

dated

6<sup>th</sup> february

2020

**The Mayor and Burgesses of the London Borough of Waltham Forest  
(as Landowner)**

to

**The Mayor and Burgesses of the London Borough of Waltham Forest  
(as Local Planning Authority)**

### **Unilateral Undertaking**

in relation to land and buildings at Hylands Road, Walthamstow E17 4AW

(Planning Application No. 192987)

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## **Unilateral Undertaking**

dated 6th February 2020

### **Parties**

- (1) **The Mayor and Burgesses of the London Borough of Waltham Forest** of Waltham Forest Town Hall, Forest Rd, London E17 4JF in its capacity as landowner (the **Owner**);

In favour of

- (2) **The Mayor and Burgesses of the London Borough of Waltham Forest** of Waltham Forest Town Hall, Forest Rd, London E17 4JF in its capacity as local planning authority (the **Council**).

### **Introduction**

- (A) The Council is the local planning authority for the purposes of Section 106 of the 1990 Act for the area within which the Land is situated and the Council is the highways authority for the area in which the Land is situated.
- (B) The Owner is the freehold owner of the Land which is registered at HM Land Registry under title numbers EGL380126
- (C) The Owner submitted the Application to the Council for the development of the Land and the Application was validated on 5 September 2019.
- (D) The Council has resolved at a meeting of its Planning Committee on 3 December 2019 to grant planning permission for the Development subject to the prior completion of this Deed which is required to mitigate the impact of the Development.

### **Agreed terms**

#### **1 Definitions**

- 1.1 In this Deed unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

**1980 Act** means the Highways Act 1980 as amended from time to time or any subsequent re-enactment of that Act;

**1990 Act** means the Town and Country Planning Act 1990 as amended from time to time or any subsequent re-enactment of that Act;

**Affordable Housing** means low cost housing available to people nominated by the council of the London Borough of Waltham Forest through its Housing Allocation Scheme (for Affordable Rented Housing) and the Mayor of London's Homes for Londoners Programme Portal (for Shared Ownership Housing) whose incomes are insufficient to enable them to afford to meet their housing needs locally within the London Borough of Waltham Forest on the open market and being either Affordable Rented Housing or Shared Ownership Housing;

**Affordable Housing Mix** means unless otherwise agreed in writing by the Council 120 Affordable Rented Housing Units (including the number and mix of bedrooms) as follows:

- (a) 51 x 1 bed (two person) Affordable Rented Housing Units;
- (b) 24 x 2 bed (three person) Affordable Rented Housing Units;
- (c) 8 x 2 bed (four person) Affordable Rented Housing Units;
- (d) 29 x 3 bed (five person) Affordable Rented Housing Units;
- (e) 8 x 3 bed (six person) Affordable Rented Housing Units;

**Affordable Housing Provider** means the council of the London Borough of Waltham Forest or a person, company, partnership, organisation or manager which is a registered provider of social housing within the meaning of section 80 of the Housing and Regeneration Act 2008 (or any statutory modification thereto) and registered with the regulator of social housing pursuant to section 81 of the Housing and Regeneration Act 2008 or from time to time permitted by law to provide Affordable Housing with such organisation to be approved by the Council in writing prior their appointment;

**Affordable Housing Terms** means the terms set out in Paragraphs 2 of Schedule 1 to this Deed;

**Affordable Housing Units** means those 120 Dwellings provided as part of the Development as Affordable Housing and the term **Affordable Housing Unit** shall be construed accordingly;

**Affordable Rented Housing** means the rented housing let by a local authority or an Affordable Housing Provider at no more than 80% of the local market rents (inclusive of service charge) and to not exceed the Local Housing Allowance and which for the purposes of this Deed comprises Social Rent unless otherwise agreed with the Council in writing;

**Affordable Rented Housing Units** means the 120 Dwellings comprising:

- a) 51 x 1 bed (two person) Affordable Rented Housing Units;
- b) 24 x 2 bed (three person) Affordable Rented Housing Units;
- c) 8 x 2 bed (four person) Affordable Rented Housing Units;
- d) 29 x 3 bed (five person) Affordable Rented Housing Units;
- e) 8 x 3 bed (six person) Affordable Rented Housing Units;

which are to be used and occupied exclusively as Affordable Rented Housing;

**Application** means the application for the Development submitted by or on behalf of the Owner to the Council to which the Council allocated reference number 192987 for the Development for which a resolution to grant permission has been passed conditionally subject to conclusion of this Deed (and for the avoidance of doubt this is inclusive of any variation that may be made in respect of the Development);

**Borough** means the administrative area of the Council;

**Housing Allocation Scheme** means the Council's scheme, policy, protocol or method for allocating housing to those on the Borough's housing waiting list and/or in need of priority housing;

**Indexation** means the recalculation of any payment specified in this Deed by applying the following formula:

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

Where:

- A = the payment specified in this Deed in pounds Sterling
- B = the figure shown in the RPIX for the month last published prior to the date the payment is made under this Deed
- C = the figure shown in the RPIX for the month immediately prior to the date of this Deed
- D = the recalculated sum in pounds sterling payable under this Deed

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

**Index-Linked** means the adjustment of payments due under this Deed as a result of Indexation from the date of this Deed to the date of actual payment;

**Interest** means 4% (four per cent) over the base lending rate of Barclays Bank;

**Land** means the land shown for the purpose of illustration only edged red on the location plan attached at Appendix 1 and known as land at Hylands Road, Walthamstow E17 4AW

**Leases** means leases of the Land registered at HM Land Registry under title numbers EGL380594, EGL418816, EGL485529, EGL516443, EGL536231 and AGL399796 which shall be terminated prior to Commencement of the Development

**Local Housing Allowance** means the maximum amount of rent eligible for support through housing benefit or universal credit as determined by the Valuation Office rent officer based on location and dwelling size and published from time to time as local housing allowance rates;

**Monitoring Fee** means £17,630.90 (seventeen thousand six hundred and thirty pounds and ninety pence) towards the monitoring, implementation and compliance of this Deed;

**Nomination Agreement** means a nominations agreement substantially in the form as attached at Appendix 2 (or such other nominations agreement as may be agreed in writing by the Council);

**Occupation** means occupation of the Development but does not include occupation for the purposes of fitting out, decoration, marketing, staff training or site security (and  **Occupy, Occupying and Occupied** shall be construed accordingly);

**Permission** means planning permission for the Development granted pursuant to the Application subject to the completion of this Deed;

**Practical Completion** means completed so that the Development:

- (a) can be used for the purpose and operate in the manner for it was designed and
- (b) is ready and available for Occupation/use;

and the term  **Practically Complete** and  **Practically Completed** shall be construed accordingly;

**Residential Occupier** means any tenant or individual occupier or leasehold owner of a Dwelling and for the avoidance of doubt the term  **Residential Occupier** excludes any business or corporate body or bodies;

**RPIX** means the All Items Index of Retail Prices which measures the change in the prices charged for goods and services brought for consumption in the UK produced by the Office for National Statistics;

**S106 Monitoring Officer** means an officer of the Council from time to time allocated to deal with and monitor all planning obligations pursuant to Section 106 of the 1990 Act and to whom all notices correspondence approvals etc. must be sent;

**Social Rent** means rented housing provided by Affordable Housing Providers including local authorities at rents based on a formula set by Government with maximum target rents published annually;

**Working Day** means a day other than a Saturday or Sunday or public holiday in England.

## 2      **Construction of this Deed**

- 2.1 Where in this Deed reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 References to any statute or statutory provision include references to:

- 2.5.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed;
  - 2.5.2 any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
  - 2.5.3 in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 The words **including** and **include** shall be deemed to be followed by the words **without limitation**.
- 2.9 Unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa.
- 2.10 Where any approval consent agreement or the like is required to be given pursuant to the terms of this Deed it shall be in writing.

### 3 Legal Basis

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011, section 16 of the Greater London Council (General Powers) Act 1974 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements given by the Owner under this Deed fall within the terms of Section 106 of the 1990 Act and are planning obligations pursuant to Section 106 of the 1990 Act which bind the Land and are, subject to the exceptions set out in this Deed, enforceable by the Council as planning authority in respect of the Land.
- 3.3 The Owner enters into the obligations for themselves and their successors in title with the intent that the obligations contained in this Deed shall be enforceable (subject to clause 5.3) not only against Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof.

### 4 Conditionality

This Deed is conditional upon the grant and issue of the Permission.

### 5 Miscellaneous

- 5.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or it expires prior to the Commencement of Development.
- 5.2 Subject as otherwise provided in this Deed the Owner for themselves and their successors agree declare and covenant with the Council that the Land shall be subject to the terms and

obligations as to the manner of carrying out the Development contained in Schedules 1 to 9 inclusive.

- 5.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 5.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 5.5 No obligation in this Deed shall be binding on or enforceable against any occupier or resident of an individual Dwelling save for any obligations preventing Occupation and/or the obligations in Schedule 1 in relation to Affordable Housing
- 5.6 Subject to paragraphs 3 to 4 of Schedule 1, no obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Land or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee, mortgagee, receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Land or part thereof to which such obligation relates.
- 5.7 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Permission or as restricting the exercise by the Council of any statutory powers exercisable by it under the 1990 Act or under any other act or authority.

## 6 **Obligations of the Owner**

### 6.1 The Owner covenants to the Council:

- 6.1.1 to observe and perform the covenants, restrictions and obligations as set out in Schedules 1 to 9 in relation to the Land;
- 6.1.2 not to Commence, cause or permit Commencement of the Development until the Commencement Notice has been given to the Council;
- 6.1.3 to permit the Council and its authorised employees and agents upon reasonable written notice access to the Land at all reasonable times for the purposes of verifying whether or not any obligations arising hereunder have been performed or observed;
- 6.1.4 to comply with any reasonable requests of the Council to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein;
- 6.1.5 to give notice to the Council of:
  - (a) when the Development is first Occupied;
- 6.1.6 if any other person acquires a freehold interest or is granted or acquires a leasehold interest in the Land which is not at the date of this Deed part of the Owner's interests, then unless otherwise agreed with the Council the interest shall not be granted until:

- (a) the Council has been notified of such transaction; and
  - (b) the person to whom the disposition is to be made has entered into a Confirmatory Deed with the Council to agree that the terms and provisions of this Deed shall be carried out by the person to whom the disposition is to be made and deliver the completed Confirmatory Deed to the Council.
- 6.1.7 if the Development has not yet Commenced the Owner shall procure that any person to whom it transfers or grants a legal or beneficial interest in the Land shall:
- (a) enter into the Confirmatory Deed with the Council prior to Commencement of the Development; and
  - (b) not commence cause or permit the Commencement of the Development until such time as the Confirmatory Deed has been entered into in relation to the Development; or
- 6.1.8 if at the time of any transfer or granting of a legal or beneficial interest in the Land the Development has Commenced to enter into a Confirmatory Deed with the Council within 21 days of taking such interest in the Land.
- 6.1.9 To pay the Monitoring Fee to the Council on the completion of this Deed
- 6.1.10 Not to commence cause or permit Commencement of the Development until the Leases have been terminated or the leaseholders have signed a section 106 agreement in the same terms as this Deed

## 7 **Waiver**

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

## 8 **Contracts Rights of Third Parties**

- 8.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and as such a person who is not named in this Deed shall not have a right to enforce any of its terms.
- 8.2 For the avoidance of doubt the exclusion referred to in clause 8.1 above shall not:
- 8.2.1 prevent all or any future successors in title to any of the parties to this Deed from being able to benefit or to enforce any of the provisions of this Deed; and
  - 8.2.2 the Deed may be varied by agreement between the parties without the consent of any third party being required.

## 9 **Notices**

- 9.1 Any notice to be given under this Deed shall be in writing and shall be deemed to be validly served if delivered by hand or sent by first class post or registered/recorded delivery.

- 9.2 Any notice served under this Deed shall be deemed to have been received:
- 9.2.1 if delivered by hand, upon delivery at the relevant address; and/or
  - 9.2.2 if sent by first class post, the second Working Day after the date of posting.
- 9.3 The address for service for any party under this Deed shall be:
- 9.3.1 for the Council, S106 Monitoring Officer (Planning Department), London Borough of Waltham Forest, Waltham Forest Town Hall Complex, Forest Road, Walthamstow, London, E17 4JF;
  - 9.3.2 for the Owner for the attention of Corporate Director of Housing, Cedar Wood House, London E17 4GG;
  - 9.3.3 or such other address for service in England as the party to be served shall have previously notified in writing.
- 9.4 Any notice served pursuant to this Deed shall cite the number and clause of the Deed to which it relates and in the case of notice to the Council the planning reference number for the Development.
- 10 Indexation**
- All contributions and payments payable under this Deed shall be Index-Linked (upwards only) from the date of this Deed until the date on which the contribution is paid.
- 11 Interest**
- Save as otherwise provided in this Deed if any payment due under this Deed is paid late then Interest will be payable from the date payment is due to the date of actual payment.
- 12 Value Added Tax**
- 12.1 All payments given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 12.2 The Owner hereby acknowledge and agree that if at any time VAT is required to be paid in respect of any financial contribution payable by the Owner in accordance with this Deed then to the extent that VAT has not been previously charged in respect of that contribution the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly.
- 13 Dispute Resolution**
- 13.1 If any dispute arises out of this Deed, the dispute may be referred for determination by an independent person (an **Expert**) with a minimum of ten years' experience in the relevant field appointed jointly by the parties but in default of such agreement such appointment shall be made by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute.
- 13.2 The procedure to be followed in any dispute resolution shall be that written submissions shall be exchanged between the parties and served upon the Expert within 21 days of the

appointment of the Expert with any response to be exchanged between the parties and served upon the Expert within 14 days of the date that the first submissions were served upon the Expert.

13.3 The findings of the Expert including any finding in respect of costs shall be binding upon all parties and costs shall be at the discretion of the Expert.

13.4 Nothing in this Clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

**14 Local Land Charge**

This Deed is a local land charge and shall be registered as such.

**15 No Fetter on Discretion**

Nothing contained or implied in this Deed shall prejudice, fetter, restrict or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice, fetter, restrict or affect any provisions, rights, powers, discretions, responsibilities, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the 1990 Act or as a local authority generally and its rights, powers, discretions, responsibilities, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised.

**16 Severability**

It is agreed that if any part of this Deed shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provisions will be severed from the Deed and the remainder of this Deed shall continue in full force and effect.

**17 Jurisdiction**

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

**18 Delivery**

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

## Schedule 1

### Affordable Housing

The Owner covenants:

- 1 To provide:
  - 1.1 120 of the Dwellings as Affordable Housing Units;
  - 1.2 the Affordable Housing Units in accordance with the Affordable Housing Mix; and
  - 1.3 the Affordable Housing Units in accordance with the Affordable Housing Terms;
  - 1.4 to commence all works of construction and fitting out necessary to make the Affordable Housing Units suitable for Occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workman like manner using good quality materials in accordance with the specification approved by the Affordable Housing Provider and to their satisfaction;
  - 1.5 not to Occupy nor cause or permit the Occupation of and/or use or cause or permit the use of the Affordable Housing Units other than as Affordable Housing by a Residential Occupier of an Affordable Housing Provider;
  - 1.6 not to Occupy nor cause or permit the Occupation of and/or use or cause or permit the use of the Affordable Rented Housing Units until the Affordable Housing Provider has entered into a nominations agreement with the Council in a form as annexed at Appendix 2 and none of the Affordable Rented Housing Units shall be Occupied by any person not chosen pursuant to this nominations agreement Provided That this paragraph shall not apply if the Affordable Housing Provider is the council of the London Borough of Waltham Forest; and

#### The Affordable Housing Terms

- 2 Each transfer of an Affordable Housing Unit to the relevant Affordable Housing Provider shall:
  - 2.1.1 be with full title guarantee of a freehold estate or a leasehold estate for a minimum of 125 years;
  - 2.1.2 provide for (i) access, (ii) foul and surface water sewers; and (iii) service systems for water, gas, electricity and telecommunications which shall be linked in each case to the estate roads and service systems to be constructed and laid as part of the remainder of the Development and connected ultimately to highways and sewers maintainable at the public expense;
  - 2.1.3 contain a covenant by the Affordable Housing Provider not to amalgamate or subdivide the Affordable Housing Units so that the Affordable Housing Mix will be maintained by the Affordable Housing Provider;
  - 2.1.4 provide for the Affordable Housing Units to be constructed to the prevailing design and performance requirements and standards set by the GLA;

2.1.5 subject to Paragraphs 3.1, 3.2, 3.3, 3.4 and 4 below in respect of an Affordable Rented Housing Unit contain a covenant that the Affordable Rented Housing Unit is only to be used, occupied and retained in perpetuity for no purpose other than for the provision of Affordable Rented Housing;

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

3 The obligations contained in paragraphs 1.1 to 1.5 (inclusive) and 2 of this Schedule 1 shall not be binding:

#### **Right to Acquire**

3.1 on a tenant (or a successor in title to such tenant) of an Affordable Rented Housing Unit where that occupant has exercised a statutory right to acquire the whole of the freehold or whole of the leasehold estate of the Affordable Rented Housing Unit;

#### **Mortgagee in Possession**

3.2 on any mortgagee or chargee of the Affordable Housing Provider who obtains an order for possession of the Affordable Housing Units under any loan or mortgage or finance agreement covering any of the Affordable Housing Units; or

3.3 on any receiver appointed under such loan mortgage or finance agreement who obtains an order for possession of and who subsequently sells the Affordable Housing Units; or

3.4 on any person deriving title from an Affordable Housing Provider or such mortgagee or chargee as a consequence of the sale of an Affordable Housing Unit by a mortgagee or chargee or a receiver (including an administrative receiver) or manager having been appointed by any mortgagee or chargee of the Affordable Housing Provider.

#### **Mortgagees**

4 In the event that:

4.1 legal proceedings are initiated or steps are taken against the Affordable Housing Provider for its winding up; or

4.2 the Affordable Housing Provider defaults or breaches any of the terms of any loan or mortgage agreement with its mortgagee or chargee;

so that the mortgagee chargee or receiver (the **Lender**) wishes to exercise its power of sale then the Lender of the Affordable Housing Provider shall serve a written notice (a **Default Notice**) upon the Council notifying the Council of the default and/or breach and/or legal proceedings,

4.3 in the event of service of a Default Notice pursuant to paragraph 4.1 of this Schedule 1 the Council shall be at liberty for a period of one (1) calendar month following receipt of the Default Notice to seek to identify another Affordable Housing Provider to agree to take a transfer of the Affordable Housing Units for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses (the **Consideration**);

4.4 if, following the receipt of a Default Notice:

- 4.4.1 a period of one (1) calendar month (the **Specified Period**) has elapsed and the Council has failed to identify another Affordable Housing Provider to agree to take a transfer of the relevant Affordable Housing Units for the Consideration; or
- 4.4.2 the Affordable Housing Provider identified by the Council within the Specified Period fails to exchange contracts for the transfer of the relevant Affordable Housing Units for the Consideration within two (2) calendar months of the end of the Specified Period;

then should the Lender take possession of the relevant Affordable Housing Units the Lender shall be released in accordance with paragraph 3 of this Schedule 1.

## Schedule 2

### Children's Play Space

- 1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Children's Play Space Contribution** means £50,000 (fifty thousand pounds) Index-Linked towards the refurbishment of play equipment, furniture and infrastructure at Bisterne Avenue Park and Coppermill Park.

- 2 The Owner hereby covenants with the Council:
  - 2.1 to pay the Children's Play Space Contribution to the Council prior to Commencement of the Development
  - 2.2 not to Commence cause or permit Commencement of the Development until such time as the Council has received in full the Children's Play Space Contribution.

### Schedule 3

#### Employment and Training Strategy

1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Apprentice Posts** means a post as defined by the National Apprenticeships Service which should combine on the job training and academic instruction to those entering the work force with each apprenticeship post to last a minimum of 52 weeks per apprentice post or as stipulated by the chosen apprenticeship framework

**Apprenticeship Default Payment** means:

£16,458 x number of Apprentice Posts the Owner fails to provide

to be paid by the Owner to the Council in accordance with the terms of this Deed towards the cost of employment training and business initiatives within the Borough;

**Construction Phase** means the period of the Development between:

- (a) the Commencement of the Development; and
- (b) completion of the Development so that it is ready for Occupation;

**Local Residents** means residents of the London Borough of Waltham Forest;

**Local Suppliers** means businesses local to the Development and the Borough including (but not limited) to:

- (a) local suppliers of building materials;
- (b) local suppliers of security; and
- (c) local suppliers of cleaners;

**Meet the Buyer Event** means an event hosted by the Council to present the opportunities the Development offers to the local supply chain and advise as to how local suppliers can get involved;

**Reasonable Endeavours** in this Schedule only means:

- (a) notification to the Council of all new roles created for the Development;
- (b) the submission to the Council of quarterly monitoring reports;
- (c) opportunities generated by the Development to be first offered to Local Residents for four – eight weeks;
- (d) proven contact with Borough's job brokerage service Steps Into Work, the Built Environment Construction Innovation Centre (**BECiC**); Job Centre Plus and local colleges and Advance TECC (Construction Centre based on Cathall Road);

- (e) updates to named contact within the Business Growth, Investment and Employment Team of the Council on progress; and
- (f) engagement in Borough's employer working to ensure access to pipeline of candidates and to shape quality opportunities;

**Work Placement** means a work experience placement in the construction trade during the Construction Phase of the Development with a length of twenty six weeks

**Work Placement Default Payment** means

£3,232 x number of Work Placements the Owner fails to provide

to be paid by the Owner to the Council in accordance with the terms of this Deed towards the cost of employment training and business initiatives within the Borough.

2 The Owner covenants hereby with the Council:

2.1 to notify the Council of all job vacancies for the construction or fit-out of the Development during the Construction Phase and to use Reasonable Endeavours to encourage or procure applications from Local Residents through liaison with:

- 2.1.1 the Borough's job brokerage service Steps Into Work;
- 2.1.2 the Built Environment Construction Innovation Centre (**BECiC**) and Advance TECC (Construction Centre based on Cathall Road); and
- 2.1.3 local employment and training providers including Job Centre Plus and local colleges,

2.2 to attend and participate in a 'Meet the Buyer' Event if one is hosted by the Council to present the opportunities the Development offers to Local Residents and local businesses and how to get involved.

3 **Local Labour**

The Owner hereby covenants with the Council to use Reasonable Endeavours to procure that 30% of all jobs for the construction or fit-out of the Development during the Construction Phase are offered to Local Residents.

4 **Apprenticeships**

4.1 The Owner hereby covenants with the Council:

- 4.1.1 to provide 15 Apprentice Posts in the construction trade during the Construction Phase; and
- 4.1.2 to first offer the apprenticeships referred to at paragraph 4.1.1 of this Schedule to Local Residents.

5 **Work Placements**

5.1 The Owner hereby covenants with the Council:

- 5.1.1 to provide a minimum of 6 Work Placements in the construction trade during the Construction Phase; and
- 5.1.2 to first offer the Work Placements referred to at paragraph 5.1.1 of this Schedule to Local Residents.

## 6 **Default Payments**

6.1 The Owner hereby covenants with the Council:

- 6.1.1 in the event that the Owner fails to provide any of the 15 Apprentice Posts pursuant to paragraph 4.1.1 of this Schedule 3 then the Apprenticeship Default Payment shall become payable by the Owner to the Council
- 6.1.2 in the event that the Owner fails to provide any of the 6 Work Placements pursuant to paragraph 5.1.1 of this Schedule 3 then the Work Placement Default Payment shall become payable by the Owner to the Council
- 6.1.3 not to Occupy cause or permit the Occupation of the Development unless and until the Apprenticeship Default Payment and the Work Placement Default Payment have been paid to the Council in full (if payable)

## 7 **Local Suppliers**

7.1 The Owner hereby covenants with the Council:

- 7.1.1 to procure a minimum of 20% Local Suppliers during the Construction Phase and to ensure all suppliers are local to the London Borough of Waltham Forest;
- 7.1.2 to provide information on a bi-monthly basis (on the 28th day of the calendar month) during the Construction Phase on the value of sub-contracts and supplier contracts that go to firms with a local postcode; and
- 7.1.3 to seek to procure that its contractors and sub-contractors provide the Council with:
  - (a) quarterly monitoring reports on performance towards the targets referred to in paragraphs 3, 4 and 5 of this Schedule during the Construction Phase; and
  - (b) an end of Development report.

## Schedule 4

### Highways

1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Public Realm** means the sum of £100,000 (one hundred thousand pounds) Index Linked to be paid by the Owner to the Council in accordance with the terms of this Deed towards the renewal and improvement of the public realm environment along Forest Road which align with the TfL Healthy Streets agenda;

**Highway Works** means the works to be carried out by the Council at the Owner's expense and being:

- a) Public realm works including renewal of footway, signage/way finding, lighting works to the unnamed road connecting Forest Road and Hylands Road;
- b) Removal of the existing turning head into the site adjacent to Hylands Road School;
- c) Temporary Traffic Regulation Order amendments, road marking and signage for any CPZ and road marking amendments;
- d) Creation of two new vehicle entrances for the car park access sites;
- e) Raised table/pedestrian priority works at the two new car park entrances and vehicle turning areas;
- f) Creation of drop kerbs for refuse collection; and
- g) Road safety audit stage (1 and 2).
- h) Renewal of footway on all frontages of the development;

provided always that the Highway Works do not include the cost of any adjustments or diversions of any statutory undertakers' apparatus. Any such adjustments or diversions must be undertaken by the Owner prior to the commencement of the Highway Works and at their own cost;

**Section 278 Agreement** means a section 278 agreement to be entered into between the Owner and the Council pursuant to the 1980 Act in order to facilitate the Highway Works; and

The Owner hereby covenants with the Council:

### 2 Financial Contribution

To pay the Public Realm Contribution to the Council prior to Commencement of the Development

3      **Section 278 Agreement**

- 3.1    To enter into the Section 278 Agreement prior to Occupation of the Development .
- 3.2    Not to Occupy or cause or permit the Occupation of the Development or any part thereof until such time as the Section 278 Agreement and the Highway Works have been completed.

## Schedule 5

### Travel Plan

- 1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Travel Plan** means a plan setting out a package of measures to be adopted by the Owner in the management of the Land as approved by the Council incorporating the elements set out in the Travel Plan Criteria with a view to inter alia reducing trips in motor vehicles by occupiers and users of the entire Development and promoting the use of environmentally friendly transport

**Travel Plans Annual Review** means an annual study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein) such annual study to be carried out by the Owner and submitted to the Council 12 (twelve) calendar months from the date following the first Occupation and then to be carried out annually on the corresponding calendar month for a period of 5 (five) years;

**Travel Plans Champion** means the person appointed by the Owner and approved by the Council who shall be responsible for managing on behalf of the Owner the implementation monitoring progression reporting and review of the Travel Plan in order to achieve its objectives and targets;

**Travel Plan Criteria** means the standards and criteria set out in Appendix 4 to this Deed

**Travel Plan Monitoring Contribution** means the sum of £4,000 (four thousand pounds) Index Linked to be paid by the Owner to the Council in accordance with the terms of this Deed towards the costs of monitoring the travel plan

- 2 The Owner hereby covenants with the Council:

- 2.1 To pay the Travel Plan Monitoring Contribution to the Council prior to Commencement of the Development
- 2.2 Not to Commence nor permit Commencement of any part of the Development until the Travel Plan Monitoring Contribution has been paid in accordance with paragraph 2.1 of this Schedule.

- 2.3 Prior to Occupation of the Development:

- 2.3.1 To submit the draft Travel Plan for written approval to the Council and obtain such approval and for the avoidance of doubt the Travel Plan shall be based on and accord with the Travel Plan Criteria;
- 2.3.2 to nominate a Travel Plan Champion for written approval of the Council and obtain such approval and such nomination shall include contact details full particulars and curriculum vitae of the proposed Travel Plan Champion and the nature of their relationship to the Owner; and
- 2.3.3 to appoint and retain the Travel Plan Champion at its own expense which retention shall endure throughout the duration of the Travel Plan.

- 2.4 Not to Occupy nor cause nor permit Occupation of the Development until the Travel Plan has been submitted to and approved in writing by the Council.
- 2.5 At all times during Occupation of the Development to:
- 2.5.1 comply with the terms of the approved Travel Plan including but not limited to implementing any actions by any dates specified in the Travel Plan;
  - 2.5.2 promote and publicise the approved Travel Plan to owners occupiers and visitors to the Development;
  - 2.5.3 implement the Travel Plan by the dates or within the time limits set out in the Travel Plan;
  - 2.5.4 carry out the Travel Plan Annual Review and submit a written report setting out the findings of such review to the Council within 3 (three) calendar months from the dates of each Travel Plan Annual Review such report shall include (but shall not be limited to) recommendations for amendments or improvements to the approved Travel Plan and whether or not the objective of the Travel Plan have been achieved;
  - 2.5.5 comply with any variations or amendments to the Travel Plan permitted by this Deed which shall in addition include any amendments or improvements reasonably required by the Council following review of the report submitted pursuant to paragraph 2.5.4 above and notified in writing to the Owner;
  - 2.5.6 to ensure that they will include in any transfer tenant's lease or occupier's licence of any part or parts of the Land a covenant that the purchaser tenant or occupier will implement the approved Travel Plan for such part or parts of the Land and further that they will use all reasonable endeavours to enforce such obligation against any such purchaser tenant or occupier;
  - 2.5.7 within 20 (twenty) Working Days of the transfer or letting of the Land or any part or parts thereof they will procure the delivery to the Council of a notice giving the following details:
    - (a) the name and address of the purchaser and/or tenant;
    - (b) a description of the premises demised;
    - (c) the length of the term; and
    - (d) a sufficient extract of the transfer or lease setting out the terms of the covenant expressed in favour of the Council in relation to the approved Travel Plans.

## Schedule 6

### Carbon Offset

1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Carbon Offset Contribution** means the sum of £174,618 (one hundred and seventy four thousand six hundred and eighteen pounds) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Deed towards the Council's Carbon Offsetting Fund which is spent on carbon reduction projects across the Borough to achieve the Council's overall carbon reduction targets. Such projects could include but are not limited to:

- (a) building energy efficiency retrofit measures;
- (b) building integrated renewable energy installations; and
- (c) awareness raising or behaviour modification programmes,

and for the avoidance of doubt such monies can be used to assist in the administration of the Carbon Offsetting Fund or as grant funding or as a repayable loan provided that the aim of such grant/loan is to seek to reduce carbon emissions across the Borough.

**Second Carbon Offset Contribution** means the contribution to be paid by the Owner to the Council prior to Occupation of the Development and calculated post construction in accordance with the following formula:

$$(A = \text{CO}_2 \text{ emitted from the Development (tonnes) per year}) - (B = \text{CO}_2 \text{ target emissions (tonnes) per year}) \times £1800$$

$$A - B \times 1800$$

towards the Council's Carbon Offsetting Fund which is spent on carbon reduction projects across the Borough to achieve the Council's overall carbon reduction targets such projects could include but are not limited to:

- (a) building energy efficiency retrofit measures;
- (b) building integrated renewable energy installations; and
- (c) awareness raising or behaviour modification programmes

and for the avoidance of doubt such monies can be used to assist in the administration of the Carbon Offsetting Fund or as grant funding or as a repayable loan provided that the aim of such grant/loan is to seek to reduce carbon emissions across the Borough.

2 The Owner hereby covenants:

#### 2.1 Carbon Offset Contribution

- 2.1.1 to pay the Carbon Offset Contribution to the Council prior to Commencement of the Development

2.1.2 not to Commence cause or permit Commencement of the Development until such time as the Council has received in full the Carbon Offset Contribution

**2.2 Second Carbon Offset Contribution**

2.2.1 Prior to Occupation of the Development to submit to the Council for its written approval a report showing the "as built" performance of the Development in terms of compliance with the policy requiring 35% carbon emission reductions beyond the 2013 Building Regulations (the **Approved Carbon Emission's Report**).

2.2.2 In the event that the Approved Carbon Emission's Report shows a shortfall against the London Plan carbon reduction target then the Second Carbon Offset Contribution will be payable.

2.2.3 On or prior to Occupation to pay to the Council the Second Carbon Offset Contribution (if such Second Carbon Offset Contribution is payable under paragraph 2.2.2 of this Schedule 6).

2.2.4 Not to Occupy or cause or permit the Occupation of the Development or any part thereof until such time as the Council has received in full the Second Carbon Offset Contribution (if such Second Carbon Offset Contribution is payable under paragraph 2.2.2 of this Schedule 6).

## Schedule 8

### Epping Forest SAC

- 1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Epping Forest SAC Contribution** means the sum of £12,000 (twelve thousand pounds) Index-Linked to be paid by the Owner to the Council in accordance with the terms of this Deed towards mitigating the impact of the Development on Epping Forest SAC:

- 2 The Owner hereby covenants with the Council to pay the Epping Forest SAC Contribution to the Council prior to Commencement of the Development
- 3 The Owner hereby covenants not to Commence cause or permit Commencement of the Development until such time as the Council has received in full the Epping Forest SAC Contribution.

## Schedule 9

### Retention of Architect

1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Architect** means On Architecture of Ink Rooms, 25-37 Easton Street, Clerkenwell, London WC1X 0DS employed by the Owner in connection with the Development

**Construction Phase** means the period of the Development between:

- (a) the Commencement of the Development; and
- (b) completion of the Development so that it is ready for Occupation;

2 The Owner hereby covenants with the Council to retain the Architect for the duration of the Construction Phase.

## **Appendix 1**

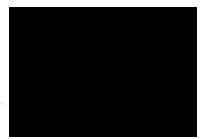
### **The Land**

Scale:



This drawing and the design are the copyright of ON Architecture Ltd only.  
This drawing should not be copied or reproduced without written consent.  
All dimensions are to be checked on site prior to fabrication and ON Architecture Ltd should be notified of any discrepancy prior to proceeding further.  
Do not scale for construction purposes.  
Illustrated information from 3rd party consultants/specialists is shown as indicatively only. See other consultant/specialist drawings for full information and detail.

93238



## Appendix 2

### Nomination Agreement

#### **Agreement**

dated [ ] 2020

#### **Parties**

- (1) **The Mayor and Burgesses of the London Borough of Waltham Forest** of Town Hall, Forest Road, Walthamstow, London, E17 4JA (the **Council**) of the first part
- (2) **Housing Association** (Industrial and Provident Societies number <<xxx>>) whose registered office is at <<xxx>> (the **Association**) of the second part

#### **Introduction**

- (A) The Council is a local authority for the purposes of the Local Government Act 1972 and a local housing authority for the purposes of the Housing Act 1985, Part I.
- (B) The Association is a registered provider within the meaning of Section 80 of the Housing and Regeneration Act 2008 and is registered under the Industrial and Provident Societies Act 1965.
- (C) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area within which the Land is situated.
- (D) By a transfer (the **Transfer**) of <<insert date>> the Developer transferred part of the Land containing the Affordable Housing Units ("the Site") to the Association so as to facilitate the management of the Affordable Housing Units by the Association.

#### **Agreed Terms**

##### 1 **Definitions**

- 1.1 In this Agreement the following expressions shall unless the context otherwise require have the following meanings:-

the Affordable Housing Units the <<insert number>> Affordable Rented Units as defined and described in the Section 106 Agreement and being constructed pursuant to the Planning Permission;

the **Agreement** means this agreement made by deed between the Council and the Association;

the **Developer** means <<insert name of developer and registered address>>;

**Housing Allocation Scheme** means the Council's scheme, policy, protocol or method for allocating housing to those on the Council's housing waiting list and/or in need of priority housing;

the **Land** means the land and premises known as \_xx shown edged in red on Plan 1 and registered at HM Land Registry under title number xxx and being the land to which the Planning Permission relates;

**Nomination Notice** means a written notice given by the Council to the Association which contains details of the Nominee(s);

**Nomination Rights** shall mean the rights granted by the Association to the Council to nominate tenants to the Affordable Housing Units as set out in this Agreement;

**Nominee(s)** means a person(s) named in a Nomination Notice;

**Non-True Void** means where an Affordable Housing Unit is vacant as a result of:

- (a) a tenant having been decanted to alternative accommodation temporarily but with the intention of returning to the Affordable Housing Unit;
- (b) voids created through tenant transfer in the borough within the Association's stock (a mutual exchange);
- (c) a tenant having been re-housed via any mobility scheme where a right to nominate a tenant to the Association's Housing stock is required in return; or
- (d) a tenant having been moved or having been transferred in such other circumstances as the Parties hereto may agree from time to time in writing as not being True Voids,

the **Parties** mean the parties to this Agreement and their successors in title;

**Plan 1** means the plan annexed at Schedule 1;

**Plan 2** means the plan annexed at Schedule 2;

**Planning Permission** means the permission issued by the Council as local planning authority to the Developer in respect of the Land on <<insert date>> under planning reference xxx for the construction of xxx

**Practical Completion Date** means the date when the Affordable Housing Units are structurally complete and ready for residential occupation notice of such date to be notified to the Council by the Developer in accordance with the provisions of the Section 106 Agreement;

the **Section 106 Agreement** means the deed containing planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) dated <<insert date>> and made between the Council, the Developer and <<insert names of other parties>> in respect of the Land and pursuant to the Planning Permission;

the **Site** means the land containing the Affordable Housing Units known as <<insert description>> shown edged red on Plan 2 and registered at HM Land Registry under title number <<insert title number>>;

**Tenancy Agreement** means a tenancy agreement between the Association and a Nominee in the Association's standard form;

**True Void** means an Affordable Housing Unit being vacant as a result of:

- (a) the tenant having moved to other accommodation;
- (b) the tenant having died and there being no right of succession to the tenancy whether under the terms of the tenancy agreement or under statute;
- (c) the tenant having purchased the Affordable Housing Unit;
- (d) the tenant having been evicted or having abandoned the Affordable Housing Unit; or
- (e) the Affordable Housing Unit becoming vacant for any other reason other than a Non-True Void;

**Vacancy Notice** means a written notice given by the Association to the Council that an Affordable Housing Unit is vacant; and

**Working Day** means any day Monday to Friday but excluding Bank and Public Holidays.

## 2 **Enabling Powers & Interpretations**

This Agreement is made under section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

## 3 **Association's covenants**

The Association covenants with the Council that it shall observe the covenants, restrictions and obligations contained in the Section 106 Agreement that relate to the Affordable Housing Units and the Site.

## 4 **Council's right to nominate tenants**

The Association grants to the Council the right to nominate tenants to occupy the Affordable Housing Units in perpetuity from the Practical Completion Date.

### 4.1 **New Build**

The Association shall grant to the Council the right to nominate tenants to 100% of all new lettings or in accordance with any regional and/or sub regional nominations protocols that the Council may enter into from time to time.

### 4.2 **Re-lets**

- 4.2.1 The Association shall grant to the Council the right to nominate tenants to occupy the Affordable Housing Units in accordance with the following ratio:
- (a) 50% of the True Voids for all the one bedroom Affordable Housing Units; and
  - (b) 75% of the True Voids for all two bedroom and over Affordable Housing Units.

5 **Exercise of Nomination Rights**

- 5.1 The Nomination Rights shall be exercised from the Practical Completion Date in accordance with the Council's Housing Allocation Scheme.
- 5.2 No liability shall devolve on the Council to reimburse the Association for any loss of rent or service charge or for any legal or other costs or fees or any other expenses incurred by the Association arising from or in any way connected with exercise of the Nomination Rights.

6 **Disposal of the Site**

- 6.1 The Association agrees with the Council that during the period of this Agreement the Association will not dispose of the Site or any part of it except:
- 6.1.1 in accordance with the provisions of this Agreement; or
  - 6.1.2 to a purchaser or transferee who is a registered provider within the meaning given in the Housing and Regeneration Act 2008 who is willing to enter into an agreement on similar terms to this Agreement in so far as such obligations remain to be observed and performed and prior to any such disposal the Association must seek the written consent of the Council such consent not to be unreasonably withheld or delayed; or
  - 6.1.3 to a purchaser of an Affordable Housing Unit exercising a statutory right to acquire or by way of a mortgage charge or loan taken out by the Association and secured against the Site

AND for the avoidance of doubt it is confirmed that the terms of this Agreement shall not be binding upon a lender mortgagee or chargee of the Association exercising its power of sale nor shall it bind a receiver of the Association.

7 **Rent**

The Association agrees that the initial rent for each Affordable Housing Unit and subsequent rent increases will be set in accordance with the provisions of the Section 106 Agreement.

8 **Procedure**

- 8.1 The Association shall serve Vacancy Notices in respect of the Affordable Housing Units at least eight weeks prior to the Practical Completion Date.
- 8.2 Within ten Working Days of the date of receipt of a Vacancy Notice in respect of an Affordable Housing Unit the Council shall serve on the Association no more than one Nomination Notice for each vacancy.

- 8.3 As soon as reasonably practicable thereafter the Association shall offer a Tenancy Agreement to the Nominee(s) named in the Nomination Notice in such priority order as the Council may specify in writing.
- 8.4 If any or all of the Nominees named in each Nomination Notice reject the Association's offer of a Tenancy Agreement the Association shall serve a second Vacancy Notice whereupon the procedure set out in clauses 8.1 to 8.3 shall be repeated and thereafter keep following this procedure until the vacancy is filled.
- 8.5 The Association shall supply the Council with full details of any offer of a Tenancy Agreement made by the Association within five Working Days of the offer made and shall notify the Council as soon as reasonably practicable of the outcome.
- 8.6 If the Association does not offer a Tenancy Agreement to any Nominee specified in the Nomination Notice served by the Council under clause 8.2 it must supply the Council with full details of the reason for not making any offer as soon as reasonably practicable.
- 8.7 In the case of the rejection of an offer by the Nominee, full details of reasons for rejection and indication of whether the Nominee intends to appeal, the suitability of the offer should be provided to the Council within two Working Days of the Nominee rejecting the offer.

## **9 Monitoring**

The Association shall provide to the Council quarterly monitoring reports in a format provided by the Council detailing how the Association has complied with clause 8 of this Agreement, these shall be provided by the end of April, July, October and January of each year.

## **10 Disputes**

- 10.1 In the event that any difference arises between the Parties with regard to this Agreement such dispute shall in the first instance be referred to [specify] of the Association and the Head of Strategic Housing and Investment of the Council or their nominees who shall meet and attempt to resolve the dispute within 14 days from the date of such referral.
- 10.2 If such dispute cannot be resolved as provided for in clause 10.1 above then the dispute shall be referred to the determination of a person chosen by the Chief Executive for the time being of the Chartered Institute of Housing and such person so chosen shall act as an expert and not as an arbitrator but shall consider written representations made to him/her by the Parties and the costs of such persons shall be borne as (s)he may determine.

## **11 Council as a local authority**

Nothing contained or implied in this Agreement shall prejudice or affect the Council's rights powers duties and obligations in the exercise of its functions as a local authority and the same may be as fully and effectually exercised in relation to the dwellings constructed on the Site as if this Agreement had not been executed by it.

## **12 Full agreement**

This Agreement contains all the terms expressly agreed between the Parties in respect of the exercise of the Nomination Rights and shall only be varied in writing and signed by both

parties or on their behalf provided that this Agreement may be varied by the Council where such variation is required by statute order byelaw or statutory instrument which has the effect of varying or removing from the Council its statutory responsibility.

### 13 Notices

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

**Council:** Strategic Housing, London Borough of Waltham Forest, Town Hall complex, Sycamore House, London, E17 4JF

**Association:** <>NAME OF CONTACT<> <>ADDRESS<>;

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

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

**SEALED** with the **COMMON SEAL** of the )  
**MAYOR AND BURGESSES OF THE** )  
**LONDON BOROUGH OF WALTHAM FOREST** )  
in the presence of : )

**Authorised Signatory**

**EXECUTED as a deed by** )  
**xxxx LIMITED** )  
acting by a director and its secretary )  
or two directors )

Director  
Secretary/Director

**Schedule 1**  
**Plan 1**

**Schedule 2**  
**Plan 2**

## Appendix 3

### Confirmatory Deed

**Agreement dated [ ] 2019**

#### **Parties**

- (1) [ ] (the **Council**); and
- (2) [ ] (Company Registration Number [ ]) whose registered office is situated at [ ] (the **Developer**)

#### **Introduction**

- (A) The Site is subject to the Unilateral Undertaking and the planning obligations it contains.
- (B) Under the terms of the Unilateral Undertaking, the Developer undertook to ensure that when it purchased and/or leased the Site that it would enter into a Confirmatory Deed.
- (C) The Developer has agreed to purchase and/or lease the Site from the Council.
- (D) This Confirmatory Deed contains obligations which are planning obligations for the purposes of Section 106 of the 1990 Act.
- (E) The Council is the local planning authority for the purposes of the Act and is the local planning authority by whom the planning obligations contained in this Confirmatory Deed are enforceable

#### **Agreed Terms**

##### **1 Definitions**

This Confirmatory Deed adopts the definitions in clause 2 of the Unilateral Undertaking and the interpretation provisions of clause 3 of the Unilateral Undertaking unless stated otherwise.

**Unilateral Undertaking** means the unilateral undertaking dated 20[ ] pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land at [ ];

**Relevant Obligations** means the planning obligations contained in the Unilateral Undertaking

##### **2 Statutory authority**

- 2.1 This Confirmatory Deed is made under Section 106 of the 1990 Act and any other enabling provisions.
- 2.2 Each covenant in this Confirmatory Deed is a planning obligation for the purposes of Section 106 of the 1990 Act enforceable by the Council against any person deriving title in the Property and is registrable as a local land charge.
- 2.3 The Confirmatory Deed shall take effect upon the date hereof.

3      **The Developer's covenants**

The Developer covenants to the Council pursuant to Section 106 of the 1990 Act as follows:

- 3.1    that all of the Developer's freehold interest / leasehold interest in the Site shall be bound by the Unilateral Undertaking;
- 3.2    that it shall observe and perform all of the Relevant Obligations;
- 3.3    that subject to the terms of the Unilateral Undertaking that the planning obligations set out in the Unilateral Undertaking shall be binding on persons deriving title to the Site from the Developer; and
- 3.4    no person other than the parties to this Confirmatory Deed has any interest in the Site for the purposes of the 1990 Act.

4      **Effect of the agreement**

- 4.1    Nothing in this Confirmatory Deed shall prejudice the exercise of any statutory power duty or discretion by the Council.
- 4.2    Insofar as any clauses of this Confirmatory Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity legality or enforceability of the remaining provisions of this Confirmatory Deed.
- 4.3    No waiver (where express or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Confirmatory Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default.
- 4.4    The provisions of this Confirmatory Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 4.5    This Confirmatory Deed is governed by and shall be interpreted in accordance with the law of England and Wales.
- 4.6    The provisions of this Confirmatory Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.
- 4.7    The headings appearing in this Confirmatory Deed are for ease of reference only and will not affect the construction of this Confirmatory Deed.

**IN WITNESS** of which the parties have executed but not delivered this Confirmatory Deed until the date first shown above.

THE COMMON SEAL OF [ ] was affixed )

in the presence of:- )

The Officer duly authorised on

behalf of the Council

## **Appendix 4**

### **TRAVEL PLAN CRITERIA**

1. The overarching purpose of any Travel Plan should be to influence behaviour change towards sustainable modes of travel, deliveries and servicing.
2. Transport for London's guidance 'Travel planning for new development in London' (November 2013) offers guidance on the preparation, implementation and monitoring of travel plans for new developments and can be found here:  
<https://tfl.gov.uk/info-for/urban-planning-and-construction/travel-plans#on-this-page-0>
3. This guidance states that the following elements are essential for a policy compliant full travel plan:

#### Introduction

- Development name, or site name and occupier name
- The planning reference number and development description
- Identify the type of travel plan (full travel plan, framework travel plan or travel plan statement)
- Full address of the development site, including postcode
- Contact details for the person responsible for preparing the travel plan
- The date and version number of the plan

#### Context

- Summary and overview of the structure of the travel plan document
- Brief description of the nature and context of the proposed development
- The scope of the travel plan (eg covering residents, employees, visitors)
- Key parameters for each element of the development (ie number of units, land use floor area, number of cycle and car parking spaces)
- Details of associated travel including numbers of users expected on site, shift patterns, opening times, postcodes of existing staff/visitors where appropriate
- Outline timescales for occupation and details of any phasing of development, if appropriate

#### Site assessment

It is recognised that much of this will be contained in the transport assessment.

- Plan of the development showing boundaries, existing and proposed access points and main routes for all transport modes
- Summary of the main transport related issues identified in the transport assessment and the infrastructure which will be delivered within the site and in the surrounding area as part of the development (eg cycle and pedestrian routes, private and publically accessible cycle parking)

- Quality and availability of infrastructure around the site. State Public Transport Access Level (PTAL), summarise how amenable local roads and key routes are to walking and cycling. Where applicable, include a summary of environment assessment reports, such as Pedestrian Environmental Review System (PERS) audits, Pedestrian Comfort Level Assessments, Bus Stop Audits
- Describe any organisational policies that will influence active travel and public transport use (eg tax-free cycle purchase schemes, flexi-working)
- Describe any existing facilities and car-related initiatives already in place (eg car clubs in the local area, car sharing, pool cars)
- Travel provision for disabled site users

### Travel surveys

- Details of any travel surveys (eg iTRACE, TRICS) undertaken if there are existing site users (including method, date, response rate and key findings)
- Set out initial travel data for the site based on travel survey data, or where there is no or insufficient existing data, on the trip rates and modal splits agreed in the transport assessment (with data drawn from comparable sites in TRICS or Census data)
- Give details as to when baseline surveys will be undertaken - usually within six months of first occupation or at 75% occupancy, whichever is first

### Objectives

- Describe the key goals that the travel plan seeks to achieve (ie encourage sustainable movement of people to and from the site)
- Cover a range of outcomes (eg environmental, health) which should be derived from the policies in the Local Planning Authority's Local Development Framework (LDF), the Mayor's Transport Strategy and the London Plan (eg to reduce CO<sub>2</sub> emissions and increase cycling)
- Ensure these are linked to the specific context of the site set out in the site assessment section

### Targets

- Should be set over a minimum five-year time frame, with interim targets at year one and year three. For larger developments or phased developments, an extended monitoring period may be required and targets may need to be set beyond five years
- Should be ambitious and SMART (specific, measurable, attainable, realistic and timebound). For example, reduce single occupancy vehicle trips by x% by x date). Clarify which journeys are being assessed (all trips/peak trips only)
- Should be linked to the objectives of the travel plan (eg if the aim is to promote healthy travel, targets to increase walking and cycling should be set)
- Should improve on baseline mode share of sustainable modes in the transport assessment and enable the measurement of success in achieving the objectives of the travel plan
- Can enable enforcement by the planning authority in the event that targets are not met

### Package of measures

These should:

- Clearly contribute to achieving the targets and meeting the objectives of the travel plan
- Aim to concentrate efforts in the initial period post completion and then maintain these (as opposed to gradual implementation) to enable behaviour change from the start
- Ensure these are related to the specific context of the site

- Include 'hard measures' (ie the infrastructure on and around the site that will help to achieve travel plan objectives eg secure bike parking, showering and changing facilities, safe and accessible routes)
- Include any organisational and 'soft measures' that will encourage sustainable travel (eg season ticket loans, flexible working policy)
- Clarify details of how car parking will be managed and restrained (eg permits or charging)
- Include clear details of marketing activities to encourage sustainable travel and who will carry these out
- Provide an estimate of the cost of the key measures over the lifetime of the travel plan (such as information provision, car club membership). Demonstrate how this cost will be met and by whom
- Use definite wording that commits to implement the proposed measure (not 'we will give consideration to...')

#### Management

- Identify a Travel Plan Coordinator (TPC) who will oversee implementation, monitoring and review of the travel plan for each occupier or group, including the TPC's name where possible or else a nominated point of contact at a senior level in the organisation. Provide clear roles and responsibilities (which may include management of deliveries and servicing, provision of personal travel planning advice, preparation and distribution of welcome packs, travel plan monitoring)
- Identify any other individuals involved in managing travel plan initiatives
- Identify how much time will be dedicated by the TPC to the travel plan and estimate cost associated with this over the lifetime of the travel plan. Confirm how this cost will be met and by whom
- Give details of management handover arrangements to ensure smooth transfer of travel plan responsibilities from the developer to the TPC

#### Monitoring

- Monitoring must be undertaken to ensure the site achieves the travel plan targets and objectives agreed within the planning permission
- A clear monitoring programme should be provided detailing what and how frequently surveys will be undertaken (usually a baseline survey, and at years one, three and five), who will be responsible and how this information will be reported
- Whether iTRACE compliant or TRICS surveys will be undertaken and estimate the cost of these over the lifetime of the travel plan. Confirm funding for these surveys

#### Action plan

- This is a key part of the document for the TPC and should be a programme for delivering the measures and a means of communicating this to the ultimate site users
- It should be concise and focused on the delivery of the travel plan measures
- It should include short/medium/long-term actions, timescales and responsibilities
- It should include an explanation of the handover process from the travel plan author to the TPC
- All measures to be introduced should be summarised and there should be clarity on the funding source for these

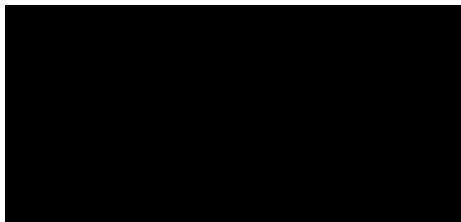
#### Securing and enforcing

- Summarise the costs associated with the measures, monitoring and management of the travel plan over its lifetime
- State the measures in place to ensure the travel plan is implemented effectively, including remedial measures and actions that will be taken if its targets are not met (eg sanctions, performance bonds)

- Incorporate servicing and delivery information within the travel plan (where appropriate)

This Deed has been executed as a deed and is delivered on the date stated at the beginning of it.

SEALED with the COMMON SEAL of the )  
MAYOR AND BURGESSES OF THE )  
LONDON BOROUGH OF WALTHAM FOREST )  
in the presence of : )



93238

Authorised Signatory