

DATED

*16th March*

2023

**(1) THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF RICHMOND UPON THAMES**

**and**

**(2) RICHMOND HOUSING PARTNERSHIP LIMITED**

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**AGREEMENT**

under section 106 Town and Country Planning Act 1990 relating to the development of land at Ham Close, part of Woodville Day Centre Site and St Richards Church of England Primary School Site, Ham Village Green, Car Park to East of Ham Village Green for residential; community and leisure facilities; parking; amenity, leisure and playspace; and highway and pedestrian works (22/1442/FUL)

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**SHOOSMITHS**

Ref. M-00995701

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APPENDIX 1 PLANS

APPENDIX 2 CONFIRMATORY DEED

THIS AGREEMENT is made on

16<sup>th</sup> March

2023

**BETWEEN:-**

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham TW1 3BZ (the "**Council**"); and

**RICHMOND HOUSING PARTNERSHIP LIMITED** (Registered Society No 30939R) whose registered address is at 8 Waldegrave Road Teddington Middlesex TW11 8GT (the "**Owner**")

**WHEREAS:-**

- a. By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the local planning authority by whom the planning obligations hereby created are enforceable.
- b. The Owner is the registered freehold proprietor with absolute title of all that land registered at HM Land Registry under title numbers TGL190588, TGL190590 and TGL190592.
- c. The Council is the registered freehold proprietor with possessory title of all that land registered at HM Land Registry under title number TGL537710.
- d. The Council is the registered freehold proprietor with absolute title of all that land registered at HM Land Registry under title numbers TGL312337, TGL312351, SY311936 and TGL312265, and the proprietor of unregistered freehold land on part of Ham Village Green which is in the process of being registered at HM Land Registry.
- e. Hill Residential Limited has submitted the Application to the Council for the Development of the Land.
- f. The Owner will be transferred the Council's freehold interest in the Land in phases and grant a building lease to Hill Residential Limited on such transfer. The Owner and Hill Residential Limited will therefore enter into a Confirmatory Deed prior to the commencement of any Phase to ensure that the relevant interests in that part of the Land are bound by the obligations in this Agreement.
- g. The Council having regard to the provisions of the London Plan 2021, the London Borough of Richmond Upon Thames Local Plan 2018 ("Local Plan"), the National Planning Policy Framework 2021 and to all other material considerations, resolved at its meeting of the Council's Planning Committee held on 14<sup>th</sup> December 2022 and following execution of this Agreement to grant the Planning Permission.
- h. The Council, in its capacity as local planning authority, has confirmed that all the obligations and covenants included in this Agreement are compliant with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
- i. The parties by entering into this Agreement do so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants, agreements, conditions and stipulations hereinafter contained.

## 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:-

**"1974 Act"** means the Greater London Council (General Powers) Act 1974

**"1990 Act"** means the Town and Country Planning Act 1990

**"Accredited Car Club Provider"** means an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment therefore

**"Additional Affordable Housing Dwellings"** means the 21 London Affordable Rent Dwellings, 10 London Living Rent Dwellings and 47 Shared Ownership Dwellings to be provided as part of the Development in addition to the Replacement Social Rent Dwellings

**"Affordable Housing"** means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework 2021 (or any successor policy or legislation in respect of affordable housing)

**"Affordable Housing Dwellings"** means the 221 Dwellings to be provided as Affordable Housing consisting of:

- 143 Replacement Social Rent Dwellings, comprising 93 no x 1 bed units, 37 no x 2 bed units, and 13 no x 3 bed units (totalling 350 habitable rooms);
- a minimum of 21 London Affordable Rent Dwellings, comprising 8 no x 1 bed units, 10 no x 2 bed units, and 3 no x 3 bed units (totalling 58 habitable rooms);
- 10 London Living Rent Dwellings, comprising 7 no x 1 bed units and 3 no x 2 bed units (totalling 23 habitable rooms); and
- 47 Shared Ownership Dwellings, comprising 22 no x 1 bed units, 24 no

x 2 bed units, and 1 no x 3 bed units  
(totalling 120 habitable rooms),

together with rights and easements over the Land to provide access to the Dwelling and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including car parking in accordance with Schedule 4 and "Affordable Housing Dwellings" shall be construed accordingly

**"Affordable Housing Plan"**

means a plan showing the location, tenure, size and mix of the Affordable Housing Dwellings within the Development as well as design and layout of the Wheelchair User Units (in consultation with the Council's Specialist Housing Occupational Therapist) to be approved by the Council in accordance with the provisions of Schedule 4

**"Application"**

means the full planning application (reference number 22/1442/FUL) validated by the Council on 9 June 2022 for the Development

**"Approved Framework Travel Plan"**

means the framework travel plan prepared by Velocity Transport Planning dated April 2022 approved by the Council

**"Building"**

means any building to be constructed as part of the Development

**"Business Occupier"**

means any occupier of any business or commercial premises within the Development

**"Business Parking Permit"**

means a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a Motor Vehicle to park in a Business Parking Bay

**"Business Parking Bay"**

means a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by businesses in the locality on which the Development is situate

**"Carbon Offset Contribution"**

means the sum of £517,978.00 to be applied toward the Council's carbon off-setting fund for

	projects within the London Borough of Richmond Upon Thames
<b>“Car Club”</b>	means a local club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them for the period of the booking
<b>“Car Plus”</b>	means the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs
<b>“Code of Considerate Practice”</b>	means the code developed by the Consideration Constructors Scheme
<b>“Commencement Date”</b>	means the date on which Commencement of Development occurs
<b>“Commencement of Development”</b>	means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act <b>SAVE THAT</b> (apart from in respect of Schedule 8 Part 1 and Schedule 11) the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, utilities investigations and diversions, archaeological investigations remediation works, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing to the site boundary and <b>“Commence Development”</b> and <b>“Commencement”</b> shall be construed accordingly
<b>“Community Centre”</b>	means a permanent three storey building to be constructed on the Land in accordance with the Community Centre Specification
<b>“Community Centre Specification”</b>	means a specification to show how the building will be laid and fitted out (including construction, materials and internal specifications and facilities) to facilitate community uses in accordance with the Planning Permission
<b>“Community Liaison Officer”</b>	means a person who is appointed to communicate and coordinate activities

between a developer and the community in accordance with the Community Liaison Plan

**“Community Liaison Plan”**

means a plan which identifies how communication with the community will be managed and programmed throughout the construction period. The plan will provide the context and scope for liaising with the community

**“Considerate Constructors Scheme”**

means the national initiative set up by the construction industry which involves the registration and monitoring of construction sites in accordance with the Code of Considerate Practice

**“CPZ”**

means any controlled parking zone which shall come into force on streets within the 200m of the Development

**“Development”**

means the development of the Land for the demolition of existing buildings on-site and change of use of land within Ham Close, the Woodville Day Centre and St Richards Church of England Primary School and the existing recycling and parking area to the east of Ham Village Green for a phased mixed-use redevelopment comprising: a. 452 residential homes (Class C3) up to 6 storeys (with plant above); b. Community/Leisure Facility (Class F2) of up to 3 storeys in height (with plant above); c. Maker labs (sui generis) of up to 2 storeys; d. Basement car park; e. Provision of on-site cycle, vehicle and servicing parking; f. Provision of amenity space and playspace; g. Site wide landscaping and alterations to Ham Village Green; and h. New pedestrian, vehicle and cycle accesses and internal routes and associated highways works

**“Disabled Persons Badge”**

means a disabled person’s badge issued pursuant to Section 21 of the Chronically Sick and Disabled Person’s Act 1970

**“Dwellings”**

means the residential units that may be built on the Land as part of the Development and **“Dwelling”** shall be construed accordingly

**“Eligible Purchaser”**

means a purchaser or purchasers whose household income at the date of purchasing the relevant Shared Ownership Dwellings does not exceed the relevant upper limit specified in the latest London Plan Annual



**"Eligible Renter"**

Monitoring Report and meets the criteria in the Intermediate Housing Policy Statement

means an existing private or social tenant or tenants without sufficient combined current savings to purchase a home in the local area and whose household income at the date of renting the relevant London Living Rent Dwelling does not exceed the relevant upper limit specified in the latest London Plan Annual Monitoring Report

**"Employment and Skills Plan"**

means a plan to be agreed between the Owner and the Council for the delivery of the Local Employment Agreement, such plan to be broadly in accordance with the template format set out in appendix 2 of the Council's Planning Obligations Supplementary Planning Document (SPD) June 2020

**"Existing Tenant"**

means an existing tenant of the Land who rents a home directly from RHP (or is within a household that rents directly from RHP) who is eligible for a Replacement Social Rent Dwelling in accordance with the Ham Close Customer Offer dated Autumn 2016

**"Expert"**

means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties to this Agreement or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society

**"GLA"**

means the Greater London Authority

**"HDM"**

means the Council's Head of Development Management for the time being or such other person as may be appointed from time to time to carry out that function

**"Healthcare Contribution"**

means the sum of £161,855 to be used by the Council towards improvement to local healthcare infrastructure serving the Development

**"Highways Works"**

means the following works shown on Plan 3, Plan 4 and the plans appended to this Agreement labelled "Explanatory Plan – Phase 1 Southern Highway Works Plan", "Explanatory Plan – Phase 2 Southern

Highway Works Plan" and "Explanatory Plan – Phase 3 Southern Highways Works Plan":

- Creation of an enlarged inset vehicular parking layby (93m x 3m) on the southern side of Woodville Road.
- Creation of 7 x new vehicular crossover accesses on the northern side of Ashburnham Road.
- Relocation of the existing western simple priority bell-mouth access junction on the northern side of Ashburnham Road. The bell-mouth will be tightened to 5m.
- Tightening of the bell-mouth access at the Sheridan Road/Ashburnham Road access junction to 5m.
- The construction of a new simple priority bell-mouth access junction on the northern side of Ashburnham Road north-west of the Ashburnham Road/Mowbray Road junction.
- The tightening of the bell-mouth at the Stuart Road/Woodville Road bell-mouth access junction to 5m.
- All of the bell-mouth access junctions into the site to be fitted with dropped kerbs and tactile paving.
- Traffic management order to enable the Council to install double yellow lines at all of the bell-mouth access junctions into the site.

**"Index"**

means the Consumer Price Index

**"Index Linked"**

means such increase to any sum or sums payable under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment (or calculation as the case may be) based upon the relevant Index last published before the date of this Agreement

**"Intermediate Housing"**

means any Shared Ownership Dwelling or London Living Rent Dwellings developed

<b>"Intermediate Housing Marketing Plan"</b>	<p>means a plan to market the Intermediate Housing demonstrating how:</p> <ul style="list-style-type: none"> <li>(a) priority will be given by the Registered Provider to Eligible Purchasers who comply with the Intermediate Housing Policy Statement for the first three (3) months from the beginning of the marketing and will include a range of prices at which the Shared Ownership Dwellings and London Living Rent Dwellings are to be sold or leased by the Registered Provider in accordance with the affordability criteria outlined within the Intermediate Housing Policy Statement; and</li> <li>(b) the affordability of sales is demonstrated for an average household income as specified within the latest Intermediate Housing Policy Statement as at the date of marketing (subject to the income figures in that statement being reviewed and updated annually); and</li> <li>(c) two thirds of the Shared Ownership Dwellings will be let on incomes below the cap set in the Intermediate Housing Policy Statement (subject to the income figures in that statement being reviewed and updated annually)</li> </ul>
<b>"Intermediate Housing Policy Statement"</b>	means the Council's Intermediate Housing Policy Statement dated 7 June 2022 (subject to any revisions updates or replacements)
<b>"Land"</b>	means all that land situate at Ham Close, Ham Village Green, Car Park To East Of Ham Village Green, And Part Of Woodville Day Centre Site And St Richards Church Of England Primary School Site, Ham shown edged red on Plan 1
<b>"Local Employment Agreement"</b>	means the local employment and skills targets set out in Schedule 8, Part 2 of this Agreement
<b>"London Affordable Rent Dwellings"</b>	means rented housing provided by a Registered Provider that has the same characteristics as social rented housing except that it is not required to be let at Target Rents but is subject to other rent controls that require it to be offered to eligible households in

accordance with Part VI of the Housing Act 1996 at a rent that is:

(a) including service charges, up to 80 per cent of local market rents; and

(b) excluding service charges, no higher than (i) the relevant benchmark rents published by the GLA annually or (ii) if no such benchmark rents have been published by the GLA in the last 12 months, the latest relevant benchmark rents published by the GLA plus any increase permitted under the Rent Standard

**“London Living Rent Dwellings”**

means Affordable Housing Dwellings offered to Eligible Renters provided by a Registered Provider that is required to be offered to eligible renters, with a maximum income of £60,000 per annum, on a time-limited tenancy at rents not exceeding the relevant maximum rents published by the GLA annually and on the basis that average annual housing costs, including rent and service charges must not exceed 28% of the relevant annual gross income upper limit (such 28% being equivalent to 40% of net income, with net income being assumed to be 70% of gross income) or any future definition of “London Living Rent”

**“London Plan Annual Monitoring Report”**

means the monitoring report published annually by the Mayor of London reviewing the progress being made in implementing the policies and addressing the objectives of the London Plan or any replacement GLA guidance or policy

**“Maker Labs”**

means a permanent building to be constructed on the Land in accordance with the Maker Labs Specification for the use by the community for DIY and craft projects

**“Maker Labs Specification”**

means a specification to show how the Maker Labs will be laid and fitted out (including construction, materials and internal specifications and facilities) to facilitate DIY and craft projects for use by the community in accordance with the Planning Permission

**“Monitoring Fee”**

means the sum of £31,808.00 to be paid to the Council towards monitoring the performance of the obligations contained in this Agreement

**"Motor Vehicle"**

means any mechanically propelled vehicles intended or adapted for use on a road and/or highway

**"Nomination Agreement"**

means an agreement to be entered into with the Council for the nomination of persons to the Affordable Housing Dwellings substantially in the same form as the Council's standard nomination agreement (and which must contain a mortgagee exclusion clause in the same form as paragraph 2.2 of Schedule 4 of this Agreement) and which shall provide the Council with nomination rights in respect of 100% of first lets of the Additional Affordable Housing Dwellings and 75% of the relets of the Replacement Social Rent Dwellings and Additional Affordable Housing Dwellings. Where a Replacement Social Rent Dwelling is not used by an Existing Tenant that unit shall be treated as an Additional Affordable Housing Dwelling for the purposes of a nomination agreement

**"Occupation"**

means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operations and **"Occupy"** **"Occupant"** and **"Occupier"** shall be construed accordingly

**"Occupation Date"**

means first Occupation of the first Dwelling

**"Off-site Play Contribution"**

means the sum of £68,644 to be used by the Council for the provision of gym and play equipment and the maintenance of gym and play equipment in the vicinity of the Development which shall include improvements to existing play facilities on Ham Village Green and play provision for the 12+ age group at Riverside Drive play space

**"Open Market Dwelling"**

means those dwellings to be constructed on the Land pursuant to the Planning Permission which are not Affordable Housing Dwellings and which are to be disposed of on the open market

**"Open Space"**

means the informal open space, Playspace, landscaping and any sustainable drainage system (SuDS) to be provided within Ham Close residential estate on the Land shown shaded green on the Plan 2 at Appendix 1 in

**“Open Space Management”**

accordance with the Planning Permission and the Open Space Works Specification

means a scheme to be submitted to and approved in writing by the Council, which identifies:

- (a) the management and maintenance plan for the Open Space, including SuDS (excluding Ham Village Green); and
- (b) the proposed means of funding the ongoing maintenance and management of the Open Space, including SuDS (excluding Ham Village Green)

**“Open Space Works”**

means the works to lay out and construct the Open Space in accordance with the Open Space Works Specification

**“Open Space Works Specification”**

means a specification for the carrying out of the Open Space Works to include details of the timetable for provision, plans, details of layout, earth works, excavations, constructions, drainage, installation of water fountain, and signage to be agreed in writing between the Owner and the Council

**“Owner”**

means the Owner and their successors in title and assigns

**“Phase”**

means a phase of the Development which shall be in accordance with the planning conditions to which the Planning Permission is subject

**“Plan 1”**

means the plan appended to this Agreement at Appendix 1 and labelled ‘Site Location Plan’ (Drawing Number HCR-BPTW-S01-ZZ-DR-A-0100)

**“Plan 2”**

means the plan appended to this Agreement at Appendix 1 and labelled ‘Open Space Management Plan’ (Drawing Number LD-PLN-226)

**“Plan 3”**

means the plan appended to this Agreement at Appendix 1 and labelled ‘General Arrangement Highways Works’ (Drawing Number LD-PLN-210)

**“Plan 4”**

means the plan appended to this Agreement at Appendix 1 and labelled ‘Stopping Up Plan’ (Drawing Number 21-102-T-025)

**“Playspace”**

means the play areas for use by the general public to be provided on the Land as part of the Development

**“Practically Completed”**

means in relation to the Highways Works a provisional certificate has been issued by the Council in accordance with the agreement pursuant to section 278 of the Highways Act 1980 and the Highways Works are in the maintenance period prior to adoption by the Council

**“Protected Tenant”**

means any tenant who:

- a. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Dwelling, or
- b. has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Dwelling, or
- c. was granted a lease of a Shared Ownership Dwelling (or similar arrangement where a share of an Affordable Housing Dwelling is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of an Affordable Housing Dwelling and has subsequently purchased all the remaining shares from the Registered Provider so that the tenant owns the entire Affordable Housing Dwelling

**“Planning Permission”**

means a planning permission to be granted pursuant to the Application

**“Registered Provider”**

means a provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008

**“Rent Standard”**

means any standard set by the Regulator of Social Housing in relation to rent (including any associated explanatory notes, statements or

guidance) from time to time under Section 194 of the Housing and Regeneration Act 2008 pursuant to any then applicable direction

**“Replacement Social Rent Dwellings”**

means the maximum of 143 replacement Affordable Housing Dwellings to be provided to Existing Tenants of the Ham Close Estate as part of the Development on the same rent structure and tenancy rights as existing in accordance with the Ham Close Customer Offer but on reletting shall be let as social rented housing in accordance with Target Rents and the Rent Standard

**“Reportable Unit”**

means a Reportable Unit (Energy Centre), Reportable Unit (Residential) or Reportable Unit (Non-Residential)

**“Reportable Unit (Energy Centre)”**

means either a connection to a third-party district heating network, a self-contained energy centre serving multiple residential/non-residential properties (within the Land) or a self-contained energy system serving multiple residential properties (within a Building)

**“Reportable Unit (Residential)”**

means an individual Building of five or more flats or a group of five or more houses

**“Reportable Unit (Non-Residential)”**

means a Building with a single occupier/tenant or a Building with multiple tenants

**“Residential Occupier”**

means any tenant or individual occupier or leasehold owner of a residential unit of the Development (except for any residential occupiers of the Land at the date of this Agreement) and for the avoidance of doubt the term “Residential Occupiers”:

(i) shall be construed accordingly; and

(ii) excludes any business or corporate body or bodies

**“Residents Parking Permit”**

means a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a Motor Vehicle to park in a Residents Parking Bay

**“Residents Parking Bay”**

means a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road



Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents of the locality on which the Development is situated

**"Residential Travel Plan"**

means the travel plan to be submitted and approved by the Council in accordance with this Agreement and which shall be based on the principles of the Approved Framework Travel Plan

**"Shared Ownership Dwelling"**

means housing offered to Eligible Purchasers to be occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the Housing and Regeneration Act 2008 (or any amended or replacement provision) where the shared ownership lessee for the time being has the right to carry out staircasing and dispose of the unit on the open market and on the basis that:

(a) each Shared Ownership Dwelling shall be let in accordance with the latest Intermediate Housing Policy Statement;

(b) two thirds of the Shared Ownership Dwellings that are affordable at gross household income of the cap set in the Intermediate Housing Policy Statement (currently £50,000) PROVIDED THAT this restriction shall apply only to the first letting of each Shared Ownership Dwelling and where the Owner or Registered Provider cannot secure a let by an Eligible Purchaser within the first three months of the Shared Ownership Dwelling being marketed the Owner or Registered Provider and Council may agree to increase the income limits where it can be demonstrated that reasonable endeavours in accordance with the Intermediate Housing Marketing Plan have been used to market the relevant dwelling; and

(c) the remaining third affordable to those on household incomes up to the latest GLA intermediate housing threshold set out in the London Plan Annual Monitoring Report (currently £90,000 per annum) PROVIDED THAT such criteria shall be increased

		periodically according to the relevant income figures set out in the London Plan Annual Monitoring Report or Intermediate Housing Policy Statement (as applicable) and "Shared Ownership Lease" and "Shared Ownership Lessee" shall be construed accordingly
<b>"Southern Phase 1 Highways Works"</b>		means at the Sheridan Road/Ashburnham Road existing access junction to: Tighten the bell-mouth access to 5m, reinstate footpath at interface with development, entrance relocated and rationalised, tactile paving to be installed at crossing points
<b>"Target Rents"</b>		means rents for social rented housing conforming with the pattern produced by the rents formula set out in the Rent Guidance and subject to the limit on rent changes and rent caps set out in 'Guidance on Rents for Social Housing and the Direction on the Rent Standard 2020' issued by the Ministry of Housing Communities and Local Government in April 2020 therein and subject to indexation as permitted by the Rent Standard or Rent Guidance from time to time
<b>"Traffic Management Administration Costs"</b>	<b>Order</b>	Means the sum of £2,961 to administer a Traffic Management Order to enable the installation of double yellow lines at all the bell-mouth access junctions into the site to reduce the risk of unsafe parking
<b>"Travel Plan Co-ordinator"</b>		means a travel plan co-ordinator to be appointed by the Owner and approved in writing by the HDM in relation to the Residential Travel Plan
<b>"Travel Plan Monitoring Contribution"</b>		means the sum of £5,000 to be used by the Council to cover the costs of monitoring the implementation the Residential Travel Plan
<b>"Tree Replacement Contribution"</b>		means the sum of £174,450 to be used by the Council to provide replacement tree planting in the vicinity of the Development
<b>"Village Green Contribution"</b>		means the sum of £23,266 to be used by the Council towards improvements to Ham Village Green, to include new paths, a buffer zone around the community centre and landscaping
<b>"Wheelchair User Units"</b>		means Affordable Housing Dwellings to be constructed to Building Regulation

requirements M4(3)(2) in accordance with the Planning Permission Provided That any Replacement Social Rent Dwellings or London Affordable Rent Dwellings shall need to be delivered to Building Regulation requirements M4 (3) 2 b standard and any for Intermediate Housing to M4(3) 2 a standard

**“Working Day”**

means any day except Saturday, Sunday and any bank or public holiday

1.2 Where the context so requires:-

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;
- 1.2.2 references to any party or body in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor Local Planning Authority exercising planning powers under the 1990 Act;
- 1.2.3 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.4 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;
- 1.2.5 any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;
- 1.2.6 references to Clauses, paragraphs, and Schedules are references to clauses, paragraphs, and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement;
- 1.2.7 the headings and contents list are for reference only and shall not affect construction.

**2 OPERATIVE PROVISIONS**

- 2.1 This Agreement is a deed made pursuant to Section 106 of the 1990 Act.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner.
- 2.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972, Section 16 of the 1974 Act and Sections 1 to 8 of the Localism Act 2011 and all other enabling powers.

3 **CONDITIONALITY**

Clause 5.1 below is conditional upon: -

- 3.1 the grant of the Planning Permission; and
- 3.2 the Commencement of Development (save for any pre-Commencement obligations).

4 **LAND NOT BOUND BY THIS AGREEMENT AT THE DATE HEREOF**

- 4.1 The Owner covenants with the Council that if and to the extent that they shall acquire any freehold or leasehold and / or any equitable interest in respect of any part of or interest in the Land not already bound by the obligations in this Agreement, then they shall:

- 4.1.1 give notice to the Council; and

- 4.1.2 within 14 days enter into and deliver to the Council an executed Deed substantially in the form of the Confirmatory Deed as attached at Appendix 2 (with all relevant requisite details accurately entered) so as to bind and make such interests subject to the planning obligations contained in this Agreement (in so far as they relate to such interests and / or parts of the Land and remain to be observed, performed and/or complied with),

unless otherwise agreed in writing by the Council in accordance with clause 4.2.

- 4.2 The Council hereby grants approval to the Owner so as to exclude the need for them to bind the following estates and interests in any part of the Land prior to Commencement of the relevant Phase of the Development:

- 4.2.1 The Council's estates and interests included in the relevant Phase of the Development if and to the extent that the Owner shall demonstrate to the Council's reasonable satisfaction that they are in the process of preparing to Commence and carry out the relevant Phase of the Development on that part of the Land pursuant to a development agreement with the Council;

- 4.2.2 Any operational land of statutory undertakers (and highways land and structures unless and to the extent that any such highway comprising such land or structure is to be extinguished under a highways stopping up closure or diversion order);

- 4.2.3 Any other minor or marginal estate or interest in the Land which it is agreed in writing by the Council can be excluded from the obligation to bind the Land in the relevant Phase without in any way compromising or otherwise undermining the future enforceability of this Agreement in the public interest and in accordance with the Council's relevant statutory duties;

- 4.2.4 Any existing occupational leasehold titles that are acquired prior to Commencement.

- 4.3 As soon as reasonably practical after any request to do so, the Council will use reasonable endeavours to issue a notice to the Owner as to whether or not it agrees that any particular estate or interest qualified for exclusion under sub-clause 4.2.3.

- 4.4 Subject to clause 4.2 and unless otherwise agreed by the Council, the Owner shall not Commence Development on any Phase (or part thereof) unless and until the Owner has:

- 4.4.1 provided written evidence to confirm to the Council's satisfaction that all material interests in the land comprised in that Phase (or part thereof) are bound by the terms of this Agreement; and
- 4.4.2 where appropriate, a Confirmatory Deed that has been signed by all parties that hold a material interest in that Phase has been completed in respect of that Phase.

## **5 PLANNING OBLIGATIONS**

- 5.1 From the date ascertained pursuant to Clause 3 above the Owner hereby covenants with the Council that the Land shall be subject to the restrictions and provisions regulating the Development and use thereof specified in Schedules 1 to 11 of this Agreement.
- 5.2 The Council hereby covenants with the Owner to comply with the obligations contained in Schedule 12 of this Agreement.

## **6 MISCELLANEOUS**

- 6.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement: -
  - 6.1.1 occurring after they have parted with their interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
  - 6.1.2 if he/she/them/they shall be an owner-occupier or tenant of any of the Dwellings (or a mortgagee of an individual Dwelling lending money to such owner-occupier or tenant) SAVE THAT the provisions of paragraph 1 of Schedule 1 and paragraph 2.1 of Schedule 4 shall bind an owner-occupier or tenant of any Affordable Housing Dwelling;
  - 6.1.3 if it is a statutory undertaker which has an interest in any part of the Land for the purposes of its undertaking;
  - 6.1.4 which require actions to be undertaken on land outside their ownership or control.
- 6.2 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 6.3 This Agreement is a Local Land Charge registrable by the Council in the Council's Register of Local Land Charges immediately on completion thereof.
- 6.4 Within 56 (fifty-six) days of a request from the Owner the Council will certify whether or not an obligation under this Agreement has been satisfied and if not the steps that are required to be taken in order to secure its satisfaction provided that where such obligation is an ongoing obligation this clause shall not apply.
- 6.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 6.6 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without

the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

- 6.7 If pursuant to Clause 6.6 this Agreement shall terminate and cease to have effect the Council shall upon request remove any entry relating to this Agreement from the Register of Local Land Charges.
- 6.8 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 6.9 In the event that an application is made pursuant to section 73 of the 1990 Act (or section 73B of the 1990 Act as may so be amended by the Levelling-up and Regeneration Bill) for an amendment to the Planning Permission and planning permission is granted in respect of the application references to Planning Permission in this Agreement shall include the new planning permission granted pursuant to section 73 of the 1990 Act (or section 73B of the 1990 Act as may so be amended by the Levelling-up and Regeneration Bill) and this Agreement shall apply to and remain in full force in respect of both the original planning permission and the new planning permission without the need for a further agreement to be entered into pursuant to section 106 of the 1990 Act.
- 6.10 If any provision in this Agreement shall be held to be void invalid illegal or unenforceable this shall not affect the operation validity legality and enforceability of any other provision of this Agreement.
- 6.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted after the date of this Agreement.
- 6.12 Nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and its rights powers 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.
- 6.13 It is acknowledged and declared that this deed has been entered into by the Owner with the intent that the planning obligation shall be binding on the land and that the security of a mortgage/charge over the land shall take effect subject to this deed provided that any mortgagee shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable for any pre-existing breach.

## **7 NOTIFICATION**

- 7.1 The Owner covenants to provide written notification to the HDM fourteen days prior to the Commencement of Development and a further written notice of actual Commencement of Development within seven (7) days of occurrence of the same.
- 7.2 All notices, requests and demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address (which may include an e-mail address) as the party to whom the notices, requests, demands or other written communication is to be given or made shall

from time to time notify in writing to the other parties as its address for the purposes of this Clause 7):-

7.2.1 to the Council care of HDM at the address shown on page 1 of this Agreement quoting the Application reference number 22/1442/FUL;

7.2.2 to the Owner at its address shown on page 1 of this Agreement.

## 8 **THIRD PARTIES**

No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this Clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

## 9 **WAIVER**

9.1 No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants, terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## 10 **LEGAL COSTS AND MONITORING FEE**

10.1 The Owner shall pay to the Council on completion of this Agreement:

10.1.1 its reasonable legal fees; and

10.1.2 the Monitoring Fee.

## 11 **OWNERSHIP**

The Owner covenants with the Council to give the Council immediate written notice of any change in ownership of any of their interests in the Land occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan **SAVE THAT** this clause 11 shall not relate to the sale of any individual Dwelling constructed pursuant to the Planning Permission or any disposal to a statutory undertaker.

## 12 **INDEXATION**

The Carbon Offset Contribution, Healthcare Contribution, Off-site Play Contribution, Tree Replacement Contribution, Village Green Contribution and Travel Plan Monitoring Contribution shall be Index Linked.

## 13 **VAT**

All consideration given in accordance with the terms of this Agreement all be exclusive of any Value Added Tax properly payable.

14 **DISPUTE PROVISIONS**

- 14.1 Any dispute arising between the parties relating to any matter contained in this Agreement may be referred to the Expert by any party.
- 14.2 The Expert will act as an expert and not as an arbitrator.
- 14.3 Each party will bear its own costs and the Expert's costs will be paid as determined by her.
- 14.4 The Expert will be required to give notice to each of the parties, inviting each of them to submit to her written representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision.
- 14.5 The Expert's decision will be given in writing as expeditiously as possible with reasons and in the absence of manifest error will be final and binding on the parties.

15 **JURISDICTION**

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

16 **DELIVERY**

The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

17 **COUNTERPART**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**IN WITNESS** whereof the parties hereto have executed this Agreement the day and year first before written.



## Schedule 1

### FUTURE CPZ AND CAR CLUB OBLIGATIONS

#### 1 FUTURE CPZ OBLIGATIONS

##### 1.1 The Owner covenants with the Council to:

##### 1.1.1 In the event that a CPZ is established before Occupation of the final Open Market Dwelling:

- a) not Occupy or allow any person to be a Business Occupier or a Residential Occupier of a Dwelling to be created as part of the Development: unless a notice has been served on such person that pursuant to policy LP45 of the Council's Local Plan or any other policy replacing the same such person shall not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons Badge) to be granted a Business Parking Permit or Residents Parking Permit to park a Motor Vehicle in any Business Parking Bay, Residents Parking Bay or other place within the CPZ; and
- b) the Council will not enter into a contract (other than individual contracts for one occasion) with such person to park in any car park controlled by the Council.

#### 2 CAR CLUB

##### 2.1 The Owner covenants with the Council:

- 2.1.1 to provide to the HDM the name of the Accredited Car Club Provider and not to Occupy the Development unless and until the Accredited Car Club Provider for the Development has been approved by the HDM (such approval not to be unreasonably withheld or delayed);
- 2.1.2 within one month of the Occupation Date to procure at its own expense that the first Occupier of each Dwelling shall have membership of the approved Car Club for 3 years (limited to membership of one individual per Dwelling) and to provide a copy of the final signed and dated contract with the Accredited Car Club Provider to the HDM;
- 2.1.3 to secure that five (5) car parking spaces are reserved for the use of the Car Club on the Land and shall provide them within the relevant Phases and prior to the Occupation of 90% of the Dwellings within that phase and retain those spaces as part and for the lifetime of the Development (unless otherwise agreed with the Council); and
- 2.1.4 in the event that the Accredited Car Club Provider is no longer able to provide the Car Club for the Development the Owner shall notify the HDM in writing and shall then use all reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Agreement.

## Schedule 2

### RESIDENTIAL TRAVEL PLAN

- 1 The Owner covenants with the Council:
  - 1.1 to submit the Residential Travel Plan to the Council for approval prior to Occupation of the Development;
  - 1.2 not to Occupy the Development until the Residential Travel Plan has been submitted to and approved in writing by the Council. If the Council has not issued a decision in respect of the acceptability of the Residential Travel Plan (submitted in accordance with paragraph 1.1) within 8 weeks of submission, or within an extended period of time agreed with the applicant, the Residential Travel Plan shall be deemed to be approved and the Owner may Occupy the Development;
  - 1.3 to implement the approved Residential Travel Plan in accordance with the timescales contained therein and for the duration set out therein;
  - 1.4 to comply with the terms of the approved Residential Travel Plan throughout its lifetime and procure that the Travel Plan Co-ordinator complies with its obligations and duties set out in the Residential Travel Plan for the duration of its appointment;
  - 1.5 to appoint a nominated Travel Plan Co-ordinator and notify the details of the Travel Plan Co-ordinator to the HDM in accordance with the provisions of the approved Residential Travel Plan;
  - 1.6 to procure that the Travel Plan Co-ordinator remains appointed for the duration of the Residential Travel Plan plus a period of 5 (five) years following Occupation of the final Dwelling and that it complies with its obligations and duties set out in the Residential Travel Plan for this period;
  - 1.7 to review the Residential Travel Plan annually for a period of 5 (five) years following Occupation of 90% of the Dwellings in accordance with the provisions of the approved Residential Travel Plan and submit the results of each review to the HDM within 3 (three) months of the anniversary of occupation of 90% of the Dwellings; and
  - 1.8 to have regard to any reasonable recommendations made by the Council from each annual review and incorporate and implement such recommendations.

**Schedule 3**  
**CONTRIBUTIONS**

Carbon Offset Contribution

1. The Owner covenants:
  - 1.1. To pay the Carbon Offset Contribution to the Council prior to the Occupation Date
  - 1.2. Not to Occupy or permit Occupation of any Dwelling unless and until the Carbon Offset Contribution has been paid to the Council

Healthcare Contribution

2. The Owner covenants:
  - 2.1. To pay the Healthcare Contribution to the Council prior to the Commencement of Phase 2
  - 2.2. Not to Commence Development of Phase 2 unless and until the Healthcare Contribution has been paid to the Council

Off-site Play Contribution

3. The Owner covenants:
  - 3.1. To pay the Off-site Play Contribution to the Council prior to the Occupation Date
  - 3.2. Not to Occupy or permit Occupation of any Dwelling unless and until the Off-site Play Contribution has been paid to the Council

Tree Replacement Contribution

4. The Owner covenants:
  - 4.1. To pay the Tree Replacement Contribution to the Council prior to Commencement of the Development
  - 4.2. Not to Commence Development unless and until the Tree Replacement Contribution has been paid to the Council

Village Green Contribution

5. The Owner covenants:
  - 5.1. To pay the Village Green Contribution to the Council prior to the Commencement of Development
  - 5.2. Not to Commence Development unless and until the Village Green Contribution has been paid to the Council

Travel Plan Monitoring Contribution

6. The Owner covenants:
  - 6.1. To pay the Travel Plan Monitoring Contribution to the Council as follows:

- 6.1.1. £1,000 on the Occupation Date and not Occupy any further Dwellings until such sum has been paid to the Council;
- 6.1.2. £1,000 on the first anniversary of the Occupation Date and not Occupy any further Dwellings until such sum has been paid to the Council;
- 6.1.3. £1,000 on the second anniversary of the Occupation Date and not Occupy any further Dwellings until such sum has been paid to the Council;
- 6.1.4. £1,000 on the third anniversary of the Occupation Date and not Occupy any further Dwellings until such sum has been paid to the Council; and
- 6.1.5. £1,000 on the fourth anniversary of the Occupation Date and not Occupy any further Dwellings until such sum has been paid to the Council.

#### Highway Contributions

#### 7. The Owner covenants:

- 7.1 To pay the Traffic Management Order Administration Costs to the Council prior to the Commencement of Development.
  - 7.2 Not to Commence Development unless and until the Traffic Management Order Administration Costs have been paid.
8. If any of the financial contributions in this Schedule are not paid to the Council within timescales stipulated in this Agreement then interest shall be paid on such contribution at the rate of 4% above the Bank of England base rate from time to time in force from the date that the contribution became due to the date of actual payment.

## Schedule 4

### ON-SITE AFFORDABLE HOUSING

Subject to the provisions of Schedule 4 to this Agreement, the Owner covenants with the Council as follows:

#### 1. AFFORDABLE HOUSING GENERAL PROVISIONS

- 1.1. To deliver, as a minimum, the Affordable Housing Dwellings.
- 1.2. To submit to the Council the Affordable Housing Plan in accordance with the affordable dwelling mix for each Phase prior to Commencement of each Phase and to not Commence each Phase until the Affordable Housing Plan has been approved by the Council
- 1.3. To construct or procure the construction of the Affordable Housing Dwellings in accordance with the Affordable Housing Plan and the quality standards in the Mayor of London's Housing Supplementary Planning Guidance unless otherwise agreed in writing with the Council
- 1.4. To not Occupy or permit to be Occupied:
  - 1.4.1. more than 20% of the Open Market Dwellings until 28.5% of the Affordable Housing Dwellings have been constructed and transferred to a Registered Provider;
  - 1.4.2. more than 40% of the Open Market Dwellings until 65.6% of the Affordable Housing Dwellings have been constructed and transferred to a Registered Provider;
  - 1.4.3. more than 70% of the Open Market Dwellings until 100% of the Affordable Housing Dwellings have been constructed and transferred to a Registered Provider.
- 1.5. To enter into a Nomination Agreement with the Council prior to Occupation of any London Affordable Rented Dwelling but for the avoidance of doubt this shall not apply to first lets of Replacement Social Rent Dwellings (unless a Replacement Social Rent Dwelling is not used by an Existing Tenant then that unit shall be treated as an Additional Affordable Housing Dwelling and shall be subject to a Nomination Agreement.)
- 1.6. The London Living Rent Dwellings shall not be let to any person other than an Eligible Renter.
- 1.7. The Shared Ownership Dwellings shall not be sold to any purchaser other than an Eligible Purchaser, except where the Lessee of a Shared Ownership Dwelling has staircased to 100 per cent equity.
- 1.8. Not less than nine (9) months prior to the estimated date of practical completion of the first Intermediate Housing unit to be practically completed within a Phase, the Owner or the Registered Provider shall submit an Intermediate Housing Marketing Plan for that Phase to the Council for approval and such units shall be marketed and disposed of in accordance with the approved Intermediate Housing Marketing Plan for that Phase PROVIDED THAT if the Council has not issued a decision in respect of the acceptability of the submitted Intermediate Housing Marketing Plan within eight (8) weeks of submission, or within an extended period of time agreed with the applicant, the Intermediate Housing Marketing Plan shall be deemed to be approved and the Owner may commence marketing of the Intermediate Housing subject to paragraph 1.9 of this Schedule.
- 1.9. No marketing of any of the Intermediate Housing units within a Phase shall be carried out until the Intermediate Housing Marketing Plan has been approved in writing by the Council for that

Phase and that marketing of any Intermediate Housing should not commence before six (6) months of practical completion of any Intermediate Housing.

- 1.10. To ensure that any transfer or lease of any Affordable Housing Dwellings to an owner-occupier or tenant:
  - 1.10.1. Be free from any encumbrances save for any existing encumbrances and such rights reservations and covenants as are necessary to enable the Owner to develop the Land in accordance with the Planning Permission;
  - 1.10.2. Grant full and free rights of access from the public highway to the Affordable Housing Dwellings and to all external communal areas and internal communal areas (within the block within which the relevant Affordable Housing Dwelling is located only)
  - 1.10.3. Grant full and free passage of water soil electricity gas and other services that are reasonably necessary for the enjoyment of the Affordable Housing Dwellings through the pipes drains channels wires cables and conducts which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Dwellings provided that all such services shall be connected to the mains

## 2. AFFORDABLE HOUSING USE

- 2.1. Save for the provisions of Paragraph 2.2 and 2.3 of this Schedule 4 the Affordable Housing Dwellings shall not be used for any purpose other than for Affordable Housing.
- 2.2. The provisions of this Agreement shall not be binding on any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver provided that:
  - 2.2.1. Such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling(s);
  - 2.2.2. Such mortgagee, chargee or Receiver shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another Registered Provider or to the Council for a consideration of not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interests costs and expenses;
  - 2.2.3. If such disposal has not completed within the three (3) month period the mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Housing Dwelling(s) free from the provisions of this Agreement which provisions shall determine absolutely
- 2.3. The provisions of this Agreement shall not apply to any Protected Tenant, any mortgagee or chargee or a Protected Tenant or any person deriving title from a Protected Tenant or any successor in title of a Protected Tenant and their respective mortgagees and chargees.

**Schedule 5**  
**VIABILITY REVIEW**

**DEFINITIONS**

<b>“Affordable Housing Target Tenure Split”</b>	means a tenure split calculated on the net additional residential homes of 80 per cent London Affordable Rent Dwellings and 20 per cent Shared Ownership Dwellings.
<b>“Additional Affordable Housing Scheme”</b>	<p>means a scheme to be prepared by the Owner and submitted to the Council detailing the Additional Affordable Housing Units to be provided and which:</p> <ul style="list-style-type: none"> <li>a) confirms which Open Market Dwellings are to be converted into Additional Affordable Housing Units and to which tenure(s);</li> <li>b) (only with the prior written agreement of the Council) provides alternative proposals as to how the Additional Affordable Housing Units may be provided which for the avoidance of doubt may be by provision of Affordable Housing within any part of the remaining Development;</li> <li>c) contains 1:50 plans showing the location, size and internal layout of the Additional Affordable Housing Unit(s); and</li> <li>d) provides a timetable for construction and delivery of the Additional Affordable Housing Units;</li> </ul>
<b>“Additional Affordable Housing Units”</b>	means in relation to the Early Stage Review or Mid Stage Review, units to be provided and converted into Affordable Housing on the Land pursuant to an Additional Affordable Housing Scheme as part of the Development in addition to the Affordable Housing Base Provision;
<b>“Affordable Housing Base Provision”</b>	<p>means the 221 Affordable Housing Dwellings consisting of:</p> <ul style="list-style-type: none"> <li>a) 143 Replacement Social Rent Dwellings (comprising 350 habitable rooms)</li> <li>b) 21 London Affordable Rent Dwellings (comprising 58 habitable rooms)</li> <li>c) 10 London Living Rent Dwellings (comprising 23 habitable rooms)</li> <li>d) 47 Shared Ownership Dwellings (comprising 120 habitable rooms)</li> </ul>
<b>“Component”</b>	<p>means a part of the Development including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) Open Market Dwellings;</li> <li>(b) Affordable Housing;</li> <li>(c) Additional Affordable Housing Units;</li> <li>(d) commercial units;</li> <li>(e) any other floorspace;</li> <li>(f) property; and</li> <li>(g) land;</li> </ul>
<b>“Disposed”</b>	means the grant of an assured shorthold tenancy agreement or a short term let in respect of a Component of the Development

<b>“Development Information”</b>	<b>Viability</b>	Means: a) in respect of the Early Stage Review, an Updated Viability Appraisal and (if a Surplus Arises) an Additional Affordable Housing Scheme; b) in respect of the Mid Stage Review, an Updated Viability Appraisal and (if a Surplus Arises) an Additional Affordable Housing Scheme; b) in respect of the Late Stage Review, an Updated Viability Appraisal
<b>“Early Stage Review”</b>		means a review of the viability of the Development in accordance with this Schedule 5
<b>“External Consultant”</b>		means an independent and suitable person holding appropriate professional qualifications
<b>“Late Stage Review”</b>		means a review of the viability of the Development in accordance with this Schedule 5
<b>“Late Stage Review Cap”</b>		Means the late stage review cap calculated in accordance with the formula in Annex 2 of this Schedule 5
<b>“Late Stage Review Contribution”</b>		means a financial contribution for the provision of off-site Affordable Housing in the Council's administrative area, the value of which is equivalent to the Surplus Arising from the Late Stage Review subject to the Late Stage Review Cap.
<b>“Late Stage Review Date”</b>		means the date on which 75 per cent of the Dwellings have been Occupied;
<b>“Market Value”</b>		means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration on the Relevant Review Date based on detailed comparable market evidence, including evidence of rental values achieved for any Component of the Development which has been Disposed but not Sold, to be assessed by the Council and assuming: (a) a willing seller and a willing buyer; (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale; (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion
<b>“Mid Stage Review”</b>		means a review of the viability of the Development in accordance with this Schedule 5



<b>"Mid Stage Review Date"</b>	means the date on which 50 per cent of the Dwellings in Phase 2 have been Occupied;
<b>"Relevant Review Date"</b>	means either the date of the Early Stage Review Date, the Mid Stage Review Date or the Late Stage Review Date;
<b>"Review Stage Developer Return"</b>	is, in respect of each Updated Viability Appraisal, the profit on gross development value shown in that appraisal;
<b>"Sale"</b>	means  (a) the sale of the freehold of the Development or part thereof; or (b) the grant of a lease of the Development or part thereof with a term of 125 years or more and subject to nominal rent;  and "Sold" shall be construed accordingly;
<b>"Substantial Implementation"</b>	means the occurrence of the following in respect of the Development: (a) completion of all ground preparation works for Phase 1; (b) construction of the first floor slab of block W
<b>"Substantial Implementation Target Date"</b>	means the date 18 months from the date of grant of the Planning Permission
<b>"Surplus Arises"</b>	means, in relation to each Updated Viability Appraisal, that the Review Stage Developer Return exceeds the Target Return and "a Surplus Has Arisen" will be construed accordingly and "no Surplus Has Arisen" shall mean that the Review Stage Developer Return does not exceed Target Return
<b>"Target Return"</b>	means a return on gross development value for each of the following:  - 15.00 per cent on gross development value for the commercial. - 17.50 per cent on gross development value for the private residential - 6 per cent on gross development value for the affordable housing less any grant funding attributable to these units.
<b>"Updated Viability Appraisal"</b>	means, as part of each Viability Appraisal, an update which must meet the requirements in Annex 1 to this Schedule
<b>"Viability Appraisal"</b>	means the Early Stage Review, Mid Stage Review or the Late Stage Review, as the context requires

## PART 1 - EARLY VIABILITY REVIEW

### 1 EARLY VIABILITY REVIEW TRIGGER

- 1.1 The Owner shall notify the Council in writing of the date on which it considers that the Substantial Implementation has been achieved no later than 10 (ten) Working Days after such

date and such notice shall be accompanied by full documentary evidence on an open book basis to enable the Council to independently assess whether the Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.

1.2 No later than 5 (five) Working Days after receiving a written request from the Council, the Owner shall provide to the Council any additional documentary evidence reasonably requested by the Council to enable it to determine whether the Substantial Implementation has been achieved on or before the Substantial Implementation Target Date.

1.3 Following the Owner's notification pursuant to paragraph 1.1 of this Part 1 of this Schedule, the Owner shall afford the Council access to the Land to inspect and assess whether or not the works which have been undertaken achieve Substantial Implementation PROVIDED ALWAYS THAT the Council shall:

1.3.1 provide the Owner with reasonable written notice of its intention to carry out such an inspection;

1.3.2 comply with relevant health and safety legislation; and

1.3.3 at all times be accompanied by the Owner or its agent.

1.4 No later than 20 (twenty) Working Days after the Council receives

1.4.1 notice pursuant to paragraph 1.1 of Part 1 of this Schedule; or

1.4.2 if the Council makes a request under paragraph 1.2 of Part 1 of this Schedule, the additional documentary evidence,

the Council shall inspect the Land and thereafter provide written confirmation to the Owner within 10 (ten) Working Days of the inspection date as to whether or not the Council considers that the Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.

1.5 If the Council notifies the Owner that the Council considers that the Substantial Implementation has not been achieved then paragraph 1.1 to 1.4 of Part 1 of this Schedule shall continue to apply mutatis mutandis until the Council has notified the Owner pursuant to paragraph 1.4 of Part 1 of this Schedule that the Substantial Implementation has been achieved.

1.6 The Owner shall not Occupy the Development or any part thereof until:

1.6.1 the Council has notified the Owner pursuant to paragraph 1.4 of Part 1 of this Schedule that the Substantial Implementation has been achieved on or before the Substantial Implementation Target Date;

1.6.2 the Council has notified the Owner pursuant to paragraph 3.6 of Part 1 of this Schedule that no Surplus Has Arisen; or

1.6.3 in the event that the Council notifies the Owner pursuant to paragraph 3.6 of Part 1 of this Schedule that a Surplus Has Arisen, an Additional Affordable Housing Scheme has been approved pursuant to paragraph 3.8 below of Part 1 of this Schedule

## **2 SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

2.1 Where the Substantial Implementation has not occurred before the Substantial Implementation Target Date (as determined by the Council under paragraph 1.4 of Part 1 of this Schedule):

2.1.1 the Owner shall submit Development Viability Information no later than 20 (twenty) Working Days after the date on which the Owner is notified pursuant to paragraph 1.4 of Part 1 of this Schedule) that the Substantial Implementation has not been achieved, on the basis that the Council may make such information publicly available; and

2.1.2 Paragraph 3 of Part 1 of this Schedule shall apply.

## **3 ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

3.1 The Council shall assess the Development Viability Information and assess whether in its view a Surplus Has Arisen and whether the Development Viability Information is approved and for the avoidance of doubt the Council (acting reasonably) will be entitled to rely on its own evidence subject to such evidence also being provided to the Owner.

3.2 The Council may appoint an External Consultant to assess the Development Viability Information PROVIDED THAT:

3.2.1 The External Consultant must be appointed not later than 10 (ten) Working Days after submission of the Development Viability Information; and

3.2.2 Any External Consultant so appointed will report to the Council:

a) not later than 20 (twenty) Working Days after the date of receipt by the External Consultant of the Development Viability Information, if no request is made under paragraph 3.3 of Part 1 of this Schedule; or

b) not later than 20 (twenty) Working Days after the date of receipt by the External Consultant of the information submitted pursuant to paragraph 3.4 of Part 1 of this Schedule, if a request is made under paragraph 3.3 of Part 1 of this Schedule .

3.3 Not later than 10 (ten) Working Days after submission of the information under paragraph 2.1.1 of Part 1 of this Schedule the Council and/or an External Consultant may request in writing from the Owner further information or supporting evidence for the relevant Development Viability Information that it reasonably requires.

3.4 The Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 (ten) Working Days of receiving a request under paragraph 3.3 of Part 1 of this Schedule.

3.5 The process in paragraphs 3.4 and 3.5 of Part 1 of this Schedule may be repeated until the Council and/or the External Consultant has all the information it reasonably requires to assess whether in their view a Surplus Has Arisen, with the periods in 3.2.2b), 3.3, 3.4 and 3.6.1 of Part 1 of this Schedule restarting accordingly.

3.6 Not later than:

- 3.6.1 35 (thirty-five) Working Days from the Development Viability Information above, if no request is made under paragraph 3.3 of Part 1 of this Schedule; or
- 3.6.2 25 (twenty-five) Working Days from the date of receipt by the Council of the information submitted pursuant to paragraph 3.4 of Part 1 of this Schedule, if a request is made under paragraph 3.3 of Part 1 of this Schedule

The Council shall notify the Owner in writing of the Council's intended decision as to whether any Surplus Has Arisen and whether the Development Viability Information is approved.

- 3.7 Where the Council concludes that a Surplus Has Arisen but the Owner's initial submission concluded otherwise, or if any part of the Additional Affordable Housing Scheme submitted is not approved by the Council the Owner shall provide an Additional Affordable Housing Scheme to the Council for approval within 10 (ten) Working Days of the date on which it receives the Council's notice pursuant to paragraph 3.6 of Part 1 of this Schedule.
- 3.8 If an Additional Affordable Housing Scheme is submitted to the Council pursuant to paragraph 3.7 of Part 1 of this Schedule, the Council shall notify the Owner in writing of the Council's intended decision as to whether the submitted Additional Affordable Housing Scheme is approved within 15 (fifteen) Working Days of receipt of the submission and, if the Additional Affordable Housing Scheme is not approved, paragraph 3.7 of Part 1 of this Schedule and this paragraph 3.8 of Part 1 of this Schedule shall continue to apply mutatis mutandis.
- 3.9 Where the Council does not have internal resource to review Development Viability Information and appoints an External Consultant to review the Development Viability Information on its behalf, the Owner shall pay to the Council the reasonable and proper costs of appointing the External Consultant PROVIDED THAT:
  - 3.9.1 such costs are agreed in advance between the Owner and the Council;
  - 3.9.2 the Council shall not be obliged to consider the relevant report until such costs are agreed; and
  - 3.9.3 such payment shall be made within 25 (twenty-five) Working Days of presentation of an invoice and provision of reasonable evidence such as appointment letter and itemised invoice.

#### **4 DELIVERY OF ADDITIONAL AFFORDABLE HOUSING**

- 4.1 Where it is determined pursuant to paragraph 3.6 of Part 1 of this Schedule that one or more Additional Affordable Housing Units are required the Owner shall deliver the Additional Affordable Housing Units in accordance with the approved Additional Affordable Housing Scheme prior to the Mid Stage Review Date Provided That the exclusions in paragraphs 2.2 and 2.3 of Schedule 4 shall apply to any Additional Affordable Housing Units.

### **PART 2 – MID STAGE VIABILITY REVIEW**

#### **5 MID STAGE REVIEW TRIGGER**

- 5.1 The Owner shall notify the Council in writing of the anticipated Mid Stage Review Date not less than 20 (twenty) Working Days in advance of that date.

#### **6 SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

6.1 No later than 20 (twenty) Working Days after the Mid Stage Review Date notified to the Council pursuant to paragraph 5.1 of Part 2 of this Schedule, the Owner shall submit to the Council the Development Viability Information on the basis that the Council may make such information publicly available.

## **7 ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

7.1 The Council shall assess the Development Viability Information and assess whether in its view a Surplus Has Arisen and whether the Development Viability Information is approved and for the avoidance of doubt the Council (acting reasonably) will be entitled to rely on its own evidence subject to such evidence also being provided to the Owner.

7.2 The Council may appoint an External Consultant to assess the Development Viability Information PROVIDED THAT:

7.2.1 The External Consultant must be appointed not later than 10 (ten) Working Days after submission of the Development Viability Information; and

7.2.2 Any External Consultant so appointed will report to the Council:

i not later than 20 (twenty) Working Days after the date of receipt by the External Consultant of the Development Viability Information, if no request is made under paragraph 7.3 of Part 2 of this Schedule; or

ii not later than 20 (twenty) Working Days after the date of receipt by the External Consultant of the information submitted pursuant to paragraph 7.4 of Part 2 of this Schedule, if a request is made under paragraph 7.3 of Part 2 of this Schedule.

7.3 Not later than 10 (ten) Working Days after submission of the information under paragraph 6.1 of Part 2 of this Schedule the Council and/or an External Consultant may request in writing from the Owner further information or supporting evidence for the relevant Development Viability Information that it reasonably requires.

7.4 The Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 (ten) Working Days of receiving a request under paragraph 7.3 of Part 2 of this Schedule.

7.5 The process in paragraphs 7.4 and 7.5 of Part 2 of this Schedule may be repeated until the Council and/or the External Consultant has all the information it reasonably requires to assess whether in their view a Surplus Has Arisen, with the periods in 7.2.2 ii), 7.3, 7.4 and 7.6.1 of Part 2 of this Schedule restarting accordingly.

7.6 Not later than:

7.6.1 35 (thirty-five) Working Days from the Development Viability Information above, if no request is made under paragraph 7.3 of Part 2 of this Schedule; or

7.6.2 25 (twenty-five) Working Days from the date of receipt by the Council of the information submitted pursuant to paragraph 7.4 of Part 2 of this Schedule, if a request is made under paragraph 7.3 of Part 2 of this Schedule

The Council shall notify the Owner in writing of the Council's intended decision as to whether any Surplus Has Arisen and whether the Development Viability Information is approved.

- 7.7 Where the Council concludes that a Surplus Has Arisen but the Owner's initial submission concluded otherwise, or if any part of the Additional Affordable Housing Scheme submitted is not approved by the Council the Owner shall provide an Additional Affordable Housing Scheme to the Council for approval within 10 (ten) Working Days of the date on which it receives the Council's notice pursuant to paragraph 7.6 of Part 2 of this Schedule.
- 7.8 If an Additional Affordable Housing Scheme is submitted to the Council pursuant to paragraph 7.7 of Part 2 of this Schedule, the Council shall notify the Owner in writing of the Council's intended decision as to whether the submitted Additional Affordable Housing Scheme is approved within 15 (fifteen) Working Days of receipt of the submission and, if the Additional Affordable Housing Statement is not approved, paragraph 7.7 of Part 2 of this Schedule and this paragraph 7.8 of Part 2 of this Schedule shall continue to apply mutatis mutandis.
- 7.9 Where the Council does not have internal resource to review Development Viability Information and appoints an External Consultant to review the Development Viability Information on its behalf, the Owner shall pay to the Council the reasonable and proper costs of appointing the External Consultant PROVIDED THAT:
- 7.9.1 such costs are agreed in advance between the Owner and the Council;
- 7.9.2 the Council shall not be obliged to consider the relevant report until such costs are agreed; and
- 7.9.3 such payment shall be made within 25 (twenty-five) Working Days of presentation of an invoice and provision of reasonable evidence such as appointment letter and itemised invoice.

## **8 DELIVERY OF ADDITIONAL AFFORDABLE HOUSING**

- 8.1 Where it is determined pursuant to paragraph 7.6 of Part 2 of this Schedule that one or more Additional Affordable Housing Units are required the Owner shall deliver the Additional Affordable Housing Units in accordance with the approved Additional Affordable Housing Scheme prior to the Late Stage Review Date Provided That the exclusions in paragraphs 2.2 and 2.3 of Schedule 4 shall apply to any Additional Affordable Housing Units.

## **PART 3 – LATE STAGE VIABILITY REVIEW**

### **9 LATE STAGE REVIEW TRIGGER**

- 9.1 The Owner shall notify the Council in writing of the anticipated Late Stage Review Date not less than 20 (twenty) Working Days in advance of that date.

### **10 SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

- 10.1 No later than 20 (twenty) Working Days after the Late Stage Review Date notified to the Council pursuant to paragraph 9.1 of Part 3 of this Schedule, the Owner shall submit to the Council the Development Viability Information on the basis that the Council may make such information publicly available.

### **11 ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION**

- 11.1 The Council shall assess the Development Viability Information and assess whether a Late Stage Review Contribution is payable and, if so, how much and the Council (acting reasonably)

will be entitled to rely on its own evidence subject to such evidence being relevant and also being provided to the Owner.

11.2 The Council may appoint an External Consultant to assess the Development Viability Information PROVIDED THAT:

11.2.1 the External Consultant must be appointed not later than 10 (ten) Working Days after submission of the Development Viability Information; and

11.2.2 Any External Consultant so appointed will report to the Council:

- a) not later than 20 (twenty) Working Days after the date of receipt by the External Consultant(s) of the Development Viability Information, if no request is made under paragraph 11.3 of Part 3 of this Schedule; or
- b) not later than 20 (twenty) Working Days after the date of receipt by the External Consultant(s) of the information submitted pursuant to paragraph 11.4 of Part 3 of this Schedule, if a request is made under paragraph 11.3 of Part 3 of this Schedule.

11.3 Not later than 10 (ten) Working Days after submission of the Development Viability Information the Council and/or the External Consultant may request in writing from the Owner further information or supporting evidence of the Development Viability Information.

11.4 The Owner shall provide any reasonably required information the Council or the External Consultant (as applicable and with copies to the other parties) within 10 (ten) Working Days of receiving a request under paragraph 11.3 of Part 3 of this Schedule.

11.5 The process in paragraphs 11.3 and 11.4 of Part 3 of this Schedule may be repeated until the Council and/or the External Consultant has all the information it reasonably requires to assess whether in its view any Late Stage Review Contribution is required, with the periods in paragraphs 11.2.2b), 11.3, 11.4 and 11.7.2 of Part 3 of this Schedule restarting accordingly.

11.6 If the Council and/or External Consultant (as applicable) determines following receipt of the Development Viability Information that the Late Stage Review Date has not occurred, the Council (acting reasonably) may require the Owner to promptly submit additional Development Viability Information or to re-submit the Development Viability Information upon the occurrence of the Late Stage Review Date (as determined by the Council).

11.7 Not later than:

11.7.1 35 (thirty-five) Working Days from the latest submission of the Development Viability Information, if no request is made under paragraph 11.3 of Part 3 of this Schedule; or

11.7.2 25 (twenty-five) Working Days from the date of receipt by the Council of any information provided to the Council pursuant to paragraph 11.4 of Part 3 of this Schedule, if a request is made under paragraph 11.3 of Part 3 of this Schedule

the Council shall notify the Owners in writing of its intended decision as to whether any Late Stage Review Contribution is required and, if so, how much.

11.8 The Owners shall not Occupy more than 75 per cent of the Open Market Dwellings until the Council has notified the Owner in writing of its decision pursuant to paragraph 11.7 of Part 3 of this Schedule as to whether any Late Stage Review Contribution is required.

**12 PUBLIC SUBSIDY**

Nothing in this Agreement shall prejudice any contractual obligation on the Owner to repay or reimburse any public subsidy using any surplus profit that is to be retained by the Owner following a Viability Appraisal.

**13 DISPUTE RESOLUTION**

Any dispute as to the matters set out in this Schedule may be referred by either party to an Expert in accordance with clause 14 of this Agreement.



## ANNEX 1 TO SCHEDULE 5

### REQUIREMENTS FOR UPDATED VIABILITY APPRAISALS AND APPLICATION OF SURPLUS

#### 1 BASIS OF EACH REVIEW

1.1 Each Updated Viability Appraisal will be carried out using Argus software or an alternative model agreed with the Council (e.g., excel), with "Day 1" being the date of this Agreement.

1.2 Each Updated Viability Appraisal will reflect:

##### 1.3 Revenues

1.3.1 The revenues and timings of receipts for the Open Market Dwellings and commercial Components will be evidenced through the actual revenue received by the Owner at first sale. Where the Open Market Dwellings and commercial Components have not been Sold, the value of these Components shall be evidenced through an assessment of Market Value based on available comparable evidence.

1.3.2 The revenues and timings of receipts for the Affordable Housing Dwellings will be evidenced through the actual revenue received by the Owner at first sale and any public subsidy used to purchase the Affordable Housing Dwellings should be separately identified and included in the appraisal in line with paragraph 1.3.3 of Annex 1 to Schedule 5.

1.3.3 Any public subsidy received by the Owner shall be included in the Updated Viability Appraisal.

##### 1.4 Costs

1.4.1 All costs reasonably incurred in the delivery of the Development shall be included in the Updated Viability Appraisal. For the avoidance of doubt reasonable costs incurred prior to Day 1 shall be included in the Updated Viability Appraisal.

1.4.2 Costs will be supported by evidence including (but not limited to) details of payments made or agreed to be paid in a building contract, receipted invoices and costs certified by the Owner's quantity surveyor, costs consultant, agent or solicitor.

1.4.3 Where costs are yet to be incurred, these costs should be supported by comparable evidence or an explanation as to why they are a reasonable cost to be included within the Updated Viability Appraisal.

1.4.4 All costs shall be re-assessed with the exception of the following which should be fixed in the Updated Viability Appraisal:

Land cost – This is the existing use value of the existing social rent homes. This is to be fixed at a sum of £7,900,000 as agreed at the application stage.

Land cost – This is the existing use value of the existing garages. This is to be fixed at a sum of £467,508 as agreed at the application stage.

1.4.5 For the avoidance of doubt the above does not include the costs of acquiring the existing leaseholder homes, the existing commercial premises nor other site assembly costs which can be included in the Updated Viability Appraisal.

#### 2 APPLICATION OF THE SURPLUS

- 2.1 The Owner agrees that, if a Surplus Arises under an Early Stage Review or Mid Stage Review, the Affordable Housing Base Provision will be increased and, in the case of the Late Stage Review, the Late Stage Review Contribution will be calculated in accordance with this paragraph 2 of Annex 1 to Schedule 5.
- 2.2 In the case of the Early Stage Review or Mid Stage Review, the number of Additional Affordable Housing Units provided will be equal to the increase in the number of Affordable Housing Dwellings (at the tenure split specified under paragraph 2.4 below) that is required in order for the Review Stage Developer Return in the Updated Viability Appraisal to reduce to the Target Return, the effect being to apply all of the surplus to Affordable Housing.
- 2.3 If any required increase in Affordable Housing Dwellings is not a whole number of units then anything less than 0.5 will be rounded down to the next whole number and anything equal to or greater than 0.5 will be rounded up to the next whole number.
- 2.4 The tenure split of any Additional Affordable Housing Units must be such that, after taking into account these units and excluding the Replacement Social Rent Dwellings, the Development would continue to comply with the Affordable Housing Target Tenure Split subject to it being practically reasonable to do so.
- 2.5 The Additional Affordable Housing Units must be shown in an Additional Affordable Housing Scheme, and for the avoidance of doubt Additional Affordable Housing Units can be located in any Phase yet to come forward.
- 2.6 In the case of the Late Stage Review, the amount of the Late Stage Review Contribution shall be 60% of any Surplus Arising from the Late Stage Review and shall not exceed the Late Stage Review Cap

## ANNEX 2 TO SCHEDULE 5 – LATE STAGE VIABILITY APPRAISAL

### FORMULA FOR CALCULATING LATE STAGE REVIEW CAP

#### Definitions:

**Average Open Market Housing Value** means the average value of the Open Market Dwellings on a habitable room basis determined at the Relevant Review Date based on the relevant information provided;

**Average Affordable Rent Housing Value** means the average value of the London Affordable Rent Dwellings on a habitable room basis determined at the Relevant Review Date based on the relevant information provided;

**Average Intermediate Housing Value** means the average value of the Shared Ownership Dwellings on a habitable room basis determined at the Relevant Review Date based on the relevant information provided;

X = Late Stage Review Cap

$$X = (((A * D) - (B * D)) * E) + (((A * D) - (C * D)) * F)$$

Where:

A = Average Open Market Housing Value (£ per m<sup>2</sup>)

B = Average Affordable Rent Housing Value (£ per m<sup>2</sup>)

C = Average Intermediate Housing Value (£ per m<sup>2</sup>)

D = The average habitable room size for the Development

E =

- No. of habitable rooms, where Additional Affordable Housing Units were not required to be provided pursuant to paragraph 3.6 of Part 1 of Schedule 5; or
- No. of habitable rooms, where Additional Affordable Housing Units were required to be provided pursuant to paragraph 3.6 of Part 1 of Schedule 5,

being the shortfall in London Affordable Rent Dwellings (by habitable room) when compared with the Affordable Housing Target Tenure Split.

F =

- No. of habitable rooms, where Additional Affordable Housing Units were not required to be provided pursuant to paragraph 3.6 of Part 1 of Schedule 5; or
- No. of habitable rooms, where Additional Affordable Housing Units were required to be provided pursuant to paragraph 3.6 of Part 1 of Schedule 5,

being the shortfall in Shared Ownership Dwellings (by habitable room) when compared with the Affordable Housing Target Tenure Split.

## Schedule 6

### OPEN SPACE, PLAYSPACE AND SUDS

The Owner covenants as follows:

1. To submit the Open Space Works Specification for each Phase to the Council for its approval prior to Commencement of that Phase PROVIDED THAT if the Council has not issued a decision in respect of the acceptability of the submitted Open Space Works Specification within 8 weeks of submission, or with a period of time agreed with the applicant through an extension of time limit, the Open Space Works Specification shall be deemed to be approved and the Owner may Commence Development.
2. To submit the Open Space Management Plan for each Phase to the Council for its approval prior to Occupation of that Phase PROVIDED THAT if the Council has not issued a decision in respect of the acceptability of the submitted Open Space Management Plan within 8 weeks of submission, or with a period of time agreed with the applicant through an extension of time limit, the Open Space Management Plan shall be deemed to be approved and the Owner may Occupy the development.
3. To deliver and maintain the Open Space in accordance with the Open Space Works Specification and Open Space Management Plan at all times from the Occupation Date of each Phase to the reasonable satisfaction of the Council.
4. To provide the drinking water fountain as shown on drawing ref LD-PLN-203 on the Land prior to Occupation of the Community Centre.
5. To keep the Open Space open, unbuilt upon (save for permitted play equipment or other items ancillary to its use) and available for public recreation use (save for the SuDS) in perpetuity, save for:
  - a. any closure which is reasonably and urgently necessary for public safety or emergency maintenance;
  - b. the requirement to carry out maintenance, cleaning, renewal and necessary or required works, or other structural or non-structural alteration, except that any works under this sub-paragraph shall be undertaken in such a way as to cause minimum disruption to the public; or
  - c. occasional temporary closure (not exceeding one day's length at any time in any calendar year) for sufficient time to assert rights of proprietorship preventing public or private rights from coming into being by means of prescription or other process of law.

## **Schedule 7**

### **HIGHWAY WORKS**

1. The Owner covenants to neither Occupy nor permit the Occupation of any Dwelling nor use the Community Centre or Maker Lab until:
  - a. an agreement under Section 278 of the Highways Act 1980 to construct the Highways Works within the relevant Phase has been entered into; and
  - b. the Highways Works within that Phase have been Practically Completed with the exception of the Southern Phase 1 Highways Works which will be Practically Completed prior to Occupation of Phase 3.
  
2. The Owner agrees:
  - a. not to Commence Phase 1 until an order has been made under S247 of the Town and County Planning Act 1990 to stop up the western section of Ham Close shown on Plan 4; and
  - b. not to Commence Phase 2 until an order has been made under S247 of the Town and Country Planning Act 1990 to stop up the eastern section of Ham Close shown on Plan 4.

## Schedule 8

### EMPLOYMENT AND SKILLS

#### Part 1 – Employment and Skills Plan

The Owner covenants with the Council as follows:

1. To submit the Employment and Skills Plan to the Council for its approval prior to Commencement of the Development, such plan to include strategies to work with the Council and other relevant organisations and to use reasonable endeavours to deliver the following:
  - a. At least 40 sustainable construction jobs filled by local people;
  - b. At least 24 apprenticeships for local people;
  - c. Local youth employment opportunities for residents and students such as industry placements, internships, work experience and mentoring;
  - d. Working with the Council to enable local business to bid for contracts to supply goods and services;
  - e. Engagement with local services and business to ensure that opportunities are accessible early by local businesses and residents including local advertising of roles, mentoring and liaise with statutory agencies.
2. Not to Commence Development until the Employment and Skills Plan has been approved in writing by the Council PROVIDED THAT if the Council has not issued a decision in respect of the acceptability of the submitted Employment and Skills Plan submitted in accordance with paragraph 1 within 8 weeks of submission, or with a period of time agreed with the applicant through an extension of time limit, the Employment and Skills Plan shall be deemed to be approved and the Owner may Commence Development
3. To implement the approved Employment and Skills Plan unless otherwise agreed in writing by the Council.

#### Part 2 – Employment and Skills Agreement

- 1 The Owner covenants with the Council to:
  - 1.1 provide the Council's employment development officer (hereafter "EDO") with a named contact who will be responsible for implementing the provisions of this Local Employment Agreement;
  - 1.2 use reasonable endeavours to ensure that any contractors or sub-contractors appointed engage as fully as possible with the Council's EDO;
  - 1.3 use reasonable endeavours to ensure that local businesses (including local contractors, sub-contractors and suppliers) are provided with:
    - 1.3.1 information about the Development and the provisions of this Local Employment Agreement; and
    - 1.3.2 opportunities to tender for all appropriate contracts or sub contracts that arise as a consequence of the Development both during the construction phase and with new tenants who will occupy the commercial floorspace in the completed Development where available and practicable with at least 20% (twenty per cent) of supplies and

services to be provided by local businesses where this is possible, practicable, commercially viable and in compliance with all relevant laws;

- 1.4 ensure that the provisions of this Local Employment Agreement are reflected in an Employment and Skills Plan and are included in the tender documentation issued to their prospective contractors and sub-contractors, and to ensure that:
  - 1.4.1 they incorporate the provisions of this Local Employment Agreement in their tender responses and commit to ensuring that local people and local businesses are able to benefit directly from all employment and training activity arising from the construction of the Development;
  - 1.4.2 any company invited by the Owner, their contractors or sub-contractors to tender for work will be given clear written details of the requirement of local employment and training and the use of local businesses including local contractors and sub-contractors prior to the receipt of any bid;
  - 1.4.3 the Council's EDO is provided by the Owner, its contractors and sub-contractors with notification of all job vacancies subcontract opportunities and opportunities for the supply of goods and services as soon as reasonably practicable after such vacancies/opportunities occur;
  - 1.4.4 the Council's EDO will be provided with regular information regarding the numbers of residents and businesses benefiting from these opportunities, including such information as to ensure that the Council is meeting its obligations under the Equality Act 2010;
  - 1.4.5 the Council's EDO will be provided by the Owner and their contractors, sub-contractors and tenants with a full schedule of work (including an indication of the workforce required) prior to commencement of demolition of any buildings and in more detail throughout the construction of the Development in a timely manner that allows for effective preparation by the Council's EDO to meet the provisions of this Local Employment Agreement; and
  - 1.4.6 subject to complying with all Health and Safety regulations and restrictions use reasonable endeavours to ensure that adequate opportunities are made available by the Owner, its contractors and sub- contractors to enable schools and other educational establishments in the local area to provide students with work experience and to create a positive link between schools and employers on the Development;
- 1.5 use reasonable endeavours to secure the placement of apprenticeships during the construction stages of the development to be agreed as part of the Employment and Skills Plan.
- 2 The Owner will use reasonable endeavours to collaborate with the Council's EDO in seeking the agreement of main and sub-contractors appointed in connection with the construction of the Development to participate in the Council's EDO's agreed initiatives for access to employment for local labour listed below:
  - 2.1 pre employment training pipelines and offering work placements for over 25's or those unable to take up apprenticeships;
  - 2.2 advertisement of jobs within the Council's "Work Match Scheme";
  - 2.3 apprenticeships where the person is working towards a formal qualification; and

2.4 the Owner, commercial tenants, main contractor and sub-contractors to engage with the Community Employment and Skills Events i.e. job / career fairs, local community events or with partner organisations that focus on employment and skills.



## Schedule 9

### 'BE-SEEN' ENERGY MONITORING

The Owner covenants with the Council as follows:

1. Prior to the Occupation Date of each Phase, the Owner shall provide updated accurate and verified 'as-built' design estimates of the 'Be Seen' energy performance indicators for each Reportable Unit within that Phase, as per the methodology outlined in the 'As-built stage' chapter / section of the GLA 'Be Seen' energy monitoring guidance (or any document that may replace it). All data and supporting evidence shall be submitted to the GLA using the 'Be Seen' as-built stage reporting webform. The Owner shall also confirm that suitable monitoring devices have been installed and maintained for the monitoring of the in-use energy performance indicators, as outlined in the 'In-use stage' of the GLA 'Be Seen' energy monitoring guidance document (or any document that may replace it).
2. On the first anniversary of the Occupation Date of each Phase and at least for the following four years after that date, the Owner will provide accurate and verified annual in-use energy performance data for all relevant indicators under each Reportable Unit within each Phase as per the methodology outlined in the 'In-use stage' chapter / section of the GLA 'Be Seen' energy monitoring guidance document (or any document that may replace it). All data and supporting evidence shall be submitted to the GLA using the 'Be Seen' in-use stage reporting webform. This obligation will be satisfied after the Owner has reported on all relevant indicators included in the 'In-use stage' chapter of the GLA 'Be Seen' energy monitoring guidance document (or any document that may replace it) for at least five years.
3. In the event that the 'In-use stage' evidence submitted under paragraph 2 shows that the 'As-built stage' performance estimates derived from paragraph 1 have not been or are not being met, the Owner shall investigate and identify the causes of underperformance and the potential mitigation measures and set these out in the relevant comment box of the 'Be Seen' in-use stage reporting webform. An action plan comprising measures identified in paragraph 2 shall be submitted to and approved in writing by the Council (in consultation with the GLA), identifying measures which would be reasonably practicable to implement and a proposed timescale for implementation. The action plan and measures approved should be implemented by the Owner as soon as reasonably practicable.

## Schedule 10

### COMMUNITY CENTRE AND MAKER LABS

The Owner covenants with the Council as follows:

#### Community Centre

1. To submit the Community Centre Specification to the Council prior to demolition of the existing community centre on the Land.
2. Not to demolish the existing community centre on the Land until the Community Centre Specification has been approved by the Council.
3. To construct the Community Centre in accordance with the approved Community Centre Specification and ensure the Community Centre is handed over with the freehold to the Council and made available for public use prior to the earlier of: (i) the closure of the existing community centre on the Land; and (ii) the Occupation of the first Dwelling in Phase 2.
4. The Community Centre shall be managed and maintained for community use for the lifetime of the development.

#### Maker Labs

5. To submit the Maker Labs Specification to the Council prior to demolition of the existing maker labs on the Land.
6. Not to demolish the existing maker labs on the Land until the Maker Labs Specification has been approved by the Council.
7. To construct the Maker Labs in accordance with the approved Maker Labs Specification and ensure that the Maker Labs is handed over with the freehold to the Council and made available for public use prior to the earlier of: (i) closure of the existing maker labs on the Land; (ii) the Occupation of the first Dwelling in Phase 2.
8. The Maker Labs shall be managed and maintained for creative uses for the benefit of the community for the lifetime of the development.

## Schedule 11

### CONSTRUCTION

The Owner covenants with the Council as follows:

#### Considerate Constructors Scheme

1. The Owner shall not Commence Development unless and until it has registered the Development with the Considerate Constructors Scheme and provided evidence of the same to the Council.
2. The Owner shall construct the Development in accordance with the Code of Considerate Practice.

#### Community Liaison Plan

3. The Owner shall not Commence Development unless and until a Community Liaison Plan has been submitted to the Council for approval.
4. The Owner shall not Commence Development until the Community Liaison Plan has been agreed in writing by the Council.
5. The Community Liaison Plan shall be implemented for the duration of the demolition and construction phase of the development.

#### Community Liaison Officer

6. The Owner shall not Commence Development until the role, responsibilities and contact details of the Community Liaison Officer have been agreed in writing by the Council.
7. The Owner shall not Commence Development until a Community Liaison Officer has been appointed.
8. The Community Liaison role shall be funded by the Owner and the appointment maintained until practical completion of the Development.

## SCHEDULE 12

### THE COUNCIL'S COVENANTS

The Council covenants with the Owner; -

- 1 to issue separate receipts on request for any sum paid to the Council under this Agreement;
- 2 not to apply any contributions for any purpose other than for the purposes set out in this Agreement within the Council's area; and
- 3 that in the event any contributions or any part or parts thereof are not expended within ten (10) years of the date of payment then the sum or sums not expended plus interest accrued will be repaid to the paying party or its nominees.

**EXECUTED** as a Deed (but not )  
delivered until dated) by affixing )  
the Common Seal of )  
**THE MAYOR AND BURGESSES OF THE** )  
**LONDON BOROUGH OF RICHMOND UPON** )  
**THAMES** )



in the presence of:-

Name *Sarah Williams*

Signature *S. C. Williams*

Job Title *Asst Head of Law*

**EXECUTED** as a Deed )  
by affixing the Common Seal of )  
**RICHMOND HOUSING PARTNERSHIP LIMITED** )

in the presence of: )

.....  
Authorised Signatory

.....  
Authorised Signatory

**EXECUTED** as a Deed (but not )  
delivered until dated) by affixing )  
the Common Seal of )  
**THE MAYOR AND BURGESSES OF THE** )  
**LONDON BOROUGH OF RICHMOND UPON** )  
**THAMES** )

in the presence of:-

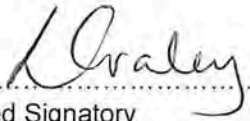
Name

Signature

Job Title

**EXECUTED** as a Deed )  
by affixing the Common Seal of )  
**RICHMOND HOUSING PARTNERSHIP LIMITED** )

in the presence of: )

  
.....  
Authorised Signatory

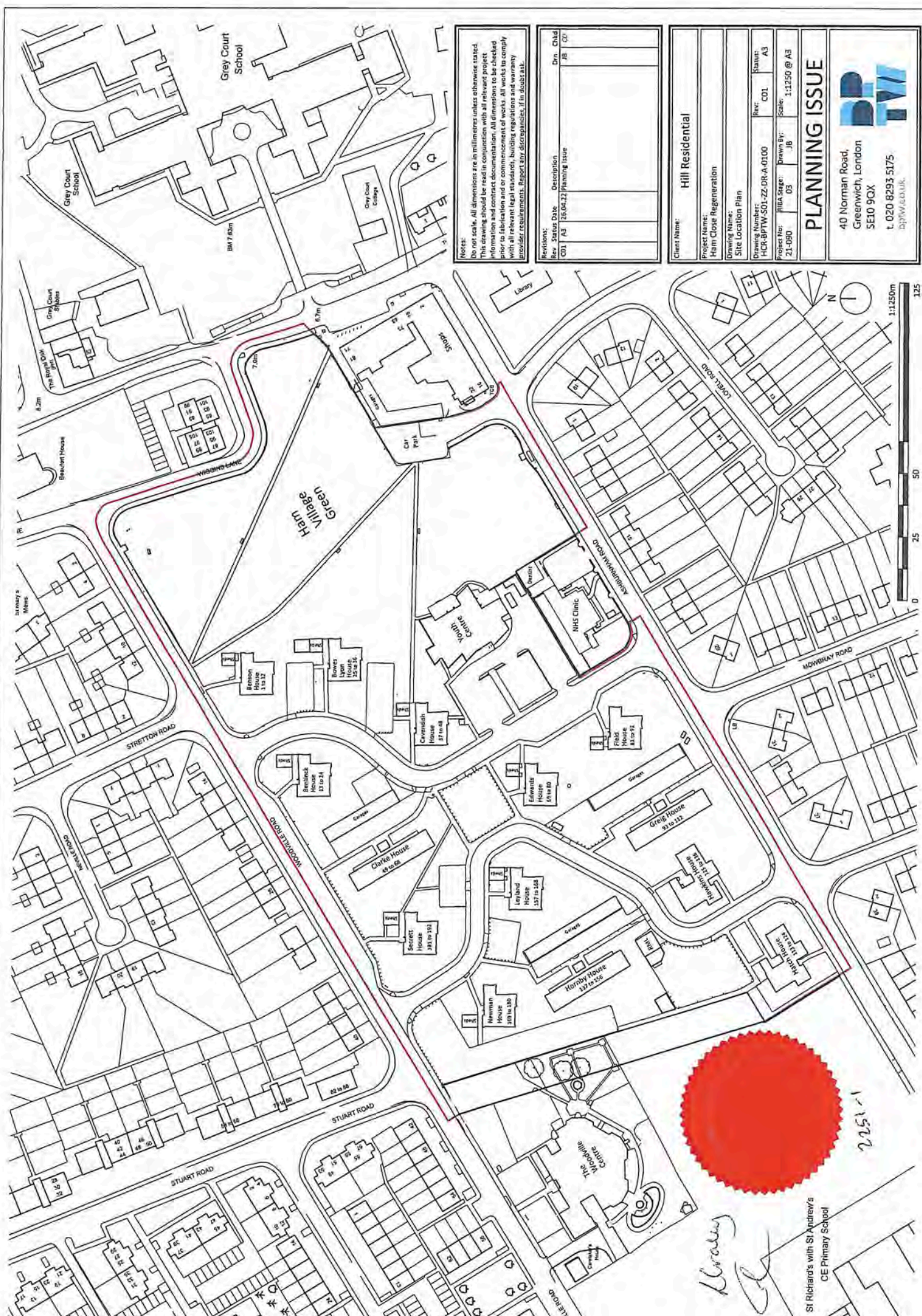
  
.....  
Authorised Signatory



2251-1

## APPENDIX 1

### Plans



**Notes:**  
 Do not scale. All dimensions are in millimetres unless otherwise stated.  
 This drawing should be read in conjunction with all relevant project information and contract documentation. All dimensions to be checked prior to fabrication and/or commencement of works. All works to comply with all relevant legal standards, building regulations and warranty provider requirements. Report any discrepancies, if in doubt ask.

Rev.	Status	Date	Description	Dr.	Chkd
001	A3	26.04.22	Planning Issue	JB	CD

Client Name:	Hill Residential
Project Name:	Ham Close Regeneration
Drawing Name:	Site Location Plan
Revision Number:	HCR-BPTW-S01-ZZ-DR-A-0100
Rev:	001
Status:	A3
Project No:	21-090
RIBA Stage:	03
Drawn By:	JB
Scale:	1:1250 @ A3

**PLANNING ISSUE**

40 Norman Road,  
 Greenwich, London  
 SE10 9GX  
 t. 020 8293 5175  
 dp@pwy.co.uk

*Handwritten:* 2251-1

*Handwritten signature:* [Signature]

St Richard's with St Andrew's  
 CE Primary School



Notes:  
 1. Drive Close from the Avenue.  
 2. All other notes are given in red.  
 3. Distribution of this drawing to be made as to part is prohibited without  
 the permission of the author.

KEY:  
 Green Hatched Area: New Close Managed by RHP  
 Blue Hatched Area: New Village Green in Conjunction to be managed by L&BUT  
 Orange Hatched Area: Private Assembly Space

*Wreathy*

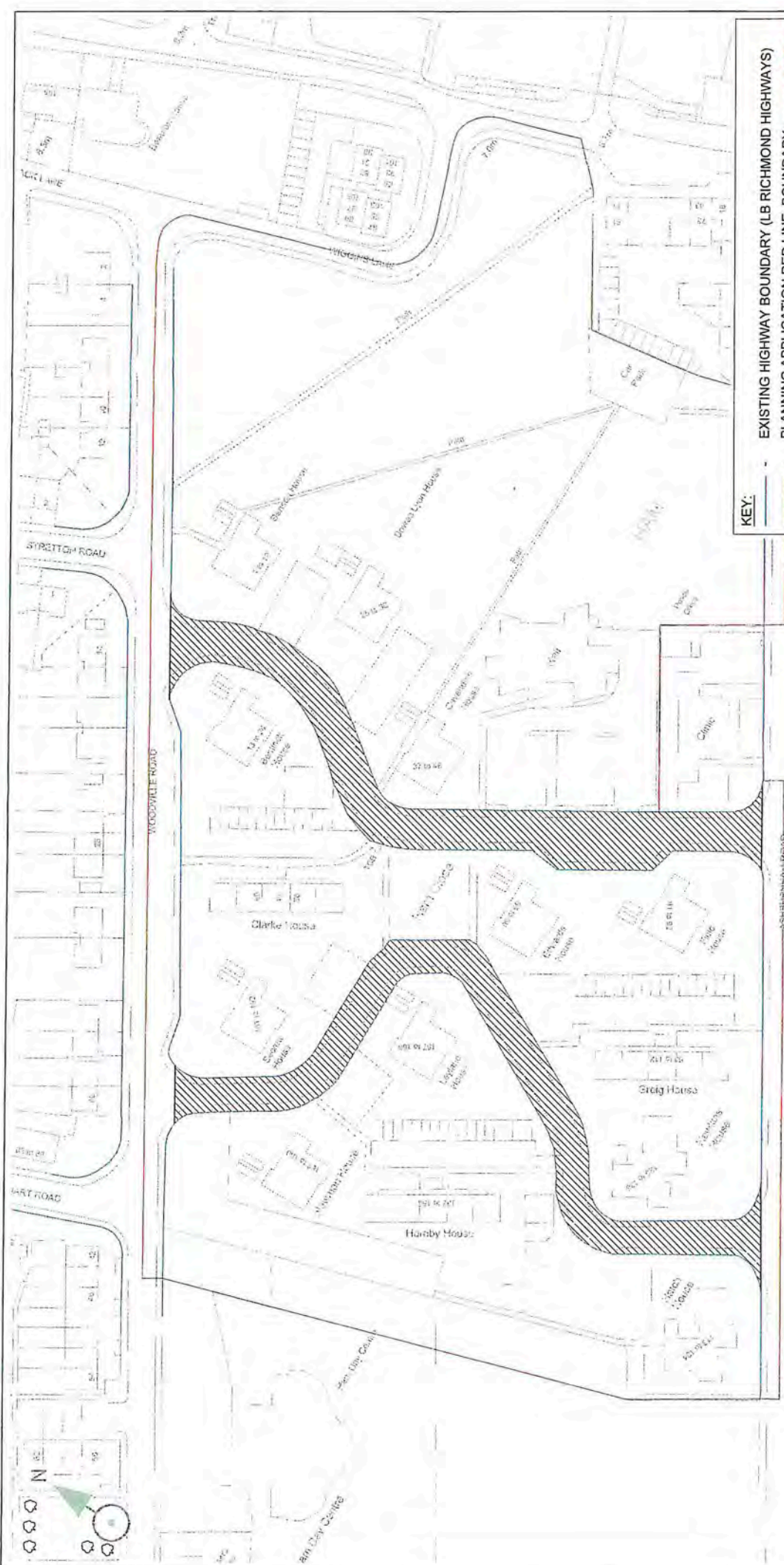


2251-1

<b>LUC</b> LUC Architects 800 Wilshire Blvd, Suite 401 WFO Los Angeles, CA 90017 Tel: (310) 707-1111 Fax: (310) 707-1112 www.lucarchitects.com	
Project:	HAN CLOSE REGENERATION
Client:	HILL GROUP
Scale:	Scale 8/11
Scale:	1:500
Drawn To:	FOR INFORMATION
Drawn By:	Open Space Management Plan
Drawn To:	LD-PL-12-225
Sheet:	B







**KEY:**  
 - - - EXISTING HIGHWAY BOUNDARY (LB RICHMOND HIGHWAYS)  
 - - - PLANNING APPLICATION RED LINE BOUNDARY  
 ▨ STOPPING UP AREA

*Ham Close*



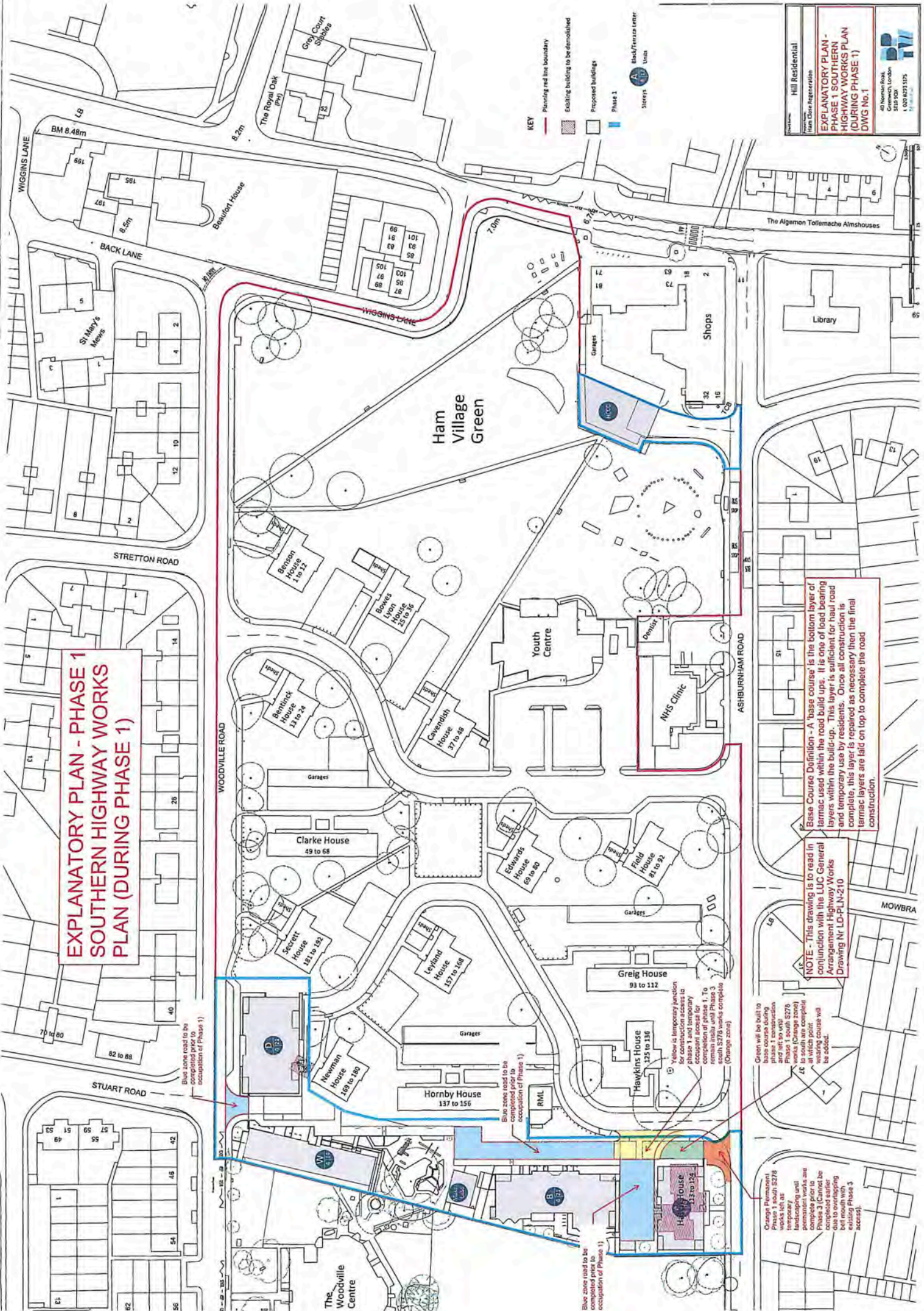
Ordnance Survey © Crown Copyright 2022.  
 All rights reserved. Licence number 100022432

Drawing Status <b>S2 - FOR INFORMATION</b>		Project Title <b>HAM CLOSE</b>		
Client <b>HILL RESIDENTIAL</b>		Drawing Title <b>STOPPING UP PLAN</b>		
Architect <b>BPTW</b>		Scale @ A3 <b>1:250</b>	Checked <b>DM</b>	
Notes:		Date <b>26.10.22</b>	Approved <b>DM</b>	
<p>DO NOT SCALE FROM THIS DRAWING          ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.          1. THIS DRAWING IS TO BE PRINTED IN COLOUR.          2. THE SURVEY INFORMATION IS BASED ON OS DATA AND VELOCITY TRANSPORT PLANNING SHALL NOT BE LIABLE FOR ANY INACCURACIES OR DEFICIENCIES.          3. THIS DRAWING HAS BEEN ISSUED FOR INFORMATION PURPOSES AND MUST NOT BE USED FOR CONSTRUCTION.</p>		Project Ref <b>21-102</b>	Drawing Number <b>21-102-T-025</b>	
Rev	Date	Description	Chk	App
E	04/11/22	MINOR AMENDMENTS	DM	DM
D	01/11/22	MINOR AMENDMENTS	DM	DM
C	01/11/22	MINOR AMENDMENTS	DM	DM
B	31/10/22	MINOR AMENDMENTS	DM	DM
A	26/10/22	FIRST ISSUE	DM	DM

**Hill Residential**  
 Ham Care Regeneration

**EXPLANATORY PLAN - PHASE 1 SOUTHERN HIGHWAY WORKS PLAN (DURING PHASE 1)**  
 DWG No. 1

40 Norman Road, London SE19 9QW  
 T: 020 831 8375



**EXPLANATORY PLAN - PHASE 1 SOUTHERN HIGHWAY WORKS PLAN (DURING PHASE 1)**

**Base Course Definition -** A 'base course' is the bottom layer of tarmac used within the road build ups. It is one of load bearing layers within the build-up. This layer is sufficient for haul road and temporary use by residents. Once all construction is complete, this layer is repaired as necessary then the final tarmac layers are laid on top to complete the road construction.

**NOTE -** This drawing is to read in conjunction with the LUC General Arrangement Highway Works Drawing Nr LD-PLN-210

Green will be built to base course during construction and left to cure for Phase 1 until S278 works (Change zone) at which point a wearing course will be added.

Orange Permanent works will be laid on S278 temporary works as landscaping will be completed after Phase 3. Cannot be laid to overlapping due to overlapping with Phase 3 access.

Blue zone road to be completed prior to occupation of Phase 1)

Blue zone road to be completed prior to occupation of Phase 1)

Blue zone road to be completed prior to occupation of Phase 1)

Yellow is temporary junction for construction access to phase 1 and temporary occupation zones for remain in situ until Phase 3 south S278 works complete (Change zone)

**EXPLANATORY PLAN - PHASE 2  
SOUTHERN HIGHWAY WORKS  
PLAN (DURING PHASE 2)**

**KEY**

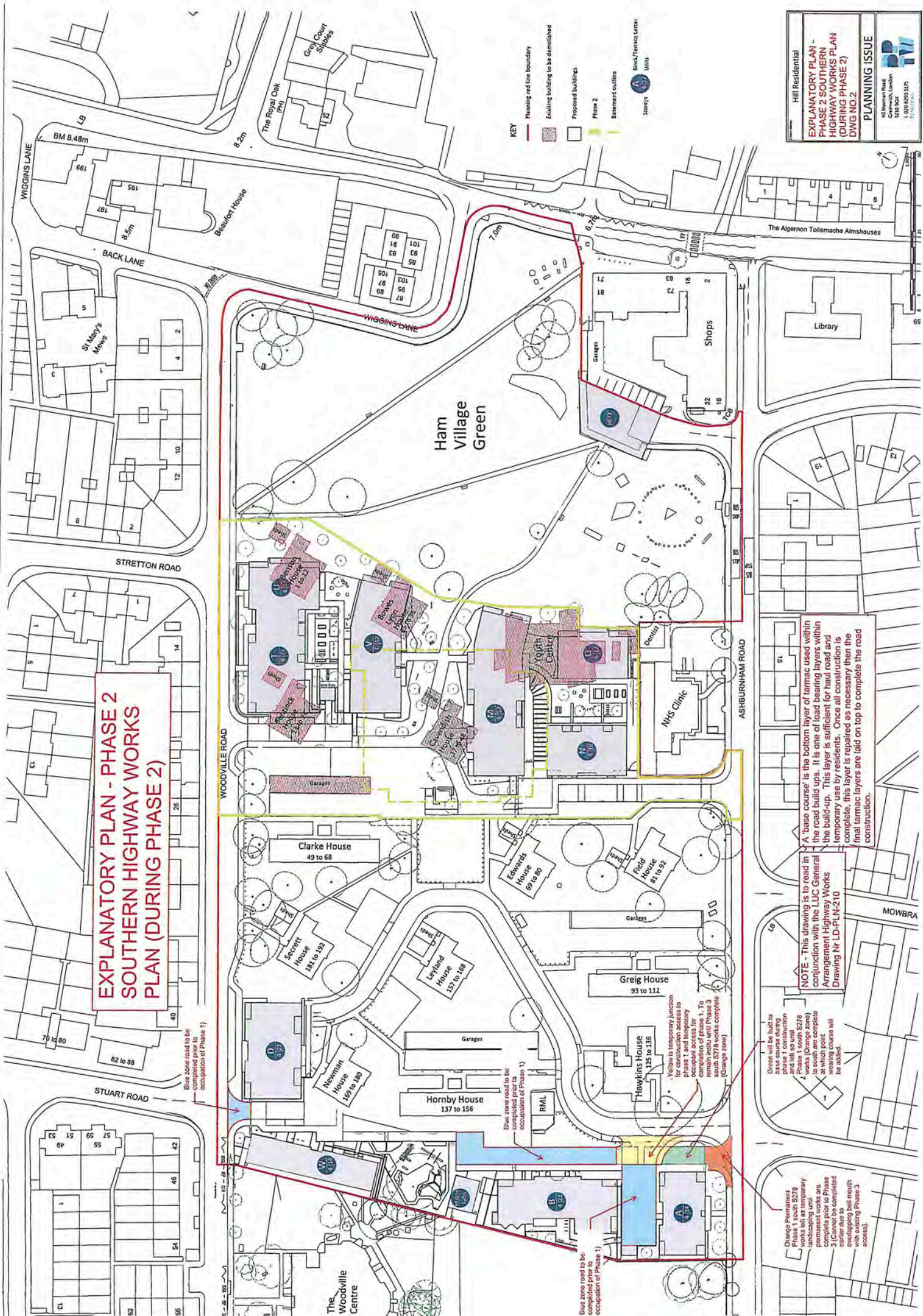
- Planning red line boundary
- Existing building to be demolished
- Proposed buildings
- Phase 2
- Basement outlines
- Storey 1
- Basement/terrace level
- Units

**Hill Residential**

**EXPLANATORY PLAN - PHASE 2 SOUTHERN HIGHWAY WORKS PLAN (DURING PHASE 2) DWG NO.2**

**PLANNING ISSUE**

40 Heman Road, London SE16 5QJ  
T: 020 8931 5375



A 'base course' is the bottom layer of tarmac used within the road build ups. It is one of load bearing layers within the build-up. This layer is sufficient for haul road and temporary use by residents. Once all construction is complete, this layer is repaired as necessary then the final tarmac layers are laid on top to complete the road construction.

**NOTE - This drawing is to read in conjunction with the LUC General Arrangement Highway Works Drawing Nr LD-PLN-210**

Green will be built to base course during phase 1 construction  
Orange Permanent Phase 1 south S278 works left as temporary permanent works are completed prior to Phase 3 (cannot be completed earlier due to existing wall restrict with existing Phase 3 access)

Blue zone roads to be completed prior to occupation of Phase 1

Blue zone roads to be completed prior to occupation of Phase 1

Blue zone roads to be completed prior to occupation of Phase 1

Yellow is temporary junction for construction access to existing buildings for temporary access for completion of phase 1. To remain in situ until Phase 3 south S278 works complete (orange zone)

**EXPLANATORY PLAN - PHASE 3  
SOUTHERN HIGHWAY WORKS  
PLAN (DURING PHASE 3)**



**KEY**

- Planning red line boundary
- Existing buildings to be demolished
- Proposed buildings
- Phase 3
- Basement outline
- Streetlights
- Block/Terrace letter
- Units

**Hill Residential**

**EXPLANATORY PLAN - PHASE 3 SOUTHERN HIGHWAY WORKS PLAN (DURING PHASE 3) DWG NO.3**

**PLANNING ISSUE**

40 Norman Road,  
Greenwich, London  
1.000.931.025

**NOTE - This drawing is to read in conjunction with the LUC General Arrangement Highway Works Drawing Nr LD-PLN-210**

A 'base course' is the bottom layer of tarmac used within the road build ups. It is one of load bearing layers within the build-up. This layer is sufficient for road and temporary use by residents. Once all construction is complete, this layer is retained as necessary then the final tarmac layers are laid on top to complete the road construction.

Temporary junction access to phase 1 and temporary access for occupant access for phase 1 permanent works completed.

Change Permanent Green to be built to permanent finish.

MOWBRA

**APPENDIX 2**  
**Form of Confirmatory Deed**

DATED:

20[]

(1) THE MAYOR AND BURGESSES OF  
LONDON BOROUGH OF RICHMOND UPON THAMES

-and-

(2) []

---

**S106 CONFIRMATORY DEED**

Made pursuant to S106 of the  
Town and Country Planning Act 1990  
relating to land at Ham Close

---



DATED

20[]

## PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham TW1 3BZ ("the Council"); and
- (2) [] whose registered office is at [TBC] ("**the Covenantor**")

## RECITALS

- (A) This Confirmatory Deed relates to the Covenantor's land and interests of which the details are set out in Schedule 1 to this Confirmatory Deed and which is shown edged red on the plan annexed to this Confirmatory Deed ("**the Site**").
- (B) The Council is the local planning authority for the area within which the Site and the Land (as defined in the Initial Planning Agreement (of which the relevant details are set out in Part 1 of Schedule 2 to this Confirmatory Deed)) are located and the planning obligations covenants agreements and other provisions contained in the Initial Planning Agreement *[as modified by the deeds of modification of which the details are set out in Part 2 of Schedule 2]* (insofar as they are relevant and applicable to the Site and its development in accordance with any Planning Permission) are intended to be made enforceable by the Council against the Covenantor and to be binding in respect of the Site in accordance with the terms of this Confirmatory Deed and the Initial Planning Agreement.
- (C) Clause 4 of the Initial Planning Agreement requires the Owner or any party who shall acquire any freehold or leasehold and/or any equitable interests in respect of any part of or interest in the Land to (inter alia) enter into complete and deliver to the Council a confirmatory deed substantially in the form of this Confirmatory Deed so as to make such interests in such land subject to those planning obligations which remain to be complied with and relate to that part of the Land.
- (D) In accordance with clause 4 of the Initial Planning Agreement the Covenantor enters into this Confirmatory Deed to covenant to observe perform and comply with (and that the Site shall henceforth be subject to and bound by) the obligations covenants agreements and other provisions contained in the Initial Planning Agreement (insofar as relevant and applicable to the Site and its development in accordance with the Planning Permission and the terms of the Initial Planning Agreement) insofar as they remain to be complied with and relate to the Site.
- (E) The Land lies within the [details to be Inserted] and is within [Phase (s) ].

## Operative Provisions

### 1. Operation of this Confirmatory Deed

1.1 This Confirmatory Deed and the obligations contained in it are:

- 1.1.1 made pursuant to section 106 of the Town and Country Planning Act 1990 as planning obligations and the other provisions referred to in the Initial Planning Agreement;
- 1.1.2 executed by the Covenantor so as to bind and subject its estate or interest in the Site (as detailed in Schedule 1) to the obligations covenants agreements and other provisions contained in the Initial Planning Agreement (insofar as relevant and applicable to the Site and its development in accordance with the Planning Permission and/or any relevant further Section 73 Permission); and

1.1.3 enforceable in accordance with the Initial Planning Agreement against the Covenantor and its successors in title to the Site by the Council acting as the local planning authority;

1.2 For the purposes of this Confirmatory Deed the term "Initial Planning Agreement" shall mean the Initial Planning Agreement dated [XX] 20[ ] as modified or amended by the deeds of modification listed in Part 2 of Schedule 2 to this Confirmatory Deed.

## 2. **The Covenantor's Obligations**

2.1 The Covenantor hereby covenants agrees and undertakes that its estate or interest in the Site shall henceforth be bound by the obligations covenants agreements and other provisions contained in the Initial Planning Agreement as if the Covenantor were a party to the Initial Planning Agreement when it was executed by the parties as listed in Part 1 of Schedule 2 (subject to the same terms and conditions set out in the Initial Planning Agreement including any clauses that limit or release the liability of any person in the Initial Planning Agreement) insofar as such terms and obligations covenants agreements and other provisions remain to be complied with in accordance with the Initial Planning Agreement which are expressed to bind the whole or any part of the Land or any specified Phase or other part of the Land (or the Development) which includes the Site or the part of the Development to be accommodated or located on the Site.

2.2 Where the Covenantor does not have vested in it all estates and interests in the part of the Land to which such obligations covenants agreements and other provisions relate it shall only be liable under clause 2.1 above for a breach of any obligation covenant agreement and other provisions in the Initial Planning Agreement if and to the extent that its estate or interest in the Site and any other relevant part of the Land enables or requires it to comply with such obligation covenant agreement and/or other provisions.

## 3. **Compliance by the Council**

The Council shall comply with their respective obligations in the Initial Planning Agreement in so far as they affect or are relevant to the Site and the relevant part of Development which relates to the Site and the Council's covenants under this Confirmatory Deed.

## 4. **Miscellaneous Provisions**

4.1 All words and phrases in this Confirmatory Deed shall bear the same meaning as defined in the Initial Planning Agreement except where defined otherwise in this Confirmatory Deed.

4.2 This Confirmatory Deed shall be registrable as a local land charge by the Council.

4.3 The Covenantor shall pay to the Council on completion of this Confirmatory Deed the Council's reasonable legal costs incurred in the negotiation preparation and execution of this Confirmatory Deed (insofar as such costs have not previously been paid).

4.4 No provision of this Confirmatory Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

4.5 Any invalidity illegality or unenforceability of any clause or paragraph in the Initial Planning Agreement or this Confirmatory Deed shall not affect the validity or enforceability of the remaining provisions in this Confirmatory Deed.

4.6 This Confirmatory Deed shall immediately cease to have effect if and to the extent that the Initial Planning Agreement shall cease to have effect and in any such circumstance all reference to this Confirmatory Deed is to be removed from the local land charges register.

**IN WITNESS** of the above [ ] has executed this Deed the day and year first above written

The Common Seal of **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** was hereto affixed in the presence of:

Authorised Signatory

**EXECUTED** as a **DEED** by [] (but not delivered until the first date specified on page 1) by a director in the presence of a witness

.....

Director

Witness Signature : .....

Witness name : .....

Witness address : .....

: .....

Witness occupation : .....

## Schedule 1

Details of the Site and interests to which this Confirmatory Deed relates

**Schedule 2**

**THE INITIAL PLANNING AGREEMENT AND RELEVANT DEEDS OF MODIFICATION**

**Part 1- THE INITIAL PLANNING AGREEMENT AND PREVIOUS CONFIRMATORY DEEDS.**

<b>Date</b>	<b>Parties</b>	<b>Details of Interests in the Land already bound in the Initial Planning Agreement or in subsequent Confirmatory Deeds.</b>
-------------	----------------	--

*[Details to be inserted]*

**Part 2- DEEDS OF MODIFICATION RELEVANT TO THE LAND.**

<b>Date</b>	<b>Parties</b>	<b>Summary of effect of the modification and the parts of the Land and/or the Development to which it relates</b>
-------------	----------------	---

*[Details to be Inserted]*