

London Council (General Powers) Act 1974, Local Government Act 1972 and the Localism Act 2011

- (3) The Planning Application was submitted to the City Council in respect of the Property and the City Council refused the Planning Application by way of a decision notice dated 1 December 2020.
- (4) The Owner has submitted the Appeal against the City Council's refusal of the Planning Application.
- (5) The Parties have agreed that this Agreement should be completed under section 106 of the Act and section 278 of the Highways Act 1980.
- (6) The City Council considers it expedient in the interests of the proper planning of its area and having regard to the provision of its development plan that provision should be made as provided for by this Agreement for regulating or facilitating development of the Property

THIS DEED WITNESSES the following:-

1. Interpretation

1.1 In this Agreement unless the context demands otherwise the following expressions shall have the meanings set out below:

"Act"	means the Town and Country Planning Act 1990
"Appeal"	means the appeal against the refusal of the Planning Application which has been given the start date of 11 June 2021 and the

	reference number APP/X5990/W/21/3275399
"Bond"	<p>means a bond in the name of an institution or bank acceptable to the Highway Officer for a sum of one and a half times the reasonable cost of the City Council carrying out in full the Highway Works and any works to the Property necessary to provide an acceptable structure and acceptable support for any proposed or existing public highway such sum to be altered:</p> <p>(i) within one month after the issue of the Certificate of Substantial Completion to 10% of the original sum; and</p> <p>(ii) within one month of issue of the Final Completion Certificate to zero; and requiring within seven days of any written request to do so the institution or bank to pay to the City Council out of the bond in the circumstances set out in paragraph 3.3 of Schedule Three our (excluding in both instances where this</p>

		<p>Agreement is determined) such reasonable sum of money as is certified by the Highway Officer to be necessary to make good the respective default/s or breach/es of this Agreement on the part of the Owner (including their agents and the Contractor/s) in the form annexed hereto at Appendix 3</p>
"Carbon Offset Contribution"		<p>means the sum of £69,597 (sixty nine thousand five hundred and ninety seven pounds) Index Linked which is to applied and used as part of the City of Westminster's Carbon Offset Fund</p>
"Certificate of Practical Completion"		<p>means the issue of a certificate of practical completion in respect of the Development by the Owner's architect or in the event that the Development is constructed by a party of the than the Owner the issue of a certificate of practical completion by the other party's architect</p>
"Certificate of Substantial Completion"		<p>means the certificate issued by or on behalf of the Owner confirming that the Highway Works are Substantially Complete</p>

<p>“Commencement of Development”</p>	<p>means the date upon which a material operation as defined in Section 56(4) of the Act shall be commenced in respect of the Development but excluding always the Demolition Works or any part of them, and the words “Commence” and “Commenced” shall be construed accordingly</p>
<p>“Construction Period”</p>	<p>means the period in which the Development is constructed between the Commencement of the Development and Practical Completion</p>
<p>“Contract”</p>	<p>means a contract or contracts for all or part of the Highway Works</p>
<p>“Contractor”</p>	<p>means a firm company or individual with whom the Contract is entered into by or on behalf of the Owner for carrying out of the Highway Works</p>
<p>“Defects Liability Period”</p>	<p>means a period of 24 months from the date of issue of the Certificate of Substantial Completion or such further period until the date of issue of the Final Completion Certificate required by the Highway Officer to enable the Owner to make good any</p>

	defects in the Highway Works
"Demolition Works"	means the taking down of the structure of the existing buildings at the Property or any part thereof including without limitation site clearance the erection of fencing and or hoarding the creation of a site compound or other means of enclosure for the purposes of site security operations in connection with site investigation (including site surveys and ground investigations) creation of temporary accesses archaeological investigations and works including the preservation and removal of archaeological artefacts decontamination works removal of hazardous substances site preparation including earth moving and laying of sewers and services
"Development"	means the development of the Property authorised by the Planning Permission namely the: <i>"Demolition of existing buildings and redevelopment to provide part 4, part 5 and part 6 storeys building and 2</i>

	<p><i>basement levels for a mixed-use development comprising office floorspace (use Class E) at part ground and first to fifth floor levels with terraces at 3rd, 4th and 5th floor levels, 5 residential flats (4 x 2 bedroom flats and 1 x 3 bedrooms flat) with balconies (use Class C3) at first to third floor levels at the corner with Gillingham Row and retail floorspace (use Classes E) at ground and basement levels with associated works including installation of plant at roof level and alterations to public realm with hard and soft landscaping and the creation of loading bays.”</i></p>
<p>“Director of Planning”</p>	<p>means the City Council’s Director of Planning or such other proper officer of the City Council responsible for planning functions and the word “Director” shall be construed accordingly</p>
<p>“Employment and Skills Contribution”</p>	<p>means a financial contribution of £180,468.03 (one hundred and eighty thousand four hundred and sixty eight</p>

	<p>pounds and three pence) Index Linked towards initiatives that provide local employment, training opportunities and skills development and supporting the Westminster Employment Service for the benefit of Local Residents</p>
<p>“Employment and Skills Plan”</p>	<p>means a written plan which promotes and facilitates within the City of Westminster provision of employment, training and apprenticeship opportunities created by the Development during the Construction Period and the End-Use Period of the Development for Local Residents which shall be prepared in accordance with and contain all specified provisions of the City Council’s “Inclusive Local Economy & Employment” guidance and such other policy guidance as is adopted by the City Council from time to time</p>
<p>“End Use Period”</p>	<p>means the period commencing upon first Occupation of the Development by tenants of the commercial parts of the Development for the use(s) secured</p>

		pursuant to the Planning Permission and expiring on the anniversary of two years from that date
"Estimated Checking Fee"		means such costs (including technical administrative procedural and legal costs) as are estimated by the Highway Officer to be the fees of the checking and approving the design of the Highways Works by officers
"Estimated Cost"		means such sum of money as is stated in writing by the Highway Officer to be the estimated costs and associated costs of carrying out the Highway Works
"Estimated Date of Practical Completion"		means the date upon which the Owner estimates that the Development will reach Practical Completion
"Estimated Monitoring Fee"		means such sum of money as is stated in writing by the Highway Officer to be the costs and associated costs connected with the City Council checking and agreeing and approving matters related to and monitoring the carrying out of the Highway Works and connected with

	<p>assisting in making and the confirmation (and/or seeking the confirmation) of applications for consents and traffic management orders</p>
<p>“Final Completion Certificate”</p>	<p>means the completion certificate to be issued by the Highway Officer pursuant to paragraph 4 of Schedule Three</p>
<p>“Highway Officer”</p>	<p>means the highway officer(s) for the time being or such other proper officer(s) of the City Council responsible for highways functions</p>
<p>“Highway Works”</p>	<p>means such works as are reasonably required by the Highway Officer in the area and to the extent shown for illustrative purposes on the Plan 2 including:</p> <ul style="list-style-type: none"> (a) rebuilding of the footway on the Wilton Road frontage, including the provision of loading pads/lay-bys (if preferred solution) and tree planting (including the provisions of a soil crating system); (b) all highway works immediately surrounding the site required for

	<p>the development to occur, any associated alteration to the public realm including necessary changes to footway levels, on-street restrictions and associated works (legal, administrative and physical)</p> <p>(c) all highway works to be carried out shall ensure the provision of adequate, high quality soil/rooting environment as set out in the Planning Application landscaping proposals and arboricultural impact assessment for the replacement tree planting</p> <p>and any other associated works to accommodate the Development (including alterations to drainage, lighting, signage, traffic management orders, street furniture, street trees and other highway infrastructure (including all legal, administrative and statutory processes))</p> <p>all of which works shall be in accordance with the specifications standards and</p>
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	requirements of the City Council <u>as approved under conditions 42 and 43</u>
"Index Linked"	means the increasing of a sum by reference to the All Items Index of Retail Prices issued by the Office for National Statistics (the comparison being between the Index published in the month preceding that in which this Agreement is completed and the Index published in the month preceding the applicable later date)
"Insurance Policy"	means the insurance policy or policies (as the case maybe) with insurers insuring up until the issue of the Final Completion Certificate against all liability loss damage demand and proceedings whatsoever relating to property or persons arising under any statutory law or at common law in connection with the Highway Works and / or any defect which shall include: (a) employer's liability insurance with indemnity cover of at least £10 million in respect of any one claim; and

	<p>(b) public liability insurance with indemnity cover of at least £10 million in respect of any one claim; and</p> <p>(c) professional indemnity insurance with indemnity cover of at least £5 million in respect of any one claim</p>
"Local Residents"	means the residents of the City Council's administrative area
"Methodology of Works"	means the Owner's detailed method statement for the Highway Works
"Notice of Commencement"	means a written notice containing details of the date estimated by the Owner to the City Council as being the date of the Commencement of Development
"Occupation"	means occupation of the Property for the purposes permitted by the Planning Permission and excludes occupation for the purposes of demolition construction internal and external refurbishment decoration fitting out marketing security or any other activity preparatory to the use of the Property for the purposes permitted by

	the Planning Permission and the word "Occupy" shall be construed accordingly
"Plan 1"	means the plan annexed to this Agreement at Appendix 1 with drawing number 055-A-00-00 Rev Ashowing the Property
"Plan 2"	means the plan annexed to this Agreement at Appendix 1 with drawing number 3947-002-1 of 1- Rev DB showing the extent of the Highway Works
"Plan 3"	means the plan annexed to this Agreement at Appendix 1 with drawing number {3947-003-1 of 1 Rev A showing for illustrative purposes the land to be stopped up;
"Planning Application"	means means the planning application for the Development which has been allocated with City Council reference number 19/06682/FULL
"Planning Permission"	means the planning permission for Development granted pursuant to the Planning Application substantially in form of the draft decision notice annexed to this Agreement at Appendix 2

"Practical Completion"	means the date when the Development is certified by the contractor, agent or architect who is responsible for constructing the Development as having reached the stage of practical completion
"Programme of Works"	means the Owner's detailed programme for the Highway Works
"Property"	means all that land and buildings at 52 to 73 Wilton Road, London all of which for the purposes of identification are shown edged red on Plan 1
"Reasonable Endeavours"	means that the obliger shall take such steps that are reasonably required to achieve the stated outcome but shall not be obliged to take any step beyond that which any reasonable commercial company would take to achieve the stated outcome or which involves beginning or becoming involved in legal proceedings
"Secretary of State"	means the Secretary of State for Housing, Communities and Local Government
"Section 106 Monitoring Officer"	means the City Council's Officer as designated from time to time with

	monitoring functions in relation to planning obligations under Section 106 of the Act
"Stopping Up Order"	Means the stopping up order relating to the part of the public highway indicatively shown on Plan 4 granted pursuant to section 247 of the Act to enable the Development to be undertaken;
"Stopping Up Order Costs"	means all reasonable and proper costs disbursements and fees incurred by the City Council in preparing, applying for and obtaining the Stopping Up Order;
"Substantially Complete"	means in relation to the Highway Works completion in accordance with the approved detailed design and the approved Methodology of Works such that the Highway Works may be made available for use by the general public and "Substantially Completed" shall be interpreted accordingly
"Threshold Checking Fee"	means such reasonable sum and being the cost to the City Council of the Highway Officer carrying out his duties

		under paragraphs 1.1 and 1.2 of Schedule Two to this Agreement
“Threshold Levels”		means the interface levels between the Development and the existing public highway
“Tree Planting Contribution”		means the sum of £20,000 (twenty thousand pounds) Index Linked to be used for the purposes of tree planting and maintenance with planting priority (where conditions allow) in the following order: <ol style="list-style-type: none"> 1. within 200m of the Property; 2. within Tachbrook ward; 3. any sites outside zones 1-3 within the administrative boundary of the City of Westminster
“Working Days”		means Monday to Friday excluding bank holidays and other public holidays

1.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 1.3 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies the City Council and firms and all such words shall be construed interchangeably in that manner
- 1.4 Words denoting an obligation on a party to do any act manner or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction.
- 1.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 1.6 Headings in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of the Agreement to which they relate.
- 1.7 Where the agreement approval consent or expression of satisfaction is required from the City Council under the terms of this Agreement such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed.

2. Legal Effect

- 2.1 To the extent that the obligations in this Agreement are capable of being so made, they are made pursuant to Section 106 of the Act but otherwise pursuant to Section

16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972 Section 278 of the Highways Act 1980 the Localism Act 2011 and all other powers enabling and the obligations and covenants herein contained: -

(a) are covenants and planning obligations to which these statutory provisions apply; and

(b) relate to the Property; and

(c) are enforceable by the City Council as the local planning authority; and

(d) are for the purposes of regulation 122 of the Community Infrastructure Levy Regulations 2010 necessary, directly related to the Development, and fairly and reasonably related in scale and kind.

2.2 The obligations in this Agreement shall be binding on the Owner together with its successors in title and assigns and those deriving title under it provided that no person shall be liable for any breach of any covenant or obligation contained in this Agreement after it has parted with all of its interest in the Property or in the part of the Property to which the relevant obligation relates save in relation to any antecedent breach prior to parting with such interest.

2.3 Notwithstanding the foregoing sub clause 2.2 of this Agreement the obligations under this Agreement shall not be enforceable against any statutory undertaker or public authority which acquires any part of the Property or an interest in it for the purposes of its statutory function or function.

- 2.4 References in this Agreement to the City Council shall include any successor to its statutory functions.
- 2.5 Nothing in this Agreement shall fetter prejudice or affect any provisions rights powers duties and obligations of the City Council in the exercise of its functions as a local planning authority for the purposes of the Act or otherwise as a local authority.
- 2.6 No waiver (whether express or implied) by the City Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the City Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 2.7 If any provision in this Agreement shall in whole or in part be found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 2.8 Nothing in this Agreement grants planning permission or any other approval consent or permission required from the City Council in the exercise of any other statutory function.
- 2.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 2.10 All parties to this Agreement acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any certificate consent permission expression of satisfaction or other approval is due from one party to

another or any person on their behalf under the terms of this Agreement it shall not be unreasonably withheld or delayed.

3. Commencement

- 3.1 Subject to clauses 3.2 and 3.5, and save for sub-clauses 5.1(b), 5.1(c) and 5.1(d), clause 12, paragraph 5.3 of Schedule One, and Schedule Two of this Agreement which shall take effect on completion of this Agreement the obligations in this Agreement are conditional on the shall take effect upon the Commencement of Development.
- 3.2 If the Planning Permission is quashed revoked or expires before Commencement of Development the obligations in this Agreement shall (save for sub-clause 5.1(b) of this Agreement) cease to have effect.
- 3.3 The planning obligations contained within this Agreement are conditional on the Secretary of State determining that such planning obligations are necessary to make the Development acceptable.
- 3.4 If the planning inspector appointed by the Secretary of State concludes that any planning obligation contained within this Agreement is incompatible with one or more of the tests for planning obligations set out at Regulation 122 and/or Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to the obligation in determining the Appeal then the relevant obligation shall, from the date of the determination of the Appeal, cease to have effect and the Owner shall be under no obligation

to comply with the obligation but such cancellation shall not affect the validity or enforceability of the remaining provisions of this Agreement.

3.5 For the avoidance of doubt, none of the planning obligations in this Agreement will be binding if:

3.5.1 the planning inspector dismisses the Appeal such that the Planning Permission is not granted; or

3.5.2 the planning inspector finds that none of the planning obligations contained within this Agreement are necessary to make the Development acceptable, or that the obligations are otherwise not required, and accordingly attaches no weight to the obligations in determining the Appeal.

4. Contracts (Rights of Third Parties) Act 1999

It is hereby agreed between the parties that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement (and any successors in title assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Agreement.

5. Covenants

5.1 The Owner covenants with the City Council:-

(a) to observe and perform and cause to be observed and performed the undertakings covenants and restrictions contained in Schedule One,

Schedule Two, Schedule Three and Schedule Four to this Agreement;
and

- (b) to pay on completion of this Agreement the City Council's legal costs and reasonable disbursements in connection with the preparation of this Agreement; and
- (c) to give Notice of Commencement to the Section 106 Monitoring Officer at least 14 days prior to Commencement of Development; and
- (d) to pay on completion of this Agreement the sum of £2000 (two thousand pounds) for the monitoring of the obligations as set out in this Agreement.

5.2 The City Council covenants with the Owner to observe and perform and cause to be observed and performed those obligations covenants undertakings and restrictions applicable to the City Council contained in Schedule One, Schedule Two, Schedule Three and Schedule Four to this Agreement.

6. Indexation

All payments to be made under this Agreement to the City Council shall be Index Linked from the date hereof to the date that payment is made.

7. Notices

7.1 All notices served under or in connection with this Agreement shall be deemed to have been properly served if sent by recorded or special delivery to the principal address or registered office (as appropriate) of the relevant party.

7.2 The provisions of section 196 of the Law of Property Act 1925 shall apply to any notice to be served under or in connection with this Agreement and any notice to:

- (a) The City Council shall be in writing and unless stated otherwise shall be addressed to the Section 106 Monitoring Officer within the Directorate of Policy, Performance & Communications City Hall, 64 Victoria Street, London SW1E 6QP and shall cite the Planning Application reference number.
- (b) The Owner shall be in writing and addressed to Benjamin Blackman
- (c) The Mortgagee shall be in writing and addressed to Mark Plummer

8. ~~Option for Owner to~~ Party to Undertake the Highway Works

8.1 ~~Unless the Owner elects in writing not to undertake the Highway Works, the Owner will undertake the Highway Works and the covenants obligations undertakings and restrictions relating to Highway Works in Schedules Two and Three of this Agreement shall apply. Where it has been agreed~~

8.2 ~~The Owner will give at least 16 weeks prior notice of commencement of the Highway Works to the Highway Officer~~

~~reed in writing between the Highway Officer and the Owner at least 16 weeks prior to commencement of the Highway Works that the Owner will undertake the Highway Works the covenants obligations undertakings and restrictions relating to Highway Works in Schedules Two and Three of this Agreement shall apply~~

8.32 If the Owner elects not to undertake the Highway Works, it shall give the City Council at least 16 weeks prior notice of that decision and the City Council shall undertake the Highway Works.

8.4 Where the City Council undertakes the Highway Works itself the covenants obligations undertakings and restrictions relating to the Highway Works in Schedules Two and Four of this Agreement shall apply

9. Mortgagee's Covenant

The Mortgagee acknowledges and declares that this Agreement has been entered into with its consent and that the Property shall be bound by the obligations contained in this Agreement in priority to the charge of the Mortgagee and that security of the Mortgagee over the Property shall take effect as if this Agreement had been entered into prior to the charge of the Mortgagee PROVIDED THAT the Mortgagee and any other mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Property over which it holds a respective legal charge in which case it will be bound by the obligations as if it were a person deriving title from the Owner

10. Local Land Charges

This Agreement shall be registered as a local land charge by the City Council.

11. Jurisdiction

This Agreement is governed by the law of England and Wales and the parties

agree in the case of a dispute not capable of being resolved by them to submit to the jurisdiction of the courts of England and Wales.

12. Electronic Execution and Completion

12.1 The Owner, the Mortgagee and the City Council each hereby agree that:

- (a) for the purposes of the execution of this Agreement an electronically affixed seal and/or electronic signature (duly attested/authenticated/witnessed in accordance with the relevant execution block) shall be accepted by each party in lieu of a wet-ink signature and/or physically affixed seal (as applicable) for the purposes of the lawful execution of this document; and
- (b) plans and other appendices (as applicable) may be electronically signed/initialed; and
- (c) this Agreement may be electronically dated and completed; and
- (d) further to completion of this Agreement each party will accept an electronic copy of the executed and completed Agreement in lieu of a hardcopy document.

IN WITNESS of the above the Owner and the Mortgagee has executed this document as a Deed and the City Council has affixed its Common Seal the day and year above written

SCHEDULE ONE

THE OWNER'S COVENANTS AND OBLIGATIONS

1. SECURING INTERESTS

- 1.1 The Owner shall not Commence the Development (or cause or permit the Commencement of Development) unless and until the Owner has submitted and the City Council has approved in writing evidence that the Owner has acquired or terminated or bound to the obligations contained in this Agreement all other freehold, leasehold or tenant interests in the Property which are not at the date of this Agreement owned by the Owner so far as the same are necessary to give effect to this Agreement.

2. EMPLOYMENT AND SKILLS PLAN

- 2.1 The Owner shall submit a draft Employment and Skills Plan in respect of the Construction Period to the City Council for approval at least one month prior to Commencement of Development and shall not Commence (or cause or permit the Commencement of Development) unless and until the draft Employment and Skills Plan in respect of the Construction Period has been approved in writing by the City Council.
- 2.2 The Owner shall submit a draft Employment and Skills Plan in respect of the End Use Period to the City Council for approval at least one month prior to the anticipated date of Practical Completion and shall not Occupy the Development (or cause or permit Occupation) unless and until the draft Employment and Skills

Plan in respect of the End Use Period has been approved in writing by the City Council.

2.3 The Owner recognises that each draft Employment and Skills Plan shall be target driven and shall include:

2.3.1 employment initiatives and opportunities relating to the Construction Period and/or the End Use Period (as the case may be) and details of delivery;

2.3.2 initiatives to work with new employees and employers including the provision of appropriate training with the objectives of ensuring effective transition into work and sustainable job outcomes;

2.3.3 a target for the recruitment of employees from within the administrative area of the City Council at the Development by or through the Westminster Employment Service as may reasonably be considered appropriate;

2.3.4 the timings and arrangement for implementation of such initiatives;

2.3.5 suitable mechanisms for monitoring the effectiveness of such initiatives;
and

2.3.6 quarterly reports to be submitted to the City Council confirming the number of Local Residents employed via each approved Employment and Skills Plan.

2.4 The Owner shall comply with the provisions of each approved Employment and Skills Plan(s) during each of the Construction Period and the End Use Period

and shall use all Reasonable Endeavours to achieve all employment targets set out in each approved Employment and Skills Plan(s).

2.5 The Owner shall use all Reasonable Endeavours to ensure that all contractors and sub-contractors working in relation to the Construction Period or the End Use Period (as the case may be) work in partnership with the Owner's training provider(s) to implement the approved Employment and Skills Plan which relates to the Construction Period and the End Use Period respectively.

2.6 Following the Occupation of the commercial parts of the Development, during the End Use Period, the Owner shall use all Reasonable Endeavours to encourage commercial occupiers of the Development to:

2.6.1 advertise job opportunities at the Development within the City Council's administrative area;

2.6.2 promote job opportunities to Local Residents;

2.6.3 engage with local employment brokerage services to advertise job opportunities at the Development;

2.6.4 offer employment to Local Residents SUBJECT TO any offer of employment made to any individual employment being at the commercial occupiers' absolute discretion,

PROVIDED ALWAYS that the Owner is not required to act counter to any legislation, regulation, or any other rule of law.

3. EMPLOYMENT AND SKILLS CONTRIBUTION

3.1 The Owner covenants and undertakes to pay the Employment and Skills

Contribution to the City Council prior to the Commencement of Development.

- 3.2 The Owner covenants and undertakes not to Commence Development or cause or permit the Commencement of Development unless and until the Employment and Skills Contribution has been paid to the City Council.

4. TREE PLANTING CONTRIBUTION

- 4.1 The Owner covenants and undertakes to pay the Tree Planting Contribution to the City Council prior to the Commencement of Development.
- 4.2 The Owner covenants and undertakes not to Commence Development or cause or permit the Commencement of Development unless and until Tree Planting Contribution has been paid to the City Council.

5. STOPPING UP ORDER

- 5.1 The Owner undertakes not to Commence or cause or permit the Commencement of Development unless and until the Stopping Up Order Costs have been paid to the City Council.
- 5.2 The Owner undertakes not to Commence until the Stopping Up Order has been made and published.
- 5.3 The City Council undertakes to use all Reasonable Endeavours to make and publish the Stopping Up Order as soon as reasonably practicable following receipt of the Stopping Up Order Costs.

6. CARBON OFFSET CONTRIBUTION

- 6.1 The Owner covenants and undertakes to pay the Carbon Offset Contribution to

the City Council prior to the Commencement of Development

- 6.2 The Owner covenants and undertakes not to Commence Development or cause or permit the Commencement of Development unless and until the Carbon Offset Contribution has been paid to the City Council

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SCHEDULE TWO
THRESHOLD LEVELS

- 1.1 The Owner shall as soon as is reasonably practicable but in any event no later than 16 weeks before the Commencement of Development unless otherwise agreed in writing by the City Council provide the Highway Officer with written notice of the intended date for the Commencement of Development.
- 1.2 The Owner shall as soon as is reasonably practicable but in any event no later than 10 weeks before the Commencement of Development provide the Highway Officer with full details of the Threshold Levels where the Development will abut onto the public highway for approval by the Highway Officer and the Highway Officer shall either give his approval or refuse approval and notify the Owner of amendments required to the Threshold Levels within 10 Working Days of receipt of details of the Threshold Levels
- 1.3 In the event that the Highway Officer refuses approval of the details of the Threshold Levels submitted to it in accordance with paragraph 1.2 above or this paragraph 1.3 the Owner shall within 10 Working Days of any such refusal submit revised details for approval having taken into account any suggestions made by the Highway Officer and the Highway Officer shall either give his approval or refuse approval and notify the Owner of amendments required to the Threshold Levels within 10 Working Days of receipt of details of the Threshold Levels
- 1.4 The Owner shall not Commence the Development (or cause or permit the Commencement of Development) until the proposed threshold levels submitted

in pursuance of paragraphs 1.2 and/or 1.3 hereof have been approved by the Highway Officer (such approval not to be unreasonably withheld) and the Owner has paid the Threshold Checking Fees to the City Council

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SCHEDULE THREE

OWNER TO DESIGN AND CARRY OUT THE HIGHWAY WORKS

1. OWNER DESIGNS THE HIGHWAY WORKS

- 1.1 The Owner shall not commence the Highway Works or cause or permit the Highway Works to be commenced until the Owner has paid the Estimated Checking Fees to the City Council
- 1.2 The Owner shall no later than 16 weeks before Commencement of the Highway Works submit a detailed design of the Highway Works to the Highway Officer for approval and the Highway Officer shall notify the Owner of any amendments he requires to the design or shall grant his approval of the design within 20 Working Days of receiving the design or a revised design PROVIDED THAT the Highway Officer shall use reasonable endeavours to provide such notification or approval within 10 Working Days of receiving the design or a revised design PROVIDED ALWAYS THAT no deemed acceptance of the design of the Highway Works will occur in the event that the Highway Officer does not approve or provide suggested amendments within the aforementioned timeframes
- 1.3 In the event that the Highway Officer refuses approval of a design of the Highway Works the Owner shall within one month of any such refusal submit a revised design of the Highway Works for approval having taken into account any suggestions made by the Highway Officer and the Highway Officer shall notify the Owner of any amendments he requires to the design or shall grant his approval of the design within 20 Working Days of receiving the design or a revised design PROVIDED THAT the Highway Officer shall use reasonable endeavours to provide

such notification or approval within 10 Working Days of receiving the design or a revised design PROVIDED ALWAYS THAT no deemed acceptance of the design of the Highway Works will occur in the event that the Highway Officer does not approve or provide suggested amendments within the aforementioned timeframes and in the event that the Highway Officer refuses approval of the revised design the process in this paragraph shall be repeated until the Highway Officer is satisfied and has approved the design of the Highway Works

- 1.4 After completion of the design of the Highway Works the City Council shall as soon as reasonably practicable notify the Owner in writing of the actual cost (being fair and reasonable) connected with the Highway Officer checking and approving any design of the Highway Works, Methodology of Works, Programme of Works and the amount (if any) by which this exceeds or is less than the Estimated Checking Fee; and
- (a) the Owner shall within fourteen days of any request to do so (and having received the City Council's notification) pay to the City Council any amount by which the actual cost (being fair and reasonable) connected with the Highway Officer checking and approving any Methodology of Works, Programme of Works and design of the Highway Works which exceeds the Estimated Checking Fees; and
 - (b) the City Council shall repay to the Owner any amount by which the Estimated Checking Fees exceeds the actual cost (being fair and reasonable) connected with the Highway Officer checking and approving any Methodology of Works, Programme of Works and design of the

Highway Works

2. OWNER CARRIES OUT THE HIGHWAY WORKS

2.1 The Owner shall as soon as reasonably practicable but in any event no later than 16 weeks prior to commencement of the Highway Works submit to the Highway Officer the Methodology of Works and Programme of Works

2.2 No Highway Works shall take place until:

- (a) the Owner has obtained written approval from the City Council for the detailed design of the Highway Works;
- (b) the Owner has obtained approval from the City Council for the Programme of Works and Methodology of Works which approval shall be given within 20 Working Days of the date of receipt of the Programme of Works and Methodology of Works or a revised Programme of Works and Methodology of Works by the City Council PROVIDED THAT the City Council shall use reasonable endeavours to give such approval within 10 Working Days of such date;
- (c) the Owner has submitted details of a firm company or individual (as the case may be) to be the Contractor to the Highway Officer and the Highway Officer has given his written approval of the Contractor (such approval not to be unreasonably withheld);
- (d) the Owner has obtained all necessary consents from relevant statutory authorities and undertakers and other persons or bodies and such traffic

management orders under the appropriate sections of the Road Traffic Regulation Act 1984 as may be required for the carrying out of the Highway Works but the City Council shall remain responsible for making recommendations and exercising its statutory functions and duties on any such application to the City Council;

- (e) the Owner has taken out or the Contractor has taken out the Insurance Policy with reputable insurers against the consequences of any claim for compensation against the Owner or the Contractor or both of them arising directly out of the construction of the Highway Works and the Owner shall provide the City Council with a copy of the Insurance Policy;
- (f) the Owner has submitted a draft of the Bond in the form attached hereto at Appendix 3 to the Highway Officer who has approved the draft in writing and the Highway Officer has received the Bond executed in the form previously approved.

2.3 The Owner covenants that the Highway Works shall be carried out and completed entirely at the expense of the Owner including any costs associated with the diversion of any public utilities or other services or equipment as necessary to enable the Highway Works to be carried out and any costs associated with the need to clear the site in the event of any instance of emergency or public order.

2.4 The Highway Works shall be carried out and completed prior to Occupation of the Development and in accordance with the timescale set out in the Programme of Works.

2.5 The Owner covenants that during the carrying out of the Highway Works it will give the Highway Officer reasonable access to and over all parts of the Highway Works and permit him and his officers to inspect the Highway Works and all materials used or intended to be used therein and the Owner shall comply with all reasonable requirements of the Highway Officer regarding the operation method and progress of the Highway Works and further the Owner shall submit any equipment or materials for reasonable testing to ensure compliance with standards in the event the Highway Officer having inspected such equipment or materials reasonably so requests.

2.6 The City Council hereby authorises the Owner and any contractor and sub-contractor employed by the Owner to enter upon and remain upon with or without workmen plant and machinery such land in the vicinity of the highway and the Property under the ownership and control of the City Council and comprising highway land as shall be reasonably necessary and for such period as may be reasonably necessary to execute or complete any relevant part or parts of the Highway Works and it is hereby expressly declared by the City Council that such licence extends to the entering upon and remaining upon the public highway for the purposes of this Agreement and also to breaking open the surface and carrying out works in on or under the public highway as may be reasonably necessary for the purposes of executing or completing any relevant part or parts of the Highway Works.

2.7 In connection with the carrying out of the Highway Works the Owner shall:

- (a) at the Owner's expense light sign and fence the Highway Works;

- (b) ensure that the Contractor/s has or have the Insurance Policy and should at any time the Contractor/s not have the Insurance Policy the Owner shall indemnify the City Council in respect of all liability loss damage demand and proceedings whatsoever that would have been covered by the Insurance Policy;
 - (c) ensure that the Highway Works co-ordinate with any works in over or under the highway required to be carried out by bodies with statutory services beneath the highway having first consulted those bodies on the Highway Works;
 - (d) pay all charges that may be levied on the City Council or the Owner by any statutory undertakers in respect of the removal protection or alteration of any of their apparatus necessitated by the Highway Works;
 - (e) pay the Estimated Monitoring Fees to the City Council within 14 days of being so requested by the City Council; and
- 2.8 not Occupy or cause or permit the Occupation of the Development until the Certificate of Substantial Completion has been issued and signed by the Highway Officer The Owner shall give the Highway Officer not less than 15 Working Days notice of the Owner's intention to issue the Certificate of Substantial Completion of the Highway Works to enable the Highway Officer to inspect the Highway Works and the Highway Officer shall inform the Owner within 10 Working Days of receipt of the said notice whether or not he wishes to inspect the Highway Works and if the Highway Officer gives notice to the Owner that he

wishes to inspect the Highway Works he shall do so within five Working Days of such notice and the Owner shall procure that proper account is taken of any representations made by or on behalf of the Highway Officer which representations shall be made either during such inspection or no later than three Working Days thereafter.

2.9 The Owner shall issue the draft Certificate of Substantial Completion to the Highway Officer together with any relevant documentation and certification and the Highway Officer shall sign the Certificate of Substantial Completion upon being satisfied that the Highway Works have been Substantially Completed which signature shall confirm the Highway Officer's agreement that the Highway Works are substantially complete and the Bond sum shall be reduced by 90%.

3. DEFECTS LIABILITY PERIOD

3.1 During the Defects Liability Period the Owner shall remain responsible at its own expense for remedying to the Highway Officer's satisfaction any defect to the Highway Works and the Owner shall on being given written notice specifying such defect to the Highway Works at its own expense and within one month from the date of the notice (unless a longer period is agreed in writing with the Highway Officer) make good the same to the Highway Officer's satisfaction.

3.2 During the Defects Liability Period and until the Final Completion Certificate is issued the City Council shall maintain the Highway Works and all ancillary works (including sweeping, litter picking and cleaning).

3.3 If during the undertaking of the Highways Works and the Defects Liability Period,

the Owner:

- (a) including their agents and the Contractor/s fails to perform or observe any of the conditions covenants agreements or obligations on the part of the Owner contained in this part of this Schedule;
- (b) including their agents and the Contractor/s fails to carry out or complete the Highway Works within the time limit set out in the timetable approved for the time being in respect of the Highway Works or such other revised timetable for the Highway Works as is approved by the City Council (such approval not to be unreasonably withheld); or
- (c) has not completed the Highway Works and being a company is wound up either voluntarily (except for the purpose of reconstruction or amalgamation) or compulsorily or being an individual becomes bankrupt or in either case enters into composition with its or his creditors; or
- (d) has not completed the Highway Works and suffer any distress or execution to be levied against its goods; or
- (e) has not completed the Highway Works and are the subject of the appointment of a receiver,

the City Council shall have the right by virtue of this paragraph and all other enabling powers whatsoever (after twenty eight days' notice in writing to the Owner requiring any alleged failure to be remedied if capable of remedy and the Owner having failed to do so within a reasonable period of time to (i) carry out and complete the Highway Works (ii) carry out and complete any works to the Property to provide an acceptable structure and acceptable support for any

proposed or existing public highway without the need to obtain any further consent from the Owner and (iii) to remedy any defect identified within the Defects Liability Period.

- 3.4 Where the City Council serves a notice under paragraph 3.3 in this part of this Schedule in respect of a part only of the Highway Works the service of the notice shall not in any way relieve the Owner from the performance and observance of the conditions covenants agreements or obligations on the part of the Owner contained in this Agreement in respect of any other part of the Highway Works included in this Agreement whether or not specified in the notice.
- 3.5 If the City Council serves a notice under paragraph 3.3 in this part of this Schedule and carries out or completes the Highway Works or any part of them or causes them to be carried out the City Council shall be entitled to payment of the reasonable cost of doing so from the Owner (or their successor) or from the Bond including payment in advance of such works being carried out.
- 3.6 If the City Council receive money in advance for the purpose of remedying default/s or breach/es of this Agreement on the part of the Owner (including their agents and the Contractor/s) the City Council shall only use that money for such purpose.
- 3.7 Upon completion of the Highway Works the City Council shall as soon as reasonably practicable notify the Owner in writing of the actual cost of checking and agreeing and approving matters related to and monitoring the carrying out of the Highway Works and connected with assisting in making and the confirmation (and/or seeking the confirmation) of applications for consents and

traffic management orders and design and supervision of the Highway Works and the amount by which this exceeds or is less than the Estimated Monitoring Fees;

- (a) the Owner shall within fourteen days of any request to do so (and having received the City Council's notification) pay to the City Council any amount by which the actual cost of checking and agreeing and approving matters related to and monitoring the carrying out of the Highway Works and connected with assisting in making and the confirmation (and/or seeking the confirmation) of applications for consents and traffic management orders and design and supervision of the Highway Works exceeds the sum of the Estimated Monitoring Fees; and
- (b) the City Council shall repay to the Owner any amount by which the Estimated Monitoring Fee exceeds the actual cost of checking and agreeing and approving matters related to and monitoring the carrying out of the Highway Works and connected with assisting in making and the confirmation (and/or seeking the confirmation) of applications for consents and traffic management orders and design and supervision of the Highway Works.

4 FINAL COMPLETION CERTIFICATE

- 5.4 After the expiration of the Defects Liability Period and after the Owner has made good any defects to the Highway Officer's satisfaction the Highway Officer shall

issue the Final Completion Certificate and the Highway Works shall revert to being a highway maintainable at the public expense and thereafter be the entire responsibility of the City Council and the Bond shall thereafter be of no effect and the Owner released from its terms thereafter.

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SCHEDULE FOUR

CITY COUNCIL TO DESIGN AND CARRY OUT HIGHWAY WORKS

1. The Owner shall as soon as is reasonably practicable but in any event not later than the date of the Commencement of Development notify the City Council of the Estimated Date of Practical Completion
2. In the event of any changes to the Estimated Date of Practical Completion the Owner shall forthwith notify the City Council in writing thereof.
3. Within 14 days of being so requested the Owner shall pay the Estimated Cost and the Estimated Monitoring Fees to the City Council.
4. The Owner shall not Occupy the Development if the Owner is in breach of paragraph 3 at the date of such Occupation.
5. The Owner shall not obstruct the City Council in the carrying out of the Highway Works.
6. The City Council (so far as it lawfully may without fettering its statutory discretion and subject to the obtaining of all necessary consents which it shall use all reasonable endeavours to obtain) shall use all reasonable endeavours to design and complete the Highway Works as soon as reasonably practicable after Practical Completion or such other timescale agreed in writing with the Owner and upon receipt of a cleared and unobstructed site for the Highway Works which shall remain cleared and unobstructed for the duration of the Highway Works.
7. ~~For the avoidance of doubt, the Owner may Occupy the development prior to completion of the Highway Works by the City Council.~~ Upon completion of the Highway Works the Owner shall within 14 days of any request to do so pay to the

Commented [BJ1]: On the basis that the changes to make the default that the Owner undertakes the Highway Works are acceptable, we can accept a restriction on Occupation where the Council undertakes the Highway Works.

City Council any amount by which the reasonable and proper actual cost of the Highway Works (including their design and supervision) exceeds the sum of the Estimated Monitoring Fees and the Estimated Cost and the City Council shall repay to the Owner any amount by which the sum of the Estimated Monitoring Fees and the Estimated Cost exceeds the reasonable and proper actual cost of the Highway Works (including their design and supervision).

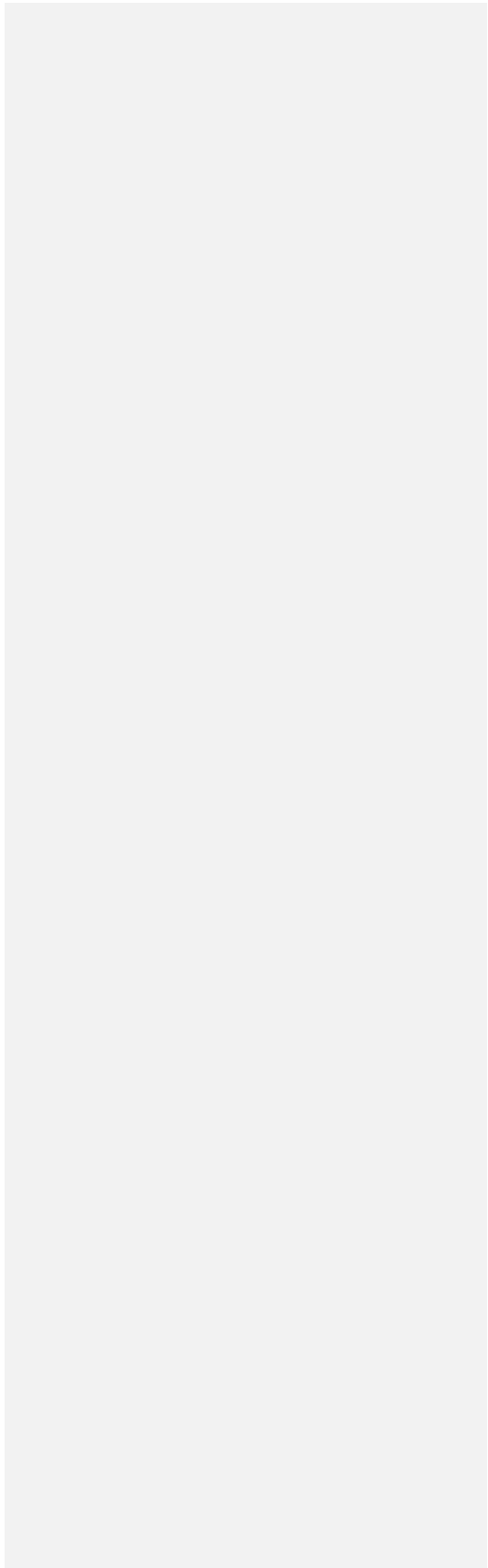
98. Within 28 days of any proper and reasonable request to do so the Owner shall provide the City Council with such information as is available to the Owner to enable the City Council to obtain such consents from the statutory authorities and undertakers and other persons or bodies and to make such traffic management orders under the appropriate sections of the Road Traffic Regulation Act 1984 as may be required for the carrying out of the Highway Works.

109. The Owner shall reimburse to the City Council all reasonable and proper costs properly and reasonably incurred which are incidental to the carrying out of the Highway Works and except in the case of an emergency and where reasonably practicable the City Council will notify the Owner before incurring such costs and take in to account any representations made by the Owner in respect of such costs.

110. The Owner shall not carry out or cause or permit to be carried out :-

- (a) any works on the public highway except such works as shall have been approved in writing by the City Council in its capacity as highway authority; or
- (b) any works to the Development abutting the highway except in accordance with the details approved by the City Council pursuant to paragraphs 1.2 and 1.3 of Schedule Two hereof.

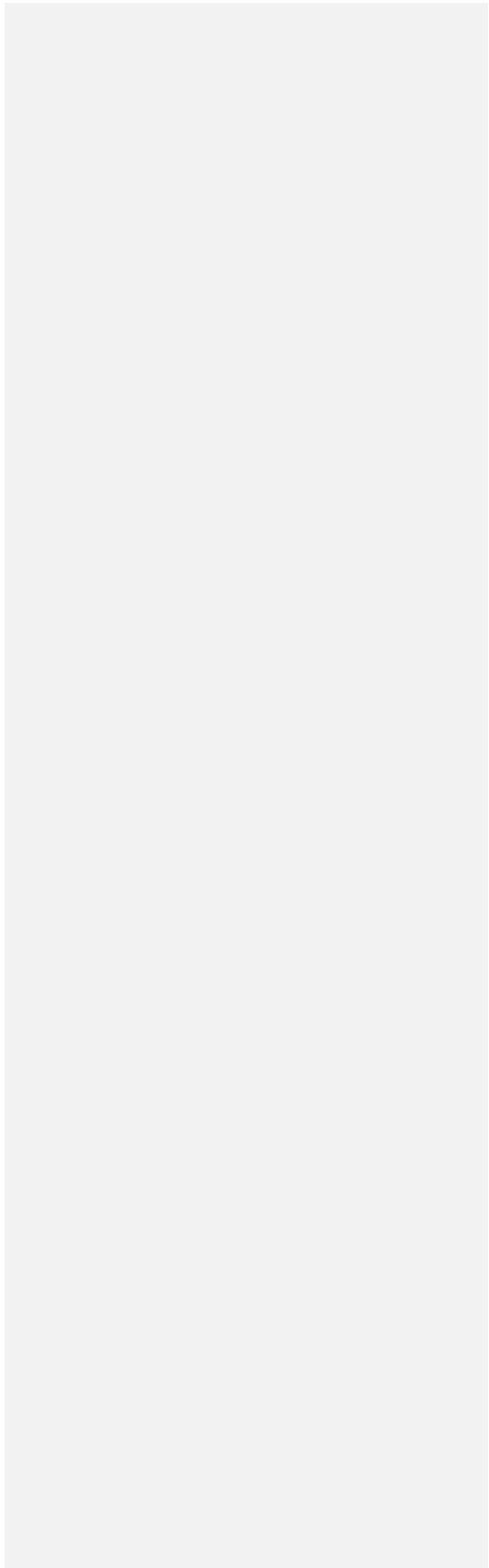
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APPENDIX 1

PLANS

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APPENDIX 2
DRAFT DECISION NOTICE

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public highway within the Highway Works or (as the case may be) to remedy any defects or any default of the Developer in the performing of its obligations in the Agreement including the cost of the City Council's administrative expenses within xx working days of receipt of an invoice for the said sum from the City Council.

3. The City Council will apply every sum received under paragraph 2 above solely towards the cost of completion of the Highway Works or remedying the said defects or default and the administrative expenses incurred by it in preparing any alternative contract and of supervising the execution of the alternative contract.
4. The total amount of the Bond Sum and liability of the Surety to the City Council under this Bond will be reduced, limited and terminate as follows:
 - (a) to 10% of the original Bond Sum on the date of issue of the Certificate of Substantial Completion (as defined in the Agreement);
 - (b) to zero on the date of issue of the Final Completion Certificate (as defined in the Agreement);
5. Following a reduction or termination of this Bond and receipt of a written request to do so the City Council will within 28 working days of receiving such request issue a certificate/ letter signed by the Highway Officer to the Developer and the Surety certifying such reduction or termination (as the case maybe).
6. Any notice to the Surety under this Bond shall be in writing and shall be served at or sent by registered or recorded delivery post to its registered office mentioned above and marked for the attention of *{Position of person at Surety to be inserted}*.
7. The Bond is governed by the law of England and Wales and the parties agree in the case of a dispute not capable of being resolved by them to submit to the jurisdiction of English Court.

Executed as a Deed by Vitcorp Limited
a company incorporated in Jersey, by
Zena Sandra Blackman, being a person
who, in accordance with the laws of that
territory, is acting under the authority
of the company: -

.....
Zena Sandra Blackman **Signature in the name of the company**

THE COMMON SEAL of THE LORD)
MAYOR AND CITIZENS OF THE)
CITY OF WESTMINSTER was)
hereunto affixed by Order)
in the presence of:)

City of Westminster

Dated:	2021
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- (1) VITCORP LIMITED
 - (2) HANDELSBANKEN PLC
 - (3) THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER
-

S106 AGREEMENT

Relating to
Development at 52 to 73 Wilton Road, London

19/06682/FULL

Director of Law
Westminster City Council
City Hall, 64 Victoria Street
London SW1E 6QP

Ref: 40006760/CTZ