

**DATED**

**2007**

**(1) LONDON THAMES GATEWAY DEVELOPMENT CORPORATION**

**- and -**

**(2) [*FREEHOLD OWNER*]**

**- and -**

**(3) [*LEASEHOLD OWNER*]**

**(4) [*DEVELOPER*]**

**-and-**

**(5) [*MORTGAGEE*]**

**-and-**

**(6) [*ANY OTHER PARTY WITH SIGNIFICANT INTEREST IN SITE*]**

**DEED**

made pursuant to section 106 of the  
Town and Country Planning Act 1990  
(as amended) relating to land at

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**Appendix 1**

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**Appendix 2**

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**THIS DEED** is made on

2007

**BETWEEN**

- (1) **LONDON THAMES GATEWAY DEVELOPMENT CORPORATION** of 9th Floor, South Quay Plaza 3, 189 Marsh Wall, London E14 9SH (the **Corporation**);
- (2) \*\* (company number \*\*) whose registered office is situated at \*\*  
and \*\* (company number \*\*) whose registered office is situated at \*\*  
(the **Owner**); and
- (3) \*\* (company number \*\*) whose registered office is situated at \*\*  
(the **Mortgagee**); and
- (4) \*\* (company number \*\*) whose registered office is situated at \*\*  
(the **Developer**)

**WHEREAS**

- A By virtue of the London Thames Gateway Development Corporation (Planning Functions) Order 2005, which came into force on 31 October 2005, the Corporation is the Local Planning Authority for the area within which the Property is situated and for development of the nature of the Development.
- B The Corporation is the appropriate statutory body to enforce this Deed for the purposes of section 106 of the 1990 Act.
- C The Owner is registered at HM Land Registry as the freehold owner of the Property under title number \*\* .
- D The Mortgagee is the proprietor of a registered a charge on the freehold title of the Property dated \*\* .
- E The Developer submitted the Application to the Corporation.
- F The Corporation considers it expedient in the interests of the proper planning of its area and having regard to all other material considerations that provision should be made for regulating the Development in the manner set out in this Deed.
- G The Owner, the Developer and the Mortgagee have agreed to enter into this Deed, accepting that the obligations that it contains fall properly to be considered as material to the determination of the Application.
- H The Discounted Standard Charge applicable to this Development has been set at £\*\* for the area within which the Development is located
- I [The Corporation has agreed to offset the cost of [*specify works*\*\* ] against payment of the Discounted Standard Charge]
- J The Corporation has resolved to grant the Planning Permission pursuant to the Application subject to the conditions set out in the Planning Permission and subject to the covenants, undertakings and restrictions herein contained.

**NOW THIS DEED WITNESSETH** as follows:

## **1 Definitions and interpretation**

In this Deed where the context so admits the following expressions shall have the following meanings:

### **1.1 Definitions**

**1990 Act** means the Town and Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force

**Affordable Housing** means residential accommodation for which the asking price or rent is significantly lower than prevailing market prices for similar units and which is subject to arrangements which seek to ensure its availability in perpetuity and comprising :

- (a) Social Rented Units;
- (b) Intermediate Affordable Housing Units

**Affordable Housing Land** means that part of the Property containing the Affordable Housing Units

**Affordable Housing Provider** means either :

- (a) a Registered Social Landlord; or
- (b) a provider and manager of Affordable Housing approved by the Corporation or the Council

**Affordable Housing Scheme** means a scheme to be submitted to and approved by the Local Planning Authority containing the details and mechanisms for the provision of the Affordable Housing Units to be provided on the Affordable Housing Land within the Development pursuant to the Planning Permission etc

**Affordable Housing Units** means the units of Affordable Housing to be provided in the Development pursuant to the Planning Permission

**All Items Retail Prices Index** means the index of retail prices published by the Office of National Statistics or any successor thereof

**Application** means the [full/outline] planning application for the Development dated \*\* and given reference number \*\* for the \*\*

**BC Index** means the Building Cost Information Service All in Tender Price Index as published by BCIS (a trading division of the Royal Institution of Chartered Surveyors Business Services Ltd) or such similar index as may from time to time be published to replace such index

**Commercial Unit** means any unit of commercial floorspace constructed on the Property pursuant to the Planning Permission

**Community Facilities** means the community facilities to be provided within the Development being \*\* for the purpose of \*\* to be located within that part of the Property shown for indicative purposes only edged\*\* on the Plan attached hereto at Appendix 1

**Completion** means the proper issue of a certificate of practical completion of any works carried out pursuant to this Deed or as the context may allow any part, section or phase thereof by an independent architect, engineer or other certifying professional as the case may be and the terms "Complete", "Completed" and cognate expressions shall be interpreted in accordance with this definition and Occupation of any Residential Unit shall be determinative of Completion even in the absence of a certificate

**Corporation's Planning Functions areas** means the areas set out in the maps referred to in the London Thames Gateway Development Corporation (Planning Functions) Order 2005

**Council** means the London Borough of \*\*

**[Deferred Part of the Standard Charge** means that part of the Standard Charge for each Residential Unit the payment of which is dependent on the Development Realised Average Sales Value]<sup>1</sup>

**Development** means the development of the Property in accordance with the Planning Permission

**Development Realised Average Sales Value** means the average sale price per metre realised for sales to an independent third party of Open Market Units within the Development calculated in accordance with Schedule 2

**Discounted Standard Charge** means a charge of £\*\* (\*\* pounds) Index-linked from \*\* to date of payment the charge being a discounted amount of the Standard Charge relevant to the Development having reached a balance between the costs of infrastructure required in the Corporation's area to support development, the likely scale of the development that will come forward and the level of charge that it is appropriate for developments to meet without stifling development

**Discounted Market Units** means \*\*<sup>2</sup>

**Expert** means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute as follows:

- (a) if the dispute relates to transport or highway works, engineering, demolition, or construction works, a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 10 years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed at the request of any of the parties by or on behalf of the President from time to time of the Institution of Civil Engineers;
- (b) if the dispute relates to any building within the Development or any similar matter, a chartered surveyor (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors;
- (c) if the dispute relates to financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant, a chartered accountant (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institute of Chartered Accountants in England and Wales; and

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<sup>1</sup> Delete if not using this alternative under paragraph 2.4 of Schedule 1

<sup>2</sup> Affordable housing definitions will be agreed for each local authority area

- (d) if the parties to the dispute shall fail to agree upon the nature or difference in question then it should be referred to a solicitor or barrister of at least 15 years' standing agreed by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Law Society

**[Fixed Deferred Charge** means the figure set out below per Residential Unit Index-Linked from the date of this Agreement to date of payment<sup>3</sup>

<b>Date of Completion of Residential Unit</b>	<b>Fixed Deferred Charge</b>
**	**
**	**
**	**

**Highway Works** means the highway works to be carried out to provide \*\* in accordance with the Highway Works Scheme

**Highway Works Scheme** means the scheme containing the details and mechanisms for carrying out the Highway Works

**Housing Corporation** means the non-departmental government body that funds and regulates Registered Social Landlords or such other body as may replace it

**Implementation** means the implementation of the Development in accordance with the Planning Permission by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the 1990 Act provided that for the avoidance of doubt the carrying out of archaeological investigations demolition remediation works site clearance site preparation and surveys shall be deemed not to constitute a material operation

**Implementation Notice** means a written notice given by or on behalf of the Developer or Owner to the Corporation stating the date of Implementation of the Development to be addressed to the Director of Planning, London Thames Gateway Development Corporation, 9th Floor, South Quay Plaza III, 189 Marsh Wall, London E14 9SH and stating the application reference number and a notice will be deemed to have been given if Implementation has occurred

**Index-Linked** means the adjustment of the financial sums referred to in this Deed by Indexing from April 2007 to the date of payment

**Indexing** means the recalculation of any amount specified in this Deed by applying the following formula:

$$A \times B/C = D \text{ where:}$$

A = the sum specified in this Deed in pounds sterling

B = [101% of] the figures shown in the BC Index (provisional index if that is the latest information available) for the period prior to the date to which the sum concerned is to be indexed under the provisions of this Deed<sup>4</sup>

<sup>3</sup> Delete if not using this alternative under paragraph 2.4 of Schedule 1

C = the figure shown in the BC Index for latest period prior to date from which the sum concerned is to be indexed under the provisions of this Deed

D = the recalculated sum in pounds sterling applying under this Deed

Provided B/C shall never be less than 1

Provided also that if the BC Index becomes no longer maintained the said formula shall be applied mutatis mutandis (so far as concerns periods after it ceases to be so maintained) by reference to such other similar publication or index as may specified from time to time by the Corporation

**Interest** means interest at 3% per cent above the base lending rate of the [National Westminster] Bank Plc from time to time

**Intermediate Affordable Housing Units** means any of the following :

- (a) Shared Ownership Units
- (b) Shared Equity Units
- (c) Discounted Market Units

**Management Scheme** means a scheme containing the details and mechanisms for the management of the Public Realm Areas and \*\* within the Development to be submitted to and approved by the Local Planning Authority

**Maximum Number of Residential Units** means \*\* being the maximum number of Residential Units that may be constructed pursuant to the Planning Permission

**Nominations Agreement** means an agreement to be entered into between the Council and the Registered Social Landlord

**Occupation** means the use of the buildings and land at the Property for the purposes permitted by the Planning Permission save for temporary occupation for the purposes of construction or fitting out the buildings and the word "Occupy" and "Occupied" and cognate expressions shall be construed accordingly

**Open Market Units** means Residential Units that are not Affordable Housing Units

**Phasing Scheme** means the scheme containing details and mechanisms for the phasing of the Development

**Plan** means the plan marked \*\* attached to this Deed at Appendix 1 hereto

**Planning Permission** means the planning permission granted pursuant to the Application for the Development as annexed at Appendix 2 to this Deed

**[Prevailing Discounted Standard Charge** means the figure for the Discounted Standard Charge last adopted by the Corporation prior to the Quarter in which a payment becomes due under Paragraph [2.4 or] 2.5 of Schedule 1 and which is Index-Linked from the date of such adoption to date of payment]

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<sup>4</sup> The additional 1% takes account of the fact that the BC Index report will always be at least 3 months out of date

**Property** means land at \*\* and registered at the Land Registry under title number(s) \*\* shown for the purposes of identification only edged red on the Plan

**Public Realm Areas** means the areas of public open space comprised within Development of at least \*\* square metres to be located within that part of the Property shown for the purposes of identification only edged \*\* on the Plan

**Public Realm Scheme** means a scheme containing the details and mechanisms for providing the Public Realm Areas

**Public Sector Investment Plan** means the plan for infrastructure to be provided in the Lower Lea Valley or London Riverside Areas (as appropriate) as contained in Schedule 5 to this Deed and as may be revised from time to time

**Quarter** means the three calendar months ending on 31 March, 30 June, 30 September and 31 December in each year

**Realised Average Sales Value** means the average sale price per metre realised for sales to independent third parties of Open Market Units within the Development calculated in accordance with Schedule 2

**Realised Sales Value** means the total consideration payable for the market units within the Development calculated in accordance with Schedule 2

**Registered Social Landlord** means a registered social landlord as defined in Part 1 of the Housing Act 1996 registered with the Housing Corporation

**Request for Security Confirmation** means a written notice from the Corporation requesting a Security Confirmation in relation to specified Residential Units within the Development

**Residential Unit** means any separate unit of residential accommodation constructed on the Property pursuant to the Planning Permission

**Security** means in relation to any Residential Units specified in a Request for Security Confirmation legal provision by way of a bank bond cash deposit mortgage parent company guarantee or other mechanism agreed between the Corporation and the Owner guaranteeing the availability of funds to pay [all Discounted Standard Charges and Deferred Part of the Standard Charges] in relation to the Residential Units when they fall due in accordance with this Agreement

**Security Confirmation** means a document that provides detailed information about the resources available to the Owner (including the value of the land)

**Security Notice** means a notice from the Corporation specifying why the Corporation is not reasonably satisfied that the Security Confirmation is sufficient to provide the Corporation with a good level of confidence that the remaining Discounted Standard Charges, Prevailing Discounted Standard Charge (where appropriate) and Deferred Part of the Standard Charges in relation to the Residential Units will be paid when they fall due in accordance with this Agreement

**Shared Equity Units** means \*\* 5

**Shared Ownership Units** means \*\* 5

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<sup>5</sup> Affordable housing definitions will be agreed for each local authority area

**Standard Charge** means the Index Linked average cost per Residential Unit of providing infrastructure and services within the relevant part of the Corporation's Planning Functions Area assessed at the date of this Deed as \*\* by the Corporation or such Index-Linked reduced figure notified to the Owner and Developer pursuant to Paragraph 3 of Schedule 4

**Works in Kind** means those works which the Owner or Developer wish to carry out themselves the details specification(s) and programming of which are approved by the Corporation in accordance with the provisions of this Deed

**Works in Kind Costs** means (as appropriate in the particular context) either:

- (a) the estimated construction costs of carrying out any Works in Kind together with associated design fees and supervision fees and required maintenance contributions (where applicable) though excluding for the avoidance of doubt any bond fees; and
- (b) the actual construction costs of carrying out any Works in Kind together with associated design fees and supervision fees and required maintenance contributions (where applicable) though excluding for the avoidance of doubt any bond fees and in the case of Works in Kind

and in each case shall not exceed the amount assessed as being the cost of those Works in Kind used in the calculation of the Standard Charge

## 2 Interpretation

- 2.1 The headings appearing in this Deed are for ease of reference only and will not affect the construction of this Deed.
- 2.2 Unless the context requires otherwise references in this Deed to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs, annexures, appendices and schedules are references to those contained in this Deed and references to plans and drawings are references to plans and drawings annexed to this Deed.
- 2.3 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 2.4 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same.
- 2.5 In this Deed words importing the singular shall include the plural and vice versa and words importing one gender shall include all other genders.
- 2.6 In this Deed the expressions "Owner", "Developer", "Mortgagee", "Council" and "Corporation" shall include their respective statutory successors in respect of the functions to which this Deed relates and/or successors in title to the Property as the case may be.
- 2.7 Any obligations of the parties to this Deed contained in this Deed which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires provided that nothing herein shall impose any liability upon either of the parties for the actions of the other.
- 2.8 Any covenant by the Owner and/or Developer not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred and any

covenant by the Owner and/or Developer to do an act or thing may be deemed to include an obligation to procure that the act or thing is done.

- 2.9 In the event of any conflict between the provisions of this Deed and any document annexed hereto as referred to herein, the terms, conditions and provisions of this Deed will prevail.
- 2.10 Where any approval, consent, agreement or the like is required to be given pursuant to the terms of this Deed it shall be in writing and no party shall unreasonably withhold or delay any such approval, consent, agreement or the like provided that nothing herein shall fetter the statutory rights, powers or duties of the Corporation and/or Local Planning Authority.

### **3 Legal Basis**

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act and the obligations herein constitute planning obligations for the purposes of the 1990 Act enforceable by the Corporation as the local planning authority.
- 3.2 It is agreed that the Owner and Developer and Mortgagee enter this Deed with the effect of the planning obligations binding the Property.

### **4 Conditionality**

- 4.1 The planning obligations in Schedule 1 of this Deed are conditional upon:
- (a) the grant of the Planning Permission; and
  - (b) the Implementation Notice being given or deemed to have been given.

### **5 Provisions for Release**

- 5.1 It is agreed that this Deed will determine if the Planning Permission is quashed, cancelled, revoked or expires prior to Implementation.
- 5.2 Upon reasonable request from the Owner and/or Developer and subject to payment of its reasonable and proper professional costs and charges the Corporation will certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed.

### **6 Covenants by the Owner and Developer**

- 6.1 The Owner and Developer jointly and severally covenant with the Corporation to carry out and comply with the obligations on their part contained in Schedules 1 and 2 to this Deed.

### **7 Provisions Relating to the Corporation**

- 7.1 Nothing in this document in any way fetters the statutory rights, powers and duties of the Corporation as local planning authority.

### **8 Mortgagee's Consent**

- 8.1 The Mortgagee consents to the Owner and Developer entering into this Deed and acknowledges that the Property will be bound by the terms and obligations contained in this Deed and if the Mortgagee become a mortgagee in possession of the whole or any part of the

Property the Mortgagee will not carry out or procure the Development or any part thereof without performing and observing the terms and obligations contained in this Deed.

## **9 Successors in Title**

9.1 The parties agree that this Deed will be binding upon the Property and will be enforceable against the Owner, Developer and Mortgagee and their successors in title and those deriving title under them in respect of the Property and as provided in section 106(3) of the 1990 Act but in accordance with section 106(4) of the 1990 Act it is the intention of the parties that neither the Owner, Developer or Mortgagee nor their successors in title nor those deriving title under them will have any further liability under this Deed (but without prejudice to any rights of the Local Planning Authority in respect of any antecedent breach) in respect of any period during which the Owner or Developer or Mortgagee or as the case may be any of their successors in title or those deriving title under them no longer have an interest in the Property.

## **10 Registration**

10.1 It is agreed between the parties that this Deed will be registered as a Local Land Charge for the purposes of the Local Land Charges Act 1975.

## **11 Third Party Rights**

11.1 A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

## **12 Dispute Resolution**

12.1 In the event of any dispute or difference between the Owner, Developer and Mortgagee and the Corporation or any of them arising out of this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of this Deed) the Owner, Developer and Mortgagee and the Corporation agree that the matter in dispute will on the application of either of the parties be referred to the Expert and it is further agreed that:

- (a) the determination of the Expert will be final and binding on the parties save in the case of manifest error;
- (b) the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert directs;
- (c) the Expert's costs will be borne in such proportions as he/she may direct failing which the parties will each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and
- (d) the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee will be appointed in the same manner as the Expert.

## **13 Variations**

13.1 No variation to this Deed will be effective unless made by Deed or pursuant to the determination of an application made under section 106A of the 1990 Act.

## **14 Service of Notices**

14.1 All notices, requests, demands or other written communications to or upon the respective parties pursuant to this Deed will be deemed to have been properly given or made if despatched by first class letter to the party to which such notice, request, demand or other written communication is to be given or made under this Deed and addressed as follows:

- (a) if to the Corporation to the address set out above for the attention of the Chief Planning Officer;
- (b) if to the Owner to the address set out above for the attention of \*\* ;
- (c) if to the Developer to the address set out above for the attention of \*\* ;  
and
- (d) if to the Mortgagee to the address set out above for the attention of \*\* .

## **15 The Corporation's Legal and other Professional Costs**

15.1 The Owner and Developer agree that upon completion of this Deed it will pay the Corporation's reasonable professional costs including the costs of legal advice, valuation and cost consultancy and any costs incurred in preparing or reviewing development appraisals including any VAT thereon and disbursements properly incurred in the negotiation and completion of this Deed in the sum of \*\* .

## **16 VAT**

16.1 If VAT becomes payable on payments made under this Deed that VAT will be additional to the sums required, provided that the Owner and/or Developer will be entitled to valid VAT receipts in respect of any vatiable supplies properly incurred under this Deed.

## **17 Interest**

17.1 If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

## **18 Transfers to the Corporation**

18.1 The parties agree that the transfer of land to the Corporation for public use will be at nil value

18.2 The parties will use reasonable endeavours to ensure that no Stamp Duty Land Tax is payable in accordance with the provisions of section 61 of the Finance Act 2003 on any transfer of land to the Corporation and the parties will take such steps as may be lawful to structure the transfer arrangements accordingly.

18.3 The Owner and/or Developer covenant to the Corporation that if any transfer to the Corporation has Stamp Duty Land Tax (or any equivalent replacement tax) payable on it the Owner and/or Developer will be responsible for all such tax due in relation to the transfer.

**IN WITNESS** whereof this Deed has been executed by the parties hereto and is intended to be and is delivered on the date first above written

# Schedule 1 - Site Specific Covenants

## 1 Implementation

The Owner and Developer will serve an Implementation Notice on the Corporation fifteen (15) working days prior to the anticipated Implementation of the Development

## 2 Standard Charge

### *General Obligations*

2.1 The Owner and Developer will pay to the Corporation an amount up to the full amount of the Index Linked Standard Charge for each Residential Unit within the Development in accordance with the provisions that follow in this paragraph

### *Payment of Discounted Standard Charge*

2.2 The Owners and the Developer shall be liable to pay to the Corporation the Discounted Standard Charge as follows

- (a) twenty five per cent (25%) of the Discounted Standard Charge for the Maximum Number of Residential Units will be paid on Implementation of the Planning Permission<sup>6</sup>; and
- (b) [seventy five per cent (75%) of the Discounted Standard Charge] [and in relation to any housing unit completed more than three years after the date of the Planning Permission the balance of the Prevailing Discounted Standard Charge]<sup>7</sup> payable in respect of each Residential Unit will become payable on Completion of each Residential Unit

2.3 The payment of any Discounted Standard Charge due under paragraph 2.2(b) will be made within 20 working days of the end of each Quarter in relation to all Residential Units Completed within that Quarter

### *Payment of [Deferred Part of the Standard Charge] [Fixed Deferred Charge]<sup>8</sup>*

2.4 [If the Development comprises 100 or more Residential Units the Owners and Developer shall pay the Deferred Part of the Standard Charge in relation to all Residential Units Completed more than three (3) years after the date of the Planning Permission within 20 days of the end of each calendar year in relation to all Residential Units Completed within that calendar year.]

[or]

[If the Development comprises 100 or more Residential Units the Owner and Developer shall pay the Fixed Deferred Charge in relation to all Residential Units Completed more than three (3) years after the date of the Planning Permission within 20 days of the end of each calendar year in relation to all Residential Units Completed within that calendar year.]

### *Long Stop Date*

2.5 Following Implementation and in relation to any Residential Unit comprised within the Maximum Number of Residential Units:

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<sup>6</sup> In the case of phased developments, the Corporation will consider relating the triggers under paragraph 2.2 (a) to each phase

<sup>7</sup> Only applicable if the Development includes one hundred (100) or more residential units and the Developer opts to pay the Prevailing Discounted Standard Charge

<sup>8</sup> Delete as appropriate depending on whether Developer opts to pay the Deferred Part of the Standard Charge, or the Fixed Deferred Charge

- (a) if any part of the Discounted Standard Charge in relation to such Residential Unit has not been paid by the tenth (10<sup>th</sup>) anniversary of Implementation the Owner and Developer covenant with the Corporation to pay the Prevailing Discounted Standard Charge for each such Residential Unit less any sum paid under paragraph 2.2 (a) of this Schedule in relation to that Residential Unit on the tenth (10<sup>th</sup>) anniversary of Implementation; and
- (b) if:
  - (i) any such Residential Unit has not been completed within three (3) years of the date of the Planning Permission; and
  - (ii) a [Deferred Part of the Standard Charge] [Fixed Deferred Charge] has not been paid in relation to that Residential Unit before the 10th anniversary of Implementation; then
  - (iii) the Owner and Developer covenant with the Corporation to pay the [Deferred Part of the Standard Charge] [Fixed Deferred Charge] for each such Residential Unit on the tenth (10<sup>th</sup>) anniversary of Implementation.<sup>9</sup>
- (c) [The amount of the Deferred Part of the Standard Charge payable under this paragraph 2.5 for any Residential Unit shall be calculated by applying the most recently available figures for the Development Realised Average Sales Value for the Development at the date of payment]

## 2.6 *General*

- 2.6.1 The payment obligations set out at paragraph 2.5 above are without prejudice to the payment obligations in paragraphs 2.2, 2.3 and 2.4 of this Schedule;
- 2.6.2 The payments set out at paragraph 2.5 above shall be paid irrespective of whether the Residential Unit to which they relate has been Completed;
- 2.6.3 The sum of the Discounted Standard Charge and the [Deferred Part of the Standard Charge][Fixed Deferred Charge] in relation to any Residential Unit will never exceed the Standard Charge for that Residential Unit; and
- 2.6.4 The Owner and the Developer shall act in good faith in relation to the sale and rental of Residential Units and the disclosure of financial information with the objective of ensuring that if as a consequence of realising higher values whether as capital receipts or rents for Residential Units than had been anticipated they will make payments of additional amounts of the Standard Charge
- 2.6.5 Other than with the approval of the Corporation at least 50% of the Open Market Units shall be sold freehold or on a long leasehold for a capital sum

### *Maximum Charge*

- 2.7 If the Developer opts to pay the [Deferred Part of the Standard Charge][Fixed Deferred Charge] then the sum of the Discounted Standard Charge and the [Deferred Part of the Standard Charge][Fixed Deferred Charge] in relation to any Residential Unit payable under paragraphs 2.2 and 2.4 will never exceed the Standard Charge (Index Linked) in relation to that Residential Unit.

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<sup>9</sup> Delete this provision if Owner/Developer opts to pay Prevailing Discounted Standard Charge.

### **3 Works the Owner and/or Developer wishes to undertake**

3.1 If the Owner or Developer wish to carry out any Works in Kind it will submit to the Corporation for approval:

- (a) comprehensive details and specifications of the proposed Works in Kind sufficient to enable the Corporation to assess whether or not the proposed works fall within the scope of those works in the Public Sector Investment Plan;
- (b) a detailed delivery programme setting out the timescales within which the proposed Works in Kind will be carried out and completed sufficient to enable the Corporation to assess whether or not they fall within the works programme in the Public Sector Investment Plan; and
- (c) a detailed estimate of the Works in Kind Costs

3.2 If the Corporation determines that:

- (a) the details and specifications fall within the scope of those in relation to which the Standard Charge has been calculated;
- (b) the details and specifications adequately define the Works in Kind;
- (c) they can properly and lawfully procure the Works in Kind from the Owner or Developer; and
- (d) that the proposed delivery programme would not adversely affect the Corporation's programming of works or adversely affect the cost of other works which the Corporation intends to carry out then

The Owner or Developer will carry out and complete the said Works in Kind entirely in accordance with the details specifications and delivery programme approved pursuant to paragraphs 3.1 and 3.2

3.3 The Works in Kind Costs will:

- (a) be Index-Linked from the date that they were agreed; and
- (b) be off-set against any payments of the Standard Charge payable by the Owner or Developer

3.4 The following Works in Kind Costs have been approved and upon Completion of the Works in Kinds the Works in Kind Costs may then be offset against any payments of the Standard Charge then falling due

- (a) \*\*

### **4 Security**

4.1 At any time after [ the Completion of \*\* Residential Units ] the Corporation may issue a Request for Security Confirmation from the Owner.

4.2 A Security Confirmation must be provided within twenty eight (28) days of a Request for Security Confirmation.

4.3 If following receipt of a Security Confirmation the Corporation is not reasonably satisfied that the Owner will be able to pay the Discounted Standard Charges or [Deferred Part of the Standard Charges] [Prevailing Discounted Standard Charges] [Fixed Deferred Charges] required when they fall due in accordance with the Agreement it shall be entitled to serve a Security Notice on the Owner.

- 4.4 Unless there is a dispute which shall be resolved using Dispute Resolution the Owner shall provide Security to the Corporation within twenty eight (28) days of the date of the Security Notice.
- 4.5 Subject to Paragraph 4.4 if the Owner fails to provide Security within twenty eight (28) days of the date of the Security Notice there shall be a deemed default of the longstop provisions contained in Paragraph 2.5 and the Corporation may commence enforcement proceedings as it sees fit to obtain the provision of Security and/or recover the Discounted Standard Charge and the [Deferred Part of the Standard Charges] [Prevailing Discounted Standard Charges] [Fixed Deferred Charges] at the rate last charged in relation to the Maximum Number of Residential Units and shall be entitled to prevent any further development on the land specified until such time as the Security has been provided.

## **5 Contribution and Environmental Parameters**

- 5.1 No more than [•] Residential Units will be built within the Development Site.

No more than [•] sq metres of floorspace (gross external area) of Commercial Units will be built within the Development Site.

## **6 Affordable Housing**

*[These provisions will be drafted as appropriate to specific sites]*

## **7 On Site Obligations**

*[These provisions will be drafted as appropriate to specific sites]*

- (a) *On site Community Facilities obligations*
- (b) *Design obligations*
- (c) *On site Public Realm obligations*
- (d) *On site sustainability obligations*

## **8 Planning Considerations**

The Owners and Developer covenant with the Agency:

- (a) not to Implement the Planning Permission until any conditions attached to the Planning Permission which must be discharged before Implementation of the Planning Permission have been discharged and to comply with the requirements of the Act; and
- (b) to comply with all conditions attached to the Planning Permission.

## Schedule 2 – Deferred Part of the Standard Charge<sup>10</sup>

The Development Realised Average Sales Value will be determined using the following process:

1. The Developer will disclose to the Corporation within 20 working days of the end of each calendar year until the cessation of development all relevant financial information including records from the Valuation Office and Land Registry relating to the Realised Sales Values achieved for sales of all Open Market Units within the Development in the preceding calendar year.
2. The Corporation will apply the following calculation to assess the Realised Average Sales Value:
  - (a) divide the Realised Sales Value of each Open Market Unit sold within the preceding calendar year by the total floorspace of that Open Market Unit to obtain the average sales value per square metre for that unit;
  - (b) add the average sales values per square metre for each of the Open Market Units sold within the preceding calendar year;
  - (c) divide this figure by the total number of Open Market Units sold in the preceding calendar year.
4. The Corporation will apply the following calculation to assess the Development Realised Average Sales Value:
  - (a) add together the Realised Average Sales Values for each year in which Open Market Units forming part of the Development have been sold to obtain the total Realised Average Sales Values obtained during such years;
  - (b) divide this figure by the total number of years in which Open Market Units forming part of the Development have been sold to get the Development Lifetime Realised Average Sales Value
5. A Deferred Part of the Standard Charge will be required as follows:

Development Realised Average Sales Value <sup>11</sup>	Additional payment of Standard Charge	Additional payment of Standard Charge
	Lower Lea Valley	London Riverside
£3,750 to £4000 per sq. metre	An amount of £4,000 of the Standard Charge payable on all Residential Units completed in the preceding calendar year	An amount of £2,500 of the Standard Charge payable on all Residential Units completed in the preceding calendar
£4000 to £4500 per sq. metre	An amount of £8,000 of the Standard Charge payable on all Residential Units completed in the preceding calendar year	An amount of £5,000 of the Standard Charge payable on all Residential Units completed in the preceding calendar year
£4500 to £5000 per sq. metre	The Standard Charge less the Discounted Standard Charge	An amount of £10,000 of the Standard Charge

<sup>10</sup> Delete this Schedule if Developer opts to pay Prevailing Discounted Standard Charge or Fixed Deferred Charge under paragraph 2.4.1 of Schedule 1

<sup>11</sup> The Corporation is willing to consider other figures if justified and evidenced by the developer

<b>Development Realised Average Sales Value<sup>11</sup></b>	<b>Additional payment of Standard Charge</b>	<b>Additional payment of Standard Charge</b>
	<b>Lower Lea Valley</b>	<b>London Riverside</b>
	on all Residential Units completed in the preceding calendar year	payable on all Residential Units completed in the preceding calendar year
£5000 to £5,500 per sq. metre	The Standard Charge less the Discounted Standard Charge on all Residential Units completed in the preceding calendar year	An amount of £15,000 of the Standard Charge payable on all Residential Units completed in the preceding calendar year
£5,500 per sq. metre	The Standard Charge less the Discounted Standard Charge on all Residential Units completed in the preceding calendar year	The Standard Charge less the Discounted Standard Charge on all Residential Units completed in the preceding calendar year

### **Schedule 3 – Works in Kind**

*[This Schedule will set out for the Development, the specification of any works which the Corporation and the Developer agree will be undertaken as Works in Kind and the amount or proportion of the Costs of those works which the Developer will be entitled to off-set against the Standard Charge.]*

## **Schedule 4 - Corporation's Obligations**

### **1 Site Specific Obligations**

*This section will set out the any obligations accepted by the Corporation in relation to the site specific obligations.*

### **2 Management of Standard Charges by the Corporation**

- 2.1 The Corporation covenants with the Owner and Developer to use reasonable endeavours to secure the provision of the infrastructure in relation to which the Standard Charges are being paid in accordance with the Public Sector Investment Plan.
- 2.2 The Corporation covenants with the Owner and Developer to procure that the Standard Charge will only be applied towards the provision of Infrastructure in accordance with the Public Sector Investment Plan
- 2.3 The Corporation covenants with the Owner and Developer to use reasonable endeavours to ensure that all details (including applications for Reserved Matters approvals and details specifications and delivery programmes of Works in Kind) submitted by the Owner or Developer pursuant to the Planning Permission and this Deed respectively are considered expeditiously and with all due diligence.

### **3 Level of Standard Charge**

- 3.1 The Corporation covenants with the Owners and Developer that within 20 days of the end of each financial year and if the circumstances set out in Paragraph 3.2 below exist, it will reduce the level of the Standard Charge specified in this Agreement by an appropriate amount to take into account the secured level of public funding or the amount of Standard Charge it expects to receive from Commercial Units and notify the Parties of any such reduction.
- 3.2 The circumstances referred to in paragraph 3.1 are that the Corporation either:
- (a) considers both that:
    - (i) public funding has been secured for a specific element of infrastructure specified in the Public Sector Investment Plan; and
    - (ii) that full funding for all other infrastructure specified in the Public Sector Investment Plan has been secured; or
  - (b) extends the Standard Charge to commercial development.

### **4 Repayment**

- 4.1 If a surplus of Standard Charge receipts remain uncommitted 31 December \*\* following the provision of all infrastructure specified in the Public Sector Investment Plan the Corporation covenants with the Owner and Developer to use its reasonable endeavours to return an appropriate and equitable proportion of such surplus to the Owner and Developer.

### **5 Planning Conditions**

- 5.1 The Corporation covenants with the Owners and the Developer that if the Owners and/or Developer are in breach of Paragraph 8 of Schedule 1 and such a breach constitutes also a breach of planning control against which the Local Planning Authority may take action under Part VII of the Act then if the Local Planning Authority takes enforcement action the Corporation will not take enforcement action against the breach pursuant to Paragraph 8 of Schedule 1 and/or will withdraw any action it has instigated pursuant to Paragraph 8 of Schedule 1 in relation to the said breach.

# Schedule 5 – Public Sector Investment Plan

# Appendix 1

## PLAN

# Appendix 2

## DRAFT PLANNING PERMISSION

**THE COMMON SEAL** of London )  
Thames Gateway Development )  
Corporation was hereunto affixed in the )  
presence of: )

**THE COMMON SEAL** of )  
was hereunto affixed in the )  
presence of: )

Director

Director/Secretary

**THE COMMON SEAL** of )  
was hereunto affixed in the )  
presence of: )

Director

Director/Secretary

**THE COMMON SEAL** of )  
was hereunto affixed in the )  
presence of: )

Director

Director/Secretary