

DATED

28 June

2013

(1) LONDON BOROUGH OF WALTHAM FOREST

and

(2) FAIRVIEW NEW HOMES (CHASE ROAD) LIMITED

and

(3) Lloyds TSB Bank PLC

AGREEMENT

relating to

**Land at the Former Chingford Municipal Offices, 16 The Ridgeway, Chingford,
E4 6PS**

pursuant to Section 106 of the Town & Country
Planning Act 1990 (as amended)

Legal & Democratic Services
London Borough of Waltham Forest
Waltham Forest Town Hall
Forest Road
Walthamstow
London
E17 4JA

Case reference: 68374/JWE



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THIS AGREEMENT is made on 28th June 2013

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM FOREST** of Town Hall, Forest Road, Walthamstow, London, E17 4JA ("the Council") of the first part
- (2) **FAIRVIEW NEW HOMES (CHASE ROAD) LIMITED**(company registration number 3479204) whose registered office is at 50 Lancaster Road, Enfield, Middlesex, EN2 0BY("the Owner") of the second part
- (3) **LLOYDS TSB BANK PLC** (company registration number 2065) whose registered office is at 25 Gresham Street, London, EC2V 7HN ("the Mortgagee") of the third part

1. RECITALS

- 1.1 The Council is the Local Planning Authority for the purposes of the Act and for the area in which the Property is situated
- 1.2 The Owner is the registered proprietor with freehold title absolute of the Property
- 1.3 The Mortgagee, acting as security trustee, has a charge over the Property dated 18 March 2013
- 1.4 The Owner has applied to the Council for permission to develop the Property in accordance with the Application and is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act in order to facilitate the Development
- 1.5 The Council having regard to the provisions of the adopted Core Strategy 2012 and the National Planning Policy Framework and to all other material

considerations resolved at its meeting of the Council's Planning Committee held on 8 January 2013 and following execution of this Agreement to grant the Planning Permission

- 1.6 The Council considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

2. DEFINITIONS

- 2.1 In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:-

"Acquisition Costs" means the fixed sum of £270,000 included in the Viability Submission and set out in the Viability Reassessment Pro Forma

"the Act" means the Town and Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force

"Affordable Dwellings" those 19 Residential Units that are to be provided as Affordable Housing shown coloured yellow and blue on the Residential Drawings together with 19 car parking spaces for the Affordable Dwellings

"Affordable Housing"	low cost housing available to people nominated by the Council and other Local Authorities through its Housing Allocation Scheme, the East London Sub-Region Nominations Protocol (for Affordable Rented Housing) and the Referral Arrangements with Metropolitan Home Ownership or any successor body nominated by the GLA (for Shared Ownership Housing) whose incomes are insufficient to enable them to afford to meet their housing needs locally within the London Borough of Waltham Forest on the open market and where the rent or price for such housing is reduced directly or indirectly by means of subsidy from the public, private or voluntary sector and being either Affordable Rented Units or Shared Ownership Housing Units
"Affordable Housing Contribution"	the sum of £200,000.00 (two hundred thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) towards the provision of Affordable Housing within the Council's administrative area
"Affordable Housing Mix"	<p>the mix of Affordable Housing as follows:</p> <ul style="list-style-type: none"> (i) 2 x 1 bedroom (2 people) Shared Ownership Housing Units; (ii) 2 x 1 bedroom (2 people) Affordable Rented Units; (iii) 4 x 2 bedroom (3 people) Shared Ownership Housing Units; (iv) 2 x 2 bedroom (4 people) Affordable Rented Units; (v) 2 x 3 bedroom (5 people) Shared Ownership Housing Units; (vi) 6 x 3 bedroom (5 people) Affordable Rented

Units ;

- (vii) 1 x 4 bedroom (6 people) Affordable Rented Units;

or such other mix as may be agreed with the Council in writing by way of a deed of variation to this Agreement

"Affordable Housing Terms"

the terms set out in Paragraphs 2 and 3 of Schedule 3 to this Agreement

"Affordable Rent Guidelines"

the Council's Affordable Rent Guidelines as approved by Cabinet on 11 May 2011 and subsequently updated in August 2011 attached to this Agreement at Schedule 22

"Affordable Rented Housing"

Residential Units available for rent in accordance with the Affordable Rent Guidelines such that the:

- (a) (i) 1-bedroom Residential Units shall be available for a rent of up to 80% of the local market rent (inclusive of service charge) and with the market rent assumptions for first rents to be agreed in writing with the Council prior to Occupation
- (ii) 2-bedroom Residential Units shall be available for a rent of up to 70% of the local market rent (inclusive of service charge) and with the market rent assumptions for first rents to be agreed in writing with the Council prior to Occupation
- (iii) 3-bedroom Residential Units shall be available for a rent of up to 60% of the local market rent (inclusive of service charge) and with the market rent assumptions for first rents to be agreed in

- writing with the Council prior to Occupation
- (iv) 4-bedroom Residential Units shall be available for a rent of up to 50% of the local market rent (inclusive of service charge) and with the market rent assumptions for first rents to be agreed in writing with the Council prior to Occupation
 - (b) They are managed by an Approved Investment Partner which has entered into a nominations agreement with the Council in a form as annexed to this Agreement at Schedule 19 providing for nominations by the Council and or other authorities within the Sub Region.
 - (c) The minimum tenancy length is 10 years subject to the Owner being entitled to grant initial starter tenancies of no less than 12 months and for the avoidance of doubt the minimum tenancy length of 10 years shall begin at the end of the 12 month starter tenancy
 - (d) rents can be increased by a maximum of RPI plus 0.5% per annum during the course of a tenancy or in accordance with current GLA Affordable Rent Guidelines, should this differ

"Affordable Rented Units"

The 11 Residential Units comprising:

- (i) 2 x 1 bedroom Residential Units (2 people)
- (ii) 2 x 2 bedroom Residential Units (4 people)
- (iii) 6 x 3 bedroom Residential Units (5 people)
- (iv) 1 x 4 bedroom Residential Units (6 people)

as shown coloured blue on the Residential Drawings and to be used and occupied exclusively as

Affordable Rented Housing in accordance with the Affordable Rent Guidelines subject to paragraphs 4 and 5 of Schedule 3

"Agreement" means this Agreement containing planning obligations made by deed pursuant to Section 106 of the Act

"Amenity Contribution" means the sum of £10,940.00 (ten thousand nine hundred and forty pounds only) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) towards the cost of planting trees in the vicinity of the Development

"Application" the planning application seeking planning permission for the Development bearing Ref No. 2012/0980 dated and validated on 4 July 2012 for which a resolution to grant permission has been passed conditionally subject to conclusion of this Agreement

"Approved Investment Partner" an organisation registered with the HCA as a registered provider pursuant to Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 and approved by the Council to secure the Affordable Housing either through the Referral Arrangements with Metropolitan Home Ownership (for Shared Ownership Housing) or through the East London Sub Region Nominations Protocol (for Affordable Rented Housing); the following investment partners are (at the date of this Agreement) approved by the Council:

- (i) East Thames Housing
- (ii) Circle Housing
- (iii) London and Quadrant

- (iv) Network Housing
- (v) A member of the North River Alliance (which comprises Islington and Shoreditch Housing Association, Christian Action Housing Association, Gateway Housing Association, North London Muslim Housing Association, Providence Row Housing Association, Spitalfields Housing Association, Lien Viet Housing Association, Tower Hamlets Community Housing Association and Bangla Housing Association)

or such other registered provider being an organisation registered with the HCA as a registered provider pursuant to Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 as agreed by the Council in writing such approval not to be unreasonably withheld or delayed.

"Benchmark Building Cost" means the anticipated costs in carrying out the Development as set out in Schedule 13

"Benchmark Building Cost Figure" means the sum of £11,005,326 being the anticipated total cost of carrying out the Development as shown in the Benchmark Building Cost

"Building Cost" means the cost incurred and anticipated to be incurred as at the date of the Viability Reassessment in constructing the Development such costs to comprise those items set out in the Benchmark Building Cost including preliminaries calculated as 11.6% of those costs included in "Section A" of the Benchmark Building Cost, overheads calculated as 9% of those costs included in "Section B" of the

Benchmark Building Cost and consultants' fees calculated as 9.8% of those costs included in Section A, Section B and overheads and all such costs to be certified by the Owner in the Owner's Certificate

"Capitalised Ground Rents" means the fixed sum of £307,000 included in the Viability Submission and set out in the Viability Reassessment Pro Forma

"Commencement Notice" means written notice given by the Owner to the Council giving not less than 5 Working Days advance notice that Implementation of the Development is about to take place and specifying the date of intended Implementation of the Development

"Completion Certificate" means a certificate certifying the purchase price and any Deferred Equity or Sales Incentives in relation to the Open Market Dwellings and such certificates will be provided by the Owner's solicitors following exchange of contracts in relation to Open Market Dwelling Sales whereupon the relevant figures to be included in the Completion Certificate and the Viability Reassessment shall be those contained in the exchanged contracts PROVIDED THAT there is nothing in the contract for sale which allows for a change in the purchase price

"Completion Statement" means a statement confirming the contract price paid by the Approved Investment Partner to the Owner for the Affordable Dwellings

"Confidential Information" means any commercial information relating to the business of the Owner which is marked "Confidential" and is submitted to the Council as part of the Viability

Reassessment

"Contributions"	means the Monitoring Charge, the Cycle Lanes Contribution, the Healthcare Contribution, the Education Contribution, the Amenity Contribution, and the Travel Plan Contribution to be paid by the Owner to the Council in accordance with the terms of this Agreement
"Controlled Parking Zone"	means an area where the Council have introduced restrictions on on-street parking during certain times
"Cycle Lanes Contribution"	the sum of £40,000.00 (forty thousand pounds) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) toward the provision of cycle lanes and associated infrastructure in the vicinity of the Development
"Deferred Contribution"	means the sum of £85,074.00 (eighty five thousand and seventy four pounds) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) towards health improvements in the borough
"Deferred Equity"	means that part of the purchase price for an Open Market Dwelling which is deferred
"Deficit"	means no Surplus has arisen
"Development"	Means new build residential accommodation on the Property in buildings ranging between 2 and 4 storeys in height comprising 88 residential units (11 x 1 bed, 49 x 2 bed, 20 x 3 bed and 8 x 4 bed) and

retention and conversion of "old Town Hall" into residential accommodation comprising 5 flats (4 x 2 bed and 1 x 1 bed) (total 93 residential units), provision of 111 car parking spaces.

**"Development
Expenditure"**

means the Building Cost, finance arrangement fees, Finance Interest Costs, marketing fees at 3.74% of Development Revenue, legal fees for the sale of the Open Market Units and legal fees for the contract with the Approved Investment Partner for the construction and transfer of the Affordable Dwellings, section 106 costs & fees, Developer's Profit (Private) at 20%, Developer's Profit (Affordable) at 6% (as set out in the Viability Reassessment Pro Forma), Acquisition Costs, Mayoral CIL, overage payments and any other costs properly incurred and anticipated to be incurred in relation to the Development as at the date of the Viability Reassessment in acquiring, assembling, constructing and carrying out the Development and selling the Open Market Dwellings which for the avoidance of doubt shall include the cost of furniture packages offered as incentives to the purchasers of the Open Market Dwellings and recommendation fees in relation to the sale of the Open Market Dwellings PROVIDED THAT such fees and furniture package costs are incurred in lieu of or in addition to Sales Incentives

"Development Revenue"

means the capital value of all income plus all disposal proceeds, capital payments and receipts received by or anticipated to be received as at the date of the Viability Reassessment by the Owner or by others on its behalf after the date of this Agreement in respect of the Development or any part or parts thereof together with the revenue received by the Owner

pursuant to the contract for the construction and transfer of the Affordable Dwellings with the Approved Investment Partner (but which does not include any revenues received by the Approved Investment Partner), the revenue from the Open Market Dwellings, the Entryphone and Satellite Revenue and the Capitalised Ground Rents PROVIDED THAT the value of Sales Incentives granted by the Owner to purchasers of the Open Market Dwellings are deducted from the calculation of the disposal revenues and the net disposal revenues following such deduction are used for the purposes of the Viability Reassessment

"the East London Sub Region Nominations Protocol"

the protocol set out in Schedule 17 to this Agreement or such other nominations agreement and/or protocol as may exist from time to time

"Education Contribution"

the sum of £331,260.00 (three hundred and thirty one thousand two hundred and sixty pounds) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) toward the cost of providing additional primary and secondary school places in the Council's area the need for which arises due to the Development

"the Employment Contribution"

means the sum of £50,000 (fifty thousand pounds) payable by the Owner to the Council in accordance with the terms of this Agreement

"Entryphone and Satellite Revenue"

means the fixed sum of £10,065 included in the Viability Submission and set out in the Viability Reassessment Pro Forma

"Finance Interest Costs"	means interest calculated at 7% of negative balances in the development cashflow from the purchase of the Property in December 2011 until Occupation of the final Residential Unit
"Fixed Expenditure"	means the sums specified in the Viability Reassessment Pro Forma being the Acquisition Costs, Mayoral CIL and the Affordable Housing Contribution
"Fixed Revenues"	means the sums specified in the Viability Reassessment Pro Forma being the Entryphone and Satellite Revenues and the Capitalised Ground Rents
"GLA"	means the Greater London Authority established by the Greater London Authority Act 1999 responsible for London's (1) economic development and wealth creation, (2) social development and (3) environmental improvement and for the delivery and funding of Affordable Housing in London and whose headquarters is currently at City Hall, The Queen's Walk, London, SE1 2AA or any successor body or organisation
"Healthcare Contribution"	the sum of £25,740.00 (twenty five thousand seven hundred and forty pounds) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) toward the provision of primary health care facilities and services in the vicinity of the Development
"Homes and Communities Agency" ("HCA")	means the government body established by the Housing and Regeneration Act 2008 responsible for the delivery and funding of housing and regeneration

projects in England whose London address is currently at Maple House 149 Tottenham Court Road London W1T 7BN (formerly known as the Housing Corporation) or any successor body or organisation including the GLA

“Housing Allocation Scheme”

the Council’s scheme, policy, protocol or method for allocating housing to those on the Council’s housing waiting list and/or in need of priority housing

“Indexation”

means the recalculation of any payment specified in this Agreement by applying the following formula:

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Agreement in pounds Sterling

B = the figure shown in the RPIX for the month last published prior to the date the payment is made under this Agreement

C = the figure shown in the RPIX for the month immediately prior to the date of this Agreement

D = the recalculation sum in pounds sterling payable under this Agreement

or if the RPIX shall cease to be compiled or the formula shall otherwise be incapable of operation then such other equivalent means as shall be proposed by the Owner (and approved by the Council in writing) to recalculate such payment with the intent that it shall have like effect

"Index-Linked/Linking"	means the adjustment of those payments expressly specified to be "Index Linked" due under this Agreement as a result of Indexation from the date of this Agreement to the date of actual payment
"Implementation Date"	the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and references to "Implementation" and "Implement" shall be construed accordingly
"Land Value Benchmark Figure"	£4,600,000.00 (four million six hundred thousand pounds)
"Last 10 Open Market Dwellings"	the final 10 Open Market Dwellings (out of 74) to be constructed as part of the Development as shown yellow on drawings FNH397_P_103 Rev A, FNH397_P_107 Rev A and FNH397_P_105 Rev A edged annexed at Schedule 21
"Mayoral CIL"	means the fixed sum of £127,280 (plus indexation) included in the Viability Submission and set out in the Viability Reassessment Pro Forma

"Monitoring Charge"	means the sum of £20,547.00 (twenty thousand five hundred and forty seven pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) towards the Council's costs of monitoring this Agreement
"Motor Vehicle"	any mechanically propelled vehicles including a motor cycle intended or adapted for use on a road and/or highway
"Non-Standard Transaction"	means: <ul style="list-style-type: none"> (a) a transaction the effect of which is to reduce private residential revenue in the Viability Reassessment Pro Forma, or (b) a disposal of Open Market Dwelling(s) that is not an arm's length third party bona fide transaction
"Occupation Date"	the first date when any part of the Development is occupied (which for the avoidance of doubt shall not include occupation for the purposes of construction, fitting out or marketing the Development) and the terms "Occupy" "Occupied" and "Occupation" shall be construed accordingly
"Open Market Dwelling(s)"	the 74 Residential Units comprising: <ul style="list-style-type: none"> (i) 8 x 1 bedroom (2 people) Residential Units; (ii) 47 x 2 bedroom (32 x 3 people and 15 x 4 people) Residential Units; (iii) 12 x 3 bedroom (2 x 3 people, 2 x 4 people and 8 x 6 people) Residential Units; (v) 7 x 4 bedroom (6 x 7 people and 1 x 6 people) Residential Units;

as shown uncoloured on the Residential Drawings
and to be used and occupied exclusively as open
market housing

"Open Market Dwelling
Sales" means the sale of the freehold interest or grant of any
leasehold interest in respect of the Open Market
Dwellings

"Owner's Certificate" means a certificate provided by a director of the
Owner confirming the accuracy of the Building Cost
and fees incurred and the anticipated Building Cost
and fees that have yet to be incurred as at the date
of the Viability Reassessment and the Building Cost
shall be set out in the same format as the Benchmark
Building Cost such director owing a duty of care to
the Council for the accuracy of the information
supplied

"the Parties" the parties to this Agreement and their successors in
title

"Payment Notice" means the notice of payment substantially in the form
annexed to this Agreement at Schedule 14

"Plan 1" means the plan attached at Schedule 15

"the Planning Permission " the notice of permission (a draft copy of which is
annexed to this Agreement at Schedule 20) to be
issued by the Council pursuant to the Application and

	the date of grant of the Planning Permission shall be the date on which the notice is issued
"Person or Persons"	includes a body of persons corporate or unincorporated
"Practically Completed"	means completed so that the Residential Units: <ul style="list-style-type: none"> (a) can be used for the purpose and operate in the manner for which they were designed and (b) are available for Occupation
"the Property"	the land and premises known as the former Chingford Municipal Offices, 16 The Ridgeway, Chingford, E4 6PS shown edged in red on Plan 1 and registered at HM Land Registry under title number AGL248363
"Referral Arrangements with Metropolitan Home Ownership"	the referral arrangements in place with the Council's FIRST STEPS agent Metropolitan Home Ownership as set out in the Local HomeBuy Agent Service Level Agreement (Schedule 18) or such other agreement as may exist from time to time
"the Residential Drawings"	the drawings numbered FNH397_P_102 Rev A, FNH397_P_103 Rev A, FNH397_P_104 Rev A and FNH397_P_105 Rev A annexed to this Agreement at Schedule 16
"Residential Occupier"	any tenant or individual occupier or leasehold owner of a Residential Unit and for the avoidance of doubt the term "Residential Occupier" excludes any business or corporate body or bodies

Handwritten signatures and notes:
 [Signature]
 [Signature]
 or freehold.
 [Signature]
 JWS

"Residents Parking Bay"	a parking place designated by the Council by an Order under the Road Traffic Regulation Act 1984 and under the Road Traffic Act 1991 or other relevant legislation for use by residents of the locality in which the Development is situated which for the avoidance of doubt does not include the car parking spaces to be provided as part of the Development
"Residents Parking Permit"	a parking permit issued by the Council under Section 45(2) of the Road Traffic Regulation Act 1984 allowing a Motor Vehicle to park in a Residents Parking Bay
"Residential Units"	means the Affordable Dwellings and the Open Market Dwellings and where the context so admits any individual Residential Unit
"RPIX"	the All Items Index of Retail Prices issued by the Office for National Statistics
"S106 Monitoring Officer"	an officer of the Council from time to time allocated to deal with and monitor all planning obligations pursuant to Section 106 of the Act and to whom all notices correspondence approvals etc. must be sent in the manner prescribed at clause 12 hereof
"Sales Incentives"	incentives granted to purchasers of the Open Market Dwellings by the Owner as certified in a Completion Certificate
"Section 278 Agreement"	means a highways agreement between the Owner and the Council to be entered into pursuant to section 278 of the Highways Act 1980 for highway works which the Council shall require (acting reasonably) to be carried out solely as a result of and necessitated

by the Development which shall include, but not be limited to:

1. In respect of College Gardens, the formation of the proposed access to the Property and associated footway works along the boundary of the Development on College Gardens (including the provision of a replacement tree);
2. In respect of The Ridgway, plane off and resurfacing at the corner with St Egberts Way, new kerb and footway works for the improvements to the accessibility of the bus stops, footway resurfacing along the boundary of the Property, stopping up the existing access to the Property nearest St Egberts; and
3. In respect of St Egbert's, provision of new footway and associated works along the boundary of the Development, new access for the Development, renewal of white lines at St Egberts and Ridgway junction.

with the detail of such works (and any associated traffic regulation orders) and plan to be agreed between the Council and the Owner as part of the highways agreement;

"Shared Ownership Housing"

Affordable Housing available on a shared ownership basis (in accordance with the Shared Ownership Housing Scheme) to occupiers who at the commencement of their occupancy are in need of shared ownership housing in terms set out in Paragraph 3.61 of the London Plan and the Mayor of London's Housing Strategy published February 2010 as revised from time to time

"Shared Ownership
Housing Scheme"

the programme whereby an Approved Investment Partner ensures the Shared Ownership Housing Units are occupied on a shared ownership basis with an initial equity share of not less than 25 per cent and an average of no more than 40 per cent and a rent level of no higher than 2.75 per cent (per annum) on the retained equity such levels to be retained in perpetuity (subject to the right of any tenant to acquire outright ownership through stair casing) and such rents to be increased in accordance with Homes and Communities Agency guidance PROVIDED THAT in any case where the Owner has not been able to secure a tenant for a Shared Ownership Housing Unit after 3 months of marketing such Shared Ownership Housing Unit the requirement to achieve an average equity share of 40 per cent shall not apply PROVIDED THAT: (1) a copy of the marketing strategy is submitted to the Council's Head of Strategic Housing and (2) notice is given to the Council's Head of Strategic Housing advising of the date of the commencement of the marketing period

"the Shared Ownership
Housing Units"

the 8 Residential Units comprising:

- (i) 2 x 1 bedroom Residential Units (2 people)
- (ii) 4 x 2 bedroom Residential Units (3 people)
- (iii) 2 x 3 bedroom Residential Units (5 people)

as shown coloured yellow on the Residential Drawings and to be used and occupied exclusively as Shared Ownership Housing subject to paragraphs 4 and 5 of Schedule 3

"Specialist"	means the Council's financial adviser, quantity surveyor and/or accountant or such other adviser as may be appointed from time to time by the Council for the purposes of advising the Council in relation to viability assessments and reassessments
"Sub-Region"	the London Boroughs of Hackney, Waltham Forest, Newham, Redbridge, Tower Hamlets, Barking & Dagenham, Havering and the Corporation of London and their successor bodies
"Surplus"	means the figure calculated as follows: the deduction of the Development Expenditure from the Development Revenue with the amount by which the resulting figure exceeds the Land Value Benchmark Figure is the Surplus
"Surplus Excess"	means the sum by which the Surplus exceeds twice the amount of the Deferred Contribution (Index Linked)
"Town Hall Works"	the works of conversion to make the old Town Hall building ready for use and occupation as 5 Residential Units forming part of the Development
"Travel Plan"	a plan setting out a package of measures to be adopted by the Owner in the management of the Property as approved by the Council incorporating the elements set out in the Travel Plan Criteria that are applicable to the Development with a view to inter alia reducing trips in motor vehicles by occupiers and users of the entire Development and promoting the use of environmentally friendly transport
"Travel Plan Contribution"	means the sum of £3,000.00 (three thousand

pounds) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council (in the event of receipt) towards the Council's monitoring of the Travel Plan

"Travel Plan Criteria" the standards and criteria set out in Schedule 9 to this Agreement

"Viability Reassessment" means the reassessment of the viability of the Development which shall be produced in accordance with the Viability Reassessment Pro Forma and the procedures contained in Schedules 10 & 11

"Viability Reassessment Pro Forma" the form of viability reassessment set out in Schedule 12

"Viability Submission" means the viability assessment of the Development submitted to the Council by the Owner on 2 July 2012

"Wheelchair Units" the 8 Residential Units shown with a red 'WC' on the Residential Drawings

"Working Days" means any Monday to Friday (other than bank and public holidays)

NOW THIS DEED WITNESSETH as follows:-

3. Enabling Powers & Interpretation

3.1 This Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011, section 16 of the Greater London Council (General Powers) Act 1974 and any other enabling powers

- 3.2 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 3.3 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.4 A reference to a company shall include any company, corporate or other body corporate, wherever and however incorporated or established.
- 3.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 3.6 Any reference to a specific statute or statutes includes any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.7 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.8 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 3.9 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually
- 3.10 Where any approval consent agreement or the like is required to be given pursuant to the terms of this Agreement it shall be in writing and shall not be unreasonably withheld or delayed
- 3.11 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or

unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement

4 Application of Section 106 of the Act

4.1 It is hereby agreed that the covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and that the Council is the local planning authority by whom they may be enforced.

4.2 Both the positive and restrictive covenants and undertakings herein on the part of the Owner are entered into with the intent that the same shall be enforceable not only against the Owner but also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Owner an interest or estate created after the date hereof in the Property or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person
PROVIDED THAT

- (a) No person shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Property or after parting with that part of the Property to which the breach relates but without prejudice to its liability for any subsisting breach arising prior to parting with such interest
- (b) The obligations contained in this Agreement shall not be binding upon the Residential Occupiers or any mortgagee or chargee of such Residential Occupier or any person deriving title from them save for the provisions contained in Schedule 2; and
- (c) The obligations contained in this Agreement shall not be binding upon any and all statutory undertakers who have as part of their statutory undertaking any interest in the Property nor the mortgagee or chargee of any such persons not any receiver appointed by a mortgagee or chargee of any such persons; and

- (d) An Approved Investment Partner owning all or any part of the Affordable Dwellings shall not at any time be liable as a successor in title to the Owner for any of the obligations set out in this Agreement insofar as those obligations do not relate to the Affordable Dwellings.

5. Conditionality

- 5.1 This Agreement is conditional upon the grant of the Planning Permission and the Implementation of the Development save for the provisions of Clauses 10.1 and 11.1 which shall come into effect immediately upon completion of this Agreement

6. Obligations

- 6.1 The Owner hereby covenants with the Council:

- (a) To observe and perform the covenants, restrictions and obligations contained in Schedules 1, 2, 3, 5, 6, 7, 8, 10 and 11;
- (b) Not to Implement, cause or permit Implementation of the Development until the Commencement Notice has been given to the Council;
- (c) To permit the Council and its authorised employees and agents upon giving not less than 5 Working Days written notice access to the Property at all reasonable times for the purposes of verifying whether or not any obligations arising hereunder have been performed or observed;
- (d) To comply with any reasonable requests of the Council to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein;

- 6.2 The Council hereby covenants with the Owner to comply with the obligations on its part contained in this Agreement

7. Indexation of Contributions

- 7.1 Save for the Affordable Housing Contribution, the Contributions and the Deferred Contribution shall be Index Linked.

8. Interest

- 8.1 Where any sum or amount payable to the Council under this Agreement has not been paid by the date on which it is due, the Owner shall pay the Council interest at the rate of 4% above the base rate of the Barclays Bank plc from time to time in force on that amount for the period from the due date to (and including) the date of payment.

9. Value Added Tax ("VAT")

- 9.1 All considerations given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof.
- 9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

10. Local Land Charge

- 10.1 This Agreement shall be registered by the Council as a Local Land Charge.
- 10.2 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

11. Payment of Council's Costs

- 11.1 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing and settling this Agreement in the sum of £3,000.00 (three thousand pounds) prior to the date of this Agreement.

12. Notices

- 12.1 Any notice (or other communication) required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice (or communication) at its address as set out below:

Council: S106 Monitoring Officer (Planning Department), London Borough of Waltham Forest, Waltham Forest Town Hall Complex, Forest Road, Walthamstow, London, E17 4JF

Owner: Director of Planning at the address set out on page 3 of this Agreement;

or as otherwise specified by the relevant person by notice in writing to each other person.

- 12.2 Any notice served pursuant to the Agreement shall cite the number and clause of the Agreement to which it relates and in the case of notice to the Council the planning reference number for the Development

13. Disputes

- 13.1 If any dispute arises out of this Agreement, the dispute shall be referred to an expert with a minimum of 10 years' experience in the relevant field ("the Expert") appointed jointly by the parties but in default of such agreement such appointment shall be made by the President for the time being of the Royal Institution of Chartered Surveyors

- 13.2 The procedure to be followed in any dispute resolution shall be that written submissions shall be exchanged between the Parties and served upon the Expert within 15 Working Days of the appointment of the Expert with any response to be exchanged between the Parties and served upon the Expert within 10 Working Days of the date that the first submissions were served upon the Expert.
- 13.3 The Expert shall make his findings within 40 Working Days of his appointment.
- 13.4 The findings of the Expert including any finding in respect of costs shall be binding upon all Parties and costs shall be at the discretion of the Expert.
- 13.5 The provisions of this clause shall not affect the ability of the Parties to seek recourse through the Courts.
- 13.6 This Clause 13 shall not apply in relation to Schedule 10 (Viability Reassessment) as that Schedule has its own dispute resolution provisions

14. Determination of the Agreement

- 14.1 This Agreement (with the exception of Clause 11) shall cease to have effect if (insofar only as it has not already been complied with) the Planning Permission expires, is varied or revoked other than at the request of the Owner or is quashed following a successful legal challenge
- 14.2 The cessation of this Agreement shall not affect the liability of any party for any earlier breach

15. Ownership

- 15.1 The Owner warrants that, save for the Mortgagee, no person other than the Owner has any legal or equitable interest in the Property and whose consent is necessary to make this Agreement binding on the Property and all estates and interests therein PROVIDED THAT as at the date hereof the Owner has entered into a conditional contract for the construction and transfer of the Affordable Dwellings with Islington and Shoreditch Housing Association as the

Approved Investment Partner and the Parties acknowledge that in the event Islington and Shoreditch Housing Association acquires an interest in part of the Property as the Approved Investment Partner pursuant to such contract, it will be the Owner's successor in title in respect of the Affordable Dwellings.

15.2 Until the covenants, restrictions and obligations in this Agreement have been complied with, the Owner will give to the Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

(a) the name and address of the person to whom the disposition was made; and

(b) the nature and extent of the interest disposed of

PROVIDED THAT the Owner shall not be required to provide such details to the Council of any such disposition to a Residential Occupier

16. Mortgagee

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Property shall be bound by the restrictions and obligations contained in this Agreement and that the security of the Mortgagee's charge over the Property shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless it takes possession of the Property (or part thereof), as mortgagee in possession, pursuant to the terms of its charge (and then only if it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt it shall not in any event be liable for any breach of the Agreement and arising prior to it becoming a mortgagee in possession of the Property (or part thereof) regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the Property (or part thereof)) in which case it too will be bound by the restrictions and obligations contained in this Agreement as if it were a person deriving title from the Owner.

17. No fetter of discretion

Nothing contained or implied in this Agreement shall prejudice, fetter, restrict or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice, fetter, restrict or affect any provisions, rights, powers, discretions, responsibilities, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, discretions, responsibilities, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

18. Future Permissions

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission.

19. Waiver

The failure by any party to enforce at any time or for any period any one or more of the terms and/or obligations of this Agreement including those contained in any Schedule or appendix hereto shall not be a waiver of those terms and/or obligations or of the right at any time subsequently to enforce all term of this Agreement.

20. Third Party Rights

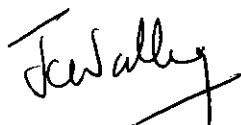
The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any Person not a party to it.

21. Governing Law

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

In Witness whereof the Parties hereto have executed this Agreement as a deed on the day and year first before written

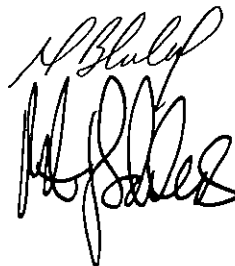
6/5/3/4
SEALED with the COMMON SEAL of the
MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF WALTHAM FOREST
in the presence of :



)
)
)
)
Authorised Signatory

AD OF COMMERCIAL LAW FOR
AD OF LEGAL AND DEMOCRATIC SERVICES

EXECUTED as a deed by
FAIRVIEW NEW HOMES (CHASE ROAD)
LIMITED acting by a director and its secretary
or two directors



)
)
)
)
Director

Secretary/Director

EXECUTED as a deed BY
LLOYDS TSB BANK PLC Acting
by its duly authorised attorney:

)
)
)
)


Attorney:

before this witness:

Witness Signature: *Nima Rodrigues*

Witness Full Name: NIMA RODRIGUES

Witness Address: 150 FOUNTAINBRIDGE

EDINBURGH EH3 9PE

SCHEDULE 1

THE CONTRIBUTIONS

- 1.1 On or prior to the Implementation Date to pay to the Council 50% of the Contributions
- 1.2 On or prior to Practical Completion of the 45th Residential Unit to pay to the Council the remaining 50% of the Contributions
- 1.3 Not to:
 - i. Implement, cause or permit Implementation of the Development until such time as the Council has received 50% of the Contributions;
 - ii. Occupy or cause or permit the Occupation of 45 Residential Units until such time as the Council has received the remaining 50% of the Contributions;
- 1.4 To give notice to the Council once 45 of the Residential Units have been Practically Completed
- 1.5 Once the Viability Reassessment has been submitted and agreed or determined pursuant to Schedule 10 of this Agreement to pay to the Council the Affordable Housing Contribution
- 1.6 Subject to paragraphs 1.12 and 1.13 of Schedule 10, not to Occupy or cause or permit the Occupation of the Last 10 Open Market Dwellings unless and until the Viability Reassessment has been agreed or determined and one of the events contained in Paragraphs 1.8, 1.9 or 1.10 of Schedule 10 have taken place AND the Council has received in full the Affordable Housing Contribution
- 1.7 All Contributions shall be accompanied by the Payment Notice

- 1.8 The Council covenants to spend the Contributions and the Deferred Contribution (if paid) in accordance with the provisions of this Agreement and to return to the payer any sums that remain unexpended or not committed for expenditure within 5 years of the date of receipt by the Council of such payment and for the avoidance of doubt, the Contributions and the Deferred Contribution (if paid) or any part thereof shall be deemed to have been committed if the Council has entered into any contract or given any written undertaking (whether enforceable at law or otherwise) the performance or fulfilment of which will require the Council to expend funds in the future.
- 1.9 The Council covenants to spend the Affordable Housing Contribution and any Surplus Excess on the provision of Affordable Housing and to return to the payer any sums that remain unexpended or not committed for expenditure within 5 years of the date of receipt by the Council of such payment and for the avoidance of doubt, the Affordable Housing Contribution or any part thereof shall be deemed to have been committed if the Council has entered into any contract or given any written undertaking (whether enforceable at law or otherwise) the performance or fulfilment of which will require the Council to expend funds in the future.
- 1.10 On or prior to the Implementation Date to pay to the Council the Employment Contribution
- 1.11 Not to Implement, cause or permit Implementation of the Development until such time as the Council has received the Employment Contribution
- 1.12 The Council covenants to pay the Employment Contribution to REDS 10 Trading or to any other recognised local labour initiatives on the basis that REDS 10 Trading (or such other recognised local labour initiative) will spend it on providing 182 weeks of training placements for unemployed adult residents seeking to pursue a career in construction

with priority being given to residents in the vicinity of the Property and the Council shall liaise with the Owner to ascertain whether any such placements can be provided as part of the construction of the Development

SCHEDULE 2

CAR FREE HOUSING

1.1 In the event that a Controlled Parking Zone is introduced in an area that includes the Development before the last Residential Unit is transferred to a Residential Occupier the Owner shall procure that with effect from the date upon which the Controlled Parking Zone is effective ("the Date of Extension") the following restrictions are included in any freehold, leasehold, option, licence or other disposal occurring after the Date of Extension of a Residential Unit to any Residential Occupier:

- (a) No Residential Unit shall be used and/or occupied by any Residential Occupier who has at the date of such occupation or use a Residents Parking Permit unless such Residential Occupier is or becomes entitled to be a holder of a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 and **Provided That** the Residential Occupier has first notified the S106 Monitoring Officer in writing of such entitlement and has provided proof thereof if required to do so by the Council.
- (b) Each new Residential Occupier must be informed prior to Occupying any Residential Unit of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to a Residents Parking Permit.

1.2 The Owner for itself and its successors in title to the Property hereby acknowledge that the provisions in Paragraph 1.1 of this Schedule 2 above will from the Date of Extension remain for the duration of the Controlled Parking Zone and hereby waive all rights and entitlement (if

any) on the part of the Owner and its successors in title to a Residents Parking Permit in respect of the Residential Units (unless a Residential Occupier becomes entitled to a disabled person's badge as aforesaid) for the duration of the Controlled Parking Zone.

SCHEDULE 3

AFFORDABLE HOUSING

- 1.1 To provide:
 - 1.1.1 19 of the Residential Units as Affordable Housing; and
 - 1.1.2 the Affordable Dwellings in accordance with the Affordable Housing Mix
 - 1.1.3 74 of the Residential Units as Open Market Dwellings
 - 1.1.4 the Affordable Dwellings in accordance with the Affordable Housing Terms;
- 1.2 Subject to Implementation occurring to commence all works of construction and fitting out necessary to make the Affordable Dwellings suitable for occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workman like manner using good quality materials in accordance with the contract entered into between the Owner and the Approved Investment Partner.
- 1.3 Subject to paragraphs 4 and 5 of this Schedule not to Occupy nor cause or permit the Occupation of and/or use or cause or permit the use of the Affordable Dwellings other than as Affordable Housing by a Residential Occupier of an Approved Investment Partner.
- 1.4 Not to Occupy, suffer or permit Occupation and or use suffer or permit the use of more than 50% of the Open Market Dwellings unless and until a contract for the construction and transfer of 11 of the Affordable Rented Units and 4 of the Shared Ownership Housing Units has been entered into with the Approved Investment Partner.

- 1.5 Not to Occupy, suffer or permit Occupation and or use suffer or permit the use of more than 75% of the Open Market Dwellings unless and until a contract for the construction and transfer of the remaining 4 Shared Ownership Housing Units has been entered into with the Approved Investment Partner
- 1.6 Not to Occupy nor cause or permit the Occupation of and/or use or cause or permit the use of the Affordable Dwellings until the Approved Investment Provider has entered into a nominations agreement with the Council in the form as annexed at Schedule 19

IT IS HEREBY AGREED AND DECLARED by the Parties hereto that:-

The Affordable Housing Terms

2. Each transfer of an Affordable Dwelling shall:
 - 2.1 be with full title guarantee of a freehold estate or a leasehold estate for a minimum of 125 years;
 - 2.2 provide for (i) access, (ii) foul and surface water sewers and (iii) service systems for water, gas, electricity and telecommunications which shall be linked in each case to the estate roads and service systems to be constructed and laid as part of the remainder of the Development and connected ultimately to highways and sewers maintainable at the public expense;
 - 2.3 contain a covenant by the Approved Investment Partner not to amalgamate or sub-divide the Affordable Dwellings so that the Affordable Housing Mix will be maintained by the Approved Investment Partner;
 - 2.4 provide for the Shared Ownership Housing Units to be constructed to the mandatory design and performance

requirements and standards set out in the Homes and Communities Agency's Design and Quality Standards April 2007 save to the extent such requirements and/or standards would conflict with the Planning Permission;

- 2.5 provide for the Affordable Rented Units to be constructed to the design and performance requirements and standards set by GLA as at the date of this Agreement save to the extent such requirements and/or standards would conflict with the Planning Permission
 - 2.6 subject to Paragraphs 4.1, 4.3, 4.4, 4.5 and 5-7 in respect of an Affordable Rented Unit contain a covenant that the Affordable Rented Unit is only to be used, occupied and retained in perpetuity for no purpose other than for the provision of Affordable Rented Units
 - 2.7 subject to Paragraphs 4.2, 4.3, 4.4, 4.5 and 5-7 below, in respect of a Shared Ownership Housing Unit contain a covenant that the Shared Ownership Housing Unit is only to be used, occupied and retained in perpetuity for no purpose other than for the provision of Shared Ownership Housing for occupation by purchasers in accordance with a shared ownership lease
- 3 The Approved Investment Partner entitled to the reversion in respect of any Shared Ownership Housing Unit lease shall only nominate under the terms of that lease to a party who at the time of the nomination is in need of Shared Ownership Housing in terms set out in paragraph 3.61 of the London Plan and the Mayor of London's Housing Strategy published February 2010 as revised from time to time.

Situations when the Obligations will not Apply or will Cease to Apply

- 4 The obligations contained in Paragraphs 1.1 to 1.6 (inclusive) and 2 and 3 of this Schedule 3 shall not be binding:

Right to Acquire

- 4.1 on a tenant (or a successor in title to such tenant) of an Affordable Rented Unit where that occupant has exercised a statutory right under the Housing Act 1996 to acquire the whole of the freehold or whole of the leasehold estate of the Affordable Rented Unit or its mortgagee or any person deriving title therefrom

Shared Ownership Housing

- 4.2 on a tenant (or a successor in title to such a tenant) who is granted a shared ownership lease of a Shared Ownership Housing Unit who subsequently exercises a right to purchase 100% of the equity (i.e. staircase up to 100%) or its mortgagee or any person deriving title therefrom

Mortgagee in Possession

- 4.3 on any mortgagee or chargee of the Approved Investment Partner who obtains possession of the Affordable Dwellings under any loan or mortgage or finance agreement covering any of the Affordable Dwellings; or
- 4.4 on any receiver appointed under such loan mortgage or finance agreement who obtains possession of and who subsequently sells the Affordable Dwellings; or
- 4.5 on any person deriving title from an Approved Investment Partner or such mortgagee or chargee as a consequence of the sale of an Affordable Dwelling by a mortgagee or chargee or a receiver (including an administrative receiver) or manager having been

appointed by any mortgagee or chargee of the Approved Investment Partner.

Mortgagees General

5 In the event that:

- 5.1 legal proceedings are initiated or steps are taken against the Approved Investment Partner for its winding up; or
- 5.2 the Approved Investment Partner defaults or breaches any of the terms of any loan or mortgage agreement with its mortgagee or chargee;

so that the mortgagee chargee or receiver ("the Lender") wishes to exercise its power of sale then the Lender of the Approved Investment Partner shall serve a written notice ("a Default Notice") upon the Council notifying the Council of the default and/or breach and/or legal proceedings.

6 In the event of service of a Default Notice pursuant to Paragraph 5 of this Schedule 3 the Council shall be at liberty for a period of one (1) calendar month following receipt of the Default Notice to seek to identify another Approved Investment Partner to agree to take a transfer of the Affordable Dwellings

7 If, following the receipt of a Default Notice:

- 7.1 a period of one (1) calendar month ("the Specified Period") has elapsed and the Council has failed to identify another Approved Investment Partner to agree to take a transfer of the relevant Affordable Dwellings; or
- 7.2 the Approved Investment Partner identified by the Council within the Specified Period fails to exchange contracts for the transfer of

the relevant Affordable Dwellings within two (2) calendar months of the end of the Specified Period;

then should the Lender take possession of the relevant Affordable Dwellings the Lender shall be released in accordance with Paragraph 4 of this Schedule 3.

SCHEDULE 4

NOT USED

SCHEDULE 5

WHEELCHAIR UNITS

1. To advertise the Wheelchair Units to wheelchair users over a period of 6 months
2. To consult the Council's Senior Occupational Therapist in Housing on the content and wording of the advertisements referred to in paragraph 1 of this Schedule 5
3. Publications to include:
 - The London Metro
 - The Waltham Forest Guardian
 - Disability Now
 - www.accessible-property.org.uk
 - www.mobilityfriendlyhomes.co.uk

SCHEDULE 6

SECTION 278 AGREEMENT

1.1 Not to:

- (i) Occupy or cause or permit the Occupation of the Development or any part thereof;
- (ii) Use or cause or permit the use of the Development or any part thereof;

until such time as the Owner has entered into the Section 278 Agreement with the Council

SCHEDULE 7

THE TOWN HALL WORKS

- 1.1 To give notice to the Council once 70 of the Residential Units have been Practically Completed
- 1.2 To give notice to the Council once 74 of the Residential Units have been Practically Completed
- 1.3 To complete the Town Hall Works prior to 75 of the Residential Units being Practically Completed
- 1.4 Not to Occupy or cause or permit the Occupation of more than 74 of the Residential Units unless and until the Town Hall Works have been completed and the 5 Residential Units forming part of that development are ready for Occupation

SCHEDULE 8

TRAVEL PLAN

- 1.1 Within 9 (nine) months of the Implementation Date to submit and thereafter resubmit to the Council the Travel Plan until such time as the same is approved in writing by the Council ("the Approved Travel Plan")
- 1.2 Following the Council's approval pursuant to Paragraph 1.1 of this Schedule 8 to implement the Approved Travel Plan to the reasonable satisfaction of the Council;
- 1.3 Not to Occupy, suffer or permit Occupation of the Development unless/until the travel measures set out in the Approved Travel Plan have been commissioned and implemented in accordance with the Approved Travel Plan AND in the event of non-compliance with this paragraph the Owner shall upon notice from the Council forthwith take any steps reasonably and properly required by the Council to remedy such non-compliance

SCHEDULE 9

TRAVEL PLAN CRITERIA

1. The overarching purpose of any Travel Plan should be to influence behaviour change towards sustainable modes of travel, deliveries and servicing.
2. Transport for London's guidance 'Travel planning for new development in London: incorporating deliveries and servicing' offers advice on the preparation, implementation and monitoring of travel plans for new developments and can be found here:

http://www.lscpl.org.uk/newwaytoplan/travelplan_guidance.html

Essential Components of the Travel Plan

3. The essential elements of a Travel Plan according to the guidance are as follows:
 - **Objectives** – the key goals that the travel plan seeks to achieve.
 - **Targets** – a means of measuring the achievement of objectives.
 - **Measures** – the initiatives that will be introduced to achieve the targets set. This should also include remedial measures and actions that will be taken if the travel plan targets are not met.
 - **Management** – it is essential that there is an individual identified to oversee implementation, monitoring and review of the travel plan. Adequate resourcing should be made with an appropriate amount of the individual's time allocated.
 - **Action plan** – a programme for delivering the measures and a means of communicating the above to site users, including identification of who will oversee delivery of the travel plan.
 - **Securing** – it is important that the travel plan is effectively secured through legal mechanisms.

- **Monitoring and review** – must be undertaken to ensure the travel plan achieves the targets it set out to achieve.

Travel Plan Structure

4. According to the guidance all travel plans should be prepared in accordance with the Attribute assessment criteria and should be in-line with the following structure:

Cover page

- Development name (if known), or site name and occupier name (if known)
- Indication of the level (strategic/local) and form (full/framework) of the travel plan
- Full address of the development
- Contact details for the person responsible for preparing the travel plan

Context

- Brief description of the nature and context of the proposed development
- Key parameters by land use class eg number of units, floor area, number of cycle and car parking spaces etc
- Details of associated travel including number of staff expected on site, numbers of visitors, residents and key details about delivery and servicing activity
- The scope of the travel plan eg employees, visitors, those making deliveries and servicing the site
- Benefits of a travel plan for the site – including benefits of managing deliveries and servicing
- Outline timescales for occupation and details of any phasing of development, if appropriate
- A statement of case, showing that the developer recognises the value of sustainable transport (including management of deliveries and servicing)
- Provide an overview of the structure of the travel plan document

Policy and best practice

- National policy eg PPG13
- Regional policy eg London Plan, MTS, London Freight Plan, Electric Vehicle Delivery Plan
- Local policy such as reference to borough-specific documents such as the Local Implementation Plan and relevant documents from the LDF (or Unitary Development Plan (UDP))
- Refer to DfT best practice guidance and TfL's travel plan guidance

Site assessment

- Location of the development including boundaries and access points for all transport modes including delivery/servicing access points
- Key infrastructure which will be delivered in the surrounding area as part of the development
- Include maps and site plans where useful
- Pedestrian and cycling access points and routes to the site, to local transport and other amenities
- Details of Pedestrian Environmental Review audit results (where applicable)
- Quality and availability of infrastructure around the site – consider how amenable local roads are to walking and cycling
- Details of infrastructure to be introduced as part of the development
 - cycle and pedestrian routes, cycle parking
 - Organisational policies and other initiatives that will influence active travel and public transport use eg tax-free cycle purchase schemes, cycle training, season ticket loans etc
 - Car-related initiatives in place eg car park management policies, car clubs in the local area, car sharing, pool cars etc
 - Public transport facilities and services including routes, hours of operation and service frequency
 - Quality of stops and stations including lighting, cleanliness, cover, realtime information etc
- Site design and operational considerations in respect to deliveries and servicing including:
 - >> The type of vehicles (including their dimensions – weight, height, length) accessing the development
 - >> Access routes for delivery and servicing vehicles to/from the site (including access to residential properties)
 - >> On-site locations of where deliveries and servicing will take place
 - >> If no on-site loading provision is provided, off-site loading should be described including the location, proximity to the site and the hours of operation
 - >> Locations of bin stores and collection points on site
 - >> Swept path analyses of delivery and servicing vehicles accessing the site and delivery and servicing areas
 - >> Other design factors including security, noise abatement and any special delivery or goods handling arrangements eg cash movements
 - >> Frequency and times of deliveries/servicing
 - >> Process for storing, segregating and removing waste
 - >> Management of deliveries and servicing with particular emphasis on safe processes and procedures

- Initiatives/work practices that reduce the need to travel or encourage sustainable travel eg home working, teleconferencing, flexi-working, sustainable business policy
- Amenities/facilities in the surrounding area that can be reached by walking/cycling, reducing the need to travel by car eg at lunchtime
- Provision for disabled site users

Travel survey

- Details of iTRACE (TRAVL where applicable) compliant surveys undertaken (including method, date, response rate and key findings)
- If not yet undertaken, details as to when surveys will be undertaken (usually within six months of occupation or at 75 per cent occupancy)
- Baseline travel data based on travel survey data if there are existing site users or (where there are no existing site users) on the transport assessment or comparator data drawn from TRAVL, TRICS or census data
- Baseline delivery and servicing related trip data based on TRAVL/TRICS (where there are no existing deliveries/servicing trips made to the site)

Objectives

- Encourage sustainable movement of people and goods to and from the site
- Cover a range of outcomes eg environmental, health etc
- Relevant to desired policy outcomes within:
 - >> The respective borough's transport and spatial development strategies (eg Local Implementation Plan, LDF, any relevant Development Plan documents and/or supplementary planning documents)
 - >> The London Plan and MTS
- Relevant and linked to the specific context of the site

Targets

- Should be SMART, specific, measurable, attainable, realistic and time bound, and should link to the objectives of the travel plan
- Should enable measurement of success in achieving objectives of the travel plan
- Enable enforcement
- A (minimum) five-year time frame, with interim targets at year three of implementation (year one, three and five targets are required as a minimum. For larger developments, an extended monitoring period maybe required and targets may need to be set beyond five years)

Travel plan management

- Identify a travel plan coordinator including their name where possible. In the absence of this, a nominated point of contact should be provided
- Clear roles and responsibilities (which may include management of deliveries and servicing, provision of personal travel planning advice, preparation and distribution of welcome packs, travel plan monitoring etc)
- Identify any other individuals involved in managing all initiatives (including deliveries and servicing)
- Identify how much time will be dedicated by the coordinator to the travel plan
- Clear marketing activities and who will carry these out

Measures

- Clearly contribute to achieving the targets and meeting the objectives of the travel plan and are specific to the site
- Take account of future propensity for walking and cycling (active travel)
- Physical and infrastructure provision eg secure bike parking, showering and changing facilities, safe and accessible routes
- Consider organisational and other policies that encourage walking and cycling eg cycle mileage for business travel
- Initiatives encouraging use of public transport (bus, light rail, National Rail and Underground) for example season cards/fares
- If appropriate, discuss initiatives in advance with TfL
- Details of how parking will be managed and restrained eg permits or charge
- Disability Discrimination Act compliant minimum of one disabled parking bay and how this will be enforced
- Car sharing, car clubs, cycle clubs and cycle vouchers and provision of electric vehicle charge points where appropriate
- Working practices which reduce the need to travel including homeworking, teleworking etc or an appropriate business travel policy
- Managing deliveries through:
 - >> Provision of safe and legal loading facilities
 - >> Use of vehicle booking systems
 - >> Methods to inform suppliers of delivery location eg maps
 - >> Scheduling deliveries outside of peak hours
 - >> Maximising out of hours deliveries
- Supply chain operations
 - >> Review and plan delivery, servicing and collection frequencies to reduce trips
 - >> Waste management and how different waste streams will be handled and collected
 - >> Co-operative working with other building tenants eg preferred suppliers
 - >> Policy to promote more sustainable deliveries by couriers

- Procurement processes
 - >> Use of operators who can demonstrate best practice such as those within the FORS or equivalent scheme

Monitoring and review

- Clear monitoring programme detailing what and how frequently surveys will be undertaken, by whom, and how they will be reported. This should include monitoring of delivery and servicing targets
- Whether iTRACE compliant or TRAVL surveys will be undertaken
- Year one (baseline), three and five monitoring periods

Action plan

- Include short/medium/long-term actions and timescales and responsibilities
- Concise and focused on delivery and implementation of the travel plan
- All measures/initiatives to be introduced should be summarised, including marketing activities and those relating to monitoring

Securing and enforcement

- Measures in place to ensure the travel plan is implemented effectively eg sanctions, S106 Agreement etc
- Relevant excerpts from the S106 agreement or planning conditions and how the travel plan is consistent with them

Travel plan funding

How the travel plan will be funded:

- A budget for each element of travel plan delivery including marketing and measures
- How the travel plan coordinator and the monitoring programme will be funded

SCHEDULE 10
VIABILITY REASSESSMENT

- 1.1 Subject to paragraphs 1.12 and 1.13, the Owner shall not Occupy or cause or permit Occupation of the Last 10 Open Market Dwellings until a full and up to date Viability Reassessment has been submitted to and agreed by the Council in writing and one of events contained in Paragraphs 1.8, 1.9 or 1.10 of this Schedule 10 has taken place
- 1.2 The Owner shall at any time after 54 of the Open Market Dwellings have been Practically Completed produce the Viability Reassessment in accordance with the objectives and principles set out in Schedule 11 and in the form of the Viability Reassessment Pro Forma set out in Schedule 12 and submit it to the Council's Head of Development Management and Head of Strategic Housing PROVIDED THAT the 15 Working Days referred to in Paragraph 1.4 of this Schedule 10 shall not begin to run until Open Market Dwelling Sales have occurred in relation to 54 Open Market Dwellings (save for the Last 10 Open Market Dwellings) and the Completion Certificates, the Owner's Certificate and the Completion Statement have been submitted to the Council.
- 1.3 At the time the Viability Reassessment is submitted to the Council the Owner shall pay to the Council the sum of £2,000 (two thousand pounds) in respect of the cost of the Specialist and in the event that the sum of £2,000 (two thousand pounds) is not sufficient to cover the reasonable and proper cost of the Specialist then the Owner shall pay such reasonable additional sum to the Council within 21 Working Days of receiving a written request from the Council to do so
- 1.4 Within 15 Working Days of receipt of the Viability Reassessment, the Council acting reasonably shall notify the Owner in writing that it agrees or disagrees with the Viability Reassessment and in the latter case, specifying its reasons, the alternative amount of any Surplus and

Surplus Excess and its justification for such alternative amount and for the avoidance of doubt the Council shall not be entitled to disagree with the amount of the Land value Benchmark Figure, the Fixed Expenditure, the Fixed Revenues or disagree with the percentages used to calculate the Developer's Profit (Private) or Developer's Profit (Affordable) or percentages used to calculate the preliminaries, overheads, the Finance Interest Costs, marketing fees and consultants' fees or the formula used to calculate the legal fees as part of the Building Cost as shown on the Viability Reassessment Pro Forma and/or set out in the definition of "Development Expenditure"

- 1.5 In the event, as part of the submitted Viability Reassessment, Building Cost is greater or less than the Benchmark Building Cost Figure by 5%, the Council shall be entitled to make reasonable written detailed requests for further information to justify the Building Cost pursuant to paragraph 1.9 of Schedule 11, receipt of such a request will stop the 15 Working Day period referred to in paragraph 1.4 above and it will begin again on the receipt of the requested information and the Owner shall respond promptly and fully and in writing to such requests.
- 1.6 The procedure set out in paragraph 1.5 above shall be repeated until the Council has all the information it reasonably needs in order to agree or disagree the Viability Reassessment and the Council shall forthwith following receipt of such information serve written notice on the Owner that the Viability Reassessment is agreed or not agreed and in the event that the Council has failed to serve such notice within 15 Working Days of receipt of such information the Viability Reassessment shall be deemed to be approved for the purposes of this Agreement.
- 1.7 Any dispute on the Viability Reassessment shall be referred to an expert appointed jointly by the parties ("the Expert"). If the Council has made requests for further information pursuant to paragraphs 1.5 and 1.6 of this Schedule 10 the Owner may on the expiry of 20 Working Days from the date of first submission of the Viability Reassessment to

the Council treat the Viability Reassessment as not agreed and refer it to the Expert for determination. If the Parties cannot agree on the Expert's identity the Expert shall be appointed on either party's request (in the event of a dispute relating to building contract sums) by the Royal Institution of Chartered Surveyors or in the event of a dispute relating to finance costs or marketing costs or any other financial issues by the Royal Institute of Chartered Accountants. The costs of the expert determination shall be payable by the parties in the proportions determined by the Expert (or if the Expert makes no direction, then equally) and the Expert shall be required to make his determination within 20 Working Days of his appointment.

- 1.8 Where the agreed Viability Reassessment determines or the Expert determines that there is a Deficit the remaining provisions of this Schedule 10 and the restriction on Occupation of the Last 10 Open Market Dwellings above shall cease to apply PROVIDED THAT the Affordable Housing Contribution has also been paid to the Council pursuant to paragraphs 1.5 and 1.6 of Schedule 1 to this Agreement.
- 1.9 Where the agreed Viability Reassessment determines or the Expert determines that there is a Surplus which is less than £170,148.00 (one hundred and seventy thousand one hundred and forty eight pounds) the Owner shall pay 50% of the Surplus to the Council towards the Deferred Contribution and upon receipt by the Council of such monies and provided the Affordable Housing Contribution has been received in full the remaining provisions of this Schedule 10 and the restriction on Occupation of the Last 10 Open Market Dwellings above shall cease to apply
- 1.10 Where the agreed Viability Reassessment determines or the Expert determines that there is a Surplus over £170,148.00 (one hundred and seventy thousand one hundred and forty eight pounds) the Owner shall pay the Deferred Contribution to the Council and pay 50% of the Surplus Excess to the Council to be spent on the provision of

Affordable Housing in the Council's administrative area and the Owner shall be released from the restriction on Occupation of the Last 10 Open Market Dwellings when 50% of the Surplus Excess, the Deferred Contribution and the Affordable Housing Contribution have been received in full by the Council

- 1.11 The policy shortfall for this Development has been calculated by reference to the table below in monetary terms as £3,265,045.00 (three million two hundred and sixty five thousand and forty five pounds) and for the avoidance of doubt £3,350,119.00 (three million three hundred and fifty thousand, one hundred and nineteen pounds) less the Affordable Housing Contribution will be the maximum amount payable to the Council under this Schedule 10

	Affordable Rent			Shared Ownership		
	Proposed	Policy Compliant	Shortfall	Proposed	Policy Compliant	Shortfall
1 beds	2	3	1	2	3	1
2 beds	2	20	18	4	15	11
3 beds	6	2	-4	2	0	-2
4 beds plus	1	3	2	0	0	0
Totals	11	28	17	8	18	10

- 1.12 The Owner may at any time following the referral to an Expert pursuant to Paragraph 1.7 of this Schedule 10 request from the Council a written statement of the aspects of the Viability Reassessment that the Council disputes and on receipt of such the Owner and the Council acting reasonably shall use reasonable endeavours to agree in writing a number of Open Market Dwellings, the revenues from which equate to a reasonable estimate of the value of any aspect of the Viability Reassessment not in dispute and which can be released from the restriction on Occupation referred to in Paragraph 1.1 of this Schedule 10 and paragraph 1.5 of Schedule 1

- 1.13 As an alternative to Paragraph 1.12 of this Schedule 10 the Owner may at any time following the referral to an Expert pursuant to Paragraph

1.7 pay the maximum disputed sum into an escrow account whereupon the restriction on Occupation of the Last 10 Open Market Dwellings above shall cease to apply PROVIDED THAT the Affordable Housing Contribution has also been paid to the Council and for the avoidance of doubt the monies contained in the escrow account shall be distributed in accordance with the decision of the Expert

- 1.14 The Owner may at any time with the Council's written consent submit a revised plan showing the Last 10 Open Market Dwellings PROVIDED ALWAYS that the number of Open Market Dwellings shown on that plan does not change

SCHEDULE 11

THE PREPARATION OF THE VIABILITY REASSESSMENT

- 1.1 The Owner covenants to carry out the Viability Reassessment required pursuant to Schedule 10 in accordance with the relevant provisions set out in this Schedule 11.
- 1.2 The Owner covenants in relation to the preparation of the Viability Reassessment:
- (a) all Development Expenditure included shall be reasonably and properly attributable to the Development and be reasonably and properly incurred or reasonably and properly anticipated to be incurred; and
 - (b) where there is a Non-Standard Transaction the figure to be included in the Viability Reassessment as a Development Revenue will be the open market value of the Open Market Dwelling(s) concerned as at the date of the transaction
- 1.3 The Viability Reassessment shall be produced in the form of the Viability Reassessment Pro Forma set out in Schedule 12

Completion Certificates

- 1.4 The Owner shall be responsible for conducting all Open Market Dwellings Sales and shall procure that the Owner's solicitors prepare the sales contracts and transfers and/or leases in accordance with this Agreement
- 1.5 The Owner's solicitors shall provide the Council with Completion Certificates in relation to the Open Market Dwellings and in respect of such Open Market Dwellings where contracts have not been exchanged the Owner shall provide within the Viability Reassessment for such Open Market Dwellings estimates of the relevant figures.

- 1.6 Where there is Deferred Equity the following shall be assumed for the purposes of the Viability Reassessment:

The actual payment made by the purchaser after deferment will be entered into the Viability Reassessment. That part of the purchase price which is deferred will be reduced by 35% (which will be written off as risk) and then adjusted by multiplication with the present value of a pound formula $=1/((1+i)^n)$ where "i" is the base rate of Barclays Bank Plc at the time of the Viability Reassessment and "n" is the number of years between the date of the Viability Reassessment and the date upon which the deferred equity is to be repaid (being the Deferred Equity) before being entered into the Viability Reassessment

- 1.7 The Owner's solicitors shall owe a duty of care to the Council in respect of producing the Completion Certificates and Completion Statement

Provision of additional information

- 1.8 The Owner shall maintain records of the Development Expenditure in good faith in accordance with normal established and consistent accounting principles and all financial reporting standards and other appropriate regulations as may reasonably be applied in each case applied in a normal fair and consistent manner and the Surplus or other calculation under this Agreement shall be similarly so accounted calculated operated and made.
- 1.9 In the event, as part of the submitted Viability Reassessment, Building Cost is greater or less than the Benchmark Building Cost Figure by 5%, the following provisions shall apply:
- 1.9.1 The Council shall be entitled (and the Owner shall afford the Council full opportunity) to reasonably request that the Owner provides for

inspection supporting evidence in respect of such excess or deficit in the Building Cost

- 1.9.2 If the Council reasonably considers that any part or parts of the Building Cost have been improperly debited, then the Council shall be entitled to require the Owner to provide proper evidence that such of the Building Cost have been properly incurred and debited

Confidentiality

- 1.10 The Council agrees not to disclose any Confidential Information received from the Owner unless required to do so by law and in the event of receipt of any request to disclose any Confidential information, the Council shall notify the Owner and shall take into account any representations received by the Owner before responding to such request.
- 1.11 Paragraph 1.10 of this Schedule 11 does not apply to authorised employees or other agents of the Council who need to have access to the Confidential Information for the purpose of carrying out their duties solely in connection with the assessment of the Viability Reassessment

SCHEDULE 12

Viability Reassessment Pro Forma

DEVELOPMENT REVENUE

1. Open Market Revenues (including Balconies, patios and Sharer Flats and Parking)	
2. Entryphone & Satellite Revenue	10,065
3. Capitalised Ground Rents	307,000
4. Total Open Market Revenues (ie 1+2+3)	
5. Affordable Dwellings Revenue	
Total Revenue	

DEVELOPMENT EXPENDITURE

6. Building Cost	
Consultants' Fees @ 9.8% of 6	
Financial arrangement fee	
Finance Interest Costs @ 7%	
Marketing Fees @3.74% of 4	
Legal Fees for the Open Market Dwellings @695 per unit	
Legal Fees for the contract with the Approved Investment Partner	
Section 106 Costs & Fees	
Developer's Profit (Private) @ 20% of 4	
Developer's Profit (Affordable) @ 6% of 5	
Acquisition Costs	270,000
Mayoral CIL	127,280
Affordable Housing Contribution	200,000

Overage Payment

Total Expenditure	
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Total Revenue less Total Expenditure

Deduct Land Value Benchmark Figure	4,600,000
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Surplus/Deficit

SCHEDULE 13

Benchmark Building Cost

SECTION A

DESCRIPTION	COST
DEMOLITION AND SITE CLEARANCE	£353,000
ROADS AND SEWERS	£198,690
FLATS	£3,944,076
HOUSES	£1,702,897
REFURBISHMENT OF TOWN HALL	£772,037
UNDERCROFT PARKING	£483,703
EXTERNALS	£174,005
SITE SPECIFIC COSTS & ABNORMALS	£1,266,393

SUB TOTAL	£8,894,801
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SECTION B

PRELIMINARIES @ 11.6%	£1,031,797
INSURANCE	£3,127

NHBC	£53,898
AFTERSALES & MAINTENANCE	£111,587
LAND MAINTENANCE & SECURITY	£1,419

SUB TOTAL	£10,096,629
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OVERHEADS @ 9%	908,697
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GRAND TOTAL	£11,005,326
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SCHEDULE 14

THE PAYMENT NOTICE

Payment Notice

To be sent to Head of Legal & Democratic Services
London Borough of Waltham Forest
Waltham Forest Town Hall Complex
Forest Road
London, E17 4JF
Ref:

Payment of monies due under a Section 106 Agreement

Please answer all the questions.

1. Payment made by/on behalf of:

.....

2. Land at:

.....

3. Agreement Dated:

.....

4. Obligation in Agreement:

a. Clause no:

b. Contribution towards:

c. Amount of contribution Due:.....

d. Date upon which contribution is due:

e. Indexation completed and added state amount:.....

f. Interest added because payment late and state amount:

g. Amount of Contribution enclosed:.....

Official Use:

Date R'cd:

Notifications out:

Interest/ Indexation Outstanding:

Confirmation of R'ct out:

SCHEDULE 15

PLAN 1

