

DATED

23<sup>rd</sup> JUNE

2015

(1) LINDEN WATES (WEST HAMPSTEAD) LIMITED

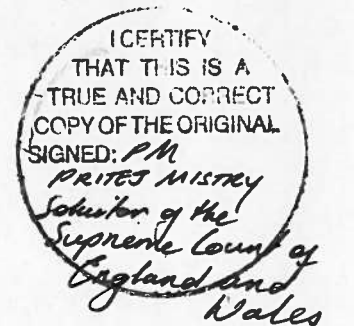
and

(2) THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF CAMDEN

**AGREEMENT**  
relating to land known as  
**GONDAR GARDENS RESERVOIR**  
**GONDAR GARDENS, WEST HAMPSTEAD, LONDON NW6**  
pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended) and  
Section 276 of the Highways Act 1980

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CLS/COM/PM/1685.1396  
2013/7585/P

FINAL 070515

THIS AGREEMENT is made the 23<sup>rd</sup> day of JUNE 2015

**BETWEEN:**

- i. **LINDEN WATES (WEST HAMPSTEAD) LIMITED** (Co. Regn. No. 07108850) whose registered office is at Cowley Business Park Cowley Uxbridge Middlesex UB8 2AL (hereinafter called "the Owner") of the first part
- ii. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

**1. WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL815686
- 1.2 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 28 November 2013 under reference number 2013/7585/P .
- 1.4 The Council refused the Planning Application on the 7<sup>th</sup> March 2014.
- 1.5 The Owner submitted an appeal to the Planning Inspectorate under Section 78 of the Act in respect of the Planning Application on the 1<sup>st</sup> May 2014 and given Planning Inspectorate reference number APP/X5210/A/14/22118052.
- 1.6 The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

- 1.7 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be for the public benefit.
- 1.8 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.9 Ahead of the Appeal the Owner submitted to the Council a completed unilateral undertaking dated 30 June 2014 relating to the Development ("the Unilateral Undertaking") for consideration by the Secretary of State. The Council does not accept this Unilateral Undertaking as having taken effect as it was unable to accept this the terms that it had been offered on and because the Council's legal fees had not been paid. The Owner now intends to proceed with this Agreement and upon its completion considers the Unilateral Undertaking to be redundant and released from the obligations set out in the Unilateral Undertaking.

## 2. DEFINITIONS

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

- 2.1 "the Accessibility Plan" a plan securing the following:-
- (a) the provision of a ground floor Social Rented Housing Unit as Wheelchair Accessible shown edged red on Plan 4
  - (b) the provision of an additional ground floor Social Rented Housing Unit as Wheelchair Accessible and fitted out in accordance with the Camden Wheelchair Housing Design Brief 2010 (adopted 6 April 2011) or any successor document shown edged blue on Plan 4
  - (c) measures to ensure that any lift access to the Wheelchair Units is maintained at all

times and in the event of routine maintenance or unexpected fault in relation to the lifts accessing the Wheelchair Unit(s) that such works/repairs are carried out diligently and in a way that endeavours to minimise disruption to wheelchair users;

(d) measures to ensure the Development is easily accessible for residents and visitors to the Development who are wheelchair users;

(e) provision of a key fob system or similar is used to ensure residents use the main service route to the Development in order to provide natural surveillance and prevent any perception of social division across the Property;

(f) principles of inclusive design inform and are fully integrated within the Development

2.2 "the Act"

the Town and Country Planning Act 1990 (as amended)

2.3 "Affordable Housing"

low cost housing including Social Rented Housing Units and Intermediate Housing that meets the needs of people who cannot afford to occupy homes available in the open market in accordance with the National Planning Policy Framework and successor documents

2.4 "Affordable Housing Contribution"

the sum of £53,000 (fifty three thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of

receipt towards the provision of Affordable Housing in the London Borough of Camden

2.5 "Affordable Housing Units"

the two Intermediate Housing Units and eight Social Rented Housing Units within the Development to be constructed fitted out and occupied exclusively as Affordable Housing

2.6 "Appeal"

The Appeal to the Secretary of State under section 78 of the Act against the refusal of the Application and given Planning Inspectorate reference APP/X5210/A/14/2218052

2.7 "the Agreement"

this planning obligation made pursuant to Section 106 of the Act

2.8 "Car Club Feasibility Plan"

a plan securing an investigation and feasibility by the Owner for the provision of two car club bays in Gondar Gardens Road in the vicinity of the Property with a local car club operator including evidence of costs figures and discussions and in the event that provision of the same is deemed feasible the Owner will account for the cost of the same in the Highways Contribution

2.9 "the Certificate of Practical Completion"

the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed

2.10 "Construction Management Plan"

a plan setting out the measures that the Owner will adopt in undertaking the demolition of the Existing Buildings and the construction of the Development using good site practices in

accordance with the Council's Considerate Contractor Manual to ensure the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):-

- (i) a statement to be submitted to Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate and offset potential or likely effects and impacts arising from the demolition of the Existing Buildings or structures on the Property and the building out of the Development;
- (ii) incorporation of the provisions set out in the First Schedule annexed hereto;
- (iii) incorporation of the provisions set out in the Second Schedule annexed hereto;
- (iv) provision of and measures to ensure compliance with a vibration impact assessment;
- (v) effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;
- (vi) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and

or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);

(vii) the inclusion of a waste management strategy for handling and disposing of construction waste; and

(viii) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time

2.11 "the Construction Phase"

the whole period between

(i) the Implementation Date and

(ii) the date of issue of the Certificate of Practical Completion

and for the avoidance of doubt includes the demolition of the Existing Buildings

2.12 "the Contributions"

means any or all of the following the Affordable Housing Contribution, the Habitat Contribution, the Highways Contribution, Public Realm Improvements Contribution and the Training and Employment Contribution

2.13 "the Council's Considerate Contractor Manual"

the document produced by the Council from time to time entitled "Guide for Contractors Working in Camden" relating to the good practice for developers engaged in building activities in the London Borough of Camden

## 2.14 "the Development"

Redevelopment of reservoir street frontage to provide 28 residential units in 2 blocks from lower ground to 3rd floors with basement parking, following substantial demolition of roof and internal structure of reservoir and subsequent re-landscaping This application is subject to an ENVIRONMENTAL IMPACT ASSESSMENT as shown on drawing numbers: Prefix T(20) E100, E01 D, E103, E02 F, E03 F, E04 E, S01 E, P00 E, P01 E, P02 F, P03 E, P04 E, P0-1 D, P0-2 D; Prefix T(90) P00 P2, P00D; 4870/B20S01 P2; JBA 10/35-01 rev M; Letter from RSK dated 8/11/13 in reference to RSK FRA report 880113-R4(1); Indicative PV Layout on A4 page; Planning statement by Rolfe Judd Planning P5228; Design and Access statement 13/11/2013 by Rolfe Judd; Environmental Report Main Report by Peter Radmall Associates Nov 2013; Environmental Report Non-Technical summary by Peter Radmall Associates Nov 2013; Gondar Gardens Lifetime Homes Review by Rolfe Judd 4870:120416; Geo-Environmental Site Assessment Report ref 23283-1 (00) by RSK Group Plc dated Dec 2009; Envirocheck Report dated 16 Feb 2011; Basement Impact Assessment Interpretative Report by Peter Radmall Associates Nov 2013; Basement Impact Assessment Land Stability Report by URS Jan 2012; Statement on Sequence of works, by URS. Undated; Basement Hydrology Assessment by RSK dated Jan 2012; Letter from Colin Whittingham, Senior Hydrologist at RSK dated 28th March 2012 Re Drainage Assessment with accompanying drawing 880113-40-01 rev P1 (Indicative Surface Water



Outfall Arrangement) and results of MicroDrainage 'WinDes' outputs; Flood Risk and Drainage Assessment 880113R4 (1) by RSK dated Jan 2012; Built Heritage Assessment by CgMs ref JO/13281 dated Nov 2013; Statement of Community Involvement by remarkable dated Nov. 2013; Appendix A: Energy Strategy Addendum by carbonplan dated Jan 2014; Climate Change letter from Peter Radmall Associates dated 10/01/14; Updated Climate Change Chapter 6 'Climate Change' dated Feb 2014; Sustainability Strategy by carbonplan dated Nov 2013; Code for Sustainable Homes Pre-Assessment carbonplan dated Nov 2013; Air Quality Impact Assessment ref 441570-01 dated Nov 2013 by RSK; Daylight and sunlight report by CHP surveyors ltd dated 8th Nov 2013; BS5228 Noise Impact Assessment ref 9384D-2 BS5228 by Noise.co.uk dated 22/12/2011; BS5228 Vibration Impact Assessment ref 9384-2 by Noise.co.uk dated 22/12/2011; Environmental Noise Survey ref 9587-2 R1 by Noise.co.uk; Car Lift Noise Assessment report 9384A-2 by Noise.co.uk dated 19/1/12; Road Noise Impact Assessment report 9384C-2 by noise.co.uk 22/12/2011; Ecological Action Plan by James Blake Associates Rev B January 2012; Reptile Mitigation Method statement by James Blake Associates Rev C December 2011; Phase 1 Habitat Survey by James Blake Associates rev A Nov 2013; Breeding Bird Survey by James Blake Associates Rev A Dec 2011; Reptile Survey by James Blake Associates Rev A Nov 2013; Bat Survey by James Blake Associates Rev B Dec 2011; Transport Statement Addendum by i-Transport dated 20 Nov 2013; Construction

Management Strategy dated Nov 2013; Letter from Chris Miele of Montagu Evans dated 07/012/14

2.15 "Ecology Action Plan"

the Ecological Action Plan by James Blake Associates Rev B dated January 2012 submitted by the Owner for the Development

2.16 "the Energy Efficiency and Renewable Energy Plan"

a strategy setting out a package of measures to be adopted by the Owner in the management of the Development with a view to reducing carbon energy emissions through (but not be limited to) the following:-

- (a) the incorporation of the measures set out in the submission document entitled Sustainability strategy dated November 2013 by Carbon Plan;
- (b) details of how the Owner will further reduce the Development's carbon emissions from renewable energy technologies located on the Property using a combination of complementary low and zero carbon technologies;
- (c) separate metering of all low and zero carbon technologies to enable the monitoring of energy and carbon emissions and savings;
- (d) a building management system being an electronic system to monitor the

Development's heating cooling and the hours of use of plant;

- (e) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on the reduction of carbon emissions contained within its Development Plan;
- (f) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Energy Efficiency and Renewable Energy Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation; and
- (g) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

2.17 "the Existing Buildings"

the redundant reservoir structure and any other associated buildings and structures located within the Property as at the date of this Agreement

2.18 "the Ecology and Enhancement Plan"

a plan to be prepared by the Owner and agreed with the Council setting out detailed measures to be undertaken by the Owner to ensure that the Retained Habitat Land is secured in perpetuity as properly managed preserved and enhanced and measures to ensure the following:-

- (a) improvement and enhancement of the Retained Habitat Land;
- (b) measures to ensure the implementation of the proposals contained in the Ecology Action Plan and the on-going compliance with the same;
- (c) details of discussions and agreement with the London Wildlife Trust or any similar organisation approved by the Council in writing with a view to transferring the Retained Habitat Land to that organisation at a peppercorn in perpetuity for it to run in accordance with the Ecology and Enhancement Plan and its own wildlife protection charter which shall include the Habitat Contribution to ensure the Retained Habitat Land is properly maintained managed and opened for controlled public access while mindful of the character of the Retained Habitat Land, the primacy of biodiversity and habitat enhancement and the privacy of neighbours ALWAYS PROVIDED if either the London Wildlife Trust or similar organisation are unable to

take control of the Retained Habitat Land the Owner shall transfer the Retained Habitat Land and the Habitat Contribution to the Council for a peppercorn and at no cost to the Council to be used as set out in this clause

- (d) measures to ensure completion of all works of remediation and landscaping to the Retained Habitat Land prior to handover to the London Wildlife Trust or other similar organisation
- (e) protection of the slow worms existing at the Property as at the date of this Agreement which are protected by the Wildlife and Countryside Act 1981 (as amended);
- (f) protection of the lowland neutral grassland;
- (g) protection of the species rich neutral grassland;
- (h) provision of bat boxes;
- (i) provision of bird boxes;
- (j) the Habitat Management Scheme;
- (k) the ongoing management of the Property;
- (l) wildlife surveys to be undertaken every year for five years
- (m) details of all landscaping including the proposed earthworks, grading, mounding and

other changes in ground levels, works of hard landscaping and all access and circulation routes and pathways; drainage and water features and details of fencing and perimeter treatment of all boundaries and necessary security and crime prevention measures. Details of all planting species and details of any works to existing tree species. All of these elements to be prepared in conjunction with London Wildlife Trust or other similar organisation.

(n) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

2.19 "Habitat Contribution"

the sum of £155,000 (one hundred and fifty five thousand pounds) being the sum agreed with the London Wildlife Trust and the Council to secure the on-going retention and management (including the controlled public access) of the Retained Habitat Land in perpetuity.

2.20 "Habitat Management Scheme"

a scheme to be prepared by the Owner setting out a minimum ten year programme to ensure enhancement of the Retained Habitat Land's biodiversity

2.21 "the Highways Contribution"

the sum of £36,922 (thirty six thousand nine hundred and twenty two pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the carrying out works to the public highway and associated measures ("the Highways Works")

these Highway Works to include costs associated with the following:-

(a) the reinstatement of the footway adjoining the Property;

(b) subject to the outcome of the Car Club Feasibility Plan the sum of £5,000 (five thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the provision of one or two car club bays including a traffic management order and consultation in relation to the same. In the event that a suitable location for the car club bays is not found and/or a willing operator of a car club is not found then this contribution to be spent on other transport measures

(c) any other highway works the Council acting reasonably requires as a direct result of the Development

all works will be subject to final measure and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertaker's costs

## 2.22 "Housing Block A"

those residential units forming a block comprised of 8 units to be constructed on the Property pursuant to the Planning Permission

2.23 "Housing Block B"

those residential units forming a block comprised of 20 units to be constructed on the Property pursuant to the Planning Permission

2.24 "the Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act which for the avoidance of doubt shall include demolition of the Existing Buildings but for the purposes of this Agreement the following shall be excluded archaeological works, site or soil investigations, grounds investigations, site survey works and the erection of hoardings and fences and references to "Implementation" and "Implement" shall be construed accordingly

2.25 "Intermediate Housing"

Affordable Housing which is above target rents but is substantially below open market levels and is affordable to people who at the commencement of their occupancy are in need of intermediate housing in terms set out in paragraph 3.61 of the London Plan (subject to annual reviews) to include Shared Ownership and other sub-market rent as agreed in writing by the Council

2.26 "Intermediate Housing Scheme"

the scheme setting out provision of Intermediate Housing within the Development submitted by the Owner and to be approved by the Council (such approval not to be unreasonably withheld) in writing ensuring the Intermediate Housing Units are occupied on the following basis:-

- (a) Shared Ownership with an initial equity share offer of at least 25 percent and a



rent level of 2 percent (per annum) on the retained equity (unless otherwise agreed in writing by the Council) such level to be retained in perpetuity subject to incremental increases linked to the Retail Price Index in accordance with Homes and Communities Agency guidance

(b) for all other Intermediate Housing products provision will be on terms to be agreed by the Council in consultation and in consideration of its own policies and those contained in the London Plan with particular reference to paragraph 3.61 (or its successor policies) and/or Shared Ownership

- 2.27 "Intermediate Housing Units" the two units of Intermediate Housing forming part of the Development comprising two 2-bed units the same as shown shaded red on Plan 2
- 2.28 "King's Cross Construction Centre" the Council's flagship skills construction training centre providing advice and information on finding work in the construction industry
- 2.29 "Local Procurement Code" the code annexed to the Third Schedule hereto
- 2.30 "the Level Plans" plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway
- 2.31 "the Monitoring Fees" the sum of £5,665 (five thousand six hundred and sixty five pounds) to be paid by the Owner to the Council and to be applied by the Council in

the event of receipt for the monitoring of the obligations contained within this Agreement

2.32 "Occupation Date"

the date when any part of the Development is occupied but does not include occupation for the purposes of construction, marketing, fitting out, or provision of security and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly

2.33 "the Parties"

mean the Council and the Owner

2.34 "Plan 1"

the plan marked "Plan 1" annexed hereto showing the Property

2.35 "Plan 2"

the plan marked "Plan 2" annexed hereto showing the Intermediate Housing Units

2.36 "Plan 3"

the plan marked "Plan 3" annexed hereto showing the Social Rented Housing Units

2.37 "Plan 4"

the plan marked "Plan 4" annexed hereto showing the Wheelchair Accessible Social Rented Housing Units

2.38 "Plan 5"

the plan marked "Plan 5" annexed hereto showing the Retained Habitat Land

2.39 "the Planning Application"

a planning application in respect of the development of the Property submitted to the Council and validated on 28 November 2013 under reference number 2013/7585/P

2.40 "Planning Obligations Monitoring Officer"

a planning officer of the Council from time to time allocated to deal with all planning

obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof

2.41 "the Planning Permission"

any planning permission granted by the Secretary of State or Planning Inspectorate for the Development under PINS reference APP/X5210/A/12/2218052

2.42 "the Property"

the land known as Gondar Gardens Reservoir Gondar Gardens West Hampstead London NW6 the same as shown edged red on Plan 1

2.43 "the Public Highway"

any carriageway footway and/or verge adjoining the Property maintainable at public expense

2.44 "Public Realm Improvements Contribution"

the sum of £20,000 (twenty thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and be applied by the Council in the event of receipt as a contribution towards linking West End Lane to the Cycle Super Highway (A41) via Lymington Road specifically landscaping and improvements to the footpaths and cycleway along that route and landscaping and improvements along the route of the footpath between Gondar Gardens and Sarre Road.

2.45 "Reasonable Endeavours"

where there is a reasonable endeavours obligation on the part of the Owner in this Agreement the Owner shall be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of

money and the engagement of such professional advisers as in all the circumstances may be reasonable and where the Owner cannot fulfil the objective of the obligation in full or in part then on the other Party's request the Owner shall provide an explanation of the steps it has undertaken in carrying out its reasonable endeavours obligations

2.46 "Registered Provider"

a registered provider of Affordable Housing registered as such by the Regulator or any person body or entity which is registered as a provider of social housing in accordance with Section 80 sub section 2 and Chapter 3 of the Housing and Regeneration Act 2008 (or any other body defined by subsequent legislation as having a similar role)

2.47 "Regulator"

means the Homes and Communities Agency and any successor organisation

2.48 "Residents Parking Bay"

a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated

2.49 "Residents Parking Permit"

a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in Residents Parking Bays

2.50 "the Retained Habitat Land"

the area shown shaded blue on Plan 5

2.51 "Secretary of State"

the Secretary of State for Communities and Local Government or other minister or authority for the time being have or entitle to exercise the powers conferred on the Secretary of State for Communities and Local Government by the Act

2.52 "Shared Ownership"

a low-cost home ownership programme managed in accordance with the Department for Communities and Local Government and Homes and Communities Agency guidance and requirements under which a Registered Provider develops new properties or refurbishes existing properties which are made available as Affordable Housing on the basis of part rent and part sale

2.53 "Social Rented Housing"

Affordable Housing Units available for rent in perpetuity such that:-

- (a) the total cost of rent and service and management charges meets targets for Social Rented Housing set by the Regulator from time to time and referred to in Annex 2 of the National Planning Policy Framework;
- (b) is consistent with Chapter 2 of the Camden Planning Guidance 2 Document "Affordable Housing and Housing in Mixed-Use Development" and the requirements of the London Plan in relation to Social Rented Housing; and
- (c) the units are managed by a Registered Provider who has entered into a standard nominations agreement with the Council providing for nominations to the Council in respect of all such units within the Development

2.54 "Social Rented Housing Units"

the eight units of Social Rented Housing forming part of the Affordable Housing Units comprising four 2 bedroom units three 3 bedroom units and one 4 bedroom units the same as shown shaded green on Plan 3

2.55 "the Sustainability Plan"

a plan securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation based which shall include:-

- (a) a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan; and
- (b) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation

2.56 "the Training and Employment Contribution"

the sum of £21,000 (twenty one thousand pounds) (seven thousand per construction

apprentice) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in lieu of construction apprentice provision to assist with the provision and payment of training opportunities within the London Borough of Camden.

- 2.57 "the Training and Employment Apprentice Support Contribution" the sum of £1,500 (one thousand five hundred pounds) per construction apprentice to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council to support the recruitment and training of a construction apprentice including payment towards pre-employment, the recruitment process, training provider brokerage and post-employment mentoring and support
- 2.58 "Wheelchair Accessible" the identified units shall meet the minimum requirements of Part M of the Building Regulations 2000 (as amended) as amended from time to time

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, Section 278 Highways Act 1980, Section 1 Localism Act 2011 and is a planning obligation for the purposes of Section 106 of the Act, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.

- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 hereof all of which shall come into effect on the date hereof, the covenants undertakings and obligations contained within this Agreement shall be conditional on the grant of the Planning Permission.
- 3.6 The Parties save where the context states otherwise shall include their successors in title.
- 3.7 Where under this Agreement any approval consent or agreement is required to be given by the Parties such approval consent or agreement shall not be unreasonably withheld or delayed.
- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car capped" housing in accordance with Clause 4.13 for all relevant purposes.
- 3.9 The Council agrees to repay to the Owner the financial contributions which in the context of this clause only refers to the person who made such payment and not their successors in title any amounts paid under this Agreement which have not been expended in accordance with this Agreement by the tenth anniversary of the Occupation Date following a request in writing to the Council ALWAYS PROVIDED for the avoidance of doubt, sums or any part of them shall be deemed to have been committed if the Council has entered into any contract or given any commitment or undertaking (whether enforceable at law or otherwise) the performance or fulfilment of which will require the Council to expend such sums in the future.



#### 4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

##### 4.1 **AFFORDABLE HOUSING**

- 4.1.1 On or prior to Implementation to submit to the Council for approval the Intermediate Housing Scheme.
- 4.1.2 Not to Implement nor permit Implementation until such time as the Council has approved the Intermediate Housing Scheme as demonstrated by written notice to that effect.
- 4.1.3 To commence all works of construction conversion and fitting out necessary to make the Affordable Housing Units as approved by the Council suitable for occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workmanlike manner using good quality materials to the reasonable satisfaction of the Council (as demonstrated by written notification to that effect) in accordance with the specification approved by a Registered Provider.
- 4.1.4 To ensure that the Affordable Housing Units shall not be otherwise used, occupied and shall be retained in perpetuity for no purpose other than (i) for the provision of Social Rented Housing for occupation by tenants at rental levels being in accordance with the rents set by the Regulator and (ii) for the provision of Intermediate Housing for occupation in accordance with the Intermediate Housing Scheme as the case may be.
- 4.1.5 Not to Occupy or allow Occupation of any part of the Development until such time as:-
  - (i) the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years; and

- (ii) the works of construction conversion and fitting out of the Affordable Housing Units have been completed in accordance with the requirement of Sub-Clause 4.1.3 hereof.

4.1.6 To ensure that the Affordable Housing Units are constructed occupied and used solely as Affordable Housing pursuant to the objects and purpose of the Council so as to provide accommodation for the households in need of Affordable Housing in accordance with the definition of the eligible persons criteria as agreed by the Government, the Regulator or the Council from time to time.

4.1.7 The Registered Provider nor the Council shall not dispose of its interest in the freehold or leasehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider registered with the Regulator or any other body organisation or company registered with the Charity Commissioners for England and Wales and approved by the Regulator or the Council.

## 4.2 CONSTRUCTION MANAGEMENT PLAN

4.2.1 On or prior to the Implementation Date to provide the Council for approval a draft Construction Management Plan.

4.2.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.

4.2.3 The Owner acknowledges and agrees that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

4.2.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan and not to permit the carrying out of any works

comprised in demolition or building out of the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non-compliance with this sub-clause the Owner shall forthwith take any steps required to remedy such non-compliance.

#### **4.3 LOCAL EMPLOYMENT**

4.3.1 In carrying out the works comprised in the Construction Phase of the Development the Owner shall use its Reasonable Endeavours to ensure that no less than 20% of the work force is comprised of residents of the London Borough of Camden.

4.3.2 In order to facilitate compliance with the requirements of sub-clause 4.3.1 above the Owner shall use Reasonable Endeavours to work in partnership with (i) the King's Cross Construction Centre; and (ii) take the following specific measures to ensure:-

- a) all contractors and sub-contractors provide information about all vacancies arising as a result of the Construction Phase of the Development to the King's Cross Construction Centre;
- b) the King's Cross Construction Centre is notified of all vacancies, arising from the building contract for the Development for employees, self-employees, contractors and sub-contractors;
- c) that the King's Cross Construction Centre is supplied with a full labour programme for the lifetime of the Development (with six-monthly updates) demonstrating (i) what skills and employment are needed through the life of the programme, and (ii) measures to ensure that these needs are met as far as possible through the provision of local labour from residents of the London Borough of Camden; and
- d) the Council is provided with a detailed six-monthly labour return for monitoring the employment and self-employment profile of all workers referred by the Kings Cross Construction Centre and employed during the Construction Phase.

4.3.3 The Owner shall use Reasonable Endeavours to ensure that at all times during the Construction Phase no less than three (3) construction apprentices shall be employed at the Development always ensuring each apprentice shall be:-

- (i) recruited through the Kings Cross Construction Centre;
- (ii) employed for a period of not less than 52 weeks; and
- (iii) paid at a rate not less than the London living wage.

4.3.4 If the construction apprentice(s) are employed at the Development the Owner shall not Occupy or permit Occupation until such time as the Training and Employment Apprentice Support Contribution (based on the each individual apprentice placement) has been paid in full.

4.3.5 If the Owner is unable to provide the apprentices in accordance with Clause 4.3.3 of this Agreement for reasons demonstrated to the written satisfaction of the Council it shall forthwith pay the Council the Training and Employment Contribution.

4.3.6 Notwithstanding the provision in clause 4.3.5 of this Agreement during the Construction Phase the Owner shall use Reasonable Endeavours to provide training opportunities on site for employees' resident within the London Borough of Camden and to provide a six-monthly statement setting out the details of candidates employed to the Kings Cross Construction Centre.

#### **4.4 LOCAL PROCUREMENT**

4.4.1 Prior to Implementation to agree a programme during the Construction Phase to provide opportunities for local businesses to bid/tender for the provision of goods and service to the Development in accordance with the Council's Local Procurement Code.

4.4.2 On or prior to Implementation to meet with the Council's Labour Market and Economy Service's Local Procurement Team and use Reasonable Endeavours to have that meeting at least one month in advance of tendering contracts to agree the specific steps that will be taken to give effect to the Local Procurement Code.

4.4.3 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in accordance with the requirements of the Local Procurement Code and in the event of non-compliance with this sub-clause the Owner shall forthwith take any reasonable steps required to remedy such non-compliance.

4.4.4 To use Reasonable Endeavours to provide opportunities for local businesses to bid/tender for the provision of facilities management services and other post construction supply of goods and services.

#### **4.5 THE ACCESSIBILITY PLAN**

4.5.1 On or prior to the Implementation Date to submit to the Council for approval the Accessibility Plan.

4.5.2 Not to Implement nor permit Implementation until the Accessibility Plan has been approved by the Council as demonstrated by written notice to that effect.

4.5.3 Not to Occupy or permit the Occupation of the Development until the Council has confirmed in writing that the measures incorporated in the Accessibility Plan have been incorporated into the Development.

4.5.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Accessibility Plan as approved by the Council and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Accessibility Plan.

#### **4.6 THE CAR CLUB FEASIBILITY PLAN**

4.6.1 On or prior to the Implementation Date to submit to the Council for approval the Car Club Feasibility Plan.

4.6.2 Not to Implement nor permit Implementation of the Development until the Council has confirmed in writing that the outcome of the feasibility assessment undertaken in the Car Club Feasibility Plan has been addressed by the Owner in either provision of a financial contribution secured under the Highways Contribution towards provision of

a car club bay on Gondar Gardens Road in the vicinity of the Property or provision of sufficient evidence to the Council's written satisfaction that it is not feasible to provide the same.

#### **4.7 ENERGY EFFICIENCY AND RENEWABLE ENERGY PLAN**

- 4.7.1 On or prior to the Implementation Date to submit to the Council for approval the Energy Efficiency and Renewable Energy Plan.
- 4.7.2 Not to Implement nor permit Implementation until such time as the Council has approved the Energy Efficiency and Renewable Energy Plan as demonstrated by written notice to that effect.
- 4.7.3 Not to Occupy or permit Occupation of Housing Block A until a satisfactory post-completion review has been submitted to and approved by the Council in writing in a timely manner confirming that the measures incorporated in the Energy Efficiency and Renewable Energy Plan as approved by the Council have been incorporated into the residential flats of Housing Block A.
- 4.7.4 Not to Occupy or permit Occupation of Housing Block B until a satisfactory post-completion review has been submitted to and approved by the Council in writing in a timely manner confirming that the measures incorporated in the Energy Efficiency and Renewable Energy Plan as approved by the Council have been incorporated into the residential units of Housing Block B and the Property as a whole.
- 4.7.5 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Energy Efficiency and Renewable Energy Plan as approved by the Council from time to time and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Energy Efficiency and Renewable Energy Plan.

#### **4.8 ECOLOGY AND ENHANCEMENT PLAN**

- 4.8.1 On or prior to the Implementation Date to submit to the Council for approval the Ecology and Enhancement Plan.

- 4.8.2 Not to Implement nor permit Implementation until such time as the Council has approved the Ecology and Enhancement Plan as demonstrated by written notice to that effect.
- 4.8.3 Not to Occupy or permit Occupation of the Property until such time as the Retained Habitat Land has been transferred to the London Wildlife Trust (or similar organisation as approved by the Council including the Council itself) for a peppercorn BUT before such transfer takes place the Owner to have carried out works on and to the Retained Habitat Land in accordance with the approved Ecology and Enhancement Plan AND for such works to be approved by the London Wildlife Trust (or such similar organisation as approved by the Council including the Council itself) in writing AND only thereafter for the transfer of the Retained Habitat Land to take place and to be confirmed and evidenced to the Council in writing.
- 4.8.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Owner (and sucesors in title) are not acting in strict accordance with the relevant parts of the Ecology and Enhancement Plan relating to the conduct and behaviour of the Owner (and sucesors in title) in relation to the Retained Habitat Land as may be approved by the Council from time to time.

#### **4.9 THE SUSTAINABILITY PLAN**

- 4.9.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.
- 4.9.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect.
- 4.9.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Property.
- 4.9.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council

and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

#### **4.10 AFFORDABLE HOUSING CONTRIBUTION**

4.10.1 On or prior to the Implementation Date to pay to the Council the Affordable Housing Contribution in full.

4.10.2 Not to Implement or to permit Implementation until such time as the Council has received the Affordable Housing Contribution in full.

#### **4.11 HABITAT CONTRIBUTION**

4.11.1 On or prior to the Implementation Date to pay to the Council the Habitat Contribution in full.

4.11.2 Not to Implement or to permit Implementation until such time as the Council has received the Habitat Contribution in full.

4.11.3 On notification from the Owner that it has transferred the Retained Habitat Land to the London Wildlife Trust or any similar organisation the Council covenants with the Owner that it will transfer the Habitat Contribution to the London Wildlife Trust or similar organisation for its use as set out by in this Agreement.

4.11.4 For the avoidance of doubt if the Council take control of the Retained Habitat Land it shall retain the Habitat Contribution and apply it as set out by this Agreement.

#### **4.12 HIGHWAYS CONTRIBUTION**

4.12.1 On or prior to the Implementation Date to:-

- (i) pay to the Council the Highways Contribution in full; and
- (ii) submit to the Council the Level Plans for approval.

4.12.2 Not to Implement or to allow Implementation until such time as the Council has:-



- (i) received the Highways Contribution in full; and
- (ii) approved the Level Plans as demonstrated by written notice to that effect.

4.12.3 For the avoidance of doubt the Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate and does not undertake any responsibility in connection with any required statutory undertakers works and that the Highways Contribution excludes any statutory undertaker's costs.

4.12.4 On completion of the Highway Works the Council shall provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.

4.12.5 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

#### 4.13 **CAR CAPPED**

4.13.1 To ensure that prior to Occupying any residential unit forming part of the Development each new resident of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned controlled or licensed by the Council.

4.13.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.13.1 above will remain permanently.

4.13.3 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.14.1 of this Agreement.

#### **4.14 PUBLIC REALM IMPROVEMENTS CONTRIBUTION**

4.14.1 On or prior to the Implementation Date to pay to the Council the Public Realm Improvements Contribution in full.

4.14.2 Not to Implement or to permit Implementation until such time as the Council has received the Public Realm Improvements Contribution in full.

#### **5. NOTICE TO THE COUNCIL/OTHER MATTERS**

5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.

5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2013/7585/P the date upon which the Development is ready for Occupation.

5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall indemnify the Council for any reasonable expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.

- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation
- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the planning reference 2013/7585/P.
- 5.7 Payment of the financial contribution pursuant to Clause 4 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The Owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2013/7585/P. Electronic Transfer be made directly to the National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480
- 5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.9 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the

denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \frac{Y-X}{X}$$

5.10 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2013/7585/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

6.2 This Agreement shall be registered as a Local Land Charge by the Council.

6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.

6.4 The Owner hereby agrees to pay the Council the Monitoring Fees within 5 days of the date of issue of the Planning Permission.

6.5 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this

Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.

- 6.6 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally 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.
- 6.7 Neither the Owner nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Owner) this Agreement shall forthwith determine and cease to have effect.

#### **MORTGAGEE EXEMPTION**

- 6.9 Subject to the provisions of paragraph (a) – (c) below the restrictions contained in Clause 4.1 hereof shall not be binding upon a mortgagee or chargee or receiver (collectively "the Chargee") of the Registered Provider of the Affordable Housing Units nor any receiver (including an administrative receiver) appointed by such Chargee or on any person deriving title from such Chargee (or receiver) in possession PROVIDED that the following conditions have been satisfied:

(a) In the event of the Registered Provider entering into liquidation or having a receiver or administrative receiver appointed or such steps are taken or legal proceedings are initiated for its winding up or defaults on any other terms of the mortgage or charge so that the Chargee exercises its power of sale then any

Chargee of the Affordable Housing Units or any such receiver or administrative receiver shall give notice to the Council of its intention to dispose ("the Default Notice").

(b) In the event of receipt of a Default Notice the Council shall be at liberty for a period of twelve (12) weeks from receipt of the Default Notice ("the Specified Period") to seek to identify another Registered Provider to agree to take a transfer of the Affordable Housing Units.

(c) If the Council having failed to locate another Registered Provider ready able and willing to take a transfer of the Affordable Housing Units within the Specified Period then should the Chargee or any such receiver or administrative receiver take possession of the Affordable Housing Units as appropriate otherwise enforce its security in relation to the same at any time thereafter then the Specified Period shall be deemed to have elapsed and the obligations of any Chargee and the terms of this Agreement shall be determined in relation to the Affordable Housing Units and shall cease to bind the Affordable Housing Units ALWAYS PROVIDED that any person claiming title from a Chargee, receiver or administrative receiver who has obtained title to the Affordable Housing Units after the procedure set out in this sub Clause has been followed shall not be bound by the restrictions contained in Clause 4.1 hereof as will any person deriving title therefrom.

6.10 For the purposes of Clause 6.9 (a) of this Agreement service of the Default Notice on the Council must be sent to each and all of the following recipients (or their successor position or title) quoting the address of the property and planning reference 2013/7585/P for the Default Notice to be properly served

- (a) The Chief Executive;
- (b) The Director of Culture and Environment;
- (c) The Assistant Director Regeneration and Planning;
- (d) The Planning Obligations Monitoring Officer; and
- (e) The Head of Legal Services.

6.11 Any tenant (or person claiming title from such tenant or any successors in title thereto and their respective mortgagees and chargee) of a Registered Provider at the Property who:-

- i. exercises a statutory right to acquire pursuant to the Housing Act 1996 (or any statutory successor thereto) or
- ii. has subsequently purchased from the Registered Provider all the remaining shares of a Shared Ownership unit so that the tenant owns the entire Affordable Housing Unit (staircased to 100%)

shall be released from the obligations of Clause 4.1 of this Agreement.

6.12 The relevant Registered Provider shall apply the monies received by the Registered Provider in respect of the sale of such Affordable Housing for the provision of Affordable Housing within the London Borough of Camden in the first instance or in the event the Registered Provider can show to the Council's reasonable written satisfaction that such funds are unable to be applied within the London Borough of Camden within the North London region.

6.13 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

## **7. RIGHTS OF THIRD PARTIES**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement is intended to confer any benefit upon or create rights in favour of any party other than the Parties executing this Agreement and their respective successors in title or function.

## **8. OBLIGATIONS OF THE COUNCIL**

The Council agrees declares and covenants with the Owner that:

8.1 it will only use the Contributions in accordance with this Agreement and for the respective purposes set out in clause 2 of this Agreement; and

8.2 (i) no more than four (4) other s.106 agreements (including all of those completed since 6 April 2010) have, or will be used, to contribute to the specific projects identified in respect of the Contributions

(ii) the Council retains the ability to change which four s.106 agreements as may be required will be used to pool contribution for the identified projects.

**9. UNILATERAL UNDERTAKING**

The Owner and the Council agree that the Unilateral Undertaking has no legal effect.

**IN WITNESS** whereof the Council has caused its Common Seal to be hereunto affixed as a Deed and the Owner has executed this instrument as its Deed the day and year first before written

EXECUTED AS A DEED BY )  
LINDEN WATES )  
(WEST HAMPSTEAD) LIMITED )  
acting by a Director and its Secretary )  
or by two Directors )

  
.....

Director

  
.....

Director/Secretary



THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON )  
BOROUGH OF CAMDEN was hereunto )  
Affixed by Order:- )

.....*R. Alexander*.....

Authorised Signatory



**THE FIRST SCHEDULE**  
**Construction Management Plan**  
**Air Quality and Carbon Reduction**

Requirements to control and minimise NO<sub>x</sub>, PM<sub>10</sub>, CO<sub>2</sub> emissions from construction sites and avoid nuisance and dust complaints.

A method statement shall be prepared and adopted as part of the Construction Management Plan to minimise gaseous and particulate matter emissions generated during the Construction Phase. The method statement shall identify the specific measures which will be implemented to control air pollution emissions during each of the following stages of the Construction Phase: (a) demolition; (b) ground breaking; and (c) construction/build.

The Construction Phase shall be carried out in accordance with the Best Practise Guidance Note "Control of dust and emissions from construction and demolition" published by London Councils, 2006. The risk rating of the site shall be defined in the method statement and determined using the risk assessment methodology in the Best Practise Guidance. Techniques to control dust from construction activities and emissions from vehicles and plant, and undertake air quality monitoring, shall conform to the 'medium' or 'high' risk categories outlined in the Best Practice Guidance.

The following best practise measures shall be included as a minimum in the method statement:-

A - Techniques to control PM<sub>10</sub> and NO<sub>x</sub> emissions from vehicles and plant

- a) Low emission plant fitted with catalysts, diesel particulate filters or similar devices shall be used;
- b) Plant shall be well maintained, with routine servicing of plant and non-road mobile machinery (NRMM) to be completed in accordance with the manufacturers recommendations;
- c) Avoid the use of diesel or petrol powered generators and use mains electricity or battery powered equipment where possible;
- d) Non-road mobile machinery (NRMM) shall use ultra low sulphur tax-exempt diesel and be fitted with appropriate exhaust after-treatment such as catalysts, diesel particulate filters as stated on the approved list managed by the Energy Saving Trust. Details of the plant and control equipment shall be included in the method statement.

- e) All construction vehicles shall comply with the Euro 4 emissions standard and where possible use low emission fuels and alternative technology.
- f) Plant and vehicles shall be located way from the closest receptors or house in closed environments where possible.

#### B - Techniques to control dust emissions from construction and demolition

- a) Keep site fencing, barriers and scaffolding clean using wet methods;
- b) Buildings to be demolished shall be wrapped
- c) Provide easily cleaned hard standing for vehicles and clean using wet sweeping methods;
- d) Provide the use of wheel-wash facilities near the site exit. Fit wheel-washes with rumble grids to dislodge accumulated dust and mud prior to leaving the site to avoid carrying dust or mud off the site;
- e) Inspect internal haul routes for integrity and instigate necessary repairs to the surface as soon as reasonably practicable;
- f) Routinely clean the Public Highways and accesses using wet sweeping methods especially during dry periods;
- g) Impose and signpost maximum speed limits of 10 mph on surfaced haul routes and work areas within the site;
- h) Ensure all vehicles carrying loose or potentially dusty material to or from the site are fully sheeted;
- i) Store materials with the potential to produce dust away from site boundaries;
- j) Sheet, seal or damp down stockpiles of excavated material held on site;
- k) Any loose materials brought onto the site shall be protected by appropriate covering
- l) The site shall be dampened down during the working day and again at the end of the day to reduce the amount that is re-suspended dust.
- m) Ensure water suppression is used during demolition operations;
- n) Ensure mobile crushing and screening plant and cement batching plant which are regulated under the Local Air Pollution Prevention and Control regime operate in compliance with a Part B Permit. This shall be submitted to the local authority prior to operation.
- o) Site personnel shall be trained in dust mitigation and a manager shall be present for managing dust on site.

#### C - Air Quality Monitoring

- a) Throughout the Construction Phase continuous particulate matter (PM10) monitoring shall be undertaken. Two instruments will be deployed at the site boundary in a transect orientated to the prevailing wind direction, with a third monitor located at the nearest sensitive receptor. One monitor shall be co-located with an anemometer.
- b) Adequate quality assurance/quality control procedures shall be in place including monitor maintenance and calibration as well and data checking. PM10 data shall be collected automatically on an hour basis.
- c) A trigger action level for PM10 concentrations of  $200\mu\text{g.m}^{-3}$  (15 minute average) shall be used to identify incidences of elevated dust emissions at the site boundary. The development site shall comply with the trigger action throughout the demolition and construction phases.
- d) An on-site alert system (email or SMS) shall be in place to notify appropriate staff that the trigger action level has been reached. Immediate and appropriate measures can be put in place to rectify abnormal particulate emissions. A procedure shall be established to deal with abnormal dust emissions. All incidences of abnormal particulate emissions leading to breaches of the trigger action level, shall be documented in the site log book (date and time), with details of the action take to remediate dust emissions.
- e) An e-mail specifying details of any alert to be sent out to the Council's air quality officer as soon as practicable following any breach of the site trigger action level.
- f) An electronic report shall be submitted to the Council's air quality officer every three months summarising the following information from each monitoring site – 24 hour average PM10 concentration, date and time of any breach of the trigger action level with the 15 minute mean concentration, prevailing wind direction and details of the cause of elevated dust emissions and mitigation measures.
- g) The Council shall be notified of any changes to the location and operation of dust PM10 monitoring instrumentation.
- h) A 24-hour phone hotline shall be set up so that residents can complain about high dust or PM10 levels directly to the developer.

The following items shall be included in the method statement:

- a) A specific timetable identifying the start and finish dates of each phase, including dust generating activities and PM10 monitoring.
- b) An inventory of stationary and fugitive dust, PM10 and NOx emission sources with an explanation of how these will be mitigated in accordance with the London Council's Best Practise Guidance.
- c) A map identifying the location of dust generating activities, plant equipment associated with emissions to air and PM10 monitors.
- d) An air quality monitoring protocol prepared in accordance with the requirements of section C.

#### D - Techniques to reduce CO<sub>2</sub> emissions from construction vehicles

A commitment from the Owner that contractors' vehicles involved in construction and demolition work will adopt 'green fleet management practices' that will result in a 10% reduction in tail-pipe CO<sub>2</sub> emissions over the duration of the construction phase. A green fleet management plan included in the method statement identifying measures to improve vehicle efficiency and reduce CO<sub>2</sub> emissions from construction vehicles. This could include the use of fuel monitoring equipment in vehicles, eco-driver training, accreditation with FORS (Freight Operator Recognition Scheme run by TfL) or SAFED (Safe and Fuel Efficient Driving run by the DfT) and use of low carbon vehicles such as hybrid electric, electric and bio-methane.

**THE SECOND SCHEDULE**  
**Construction Management Plan**  
**Highway Measures**

A Construction Management Plan outlines how construction work will be carried out and how this work will be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations and minimising the impact on local amenity. A Construction Management Plan should cover both demolition and construction phases of development. Details of the Construction Management Plan will relate to the scale and kind and location of the development and they should assess the impact on transport and on local amenity including road user amenity. Should any one of these criteria be considered not to be relevant, then specific justification, as to why that particular criterion is not relevant, will need to be provided. The Construction Management Plan should demonstrate that the following has been considered and where necessary the impacts mitigated:

*(Note the term 'vehicles' used here refers to all vehicles associated with the implementation of the development, e.g. demolition, site clearing, delivering of plant, material and construction, staff parking etc)*

- a) A brief description of the site, surrounding area and development proposals for which the Construction Management Plan applies.
- b) Proposed start and end dates for each phase of construction.
- c) The proposed working hours within which vehicles will arrive and depart.
- d) The access arrangements for vehicles.
- e) Proposed routes for vehicles between the site and the Transport for London Road Network (TLRN). Consideration should also be given to weight restrictions, low bridges and cumulative affects of construction on the highway. A map of the TLRN can be downloaded from the following site:-  
[http://www.tfl.gov.uk/assets/downloads/TFL\\_Base\\_Map\\_Master.pdf](http://www.tfl.gov.uk/assets/downloads/TFL_Base_Map_Master.pdf)
- f) Typical sizes of all vehicles and the approximate frequency and times of day when they will need access to the site, for each phase of construction.
- g) Swept path drawings for any tight manoeuvres on vehicle routes to the site.
- h) Details (including accurate scaled drawings) of any highway works necessary to enable construction to take place.

- i) Parking and loading arrangement of vehicles and delivery of materials and plant to the site.
- j) Details of proposed parking bays suspensions and temporary traffic management orders.
- k) Proposed overhang (if any) of the public highway (scaffolding, cranes etc.).
- l) Details of hoarding required or any other occupation of the public highway.
- m) Details of how pedestrian and cyclist safety will be maintained, including any proposed alternative routes (if necessary), and any banksman arrangements.
- n) Details of how traffic associated with the Development will be managed in order to reduce congestion.
- o) Details of any other measures designed to reduce the impact of associated traffic (such as the use of construction material consolidation centres).
- p) Details of how any significant amounts of dirt or dust that may be spread onto the public highway will be cleaned or prevented.
- q) Details of consultation on a draft Construction Management Plan with local residents, business, local groups (e.g. residents/tenants and business associations) and Ward Councillors. Details should include who was consulted, how the consultation was conducted and the comments received in response to the consultation. In response to the comments received, the Construction Management Plan should then be amended where appropriate and where not appropriate a reason should be given why not. The revised Construction Management Plan should also include a list of all the comments received. You are advised to check your proposed approach to consultation with the Council before carrying it out.
- r) Details of any Construction Working Group that will be set up, addressing the concerns of surrounding residents, as well as contact details for the person responsible for community liaison on behalf of the developer, and how these contact details will be advertised to the community.
- s) Details of any schemes such as the "Considerate Contractors Scheme" that the project will be signed up to should form part of the consultation and be notified to the Council. Contractors will also be required to follow the "Guide for Contractors Working in Camden" also referred to as "Camden's Considerate Contractor's Manual"
- t) Details of other construction sites in the local area and how your Construction Management Plan takes into consideration the cumulative effects of construction local to your site.
- u) Any other relevant information with regard to traffic and transport.

v) The Construction Management Plan should also include the following statement:

*"The agreed contents of the Construction Management Plan must be complied with unless otherwise agreed with the Council. The project manager shall work with the Council to review this Construction Management Plan if problems arise in relation to the construction of the Development. Any future revised plan must be approved by the Council and complied with thereafter."*

**It should be noted that any agreed Construction Management Plan does not prejudice further agreement that may be required for things such as road closures or hoarding licences**



## **THE THIRD SCHEDULE LOCAL PROCUREMENT CODE**

### **1. INTRODUCTION**

The use of local procurement agreements is a useful tool in helping the Council to improve economic prosperity and diversity in the local area which is a key aim of the Camden Community Strategy and the Local Development Framework (adopted November 2010). The sourcing of goods and services locally will also help to achieve a more sustainable pattern of land use and reduce the need to travel. The use of section 106 Agreements attached to the grant of planning permission will be used as a mechanism to secure appropriate levels of local procurement of goods and services.

A fuller explanation of the policy background and the justification for the use of local procurement agreements and when they will be required is contained with Sections 32 and 33 of the Camden Planning Guidance (adopted December 2006) which can be viewed on the Council's web site. This document is in line with the objectives of other organizations such as the London Development Agency and Government Office for London.

The purpose of this code is to maximise the opportunities available to Local Businesses in Camden from larger property developments taking place in Camden both during and after the construction phase. The local procurement code describes how the Owner/Developer in partnership with Camden Labour Market & Economy Service will ensure that Local Businesses benefit directly from the opportunities arising from both the Construction Phase of the Development and the end use of the Property.

The requirements of the local procurement code apply to the developer, main contractor and subcontractors appointed by them as well as tenants subsequently occupying the building. The code is designed to support developers and contractors in fulfilling their commitments to the planning agreements by clarifying what is required from the outset. Although the wording is emphatic, Camden Labour Market & Economy Service seeks to work in partnership with contractors to assist them in meeting specifications and in finding suitable local companies. They will provide a

regularly updated pre-screened directory of local companies in construction, fitting-out and furnishing trades in support of local procurement agreements.

## **2) MAIN REQUIREMENTS OF THE CODE**

### **A) CONSTRUCTION.**

We will request that the developers meet with London Borough of Camden's Labour Market & Economy Service's Local Procurement Team ("the Local Procurement Team") at least 1 month in advance of tendering contracts to clarify how the local procurement code will work and the co-operation required from the developer, main contractor and subcontractors.

The Council will seek to ensure that the developer inserts the following clauses in the tender documentation issued to the main contractor:

#### **2.1 Actions & Responsibilities of Main Contractor**

1. The main contractor will provide the Local Procurement Team with information on the estimated timing of their procurement programme and a schedule of works packages to be let ("the Procurement Schedule") and to provide updates of the Procurement Schedule as and when it is updated or revised.
2. The main contractor will work with the Local Procurement Team to: include local companies on their tender lists wherever possible and to aim to achieve the procurement of construction contracts and goods and services from companies and organisations based in Camden towards a target of 10% of the total value of the construction contract.
3. The main contractor is required to provide regular monitoring information to the Local Procurement Team every six to eight weeks during the construction phase, via e-mail, phone, fax or liaison meeting providing details of:
  - all local companies which are sent a tender enquiry or a tender invitation detailing the date and the works package or items concerned;

- the outcome of all works packages tendered, where there is a local company on the tender list, stating whether the local company was unsuccessful, successful or declined to tender and the contract value in the case of a contract being awarded to a local company.
  - All local wholesalers and building materials suppliers which are asked to provide prices and the value of any purchases of materials and other wholesaler supplies procured subject to the Council using Reasonable Endeavours to keep this strictly private and confidential between the Council and the Owner if asked to do so with the submission of such information.
  - (The Local Procurement Team can provide a pro forma local procurement log to assist in the monitoring process)
  - Full contact details of all subcontractors appointed (whether local or from elsewhere)
4. The main contractor should include a written statement in the tender documentation sent out to sub contractors informing them of their s106 requirement obligations as set out in section 2.2 below and ensure cooperation is agreed as a prerequisite to accepting sub contract tenders
  5. The main contractor should provide an opportunity for the Local Procurement Team to brief subcontractors on the requirements of the Local Procurement code.
  6. The main contractor will identify any actions that are required in order to overcome known barriers to Local Businesses to accessing their supply chain in respect of the Construction Phase.

## **2.2 Actions And Responsibilities of Sub-Contractors**

1. All sub-contractors appointed will be required to work with the Local Procurement Team and to aim to achieve the procurement of construction goods and services from companies and organisations based in Camden towards a target of 10% of the

total value of their construction sub-contract. (A regularly updated sub-directory of local suppliers will be supplied to subcontractors by the Local Procurement Team).

2. All subcontractors are required to provide regular monitoring information either to the main contractor or directly to the Local Procurement Team every six to eight weeks during the construction phase, via e-mail, phone, fax or liaison meeting providing details of :
  - All local wholesalers and building materials suppliers which are asked to provide prices and the value of any subsequent purchases of materials and other wholesaler supplies procured.
  - All local companies which are sent a tender enquiry or a tender invitation detailing the date and the works package concerned and the outcome of all sub-contracts tendered.

## **B. POST CONSTRUCTION: FITTING OUT BY TENANTS AND FACILITIES MANAGEMENT**

### **Fitting out by tenants**

Where the tenants of a development are responsible for fitting out the building(s), we will require the developers to inform them that they also fall under the provisions of this s106 on local procurement and provide guidance in writing to their tenants setting out the above clauses contained in section 2 above, which will apply to them as the developer, their main contractor and subcontractors.

### **Facilities Management**

The Owner and their agents shall use Reasonable Endeavours to provide opportunities for local businesses to bid/tender for the provision of facilities management services and other post construction supply of goods and services.

The Council will assist the developer, occupier and their contractors in identifying suitable local companies to bid for facilities management contracts and to source local goods and services.

DATED 23<sup>RD</sup> JUNE 2015

(1) LINDEN WATES (WEST HAMPSTEAD) LIMITED

and

(2) THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF CAMDEN

**A G R E E M E N T**

relating to land known as  
GONDAR GARDENS RESERVOIR  
GONDAR GARDENS, WEST HAMPSTEAD, LONDON NW6  
pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended) and  
Section 278 of the Highways Act 1980

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