

DATED 7<sup>th</sup> June 2018

**OLD OAK AND PARK ROYAL DEVELOPMENT  
CORPORATION**

**AND**

**AURORA DEVELOPMENTS LIMITED**

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**SECTION 106 AGREEMENT**

**under section 106 of the Town and Country Planning Act 1990  
and all other powers enabling relating to land known as North  
Kensington Gate South, 115-129A Scrubs Lane (odd numbers  
only), London NW10 6QU**

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THIS DEED is made on

7<sup>th</sup> June

2018

**BETWEEN:**

1. **OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION** of City Hall, The Queen's Walk, More London Riverside, London SE1 2AA (the "**OPDC**"); and
2. **AURORA DEVELOPMENTS LIMITED** a company registered in Guernsey (company number 58085) whose registered office is at PO Box 635, St Peter's House, Le Bordage, St Peter's Port, Guernsey GY1 1BR (the "**Developer**")

Together the "Parties"

**RECITALS**

- (A) By virtue of The Old Oak and Park Royal Development Corporation (Planning Functions) Order 2015, the OPDC is the local planning authority for the area in which the Site is located for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The Developer is the registered owner of the freehold interest in the Site with title absolute under title number LN192535.
- (C) The Developer has submitted the Planning Application to the OPDC.
- (D) At a meeting of its Planning Committee on 5 April 2017, the OPDC resolved to grant the Planning Permission subject to the Developer entering into this Deed without which the Planning Permission would not be granted.
- (E) Accordingly, the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in it pursuant to the provisions of section 106 of the 1990 Act and all other enabling powers.

**THE PARTIES AGREE AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

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

**"1980 Act"**

means the Highways Act 1980 (as amended);

**"1990 Act"**

means the Town and Country Planning Act 1990 (as amended);

**"2011 Act"**

means the Localism Act 2011 (as amended);

**"Additional Affordable Housing Provision"**

means any unit or units of London Living Rent Housing or Shared Ownership Housing (or any alternative intermediate product) Affordable Rent Housing and/or London Affordable Rent Housing provided on the Site as part of the Development in addition to the Affordable Housing Units in accordance with Schedule 4 which together with any Affordable Housing Contribution shall not exceed the value of the Surplus Share



**“Affordable Housing”**

means housing including Affordable Rent Housing, London Affordable Rent Housing, London Living Rent Housing and Shared Ownership Housing provided to eligible households whose needs are not met by the market and which housing should (a) meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and (b) include provision for the home to remain at an affordable price for future eligible households, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision;

**“Affordable Housing Contribution”**

means a financial contribution for the provision of Affordable Housing in the OPDC’s area or Relevant Infrastructure payable in accordance with the provisions of Schedule 4 which together with any Additional Affordable Housing Provision shall not exceed the Surplus Share

**“Affordable Housing Units”**

means 44 Residential Units (as shown on Plan 2) forming part of the Development comprising the London Living Rent Units and the Shared Ownership Housing Units (and for the avoidance of doubt excluding the Private Residential Units);

**“Affordable Rent Housing”**

means rented affordable housing to be provided to eligible households whose needs are not met by the market and which are let at a rent of no more than 80% of the local open market rent, but subject to local housing allowance levels and which include service charge;

**“Approved Drawings”**

means the drawings prepared by the Architect to be approved by the Planning Permission or a S73 Permission as each may be varied by a S96A Amendment;

**“Architect”**

means Allies and Morrison;

**“Blue Badge Holders”**

means the holder of a disabled person’s badge pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or such other successor or alternative legislation as may be in force from time to time;

**“Boroughs”**

means LBB, LBE and LBHF and “Borough” shall be construed accordingly;

**“Building”**

means the building to be constructed pursuant to the Planning Permission;

**“Cap”**

means the value within the Development of 50% affordable housing (by habitable room) assuming a tenure split of 30% Affordable Rent Housing 30% London Affordable Rent Housing and 40% Shared Ownership Housing (Index Linked)

**“Car Club”**

means a company accredited by Carplus that Residents may join and which makes cars available to hire to members;

**“Carplus”**

means Carplus (registered charity no.1093980) or its successor or equivalent organisation as may be agreed in writing with the OPDC being the umbrella organisation for the promotion of sustainable car use and which gives accreditation to car club operators that meet set standards promoting responsible car use;

**“Car-Free Housing Scheme”**

means a development in which occupiers of the development affected are not entitled to parking permits allowing them or their visitors to park their vehicles within a CPZ in the vicinity of the development;

**“Chargee”**

means any mortgagee or chargee from time to time of a Registered Provider who has gone into possession and is exercising its power of sale in respect of the Affordable Housing Units or any part of the Affordable Housing Units;

**“Commencement”**

means the carrying out of a material operation (as defined in section 56(4) of the 1990 Act) or the service of a notice upon the OPDC that a material operation is about to be carried out whichever is earlier but for the purposes of this Deed shall not include the Exempted Works and **“Commence”** and **“Commenced”** shall be construed accordingly;

**“Commencement Date”**

means the date upon which the Development is Commenced;

**“Commercial Floorspace”**

means any floorspace comprised within the Development which falls within Use Classes A1, A2, A3 and or B1;

**“Construction Period”**

means the period from the Implementation Date to the date of Practical Completion of the Development;

**“Consumer Prices Index”**

means the Consumer Prices Index as published by the Office for National Statistics or in the event that the index ceases to be published or if the basis on which it is calculated is altered to a material extent such other index which most closely resembles it to be agreed between the parties hereto;

**“Contributions”**

means together the Education Contribution the Healthcare Contribution and the Transport Contribution

**“Costs”**

means the total of all of the costs incurred or estimated by the Developer (as the case may be) in connection with the Development as at Substantial Implementation and/or the Sales Assessment Trigger Date (as the case may be) the types of which are shown in the Revised Viability Assessment Template;

**“CPZ”**

means any controlled parking zone enforced by LBHF (or any successor local highway authority) from time to time in the streets in the vicinity of the Site;

**“Design Monitoring Costs”**

means any monies paid in accordance with paragraph 2 of Schedule 12 to meet the OPDC's reasonable costs incurred in monitoring the design quality of the Development as detailed drawings are prepared and to ensure that all such drawings are completed to a satisfactory quality and are consistent with the Approved Drawings;

**“Development”**

means the development permitted by the Planning Permission or a Varied Planning Permission;

**“District Heating Network”**

means an existing or future decentralised energy network providing low carbon energy, heating, electricity and hot water in the locality of the Site;

**“Education Contribution”**

means the sum of £762,851 (Index Linked) to be used towards improvement works to any primary or secondary school within a 1.5km radius of the Site, to address the demand arising from the Development for education services;

**“Eligible Purchaser”**

means a purchaser who is part of a household whose annual income at the date of purchasing the relevant Shared Ownership Housing Unit does not exceed the relevant amount specified in the latest London Plan Annual Monitoring Report, such income at the date of this Deed being £90,000;

**“Energy Strategy”**

means the revised energy strategy to be submitted pursuant to the relevant condition of the Planning Permission and including details of how the Development will be designed in accordance with the London Heat Network Manual to connect to the District Heating Network, including the size and location of pipework within the fabric of the Building and buried externally to the point of connection at the boundary of the Site.

**“Exempted Works”**

means an operation or item of work of or connected with or ancillary to archaeological investigation or remediation works associated with decontamination, exploratory boreholes, site or soil investigations, demolition, site clearance, site level re-modelling and excavation and/or site preparation, site reclamation and site remediation works, installation of trunk services to serve the entire Site, the erection of fences and hoardings and construction of temporary access and service roads;

**“Existing Third Party Interests”**

means any leasehold interests or any other interests or rights of third parties of whatever nature in, on or over the Site or any part of the Site existing at the date of this Deed;

**“Expert”**

has the meaning given in clause 19.3;

**“Framework Travel Plan”**

means a plan to promote sustainable modes of transport by Occupiers of the Residential Units and their visitors;

**“GLA”**

means the Greater London Authority which acts as a strategic city-wide government for London and includes any successor body;

**“HCA”**

means the Homes and Communities Agency or any successor in function as regulator of Affordable Housing in England and/or London;

**“Healthcare Contribution”**

means the sum of £197,130 (Index Linked) to be used towards expanding the primary care facility at the Hammersmith Centre for Health, Hammersmith Hospital to address the demand arising from the Development for healthcare services;

**“Highway Agreement”**

means an agreement entered into with the local highway authority pursuant to inter alia section 38 and 278 of the 1980 Act and **“Highway Agreements”** shall be interpreted accordingly;



**“Highway Reinstatement Area”**

means the highways and footways in the vicinity of the Site shown hatched green on Plan 3;

**“Highway Works”**

means:

- (a) the repair and reinstatement of the highway and footways within the Highway Reinstatement Area so as to repair and/or reinstate them to the same condition and standards as shown in the Schedule of Highway Condition approved by the OPDC pursuant to paragraph 2.1 of Schedule 5;
- (b) the provision of the loading bay that forms part of the Development;
- (c) the removal of street furniture;
- (d) the provision of a car club parking space; and
- (e) works to ensure compatibility with LBHF’s Streetsmart streetscape guidance and with the landscaping scheme approved under condition 14 of the Planning Permission as per the draft annexed hereto at Schedule 2.

**“Implementation”**

means the carrying out of the first material operation (as defined in section 56(4) of the 1990 Act) pursuant to the Planning Permission or the service of a notice upon the OPDC that the first material operation is about to be carried out pursuant to the Planning Permission, whichever is earlier and **“Implemented”** and **“Implementation Date”** shall be construed accordingly;

**“Index Linked”**

means subject to indexation in accordance with clause 17;

**“Interest”**

means interest at a rate of four per cent per annum greater than the Bank of England base rate in force from time to time from the date that the payment becomes due until the date of payment;

**“Jobs and Employment Strategy”**

means a written strategy which:

- (a) sets out the partnership arrangements for how the Developer and its contractors and sub-contractors will work with the OPDC (and the LBB, LBE and LBHF as appropriate) and any local employment or training agencies as part of an employment and training consortium, such arrangements to include appropriate reporting and review mechanisms; and
- (b) sets out agreed protocols and processes for joint working between the Developer and the OPDC (and the LBB, LBE and LBHF as appropriate) specifically around vacancy sharing for the purposes of recruiting Local Residents to vacancies and apprenticeships to include an agreed approach to the forecasting of future job opportunities and skills requirements to ensure an adequate pipeline of candidates;

**“LBB”**

means the London Borough of Brent;

**“LBE”**

means the London Borough of Ealing;

**“LBHF”**

means the London Borough of Hammersmith and Fulham;

**“Local Business”**

means any business, trade, service, profession or industry whose established place of business is within the LBB, LBE and/or LBHF;

**“Local Resident”**

means a person who is resident in the LBB, LBE or LBHF, such residency to be proven by the production of two valid proofs of address which are no more than three months old, for example:

- (a) council tax statement;
- (b) utility bills;
- (c) bank statements; or
- (d) other correspondence from government or state bodies;

**“London Affordable Rent Housing”**

means rented housing provided by a Registered Provider that is required to be offered to eligible households on a secured tenancy at rents set using the benchmark London affordable rents published annually by the GLA and the HCA;

**“London Design Standards”**

means the applicable housing design standards set out in the London Plan, the Mayor of London's Housing Supplementary Planning Guidance (2016) and the Mayor of London's and Homes and Communities Agency's Funding Standards Framework – New Funding Design and Sustainability Standards for London (December 2011) and any replacement or supplementary guidance in force from time to time;

**“London Heat Network Manual”**

means the London Heat Network Manual Issue 1 Revision 0 published by the Greater London Authority in April 2014 or any successor or replacement document;

**“London Living Rent Housing”**

means rented housing provided by a Registered Provider that is required to be offered to eligible households on a time-limited tenancy at a locally specified rent to help households on average incomes to save for a deposit to buy their own homes in accordance with the provisions of paragraphs 2.43 to 2.46 of the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance (August 2017). For the avoidance of doubt, the starting rent for the first and each subsequent new tenancy shall be in accordance with the locally specified rent for London Living Rent Housing units published annually by the GLA which is applicable at that time which, for the length of each tenancy, shall be allowed to increase by up to the rate of the Consumer Prices Index each year.

**“London Living Rent Housing Units”**

means the Affordable Housing Units to be made available for London Living Rent Housing in accordance with paragraph 1 of Schedule 3;

**“London Living Wage”**

means the hourly rate of pay calculated and published from time to time by the GLA as being a wage that is sufficient to give a worker in London and their family enough to afford the essentials and to save, the current rate at the date of this Deed being £9.75 per hour;

**“London Plan”**

means the spatial development strategy for London published by the Mayor of London and as may be amended or replaced from time to time;



**"London Plan Annual Monitoring Report"**

means the annual 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;

**"Occupation"**

means the occupation of any part of the Development for its designated planning use but does not include occupation by the Developer or any contractor or other occupier for the purposes of security, construction, fitting out, decoration, marketing or display and **"Occupy"**, **"Occupying"**, **"Occupier"** and **"Occupied"** shall be construed accordingly;

**"Pavilion"**

the single storey pavilion building located on the south side of the Development as shown on Plan 6

**"Plan 1"**

means the plan attached to this Deed at Schedule 1 and labelled "Plan 1";

**"Plan 2"**

means the plan attached to this Deed at Schedule 1 and labelled "Plan 2";

**"Plan 3"**

means the plan attached to this Deed at Schedule 1 and labelled "Plan 3";

**"Plan 4"**

means the plan attached to this Deed at Schedule 1 and labelled "Plan 4"

**"Plan 5"**

means the plan attached to this Deed at Schedule 1 and labelled "Plan 5"

**"Plan 6"**

means the plan attached to this Deed at Schedule 1 and labelled "Plan 6"

**"Planning Application"**

means the application for full planning permission for the Development submitted to the OPDC and allocated reference number 16/0119/FULOPDC for demolition of existing buildings and redevelopment of the Site to provide a new building ranging from 6 storeys (25.1 metres above ground level) to 22 storeys (80.4 metres above ground level) in height over a new excavated basement, comprising 750sqm (GIA) of ground floor commercial floorspace (use class A1/A2/A3/B1) and 164 residential units (use class C3) with basement car parking and plant space, landscaping and associated works;

**"Planning Permission"**

means the planning permission to be granted pursuant to the Planning Application in the form of the draft annexed hereto at Schedule 2;

**"Practical Completion"**

means the issue of a certificate of practical completion by the Developer's architect, engineer or other certifying officer as the case may be under the relevant building contract entered into in respect of the Development or part or parts thereof and **"Practically Complete"** and **"Practically Completed"** shall be construed accordingly;

**"Private Residential Units"**

means 120 Residential Units (subject to viability assessment undertaken pursuant to Schedule 4) for private sale forming part of the Development and which excludes the Affordable Housing Units and any Additional Affordable Housing Provision;

**“Registered Provider”**

means a provider of Affordable Housing registered under section 111 of the Housing and Regeneration Act 2008 (or such other relevant previous or amended or replacement statutory provision) and approved by the OPDC such approval not to be unreasonably withheld or delayed;

**“Relevant Infrastructure”**

means any infrastructure to be funded through the Education Contribution, Healthcare Contribution or Transport Contribution;

**“Rent and Nominations Agreement”**

means an agreement required pursuant to paragraph 1.3(a) or 1.4(a) of Schedule 3 or paragraphs 9.1(c) or 9.2(c) of Schedule 4 between the owner for the time being of the Affordable Housing Units (or any Additional Affordable Housing Provision as the case may be) and a Borough in a form to be agreed between said owner and Borough (acting reasonably) providing that Borough with nomination rights in respect of the Affordable Housing Units (or any Additional Affordable Housing Provision) and that the Borough may offer them to the other Boroughs if it is unable to fill the relevant Affordable Housing Units, and that the Borough may offer them to any other London borough if neither it nor the other Boroughs are able to fill the relevant Affordable Housing Units;

**“Resident”**

means an Occupier of a Residential Unit;

**“Residential Units”**

means 164 units of Use Class C3 residential accommodation to be provided as part of the Development comprising the Private Residential Units and the Affordable Housing Units;

**“Retail Price Index”**

means the Retail Price Index as published by the Office for National Statistics or in the event that the index ceases to be published or if the basis on which it is calculated is altered to a material extent such other index which most closely resembles it to be agreed between the Parties hereto;

**“Revenues”**

means the total of all of the revenues secured or estimated to be secured by the Developer (as the case may be) from the Development as at Substantial Implementation and/or the Sales Assessment Trigger Date (as the case may be) of which are shown in the Revised Viability Assessment Template and which include actual sales values for all Private Residential Units which have been disposed of by way of freehold sale or the grant of a long leasehold interest and actual rental values for all Private Residential Units which have been let on short term tenancy agreements;

**“Revised Viability Assessment”**

means an upwards only revised viability assessment prepared by or on behalf of the Developer in connection with the whole of the Development following the Substantial Implementation Assessment Trigger Date and/or the Sales Assessment Trigger Date (as the case may be), which assesses Revenues and Costs as at Substantial Implementation and/or the Sales Assessment Trigger Date (as the case may be);

**“Revised Viability Assessment Template”**

means the template form for the Revised Viability Assessment set out in Annex 1 to Schedule 4;

**“Revised Viability Assessment Review”**

means the upwards only review of a Revised Viability Assessment by the Viability Consultant with the purpose of determining the viability of the Development at Substantial



Implementation and/or the Sales Assessment Trigger Date as applicable in order to calculate whether a Surplus has arisen such review to be carried out in accordance with the provisions of Schedule 4

**“RTA Purchaser”**

means a former tenant of an Affordable Housing Unit who purchases that Affordable Housing Unit under the provisions of the right to acquire created by section 180 of the Housing and Regeneration Act 2008 or the preserved right to buy created by Part V of the Housing Act 1985 or any other statutory right in force from time to time entitling tenants of a Registered Provider to purchase their homes;

**“S96A Amendment”**

means a non-material amendment to the Planning Permission granted pursuant to section 96A of the 1990 Act;

**“S73 Permission”**

means a permission granted pursuant to an application for a minor material amendment pursuant to section 73 of the 1990 Act;

**“Sales Assessment Trigger Date”**

means the date of the sale of the 90<sup>th</sup> Private Residential Unit;

**“Schedule of Highway Condition”**

means a schedule of condition relating to the highways and footways within the Highway Reinstatement Area which shall include but not be limited to:

- (a) the line and level of footways and carriageways; and
- (b) the state of condition of access covers, surfacing, street furniture, channels and kerbs, street lighting and gullies (to be checked for blockages);

**“Shared Ownership Housing”**

means a unit occupied partly for rent and partly by way of owner occupation on shared ownership terms as defined in section 2(6) of the Housing Act 1996 (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 **“Shared Ownership Lease”** and **“Shared Ownership Lessee”** shall be construed accordingly;

**“Shared Ownership Housing Units”**

means the 37 Affordable Housing Units to be made available for Shared Ownership Housing in accordance with paragraph 1 of Schedule 3;

**“Site”**

means the land known as North Kensington Gate South, 115-129A Scrubs Lane (odd numbers only), London NW10 6QU as shown edged red on Plan 1, the freehold interest in which is owned by the Developer and registered at HM Land Registry under title number LN192535;

**“Staircasing”**

means the acquisition by a Shared Ownership Lessee of additional equity in a unit of Shared Ownership Housing up to a maximum of 100 per cent equity and “Staircased” shall be construed accordingly;

**“Substantial Implementation”**

means the Development has been Implemented and the following has occurred:

- (a) the letting of building contracts for the demolition and site clearance and construction of basement, substructure and concrete frame in connection with the Development
- (b) the completion of demolition of all existing buildings on the Site; and

- (c) completion of basement works and construction to ground floor slab level for the Building in accordance with Approved Drawings

and **“Substantially Implemented”** shall be construed accordingly

**“Substantial Implementation Assessment Trigger Date”**

means the date 24 months from but excluding the date of grant of the Planning Permission;

**“Surplus”**

means the sum resulting from the Revised Viability Assessment the value of which shall be calculated in accordance with paragraph 7 of Schedule 4;

**“Surplus Share”**

means 50% (fifty per cent) of the Surplus (if any);

**“Transport Contribution”**

means the sum of £167,500 (Index Linked) which in consultation with Transport for London is to be used towards increasing the accessibility of the Site including increasing the capacity of the local bus network and walking, cycling and public realm improvements on or adjacent to Scrubs Lane between the southern end of Mitre Bridge to the South and the junction with Hythe Road to the north as shown edged in red on Plan 4;

**“Use Classes”**

shall be defined by reference to the Town and Country Planning (Use Classes) Order 1987 (as amended);

**“Varied Planning Permission”**

any planning permission issued pursuant to an application to vary or further vary any of the conditions in the Planning Permission;

**“Viability Consultant”**

means such suitably qualified and experienced viability consultant appointed by the OPDC who is a professional member of the Royal Institution of Chartered Surveyors of not less than 10 years' experience of carrying out viability assessments in respect of developments of a magnitude which are similar to the Development.

**“Viability Assessment”**

means the viability assessment dated 25<sup>th</sup> July 2016 prepared by DS2 on behalf of the Developer in connection with the Planning Application and the review of that viability assessment carried out by GL Hearn on behalf of the OPDC; and

**“Working Day”**

means any day of the week other than Saturday Sunday or any bank holiday.

- 1.2 Where in this Deed reference is made to a clause paragraph schedule recital plan annex or appendix such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed or to a plan annex or appendix attached to this Deed.
- 1.3 Where in any schedule or part of a schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that schedule or (if relevant) part of a schedule.
- 1.4 References in this Deed to the Developer shall include reference to its successors in title and assigns and to persons claiming through or under it in relation to all or any part of the Site save where the context otherwise requires.
- 1.5 References to the OPDC shall include reference to any successor body exercising any of the powers currently vested in the OPDC in relation to this Deed.



- 1.6 Words including the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.7 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner.
- 1.8 Words denoting an obligation on a party to do an act matter or thing include an obligation to procure that it be done and words placing a party under a restriction (including for the avoidance of doubt any obligation preventing or restricting Commencement or Occupation) include an obligation not to cause, permit, suffer or allow infringement of the restriction.
- 1.9 Any reference to a statute or a provision thereof or a statutory instrument or a provision thereof shall include any modification, extension or re-enactment thereof for the time being in force (including for the avoidance of doubt any modification, extension or re-enactment made prior to the date of this Deed) and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.10 The word "including" means including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 1.11 The clause and paragraph headings in the body of this Deed and in the schedules hereto do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.12 References to the Site include any part of it.

## **2 LEGAL BASIS**

- 2.1 This Deed is made pursuant to:
  - (a) section 106 of the 1990 Act;
  - (b) sections 1 and 201 of the 2011 Act; and
  - (c) all other powers so enabling.
- 2.2 The OPDC is the local planning authority having the power to enforce the planning obligations contained in this Deed.

## **3 NATURE OF OBLIGATIONS**

- 3.1 Subject to clause 3.2 below, the obligations, covenants and undertakings on the part of the Developer in this Deed are planning obligations insofar as they are capable of being lawfully made pursuant to and for the purpose of section 106 of the 1990 Act and are given so as to bind the Developer's interest in the Site and with the intent that they shall be enforceable by the OPDC not only against the Developer but also against any successors in title to or assigns of or transferees of the Developer and/or any person claiming through or under the Developer an interest or estate in the Site as if that person had been an original covenanting party and insofar as any such obligations, covenants or undertakings are not capable of falling within section 106 of the 1990 Act the same are entered into as obligations, covenants or undertakings in pursuance of any other such enabling power.
- 3.2 The Developer and the OPDC acknowledge and agree that:
  - (a) the Planning Permission will be granted on the basis that Occupiers of the Residential Units should not be entitled to any parking permit that would entitle them to park within any CPZ enforced by LBHF as at the date of this Deed;



- (b) paragraph 3 of Schedule 6 prevents Commencement of the Development until the Developer has given a unilateral undertaking to LBHF pursuant to section 16 of the Greater London Council (General Powers) Act 1974 to secure restrictions on the ability of Occupiers to obtain such parking permits, with the intent that such restrictions on parking permits shall be enforceable by LBHF not only against the Developer but also against any successors in title to or assigns of or transferees of the Developer and/or any person claiming through or under the Developer an interest or estate in the Site, as if that person had been an original covenanting party;
- (c) the obligations in paragraph 3 of Schedule 6 are planning obligations insofar as they are capable of being lawfully made pursuant to and for the purpose of section 106 of the 1990 Act and in any event are covenants also given pursuant to section 201 of the 2011 Act.

3.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the OPDC of any of its statutory powers, functions or discretions.

#### **4 CONDITIONAL AGREEMENT**

4.1 This Deed is conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Implementation of the Development

save in respect of clauses 1–4 (inclusive), 6.2, 7–24 (inclusive) and paragraph 3.3 of Schedule 6 which shall come into effect immediately upon completion of this Deed and paragraphs 2.3 to 2.7 (inclusive) of Schedule 6 which shall come into effect upon the grant of the Planning Permission.

#### **5 OBLIGATIONS OF THE DEVELOPER**

The Developer covenants with the OPDC to observe and perform and cause to be observed and performed the obligations and covenants on the part of the Developer contained in the schedules to this Deed.

#### **6 OBLIGATIONS OF THE OPDC**

- 6.1 The OPDC covenants with the Developer to observe and perform and cause to be observed and performed the obligations and covenants on the part of the OPDC contained in this Deed.
- 6.2 The OPDC shall issue the Planning Permission as soon as reasonably practicable after the date of this Deed.

#### **7 LEGAL COSTS**

The Developer covenants with the OPDC to pay upon completion of this Deed the OPDC's reasonable and proper legal costs incurred in respect of the Planning Application and the preparation, negotiation and completion of this Deed (inclusive of any reasonable legal costs incurred by external lawyers appointed by the OPDC).

#### **8 OWNERSHIP**

- 8.1 The Developer warrants and undertakes to the OPDC that it is the freehold owner of the whole of the Site and has full power to enter into this Deed.
- 8.2 The Developer covenants with the OPDC to give the OPDC written notice of any change in ownership of any of its interests in the Site or part thereof (save in respect of individual Residential Units or units of Commercial Floorspace) occurring before all the obligations

under this Deed have been discharged, such notice to be served within 20 Working Days following the change and to give details of the transferee's full name and registered office (if a company) or usual address (if not a company), together with a plan showing the area of the Site to which the disposal relates.

## **9 NO ENCUMBRANCES**

- 9.1 The Developer covenants with the OPDC that it will not Implement the Development until either (a) all Existing Third Party Interests have been extinguished or (b) all Existing Third Party Interests are bound by the terms of this Deed.
- 9.2 The Developer covenants with the OPDC that if a third party with an Existing Third Party Interest Implements the Development or procures the Implementation of the Development the Developer shall observe and perform the covenants obligations and duties contained in this Deed.
- 9.3 If a third party with an Existing Third Party Interest Implements the Development or procures the Implementation of the Development the Developer shall use all reasonable endeavours to prevent any further works pursuant to the Development being carried out and shall use all reasonable endeavours to ensure that the party responsible for carrying out or procuring the Implementation shall promptly and permanently be removed from the Site.
- 9.4 The Developer shall not encumber or otherwise deal with its interests in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Deed are rendered impossible to carry out save where planning permission is granted after the date of this Deed for an alternative development of the Site Provided That this clause shall not restrict the Developer from encumbering or otherwise dealing with its interest in the Site or any part or parts thereof on a basis that is subject to the obligations, covenants and undertakings imposed by this Deed.

## **10 REGISTRATION**

- 10.1 As soon as reasonably practicable after the completion of this Deed (and in any event within 10 Working Days of this Deed), the Developer shall make applications to the Land Registry for entries relating to this Deed to be made in the charges registers of the Title Number LN192535 above so as to bind the Site as provided for in the above mentioned statutory provisions and shall provide the OPDC with written notification as soon as reasonably practicable that such applications have been made.
- 10.2 If the Developer fails to notify the OPDC that it has made the applications in accordance with clause 10.1, the OPDC shall (without prejudice to any other right) be entitled to register this Deed and recover the expenses incurred in doing so from the Developer and the Developer hereby covenants with the OPDC to do or concur in doing all things necessary or advantageous to enable the said entries to be made.
- 10.3 The Developer covenants that it shall not make any application to the Land Registry for the removal of any notice registered pursuant to clauses 10.1 or 10.2.
- 10.4 The OPDC shall request registration of this Deed as a Local Land Charge by the LBHF or its respective successor in statutory function.

## **11 RIGHT OF ACCESS**

Without prejudice to the OPDC's statutory rights of entry and subject to reasonable prior notice, the Developer shall permit the OPDC and its authorised employees, agents, surveyors and other representatives to enter the Site and any buildings erected thereon pursuant to the Development at all reasonable times for the purpose of verifying whether or not any obligation

arising under this Deed has been performed or observed and the Developer shall comply with any reasonable request made by the OPDC for documentation held by the Developer for such purposes.

## **12 DEVELOPER TO NOTIFY THE OPDC**

12.1 The Developer covenants with the OPDC to notify the OPDC in writing of:

- (a) the intended Implementation Date, at least a month prior to such intended date;
- (b) the actual Implementation Date, within five Working Days of such actual date;
- (c) the intended Commencement Date, at least a month prior to such intended date;
- (d) the actual Commencement Date, within five Working Days of such actual date;
- (e) the intended date of Substantial Implementation at least a month prior to such intended date;
- (f) the actual date of Substantial Implementation within five Working Days of such actual date;
- (g) the intended date for first Occupation of the Development, at least a month prior to such intended date;
- (h) the actual date of first Occupation of the Development, within five Working Days of such actual date.

12.2 In the event that the Developer fails to provide notification in accordance with clause 12.1, the relevant notifiable event shall be deemed by OPDC (acting reasonably) for the purpose of this Deed to have taken place on the earliest date that such event could have taken place.

## **13 NOTICES**

13.1 Any notice or other written communication to be served upon a party or given by one party to any other under the terms of this Deed shall be given in writing and shall be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given and shall conclusively be deemed to have been received on:

- (a) if delivered by hand, the next Working Day after the day of delivery; and
- (b) if sent by first class post or recorded delivery post, the day two Working Days after the date of posting.

13.2 The address for any notice or other written communication shall be within the United Kingdom only and shall be as specified below, or such other address as shall be specified by the Party upon whom the notice is to be served to the other Party by not less than five Working Days' notice:

- (a) OPDC:  
 Director of Planning  
 Old Oak and Park Royal Development Corporation  
 PP5A  
 City Hall  
 The Queen's Walk  
 More London Riverside  
 London  
 SE1 2AA



(b) The Developer:  
 Mr Nebojsa Crnobrnja  
 Aurora Developments Limited  
 c/o PO Box 635  
 St Peter's House  
 Le Bordage  
 St Peter's Port  
 Guernsey  
 GY1 1BR

Email: crnobrnja@pfb.rs

- 13.3 Any notice or other written communication to be given by the OPDC shall be deemed valid and effectual if on its face it is signed on behalf of the OPDC by an officer or duly authorised signatory.

#### **14 PAYMENTS**

- 14.1 All payments to be made by the Developer pursuant to the terms of this Deed shall be sent to OPDC by way of electronic transfer marked for the attention of the Head of Development Management and using reference 16/0119/FULOPDC.
- 14.2 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof.
- 14.3 The Developer hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of any of the financial contribution due under this Deed then to the extent that VAT had not been previously charged in respect of that contribution the OPDC shall have the right to issue a VAT invoice to the Developer and the VAT shall be paid accordingly.

#### **15 NO WAIVER**

No waiver (whether expressed or implied) by the OPDC of any breach or default in performing or observing any of the covenants, obligations or undertakings contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the OPDC from enforcing any covenants, obligations or undertakings or from acting upon any subsequent breach or default in respect thereof by the Developer.

#### **16 INTEREST ON LATE PAYMENT**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date payment is made.

#### **17 INDEXATION**

Where in this Deed any sum or value is to be paid or is otherwise referred to then unless stated to the contrary such sum or value shall be Index Linked so that such sum or value shall be increased (as the case may be) by the percentage change in the Retail Price Index from 5 April 2017 until the date of each payment (or the date that it becomes necessary to calculate such sum or value) to be calculated by reference to the most recently published figures for the Retail Price Index prior to 5 April 2017 and prior to each payment date.

## **18 LIABILITY UNDER THE DEED**

- 18.1 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed:
- (a) to the extent that such breach relates to any part of the Site in which that person has no interest and/or
  - (b) which occurs after that person has parted with their entire interest in the Site (or his interest in that part of the Site on which the breach occurs) save for any prior breach for which he shall continue to be liable
- 18.2 No obligations, undertakings or liabilities under this Deed shall be enforceable against individual purchasers or lessees or Occupiers of the individual Residential Units or their mortgagees or successors in title to either the purchaser or lessee or Occupier or mortgagee, save in respect of the obligations in:
- (a) paragraph 1.1 and 1.8 of Schedule 3 (Affordable Housing); and
  - (b) paragraph 2.3 of Schedule 6 (Car Parking)
- 18.3 No obligations, undertakings or liabilities under this Deed shall be enforceable against individual purchasers or lessees or Occupiers of individual units of Commercial Floorspace or their mortgagees or successors in title to either the purchase or lessee or Occupier or mortgagee, save in respect of the obligations in paragraph 2.3 of Schedule 6 (Car Parking).
- 18.4 Subject to paragraph 2 of Schedule 3, no obligations, undertakings or liabilities under this Deed shall be enforceable against any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge of or on the whole or any part of the Developer's interest in the Site unless and until such mortgagee or chargee has entered into possession of the Site or any part thereof to which such obligation, covenant or undertaking relates, whereupon it will be bound by the obligations, covenants and undertakings as a person deriving title from the Developer.
- 18.5 No obligations, undertakings or liabilities under this Deed shall be enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of heat, cooling, electricity, gas, water, drainage, telecommunication services or public transport services.

## **19 DISPUTES**

- 19.1 Where the Parties are in dispute or disagreement or have any differences relating to any matter the subject of or connected with this Deed or its meaning or construction (a "**Dispute**") then (without prejudice to any provision in this Deed which specifies a particular timescale for the resolution or determination of any matter) the Parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the Dispute arising
- 19.2 Failing the resolution of any such Dispute within the said 20 Working Days or within such other period as may be specified in this Deed in relation to the resolution or determination of the matter in question, the Dispute shall be referred for determination in accordance with the provisions of this clause 19 on the reference of any of the Parties to the Dispute
- 19.3 The Dispute shall be referred to the decision of an independent expert (the "**Expert**") who shall be an independent person of at least ten years' standing in the area of expertise relevant to the Dispute and in the event that the Parties are unable to agree whom should be appointed within a period of ten Working Days following a failure of the parties to resolve the Dispute within the period set out in clause 19.1, then any party may request:



- (a) if such Dispute shall relate to matters concerning the construction, interpretation and/or application of this Deed, the Chairman of the Bar Council to nominate the Expert;
  - (b) if such Dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institution of Chartered Surveyors to nominate the Expert;
  - (c) if such Dispute shall relate to matters requiring a specialist chartered civil engineer, the President of the Institution of Civil Engineers to nominate the Expert;
  - (d) if such Dispute shall relate to matters requiring a specialist chartered account, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;
  - (e) if such Dispute shall relate to matters requiring a viability consultant, the President of the Royal Institution of Chartered Surveyors to nominate the Expert; and
  - (f) in all other cases, the President of the Law Society to nominate the Expert.
- 19.4 If the Dispute shall relate to matters falling within two or more of clauses 19.3(a) to 19.3(f) (inclusive), the Parties may agree to appoint joint Experts and in the event that the Parties are unable to agree whom should be appointed as joint Experts, the Parties may request the President of the Law Society to nominate such persons falling within the descriptions of clauses 19.3(a) to 19.3(f) (inclusive) to act as joint Experts.
- 19.5 The Expert shall act as an expert and not as an arbitrator and the determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the Parties) shall be final and binding upon the Parties subject to manifest error.
- 19.6 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine, submitted jointly by the Parties to the Dispute) subject to an express requirement that he reaches his decision and communicates in writing it to the Parties to the Dispute within the minimum practical timescale allowing for the nature and complexity of the Dispute and in any event no later than thirty Working Days from the date of his appointment to act and that he is to have particular regard to the 1990 Act in reaching his decision.
- 19.7 The terms of reference of any Expert appointed to determine a Dispute shall include the following:
- (a) he shall call for representations from all parties with ten Working Days of a reference to him under this Deed and shall require the parties to exchange representations within this period;
  - (b) he shall allow the parties ten Working Days from the expiry of the ten Working Days period referred to in clause 19.7(a) to make counter-representations;
  - (c) any representations or counter-representations received out of time shall be disregarded by the Expert;
  - (d) he shall provide the parties with a written decision (including his reasons) within ten Working Days of the last date for receipt of counter-representations;
  - (e) he shall be entitled to call for such independent expert advice as he shall think fit; and
  - (f) his costs and the costs of any independent expert advice called for by the Expert shall be included in his award.
- 19.8 Unless the Expert shall decide otherwise the costs of any reference to the Expert shall be borne equally by the parties to the Dispute.

## **20 CONTRIBUTIONS**

- 20.1 The OPDC covenants that as soon as is reasonably practicable upon receipt of any Contribution under this Agreement, to pay such Contribution or payment into a separately identified interest bearing section of the OPDC's accounts (unless the Parties agree otherwise) such accounts bearing the Bank of England base rate of interest from time to time on deposits.
- 20.2 The OPDC covenants that in the event that any part or all of any of the Contributions have not been allocated or used for the purpose specified within this Agreement within ten years from the date of payment to, on written request from the Developer, repay such sums or amounts (or such part thereof) to the Developer with all Interest accrued.

## **21 MISCELLANEOUS PROVISIONS**

- 21.1 Without prejudice to the terms of this Deed and the obligations imposed on the Developer herein, nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted after the date of this Deed.
- 21.2 This Deed and the obligations, covenants and undertakings which it contains shall lapse and be extinguished automatically if and from the date that the Planning Permission:
- (a) expires without the Development having been Implemented; or
  - (b) is quashed, revoked or (without the consent of the Developer) modified.
- 21.3 If any provision of this Deed is declared by any court to be void, voidable, illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend that provision in accordance with the decision of the court provided that any party may seek the consent of the others to the termination of this Deed on such terms (including the entering into of another Deed) as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties
- 21.4 Where this Deed requires any matter to be agreed, approved, certified, consented to or determined by any party or any person on behalf of any party hereto under this Deed such agreement, approval, certification, consent or determination shall not be unreasonably withheld or delayed and shall be given in writing.
- 21.5 No variation to this Deed shall be effective unless made by deed
- 21.6 All interest earned on sums paid to the OPDC under this Deed shall be taken to form part of the principal sum and may be expended by the OPDC accordingly
- 21.7 Nothing in this Deed shall imply any obligations on the part of the OPDC to any person to ensure that the Development is properly constructed.

## **22 GOVERNING LAW**

This Deed and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this Deed or its formation (including any non-contractual disputes or claims) shall be governed and construed in accordance with English law.

## **23 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Any person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**IN WITNESS** whereof this Deed has been executed as a deed and delivered on the date first above written.

**SCHEDULE 1****Plans**

1. Plan 1 – Site Plan
2. Plan 2 – Affordable Housing Plan
3. Plan 3 – Highway Reinstatement Area Plan
4. Plan 4 – Transport Contribution Plan
5. Plan 5 – Blue Badge Holder Parking Space plan
6. Plan 6 – The Pavilion Plan















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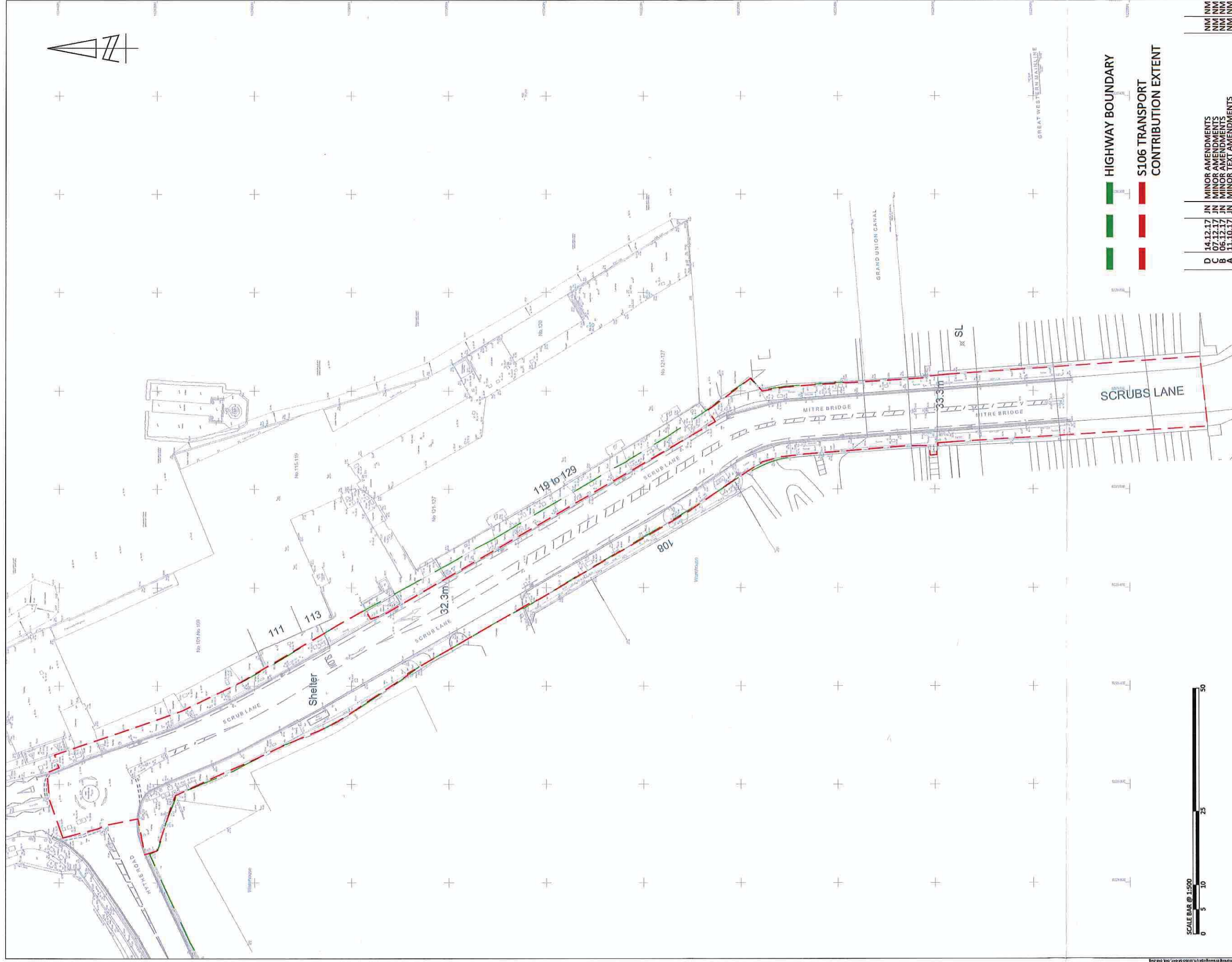
HIGHWAY REINSTATEMENT WORKS

NORTH KENSINGTON GATE

REV	DATE	BY	DESCRIPTION	OK	APP
B	14.12.17	JN	MINOR TEXT AMENDMENTS	NM	NM
A	11.10.17	JN	MINOR TEXT AMENDMENTS	NM	NM

FOR INFORMATION			
SCALE @ A2	1:500	ORDERED	NM
DATE	11.10.17	DRAWN	JN
PROJECT	ITL10260-SK-049	DATE	06.10.2017
PROJECT	ITL10260	REV	B





## HIGHWAY BOUNDARY

## S106 TRANSPORT CONTRIBUTION EXTENT

D	14.12.17	JN	MINOR AMENDMENTS	NM
C	07.12.17	JN	MINOR AMENDMENTS	NM
B	06.12.17	JN	MINOR AMENDMENTS	NM
A	11.10.17	JN	MINOR TEXT AMENDMENTS	NM

STATUS:		FOR INFORMATION			
SCALE @ A2:	1:500	CHECKED:	NM	APPROVED:	NM
FILE REF:	ITL10260-SK-048	DRAWN:	JN	DATE:	06.10.2017
DRAWING No: ITL10260-SK-048					
PROJECT No: ITL10260				REF: D	

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## S106 TRANSPORT CONTRIBUTION PLAN

**NORTH KENSINGTON GATE**









**SCHEDULE 2**  
**Draft Planning Permission**





**OPDC**  
**OLD OAK AND**  
**PARK ROYAL**  
**DEVELOPMENT**  
**CORPORATION**

**FULL PLANNING PERMISSION APPROVAL**

**Town and Country Planning Act 1990 (as amended)**  
**The Town and Country Planning (Development Management Procedure) (England)**  
**Order 2015**

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Please see notes at the end of this notice

Applicant

Aurora Developments Ltd

Agent

Sue Willcox  
Quod  
Ingeni Building  
17 Broadwick Street  
London, W1F 0AX

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**Part I - Particulars of Application**

Date of Application: 19-September-2016

Application No: 16/0119/FULOPDC

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Proposal: Demolition of existing buildings and redevelopment of the site to provide a new building ranging from 6 storeys (25.1 metres above ground level) to 22 storeys (80.4 metres above ground level) in height over a new excavated basement, comprising 750sqm (GIA) of ground floor commercial floorspace (use class A1/A2/A3/B1) and 164 residential units (use class C3), with basement car parking and plant space, landscaping and associated works.

Location: North Kensington Gate South, 115-129A Scrubs Lane, London, NW10 6QU

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**Part II - Particulars of Decision**

In pursuance of the powers under the above Act and Order, Old Oak and Park Royal Development Corporation hereby gives notice that **PLANNING PERMISSION HAS BEEN GRANTED** for the carrying out of the development referred to in Part I hereof and as described

and shown on the application and plan(s) submitted, subject to the following conditions and notes:

**1. COMPLIANCE – Approved plans**

The development shall be carried out in accordance with the following drawings:

996\_01\_07: 000 P2, 001 P2, 002 P2, 003 P2, 004 P2, 005 P2, 099 P2, 100 P2, 010 P2, 101 P2, 102 P2, 106 P2, 107 P2, 108 P2, 109 P1, 110 P2, 123 P2, 150 P2, 200 P2, 201 P2, 210 P2, 211 P2, 300 P2, 301 P2, 302 P2, 500 P2, 501 P2, 502 P2, 550 P2, 551 P2.

Letter from Quod dated 13 September 2016

Planning Statement by Quod dated September 2016

Design and Access Statement by Allies and Morrison dated September 2016

Environmental Statement by Quod dated September 2016

Daylight, Sunlight and Overshadowing Report by Schroeders Begg dated September 2016

Statement of Community Involvement by Cascade dated September 2016

Health Impact Assessment by Quod dated September 2016

Refuse Management Plan by Allies and Morrison dated September 2016

Energy and Sustainability Statement by Buro Happold dated September 2016

Letter from Quod dated 10 February 2017

Environmental Statement Addendum Q60157 by Quod dated February 2017

Technical Statement - Daylight and Sunlight 1067/D by Schroeders Begg dated November 2016

Response to GLA State I Energy Comments by Buro Happold dated 25 January 2017

Foul and Surface Water Drainage Strategy Revision 05 by Buro Happold dated 5 January 2017

Heritage, Townscape and Visual Impact Assessment by Turley dated February 2017

Reason: For the avoidance of doubt and in the interests of proper planning.

**2. COMPLIANCE – Time limit**

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990 (amended by Section 51 of the Compulsory Purchase Act 2004).

**3. PRE-COMMENCEMENT – Construction and Environmental Management Plan (CEMP)**

No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) for the proposed development to address how the impacts of demolition and construction on the local highway network and the local environment has been submitted to and approved in writing by the local planning authority.

The CEMP must include the following details (where appropriate):

- a construction programme including a 24 hour emergency contact number;
- parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- arrangements to demonstrate how any concurrent construction with HS2 works shall not impede the construction of the HS2 works;



- arrangements to minimise the potential for noise and vibration disturbance;
- locations for loading/unloading and storage of plant and materials used in constructing the development;
- erection and maintenance of security hoardings;
- wheel washing facilities and measures to control the emission of dust and dirt during construction; and
- a scheme for recycling/disposing of waste resulting from demolition and construction works in accordance with the waste hierarchy and circular economy principles.

The development (including any works of demolition) shall only be carried out in accordance with the approved CEMP.

Reason: To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties in accordance with London Plan (2015) policies 6.12 'Road Network Capacity' and 7.15 'Reducing and Managing Noise, Improving and Enhancing the Acoustic Environment and Promoting Appropriate Soundscapes' and OPDC Regulation 19 Local Plan (2017) policies T7 'Freight, servicing and deliveries' and T8 'Construction'. The details are required prior to commencement because the demolition phase must be addressed in the CEMP.

#### 4. **PRE-COMMENCEMENT – Construction Logistics Plan (CLP)**

No development shall take place, including any works of demolition, until a Construction Logistics Plan (CLP) for the proposed development has been submitted to and approved in writing by the local planning authority. The CLP shall include information on:

- i) booking systems;
- ii) consolidated or re-timed trips;
- iii) secure off-street loading and drop off facilities;
- iv) compliance with the Construction Logistics Strategy for the wider OPDC area, if available.

The development (including any works of demolition) shall only be carried out in accordance with the approved details.

Reason: To protect the amenity of local residents and to limit any impact on the local highway network in accordance with London Plan (2015) policy 6.12 'Road Network Capacity', LBHF Regulation 18 Local Plan (2015) policy T2 'Transport assessments and travel plans' and OPDC Regulation 19 Local Plan (2017) T8 'Construction'. The details are required prior to commencement because the demolition phase must be addressed in the CLP.

#### 5. **PRE-COMMENCEMENT – Air Quality (Low Emissions Strategy)**

Prior to the commencement of the development a Low Emission Strategy shall be submitted to and approved in writing by the local planning authority. The Low Emission Strategy shall:

- address the results of the Air Quality Assessment set out in the Environmental Statement;
- detail the remedial action and mitigation measures that will be implemented to protect residential receptors (e.g. abatement technology for energy plant, design solutions);

- show that the CHP and boiler units installed will comply with the relevant emissions standards in the Mayor's SPG 'Sustainable Design and Construction' (2014); and
- reduce the exposure of on-site and off-site local receptors to poor air quality including the emissions of NOx and particulates from on-site and off-site transport and energy generation sources.

The development shall not be brought into use until the mitigation measures identified in the approved Low Emissions Strategy have been implemented in full and the measures shall thereafter be retained for the lifetime of the development.

Reason: To ensure the development contributes to improvements in air quality in accordance with London Plan (2015) policy 7.14 'Improving Air Quality', LBHF Regulation 18 Local Plan (2015) policy CC9 'Air Quality' and OPDC Regulation 19 Local Plan (2017) policy EU4 'Air Quality'. The details are required prior to commencement because the demolition phase must be addressed in the Strategy.

#### **6. PRE-COMMENCEMENT – Water supply (Thames Water)**

Prior to the commencement of development, excluding demolition and site clearance, impact studies of the existing water supply infrastructure shall be submitted to and approved in writing by the local planning authority in consultation with Thames Water. The studies shall determine the magnitude of any new additional capacity required in the system and a suitable connection point. The development shall not be commenced until the studies have been approved in writing by the local planning authority. The development shall not be brought into use until any necessary mitigation measures identified by the impact studies have been approved in writing by the local planning authority and carried out in full in accordance with the approved details.

Reason: To ensure that the water supply infrastructure has sufficient capacity to cope with the additional demand in accordance with London Plan (2015) policies 5.14 'Water Quality and Wastewater Infrastructure' and 5.15 'Water Use and Supplies', LBHF Regulation 18 Local Plan (2015) policy CC3 'Reducing Water Use and the Risk of Flooding' and OPDC Regulation 19 Local Plan (2017) policy EU3 'Water'. The details are required prior to commencement, excluding demolition and site clearance, because water supply infrastructure may be required prior to .

#### **7. PRE-COMMENCEMENT – Piling method statement (Thames Water)**

No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement. The development shall not be brought into use until any necessary mitigation measures identified by the method statement have been approved in writing by the local planning authority and carried out in full in accordance with the approved details.

Reason: To protect water infrastructure in the vicinity of the site because the proposed works will be in close proximity to underground water utility infrastructure in accordance



with London Plan (2015) policies 5.14 'Water Quality and Wastewater Infrastructure' and 5.15 'Water Use and Supplies', LBHF Regulation 18 Local Plan (2015) policy CC3 'Reducing Water Use and the Risk of Flooding' and OPDC Regulation 19 Local Plan (2017) policy EU3 'Water'. The details are required prior to commencement because any piling will be undertaken at an early stage of construction.

#### **8. PRE-COMMENCEMENT – Contaminated Land**

(i) The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the local planning authority:

- a. a desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in 'Model Procedures for the Management of Land Contamination' Contaminated Land Report 11, 'Guidance for the Safe Development of Housing on Land Affected by Contamination R&D66: 2008' and BS10175:2011 (+A1:2013) – 'Investigation of Potentially Contaminated Sites – Code of Practice'; and, unless otherwise agreed in writing by the local planning authority;
- b. a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2011 (+A1:2013); and, unless otherwise agreed in writing by the local planning authority;
- c. a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases and vapours when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include the nomination of a competent person to oversee the implementation of the works.

(ii) Unless otherwise agreed in writing pursuant to paragraph (i) above, the development hereby permitted shall not be occupied or brought into use until there has been submitted to and approved in writing by the local planning authority a verification report prepared by the competent person approved under the provisions of (i) (c) above confirming that any remediation scheme required and approved under the provisions of (i) (c) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the local planning authority such verification shall comprise:

- a) as built drawings of the implemented scheme;
- b) photographs of the remediation works in progress; and
- c) certificates demonstrating that imported and/or material left in situ is free from contamination.

(iii) Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under (i) (c).

Reason: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works in accordance with London Plan (2015) policy 5.21 'Contaminated Land', LBHF Regulation 18 Local Plan (2015) policy CC8 'Contaminated Land' and OPDC Regulation 19 Local Plan (2017) policy EU13 'Land Contamination'. The details are required prior to commencement because the site investigation must be undertaken prior to demolition works to avoid any risks to health.

#### **9. PRE-COMMENCEMENT – Written Scheme of Investigation (Archaeology)**



No demolition or development shall take place until a stage 1 Written Scheme of Investigation (WSI) dealing with archaeology has been submitted to and approved in writing by the local planning authority. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works.

If heritage assets of archaeological interest are identified by stage 1 then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved in writing by the local planning authority. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include:

- a. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;
- b. The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.

Reason: To protect archaeological interests by providing an opportunity to investigate and excavate archaeological remains on the site in accordance with London Plan (2015) policy - 7.8 'Heritage Assets and Archaeology' and OPDC Regulation 19 Local Plan (2017) policy D8 'Heritage'. The details are required prior to commencement because demolition works may impact upon archaeological remains.

#### **10. PRIOR TO ABOVE GROUND WORKS – Detailed drawings**

Notwithstanding the submitted details, prior to the commencement of work on the corresponding part of the development, detailed drawings comprising elevations and sections of the following parts of the development at 1:20 or 1:50 as appropriate with references to the heritage context shall be submitted to and approved in writing by the local planning authority:

- a. A bay study of the materials, cladding and glazing;
- b. Residential entrances (with canopies where relevant);
- c. Principle features on all facades;
- d. Balconies (including soffits and balustrades);
- e. Shopfronts and windows/glazing to the commercial uses;
- f. Typical window openings including surrounds;
- g. The parapets/roof edges and screens at the top of the building;
- h. Any roof level structures including flues and lift overruns;
- i. The frame at the top of the 22-storey tower;
- j. Any fences and gates facing Scrubs Lane;
- k. The landscaping and boundary treatment for the infill area at ground floor level between the 22-storey and 6-storey elements;
- l. The pavilion building adjoining the southern elevation of the 22-storey tower.

The development shall only be carried out in accordance with the approved details.



Reason: To ensure that the appearance of the building is suitable and it contributes to the character and appearance of the area in accordance with London Plan (2015) policies 7.4 'Local Character' and 7.6 'Architecture', LBHF Regulation 18 Local Plan (2015) policy DC2 'Design of new build' and OPDC Regulation 19 Local Plan (2017) policy D4 'Well-Designed Buildings'.

**11. PRIOR TO ABOVE GROUND WORKS – Roof-top residents' amenity enclosure**

Prior to the commencement of above ground works details including plans, elevations and sections of the roof-top residents' amenity enclosure on the 8-storey element shall be submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with the approved details.

Reason: In the interests of the character and appearance of the area in accordance with London Plan (2015) policies 7.4 'Local Character' and 7.6 'Architecture', LBHF Regulation 18 Local Plan (2015) policy DC2 'Design of new build' and OPDC Regulation 19 Local Plan (2017) policy D4 'Well-Designed Buildings'.

**12. PRIOR TO ABOVE GROUND WORKS – Material samples and sample panels**

Prior to the commencement of above ground works:

- a. Samples of the facing materials, including glazing, and elevations annotated to show where the materials are to be located shall be submitted to and approved in writing by the local planning authority;
- b. Sample panels shall be constructed on site to show the typical facades including glazing, cladding and frames where relevant, made available for inspection by the local planning authority and approved in writing.

The development shall only be carried out in accordance with the approved details.

Reason: To ensure that the appearance of the building is suitable and it contributes to the character and appearance of the area in accordance with London Plan (2015) policy 7.4 'Local Character', LBHF Regulation 18 Local Plan (2015) policy DC2 'Design of new build' and OPDC Regulation 19 Local Plan (2017) policy D4 'Well-Designed Buildings'.

**13. PRIOR TO ABOVE GROUND WORKS – External equipment**

Prior to the commencement of above ground works details of any external equipment to be installed on the building including window cleaning equipment and mechanical plant shall be submitted to and approved in writing by the local planning authority. Above ground works shall not be commenced until the details have been approved in writing by the local planning authority. The equipment shall only be installed in accordance with the approved details.

Reason: In the interests of the character and appearance of the area in accordance with London Plan policy 7.6 'Architecture', LBHF Regulation 18 Local Plan (2015) policy DC1 'Built environment' LBHF Regulation 18 Local Plan (2015) policy DC2 'Design of new build' and OPDC Regulation 19 Local Plan (2017) policy D4 'Well-Designed Buildings'.

**14. PRIOR TO ABOVE GROUND WORKS – Hard and soft landscaping**

Prior to the commencement of above ground works a scheme of hard and soft landscaping for the site, including details of materials, street furniture, species and a planting schedule



showing the number, size, species and location of trees and shrubs, including details of semi-mature trees along the rear site boundary to address the setting of the Canadian War Memorial in St Mary's Cemetery, shall be submitted to and approved in writing by the local planning authority. The approved hard landscaping shall be carried out in full accordance with the approved plans prior to the occupation of the development and it shall thereafter be permanently retained. The approved soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or completion of the development, whichever is the sooner. Any plants or trees which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of the character and appearance of the area, to ensure appropriate accessibility and to support biodiversity in accordance with London Plan (2015) policies 7.19 'Biodiversity and Access to Nature' and 7.4 'Local Character', LBHF Regulation 18 Local Plan (2015) policy OS5 'Greening the borough' and OPDC Regulation 19 Local Plan (2017) policy D2 'Public Realm'.

**15. PRIOR TO ABOVE GROUND WORKS – Noise assessment**

Prior to the commencement of above ground works, a noise assessment shall be submitted to and approved in writing by the local planning authority. The assessment shall identify current and future sources of noise and vibration disturbance for the proposed residential units and shall provide details of attenuation measures to be installed as mitigation, where necessary. The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level LAeq Tr arising from the proposed plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 5dB(A) below the background noise level LAF90 Tbg. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142:2014. The development shall not be commenced until the noise assessment has been approved in writing by the local planning authority. The attenuation measures shall be provided in full accordance with the proposed details before any of the residential units are first brought into use.

Reason: To minimise the risk of noise or vibration disturbance for future residents in accordance with London Plan (2015) policy 7.15 'Reducing and Managing Noise, Improving and Enhancing the Acoustic Environment and Promoting Appropriate Soundscapes', LBHF Regulation 18 Local Plan (2015) policy CC10 'Noise' and OPDC Regulation 19 Local Plan (2017) policy EU5 'Noise and Vibration'.

**16. PRIOR TO ABOVE GROUND WORKS – Emergency plant equipment**

Prior to the commencement of above ground works, a written code for the management of noise emitted from any emergency plant and equipment proposed shall be submitted to and approved in writing by the local planning authority.

The approved code and any noise mitigation measures shall be installed and operational at all times in accordance with the approved details prior to the first occupation of any residential units.

The management code shall include measures to address the following matters:



- i) the testing of equipment not to take place between the hours of 1800 and 0800 on any day, and not at any time on Sundays, Bank Holidays or after 1300 on a Saturday;
- ii) the duration of the testing to be commensurate with the test requirements and not to exceed one hour;
- iii) the acoustic design and control of the fixed plant and equipment to meet a criterion of a rating level, measured or calculated at 1m from the façade of the nearest noise sensitive premises, of not more than 5dB(A) above the existing background noise level (LA90). The rating level to be determined as per the guidance provided in BS4142:2014;
- iv) a report to be commissioned by the applicant, using an appropriately experienced & competent person, to assess the noise from the plant and machinery.

Reason: To minimise the risk of noise or vibration disturbance for future residents in accordance with London Plan (2015) policy 7.15 'Reducing and Managing Noise, Improving and Enhancing the Acoustic Environment and Promoting Appropriate Soundscapes', LBHF Regulation 18 Local Plan (2015) policy CC10 'Noise' and OPDC Regulation 19 Local Plan (2017) policy EU5 'Noise and Vibration'.

#### **17. PRIOR TO ABOVE GROUND WORKS – Internal noise transmission**

Prior to the commencement of above ground works a scheme of sound insulation and noise control measures shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented to the satisfaction of the local planning authority prior to the first occupation of any of the residential units and permanently retained thereafter to achieve the following internal noise targets:

- Bedrooms (23:00-07:00 hrs) 30 dB LAeq;
- Living Rooms (07:00-23:00 hrs) 35 dB LAeq; and
- Kitchens, bathrooms, WCs and utility rooms (07:00-23:00 hrs) 45 dB LAeq.

Reason: To minimise the risk of noise or vibration disturbance for future residents in accordance with London Plan (2015) policy 7.15 'Reducing and Managing Noise, Improving and Enhancing the Acoustic Environment and Promoting Appropriate Soundscapes', LBHF Regulation 18 Local Plan (2015) policy CC10 'Noise' and OPDC Regulation 19 Local Plan (2017) policy EU5 'Noise and Vibration'.

#### **18. PRIOR TO ABOVE GROUND WORKS – Ventilation/extraction system**

Prior to the commencement of above ground works details of a ventilation/extraction system to serve any commercial unit identified for restaurant or café (Class A3) use shall be submitted to and approved in writing by the local planning authority. The approved system shall be installed in full accordance with the approved details before any of the units are brought into use and maintained thereafter.

Reason: To prevent nuisance from cooking smells for people using neighbouring properties in accordance with London Plan (2015) policy 7.14 'Improving Air Quality', LBHF Regulation 18 Local Plan (2015) policy CC9 'Air Quality' and OPDC Regulation 19 Local Plan (2017) policy EU4 'Air Quality'.

#### **19. PRIOR TO ABOVE GROUND WORKS – Waste and recycling management plan**

Notwithstanding the submitted details and prior to the commencement of above ground works a waste and recycling management plan to show sufficient capacity for the waste and

recycling generated during the operational phase of the development, and details of how servicing vehicles will safely access the site shall be submitted to and approved in writing by the local planning authority. The plan shall thereafter be adhered to at all times for the lifetime of the development.

Reason: To ensure that adequate arrangements have been made for the storage and collection of waste and recycling in accordance with London Plan (2015) policies 5.17 'Waste Capacity' and 6.12 'Road Network Capacity', LBHF Regulation 18 Local Plan (2015) policy CC6 'On-site Waste Management' and OPDC Regulation 19 Local Plan (2017) policy EU6 'Waste'.

**20. PRIOR TO ABOVE GROUND WORKS – Cycle storage**

Notwithstanding the submitted details and prior to the commencement of above ground works details of secure cycle storage including the provision of additional on-street spaces shall be submitted to and approved in writing by the local planning authority. The cycle storage shall be provided in accordance with the approved details, made available at all times to everyone using the development and not used for any other purpose. The development shall not be brought into use until the cycle storage has been provided in accordance with the approved details.

Reason: To encourage cycling as a means of sustainable transport in accordance with London Plan (2015) policy 6.9 'Cycling', LBHF Regulation 18 Local Plan (2015) policy T4 'Increasing opportunities for cycling and walking' and OPDC Regulation 19 Local Plan (2017) policy T3 'Cycling'.

**21. PRIOR TO ABOVE GROUND WORKS – Energy strategy**

Notwithstanding the submitted details and prior to the commencement of above ground works a revised energy strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall explore all reasonable options for improving the energy efficiency of the building and reducing carbon dioxide emissions in accordance with the energy hierarchy set out in London Plan policy 5.2 'Minimising carbon dioxide emissions'. The strategy shall clarify where glazing is required to reduce solar gain and how this has been balanced against the need to ensure good levels of daylight. The development shall only be carried out in accordance with the approved strategy.

Reason: To ensure the development maximises energy efficiency measures in accordance with London Plan (2015) policies 5.2 'Minimising Carbon Dioxide Emissions' and 5.7 'Renewable energy' and OPDC Regulation 19 Local Plan (2017) policy EU9 'Minimising Carbon Emissions and Overheating'.

**22. PRIOR TO ABOVE GROUND WORKS – Drainage strategy**

Prior to the commencement of above ground works, a revised drainage strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall investigate measures for attenuating surface water run-off including permeable paving and green/brown roofs. The approved measures shall be implemented in full before the development is first brought into use and the development shall only be carried out in accordance with the approved details.

Reason: To minimise the risk of surface water flooding in the vicinity of the site in accordance with London Plan (2015) policy 5.13 'Sustainable Drainage', LBHF Regulation



18 Local Plan policy CC3 'Reducing Water Use and the Risk of Flooding' and OPDC Regulation 19 Local Plan (2017) policy EU3 'Water'.

**23. PRIOR TO OCCUPATION – Lighting strategy**

Prior to the building being brought into use a lighting strategy to address all external lighting across the development shall be submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with the approved details.

Reason: In the interests of the character and appearance of the area in accordance with London Plan (2015) policy 7.4 'Local Character', LBHF Regulation 18 Local Plan (2015) policy DC2 'Design of new build' and OPDC Regulation 19 Local Plan (2017) policies D1 'Securing High Quality Design' and D2 'Public Realm'.

**24. PRIOR TO OCCUPATION – Antennae/satellite dishes**

Prior to the first occupation of any of the units hereby approved details to show appropriate locations for communal antennae and satellite dishes that can be used by occupants of the development shall be submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with the approved details.

Reason: In the interests of the character and appearance of the area in accordance with London Plan (2015) policy 7.4 'Local Character', LBHF Regulation 18 Local Plan (2015) policy DC1 'Built environment' and OPDC Regulation 19 Local Plan (2017) policies D1 'Securing High Quality Design' and D2 'Public Realm'.

**25. PRIOR TO OCCUPATION – Play equipment**

Prior to any of the uses hereby approved being first brought into use, details of the play equipment proposed for the child play spaces shall be submitted to and approved in writing by the local planning authority. The development shall not be brought into use until the details have been approved in writing and the equipment installed in full accordance with the approved details.

Reason: To ensure that appropriate equipment is positioned in the areas identified for play space according to the intended age group in accordance with London Plan (2015) policy - 7.5 'Public Realm' and OPDC Regulation 19 Local Plan (2017) policy D9 'Play Space'.

**26. PRIOR TO OCCUPATION – Microclimate**

Prior to the development being brought into use details of the proposed wind microclimate mitigation measures shall be submitted to and approved in writing by the local planning authority. The mitigation measures shall be installed in full before the building is brought into use.

Reason: To ensure that the microclimate around the buildings is appropriate in accordance with London Plan (2015) policy 7.7 'Location and Design of Tall and Large Buildings', LBHF Regulation 18 Local Plan (2015) policy DC3 'Tall buildings' and OPDC Regulation 19 Local Plan (2017) policy D5 'Tall Buildings'.

**27. PRIOR TO OCCUPATION – Electric Vehicle Charging Points**

Electric vehicle charging points shall be provided for 20% of the basement car parking spaces and passive provision shall be made available for the remaining 80% of the spaces so that the spaces are capable of being readily converted to electric vehicle charging points.



The location of the EVCP spaces and charging points shall be submitted to and approved in writing by the local planning authority before any of the residential units are first brought into use. The EVCP shall thereafter be constructed and marked out and the charging points installed prior to any of the residential units being brought into use and thereafter retained permanently to serve the vehicles of occupiers.

Reason: To encourage the use of electric vehicles in the interests of sustainability in accordance with London Plan (2015) policy 6.13 'Parking' and OPDC Regulation 19 Local Plan (2017) policy T4 'Parking'.

**28. PRIOR TO OCCUPATION– Delivery and Servicing Plan**

Prior to the building being first brought into use, a Delivery and Servicing Plan to demonstrate how deliveries to the site will be accommodated and managed shall be submitted to and approved in writing by the local planning authority. The Plan shall include suitable capacity for the anticipated size of delivery/servicing vehicles, appropriate storage areas and the intended routing of vehicles. The development shall not be brought into use until the Plan has been approved in writing and the Plan shall be adhered to thereafter.

Reason: To avoid blocking the highway network and to protect the amenity of people in neighbouring properties in accordance with London Plan (2015) policies 6.11 'Smoothing Traffic Flow and Tackling Congestion' and 6.12 'Road Network Capacity', LBHF Regulation 18 Local Plan (2015) policy T2 'Transport assessments and travel plans' and OPDC Regulation 19 Local Plan (2017) policies T1 'Roads and Streets' and T7 'Freight, Servicing and Deliveries'.

**29. PRIOR TO OCCUPATION – Cross platform digital model**

Prior to the development being brought into use, a cross platform digital model of the proposal that is geolocated and compatible with SketchUp and BIM formats shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure that the development maximises opportunities for SMART technology in accordance with OPDC Regulation 19 Local Plan (2017) policy EU11 'Smart Technology'.

**30. PRIOR TO OCCUPATION – Air Quality (Energy plant emissions standards, ventilation and gas boilers)**

Prior to the building being brought into use, detailed information on the following issues shall be submitted to and approved in writing by the local planning authority and thereafter carried out in accordance with the approved details:

- the mechanical ventilation system;
- the Combined Heat and Power units, abatement technologies and boilers installed to demonstrate compliance with the emissions standards set out within the agreed Low Emission Strategy. Where any combustion plant does not meet the relevant standard it should not be operated without the fitting of suitable NOx abatement equipment or technology (evidence of installation shall be provided);
- gas fired boilers to be provided for space heating and domestic hot water which shall have dry NOx emissions not exceeding 40 mg/kWh (at 0% O<sub>2</sub>). Where any installations do not meet this emissions standard it should not be operated without the fitting of suitable NOx abatement equipment or technology as determined by a specialist to ensure comparable emissions. Following installation, emissions certificates will need to be provided to the local planning authority to verify boiler emissions.

The maintenance and cleaning of the ventilation systems shall be undertaken regularly in accordance with manufacturer specifications and shall be the responsibility of the primary owner of the building. All approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained in good working order.

Reason: To ensure the development contributes to improvements in air quality in accordance with London Plan (2015) policy 7.14 'Improving Air Quality', LBHF Regulation 18 Local Plan (2015) policy CC9 'Air Quality' and OPDC Regulation 19 Local Plan (2017) policy EU4 'Air Quality'.

**31. COMPLIANCE – Accessibility**

The development shall only be carried out in accordance with the inclusivity and accessibility measures identified in the Design and Access Statement produced by Allies and Morrison dated September 2016 with regard to the fit out in accordance with Building Regulations Part M4 category 2.

Reason: To provide suitable access for disabled persons in accordance with London Plan (2015) policy 3.8 'Housing Choice', LBHF Regulation 18 Local Plan (2015) policy DC2 'Design of new build' and OPDC Regulation 19 Local Plan (2017) policy D3 'Accessible and Inclusive Design'.

**32. COMPLIANCE – Family-sized homes**

All of the residential units which comprise at least three bedrooms shall be provided in accordance with the approved plans and shall thereafter be retained for a minimum of 10 years following first occupation as accommodation which (in addition to the living space) provides three separate rooms capable of being occupied as bedrooms.

Reason: To protect family-sized accommodation in accordance with London Plan (2015) policy 3.8 'Housing Choice', LBHF Regulation 18 Local Plan (2015) policy HO5 'Housing mix' and OPDC Regulation 19 Local Plan (2017) policy H3 'Housing Mix'.

**33. COMPLIANCE – Land use**

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no more than a combined total of 500sqm of the commercial floorspace shall be used for the purposes of Class A1 (retail use), Class A2 (financial and professional services) and Class A3 (café/restaurant use).

Reason: To ensure the development provides an appropriate mix of land uses in accordance with London Plan (2015) policy 4.8 'Supporting a Successful and Diverse Retail Sector and Related Facilities and Services', LBHF Regulation 18 Local Plan (2015) policy TLC3 'Managing uses in the non prime frontage areas of town centres' and OPDC Regulation 19 Local Plan (2017) policies TCC2 'Vibrancy' and TCC3 'A-Class Uses'.

**34. COMPLIANCE – Noisy working hours**

You must carry out any building work which can be heard at the boundary of the site only between the following hours:

- 08.00 – 18.00 Monday to Friday;



- 08.00 – 13.00 on Saturdays
- Not at all on Sundays, bank holidays and public holidays.

Reason: In the interests of the amenity of local residents in accordance with London Plan (2015) policy 7.15 'Reducing and Managing Noise, Improving and Enhancing the Acoustic Environment and Promoting Appropriate Soundscapes'.

**35. COMPLIANCE – Opening hours**

Customers shall not be permitted within any restaurant or café (Class A3 use) premises before 06.00 or after 00.00 on Monday to Saturday (not including bank holidays and public holidays) and before 07.00 or after 00.00 on Sundays, bank holidays and public holidays.

Reason: To protect the amenity of local residents in accordance with London Plan (2015) policy 7.15 'Reducing and Managing Noise, Improving and Enhancing the Acoustic Environment and Promoting Appropriate Soundscapes', LBHF Regulation 18 Local Plan (2015) policy CC10 'Noise' and OPDC Regulation 19 Local Plan (2017) policy TCC11 'Night Time Economy Uses'.

**36. COMPLIANCE – Doors or gates over the highway**

You must hang all doors or gates so that they do not open over or across the road or pavement unless they are required as an emergency exit.

Reason: In the interests of public safety and to avoid obstructing the highway in accordance with London Plan (2015) policy 6.10 'Walking' and OPDC Regulation 19 Local Plan (2017) policy T1 'Roads and Streets'.

**37. COMPLIANCE – Solar panels**

The solar panels shown on drawing 996\_01\_07: 123 P2 shall be installed in full accordance with the approved plans and fully operational before the building is first brought into use.

Reason: To ensure the development maximises energy efficiency measures in accordance with London Plan (2015) policies 5.2 'Minimising Carbon Dioxide Emissions' and 5.7 'Renewable energy'.

**38. COMPLIANCE – Ecological mitigation**

The development, including any works of demolition, shall only be carried out in full accordance with the measures set out in tables 12.6 and 12.7 of the Environmental Statement Volume 1 by Quod dated September 2016.

Reason: To ensure adequate protection for protected species that may be present on the site in accordance with London Plan (2015) policy 7.19 'Biodiversity and Access to Nature' and OPDC Regulation 19 Local Plan (2017) policy EU8 'Urban Greening and Biodiversity'.

**For your information:**

1. The written scheme of investigation required by Condition 9 will need to be prepared and implemented by a suitably professionally accredited archaeological practice in accordance with Historic England's Guidelines for Archaeological Projects in Greater London. This condition is exempt from deemed discharge under schedule 6 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.



2. A Groundwater Risk Management Permit from Thames Water will be required for discharging groundwater into a public sewer. Any discharge made without a permit is deemed illegal and may result in prosecution under the provisions of the Water Industry Act 1991. Thames Water would expect the developer to demonstrate what measures will be undertaken to minimise groundwater discharges into the public sewer. Permit enquiries should be directed to Thames Water's Risk Management Team by telephoning 020 3577 9483 or by emailing [www.riskmanagement@thameswater.co.uk](mailto:www.riskmanagement@thameswater.co.uk). Application forms should be completed online via [www.thameswater.co.uk/wastewaterquality](http://www.thameswater.co.uk/wastewaterquality).
3. Under the terms of the Planning Act 2008 (as amended) and Community Infrastructure Levy Regulations 2010 (as amended), this development is liable to pay the Mayor of London's Community Infrastructure Levy (CIL). This will be calculated in accordance with the Mayor of London's CIL Charging Schedule 2012. Liability to pay CIL must now be assumed by submitting an Assumption of Liability Notice to the OPDC at [planningapplications@opdc.london.gov.uk](mailto:planningapplications@opdc.london.gov.uk).
4. With regard to the HS2 arrangements and works referred to in Condition 3 the applicant is advised to liaise with High Speed Two (HS2) Limited.
5. The applicant and/or contractor are encouraged to sign up to the Fleet Recognition Scheme (FORS) which promotes better safety standards during construction. The FORS guidance can be found at <http://www.tfl.gov.uk/info-for/freight/safety-and-the-environment/managing-risks-wrrr>.
6. The applicant is advised that prior to making a submission in relation to condition 12, requiring further details of external materials, that they should discuss the materials to be submitted with an Approved Building Control Surveyor in order to ensure that they meet with current fire safety regulations.
7. The applicant is strongly encouraged to consider the use of a sprinkler system within the development. Sprinkler systems installed in buildings can significantly reduce the damage caused by fire and the consequential cost to businesses and housing providers, and can reduce the risk to life.
8. The applicant is strongly encouraged to make reasonable endeavours to ensure that all workers involved in the construction of the development, either directly employed by the applicant, or employed by a sub-contractor, are paid the London Living Wage.
9. The applicant is advised that the Construction Logistics Plan required to be submitted for approval under condition 4 of this permission should be prepared in accordance with relevant guidance contained in "Construction Logistics Plan Guidance" published by Transport for London (TfL).

#### **Proactive and Positive Statement**

In accordance with the National Planning Policy Framework and with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the following statement explains how OPDC as local planning authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with this planning application:

OPDC, as the local planning authority, has worked with the applicant in a positive and proactive manner by offering a full pre-application service to ensure that the applicant has had the opportunity to submit an application that was likely to be considered favourably. In addition, the local planning authority provided guidance on how outstanding planning matters could be addressed prior to determination of the application. Environmental information provided in an Environmental Statement and the planning application documents has been taken into account in the determination of the application. The planning application complies with relevant national, regional and local planning policy and OPDC has decided to grant planning permission accordingly.

Dated this: XX MMMM 2017

*M Mulhern*

**Michael Mulhern**

Director of Planning

Old Oak and Park Royal Development Corporation



**Old Oak and Park Royal Development Corporation**  
**TOWN AND COUNTRY PLANNING ACT 1990**  
**Statement of Applicant's Rights**

**Appeals to the Secretary of State**

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for Communities and Local Government under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice or within 12 weeks in the case of a householder<sup>1</sup> appeal.
- Appeals must be made using the correct form, which is available from the Planning Inspectorate (a copy of which must be sent to Old Oak and Park Royal Development Corporation), or can be completed online.

The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (e-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)) or (Tel: 0117 372 8000).

To make an appeal online, please use [www.planningportal.gov.uk/pes](http://www.planningportal.gov.uk/pes). The Inspectorate will publish details of your appeal on the internet. This may include copies of documentation from the original planning application and relevant supporting documents supplied to the local authority, and or information, including personal information belonging to you that you are happy will be made available in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

- The Secretary of State can allow a longer period for giving notice of an appeal, but the Secretary of State will not normally be prepared to use this power unless there are special circumstances, which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of any Development Order and to any directions given under a Development Order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by the Secretary of State.

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<sup>1</sup> For the purposes of an appeal, a householder development is development in the boundary of, or to an existing dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse, that does not involve change of use or a change to the number of dwellings.

Please note, this does not include development in the boundary of, or to an existing flat or maisonette.



## Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonably beneficial use in its existing state, nor render the land capable of a reasonably beneficial use, either carrying out any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his/her interest in the land, in accordance with the provisions of Part VI of the Town and Country Planning Act 1990 (as amended).

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### SCHEDULE 3

#### Affordable Housing

#### 1 ON-SITE AFFORDABLE HOUSING PROVISION

##### 1.1 The Developer shall not:

- (a) Occupy the London Living Rent Housing Units for any purpose other than for London Living Rent Housing for the lifetime of the Development; or
- (b) Occupy the Shared Ownership Housing Units for any purpose other than for Shared Ownership Housing for the lifetime of the Development, save where a Shared Ownership Lessee has Staircased to 100 per cent equity in respect of a particular Shared Ownership Housing Unit.

##### 1.2 The Developer shall:

- (a) ensure that 10 per cent of the Affordable Housing Units are accessible or easily adaptable for wheelchair users across all tenures and unit sizes;
- (b) provide details (including 1:50 floor plans) of the proposed wheelchair accessible Affordable Housing Units to the OPDC for approval prior to Commencement of the Development; and
- (c) not Commence the Development until the details of the proposed wheelchair accessible Affordable Housing Units have been approved in writing by the OPDC.
- (d) ensure that the Affordable Housing Units are designed and constructed in accordance with the London Design Standards.

##### 1.3 In the event that the Development is being carried out by a Registered Provider the Developer (being that Registered Provider) shall:

- (a) prior to first Occupation of more than 90 of the Private Residential Units:
  - (i) Practically Complete the Affordable Housing Units and make them available for Occupation and
  - (ii) Enter into a Rent and Nominations Agreement with each of the Boroughs giving the Boroughs nomination rights in equal shares in respect of the Affordable Housing Units for the life of the Development
- (b) Not first Occupy more than 90 of the Private Residential Units until the requirements of paragraph 1.3(a) have been satisfied in full.

##### 1.4 In the event that the Development is being carried out by a Developer who is not a Registered Provider the Developer shall:

- (a) prior to first Occupation of more than 90 of the Private Residential Units:
  - (i) Practically Complete the Affordable Housing Units and make them available for Occupation;
  - (ii) dispose of the Affordable Housing Units to a Registered Provider either by way of sale or grant of a lease of not less than 125 years, subject to an express condition that the Registered Provider will enter into a Rent and Nominations Agreement to provide the Boroughs with nomination rights in equal shares in respect of the Affordable Housing Units for the life of the Development
- (b) not first Occupy more than 90 of the Private Residential Units until the requirements of paragraph 1.4(a) have been satisfied in full.



- 1.5 The Developer shall unless otherwise agreed in writing by the OPDC:
- (a) provide the London Living Rent Housing Units in the location shown on Plan 2; and
  - (b) provide the Shared Ownership Housing Units in the locations shown on Plan 2.
- 1.6 The London Living Rent Housing Units shall be provided in accordance with the following unit size mix:

Unit Size	Number of Units
3 bed, 5 person	3
3 bed, 6 person	4

- 1.7 The Shared Ownership Housing Units shall be provided in accordance with the following unit size mix:

Unit Size	Number of Units
1 bed, 2 person	12
2 bed, 3 person	7
2 bed, 4 person	8
3 bed, 5 person	8
3 bed, 6 person	2

- 1.8 The Shared Ownership Housing Units shall not be sold to any purchaser other than an Eligible Purchaser, except where Staircasing applies and where the Shared Ownership Lessee has Staircased to 100 per cent equity.

## 2 EXCLUSION OF LIABILITY

- 2.1 The obligations and restrictions contained in paragraph 1 of this Schedule shall not bind:
- (a) a Chargee or receiver of the whole or any part of the Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) who has provided loan facilities to the Developer or any persons or bodies deriving title through such Chargee or receiver provided that they have first complied with the provisions of paragraphs 2.2(a) to 2.2(b);
  - (b) any RTA Purchaser;
  - (c) any mortgagee or chargee of a Shared Ownership Housing Unit lawfully exercising the mortgagee protection provision within a Shared Ownership Lease;
  - (d) any person or body deriving title through or from any of the Parties mentioned in paragraphs 2.1(a) to 2.1(c); or
  - (e) any Shared Ownership Housing Unit where the Shared Ownership Lessee has acquired 100 per cent of the equity in such unit through Staircasing.
- 2.2 Any Chargee or receiver claiming protection granted by paragraph 2.1(a) must first:

- (a) give written notice to the OPDC of its intention to dispose of the Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) and give the OPDC the option to purchase the relevant Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) from the Chargee or receiver or alternatively nominate another Registered Provider to purchase the relevant Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) for a period commencing on the date the OPDC receives (or is deemed to have received) the notice from the Chargee or receiver and ending three months after the date of receipt (or deemed receipt) of the notice (the "Notice Period"). In the event that the OPDC or its nominated Registered Provider gives notice to the Chargee or receiver that it wishes to purchase the relevant Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) within the Notice Period it shall be entitled to purchase the relevant Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) within a period of not more than three months from the date of informing the Chargee or receiver of its intention to proceed with the purchase;
- (b) if such disposal has not yet completed within the timescales specified in paragraph 2.2(a) above, the Chargee or receiver shall be entitled to dispose of the Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) free from the affordable housing provisions of this Deed which provisions shall determine absolutely.

2.3 The price payable by the OPDC or its nominated Registered Provider for the relevant Affordable Housing Unit(s) or the Additional Affordable Housing Provision (as appropriate) pursuant to paragraph 2.2(a) shall be that reasonably obtainable in the circumstances for the Affordable Housing Unit(s) or the Additional Affordable Housing Provision (as appropriate) subject to the restrictions as to the use of the relevant Affordable Housing Units or the Additional Affordable Housing Provision contained within this Schedule 3 but in no circumstances shall the consideration be less than all sums due to the Chargee pursuant to the terms of the relevant mortgage or charge or other relevant security documentation including all interest and reasonable legal and administrative fees costs and expenses PROVIDED THAT the sums secured against the relevant Affordable Housing Unit(s) or the Additional Affordable Housing Provision (as appropriate) shall be no more than market value subject to tenancy.

2.4 The OPDC (or its nominated Registered Provider) and the Chargee or receiver shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units and / or Additional Affordable Housing Provision (if applicable) but in the event of failure to agree the purchase price the matter shall be determined by an independent surveyor having at least ten years' experience in the valuation of affordable/social housing within the London area and will be appointed by agreement between the Parties or failing such agreement and upon application by either party by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy, due regard being had to all the restrictions imposed upon the Affordable Housing Unit(s) and / or Additional Affordable Housing Provision (if applicable) by this Deed.



## SCHEDULE 4

### Viability Review

#### 1 NOTIFICATION OF SUBSTANTIAL IMPLEMENTATION

- 1.1 Where Substantial Implementation has not occurred before the Substantial Implementation Assessment Trigger Date the Owners will carry out and submit a Revised Viability Assessment in accordance with the provisions of this Schedule.
- 1.2 Prior to the Substantial Implementation Assessment Trigger Date the Developer shall notify the OPDC in writing of Substantial Implementation and such notice shall be accompanied by full documentary evidence on an open book basis to enable the OPDC to independently assess whether Substantial Implementation has occurred and, if so, when Substantial Implementation occurred.
- 1.3 Following notification of Substantial Implementation pursuant to paragraph 1.2, the Developer shall afford OPDC (and its agents) access to the Site to inspect and assess whether or not the work which has been undertaken amounts to Substantial Implementation provided always that:
  - (a) the OPDC shall provide the Developer with reasonable written notice of its intention to carry out such inspection;
  - (b) OPDC and its agents shall comply fully with the Developer's site rules and regulations applicable as at the time of access throughout the duration of such inspection and with health and safety legislation, policy and best practice;
  - (c) OPDC and its agents shall at all times be accompanied by the Developer or its agent.
- 1.4 The OPDC shall inspect the Site within 20 Working Days of receiving notice pursuant to paragraph 1.2 and thereafter provide written confirmation to the Developer within 10 Working Days of the inspection date (or such other date agreed with the Developer) as to whether or not the OPDC considers that the works undertaken amount to Substantial Implementation.
- 1.5 In the event that the OPDC:
  - (a) Fails to comply with either of its obligations in paragraph 1.4; or
  - (b) confirms in writing in accordance with paragraph 1.4 that Substantial Implementation has not occurred
 then the Developer may:
  - (i) submit additional information to OPDC to seek to demonstrate to OPDC that Substantial Implementation has occurred; and/or
  - (ii) refer the matter to dispute resolution in accordance with the provisions of clause 19 of this Deed.
- 1.6 In the event that the Developer has notified the OPDC of Substantial Implementation pursuant to paragraph 1.2 and following receipt of that notice the OPDC fails to comply with its obligations in paragraph 1.4 or if the OPDC notifies the Developer that it considers that the works undertaken do not amount to Substantial Implementation in accordance with paragraph 1.4 and either
  - (a) the Developer does not refer the matter to dispute resolution in accordance with paragraph 1.5(b)(ii); or

- (b) the Developer does refer the matter to dispute resolution in accordance with paragraph 1.5(b)(ii) and the Expert determines that the works undertaken do not amount to Substantial Implementation;

then the Developer may carry out further works and, acting reasonably and having regard to any relevant statements made by the OPDC and / or the Expert, may submit a new notification in accordance with paragraph 1.2 above when the Developer considers that Substantial Implementation has occurred and paragraphs 1.3 to 1.6 shall apply mutatis mutandi following the service of any such notice.

## **2 SALES ASSESSMENT TRIGGER**

- 2.1 The Developer will carry out a Revised Viability Assessment from the Sales Assessment Trigger Date in accordance with the provisions of this schedule.
- 2.2 The Developer shall not Occupy more than 90 Private Residential Units unless and until the Revised Viability Assessment Review following the Sales Assessment Trigger Date has been completed and agreed (or determined) in accordance with the following provisions of this Schedule, unless the OPDC agrees otherwise.

## **3 REVISED VIABILITY ASSESSMENT**

- 3.1 Any Revised Viability Assessment will be prepared by the Developer in substantially the same form as the Revised Viability Assessment Template.
- 3.2 Any Revised Viability Assessment will include the inputs shown on the Revised Viability Assessment Template unless otherwise agreed by the Developer and the OPDC.
- 3.3 The inputs shown on any Revised Viability Assessment will be calculated in accordance with the methodology and notes included in the Revised Viability Assessment Template unless otherwise agreed by the Developer and OPDC.
- 3.4 The inputs shown on any Revised Viability Assessment shall be calculated:
  - (a) in relation to a Revised Viability Assessment required to be submitted pursuant to paragraph 1.1, as at the date of Substantial Implementation;
  - (b) In relation to a Revised Viability Assessment submitted following the Sales Assessment Trigger Date, as at the Sales Assessment Trigger Date.

## **4 SUBMISSION OF THE REVISED VIABILITY ASSESSMENT**

- 4.1 In the event that the Developer is required to submit a Revised Viability Assessment pursuant to paragraph 1.1 above, such Revised Viability Assessment shall be submitted within 20 Working Days from the day the OPDC confirms or the Expert determines (as the case may be) in writing that Substantial Implementation has occurred.
- 4.2 The Developer will submit a Revised Viability Assessment within 20 Working Days after the Sales Assessment Trigger Date.
- 4.3 The Developer will submit to the OPDC together with a Revised Viability Assessment a written statement confirming
  - (a) whether a Surplus has arisen
 and where that statement confirms that a Surplus has arisen a written statement confirming the following determined in accordance with the provisions of this Schedule
  - (b) the value of any Surplus;



- (c) a plan indicating the location of any Private Residential Units that are proposed to become Additional Affordable Housing Provision within the Development (if any) in a policy compliant split (by habitable rooms) of 30% London Affordable Rent Housing, 30% Affordable Rent Housing and 40% Shared Ownership Housing; and / or
  - (d) the proposed value of any Affordable Housing Contribution.
- 4.4 The Developer will not first Occupy more than 90 of the Private Residential Units until the requirements of this paragraph 5 have been satisfied in full.
- 4.5 The Developer will provide to OPDC together with a Revised Viability Assessment such further information and evidence as is reasonably required by OPDC to enable OPDC's Viability Consultant to carry out the Revised Viability Assessment Review.

## **5 REVISED VIABILITY ASSESSMENT REVIEW**

- 5.1 The OPDC will commission an independent review of any Revised Viability Assessment it receives as soon as possible following receipt by the OPDC of the Revised Viability Assessment in accordance with paragraph 4 of this Schedule provided always that the OPDC will appoint its Viability Consultant on terms that the Viability Consultant must report to the OPDC within 30 Working Days after the date of appointment with reasonable terms to incentivise the meeting of this deadline, but for the avoidance of doubt failure on the part of the Viability Consultant to meet this deadline will not affect the Revised Viability Assessment Review and the steps set out at 5.2 and 5.3 below will always be followed when the Viability Consultant submits the relevant report.
- 5.2 The OPDC will notify the Developer in writing when the OPDC's Viability Consultant has completed a Revised Viability Assessment Review and provide a copy of the relevant report of OPDC's Viability Consultant to the Developer within 5 Working Days of receipt of the report.
- 5.3 The Developer will pay to the OPDC the costs of OPDC's Viability Consultant which are reasonably and properly incurred on the Revised Viability Assessment Review within 20 Working Days of receipt of the report.

## **6 CALCULATION OF ANY SURPLUS**

- 6.1 The Surplus will be calculated in accordance with the Revised Viability Assessment Template.
- 6.2 For the avoidance of doubt the Developer shall be entitled to a developer's profit of 20% on gross development value ("GDV") as a Cost to the Development (as shown in the Revised Viability Assessment Template) prior to the calculation of any Surplus.
- 6.3 In the event of a dispute between the Parties as to the level of Surplus either the OPDC or the Developer may refer the matter to dispute resolution pursuant to clause 19 of this Deed.
- 6.4 In the absence of a Surplus then no Additional Affordable Housing Provision will be required and no Affordable Housing Contribution shall be payable in respect of that Revised Viability Assessment Review PROVIDED THAT notwithstanding the fact that no Surplus has arisen there shall be no reduction or other alteration to the planning obligations within this Deed as a result of such review.

## **7 ADDITIONAL AFFORDABLE HOUSING PROVISION AND AFFORDABLE HOUSING CONTRIBUTION**

- 7.1 The OPDC and the Developer will use reasonable endeavours to agree the conclusions of the Revised Viability Assessment Review as set out in the Viability Consultant's report including where applicable the number of Private Residential Units that are proposed to become Additional Affordable Housing Provision and/or the level of Affordable Housing Contribution

within 20 Working Days following receipt of OPDC's Viability Consultant's final report having regard (inter alia) to the level of the Surplus Share and the feasibility of providing any Additional Affordable Housing Provision within the Development as at the date of the relevant Revised Viability Assessment.

7.2 Subject to paragraphs 7.1 and 7.3, it is a principle of any agreement under paragraph 7.1 above that any Surplus Share will be applied in the form of an Affordable Housing Contribution only where it is not possible to apply it in the form of Additional Affordable Housing Provision.

7.3 It is a principle of any agreement under paragraph 7.1 above that in the event that there is a positive Surplus but

- (a) the OPDC's Surplus Share is insufficient to provide any Additional Affordable Housing Provision; or
- (a) the OPDC's Surplus Share cannot deliver a complete number of units of Additional Affordable Housing Provision

then in either scenario any part of the OPDC's Surplus Share attributable to incomplete units of Additional Affordable Housing Provision shall be payable to the OPDC as an Affordable Housing Contribution.

7.4 OPDC or the Developer may refer the matter to dispute resolution pursuant to clause 19 of this Deed to determine the provision of Additional Affordable Housing Provision and/or the value of any Affordable Housing Contribution if no agreement has been reached in accordance with paragraph 7.1 above.

## **8 PAYMENT OF AFFORDABLE HOUSING CONTRIBUTION AND/OR PROVISION OF ADDITIONAL AFFORDABLE HOUSING UNITS**

8.1 Where pursuant to a Revised Viability Assessment undertaken pursuant to paragraph 1.1 there is a Surplus, the Developer shall (unless otherwise agreed with the OPDC):

- (a) pay to the OPDC the value of any Affordable Housing Contribution which has been agreed pursuant to paragraph 7.1 or determined pursuant to paragraph 7.4 within 10 Working Days of such agreement or determination and in any event prior to the Occupation of more than 60 of the Private Residential Units

and prior to the Occupation of more than 90 of the Private Residential Units shall:

- (b) make any amendments to the Development required to accommodate any Additional Affordable Housing Provision which have been agreed pursuant to paragraph 7.1 or determined pursuant to paragraph 7.4 and seek any necessary variation to the Planning Permission and / or any details approved pursuant to conditions imposed thereon;
- (c) Practically Complete any Additional Affordable Housing Provision and make this available for Occupation and:
  - (i) dispose of the Additional Affordable Housing Provision to a Registered Provider by way of freehold sale or grant of a lease of not less than 125 years, subject to an express condition that the Registered Provider will enter into a Rent and Nominations Agreement to provide the Boroughs with nomination rights in equal shares in respect of the Additional Affordable Housing Provision

or, in the event that the Developer is a Registered Provider:



- (ii) enter into a Rent and Nominations Agreement to provide the Boroughs with nomination rights in equal shares in respect of the Additional Affordable Housing Provision

8.2 Where pursuant to a Revised Viability Assessment undertaken pursuant to paragraph 2 (Sales Assessment Trigger) there is a Surplus, the Developer shall (unless otherwise agreed with the OPDC):

- (a) pay to OPDC the value of any Affordable Housing Contribution which has been agreed pursuant to paragraph 7.1 or determined pursuant to paragraph 7.4 within 10 Working Days of such agreement or determination and in any event prior to the Occupation of more than 90 of the Private Residential Units

and Prior to the Occupation of more than 90 of the Private Residential Units shall:

- (b) make any amendments to the Development required to accommodate any Additional Affordable Housing Provision which have been agreed pursuant to paragraph 7.1 or determined pursuant to paragraph 7.4 and seek any necessary variation to the Planning Permission and / or any details approved pursuant to conditions imposed thereon;
- (c) Practically Complete any Additional Affordable Housing Provision and make this available for Occupation and:
  - (i) Dispose of the Additional Affordable Housing Provision to a Registered Provider by way of freehold sale or grant of a lease of not less than 125 years, subject to an express condition that the Registered Provider will enter into a Rent and Nominations Agreement to provide the Boroughs with nomination rights in equal shares in respect of the Additional Affordable Housing Provision

or, in the event the Developer is a Registered Provider:

- (ii) Enter into a Rent and Nominations Agreement to provide the Boroughs with nomination rights in equal shares in respect of the Additional Affordable Housing Provision

8.3 The Developer shall not Occupy any Additional Affordable Housing Provision provided pursuant to this Schedule for any purpose other than London Living Rent Housing or Shared Ownership Housing (or any other intermediate product) or London Affordable Rent Housing or Affordable Rent Housing (as the case may be) for the lifetime of the Development, save where a Shared Ownership Lessee has Staircased to 100 per cent equity in respect of a particular Shared Ownership Housing Unit.

8.4 The exclusion of liability provisions set out in paragraph 2 of Schedule 3 shall apply to any Additional Affordable Housing Provision as the same provisions apply to Affordable Housing Units.

8.5 The provisions of this Schedule are subject to the proviso that the Affordable Housing Units and any Affordable Housing Contribution and/or any Additional Affordable Housing Provision provided by the Developer shall never exceed the Cap individually or in aggregate (and for the avoidance of doubt in aggregate shall mean the Affordable Housing Units and/or any Affordable Housing Contribution payable and / or any Additional Affordable Housing Provision provided as the case may be) following Revised Viability Assessments submitted following the Substantial Implementation Assessment Trigger Date and the Sales Assessment Trigger Date





**ANNEX 1**  
**Revised Viability Assessment Template**  
**As at [Date]**

**REVENUE**

				<b>TOTALS</b>
<b>Residential – Open Market Sale</b>				
Gross Sales Revenue	Note 1			<b>A</b>
<b>Residential Affordable Units</b>				
Gross Sales Revenue	Note 2			<b>B</b>
<b>Non-Residential Space</b>				
Commercial Space Sales Revenue	Note 3			<b>C</b>
Ground Rents	Note 4			<b>D</b>
Car Parking	Note 5			<b>E</b>
<b>REVENUE SUMMARY</b>				
Residential for Sale/Rent		= A		
Affordable Housing		= B		
Commercial		= C		
Ground Rents		= D		
Car Parking		= E		
<b>TOTAL GROSS DEVELOPMENT VALUE (GDV)</b>			<b>= A+B+C+D+E</b>	<b>F</b>

**DEVELOPMENT COSTS**

<b>Site Cost</b>				
Site Value	£2,665,000 subject to indexation from the date of resolution to grant planning permission to the date of this Agreement in accordance with the House Prices Index for the LBHF as published by HM Land Registry from time to time (or such other index as may replace it)			<b>G1</b>
SDLT	Variable	%	(G2) =G2xG1	<b>G3</b>
Site Legals & fees & comm	1.8	%	(G4) =G4xG1	<b>G5</b>
<b>Total Site Cost</b>			<b>= G1+G3+G5</b>	<b>G</b>

**Build Cost**

Total Gross Area	Variable	H1
Average Build Rate per Gross Sqft <sup>Note 6</sup>	Variable	H2
<b>Total Build Cost</b>		<b>=H1xH2 H</b>

**Other Costs**

Planning Applications	Variable	J1
Section 106 Costs	Variable	J2
Mayoral CIL	Variable	J3
Borough CIL	Variable	J4
Construction and Design Contingency	5% on construction and design costs for any review following the Substantial Implementation Assessment Trigger Date; actual costs for the review following the Sales Assessment Trigger Date	J5
Professional Fees	10% on construction and design costs for any review following the Substantial Implementation Assessment Trigger Date; actual costs for the review following the Sales Assessment Trigger Date	J6
Residential sales, marketing and legal	2.5% on GDV of private residential sales and £1,500 per private unit for sales legal fees	J7
Commercial sales, marketing and legal	1.5% on capital value of commercial element	J8
Commercial letting and legal fees	15% on agreed annual rental income of commercial element for first	J9



Commercial purchaser's costs	year 1.8% on capital value of commercial element plus SDLT at the prevailing rate			J10
Other Development Costs (Note 7)				J11
<b>Total Other Costs</b>			$=J1+J2+J3+J4+J5+J6+J7+J8+J9+J10 + J11$	<b>J</b>
<b>Total Finance Cost</b>	7% p.a.	Variable as cash flow		<b>K</b>
<b>Total Developer Margin</b>	20.00 % of GDV	(L1)	$=L1 \times F$	<b>L</b>
<b>Total Development Costs</b>			$= G+H+J+K+L$	<b>M</b>

#### SCHEME SUMMARY

TOTAL GROSS DEVELOPMENT VALUE	=F
Less	
TOTAL DEVELOPMENT COSTS	=M
Equals	
DEFICIT/SURPLUS which in the event of a surplus is to be apportioned equally between the Developer and OPDC	=F-M

Note 1: To be determined from actual sales values for plots sold/rented where applicable and where actual sales values are not available detailed plot pricing of each unit from the best available market evidence.

Note 2: To be determined from a detailed appraisal of each unit taking account of the agreed rents and intermediate affordability.

Note 3: To be determined from actual letting values for commercial units where applicable and where actual letting values are not available to be determined from the best available market rental evidence and multiplied by the appropriate capitalisation rate determined from market evidence

Note 4: To be determined from a valuation of the market rate for ground rents chargeable on each unit type per annum and multiplied by the appropriate capitalisation rate determined from market evidence.

Note 5: To be determined from actual sales for car parking spaces and where actual sales are not available to be determined from a valuation of the average price per car parking space from the best available market evidence.

Note 6: To be determined from a cost plan prepared by a QS.

Note 7: costs necessarily and reasonably incurred in undertaking and delivering the development arising from rights of light, party wall awards, project insurances, NHBC or similar warranties and Network Rail monitoring costs only.

**SCHEDULE 5**  
**Highways and Transport**

**1 TRANSPORT CONTRIBUTION**

**1.1** The Developer shall:

- (a) pay the Transport Contribution to the OPDC prior to Commencement of the Development; and
- (b) not Commence the Development until the Transport Contribution has been paid in full to the OPDC.

**2 HIGHWAY WORKS**

**2.1** The Developer shall:

- (a) prior to Commencement of the Development submit an initial Schedule of Highway Condition to the OPDC for approval; and
- (b) not Commence the Development until the OPDC has approved the initial Schedule of Highway Condition in writing.

**2.2** Prior to Practical Completion of the Development the Developer shall give OPDC the following information for approval:

- (a) a proposed specification for the Highway Works (other than in respect of the repair and reinstatement works to the Highway Reinstatement Area); and
- (b) a proposed programme for the Highway Works referred to in paragraph 2.2(a).

**2.3** Within 20 Working Days of Practical Completion of the Development (or the date at which works in respect of the Development have reached a stage where further works will not adversely affect the Highway Reinstatement Area), the Developer shall give written notification of such fact to the OPDC together with the following information for approval:

- (a) a further Schedule of Highway Condition;
- (b) a proposed specification for the Highway Works in respect of the repair and reinstatement works to the Highway Reinstatement Area; and
- (c) a proposed programme for the Highway Works referred to in paragraph 2.3(b).

**2.4** Following approval of the details in paragraph 2.2 and paragraph 2.3 by the OPDC, the Developer shall:

- (a) unless otherwise agreed with the OPDC, enter into a Highways Agreement or Highways Agreements with LBHF (as local highways authority) in respect of the Highway Works; and
- (b) thereafter carry out the Highway Works in accordance with the Highways Agreement or Highways Agreements.

**2.5** Unless otherwise agreed with the OPDC the Developer shall not permit any Occupation of Residential Units or Commercial Floorspace after Practical Completion of the Development until:

- (a) the details required to be submitted pursuant to paragraph 2.2 and paragraph 2.3 have been approved in writing by the OPDC;
- (b) the Developer has entered into a Highways Agreement or Highways Agreements in respect of the approved Highway Works; and



- (c) the Developer has Practically Completed the Highway Works in accordance with the Highways Agreement or Highways Agreements (as the case may be).

2.6 The Developer shall consult with the LBHF (as local highway authority) in respect of the approval of the details required to be submitted pursuant to paragraphs 2.1, 2.2 and 2.3 and shall provide details of LBHF's responses to the OPDC when submitting those details for approval.

## SCHEDULE 6

### Car Parking

#### 1 CAR CLUB MEMBERSHIP

- 1.1 Prior to first Occupation of each Residential Unit, the Developer shall write to the relevant first Resident to notify him of the existence of the Car Club and to offer to pay for three year's membership of the Car Club
- 1.2 In the event that following receipt of written notice pursuant to paragraph 1.1 above a Resident notifies the Developer that he wishes to become a member of the Car Club, the Developer shall pay the full cost of that Resident's membership to the Car Club for a period of not less than three years.
  - (a) As soon as reasonably practicable following a written request from the OPDC, the Developer shall provide the OPDC with evidence of the acceptance or non-acceptance of the Car Club membership by the Resident of each Residential Unit.
  - (b) It is hereby agreed that the Developer shall only be required to offer to pay for three years' membership of the Car Club for up to 2 (two) first Residents per Residential Unit
  - (c) The Developer undertakes that any advert or marketing in relation to the sale or letting of any of the Residential Units shall include reference to the provision of membership of the Car Club pursuant to the terms of this Deed and the Developer shall provide evidence of the same to the OPDC as soon as reasonably practicable following a written request.

#### 2 CONTROLLED PARKING ZONES – RESTRICTION ON TITLE

- 2.1 The Developer shall not Occupy the Development or any part thereof unless and until the Developer has informed all intended Occupiers of the Development by formal notice in writing:
  - (a) that the Development is a Car-Free Housing Scheme; and
  - (b) that (save for any Blue Badge Holders) intended Occupiers of the Development (or any person having any connection whatsoever or relationship with any such Occupier whether contractual, personal or otherwise and who is resident at the Development) shall not be entitled to any form of permit from the LBHF or LBE or LBB which would allow them to park any motor vehicle within a CPZ.
- 2.2 The Developer will forthwith confirm in writing to the OPDC that it has made formal notification in accordance with paragraphs 2.1(a) and 2.1(b) above.
- 2.3 The Developer for itself and its successors in title (other than Blue Badge Holders) hereby waives all rights and entitlement (if any) on the part of the Developer to a parking permit in the CPZ.
- 2.4 The Developer for itself and its successors in title (other than Blue Badge Holders) hereby covenants not to lease or transfer the whole or any part of the Site unless he has included a restrictive covenant in any such lease or transfer which provides that the tenant or owner of the whole or any part of the Site covenants not to apply to the LBHF, LBE or LBB for a resident's parking permit for a CPZ.
- 2.5 The Developer hereby covenants for itself and its successors in title not to transfer its interest in the Site or grant a leasehold interest in the Site or any part thereof (other than a leasehold interest in an individual Residential Unit or unit of Commercial Floorspace) unless the



transferee or lessee as the case may be enters into a deed of covenant (the "Deed of Covenant") with the OPDC in which the transferee or lessee as the case may be gives covenants to the OPDC identical to the covenants within this paragraph 2.

- 2.6 The Deed of Covenant shall be in substantially the same form as the draft deed of covenant appearing at Annex 1 of this Schedule, subject to amendments as may be agreed by the parties acting reasonably.
- 2.7 The Developer shall not Implement the Development or any part thereof until it has entered a restriction on its interest(s) in the Site prohibiting registration of any disposition of said registered estate(s) without a certificate signed by OPDC that the provisions of paragraph 2.4 above have been complied with (the "Restriction").
- 2.8 The Restriction shall be in the same form as the restriction appearing at Annex 2 of this Schedule.

### **3 CONTROLLED PARKING ZONES – UNDERTAKINGS TO LBHF**

- 3.1 The Developer shall not Commence the Development or any part thereof until it has given unilateral undertakings pursuant to section 16 of the Greater London Council (General Powers) Act 1974 to LBHF (the "Undertaking") and the OPDC has approved such Undertaking in writing.
- 3.2 The Undertaking shall be in substantially the same form as the draft undertaking appearing at Annex 3 of this Schedule, subject to such reasonable amendments as may be required by LBHF.
- 3.3 The Developer and the OPDC shall use reasonable endeavours to agree the form of the Undertaking with LBHF within one month of the date of this Deed and in any event as soon as reasonably practicable after the date of this Deed.
- 3.4 The Developer covenants that all material utilised for advertising or marketing each and every individual Residential Unit with the Development for letting or sale will make it clear to prospective tenants and Occupiers that no parking permit (other than for a Blue Badge Holder) will be issued by LBHF for any Residential Unit.
- 3.5 Upon receiving written request from the OPDC, the Developer shall provide the OPDC with such evidence as the OPDC may reasonably require to demonstrate that the Developer is complying with the requirements of the Undertaking and this paragraph 3.

### **4 BLUE BADGE CAR PARKING SPACES**

- 4.1 Prior to first Occupation of the Development the Developer shall provide 9 parking spaces for Blue Badge Holders in the location shown in Plan 5.
- 4.2 The Developer shall not first Occupy the Development until the requirements of paragraph 4.1 have been satisfied in full.

## **ANNEX 1**

### **Deed of Covenant**



DATED

20[ ]

OLD OAK AND PARK ROYAL DEVELOPMENT  
CORPORATION

AND

[COVENANTOR]

---

DEED OF COVENANT

---

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL  
Tel: +44 (0)20 7074 8000

**THIS DEED** is made on

20[ ]

**BETWEEN:**

1. **OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION** of City Hall, The Queen's Walk, More London Riverside, London SE1 2AA (the "**OPDC**"); and
2. **[Covenantor]** [a company registered in England and Wales (company number [0000]) whose registered office is at [Address] (the "**COVENANTOR**")

**RECITALS**

- (A) The Covenantor has on the date of this deed acquired the Property from the Seller.
- (B) The Covenantor has agreed to comply with the Seller's Obligations in the Original Agreement as if were the Developer named in that Original Agreement.
- (C) The Covenantor has agreed to enter into this Deed of Covenant to record that Agreement.

**OPERATIVE PROVISIONS**

**1 INTERPRETATION**

- 1.1 In this Deed the following words and expressions shall have the following meanings:

**"Developer"**

the party to the Original Agreement so named;

**"Original Agreement"**

the deed dated [] made between (1) the OPDC and (2) Aurora Developments Limited;

**"Property"**

[insert title details] which comprises [part of] the Site as defined in the Original Agreement;

**"Seller"**

[Aurora Developments Limited or relevant successor];

**"Seller's Obligations"**

all obligations and restrictions on the Developer and all covenants provided by the Developer in [paragraph 2 of Schedule 6] of the Original Agreement.

- 1.2 Words and expressions defined in the Original Agreement have the same meanings in this Deed unless an alternative meaning is given in this Deed when the alternative meaning will apply.
- 1.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**2 OBLIGATIONS**

- 2.1 The Covenantor covenants with the OPDC to comply with the Seller's Obligations as if the Seller's Obligations were set out in full in this Deed of Covenant and references to the Developer in the Seller's Obligations were references to the Covenantor.

**3 EXECUTION**

- 3.1 The Covenantor has executed this Deed of Covenant as a deed and it is delivered on the date set out above.



The common seal of

)

**OLD OAK AND PARK ROYAL  
DEVELOPMENT CORPORATION**

)

)

was affixed in the presence of:

Authorised Signatory

Executed as a deed by

)

**[Covenantor]**

)

acting by a director and a secretary/two  
directors:

)

Director

Director/Secretary

## **ANNEX 2**

### **Restriction on Title**

“No disposition of the registered estate (other than a charge, or the grant of a leasehold interest in an individual Residential Unit or unit of Commercial Floorspace as defined in the Deed dated [ ] between the Old Oak and Park Royal Development Corporation and Aurora Developments Limited) by the proprietor of the registered estate is to be registered without a certificate signed by the Old Oak and Park Royal Development Corporation of City Hall, The Queen's Walk, More London Riverside, London SE1 2AA (or its successor) that the provisions of paragraph [2.4 of Schedule 6] of the Deed dated [ ] between the Old Oak and Park Royal Development Corporation and Aurora Developments Limited have been complied with or that they do not apply to the disposition”





DATED

20[ ]

**AURORA DEVELOPMENTS LIMITED**

**AND**

**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF HAMMERSMITH AND FULHAM**

---

**UNILATERAL UNDERTAKING**

**pursuant to section 16 of the Greater London Council  
(General Powers) Act 1974 and all other powers enabling  
relating to land known as North Kensington Gate South, 115-  
129A London NW10 6QU**

---

**Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL  
T: 020 7074 8000**

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**THIS UNDERTAKING** is given on

20[ ]

**FROM:**

1. **AURORA DEVELOPMENTS LIMITED** a company registered in England and Wales (company number 04448424) whose registered office is at PO Box 635, St Peter's House, Le Bordage, St Peter's Port, Guernsey GY1 1BR (the "**Developer**")

**TO:**

2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM** of Town Hall, King Street, London, W6 9JU (the "**Council**")

**RECITALS**

- (A) The Council is the local authority for the area in the vicinity of the Site for the purposes of section 16 of the 1974 Act and is the local authority by whom the obligations contained in this Undertaking are enforceable.
- (B) By virtue of The Old Oak and Park Royal Development Corporation (Planning Functions) Order 2015, the Old Oak and Park Royal Development Corporation ("**OPDC**") is the local planning authority for the area in which the Site is located for the purposes of Part 3 of the 1990 Act.
- (C) The Developer is the registered owner of the freehold interest in the Site with title absolute under title number LN192535.
- (D) The Developer submitted the Planning Application to the OPDC.
- (E) At a meeting of its Planning Committee on 5 April 2017, the OPDC resolved to grant the Planning Permission subject to the Developer entering into the S106 Agreement and securing obligations to restrict Occupiers of the Site from holding Parking Permits, without which the Planning Permission would not be granted.
- (F) The S106 Agreement has been entered into and the Planning Permission has been granted.
- (G) This Undertaking is being given to satisfy the requirements of paragraph 2 of Schedule 7 of the S106 Agreement.

**THE PARTIES AGREE** as follows:

**1 INTERPRETATION**

- 1.1 In this Undertaking the following words and expressions and abbreviations have the following meanings, unless the context otherwise requires:

**"1974 Act"**

means the Greater London Council (General Powers) Act 1974;

**"1990 Act"**

means the Town and Country Planning Act 1990;

**"Blue Badge"**

means a disabled parking badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970;



**“Commencement”**

means the carrying out of a material operation (as defined in section 56(4) of the 1990 Act but disregarding for the purposes of this Undertaking the following operations: ground investigations for assessing site conditions; archaeological investigations; demolition and site clearance; site survey works; diversion and laying of services; erection of any temporary means of enclosure; temporary display of site notices and advertisements; and any works requires to be undertaken to discharge pre-commencement conditions on the Planning Permission) and **“Commenced”** shall be construed accordingly;

**“Commencement Date”**

means the date upon which the Development is Commenced;

**“CPZ”**

means any controlled parking zone enforced by the Council as at the date of the S106 Agreement;

**“Development”**

means demolition of existing structures and redevelopment of the Site to provide a new building ranging from 6 storeys (25.1 metres above ground level) to 22 storeys (80.4 metres above ground level) in height over a new excavated basement, comprising 750sqm (GIA) of ground floor commercial floorspace (use class A1/A2/A3/B1) and 164 residential units (use class C3) with basement car parking and plant space, landscaping and associated works;

**“Occupation”**

means the occupation of any part of the Development for its designated planning use but does not include occupation by the Developer or any contractor or other occupier for the purposes of construction, fitting out, decoration, marketing or display and **“Occupier”** shall be construed accordingly;

**“Parking Permit”**

means a permit issued or to be issued in the future by the Council to an Occupier of a Residential Unit to permit the parking of a motor vehicle on the highway within a CPZ;

**“Planning Application”**

means the application for full planning permission submitted to the OPDC for the Development and allocated reference number 16/0119/FULOPDC;

**“Planning Permission”**

means the planning permission for the Development granted by the OPDC on *[insert date]* and bearing reference number 16/0119/FULOPDC and shall include any amended, varied or replacement permission granted pursuant to section 96A or section 73 of the 1990 Act from time to time;

**“Residential Unit”**

means a unit of residential accommodation comprised within the Development and falling within Use Class C3;

**“S106 Agreement”**

means the agreement dated *[insert date]* and made pursuant to section 106 of the 1990 Act in respect of the Planning Permission between (1) the OPDC and (2) the Developer;

**“Site”**

means the land known as North Kensington Gate South, 115-129A Scrubs Lane, London NW10 6QU as shown edged [red] on Plan 1, the freehold interest in which is owned by the Developer and registered at HM Land Registry under title number LN192535;

**“Use Classes”**

shall be defined by reference to the Town and Country Planning (Use Classes) Order 1987; and

**“Working Day”**

means any day of the week other than Saturday, Sunday or any bank holiday.

- 1.2 Where in this Undertaking reference is made to a clause, paragraph, schedule, recital, plan, annex or appendix such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule, or recital in this Undertaking or to a plan, annex or appendix attached to this Undertaking.
- 1.3 Where in any schedule or part of a schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that schedule or (if relevant) part of a schedule.
- 1.4 References in this Undertaking to the Developer shall include reference to its successors in title and assigns and to persons claiming through or under it in relation to all or any part of the Site save where the context otherwise requires.
- 1.5 References to the Council shall include reference to any successor body exercising any of the powers currently vested in the Council in relation to this Undertaking.
- 1.6 Words including the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.7 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner.
- 1.8 Words denoting an obligation on a party to do an act matter or thing include an obligation to procure that it be done and words placing a party under a restriction (including for the avoidance of doubt any obligation preventing or restricting Commencement or Occupation) include an obligation not to cause, permit, suffer or allow infringement of the restriction.
- 1.9 Any reference to a statute or a provision thereof or a statutory instrument or a provision thereof shall include any modification, extension or re-enactment thereof for the time being in force (including for the avoidance of doubt any modification, extension or re-enactment made prior to the date of this Undertaking) and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.10 The word **“including”** means including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word **“include”** and its derivatives shall be construed accordingly.
- 1.11 The clause and paragraph headings in the body of this Undertaking and in the schedules hereto do not form part of this Undertaking and shall not be taken into account in its construction or interpretation.
- 1.12 References to the Site include any part of it.

**2 LEGAL EFFECT**

- 2.1 This Undertaking is made pursuant to section 16 of the 1974 Act and will come into effect on the date hereof, save for clause 3 which shall come into force upon the Commencement Date.
- 2.2 The covenants undertakings restrictions and requirements imposed upon the Developer under this Undertaking create obligations pursuant to section 16 of the 1974 Act which are



enforceable by the Council as local authority against the Developer and the Developer's successors in title and assigns and which bind each and every part of the Site.

- 2.3 Insofar as any provisions in this Undertaking are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Undertaking.
- 2.4 No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants, undertakings, terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants, undertakings, terms or conditions or from acting upon any subsequent breach or default.
- 2.5 The covenants, undertakings, restrictions and obligations herein shall be enforceable without any limit of time against the Developer and its successors in title and assigns or any person claiming title through or under the Developer to the Site or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

### **3 THE DEVELOPER'S COVENANTS**

The Developer hereby covenants with the Council to observe and perform and cause to be observed and performed the obligations, undertakings, covenants and restrictions contained in Schedule 2.

### **4 DEVELOPER'S CAPACITY TO ENTER INTO THIS UNDERTAKING**

The Developer hereby warrants that it has full power to enter into this Undertaking and that it has obtained all necessary consents from any mortgagee, chargee or any other person having a title or right in the Site.

### **5 FURTHER TERMS**

- 5.1 The covenants and undertakings in this Undertaking shall be registered by the Council as local land charges for the purposes of the Local Land Charges Act 1975.
- 5.2 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission.

### **6 NOTICE PROVISIONS**

- 6.1 The Developer shall give the Council written notice of Commencement no later than 10 Working Days after the Commencement Date.
- 6.2 The Developer shall give the Council written notice of any change in ownership of any freehold or leasehold interest in the Site no later than ten Working Days after such change in ownership and such notice shall give details of the transferee's or lessee's full name and registered office (if a company or usual address if not).
- 6.3 Any notice or other written communication to be served upon a party or given by one party to any other under the terms of this Undertaking shall be given in writing (which for this purpose shall not include email) and shall be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given and shall conclusively be deemed to have been received on:
  - (a) if delivered by hand, the next Working Day after the day of delivery; and



- (b) if sent by first class post or recorded delivery post, the day two Working Days after the date of posting.

6.4 The address for any notice or other written communication shall be within the United Kingdom only and shall be as specified below or such other address as shall be specified by the party upon whom the notice is to be served to the other parties by not less than five Working Days' notice:

- (a) in the case of the Council, to the Head of Development Management, Hammersmith and Fulham Council, Town Hall, King Street, London, W6 9JU, bearing the reference "North Kensington Gate South – OPDC – 16/0119/FULOPDC";
- (b) in the case of the Developer, to [\*].

## 7 REVOCATION

This Undertaking shall cease to have effect (insofar as it has not already been complied with and save for any obligations which are already outstanding) if the Planning Permission shall be quashed, modified (without the consent of the Developer) or revoked or if the Planning Permission shall expire prior to Commencement of the Development.

## 8 LIABILITY UNDER THIS UNDERTAKING

8.1 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Undertaking:

- (a) to the extent that such breach relates to any part of the Site in which that person has no interest and/or
- (b) which occurs after he has parted with his entire interest in the Site (or his interest in that part of the Site on which the breach occurs) save for any prior breach for which he shall continue to be liable.

## 9 DISPUTE RESOLUTION

9.1 Where the Developer and the Council (referred to hereafter in this clause as the "**parties**") are in dispute or disagreement or have any differences relating to any matter the subject of or connected with this Undertaking or its meaning or construction (a "**Dispute**") then (without prejudice to any provision in this Undertaking which specifies a particular timescale for the resolution or determination of any matter) the parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the Dispute arising.

9.2 Failing the resolution of any such Dispute within the said 20 Working Days or within such other period as may be specified in this Undertaking in relation to the resolution or determination of the matter in question, the Dispute shall be referred for determination in accordance with the provisions of this clause 9 on the reference of any of the parties to the Dispute.

9.3 The Dispute shall be referred to the decision of an independent expert (the "**Expert**") who shall be an independent person of at least ten years' standing in the area of expertise relevant to the Dispute and in the event that the parties are unable to agree whom should be appointed within a period of ten Working Days following a failure of the parties to resolve the Dispute within the period set out in clause 9.1, then any party may request:

- (a) if such Dispute shall relate to matters concerning the construction, interpretation and/or application of this Undertaking, the Chairman of the Bar Council to nominate the Expert;

- (b) if such Dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institution of Chartered Surveyors to nominate the Expert; and
  - (c) in all other cases, the President of the Law Society to nominate the Expert.
- 9.4 If the Dispute shall relate to matters falling within two or more of clauses 9.3(a) to 9.3(c) (inclusive), the parties may agree to appoint joint Experts and in the event that the parties are unable to agree whom should be appointed as joint Experts, the parties may request the President of the Law Society to nominate such persons falling within the descriptions of clauses 9.3(a) to 9.3(c) (inclusive) to act as joint Experts.
- 9.5 The Expert shall act as an expert and not as an arbitrator and the determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the parties) shall be final and binding upon the parties.
- 9.6 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine, submitted jointly by the parties to the Dispute) subject to an express requirement that he reaches his decision and communicates it to the parties to the Dispute within the minimum practical timescale allowing for the nature and complexity of the Dispute and in any event no later than thirty Working Days from the date of his appointment to act and that he is to have particular regard to the 1990 Act in reaching his decision.
- 9.7 The terms of reference of any Expert appointed to determine a Dispute shall include the following:
- (a) he shall call for representations from all parties with ten Working Days of a reference to him under this Undertaking and shall require the parties to exchange representations within this period;
  - (b) he shall allow the parties ten Working Days from the expiry of the ten Working Days period referred to in clause 9.7(a) to make counter-representations;
  - (c) any representations or counter-representations received out of time shall be disregarded by the Expert;
  - (d) he shall provide the parties with a written decision (including his reasons) within ten Working Days of the last date for receipt of counter-representations;
  - (e) he shall be entitled to call for such independent expert advice as he shall think fit; and
  - (f) his costs and the costs of any independent expert advice called for by the Expert shall be included in his award.
- 9.8 Unless the Expert shall decide otherwise the costs of any reference to the Expert shall be borne equally by the parties to the Dispute.

## **10 GOVERNING LAW**

This Undertaking and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this Undertaking or its formation (including any non-contractual disputes or claims) shall be governed and construed in accordance with English law.

## **11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is hereby declared that none of the terms of this Undertaking shall be construed as being enforceable by any third party (other than the Council) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof this undertaking has been executed as a deed on the date first above written.

**SCHEDULE 1**  
**Site Plan**





## SCHEDULE 2

### Developer's Covenants - Permit Free

The Developer covenants with the Council:

1. Not to apply for a Parking Permit or knowingly suffer or permit any Occupier of a Residential Unit (other than a Blue Badge holder) to apply for a Parking Permit for any CPZ in the Council's area and if such a Parking Permit is issued the Developer covenants on becoming aware of such issue to notify the Council in writing immediately thereafter.
2. That all material utilised for advertising or marketing each and every individual Residential Unit with the Development for letting or sale will make it clear to prospective tenants and Occupiers that no Parking Permit (other than for a Blue Badge holder) will be issued by the Council for any Residential Unit.
3. That in respect of every freehold transfer or lease granted, assigned, transferred or otherwise provided in respect of the Residential Units, the following covenants will be imposed (or a covenant of substantially the same nature) in respect of any transfer, tenancy agreement, licence or other instrument entitling Occupation of the Residential Unit:

*"the [transferee/lessee] for himself and his successors in title being the owner or owners for the time being [of the terms of years hereby granted] hereby covenant with the [transferor/lessor] and separately with the Mayor and Burgesses of the London Borough of Hammersmith and Fulham ("**the Council**") that they shall not apply for nor knowingly permit an application to be made by any person residing in the premises to the Council for any resident's parking permit (save for a disabled person's "**blue badge**" issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) in respect of such premises (such parking permit entitling the resident to park within any controlled parking zone that was in force on or before [insert date of S106 Agreement] (being the date of an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 between (1) the Old Oak and Park Royal Development Corporation (the "**OPDC**") and (2) Aurora Developments Limited, in respect of a planning permission granted by the OPDC under reference 16/0119/FULOPDC) and if such a permit is issued then it shall be surrendered within seven days of written request to do so from the Council and this covenant shall also be enforceable by the Council under section 1 of the Contracts (Rights of Third Parties) Act 1999".*

4. Upon receiving written request from the Council, to provide the Council with such evidence as the Council may reasonably require to demonstrate compliance with this schedule.





**EXECUTED** as a DEED by  
**AURORA DEVELOPMENTS**  
**LIMITED**  
acting by

a director and

a director/its secretary

)  
)  
)  
)  
)  
)  
)  
)

.....

director

.....

director/secretary

## SCHEDULE 7

### Framework Travel Plan

#### 1 SUBMISSION OF FRAMEWORK TRAVEL PLAN

##### 1.1 The Developer shall:

- (a) submit a Framework Travel Plan to the OPDC for approval prior to first Occupation of the Residential Units;
- (b) not first Occupy the Residential Units until the Framework Travel Plan has been approved by the OPDC in writing (which approval shall not be unreasonably withheld or delayed); and
- (c) thereafter implement, comply with and procure compliance with the Framework Travel Plan for the duration of the beneficial use of the Residential Units within the Development, subject to any variations that may be agreed from time to time in writing between the Developer and the OPDC.

#### 2 CONTENTS OF FRAMEWORK TRAVEL PLAN

##### 2.1 The Developer covenants with and undertakes to the OPDC that the Framework Travel Plan shall include (but not be limited to) the following information and measures:

- (a) a specimen welcome pack for all Occupiers of the Residential Units;
- (b) explore initiatives to promote cycling and walking;
- (c) proposals for providing and promoting public transport information (for example, maps, routes and timetables);
- (d) provide objectives and targets over the life of the Framework Travel Plan aimed at reducing car use and increasing the modal share towards more sustainable modes of transport;
- (e) proposals for monitoring compliance with the Framework Travel Plan and achievement of the objectives and targets.

#### 3 REVIEW OF FRAMEWORK TRAVEL PLAN

##### 3.1 The Developer shall review the operation of the Framework Travel Plan on the first, second, third, fourth and fifth anniversaries of the first Occupation of the Residential Units within the Development and shall submit a written report to the OPDC within 10 Working Days of completion of the review setting out the findings of the review including the extent to which the objectives and targets set out within the Framework Travel Plan are being achieved and any proposals for improving the operation of the Framework Travel Plan.

##### 3.2 Following submission of a review of the Framework Travel Plan, the Developer and the OPDC shall use reasonable endeavours to agree any necessary changes to the Framework Travel Plan to ensure that the objectives and targets set out therein are achieved and the Developer shall thereafter implement any such agreed changes.

#### 4 TRAVEL PLAN MONITORING CONTRIBUTIONS

##### 4.1 The Developer shall pay £1000 on the first, second, third, fourth and fifth anniversaries of first Occupation of the Residential Units within the Development as contributions towards the OPDC's costs involved in monitoring compliance with the Framework Travel Plan.

**SCHEDULE 8****Education****1 EDUCATION CONTRIBUTION**

- 1.1 The Developer shall pay the Education Contribution to the OPDC prior to Commencement of the Development and shall not Commence the Development until the Education Contribution has been paid to the OPDC.



**SCHEDULE 9****Healthcare****1 HEALTHCARE CONTRIBUTION**

- 1.1 The Developer shall pay the Healthcare Contribution to the OPDC prior to Commencement of the Development and shall not Commence the Development until the Healthcare Contribution has been paid to the OPDC.

## **SCHEDULE 10**

### **Training and Skills**

#### **1 JOBS AND EMPLOYMENT STRATEGY**

##### **1.1 The Developer shall:**

- (a) submit a Jobs and Employment Strategy to the OPDC for approval prior to Commencement of the Development;
- (b) not Commence the Development until the Jobs and Employment Strategy has been approved in writing by the OPDC; and
- (c) implement and comply at all times with the approved Jobs and Employment Strategy, subject to such amendments as may be agreed in writing with the OPDC from time to time.

#### **2 LOCAL LABOUR**

- 2.1** The Developer shall use reasonable endeavours to ensure that not less than 15% of the jobs required during the Construction Period are filled by Local Residents.

#### **3 LOCAL PROCUREMENT**

- 3.1** The Developer shall no later than three months prior to Implementation provide the OPDC with a schedule of the construction contracts and suppliers required during the Construction Period, such schedule to:

- (a) include the estimated value/budget of packages, expected start and completion timeframes and any additional health and safety requirements for specific packages; and
- (b) show all opportunities for contracted and sub-contracted supplies and services.

- 3.2** The Developer shall use reasonable endeavours to ensure that the total value of contracts procured from Local Businesses throughout the Construction Period shall be no less than 20% of the total value of the goods and services procured.

- 3.3** The Developer shall report the value of all orders placed with Local Businesses to the OPDC on the completion of the tendering stage for the construction of the Development.

- 3.4** The Developer shall upon written request provide the OPDC with written evidence of its compliance with the provisions of this paragraph 3.

#### **4 APPRENTICESHIPS**

- 4.1** The Developer shall use reasonable endeavours to employ not less than 10 construction trade apprentices during the Construction Period with a view to each apprenticeship leading to a minimum qualification of NVQ Level 2.

- 4.2** Each apprentice employed pursuant to paragraph 4.1 shall be:

- (a) a Local Resident;
- (b) employed for a period of not less than 52 weeks and paid at a rate of not less than the London Living Wage and if the period of employment of an apprentice overruns the expiration date of the relevant contract or sub-contract the Developer shall ensure the continuation of the relevant apprenticeship elsewhere on the Development;
- (c) supported through paid day release to undertake relevant training; and

- (d) provided with on the job training and supervised on-site by an experienced operative in a trade related to his or her training needs.

4.3 The Developer shall upon written request provide the OPDC with written evidence of its compliance with the provisions of this paragraph 4.



**SCHEDULE 11**  
**Decentralised Energy**

**1 DECENTRALISED ENERGY**

**1.1** The Developer covenants with the OPDC that the Development

- (a) will be designed and constructed to connect to or not prejudice the future connection to a District Heating Network; and
- (b) will be provided with a single connection point at which the Development may be connected to a District Heating Network in a location to be approved as part of the Energy Strategy.

**1.2** The Developer shall ensure that the Building is designed and constructed so that it is capable of being connected to a District Heating Network and such provision shall include:

- (a) the installation of sufficiently sized external buried pipework at the time of available connection in positions agreed with the OPDC to enable connection to a District Heating Network;
- (b) the installation of pipework in the fabric of buildings in accordance with the approved Energy Strategy;
- (c) the provision of 'tees' and isolation valves in hot water headers to facilitate the connection of an interfacing heat exchanger at a later date if connection to the District Heating Network is not immediately technically feasible or economically viable when first provided prior to first Occupation of the Development;
- (d) provision of secondary side pipework designed and installed to avoid, as far as possible, those heat losses that give rise to building overheating.

**SCHEDULE 12****Design Monitoring****1 DESIGN TEAM STATEMENT**

1.1 The Developer shall not submit any of the following applications unless accompanied by a statement prepared by the Developer specifying the design team involved in the preparation of those details ("the **Design Team Statement**"):

- (a) an application pursuant to conditions 10, 11, 12, 13, 14, 23 and 24 of the Planning Permission;
- (b) an application for a S96A Amendment;
- (c) an application for a S73 Permission.

**2 DESIGN MONITORING COSTS**

2.1 If at any point the Architect is not retained to either prepare or oversee any design work required in relation to the applications set out at paragraph 1.1 above in order to ensure the design quality of the Development the Developer shall forthwith:

- (a) notify the OPDC of such non-retention; and
- (b) subject to receipt from the OPDC of an invoice setting out a full breakdown of the relevant monitoring work, pay to the OPDC within 10 Working Days of demand the Design Monitoring Costs and it is agreed that:
  - (i) such costs (or part thereof) may relate either to staff employed directly by the OPDC or third party consultants retained by the OPDC; and
  - (ii) the OPDC may make more than one demand for payment of Design Monitoring Costs;

PROVIDED THAT the total amount payable to the OPDC in Design Monitoring Costs shall not exceed £50,000 (Index Linked)

2.2 The Developer shall not Occupy the Development or any part thereof if the OPDC's Design Monitoring Costs have not been paid in accordance with paragraph 2.1 of this Schedule.

**SCHEDULE 13****Pavilion****1 PAVILION**

- 1.1 The Developer shall construct and fit-out the Pavilion to a standard to be agreed with the OPDC.
- 1.2 The Pavilion shall be delivered in accordance with a build programme to be agreed with the OPDC within 12 months from the date of issue of the Planning Permission or as otherwise agreed between the OPDC and the Developer.
- 1.3 The Developer shall not first Occupy the Development prior to agreement of the build programme in accordance with paragraph 1.2 unless otherwise agreed with the OPDC.

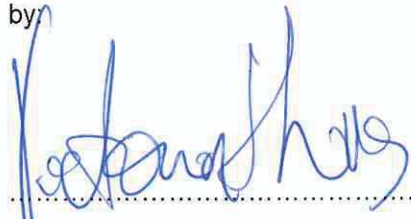




Executed as a deed by

**OLD OAK AND PARK ROYAL  
DEVELOPMENT CORPORATION** acting

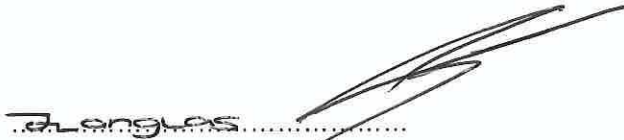
by



Authorised Signatory

Executed as a deed by

**AURORA DEVELOPMENTS LIMITED**  
acting by two directors



Authorised signatories for and on behalf of

Imperium Directors One Limited



Authorised Signatories for and on behalf of

Imperium Directors Two Limited

