

DATED

The Mayor and Burgesses of the London Borough of Southwark (1)

Leathermarket Community Benefit Society Limited (2)

AFFORDABLE HOUSING GRANT AGREEMENT
in relation to Kipling Garages, Weston Street, London SE1 3RH

Anthony Collins Solicitors
134 Edmund Street
Birmingham B3 2ES

DSA.41657.0002

AFFORDABLE HOUSING GRANT AGREEMENT

THIS GRANT AGREEMENT is made the day of 2015

BETWEEN:

- (1) **The Mayor and Burgesses of the London Borough of Southwark**, whose principal office is at 160 Tooley Street, London SE1 2HZ (“the Council”); and
- (2) **Leathermarket Community Benefit Society Limited**, registered society number 32294R, registered at 26 Leathermarket Street, London SE1 3HN (“the Grant Recipient”)

BACKGROUND:

- A.** The Council has agreed to provide a grant to the Grant Recipient for the development of the Property for high quality, genuinely affordable residential accommodation pursuant to Section 24 of the Local Government Act 1988.
- B.** This Grant Agreement sets out the conditions on which funding is provided from the Council to the Grant Recipient. The Agreement specifies the purpose for which grant is to be provided, the reporting arrangements, monitoring and evaluation, liaison and communication between the Parties, and the funding to be provided to the Grant Recipient.
- C.** This Grant Agreement is supplemental to and co-terminus with the Agreement for Lease.

CONDITIONS OF GRANT:

1. DEFINITION OF TERMS

In this Grant Agreement the following words or phrases have the following meanings ascribed to them:

- Agreement for Lease:** means an Agreement for Lease of the Property of even date and made between the Council and the Grant Recipient
- Building Contract:** means a building contract or contracts for the carrying out of the Project or a letter of intent binding the Grant Recipient or its subsidiary having been signed and delivered by the Grant Recipient or its subsidiary to the building contractor
- Claim Form:** means a Claim Form in the form set out at Appendix 4
- Commencement Date:** means
- CPI** means the consumer prices index measure of inflation as verified by the Office for National Statistics
- Design Guide:** means the version of the London Housing Design Guide applicable at the submission of the planning application for the Project by the Grant Recipient

Development Plans:	means the quantity surveyor's cost plan, the project appraisal and the development programme for the Property as attached to this Agreement as Appendix 1 <u>or as amended from time to time following the Commencement Date and as notified to the Council by the Grant Recipient</u>
Duplicate Funding:	<u>means funding obtained from a third party for the same purpose and in relation to the same expenditure as the Grant and for the avoidance of doubt does not include any additional funding that the Grant Recipient may secure either a) in relation to any aspects of the Project for separate purposes or b) for any sum required to complete the Project over and above the Maximum Sum</u>
EIR:	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner in relation thereto
Environmental Information:	has the meaning ascribed to it in Regulation 2(1) of the EIR
Final Report:	means a final report on the Project detailing: <ul style="list-style-type: none"> (a) the implementation of the Project; (b) a final statement on the progress of the Project against the <u>Development Plans Project Programme</u> and detailing any deviation; (c) a final expenditure statement detailing any deviation; (d) a statement of realised and/or anticipated outputs from the Project and any other benefits derived from the provision of the Grant; and (e) any other information as may be reasonably requested by the Council
Financial Year:	1 April - 31 March in each year
FOIA:	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation thereto
Grant:	means the funding to be provided by the Council to the Grant Recipient under this Grant Agreement, up to the Maximum Sum
Grant Recipient's Allocation Policy:	means the allocations policy approved by the Grant Recipient and which is appended to this Agreement as Appendix 2 or as varied from time to time by the Grant Recipient in consultation with the Council but strictly subject to the requirement that all of the tenancies arising from the Project will be allocated for affordable housing
Grant Period:	means the Grant Period set out at Clause 2.1 of this Grant Agreement

Group:	means in relation to any party that is part of a group structure, the various organisations comprised in such group which either control or are controlled by the party (whether directly or indirectly) by virtue of shareholding, membership and/or board representation
Information:	means any information recorded in any form or media
Intellectual Property	means any or all of the following <u>in relation to the Project only</u> :
Rights:	patents, trademarks,
Rights:	service marks, drawings, designs, registered designs, utility models, design right, copyright (including copyright in computer software), database right, inventions, trade secrets and other confidential information, technical information, know-how, business or trade names, rights to prevent passing off, and all other intellectual property rights and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights
Know-How:	means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale
Leathermarket JMB:	means Leathermarket Joint Management Board, a company limited by guarantee with registered number 02987890
Maximum Sum:	means £9,661,815.00 or such other sum as to be agreed between the parties acting reasonably
Party:	means a party to this Grant Agreement and “Parties” shall be construed accordingly
Payment Arrangements:	means the payment arrangements in respect of the Grant set out in Schedule 2
Practical Completion:	means the date of the certificate given by the contract administrator working on behalf of the Grant Recipient or its subsidiary under the Development Plans that the development at the Property is practically complete under the terms of the relevant building contract
Project Budget:	means the proposed budget for the Project <u>as set out in the project appraisal which forms part of Appendix 1 set out at Appendix 6 of this Grant Agreement</u> or as amended during the Project by agreement with the Council (acting reasonably) and the Grant Recipient
Project:	means the development of the Property as set out in Schedule 1
Property:	means the Kipling Garage site in the London Borough of Southwark as shown on the plan at Appendix 3
<u>Recipient’s Representative</u>	<u>means a director of the Grant Recipient or the project worker for the Grant Recipient</u>

- Rents:** means the net rental income ~~paid payable~~ to the Grant Recipient derived from dwellings on the Property, having deducted ~~a the reasonable charge for~~ management and maintenance costs incurred by the Grant Recipient in relation to the dwellings
- Request for Information:** shall have the meaning set out in FOIA or any apparent request for Information under the FOIA, the EIR or the Code of Practice on the discharge of public authorities' functions under part 1 of the FOIA
- Social Rents:** means the rents at the date of this Agreement as set out in Schedule 3 ~~which may be increased on an annual basis by the Grant Recipient by a rate of no more than CPI plus 1%~~
- Tenancy:** means the granting of a new assured tenancy at the Property by the Grant Recipient using the Tenancy Agreement
- Tenancy Agreement:** means the form of assured tenancy agreement attached to this Agreement as Appendix 4 or as varied from time to time by the Grant Recipient giving notice to the Council.

2. PERIOD OF AGREEMENT

- 2.1 This Agreement will continue from the ~~Commencement Date date at the head of this Agreement~~ to the end of 10 years and 6 months following the final Practical Completion ("the Grant Period") unless it is brought to an end in any of the ways described in this Agreement or in the event that the Agreement for Lease or Lease is terminated.

3. THE GRANT CONDITIONS

- 3.1 The Grant Recipient shall:
- 3.1.1 use the Grant only for the delivery of the Project;
 - 3.1.2 not change the Project without the written consent of the Council;
 - 3.1.3 use the Grant in accordance with this Grant Agreement;
 - 3.1.4 maintain proper paper and electronic records of evidence of spend and evidence of outputs achieved and provide these to the Council when requested;
 - 3.1.5 permit the Council and/or its appointed representative(s) to review the performance and compliance of the Grant Recipient in relation to this Grant Agreement, provided that reasonable notice has been given and at any time during normal working hours;
 - 3.1.6 ensure that value for money and sound procurement practices are applied to all contracts entered into in relation to the Project;
 - 3.1.7 ensure that the tenancies arising from the development of the Property are for affordable housing to remain at the Social Rents; and
 - 3.1.8 ensure that the development of the Property follows the Design Guide.

- 3.2 This Grant Agreement is personal to the Grant Recipient and the Grant Recipient shall not assign its obligations under this Agreement without the consent of the Council.
- 3.3 Any liabilities arising at the end of the Grant Period or including any redundancy liabilities for staff employed by the Grant Recipient to deliver the Project must be managed and paid for by the Grant Recipient using the Grant or other resources of the Grant Recipient. There will be no additional funding available from the Council for this purpose.
- 3.4 ~~Continuing payment of No~~ Grant shall be conditional upon paid unless and until the Council being is satisfied (acting reasonably) that such payment will be used for proper expenditure in the delivery of the Project. Claims for Grant shall be made by means of -is accompanied by a valid Claim Form (accepting that payment of Grant is to be made in advance). ~~-with s~~Supporting evidence of previous spend shall be provided to the reasonable satisfaction of the Council to justify any works ~~to be~~ undertaken in accordance with the Project.
- 3.5 The amount of the Grant shall not be increased above the Maximum Sum in the event of any overspend by the Grant Recipient in its delivery of the Project and any such overspend shall be the Recipient's liability.
- 3.6 The Grant shall be held in a ring fenced account by the Grant Recipient.
- 3.7 The Grant Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Council.
- 3.8 The Grant Recipient shall in a timely manner and in such manner to be agreed between the Parties pay to the Council any money incorrectly paid to it over and above the Grant claimed either as a result of an administrative error or otherwise.
- 3.9 Where the Grant Recipient has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs) the amount of such funding shall be included in the Project Budget ~~at Appendix 6~~ together with a clear description of what that funding shall be used for. For the avoidance of doubt, the Project Budget may be varied by the inclusion of any funding received from third parties but provided there is no duplication of funding to the Grant Recipient this will not alter the Maximum Sum.
- 3.10 The Grant Recipient shall not use the Grant to:
- (a) make any payment to members of its Governing Body;
 - (b) meet, cover or pay for any revenue expenditure; or
 - (c) pay for any expenditure commitments of the Grant Recipient entered into before the Commencement Date save where this has been provided for in the Project Budget
- unless this has been approved in writing by the Council.
- 3.11 The Grant Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.

- 3.12 Should any part of the Grant remain unspent at the end of the Grant Period, the Grant Recipient shall ensure that any unspent monies are returned to the Funder including any interest actually received by the Grant Recipient accrued on the grant amount.
- 3.13 The Grant Recipient and any other member of the same Group will comply with and will procure that any of its contractors complies with all applicable EU Procedure regulations Requirements—in connection with the procurement of any works, equipment, goods and services in relation to the Project and shall promptly provide the Council or any Government Office any information which the Council may request in order to satisfy itself that the Grant Recipient and the contractor have done so where they are required to do so.
- 3.14 The Grant Recipient and any other member of the same Group will procure that procurement of works, equipment, goods and services by the Grant Recipient and its contractors shall be based on value for money. In determining how this requirement should be met, the Grant Recipient will (and will procure that its contractors will) take account of public sector accountability and probity and shall document the decision making process.
- 3.15 The Parties understand and agree that the Grant by the Council under this Agreement is not consideration for any supply for Value Added Tax ("**VAT**") purposes whether by the Recipient or otherwise.
- 3.16 If, notwithstanding the agreement and understanding of the Parties as set out in Clause 3.15 above, it is determined that the Grant is consideration for a supply for VAT purposes, the Grant shall be treated as inclusive of any VAT.

4. ACCOUNTS AND RECORDS

- 4.1 The Grant shall be shown in the Grant Recipient's accounts as a restricted fund and shall not be included under general funds.
- 4.2 The Grant Recipient shall keep separate, accurate and up-to-date accounts on an open book basis and records of the receipt and expenditure of the Grant monies received by it.
- 4.3 The Grant Recipient shall keep all invoices, receipts and accounts and any other relevant documents relating to the expenditure of the Grant for a period of six years from the Commencement Date. The Council shall have the right to review at the Council's reasonable request, the Grant Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 4.4 The Grant Recipient shall on request provide to the Council a copy of its annual accounts within six months (or such lesser period as the Council may reasonably require) of the end of the relevant financial year during the Grant Period.
- 4.5 The Grant Recipient shall comply with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself.

5. MONITORING AND REPORTING

- 5.1 The Grant Recipient shall monitor the delivery and success of the Project throughout the Grant Period to ensure compliance with the terms and conditions of this Grant Agreement, the Agreement for Lease and their respective Schedules.

- 5.2 The Grant Recipient shall provide the Council with a financial report and an operational report of its use of the Grant within 30 days receipt of a written request to do so and in such formats as the Council may reasonably require.
- 5.3 The Grant Recipient shall provide the Council with copies of its risk register for the Project upon request.
- 5.4 The Grant Recipient shall on request provide the Council such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.
- 5.5 The Grant Recipient shall upon receipt of five Working Days notice in writing from the Council permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Grant Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 5.6 Upon prior agreement the Grant Recipient shall permit any person authorised by the Council for the purpose to visit the Grant Recipient once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Council considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person (with the prior agreement of the Grant Recipient) to make such visits on its behalf.
- 5.7 The Grant Recipient shall provide the Council with a Final Report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.
- 5.8 The Grant Recipient shall use all reasonable endeavours to provide the Council with any additional information that it may reasonably require to comply with any internal or external audit requirements.

6. ACKNOWLEDGMENT AND PUBLICITY

- 6.1 Subject to the remainder of this clause 6, the Parties shall agree to observe and follow the communication strategy to be agreed between the Parties acting reasonably.
- 6.2 Neither Party shall publish any press release or other formal communication concerning the Project without the prior written agreement of the other Party. For the avoidance of doubt, this shall not prevent either the Grant Recipient or Leathermarket JMB from communicating concerning the Project with residents in the area managed by Leathermarket JMB or pursuant to their existing contractual or governance obligations.
- 6.3 The Grant Recipient shall acknowledge the Grant in its annual report and accounts, or other equivalent reports, including an acknowledgement of the Council as the source of the Grant.
- 6.4 The Grant Recipient shall comply with all reasonable requests from the Council to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Council in its promotional and fundraising activities relating to the Project.

7. ROLE OF THE COUNCIL

- 7.1 The Council will make payments of Grant according to the Payment Arrangements.

- 7.2 The Grant Recipient shall use all reasonable endeavours to appoint a representative of the Council to the board of the Grant Recipient by 1st April 2016. as soon as possible from the date of this Agreement. If the appointment requires amendment to the rules of the Grant Recipient or its governing arrangements, then the Grant Recipient shall use all reasonable endeavours to make such amendment in a timely fashion to allow the appointment to take place.

8. TENANCIES

- 8.1 The Grant Recipient shall not sell, charge or otherwise grant any right of exclusive possession of the Property (or any part thereof) save for the granting of a Tenancy in accordance with the Tenancy Agreement.
- 8.2 For the avoidance of doubt, nothing in this Agreement is to be held to prevent the Grant Recipient's ability to mortgage the Property or any part of it with a third party and grant a first charge to that third party to assist in future projects.

9. OBSERVANCE OF STATUTORY REQUIREMENTS

- 9.1 The Grant Recipient shall comply with all statutory and other provisions to be observed and performed in connection with the Project. This includes those relating to employment of staff, payment of salaries and wages (such as income tax and National Insurance contributions), premises and health and safety legislation.

10. INSURANCE AND INDEMNITY

- 10.1 The Grant Recipient shall immediately notify the Council and its own insurers of any event that may give rise to a claim, demand, proceeding damage cost or charge whatsoever arising out of this Agreement, in relation to the Project.
- 10.2 The Council does not accept any liability whatsoever to the Grant Recipient for any costs, claims, damages or losses incurred as a result of breach by the Grant Recipient of this Agreement or of any relevant statutory or other requirement in relation to the Project.
- 10.3 The Grant Recipient shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Project, the non-fulfilment of obligations of the Grant Recipient under this Agreement or its obligations to third parties.
- 10.4 The Council's liability under this Agreement is limited to the payment of the Grant.

11. DISPUTE RESOLUTION

- 11.1 If either party to this Agreement wishes to raise a dispute concerning the other party to this Agreement ("the Complainant"), then the Complainant will notify the relevant party in writing, setting out the grounds for the complaint.
- 11.2 Following the receipt of a notice of dispute under clause 11.1, the Parties in question will use their reasonable endeavours to resolve the dispute within 28 days.

- 11.3 If the dispute or complaint cannot be resolved, then the matter will be referred to the relevant senior officer of the Council and the nominated representative of the Grant Recipient, who will use their respective reasonable endeavours to meet within 14 days of the matter being referred to them in accordance with this clause.
- 11.4 If the dispute or complaint cannot be resolved by the designated individuals under clause 11.3 then the matter may be passed for mediation under clause 12.

12. MEDIATION

- 12.1 Any dispute not resolved through negotiation under clause 11 of this Agreement shall at the request of either Party within 14 days of the meeting in clause 11.3 be referred to mediation.
- 12.2 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party shall within 14 (fourteen) days from the date of the proposal to appoint a mediator or within 14 (fourteen) days of notice to either Party that he or she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a mediator.
- 12.3 The Parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure ("the Model Procedure"). The cost of such mediation shall be split equally between the Parties or as otherwise determined by the Parties during the mediation process.
- 12.4 The mediation will be conducted on a without prejudice basis and in strict confidence.
- 12.5 If a dispute is settled through mediation, the terms of the settlement will be recorded in writing in a legally binding form signed by a duly authorised representative of each of the Parties. If a settlement is reached while proceedings are pending, the Parties acknowledge that an appropriate application must be made to the courts to render the terms of the settlement as a consent order or award.
- 12.6 If, within 28 calendar days of the mediator being appointed, the mediation has not resulted in the settlement of the dispute being reached, then the mediation procedure shall, unless otherwise agreed, be terminated. In that event, any proceedings, which have been stayed, will resume.
- 12.7 If either Party withdraws from the mediation at any time, the mediation procedure will be terminated and either will be free to refer the dispute to the courts, unless proceedings have already been commenced but stayed pending the outcome of the mediation, in which case those proceedings will resume.
- 12.8 In the event that the dispute or complaint is not capable of being resolved through this mediation procedure then it shall be subject to the jurisdiction of the courts of England and Wales.

13. VARIATIONS

- 13.1 Any variation to this arrangement must be approved by the Parties in writing.

14. TERMINATION

- 14.1 Subject to clauses 14.2 and 14.3 below, payment of Grant to the Grant Recipient is not repayable.

- 14.2 In the event that, in the reasonable opinion of the Council, the Grant Recipient has not commenced a further development scheme with a purpose similar to the Project at least 12 months prior to the end of the Grant Period, then the Grant Recipient must pay to the Council the Rents derived from the Property.
- 14.3 The Council's intention is that the Grant will be paid to the Grant Recipient in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:
- 14.3.1 the Grant Recipient uses the Grant for purposes other than those for which they have been awarded;
 - 14.3.2 the delivery of the Project does not start within 12 months of the Commencement Date and the Grant Recipient has failed to provide the Council with a reasonable explanation for the delay;
 - 14.3.3 the Council acting reasonably considers that the Grant Recipient has not made satisfactory progress with the delivery of the Project;
 - 14.3.4 the Grant Recipient is, in the reasonable opinion of the Council, delivering the Project in a negligent manner;
 - 14.3.5 the Grant Recipient obtains ~~D~~uplicate ~~f~~unding from a third party for the Project;
 - 14.3.6 the Grant Recipient obtains funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Project or the Council into disrepute;
 - 14.3.7 the Grant Recipient provides the Council with any materially misleading or inaccurate information;
 - 14.3.8 any member of the governing body, employee or volunteer of the Grant Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute;
 - 14.3.9 the Grant Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
 - 14.3.10 the Grant Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
 - 14.3.11 the Grant Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure; or
 - 14.3.12 in the event of a material breach of the Agreement for Lease by the Grant Recipient leading to the Termination of the Agreement for Lease.

14.4 Where the Agreement is terminated in accordance with this clause then the Council will give notice of the termination to the Grant Recipient and the Grant Recipient will have no claim under this Agreement for damages or otherwise by reason of such termination.

15. STATUS OF THIS AGREEMENT

15.1 This Agreement will be deemed to have come into effect upon the date at the head of this Agreement and will continue until such time as it is terminated in accordance with clause 2 or clause 14 of this Agreement.

15.2 For the avoidance of doubt this Agreement (and any variations to it) may be entered into by any number of counterparts. Together they will have the same effect as if the various signatures or seals on each were on a single copy.

16. STATUS OF THE PARTIES

16.1 This Agreement is personal to each of the Parties.

16.2 No Party may assign the benefit or burden of its interest under this Agreement except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).

16.3 If the Grant Recipient is part of a Group it will use all reasonable endeavours to ensure other organisations within its Group adhere to the terms and spirit of this Agreement in so far as it relates to them.

16.4 Except as mentioned in this clause no one other than the Parties will have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

17. LAW

17.1 This Agreement is to be governed by and construed in accordance with the law of England and Wales.

17.2 Subject to the dispute procedure in clauses 11 and 12 the Parties agree to submit to the exclusive jurisdiction of the English courts.

18. NOTICES

18.1 A notice given to a party under or in connection with this agreement:

18.1.1 shall be in writing and in English;

18.1.2 shall be signed by or on behalf of the party giving it;

18.1.3 shall be sent to the relevant party for the attention of the contact and to the address or fax number specified in clause 18.2, or such other address, fax number or person as that party may notify to the other in accordance with the provisions of this clause 18; and

18.1.4 shall be:

18.1.4.1 delivered by hand; or

18.1.4.2 sent by pre-paid first class post, recorded delivery or special delivery; or

18.1.4.3 sent by e-mail to an e-mail address notified by the relevant party to the other party for such purpose; and

18.1.5 is deemed received as set out in clause 18.2.

18.2 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied):

18.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address; or

18.2.2 if sent by pre-paid first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or

18.2.3 if sent by e-mail, one hour after the notice was sent.

19. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Grant Recipient and the Council, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

20. SEVERABILITY

If any part of this Agreement becomes invalid, illegal or unenforceable and such is so fundamental as to prevent the accomplishment of the purpose of this Agreement the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement. In the event of failure to agree, then the parties shall invoke the dispute procedures set out in clauses 11 and 12 of this Agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of this Agreement shall be suspended during such negotiations and procedures.

21. EQUALITY AND DIVERSITY

The Grant Recipient shall:

21.1 perform its obligations under this Agreement in accordance with the Equality Act 2010 and with all regulations and Codes of Practice, made under the same;

21.2 comply with any other requirements and instructions which the Council reasonably requires in connection with any equality obligations imposed on the Council in so far as they relate to the Project under relevant equality law; and

21.3 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination.

22. CONFIDENTIALITY

22.1 Subject to Clause 23, each party shall during the Term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or

other business, technical or commercial information disclosed to it by the other party in connection with this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

22.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

22.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;

22.2.2 it is reasonably necessary for either party to disclose to those of its employees and sub-contractors as may be reasonably necessary or desirable in order to implement the provisions of this Agreement, provided that before any such disclosure the receiving party shall make those employees and sub-contractors aware of its obligations of confidentiality under this Agreement and shall at all times seek to ensure compliance by those employees and sub-contractors with them;

22.2.3 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

22.2.4 is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

23. FREEDOM OF INFORMATION

23.1 Provisions Common to FOI and EIR

23.1.1 Each party acknowledges that the Council is subject to the statutory duties imposed upon public authorities under the FOIA and the EIR and the Grant Recipient shall assist and cooperate with the Council to enable the Council to comply with these information disclosure requirements.

23.1.2 The parties shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure under the FOI and the EIR (if required) and shall permit the other party to inspect such records as reasonably requested from time to time.

23.1.3 Where the Council receives a Request for Information under the FOIA or the EIR which relates to the Agreement, it shall inform the Grant Recipient of the Request for Information as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information.

23.1.4 if the parties determine that Information (including Confidential Information) must be disclosed pursuant to this Clause 23, it shall at least two Working Days before disclosure provide the Grant Recipient with a copy of the draft response to the Request for Information.

23.2 Freedom of Information Requests

23.2.1 Where one party deposits with the other party information which is intended to be information held on behalf of the other party it shall clearly indicate at the time of the deposit that this information is held on behalf of the other party.

23.2.2 Each party shall and shall seek to ensure that its sub-contractors, agents and employees shall where they receive a request for information under FOI:

23.2.2.1 transfer any Request for Information under the FOIA in respect of the information held on behalf of the other party to the depositing party as soon as practicable after receipt and in any event within two Working Days of receiving the Request for Information;

23.2.2.2 provide upon written request of the other party a copy of all information held on behalf of the other party in the form that the depositing party required within five Working Days (or such other period as the depositing party may specify) of the depositing party requesting that Information; and

23.2.2.3 provide all necessary assistance as reasonable requested by the depositing party to enable the depositing party to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

23.2.3 The depositing party shall be responsible for determining at its absolute discretion whether the Information held on its behalf:

23.2.3.1 is exempt from disclosure in accordance with the provisions of the FOIA;

23.2.3.2 is to be disclosed in response to a Request for Information; and

in no event shall the other party respond directly to a Request for Information unless expressly authorised to do so by the depositing party.

23.3 Requests for Environmental Information

23.3.1 The parties acknowledge that the party holding information which is Environmental Information held on behalf of the other party may, acting in accordance with the EIR be obliged to disclose Information:-

23.3.1.1 without consulting with the depositing party; or

23.3.1.21 following consultation with the depositing party and having taken its views into account.

24. INTELLECTUAL PROPERTY

24.1 All ~~Project~~ Intellectual Property Rights shall be proprietary to and owned by the Grant Recipient immediately on its coming into existence.

24.2 To the extent that it is reasonably able to do so the Grant Recipient hereby grants to the Council an irrevocable, world-wide, royalty-free transferable non-exclusive right and licence (with freedom to sub-licence) ~~under the Project Intellectual Property~~ to use and exploit ~~all the Project~~ Intellectual Property Rights.

24.3 Notwithstanding termination of this Agreement for whatsoever reason the Grant Recipient shall at its expense do and execute, and shall seek to ensure that its employees and sub-contractors engaged in the performance of the Project do and execute any further thing or document as may be required by the Council to give effect to Clause 24.2.

24.4 The Grant Recipient warrants:

24.4.1 that it shall use its reasonable endeavours to ensure that the **Project Intellectual Property Rights** will not infringe the rights of any third party and that no third party has threatened or so far as it is aware is currently threatening proceedings in respect of such infringement; and

24.4.2 that it is able to undertake the Project without breaching any obligations it may owe to any third party now, or as far as it is at present aware, in the future and hereby undertakes to carry out the Project without knowingly breaching any such obligations and further undertakes not to assume any obligations to any third party which would be inconsistent with such undertaking. Without limitation, it warrants that it shall **use reasonable endeavours to seek to** acquire all rights in any **Project Intellectual Property Rights** obtained or developed by any third party contractors in the course of or in connection with the Project or shall be duly allowed to licence the same as contemplated under this Agreement.

24.5 The Grant Recipient shall indemnify and hold the Council harmless (and keep indemnified and hold harmless notwithstanding termination of this Agreement) against any and all loss or damage (including without limitation any economic loss or other loss of profits, business or goodwill or any consequential loss) suffered by the Council as a result of the Grant Recipients breach of any or all of the warranties in Clause **24.4**.

25. **REGISTRATION OF AGREEMENT AT THE LAND REGISTRY**

25.1 Following completion of the Lease, the Grant Recipient shall:-

25.1.1 as soon as reasonably practicable apply for a notice this Agreement to be registered at the Land Registry against the Grant Recipients leasehold title to the Property;

25.1.2 deal with any requisitions raised by the Land Registry acting reasonably; and

25.1.3 send the Council's solicitor official copies of the title within five working days of completion of the registration.

IN WITNESS whereof the Parties have each signed the Agreement and the Agreement is executed as a Deed but not delivered the day and year before written

SCHEDULE 1

PROJECT

1. The Council will provide funding (monies) to the Grant Recipient equivalent to the cost of delivering the proposed scheme at the Property for high quality genuinely affordable homes subject to reasonable variations from time to time up to the Maximum Sum.
2. The affordable housing will be let at the Social Rents on the terms of the Tenancy Agreement.
3. The monies are to be used solely for the purpose of developing new genuinely affordable homes by the Grant Recipient at the Property.
4. The income from the new homes may be retained by the Grant Recipient to assist in the funding of future genuinely affordable housing projects.
5. Tenancies are to be granted in accordance with the Grant Recipient's Allocations Policy. The Grant Recipient shall use reasonable endeavours to minimise voids.

SCHEDULE 2

PAYMENT ARRANGEMENTS

1. No payment of Grant shall be made unless and until the Council is satisfied **acting reasonably** that such payment will be used for proper expenditure on the delivery of the Project and the Grant Recipient has submitted a Claim Form, accepting for the avoidance of doubt that the Grant Recipient may ~~make~~ submit a Claim Form for payment in advance.
2. The amount of the Grant shall not be increased in the event of any overspend by the Grant Recipient in its delivery of the Project.
3. The Grant shall be paid into a separate bank account in the name of the Grant Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Grant Recipient.
4. The Grant Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Council.
5. Following the start of the Grant Period and subject to the remainder of this schedule the Grant Recipient may request payment of Grant by giving 15 days' notice in writing to the Council.
6. A maximum of £300,000 paid in advance may be drawn prior to the commencement of building works.
7. Following the entering into of the Building Contract payment of Grant shall be made quarterly in advance in agreed payment amounts up to the Maximum Sum upon receipt of a Claim Form completed by the Grant Recipient and submitted to the Council.

SCHEDULE 3

PROPOSED RENTS

- [1 bed £127.18 per week](#)
- [2 bed £145.80 per week](#)
- [3 bed £153.90 per week](#)

EXECUTED AS A DEED with the seal of the Mayor and Burgesses of the London Borough of Southwark, in the presence of:

Authorised signatory

EXECUTED AS A DEED by Leathermarket Community Benefit Society Limited and signed by:-

Director

Director/Secretary

Appendix 1: Development Plans

Appendix 2: Allocations Policy

Leathermarket CBS - Local Lettings Policy

[The Council and CBS have agreed that 50% local lettings criteria will be applied across three schemes, the Council's Long Lane development and the CBS's Kipling garages and Joseph Lancaster developments.](#)

[The Leathermarket CBS local lettings policy sets out the eligibility criteria for the allocation of the CBS new build homes to existing JMB tenants and the policy for determining priority for an allocation.](#)

[The CBS has adopted Southwark Council's approach to re-housing tenants as set out in the Housing Allocations Scheme November 2013.](#)

1) Eligibility for allocation

A JMB tenant who wishes to apply for a new build property must be registered on Southwark Council's Housing Register as a 'qualifying person'.

The tenant must have lived in Southwark for the last 5 years

The tenant must not be in breach of their tenancy agreement, including rent arrears, anti-social behaviour and unlawful sub-letting. The 'no rent arrears' criteria can be waived for tenants who are downsizing.

2) Determining priority between tenants

A tenant's priority for housing is determined by priority bands; band 1 being the highest and band 4 the lowest.

Band 1

- Tenants who are under-occupying a JMB tenancy and wish to move to a smaller property. (Tenants who have reached the qualifying age for state Pension Credit will be allowed to transfer to a property with one additional bedroom)
- Tenants who are statutorily overcrowded as defined by Part X of the Housing Act 1985, and have not caused the overcrowding through a deliberate act.

- Tenants who have to move as their home require major works within six months. This will be determined and managed subject to the Leathermarket JMB's decant procedure.

Band 2

- Tenants who have a severe medical, welfare award or disability where the current accommodation is unsuitable or it is unreasonable to remain in occupation. This can include where a tenant's condition is life-threatening and the tenant's accommodation is a major contributory factor, or the tenant's health is so severely affected by the accommodation that it is likely to become life-threatening.
- Tenants who are entitled to the Good Tenant Award (lived at the tenancy for 5 years, with no housing related debt or breach of tenancy agreement).
- Tenants who have priority on welfare grounds and require a move urgently because of a risk to their well-being or health.

Band 3

- Tenants who are overcrowded but not statutorily overcrowded as defined by Part X of Housing Act 1985.
- Tenants with a moderate medical priority where there is a clear objective need to move, because they include a person (or persons) whose illness or disability is either made worse by their present living conditions, or where a move to more satisfactory housing accommodation is likely to result in an improvement in health. However, the housing conditions directly contribute to causing serious ill-health.

Band 4

- All other tenants not included in Bands 1-3.

Additional Priority within the Bands

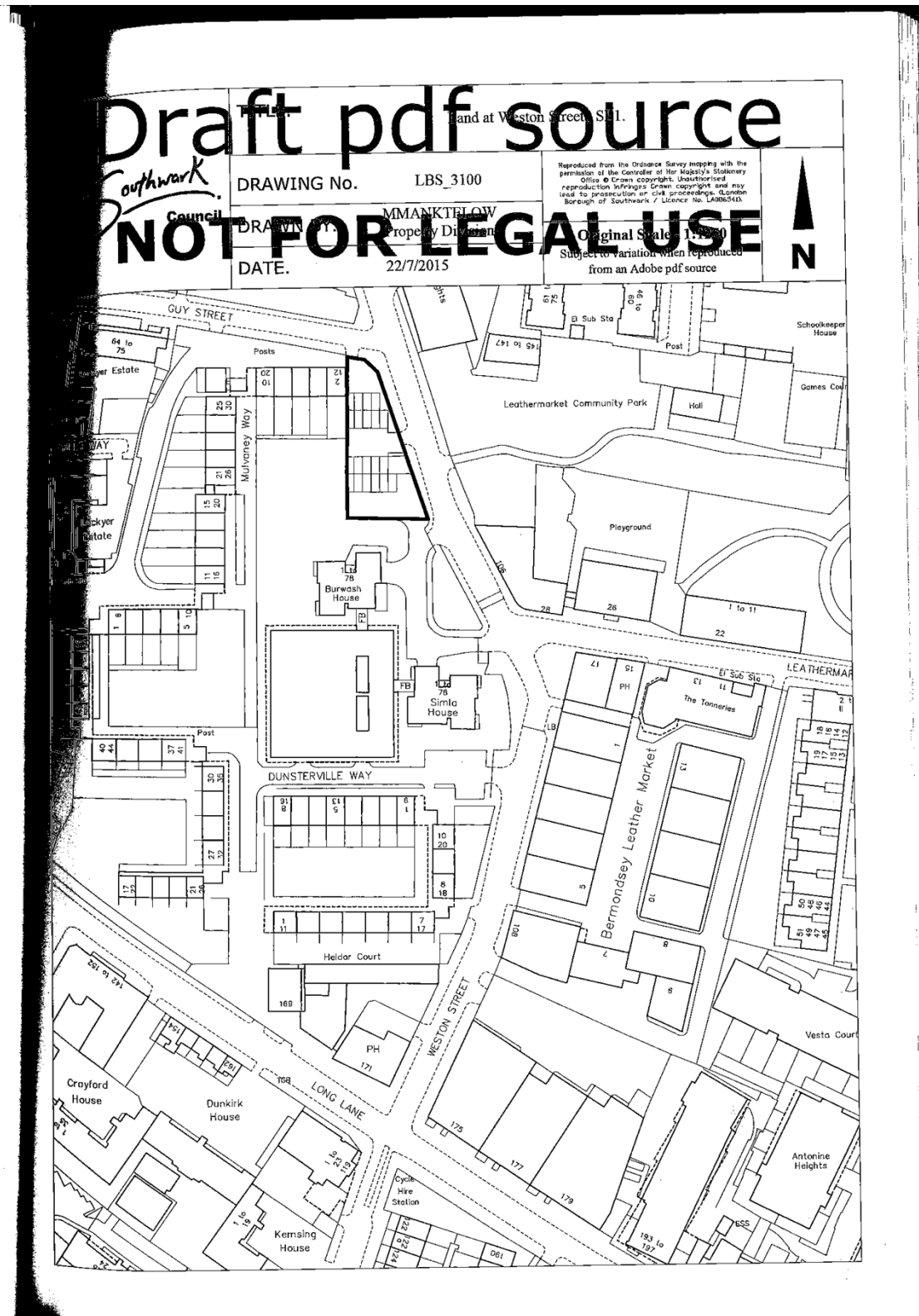
Within Bands 1 to 4 priority is accorded by;

- the number of priority stars the tenant has been awarded, in accordance with Southwark Council 'Priority Star system'
- the date of the tenant's registration.

3) Tenant participation

Priority is given to tenants who actively participate in the new homes design consultation process, with the provision of alternative engagement options for those who have difficulty participating due to health, childcare or other equalities factors.

Appendix 3: Plan of site



Draft pdf source

Southwark Council

DRAWING No. LBS_3100

DRAWN BY: MMANKTELLOW
Property Director

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Appendix 4: Form of assured tenancy agreement

Appendix 5 : Claim Form

Claim Form

- This form must be completed in full and signed off by the Recipient's Representative as identified in the Grant Agreement.
- You must provide supporting evidence for all Project expenditure.
- Unless agreed with Council, all claims must be in line with the agreed budget.
- The Claim Form and supporting evidence must be sent to the Council.

1. Recipient details

<u>Name</u>	
<u>Organisation</u>	
<u>Address</u>	
<u>Project Title</u>	
<u>Bank Name and Address</u>	
<u>Bank A/C Number</u>	
<u>Sort Code</u>	

2. Funding - We wish to claim the following amount of:

£

3. Declaration and Undertaking

- We declare that the project is being implemented in accordance with the Grant Agreement.
- We undertake to notify the Council immediately in writing of any changes to detailed notes on this form and any attachments.
- Evidence of spend (invoices, certificates of work) will kept and made available for inspection by the Council.

<u>Name (block capitals)</u>	<u>Signature</u>	<u>Date</u>

Supporting evidence for the second instalment of the Grant must be provided with this claim form to support the claim for funding.

Appendix 6 : Project Budget