

DATED 11th August

2014

UNILATERAL UNDERTAKING GIVEN BY DEED

BY

THE LONDON LEGACY DEVELOPMENT CORPORATION
in its capacity as Local Planning Authority

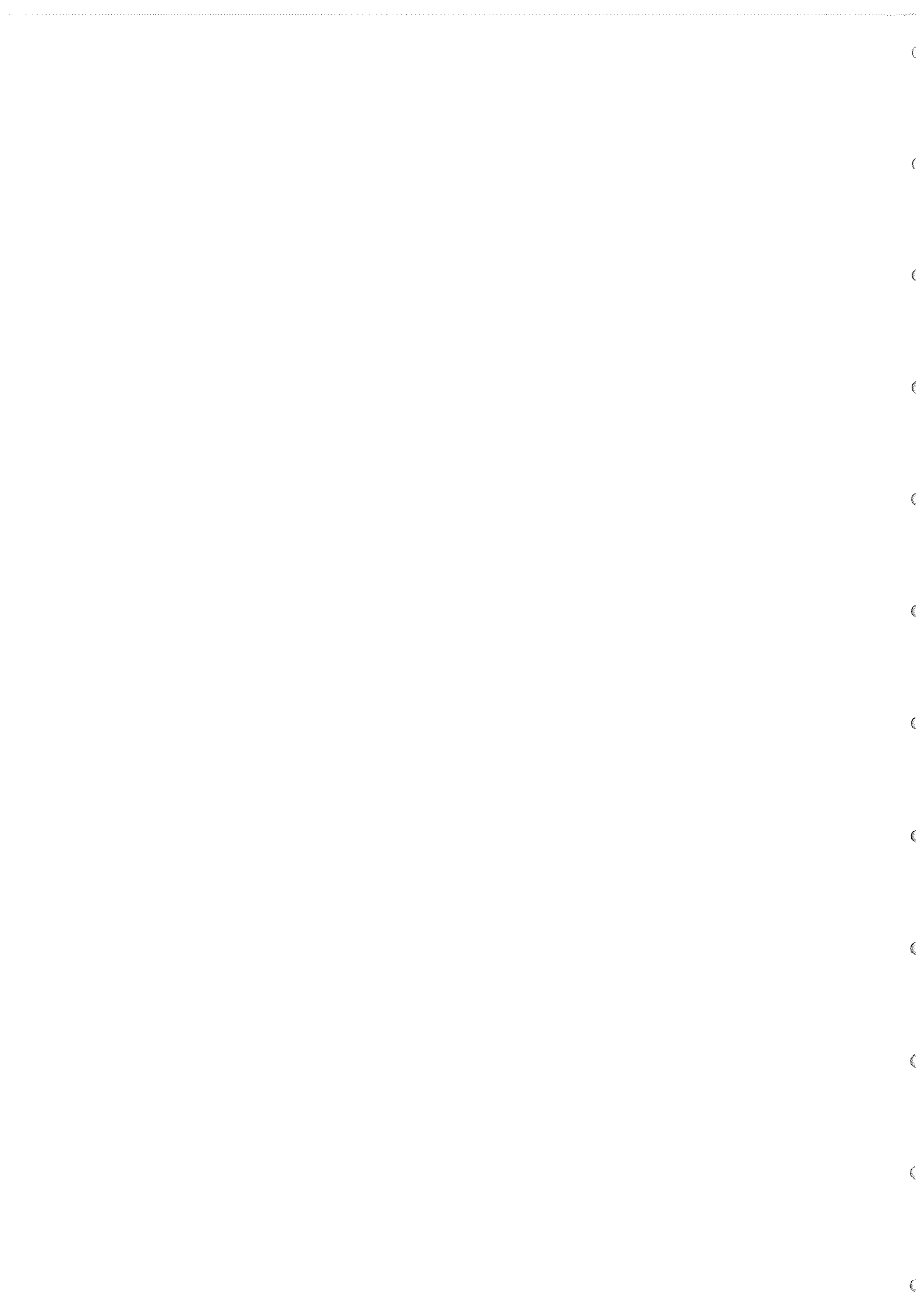
And

TRANSPORT FOR LONDON

pursuant to section 201 of the Localism Act 2011 and all other powers enabling

relating to the accelerated delivery of PDZs 4 and 5 (Sweetwater and East Wick) as part of the Legacy Communities Scheme, Queen Elizabeth Olympic Park application references 14/00035/AOD and 14/00036/VAR)

To be read alongside the unilateral undertaking given by London Legacy Development Corporation (as owner) pursuant to Section 106 of the Town & Country Planning Act relating to the same development and entered into on the date hereof



THIS UNILATERAL UNDERTAKING is given on

11th August

2014

BY:

- (1) the **LONDON LEGACY DEVELOPMENT CORPORATION LIMITED** of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ ("the LPA"); and
- (2) **TRANSPORT FOR LONDON** of Windsor House, Victoria Street, London SW1 0TL ("TfL")

IN FAVOUR OF the Owner(s) of the Developer's Land from time to time.

RECITALS

Background

- (A) LLDC (acting through a department known as PPDT) is the Local Planning Authority for the area within which the Developer's Land is located pursuant to the London Legacy Development Corporation (Planning Functions) Order 2012 in place of the Host Boroughs.
- (B) TfL is the provider of public transport services and is also the highway authority responsible for certain roads in the vicinity of the Site.
- (C) The London Legacy Development Corporation ("LLDC") is a Mayoral Development Corporation ("MDC") established under the Localism Act 2011 and the London Legacy Development Corporation (Establishment) Order 2012 for an area which straddles the boundaries of the four Host Boroughs.
- (D) An MDC's statutory purpose is to secure the regeneration of its area. In support of this statutory purpose, LLDC holds land transferred to it under various statutory transfer schemes and can exercise a range of powers over that land, including management, development and disposal to third parties. This land includes the Developer's Land, details of which are set out in Schedule 1 to this Deed.
- (E) LLDC's Board has delegated the exercise of LLDC's planning functions to PPDT. Although it acts independently, PPDT remains part of the same legal entity as LLDC.
- (F) At the time this Deed is entered into, it is expected that that LLDC will be a time limited organisation and its planning powers will eventually revert to the Host Boroughs or transfer to another successor organisation(s).

Legacy Communities Scheme

- (G) The Olympic Park Legacy Company (the predecessor owner of the Developer's Land) submitted a planning application to the Olympic Delivery Authority (the then local planning authority) on 30 September 2011 for the residential-led legacy redevelopment of the Site.
- (H) On 28 September 2012 the Olympic Delivery Authority, London Legacy Development Corporation (as Owner) and TfL entered into the Original Agreement and the Original Permission for such residential-led legacy redevelopment of the Site was granted.
- (I) Under the terms of the Enforcement Protocol, in the event the Original Agreement is to be varied, PPDT and LLDC (as Owner) will agree the extent of the variations to the Original Agreement albeit that a formal deed of variation cannot be entered into. The Enforcement

Protocol also sets out how the terms of the Reciprocal Undertaking and this Undertaking will be managed while LLDC is both landowner and local planning authority.

The Applications

- (J) LLDC submitted the Variation Applications to the LPA for determination and on 25 March 2014 the LPA resolved to approve the Variation Applications subject to agreeing the terms of this Deed, the Reciprocal Undertaking and the Draft Deed.
- (K) In its role as LPA, LLDC considers it expedient in the interests of the proper planning of its area and for the benefit of the public at large and having regard to all other material considerations that provision should be made for regulating the Revised Development in the manner set out in the Draft Deed.
- (L) In its role as LPA, LLDC is satisfied that the planning obligations contained in the Draft Deed meet the three tests set out in Regulation 122 (2) (a) – (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- (M) LLDC recognises that as a matter of law, as both landowner and local planning authority LLDC it is unable to secure the obligations set out in the Draft Deed by way of a bilateral agreement concluded with itself.
- (N) To overcome this obstacle, LLDC as landowner has entered into the Reciprocal Undertaking binding itself and its interests in the Developer's Land with the terms and obligations set out in the Original Agreement as though it had been varied by the Draft Deed.
- (O) In return for the promises given in the Reciprocal Undertaking, PPDT as LPA and TfL unilaterally undertake herein to observe the terms and perform the local planning authority's and TfL's obligations (respectively) as set out in the Original Agreement as though it had been amended by the Draft Deed attached hereto at Annex 1. If LLDC's planning powers pass to a successor organisation, it is intended that this Deed will be transferred to that successor under a statutory or mayoral scheme of transfer.
- (P) Notwithstanding that any third party with an interest within PDZ 6 is not party to the Reciprocal Undertaking, Clause 7 of the Draft Deed purports to vary site-wide triggers for the payment of both the Bus Service Enhancement Contribution and the Bus Infrastructure Contribution. It also purports to vary corresponding restrictions on the Occupation of Residential Units which apply site-wide. With the particular intention of not prejudicing current Owners of land within PDZ6, the LPA's covenants given herein to enforce only the terms of the Original Agreement as though amended by the Draft Deed (see Clause 3.1) are expressly given for the benefit of any Owner of the Developer's Land, including Owners of land within PDZ6.
- (Q) If, while LLDC remains the local planning authority for the Developer's Land, a third party acquires an interest in the Developer's Land, the LPA intends that this Deed will be enforceable by such third party against it under the Contracts (Rights of Third Parties) Act 1999. The LPA also intends that this Deed will be enforceable by the owners of land within PDZ6.
- (R) This Deed is to be read alongside the Reciprocal Undertaking.

OPERATIVE PROVISIONS:-

1. INTERPRETATION

- 1.1 Save where provided otherwise, words and expressions used in this Deed have the meaning assigned to them in the Original Agreement.

1.2 For the purposes of this Deed, the following words and expressions have the meanings assigned:

1990 Act means the Town & Country Planning Act 1990 (as amended).

AOD Approval means the written approval issued by PPDT pursuant to application reference 14/0035/AOD to vary the phasing plan approved under condition reference LCS0.49 of the Original Permission and such term shall include any further minor amendments to such phasing plan which result in substantially the same development timetable for PDZ 4 and PDZ 5.

Developer's Land means the land shown edged red on Plan 1, and the details of the interests LLDC owns in the Developer's Land are set out in Schedule 1 to this Deed.

Draft Deed means the draft agreement attached to this Deed at Annex 1.

Enforcement Protocol means the protocol for enforcing the terms of this Deed contained at Annex 2.

Host Boroughs means the London Boroughs of Hackney, Newham, Tower Hamlets and Waltham Forest and their respective successors in function.

LPA means at the date of this Deed, the London Legacy Development Corporation (acting through PPDT) in its function as local planning authority for the area within which the Developer's Land is located, and includes any successors in that function.

Original Agreement means the agreement entered into by the Olympic Delivery Authority (as local planning authority), London Legacy Development Corporation (as owner of the Developer's Land) and TfL dated 28 September 2012 for the Original Permission.

Original Permission means the legacy development known as the Legacy Communities Scheme (reference 11/90621/OUTODA).

Owner means anyone with an interest in the Developer's Land.

PPDT means the department within legal entity known as the London Legacy Development Corporation to which LLDC's planning functions have been delegated.

Plan 1 means the plan marked Plan 1 identifying the Developer's Land and attached to this Deed at Annex 3.

Plan 2 means the plan marked Plan 2 identifying the Site and attached to this Deed at Annex 3.

Reciprocal Undertaking means a completed unilateral undertaking of even date with this Deed given by LLDC as landowner in which LLDC undertakes for the benefit of the LPA and TfL from time to time to abide by the terms and to comply with the obligations given on the part of LLDC and the Developer contained in the Original Agreement as though it had been varied by the Draft Deed.

Revised Confidential Appendix means the confidential appendix updated as a result of the Variation Approvals and which, pursuant to the terms of the Draft Deed, replaces the Confidential Appendix as defined in the Original Agreement.

Revised Development means the development to be carried out pursuant to the Variation Approvals.

Site means the land benefitted by the Original Permission as shown edged red on Plan 2.

Variation Applications means together an application pursuant to Condition LCS0.49 of the Planning Permission to vary the phasing of the Development to accelerate the delivery of PDZ4 and PDZ5 (reference 14/00035/AOD) and an application made pursuant to Section 73 of the 1990 Act to amend the eastern building line of SPDZ5B (reference 14/00036/VAR).

Variation Approvals means together the approvals issued pursuant to the Variation Applications.

2. OPERATION OF THIS UNILATERAL UNDERTAKING

2.1 This unilateral undertaking is given by Deed entered into pursuant to section 201 of the Localism Act 2011 section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999.

2.2 The LPA and TfL intend that this undertaking shall be binding on both the LPA TfL and their successors in function and shall be enforceable by the Owner and their successors in title

2.3 While LLDC is both the Owner and the LPA, the LPA will comply with the terms of the Enforcement Protocol in respect of the obligations contained in this Deed and in the Draft Deed.

3. LPA'S AND TFL'S COVENANTS IN FAVOUR OF THE OWNER

3.1 Subject to:

3.1.1 Commencement of the Development in the earlier of either PDZ 4 or PDZ 5 in accordance with the amended phasing permitted by the AOD Approval; and

3.1.2 LLDC entering into a Reciprocal Undertaking;

the LPA and TfL undertake for the benefit of any Owner of the Developer's Land that they will observe and perform the terms obligations, covenants, undertakings, restrictions and agreements imposed on the local planning authority and TfL (respectively) by the Original Agreement as though it had been amended by the Draft Deed and shall not enforce those obligations of the Original Agreement that are expressly deleted by clause 7 of the Draft Deed.

3.2 In the event PPDT's planning powers are transferred to a successor authority and where the Draft Deed has not already been entered into and completed by the Owner and the LPA, the LPA undertakes for the benefit of the Owner that within 28 days of the planning powers being transferred it shall enter into:

3.2.1 the Draft Deed with the Owner, PROVIDED THAT where any obligations in the Draft Deed have been superseded and/or further amended by any subsequent variation to the Original Agreement the Draft Deed shall be amended accordingly; and

3.2.2 the Revised Confidential Appendix with LLDC.

3.3 Where the provisions of clause 3.2 apply, TfL undertakes to enter into such Draft Deed within 28 days of the planning power being transferred.

4. LEGAL BASIS

4.1 This Deed is made under section 201 of the Localism Act 2011, section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999.

5. **RIGHTS OF THIRD PARTIES**

5.1 Save in respect of the Owner, no term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

6. **CONFLICT**

6.1 In the event of any conflict between the terms of this Deed and of the completed Draft Deed the latter will take precedence.

7. **LOCAL LAND CHARGE**

7.1 This Deed is a local land charge and is intended to be registered as such by the London Borough of Newham, the London Borough of Hackney and the London Borough of Tower Hamlets.

IN WITNESS whereof the LPA and TfL have executed and delivered this unilateral undertaking as a Deed the day and year first above written

**THE COMMON SEAL of THE LONDON
LEGACY DEVELOPMENT CORPORATION**)
was hereunto affixed in the presence of:)

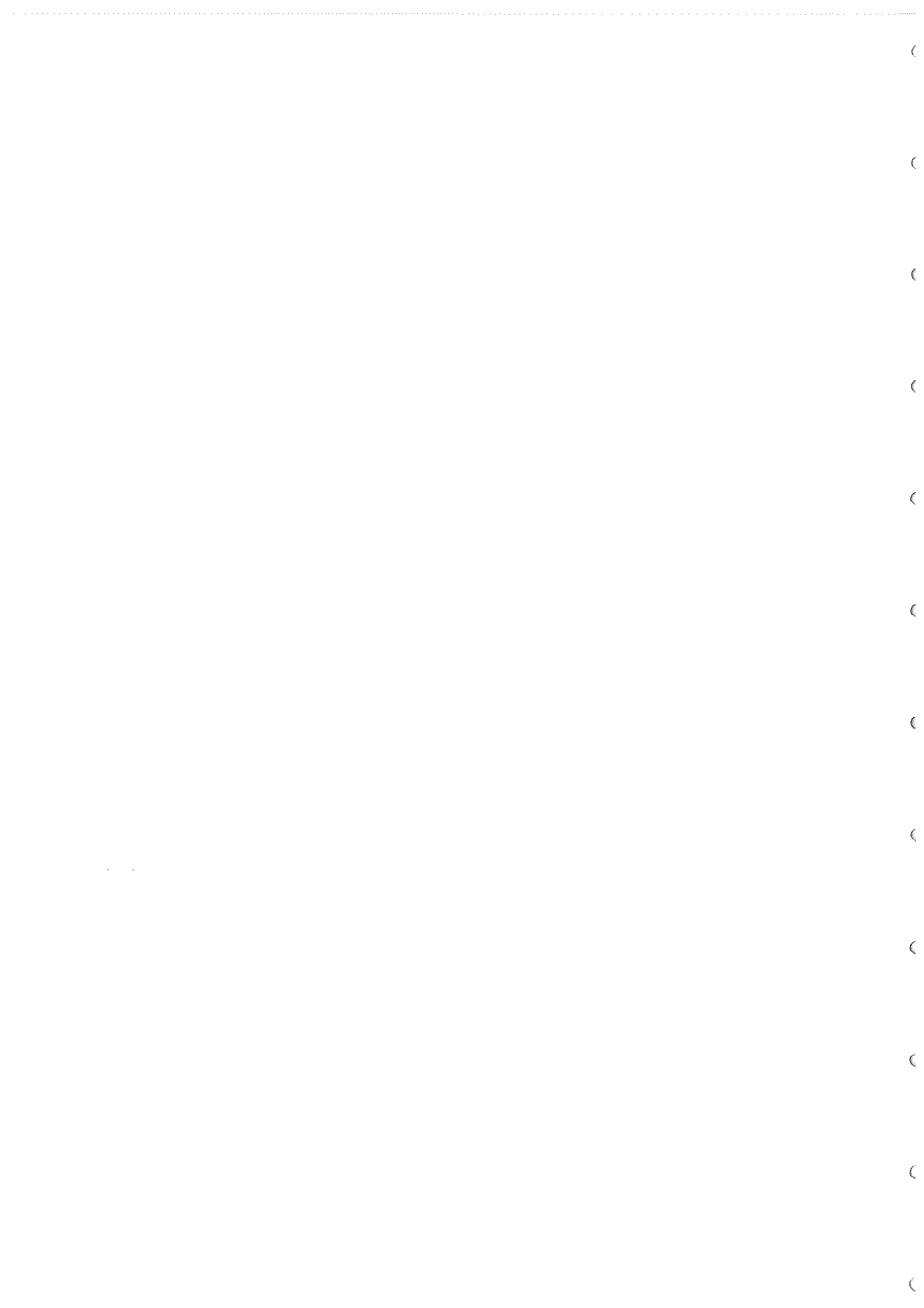
Authorised signatory



**THE COMMON SEAL of
TRANSPORT FOR LONDON**)
was hereunto affixed in the presence of:)

Authorised signatory





Annex 1 – Draft Deed

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DATED

201[4]

- (1) [LONDON LEGACY DEVELOPMENT CORPORATION] OR [LOCAL PLANNING AUTHORITY]
- (2) [LONDON LEGACY DEVELOPMENT CORPORATION] OR [OWNER]
- (3) TRANSPORT FOR LONDON

SUPPLEMENTAL DEED AND DEED OF VARIATION TO THE PLANNING OBLIGATION DATED 28 SEPTEMBER 2012 FOR THE LEGACY COMMUNITIES SCHEME, QUEEN ELIZABETH OLYMPIC PARK relating to applications [] submitted for the accelerated delivery of PDZ4 and PDZ5¹

made pursuant to section 106A of the Town and Country Planning Act 1990 and all other powers enabling

¹ To be entered into in the event either LLDC PPDT's planning powers are transferred to another entity or a third party takes an interest in PDZs 4 and/or 5

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THIS AGREEMENT is made on

201[4]

BETWEEN:

- (1) [LONDON LEGACY DEVELOPMENT CORPORATION LIMITED of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ] OR [LOCAL PLANNING AUTHORITY]² (the "LPA"); and
- (2) [LONDON LEGACY DEVELOPMENT CORPORATION LIMITED of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ] OR [DEVELOPER]³ (the "Developer"); and
- (3) TRANSPORT FOR LONDON of Windsor House, Victoria Street, London SW1 OTL ("TfL").

RECITALS

Parties

- (A) The LPA is the local planning authority for the Site for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in the Original Agreement are enforceable.
- (B) The Developer is the ([freehold/leasehold] owner of [] details of which are set out in Schedule 1 to this Deed)
- (C) TfL is the provider of public transport services and is also the highway authority responsible for certain roads in the vicinity of the Site.

Background

- (D) The Olympic Park Legacy Company (OPLC) submitted the planning application to the Olympic Delivery Authority (as local planning authority) on 30 September 2011 for the legacy redevelopment of the Queen Elizabeth Olympic Park (defined in the Original Agreement as the "Development").
- (E) On 1 April 2012, the Secretary of State for Communities and Local Government created the London Legacy Development Corporation (LLDC) pursuant to the London Legacy Development Corporation (Establishment) Order 2012 as the successor organisation to the OPLC. LLDC took on responsibility for promoting the application submitted by the OPLC for the Development.
- (F) On 26 June 2012 the Olympic Delivery Authority (as local planning authority) resolved to grant the outline planning permission reference 11/90621/OUT/ODA for the Development subject to the completion of an agreement pursuant to Section 106 of the 1990 Act.
- (G) On 28 September 2012 the Olympic Delivery Authority (ODA), LLDC (as developer) and Transport for London entered into an agreement pursuant to Section 106 of the 1990 Act in respect of the Planning Permission (the "**Original Agreement**") and the Planning Permission was granted.

² Insert details of successor LPA in the event the transfer of LLDC PPDT's planning powers to another entity triggers the entering into of this deed.

³ Insert details of successor in title as appropriate

- (H) On 1 October 2012 the Olympic Delivery Authority's planning functions and powers were transferred to the London Legacy Development Corporation and the London Legacy Development Corporation became the local planning authority for the Site for the purposes of Part 3 of the 1990 Act ("**PPDT**") with the effect that the local planning authority and the developer became the same legal entity. Because LLDC could not contract with itself, LLDC could not vary the Original Agreement if changes were required to be made to it while LLDC was both landowner and local planning authority.
- (I) The Original Agreement is drafted so that it attaches not only to development carried out under the planning permission as it was granted on 28 September 2012 ("**the Original Planning Permission**"), but also to development carried out pursuant to any variations to the Original Planning Permission, or planning permission for any development on the Developer's Land which is related to or carried out in substitution for development authorised under the Original Planning Permission.

Variation Applications

- (J) On 11 February 2014 LLDC as developer submitted to PPDT an application pursuant to Condition LCS0.49 of the Planning Permission to vary the phasing of the Development to accelerate the delivery of PDZ4 and PDZ5 (reference 14/00035/AOD) and an application made pursuant to Section 73 of the 1990 Act to amend the eastern building line of SPDZ5B (reference 14/00036/VAR) (together the "**Variation Applications**").
- (K) In order to carry out the accelerated development of PDZs 4 & 5 as envisaged by the Variation Approvals, the Original Agreement needs to be amended in accordance with the provisions set out in Clause 7 of this Deed.
- (L) On 25 March 2014 the planning committee of PPDT resolved to approve the Variation Applications subject to agreeing the terms of this Deed (the "**Variation Approvals**") and the completion of a unilateral undertaking securing the terms of this Deed.

The Unilateral Undertakings

- (M) On the date that the Variation Approvals were issued, LLDC was both the planning authority and landowner of Developer's Land (excluding an interest in part of PDZ 6 which had already been granted to Chobham Manor LLP). As explained above for this reason LLDC could not complete this Deed.
- (N) To ensure that the provisions set out in Clause 7 of this Deed would nonetheless be legally binding, LLDC as landowner gave a unilateral undertaking on [] to observe and perform the terms of the Original Agreement in relation to the Developer's Land as though it had been varied by this Deed ("**UU1**"). UU1 was given under section 106 of the 1990 Act and is binding on both LLDC's interests in the Developer's Land and on any the interests in that land of successors in title.
- (O) In return for UU1, LLDC as local planning authority and TfL gave a reciprocal undertaking on [] in which (conditional on the performance of the Original Agreement as deemed to be varied by this Deed) LLDC as Local Planning Authority and TfL were bound to only enforce the Original Agreement as though it had been effectively varied by this Deed ("**UU2**"). UU2 was given for the benefit of any owner of the Developer's Land from time to time. This means that the owners of interests in PDZ6 as well as any other owner of an interest in the Developer's Land may rely on and enforce the LPA's and TfL's promises in UU2.

- (P) If LLDC's planning function is transferred to a successor organisation, it is expected that UU2 will be transferred to and binding on the successor local planning authority under a formal scheme of transfer.
- (Q) UU1 and UU2 by themselves do not vary the Original Agreement. Instead, they are binding promises on the part of the owners of the Developer's land and on the part of the local planning authority to treat the Original Agreement as though it had been varied in accordance with the terms of this Deed.

Deed of Variation

- (R) This Deed is drafted as a simple deed of variation to the Original Agreement to be made under section 106A of the 1990 Act. The variations are effected by Clause 7 of this Deed.
- (S) This Deed is not itself made under section 106. The reason for this is to simplify the process of any future variations to the Original Agreement. Should these become necessary, the intention is that they will be effected by varying just the Original Agreement (as already amended) and UU1 & UU2 without also having vary this Deed.
- (T) Notwithstanding the fact that this Deed is not itself made under section 106 of the 1990 Act, once completed the variations this Deed makes to the Original Agreement will be enforceable against the parties to this deed and their successors in title because of the binding nature of the Original Agreement described in Recital I above and because of the effect of UU1 described below.
- (U) Some of the variations envisaged in Clause 7 of this Deed relate to site-wide planning obligations. Others relate to obligations which apply only to PDZ 4 and PDZ 5.

Role of this Deed

- (V) UU1 requires at clause 4.3 certain persons acquiring title to all or any part of the Developer's Land to enter into this Deed. The purpose of this Deed (once completed) is to create certainty particularly as to how the local planning authority will manage the amended development.
- (W) Because this Deed seeks (amongst other variations) to vary site-wide obligations, section 106A of the 1990 Act requires any party against whom such obligations are enforceable (such as the owners of PDZ6) to be a party to this Deed.
- (X) The LPA recognises that some interests affected by the amendments to be secured by this Deed may not be willing or able to be a party to this Deed. In these circumstances, the LPA considers that this Deed (incorporating appropriate amendments) need only be completed by the LPA (from time to time) and the third party required to enter into this Deed by Clauses 4.3 and 4.4 of UU1. As regards the amended site-wide obligations secured under UU1, other parties can rely on and enforce the LPA's and TfL's promises given for their benefit in UU2.
- (Y) For the avoidance of doubt, the LPA acknowledges that when completed, this Deed may include such further amendments to the Original Agreement (including amendments to these recitals and any of the terms of Clause 9 of this Deed) and such other terms as are appropriate and/or necessary to accommodate any further changes to the Original Planning Permission which the LPA (from time to time) approves.

OPERATIVE PROVISIONS:

1. INTERPRETATION

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

"Revised Confidential Appendix" means the separate appendix signed by LLDC and the LPA and dated the date hereof.⁴

"Original Agreement" means the agreement dated 28 September 2012 and made in respect of the Planning Permission between (1) the Olympic Delivery Authority, (2) the London Legacy Development Corporation (as developer) and (3) Transport for London pursuant to Section 106 of the 1990 Act

1.2 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates.

1.3 In this Deed:

1.3.1 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;

1.3.2 unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa;

1.4 The Interpretation Act 1978 shall apply to this Deed.

1.5 The "Deed" includes the Schedules, Recitals and the Revised Confidential Appendix to this Deed.

1.6 If any provision of this Deed is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Deed is (if and to the extent that it may properly and lawfully be construed as such) to be unaffected.

2. EFFECT OF THIS DEED

2.1 This Deed is made pursuant to:

2.1.1 section 106A of the 1990 Act; and

2.1.2 [sections 201, 205 and 206 of the 2011 Act, section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999 and all other powers so enabling.]⁵

2.2 Save as set out in Clause 7 below nothing in this Deed shall be construed as amending in any way the provisions of the Original Agreement and all provisions of the Original Agreement shall continue in full force and effect and nothing in this Deed shall otherwise release or absolve any party from its obligations under the Original Agreement.

⁴ The appendix will only be signed if the LPA is no longer LLDC, ie it will only be signed by LLDC (and not successors in title) and the LPA

⁵ Amend with relevant local authority powers if LLDC is not a party to this Deed as the LPA

3. **CONDITIONALITY**

Save where expressly provided for in this Deed this Deed is conditional upon and shall not take effect until the Variation Approvals have been granted and the Development has Commenced in accordance with the Variation Approvals.

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

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

5. **JURISDICTION AND LEGAL EFFECT**

5.1 This Deed shall be governed by and interpreted in accordance with the law of England.

5.2 The provisions of this Deed (other than this Clause 5.2 which shall be effective in any event) shall be of no effect until this Deed has been dated.

6. **EXECUTION**

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

7. **VARIATION OF THE ORIGINAL AGREEMENT**

7.1 The Original Agreement is varied as follows:

7.1.1 Clause 2.3 is deleted and replaced with the following:

"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 so as to bind the Developer's Land and, subject to Clauses 2.9, 2.9A, 2.10, 2.11 and 2.12 the said obligations, covenants and undertakings on the part of the Developer are entered into with the intent that they shall be enforceable not only against the Developer but also against any successors in title to or assigns of the Developer and/or any person claiming through or under the Developer an interest or estate in the Developer's Land (other than a utility undertaker insofar as and to the extent that the relevant utility undertaker is occupying the relevant part of the Developer's Land in its capacity as a utility undertaker) as if that person had been an original covenanting party in respect of such interest for the time being held by it and insofar as any such obligations, covenants and undertakings are not capable of falling within section 106 of the 1990 Act are entered into as obligations, covenants and undertakings in pursuance of sections 4 and 5 of the Olympic Act, sections 201, 205 and 206 of the 2011 Act and, in respect of those obligations, covenants and undertakings given to TfL, in pursuance of section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999."

7.1.2 A new clause 2.9A is added as follows:

"2.9A Subject to clauses 2.10.1 and 2.10.2 the obligations in this Agreement given by the Developer shall not be enforced against a third party who acquires a leasehold or freehold interest in the

Developer's Land which is not sufficient to enable it to carry out and/or Occupy the Development (or any part thereof) such that it would trigger the relevant obligations."

7.1.3 Clause 2.12 shall be deleted and replaced with the following:

"2.12 Where any Developer (other than LLDC) considers that it should not be liable in whole or part in respect of an obligation contained in this Agreement which does not directly relate to that part of the Developer's Land in which such Developer has an interest, such Developer may apply to the LPA for written binding confirmation that the specified obligations cannot and will not be enforced against the Developer."

7.1.4 Clause 4.1.6 shall be deleted and replaced with the following:

"notify the LPA (and TfL in respect of (h)-(k)) of the following dates and information within 5 (five) Working Days of the relevant date occurring:

- (a) the Commencement Date in each PDZ;
- (b) the Commencement Date in each SPDZ;
- (c) Occupation of the first Residential Unit in each PDZ;
- (d) Occupation of the first Residential Unit in each SPDZ;
- (e) Occupation of the first Residential Unit in each DP;
- (f) the number of Occupations at the end of Phase 2;
- (g) the number of Occupations at the end of Phase 3;
- (h) Occupation of 700 (seven hundred) Residential Units;
- (i) Occupation of 350 (three hundred and fifty) Residential Units;
- (j) Occupation of 3000 (three thousand) Residential Units; and
- (k) Occupation of the first Residential Unit in PDZ2"

7.1.5 A new clause 22 is added as follows:

"22. **Variations**

22.1 Save in respect of any variation to the obligations in this Agreement given for the benefit of TfL or given by TfL, TfL shall not be required to be party to any deed of variation to this Deed."

7.1.6 Paragraphs 1.1 and 1.2 of Schedule 2 (payment of the Bus Service Enhancement Contribution) is deleted and replaced with the following:

"1.1 LLDC covenants with the LPA and with TfL:

1.1.1 not more than one month prior to the anticipated Occupation of 700 (seven hundred) Residential Units which are permitted to be constructed across the Development to calculate the amount by which

£1,575,000 of the Bus Service Enhancement Contribution is increased in accordance with clause 8.2 (the "**First Additional Payment**") and to then pay such sums to the LPA as follows:

- (a) £315,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the First Additional Payment on or before Occupation of 700 (seven hundred) Residential Units permitted to be constructed across the Development;
- (b) £315,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the First Additional Payment on or before the first anniversary of the payment made pursuant to paragraph 1.1.1(a); and
- (c) £315,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the First Additional Payment on or before the second anniversary of the payment made pursuant to paragraph 1.1.1(a);
- (d) £315,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the First Additional Payment on or before the third anniversary of the payment made pursuant to paragraph 1.1.2(a);
- (e) £315,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the First Additional Payment on or before the fourth anniversary of the payment made pursuant to paragraph 1.1.2(a);

1.1.2 not more than one month prior to the anticipated Occupation of 3,000 (three thousand) Residential Units permitted to be constructed across the Development to calculate the amount by which £450,000 of the Bus Service Enhancement Contribution is increased in accordance with clause 8.2 (the "**Second Additional Payment**") and to then pay such sums to the LPA as follows:

- (a) £90,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Second Additional Payment on or before Occupation of 3,000 (three thousand) Residential Units permitted to be constructed across the Development;
- (b) £90,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Second Additional Payment on or before the first anniversary of the payment made pursuant to paragraph 1.1.2(a);
- (c) £90,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Second Additional Payment on or before the second anniversary of the payment made pursuant to paragraph 1.1.2(a);

- (d) £90,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Second Additional Payment on or before the third anniversary of the payment made pursuant to paragraph 1.1.2(a);
- (e) £90,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Second Additional Payment on or before the fourth anniversary of the payment made pursuant to paragraph 1.1.2(a);

1.1.3 not more than one month before the anticipated Occupation of any Residential Units permitted to be constructed in PDZ2 to calculate the amount by which £4,565,000 of the Bus Service Enhancement Contribution is increased in accordance with clause 8.2 (the "Third Additional Payment") and to then pay such sums to the LPA as follows:

- (a) £913,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Third Additional Payment on or before Occupation of any Residential Units permitted to be constructed in PDZ2;
- (b) £913,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Third Additional Payment on or before the first anniversary of the payment made pursuant to paragraph 1.1.3(a);
- (c) £913,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Third Additional Payment on or before the second anniversary of the payment made pursuant to paragraph 1.1.3(a);
- (d) £913,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Third Additional Payment on or before the third anniversary of the payment made pursuant to paragraph 1.1.3(a); and
- (e) £913,000 of the Bus Service Enhancement Contribution and $\frac{1}{5}$ of the Third Additional Payment on or before the fourth anniversary of the payment made pursuant to paragraph 1.1.3(a).

and each of the payments made pursuant to paragraph 1.1.1-1.1.3 is separately referred to as a "**Payment**" and for the avoidance of doubt none of the Payments shall (save where expressly set out in paragraphs 1.1.1 – 1.1.3) be further increased in accordance with clause 8.2."

7.1.7 The text of paragraph 1.2 of Schedule 2 (payment of the Bus Services Enhancement Contribution) is deleted and is replaced with:

"1.2 The Developer covenants not to Occupy:

- 1.2.1 more than 700 (seven hundred) Residential Units permitted to be constructed across the Development unless and until LLDC has made the payment set out in paragraph 1.1.1(a) above;
 - 1.2.2 any Residential Units following the fourth anniversary of the date of the payment made pursuant to paragraph 1.1.1(a) unless and until LLDC has made the payments set out in paragraph 1.1.1(a)-(e) above;
 - 1.2.3 more than 3,000 (three thousand) Residential Units permitted to be constructed across the Development unless and until LLDC has made the payment set out in paragraph 1.1.2(a) above;
 - 1.2.4 any Residential Units following the fourth anniversary of the date of the payment made pursuant to paragraph 1.1.2(a) unless and until LLDC has made the payments set out in paragraph 1.1.2(a)-(e) above;
 - 1.2.5 any Residential Units permitted to be constructed in PDZ2 unless and until LLDC has made the payment set out in paragraph 1.1.3(a) above;
 - 1.2.6 any Residential Units following the fourth anniversary of the date of the payment made pursuant to paragraph 1.1.3(a) unless and until LLDC has made the payments set out in paragraph 1.1.3(a)-(e) above."
- 7.1.8 Paragraphs 2.1 and 2.2 of Schedule 2 (payment of the Bus Infrastructure Contribution) is deleted and replaced with the following:
- "2.1 LLDC covenants with the LPA and with TfL that it shall:
 - 2.1.1 pay £100,000 (one hundred thousand pounds) (Indexed) from the Bus Infrastructure Contribution to TfL prior to the Occupation of more than 350 (three hundred and fifty) Residential Units permitted to be constructed across the Development; and
 - 2.1.2 pay £188,000 (one hundred and eighty eight thousand pounds) (Indexed) from the Bus Infrastructure Contribution to TfL prior to the Occupation of any Residential Units permitted to be constructed in PDZ2.
 - 2.2 The Developer covenants with the LPA and with TfL that it shall not:
 - 2.2.1 Occupy more than 350 (three hundred and fifty) Residential Units permitted to be constructed across the Development unless and until £100,000 (one hundred thousand pounds) (Indexed) from the Bus Infrastructure Contribution has been paid to TfL pursuant to paragraph 2.1.1; and

2.2.2 Occupy any Residential Units permitted to be constructed in PDZ2 unless and until £188,000 (one hundred and eighty eight thousand pounds) (Indexed) from the Bus Infrastructure Contribution has been paid to TfL pursuant to paragraph 2.1.2."

7.1.9 Paragraph 1.1 of Schedule 4 (Site wide target for Family Housing) shall be deleted and replaced with the following:

"1.1 Subject to the operation of the viability review mechanism pursuant to Schedule 15 not less than 42% of Residential Units constructed at the Development shall be provided as Family Housing".

7.1.10 Paragraph 1.3 of Schedule 4 (PDZ/SPDZ target for Family Housing) shall be deleted and replaced with the following:

"Subject to the operation of the viability review mechanism pursuant to Schedule 15 and other than in PDZ6 and the First PDZ the site wide target of 42% Family Housing referred to paragraph 1.1 of this Schedule shall be provided in the following proportions:

| PDZ | Percentage of Residential Units to be provided as Family Housing |
|---|--|
| 1A | 16% |
| 1B | 23% |
| 2 | 27% |
| 4 (where PDZ4 is the Second PDZ) | 57% |
| 5 (where PDZ5 is the Second PDZ and the Developer elects to submit a ZMP for PDZ5) | 66% |
| 5A (where PDZ5 is the Second PDZ and the Developer elects to submit a SZMP for SPDZ5A) | 53% |
| 5B (where PDZ5 is the Second PDZ and the Developer elects to submit a SZMP for SPDZ5B) | 82% |
| 8A | 38% |
| 8B | 39% |
| 12 | 46% |

PROVIDED THAT the Developer shall be entitled to exceed the above percentages;"

7.1.11 The following new paragraphs 1.3A-C shall be added to Schedule 4:

"1.3A where PDZ4 is the First PDZ, 57% of the Residential Units to be constructed in PDZ4 shall be provided as Family Housing;

- 1.3B where PDZ5 is the First PDZ and the Developer elects to submit one ZMP for PDZ5, 66% of the Residential Units to be constructed in PDZ5 shall be provided as Family Housing;
 - 1.3C where PDZ5 is the First PDZ and the Developer elects to submit SZMPs for SPDZ5A and SPDZ5B, 53% of the Residential Units to be constructed in SPDZ5A shall be provided as Family Housing and 82% of the Residential Units to be constructed in SPDZ5B shall be provided as Family Housing"
- 7.1.12 The Confidential Appendix shall be deleted and replaced with the Revised Confidential Appendix and all references to the Confidential Appendix in the Original Agreement shall be deemed to refer to the Revised Confidential Appendix.
 - 7.1.13 Schedule 3 shall be deleted and replaced with the revised Schedule 3 contained in Schedule 2 of this Deed and for the avoidance of doubt for the purposes of Recital X of this Deed, in ascertaining who is to enter into this Deed pursuant to clause 4.3 of UU1, Schedule 3 has been amended in respect of the Site wide target for Affordable Housing Units and the obligations relating to PDZ4 and 5. None of the obligations in Schedule 3 relating to other PDZs have been amended.
 - 7.1.14 Schedule 15 shall be deleted and replaced with the revised Schedule 15 contained in Schedule 3 of this Deed.
- 7.2 The LPA shall within [20] Working Days of the date of this Deed confirm in writing to the Developer and LLDC which obligations in the Original Agreement have been complied with [in full/in part].
 - 7.3 TfL shall within [20] Working Days of the date of this Deed confirm in writing to the Developer and LLDC which obligations in the Original Agreement for the benefit of TfL have been complied with [in full/in part];

SCHEDULE 1
Interests in the Site

SCHEDULE 2

Replacement to Schedule 3 of the Original Agreement

AFFORDABLE HOUSING

RECITALS

- (A) The Planning Application seeks planning permission for up to 641,817m² of residential floorspace for a range of Market Housing Units, Affordable Rented Units, Social Rented Units and Intermediate Units proposed to be built in phases across seven Planning Delivery Zones as the Development proceeds.
- (B) The LPA and the Developer share the objective of providing an inclusive and sustainable residential community combining Market Housing Units and Affordable Housing at the Development as part of the overall strategy to create a mixed and sustainable development.
- (C) The LPA and the Developer have agreed that not less than 31% of the total number of Residential Units constructed at the Development shall be provided as Affordable Housing Units, subject to the operation of the viability review mechanism in Schedule 15.
- (D) It has been agreed that within Planning Delivery Zone 6 not less than 28% of all Residential Units will be provided as Affordable Housing. Elsewhere the operation of the viability review mechanism will determine the proportion of Residential Units to be provided as Affordable Housing, to be agreed between the Developer and the LPA, subject always that not less than 20% of the total number of Residential Units constructed at the Development shall be provided as Affordable Housing Units.

DEFINITIONS

| | |
|-------------------------------|---|
| "Affordability Criteria" | means as defined in Schedule 15 |
| "Affordable Housing" | means housing provided to eligible households whose needs are not met by the market |
| "Affordable Housing Contract" | means a binding contract between the Developer and an Affordable Housing Provider for the construction and Transfer of Affordable Housing Units to the Affordable Housing Provider |
| "Affordable Housing Provider" | means a provider of Affordable Housing Approved in respect of the relevant PDZ or SPDZ or deemed to be approved pursuant to paragraph 7 |
| "Affordable Housing Tenancy" | means a tenancy entered into in respect of each Social Rented Unit and Affordable Rented Unit between the tenant and the Affordable Housing Provider |
| "Affordable Housing Units" | means the Residential Units to be provided as Affordable Housing pursuant to this Schedule |
| "Affordable Rented Units" | means Affordable Housing Units to be made available by an Affordable Housing Provider to households who are eligible for social rented housing at rents no more than the percentage of Market Rent to be calculated in accordance with paragraph 6.2 or 6.3 |

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| "Approved" | means, in the context of this Schedule, approved by the LPA pursuant to paragraph 17 or Clause 12 or by the Expert pursuant to Clause 13 and "Approval" and cognate expressions shall be construed accordingly |
| "Development Parcel Phasing Plan" | means a plan to be approved pursuant to Condition LCS0.50 identifying the sequence and projected programme for the build out of the relevant PDZ or SPDZ and each Development Parcel (within the relevant PDZ or SPDZ) |
| "East London Housing Sub-Region" | means the City of London and the London Boroughs of Barking and Dagenham, Hackney, Havering, Redbridge, Newham, Waltham Forest and Tower Hamlets or any successor body or group of boroughs that may replace them from time to time |
| "Family Housing" | means Residential Units with three or more bedrooms |
| "First PDZ" | means either: <ul style="list-style-type: none">a) PDZ4, where a ZMP for PDZ4 is submitted to the LPA pursuant to Condition LCS0.1 before a ZMP for PDZ5 or a SZMP for either SPDZ5A or SPDZ5B is submitted to the LPA pursuant to Condition LCS0.1; orb) PDZ5, where a ZMP for PDZ5 or a SZMP for either SPDZ5A or SPDZ5B is submitted to the LPA pursuant to Condition LCS0.1 before a ZMP for PDZ4 is submitted to the LPA pursuant to Condition LCS0.1 and the provisions of Paragraph 1.3A.1 of this Schedule 3 shall apply to such first PDZ |
| "Grant Funding" | means any capital funding provided by the HCA, GLA or any other public body for the delivery of Affordable Housing |
| "HCA" | means the Homes and Communities Agency of 110 Buckingham Palace Road, London, SW1W 9SA or such successor body for the time being having or being entitled to exercise the powers now conferred on such agency at the date of this Agreement |
| "HomeBuy Agent" | means a body appointed or approved by the HCA to act as agents for the allocation of the Shared Ownership Units |
| "Households on Intermediate Incomes" | means households with a gross annual income (including benefits) of between £40,000 and £55,000 (Indexed) or such other income ranges as may be agreed between the Developer and the Local Planning Authority |

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| "Households on Lower Intermediate Incomes" | means households with a gross annual income (including benefits) of between £25,000 and £39,999 (Indexed) or such other income ranges as may be agreed between the Developer and the Local Planning Authority |
| "Households on Upper Intermediate Incomes" | means households with a gross annual income (including benefits) of between £55,001 and £70,000 (Indexed) or such other income ranges as may be agreed between the Developer and the Local Planning Authority |
| "Intermediate Units" | means Affordable Housing Units for sale and rent provided at a cost above social rent but below market levels to be provided as: (a) Shared Equity Units; and (b) Shared Ownership Units or such other form of intermediate housing as may be agreed by the Developer and the LPA |
| "London Legacy Development Corporation" | means in this Schedule only the London Legacy Development Corporation and any successor regeneration authority and not any successor in title to the Site or any part thereof |
| "Market Housing Units" | means Residential Units which are not Affordable Housing and in PDZ4 and PDZ5 shall include Private Rented Units |
| "Market Rent" | means the rent as assessed by a Member or Fellow of the Royal Institute of Chartered Surveyors being a chartered valuation surveyor appointed by the Developer owing a duty of care to the LPA and acting in an independent capacity in accordance with the definition of "Market Rent" at Practice Statement 3.4 of the Royal Institute of Chartered Surveyors Valuation – Professional Standards (the Red Book) March 2012 as may be updated from time to time |
| "Market Value" | means the market value as assessed by a Member or Fellow of the Royal Institute of Chartered Surveyors being a chartered valuation surveyor appointed by the Developer owing a duty of care to the LPA and acting in an independent capacity in accordance with the Royal Institute of Chartered Surveyors Valuation – Professional Standards (the Red Book) March 2012 as may be updated from time to time |
| "Nominating Body" | means each of the bodies referred to in paragraph 11.1 |
| "Nominations Agreement" | means an agreement between an Affordable Housing Provider and the Nominating Body containing arrangements for the initial and subsequent selection and prioritisation of tenants or occupiers of Affordable Housing Units |

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|-------------------------------------|---|
| "Private Rented Units" | means those Market Housing Units that are rented out at Market Rent |
| "Residential Units" | means the residential units provided as part of the Development |
| "Second PDZ" | means either PDZ4 or PDZ5 whichever is not the First PDZ |
| "Service Level Agreement" | means a service level agreement with a HomeBuy Agent containing arrangements in relation to the operation of the Homebuy Agent's list in a form which complies with the HCA practice guidance issued from time to time |
| "Shared Equity Units" | means Affordable Housing Units to be made available by an Affordable Housing Provider where a proportion of the equity (being not less than 30% and not more than 80% and subject to an initial average equity share across all such units at the Development being not less than 60%) is sold on a long lease to the purchaser and the remainder of the equity is retained by the Affordable Housing Provider without rent being charged in respect of the retained equity and, unless otherwise agreed by the LPA and the Developer, on terms that entitle the purchaser to acquire up to 80% of the equity through Staircasing |
| "Shared Ownership Units" | means Affordable Housing Units to be made available by an Affordable Housing Provider where a proportion of equity is sold on a long lease to the purchaser and the remainder of the equity is retained by the Affordable Housing Provider subject to rent being charged on the retained equity on terms that entitle the purchaser to acquire up to 100% of the equity through Staircasing |
| "Sheltered Housing Facility" | shall have the meaning ascribed to it in Schedule 5 |
| "Social Rented Units" | means Affordable Housing Units to be made available by an Affordable Housing Provider at Target Rents to be determined through the national rent regime |
| "Staircasing" | means the purchase by the owner of additional equity in a Shared Ownership Unit or a Shared Equity Unit |
| "Target Rents" | means target rents as published from time to time by the HCA (or such other body as may replace the HCA having the responsibility of setting target rents for social housing) |
| "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 Local Planning Authority |

OPERATIVE PROVISIONS

1. QUANTUM OF AFFORDABLE HOUSING

- 1.1 Subject to the operation of the viability review mechanism pursuant to Schedule 15 not less than 31% of the total number of Residential Units constructed at the Development shall be provided as Affordable Housing Units.
- 1.2 Not less than 28% of the total number of Residential Units constructed in PDZ6 shall be provided as Affordable Housing Units.
- 1.3 Subject to the operation of the viability review mechanism pursuant to Schedule 15 and other than in PDZ4, PDZ5 and PDZ6 the following percentages of the total number of Residential Units constructed in each PDZ or SPDZ shall be provided as Affordable Housing Units:

| PDZ/SPDZ | Percentage of Residential Units |
|----------|---------------------------------|
| 1A | 19% |
| 1B | 23% |
| 2 | 36% |
| 8A | 35% |
| 8B | 46% |
| 12 | 53% |

PROVIDED THAT nothing in this paragraph 1.3 shall prevent the Developer from providing Affordable Housing Units in each PDZ or SPDZ in excess of the above percentages.

- 1.3A.1 Not less than thirty percent (30%) of the total number of Residential Units constructed in the First PDZ shall be provided as Affordable Housing Units and no viability review (as set out in Schedule 15) shall be carried out in respect of the First PDZ.
- 1.3A.2 If PDZ5 is the First PDZ and the Developer elects to submit separate SZMPs for SPDZ5A and SPDZ5B the following percentages of the total number of Residential Units constructed in SPDZ5A and SPDZ 5B shall be provided as Affordable Housing Units:

| SPDZ | Percentage of Residential Units |
|------|---------------------------------|
| 5A | 44% |
| 5B | 12% |

PROVIDED THAT not less than 30% of the Residential Units constructed across PDZ5 shall be provided as Affordable Housing Units and nothing in this paragraph 1.3A.2 shall prevent the Developer from providing Affordable Housing Units in excess of the above percentages.

- 1.3A.3 Subject to the operation of the viability review mechanism pursuant to Schedule 15 not less than 31% of the total number of Residential Units constructed in the Second PDZ shall be provided as Affordable Housing Units and where PDZ5 is the Second PDZ and the Developer has elected to submit separate SZMPs for SPDZ5A and SPDZ5B then subject to the operation of the viability review mechanism pursuant to Schedule

15 the total number of Residential Units constructed in each of SPDZ 5A and SPDZ 5B shall be as follows:

| SPDZ | Percentage of Residential Units |
|------|---------------------------------|
| 5A | 47% |
| 5B | 12% |

PROVIDED THAT nothing in this paragraph 1.3A.3 shall prevent the Developer from providing Affordable Housing Units in excess of the above percentages.

1.4 Notwithstanding the operation of the viability review mechanism pursuant to Schedule 15:

1.4.1 not less than 20% of the total number of Residential Units constructed at the Development shall be provided as Affordable Housing Units, such minimum to be applied across the Development in accordance with paragraphs 1.4.2 to 1.4.4A below;

1.4.2 following the approval of each ZMP or SZMP by the LPA pursuant to Condition LCS0.1, the percentage of Affordable Housing Units approved pursuant to all approved ZMPs and SZMPs shall be not less than 20% of the total number of Residential Units so approved, and the parties agree that the LPA shall be entitled to refuse any ZMP or SZMP which if approved would not comply with this paragraph;

1.4.3 following the approval of each Reserved Matters application pursuant to Condition LCS0.27, the percentage of Affordable Housing Units approved pursuant to all Reserved Matters Approvals shall be not less than 20% of the total number of Residential Units so approved, and the parties agree that the LPA shall be entitled to refuse any Reserved Matters Application which if approved would not comply with this paragraph;

1.4.4 based on the Outline Site Wide Phasing Plan as amended pursuant to application 14/00035/AOD and approved on [drafting note: use date of unilateral undertaking given by LLDC] and other than in PDZ4, PDZ5 and PDZ6, not less than the following percentages of the total number of Residential Units constructed in each PDZ or SPDZ shall be provided as Affordable Housing Units:

| PDZ/SPDZ | Percentage of Residential Units |
|----------|---------------------------------|
| 1A | 19% |
| 1B | 23% |
| 2 | 11% |
| 8A | 28% |
| 8B | 22% |
| 12 | 15% |

PROVIDED THAT in the event that approved amendments to the Outline Site Wide Phasing Plan and/or any Development Parcel Phasing Plan change the sequence of Development the Developer may submit to the LPA for Approval a revised version of the above table which, once Approved, shall replace the table in this paragraph 1.4.4 and **FOR THE AVOIDANCE OF DOUBT** the provisos shall apply without prejudice to paragraphs 1.4.1 to 1.4.3 which shall always apply; and

1.4.4A based on the Outline Site Wide Phasing Plan as amended pursuant to application 14/00035/AOD and approved on [], the proportion of

Affordable Housing Units provided in the Second PDZ shall not be less than (stated as a percentage of residential Units in that PDZ or SPDZ):

| Second PDZ | Minimum % of Affordable Housing Units |
|--|---------------------------------------|
| PDZ4 | 24% |
| PDZ5 (where the Developer has elected to submit a SZMP for PDZ5) | 12% |
| SPDZ5A (where the Developer has elected to submit SZMP's for PDZ5) | 12% |
| SPDZ5B (where the Developer has elected to submit SZMP's for PDZ5) | 12% |

2. **TENURE**

2.1 Subject to the operation of the viability review mechanism pursuant to Schedule 15 the tenure of the Affordable Housing Units shall be provided in the following proportions:

| Tenure | Percentage of Affordable Housing Units |
|-------------------------|--|
| Social Rented Units | 30% |
| Affordable Rented Units | 30% |
| Intermediate Units | 40% |

2.2 The tenure of the Affordable Housing Units in PDZ 6 shall be provided in the following proportions (stated as a proportion of Residential Units in PDZ6):

| PDZ | Social Rented Units | Affordable Rented Units | Intermediate Units |
|-----|---------------------|-------------------------|--------------------|
| 6 | 8.5% | 8.5% | 11% |

2.3 Subject to the operation of the viability review mechanism pursuant to Schedule 15 and other than in PDZ4, PDZ5 and PDZ6 the tenure of the Affordable Housing Units in each PDZ or SPDZ shall be provided in the following proportions (stated as a percentage of Residential Units in that PDZ or SPDZ):

| PDZ/SPDZ | Social Rented Units | Affordable Rented Units | Intermediate Units |
|----------|---------------------|-------------------------|--------------------|
| 1A | 5% | 5% | 9% |
| 1B | 6% | 6% | 10% |
| 2 | 11% | 11% | 13% |
| 8A | 11% | 11% | 12% |
| 8B | 14% | 14% | 18% |
| 12 | 15% | 15% | 23% |

2.3A The tenure of the Affordable Housing Units in the First PDZ shall be provided in the following proportions (stated as a percentage of the Residential Units in that PDZ or SPDZ):

| First PDZ | Social Rented Units | Affordable Rented Units | Intermediate Units |
|----------------------------|---------------------|-------------------------|--------------------|
| 4 | 9% | 9% | 12% |
| 5 (where the Developer was | 9% | 9% | 12% |

| | | | |
|---|-----|-----|-----|
| elected to submit one ZMP for PDZ5) | | | |
| 5A (where the Developer has elected to submit SZMPs for PDZ5) | 13% | 13% | 18% |
| 5B (where the Developer has elected to submit SZMPs for PDZ5) | 4% | 4% | 4% |

2.3B Subject to the operation of the viability review mechanism pursuant to Schedule 15, the tenure of the Affordable Housing Units in the Second PDZ shall be provided in the following proportions (stated as a percentage of the Residential Units in that PDZ or SPDZ):

| Second PDZ | Social Rented Units | Affordable Rented Units | Intermediate Units |
|--|---------------------|-------------------------|--------------------|
| 4 | 9% | 9% | 13% |
| 5 (where the Developer was elected to submit one ZMP for PDZ5) | 9% | 9% | 13% |
| 5A (where the Developer has elected to submit SZMPs for PDZ5) | 14% | 14% | 19% |
| 5B (where the Developer has elected to submit SZMPs for PDZ5) | 4% | 4% | 4% |

3. UNIT SIZE MIX

3.1 The Affordable Housing Units in PDZ6 shall comprise the following unit size mix:

| Affordable Housing tenure type | studio, 1 & 2 bed units | Family Housing |
|--------------------------------|-------------------------|----------------|
| Social Rented | 15% | 85% |
| Affordable Rented | 15% | 85% |
| Intermediate | 38% | 62% |

3.2 Subject to the operation of the viability review mechanism pursuant to Schedule 15 and other than in PDZ6 and the First PDZ the Affordable Housing Units shall be provided within the following Site Wide ranges of unit size mix, the precise mix for each PDZ or SPDZ (which shall be in the ranges set out below) to be approved by the LPA as part of the ZMP for each PDZ or SZMP for each SPDZ:

| Affordable Housing tenure type | Site wide ranges of unit size mix | |
|--------------------------------|-----------------------------------|----------------|
| | studio, 1 & 2 bed units | Family Housing |
| Social Rented Unit | 39%-43% | 57%-61% |
| Affordable Rented Unit | 39%-43% | 57%-61% |

| | | |
|-------------------|---------|---------|
| Intermediate Unit | 82%-87% | 13%-18% |
|-------------------|---------|---------|

3.2A In respect of the First PDZ, the Affordable Housing Units shall be provided within the following ranges of unit size mix, the precise mix (in the ranges set out below) to be set out in the ZMP for the First PDZ and approved by the LPA pursuant to condition LCS0.1:

| | Studio, 1 & 2 bed units | Family Housing |
|------------------------|-------------------------|----------------|
| Social Rented Unit | 39-43% | 57-61% |
| Affordable Rented Unit | 39-43% | 57-61% |
| Intermediate Unit | 82-87% | 13-18% |

And for the avoidance of doubt where PDZ5 is the First PDZ and where the Developer has elected to submit SZMPS for SPDZ5A and SPDZ5B, such percentage ranges of unit size mix shall apply in respect of each SPDZ.

4. **GENERAL**

- 4.1 Where in this Schedule the number of Affordable Housing Units of any particular tenure, size or mix is specified as a percentage the actual number of Affordable Housing Units of that tenure, size or mix to be provided will be the number of whole units that is as near as arithmetically possible to the specified percentage.
- 4.2 Not less than 13% of Social Rented Units and Affordable Rented Units which are provided as Family Housing shall be provided at ground floor level (save in respect of any upper storeys forming part of the unit) so they have a direct ground floor entrance.

5. **GRANT FUNDING**

- 5.1 Save in respect of PDZ6 the Developer and the Affordable Housing Provider shall use Reasonable Endeavours to secure Grant Funding for the Affordable Housing Units in each PDZ and SPDZ.
- 5.2 The LPA shall provide such non-financial support as may be reasonably requested by the Developer and/or the Affordable Housing Provider in respect of any applications for Grant Funding pursuant to paragraph 5.1 above.
- 5.3 In the event Grant Funding is offered or secured in respect of the Affordable Housing Units (or any of them) 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 in order to deliver the relevant Affordable Housing Units 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.

6. **RENT LEVELS AND AFFORDABILITY CRITERIA**

- 6.1 The rent payable by the occupant of any Social Rented Unit shall not exceed the Target Rent, such rent to be calculated at the date of the start of each Affordable Housing Tenancy and during the term of each Affordable Housing Tenancy the rent shall be increased annually by no more than the annual change in the RPI plus 0.5%.

6.2 The rent payable by the occupant of any Affordable Rented Unit in PDZ 6 shall not exceed the percentages of Market Rent set out in the table below, such rent to be calculated at the date of the start of each Affordable Housing Tenancy and during the term of each Affordable Housing Tenancy the rent shall be increased annually by no more than the annual change in the RPI plus 0.5%. For the avoidance of doubt on the grant of a new Affordable Housing Tenancy or the re-grant of an existing Affordable Housing Tenancy the Affordable Housing Provider shall be entitled to rebase the rent levels charged in respect of the Affordable Rented Units against any change in the Market Rent to ensure the rent charged does not exceed the below percentages.

| Unit Size | Maximum Percentage of Market Rent |
|---------------------|-----------------------------------|
| Studio/ 1 bed units | 80% |
| 2 bed units | 70% |
| 3 bed units | 60% |
| 4 and 5 bed units | 50% |

6.3 The percentage of Market Rent applicable to Affordable Rented Units other than in PDZ 6 shall be determined and agreed with the LPA as part of the viability review mechanism pursuant to Schedule 15 and ZMP for each PDZ or SZMP for each SPDZ having regard to:

6.3.1 adopted development plan policy relevant to the PDZ or SPDZ; and

6.3.2 the table at paragraph 6.2 above

and the rent payable by the occupant of any such Affordable Rented Unit shall not exceed the lower of:

(a) the relevant agreed percentage(s); and

(b) 80% of Market Rent (including service charges, where applicable),

such rent to be calculated at the date of the start of each Affordable Housing Tenancy and during the term of each Affordable Housing Tenancy the rent shall be increased annually by no more than the annual change in the RPI plus 0.5%. For the avoidance of doubt on the grant of a new Affordable Housing Tenancy or the re-grant of an existing Affordable Housing Tenancy the Affordable Housing Provider shall be entitled to rebase the rent levels charged in respect of the Affordable Rented Units against any change in the Market Rent to ensure the rent does not exceed the percentage(s) agreed as part of the approved ZMP or SZMP.

6.4 The cost of rent and/or mortgage payments and service and estate charges in relation to the Intermediate Units shall not exceed:

6.4.1 40% of the net income of Households on Lower Intermediate Incomes;

6.4.2 40% of the net income of Households on Intermediate Incomes; and

6.4.3 40% of the net income of Households on Upper Intermediate Incomes

6.5 Subject to the operation of the viability review mechanism pursuant to Schedule 15 not less than 30% of the Intermediate Units shall be provided for and affordable to Households on Lower Intermediate Incomes.

6.6 Subject to the operation of the viability review mechanism pursuant to Schedule 15 not less than 30% of the Intermediate Units shall be provided for and affordable to Households on Intermediate Incomes.

6.7 The balance of any Intermediate Units not provided in accordance with paragraphs 6.6 and 6.7 above shall be provided for and affordable to Households on Upper Intermediate Incomes.

7. AFFORDABLE HOUSING PROVIDERS

7.1 Prior to the submission of the ZMP for each PDZ or SZMP for each SPDZ the Developer shall submit to the LPA and obtain its written 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 relevant PDZ or SPDZ for the purposes of this Schedule **PROVIDED THAT** any company or organisation which appears on an approved list of affordable housing providers of one or more of the Host Boroughs current at the time of the submission shall be deemed to be approved as an Affordable Housing Provider for the relevant PDZ or SPDZ.

7.2 In considering any submission for Approval pursuant to paragraph 7.1 the LPA agrees to give favourable consideration to any company or organisation which has a staffed office with regular opening hours in one or more of the Host Boroughs which potential or existing tenants can visit to make housing-related enquiries.

7.3 The list submitted for Approval pursuant to paragraph 7.1 may include the London Legacy Development Corporation or any subsidiary company or the GLA subject to it being permitted under law to provide Affordable Housing.

7.4 The list of Affordable Housing Providers Approved for each PDZ or SPDZ may be reviewed by the Developer and the LPA upon submission of each Reserved Matters Application containing Affordable Housing and in the event any amendments to the list of Affordable Housing Providers are Approved following the review the list of Affordable Housing Providers for that PDZ or SPDZ shall be revised accordingly.

8. AFFORDABLE HOUSING CONTRACTS

8.1 The Developer will proceed diligently and with all due expedition to negotiate and enter into Affordable Housing Contracts in respect of the Affordable Housing Units.

8.2 The Developer shall notify the LPA in writing within 15 (fifteen) Working Days of entering into each Affordable Housing Contract.

8.3 Each Reserved Matters Application which includes Affordable Housing Units shall be accompanied by the following:

8.3.1 unless notice has already been served pursuant to paragraph 8.2 above in respect of the relevant Affordable Housing Units, written confirmation of the progress the Developer has made towards entering into an Affordable Housing Contract for the Affordable Housing Units which are the subject of the application and the Developer's best estimate of when an Affordable Housing Contract will be entered into; and

8.3.2 written confirmation from the Affordable Housing Provider with which the Developer has entered or intends to enter into an Affordable Housing Contract that it approves the form of Reserved Matters Application for the Affordable Housing Units.

9. LOCATION AND DISTRIBUTION OF AFFORDABLE HOUSING UNITS

9.1 The key principles for the general location and distribution of Affordable Housing Units shall be set out in the ZMP for each PDZ or SZMP for each SPDZ.

9.2 The general location and distribution of Affordable Housing Units shall be in accordance with the approved ZMP or approved SZMP.

10. DELIVERY OF AFFORDABLE HOUSING

10.1 Not more than 30% of Market Housing Units in each PDZ or SPDZ shall be Occupied until 20% of Affordable Housing Units in that PDZ or SPDZ have been completed and Transferred to an Affordable Housing Provider.

10.2 Not more than 60% of Market Housing Units in each PDZ or SPDZ shall be Occupied until 50% of Affordable Housing Units in that PDZ or SPDZ have been completed and Transferred to an Affordable Housing Provider.

10.3 Not more than 90% of Market Housing Units in each PDZ or SPDZ shall be Occupied until 100% of Affordable Housing Units in that PDZ or SPDZ have been completed and Transferred to an Affordable Housing Provider.

11. NOMINATIONS RIGHTS

11.1 The terms of each Transfer of Affordable Housing Units other than Intermediate Units to an Affordable Housing Provider shall impose a requirement on the Affordable Housing Provider to enter into Nominations Agreements in respect of the Affordable Housing Units that are the subject of that Transfer to give effect to the following agreed split of nomination rights:

11.1.1 10% for the GLA;

11.1.2 40% for the Host Borough in whose area the Affordable Housing Units are located;

11.1.3 10% for Affordable Housing Provider;

11.1.4 30% for the East London Housing Partnership Sub-Region;

11.1.5 10% for the London Legacy Development Corporation unless at the date of the Transfer the London Legacy Development Corporation has not established a nomination mechanism in which case the 10% shall be allocated for the GLA.

11.2 The terms of each Transfer of Intermediate Units to an Affordable Housing Provider shall impose a requirement on the Affordable Housing Provider to enter into a Service Level Agreement in respect of the Shared Ownership Units that are the subject of that Transfer.

12. ANNUAL RETURNS INFORMATION

12.1 The Developer will procure that each Affordable Housing Provider provides annual returns to the LPA in relation to each PDZ and SPDZ with details of:

12.1.1 the initial purchaser or tenant of each Affordable Housing Unit and its tenure;

12.1.2 the household income of such initial purchaser or tenant;

12.1.3 the ethnicity of such initial purchaser or tenant (where available);

- 12.1.4 for Intermediate Units, the initial purchase price of the Unit and the initial percentage equity share bought;
- 12.1.5 the total monthly housing costs for each Affordable Housing Unit, including service and estate charges but showing such charges as separate figures;
- 12.1.6 the location of the purchaser or tenant's previous accommodation by local authority area; and
- 12.1.7 the purchaser or tenant's present occupation,

in each case in relation to the Affordable Housing Units within that PDZ or SPDZ, the first of such returns to be submitted 6 (six) months following first Occupation of the Affordable Housing Units within the PDZ or SPDZ in question and the last of such returns to be submitted 6 (six) months following the last Occupation of the Affordable Housing Units within the PDZ or SPDZ in question.

13. MANAGEMENT AND SERVICE CHARGES

13.1 It is acknowledged and agreed by the LPA and the Developer that:

- 13.1.1 estate and/or service charges will be payable by occupiers of the Affordable Housing Units in addition to being payable by occupiers of the Market Housing Units;
- 13.1.2 service charges for the Affordable Housing Units will be calculated separately from the Market Housing Units;
- 13.1.3 owners and occupiers of Market Housing Units and commercial premises at the Development will not be expected to subsidise the charges payable by owners and occupiers of Affordable Housing Units; and
- 13.1.4 it is the Developer's intention that the aggregate service charges to be payable by the occupiers of the Affordable Housing Units will be affordable (as determined by the Developer and the Affordable Housing Provider).

13.2 Before the submission of each Reserved Matters Application which includes Affordable Housing Units to the Local Planning Authority, the Developer will submit for information purposes an estimate of the initial service charges for the Affordable Housing Units proposed in that submission to the Local Planning Authority.

14. GENERAL PROVISIONS

14.1 The provisions of this Schedule will not bind:

- 14.1.1 any mortgagee of the Affordable Housing Provider nor any mortgagee 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 a party who has provided loan facilities to such Affordable Housing Provider or owner and who exercises any power of sale;
- 14.1.2 any person who has acquired 100% of the equity in a Shared Ownership Unit through Staircasing;
- 14.1.3 any person who exercises any right to buy or acquire an Affordable Housing Unit pursuant to a right under the Housing Act 1985 or the Housing Act 1996 or any other statutory power; or

- 14.1.4 the successors in title to the persons described in paragraphs 14.1.1 to 14.1.3 above.
- 14.2 The Developer will procure that the Transfer of any Intermediate Units to an Affordable Housing Provider imposes a requirement that when granting a lease of an individual Intermediate Unit the Affordable Housing Provider will impose obligations on the purchaser of such lease in similar terms to those stated in paragraph 14.3.
- 14.3 Subject to paragraph 14.6, where the owner of any Intermediate Unit wishes to sell his equity share in such unit:
 - 14.3.1 the consideration for any such sale will be restricted to the Model Shared Ownership Lease Market Value of the equity share at the time of sale;
 - 14.3.2 the owner must notify the Affordable Housing Provider of his wish to sell and the Affordable Housing Provider will then notify the Homebuy Agent and the unit will be offered to persons on the Homebuy Agent List by the Homebuy Agent;
 - 14.3.3 after a period of 8 (eight) weeks from the date of notification to the Affordable Housing Provider, the Homebuy Agent may continue to identify prospective purchasers, but the owner of the unit in question shall be entitled to place the property with an estate agent and sell it privately on the open market if not already sold and shall not be bound to accept the nomination from the Homebuy Agent and the provisions of paragraph 15 shall cease to apply to such unit,

PROVIDED THAT if the owner has not sold the equity share in his Affordable Housing Unit after a period of 6 (six) months from the date of notification to the Affordable Housing Provider, there shall be deemed for the purpose of paragraph 15 to be no need for the Affordable Housing Unit and the Developer (or any person nominated by the Developer for that purpose) may purchase the owner's equity share and subsequently sell the Affordable Housing Unit on the open market as a Market Housing Unit.

- 14.4 The terms of the Transfer of any Shared Ownership Units and (subject to paragraph 14.5) any Shared Equity Units to an Affordable Housing Provider will require the Affordable Housing Provider to include a provision in each lease of a Shared Ownership Unit and each lease of a Shared Equity Unit giving the Affordable Housing Provider a right of pre-emption in respect of each such lease for the period from the grant of the lease until the expiry of 21 years following final Staircasing entitling the Affordable Housing Provider to buy the lease back at the Market Value upon sale by the tenant.
- 14.5 In the event that any right of pre-emption is exercised pursuant to paragraph 14.4, and subject to paragraphs 14.6 and 15, on any subsequent disposal the Affordable Housing Provider will not dispose of more than the equity share purchased from the tenant and will conduct such disposal in accordance with paragraph 14.3.
- 14.6 The terms of the Transfer of any Intermediate Units to an Affordable Housing Provider may require the Affordable Housing Provider to include a provision in the lease of each such unit giving the Developer (or any person nominated by the Developer for that purpose) a right with effect from 25 years after the first disposal of each such unit of pre-emption in respect of such lease entitling the Developer (or any person nominated by the Developer for that purpose) to purchase the lease at the Open Market Value upon sale by the tenant and sell it on the open market as a Market Housing Unit and the difference between the proceeds of sale received by the Developer (or any person nominated by the Developer for that purpose) upon such disposal on the open market (less any costs incurred in relation to the disposal) and the purchase price paid to the tenant (plus any costs incurred in relation to the

purchase) will be allocated to the Developer (or any person nominated by the Developer for that purpose).

14.7 Save in respect of:

14.7.1 any antecedent breach; or

14.7.2 any equity interest retained by the Developer in respect of any Affordable Housing Units,

with effect from the date of Transfer of any Affordable Housing Units to an Affordable Housing Provider in accordance with this Schedule, the Developer will not be liable for the performance of the obligations in this Schedule in relation to those Affordable Housing Units unless and until the Developer re-acquires an interest in the relevant Affordable Housing Units.

14.8 Upon the Transfer of any Affordable Housing Units to an Affordable Housing Provider and subject to paragraph 14.7, 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.

15. **RESTRICTION ON OCCUPATION OF AFFORDABLE HOUSING UNITS**

15.1 Unless otherwise agreed by the LPA and subject to the terms of this Schedule and any Nominations Agreement or Service Level Agreement:

15.1.1 no Social Rented Unit provided under the terms of this Schedule 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 an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Social Rented Unit; and

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

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

in each case for so long only as the need exists for the tenure of Affordable Housing in question, such need to be determined by Local Planning Authority, and in the event

that the LPA agrees with the Developer (or any person nominated by the Developer for that purpose) that the need no longer exists for the Affordable Housing Units in question then those Affordable Housing Units may be sold on the open market as Market Housing Units.

16. **SHELTERED HOUSING FACILITY**

16.1 Where a notice is served by the Developer pursuant to paragraph 2.1 of Schedule 5, the Sheltered Housing Facility shall be provided as part of the Affordable Housing Units pursuant to the provisions of this Schedule subject to the following additional requirements:

16.1.1 for the purposes of paragraph 7 of this Schedule the Affordable Housing Provider to whom the Sheltered Housing Facility is to be transferred must also be a development or management specialist in older people's accommodation and approved by the LPA for these purposes **PROVIDED THAT** any company or organisation which appears on an approved list of providers of this type of accommodation of one or more of the Host Boroughs current at the time of the submission shall be deemed to be approved as an Affordable Housing Provider for the relevant PDZ or SPDZ;

16.1.2 the terms of Transfer for the Sheltered Housing Facility to an Affordable Housing Provider shall contain provisions which ensure that the Sheltered Housing Facility is to be used for the provision and operation of specialist accommodation for older people where care services are provided or facilitated and for no other purpose.

17. **APPROVAL**

17.1 The LPA shall confirm whether or not it approves the list of Affordable Housing Providers submitted to it pursuant to paragraph 7.1 or revisions to the table at paragraph 1.4.4 within:

17.1.1 20 (twenty) Working Days of receipt of the list of Affordable Housing Providers submitted to it pursuant to paragraph 7.1 or revisions to the table at paragraph 1.4.4 from the Developer, or

17.1.2 where the LPA decides that it needs to report the list of Affordable Housing Providers submitted to it pursuant to paragraph 7.1 or revisions to the table at paragraph 1.1.4 to its planning committee, 40 (forty) Working Days of receipt of such list or such revisions

PROVIDED THAT where paragraph 17.1.2 applies, the LPA shall notify the Developer of such reporting to its planning committee within 20 (twenty) Working Days of receipt of such list or such revisions from the Developer and **FURTHER PROVIDED THAT** in the event the LPA refuses to approve such list or such revisions the LPA shall issue a Refusal Notice with the confirmation and in the event the LPA does not provide the confirmation within the 20 (twenty) Working Days or 40 (forty) Working Days (as applicable) the provisions of Clause 12 shall apply.

18. **VIABILITY REVIEW MECHANISM**

18.1 Where the operation of the viability review mechanism pursuant to Schedule 15 in respect of PDZs 2, 4, or 12 or in respect of SPDZs 1A, 1B, 5A, 5B, 8A or 8B results in the approval of a ZMP or SZMP with:

18.1.1 less than the relevant applicable quantum of Affordable Housing set out in paragraph 1.3;

18.1.2 a different tenure mix to that set out in paragraph 2.3;

18.1.3 a unit size mix outside the Site Wide ranges set out in paragraph 3.2;

18.1.4 different Affordability Criteria to that set out in paragraph 6

the Affordable Housing provision approved as part of the ZMP or SZMP shall be delivered in accordance with the approved ZMP or SZMP.

SCHEDULE 3

Replacement to Schedule 15 of the Original Agreement

VIABILITY

DEFINITIONS

- "Affordability Criteria"** means:
1. the gross annual income ranges of households for Intermediate Units; and
 2. only if agreed in writing with the LPA (in respect of each PDZ or SPDZ such agreement to be reached before the LPA confirms that it does not approve any of the Initial Viability Scenarios for the relevant PDZ or SPDZ) the rent levels for Affordable Rented Units;
- "Affordable Housing Units"** means as defined in Schedule 3;
- "Affordable Rented Units"** means as defined in Schedule 3;
- "Affordable Workspace"** means Use Class B1 floorspace initially made available at affordable rents for such floorspace;
- "Annual LLDC Report"** means a report certified by the Costs Consultant which shall set out:
1. any LLDC Actual Zonal Cost Credit incurred in the previous 12 (twelve) month period;
 2. any LLDC Actual Zonal Cost Deficit incurred in the previous 12 (twelve) month period;
 3. any LLDC Actual Site Wide Cost Credit incurred in the previous 12 (twelve) month period;
 4. any LLDC Actual Site Wide Cost Deficit incurred in the previous 12 (twelve) month period;
 5. any Cumulative LLDC Actual Site Wide Cost Credit or Cumulative LLDC Actual Site Wide Cost Deficit identified as at the date the report is prepared;
 6. the progress towards achieving the LCS Benchmark taking into account:
 - 6.1 each PDZ Viability Assessment, SPDZ Viability Assessment, any approved Preferred Initial Viability Scenarios and any approved Further Viability Scenarios approved pursuant to paragraphs 2 and 3 of this Schedule or determined in accordance with Clause 13 prior to the

date of the report; and

6.2 any Cumulative LLDC Actual Site Wide Cost Credit or any Cumulative LLDC Actual Site Wide Cost Deficit as identified in 5;

7. whether it is anticipated that as at Completion of 75% or 95% of the last PDZ to be developed the LCS Benchmark will be achieved and, if so, by how much;

"Cost Consultant" means the cost consultant to be appointed jointly by LLDC and the LPA in accordance with paragraph 1.1 of this Schedule;

"Cumulative LLDC Actual Site Wide Cost Credit" a reconciliation of any LLDC Actual Site Wide Cost Credits and/or LLDC Actual Site Wide Cost Deficits as identified in the Annual LLDC Report(s) that results in an overall LLDC Actual Site Wide Cost Credit;

"Cumulative LLDC Actual Site Wide Cost Deficit" a reconciliation of any LLDC Actual Site Wide Cost Credits and/or LLDC Actual Site Wide Cost Deficits as identified in the Annual LLDC Report(s) that results in an overall LLDC Actual Site Wide Cost Deficit;

"Cumulative LLDC Actual Zonal Cost Credit" an overall LLDC Actual Zonal Cost Credit based on a reconciliation of any LLDC Actual Zonal Cost Credits and/or LLDC Actual Zonal Cost Deficits as identified in the Annual LLDC Report(s) that have not been included as a PDZ Gross Development Value in any previous PDZ Viability Assessment or SPDZ Gross Development Value in any previous SPDZ Viability Assessment;

"Cumulative LLDC Actual Zonal Cost Deficit" an overall LLDC Actual Cost Deficit based on a reconciliation of any LLDC Actual Zonal Cost Credits and/or LLDC Actual Zonal Cost Deficits as identified in the Annual LLDC Report(s) that have not been included as a PDZ Gross Development Cost in any previous PDZ Viability Assessment or SPDZ Gross Development Value in any previous SPDZ Viability Assessment;

"Developer Partner" means third parties with whom LLDC contracts to develop the Development in each PDZ, SPDZ or part thereof;

"Development Parcel Phasing Plan" means a development parcel phasing plan required pursuant to the Planning Permission;

"Disposal" means disposal by way of freehold transfer, grant of leasehold interest and/or grant of easements, covenants and other rights;

"Excess Contribution" means a sum equal to 15% of the amount by which the LCS Benchmark is exceeded as identified in any LCS Benchmark Final Report submitted and approved pursuant to paragraphs 5.1 to 5.3 of this Schedule;

"Family Housing" means as defined in Schedule 4;

- "Final PDZ Consented Development"** means the whole of the development authorised to be carried out in the PDZ which is the subject of the last ZMP or SZMP to be submitted for approval, as detailed in Reserved Matters approvals for that ZMP or SZMP;
- "First PDZ"** means either:
- (a) PDZ4, where a ZMP for PDZ4 is submitted to the LPA pursuant to Condition LCSO.1 before a ZMP for PDZ5 or a SZMP for either SPDZ5A or SPDZ5B is submitted to the LPA pursuant to Condition LCSO.1; or
 - (b) PDZ5, where a ZMP for PDZ5 or a SZMP for either SPDZ5A or SPDZ5B is submitted to the LPA pursuant to Condition LCSO.1 before a ZMP for PDZ4 is submitted to the LPA pursuant to Condition LCSO.1;
- "First SPDZ"** means, for this Schedule only, the first SPDZ to be delivered in each of PDZs 1, 5 and 8 and which shall be identified as the "First SPDZ" in the ZMP for their respective PDZ and be subject to Part A of Annexure 2 to the Planning Permission;
- "Further Viability Scenarios"** means not less than 3 (three) viability assessments based on amendments to the Proposed PDZ Development or Proposed SPDZ Development and prepared with the joint aims of achieving a PDZ Residual Land Value or SPDZ Residual Land Value that matches the Relevant PDZ Benchmark or Relevant SPDZ Benchmark (as appropriate) and securing the optimum affordable housing offer in accordance with the alternative:
1. Hierarchy;
 2. Relevant Affordable Housing Parameters;
 3. Relevant Family Housing Parameters;
 4. in respect of SPDZ 5A and SPDZ 8A where paragraph 3 of this Schedule applies, Relevant Affordable Workspace Parameters;
 5. in respect of PDZ5 where paragraph 2 of this Schedule applies, Relevant Affordable Workspace Parameters;
- as approved or determined in accordance with paragraphs 2.3.5 or 3.3.5;
- "Grant Funding"** means as defined in Schedule 3;
- "Grant Funding Excess Value"** means any positive sum produced when subtracting X from Y where:
1. "X" means the Value of Affordable Housing Provision assuming no Grant Funding is available;
 2. "Y" means the Value of Affordable Housing Provision taking account of the Grant Funding secured; and

3. "Affordable Housing Provision" means either:
 - 3.1 the Relevant Target Affordable Housing where paragraph 2.2 or 3.2 applies to the PDZ or SPDZ; or
 - 3.2 in all other circumstances the quantum, Tenure Split, Unit Size Mix and Affordability Criteria of the Affordable Housing Units set out in the Preferred Initial Viability Scenario or Further Viability Scenario agreed or determined pursuant to paragraph 2.3 or 3.3 in respect of that PDZ or SPDZ;
4. "Value" means the total anticipated receipts from the Disposal of Affordable Housing Units based on Relevant Comparable Evidence;

"Hierarchy" means the hierarchy between the Variants which shall be used to determine the order in which such Variants will be adjusted in the relevant PDZ or SPDZ for the purposes of producing the viability scenarios for that PDZ or SPDZ taking into account the Relevant Target Affordable Housing, the Relevant Minimum Affordable Housing Quantum, the Relevant Family Housing Provision, the Relevant Target Affordable Workspace (if applicable) for that PDZ or SPDZ;

"Initial Viability Scenarios" means such number (being not less than 5 (five)) of viability assessments based on amendments to the Proposed PDZ Development or Proposed SPDZ Development as shall be reasonably required to test a range of options for adjusting the Variants and to illustrate the impacts that such adjustments would have both on the PDZ Residual Land Value or SPDZ Residual Land Value (as appropriate) and on the output of Affordable Housing, Family Housing, Affordable Workspace (where appropriate) with the aim of assisting and informing the consultation to be undertaken pursuant to paragraphs 2.3.2 or 3.3.2 (as appropriate);

"Intermediate Units" means as defined in Schedule 3;

"LCS Benchmark" means the combined total of the Relevant PDZ Benchmarks LESS the costs set out in the Original LLDC Budget as shown in paragraph 1 of the Confidential Appendix and table 1 contained in the Confidential Appendix;

"LCS Benchmark Final Report" means the report(s) certified by the Cost Consultant pursuant to paragraph 1.1 and required pursuant to paragraphs 5.1 and 5.3 of this Schedule which shall set out:

1. any LLDC Actual Zonal Cost Credit or LLDC Actual Zonal Cost Deficit incurred in the period between the last submitted Annual LLDC Report and the date of the report;

2. any Cumulative LLDC Actual Zonal Cost Credit or Cumulative LLDC Actual Zonal Cost Deficit taking into account any LLDC Actual Zonal Cost Credit or LLDC Actual Zonal Cost Deficit identified in 1. above;
3. any LLDC Remaining Site Wide Costs;
4. any Cumulative LLDC Actual Site Wide Cost Credit or Cumulative LLDC Actual Site Wide Cost Deficit taking into account any LLDC Remaining Site Wide Costs;
5. total actual cost of all of the LLDC Works & Commitments calculated using the LLDC Site Wide Works & Commitments Costs and the LLDC Zonal Works & Commitments Costs set out in the Original LLDC Budget PLUS the costs set out in 1 to 4 above;
6. whether the LCS Benchmark is exceeded (and if so, by how much) based on the PDZ Residual Land Value or SPDZ Residual Land Value (as appropriate) of each PDZ Viability Assessments, SPDZ Viability Assessments, any approved Preferred Initial Viability Scenarios and any approved Further Viability Scenarios approved pursuant to paragraphs 2 and 3 of this Schedule or determined pursuant to Clause 13, LESS the total actual cost of all of the LLDC Works & Commitments as set out in 5.;

"LLDC Actual Site Wide Costs"

means the actual costs of the LLDC Site Wide Works & Commitments Costs and the notional cost to LLDC of any Transferred LLDC Works & Commitments Costs as certified by the Cost Consultant and, in respect of the LCS Benchmark Final Report, includes any committed LLDC Site Wide Works & Commitments Costs as certified by the Cost Consultant;

"LLDC Actual Site Wide Cost Credit"

means where the LLDC Actual Site Wide Costs are less than the LLDC Site Wide Works & Commitments Costs, a sum equal to the LLDC Site Wide Works & Commitments Costs LESS the LLDC Actual Site Wide Costs;

"LLDC Actual Site Wide Cost Deficit"

means where the LLDC Actual Site Wide Costs exceed the LLDC Site Wide Works & Commitments Costs, a sum equal to the LLDC Actual Site Wide Costs LESS the LLDC Site Wide Works & Commitments Costs;

"LLDC Actual Zonal Costs"

means the actual costs of the LLDC Zonal Works & Commitments Costs and the notional cost to LLDC of any Transferred LLDC Works & Commitments Costs as certified by the Cost Consultant and, in respect of the LCS Benchmark Final Report, includes any committed LLDC Zonal Works & Commitments Costs as certified by the Cost Consultant;

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| "LLDC Actual Zonal Cost Credit" | means where the LLDC Actual Zonal Costs for a PDZ or SPDZ are less than the Updated LLDC Zonal Costs for that PDZ or SPDZ, a sum equal to such Updated LLDC Zonal Costs LESS such LLDC Actual Zonal Costs; |
| "LLDC Actual Zonal Cost Deficit" | means where the LLDC Actual Zonal Costs for a PDZ or SPDZ exceed the Updated LLDC Zonal Costs for that PDZ or SPDZ, a sum equal to such LLDC Actual Zonal Costs LESS such Updated LLDC Zonal Costs; |
| "LLDC Anticipated Zonal Cost Credit" | means where the Updated LLDC Zonal Costs for a PDZ or SPDZ are less than the costs set out in the Original LLDC Budget for that PDZ or SPDZ, a sum equal to the costs set out in the Original LLDC Budget LESS the Updated LLDC Zonal Costs; |
| "LLDC Anticipated Zonal Cost Deficit" | means where the Updated LLDC Zonal Costs for a PDZ or SPDZ exceed the costs set out in the Original LLDC Budget for that PDZ or SPDZ, a sum equal to the costs set out in the Updated LLDC Zonal Costs LESS the Original LLDC Budget; |
| "LLDC Remaining Site Wide Costs" | means the anticipated LLDC Site Wide Works & Commitments Costs to be incurred and committed after the date of the LCS Benchmark Final Report to the extent such LLDC Site Wide Works & Commitments Costs were not set out in the Original LLDC Budget; |
| "LLDC Works & Commitments" | means those works and commitments which LLDC intends to undertake as master developer rather than passing on the requirement to carry out such works or commitments to Developer Partners including but not limited to site clearance, remediation, preparation, development works, discharging and complying with Conditions, complying with the terms of this Agreement, agents and legal fees, professional fees, risk items, contingencies and the reasonable costs of LLDC acting as development manager; |
| "LLDC Zonal Report" | means a report certified by the Cost Consultant which sets out for the relevant PDZ or SPDZ: <ol style="list-style-type: none">1. the Original LLDC Budget;2. the Updated LLDC Zonal Costs;3. the amount of any LLDC Anticipated Zonal Cost Credit or LLDC Anticipated Zonal Cost Deficit;4. the amount of any Transferred LLDC Works & Commitments Costs; <p>together with any Cumulative LLDC Actual Zonal Cost Deficit or Cumulative LLDC Actual Zonal Cost Credit;</p> |
| "LLDC Site Wide Works & Commitments Costs" | means the costs of those LLDC Works & Commitments not allocated to a PDZ or SPDZ as identified in the Original LLDC Budget; |

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| "LLDC SPDZ Works & Commitments Costs" | means the costs of the LLDC Works & Commitments allocated for each of SPDZs 1A, 1B, 5A, 5B, 8A and 8B determined in accordance with paragraph 1.2 and certified by the Cost Consultant; |
| "LLDC Zonal Works & Commitments Costs" | means the costs of those LLDC Works & Commitments allocated to PDZs and SPDZs as identified in the Original LLDC Budget; |
| "Market Residential Units" | means market residential units that are made available for sale or rent at market value; |
| "Non Family Housing Units" | means studio, one bedroom units and two bedroom units; |
| "Non-Residential Units" | means units of occupation provided as part of the Development comprising retail (Use Class A1-A5), employment (Use Class B1), hotel (Use Class C1), leisure (Use Class D2) or community facilities (Use Class D1); |
| "Option A" | means where LLDC has notified (pursuant to paragraph 1A.2 of this schedule) the LPA that it intends to develop PDZ5 as a whole submit a single ZMP and therefore carry out a viability assessment of the whole of PDZ5 pursuant to paragraph 2 of this Schedule 15; |
| "Option B" | means where LLDC has notified (pursuant to paragraph 1A.2 of this schedule) the LPA that it intends to develop PDZ5 as two separate SPDZs (SPDZ5A and SPDZ5B), to submit a ZMP and a second SZMP and carry out a viability assessment in accordance with paragraph 3 of this Schedule 15; |
| "Original LLDC Budget" | means the budget for the total LLDC Works & Commitments for each year of the Development as set out in the Confidential Appendix; |
| "Outline Site Wide Phasing Plan" | means the outline site wide phasing plan approved as part of the Planning Permission; |
| "PDZ Gross Development Costs" | <p>in respect of each PDZ:</p> <ol style="list-style-type: none">1. the total costs of the Proposed PDZ Development including any Transferred LLDC Works & Commitments Costs anticipated to be incurred by the Developer Partner in that PDZ which may include those cost items set out in Appendix 12 and which in the case of:<ol style="list-style-type: none">1.1 paragraphs 1 and 2 of Appendix 12 will be based on benchmark market data of recent development schemes which in the reasonable opinion of the Cost Consultant are comparable to the Proposed PDZ Development in terms of type, quantum, construction, specification, density of residential units and sustainability requirements; and |

1.2 paragraphs 3 – 26 of Appendix 12 will be based on Relevant Comparable Evidence;

2. any LLDC Anticipated Zonal Cost Deficit for that PDZ identified in the relevant LLDC Zonal Report;

together with any Cumulative LLDC Actual Zonal Cost Deficit identified in the relevant LLDC Zonal Report;

"PDZ Gross Development Values"

means in respect of each PDZ:

1. the total revenues anticipated to be received by the Developer Partner (including rental, investment and capital receipts) from the Disposal of Market Residential Units, Affordable Housing Units, Non-Residential Units and any units, facilities or land used for other uses (including but not limited to parking spaces) that form part of the Proposed PDZ Development which shall be based on Relevant Comparable Evidence;

2. any Grant Funding Excess Value to be included pursuant to paragraph 6.4.1 of this Schedule;

3. any LLDC Anticipated Zonal Cost Credit for that PDZ identified in the relevant LLDC Zonal Report;

4. a notional revenue required to off set in full any Transferred LLDC Works & Commitments Costs for that PDZ;

together with any Cumulative LLDC Actual Zonal Cost Credit identified in the relevant LLDC Zonal Report;

"PDZ Residual Land Value"

means the residual land value derived as a result of a residual method of valuation taking into account the PDZ Gross Development Costs and the PDZ Gross Development Values using Argus Developer or any replacement software to be agreed in advance with the LPA and with reasonable allowance within the valuation for the timing of receipt of PDZ Gross Development Values and incurrence of PDZ Gross Development Costs assuming land receipts are paid at the point of LLDC entering into a contract with the Developer Partner to develop the relevant part of the PDZ;

"PDZ Viability Assessment"

means a viability assessment based on the Proposed PDZ Development from which the PDZ Residual Land Value will be derived;

"PDZ2 Family Housing Provision"

means 27% of the Residential Units in PDZ2 to be provided as Family Housing;

"PDZ4 Family Housing Provision"

means 57% of the Residential Units in PDZ4 to be provided as Family Housing;

"PDZ5 Family Housing Provision"

means 66% of the Residential Units in PDZ5 to be provided as Family Housing;

"PDZ12 Family Housing Provision"

means 46% of the Residential Units in PDZ12 to be provided as Family Housing;

"PDZ2 Target Affordable Housing"

means 36% of the Residential Units in PDZ2 will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"PDZ4 Target Affordable Housing"

means 30% of the Residential Units in PDZ4 where it is the First PDZ, and 31% of the Residential Units in PDZ4 where it is the second PDZ, will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"PDZ5 Target Affordable Housing"

means 30% of the Residential Units in PDZ5 where it is the First PDZ, and 31% of the Residential Units in PDZ5 where it is the second PDZ, will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"PDZ12 Target Affordable Housing"

means 53% of the Residential Units in PDZ12 will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"Preferred Initial Viability Scenarios"

such of the Initial Viability Scenarios which LLDC notifies the LPA are submitted for approval and which shall have been prepared in accordance with the:

1. Hierarchy;
2. Relevant Affordable Housing Parameters;

3. Relevant Family Housing Parameters;
4. in respect of SPDZs5A (if paragraph 3 applies) and 8A, Relevant Affordable Workspace Parameters;
5. in respect of PDZ5, Relevant Affordable Workspace Parameters (if paragraph 2 applies)

with 1 to 5 being determined by LLDC having regard to LLDC's place making priorities for the Development and to the adopted planning policies for the MDC Area on the delivery of Affordable Housing and, where relevant, the delivery of Affordable Workspace with the joint aims of achieving a PDZ Residual Land Value or SPDZ Residual Land Value that matches the Relevant PDZ Benchmark or Relevant SPD Benchmark (as appropriate) and securing the optimum affordable housing offer;

"Proposed PDZ Development"

means the proposed Development for the PDZ which shall be in accordance with:

1. the Relevant Target Affordable Housing;
2. the Relevant Family Housing Provision; and
3. the Relevant Target Affordable Workspace (if paragraph 2 applies for PDZ5)

"Proposed SPDZ Development"

means the proposed Development for the SPDZ which shall be in accordance with:

1. the Relevant Target Affordable Housing;
2. the Relevant Family Housing Provision;
3. in respect of SPDZs 5A (if paragraph 3 applies) and 8A, the Relevant Target Affordable Workspace; and

"Relevant Affordable Housing Parameters"

means, in respect of each PDZ or SPDZ, maximum and minimum parameters for the Tenure Split, Affordability Criteria and Unit Size Mix of the Affordable Housing Units taking into account the Relevant Target Affordable Housing, the Relevant Minimum Affordable Housing Quantum and the Relevant Family Housing Provision;

"Relevant Affordable Workspace Parameters"

means the maximum quantum of Affordable Workspace (up to 930 square metres) to be provided in the Development, the maximum and minimum discount applied to the market rent of such floorspace and the maximum and minimum duration such discounted rent shall apply;

"Relevant Comparable Evidence"

shall be construed in accordance with such RICS guidance on the use of comparable evidence as shall be published from time to time and shall be subject to evaluation by suitably qualified professional advisors to LLDC and the LPA;

"Relevant Family Housing Parameters"

means, in respect of each PDZ or SPDZ, maximum and minimum parameters for the quantum of Family Housing;

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| "Relevant Family Housing Provision" | means the SPDZ 1A Family Housing Provision, SPDZ 1B Family Housing Provision, PDZ2 Family Housing Provision, PDZ4 Family Housing Provision, PDZ5 Family Housing Provision (where paragraph 2 of this Schedule applies for PDZ5), SPDZ 5A Family Housing Provision, SPDZ 5B Family Housing Provision (where paragraph 3 of this Schedule applies for PDZ5), SPDZ 8A Family Housing Provision, SPDZ 8B Family Housing Provision, PDZ12 Family Housing Provision depending on the PDZ or SPDZ to which the PDZ Viability Assessment or SPDZ Viability Assessment relates; |
| "Relevant Minimum Affordable Housing Quantum" | means not less than the minimum percentage of the Residential Units in the relevant PDZ to be provided as Affordable Housing Units calculated in accordance with paragraph 1.4 of Schedule 3; |
| "Relevant PDZ Benchmark" | means the relevant benchmark residual land value figure for the PDZ as detailed in the Confidential Appendix to which the relevant PDZ Residual Land Value relates; |
| "Relevant SPDZ Benchmark" | means the relevant benchmark residual land value figure for the SPDZ as detailed in the Confidential Appendix to which the relevant SPDZ Residual Land Value relates; |
| "Relevant Target Affordable Housing" | means the SPDZ 1A Target Affordable Housing, SPDZ 1B Target Affordable Housing, PDZ2 Target Affordable Housing, PDZ4 Target Affordable Housing, PDZ5 Target Affordable Housing, SPDZ 5A Target Affordable Housing, SPDZ 5B Target Affordable Housing, SPDZ 8A Target Affordable Housing, SPDZ 8B Target Affordable Housing, PDZ12 Target Affordable Housing depending on the PDZ or SPDZ to which the PDZ Viability Assessment or SPDZ Viability Assessment relates; |
| "Relevant Target Affordable Rent Levels" | means the rent levels for the Affordable Rented Units agreed or determined pursuant to paragraph 2.1.1 or 3.1.1 of this Schedule (as appropriate) having regard to the matters identified in paragraph 6.3 of Schedule 3; |
| "Relevant Target Affordable Workspace" | means in respect of SPDZ 8A and, where paragraph 3 of this Schedule applies, SPDZ 5A, or where paragraph 2 of this Schedule applies, PDZ5 the proposed quantum of Affordable Workspace, the extent of the discount applied to the market rent of such floorspace, and the duration such discounted rent shall apply having regard to the provision of Affordable Workspace provided in the Development and in the MDC Area; |
| "Scheme Needs" | means the population needs of the Development in terms of provision of Affordable Housing (up to 35% of the Residential Units provided across the Development), acute care, social care, emergency services, Sustainability and any other social infrastructure necessary to meet the needs of the Development (in all cases On Site or Off Site) calculated using the data from the most recent population review carried out pursuant to Condition LCS0.252; |
| "Second PDZ" | means either PDZ4 or PDZ5 whichever is not the First PDZ; |

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|--|--|
| "Second SPDZ" | means, for this Schedule only, the second of the SPDZs to be delivered in each of PDZs 1, 5 and 8 and which shall be identified as the "Second SPDZ" in the ZMP for their respective PDZ and be subject to Part B of Annexure 2 to the Planning Permission and their own SZMP |
| "Second SZMP" | means a SZMP for each of the Second SPDZs; |
| "Social Rented Units" | means as defined in Schedule 3; |
| "SPDZ1A Family Housing Provision" | means 16% of the Residential Units in SPDZ1A to be provided as Family Housing; |
| "SPDZ1A Family Housing Provision" | means 23% of the Residential Units in SPDZ1A to be provided as Family Housing; |
| "SPDZ5A Family Housing Provision" | means 53% of the Residential Units in SPDZ5A to be provided as Family Housing; |
| "SPDZ5B Family Housing Provision" | means 82% of the Residential Units in SPDZ5B to be provided as Family Housing; |
| "SPDZ8A Family Housing Provision" | means 38% of the Residential Units in SPDZ8A to be provided as Family Housing; |
| "SPDZ8B Family Housing Provision" | means 39% of the Residential Units in SPDZ8B to be provided as Family Housing; |
| "SPDZ Gross Development Costs" | <p>in respect of each SPDZ:</p> <ol style="list-style-type: none">1. the total costs of the Proposed SPDZ Development including any Transferred LLDC Works & Commitments Costs anticipated to be incurred by the Developer Partner in that SPDZ which may include those cost items set out in Appendix 12 and which in the case of:<ol style="list-style-type: none">1.1 paragraphs 1 and 2 of Appendix 12 will be based on benchmark market data of recent development schemes which in the reasonable opinion of the Cost Consultant are comparable to the Proposed SPDZ Development in terms of type, quantum, construction, specification, density of residential units and sustainability requirements; and1.2 paragraphs 3 – 26 of Appendix 12 will be based on Relevant Comparable Evidence;2. any LLDC Anticipated Zonal Cost Deficit for that SPDZ identified in the relevant LLDC Zonal Report; <p>together with any Cumulative LLDC Actual Zonal Cost Deficit identified in the relevant LLDC Zonal Report;</p> |

"SPDZ Gross Development Values"

means in respect of each SPDZ:

1. the total revenues anticipated to be received by the Developer Partner (including rental, investment and capital receipts) from the Disposal of Market Residential Units, Affordable Housing Units, Non-Residential Units and any units, facilities or land used for other uses (including but not limited to parking spaces) that form part of the Proposed SPDZ Development which shall be based on Relevant Comparable Evidence;
2. any Grant Funding Excess Value to be included pursuant to paragraph 6.4.1 of this Schedule;
3. any LLDC Anticipated Zonal Cost Credit for that SPDZ identified in the relevant LLDC Zonal Report;
4. a notional revenue required to off set in full any Transferred LLDC Works & Commitments Costs for that SPDZ;

together with any Cumulative LLDC Actual Zonal Cost Credit identified in the relevant LLDC Zonal Report;

"SPDZ Residual Land Value"

means the residual land value derived as a result of a residual method of valuation taking into account the SPDZ Gross Development Costs and the SPDZ Gross Development Values using Argus Developer or any replacement software to be agreed in advance with the LPA and with reasonable allowance within the valuation for the timing of receipt of SPDZ Gross Development Values and incurrence of SPDZ Gross Development Costs assuming land receipts are paid at the point of LLDC entering into a contract with the Developer Partner to develop the relevant part of the SPDZ;

"SPDZ1A Target Affordable Housing"

means 19% of the Residential Units in SPDZ1A will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"SPDZ1B Target Affordable Housing"

means 23% of the Residential Units in SPDZ1B will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"SPDZ5A Target Affordable Housing"

means 44% of the Residential Units in SPDZ5A where PDZ5 is the First PDZ and 47% of the Residential Units in SPDZ5A where PDZ5 is the Second PDZ will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"SPDZ5B Target Affordable Housing"

means 12% of the Residential Units in SPDZ5B (whether PDZ5 is the First PDZ or the Second PDZ) will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"SPDZ8A Target Affordable Housing"

means 35% of the Residential Units in SPDZ8A will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"SPDZ8B Target Affordable Housing"

means 46% of the Residential Units in SPDZ8B will be Affordable Housing Units of which the Tenure Split is in accordance with the relevant table at paragraph 2 of Schedule 3, the rent levels for the Social Rented Units are in accordance with paragraph 6.1 of Schedule 3, the Affordability Criteria for the Intermediate Units is in accordance with paragraphs 6.4-6.7 of Schedule 3, the rent levels for the Affordable Rented Units are in accordance with the Relevant Target Affordable Rent Levels, and the Unit Size Mix is in accordance with the ranges within the relevant table at paragraph 3 of Schedule 3;

"SPDZ Viability Assessment"

means a viability assessment based on the Proposed SPDZ Development from which the SPDZ Residual Land Value will be derived;

"Sustainability"

means:

1. Offsite Solutions (as defined in Schedule 11) where the financial cap set out in paragraph 2.6 of Schedule 11 has been reached; and

2. Sustainability Enhancements (as defined in Schedule 11) where the Sustainability Enhancement Cap (as defined in Schedule 11) has been reached

"Tenure Split" means the split between Social Rented Units, Affordable Rented Units and Intermediate Units;

"Transferred LLDC Works & Commitments Costs" means where any LLDC Works & Commitments set out in the Original LLDC Budget will actually be carried out by the Developer Partner instead, a sum equal to the amount allocated in the Original LLDC Budget for such LLDC Works & Commitments LESS any associated LLDC fees, contingencies and development management fees;

"Unit Size Mix" means the split between Family Housing and Non Family Housing for each of the Social Rented Units, the Affordable Rented Units and the Intermediate Units;

"Updated LLDC Zonal Costs" means in respect of each PDZ and SPDZ the total costs with an annual breakdown for the PDZ or SPDZ as set out in the Original LLDC Budget updated to reflect any anticipated increases or decreases in such costs as at the date of the LLDC Zonal Report;

"Variants" means:

1. the quantum, Tenure Split, Unit Size Mix and Affordability Criteria of the Affordable Housing Units;
2. the quantum of Family Housing;
3. in respect of SPDZs 5A (if paragraph 3 applies) and 8A, the quantum of Affordable Workspace, the extent of the discount applied to the market rent for such floorspace and the duration such discounted rent will be applied for; and
4. in respect of PDZ5 (if paragraph 2 applies) the quantum of Affordable Workspace, the extent of the discount applied to the market rent for such floorspace and the duration of such discounted rent will be applied for

OPERATIVE PROVISIONS

1. LLDC WORKS

1.1 LLDC and the LPA shall appoint and retain when necessary for the purposes of this Schedule a suitably qualified cost consultant to undertake the following functions:

1.1.1 to certify:

- (a) the LLDC Actual Zonal Costs;
- (b) the LLDC Actual Site Wide Costs;
- (c) the Updated LLDC Zonal Costs;

- (d) the LLDC SPDZ Works & Commitments Costs;
- (e) each Annual LLDC Report;
- (f) each LLDC Zonal Report;
- (g) the LCS Benchmark Final Report(s);

1.1.2 to provide estimates of PDZ Gross Development Costs and SPDZ Gross Development Costs in relation to paragraphs 1 and 2 of Appendix 12 for inclusion in each PDZ Viability Assessment, SPDZ Viability Assessment, Initial Viability Scenario and Further Viability Scenario

and the costs of such appointment shall be apportioned as follows:

- (a) 100% of the costs shall be payable by LLDC where the costs relate to a period when LLDC and the LPA are separate statutory bodies;
- (b) the costs shall be split 50/50 where the costs relate to a period when LLDC and the LPA are different functions of the same statutory body

1.2 By the earlier of 31 December 2014 or the date on which LLDC complies with paragraph 3.1.1 in respect of the first ZMP to come forward in respect of any of PDZ 1, 5 and 8, LLDC shall submit to the LPA the LLDC SPDZ Works & Commitments Costs having calculated such LLDC SPDZ Works & Commitments Costs by taking the LLDC Zonal Works & Commitments Costs allocated for PDZs 1, 5 and 8 and further allocating or dividing them between each of the SPDZs 1A, 1B, 5A, 5B, 8A and 8B such that appropriate LLDC Zonal Works & Commitments Costs are allocated to each SDPZ.

1.3 By 31 January in each year following Commencement of Development until Completion of the Development, LLDC shall submit to the LPA an Annual LLDC Report every 12 (twelve) months in respect of the 12 (twelve) month period ending on the previous 31 December.

1.4 Where any LLDC Actual Site Wide Cost Credit, LLDC Actual Site Wide Cost Deficit or Updated LLDC Zonal Costs have arisen due to the date on which the costs are incurred for any or all of the relevant LLDC Works & Commitments for that PDZ or SPDZ being delayed or brought forward early and such delayed or early date is not in accordance with the Outline Phasing Plan and/or Development Parcel Phasing Plan, LLDC shall at the same time as Complying with paragraph 2.1.1 or paragraph 3.1.1 submit to the LPA an application to vary the Outline Phasing Plan pursuant to Condition LCS0.49 and/or vary the Development Parcel Phasing Plan pursuant to Condition LCS0.53.

1A. PDZ4 AND PDZ5

1A.1 A viability review mechanism pursuant to this Schedule 15 shall not be carried out in respect of the First PDZ and instead the Affordable Housing Units in the First PDZ shall be constructed in accordance with the quantum, unit size mix, tenure split, rent levels of the Affordable Rented Units as set out in paragraphs 1-3 (as applicable) and 6 of Schedule 3.

1A.2 Where PDZ5 is the Second PDZ, not more than 13 (thirteen) months but not less than 4 (four) months prior to the anticipated submission of the ZMP for PDZ5, LLDC shall notify the LPA whether it elects to Option A or Option B.

2. **PDZ VIABILITY REVIEWS FOR PDZS 2, 4 (WHERE PDZ4 IS THE SECOND PDZ) AND 12 AND PDZ5 WHERE OPTION A IS ELECTED PURSUANT TO PARAGRAPH 1A AND PDZ5 IS THE SECOND PDZ**
- 2.1 Not more than 12 (twelve) months but not less than 3 (three) months prior to the anticipated submission of the ZMP for each of PDZs 2, 4 (where PDZ4 is the Second PDZ), 12 and/or 5 (where Option A is elected pursuant to paragraph 1A and where PDZ5 is the Second PDZ):
 - 2.1.1 LLDC shall submit to the LPA for agreement:
 - (a) the LLDC Zonal Report
 - (b) the PDZ Gross Development Costs
 - (c) the PDZ Gross Development Values
 - (d) the Relevant Target Affordable Rent Levels
 - (e) for PDZ5 only, the Relevant Target Affordable Workspacefor the relevant PDZ Viability Assessment to the LPA for agreement **PROVIDED THAT** if agreement in writing is not reached within 20 (twenty) Working Days the provisions of Clause 13 shall apply;
 - 2.1.2 LLDC shall carry out the PDZ Viability Assessment for that PDZ using the PDZ Gross Development Costs, the PDZ Gross Development Values and the Relevant Target Affordable Rent Levels and for PDZ5 only, the Relevant Target Affordable Workspace agreed or determined pursuant to paragraph 2.1.1 and submit such PDZ Viability Assessment to the LPA;
 - 2.1.3 LLDC shall as part of the PDZ Viability Assessment for that PDZ confirm whether the Proposed PDZ Development is likely to achieve the Relevant PDZ Benchmark;
- 2.2 In the event the PDZ Viability Assessment submitted pursuant to paragraph 2.1 indicates that the Proposed PDZ Development is likely to achieve the Relevant PDZ Benchmark, the ZMP for that PDZ shall be prepared on the basis of the Relevant Target Affordable Housing, the Relevant Family Housing Provision for that PDZ and in respect of PDZ5 the Relevant Target Affordable Workspace.
- 2.3 In the event the PDZ Viability Assessment submitted pursuant to paragraph 2.1 indicates that the Proposed PDZ Development is not likely to achieve the Relevant PDZ Benchmark the following provisions shall apply:
 - 2.3.1 LLDC shall submit to the LPA the Initial Viability Scenarios and shall indicate to the LPA in writing which one or more of the Initial Viability scenarios are Preferred Initial Viability Scenarios and the reasons for such preference;
 - 2.3.2 On receipt of the Initial Viability Scenarios, the LPA shall consult the relevant Host Boroughs and the GLA on the Initial Viability Scenarios;
 - 2.3.3 Within 40 (forty) Working Days of receipt of the Initial Viability Scenarios, the LPA shall confirm to LLDC the outcome of the consultation carried out pursuant to paragraph 2.3.2 and whether or not they approve one of the Preferred Initial Viability Scenarios;
 - 2.3.4 Where the LPA approves one of the Preferred Initial Viability Scenarios, the ZMP for that PDZ shall be prepared on the basis of the quantum, Tenure Split, Unit Size Mix and Affordability Criteria of the Affordable Housing Units,

the quantum of Family Housing for that PDZ and in respect of PDZ5 the quantum, level of rent discount and the duration of the rent discount of the Affordable Workspace as set out in the approved Preferred Initial Viability Scenario;

2.3.5 Where the LPA does not approve any of the Preferred Initial Viability Scenarios, the following provisions shall apply:

- (a) at the same time as confirming that it does not approve any of the Preferred Initial Viability Scenarios, the LPA shall submit to LLDC for approval the proposed alternative Hierarchy, Relevant Affordable Housing Parameters and/or the Relevant Family Housing Parameters for that PDZ and in respect of PDZ5 the Relevant Affordable Workspace Parameters;
- (b) within 10 (ten) Working Days of receipt of the proposed alternative Hierarchy, Relevant Affordable Housing Parameters and the Relevant Family Housing Parameters for that PDZ pursuant to paragraph 2.3.5(a), LLDC shall confirm whether or not it approves the proposed alternative Hierarchy, Relevant Affordable Housing Parameters, the Relevant Family Housing Parameters for that PDZ and in respect of PDZ5 the Relevant Affordable Workspace Parameters;
- (c) where LLDC does not approve the proposed alternative Hierarchy, Relevant Affordable Housing Parameters and/or the Relevant Family Housing Parameters for that PDZ, the Hierarchy, Relevant Affordable Housing Parameters, the Relevant Family Housing Parameters and in respect of PDZ5 the Relevant Affordable Workspace Parameters shall be determined by the Expert pursuant to Clause 13;
- (d) where LLDC does approve the proposed alternative Hierarchy, Relevant Affordable Housing Parameters, the Relevant Family Housing Parameters for that PDZ and in respect of PDZ5 the Relevant Affordable Workspace Parameters, LLDC shall within 10 (ten) Working Days prepare the Further Viability Scenarios and shall indicate to the LPA which is LLDC's preferred Further Viability Scenario and the reasons for such preference;
- (e) within 20 (twenty) Working Days of receipt of the Further Viability Scenarios pursuant to paragraph 2.3.5(d), the LPA shall confirm whether or not it approves any of the Further Viability Scenarios and FOR THE AVOIDANCE OF DOUBT in deciding which Further Viability Scenario to approve, the LPA shall have regard to the Further Viability Scenario(s) that would enable the PDZ Benchmark to be achieved or, in the event none of the Further Viability Scenarios would result in the Relevant PDZ Benchmark being achieved, the Further Viability Scenario that is closest to the Relevant PDZ Benchmark being achieved but FOR THE FURTHER AVOIDANCE OF DOUBT the LPA shall not be obliged to approve such Further Viability Scenario;
- (f) where the LPA approves one of the Further Viability Scenarios in accordance with paragraph 2.3.5(e), the ZMP for that PDZ shall be prepared on the basis of the quantum, Tenure Split, Unit Size Mix and Affordability Criteria of the Affordable Housing Units, the quantum of Family Housing for that PDZ and in respect of PDZ5 only the quantum, level of rent discount and the duration of the rent discount of the Affordable Workspace as set out in the approved Further Viability Scenario;

- (g) where the LPA does not approve one of the Further Viability Scenarios in accordance with paragraph 2.3.5(e) or where the LPA approves a Further Viability Scenario that LLDC considers does not achieve the joint aims of achieving a PDZ Residual Land Value or SPDZ Residual Land Value that matches the Relevant PDZ Benchmark or Relevant SPDZ Benchmark (as appropriate) and securing the optimum affordable housing offer, the decision as to which Further Viability Scenario submitted pursuant to this paragraph 2.3 shall be used for the preparation of the ZMP for that PDZ shall be determined by the Expert in accordance with Clause 13.

3. **SPDZ VIABILITY REVIEWS FOR PDZ1, PDZ5 (WHERE OPTION B IS ELECTED AND PDZ5 IS THE SECOND PDZ) AND PDZ8**

- 3.1 Not more than 12 (twelve) months but not less than 3 (three) months prior to the anticipated submission of each ZMP for each of PDZs 1, 5 (where pursuant to paragraph 1A LLDC elects to develop PDZ5 in accordance with Option B and where PDZ5 is the Second PDZ), and 8 and each Second SZMP:

3.1.1 LLDC shall submit to the LPA for agreement:

- (a) the LLDC Zonal Report;
- (b) the SPDZ Gross Development Costs;
- (c) the SPDZ Gross Development Values;
- (d) the Relevant Target Affordable Rent Levels; and
- (e) for SPDZs 5A and 8A only, the Relevant Target Affordable Workspace;

for the relevant SPDZ Viability Assessment **PROVIDED THAT** if agreement in writing is not reached within 20 (twenty) Working Days the provisions of Clause 13 shall apply;

3.1.2 LLDC shall carry out the SPDZ Viability Assessment for that SPDZ using the SPDZ Gross Development Costs, the SPDZ Gross Development Values, the Relevant Target Affordable Rent Levels agreed or determined pursuant to paragraph 3.1.1, for SPDZs 5A, and 8A only, the Relevant Target Affordable Workspace and submit such SPDZ Viability Assessment to the LPA;

3.1.3 LLDC shall as part of the SPDZ Viability Assessment for that SPDZ confirm whether the Proposed SPDZ Development is likely to achieve the Relevant SPDZ Benchmark;

3.2 In the event the SPDZ Viability Assessment submitted pursuant to paragraph 3.1 indicates that the Proposed SPDZ Development is likely to achieve the Relevant SPDZ Benchmark, the SZMP for that SPDZ shall be prepared on the basis of the Relevant Target Affordable Housing, the Relevant Family Housing Provision, agreed or determined pursuant to paragraph 3.1, for SPDZs 5A and 8A only, the Relevant Target Affordable Workspace.

3.3 In the event the SPDZ Viability Assessment submitted pursuant to paragraph 3.1 indicates that the Proposed SPDZ Development is not likely to achieve the Relevant SPDZ Benchmark the following provisions shall apply:

- 3.3.1 LLDC shall submit to the LPA the Initial Viability Scenarios and shall indicate to the LPA in writing which one or more of the Initial Viability scenarios are Preferred Initial Viability Scenarios and the reasons for such preference;
- 3.3.2 On receipt of the Initial Viability Scenarios, the LPA shall consult the relevant Host Boroughs and the GLA on the Initial Viability Scenarios;
- 3.3.3 Within 40 (forty) Working Days of receipt of the Initial Viability Scenarios, the LPA shall confirm to LLDC the outcome of the consultation carried out pursuant to paragraph 3.3.2 and whether or not they approve any of the Preferred Initial Viability Scenarios;
- 3.3.4 Where the LPA approves one of the Preferred Initial Viability Scenarios, the ZMP for that SPDZ shall be prepared on the basis of the quantum, Tenure Split, Unit Size Mix and Affordability Criteria of the Affordable Housing Units and the quantum of Family Housing for that SPDZ, for SPDZs 5A and 8A only, the quantum, level of rent discount and the duration of the rent discount of the Affordable Workspace as set out in the approved Preferred Initial Viability Scenario;
- 3.3.5 Where the LPA does not approve any of the Preferred Initial Viability Scenarios, the following provisions shall apply:
- (a) at the same time as confirming that it does not approve any of the Preferred Initial Viability Scenarios, the LPA shall submit to LLDC for approval the proposed alternative Hierarchy, Relevant Affordable Housing Parameters, the Relevant Family Housing Parameters for that SPDZ, for SPDZs 5A and 8A only and the Relevant Affordable Workspace Parameters;
 - (b) within 10 (ten) Working Days of receipt of the proposed alternative Hierarchy, Relevant Affordable Housing Parameters and the Relevant Family Housing Parameters for that SPDZ, for SPDZs 5A and 8A only and the Relevant Affordable Workspace Parameters pursuant to paragraph 3.3.5(a), LLDC shall confirm whether or not it approves the proposed alternative Hierarchy, Relevant Affordable Housing Parameters and/or the Relevant Family Housing Parameters for that SPDZ and/or for SPDZs 5A and 8A only, the Relevant Affordable Workspace Parameters;
 - (c) where LLDC does not approve the proposed alternative Hierarchy, Relevant Affordable Housing Parameters and/or the Relevant Family Housing Parameters for that SPDZ and, for SPDZs 5A and 8A only, the Relevant Affordable Workspace Parameters, the Hierarchy, Relevant Affordable Housing Parameters, the Relevant Family Housing Parameters for SPDZs 5A and 8A only and the Relevant Affordable Workspace Parameters shall be determined by the Expert pursuant to Clause 13;
 - (d) where LLDC does approve the proposed alternative Hierarchy, Relevant Affordable Housing Parameters and/or the Relevant Family Housing Parameters for that SPDZ, for SPDZs 5A and 8A only, the Relevant Affordable Workspace Parameters, LLDC shall within 10 (ten) Working Days prepare the Further Viability Scenarios and shall indicate to the LPA which is LLDC's preferred Further Viability Scenario and the reasons for such preference;
 - (e) within 20 (twenty) Working Days of receipt of the Further Viability Scenarios pursuant to paragraph 3.3.5(d), the LPA shall confirm whether or not it approves any of the Further Viability Scenarios and FOR THE AVOIDANCE OF DOUBT in deciding which Further

Viability Scenario to approve, the LPA shall have regard to the Further Viability Scenario(s) that would enable the Relevant SPDZ Benchmark to be achieved or, in the event none of the Further Viability Scenarios would result in the Relevant SPDZ Benchmark being achieved, the Further Viability Scenario that is closest to the Relevant SPDZ Benchmark being achieved but FOR THE FURTHER AVOIDANCE OF DOUBT the LPA shall not be obliged to approve such Further Viability Scenario;

- (f) where the LPA approves one of the Further Viability Scenarios in accordance with paragraph 3.3.5(e), the SZMP for that SPDZ shall be prepared on the basis of the quantum, Tenure Split, Unit Size Mix and Affordability Criteria of the Affordable Housing Units and the quantum of Family Housing for that SPDZ, for SPDZs 5A and 8A only, the quantum, level of rent discount and the duration of the rent discount of the Affordable Workspace as set out in the approved Further Viability Scenario;
- (g) where the LPA does not approve one of the Further Viability Scenarios in accordance with paragraph 3.3.5(e) or where the LPA approves a Further Viability Scenario that LLDC considers does not achieve the joint aims of achieving a PDZ Residual Land Value or SPDZ Residual Land Value that matches the Relevant PDZ Benchmark or Relevant SPDZ Benchmark (as appropriate) and securing the optimum affordable housing offer, the decision as to which Further Viability Scenario submitted pursuant to this paragraph 3.3 shall be used for the preparation of the SZMP for that SPDZ shall be determined by the Expert in accordance with Clause 13;

4. SUBMISSION OF ZMPS AND EXPIRY OF ZMPS

- 4.1 Save in respect of the First PDZ, no ZMP or SZMP shall be submitted to the LPA for approval pursuant to Condition LCS0.1 unless and until paragraph 2 or 3 of this Schedule (as appropriate) has been complied with and for the avoidance of doubt no viability review mechanism pursuant to paragraph 2 or 3 shall be carried out in respect of the First PDZ and the following provisions of this paragraph 4 shall not apply to the First PDZ.
- 4.2 Where a contract(s) has not been let by the relevant Developer Partner for the construction of all of the Residential Units that form the Development in the first phase of any PDZ or SPDZ (as such first phase may be identified in the Development Parcel Phasing Plan approved pursuant to Condition LCS0.50) within 5 (five) years of the date on which the quantum, Tenure Split, Unit Size Mix and Affordability Criteria of the Affordable Housing Units and the quantum of Family Housing for SPDZs 5A, 8A and for PDZ5 (if applicable), the quantum, level of rent discount and the duration of the rent discount of the Affordable Workspace were determined for that PDZ or SPDZ in accordance with paragraph 2 or 3 of this Schedule (as applicable), the ZMP or SZMP (as appropriate) shall be deemed to have expired and LLDC shall be required to resubmit the ZMP or SZMP for that PDZ or SPDZ and comply with the provisions of paragraph 2 or 3 of this Schedule (as applicable).

5. EXCESS CONTRIBUTION

- 5.1 There shall be no Completion of more than 75% of the Final PDZ Consented Development until:
 - 5.1.1 LLDC has submitted to the LPA the LCS Benchmark Final Report and such report is deemed approved pursuant to paragraph 5.3; and

- 5.1.2 in the event the LCS Benchmark Final Report submitted pursuant to 5.1.1 above indicates that the LCS Benchmark has been achieved, LLDC has paid to the LPA the Excess Contribution
- 5.2 If the LCS Benchmark Final Report submitted pursuant to paragraph 5.1.1 indicates that the LCS Benchmark has not been achieved, there shall be no Completion of more than 95% of the Final PDZ Consented Development until:
- 5.2.1 LLDC has submitted to the LPA a further LCS Benchmark Final Report and such report is deemed approved pursuant to paragraph 5.3; and
- 5.2.2 in the event the LCS Benchmark Final Report submitted pursuant to paragraph 5.2.1 above indicates that the LCS Benchmark has been achieved, LLDC has paid to the LPA the Excess Contribution
- 5.3 Each LCS Benchmark Final Report submitted pursuant to paragraphs 5.1 and 5.2 of this Schedule shall be deemed to be approved by the LPA unless the LPA notifies LLDC in writing within 10 Working Days that in its view there is an error in the calculations referred to in limb 4. of the definition of LCS Benchmark Final Report. Where such notice is given by the LPA, LLDC shall review and correct any error in the calculations and resubmit the LCS Benchmark Final Report to the LPA within a further 10 Working Days and this paragraph 5.3 shall apply to the resubmitted LCS Benchmark Final Report.
- 5.4 The LPA shall
- 5.4.1 apply any Excess Contribution received pursuant to this paragraph 5 towards meeting Scheme Needs;
- 5.4.2 consult with LLDC on which Scheme Needs to apply the Excess Contribution towards and take account of any reasonable comments received from LLDC in writing; and
- 5.4.3 report to LLDC on how any and all parts of the Excess Contribution have been applied or committed and how this will meet some or all of the Scheme Needs; and
- 5.4.4 in the event some or all of such sums remain unspent or uncommitted 3 years after such sum is paid to the LPA pursuant to paragraph 5.1.2 or 5.2.2, the LPA shall return such unspent or uncommitted sums to LLDC.
- 6. GRANT FUNDING**
- 6.1 LLDC shall notify the LPA in writing within 10 (ten) Working Days of any application for Grant Funding being approved, such notice to include details of:
- 6.1.1 the amount of Grant Funding secured; and
- 6.1.2 the PDZ or SPDZ to which such Grant Funding relates.
- 6.2 Within 20 (twenty) Working Days of submitting the notice pursuant to paragraph 6.1, LLDC shall submit to the LPA for approval a report outlining whether or not there will be any Grant Funding Excess Value and, if so, how much.
- 6.3 Where the LPA confirms in writing that it does not approve the report submitted pursuant to paragraph 6.2 or where the LPA fails to confirm that it approves the report within 20 (twenty) Working Days of receipt, the matter shall be determined by the Expert in accordance with Clause 13.
- 6.4 Where any Grant Funding Excess Value is agreed or determined:

- 6.4.1 such Grant Funding Excess Value shall be carried forward as a PDZ Gross Development Value or SPDZ Gross Development Value (as appropriate) in the next PDZ Viability Assessment or SPDZ Viability Assessment which indicates that the Proposed PDZ Development or Proposed SPDZ Development (as appropriate) is not likely to achieve the Relevant PDZ Benchmark or Relevant SPDZ Benchmark PROVIDED THAT only so much of the Grant Funding Excess Value shall be carried forward as is required to meet the Relevant PDZ Benchmark or Relevant SPDZ Benchmark and any excess shall be carried forward into the next PDZ Viability Assessment or SPDZ Viability Assessment which indicates that the Proposed PDZ Development or Proposed SPDZ Development (as appropriate) is not likely to achieve the Relevant PDZ Benchmark or Relevant SPDZ Benchmark; and
- 6.4.2 where any Grant Funding Excess Value is identified or is remaining following the approval of the last ZMP or SZMP:
- (a) such amount(s) shall be ring fenced for investment in affordable housing in the MDC Area); and
 - (b) LLDC shall report in writing to the LPA on how such amount(s) have been reinvested, such report to be provided not less than once every 12 months commencing with the date of approval of the last ZMP or SZMP until such amount(s) is spent or committed.

7. REMIT OF EXPERT

- 7.1 Where any matter is to be determined by the Expert pursuant to this Schedule, the Expert shall take into account the joint aims of:
- 7.1.1 achieving a PDZ Residual Land Value or SPDZ Residual Land Value (as appropriate) that matches the Relevant PDZ Benchmark; and
 - 7.1.2 securing the optimum affordable housing offer.

8. CONFIDENTIALITY

- 8.1 LLDC and the LPA acknowledge that the Confidential Appendix and any data, reports, updates, assessments, papers and any other information prepared and/or submitted to either party in respect of the obligations in paragraphs 1 to 7 above are confidential and are commercially sensitive to LLDC and accordingly neither LLDC or the LPA shall release any such data, reports, updates, assessments, papers and any other information to a third party save that LLDC may disclose any such data, reports, updates, assessments, papers and any other information to Developer Partners unless and to the extent that:
- 8.1.1 it is required to do so as a matter of law; and
 - 8.1.2 it has obtained the written consent to such release from the other.

SIGNED as a Deed by)
[Local Planning Authority])
in the presence of:)

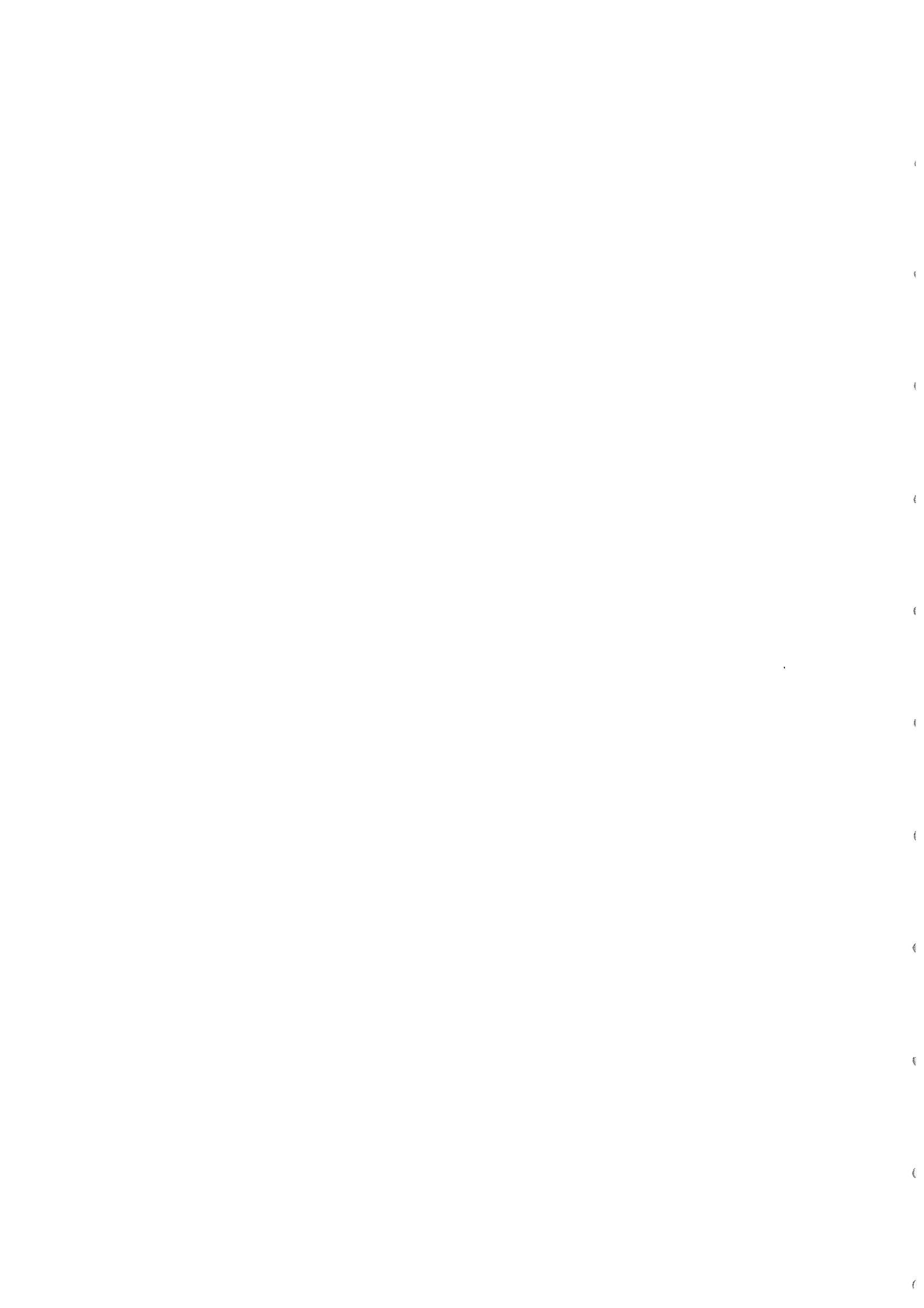
Authorised Signatory

SIGNED as a Deed by)
[Developer])
in the presence of:)

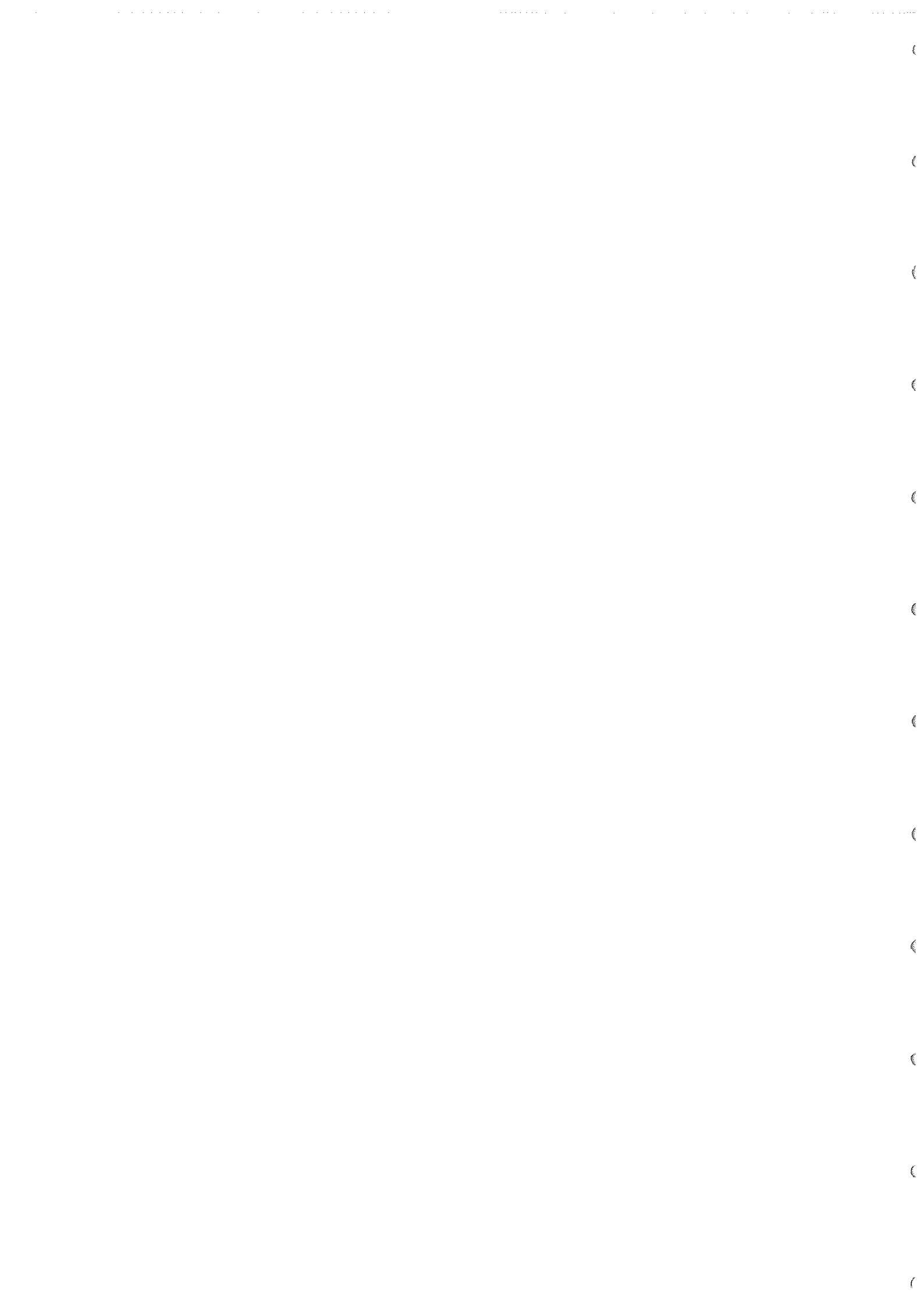
Authorised Signatory

SIGNED as a Deed by)
Transport for London)
in the presence of:)

Authorised Signatory



Annex 2 – Enforcement Protocol



LONDON LEGACY DEVELOPMENT CORPORATION

S106 ENFORCEMENT PROTOCOL

1. INTRODUCTION

- In March 2012 the London Legacy Development Corporation (LLDC) was established as a Mayoral Development Corporation with responsibility for regenerating an area of east London focused on the Queen Elizabeth Olympic Park. Subsequently, various transfer schemes transferred land including the Olympic Park to LLDC.
- On 1 October 2012, LLDC also became the local planning authority for the land within its area. LLDC's planning powers were delegated by a resolution of LLDC's board to the Planning Policies and Decisions Team (PPDT),¹ a directorate within LLDC which reports to LLDC's Board.
- From a planning perspective, LLDC combines in a single legal entity two distinct roles; firstly as landowner/developer whose land is already bound by several agreements made under S106 of the Town and Country Planning Act 1990 (a S106 Agreement), secondly as the planning authority responsible for enforcing compliance with those agreements.
- As a matter of common law, a single entity can neither contract with itself, nor can it enforce contracts against itself.
- The effect of this is twofold:
 - obligations in existing S106 Agreements cannot be enforced at law by PPDT against LLDC or by LLDC against PPDT. NB: this does not affect PPDT's ability to enforce the same obligations against any third party who acquires title to the bound land from LLDC nor does it affect such third party's ability to enforce the obligations against PPDT. Nor does it affect the ability of any successor organisation of PPDT's planning function to enforce those obligations against both LLDC as landowner/developer as well as against such a third party.
 - if any changes are needed to any existing S106 agreements binding LLDC land, then a legally binding deed of variation to which LLDC is a party cannot be entered into.

¹ In this note "LLDC" refers to LLDC in its role as landowner or developer and "PPDT" refers to LLDC in its role as local planning authority.

- This protocol has been prepared in respect of any planning obligations whether secured by a bilateral or unilateral deed made under s. 106 of the Town and Country Planning Act 1990 to which LLDC is a party as landowner² and which relates to development of land within the area for which PPDT is the local planning authority (a Principal Agreement). It sets out the steps that LLDC and PPDT are committed to taking to manage compliance within the Corporation with such Principal Agreements as well as setting out the approach that LLDC and PPDT are willing to adopt to deal with any variations to such deeds. This protocol does not affect third party rights or fetter the exercise by PPDT of its planning powers against third parties.
- In applying this protocol both LLDC and PPDT commit to act reasonably.

2. OPERATION OF S106

- Notwithstanding the deeds made under s. 106 by LLDC as landowner cannot now be enforced by PPDT, LLDC and PPDT commit to comply with their terms as if they could be enforced.
- Annual update reports to be submitted by LLDC to PPDT within 20 working days of the end of each financial year on what S106 obligations have been triggered, whether such obligations have been discharged, whether there have been any "ghost" deeds of variation to the Principal Agreement (see paragraph 3 below), whether there have been any S106 agreements entered into where third parties have taken an interest in the site to which the Principal Agreement relates (see paragraph 3 below), whether there have been any disputes and the outcome of such disputes. Report to be approved by PPDT as a true reflection of the status of the relevant Principal Agreement in the past year and reported to the PPDT Planning Committee for noting. The Annual update reports to be made public so there is transparency.
- In the event of dispute regarding the interpretation of the terms of a Principal Agreement:
 - initially to be dealt with between the director of PPDT and LLDC's director of Real Estate. A note will be made of the outcome of the meeting and placed on the relevant planning file.
 - if the dispute is not resolved internally, it will be referred to a jointly instructed and external, independent legal expert appointed in accordance

² This includes deeds made under s. 106 relating to land which has been transferred to LLDC

with the provisions attached at Annex 1 to this Protocol whose decision is binding.

- In the event of non-compliance with a term of the relevant deed made under s. 106:
 - PPDT to serve a written notice on LLDC identifying any breach and the steps required to remedy it. LLDC to respond within 10 working days either setting out a reasonable timetable and confirming the steps it intends to take to remedy the breach, or (if relevant) disputing the breach. Unless the procedure described below is triggered, LLDC will carry out the steps in accordance with the proposed timetable.
 - If there is a factual dispute as to whether there has been a breach or as to the appropriate steps to be taken to remedy any breach, this will initially be dealt with between the director of PPDT and LLDC's director of Real Estate. A note will be made of the outcome of the meeting and placed on the relevant planning file. Follow-up meetings will be arranged as necessary.
 - If the above steps do not lead to a mutually acceptable solution, each party will prepare and submit a report on the matter, including a recommended solution, to their respective committees. In the case of LLDC, the relevant committee is the LLDC Investment Committee and in the case of PPDT, the Planning Committee. Both committees shall consider the matter and the recommended solution.
 - If either committee rejects the recommendation made to it, the rejecting committee shall instruct its officers on what further steps to take to try to resolve the dispute.
 - If both committees endorse the recommendations set out in the respective reports (and assuming that the recommendations of the two reports conflict), the matter shall be referred to the Board for consideration. The Board's decision will be binding on both parties.

3. **VARIATIONS TO S106 AGREEMENTS / UNILATERAL UNDERTAKINGS**

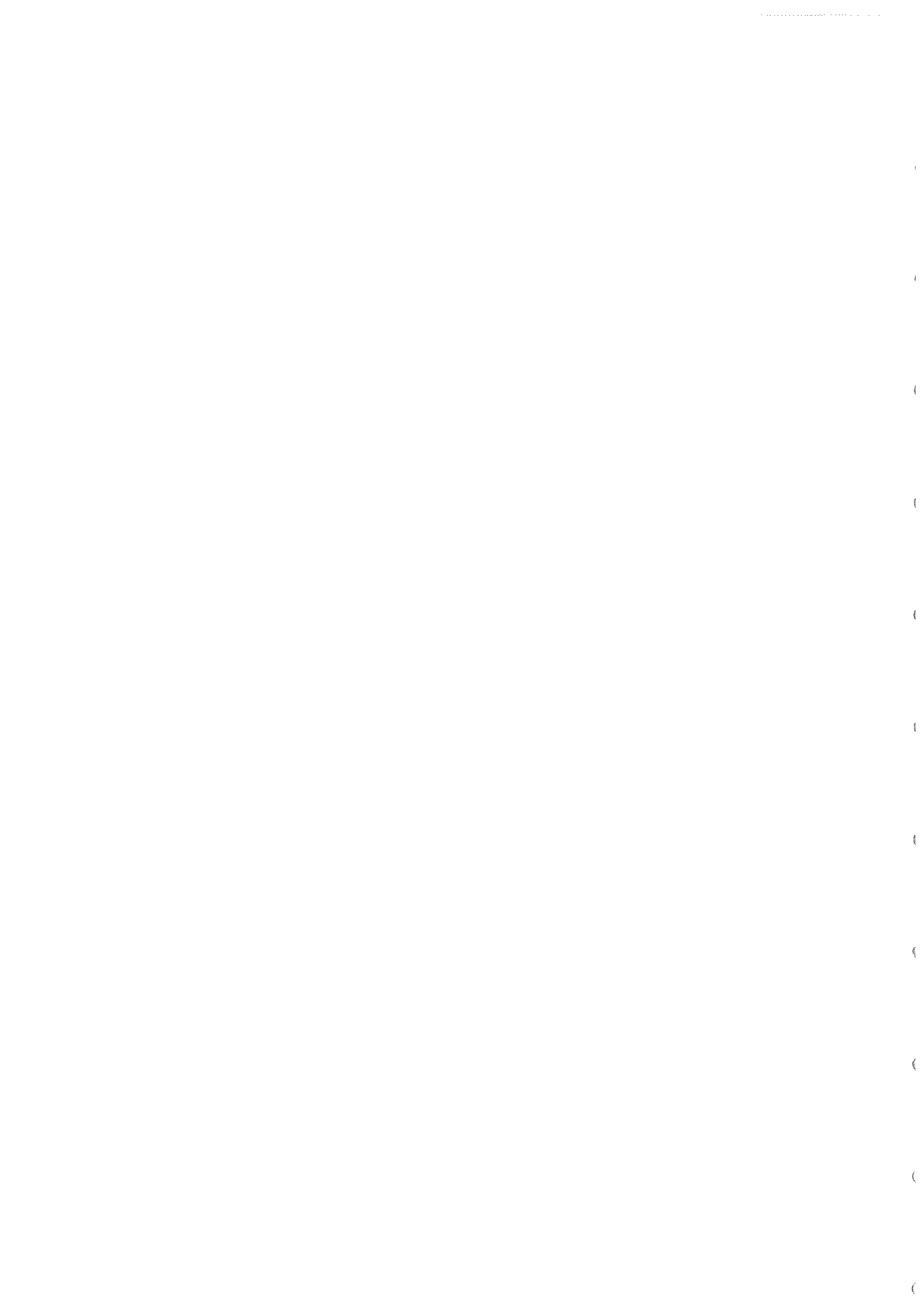
- In the event that variations to an existing section 106 agreement or unilateral undertaking to which LLDC is a party as landowner (a Principal Agreement) are required, LLDC and PPDT will negotiate a draft deed of variation to reflect the changes notwithstanding it cannot be lawfully entered into as a bilateral

agreement (a "Ghost Agreement"). A copy of the Ghost Agreement will be placed on PPDT's public planning file.

- Where appropriate, LLDC will bind itself (and its successors in title) by unilateral S106 undertaking to abide by the terms of the Ghost Agreement. In return for such an undertaking, PPDT will confirm by a reciprocal undertaking that it will only enforce the relevant Principal Agreement in a manner that is consistent with the Ghost Agreement. This reciprocal undertaking is intended to be binding on PPDT's successors in function.
- LLDC to ensure that any transfer to a third party of LLDC land against whom the Ghost Agreement could be enforced will be subject to a condition requiring completion of the Ghost Agreement by the transferee following completion of the land transfer.

Annex 1: Dispute Resolution Procedure

- 1) LLDC or PPDT may by serving notice on the other (the "Notice") refer a dispute to an Expert for determination.
- 2) The Notice must specify:
 - a) the nature, basis and brief description of the dispute;
 - b) the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
 - c) the proposed Expert.
- 3) In the event that the parties are unable to agree who to appoint 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 paragraph 7 provides otherwise) to nominate the Expert at their joint expense.
- 4) The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and the Expert's cost shall be awarded 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.
- 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 (or such longer period as is agreed in writing between the parties).
- 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 5 (five) Working Days in respect of any such submission and material.



Annex 3 – Plans 1 and 2



Plan showing extent of London Legacy Development Corporation's interests within land bound by Legacy Communities Scheme Section 106 Appendix 3

26 September 2012

Legend

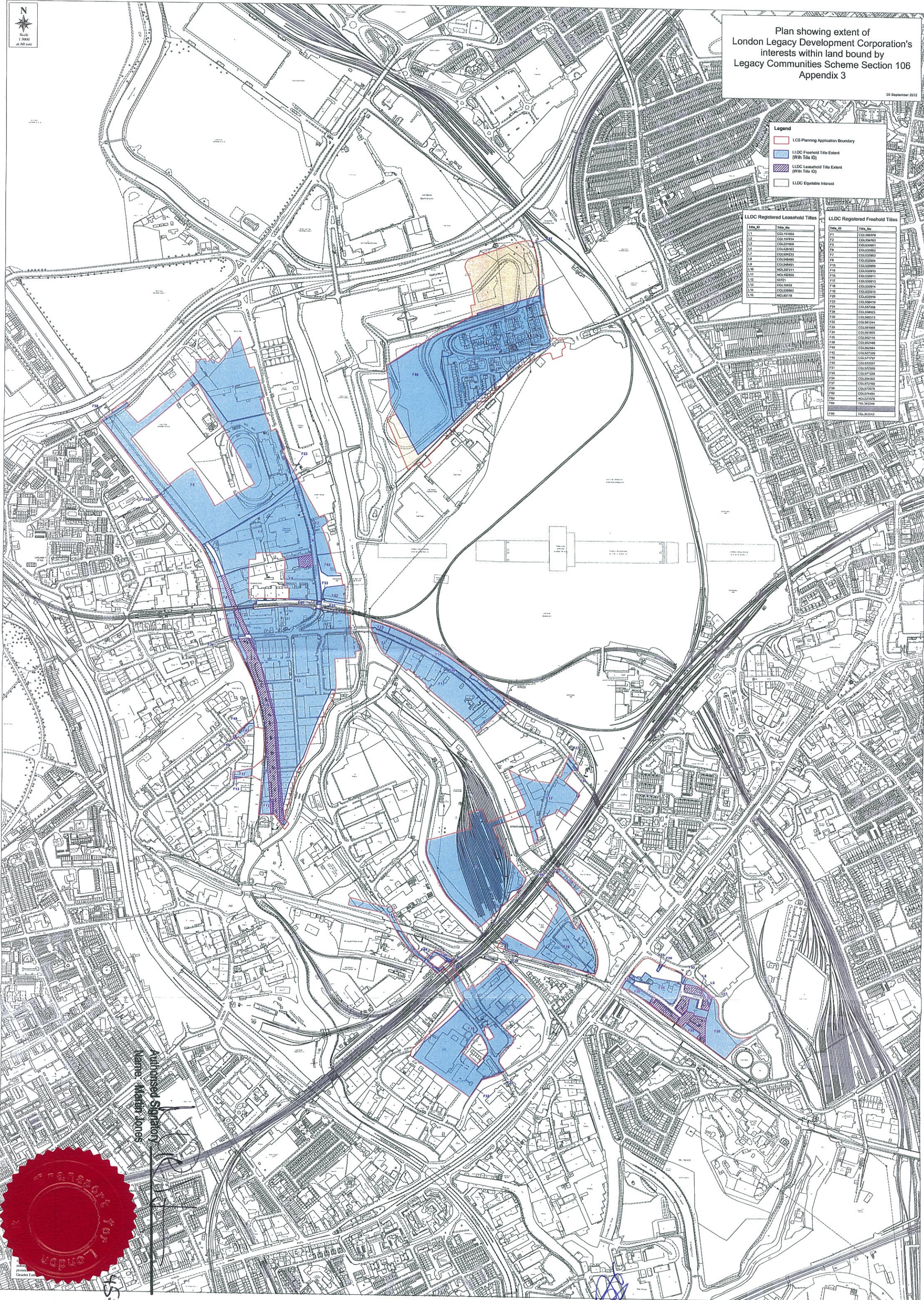
- LCS Planning Application Boundary
- LLDC Freehold Title Extent (With Title ID)
- LLDC Leasehold Title Extent (With Title ID)
- LLDC Equitable Interest

LLDC Registered Leasehold Titles

| Title ID | Title No |
|----------|-----------|
| L1 | EGL151605 |
| L2 | EGL151614 |
| L3 | EGL221056 |
| L4 | EGL428195 |
| L5 | EGL534223 |
| L6 | EGL548480 |
| L7 | EGL548491 |
| L8 | EGL548491 |
| L9 | NGL302211 |
| L10 | NGL402005 |
| L11 | 03721 |
| L12 | EGL53013 |
| L13 | EGL53013 |
| L14 | EGL53082 |
| L15 | NGL80118 |

LLDC Registered Freehold Titles

| Title ID | Title No |
|----------|-----------|
| F1 | EGL260328 |
| F2 | EGL260328 |
| F3 | EGL533902 |
| F4 | EGL533902 |
| F5 | EGL533902 |
| F6 | EGL533902 |
| F7 | EGL533902 |
| F8 | EGL533904 |
| F9 | EGL533909 |
| F10 | EGL533910 |
| F11 | EGL533911 |
| F12 | EGL533912 |
| F13 | EGL533913 |
| F14 | EGL533915 |
| F15 | EGL533916 |
| F16 | EGL533916 |
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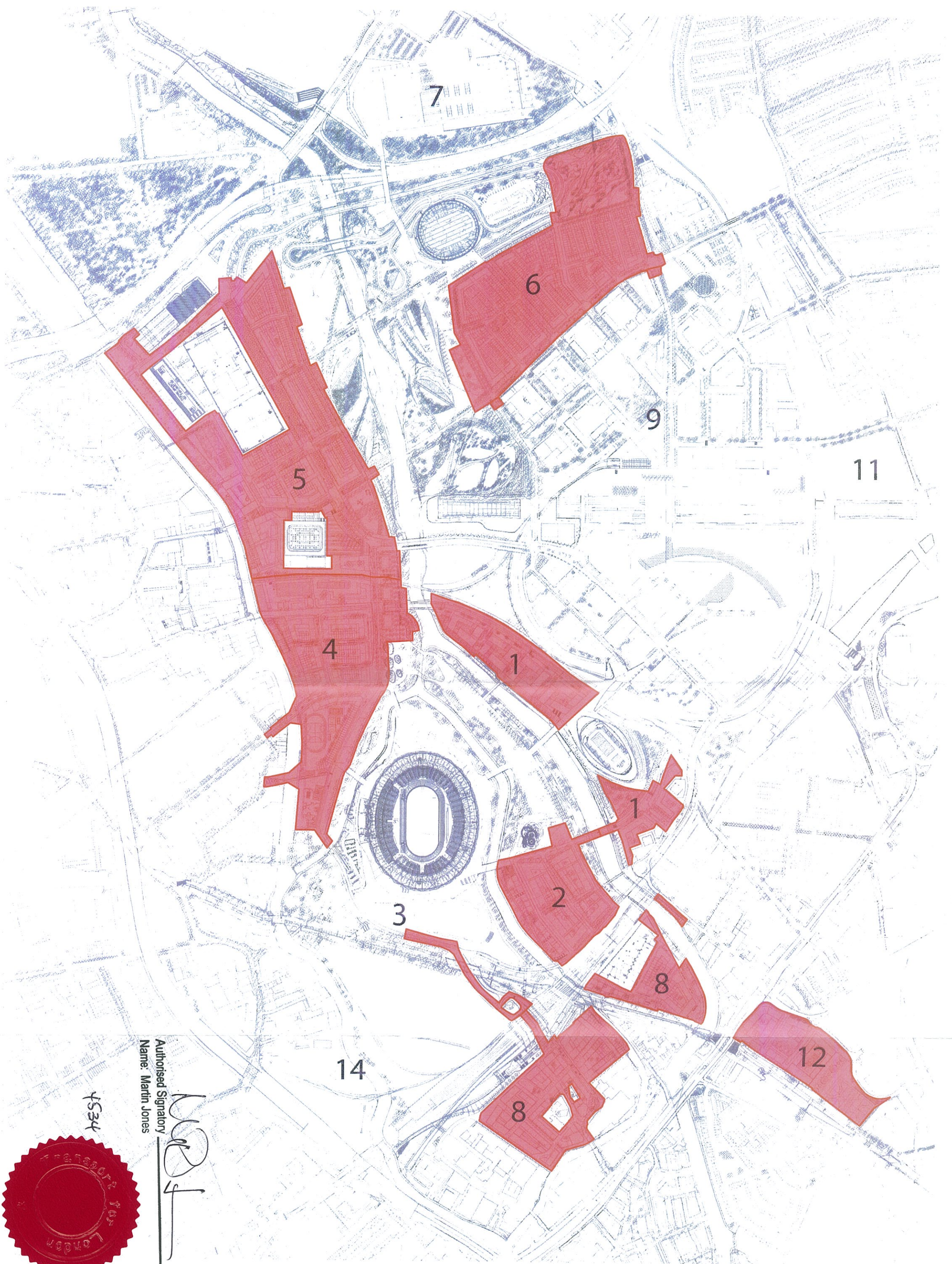


Authorised Signatory
Name: Martin Jones

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 Authorised Signatory
 Name: Martin Jones




KEY
 LCS Planning Application Boundary
 Planning Delivery Zones within the LCS red line Boundary



LEGACY DEVELOPMENT CORPORATION
ACCOM
 Legacy Communities Scheme

The Site and Planning Delivery Zones Plan
 S106 Appendix 1
 Scale: 1:2500
 September 2012
 LCS-DWG-ILL-PER-CON-GLB-013 001

