

DATED 12 December 2017

(1) LONDON LEGACY DEVELOPMENT CORPORATION

(2) 52-54 WHITE POST LANE LLP

(3) CLOSE BROTHERS LIMITED

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SECTION 106A AGREEMENT  
DEED OF VARIATION  
relating to the development of 52-54 White Post Lane,  
London E9 5EN  
Supplemental to Agreement of 20 April 2016

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CERTIFIED TO BE A TRUE AND COMPLETE  
COPY OF THE ORIGINAL  
DATED THIS 12 DAY OF December 2017  
Pinsent Masons LLP Pinsent Masons LLP

  
Pinsent Masons

THIS DEED is made on 12 December

2017

BY:-

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ (the "**LPA**"); and
- (2) **52-54 WHITE POST LANE LLP** (Company Number 0C361199) of First Floor Kirkdale House, Kirkdale Road, Leytonstone, London E11 1HP (the "**Owner**"); and
- (3) **CLOSE BROTHERS LIMITED** (Company Number 195626) of 10 Crown Place, London EC2A 4FF (the "**Mortgagee**").

WHEREAS:-

- (A) By virtue of the London Legacy Development Corporation (Planning Functions) Order 2012 (effective from 1 October 2012 and made pursuant to powers, inter alia, in the 2011 Act) the Local Planning Authority is the local planning authority for the Site for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The Owner has a freehold interest in the Site registered at the Land Registry with Title Number EGL211423.
- (C) The Mortgagee has a charge over the Site registered under Title Number EGL211423.
- (D) The Developer submitted an application to the LPA seeking a proposed deed of variation for modifications to Schedule 1 (Affordable Housing) and Schedule 2 (Viability) of the Section 106 agreement attached to planning permission 15/00416/FUL and allocated reference number 17/00200/106 ("**S106 Application**").
- (E) The LPA, Owner, KH Savoy Investments Limited (Company Number 07037124) and Mr Bagels Limited (Company Number 06789960) have previously entered into the Principal Agreement in order to secure the planning obligations contained within the Principal Agreement.
- (F) This Deed varies and is supplemental to the Principal Agreement.
- (G) It is hereby acknowledged that the Affordable Housing requirement for this Development is 13 of the total dwellings and this shall be met by the delivery of the Relocated 52-54 WPL Development Affordable Housing Units.
- (H) The Parties have agreed to enter into this Deed in order to secure the planning obligations contained in it pursuant to the provisions of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the 2011 Act and all other enabling powers.
- (I) The Parties agree that the obligations contained in this Deed meet the three tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

## 1. INTERPRETATION

In this Deed:-

- 1.1 "**the Principal Agreement**" means the s106 agreement dated 20 April 2016 between the LPA, the Owner, KH Savoy Investments Limited (Company Number 07037124) and Mr Bagels Limited (Company Number 06789960);
- 1.2 terms and expressions defined in the Principal Agreement shall have the same meaning in this Deed unless otherwise provided;

- 1.3 any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply;
- 1.4 headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation;
- 1.5 references to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed save where the context provides otherwise;
- 1.6 where the context so requires:-
- 1.6.1 the singular includes the plural and vice versa;
- 1.6.2 the masculine includes the feminine and vice versa; and
- 1.6.3 persons includes bodies corporate associations and partnerships and vice versa;
- 1.7 where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons;
- 1.8 where more than one party enters into any obligation or liability those parties are jointly and severally liable;
- 1.9 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction;
- 1.10 references to any party shall include their respective successors in title and assigns.

## 2. LEGAL EFFECT

This Deed is made pursuant to the provisions of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the 2011 Act and all other enabling powers.

## 3. PLANNING OBLIGATION INCORPORATING THE PRINCIPAL AGREEMENT

- 3.1 This Deed shall take effect on the date hereof.
- 3.2 The Owner agrees to observe and perform all of the covenants agreements restrictions and obligations contained in the Principal Agreement subject to this Deed.
- 3.3 The Owner agrees that the covenants and obligations contained in the Principal Agreement are to continue in full force and effect except as expressly varied by this Deed.

## 4. MODIFICATIONS

- 4.1 The Owner agrees that from the date of this Deed the Principal Agreement shall be varied as follows:
- 4.1.1 The definition "**Private Residential Units**" shall be deleted from Clause 1.1.
- 4.1.2 The following definitions shall be inserted at Clause 1.1:
- (a) "**Combined Development**" means the Development and the 25-37 RR Development.
- (b) "**Plan 4**" means the plan attached to this Agreement at Appendix 2 5 showing the 24-26 WPL Development site

(c) "Plan 5" means the plan attached to this Agreement at Appendix 6 showing the 25-37 RR Development site

4.1.3 Schedule 1 shall be deleted and replaced with Appendix 1 attached to this Deed.

4.1.4 Schedule 2 shall be deleted.

4.2 Except as expressly varied by this Deed the Principal Agreement shall remain in full force and effect.

5. **LEGAL FEES**

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

6. **MORTGAGEE'S CONSENT**

6.1 The Mortgagee acknowledges and declares that:

6.1.1 this Deed has been entered into by the Owner with its consent;

6.1.2 the Site shall be bound by the obligations contained in this Deed and the Principal Agreement;

6.1.3 the security of the Mortgagee over the site shall take effect subject to this Deed and the Principal Agreement.

6.2 The Mortgagee and any subsequent mortgagee shall be liable only for any breach of the provisions of this Deed during such period as he is Mortgagee in possession of the site.

7. **THIRD PARTY RIGHTS**

This Deed gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act and it may be enforced by the successors in title of the parties and by any successor to the Council's statutory functions.

8. **NO WAIVER**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the LPA in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Developer from any liability under this Deed.

9. **NO FETTER**

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

10. **JURISDICTION**

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

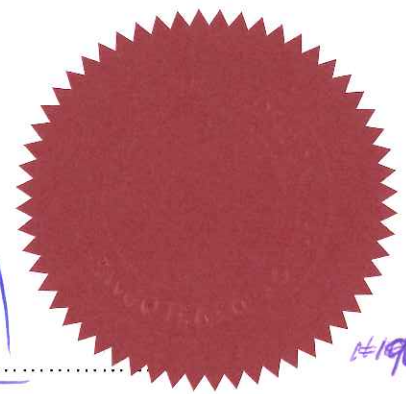
11. **DELIVERY**

The provisions of this Deed shall be of no effect until this Deed has been dated.

**IN WITNESS** whereof the parties hereto have executed this Deed as a deed the day and year first before written.



EXECUTED as a Deed by affixing the )  
common seal of LONDON LEGACY )  
DEVELOPMENT CORPORATION )  
in the presence of:- )



[Signature]  
Authorised signatory

#1900

EXECUTED as a Deed by 52-54 WHITE )  
POST LANE LLP acting by:- )

[Signature]  
~~Director~~ MEMBER

[Signature]  
~~Director/Secretary~~ MEMBER

EXECUTED as a Deed by CLOSE )  
BROTHERS LIMITED acting by:- )

[Signature]  
~~Member~~ DIRECTOR

[Signature]  
~~Member~~ DIRECTOR

Executed by Close Brothers Limited as a Deed pursuant to a  
Power of Attorney dated 21st December 2016 (filed at Land Registry  
Head Office under reference CAS/Close Brothers Limited/2017  
pursuant to a facility letter dated 5th January 2017

[Signature]  
Authorised Signatory  
LENBOYD  
Name of Signatory  
[Signature]  
Witnessed by  
Jan Maslen-Brown  
Name of Witness

[Signature]  
Authorised Signatory  
ILL TATTUM  
Name of Signatory  
[Signature]  
Witnessed by  
Jan Maslen-Brown  
Name of Witness

10 Crown Place, London EC2A 4FT 10 Crown Place, London EC2A 4FT

## APPENDIX 1

### SCHEDULE 1

#### AFFORDABLE HOUSING

##### 1. DEFINITIONS

- "24-26 WPL Development"** means the site at 24-26 White Post Lane, London E9 5EN outlined in red on Plan 4 which shall be developed in accordance with planning permission 15/00540/FUL for the demolition of existing buildings and the structure and erection of four new linked building of up to six storeys and 21.3 m in height (maximum of 26.2 AOD) to provide 2,916 sqm business floorspace (use class B1c), 103 residential units (use class C3), commercial yard new public realm, vehicular access, together with car and cycle parking landscaping and other associated works as amended
- "25-37 RR Agreement"** means the Section 106 agreement between the LPA, Rothwick LLP (Company Number OC402673) and Hemnall Limited (Company Number 07342913) dated [            ]
- "25-37 RR Development"** means the site at 25-37 Rothbury Road, Hackney Wick, London E9 5EN outlined in red on Plan 5 which shall be developed in accordance with planning permission 16/00441/FUL for a mixed use redevelopment comprising construction of a new 6 storey building to provide 645 sqm (GIA) of commercial space (use class B1) with yard area, 23 residential dwellings (7 x 1 bed, 11 x 2 bed and 5 x 3 bed), amenity areas, cycle parking and refuse/recycling stores
- "Affordable Housing"** means housing including Social Rented Housing, Affordable Rented Housing and Intermediate Housing, provided to eligible households whose needs are not met by the market, and which housing should (a) meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices and (b) include provision for the home to remain at an affordable price for future eligible households, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision
- "Affordable Contracts"**         **Housing** means a binding contract between the developer of the 25-37 RR Development and the Affordable Housing Provider for the construction and transfer of Affordable Housing Units to the Affordable Housing Provider
- "Affordable Provider"**         **Housing** means a provider of Affordable Housing approved in respect of the 25-37 RR Development pursuant to the 25-37 RR Agreement

**"Affordable Housing Units"** means the 23 residential units to be provided as Affordable Housing at the 25-37 RR Development in accordance with the 25-37 RR Agreement which comprise:

- (a) the Relocated 24-26 WPL Development Affordable Housing Units;
- (b) the Relocated 52-54 WPL Development Affordable Housing Units; and
- (c) the 5 residential units Affordable Housing requirement for the 25-37 RR Development

**"Affordable Rented Housing"** means rented housing that has the same characteristics as Social Rented Housing except that it is outside the National Rent Regime, but is subject to other rent controls that require it to be offered to eligible households at a rent of up to 80 per cent of local market rents

**"Combined Development Viability Review"** means the viability review of the Combined Development set out at Schedule 2 of the 25-37 RR Agreement

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

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

**"Model Form of Lease"** means the model forms of lease for Shared Ownership Housing published by the Homes and Communities Agency from time to time

**"Relocated 24-26 WPL Development Affordable Housing Units"** means 5 of the residential units (excluding the Relocated 52-54 WPL Affordable Housing Units) originally to be provided as Affordable Housing at the 24-26 WPL Development which are now to be provided as Affordable Housing in accordance with the 25-37 RR Agreement forming part of the 25-37 RR Development



**"Relocated 52-54 WPL Development Affordable Housing Units"** means 13 of the Residential Units (excluding the Relocated 24-26 WPL Development Affordable Housing Units) originally to be provided as Affordable Housing at the Development which are now to be provided as Affordable Housing in accordance with the 25-37 RR Agreement forming part of the 25-37 RR Development

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

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

## 2. **AFFORDABLE HOUSING PROVISION**

2.1 None of the Residential Units shall be Occupied until:-

2.1.1 one hundred per cent (100%) of the Affordable Housing Units are:

- (a) completed and made ready for Occupation; and
- (b) have been transferred to the Affordable Housing Provider pursuant for the Affordable Housing Contract,

in accordance with the 25-37 RR Agreement.

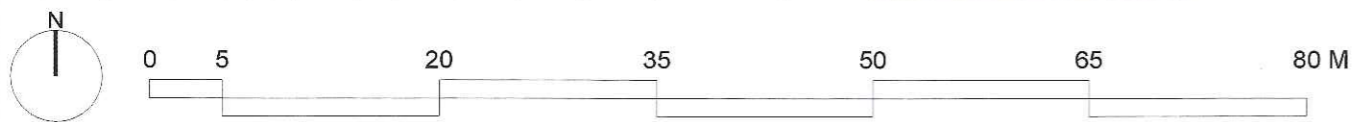
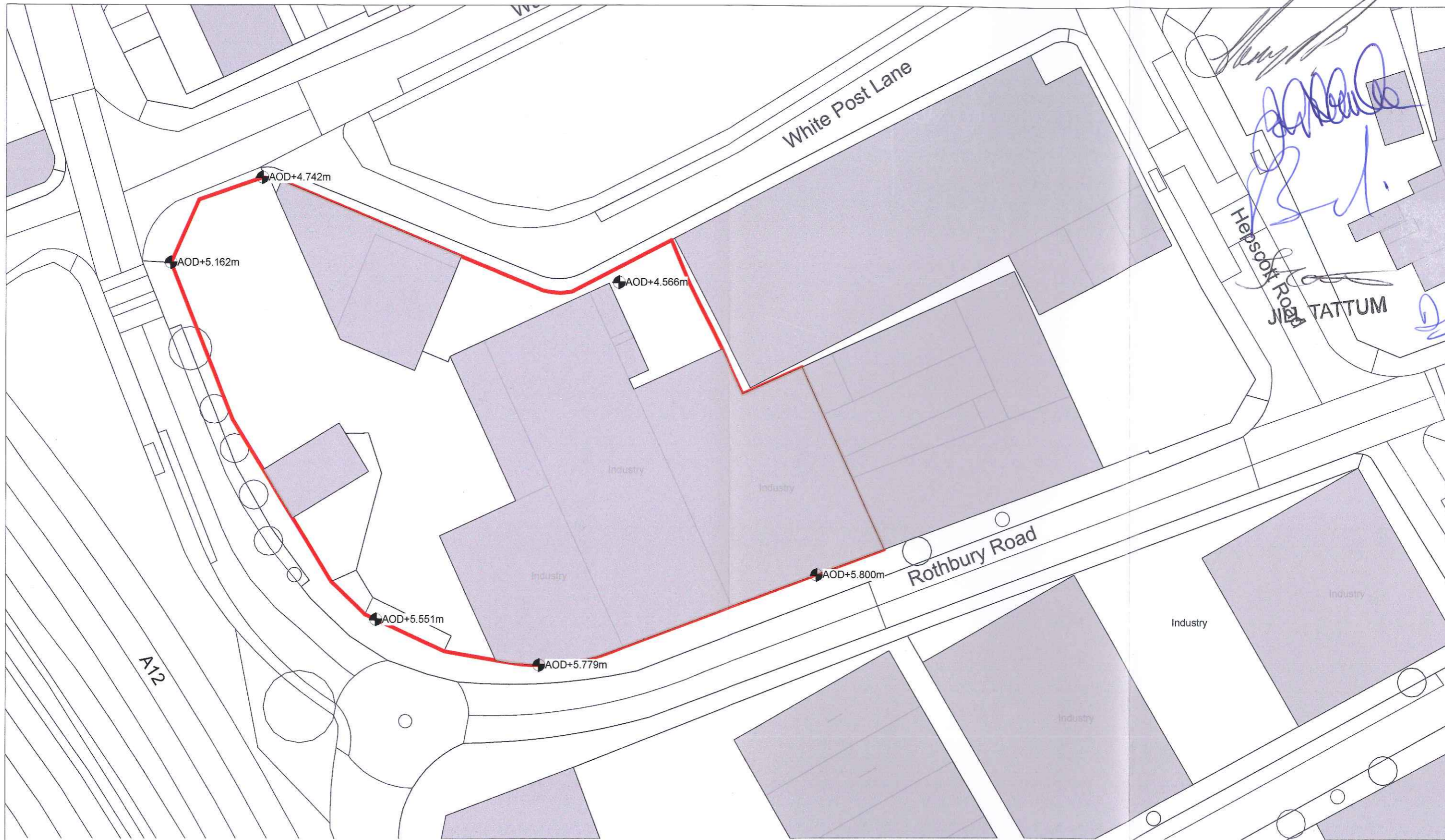
## 3. **VIABILITY REVIEW**

3.1 The Developer covenants to comply with the Combined Development Viability Review.



**APPENDIX 2**

**PLAN 4**



FOR APPROVAL

Revisions	-	Issued for planning
12/10/15	A	AOD levels added
03/11/15		

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Scale	Date
1:500 @ A3	July 2015
Drawn by	Checked by
MR	PK
Job Number	Status
HB1605	Planning

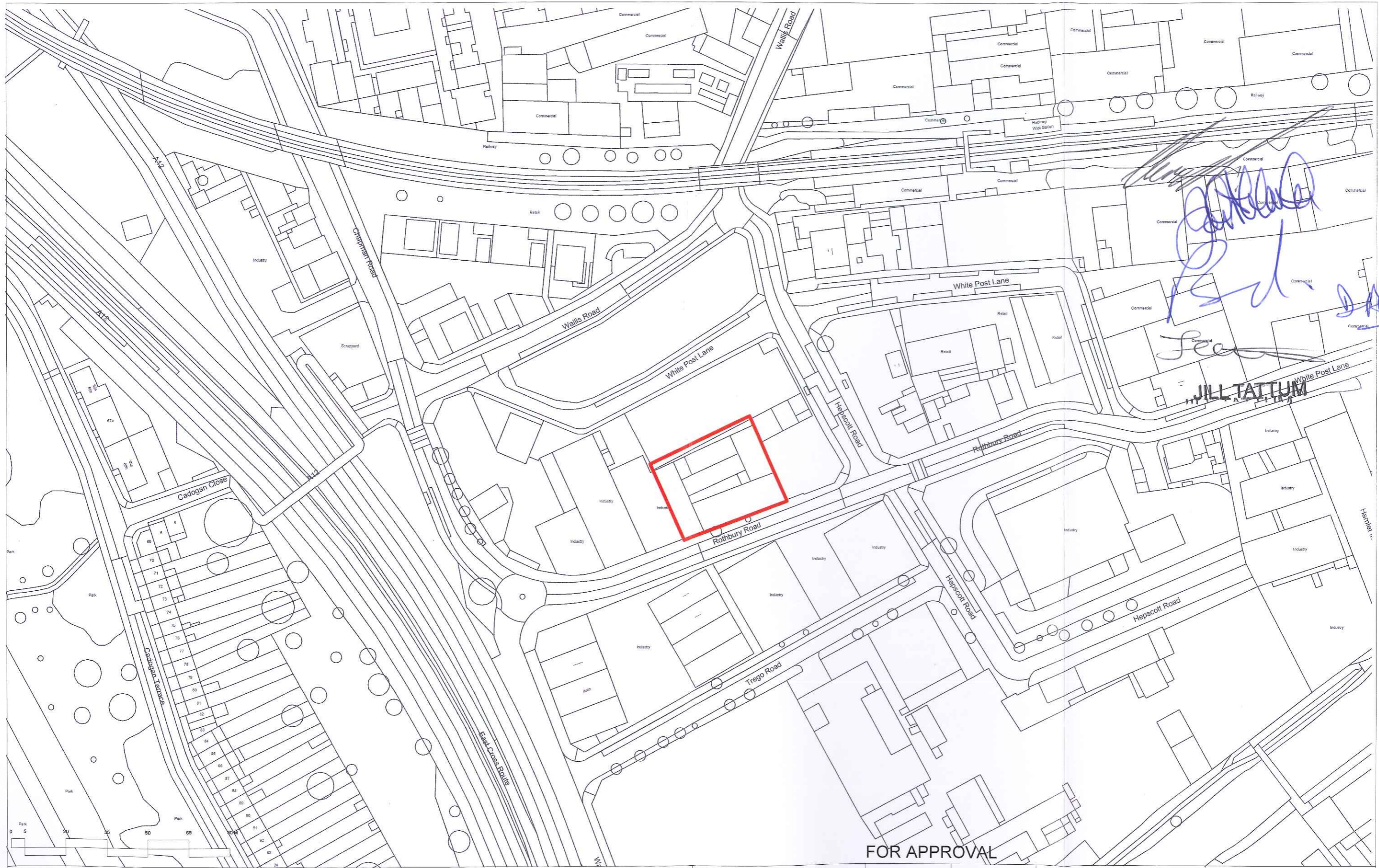
Project	Drawing
24-26 White Post Lane Hackney Wick	Block Location Plan Existing

<b>Hawkins Brown</b>	
159 St John Street London EC1V 4QJ 020 7336 8030t	mail@hawkinsbrown.com www.hawkinsbrown.com
Drawing No. & Revision	A
1605_DWG_00_101	

**APPENDIX 3**

**PLAN 5**





FOR APPROVAL

Revisions  
18/08/16 - Issued for planning

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Scale 1:1250 @ A3	Date May 2016
Drawn by MR	Checked by RS
Job Number HB16026	Status Information

Project  
25-37 Rothbury Road  
Hackney Wick

Drawing  
Site Location Plan

**Hawkins Brown**  
159 St John Street  
London  
EC1V 4QJ  
020 7336 8030t  
mail@hawkinsbrown.com  
www.hawkinsbrown.com

Drawing No. & Revision  
16026\_DWG\_00\_100