

Dated 2021

Greater London Authority

and

The Mayor and Burgesses of the London Borough of Merton

and

Suez Recycling and Recovery UK Ltd

and

Suez Recycling and Recovery South East Ltd

Deed of Agreement under Section 106 of the Town and
Country Planning Act 1990

in relation to development at Benedict Wharf Hallowfield Way
Mitcham

Ref: HM11/ED04
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Parties

- (1) **The Greater London Authority** of City Hall, Kamal Churchie Way, London, E16 1ZE (the **GLA**);
- (2) **The Mayor and Burgesses of the London Borough of Merton** of Merton Civic Centre, London Road, Morden, Surrey, SM4 5DX (the **Council**);
- (3) **Suez Recycling and Recovery UK Ltd** (Company Number 02291198) and **Suez Recycling and Recovery South East Ltd** (Company Number 0295632) both of whose registered office is at Suez House Grenfell Road Maidenhead SL6 1ES (the **Owner**)

Introduction

- (A) On 3 August 2020 the GLA in accordance with section 2A of the 1990 Act called in the Application for its determination and is acting as the local planning authority for the purposes of the Application on behalf of the Mayor of London
- (B) At a representation hearing held on 8th December 2020, the Mayor of London resolved to approve the Application and grant the Planning Permission subject to imposing conditions and prior completion of this Deed to secure the planning obligations mentioned herein.
- (C) The GLA is a body established by the Greater London Authority Act 1999 and is entering into this Deed on behalf of the Mayor of London fulfilling its function under section 2E(2) of the 1990 Act.
- (D) The Council remains the local planning authority for the purposes of the 1990 Act and the local highway authority for the purposes of the 1980 Act for the area in which the Site is located and in accordance with section 2E(5) of the 1990 Act will be responsible with the GLA for monitoring the discharge and enforcement of the obligations in this Deed.
- (E) The Council confirms and acknowledges that the GLA has consulted with it as to the terms of this Deed in accordance with section 2E(4) of the 1990 Act.
- (F) The Parties enter into this Deed to secure the planning obligations contained within it and to enable the GLA acting as the local planning authority to grant Planning Permission for the Development.
- (G) The Parties to this Deed wish to secure the obligations and restrictions contained herein and are satisfied, for the purposes of Regulation 122 of the CIL Regulations, that they are necessary to make the Application acceptable in planning terms, directly related to the Application, fairly and reasonably related in scale and kind to the Application and are reasonable in all other respects and as such enforceable by the GLA and the Council.

Agreed terms

1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of this Agreement the following words and expressions have the following meanings:

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

Additional Affordable Housing Scheme means a scheme to be prepared by the Owner and submitted to the Council in accordance with either paragraph 9 of Part 1 of Schedule 1 or Part

3 of Schedule 1 detailing the Additional Affordable Housing Units to be provided and which (unless otherwise agreed in writing by the GLA and the Council):

- (a) confirms which Market Units are to be converted into Additional Affordable Housing Units;
- (b) contains 1:50 plans showing the location, size and internal layout of each Additional Affordable Housing Unit;
- (c) provides an indicative timetable for construction and delivery of the Additional Affordable Housing Units;
- (d) sets out the amount (if any) of any financial contribution payable towards offsite Affordable Housing if paragraph 3.10 of Part 3 of Schedule 1 applies;

and

- (e) ensures that no block will comprise solely or substantially of Market Units

Additional Affordable Housing Units means the Market Units to be converted to London Shared Ownership Housing Units and/or Low Cost Rented Units and/or London Living Rent Housing pursuant to the Additional Affordable Housing Scheme to be approved under Part 3 of Schedule 1 and subject to the provision of Additional Affordable Housing Units being capped so that the Affordable Housing Units and the Additional Affordable Housing Units (if any) do not comprise more than 70% (by Habitable Room) Low Cost Rented Units in total

Adjoining Site means the land registered at HM Land Registry with Title No SGL656281

Affordable Housing means housing including London Affordable Rented Housing, London Living Rent Housing, London Shared Ownership Housing and Social Rented Housing provided to eligible households whose needs are not met by the market and which housing should:

- (a) meet the needs of eligible purchasers or renters 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 purchasers or renters, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision within Greater London (as defined in section 2 of the London Government Act 1963);

and **Affordable Housing Units** shall be construed accordingly

Affordable Housing Cap means 50% of the Affordable Housing based on a tenure split of 60% Low Cost Rented Units and 40% Intermediate Housing Units;

Affordable Housing Provider means

- (a) 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);
- (b) an approved development partner of Homes England (or any successor agency) which is eligible to obtain grant funding; or
- (c) any other body specialising in the provision of Affordable Housing

in each case either nominated or approved by the Council (such approval not to be

unreasonably withheld or delayed);

Affordable Housing Scheme means a scheme specifying:

- (a) the percentage and number of Affordable Housing Units which will be delivered in accordance with the Baseline Affordable Housing Requirement;
- (b) the location, distribution, sizes, tenures and mix of the Affordable Housing Units which shall be prepared in accordance with a Housing Mix to be agreed by the Council as a Reserved Matter;
- (c) a demonstration of compliance with the Affordability Criteria and the Eligibility Criteria having regard to the Housing Mix to be agreed by the Council at Reserved Matters Stage; and
- (d) details of how the proposed external design of the Affordable Housing ensures that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from Market Housing Units of similar size within the Development;
- (e) phasing of affordable housing, and housing size mix by tenure by phases, ensuring that each phase includes affordable housing.

Affordability Criteria means the following criteria for affordability levels for Intermediate Housing Units which should also accord with the objectives set out in the Council's Intermediate Housing policy (set out in the Core Strategy dated July 2011) and with the Mayor's Annual Monitoring Report as updated:

- (a) 1 bedroomed Intermediate Housing Units are for Eligible Households with gross household annual incomes of forty three thousand five hundred pounds (£43,500) or less;
- (b) 2 bedroomed Intermediate Housing Units are for Eligible Households with gross household annual incomes of seventy one thousand pounds (£70,000) or less;
- (c) 3 bedroomed Intermediate Housing Units are for Eligible Households with gross household annual incomes of sixty five thousand pounds (£65,000) or less;
- (d) affordability levels will be updated annually in line with the current London Plan Annual Monitoring Report as may be amended from time to time (or any replacement regional affordability criteria for Intermediate Housing); and
- (e) the total mortgage payments, rent payments and the service charge for each Intermediate Housing Unit does not exceed twenty eight percent (28%) of the relevant annual gross income upper limit (such 28% per cent being equivalent to 40 per cent of net income, with net income being assumed to be seventy per cent of gross income).

Agreement means this agreement made pursuant to section 106 of the 1990 Act and other enabling powers;

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

AMR Upper Limit means the upper limit threshold for affordability levels for Intermediate Housing Units as set out in the Mayor's Annual Monitoring Report as updated being an annual income of £90,000;

Application means an application for planning permission with all matters reserved for a residential- led mixed-use development to construct up to 850 residential units and up to 750sq. metres of flexible commercial/community floorspace in Class A1-A3 D1 and D2 use

on the Property and given reference number 19/P2383 by Merton Council and 4756 by the GLA;

Average London Affordable Rent Housing Value means the average value of London Affordable Rent Housing floorspace per square metre at the Review Date based on the relevant information provided to establish the Estimated GDV to be assessed by the Council and the Owner;

Average London Living Rent Housing Value means the average value of London Living Rent Housing floorspace per square metre at the Review Date based on the relevant information provided to establish the Estimated GDV to be assessed by the Council and the Owner;

Average Market Unit Value means the average value of Market Housing Unit floorspace per square metre on the Site at the Review Date based on the relevant information provided to establish the Estimated GDV to be assessed by the Council and the Owner;

Average Shared Ownership Housing Value means the average value of London Shared Ownership Housing floorspace per square metre at the Review Date based on the relevant information provided to establish the Estimated GDV to be assessed by the Council and the Owner

Baseline Affordable Housing Requirement means the provision of a minimum of 35% (by Habitable Room) Residential Units as Affordable Housing across the Development with a tenure split of 60% Low Cost Rented Units and 40% Intermediate Housing Units;

Belgrave Walk Tram Stop Contribution means the sum of £70,000 for the delivery and maintenance of mitigation measures indicatively including the construction of a new paved path with chicane on the south side of the substation and new safety guard railing and operational access point in the locations in yellow and shaded blue on Plan 2 at Schedule 14.

Belgrave Walk Permissive Path Contribution means the sum of £150,000 for the design, delivery and maintenance of the Belgrave Walk Permissive Path including for the implementation all materials, lighting, landscaping and preparation works;

Belgrave Walk Permissive Path: means the proposed 3m wide pedestrian and cycle permissive path to be designed and delivered by TfL to link the Site to Belgrave Walk Tram Stop the location and extent of which is indicatively shown dashed red on Plan 2 at Schedule 14.

Bus Capacity Contribution means the sum identified by TfL to a maximum of £450,000 (four hundred and fifty thousand pounds) equating to a rate of £90,000 (ninety thousand pounds) per annum over a period of 5 (five) years which shall be a reasonable proportion of the aggregate reasonable and proper costs and expenses that will be incurred by TfL in implementing bus capacity improvements for the number 200 bus route from Mitcham to Colliers Wood;

Bus Stop Improvement Works means such works to relocate the northbound Miles Road Bus Stop (No.33563) in compliance with the TfL responses to the Application, as specified in the relevant Bus Stop Scheme;

Bus Stop Scheme means an assessment of the need and the measures to be taken to relocate the northbound Miles Road Bus Stop (No.33563) in compliance with the TfL responses to the Application and having regard to the likely increase in demand for bus services and use of the relevant bus stops as a result of the Development;

Bus Stop Improvement Contribution means the proper and reasonable costs incurred by the Council, TfL or partners to undertake the Bus Stop Improvement Works;

Car Club means a car club operating in the vicinity of the Development which provides its

members with access to or shared facilities of a private car on a short term basis as and when required subject to availability and which is made available to Occupiers of Residential Units in accordance with Schedule 7 of this Agreement;

Car Club Scheme means a scheme for the establishment of a Car Club to be established to serve the needs of the Development, having regard to:

- (a) the number of Residential Units;
- (b) the availability of other existing car clubs;
- (c) the level of interest expressed by prospective Car Club Operators who may be able to establish a Car Club; and
- (d) the timing of delivery of Car Club Bays;

Car Club Bays means a number of suitably positioned parking bays to be agreed with the Council at the same time as Reserved Matter Approval are sought, for the purposes of establishing a Car Club and reference to a **Car Club Bay** shall be to any one of them;

Car Club Membership means free membership of the Car Club for a period of 3 (three) years from the date of the initial sale of the relevant Residential Unit, such membership to exclude hire and fuel charges which shall be payable by the member according to usage;

Car Club Operator means the operator of the Car Club being a company accredited by Carplus;

Carbon Offset Contribution a contribution calculated by multiplying the amount of CO₂ to be offset (in tonnes) by the price of CO₂ (set at £95 (ninety five pounds) per tonne charged over a 30 (thirty) year period) to conform with Policy SI 2 of the London Plan 2021- Minimising Greenhouse Gas Emissions or in accordance with the relevant London Plan policies in force as at the date of this Agreement to be used by the Owner or the Council on Carbon Reduction Projects such sum to be estimated by the Owner and included in the Carbon Offset Strategy;

Carbon Offset Strategy means a scheme which shall set out an updated calculation for the Carbon Offset Contribution and includes details of how the contribution would be spent on Carbon Reduction Projects, with the following priority order:

- (a) provision of On-site measures;
- (b) provision of Off-Site measures on other housing stock or other buildings managed by the Owner within the Council's administrative area;
- (c) provision of Off-Site measures on other housing stock or other buildings within the Council's administrative area; and/or
- (d) a financial contribution payable to the Council;

Carbon Reduction Projects means measures to secure the delivery of carbon dioxide savings On-Site or elsewhere in the Borough in accordance with the London Plan which could include:

- (a) measures to improve energy efficiency;
- (b) installation of renewable energy technology;
- (c) measures to improve embodied energy; and

- (d) measures to encourage behaviour change amongst residents / non- residential operators;

Carplus means Carplus (registered charity no. 1093980) or its successor or equivalent organisation as may be agreed in writing with the Council 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;

Chargee means any party having a charge or mortgage over the freehold interest in the Property;

Children's Play Space Contribution means the sum to be calculated by reference to the GLA's Play Space Calculator to be used for the provision of play and informal recreation based upon the expected child population generated by the scheme and an assessment of future needs;

Commencement means a material operation as defined in section 56(4) of the 1990 Act but for the purposes of this Agreement only shall not include demolition, site clearance and preparation, archaeological investigation, investigations for the purpose of assessing contamination, other ground and site surveying, construction of temporary access for construction purposes only, remediation works associated with decontamination, erection of a temporary means of enclosure including fences and hoardings for the purposes of site security, provision of temporary accommodation reasonably required for construction purposes only and preliminary landscaping works including tree protection and the terms **Commence, Commenced** and **Commencement Date** shall be construed accordingly;

Commercial Travel Plan means a travel plan for the Commercial Units within the Development to be submitted by the Owner to the Council for its approval pursuant to Schedule 12 apply at the date of submission of the travel plan and which shall include the information and measures set out at Schedule 12 and include measures:

- (a) to appoint a travel plan co-ordinator whose appointment shall be within three months of first Occupation of any Commercial Unit;
- (b) to influence positively the travel behaviour of Commercial Occupiers, customers and visitors to the Commercial Units by promoting alternative modes of travel to the car;
- (c) to minimise the number of single occupancy car trips generated by the Commercial Units by encouraging car sharing and car clubs; and
- (d) to provide visitor cycle spaces in accessible locations within the Development,

and such other measures as may be agreed between the Council and the Owner;

Commercial Units means those parts of the Development that are authorised for non residential uses pursuant to the relevant Planning Permissions (or any one of them);

Council's Preferred List of Registered Providers means the list of the Council's preferred Affordable Housing Providers for the purposes of this Agreement set out at Schedule 1 Part 2;

CPZ means an order creating a resident permit parking area in relation to public highways within the vicinity of the Development pursuant to section 45(2) of the Road Traffic Regulation Act 1984;

CPZ Area means an area in which a CPZ is in force which is not within the Development;

CPZ Contribution means the sum specified in the CPZ Demand Notice(s) or agreed between the Council and Owner in respect of the aggregate reasonable and proper costs and expenses that will be incurred by the Council in carrying out a statutory consultation

exercise PROVIDED THAT one or more CPZ Demand notices may be served in totality in relation to the CPZ proposed in the CPZ Demand Notice and implementing that scheme but the aggregate of payments to be made in respect of the CPZ Demand Notices and the costs of implementation shall not exceed forty five thousand pounds (£45,000);

CPZ Demand Notice means a notice which shall specify the following:

- (a) details of the CPZ that is proposed by the Council with an explanation as to why the CPZ is considered necessary in order to mitigate the highways impacts of the Development specified in the notice; and
- (b) a figure being the aggregate reasonable and proper costs and expenses that will be incurred by the Council in carrying out a statutory consultation exercise in relation to the proposed CPZ and implementing that scheme, together with a detailed breakdown of such reasonable and proper costs and expenses;

Defects Liability Period means such period of time following Practical Completion of a Building which shall be so defined in the building contract for the relevant Building during which the contractor shall be obliged to deal with any snagging items (normally being the period of 12 months from Practical Completion);

Development means outline planning application (with all matters reserved) for the redevelopment of the Site comprising demolition of existing buildings and development of up to 850 new residential dwellings (class C3 use) and up to 750 sqm of flexible commercial floorspace (class A1-A3, D1 and D2 use) together with associated car parking, cycle parking, landscaping and infrastructure;

Development Site means Benedict Wharf, off Hallowfield Way, Mitcham, CR4 3BQ;

Disposal means either:

- (a) the sale of the freehold of a Residential Unit; or
- (b) the grant or transfer of a lease or tenancy in excess of 7 (seven) years of a Residential Unit,
- (c) the grant of an assured shorthold tenancy agreement or a short term let in respect of a Residential Unit

and the terms **Dispose** and **Disposed** shall be construed accordingly;

“Energy Monitoring Portal” means the ‘Be seen’ webpage of the GLA’s website and the email address ZeroCarbonPlanning@london.gov.uk, or any other such method of submission that may replace this;

Estimated Build Costs means the sum of:

- (a) the estimated Build Costs remaining to be incurred at the Review Date; and
- (b) the actual Build Costs incurred at the Review Date

taking into account Additional Affordable Housing being secured and provided where there is available Public Subsidy;

Estimated GDV means the price at which a sale of the Open Market Housing Units and Commercial Floorspace would have been completed unconditionally for cash consideration on the date of the submission of the Development Viability Information pursuant to paragraph Part 3 of Schedule 1 based on detailed comparable market evidence to be assessed by the Council and assuming:

- (a) a willing seller and a willing buyer;
- (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale;
- (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion;
- (e) that Additional Affordable Housing is secured and provided where there is available Public Subsidy;

Eligible Households means in relation to the Intermediate Housing Units, households who at the commencement of their Occupation of an Intermediate Housing Unit meet the criteria identified in the Affordability Criteria;

Eligibility Criteria means the Council's criteria for establishing eligibility for Affordable Housing as set out in its Housing Register and Nominations Policy dated August 2012 or any document which may supersede this;

Eligible Properties means the Affordable Housing Units which are part funded with social housing assistance, social housing grant or disposal proceed fund or any other grant or funding set out in the Mayor of London's Capital Funding Guide;

Eligible Tenants means those tenants of social homebuy or Eligible Properties who accord with the definition set out in the Mayor of London's Capital Funding Guide (last updated December 2018) and any replacement guide or document which may replace that;

Enabling Works means any works comprising of demolition, site clearance, construction of boundary fencing or hoardings for the demolition/construction phase, demolition/construction noise attenuation works, construction of temporary highways accesses and construction/demolition compound set up;

Estate Roads means the roads within the Development Site that will be open to vehicular traffic, pedestrians and cyclists;

Estate Roads Maintenance and Access Plan means a plan to be submitted to the Council and approved as a Reserved Matter detailing the layout, the standard of construction and how the future maintenance of and public access over the Estate Roads will be secured in perpetuity;

Expert means an independent person appointed to determine a dispute in accordance with clause 11 of this Agreement;

External Consultant means the external consultant(s) appointed by the Council to assess the Early Stage Development Viability Information pursuant to Part 3 of Schedule 1;

Formula 1a means the formula identified as "Formula 1a" as set out at Part 4 of Schedule 1;

Formula 2 means the formula identified as "Formula 2" as set out at Part 5 of Schedule 1;

Framework Travel Plans means the framework travel plan for the Development submitted with the Application which is indicatively shown on Plan 3 at Schedule 14;

GLA Play Space Calculator means the calculator used by GLA for estimating population yield from new housing development and indicating the possible number and age of children

that could be expected to live in a new housing development;

Gross Internal Area means the gross internal area of a building or space calculated in accordance with the Royal Institution of Chartered Surveyors "Code of Measuring Practice";

Habitable Room means any room within a Residential Unit the primary use of which is for living, sleeping or dining and which expressly includes kitchens of 13 square metres or more, living rooms, dining rooms and bedrooms but expressly excludes kitchens with a floor area of less than 13 square metres, bathrooms, toilets, corridors and halls and references to 'Habitable Rooms' shall be construed accordingly;

Hallowfield Way Cycle Lane Contribution means the sum of £100,000 (one hundred thousand pounds) for the delivery of a dedicated cycle lane on Hallowfield Way in compliance with the TfL responses to the Application and landscaping and public realm improvements within the existing footway;

Index means the Consumer Prices Index published by the Office for National Statistics unless otherwise expressly provided for in this Agreement or if that index is no longer published or is otherwise discontinued the Index shall include any replacement index performing substantially the same function published from time to time by the above organisations (or any successors to their respective functions) and references to "**Indexed Linked**" shall be construed accordingly;

Intention Notice means a notice in writing served on the Chargee by the Council and/or the GLA under Schedule 1, Part 1, paragraph 4.7 that the Council and/or the GLA is minded to purchase the relevant Affordable Housing Units and/or Additional Affordable Housing Units;

Interest means interest on any specified sum at 4% (two per cent) above the base lending rate of a clearing bank to be approved by the Council;

Intermediate Housing Units means Residential Units that are Occupied as either London Living Rent Housing or London Shared Ownership Housing and reference to an "Intermediate Housing Unit" shall be to anyone of them;

London Affordable Rented Housing means rented housing provided by an Affordable Housing Provider that has the same characteristics as Social Rented Housing except that it is not required to be let at Target Rents but is subject to other rent controls that require it to be offered to Eligible Households in accordance with Part VI of the Housing Act 1996 at a rent that is:

- (a) including Service Charges, up to 80 per cent of local market rents; and
- (b) excluding Service Charges, no higher than the benchmark rents published by the GLA annually in accordance with the Mayor of London's Capital Funding Guidance or in the event that such benchmark rents are no longer published, successor rents published by the Mayor of London;

London Affordable Rented Housing Units means the Affordable Housing Units to be made available for London Affordable Rented Housing in accordance with Schedule 1 paragraph 4 of this Agreement;

London Bus Services Ltd means the owner of the London Bus Ltd Land or its successor body from time to time and its successors in title;

London Living Rent Housing means rented housing provided by an Affordable Housing Provider that is required to be offered to Eligible Households on a time-limited tenancy:

- (a) with a minimum term of three years unless a shorter term is requested by the prospective tenant;

- (b) with a break clause allowing the tenant to end the tenancy any time after the first six months of the tenancy with one month's notice;
- (c) at rents not exceeding the relevant maximum rents published by the GLA annually; and
- (d) under which rent increases (in percentage terms) within the term of the tenancy in question will not be more than the percentage increase in the CPI for the relevant period PROVIDED THAT initial rents for subsequent lettings will reset in accordance with subparagraph (c) above;

London Living Rent Housing Units means the Affordable Housing Units to be made available for London Living Rent Housing in accordance with Schedule 1 paragraph 4 of this Agreement;

London Road Playing Fields: the land identified on the Plan as London Road Playing Fields;

London Shared Ownership Housing means housing offered to Eligible Purchasers to be occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the Housing and Regeneration Act 2008 (or any amended or replacement provision) where the shared ownership lessee for the time being has the right to carry out Staircasing and dispose of the unit on the open market and on the basis that average annual housing costs, including Service Charges and mortgage payments (assuming reasonable interest rates and deposit requirements) must not exceed 28% of the relevant annual gross income upper limit (such 28% being equivalent to 40% of net income, with net income being assumed to be 70% of gross income) specified in the London Plan Annual Monitoring Report and "London Shared Ownership Lease" and "London Shared Ownership Lessee" shall be construed accordingly;

Low Cost Rented Units means London Affordable Rented Units and Social Rented Units

Management Company means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of the Estate Roads, Open Spaces and parking spaces;

Market Unit means any Residential Unit within the Development which is not an Affordable Housing Unit;

Mayor of London's Capital Funding Guide means "Homes for Londoners: Affordable Homes Programme 2016-21 Funding Guidance" published by the Mayor of London in November 2016 or any update or replacement guidance;

Monitoring Fees means £47,745 in respect of the costs and expenses of the Council monitoring compliance with the terms of this Agreement in relation to the Development;

Moratorium Period means the period of one calendar month commencing on the date of service of the Default Notice;

On-Site means within the Site;

Off-Site means outside of the Site in areas which are within the Council's administrative borough;

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

Open Space means the areas identified for the provision of open space in accordance with any Reserved Matters Approval which shall include children's play spaces(and associated

equipment) and which may include any areas or spaces between buildings and references to **Open Space Area or Open Space Areas** shall be construed accordingly;

Open Space Management Plan means a plan which identifies and details the following:

- (a) the location of the open space as approved by a Reserved Matters Approval;
- (b) the arrangements that will be put in place to ensure that the Open Space is managed and maintained for the lifetime of the Development;
- (c) the arrangements that will be put in place to ensure that (with the exception of the private courtyards and unless otherwise agreed with the Council) the Open Space will be accessible by members of the public for the lifetime of the Development; and
- (d) where a management company is to be in charge of ongoing management and maintenance of the Open Space, the following shall be provided to the Council for approval:
 - (i) the name and company number of the management company;
 - (ii) a copy of the company certificate of incorporation and articles and memorandum of association;
 - (iii) a copy of its rules (including the holding of at least one public meeting per year and the giving of a minimum of seven (7) days' written notice of each meeting to the Council and all company members and any other interested parties and to provide suitable facilities for the meetings of the Management Company) and regulations and operational manuals;
 - (iv) details of the names and addresses of all directors, members and the company secretary;
 - (v) full and sufficient details of the financial resources available to the management company including evidence that there are or will be adequate resources in place to undertake the maintenance of the Open Space for the lifetime of the Development in accordance with the Open Space Management Scheme;
 - (vi) details of how owners and occupiers will be entitled to become members of the management company; and
 - (vii) the proposed form of transfer of the Open Space from the Owner to the management company;

Parties means the parties to this Agreement and the word **Party** shall mean any one of them;

Person includes a body of persons corporate or unincorporated;

Plan means the plans attached to this Agreement at Schedule 14;

Planning Permission means the planning permission granted pursuant to the Application;

Practical Completion means the issue of a certificate of practical completion or sectional practical completion (in relation to Highway Works) issued by the Owner's architect or other suitably qualified professional and **Completed, Completion, Practically Complete** and **Practically Completed** shall be construed accordingly;

Protected Tenant means any tenant:

- (a) who has exercised the right to acquire pursuant to the Housing Act 1996, Housing and Regeneration Act 2008, the Housing and Planning Act 2016 or any voluntary statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) who has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) of an Intermediate Housing Unit who has acquired 100% (one hundred per cent) of the equity in that Intermediate Housing Unit; and
- (d) who has acquired an Affordable Housing Unit through social homebuy where Eligible Tenants of participating Registered Providers who occupy Eligible Properties may purchase their Affordable Housing Unit at discount either outright or on Shared Ownership Terms funded pursuant to section 19(3) of the Housing and Regeneration Act 2008;

Public Subsidy means funding from the Council and/or the GLA together with any additional public subsidy secured by the Owner to support the delivery of the Affordable Housing;

Rent Guidance means the Guidance on Rents for Social Housing and the Direction on the Rent Standard 2014 issued by the Department of Communities and Local Government in May 2014 or such other replacement guidance or direction or legislation;

Rent Standard means the standard relating to rent set by the Regulator of Social Housing from time to time having regard to the Welfare Reform and Work Act 2016, the Rent Guidance and the Direction on the Rent Standard 2014 issued by the Department for Communities and Local Government in May 2014 together with the Rent Standard Guidance published by the Department for Communities and Local Government in April 2015 or such other replacement guidance or direction or legislation;

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

Reportable Unit (Energy Centre) means either a connection to third-party District Heating Network, a self-contained Energy Centre serving multiple residential/non-residential properties (within the Site) or a self-contained energy system serving multiple residential properties (within a Block or Building);

Reportable Unit (Residential) means an individual Block or Building of five or more flats or a group of five or more houses and for the avoidance of doubt this does not include individual freehold houses;

Reportable Unit (Non-Residential) means a Building with a single occupier/tenant (including block of flats' communal areas) or a Building with multiple tenants;

Reserved Matters has the same meaning as in the Town and Country Planning (Development Management Procedure) (England) Order 2015 and **Reserved Matters Application** and **Reserved Matters Approval** shall be construed accordingly;

"Residential Travel Plan" means a travel plan for the Residential Units within the Development to be submitted by the Owner to the Council for its approval pursuant to Schedule 11 which shall comply with TfL's best practice as shall apply at the date of submission of the travel plan and which shall include the information and measures set out at Schedule 11 and include measures:

- (a) to appoint a travel plan co-ordinator whose appointment shall be within three months of first Occupation of any Residential Unit;

- (b) to influence positively the travel behaviour of Occupiers by promoting alternative modes of travel to the car;
- (c) to minimise the number of single occupancy car trips generated by the Development by encouraging car sharing and car clubs;
- (d) to provide visitor cycle spaces in accessible locations within the Development,

and such other measures as may be agreed between the Council and the Owner;

Residential Unit means any unit of residential accommodation (whether house or flat or otherwise) including any Market Housing Unit or Affordable Housing Unit permitted under the Planning Permission;

Review Date means the date of the submission of the Early Stage Development Viability Information pursuant to paragraph 2 of Part 3 of Schedule 1;

Service Charges means all amounts payable by a tenant of the relevant Affordable Housing Units as part of or in addition to the rent and directly or indirectly for services, repairs, maintenance, improvements, insurance and/or the landlord's costs of management in relation to that Affordable Housing Unit;

Shared Ownership Terms means Shared Ownership Housing Units that comply with the definition of 'Intermediate Affordable Housing' contained in the National Planning Policy Framework, the Affordability Criteria and the figures published annually by the Mayor of London in the Annual Monitoring Report or any successor public authority to reflect changes in income/house prices ratios and which aim to ensure that they provide for households with a range of incomes below the upper limit of the affordability criteria for Intermediate ownership products by providing a mix of unit sizes (measured by number of bedrooms) PROVIDED THAT in default of such figures being so published on an annual basis such sums may be amended from time to time by agreement between the Council and the Affordable Housing Provider having regard to changes in income/house-price ratios relating to the Council's area;

Shared Ownership Units means those Intermediate Housing Units which can be part sold and part rented and where the owner has an option to acquire up to 100% of the equity and **Shared Ownership** shall be construed accordingly;

Social Rented Housing means rented housing owned and managed by [local authorities or] Affordable Housing Providers and let at Target Rents;

Social Rented Units means Affordable Housing Units which are to be let as Social Rented Housing;

Site means Benedict Wharf, off Hollowfield Way, Mitcham, CR4 3BQ shown edged red on Plan 1 at Schedule 14;

Substantial Implementation means the occurrence of the following in respect of the Development:-

- (a) completion of all ground preparation works for the first phase or block to be constructed together with all site-wide enabling works; and
- (b) construction of the first floor slab of the first phase or block containing Affordable Housing to be constructed within the Development;
- (c) letting of a contract for the construction for the whole of the Development;

and the term "Substantially Implement" will be interpreted accordingly;

Substantial Implementation Target Date means the date means the date 36 months from

but excluding the date of grant of the Planning Permission;

Target Rents means rents for Social Rented Housing conforming with the pattern produced by the rents formula set out in the Rent Guidance and subject to the limit on rent changes and rent caps set out therein and subject to indexation as permitted by the Rent Standard or Rent Guidance from time to time;

TfL means Transport for London, the statutory body created by The Greater London Authority Act 1999 of 5 Endeavour Square, Stratford, London E20 1JN or such other statutory successor in title responsible for the planning, delivery and day to day operation of London's public transport system;

Transfer means the transfer of the freehold or grant of a lease for a term of at least 125 (one hundred and twenty five) years unless otherwise agreed in writing with the Council and **Transferred** shall be construed accordingly;

Travel Plan Monitoring Report means a report prepared by the Owners annually with a copy provided to the Council on the third and fifth anniversary of implementation of the Travel Plan that shall demonstrate how the Travel Plan has been operated which shall:

- (a) be based upon the travel survey to and from the Site (**Monitoring Survey**) conducted by the Owners;
- (b) comply with TfL's format or such other format as the Council may reasonably specify; and
- (c) be submitted and approved by the Council within three months of the third and fifth anniversaries of the Travel Plan;

Travel Plan Monitoring Contribution (Commercial) means the sum of £500 Index-Linked to be paid to the Council and used for monitoring performance against and reviewing the Commercial Travel Plan;

Travel Plan Monitoring Contribution (Residential) means the sum of £2,000 Index-Linked to be paid to the Council and used for monitoring performance against and reviewing the Residential Travel Plan;

Wheelchair Access means housing that accords with the design criteria as set out in Part M4(3) of the Building Regulations 2010 (incorporating 2015 and 2016 amendments) or any replacement of the same or housing capable of being easily adapted to provide full wheelchair access and **Wheelchair Adaptable** shall be interpreted accordingly;

Wheelchair Adaptable Units means the Affordable Housing Units built to provide Wheelchair Access;

Working Day means any day on which clearing banks in the City of London are (or would be but for a strike lock-out or other stoppage affecting such banks generally) open during banking hours.

2. CONSTRUCTION OF THIS AGREEMENT

2.1 In this Agreement:

2.1.1 unless otherwise indicated reference to any:

- (a) clause, schedule or appendix is to a clause of, schedule to or appendix to this Agreement;
- (b) paragraph is to a paragraph of a schedule to this Agreement;

- (c) reference within a schedule to a paragraph is to a paragraph of that Schedule;
- (d) part is to a part of a schedule to this Agreement;
- (e) table is to a table of a schedule to this Agreement;
- (f) recital is to a recital to this Agreement; and
- (g) plan is to a plan annexed to this Agreement;

2.1.2 references to any statute or statutory provision include references to:

- (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement;
- (b) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
- (c) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force;

2.1.3 headings, the table of contents and titles to the plans are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of the Agreement to which they relate;

2.1.4 any notice, notification, consent, approval, agreement, request, statement or details to be made, given or submitted under or in connection with this Agreement shall be made or confirmed in writing;

2.1.5 references to the Council or GLA include any successor bodies to such function;

2.1.6 references to any other Party to this Agreement shall include the successors in title to that Party and to any person deriving title through or under that Party;

2.1.7 including means including without limitation;

2.1.8 unless otherwise indicated references to the singular include the plural and references to the plural include the singular and words importing any gender include every gender;

2.1.9 unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa;

2.1.10 any obligation, covenant, undertaking or agreement by any Party not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit or allow the doing of that act or thing; and

save where expressly stated to the contrary, where in this Agreement there is reference to using reasonable endeavors to achieve an outcome, upon written request by any of the Parties at reasonable intervals (not to exceed more than once every 3 (three) months), within 10 (ten) Working Days of such request reasonable evidence of the steps taken to achieve such outcome shall be provided in documentary form (where possible) to the requesting Party

2.2 The Interpretation Act 1978 shall apply to this Agreement.

2.3 This Agreement includes the schedules, recitals and appendices to this Agreement.

3. **LEGAL BASIS**

- 3.1 This Agreement is executed by the Parties hereto as a deed and is made pursuant to section 2E and section 106 of the 1990 Act with the intention that it shall bind the Owner's interests in the Site as provided by that section.
- 3.2 The covenants, restrictions and requirements imposed on the Owner in this Agreement create planning obligations pursuant to and for the purposes of section 106 of the 1990 Act and are enforceable against the Owner by the Council or GLA as local planning authority in accordance with the terms of this Agreement and in accordance with clause 3.3.
- 3.3 To the extent that any of the covenants, restrictions and requirements imposed in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 16 of the Greater London (General Powers) Act 1974, section 1 of the Localism Act 2011 and all other powers enabling in that behalf.
- 3.4 The planning obligations within this Agreement are compliant with regulation 122 of the CIL Regulations.

4. **CONDITIONALITY**

- 4.1 This Agreement is conditional upon the grant of the Planning Permission and Commencement save for clauses 1 to 4 and 8 to 21 which shall come into immediate effect upon the date of completion of this Agreement.

5. **THE OWNER'S COVENANTS WITH THE COUNCIL AND GLA**

- 5.1 The Owner covenants with the Council and GLA:
- 5.1.1 as set out in Schedules 1 to 13 and in relation only to their respective interests in the Site;
 - 5.1.2 not to Commence the Development before it has served notice on the Council of the anticipated Commencement Date of the Development in accordance with clause 5.1.3 ii;
 - 5.1.3 to notify the Council at least 10 (ten) Working Days prior to the occurrence of the following dates:
 - (i) Commencement of the Enabling Works;
 - (ii) Commencement of the Development
 - (iii) Substantial Implementation of the Development;

6. **THE GLA AND COUNCIL'S COVENANTS WITH THE OWNER**

- 6.1 The GLA covenants with the Owner and the Council to comply with, perform and observe its obligations set out in this Deed.
- 6.2 The Council covenants with the Owner and the GLA to comply with, perform and observe its obligations set out in this Deed.

7. **FINANCIAL CONTRIBUTIONS, INDEXATION AND INTEREST**

- 7.1 Where, pursuant to this Agreement, a payment or financial contribution is to be made, such payment or financial contribution shall be paid in accordance with the triggers and provisions for payment set out in and in accordance with all relevant provisions of this Agreement.

- 7.2 All payments or financial contributions to be paid pursuant to this Agreement will be increased by reference to the amount of the quarterly increase in the relevant Index from the date of this Agreement until the date such sums are due.
- 7.3 All payments or financial contributions to be paid pursuant to this Agreement shall be made on the dates provided in this Agreement and if paid late shall be paid with Interest accrued calculated from the date such payments or financial contributions were due to the date of the actual payment.
- 7.4 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Agreement, the Council covenants and undertakes to:
- 7.4.1 apply such payments or financial contributions only for the purposes specified in this Agreement;
 - 7.4.2 transfer all amounts received from the Owner under Schedule 2 paragraphs 1.2 and 1.3 and Schedule 3 paragraphs 1 and 3 to TfL within 10 days of receipt of the same;
 - 7.4.3 provide annual reports to the Owner setting out the expenditure from such payments or financial contributions in the previous 12 (twelve) month period; and
- 7.5 To the extent notified and agreed by the Parties prior to the date of payment, the Council may apply all or any part of payments made under this Agreement to costs already incurred at the date of payment in pursuit of the relevant purposes specified against such payments in this Agreement.
- 7.6 The Council shall return to the person who paid to the Council the original payment or financial contribution any sums from such payment or financial contribution that remain contractually uncommitted or unspent as at the fifth (5th) anniversary of payment or such other period specified in this Agreement (whichever is the earlier).
- 7.7 Where sums have been paid to the Council and the Council has thereafter paid those sums to a third party then the Council's obligation to repay any such sums pursuant to clause 7.6 shall be conditional upon the repayment of any such sums by such third party to the Council and the Council shall not be obliged to repay such sums until such time as the sums have been repaid by such third party.
- 7.8 Where a financial contribution is payable pursuant to this Agreement, but the precise sum of such contribution is not set out in this Agreement, then such financial contribution shall only be payable by the Owner if and to the extent it is:
- 7.8.1 necessary to make the Development in question acceptable in planning terms;
 - 7.8.2 directly related to the Development in question; and
 - 7.8.3 fairly and reasonably related in scale and kind to the Development in question.

8. **POWERS OF THE GLA AND THE COUNCIL**

Nothing in this Deed shall fetter or restrict or prejudice or affect the rights discretions powers duties and obligations of the GLA or the Council in the exercise of its statutory functions under any enactment (whether public or private) statutory instrument regulation byelaws order or power for the time being in force and otherwise may be as fully and effectually exercised in relation to the Development and any other subject matter of this Deed as if this Deed had not been executed by the GLA and the Council.

9. **NOTICES**

- 9.1 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 Agreement 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:

- 9.1.1 if delivered by hand, the next Working Day after the day of delivery; and
- 9.1.2 if sent by first class post or recorded delivery post, the day 2 (two) Working Days after the date of posting.

9.2 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 Parties by not less than 5 (five) Working Days' notice:

Council:

At the address set out under the heading 'Parties' at the start of this Agreement

The Owner:

The address as set out under the heading 'Parties' at the start of this Agreement.

The GLA:

The address as set out under the heading 'Parties' at the start of this Agreement.

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

10. SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT

10.1.1 Where in the opinion of the Owner any obligation, covenant, undertaking or other provision on the part of the Owner contained in this Agreement has been satisfied wholly or in part, the Owner shall be entitled to apply to the GLA and the Council for a notification to that effect, and where the relevant obligation, covenant, undertaking or other provision has been satisfied (wholly or in part) the GLA and the Council shall as soon as reasonably practicable issue a notification to such effect. A notification may be given that the relevant obligation, covenant, undertaking or other provision (as the case may be) has been satisfied in relation to part of the Site

10.1.2 Where in the opinion of the Council, any obligation, covenant, undertaking or other provision on the part of the GLA and the Council contained in this Agreement has been satisfied wholly or in part, the GLA or the Council shall be entitled to apply to the Owner for a notification to that effect, and where the relevant obligation, covenant, undertaking or other provision has been satisfied (wholly or in part) such Owner shall as soon as reasonably practicable issue a notification to such effect. A notification may be given that the relevant obligation, covenant, undertaking or other provision (as the case may be) has been satisfied in relation to part of the Site (as the case may be).

10.1.3 Where all of the obligations, covenants, undertakings and other provisions contained in this Agreement have been satisfied wholly the Council shall remove the entry relating to this Agreement from its Local Land Charges Register.

11. VERIFICATION AND ENFORCEMENT

Subject to the GLA and the Council complying with the Owner's reasonable rules in respect of health and safety, the Owner shall permit the GLA and the Council and its authorised employees agents surveyors and other representatives to enter upon the Site and any

buildings erected thereon at reasonable times and upon reasonable prior notice for the purpose of verifying whether or not the obligations contained in this Agreement are being performed and complied with **provided that** the GLA or the Council shall make good any damage caused by the GLA or the Council and its authorised employees, agents, surveyors and other representatives during the carrying out of such verification.

12. **DISPUTE RESOLUTION**

12.1 One Party may by serving notice on the other Parties (the **Notice**) require a dispute to be referred to an Expert for determination.

12.2 The Notice must specify:

12.2.1 the nature, basis and brief description of the dispute;

12.2.2 the clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and

12.3 The Expert may be agreed upon by the Parties and in the absence of such agreement within 1 (one) month of the date that the notice is issued pursuant to clause 12.1 either Party may request that the following nominate the expert at their joint expense:

12.3.1 if such dispute relates to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the expert;

12.3.2 if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institution of Chartered Surveyors to nominate the expert;

12.3.3 if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the expert; if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the expert;

12.3.4 if such dispute relates to Affordable Housing the expert shall be nominated by the President of the Royal Town Planning Institute; and

12.3.5 in all other cases, the President of the Law Society to nominate the expert provided that if a dispute relates to a matter falling within two or more of sub-clause 12.3.1 to 12.3.5 the President of the Law Society may nominate such person or persons falling within the description of sub-clauses 12.3.1 to 12.3.5 as he thinks appropriate including joint experts.

12.4 If an Expert nominated or appointed pursuant to clause 12 shall die or decline to act another expert may be appointed in his place in accordance with the provisions of clause 12.3. The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 (twenty) Working Days from the date of the notice of his appointment which is served on the Parties pursuant to clause 12.6.

12.5 Notice in writing of the appointment of an Expert pursuant to this clause 12 shall be given by the expert to the Parties and he shall invite each of the Parties to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further 5 (five) Working Days in respect of any such submission and material.

12.6 The Expert shall act as an expert and not as an arbitrator. He shall consider any written representation submitted to him within the period specified in clause 12 and shall not be in any

way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.

- 12.7 The Expert shall give notice of his decision in writing and his decision will (in the absence of manifest error) be final and binding on the Parties hereto.
- 12.8 If for any reason the Expert fails to make a decision and give notice thereof in accordance with this clause 11 the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
- 12.9 The Expert's costs shall be in the expert's award or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares.
- 12.10 Nothing in this clause 11 shall be taken to fetter the Parties' ability to seek legal redress in the courts (or otherwise) for any breach of the obligations in this Agreement.

13. NO WAIVER

No waiver (whether expressed or implied) by the GLA or the Council of any breach or default by the Owner in performing or complying with any of the obligations, covenants or undertakings contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the GLA or Council from enforcing any of the said obligations, covenants or undertakings or from acting upon any subsequent breach or default in respect thereof by the Owner.

14. CHANGE IN OWNERSHIP

14.1 The Owner warrants that:

- 14.1.1 they have full power to enter into this Deed;
- 14.1.2 the title details referred to in the Recitals of this Deed are complete and accurate at the date of this Deed; and
- 14.1.3 they have obtained all necessary consents from any mortgagee, chargee or any other person having a title or interest in the Site to allow it to enter into this Deed.

14.2 The Owner agrees with the GLA and the Council to give the GLA and Council written notice as soon as reasonably practical of any change in ownership of any of its interests in the Site occurring before the relevant obligations which relate to the Owner's relevant interests have been discharged, such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of land or unit of occupation purchased by reference to a plan provided that Disposals of individual Residential Units or Commercial Units to the prospective Occupiers of such units do not need to be notified.

15. THE GLA AND COUNCIL'S LEGAL AND OTHER COSTS

- 15.1 The Owner agrees that it will pay the GLA and Council's reasonable costs incurred in negotiating and completing this Agreement (inclusive of any such reasonable costs incurred by external consultants appointed by the Council in relation to the negotiation and completion of this Agreement) on completion of this Agreement.
- 15.2 The Owner shall pay to the Council the Monitoring Fees upon Commencement of Development.

16. VAT

All payments given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof provided that if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the provisions of this

Deed then to the extent that VAT had not previously been charged in respect of that supply that VAT will be additional to the sums required and the Owner will be entitled to valid VAT receipts in respect of any vatable supplies properly incurred under this Deed.

17. DUTY TO ACT REASONABLY AND IN GOOD FAITH

The Parties agree with one another to act reasonably and in good faith in the fulfilment of this Agreement.

18. MISCELLANEOUS

18.1 If any provision of this Agreement is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Agreement is (if and to the extent that it may properly and lawfully be construed as such) to be unaffected.

18.2 Where in this Agreement there is any reference to an expression of satisfaction certificate approval agreement or other consent to be given or made by the GLA or Council such expression of satisfaction certificate approval agreement or other consent shall be requested in writing and the Council shall not unreasonably withhold or delay the giving or making of the same.

18.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the GLA of any of its statutory powers functions or discretions.

18.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with their interest in the Site (or in the event of a disposal of part of the Site against the part disposed) but without prejudice to liability for any subsisting breach arising prior to parting with such interest The covenants, restrictions and requirements contained in this Deed shall not be binding upon nor enforceable against:

18.4.1 individual purchasers lessees and/or occupiers of Residential Units or Commercial Units constructed on the Site pursuant to the Planning Permission not involved in the construction of the Development and who do not own any other type of interest in the Development save for:

- (a) in the case of Residential Units the restrictions in Paragraph 3.3 of Part 2 Schedule 6;
- (b) in the case of an Affordable Housing Unit the restrictions in Paragraphs 8 -11 of Part 1 of Schedule 2; and

Provided That individual purchasers lessees and/or occupiers of Residential Units and/or Commercial Units shall not Occupy a Residential Unit and/or Commercial Unit in breach of a restriction prohibiting Occupation until details have been submitted or works have been undertaken or contributions paid;

18.4.2 any mortgagee of a person identified pursuant to Clause 18.4.1 above;

18.4.3 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways or drainage in connection with the Development of the Site;

18.4.4 any Chargee as set out in Paragraphs 4.6 – 4.13 of Part 1 of Schedule 1

18.5 .The Council shall register this Agreement as a local land charge.

18.6 This Agreement and the obligations, covenants and undertakings which it contains shall lapse and be extinguished automatically, if the Planning Permission lapses without the Development being Commenced or is otherwise revoked, withdrawn or if it is modified without the consent of the Owner of the Site.

18.7 In the event that any new planning permission(s) are granted by the Council pursuant to section 73 of the 1990 Act and unless otherwise agreed between the Parties, with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act the obligations in this Agreement shall relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to section 73 of the 1990 Act without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to section 106 of the 1990 Act; provided that nothing in this clause shall fetter the discretion of the Council or the GLA in determining any application(s) under section 73 of the 1990 Act of the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to section 106 of the 1990 Act.

19. **EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

19.1 The Parties to this Agreement do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

20. **JURISDICTION AND LEGAL EFFECT**

20.1 This Agreement shall be governed by and interpreted in accordance with the law of England.

20.2 The provisions of this Agreement (other than this clause 19.1 which shall be effective in any event) shall be of no effect until this Agreement has been dated.

21. **ELECTRONIC EXECUTION AND COMPLETION**

21.1 The Parties each hereby agree that:

21.1.1 for the purposes of the execution of this Deed an electronically affixed seal and/or electronic or scanned signature (duly attested/authenticated/witnessed in accordance with the relevant execution block) shall be accepted by each Party in lieu of a wet-ink signature and/or physically affixed seal (as applicable) for the purposes of the lawful execution of this document; and

21.1.2 plans and other appendices (as applicable) may be electronically signed/initialed; and

21.1.3 this Deed may be electronically dated and completed; and

21.1.4 further to completion of this Deed each Party will accept an electronic copy of the executed and completed Deed in lieu of a hardcopy document

Schedule 1
Affordable Housing
Part 1

General

The Owner covenants with the GLA and the Council as follows:

1. AFFORDABLE HOUSING SCHEME AND AFFORDABLE HOUSING PROVIDER

1.1 Not to Commence Development until the Affordable Housing Scheme has been approved in writing by the Council and the GLA (the **Approved Affordable Housing Scheme**) and the proposed Affordable Housing Provider has been approved (the **Approved Affordable Housing Provider**). The Affordable Housing Provider shall be either:-

1.1.1 the Owner;

1.1.2 taken from the Council's Preferred List of Registered Providers or any replacement list issued by the Council from time to time; or

1.1.3 an alternative Affordable Housing Provider as proposed by the Owner and approved by the Council in writing.

2. DELIVERY AND TRANSFER OF THE AFFORDABLE HOUSING UNITS

2.1 Upon practical completion of the Development not less than 35% of the Residential Units (by Habitable Room) shall be provided as Affordable Housing in accordance with the Approved Affordable Housing Scheme subject to:

2.1.1 the Developer providing a valuation of the unrestricted market value of any London Shared Ownership Housing prepared by an independent valuer having not less than 10 years relevant experience on an objective basis and in compliance with RICS Valuation Global Standards 2020 (or as updated) prior to (but not more than three months before) entering into a transfer or a long lease with a Registered Provider for the freehold or leasehold interest of the Affordable Housing Units;

2.1.2 if the valuation exceeds £600,000 for any of the London Shared Ownership Housing, those units are to be provided as London Living Rent Housing.

2.2 To construct and Practically Complete 30% (thirty per cent) of the Affordable Housing Units within the Development in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) to Transfer such Affordable Housing Units to the Approved Affordable Housing Provider and deliver written evidence of such Transfer to the Council prior to Occupation of 30% (thirty per cent) of the Market Units within the Development;

2.3 Not to Occupy or permit or allow Occupation of more than 30% (thirty per cent) of the Market Units within the Development unless and until 30% (thirty per cent) of the Affordable Housing Units have been Practically Completed in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) Transferred to the Approved Affordable Housing Provider and written evidence of the Transfer provided to the Council in accordance with paragraph 2.2 hereof;

2.4 To construct and Practically Complete 60% (sixty per cent) of the Affordable Housing Units within the Development in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) to Transfer such Affordable Housing Units to the Approved Affordable Housing Provider and deliver written evidence of such Transfer to the Council prior to Occupation of 60% (sixty per cent) of the Market Units within the Development;

- 2.5 Not to Occupy or permit or allow Occupation of more than 60% (sixty per cent) of the Market Units within the Development unless and until 60% (sixty per cent) of the Affordable Housing Units have been Practically Completed in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) Transferred to the Approved Affordable Housing Provider and written evidence of the Transfer provided to the Council in accordance with paragraph 2.4 hereof;
- 2.6 To construct and Practically Complete 100% (one hundred per cent) of the Affordable Housing Units within the Development in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) to Transfer the Affordable Housing Units to the Approved Affordable Housing Provider and deliver written evidence of such Transfer to the Council prior to Occupation of 75% (seventy five per percent) of the Market Units within the Development;
- 2.7 Not to Occupy or permit or allow Occupation of more than 75% (seventy five per cent) of the Market Units within the Development unless and until 100% (one hundred per cent) of the Affordable Housing Units have been Practically Completed in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) Transferred to the Approved Affordable Housing Provider and written evidence of the Transfer provided to the Council in accordance with paragraph 2.6 hereof;
- 2.8 The Transfer by the Owner to the Affordable Housing Provider (if applicable) shall be prepared by the Owner's solicitors at the cost of the Owner and shall contain (inter alia) the following:-
- 2.8.1 the grant by the Owner to the acquiring Affordable Housing Provider of the requisite rights of access light, air, support, and entry and passage of services and other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Units as Affordable Housing;
 - 2.8.2 a reservation of the requisite rights of access light, air, support and entry and passage of services and other rights reasonably necessary for the purposes of the beneficial use and enjoyment of the Development;
 - 2.8.3 such other covenants as the Owner may reasonably require for the maintenance of the Development and the preservation of the appearance thereof but no unduly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units as Affordable Housing.

3. **LOW COST RENTED UNITS**

- 3.1 To construct and Practically Complete 50% (fifty per cent) of the Low Cost Rented Units within the Development in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) to Transfer such Low Cost Rented Units to the Approved Affordable Housing Provider and deliver written evidence of such Transfer to the Council prior to Occupation of 50% (fifty percent) of the Market Units within the Development;
- 3.2 Not more than 50% (fifty per cent) of the Market Units within the Development shall be Occupied until 50% (fifty per cent) of the Low Cost Rented Units within the Development have been Practically Completed in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) Transferred to the Approved Affordable Housing Provider and written evidence of the Transfer provided to the Council in accordance with paragraph 3.1 hereof;
- 3.3 To construct and Practically Complete 100% (one hundred per cent) of the Low Cost Rented Units within the Development in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) to Transfer such Low Cost Rented Units to the Approved Affordable Housing Provider and deliver written evidence of such Transfer to the Council prior to Occupation of 75% (seventy-five percent) of the Market Units within the Development;

- 3.4 Not more than 75% (seventy five per cent) of the Market Units within the Development shall be Occupied until 100% (one hundred per cent) of the Low Cost Rented Units within the Development have been Practically Completed in accordance with the Approved Affordable Housing Scheme and (should the Approved Affordable Housing Provider not be the Owner) Transferred to the Approved Affordable Housing Provider and written evidence of the Transfer provided to the Council in accordance with paragraph 3.3 hereof;
- 3.5 If the Development is developed in phases:
- 3.5.1 not more than 50% (fifty per cent) of the Market Units in each phase shall be Occupied until 50% (fifty per cent) of the Low Cost Rented Units which are required to be delivered in the relevant phase pursuant to the Approved Affordable Housing Scheme have been Practically Completed and (should the Approved Affordable Housing Provider not be the Owner) Transferred to the Approved Affordable Housing Provider and written evidence of the Transfer provided to the Council in accordance with paragraph 3.1 hereof;
- 3.5.2 No Market Units in a phase shall be Occupied until 100% (one hundred percent) of the Low Cost Rented Units required to be delivered in the preceding phase in accordance with the Approved Affordable Housing Scheme have been Practically Completed and (should the Approved Affordable Housing Provider not be the Owner) Transferred to the Approved Affordable Housing Provider and written evidence of the Transfer provided to the Council in accordance with paragraph 3.3 hereof.

4. **OCCUPATION OF THE AFFORDABLE HOUSING UNITS**

- 4.1 Subject to paragraph 5 of this Part 1 of Schedule 1 not to Occupy or permit Occupation or the use of the Affordable Housing Units other than as Affordable Housing in accordance with the Approved Affordable Housing Scheme save where otherwise provided in this Deed and the Owner shall not:
- 4.1.1 Occupy the Low Cost Rented Units for any purpose other than for Affordable Rented Housing for the lifetime of the Development;
- 4.1.2 Occupy the London Shared Ownership Housing Units for any purpose other than for London Shared Ownership Housing for the lifetime of the Development, save where a London Shared Ownership Housing lessee has Staircased to 100% equity in respect of a particular London Shared Ownership Housing Unit
- 4.2 Unless the Council and the GLA approve otherwise first and in writing:
- 4.2.1 no lease may be granted of a London Shared Ownership Housing Unit other than a London Shared Ownership Lease; and
- 4.2.2 a London Shared Ownership Lease may not be assigned underlet charged or otherwise dealt with or disposed of except for (i) a sale by way of an assignment of the whole, (ii) a charge of the whole to a mortgage lender or (iii) a surrender to the landlord;
- PROVIDED THAT this paragraph 4 shall not apply where the tenant under the London Shared Ownership Lease has Staircased.
- 4.3 The Owner shall ensure that the first lease of any Intermediate Housing Unit shall not be granted to any person or persons other than:

- 4.3.1 a Person or Persons which satisfies the Affordability Criteria **PROVIDED ALWAYS THAT**
- 4.3.2 if the Owner has been unable to grant a lease to a Person or which satisfies the Affordability Criteria within three (3) months of first advertising the availability of the

Intermediate Housing Units the Owner shall be entitled to grant the first lease or tenancy to a Person or Persons who satisfies the AMR Upper Limit;

- 4.4 Paragraph 4.3.2 above shall apply mutatis mutandis to any subsequent sales of the Intermediate Housing Units except where a Shared Ownership Housing lessee has Staircased to 100% equity in the relevant London Shared Ownership Unit;
- 4.5 During the period that the Development is initially marketed for sale prior to first Occupation the availability of Wheelchair Adaptable Units to disabled persons shall be promoted and advertised including registering them with appropriate relevant website and advertising through appropriate media;
- 4.6 The obligations in this Part 1 of Schedule 1 shall not be binding upon or enforceable against: any Chargee or any person or bodies deriving title through such Chargee;
- 4.7 In order to benefit from the protection granted by paragraph 4.6 of this Part 1 of Schedule 1, a Chargee must:
- 4.7.1 serve a Default Notice on the Council and the GLA to the Council's offices at Civic Centre London Road Morden SM4 5DX (addressed to the Head of Planning and Head of Legal Services of the Council) and the GLA's offices at City Hall, The Queen's Walk, London, SE1 2AA (addressed to the Chief Planner) and a copy to the Director of Legal, Transport for London 5 Endeavour Square, London E20 1JN, prior to seeking to dispose of the relevant Affordable Housing Units and/or Additional Affordable Housing Units;
- 4.7.2 when serving the Default Notice, provide to the Council and to the GLA official copies of the title registers for the relevant Affordable Housing Units and/or Additional Affordable Housing Units; and
- 4.7.3 subject to paragraph 4.12 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units and/or Additional Affordable Housing Units before the expiry of the Moratorium Period except in accordance with paragraph below.
- 4.8 From the first day of the Moratorium Period to (but excluding) the date falling one calendar month later, the Council and/or the GLA may serve an Intention Notice on the Chargee;
- 4.9 Not later than fifteen (15) Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Council the GLA and the Chargee), the Chargee will grant the Council (and/or the Council's nominated substitute Affordable Housing Provider) or the GLA an exclusive Option to purchase the relevant Affordable Housing Units and/or Additional Affordable Housing Units which shall contain the following terms:
- 4.9.1 the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
- 4.9.2 the price for the sale and purchase will be agreed in accordance with paragraph 4.10.2 below or determined in accordance with paragraph 4.11 below;
- 4.9.3 provided that the purchase price has been agreed in accordance with paragraph 4.10.2 below or determined in accordance with paragraph 4.11 below, but subject to para 4.9.4 below, the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or its nominated substitute Affordable Housing Provider) may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing Units and/or Additional Affordable Housing Units at any time prior to the expiry of the Moratorium Period;

4.9.4 the Option will expire upon the earlier of (i) notification in writing by the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or its nominated substitute Affordable Housing Provider) that it no longer intends to exercise the Option PROVIDED THAT the Council has first obtained the GLA's prior written approval and (ii) the expiry of the Moratorium Period; and

4.9.5 any other terms agreed between the parties to the Option (acting reasonably);

PROVIDED THAT in the event that both the GLA and the Council serve an Intention Notice, the Intention Notice served by the Council will take priority

4.10 Following the service of the Intention Notice:

4.10.1 the Chargee shall use reasonable endeavours to reply to enquiries raised by the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or its nominated substitute Affordable Housing Provider) in relation to the Affordable Housing Units and/or the Additional Affordable Housing Units as expeditiously as possible having regard to the length of the Moratorium Period; and

4.10.2 the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or its nominated substitute Affordable Housing Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units and/or Additional Affordable Housing Units, which shall be the higher of:

(a) the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing Units and/or Additional Affordable Housing Units contained in this Schedule 1; and

(b) (unless otherwise agreed in writing between the GLA or the Council (or the GLA or the Council's nominated substitute Affordable Housing Provider) (as appropriate) and the Chargee) the Sums Due.

4.11 On the date falling ten (10) Working Days after service of the Intention Notice, if the Council (or its nominated substitute Affordable Housing Provider) or the GLA and the Chargee have not agreed the price pursuant to paragraph 4.10.2 (a) above:

4.11.1 the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or the GLA's nominated substitute Affordable Housing Provider) (as appropriate) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least ten (10) years' experience in the valuation of affordable/social housing within the London area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;

4.11.2 if, on the date falling fifteen (15) Working Days after service of the Intention Notice, the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or the GLA's nominated substitute Affordable Housing Provider) (as appropriate) and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least ten (10) years' experience in the valuation of affordable/social housing within the London area to determine the dispute;

4.11.3 the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 4.10.2 (a) above, due regard being had to all the restrictions imposed upon the relevant Affordable Housing Units and/or Additional Affordable Housing Units by this Deed;

4.11.4 the independent surveyor shall act as an expert and not as an arbitrator;

- 4.11.5 the fees and expenses of the independent surveyor are to be borne equally by the parties;
 - 4.11.6 the independent surveyor shall make his/her decision and notify the Council, the GLA, the Council's nominated substitute Affordable Housing Provider (if any) and the Chargee of that decision no later than ten (10) Working Days after his/her appointment and in any event within the Moratorium Period; and
 - 4.11.7 the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 4.12 The Chargee may dispose of the relevant Affordable Housing Units and/or Additional Affordable Housing Units free from the obligations and restrictions contained in paragraph 1 of this Part 1 of Schedule 1 which shall determine absolutely in respect of those Affordable Housing Units and/or Additional Affordable Housing Units (but subject to any existing tenancies) if:
- 4.12.1 the Council or the GLA have not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
 - 4.12.2 the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or its nominated substitute Affordable Housing Provider) (as appropriate) has not exercised the Option and completed the purchase of the relevant Affordable Housing Units and/or Additional Affordable Housing Units on or before the date on which the Moratorium Period expires; or
 - 4.12.3 the Council (or its nominated substitute Affordable Housing Provider) or the GLA (or its nominated substitute Affordable Housing Provider) (as appropriate) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.
- 4.13 The Council (and its nominated substitute Affordable Housing Provider, if any) and the GLA (and its nominated substitute Affordable Housing Provider, if any) and the Chargee shall act reasonably in fulfilling their respective obligations under paragraphs 4.6 to 4.12 above (inclusive);
- 4.14 To submit to the Council annually the Affordable Housing Mix (Subsequent Disposals) Table.

5. **AFFORDABLE HOUSING GRANT**

- 5.1 The Owner covenants that:
- 5.1.1 it will use reasonable endeavours to contract with an Affordable Housing Provider that is able to provide or that has access to Affordable Housing Grant prior to substantial Implementation (or such later date as may be agreed between the parties);
 - 5.1.2 The Owner covenants that where the Owner does contract with an Affordable Housing Provider that is able to provide or who has access to Affordable Housing Grant, subject to the parties being satisfied with the amount of the Affordable Housing Grant the said Affordable Housing Grant shall only be used to provide Additional Affordable Housing and the Owner shall provide an Additional Affordable Housing Scheme to the Council for approval within 10 Working Days of the contract with an Affordable Housing Provider having been exchanged;
 - 5.1.3 If at the date of Substantial Implementation the Owner has been unable to contract with an Affordable Housing Provider that is able to provide or that has access to Affordable Housing Grant and in any event prior to contracting with any Affordable Housing Provider that is not able to provide or that does not have access to Affordable Housing Grant the Owner shall:

- (a) serve a notice on the Council and the GLA stating that the Owner has been unable to contract with an Affordable Housing Provider that is able to provide or that has access to Affordable Housing Grant and include:
 - (i) details of the Affordable Housing Providers with whom the Owner has corresponded and copies of the correspondence with the Affordable Housing Providers including details of the terms on which the Affordable Housing Providers have been invited to tender and evidence that these are reasonable commercial terms;
 - (ii) reasons for the approached Affordable Housing Providers not entering into a contract (subject to reasons having been provided by the Affordable Housing Providers);
- (b) approach other Affordable Housing Providers as the Council or the GLA shall nominate as having or able to access Affordable Housing Grant and if after a period of 3 months the Owner has been unable to contract with an Affordable Housing Provider that is able to provide or that has access to Affordable Housing Grant the Owner shall serve a notice on the Council and the GLA stating that the Owner has been unable to contract with an Affordable Housing Provider that is able to provide or that has access to Affordable Housing Grant and include:
 - (i) details of the Affordable Housing Providers with whom the Owner has corresponded and copies of the correspondence with the Affordable Housing Providers including details of the terms on which the Affordable Housing Providers have been invited to tender and evidence that these are reasonable commercial terms;
 - (ii) reasons for the approached Affordable Housing Providers not entering into a contract (subject to reasons having been provided by the Affordable Housing Providers);

5.1.4 If paragraph 5.1.3 applies, then the GLA and the Council shall respond to the Owner to confirm either:

- (a) that they are satisfied (acting reasonably) that the Owner has used reasonable endeavours to contract with an Affordable Housing Provider that is able to provide or that has access to Affordable Housing Grant the Owner shall be free to contract with any Affordable Housing Provider; or
- (b) that they are not satisfied that the Owner has used its reasonable endeavours to contract with an Affordable Housing Provider that is able to provide or that has access to Affordable Housing Grant in accordance with paragraph 5.1.1 in which case the notice shall include details of the ways in which the Owner is considered not to have used reasonable endeavours:

PROVIDED THAT in the event of disagreement between the GLA and the Council in respect of the above, the view of the GLA shall take precedence

5.1.5 Following service of a notice under paragraph 5.1.4(b) above, the Owner shall:

- (a) approach the Affordable Housing Provider listed in the notice and continue to use its reasonable endeavours to secure Affordable Housing Grant for a period of eight weeks; and
- (b) provide the GLA and the Council with notification of its progress in accordance with paragraph 5.1.5 (a) at the end of the eight week period;

- 5.1.6 If by the end of the eight week period specified in paragraph 5.1.5(a) the Owner has not been able achieve the objectives of paragraph 5.1.1 it shall explain why in the notice required under paragraph 5.1.5 (b);
- 5.1.7 If paragraph 5.1.6 applies, the Council and the GLA shall respond to the Owner in accordance with paragraph 5.1.4 and in the event that paragraph 5.1.4 (b) is agreed by the Owner (or determined under clause 12 to apply) the process at paragraphs 5.1.5, 5.1.6 and this paragraph 5.1.7 shall be repeated.

Part 2

Council's List of Preferred Affordable Housing Providers
Developing Registered Providers in Merton

<p>Wandie Housing Association</p> <p>Peter Beggan Land Manager</p>	<p>L & Q Group</p> <p>Contact- Jan Mackey Land Manager</p>
<p>Notting Hill Housing Group</p> <p>Shoreh Halfezi</p>	<p>Thames Valley</p> <p>Contact- Tim Preston</p>
<p>Clarion Housing Group</p> <p>Contact - Paul Quinn</p>	<p>Viridian</p> <p>Contact - Cheryl Scott</p>
<p>Ability Housing Contact - Paul Herbert Development Manager</p> <p>PaulH@ability-housing.co.uk Tel – 01784495635</p>	<p>Paragon</p> <p>Contacts - Chris Marchant / Liz Le Gresley Development Managers</p> <p>CMarchant@ParagonCHG.co.uk Elegresley@12aragonCHG.co.uk</p>
<p>Moat</p>	<p>Amicus Horizon</p>

Head of New Business Development Tel - 0845 359 6441 Kim.Mcgregor@moat.co.uk	Development Manager Tel- 0208 726 8637 Joanne.Maunders@ogtivo.org.uk
Catalyst Contact - Chris Struthers Planning Manager Chris.Struthers@chg.org.uk	

PART 3

EARLY STAGE REVIEW

1. EARLY IMPLEMENTATION VIABILITY REVIEW TRIGGER

- 1.1 The Owner shall notify the Council and the GLA in writing of the date on which it considers that Substantial Implementation has been achieved no later than ten (10) Working Days after such date and such notice shall be accompanied by full documentary evidence on an open book basis to enable the Council and/or the GLA to independently assess whether the Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 1.2 No later than five Working Days after receiving a written request from the Council or the GLA, the Owner shall provide to the Council and the GLA any additional documentary evidence reasonably requested by the Council or the GLA to enable it to determine whether the Substantial Implementation has been achieved on or before the Substantial Implementation Target Date.
- 1.3 Following the Owner's notification pursuant to paragraph 1.1 of this Part 3 of Schedule 1, the Owner shall afford the Council and the GLA access to the Site to inspect and assess whether or not the works which have been undertaken achieve Substantial Implementation PROVIDED ALWAYS THAT the Council and the GLA shall:
- 1.3.1 provide the Owner with reasonable written notice of its intention to carry out such an inspection;
 - 1.3.2 comply with relevant health and safety legislation; and
 - 1.3.3 at all times be accompanied by the Owner or its agent.
- 1.4 No later than twenty (20) Working Days after the Council and the GLA receive:
- 1.4.1 notice pursuant to paragraph 1.1 of this Part 3 of Schedule 1; or
 - 1.4.2 if the Council and the GLA makes a request under paragraph 1.2 of this Part 3 of Schedule 1, the additional documentary evidence,
- the Council (and if it elects to do so the GLA) shall inspect the Site and thereafter provide written confirmation to the Owner within 10 Working Days of the inspection date as to whether or not the Council (and if the GLA has inspected the Site, the GLA) considers that the Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 1.5 Subject to paragraph 1.6 below, if the Council or the GLA notify the Owner that the Council or the GLA considers that the Substantial Implementation has not been achieved then this paragraph 1 shall continue to apply until the Council (and if the GLA has inspected the Site, the GLA) has notified the Owner pursuant to paragraph 1.4 of this Part 3 of Schedule 1 that the Substantial Implementation has been achieved.
- 1.6 If the GLA elects to inspect the Site, its decision as to whether Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date (as notified to the Owner under paragraph 1.4 above) shall override the Council's decision in relation to the same (if any).
- 1.7 Any dispute between the parties regarding whether Substantial Implementation has occurred or whether it occurred on or before the Substantial Implementation Target Date (including a

dispute arising from a failure by the Council (and, if the GLA has elected to inspect the Site, the GLA) to provide the written confirmation in paragraph 1.4 above within the time period specified in that paragraph) may be referred to dispute resolution in accordance with Clause 20.

- 1.8 The Owner shall not Occupy the Development or any part thereof until:
- 1.8.1 the Council (and, if the GLA has elected to inspect the Land, the GLA) has notified the Owner pursuant to paragraph 1.4 of this Part 3 of Schedule 1 that the Substantial Implementation has been achieved on or before the Substantial Implementation Target Date; or
 - 1.8.2 the GLA has confirmed in writing pursuant to paragraph 3.9 of this Part 3 of Schedule 1 its agreement with the Council that no Additional Affordable Housing Units are required; or
 - 1.8.3 if the GLA has confirmed in writing pursuant to paragraph 3.9 of this Part 3 of Schedule 1 that Additional Affordable Housing Units are required, the GLA has confirmed pursuant to this Schedule 1 its approval of an Additional Affordable Housing Scheme.

2. SUBMISSION OF EARLY STAGE DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION

2.1 Where the Substantial Implementation has not occurred before the Substantial Implementation Target Date (as determined by the Council or the GLA under paragraph 1.4 of this Part 3 of Schedule 1 or pursuant to dispute resolution in accordance with Clause 11):

2.1.1 the Owner shall submit to the GLA and the Council the following information no later than 20 Working Days after the date on which the Owner is notified pursuant to paragraph 1.4 of this Part 3 of Schedule 1 or the date that an Expert has determined pursuant to Clause 11 that Substantial Implementation has been achieved, on the basis that the Council or the GLA may make such information publicly available:

- (a) the Early Stage Development Viability Information;
- (b) a written statement that applies the applicable Early Stage Development Viability Information to Formula 1a (PROVIDED ALWAYS THAT if the result produced by Formula 1a is less than zero it shall be deemed to be zero) and Formula 2 thereby confirming whether in the Owner's view any Additional Affordable Housing Units can be provided; and
- (c) where such written statement confirms that Additional Affordable Housing Units can be provided, an Additional Affordable Housing Scheme; and

2.1.2 paragraphs 3 and 4 and of this Part 3 of Schedule 1 shall apply.

3. ASSESSMENT OF EARLY STAGE DEVELOPMENT VIABILITY INFORMATION AND OTHER INFORMATION

3.1 The Council and/or the GLA shall assess the information submitted pursuant to paragraph 2.1.1 of Part 3 of Schedule 1 and assess whether in its view Additional Affordable Housing Units are required to be delivered in accordance with Formula 1a and Formula 2 and for the avoidance of doubt the Council and/or the GLA will be entitled to rely on its own evidence in determining inputs into Formula 1a and Formula 2 subject to such evidence also being provided to the Owner and the Owner having the opportunity to make representations in respect of such evidence and for further avoidance of doubt such evidence may be subject to dispute resolution under Clause 11.

- 3.2 The Council and the GLA may jointly or individually appoint an External Consultant to assess the information submitted pursuant to paragraph 2.1.1 of this Part 3 of Schedule 1 PROVIDED THAT:
- 3.2.1 the External Consultant(s) must be appointed not later than ten (10) Working Days after submission of the information under paragraph 2.1.1 above; and
 - 3.2.2 any External Consultant(s) so appointed will report to the Council or the GLA (as appropriate, with a copy to the other) or both (if the External Consultant is jointly appointed by the Council and the GLA):
 - (a) not later than thirty (30) Working Days after the date of receipt by the External Consultant(s) of the information submitted pursuant to paragraph 2.1.1 of this Part 3 of Schedule 1, if no request is made under paragraph 3.3 below; or
 - (b) not later than twenty-five (25) Working Days after the date of receipt by the External Consultant(s) of the information submitted pursuant to paragraph 3.4 below, if a request is made under paragraph 3.3 below.
- 3.3 Not later than twenty (20) Working Days after submission of the information under paragraph 2.1.1 above, the GLA, the Council and/or an External Consultant(s) (as applicable and with copies to the other parties) may request in writing from the Owner further Early Stage Development Viability Information or supporting evidence of the same.
- 3.4 The Owner shall provide any reasonably required information to the Council, the GLA or the External Consultant(s) (as applicable and with copies to the other parties) within ten (10) Working Days of receiving a request under paragraph 3.3 above.
- 3.5 The process in paragraphs 3.3 and 3.4 may be repeated until the Council and the GLA and/or the External Consultant(s) (as applicable) have all the information they reasonably require to assess whether in their view Additional Affordable Housing Units are required to be delivered in accordance with Formula 1a and Formula 2 with the periods in 3.2.2(b), 3.3, 3.4 and 3.6.2 of this Part 3 of Schedule 1 restarting accordingly.
- 3.6 Not later than:
- 3.6.1 forty (40) Working Days from the submission of the information under paragraph 2.1.1 above, if no request is made under paragraph 3.3 above; or
 - 3.6.2 thirty (30) Working Days from the date of receipt by the Council of the information submitted pursuant to paragraph 3.4 above, if a request is made under paragraph 3.3 above
- the Council shall notify the GLA and the Owner in writing of the Council's intended decision as to whether any Additional Affordable Housing Units are required and whether the submitted Additional Affordable Housing Scheme is approved by the Council.
- 3.7 Where the Council concludes that Additional Affordable Housing Units are required but the Owner's initial submission concluded otherwise or if the Additional Affordable Housing Scheme initially submitted is not approved by the Council the Owner shall provide an Additional Affordable Housing Scheme to the Council (with a copy to the GLA) for approval within fifteen (15) Working Days of the date on which it receives the Council's notice pursuant to paragraph 3.6.
- 3.8 If an Additional Affordable Housing Scheme is submitted to the Council pursuant to paragraph 3.7 above, the Council shall notify the GLA and the Owner in writing of the Council's intended decision as to whether the submitted Additional Affordable Housing Scheme is approved within 15 Working Days of receipt of the submission and, if the Additional Affordable Housing Scheme is not approved, paragraph 3.7 and this 3.8 shall continue to apply mutatis mutandis.

3.9 Not later than fifteen (15) Working Days after receipt of the Council's notification under paragraph 3.6 above or, if later, the Council's notification under paragraph 3.8 above, the GLA shall confirm in writing to the Council and the Owner whether it agrees with the Council's intended decision under paragraphs 3.6 to 3.8 of this Part 3 of Schedule 1 (including whether to approve the Additional Affordable Housing Scheme, if submitted) as soon as reasonably practicable after receiving notice of that intended decision and the GLA (acting reasonably) will be entitled to rely on its own evidence in determining inputs into Formula 1 and Formula 2 subject to such evidence being relevant and also being provided to the Owner and the Council and:

3.9.1 if the GLA agrees with the Council's intended decision under paragraphs 3.6 or 3.8 (as applicable) paragraphs 3.10 and 3.11 below shall apply (if relevant); and

3.9.2 if the GLA disagrees with the Council's intended decision:

(a) it shall provide reasons to which the Owner and the Council shall have regard;

(b) the Owner shall submit, or re-submit, an Additional Affordable Housing Scheme for approval by the Council, if required by the GLA, not later than twenty (20) Working Days after the GLA's confirmation pursuant to this paragraph 3.9;

(c) the Council shall notify the GLA and the Owner in writing of its intended decision as to whether the Additional Affordable Housing Scheme re-submitted under this paragraph 3.9 is approved not later than 20 Working Days after the Owner's submission pursuant to paragraph 3.9.2(b) above; and

(d) this paragraph 3.9 shall apply *mutatis mutandis*

PROVIDED THAT if the Owner has referred the matter to dispute resolution pursuant to paragraph 2.7 of this Part 3 of Schedule 1 the Owner shall not be required to submit or re-submit an Additional Affordable Housing Scheme for approval unless and until the Expert has determined that such Additional Affordable Housing Scheme is required.

3.10 If the Council's assessment pursuant to paragraph 3.6 concludes, and the GLA has confirmed in writing its agreement with such conclusion in accordance with paragraph 3.9.1 above, that

3.10.1 a surplus profit arises following the application of Formula 1a but such surplus profit is insufficient to provide any Additional Affordable Housing Units pursuant to Formula 2 or

3.10.2 a surplus profit arises following the application of Formula 1a but such surplus profit cannot deliver a whole number of Additional Affordable Housing Units pursuant to Formula 2;

then in either scenario the Owner shall pay any such surplus profit allocable to any incomplete Additional Affordable Housing Unit to the Council as a financial contribution towards offsite Affordable Housing in accordance with paragraph 4.1.2 below.

3.11 The Owner shall pay the Council's and the GLA's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 2.1.1 including those of the External Consultant(s) within twenty (20) Working Days of receipt of a written request for payment.

3.12 Following the GLA's confirmation pursuant to paragraph 3.9 above or if the GLA fails to provide that confirmation within the time period specified in paragraph 3.9 above, any party may refer the matter to dispute resolution pursuant to Clause 20 to determine whether any Additional Affordable Housing Units are required to be delivered in accordance with Formula 1a and Formula 2 (and, if so, how many).

4. **DELIVERY OF ADDITIONAL AFFORDABLE HOUSING**

4.1 Where it is determined pursuant to paragraphs 3.9 or 3.12 of this Part 3 of Schedule 1 that one or more Additional Affordable Housing Units are required the Owner shall not Occupy more than 50% of the Market Units unless and until it has:

4.1.1 practically completed all of the Additional Affordable Housing Units in accordance with the Additional Affordable Housing Scheme approved by the Council and/or the GLA and made them available for Occupation; and

4.1.2 paid any remaining surplus profit pursuant to paragraph 3.10 of this Part 3 of Schedule 1 to the Council towards the delivery of offsite Affordable Housing within the Council's administrative area.

4.2 The Parties agree that the terms of Part 1 of Schedule 1 shall apply to the provision of any Additional Affordable Housing Units.

5. **PUBLIC SUBSIDY**

5.1 Nothing in this Deed shall prejudice any contractual obligation on the Owner to repay or reimburse any Public Subsidy using any surplus profit that is to be retained by the Owner following the application of Formula 2.

6. **MONITORING**

6.1 The parties acknowledge and agree that as soon as reasonably practicable following completion of this Deed the Council shall report to the GLA through the London Development Database the number and tenure of the Affordable Housing Units by units and Habitable Room.

6.2 The Parties acknowledge and agree that the Council shall report the following information to the GLA through the London Development Database as soon as reasonably practicable after the approval of the Additional Affordable Housing Scheme pursuant to paragraph 3.6 or 3.7 of this Part 3 of Schedule 1 or, if an Additional Affordable Housing Scheme is not required by the Council, the conclusion of the assessment under paragraph 3.6 of this Part 3 of Schedule 1:

6.2.1 the number and tenure of the Additional Affordable Housing Units by unit numbers and Habitable Room (if any);

6.2.2 any changes in the tenure or affordability of the Affordable Housing Units by unit numbers and Habitable Room; and

6.2.3 the amount of any financial contribution payable towards offsite Affordable Housing pursuant to paragraph 3.10 of this Part 3 of Schedule 1.

Part 4

FORMULA 1A

Early Stage Review Surplus Profit

X = Surplus profit available for additional on-site affordable housing

$$X = (A - B) - (C - D) - P$$

A = Estimated GDV of development as determined at the time of review (£)

B = Estimated GDV of development as determined at the grant of planning permission (£)

C = Estimated build costs as determined at the time of review (£)

D = Estimated build costs as determined at grant of planning permission (£)

P = (A – B) * Y; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the application stage (%)

Notes:

(A - B) = Change in GDV from the date of planning permission to the date of review (£)

(C - D) = Change in build costs from the date of planning permission to the date of review (£)

Part 5

FORMULA 2

Additional Affordable Housing Units

X = additional London Affordable Rent Housing requirement (Habitable Rooms)

$$X = ((E * F) \div (A - B)) \div D$$

Y = additional London Living Rent Housing requirement (Habitable Rooms)

$$Y = ((E * G) \div (A - C)) \div D$$

Where:

A = Average Market Unit Value (£ per m²)

B = Average London Affordable Rent Housing Value (£ per m²)

C = Average London Living Rent Housing Value (£ per m²)

D = average Habitable Room size for the Development (perm² to be determined on Reserved Matters approval)

E = Surplus Profit available for Additional Affordable Housing Units as determined in Formula 1a (£)

F = percentage 70 (%) of Surplus Profit available for Additional Affordable Housing Units to be used for London Affordable Rent Housing

G = percentage 30 (%) of Surplus Profit available for Additional Affordable Housing Units to be used for London Living Rent Housing

Notes:

(A – B) represents the difference in Average Market Unit Value (per m²) and Average London Affordable Rent Housing Value (per m²) (£)

(A – C) represents the difference in Average Market Unit Value (per m²) and Average Shared Ownership Housing Value (per m²) (£)

(E * F) represents the Surplus Profit to be used for London Affordable Rent Housing (£)

(E * G) represents the Surplus Profit to be used for London Living Rent Housing (£)

(E * F) ÷ (A – B) represents the additional London Affordable Rent Housing requirement (m²)

(E * G) ÷ (A – C) represents the additional London Living Rent Housing requirement (m²)

X and Y are subject to the Affordable Housing Cap.

Schedule 2

Bus Stop Improvement Works

1. The Owner covenants with the GLA and the Council as follows:
 - 1.1 To liaise with JC Decaux (or instructed contractor), the Council and TfL Buses to prepare a Bus Stop Scheme calculating the costs involved in relocating the Northbound Miles Road Bus Stop (No.33563) to outside the northern end of Princess Lodge flats, stop up the former bus stop and ensure the new stop is accessible to all users.
 - 1.2 Upon receipt from the Council of a written estimate of the proper and reasonable cost of the Bus Stop Improvement Works then to pay to the Council the amount specified in such written estimate within 15 Working Days of the receipt of such estimate.
 - 1.3 Upon completion of the Bus Stop Improvement Works and upon receipt from the Council of a written invoice specifying the final cost (which shall be proper and reasonable) of the Bus Stop Improvement Works (and on the assumption that the amount of such invoice exceeds the amount of the estimate referred to in paragraph 1.1 above) then to pay to the Council the amount specified in such written invoice (less the amount paid under paragraph 1.1 above) within 15 Working Days of the receipt of such written invoice.
 - 1.4 The Owner shall not Commence Development or allow or permit Commencement of Development until it has paid the relevant Bus Stop Improvement Contribution to the Council and the Council has confirmed receipt of the same in writing.

2. The Council covenants with the Owner as follows:

Upon completion of the Bus Stop Improvement Works by TfL and upon the delivery to the Owner by TfL of a written invoice specifying the final cost of the Bus Stop Improvement Works (and on the assumption that the amount of such invoice is less than the amount of the estimate referred to in paragraph 1.1 above) then to re-pay to the Owner the amount paid by the Owner under paragraph 1.1 above (less the amount specified in such written invoice) within 15 Working Days of the receipt of such amount from TfL of such written invoice.

Schedule 3

Bus Capacity Improvements

The Owner covenants with the GLA and the Council as follows:

1. The Owner shall pay the Bus Capacity Contribution to the Council in the following installments:
 - (a) 33% prior to the occupation of 25% of Market Units and shall not occupy or permit occupation of more than 25% of the Market Units until the first installment (being 33%) of the Bus Capacity Contribution has been paid;
 - (b) A further 33% prior to the occupation of 50% of Market Units and shall not occupy or permit occupation of more than 50% of the New Market Units until in aggregate sixty six percent (66%) of the Bus Capacity Contribution has been paid;
 - (c) The final 34% prior to the occupation of the 75% of Market Units and shall not occupy or permit occupation of more than 75% of the Market Units until in aggregate one hundred percent (100%) of the Bus Capacity Contribution has been paid.

Schedule 4

Baron Walk Improvements

The Owner covenants with the GLA and the Council as follows:

1. To submit for the Council's written approval with the first Reserved Matters Application a scheme for the improvement of Baron Walk and the London Road Playing Fields, including;
 - (a) The widening of Baron Walk to provide a cycle path and pedestrian footway as set out in the Framework Design Code submitted as part of the Application;
 - (b) To remove the security fencing surrounding London Road Playing Fields and improve the permeability between the Development and the London Road Playing Fields by realigning existing footpaths within London Road Playing Fields with new entrances to the Development;
2. Not to Commence the Development until the scheme of improvement referred to in paragraph 1 has been approved in writing by the Council;
3. To submit for the Council's written approval prior to Occupation of the Development a maintenance scheme for Baron Walk;
4. The costs of the scheme of improvement, and the works shall be borne by the Owner;
5. Not to Occupy the Development until the improvement works approved under paragraph 1 have been completed to the Council's reasonable satisfaction.

Schedule 5

Management, Maintenance and Access of Estate Roads

1. To submit the Estate Roads Maintenance and Access Plan for the Council's approval prior to Commencement of the Development.
2. The Owner shall not Commence the Development until the Estate Roads Maintenance and Access Plan has been submitted to and approved in writing by the Council.
3. The Owner covenants with the Council to manage and maintain and allow public access on foot, bicycle and vehicles for the life of the Development to each of the Estate Roads pursuant to the Estate Roads Maintenance and Access Plan as approved in writing by the Council (save for those where controlled or limited access is proposed and agreed under the Estate Roads Maintenance and Access Plan) **provided that** the Owner may subject to at least 10 (ten) Working Days' advance notice (save in respect of cases of emergency danger to the public) being given to the Council in writing temporarily close and/or temporarily prevent public use or access to the land forming part of the Estate Roads for reasons including:
 - 3.1 the maintenance, repair, renewal, cleaning or other required works to the Estate Roads;
 - 3.2 the laying, construction, inspection, maintenance, repair or renewal or cleaning of any building or buildings (including the Development) or any services or service media serving such building or buildings now or hereafter on the land adjoining the Estate Roads or any part thereof (including the erection of scaffolding);
 - 3.3 in cases of emergency or danger to the public;
 - 3.4 any other sufficient cause approved by the Council;
 - 3.5 vehicular and other servicing of the Development including vehicular and pedestrian access and egress to and from the Development at the time and for the periods to have been agreed previously with the Council;
 - 3.6 the maintenance, repair, renewal, cleaning or other required works to the Development abutting the Estate Roads (including works of shop fitting or other structural or non-structural works and/or alterations);
 - 3.7 the withdrawal of areas used in association with the Development for tables, chairs, planters, screens and other structures subject to securing written approval from the Council; and
 - 3.8 any temporary closure required in connection with works to an adjoining adopted highway and for the avoidance of doubt any such closures will be a) subject to advance approval in writing by the Council, b) affect a small area of the Estate Roads for the minimum period of time (i.e. not more than three consecutive days at a time) and c) the Owner shall if required provide alternative means of access and egress to prevent delays in the flow of traffic;
4. The Owner may, by agreement with the Council in writing, make and enforce such reasonable rules and regulations governing access to the Estate Roads as it may from time to time consider necessary and appropriate to control the use of the Estate Roads and shall send to the Council by way of consultation before they are brought into force a copy of any rules and regulations so made and shall inform the Council in writing of any changes that may from time to time be made to the said rules and regulations before they are brought into force;
5. The Owner shall provide written details to the Council of the Management Company responsible for managing the Estate Roads within 10 Working Days of completion of the transfer of the Estate Roads to the Management Company, such detail to include a copy of the certificate of incorporation, its structure and funding plans ;

6. The Owner shall ensure that all Estate Roads from the time of laying out and completion are maintained in accordance with the Estate Roads Maintenance and Access Plan (subject to any variations that may be agreed in writing between the Council and the Owner from time to time) and shall keep them maintained until such time as they are transferred to the Management Company **PROVIDED THAT** it is agreed that it shall be a term of the appointment of the Management Company that the transfer is on the condition that they shall manage and maintain the Estate Roads in accordance with the Estate Roads Maintenance and Access Plan as approved in writing by the Council; and
7. Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.

Schedule 6

Parking Controls

Part 1 - CPZs

1. The Council shall serve on the Owner a CPZ Demand Notice(s) at different stages which in total shall not include costs in excess of £45,000 (forty-five thousand pounds) to investigate, consult and implement a CPZ Scheme.
2. The Owner shall pay the CPZ Contribution as specified in the CPZ Demand Notices to the Council within 20 (twenty) Working Days of receipt of the relevant CPZ Demand Notice.
3. Notwithstanding paragraphs 1 and 2 the Owner may request (and on receipt of such request the Council may at its discretion carry out) the statutory consultation exercise in relation to a proposal to create a CPZ and shall be liable for the related CPZ Contribution. The Owner may also elect to pay the CPZ Contribution at any time in advance of a CPZ Demand Notice.
4. Following payment of the CPZ Contribution in a Five Year Period and the carrying out by the Council of a statutory consultation exercise in relation to a proposal to create a CPZ, if the Council resolves not to create a CPZ within the vicinity of the Development, any of the CPZ Contribution that has not been expended or contractually committed must be returned to the person who made the payment.

Part 2 - Car Free Development

1. Prior to Disposing of any of the Residential Units the Owner shall put in place arrangements to notify New Occupiers of Residential Units (unless the New Occupier is a Blue Badge Holder) in writing that they may not apply for a residents parking permit in any CPZ Area operated by the Council.
2. The Owner shall not Dispose of the Residential Units prior to having put in place arrangements pursuant to paragraph 1 of this Schedule 6 Part 2.
3. The Owner shall:
 - 3.1 inform all New Occupiers of any Residential Unit of the restrictions relating to car use under this Agreement; and
 - 3.2 include in all transfers, tenancies and leases of any Residential Units to New Occupiers covenants dealing with the matters referred to in paragraphs 1 and 2 of Part of this Schedule.
 - 3.3 The Owner shall not permit a New Occupier to Occupy a Residential Unit unless and until the New Occupier has waived all rights and entitlements to apply for a resident's parking permit in any CPZ Area and **for the avoidance of doubt** a New Occupier shall be taken to have so waived its rights by entering into a transfer, tenancy or lease as pursuant to paragraph 3.2 of this Schedule 6 Part 2.
 - 3.4 The Owner shall upon the receipt of a written request from the Council, provide to the Council such information as the Council reasonably requires regarding compliance with Part 2 of this Schedule.

Schedule 7

Car Club

Part 1 - Car Club Bays

The Owner covenants with the GLA and the Council as follows:

1. To submit the Car Club Scheme for the Council's approval prior to Occupation of the Development.
2. The Owner shall not Occupy the Development until the Car Club Scheme has been submitted to and approved in writing by the Council.
3. The Owner shall at its own cost lay out, construct and Practically Complete to the Council's reasonable satisfaction and in line with the Car Club Scheme the Car Club Bays and shall not Occupy or permit Occupation of more than 75% of the Residential Units unless and until it has complied with its obligations under this paragraph

Part 2 - Car Club Membership

The Owner shall:

1. Enter into an agreement with a Car Club Operator for the establishment of a Car Club so that the Car Club becomes operational and is available to all Occupiers as soon as possible after approval of the Car Club Schemet and shall notify the Council as soon as possible once the agreement has been entered into;
2. Notify in writing the first household of each Residential Unit of their entitlement to a Car Club Membership from the date of first Occupation;
3. Not occupy or permit first Occupation of any Residential Units prior to notifying each first household in accordance with the requirements of paragraph 2 of Part 2 of Schedule 7;
4. Within 30 (thirty) Working Days of the first Occupation of a Residential Unit to notify the Council that the first household of the relevant Residential Units has been notified in accordance with the requirements of paragraph 2 of Part 2 of Schedule 7;
5. Provide to the first household of each Residential Unit the Car Club Membership commencing no later than the date the Car Club first becomes operational provided that:
 - (a) the first household of the relevant Residential Units has confirmed to the Owner that it wishes to accept the proposal made under paragraph 2 of Part 2 of Schedule 7; and
 - (b) the relevant member of each first household of the relevant Residential Unit is legally entitled to drive a motor vehicle.

Schedule 8

Energy and Sustainability

Part 1 -Carbon Offset

1. The Owner shall in respect of the Development submit an Energy Strategy to the Council prior to Commencement of the Development, and shall not Commence the Development until the Energy Strategy for that Development has been approved in writing by the Council.
2. The Owner shall not Occupy or permit Occupation of any Residential Units unless and until the requirements of the approved Energy Strategy have been implemented **Provided That** where the approved Energy Strategy provides for implementation of different parts of the Energy Strategy at different times it shall be implemented in accordance with the timetable set out in the Energy Strategy.
3. If the Energy Strategy as approved requires the Owner to pay a financial contribution to the Council, the Owner shall pay the Carbon Offset Contribution (if any) to the Council prior to Occupation and shall not Occupy or permit Occupation of the Development until the Carbon Offset Contribution (if any) has been paid.

Part 2 - Whole Life Carbon Requirements

1. Within 8 weeks of the approval of [the last of the] Reserved Matters , the Owner shall submit to the GLA accurate and verified estimates of the 'Be seen' energy performance indicators, as outlined in the 'Planning stage' section / chapter of the GLA 'Be seen' energy monitoring guidance document (or any document that may replace it), for the consented development. This should be submitted to the GLA's Energy Monitoring Portal in accordance with the 'Be seen' energy monitoring guidance.
2. Prior to each Building being occupied, the Owner shall provide updated accurate and verified 'as-built' design estimates of the 'Be seen' energy performance indicators for each Reportable Unit of the development, as per the methodology outlined in the 'As-built stage' chapter / section of the GLA 'Be seen' energy monitoring guidance (or any document that may replace it). All data and supporting evidence should be uploaded to the GLA's Energy Monitoring Portal. The Owner should also confirm that suitable monitoring devices have been installed and maintained for the monitoring of the in-use energy performance indicators, as outlined in the 'In-use stage' of the GLA 'Be seen' energy monitoring guidance document (or any document that may replace it).
3. Upon completion of the first year of Occupation or following the end of the Defects Liability Period (whichever is the later) and for the following four years after that date, the legal Owner is required to provide accurate and verified annual in-use energy performance data for all relevant indicators under each Reportable Unit of the development as per the methodology outlined in the 'In-use stage' chapter / section of the GLA 'Be seen' energy monitoring guidance document (or any document that may replace it). All data and supporting evidence should be uploaded to the GLA's Energy Monitoring Portal. This obligation will be satisfied after the Owner has reported on all relevant indicators included in the 'In-use stage' chapter of the GLA 'Be seen' energy monitoring guidance document (or any document that may replace it) for at least five years.
4. In the event that the 'In-use stage' evidence submitted under Paragraph 3 shows that the 'As-built stage' performance estimates derived from Paragraph 2 have not been or are not being met, the Owner should investigate and identify the causes of underperformance and the potential mitigation measures and set these out in the relevant comment box of the 'Be seen' spreadsheet through the GLA's Energy Monitoring Portal. An action plan comprising measures identified in Paragraph 4 shall be submitted to and approved in writing by the GLA, identifying

measures which would be reasonably practicable to implement and a proposed timescale for implementation. The action plan and measures approved by the GLA should be implemented by the Owner as soon as reasonably practicable.

Schedule 9

Open Space

Delivery of Open Space

The Owner covenants with the GLA and Council as follows:

1. to submit for the Council's approval prior to Commencement of the Development the Open Space Management Plan and shall not Commence the Development without the Open Space Management Plan having been submitted and approved in writing by the Council;
2. in the event that sufficient play space cannot be appropriately delivered on site, or it would be beneficial to deliver play space off site, this will be identified and costed within the Open Space Management Plan for the approval of the Council such approval not to be unreasonably withheld or delayed. Subject to the Owner being responsible for the costs of providing such space Off Site the Owner shall be at liberty to deliver play space Off Site or alternatively pay the Children's Play Space Contribution to the Council prior to Occupation of the Development.
3. In the event that either of the Parties identify any revisions and/or amendments that are required to be made to the Open Space Management Plan following approval by the Council, to submit within 20 (twenty) Working Days of identification of the required revisions and/or amendments such revisions and/or amendments as required to the Council for its written approval;
4. To lay out and Practically Complete the Open Space prior to first Occupation of the Development;
5. From Practical Completion of the Open Space not to operate the Open Space otherwise than in accordance with the Open Space Management Plan as approved in writing by the Council; and
6. For the avoidance of doubt all the Open Space when laid out and Practically Completed should comply with the specifications approved under the Planning Permission and not be operated other than in accordance with the Open Space Management Plan as approved in writing by the Council.

Part 2

Management, Maintenance and Access of Open Space

1. To manage and maintain and allow public access on foot and bicycle (where appropriate and marked out) for the life of the Development to each Open Space Area (save for in relation to public access to the private courtyards and communal gardens) **provided that** the Owner may subject to at least 14 (fourteen) days' notice (save in respect of cases of emergency danger to the public or in the interests of security) being given to the Council in writing temporarily close and/or temporarily prevent public use or access to the land forming part of the Open Space for reasons including:
 - (a) the maintenance, repair, renewal, cleaning or other required works to the Open Space;
 - (b) in cases of emergency or danger to the public;
 - (c) in the interests of security;
 - (d) any other sufficient cause approved by the Council;

- (e) the maintenance, repair, renewal, cleaning or other required works to the Development abutting the Open Space (including works of shop fitting or other structural or non- structural works and/or alterations);
 - (f) the withdrawal of areas used in association with the Development for tables, chairs, planters, screens and other structures subject to securing written approval from the Council;
 - (g) any temporary closure required in connection with works to an adjoining adopted highway; and
 - (h) **for the avoidance of doubt** any such closures will be a) subject to advance approval in writing by the Council, b) affect a small area of the Open Space for the minimum period of time (i.e. not more than three consecutive days at a time) and c) the Owner shall if required provide alternative temporary Open Space provision.
2. The Owner may, by written agreement with the Council, make and enforce such reasonable rules and regulations governing access to the Open Space as it may from time to time consider necessary and appropriate to control the use of the Open Space and shall send to the Council by way of consultation before they are brought into force a copy of any rules and regulations so made and shall inform the Council in writing of any changes that may from time to time be made to the said rules and regulations before they are brought into force.
3. The Owner shall ensure that all Open Spaces from the time of laying out and Practical Completion are maintained in accordance with the Open Space Management Plan (subject to any variations that may be agreed in writing between the Council and the Owner from time to time) and shall keep them maintained until such time as they are transferred to the Management Company **PROVIDED THAT** it is agreed that it shall be a term of the appointment of the Management Company that the transfer is on the condition that they shall manage and maintain the Open Spaces in accordance with the Open Space Management Plan as approved in writing by the Council; and
4. Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.

Schedule 10

Hallowfield Way Cycle Lane

The Owner covenants with the GLA and the Council as follows:

1. The Owner shall pay the Hallowfield Way Cycle Lane Contribution to the Council in full prior to Commencement of the Development.
2. The Owner shall not Commence the Development until the Hallowfield Way Cycle Lane Contribution has been paid to the Council in full.

Schedule 11

Travel Plan

The Owner covenants with the GLA and Council as follows:

1. RESIDENTIAL TRAVEL PLAN

- 1.1 The Owner shall not Occupy or permit Occupation of any Residential Unit unless or until the Residential Travel Plan has been submitted to and approved by the Council in writing (the “Approved Residential Travel Plan”).
- 1.2 The Owner shall commence implementation of the Approved Residential Travel Plan prior to first Occupation of the first Residential Unit to be Occupied and shall observe the requirements and obligations of the Approved Residential Travel Plan (as may be amended from time to time in accordance with paragraph 3.2 or as may otherwise be amended by agreement in writing between the Council and the Owner from time to time).
- 1.3 The Owner shall pay to the Council the Travel Plan Monitoring Contribution (Residential) prior to first Occupation of the Development and shall not Occupy or permit Occupation of the Development unless and until the Travel Plan Monitoring Contribution (Residential) has been paid to the Council.

2. CONTENTS OF RESIDENTIAL TRAVEL PLAN

- 2.1 The Owner covenants with and undertake to the Council that the Residential Travel Plan shall include (but not be limited to) the following information and measures:
 - 2.1.1 a specimen welcome pack for all Occupiers of the Residential Units;
 - 2.1.2 explore initiatives to promote cycling and walking which shall include but not be limited to the provision of visitor cycle spaces outside the entrance to each block;
 - 2.1.3 include proposals for providing and promoting public transport information (for example, maps, routes and timetables);
 - 2.1.4 proposals for monitoring of the demand of the use of Blue Badge car parking spaces;
 - 2.1.5 provide objectives and targets over the life of the Residential Travel Plan aimed at reducing car use and increasing the modal share towards more sustainable modes of transport; and
 - 2.1.6 proposals for monitoring compliance with the Residential Travel Plan and achievement of the objectives and targets.

3. REVIEW OF RESIDENTIAL TRAVEL PLAN

- 3.1 The Owner shall review the operation of the Approved Residential Travel Plan annually on the anniversary of the date of first Occupation of the first Residential Unit to be Occupied for a period of 5 years and shall submit a written report to the Council 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 Approved Residential Travel Plan are being achieved and any proposals for improving the operation of the Residential Travel Plan.
- 3.2 Following submission of a review of the Approved Residential Travel Plan, the Owner and the Council shall use reasonable endeavours to agree any necessary changes to the Approved Residential Travel Plan to ensure that the objectives and targets set out therein are achieved

and the Owner shall thereafter implement any such agreed changes to the Approved Residential Travel Plan.

4. **COMMERCIAL TRAVEL PLAN**

4.1 The Owner shall not Occupy or permit Occupation of any Commercial Unit unless or until the Commercial Travel Plan has been submitted to and approved by the Council in writing (the “**Approved Commercial Travel Plan**”).

4.2 The Owner shall commence implementation of the Approved Commercial Travel Plan prior to first Occupation of any Commercial Unit and shall observe the requirements and obligations of the Approved Commercial Travel Plan (as may be amended from time to time in accordance with paragraph 6.2 or as may otherwise be amended by agreement in writing between the Council and the Owner from time to time).

4.3 The Owner shall pay to the Council the Travel Plan Monitoring Contribution (Commercial) prior to first Occupation of any Commercial Unit and shall not Occupy or permit Occupation of any Commercial Unit unless and until the Travel Plan Monitoring Contribution (Commercial) has been paid to the Council.

5. **CONTENTS OF COMMERCIAL TRAVEL PLAN**

5.1 The Owner covenants with and undertake to the Council that the Commercial Travel Plan shall include (but not be limited to) the following information and measures:

5.1.1 a specimen welcome pack for all Commercial Occupiers of the Commercial Units;

5.1.2 explore initiatives to promote cycling and walking which shall include but not be limited to the provision of visitor cycle spaces outside the entrance to each block;

5.1.3 include proposals for providing and promoting public transport information (for example, maps, routes and timetables);

5.1.4 provide objectives and targets over the life of the Commercial Travel Plan aimed at reducing car use and increasing the modal share towards more sustainable modes of transport; and

5.1.5 proposals for monitoring compliance with the Commercial Travel Plan and achievement of the objectives and targets.

6. **REVIEW OF COMMERCIAL TRAVEL PLAN**

6.1 The Owner shall review the operation of the Approved Commercial Travel Plan annually on the anniversary of the date of first Occupation of the first Commercial Unit to be Occupied for a period of [5] years and shall submit a written report to the Council 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 Approved Commercial Travel Plan are being achieved and any proposals for improving the operation of the Approved Commercial Travel Plan.

6.2 Following submission of a review of the Approved Commercial Travel Plan, the Owner and the Council shall use reasonable endeavours to agree any necessary changes to the Approved Commercial Travel Plan to ensure that the objectives and targets set out therein are achieved and the Owner shall thereafter implement any such agreed changes to the Approved Commercial Travel Plan.

Schedule 12

Waste Management Capacity

The Owner covenants with the GLA and the Council as follows:

1. No development aside from Enabling Works (which for the purposes of this paragraph only does not include demolition works) shall Commence at the Site until replacement waste management capacity has been provided at 79-85 Beddington Lane, Beddington CR0 4TH in the London Borough of Sutton to such an extent that operation of the facility can commence in accordance with permission DM2018/01865 for the construction and operation of the Beddington Lane Resource Recovery Facility

Schedule 13

Belgrave Walk Tram Stop

The Owner covenants with the GLA and the Council as follows:

Belgrave Walk Tram Stop Contribution

1. The Owner shall pay to the Council the Belgrave Walk Tram Stop Contribution in full prior to Commencement

Belgrave Walk Permissive Path

2. The Owner shall pay to the Council the Belgrave Walk Permissive Path Contribution in full prior to Occupation PROVIDED THAT this payment obligation shall cease and be void and such part of the monies which remain unspent (not being the subject of evidenced spend) shall be returned to the Developer promptly if either:
 - a. TfL carry out the initial design work for the Belgrave Walk Permissive Path and either conclude that it is not possible to construct and implement the Belgrave Walk Permissive Path; or
 - b. Prior to Occupation a footpath providing direct access for members of the public from the Site to the Belgrave Walk Tram Stop has been provided as part of the development of the Adjoining Site.
3. The Owner agrees to facilitate and not prejudice the design, delivery and maintenance of the Belgrave Walk Permissive Path including not prejudicing compliance by TfL and the Council of their obligations relating to the design, delivery and maintenance of it in any permissive path agreement entered into in respect of the Belgrave Walk Permissive Path.

The Council covenants with the Owner as follows:

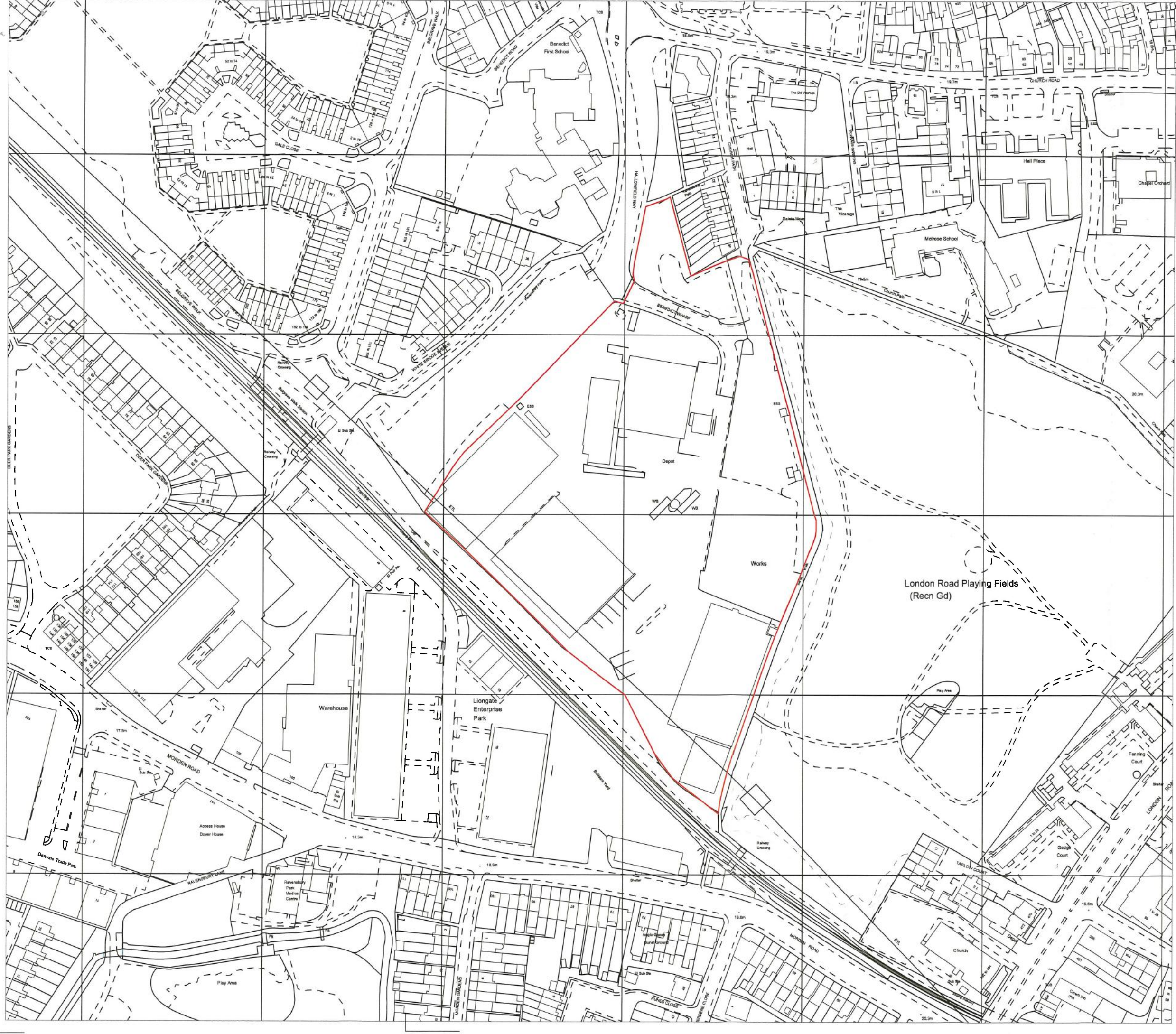
4. To notify TfL within 10 working days of receipt of the Belgrave Walk Permissive Path Contribution paid pursuant to Paragraph 2 of Schedule 13 and to pay the Belgrave Walk Permissive Path Contribution to TfL within 10 Working Days of receipt of written confirmation from TfL that it will use the Belgrave Walk Tram Stop Contribution pursuant to Paragraph 2 of Schedule 13 only for the purposes specified in this deed and it will repay to the Council any of the Belgrave Walk Permissive Path Contribution that remains unspent by the date which is the fifth anniversary of payment by the Developer under paragraph 2 of Schedule 13
5. To notify TfL within 10 working days of receipt of the Belgrave Walk Tram Stop Contribution paid pursuant to paragraph 1 of Schedule 13 and to pay the same to TfL within 10 Working Days of receipt of written confirmation from TfL that it will use the Belgrave Walk Tram Stop Contribution paid pursuant to paragraph 1 of Schedule 13 only for the purposes specified in this deed and it will repay to the Council any of the Belgrave Walk Tram Stop Contribution that remains unspent after 5 years
6. To repay to the Developer within two months of the date which is the fifth anniversary of payment by the Developer under paragraph 2 of Schedule 13 any part of the Belgrave Walk Permissive Path Contribution which unspent or uncommitted and/or is repayable under paragraphs 2 of Schedule 13
7. To repay to the Developer within two months of the date which is the fifth anniversary of payment by the Developer under paragraph 1 of Schedule 13 any part of the Belgrave Walk Tram Stop Contribution which unspent or uncommitted

Schedule 14
Plans

Plan 1 – Site location Plan

Plan 2 – Indicative Belgrave Way Tram Stop Plan

Plan 3 – Indicative Framework Plan Access and Movement



The contractor is responsible for checking dimensions, tolerances and references. Any discrepancy to be verified with the Architect before proceeding with the works. Where an item is covered by drawings to different scales the larger scale drawing is to be worked to.

Do not scale drawing. Figured dimensions to be worked to in all cases.

CDM REGULATIONS 2015. All current drawings and specifications for the project must be read in conjunction with the Designer's Hazard and Environment Assessment Record

All intellectual property rights reserved.

— SUEZ Site Boundary

CM OF

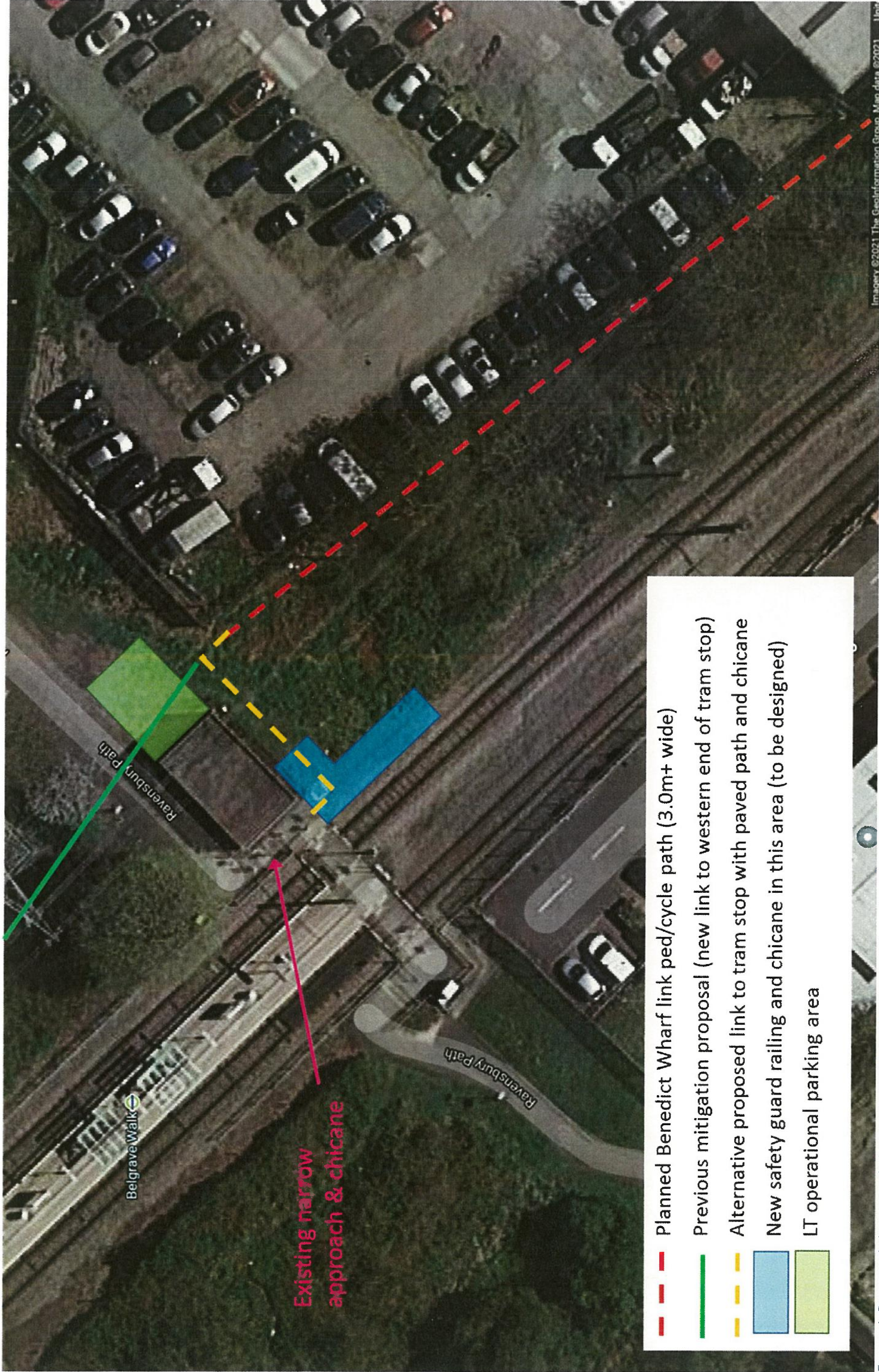
A	26.11.2018	UPDATED SITE BOUNDARY	CI	JB
Rev	Date	Description	Dwn	Ckd

LB BENEDICT WHARF
SITE BOUNDARY

AA7042 - SK004 **REV A**
FOR INFORMATION

Drawn JB Checked JB Date 12.07.2018 Scale @ A3 1:2000

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 020 7653 1200



Existing narrow approach & chicane

- Planned Benedict Wharf link ped/cycle path (3.0m+ wide)
- Previous mitigation proposal (new link to western end of tram stop)
- Alternative proposed link to tram stop with paved path and chicane
- New safety guard railing and chicane in this area (to be designed)
- LT operational parking area

SM
Q

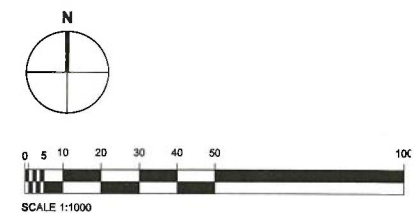
Figure 4. Proposed alternative link to tram stop from the planned Benedict Wharf path

The contractor is responsible for checking dimensions, tolerances and references. Any discrepancy to be verified with the Architect before proceeding with the works. Where an item is covered by drawings to different scales the larger scale drawing is to be worked to.

Do not scale drawing. Figured dimensions to be worked to in all cases.

CDM REGULATIONS 2015. All current drawings and specifications for the project must be read in conjunction with the Designer's Hazard and Environment Assessment Record.

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- KEY**
- Outline application boundary
 - Primary vehicle access
 - Emergency vehicle access
 - Vehicle and pedestrian route
 - Pedestrian and cycle access to and from London Road Playing Fields
 - Indicative pedestrian walkway and designated cycle lane
 - Shared surface for emergency access only
 - Indicative pedestrian only interim connection to and from Belgrave Walk tram stop
 - Indicative linear open space
 - Indicative development parcel outline*
 - Indicative building facade line
- * Including private defensible space

CM *01*

Rev	Date	Description	Drawn	Clk
BENEDICT WHARF				
INDICATIVE FRAMEWORK PLAN				
ACCESS AND MOVEMENT				
AA7402 - 02072				
FOR PLANNING				
Drawn	MB	Checked	ZO	Date 13/02/2020 Scale @ A1 1:1000

NOTE: FOR ILLUSTRATIVE PURPOSES ONLY

Executed as a deed by **THE GREATER LONDON AUTHORITY** acting by:

.....
Authorised signatory

Executed as a deed by **SUEZ RECYCLING AND RECOVERY UK LIMITED** acting by two directors/one director and its secretary

.....
Director

.....
Director / Secretary

Executed as a deed by **SUEZ RECYCLING AND RECOVERY SOUTH EAST LIMITED** acting by two directors/one director and its secretary

.....
Director

.....
Director / Secretary

THE COMMON SEAL of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON was hereto affixed in the presence of)
)

Authorised Signatory