

DATED *16th March* 2023

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

**and**

**(2) RICHMOND HOUSING PARTNERSHIP LIMITED**

---

**AGREEMENT**

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

---

**SHOOSMITHS**

Ref. M-00995701

TABLE OF CONTENTS

1 DEFINITIONS AND INTERPRETATION .....2

2 OPERATIVE PROVISIONS .....16

3 CONDITIONALITY .....17

4 LAND NOT BOUND.....17

5 PLANNING OBLIGATIONS.....18

6 MISCELLANEOUS .....18

7 NOTIFICATION .....19

8 THIRD PARTIES .....20

9 WAIVER .....20

10 LEGAL COSTS .....20

11 OWNERSHIP .....20

12 INDEXATION .....20

13 VAT .....20

14 DISPUTE PROVISIONS .....21

15 JURISDICTION .....21

16 DELIVERY.....21

SCHEDULE 1 .....22

    FUTURE CPZ AND CAR CLUB OBLIGATIONS.....22

SCHEDULE 2 .....23

    RESIDENTIAL TRAVEL PLAN .....23

SCHEDULE 3 .....24

    CONTRIBUTIONS.....24

SCHEDULE 4 .....26

    ON-SITE AFFORDABLE HOUSING .....26

SCHEDULE 5 .....28

    VIABILITY REVIEW.....26

SCHEDULE 6 .....41

OPEN SPACE, PLAYSACE AND SUDS .....	41
SCHEDULE 7 .....	42
HIGHWAY WORKS .....	42
SCHEDULE 8 .....	43
EMPLOYMENT AND SKILLS .....	43
SCHEDULE 9 .....	46
BE SEEN ENERGY MONITORING .....	46
SCHEDULE 10 .....	47
COMMUNITY CENTRE AND MAKER LABS .....	47
SCHEDULE 11 .....	48
CONSTRUCTION.....	48
SCHEDULE 12 .....	49
COUNCILS COVENANTS .....	49

**APPENDIX 1 PLANS**

**APPENDIX 2 CONFIRMATORY DEED**

THIS AGREEMENT is made on

16<sup>th</sup> March

2023

**BETWEEN:-**

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

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

**WHEREAS:-**

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

## 1 DEFINITIONS AND INTERPRETATION

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

- “1974 Act”** means the Greater London Council (General Powers) Act 1974
- “1990 Act”** means the Town and Country Planning Act 1990
- “Accredited Car Club Provider”** means an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment therefore
- “Additional Affordable Housing Dwellings”** means the 21 London Affordable Rent Dwellings, 10 London Living Rent Dwellings and 47 Shared Ownership Dwellings to be provided as part of the Development in addition to the Replacement Social Rent Dwellings
- “Affordable Housing”** means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework 2021 (or any successor policy or legislation in respect of affordable housing)
- “Affordable Housing Dwellings”** means the 221 Dwellings to be provided as Affordable Housing consisting of:
- 143 Replacement Social Rent Dwellings, comprising 93 no x 1 bed units, 37 no x 2 bed units, and 13 no x 3 bed units (totalling 350 habitable rooms);
  - a minimum of 21 London Affordable Rent Dwellings, comprising 8 no x 1 bed units, 10 no x 2 bed units, and 3 no x 3 bed units (totalling 58 habitable rooms);
  - 10 London Living Rent Dwellings, comprising 7 no x 1 bed units and 3 no x 2 bed units (totalling 23 habitable rooms); and
  - 47 Shared Ownership Dwellings, comprising 22 no x 1 bed units, 24 no

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

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

**"Affordable Housing Plan"**

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

**"Application"**

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

**"Approved Framework Travel Plan"**

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

**"Building"**

means any building to be constructed as part of the Development

**"Business Occupier"**

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

**"Business Parking Permit"**

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

**"Business Parking Bay"**

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

**"Carbon Offset Contribution"**

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

projects within the London Borough of Richmond Upon Thames

**“Car Club”**

means a local club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them for the period of the booking

**“Car Plus”**

means the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs

**“Code of Considerate Practice”**

means the code developed by the Consideration Constructors Scheme

**“Commencement Date”**

means the date on which Commencement of Development occurs

**“Commencement of Development”**

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act **SAVE THAT** (apart from in respect of Schedule 8 Part 1 and Schedule 11) the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, utilities investigations and diversions, archaeological investigations remediation works, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing to the site boundary and **“Commence Development”** and **“Commencement”** shall be construed accordingly

**“Community Centre”**

means a permanent three storey building to be constructed on the Land in accordance with the Community Centre Specification

**“Community Centre Specification”**

means a specification to show how the building will be laid and fitted out (including construction, materials and internal specifications and facilities) to facilitate community uses in accordance with the Planning Permission

**“Community Liaison Officer”**

means a person who is appointed to communicate and coordinate activities

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

**“Community Liaison Plan”**

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

**“Considerate Constructors Scheme”**

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

**“CPZ”**

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

**“Development”**

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

**“Disabled Persons Badge”**

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

**“Dwellings”**

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

**“Eligible Purchaser”**

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



	Monitoring Report and meets the criteria in the Intermediate Housing Policy Statement
<b>"Eligible Renter"</b>	means an existing private or social tenant or tenants without sufficient combined current savings to purchase a home in the local area and whose household income at the date of renting the relevant London Living Rent Dwelling does not exceed the relevant upper limit specified in the latest London Plan Annual Monitoring Report
<b>"Employment and Skills Plan"</b>	means a plan to be agreed between the Owner and the Council for the delivery of the Local Employment Agreement, such plan to be broadly in accordance with the template format set out in appendix 2 of the Council's Planning Obligations Supplementary Planning Document (SPD) June 2020
<b>"Existing Tenant"</b>	means an existing tenant of the Land who rents a home directly from RHP (or is within a household that rents directly from RHP) who is eligible for a Replacement Social Rent Dwelling in accordance with the Ham Close Customer Offer dated Autumn 2016
<b>"Expert"</b>	means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties to this Agreement or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society
<b>"GLA"</b>	means the Greater London Authority
<b>"HDM"</b>	means the Council's Head of Development Management for the time being or such other person as may be appointed from time to time to carry out that function
<b>"Healthcare Contribution"</b>	means the sum of £161,855 to be used by the Council towards improvement to local healthcare infrastructure serving the Development
<b>"Highways Works"</b>	means the following works shown on Plan 3, Plan 4 and the plans appended to this Agreement labelled "Explanatory Plan – Phase 1 Southern Highway Works Plan", "Explanatory Plan – Phase 2 Southern

Highway Works Plan” and “Explanatory Plan – Phase 3 Southern Highways Works Plan”:

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

**"Index"**

means the Consumer Price Index

**"Index Linked"**

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

**"Intermediate Housing"**

means any Shared Ownership Dwelling or London Living Rent Dwellings developed

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

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

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

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

**“London Living Rent Dwellings”**

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

**“London Plan Annual Monitoring Report”**

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

**“Maker Labs”**

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

**“Maker Labs Specification”**

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

**“Monitoring Fee”**

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

<b>“Motor Vehicle”</b>	means any mechanically propelled vehicles intended or adapted for use on a road and/or highway
<b>“Nomination Agreement”</b>	means an agreement to be entered into with the Council for the nomination of persons to the Affordable Housing Dwellings substantially in the same form as the Council’s standard nomination agreement (and which must contain a mortgagee exclusion clause in the same form as paragraph 2.2 of Schedule 4 of this Agreement) and which shall provide the Council with nomination rights in respect of 100% of first lets of the Additional Affordable Housing Dwellings and 75% of the relets of the Replacement Social Rent Dwellings and Additional Affordable Housing Dwellings. Where a Replacement Social Rent Dwelling is not used by an Existing Tenant that unit shall be treated as an Additional Affordable Housing Dwelling for the purposes of a nomination agreement
<b>“Occupation”</b>	means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operations and <b>“Occupy”</b> <b>“Occupant”</b> and <b>“Occupier”</b> shall be construed accordingly
<b>“Occupation Date”</b>	means first Occupation of the first Dwelling
<b>“Off-site Play Contribution”</b>	means the sum of £68,644 to be used by the Council for the provision of gym and play equipment and the maintenance of gym and play equipment in the vicinity of the Development which shall include improvements to existing play facilities on Ham Village Green and play provision for the 12+ age group at Riverside Drive play space
<b>“Open Market Dwelling”</b>	means those dwellings to be constructed on the Land pursuant to the Planning Permission which are not Affordable Housing Dwellings and which are to be disposed of on the open market
<b>“Open Space”</b>	means the informal open space, Playspace, landscaping and any sustainable drainage system (SuDS) to be provided within Ham Close residential estate on the Land shown shaded green on the Plan 2 at Appendix 1 in

	accordance with the Planning Permission and the Open Space Works Specification
<b>“Open Space Management”</b>	means a scheme to be submitted to and approved in writing by the Council, which identifies: <ul style="list-style-type: none"> <li>(a) the management and maintenance plan for the Open Space, including SuDS (excluding Ham Village Green); and</li> <li>(b) the proposed means of funding the ongoing maintenance and management of the Open Space, including SuDS (excluding Ham Village Green)</li> </ul>
<b>“Open Space Works”</b>	means the works to lay out and construct the Open Space in accordance with the Open Space Works Specification
<b>“Open Space Works Specification”</b>	means a specification for the carrying out of the Open Space Works to include details of the timetable for provision, plans, details of layout, earth works, excavations, constructions, drainage, installation of water fountain, and signage to be agreed in writing between the Owner and the Council
<b>“Owner”</b>	means the Owner and their successors in title and assigns
<b>“Phase”</b>	means a phase of the Development which shall be in accordance with the planning conditions to which the Planning Permission is subject
<b>“Plan 1”</b>	means the plan appended to this Agreement at Appendix 1 and labelled ‘Site Location Plan’ (Drawing Number HCR-BPTW-S01-ZZ-DR-A-0100)
<b>“Plan 2”</b>	means the plan appended to this Agreement at Appendix 1 and labelled ‘Open Space Management Plan’ (Drawing Number LD-PLN-226)
<b>“Plan 3”</b>	means the plan appended to this Agreement at Appendix 1 and labelled ‘General Arrangement Highways Works’ (Drawing Number LD-PLN-210)

<b>“Plan 4”</b>	means the plan appended to this Agreement at Appendix 1 and labelled ‘Stopping Up Plan’ (Drawing Number 21-102-T-025)
<b>“Playspace”</b>	means the play areas for use by the general public to be provided on the Land as part of the Development
<b>“Practically Completed”</b>	means in relation to the Highways Works a provisional certificate has been issued by the Council in accordance with the agreement pursuant to section 278 of the Highways Act 1980 and the Highways Works are in the maintenance period prior to adoption by the Council
<b>“Protected Tenant”</b>	means any tenant who: <ul style="list-style-type: none"> <li>a. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Dwelling, or</li> <li>b. has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Dwelling, or</li> <li>c. was granted a lease of a Shared Ownership Dwelling (or similar arrangement where a share of an Affordable Housing Dwelling is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of an Affordable Housing Dwelling and has subsequently purchased all the remaining shares from the Registered Provider so that the tenant owns the entire Affordable Housing Dwelling</li> </ul>
<b>“Planning Permission”</b>	means a planning permission to be granted pursuant to the Application
<b>“Registered Provider”</b>	means a provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008
<b>“Rent Standard”</b>	means any standard set by the Regulator of Social Housing in relation to rent (including any associated explanatory notes, statements or

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

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

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

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

**“Reportable Unit (Residential)”** means an individual Building of five or more flats or a group of five or more houses

**“Reportable Unit (Non-Residential)”** means a Building with a single occupier/tenant or a Building with multiple tenants

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

(i) shall be construed accordingly; and

(ii) excludes any business or corporate body or bodies

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

**“Residents Parking Bay”** means a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road



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

**"Residential Travel Plan"**

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

**"Shared Ownership Dwelling"**

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

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

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

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

periodically according to the relevant income figures set out in the London Plan Annual Monitoring Report or Intermediate Housing Policy Statement (as applicable) and "Shared Ownership Lease" and "Shared Ownership Lessee" shall be construed accordingly

**"Southern Phase 1 Highways Works"**

means at the Sheridan Road/Ashburnham Road existing access junction to: Tighten the bell-mouth access to 5m, reinstate footpath at interface with development, entrance relocated and rationalised, tactile paving to be installed at crossing points

**"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 in 'Guidance on Rents for Social Housing and the Direction on the Rent Standard 2020' issued by the Ministry of Housing Communities and Local Government in April 2020 therein and subject to indexation as permitted by the Rent Standard or Rent Guidance from time to time

**"Traffic Management Administration Costs"**

**Order**

Means the sum of £2,961 to administer a Traffic Management Order to enable the installation of double yellow lines at all the bell-mouth access junctions into the site to reduce the risk of unsafe parking

**"Travel Plan Co-ordinator"**

means a travel plan co-ordinator to be appointed by the Owner and approved in writing by the HDM in relation to the Residential Travel Plan

**"Travel Plan Monitoring Contribution"**

means the sum of £5,000 to be used by the Council to cover the costs of monitoring the implementation the Residential Travel Plan

**"Tree Replacement Contribution"**

means the sum of £174,450 to be used by the Council to provide replacement tree planting in the vicinity of the Development

**"Village Green Contribution"**

means the sum of £23,266 to be used by the Council towards improvements to Ham Village Green, to include new paths, a buffer zone around the community centre and landscaping

**"Wheelchair User Units"**

means Affordable Housing Dwellings to be constructed to Building Regulation

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

**“Working Day”**

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

1.2 Where the context so requires:-

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

**2 OPERATIVE PROVISIONS**

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

3      **CONDITIONALITY**

Clause 5.1 below is conditional upon: -

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

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

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

4.1.1    give notice to the Council; and

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

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

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

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

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

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

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

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

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

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

## 5 **PLANNING OBLIGATIONS**

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

## 6 **MISCELLANEOUS**

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

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

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

## **7 NOTIFICATION**

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

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

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

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

## 8 **THIRD PARTIES**

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

## 9 **WAIVER**

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

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

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

10.1.1 its reasonable legal fees; and

10.1.2 the Monitoring Fee.

## 11 **OWNERSHIP**

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

## 12 **INDEXATION**

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

## 13 **VAT**

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

14      **DISPUTE PROVISIONS**

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

15      **JURISDICTION**

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

16      **DELIVERY**

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

17      **COUNTERPART**

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

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



## **Schedule 1**

### **FUTURE CPZ AND CAR CLUB OBLIGATIONS**

#### **1 FUTURE CPZ OBLIGATIONS**

1.1 The Owner covenants with the Council to:

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

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

#### **2 CAR CLUB**

2.1 The Owner covenants with the Council:

2.1.1 to provide to the HDM the name of the Accredited Car Club Provider and not to Occupy the Development unless and until the Accredited Car Club Provider for the Development has been approved by the HDM (such approval not to be unreasonably withheld or delayed);

2.1.2 within one month of the Occupation Date to procure at its own expense that the first Occupier of each Dwelling shall have membership of the approved Car Club for 3 years (limited to membership of one individual per Dwelling) and to provide a copy of the final signed and dated contract with the Accredited Car Club Provider to the HDM;

2.1.3 to secure that five (5) car parking spaces are reserved for the use of the Car Club on the Land and shall provide them within the relevant Phases and prior to the Occupation of 90% of the Dwellings within that phase and retain those spaces as part and for the lifetime of the Development (unless otherwise agreed with the Council); and

2.1.4 in the event that the Accredited Car Club Provider is no longer able to provide the Car Club for the Development the Owner shall notify the HDM in writing and shall then use all reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Agreement.