing Contracts"	Housing	means a binding contract between the Developer and the Affordable Housing Provider for the construction and transfer of Affordable Housing Units to the Affordable Housing Provider
"Affordable Housing Provider"	Housing	means a provider of Affordable Housing Approved in respect of the Development pursuant to paragraph 2.1 of this Schedule
"Affordable Housing Units"		means the Residential Units to be provided as Affordable Housing pursuant to this Schedule
"Affordable Housing Management Scheme"	Housing	means a scheme specifying:- <ul style="list-style-type: none">(a) management and servicing arrangements for the Affordable Housing Units and(b) details of the rent, service charge and any estate or other charges payable for each Affordable Housing Unit together with an explanation of how the Affordable Housing Units remain affordable notwithstanding such charge
"Affordable Rented Housing"		means rented housing that has the same characteristics as Social Rented Housing except that it is outside the National Rent Regime, but is subject to other rent controls that require it to be offered to eligible households at a rent of up to 80 per cent of local market rents
"Affordable Rented Housing Units"		means Affordable Housing Units to be made available for Affordable Rented Housing pursuant to paragraph 3 of this Schedule

"Affordable Rents"

means the rents (inclusive of service charge) not exceeding those set out in the table below:-

Size of Affordable Housing Unit	Maximum rent
1 bedroom	65% of local market rent
2 bedroom	55% of local market rent
3 bedroom	50% of local market rent

SUBJECT TO an annual percentage rent increase by reference to the amount of the annual increase in the CPI + 1% (calculated from the date of this Agreement and based on the annual CPI rate published for the preceding September), or such other rate of annual increase as shall be published by the HCA under their Rent Standard Guidance, including any rate published by the HCA in "the Regulatory Framework for Social Housing in England from 1 April 2015 Rent Standard Guidance" or any successor guidance

"Grant Funding"

means any capital funding provided by the HCA, GLA or any other public body for the delivery of additional Affordable Housing in the Development

"Homes and Communities Agency" or "HCA"

means the organisation empowered to regulate registered providers of Affordable Housing under the Housing and Regeneration Act 2008 or any successor body having functions currently exercised by the Homes and Communities Agency

"HomeBuy Agent"

means a body appointed or approved by the HCA to act as agents for the allocation of the Shared Ownership Units

"Intermediate Housing"

means submarket housing which is above Target Rents but below open market levels and which housing includes schemes such as Share Ownership Housing or shared equity housing, intermediate rent and rent to buy housing provided always that such schemes meet the affordability criteria as referred to in the supporting text of Policy 3.10 of the London Plan 2015 (consolidated with amendments from 2011)

"Intermediate Units"

means Affordable Housing Units to be made available for Intermediate Housing pursuant to paragraph 2 of this Schedule

"Lifetime Home Standards"

means the standards contained in Part M Building Regulations

"Model Form of Lease"

means the model forms of lease for Shared Ownership Housing published by the HCA from time to time

"National Rent Regime"

means the regime under which the social rents of tenants of social housing are set, with particular reference to the DCLG's Guidance on Rents for Social Housing on the Rent Standard (May 2014) and the Welfare Reform Act (2016) (as the same may be amended or superseded)

"Perpetuity" means a minimum term of One Hundred and Twenty Five years from the date of first Occupation of an Affordable Housing Unit

"Rental Cap" means the weekly rents (inclusive of service charge) set out in the table below:-

Size	Weekly Rent (inc Service Charge) on first letting of an Affordable Rented Housing Unit
1 bedroom	£185
2 bedroom	£202
3 bedroom	£248

SUBJECT TO an annual percentage rent increase by reference to the amount of the annual increase in the CPI + 1% (calculated from the date of this Agreement and based on the annual CPI rate published for the preceding September), or such other rate of annual increase as shall be published by the HCA under their Rent Standard Guidance, including any rate published by the HCA pursuant to the consultation entitled "**The Regulatory Framework for Social Housing in England from April 2012 Annex A: Rent Standard Guidance**)"

"Rents and Nominations Agreement" means the Council's standard rents and nominations agreement

"Shared Ownership Housing" means a unit occupied partly for rent and partly by way of owner occupation on shared ownership terms as defined in section 2(6) of the Housing Act 1996 where the lessee for the time being has the right to carry out staircasing and dispose of the unit on the open market in accordance with the provisions of the Model Form of Lease

"Shared Ownership Units" means Affordable Housing Units to be made available for Shared Ownership Housing pursuant to paragraph 3 of this Schedule

"Social Rented Housing" means rented housing for which guideline target rents are determined through the National Rent Regime

"Staircasing" means the purchase by the owners of additional equity in a Shared Ownership Unit or shared equity unit

"Target Rents" means rents for Social Housing calculated in accordance with the National Rent Regime

2. **AFFORDABLE HOUSING PROVIDER**

2.1 Prior to the Commencement of Development (whichever is sooner) the Developer shall submit to the LPA and obtain its approval to a list of companies or organisations involved in the provision of Affordable Housing who if Approved shall be capable of being Affordable Housing Providers for the Development.

2.2 The Developer will:-

2.2.1 proceed diligently and with all due expedition to negotiate and enter into an Affordable Housing Contract in respect of the Affordable Rented Housing Units and the Shared Ownership Units to be provided pursuant to paragraph 3 of this Schedule; and

2.2.2 notify the LPA within 10 (ten) Working Days of entering into an Affordable Housing Contract.

3. MINIMUM AFFORDABLE HOUSING PROVISION

3.1 Not less than 5 (five) Residential Units shall be provided as Intermediate Units.

3.2 The Affordable Housing to be provided pursuant to paragraphs 3.1 above shall comprise the following unit size mix:-

	1 bed/2 person units	2 bed/4 person units	3 bed/5 person units	Total number of units
Intermediate Units	3	1	1	5

3.3 Not more than fifty per cent (50%) of the Private Residential Units shall be Occupied until:-

3.3.1 fifty per cent (50%) of the Affordable Rented Housing Units and the Intermediate Units are:-

(a) Completed and made ready for occupation; and

(b) have been transferred to the Affordable Housing Provider pursuant to the Affordable Housing Contract.

3.4 Not more than seventy per cent (70%) of the Private Residential Units shall be Occupied until:-

3.4.1 one hundred per cent (100%) of the Affordable Rented Housing Units and the Intermediate Units are:-

(a) Completed and made ready for occupation; and

(b) have been transferred to the Affordable Housing Provider pursuant to the Affordable Housing Contract.

4. AFFORDABLE RENTS AND AFFORDABILITY CRITERIA

4.1 The rent (inclusive of service charge) charged for the first letting of any Affordable Rented Housing Unit shall not exceed the applicable Affordable Rent **PROVIDED THAT:-**

4.1.1 the Owner shall obtain the written agreement of the LPA as to the amounts of the weekly rents and the LPA shall act reasonably when agreeing any proposed revisions to these weekly rents; and

4.1.2 the Affordable Rent shall not exceed the relevant Rental Cap.

4.2 The rents (inclusive of service charge) on subsequent lettings and tenancy renewals of any Affordable Rented Housing Unit (which for the avoidance of doubt shall not include tenancies which are continuing after a probationary period) shall not exceed the applicable Affordable Rent unless otherwise agreed in writing with the LPA.

4.3 The cost of rent and/or mortgage payments and service and estate charges in relation to the Shared Ownership Units shall not exceed the general affordability criteria for Shared Ownership Housing published by the Greater London Authority from time to time.

5. GRANT FUNDING

5.1 The Developer shall:-

5.1.1 use Reasonable Endeavours to secure Grant Funding;

5.1.2 notify the LPA of the outcome of any such application for Grant Funding within 10 (ten) Working Days of receipt of the same;

5.1.3 if Grant Funding is secured, notify the LPA as to the quantum, tenure and proposed location of the additional Affordable Housing to be provided in the Development.

5.2 The LPA shall provide such non-financial support as may be reasonably requested by the Developer in respect of any applications for Grant Funding pursuant to paragraph 5.1 above.

5.3 If Grant Funding is offered or secured subject to conditions that would prevent the Developer from complying with any of the obligations in this Schedule, the Developer and the LPA shall meet to discuss any amendments to the said obligations which would be necessary to deliver additional Affordable Housing in the Development with such Grant Funding **PROVIDED THAT** there shall be no obligation on the LPA to agree to any such amendments even if this results in the Grant Funding not being available.

5.4 If Grant Funding is made available for the delivery of any Intermediate Housing within the Development, the Developer shall within the later of 28 (twenty-eight) days of receipt of such Grant Funding or Commencement of Development notify the LPA which units of Affordable Housing are being delivered with the assistance of such funding (a "**Grant Funded Unit**").

5.5 In respect of the disposal of any Grant Funded Unit the purchase price shall not exceed eighty five per cent (85%) of the market value of that unit on the assumption that it is a Private Residential Unit and the assessment of market value shall be undertaken as at the date of the contract for sale for that unit.

5.6 Subject to the terms of any grant agreement with any body or other binding funding conditions providing Grant Funding, the balance of any payment received by the Developer in respect of the Staircasing of a Grant Funded Unit less the Developer's reasonably and properly incurred costs in relation to such Staircasing (including but not limited to legal and other professional fees) shall be applied by the Developer towards the provision of additional Affordable Housing within the LPA's administrative area.

6. GENERAL

6.1 The Developer hereby covenants with and undertakes to the LPA that the Developer will in respect of Affordable Housing:-

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

6.1.2 provide that 10% of the Affordable Housing Units are accessible or easily adaptable for wheelchair users across all tenures and unit sizes, and provide details including 1:50 floor plans of the proposed wheelchair accessible dwellings to the LPA for Approval prior to any development above the Super-Structure and notify the LPA at least seven (7) months prior to their Completion **PROVIDED THAT** in the event that any such units have not been sold to a wheelchair user by the end of the Developer using reasonable endeavours to sell the units within the seven (7) month marketing period and evidence of the same has been provided and approved by the LPA then the Developer may convert such units to non-wheelchair accessible or adaptable dwellings **AND PROVIDED FURTHER THAT**

notwithstanding the Approved Drawings any wheelchair allocated parking bays which are not purchased by wheelchair users by the end of the seven (7) month marketing period may be sold to any purchaser of a Residential Unit;

- 6.1.3 provide the Affordable Housing Units in accordance with the London Mayor's Housing Supplementary Planning Guidance Housing (March 2016) and such parts of the London Mayor's Draft Interim Housing Supplementary Planning Guidance Housing (May 2015) which remain in place at the date of this Agreement and the Lifetime Home Standards as the same may be superseded or amended from time to time;
- 6.1.4 ensure that the Affordable Housing Contract imposes a requirement on the Affordable Housing Provider to deliver a duly executed Rents and Nominations Agreement to the Council within 6 months of date of the Affordable Housing Contract.

6.2 The provisions of this Schedule will not bind:-

- 6.2.1 any mortgagee or chargee of the Affordable Housing Provider nor any mortgagee or charge of the owner for the time being of any leasehold interest in any of the Affordable Housing Units nor any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by such mortgagee or chargee of such Affordable Housing Provider or owner and who exercises any power of sale **PROVIDED THAT:-**
 - (a) it has given the LPA at least 3 (three) months written notice of its intention to exercise such power of sale so as to provide the LPA with the opportunity to complete an assignment of the Affordable Housing Units in question to ensure that they continue to be used for the purpose of Affordable Housing;
 - (b) the said mortgagee or receiver has used its Reasonable Endeavours to first dispose of the Affordable Housing Units to an Affordable Housing Provider and provided written evidence of such Reasonable Endeavours to the LPA and for the avoidance of doubt such mortgagee chargee or receiver shall not be under any obligation to dispose of the Affordable Housing Units for a sum less than the monies outstanding pursuant to the legal charge or mortgage; and
 - (c) if the said mortgagee chargee or receiver shall not have disposed of the said Affordable Housing Units or any part thereof in accordance with paragraph 6.2.1(b) above within the said three month period the said mortgagee or the receiver may (but without imposing any obligation on the said mortgagee or receiver) dispose of the Affordable Housing Units which have not by that time been disposed of to such Affordable Housing Provider on the open market to a willing buyer and such buyer shall take free of the restrictions imposed herein in relation to the Affordable Housing Units;
- 6.2.2 any Shared Ownership Unit where one hundred per cent (100%) of the equity in that Shared Ownership Unit has been purchased by the tenant via Staircasing;
- 6.2.3 any completed Affordable Housing Units where an Affordable Housing Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable;
- 6.2.4 any completed Affordable Housing Units where a Affordable Housing Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof; or
- 6.2.5 any person or body deriving title through or from any of the parties mentioned in paragraphs 6.2.1 to 6.2.4.

- 6.3 The Developer will procure that the Transfer of any Shared Ownership Units to an Affordable Housing Provider imposes a requirement that when granting a lease of an individual Shared Ownership Unit the Affordable Housing Provider will use the appropriate Model Form of Lease.
- 6.4 Upon the transfer of any Affordable Housing Units to an Affordable Housing Provider the obligations imposed on the Developer in this Schedule in relation to those Affordable Housing Units shall be observed and performed by the Affordable Housing Provider and where any obligation is expressed as an obligation on the Developer to procure any act on the part of the Affordable Housing Provider, such obligation shall be construed as an obligation of the Affordable Housing Provider to itself perform the obligation in question.
- 6.5 No Affordable Housing Unit shall be Occupied before the Affordable Housing Provider has entered into a Rents and Nominations Agreement with the London Borough of Tower Hamlets in respect of the Affordable Housing Units and evidence thereof has been provided to and approved in writing by the LPA.
- 6.6 Unless otherwise agreed in writing by the LPA, no Affordable Housing Unit shall be Occupied before an Affordable Housing Management Scheme for the Affordable Housing Units has been submitted to and approved in writing by the LPA and the Affordable Housing Units shall thereafter be Occupied in accordance with the approved Affordable Housing Management Scheme.

7. RESTRICTION ON OCCUPATION OF AFFORDABLE HOUSING UNITS

7.1 Subject to the terms of this Schedule and any Rents and Nominations Agreement:-

- 7.1.1 no Affordable Rented Housing Unit provided under the terms of this Schedule shall be Occupied other than as an Affordable Rented Housing Unit and all occupational leases and tenancies of such units shall include a provision preventing sub-letting and underletting save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Affordable Rented Housing Unit; and
- 7.1.2 no Intermediate Unit provided under the terms of this Schedule shall be Occupied other than as an Intermediate Unit pursuant to a Model Form of Lease save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Intermediate Unit.

SCHEDULE 2

VIABILITY REVIEW

1. DEFINITIONS

"Construction Contract"		means a contract for the construction and completion of the Development entered into by the Developer in such form as is custom and practice to use in the industry incorporating the programme for the completion of the Development by a specified completion date documentary evidence of which shall be submitted to the LPA in writing
"Deferred Housing"	Affordable	means the Deferred Affordable Housing Units or the Deferred Affordable Housing Payment
"Deferred Housing Units"	Affordable	means Affordable Housing to be provided as part of the Development in addition to the Affordable Housing Units to be provided pursuant to Schedule 1 of this Agreement up to a maximum of 10 (ten) Residential Units (in addition to the 5 (five) secured by Schedule 1) in accordance with the Deferred Affordable Housing Scheme
"Deferred Housing Payment"	Affordable	means a sum of money representing the cost of providing additional Affordable Housing Off Site so as to increase the Affordable Housing provided by the Development above the figure of 5 Residential Units secured through Schedule 1 of this Agreement up to a cap of fifty per cent (50%) of the Residential Units comprised within the Development in accordance with the requirements of Policy H.2 of the London Legacy Development Corporation Local Plan (adopted on 21 July 2015) to be agreed between the Developer and the LPA or determined by the Specialist
"Deferred Housing Scheme"	Affordable	means a scheme specifying the quantum, size and location of the Deferred Affordable Housing Units with reference to plans and drawings approved as part of the Planning Application, which:- (a) is submitted by the Developer with any Viability Review and (b) is either:- (i) agreed by the LPA and the Developer or (ii) determined by the Specialist
"Force Majeure"		means fire, explosion, aircraft and aerial devices dropped from aircraft, war, riot, civil commotion or terrorist activity
"Memorandum"		means a memorandum made in accordance with paragraph 13 of this Schedule
"Relevant Report"		means a detailed report setting out and evidencing the Developer's reasons and justification (financial and otherwise) as to why any Viability Review submitted would not support any Deferred Affordable Housing

"Specialist" means an independent qualified chartered surveyor with not less than 10 (ten) years relevant experience in undertaking viability assessments the identity of which shall be agreed between the parties or nominated in accordance with Clause 10.3 of this Agreement

"Substantial Commencement" means the occurrence of all of the following events:-

- (a) a Construction Contract is let by the Developer and certified documentary evidence of the same is provided to the LPA and
- (b) an Unconditional Obligation Certificate is provided to the LPA in writing (which for the avoidance of doubt can be in the form of a letter) and
- (c) Commencement of the Development has occurred and works (including but without limitation building or engineering works) pursuant to the Construction Contract have taken place and are ongoing in respect of the Development for at least three (3) calendar months (without interruption to the construction programme under the Construction Contract lasting more than one (1) week in total in any given month)

"Unconditional Obligation Certificate" means a certificate provided by solicitors acting for the Developer to the effect that:-

- (a) the Developer has completed the Construction Contract in which a construction contractor agrees to construct the whole Development by a specified completion date in accordance with an agreed programme subject to the usual extensions and
- (b) all contractual conditions precedent to the enforcement of the obligation to construct the Development referred to at (a) above have been satisfied

"Viability Review" means a review to be provided by the Developer assessing the ability of the Development to viably deliver some or all of the Deferred Affordable Housing based upon a review of relevant income assumptions undertaken in accordance with the supporting statement prepared by Savills dated 28 July 2015

2. EVIDENCE OF COMMENCEMENT

Upon the occurrence of Substantial Commencement within 15 (fifteen) months of the date of grant of the Planning Permission the Developer shall submit to the LPA written evidence of the events which amount to Substantial Commencement including the Construction Contract and the Unconditional Obligation Certificate and shall allow the LPA (and its agents) access to the Site at all reasonable times for the purposes of inspecting the Site and verifying Substantial Commencement.

3. VIABILITY REVIEW

3.1 If the Development has not been Substantially Commenced within 15 (fifteen) months of the date of the Planning Permission the Developer shall prior to Substantial Commencement or as the case may be prior to any undertaking any further development work which would constitute Substantial Commencement submit to the LPA a Viability Review which shall be accompanied by:-

3.1.1 either:-

- (a) the Relevant Report; or
 - (b) a Deferred Affordable Housing Scheme;
 - (c) the Construction Contract; and
 - (d) an Unconditional Obligation Certificate
- (together known as the "**Contract Documents**").

4. INTERRUPTIONS TO THE PROGRAMME

Subject to Force Majeure if at any time following Commencement no construction works at the Development have taken place for a period exceeding three (3) consecutive calendar months, the Developer shall submit to the LPA a Viability Review prior to re-commencement of works on the Development and the provisions of paragraph 3 above and the remainder of this Schedule shall apply to such Viability Review.

5. CONTENT OF VIABILITY REVIEW

5.1 If no Deferred Affordable Housing Scheme is submitted with the Viability Review required to be submitted to the LPA pursuant to the provisions of paragraphs 3 or 4 of this Schedule, the Viability Review shall be accompanied by:-

- 5.1.1 the Developer's justification (financial and/or otherwise) as to why no On Site Deferred Affordable Housing Units can be provided as part of the Development; and
- 5.1.2 a Deferred Affordable Housing Payment proposal in the event that the Viability Review demonstrates that a Deferred Affordable Housing Payment can be made.

6. VALIDATION OF VIABILITY REVIEW AND REQUESTS FOR FURTHER INFORMATION

6.1 Within 10 (ten) Working Days of receipt of a Viability Review (unless otherwise agreed between the LPA and the Developer), the LPA shall either:-

- 6.1.1 confirm in writing to the Developer that it has received a valid Viability Review and the Contract Documents ("**Validation Date**"); or
- 6.1.2 request such further financial, planning, legal or other information as acting reasonably it deems necessary in order to assess viability

and for the avoidance of doubt nothing in this paragraph 6.1 shall amount to agreement of any of the matters contained in the Viability Review nor preclude the LPA from seeking further relevant information during the course of negotiations pursuant to paragraph 7 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 in paragraph 6.1.2 above.

6.2 On receipt of any request for further information, the Developer shall as soon as reasonably practicable and in any case within 10 (ten) Working Days (or such longer period as may be agreed

between the LPA and the Developer) of such request provide to the LPA the information requested whereupon the LPA shall confirm receipt of a valid Viability Review in writing (and such date shall be deemed the Validation Date).

6.3 The Developer acknowledges that during the course of negotiations pursuant to paragraph 7 below, the LPA or its surveyor shall be entitled to seek such further information as either deems relevant or reasonable to settling the Viability Review and/or Deferred Affordable Housing Scheme and/or Deferred Affordable Housing Payment with which the Developer shall comply as outlined in paragraph 6.2 above using all reasonable endeavours.

6.4 If either paragraph 3 or paragraph 4 of this Schedule applies, the Developer shall not Commence or continue to Commence (as applicable) the Development or otherwise cause or permit Commencement or continued Commencement (as applicable) of the Development until the LPA has received a valid Viability Review and Contract Documents.

7. REVIEW OF VIABILITY REVIEW AND DEFERRED AFFORDABLE HOUSING SCHEME

7.1 The LPA shall be entitled to:-

7.1.1 recover from the Developer its reasonable and properly incurred internal costs (including officer time) incurred pursuant to this Schedule 2; and

7.1.2 instruct external surveyors to act on its behalf to review and assess the Viability Review and recover from Developer the LPA's reasonable and properly incurred costs of that review and subsequent advice to the LPA; and

7.1.3 the Developer shall pay such costs within 10 (ten) Working Days of written demand from the LPA.

7.2 For a period not exceeding 2 (two) calendar months commencing on the Validation Date (unless otherwise agreed between the LPA and the Developer in writing), the Developer and the LPA (or its surveyor) both acting reasonably and in good faith may review and seek to agree:-

7.2.1 the Viability Review, and

7.2.2 if relevant, the Deferred Affordable Housing Scheme or Deferred Affordable Housing Payment; and

7.2.3 shall give effect to any such agreement in a Memorandum.

7.3 Within 3 (three) calendar months of the Validation Date, the LPA shall confirm in writing that either:-

7.3.1 it rejects (with reasons) the conclusions of the Viability Review (as submitted) ("**Non-Acceptance Notice**"); or

7.3.2 it accepts the conclusions of the Viability Review as submitted or as negotiated between the Developer and the LPA and confirms that no Deferred Affordable Housing is triggered; or

7.3.3 it accepts the conclusions of the Viability Review as submitted or as revised following a review between the Developer and the LPA, and the Deferred Affordable Housing Scheme or Deferred Affordable Housing Payment (if relevant) is agreed by way of a completed Memorandum ("**Acceptance Notice**").

8. REFERRAL TO THE SPECIALIST

8.1 In the event that pursuant to paragraph 7 above, the Developer and the LPA have not agreed the Viability Review and/or the Deferred Affordable Housing either Party shall be entitled to refer the matter to the Specialist for determination and each shall use its reasonable endeavours to do so

within 1 (one) calendar month of the date of the Non-Acceptance Notice (unless otherwise agreed between the LPA and the Developer) and the date the matter is referred shall be referred hereafter as the "**Referral Date**".

8.2 Unless otherwise agreed between the LPA and the Developer or required by the Specialist each shall within a further period of 10 (ten) Working Days from the Referral Date submit its evidence and representations to the Specialist in respect of the Viability Review and the Deferred Affordable Housing which for the avoidance of doubt shall include representations explaining whether Deferred Affordable Housing could be provided on Site as Deferred Affordable Housing Units ("**Representations Period**").

8.3 In addition to the matters specified in paragraph 8.2, in making his determination the Specialist shall have regard to:-

8.3.1 all relevant material submitted to him by the LPA and the Developer;

8.3.2 such relevant financial, legal, planning or other matters he considers relevant using reasonable care and skill and his professional expertise;

8.3.3 the provisions of this Agreement and this Schedule, in particular but without prejudice to the generality of the provisions relating to On Site Deferred Affordable Housing at paragraph 9.

8.4 Unless otherwise agreed by the LPA and the Developer or notified to them by the Specialist the Specialist shall be appointed on the basis that, if the Specialist determines that the Deferred Affordable Housing requirement is triggered that his or her decision shall include a Deferred Affordable Housing Scheme or calculation of the Deferred Affordable Housing Payment (the "**Decision**") which the LPA and the Developer shall thereafter incorporate in a completed Memorandum in accordance with paragraph 13 below.

9. **ON SITE DEFERRED AFFORDABLE HOUSING UNITS**

9.1 The Developer covenants to provide any Deferred Affordable Housing Units as may be required and agreed between the Parties (or determined by the Specialist) on the Site as part of the Development in accordance with:-

9.1.1 the Deferred Affordable Housing Scheme; and

9.1.2 the programme comprised in the Construction Contract; and

9.1.3 the obligations and covenants on the part of the Developer in relation to Affordable Housing Units in Schedule 1 which shall apply mutatis mutandis to the Deferred Affordable Housing Units.

10. **DEFERRED AFFORDABLE HOUSING PAYMENT**

10.1 If the Specialist determines or the Developer and LPA agree that the Development can viably support Deferred Affordable Housing but the Deferred Affordable Housing cannot be provided within the Development and the Developer has previously submitted to the LPA or the Specialist (as the case may be) a detailed report evidencing the reasons why it would not be practicable to provide the Deferred Affordable Housing Units within the Development:-

10.1.1 the Developer shall pay to the LPA the Deferred Affordable Housing Payment prior to First Occupation; and

10.1.2 no part of the Development shall be Occupied until the Deferred Affordable Housing Payment has been paid to the LPA.

11. **RESTRICTION ON IMPLEMENTATION**

11.1 If either paragraph 3 or 4 of this Schedule applies, the Developer shall not Substantially Commence or re-commence (as applicable) the Development until:-

- 11.1.1 the LPA or the Specialist has confirmed in writing that the Viability Review is accepted and no Deferred Affordable Housing is required; or
- 11.1.2 the LPA has confirmed its approval of the Deferred Affordable Housing Scheme and the same has been documented by way of Memorandum; or
- 11.1.3 if the matter has been referred to the Specialist by either Party the Specialist has issued his Decision including the Deferred Affordable Housing Scheme or Deferred Affordable Housing Payment (as relevant) and the same has been documented by way of Memorandum.

12. **EXPIRY OF VIABILITY REVIEW AND DEFERRED AFFORDABLE SCHEME**

12.1 Any Viability Review shall expire ("**Expiry Date**") after a period of 12 (twelve) months:-

- 12.1.1 from the date of its preparation; or
- 12.1.2 if the LPA requested further information resulting in its revision from the Validation Date; and
- 12.1.3 where the Developer has not Substantially Commenced or re-commenced (as applicable) the Development.

12.2 If a Viability Review expires without the LPA and the Developer having agreed or the Specialist having determined the issue of the Deferred Affordable Housing, then the Developer shall within 1 (one) calendar month of the Expiry Date submit to the LPA (or the Specialist as the case may be) an up-to-date Viability Review whereupon the provisions and covenants on behalf of the Developer in this Schedule shall apply to any subsequent Viability Review(s) and Deferred Affordable Housing.

12.3 Notwithstanding the agreement of the LPA and Developer (or the Specialist's determination) of the Deferred Affordable Housing Scheme, if following Commencement construction works have not taken place for a period exceeding 12 (twelve) calendar months, then the Developer shall:-

- 12.3.1 submit to the LPA an updated Viability Review prior to re-commencement of works, and
- 12.3.2 immediately cease to dispose off-plan of any Residential Units; and
- 12.3.3 the provisions and covenants on behalf of the Developer in this Schedule shall apply to any subsequent Viability Review(s) and Deferred Affordable Housing such that any further or revised Deferred Affordable Housing Scheme shall be agreed by way of a fresh Memorandum.

13. **MEMORANDUM**

13.1 Within 15 (fifteen) Working Days of the LPA and the Developer agreeing a Deferred Affordable Housing Scheme or Deferred Affordable Housing Payment (or the Specialist determining by issuing his decision), the Developer and the LPA shall record the Deferred Affordable Housing Scheme or Deferred Affordable Housing Payment by completing a Memorandum by each of the LPA and the Developer signing the same (acting by authorised signatories).

13.2 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 [Deferred Affordable Housing Scheme/Deferred Affordable Housing Payment] by way of a signed Memorandum between the LPA and the Developer dated 20 "

13.3 Upon completion of a Memorandum, this Deed shall be construed such that:-

13.3.1 in the case of Deferred Affordable Housing Units being provided:-

- (a) the number of Deferred Affordable Housing Units shall be included within the definition of Affordable Housing Units; and
- (b) the number of Private Residential Units shall be reduced by the corresponding number of Deferred Affordable Housing Units;
- (c) the obligations in Schedule 1 shall apply to the Deferred 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 "Deferred Affordable Housing" Units to be provided within the Development; or

13.3.2 in the case of a Deferred Affordable Housing Payment becoming payable the payment will be due in accordance with the terms of the Memorandum.

SCHEDULE 3
TRAVEL PLAN

1. DEFINITIONS

"Modal Split Targets"	means the modal split targets identified in the approved Travel Plan
"Monitoring Period"	means 6 (six) months after first Occupation until 5 (five) years after first Occupation of the final Building to be Completed
"Sustainable Transport Measures"	means measures to promote sustainable transport and encourage behavioural change (which may include the provision of physical infrastructure in order to encourage greater travel by walking and cycling) PROVIDED THAT such measures are in accordance with the requirements of regulation 122(2) of the Community Infrastructure Levy Regulations 2010
"Travel Plan"	means the travel plan to be submitted to the LPA for approval pursuant to paragraph 2 of this Schedule
"Travel Plan Monitoring"	means monitoring of the approved Travel Plan by carrying out the following monitoring of travel to and from the Development which shall as a minimum include the following:- (a) carrying out representative surveys of the modal split of visitors to the Development (including staff) together with details of where those who have travelled by vehicle (for all or part of their journey) have parked (b) monitoring of the usage of the car parking which is available for use in the Development and (c) monitoring of the usage of cycle parking facilities by visitors to, and employees of, the Development
"Travel Plan Monitoring Officer"	means a person appointed by the Developer to monitor and promote the success in meeting the targets set out in the Travel Plan

- "Travel Plan Monitoring Report"** means a report setting out the data and information gathered during the Travel Plan Monitoring undertaken during the Travel Plan Review Period and such report shall include:-
- (a) details of trip generation rates
 - (b) details of mode share and change in mode share over time
 - (c) details of how effectively the Travel Plan has operated within the previous period
 - (d) any data and information necessary for the purposes of determining whether or not the Modal Split Targets have been achieved and
 - (e) (where the objectives and/or targets specified in the Travel Plan have not been met) a proposed revision to the Travel Plan for Approval by the LPA setting out additional and/or enhanced measures to bridge any shortfall in achieving the objectives and targets of the Travel Plan together with a timetable for implementing such measures
- "Travel Plan Review Period"** means initially the period of 6 (six) months commencing on first Occupation of a Residential Unit and thereafter annually on a rolling basis

2. TRAVEL PLAN

- 2.1 Prior to the erection of the Superstructure or within 12 (twelve) months of the Commencement of Development (whichever is sooner) the Developer shall:-
- 2.1.1 submit and obtain the LPA'S approval to a Travel Plan;
 - 2.1.2 appoint a Travel Plan Monitoring Officer and notify the LPA of the name and contact details of such officer.
- 2.2 The Travel Plan shall contain separate measures, commitments, targets and plans for the residential and commercial uses authorised by the Planning Permission.
- 2.3 The Travel Plan to be submitted pursuant to paragraph 2.1 shall:-
- 2.3.1 comply with TfL's online guidance on travel plans published in November 2013 and found at <http://www.tfl.gov.uk/info-for/urban-planning-and-construction/travel-plans/the-travel-plan> or such replacement best practice guidance as shall apply at the date of submission of the Travel Plan;
 - 2.3.2 contain clear commitments to measures, including investigation of potential additional measures;
 - 2.3.3 set out a clear process for review, consultation and approval of changes (and specifically targets) with the LPA;
 - 2.3.4 have obtained a 'Passed' score in the online Travel Plan assessment tool 'ATTRBUTE';

2.3.5 contain measures aimed at:-

- (a) positively influencing the travel behaviour of residents, employees and other users of the Development by promoting alternative travel modes to the car including initiatives to reduce reliance on the car and over time reduce car parking On Site;
- (b) encouraging travel by cycle, on foot and by public transport by highlighting their accessibility, availability and reviewing cycle parking space demand and use and set out measures for providing additional cycle parking spaces should further demand arise; and
- (c) setting out how monitoring travel surveys will be undertaken which cover all employees within the Development.

2.3.6 include a parking review plan which sets out:-

- (a) a strategy for periodic review of the parking spaces; and
- (b) a strategy for periodic review of blue badge parking spaces to ensure that 1 (one) parking space is provided for each resident or employee who is a disabled motorist in line with London Plan policy.

2.3.7 include a car parking management plan which sets out:-

- (a) principles for allocating car parking spaces for residents or staff and enforcement of allocated spaces;
- (b) principles for the prevention of unauthorised parking Off Site which could affect performance of the local highway network.

2.3.8 include provision for each Residential Unit and each Commercial Units membership for the use of a car club/van share scheme in the vicinity of the Development.

2.4 The Developer shall implement the approved Travel Plan during the life of the Development and shall include provisions in any lease or licence of any non-residential unit requiring any Occupier of such unit to comply with the Travel Plan and any amendments thereto.

2.5 No Development shall be Occupied other than in accordance with the approved Travel Plan and any amendments thereto.

3. TRAVEL PLAN MONITORING

3.1 In order to monitor the effectiveness of the Travel Plan the Developer shall during the Monitoring Period carry out the Travel Plan Monitoring.

3.2 During the Monitoring Period the Developer shall prepare and submit to the LPA for approval a Travel Plan Monitoring Report by not later than 42 (forty-two) days after the end of each Travel Plan Review Period.

3.3 Prior to the submission of a report referred to in paragraph 3.2 the Developer shall agree the structure of that report with the LPA.

3.4 If any Travel Plan Monitoring Report includes a revised Travel Plan for approval by the LPA the Developer shall implement the revised Travel Plan as approved so that it is in place and operational as soon as reasonably practicable after the LPA's approval of the same.

4. **MODAL SPLIT TARGETS**

- 4.1 If any Travel Plan Monitoring Report ("**First Monitoring Report**") shows that any of the Modal Split Targets in the Travel Plan have not been achieved the Developer shall in the First Monitoring Report identify Sustainable Transport Measures that it can implement with the aim of seeking to achieve the Modal Split Targets in the Travel Plan which shall include a timetable for the implementation of such Sustainable Transport Measures.
- 4.2 The Developer shall implement the Sustainable Transport Measures that are set out in any First Monitoring Report in accordance with the timetable set out therein as approved by the LPA.
- 4.3 If the Travel Plan Monitoring Report for the year immediately following the First Monitoring Report shows that any of the relevant Modal Split Targets are not being achieved the Developer shall repeat the process set out in paragraphs 4.1 and 4.2 of this Schedule for that year and each subsequent year until the Modal Split Targets are achieved.

SCHEDULE 4

EMPLOYMENT AND TRAINING

1. DEFINITIONS

- "Council's Area"** means the administrative area of the Council
- "Legacy Communities Scheme Careers Programme Group"** means the group known as the Legacy Communities Scheme Careers Programme Group which is established and operated pursuant to the provisions of a section 106 agreement dated 28 September 2012 and made between (1) the Olympic Delivery Authority (2) the London Legacy Development Corporation and (3) Transport for London
- "Local Labour and Business Schemes"** means the following schemes:-
- (a) in the LPA's administrative area - the Legacy Communities Scheme Careers Programme Group and
 - (b) in the London Borough of Hackney – the scheme known as "Ways into Work"
- "London Living Wage"** means the minimum amount (currently £9.75) of pay per hour that all workers in London should receive, as published from time to time by the GLA from time to time
- "Shell and Core"** means accommodation constructed to shell and core finish as that expression is understood in the commercial development industry
- "Workspace"** means the commercial floorspace as authorised by the Planning Permission
- "Workspace Strategy"** means a written strategy identifying how the Workspace has been and will be designed and marketed to meet the needs of small local companies and businesses

2. DELIVERY OF WORKSPACE

- 2.1 No Residential Units shall be Occupied until all of the Workspace has been completed to Shell and Core.

3. WORKSPACE STRATEGY

- 3.1 Prior to the Commencement of Development the Developer shall submit and obtain the LPA's approval to the Workspace Strategy.
- 3.2 The Developer shall not less than once a year from the date of the first Occupation of the first part of the Workspace until the date on which all Workspace is Occupied:-
- 3.2.1 review the effectiveness of the Workspace Strategy; and
 - 3.2.2 submit to the LPA for approval a report detailing the effectiveness of the Workspace Strategy and any proposed amendments thereto.
- 3.3 The Developer shall implement the approved Workspace Strategy (as may be amended in accordance with paragraph 3.2 of this Schedule) and shall use Reasonable Endeavours to enter into agreements for lease or to grant leases in respect of the Workspace.

4. LOCAL LABOUR AND LOCAL BUSINESS

- 4.1 The Developer shall use Reasonable Endeavours to, and shall procure that its contractors (in respect of construction vacancies and jobs) and its tenant(s) and any sub-tenants (in respect of end-use vacancies and jobs), use reasonable endeavours to ensure that:-
- 4.1.1 all job vacancies arising from the Development are advertised in Local Labour and Business Schemes and job centres in the Council's Area;
 - 4.1.2 Local Labour and Business Schemes are notified of all job vacancies arising from the Development;
 - 4.1.3 the recruitment of persons living in the Council's Area accounts for twenty-five per cent (25%) of the construction jobs arising from the Development;
 - 4.1.4 the recruitment of persons living in the Council's Area accounts for a total of between twenty-five per cent (25%) and eighty-five per cent (85%) of the end-use jobs at the Development;
 - 4.1.5 all employees employed at the Development in construction jobs are paid the London Living Wage;
 - 4.1.6 the London Living Wage is promoted for all end use jobs at the Development;
 - 4.1.7 work-based learning opportunities are provided at the Development, including apprenticeship opportunities comprising no less than five (5%) of all job vacancies arising from the Development; and
 - 4.1.8 to the extent that the Developer is not prevented from doing so by any rule of law whether domestic or international.
- 4.2 To the extent that it is reasonably practicable to do so and the Developer is not prevented from doing so by any rule of law whether domestic or international, the Developer shall:-
- 4.2.1 use Reasonable Endeavours to ensure that businesses located in the Council's Area benefit directly from the commercial opportunities arising from the Development;
 - 4.2.2 use Reasonable Endeavours to ensure that 20 per cent (20%) of the value of goods and services procured during the construction of the Development are supplied by businesses located within the Council's Area; and
 - 4.2.3 provide local agencies with early information relating to availability of vacant space within the Development.

SCHEDULE 5
SUSTAINABILITY

1. DEFINITIONS

- "District Energy Network"** means the Olympic Park district energy network
- "Local CHP Plant"** means any gas boilers and combined heat and power plants located within adjacent developments including but not limited to the development on the sites of planning permission references 13/00204/FUM (Monier Road East) and 12/00210/OUT (Neptune Wharf)
- "Price Per Carbon Tonne"** means £60 (Indexed) per carbon tonne or such other amount as may be set in local or national policy relating to offset solutions

2. DISTRICT HEATING NETWORK

2.1 Prior to the erection of the Superstructure the Developer shall:-

- 2.1.1 use Reasonable Endeavours to extend or procure the extension of the District Energy Network to the Site and thereafter connect all Buildings to the District Energy Network; and
- 2.1.2 provide a written report to the LPA prior to the erection of the Superstructure or within 12 (twelve) months of the Commencement of Development (whichever is sooner) outlining the steps the Developer has taken to satisfy the obligation in paragraph 2.1.1 above and the progress made towards securing the extension and connection.

2.2 If the report submitted pursuant to paragraph 2.1.2 concludes that it will not be possible (including but not limited to technical and/or financial factors) to connect all Buildings to the District Energy Network the Developer shall:-

- 2.2.1 use Reasonable Endeavours to connect to a Local CHP Plant; and
- 2.2.2 submit a further written report to the LPA prior to the erection of the Superstructure or within 12 (twelve) months of the Commencement of Development (whichever is sooner) outlining the steps the Developer has taken to satisfy the obligation in paragraph 2.2.1 above, the progress made towards securing the connection and the carbon emission reductions associated with such connection.

2.3 No Development shall take place beyond the erection of the Superstructure until:-

- 2.3.1 the report submitted pursuant to paragraph 2.1.2 confirms to the LPA's satisfaction that it will be possible to connect all Buildings to the District Energy Network;
- 2.3.2 the report submitted pursuant to paragraph 2.2.2 confirms to the LPA's satisfaction that it will be possible to connect all Buildings to a Local CHP Plant and such connection would have equivalent carbon emission reductions as if the Buildings has been connected to the District Energy Network; or
- 2.3.3 the Developer has agreed the terms of and entered into a binding obligation with the LPA pursuant to which it agrees to pay a financial contribution to the LPA towards identified offset solutions, such contribution having been calculated by reference the Price Per Carbon Tonne and the tonnage of residual CO2 emissions to be off set as a result of the Buildings not being connected to the District Energy Network.

2.4 No Building shall be Occupied unless and until:-

2.4.1 it is connected to the District Heating Network;

2.4.2 where paragraph 2.2 applies, it is connected to a Local CHP Plant; or

2.4.3 the obligation referred to in paragraph 2.3.3 has been satisfied by the Developer.

3. REDUCTION OF ENERGY DEMAND

3.1 The Developer shall use Reasonable Endeavours to encourage Occupiers of the Development to reduce their energy usage which shall include (without limitation):-

3.1.1 dissemination of marketing materials and the provision of education and training (including tips and advice) on energy saving methods;

3.1.2 the promotion of the use of energy efficient appliances; and

3.1.3 the installation of energy efficient appliances where these are installed as part of the original construction and fit out of the Development (or any part thereof).

SCHEDULE 6

DESIGN MONITORING

1. DEFINITIONS

- "Approved Drawings"** means the drawings prepared by the Architect to be approved by the Planning Permission or a S73 Permission as each may be varied by a S96A Amendment
- "Architect"** means Stock Woolstencroft
- "Design Monitoring Costs"** means the monies paid in accordance with 3.1.2 of this Schedule to meet the LPA's reasonable costs incurred in monitoring the design quality of the Development as detailed drawings are prepared and construction works are carried out on the Site and to ensure that all such drawings and works are completed to a satisfactory quality and are consistent with the Approved Drawings
- "Development"** means for the purposes of this Schedule only the development of the Site and all other operations and/or works authorised by the Planning Permission as may be amended and/or replaced by a S96A Amendment and/or a S73 Permission
- "S96A Amendment"** means a non-material amendment to the Planning Permission approved pursuant to section 96A of the 1990 Act
- "S73 Permission"** means a permission granted pursuant to an application for a minor material amendment pursuant to section 73 of the 1990 Act

2. DESIGN TEAM STATEMENT

- 2.1 None of the following applications shall be submitted unless accompanied by a statement prepared by the Developer specifying the design team involved in the preparation of these details (the **"Design Team Statement"**):-
- 2.1.1 an application pursuant to Conditions [17] of the Planning Permission;
 - 2.1.2 an application for a S96A Amendment;
 - 2.1.3 an application for a S73 Permission.

- 2.2 The Developer shall also submit a statement to the LPA specifying the design team retained in connection with the Development upon Commencement of the Development and every 6 (six) months during the construction of the Development until its Completion.

3. DESIGN MONITORING COSTS

- 3.1 If at any point the Architect is not retained to oversee the delivery of the design quality of the Development (including but not limited to the making of the applications referred to in paragraph 2.1 above and overseeing the construction of the Development) the Developer shall forthwith:-
- 3.1.1 notify the LPA of such non-retention; and

3.1.2 pay to the LPA within 10 (ten) Working Days of demand the Design Monitoring Costs and it is agreed that:-

- (a) such costs may relate either to staff employed directly by the LPA or third party consultants retained by the LPA;
- (b) the LPA may make more than one demand for payment of Design Monitoring Costs; and
- (c) when the LPA notifies the Developer of the amount of the Design Monitoring Costs to be paid it shall also provide a detailed break-down setting out how the amount has been calculated and how such monies will be spent

PROVIDED THAT the amount payable to the LPA in Design Monitoring Costs shall not exceed £50,000 (Indexed).

4. RESTRICTION ON DEVELOPMENT

4.1 The Development shall not Commence until the Developer has either:-

4.1.1 provided satisfactory evidence to the LPA that the Architect will be retained to oversee the delivery of the design quality of the Development in accordance with the Approved Drawings; or

4.1.2 paid the first instalment of the LPA's Design Monitoring Costs if the Architect has not been retained to oversee the design quality of the Development.

4.2 No Development shall be carried out if the LPA's Design Monitoring Costs have not been paid in accordance with paragraph 3.1.2.

4.3 No Development shall be carried out in accordance with any changes to the detailed designs for the Development as prepared by the Architect unless agreed in writing by the LPA and the LPA may require the Architect to approve any subsequent changes in writing before the LPA gives its own written approval under this paragraph.

SCHEDULE 7

ESTATE MANAGEMENT

1. DEFINITIONS

- "Common Areas" means:-
- (a) all shared surfaces, landscaped areas, car parks and pedestrian and/or cycle routes within the Development which are not intended to be adopted by the local highways authority pursuant to its powers under the 1980 Act and
 - (b) all areas within the Development which are used in common by Occupiers and users of such Buildings including the Play Areas
- which are shown [shaded red on Plan 4] unless otherwise agreed in writing in accordance with the Council
- "Estate Management Strategy" means the site wide estate management strategy submitted and approved pursuant to paragraphs 2.1 and 2.2 below
- "Play Areas" has the meaning ascribed to it in Schedule 8
- "Publicly Accessible Open Space" or "PAOS" has the meaning ascribed to it in Schedule 8
- "SUDS Infrastructure" means any sustainable urban drainage system comprised within the Development

2. SITE WIDE ESTATE MANAGEMENT STRATEGY

- 2.1 The Development shall not be Occupied until an Estate Management Strategy has been submitted to the LPA for approval. The Estate Management Strategy shall set out detailed proposals for the following:-
- 2.1.1 the management and maintenance (including repair, renewal, cleaning and keeping tidy) of:-
 - (a) the Common Areas (including the Play Areas);
 - (b) the PAOS; and
 - (c) any SUDS Infrastructure (unless and until such infrastructure is adopted by the relevant authority)

including in respect of (a) and (b) above all associated street furniture, lighting, security equipment and drainage;
 - 2.1.2 management and co-ordination of waste collection and recycling on a site wide basis; and
 - 2.1.3 liaison, consultation and co-ordination with other strategies, frameworks, plans and statements required by this Agreement and the Planning Permission.
- 2.2 No part of the Development shall be Occupied before the Estate Management Strategy has been approved by the LPA.

2.3 The approved Estate Management Strategy shall be implemented from First Occupation and thereafter during the life of the Development.

SCHEDULE 8

PUBLIC OPEN SPACE AND PLAY SPACE

1. DEFINITIONS

"Delivery Plan"

means a detailed plan for the delivery and layout of the PAOS and the Play Areas which shall contain at least the following information:-

- (a) the specification of the PAOS
- (b) the specification of the Play Areas including how they shall meet the requirements of the Mayoral Supplementary Planning Guidance, "Shaping Neighbourhoods: Play and Informal Recreation" published in September 2012 (or equivalent replacement guidance published by the Mayor of London or any successor body to the Mayor of London which applies on the date that the Delivery Plan is approved by the LPA) and
- (c) the timing of the construction of the Residential Units and the delivery of the PAOS and the Play Space

"Permitted Closures"

means temporary closure of any area of PAOS (or part thereof) in the following circumstances:-

- (a) temporary closure in the case of emergency where such closure is necessary in the interests of public safety or otherwise for reasons of public safety
- (b) temporary closure where such temporary closure is required for the purposes of carrying out maintenance, repair, cleansing, renewal, or resurfacing works of the area of the PAOS in question, any cables, wires, pipes, sewers, drains or ducts over along or beneath them or any other area or services in the vicinity of the PAOS
- (c) where such temporary closure is required for the purposes of carrying out inspecting, maintaining, repairing, renewing, rebuilding, demolishing or developing any buildings now or hereafter on the Site or any part thereof (including the erection of scaffolding)
- (d) closure for a maximum of one day per year to assert rights of proprietorship preventing public rights from coming into being by means of prescription or other process of law
- (e) any other closure not covered by the above in relation to which the LPA's prior written Approval has been obtained

PROVIDED THAT save in the case of an emergency the Developer will be required to provide notice to the public of any Permitted Closure of not less than 3 (three) days prior to the date such Permitted Closure is to commence

"Play Areas" means the areas shown edged red on Plan 3

"Publicly Accessible Open Space" or "PAOS" means areas of the public realm and pedestrian routes within the Development as set out in the Delivery Plan which shall be maintained and shall be freely accessible to the general public at all times save as set out in paragraph 3 of this Schedule

2. DELIVERY OF PUBLICLY ACCESSIBLE OPEN SPACE AND PLAY AREAS

- 2.1 The Development shall not be Occupied until the Delivery Plan has been submitted to and approved by the LPA and implemented as approved.
- 2.2 The Development shall be carried out and Occupied in accordance with the approved Delivery Plan.

3. PUBLIC ACCESS TO PUBLICLY ACCESSIBLE OPEN SPACE

- 3.1 From the date of Completion of the Publicly Accessible Open Space (and each part thereof) the Developer shall permit the general public to have continuous access on foot and (in respect of those routes where bicycles are permitted) by bicycle to and over the Publicly Accessible Open Space at all times free of charge **SUBJECT TO:-**

3.1.1 Permitted Closures;

3.1.2 any lawful requirements of the police or any other competent authority.

- 3.2 Subject to paragraph 3.1 the Developer shall not without the LPA's prior written approval erect any wall or barrier or any other object or structure or take any other steps which would prevent or restrict, or would have the effect of preventing or restricting, pedestrian access over the Completed Publicly Accessible Open Space except in accordance with the Delivery Plan.

4. MANAGEMENT AND MAINTENANCE OF PUBLICLY ACCESSIBLE OPEN SPACE AND PLAY AREAS

The Developer shall manage and maintain the Publicly Accessible Open Space and the Play Areas for the life of the Development in accordance with the Estate Management Strategy approved pursuant to Schedule 7.

SCHEDULE 9

FORMER RUBBER WORKS COMPLEX

1. DEFINITIONS

- "Monitoring Fee"** means the sum of £6,000 (six thousand pounds) (Indexed) which shall be used by the LPA to monitor the implementation of the Schedule of Works
- "Rubber Works Complex"** means the former rubber works complex shown on Plan 2
- "Schedule of Works"** means a detailed schedule of works for the repair of the Rubber Works Complex which shall include at least the following information:
- (a) details of works to prevent further deterioration of the structure and internal fabric
 - (b) details of the retention of the commemorative plaque
 - (c) details of the reuse of the existing London stock bricks
 - (d) details of the timing of the implementation of the works
 - (e) details of the maintenance of the works

2. SCHEDULE OF WORKS

- 2.1 Prior to the Commencement of works to the Rubber Works Complex the Schedule of Works shall be submitted to the LPA for approval and they shall include as a minimum the details outlined under paragraphs (a), (d) and (e) of the Schedule of Works definition.
- 2.2 Prior to any demolition at the Site the Schedule of Works shall be submitted to the LPA for approval and they shall include as a minimum the details outlined under paragraphs (b) and (c) of the Schedule of Works definition.
- 2.3 Thereafter the Developer shall carry out the Schedule of Works approved under paragraph 2.1 and 2.2 above.

3. MONITORING FEE

- 3.1 Prior to the Commencement of Development to pay the Monitoring Fee to the LPA.

SCHEDULE 10

PLAN 1

FOR APPROVAL



DLG

stock wool

RevB 17.11.16 Door added to commercial refuse store
RevC 14.02.17 Retained former Rubber works indicated
The Pump House 19 Hooper Street London E18BU 0207 264 8600 info@stockwool.co.uk © STOCKWOOL

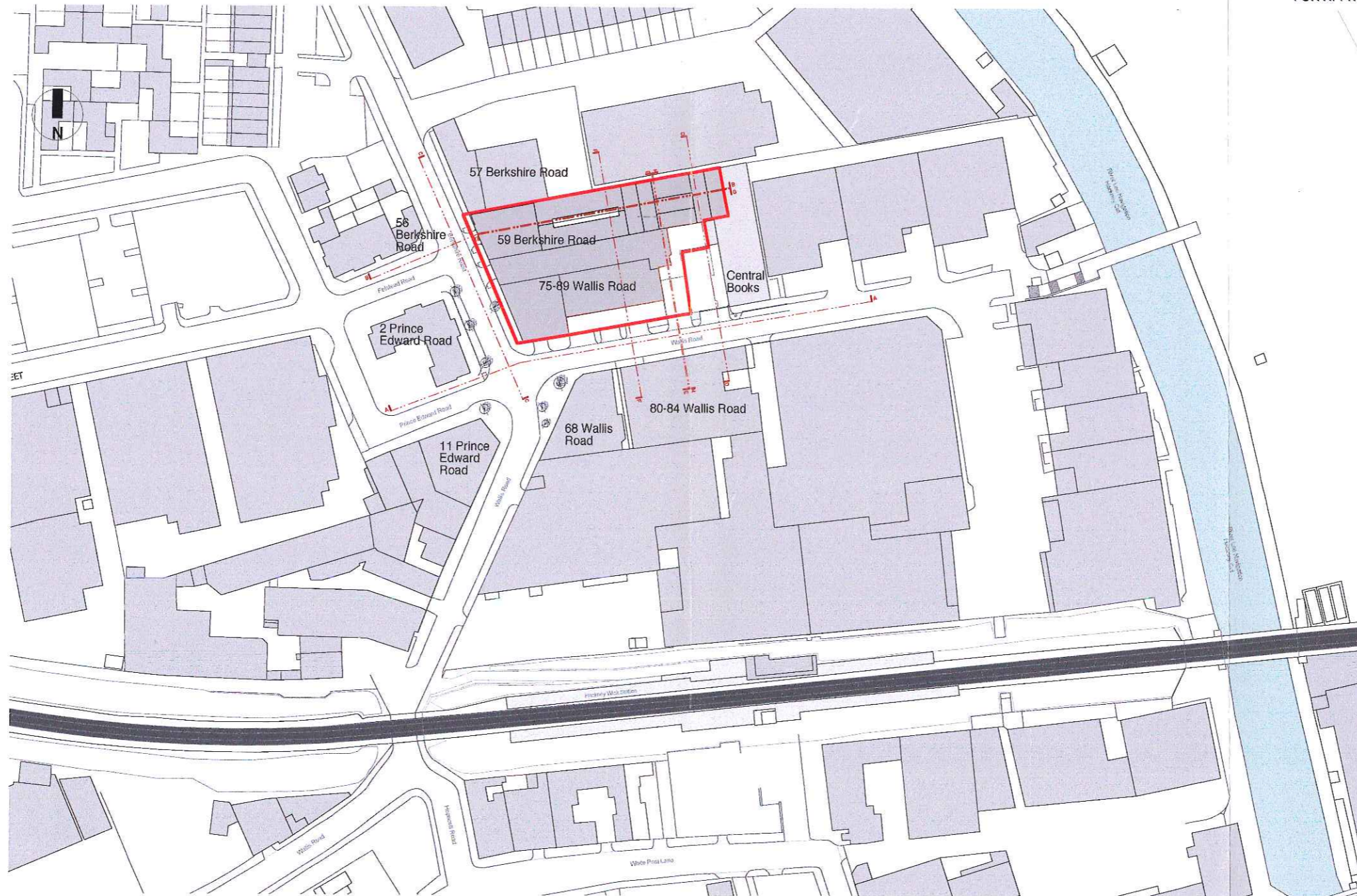
75-89 WALLIS ROAD and 59 BERKSHIRE ROAD
GROUND FLOOR PLAN
3280/PL103 - REV C | 1:2000A3 14.02.2017

[Signature]

SCHEDULE 11

PLAN 2

FOR APPROVAL



D. J. G.

stock wool

The Pump House 19 Hooper Street London E18BU 0207 264 8600 info@stockwool.co.uk © STOCKWOOL

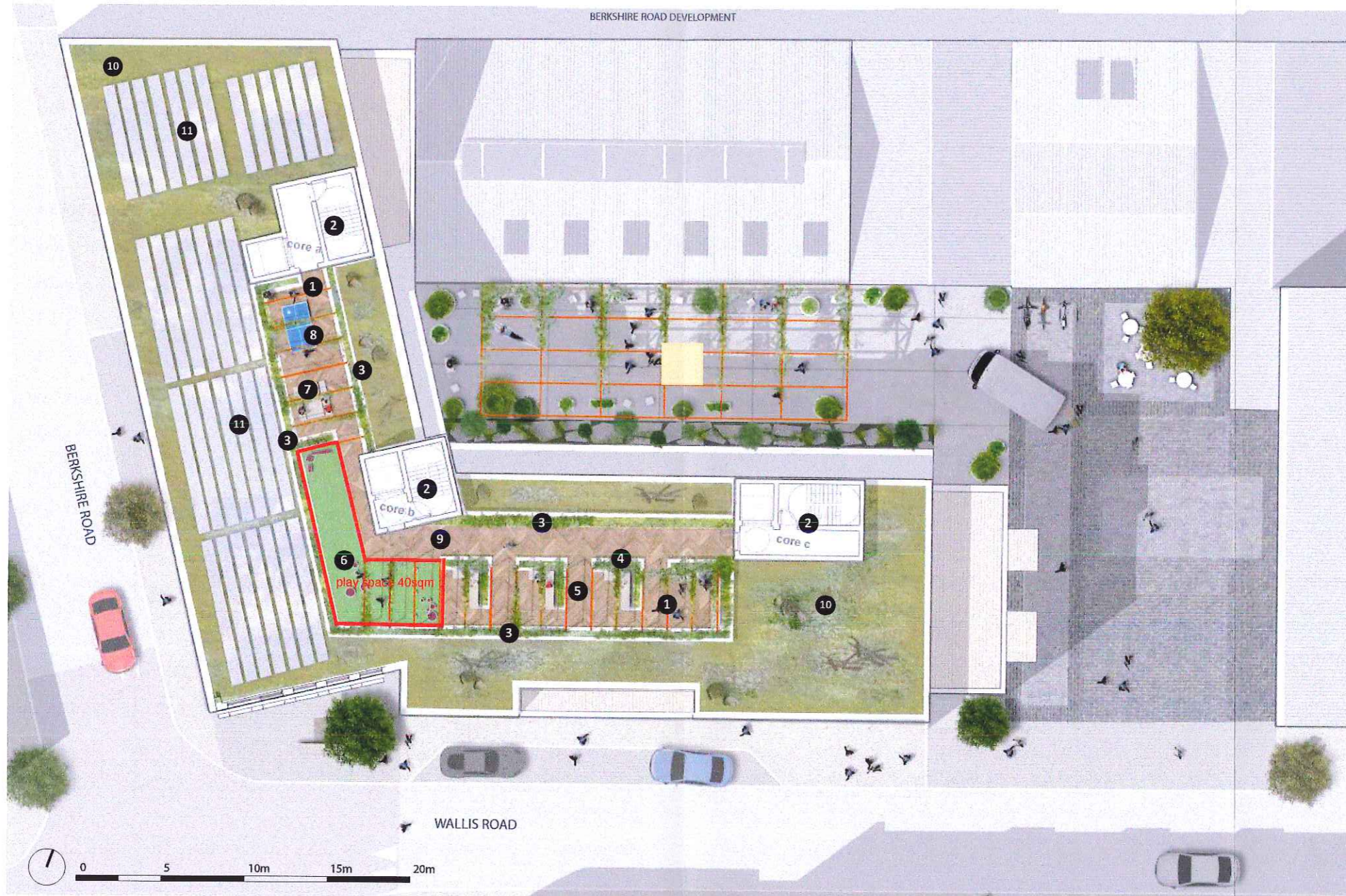
75-89 WALLIS ROAD and 59 BERKSHIRE ROAD
EXISTING SITE LOCATION
3280/PL001 | 1:1000@A3 | 30.04.2015

[Handwritten signature]

SCHEDULE 12

PLAN 3

ROOF LEVEL TERRACES AND LANDSCAPE



DADR

[Signature]

SCHEDULE 13

PLAN 4

FOR APPROVAL



stock wool

RevB 17.11.15 Door added to commercial refuse store
 The Pump House 19 Hooper Street London E18BU 0207 264 8600 info@stockwool.co.uk © STOCKWOOL

75-89 WALLIS ROAD and 59 BERKSHIRE ROAD
 GROUND FLOOR PLAN - non adopted areas
 3280/PL111 | 1:200RA3 19.04.2017

Dtk

SCHEDULE 14
DRAFT PLANNING PERMISSION

FULL PLANNING PERMISSION APPROVAL

**Town and Country Planning Act 1990 (as amended)
Town and Country Planning (Development Management Procedure) (England) Order 2015**

Please see notes at the end of this notice

Applicant	Agent
M&D Silk Properties M&D Silk Properties c/o agent	Tim Gaskell, CMA Planning 113 The Timberyard Drysdale Street London N1 6ND

Part I - Particulars of Application

Date of Application: 24-Jul-2015 Application No: 15/00338/FUL

Proposal: _____
Application for full planning permission for mixed use development comprising demolition of some existing buildings, extension and alteration of buildings retained, and erection of new part four (4) storey building with basement and part five (5) storey building with a maximum parapet height of 21.8m AOD to provide 2,133m² (GIA) of commercial space (use class B1, with up to 700m² A1 and D1 use) with yard area, 44 residential dwellings (3 x studio, 15 x 1 bedroom, 16 x 2 bedroom and 10 x 3 bedroom), upper level amenity areas, cycle parking and refuse/recycling stores.

Location: 75-89 Wallis Road and 59 Berkshire Road, Hackney Wick, London, E9 5LN

Part II - Particulars of Decision

In pursuance of the powers under the above Act and Order the London Legacy Development Corporation hereby gives notice that **PLANNING PERMISSION HAS BEEN APPROVED** for the carrying out of the development referred to in Part I hereof and as described and shown on the application and plan(s) submitted, subject to the following conditions and notes:

1. Time limit

The development shall be commenced before the expiration of three years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990

2. Works in accordance with approved details

Unless minor variations have been agreed by the Local Planning Authority and to the extent that it does not deviate from this permission, the development shall be carried out in accordance with the following drawings and documents:

Drawings 3280_PL001A, 002, 003a, 100b, 101a, 102a, 103b, 104a, 105b, 106b, 107b, 108a, 110, 120g, 121a, 122a, 123a, 124, 125, 126, 127, 128, 200a, 201a, 202a, 203a, 204a, 205a, 206a, 207a, 208b, 209a, 210a, 211, 212, 400a, 401a, 402a, 403a, 404, 405, 500a, 501a, 502a, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 8200-101a and 102a

and the description of development contained in the application and any other plans, drawings, documents, details, schemes or strategies which have been approved by the Local Planning Authority pursuant to these conditions.

Reason: To ensure that all works are properly implemented and retained.

3. Notice of Commencement

The development shall not be commenced until written notice of intention to commence the development has been given to the Local Planning Authority. The notice required by this condition shall only be given where there is a genuine prospect of development being commenced within 21 days of the notice and the notice shall confirm and provide evidence that this is the case.

Reason: To ensure satisfactory compliance with this planning permission.

Pre commencement justification: To enable the LPA to monitor development.

4. Land Use

Notwithstanding the provisions of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and/or re-enacting that Order) the commercial premises hereby approved shall only be used for the purposes specified in the application (being use class B1 as defined in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended at the date of this permission)).

Reason: To ensure a suitable quantum of workspace on the site.

5. Housing Design Guide

The residential units hereby permitted shall:

- as a minimum meet the Technical Housing Standards - Nationally Described

Space Standard - (March 2015) or such any replacement national standard published after the date of this permission; and

- be built in substantial conformity with the Mayor of London's Housing Supplementary Planning Guidance (November 2012) or any replacement housing SPG that may be issued by the Mayor of London after the date of this permission SAVE THAT the following elements of the 'Baseline' Quality and Design Standards outlined with Annex 1 of the Mayor of London's Housing Supplementary Planning Guidance shall not apply:
- any elements of the Annex 1 Baseline Standards that are addressed by the Technical Housing Standards - Nationally Described Space Standard unless they are equivalent; and
- any elements of the Annex 1 Baseline Standards that are addressed by other conditions in this permission.

Reason: To ensure that high standards of urban design, residential amenity and landscaping are achieved.

10. Approval of road works necessary

The development shall not be commenced above ground (other than demolition) until a scheme for implementing details of the following works to the highway have been submitted to and approved in writing by the Local Planning Authority:

- Installation of new crossovers and reinstatement of footways where existing crossovers are being blocked up

The building hereby permitted shall not be occupied until the scheme of works have been completed in accordance with the approved details.

Reason: To ensure that all road works associated with the proposed development are to a standard approved by the Local Planning Authority and are completed before occupation.

Pre-commencement justification: To ensure that all road works required will be undertaken so that there will be no adverse highway of safety issues as a result of the development.

11. Construction Management Plan

The development shall not be commenced until an updated construction management plan (CMP), has been submitted to and approved by the Local Planning Authority. An updated version of the CMP reflecting any changes in policy or best practice guidance shall be submitted to the Local Planning Authority for approval no less frequently than once every three years whilst construction works are in progress on the site. The CMP and the updates thereto shall be in accordance with all relevant legislation in force and substantially in accordance with all policy adopted and best practice guidance published at the time of submission. The CMP shall include as a minimum the following information:

- The arrangements for liaison with the relevant highway authorities;
- The parking of vehicles of site operatives and visitors;
- The loading and unloading of plant and materials including a construction logistics plan;
- The storage of plant and materials use in constructing the development;
- The erection and maintenance of security hoardings;
- Measures to control the emission of dust and dirt during construction;
- A scheme for recycling and disposing of waste resulting from demolition and construction work;
- Dealing with complaints and community liaison;
- Details of routes and access for construction traffic. Including lorry holding areas; and
- Guidance on membership of the Fleet Operator Recognition Scheme and implementation of vehicle safety measures and driver training including cycle awareness and an on road cycle module.

The development shall be carried out in accordance with the approved details.

Reason: To ensure that the construction of the development uses best practicable means to minimise adverse environmental impacts

Pre-commencement justification: To ensure that construction is undertaken so that impacts are mitigated.

14. Archaeological Investigation

- a) No development other than demolition to existing ground level shall take place until (i) a programme of archaeological evaluation has been submitted to and approved by the Local Planning Authority in writing (ii) the approved archaeological evaluation programme has been implemented and (iii) a report on that evaluation has been submitted to the Local Planning Authority.
- b) If heritage assets of archaeological interest are identified by the evaluation under Part A, then before development, other than demolition to existing ground level, commences (i) a Written Scheme of Investigation shall be submitted to and approved by the Local Planning Authority in writing.
- c) No development or demolition other than demolition to existing ground level shall take place other than in accordance with the Written Scheme of Investigation approved under Part (B) and archaeological works shall be carried out by a suitably qualified investigating body acceptable to the Local Planning Authority.
- d) The development shall not be occupied until a site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part (B), and the provision for analysis, publication and dissemination of the results and archive deposition has been secured.

Reason: To protect heritage assets of archaeological interest that may survive on the site.

Pre commencement justification: To ensure that the archaeological interests are protected during construction works.

15. Material samples

No above ground works (other than demolition) shall take place until material samples and sample-panels of all external facing materials (including any hard landscaping materials, mortar and bond) to be used in the construction of the external surfaces of the building hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure the satisfactory appearance of the development

16. Detailed drawings

Prior to commencement of the development above ground (other than demolition) -the following detailed drawings including sections (at a scale to be agreed with the Local Planning Authority) shall be submitted to and approved in writing by the Local Planning Authority:

- Commercial façade details (ground level shopfronts and entrances): Elevations and sections through shopfronts, including details of doors, windows, and junctions with new pedestrian space;
- Residential façade details: Elevations and sections annotated with materials and finishes of all windows (including reveals and sills), entrances, external bin stores, balconies, and balustrades, pipework and parapets;
- External lighting;
- Junctions with the adjacent building;
- Gates to yard; and
- All openings adjacent to the highways.

The development shall not be carried out otherwise than in accordance with the approved drawings.

21. Cycle Storage and facilities- details to be submitted

No above ground works (other than demolition) shall take place until details (1:50 scale drawings) of the facilities to be provided for the secure storage of cycles (for both residential and commercial elements) and on site changing facilities and showers (for the commercial element) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the facilities provided shall be retained for the life of the development and the space used for no other purpose.

Reason: In order to ensure that satisfactory secure cycle parking and facilities for cyclists are provided and retained.

22. Renewable energy

The development shall be constructed and operated in accordance with the submitted Energy Strategy Report (dated 3rd June 2015), and achieve reductions in regulated CO2 emissions through the use of on-site renewable energy generation sources approved as part of this development.

Reason: To ensure a high standard of sustainable design and construction.

23. BREEAM

Before any fit out works to the commercial premises hereby authorised begins, an independently verified BREEAM report (detailing performance in each category, overall score, BREEAM rating and a BREEAM certificate of building performance) which demonstrates that a minimum 'very good' rating has been achieved shall be submitted to and approved in writing by the Local Planning Authority and the development shall not be carried out otherwise than in accordance with any such approval given. Before the first occupation of any commercial premises hereby permitted, a certified Post Construction Review (or other verification process agreed with the Local Planning Authority) shall be submitted to and approved in writing by the Local Planning Authority, confirming that the agreed standards above have been met.

Reason: To ensure that high standards of sustainability are achieved.

24. Green roof

Before any above ground work (other than demolition) hereby authorised begins, details of the biodiverse roof (including a specification and maintenance plan) to be used in the carrying out of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and the development shall not be carried out otherwise than in accordance with any such approval given.

Reason: To ensure the proposed development will preserve and enhance the visual amenities of the locality and is designed for the maximum benefit of local biodiversity.

25. Landscaping Plan (including roof terraces)

Before any above ground work (other than demolition) hereby authorised begins, the following information shall be submitted to and approved in writing by the Local Planning Authority:

- detailed drawings 1:50 and 1:10 of a hard and soft landscaping scheme showing the treatment of all parts of the site not covered by buildings and roof terrace areas (including boundary treatments, surfacing materials of any parking, access, or pathways layouts, materials and edge details and material samples of hard landscaping);
- details of all existing trees on and adjacent to the land, and details of any to be retained, together with measures for their protection, during the course of development;
- any external lighting;
- planting schedules;
- species mix;

28. Verification report

No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation has been submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, a maintenance timetable and arrangements for contingency action arising from the monitoring, as identified in the verification report. The long-term monitoring and maintenance plan shall be implemented in full as approved.

Reason: To protect the water environment, including groundwater from pollution and/or further deterioration.

29. Unexpected contamination

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy has been submitted to and approved by the Local Planning Authority in writing detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

Reason: To protect the water environment, including groundwater.

30. Wheelchair housing

90% of the residential units hereby permitted shall be designed and constructed in accordance with Optional Requirement M4 (2) Category 2 of Part M of the Building Regulations. 10% of the residential units hereby permitted shall be designed and constructed in accordance with Optional Requirement M4 (3) Category 3 of Part M of the Building Regulations (split proportionately so that 10% of each of the following tenures of residential units shall be so provided: market housing units, intermediate units, social rented Units and affordable rented units; and 10% of each of the following sizes of residential units shall be so provided: one, two and three bedroom units). The actual number of units to be provided in accordance with this condition will be the number of whole units that is as near as arithmetically possible to the specified percentage and 0.5 or above shall be rounded up to the nearest whole.

Reason: To ensure adequate wheelchair housing is provided

Proactive and Positive Statement

In accordance with the National Planning Policy Framework and with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the following statement explains how the LLDC as Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with this planning application:

Following submission of the planning application to LLDC, the local planning authority continued to work with the applicant in a positive and proactive manner. The planning application complies with planning policy as stated above and was determined in a timely manner.

The applicant has been kept informed of the progress of the application and has been given the opportunity to respond to and address any problems arising.

London Legacy Development Corporation

Town and Country Planning Act 1990 (as amended)

Appeals to the Secretary of State

- * If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for Communities and Local Government under Section 78 of the Town and Country Planning Act 1990 (as amended).
- * If you want to appeal then you must do so within **SIX months** of the date of this notice (unless your proposal relates to a householder appeal or minor commercial appeal as defined in Article 37 of the DMPO 2015 in which case you must do so within **TWELVE weeks** of the date of this notice), using a form, which is available from the Planning Inspectorate, (a copy of which must be sent to London Legacy Development Corporation Planning Policy and Decisions Team) or complete an application online. The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (e-mail: enquiries@pins.gsi.gov.uk) or (Tel: 0117 372 8000).

To make an appeal online, please use www.gov.uk/appeal-planning-inspectorate. The Inspectorate will publish details of your appeal on the internet. This may include copies of documentation from the original planning application and relevant supporting documents supplied to the local authority, and or information, including personal information belonging to you that you are happy will be made available in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

- * The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances, which excuse the delay in giving notice of appeal.
- * The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.
- * In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

Purchase Notice

- * If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by carrying out any development which has been or would be permitted.
- * In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with Part VI of the Town and Country Planning Act 1990.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written

EXECUTED as a Deed (but not delivered until dated) by affixing the Common Seal of LONDON LEGACY DEVELOPMENT CORPORATION in the presence of:-

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)
)


Director

AUTHORISED SIGNATORY.

Director/Secretary



EXECUTED as a Deed (but not delivered until dated) by M&D SILK PROPERTIES LIMITED acting by two Directors or a Director and the Secretary:-

)
)
)
)
)

DAVID SILK, Director



Director/Secretary

WITNESS SIGNATURE: 

WITNESS NAME : MATTHEW EVANS

ADDRESS : 3 BARNARD HOUSE
10A SHACKLEWELL ROAD
LONDON
N16 7TU