

DATED 12th August 2016

- (1) LONDON LEGACY DEVELOPMENT CORPORATION
(2) BELLWAY HOMES LIMITED
and
(3) ROOFF PROPERTY LLP and TERENCE MICHAEL ALLEN

PLANNING OBLIGATION BY AGREEMENT

made pursuant to section 106 of the Town and Country Planning Act 1990

and all other powers enabling

relating to Cooks Road, Pudding Mill Lane E15

TABLE OF CONTENTS

1	INTERPRETATION	1
2	EFFECT OF THIS AGREEMENT	7
3	CONDITIONALITY	8
4	THE DEVELOPER'S COVENANTS WITH THE LPA	9
5	THE LPA'S COVENANTS WITH THE DEVELOPER	9
6	NOTICES	9
7	SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT	10
8	VERIFICATION AND ENFORCEMENT	11
9	APPROVAL	11
10	REFUSAL NOTICE	11
11	DISPUTE RESOLUTION	12
12	NO WAIVER	13
13	DUTY TO ACT REASONABLY AND IN GOOD FAITH	14
14	EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	14
15	THE LPA'S COSTS	14
16	FINANCIAL CONTRIBUTIONS AND INDEXATION	14
17	JURISDICTION AND LEGAL EFFECT	14
18	EXECUTION	14
	SCHEDULE 1 - AFFORDABLE HOUSING	15
	SCHEDULE 2 - VIABILITY REVIEW IN EVENT OF DELAYED COMMENCEMENT	22
	SCHEDULE 3 - MID POINT VIABILITY REVIEW	29
	SCHEDULE 4 - WASTE TRANSFER STATION	33
	SCHEDULE 5 - PUBLIC REALM CONTRIBUTION AND SUSTAINABLE TRANSPORT	35
	SCHEDULE 6 - TRAVEL PLAN	37
	SCHEDULE 7 - ESTATE MANAGEMENT	41
	SCHEDULE 8 - EMPLOYMENT AND TRAINING	43
	SCHEDULE 9 - SUSTAINABILITY	48
	SCHEDULE 10 - DESIGN MONITORING	50

SCHEDULE 11 - PUBLIC OPEN SPACE AND PLAY SPACE	52
APPENDIX 1 - PLAN 1: SITE	56
APPENDIX 2 - PLAN 2: DEVELOPMENT PHASING PLAN	57
APPENDIX 3 - PLAN 3A: AFFORDABLE HOUSING PLAN (LOCATION & TENURE)	58
APPENDIX 4 - PLAN 4: WASTE TRANSFER SITE	59
APPENDIX 5 - PLAN 5: PUBLIC REALM IMPROVEMENTS AREA	60
APPENDIX 6 - PLAN 6: ANCHOR EMPLOYMENT TENANT PARKING SPACES	61
APPENDIX 7 - PLAN 7: COMMON AREAS	62
APPENDIX 8 - PLAN 8: PLAY AREAS	63
APPENDIX 9 - PLAN 9: PUBLICLY ACCESSIBLE OPEN SPACE	64
APPENDIX 10 - PLAN 10: PHASED PROVISION OF CENTRAL PLAY AREA	65
APPENDIX 11 - ODOUR MEASUREMENT PROTOCOL	67
APPENDIX 12 - DRAFT PLANNING PERMISSION	70

THIS AGREEMENT is made on

12th August

2016

BETWEEN:

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ (the "LPA");
- (2) **BELLWAY HOMES LIMITED** (Company Number 670176) of Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne NE13 6BE (the "Developer"); and
- (3) **ROOFF PROPERTY LLP** (LLP Reg Number 322260) of The Granary, 90 Abbey Road, Barking IG11 7BT and **TERENCE MICHAEL ALLEN** of 3 The Avenue, London E11 2EE (the "Mortgagees").

RECITALS

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 Developer has a freehold interest in the Site registered at the Land Registry with Title Number EGL220827.
- (C) The Mortgagees have a registered charge over part of the Site dated 7 September 2015.
- (D) The Planning Application was validated by the LPA on 17 August 2015.
- (E) On 23 February 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.

OPERATIVE PROVISIONS:

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"	Town and Country Planning Act 1990 (as amended);
"Agreement"	this agreement made pursuant to section 106 of the 1990 Act and other enabling powers;
"Anticipated Commencement Date"	the date on which the Developer reasonably considers in all the circumstances that the Development will be Commenced;
"Approve"	a decision by the LPA to approve a Submitted Document pursuant to any of the following:

- (a) Clause 9 (approval of a Submitted Document as submitted);
- (b) Clause 10.2.2 (approval of a Submitted Document incorporating the Report Amendments);
- (c) Clause 10.3.3 (approval of a Submitted Document following a meeting to discuss the Report Amendments);
- (d) Clause 10.4.3 (approval following a meeting to discuss a Submitted Document following non-determination by the LPA);
- (e) Clause 11 (approval of a Submitted Document by an Expert following a decision of the Expert)

and "**Approval**" and cognate expressions shall be construed accordingly;

"Block"	means one of 4 blocks comprised within the Development as identified on the Development Phasing Plan;
"Building Cost Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (or by any other successor organisation) or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation agreed between the Developer and the LPA;
"Commencement"	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"	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"	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 Newham and its successor in function;
"CPI"	means the Consumer Price Index published by the Office for National Statistics or any official publication substituted for it;
"Developer"	shall have the meaning ascribed to it in clause 1.2.7;

"Development"	the development of the Site and all other operations and/or works authorised by the Planning Permission;
"Development Phasing Plan"	means Plan 2 which illustrates the phasing of the construction and Occupation of the Development in the following sequence (starting with the earliest): <ul style="list-style-type: none"> (a) Block B2; followed by (b) Block B1; followed by (c) Block B3; followed by (d) Block B4;
"Dispute"	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"	an independent expert appointed in accordance with the provisions of Clause 11 to determine a Dispute;
"First Occupation"	means first Occupation of the Development or any part thereof;
"Index"	means: <ul style="list-style-type: none"> (a) the Building Cost Index in respect of the Public Realm Contribution, Play Space Contribution, the Trigger Value and the figure at paragraph 3.6 of Schedule 3; and (b) in all other cases the CPI;
"Indexed"	means in relation to a sum that it is to be increased in accordance with clause 16.2;
"Local Plan"	means the London Legacy Development Corporation Local Plan 2015-2031 (adopted on 21st July 2015);
"LPA Response Date"	not more than 10 (ten) Working Days after receipt of the revised Submitted Document except where: <ul style="list-style-type: none"> (a) the LPA decides to consult on the revised Submitted Document, in which case the period shall be extended to not more than 20 (twenty) Working Days after receipt of the relevant revised Submitted Document; or (b) the LPA decides the matter needs to be reported to its planning committee, in which case the period shall be extended to not more than 40 (forty) Working Days after receipt of the relevant revised Submitted Document;
"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"	on land outside the Site;

"On Site"	on land within the Site;
"Parties"	the parties to this Agreement and the word "Party" shall mean either one of them;
"Plan 1"	means the plan of the Site annexed to this Agreement at Appendix 1;
"Plan 2"	means the Development Phasing Plan annexed to this Agreement at Appendix 2;
"Plan 3A"	means the Affordable Housing Plan (Location & Tenure) annexed to this Agreement at Appendix 3;
"Plan 3B"	means the Affordable Housing Plan (Wheelchair Units) annexed to this Agreement at Appendix 3;
"Plan 4"	means the plan showing the location of the Waste Transfer Station Site annexed to this Agreement at Appendix 4;
"Plan 5"	means the Public Realm Improvements Area plan annexed to this Agreement at Appendix 5;
"Plan 6"	means the plan showing the location of the Anchor Employment Tenant Parking Spaces annexed to this Agreement at Appendix 6;
"Plan 7"	means the plan showing the location of the Common Areas annexed to this Agreement at Appendix 7;
"Plan 8"	means the plan showing the location of the Play Areas annexed to this Agreement at Appendix 8;
"Plan 9"	means the plan showing the location of the Publicly Accessible Open Space annexed to this Agreement at Appendix 9;
"Plan 10"	means the plan showing the phased provision of the central Play Area annexed to this Agreement at Appendix 10 or such other plan as may be submitted to and Approved by the LPA where amendments are required as a result of health and safety or are otherwise reasonably required for construction purposes;
"Planning Application"	the application for planning permission submitted to the LPA and given reference number 15/00392/FUL by the LPA for comprehensive mixed use redevelopment comprising: demolition of existing buildings and erection of four blocks ranging from five (5) to eight (8) storeys above ground level with a maximum parapet height of 33m AOD comprising: 194 residential units including affordable housing (Use Class C3), 2,136sqm of commercial floorspace (Use Classes A1-A3 / B1 / D1 / D2), together with podium level, car parking including blue badge parking, cycle parking, refuse areas, plant room, servicing, open space, landscaping and infrastructure works;
"Planning Permission"	the planning permission which may be granted subject to conditions for the proposals within the Planning Application substantively in the form of the draft attached at Appendix 12;
"Private Residential Units"	means Residential Units which are not Affordable Housing Units (as defined in Schedule 1);

"Reasonable Endeavours"	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 where appropriate 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);
"Refusal Notice"	a notice prepared by the LPA confirming which Submitted Document it is refusing to Approve and enclosing the Report Amendments;
"Report Amendments"	those amendments to the Submitted Document that the LPA considers should be made to enable it to Approve such Submitted Document together with brief reasons;
"Requisite Consents"	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"	the land shown edged red on Plan 1;
"Submitted Document"	any document, report, review, strategy and other information required to be submitted to the LPA for Approval pursuant to this Agreement;
"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"	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 England 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 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 2.5 and 2.6 references to the Developer in this Agreement include:
- (a) the Developer;
 - (b) persons deriving title from the Developer; and
 - (c) the Developer's successors in title;
- 1.2.8 **"including" means "including without limitation";**
- 1.2.9 references to the LPA include its successor bodies in function;
- 1.2.10 unless otherwise indicated references to the singular include the plural and references to the plural include the singular and words importing any gender include every gender;
- 1.2.11 unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa;
- 1.2.12 any obligation, covenant, undertaking or agreement by the Developer or LPA not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit or allow the doing of that act or thing;
- 1.2.13 save where expressly stated to the contrary, where in this Agreement there is reference to using Reasonable Endeavours to achieve an outcome, upon written request by the LPA at reasonable intervals (not to exceed more than once every 3 (three) months), within 10 (ten) Working Days of such request reasonable evidence of the steps taken to achieve such outcome shall be provided in documentary form (where possible) to the LPA.
- 1.3 The Interpretation Act 1978 shall apply to this Agreement.

- 1.4 If any provision of this Agreement is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Agreement is (if and to the extent that it may properly and lawfully be construed as such) to be unaffected.
- 1.5 Where in this Agreement any matter is referred to dispute resolution under Clause 11 the findings of the Expert shall (save in relation to manifest error or fraud) 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.

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 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, subject to Clauses 2.5 and 2.6, 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 (other than 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) 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 they 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 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 or enforceable against individual owner-occupiers or tenants in each case of individual Residential Units constructed pursuant to the Planning Permission nor against those deriving title from them except:
- 2.6.1 in respect of the obligations in paragraph 6 of Schedule 1 which shall be enforceable against owners-occupiers and tenants of Affordable Housing Units; and
 - 2.6.2 the obligations in paragraph 4.1 of Schedule 5.
- 2.7 No obligation in this Agreement shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Site (including the Mortgagees) or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgagee, receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Site or part thereof to which such obligation relates.
- 2.8 The Mortgagees acknowledge and declare that:-
- 2.8.1 this Agreement has been entered into by the Developer with their consent;
 - 2.8.2 the Site shall be bound by the obligations contained in this Agreement; and
 - 2.8.3 the security of the Mortgagees over the Site shall take effect subject to this Agreement.
- 2.9 The LPA shall request registration of this Agreement as a local land charge by the Council or its respective statutory successor in function.
- 2.10 This Agreement and the obligations, covenants and undertakings which it contains shall lapse and be extinguished automatically if (and from the date that) the Planning Permission lapses without the Development being Commenced or is otherwise revoked, withdrawn or (without the consent of the Developer) modified.
- 2.11 Subject to clause 2.12 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.
- 2.12 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 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.
- 2.13 Following the performance and satisfaction of all the obligations contained in this Agreement the LPA shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

3. **CONDITIONALITY**

- 3.1 This Agreement shall have full force and effect from the date hereof save that:
- 3.1.1 other than the planning obligations set out in clause 3.1.2, the planning obligations in Schedules 1 to 11 shall be conditional upon the Planning Permission and Commencement of Development; and
 - 3.1.2 the planning obligations in paragraphs 2.1 of Schedule 1, Schedule 2, paragraph 2 of Schedule 4, paragraph 2.1 of Schedule 7, paragraphs 2.1, 2.2.1, 3.1, 4 and 5.1.2 of

Schedule 8, Schedule 10 and paragraphs 2.1 and 5 of Schedule 11 shall be conditional upon the grant of Planning Permission only.

4. THE DEVELOPER'S COVENANTS WITH THE LPA

- 4.1 The Developer on behalf of itself and its successors in title to the Site covenants with the LPA that it shall:
- 4.1.1 perform and Comply with, and shall procure performance of and Compliance with, each and every of the obligations, covenants and undertakings on the part of the Developer contained in this Agreement;
 - 4.1.2 not encumber or otherwise deal with its interest in the 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;
 - 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 days of the notice and the notice shall confirm in writing that this is the case; and
 - 4.1.4 not carry out or Occupy the Development other than in accordance with the Development Phasing Plan unless the LPA agrees otherwise in writing.

5. THE LPA'S COVENANTS WITH THE DEVELOPER

- 5.1 The LPA covenants with the Developer that it shall perform and 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 5.3 the LPA covenants with the Developer that it shall use all sums received from the Developer under the terms of this Agreement only for the purposes specified in this Agreement for which they are paid.
- 5.3 Where any payment is made by the Developer to the LPA pursuant to schedules 2, 3, 5, 9 and/or 11 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.
- 5.4 Prior to payment of monies to an Other Statutory Authority pursuant to Clause 5.3 the LPA shall obtain written 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

Developer:

Address: Bellway Homes Limited (Thames Gateway)

1st Floor, Osprey House

Crayfields Business Park

New Mill Road

Orpington

Kent

BR5 3QJ

For the attention of: Tom Harris

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 on reasonable written request to enter upon the Site and any buildings erected thereon (save any buildings or parts thereof in occupation) 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 solely 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. APPROVAL

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

9.1.1 20 (twenty) Working Days of receipt of the Submitted Document from the Developer, or

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

PROVIDED THAT where Clause 9.1.2 applies, the LPA shall notify the Developer of such reporting to its planning committee within 20 (twenty) Working Days of receipt of the Submitted Document from the Developer.

9.2 In the event the LPA confirms that it does not Approve the Submitted Document the LPA shall issue a Refusal Notice within the 20 (twenty) Working Days or 50 (fifty) Working Days period referred to in clause 9.1 (as applicable) and the provisions of Clauses 10.1 to 10.3 shall apply.

9.3 In the event the LPA does not Approve the Submitted Document or issue a Refusal Notice within the 20 (twenty) Working Days or 50 (fifty) Working Days period referred to in clause 9.1 (as applicable) the provisions of Clause 10.4 shall apply.

10. REFUSAL NOTICE

10.1 The Developer shall use Reasonable Endeavours to confirm to the LPA whether or not it accepts the Report Amendments within 10 (ten) Working Days from receipt of a Refusal Notice.

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

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

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

10.2.3 in the event the LPA refuses in writing to Approve the revised Submitted Document the matter may be referred by either Party to the Expert for determined in accordance with Clause 11.

- 10.3 In the event the Developer confirms that it does not accept the Report Amendments the following provisions apply:
- 10.3.1 not more than 10 (ten) Working Days after such confirmation the Developer and the LPA shall use reasonable endeavours to meet to discuss the Report Amendments and the Submitted Document;
 - 10.3.2 in the event the Developer and the LPA do not reach agreement at the meeting on how to amend the Submitted Document such that the LPA can Approve it or if a meeting is not held within the 10 (ten) Working Days referred to in paragraph 10.3.1 the provisions of Clause 11 shall apply;
 - 10.3.3 in the event the Developer and the LPA do reach agreement at the meeting on how to amend the Submitted Document such that the LPA can Approve it, the Developer shall use Reasonable Endeavours to submit the revised Submitted Document to the LPA for Approval not more than 10 (ten) Working Days following the meeting and the LPA may no later than the LPA Response Date confirm to the Developer whether or not it Approves the revised Submitted Document PROVIDED THAT in the event the LPA refuses to Approve the revised Submitted Document the provisions of Clause 11 shall apply.
- 10.4 In the event the LPA does not Approve the Submitted Document or issues a Refusal Notice within the 20 (twenty) Working Days or 50 (fifty) Working Days period referred to in clause 9.1 (as applicable) the following provisions shall apply:
- 10.4.1 not more than five Working Days after the expiry of the time period for such Approval being made, if the Developer so requests, the Developer and the LPA shall meet to discuss the Submitted Document;
 - 10.4.2 in the event the Developer and the LPA do not reach agreement at the meeting on whether the Submitted Document needs amending such that the LPA can Approve it the provisions of Clause 11 shall apply;
 - 10.4.3 in the event the Developer and the LPA do reach agreement at the meeting on whether the Submitted Document needs to be amended such that the LPA can Approve it:
 - (a) where the Submitted Document does need to be amended, not more than 10 (ten) Working Days following the meeting the Developer may submit the revised Submitted Document to the LPA for Approval and the LPA shall by no later than the LPA Response Date confirm to the Developer whether or not it Approves the revised Submitted Document PROVIDED THAT in the event the LPA expressly refuses to Approve the revised Submitted Document the provisions of Clause 11 shall apply; or
 - (b) where the Submitted Document does not need to be amended, the LPA shall by not more than 10 (ten) Working Days following the meeting confirm to the Developer whether or not it Approves the Submitted Document PROVIDED THAT in the event the LPA does not Approve the Submitted Document within that 10 (ten) Working Day period the provisions of Clause 11 shall apply.
- 10.5 The LPA and the Developer may agree in writing to increase or decrease the number of Working Days in which the actions required by Clauses 10.1 to 10.4 (inclusive) are required to be undertaken if considered appropriate in all the circumstances.
11. **DISPUTE RESOLUTION**
- 11.1 One party may by serving notice on all the other parties (the "Notice") refer a Dispute to an Expert for determination.

- 11.2 The Notice must specify:
- 11.2.1 the nature, basis and brief description of the Dispute;
 - 11.2.2 the Clause or paragraph of a Schedule or Appendix pursuant to which the Dispute has arisen; and
 - 11.2.3 the proposed Expert.
- 11.3 In the event that the Parties are unable to agree whom should be appointed as the Expert within 10 (ten) Working Days after the date of the Notice then either Party may request the President of the Law Society (except where Clause 11.7 provides otherwise) to nominate the Expert at their joint expense.
- 11.4 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error and fraud) be final and binding on the Parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- 11.5 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the Dispute and in any event not more than 20 (twenty) Working Days from the date of his appointment to act.
- 11.6 The Expert will be required to give notice to each of the said Parties inviting each of them to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
- 11.7 Where the Parties are unable to agree whom should be appointed as the Expert, either Party may request that the following nominate the Expert at their joint expense:
- 11.7.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the Expert;
 - 11.7.2 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;
 - 11.7.3 if such dispute shall relate to matters requiring a specialist chartered civil engineer or specialist transport adviser, the President of the Institution of Civil Engineers to nominate the Expert;
 - 11.7.4 if such dispute shall relate to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert; and
 - 11.7.5 in all other cases, the President of the Law Society to nominate the Expert.

12. **NO WAIVER**

No waiver (whether expressed or implied) by the LPA 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.

13. DUTY TO ACT REASONABLY AND IN GOOD FAITH

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

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

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

15. THE LPA'S COSTS

The Developer agrees that it will on completion of the Agreement pay 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) not to exceed £21,000 (inclusive of disbursements and VAT).

16. FINANCIAL CONTRIBUTIONS AND INDEXATION

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

16.2 The following payments, financial contributions, sums and values will be increased by reference to the amount of the quarterly increase in the Index from the date of this Agreement until the date such sums are paid in the event that they are payable in accordance with this Agreement:

16.2.1 the Trigger Value and the figure at paragraph 3.6 of Schedule 3;

16.2.2 the Public Realm Contribution as defined in Schedule 5;

16.2.3 the Price Per Carbon Tonne as defined in Schedule 9; and

16.2.4 the Design Monitoring Costs as defined in Schedule 10; and

16.2.5 the Play Space Contribution as defined in Schedule 11.

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"	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 Plan (Location & Tenure)"	means Plan 3A or such other plan approved in writing by the LPA;
"Affordable Housing Plan (Wheelchair Units)"	means Plan 3B or such other plan approved in writing by the LPA;
"Affordable Housing Provider"	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 Affordable Rented Housing Units, the Intermediate Units and the Social Rented Units;
"Affordable Housing Management Scheme"	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 anticipated rent, service charge and any estate or other charges payable for each Affordable Housing Unit and the mechanism for reviewing the same together with an explanation of how it is anticipated the Affordable Housing Units will remain affordable notwithstanding such charges;
"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 Residential Units to be made available as Affordable Rented Housing pursuant to paragraph 3 of this Schedule together with any Deferred Affordable Housing Units provided pursuant to Schedule 2 as Affordable Rented Housing and any Affordable Housing Reappraisal Units provided pursuant to Schedule 3 as Affordable Rented Housing;
"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	80% of local market rent
2 bedroom	70% of local market rent
3 bedroom	60% of local market rent

SUBJECT TO

- a) 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;
- b) any rent reduction required in accordance with the Welfare Reform and Work Act 2016 (as the same may be amended or superseded);

- "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;
- "Intermediate Housing"** means submarket housing which (if rented) is above Target Rents but below open market levels and which housing includes schemes such as Shared Ownership Housing or shared equity housing, intermediate rent and rent to buy housing provided always that such schemes meet the affordability criteria as referred to in the supporting text of Policy 3.10 of the London Plan 2015 (consolidated with amendments from 2011) (or any successor or replacement provision);
- "Intermediate Units"** means the Shared Ownership Units together with any Deferred Affordable Housing Units provided pursuant to Schedule 2 as Intermediate Housing and any Affordable Housing Reappraisal Units provided pursuant to Schedule 3 as Intermediate Housing;
- "Lifetime Home Standards"** means the incorporation of the 16 design standards which together create a flexible blue print for accessible and adaptable housing published by the Joseph Rowntree Foundation Lifetime Homes Group and which standards incorporate all of the Part M Building Regulations and relevant parts of the Housing Corporation Design and Quality Standards;
- "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 (May 2014) and Direction on the Rent Standard (May 2014) and the Welfare Reform and Work 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;
"Rents and Nominations Agreement"	means the London Borough of Newham's standard rents and nominations agreement (as may be amended by agreement between the Approved Affordable Housing Provider and the London Borough of Newham);
"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;
"Social Rented Units"	means any Deferred Affordable Housing Units provided pursuant to Schedule 2 as Social Rented Housing and any Affordable Housing Reappraisal Units provided pursuant to Schedule 3 as Social Rented Housing;
"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 Rented Housing calculated in accordance with the National Rent Regime;
"Transfer"	means the transfer of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the LPA (and "Transferred" shall be construed accordingly).

2. AFFORDABLE HOUSING PROVIDER

- 2.1 Prior to the Commencement of Development the Developer shall submit to the LPA and obtain its Approval to a list of companies or organisations involved in the provision of Affordable Housing who if Approved shall be capable of being Affordable Housing Providers for the Development.
- 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 Working Days of entering into an Affordable Housing Contract.

3. MINIMUM AFFORDABLE HOUSING PROVISION

- 3.1 Not less than 22 Residential Units shall be provided as Shared Ownership Units shaded yellow on the Affordable Housing Plan (Location & Tenure) and in accordance with paragraph 3.3.
- 3.2 Not less than 28 Residential Units shall be provided as Affordable Rented Housing Units shaded pink on the Affordable Housing Plan (Location & Tenure) and in accordance with paragraph 3.3.

- 3.3 The Affordable Housing to be provided pursuant to paragraphs 3.1 and 3.2 above shall comprise the following unit size mix unless the LPA approves otherwise in writing:

	1 bed/2 person units	2 bed/3 person units	2 bed/4 person units	3 bed/5 person units	Total number of units
Shared Ownership Units	10	4	4	4	22
Affordable Rented Housing Units	0	0	22	6	28

- 3.4 Not more than 11 Private Residential Units in Block B1 shall be Occupied until the Affordable Housing Units in Block B1 are:

- 3.4.1 Completed and made ready for occupation; and
- 3.4.2 have been Transferred to the Affordable Housing Provider pursuant to the Affordable Housing Contract.

- 3.5 No Private Residential Units in Block B3 and not more than 25 Private Residential Units in Block B1 shall be Occupied until the Affordable Housing Units in Block B3 are:

- 3.5.1 Completed and made ready for occupation; and
- 3.5.2 have been Transferred to the Affordable Housing Provider pursuant to the Affordable Housing Contract.

- 3.6 Not more than 7 Private Residential Units in Block B4 shall be Occupied until the Affordable Housing Units in Block B4 are:

- 3.6.1 Completed and made ready for occupation; and
- 3.6.2 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 Rents PROVIDED THAT the Developer shall notify the LPA as to the amount of such weekly rents (including the proportion of service charge comprised in such rents).
- 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 Rents 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.
- 4.4 The rent payable by the occupant of any Social Rented Unit provided pursuant to Schedule 2 and/or Schedule 3 shall not exceed the Target Rent, such rent to be calculated at the start of each tenancy.

5. GENERAL

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

- 5.1.1 subject to paragraph 5.2 not Occupy or cause or permit to become Occupied the Affordable Housing Units for any purpose other than for Affordable Housing in Perpetuity;
- 5.1.2 provide that 10% of the Affordable Housing Units are accessible or easily adaptable for wheelchair users in accordance with the Affordable Housing Plan (Wheelchair Units) and provide details including 1:50 floor plans of the proposed wheelchair accessible dwellings to the LPA for Approval prior to commencement of the unit and notify the LPA at least nine months prior to their Completion;
- 5.1.3 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;
- 5.1.4 ensure that the quality of the design and build of the Affordable Housing Units is the same or better than the Private Residential Units and that the habitable rooms within Affordable Housing Units comply with the recommended Average Daylight Factor (ADF) and Annual Probably Sunlight Hours (APSH) targets as set out in section 8 of the Daylight and Sunlight Report submitted in support of the Planning Application dated 12 June 2015 (updated 23 July 2015);
- 5.1.5 ensure that from the date of first Occupation of each Affordable Housing Unit the Affordable Housing Unit shall have access to the play provision and communal amenity space incorporated within the Block within which it is located as shown red and pink on Plan 8;
- 5.1.6 ensure that each Affordable Housing Unit in a Block will have access to the relevant part of the play provision and communal amenity space identified on Plan 10 following its provision in accordance with Schedule 11;
- 5.1.7 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.

5.2 The provisions of this Schedule will not bind:

- 5.2.1 any mortgagee or chargee of the Affordable Housing Provider nor any mortgagee or chargee 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 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 5.2.1(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;
- 5.2.2 any Shared Ownership Unit where one hundred per cent of the equity in that Shared Ownership Unit has been purchased by the tenant via Staircasing;
- 5.2.3 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;
- 5.2.4 any person or body deriving title through or from any of the parties mentioned in paragraphs 5.2.1 to 5.2.3.
- 5.3 The Developer will procure that the Transfer of any 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.
- 5.4 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.
- 5.5 No Affordable Housing Unit shall be Occupied before the Affordable Housing Provider has entered into a Rents and Nominations Agreement with the Council in respect of that Affordable Housing Unit and evidence thereof has been provided to the LPA.
- 5.6 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 or any amended scheme approved in writing by the LPA.
- 6. RESTRICTION ON OCCUPATION OF AFFORDABLE HOUSING UNITS**
- 6.1 Subject to the terms of this Schedule and any Rents and Nominations Agreement:
- 6.1.1 no Affordable Rented Housing Unit 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
- 6.1.2 no Intermediate Unit shall be Occupied other than as a Intermediate Unit (and in the case of a Shared Ownership 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 Shared Ownership Unit;

6.1.3 no Social Rented Unit shall be Occupied other than as a Social Rented Unit and all occupational leases and tenancies of such units shall include a provision preventing sub-letting and underletting save that this shall not prevent any occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Social Rented Unit.

SCHEDULE 2

VIABILITY REVIEW IN EVENT OF DELAYED COMMENCEMENT

1. DEFINITIONS

"Commencement Confirmation Letters"

means:

- a) a formal letter in writing signed by a Director of the Bellway Thames Gateway Division confirming that the construction and completion of the Development has been authorised by Bellway Homes Limited and Commencement of the Development has occurred and works (including but without limitation building or engineering works) have taken place and are ongoing in respect of the Development for at least three (3) calendar months (without interruption lasting more than one (1) week in total in any given month); and
- b) a formal letter in writing signed by a member of the Royal Institution of Chartered Surveyors or Royal Institution of British Architects with sufficient knowledge of the Development confirming that Commencement of Development has occurred and works (including but without limitation building or engineering works) have taken place and are ongoing in respect of the Development for at least three (3) calendar months (without interruption lasting more than one (1) week in total in any given month);

"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 (as may be extended under the terms of the contract) documentary evidence of which shall be submitted to the LPA in writing;

"Deferred Affordable Housing"

means the Deferred Affordable Housing Units or the Deferred Affordable Housing Payment;

"Deferred Affordable Housing Payment"

means a sum of money representing the cost of providing additional Affordable Housing Units Off Site so as to increase the Affordable Housing provided or funded by the Development above the figure of 50 Residential Units secured through Schedule 1 of this Agreement up to a cap of fifty per cent (50%) of the Residential Units in accordance with the requirements of Policy H.2 of the Local Plan to be agreed between the Developer and the LPA or determined by the Specialist;

"Deferred Affordable Housing Scheme"

means a scheme specifying the quantum, tenure, size and location of the Deferred Affordable Housing Units with reference to plans and drawings approved as part of the Planning Application and the proposed programme for delivering the Deferred Affordable Housing Units 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

taking account of relevant planning policy;

"Deferred Affordable Housing Units"

means Affordable Housing to be provided as part of the Development in addition to the 50 Affordable Housing Units to be provided pursuant to Schedule 1 of this Agreement up to a maximum of 18 Residential Units (in addition to the 50 Affordable Housing Units secured by Schedule 1) in accordance with the Approved Deferred Affordable Housing Scheme;

"Force Majeure"

means any of the following events beyond the control of the Developer (including its contractors, sub-contractors and agents) which is unrelated to its fault or negligence and which reasonably interrupts works to construct the Development:

- a) fire, explosion, aircraft and aerial devices dropped from aircraft, riot, civil commotion or terrorist activity;
- b) war, preparation for war, armed conflict, imposition of sanctions; or
- c) nuclear, chemical or biological contamination;

"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 financial justification 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 years relevant experience in undertaking viability assessments the identity of which shall be agreed between the Parties or nominated in accordance with clause 11.7.2 of this Agreement;

"Substantial Commencement"

means:

(a) in the event the construction of the Development is to be carried out by Bellway Homes Limited the occurrence of both of the following events:

- (i) Commencement Confirmation Letters have been provided to the LPA;
- (ii) Commencement of the Development has occurred and works (including but without limitation building or engineering works) have taken place and are ongoing in respect of the Development for at least three (3) calendar months (without interruption lasting more than one (1) week in total in any given month);

(b) in all other cases the occurrence of all of the following events:

- (i) a Construction Contract is let by the Developer and certified documentary evidence of the same is provided

to the LPA (which may be redacted only to exclude irrelevant or commercially sensitive information); and

- (ii) 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
- (iii) 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);

and "Substantially Commenced" shall be constructed accordingly.

"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 as may be extended in accordance with the Construction Contract 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 the letter from Savills to the LPA dated 12 May 2016 (a copy of which has been provided to the Developer).

2. EVIDENCE OF COMMENCEMENT

Upon the occurrence of Substantial Commencement within 12 months of the date of grant of the Planning Permission the Developer shall submit to the LPA the written evidence of the events which amount to Substantial Commencement as required by the definition of Substantial Commencement and shall allow the LPA (and its agents) access to the Site at all reasonable times and on reasonable notice for the purposes of inspecting the Site to verify Substantial Commencement.

3. VIABILITY REVIEW

If the Development has not been Substantially Commenced within 12 (twelve) months of the date of the Planning Permission the Developer shall prior to Commencement or as the case may be prior to undertaking any further development work which would constitute Commencement submit to the LPA a Viability Review which shall be accompanied by either the Relevant Report or a draft Deferred Affordable Housing Scheme or documents required by paragraph 5.

4. INTERRUPTIONS TO THE PROGRAMME

Subject to Force Majeure (in which case this paragraph shall not apply to any period of interruption attributable to such 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 Relevant Report or 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:

- (a) a detailed report evidencing the reasons why it would not be practicable to provide the Deferred Affordable Housing Units within the Development; and
- (b) a Deferred Affordable Housing Payment proposal.

6. VALIDATION OF VIABILITY REVIEW AND REQUESTS FOR FURTHER INFORMATION

6.1 Within 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 ("**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 pursuant to paragraph 6.1.2, the Developer shall as soon as reasonably practicable and in any case shall use reasonable endeavours to within 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 of confirmation from the LPA shall be deemed the Validation Date for the purposes of paragraph 6.1.1).

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 reasonable to settling the Viability Review and/or Deferred Affordable Housing Scheme and/or Deferred Affordable Housing Payment with which the Developer shall use Reasonable Endeavours to comply.

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.

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 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 the Developer shall pay such costs within 20 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 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) and, as applicable, the Deferred Affordable Housing Scheme and/or the Deferred Affordable Housing Payment proposal (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 negotiated 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**") (which it shall do if a memorandum is agreed pursuant to Clause 7.2).

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 as applicable, the Deferred Affordable Housing Scheme and/or the Deferred Affordable Housing Payment proposal 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 Party shall within a further period of 10 (ten) Working Days from the Referral Date submit its evidence and representations to the Specialist and the other Party 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**") and each party shall have the right to submit counter-representations to the Specialist on the other Party's representations within a further period of 10 (ten) Working Days.

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.

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 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 to the extent applicable.

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.

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 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 or Specialist has confirmed its approval of the Deferred Affordable Housing Scheme and the same has been documented by way of Memorandum; or

11.1.3 the LPA or Specialist has agreed a 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 from the Validation Date where the Developer has not Substantially Commenced or re-commenced (as applicable) the Development by the end of that 12 month period.

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 (or such longer period as may be agreed with the LPA or the Specialist as the case may be) 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 such agreement 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 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 20xx".

13.3 Upon completion of a Memorandum, this Agreement 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
MID POINT VIABILITY REVIEW

1. DEFINITIONS

"Achieved Sales Value"	means the aggregate value of the Sold Private Residential Units referred to in each Affordable Housing Reappraisal (less any reasonable incentives incurred in the construction and sale of such units);
"Achieved Values"	means the Achieved Sales Value and the Attributed Value;
"Affordable Housing Reappraisal"	means a reappraisal of the ability of the Development to deliver a level of Affordable Housing above the minimum level required to be provided pursuant to Schedule 1 as may be increased in accordance with Schedule 2 if relevant which shall be carried out in accordance with and contain the information required by paragraph 3 of this Schedule;
"Affordable Housing Reappraisal Units"	means the additional units of Affordable Housing (if any) to be provided in accordance with the provisions of this Schedule as identified in the Approved Affordable Housing Reappraisal;
"Affordable Housing Units"	has the meaning given to it in Schedule 1;
"Affordable Rented Housing Units"	has the meaning given to it in Schedule 1;
"Attributed Value"	means the value attributed by the Developer to each Sold Affordable Rented Housing Unit, Sold Intermediate Unit and Sold Social Rented Unit referred to in each Affordable Housing Reappraisal;
"Intermediate Units"	has the meaning given to it in Schedule 1;
"Projected Values"	means the value of Residential Units not yet Sold as at the date the Affordable Housing Reappraisal is prepared that would reasonably be expected to be achieved (less any reasonable incentives);
"Saleable Area"	means the net Saleable area (excluding all common areas) of each Residential Unit measured in square feet;
"Sale"	means the disposal of a freehold or leasehold interest in respect of each individual Residential Unit to an independent third party or Affordable Housing Provider and "Sold" and "Saleable" shall be construed accordingly;
"Social Rented Units"	has the meaning given to it in Schedule 1;
"Surplus"	means fifty per cent (50%) of the amount by which the Total Value exceeds the Trigger Value;
"Total Value"	means as at the date the Affordable Housing Reappraisal