

DATED

11th August

2011

(1) LONDON BOROUGH OF WALTHAM FOREST

-and-

(2) OLYMPIC DELIVERY AUTHORITY

AGREEMENT

relating to

Drapers Field Recreation Ground

pursuant to Section 106 of the Town & Country
Planning Act 1990

London Borough of Waltham Forest

Governance and Law

Town Hall

Forest Road

Walthamstow

London

E17 4JA

Ref: LE/PCJ/64587

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THIS AGREEMENT is made on
BETWEEN

11th August

2011

- (1) **The Mayor and Burgesses of the LONDON BOROUGH OF WALTHAM FOREST** of Town Hall, Forest Road, Walthamstow, London, E17 4JA ("Council") and
- (2) **The Olympic Delivery Authority** of London 2012, One Churchill Place Canary Wharf London E14 5LN, a body corporate established by Section 3 and Schedule 1 of the London Olympic Games and Paralympic Games Act 2006, ("the ODA")

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act and for the area within which the Site (an Open Space as hereinafter defined) is situated. The obligations entered into pursuant to this Agreement are enforceable by the Council.
- B The Council is the freehold owner of the Site. The ODA is interested in the Site for the purposes of section 106 of the Act by virtue of the grant of a Lease of even date herewith.
- C Sport England is a statutory consultee on proposals for development which affect playing fields and was consulted on the Application
- D On 22 February 2011 the ODA and LOCOG submitted the Application to the Council for the Development.
- E On 2 August 2011 the Council resolved to grant a temporary Planning

Permission for the Development proposed by the Application subject to the conditions set out in the Planning Permission and subject to:

- (E.1) the conditions set out in the Planning Permission;
- (E.2) a legal agreement providing for the carrying out of the Drapers Field Works
- (E.3) measures being provided to mitigate the displacement of users of the Site resulting from the ODA's use of the Site under the Planning Permission

The Council is satisfied that entering into this Agreement will enable it to issue the Planning Permission consistent with the requirement in the Council's resolution referred to at Recital E.2. The Section 111 Agreement of even date is being entered into by the parties in respect of Recital E.3.

- F The Council consider it expedient in the interests of the Open Space Strategy that the development of the Site should be granted for a temporary period with restoration and improvement of the facilities on the Site subsequently as provided by this Agreement.
- G For that purpose the parties are willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1. DEFINITIONS

- 1.1 Where in this Agreement the following words (arranged in alphabetical order) begin with a capital letter these shall have the following meaning:

"Act" means the Town and Country Planning Act 1990 (as amended);

"Agreement" means this deed of planning Agreement made pursuant to the Act;

"Application" means the planning application submitted by Ove Arup on behalf of the ODA and LOCOG on 22 February 2011 under reference number 2011/0623;

"Commencement" means commencement of the Development as defined by section 56 of the Act and (and the date of such Commencement shall be referred to as the "Commencement Date") and "Commenced" shall be construed accordingly;

"Contribution" means the sum of two million pounds (£2,000,000) paid by the ODA to the Council in accordance with paragraph 2 of Schedule 1 and to be expended or committed in accordance with paragraph 1 to 3 (inclusive) of Schedule 2;

"Demand Notice" means the notice served by the Council on the ODA pursuant to Schedule 2 paragraph 1 requesting payment of the Contribution or an instalment from the Contribution;

"Development" means temporary use of the site as an Athletes' Village Operational Support Area (VOSA) to provide back of house services to the Athletes Village during the London Olympic and Paralympic Games 2012. Works comprise erection of temporary LOCOG facilities (including tents, refrigerated storage units, containers and portacabins); hard surfacing; surface water drainage; lighting; highway access from Temple Mills Lane; Command & Perimeter Security Systems (CPSS); and Outer Perimeter Fence (OPF) and demarcation fence;

"Drapers Field Works" means the restoration improvement and construction (after 24 December 2012) of facilities currently provided on the Site together with any appropriate landscaping and/or biodiversity enhancements, and any other works within Sport England's Requirements;

"Evidence" means evidence of the letting by the Council of a contract, or the submission to the Council of an invoice or such other evidence supportive of any instalment of the Contribution requested in a Demand Notice as the parties may agree;

"Interest" means interest at the rate of 4% per annum above the base lending rate of the Co-operative Bank plc such interest to be apportioned on a daily basis;

"LOCOG" means the London Organising Committee of the Olympic Games and Paralympic Games 2012;

"Maintenance Schedule" means a document to be agreed between the Council and Sport England which sets standards for the maintenance of the Site after the Drapers Field Works have been practically completed. This document shall include the following items;

- Pavilion staffing, equipment, fixtures and security
- Artificial grass Playing Pitch and natural turf Playing Pitch and urban beach facility and management and maintenance
- Maintenance cleaning and litter picking in the open play and grass areas
- Opening and closing of the site gates and site wide security arrangements

This document shall also include the following requirements:

- All Playing Pitches should be maintained to a standard agreed with a specialist Playing Pitch consultant agreed by Sport England.
- All Playing Pitches must be maintained in line with the relevant National Governing Body of Sport standards linked to the level of competitive standard proposed for the clubs using the pitches.
- All Playing Pitches should be subject to an annual inspection and maintenance action plan.
- All Playing Pitches are to be maintained by appropriately qualified / experienced staff to undertake the work.

"Planning Permission" means a planning permission granted for the Development in the draft form annexed as Schedule 5;

"Playing Field" means the whole of a site which encompasses at least one Playing Pitch;

"Playing Pitch" means a delineated area which, together with any run-off area, is of 0.2 hectares or more and which is used for association football, American football, rugby, cricket, hockey, lacrosse, rounders, baseball, softball, Australian football, Gaelic football, shinty, hurling, polo or cycle polo;

"Open Space" has the meaning assigned by Section 336 (1) of the Act;

"Section 111 Agreement" means the agreement of even date herewith between the same parties entered into pursuant to Section

111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers;

"Open Space Strategy" means the Open Space Strategy adopted by the Council at the meeting of its Cabinet in September 2010;

"Site" means the Playing Field known as Drapers Field Recreation Ground High Road Leyton which for the purposes of identification only is shown edged red on the Site Plan;

"Site Plan" means the plan of the Site annexed to this Agreement as Schedule 3;

"Sport England's Requirements" means the execution of the Draper's Field Works in accordance with the details as set out at Schedule 4;

"Working Day" means each day (other than Saturdays or Sundays) on which clearing banks in England are open for transactions or ordinary business other than any date between 24 December and 31 December inclusive.

2. INTERPRETATION

- 2.1 References to clauses, sub-clauses, paragraph numbers, recitals, Schedules and plans are unless otherwise stated references to clauses, sub-clauses, paragraph numbers and recitals of and Schedules to this Agreement and in the case of plans, plans annexed to this Agreement.

- 2.2 Words importing one gender will be construed as importing any other gender. Words importing the singular will be construed as importing the plural and vice versa.
- 2.3 Words importing persons include firms, companies, other corporate bodies or legal entities and vice versa.
- 2.4 References to any party shall include their respective statutory successors to their functions or successors in title to their respective interests in the Site and persons deriving title therefrom (except where the contrary is expressly provided) and permitted assigns.
- 2.5 References to any statute, regulations, orders, directions, by-laws, delegated legislation, and other instruments made under a statute shall include any statute, bye-laws, regulations, orders or delegated legislation amending, re-enacting, consolidating or replacing the same in force from time to time.
- 2.6 The headings in this Agreement are for convenience only and should not be taken into account in the construction or interpretation of the Agreement.
- 2.7 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.
- 2.8 In the event of any conflict between the terms conditions and provisions of this Agreement and any document annexed hereto or

referred to herein, the terms conditions and provisions of this Agreement will prevail.

2.9 References to "the parties" shall mean the parties to this Agreement and reference to "party" shall mean any one of the parties.

2.10 The Interpretation Act 1978 shall apply to this Agreement.

3. PARTIES

3.1 The ODA enters into this Agreement as the Lessee under the Lease referred to in recital B.

3.2 The Council enters into this Agreement as the local planning authority for the Site, and as freehold owner of the Site.

4. LEGAL EFFECT

4.1 This Agreement is a planning obligation made pursuant to the provisions of section 106 of the Act, section 111 of the Local Government Act 1972 and all other enabling powers with the intent that the obligations herein run with and bind the Site.

4.2 This Agreement shall be enforceable against the ODA and any person for the time being deriving title from the ODA as provided in section 106(3) of the Act.

4.3 Notwithstanding clause 4.2 above, in accordance with section 106(4) of the Act neither the ODA nor any person deriving title from the ODA shall have any further liability under this Agreement in respect

of any period during which the ODA (or as the case may be such other person) no longer has an interest in the part of the Site in respect of which such breach occurs save for any prior subsisting breaches

- 4.4 It is hereby agreed that save for clause 5.1 which comes into effect on the date hereof all covenants, undertakings and obligations contained within this Agreement shall become binding upon the ODA upon Commencement.

5. THE ODA'S COVENANTS

The ODA covenants with the Council:

- 5.1 on or before completion of the Agreement to pay the Council's legal and other professional costs reasonably and properly incurred in respect of the approval and completion of the Agreement in an amount agreed between the parties;
- 5.2 to observe and perform the restrictions and obligations set out in Schedule 1.

6. THE COUNCIL'S COVENANTS

The Council covenants with the ODA:

- 6.1 to issue the Planning Permission immediately upon completion of this Agreement;

6.2 to issue written confirmation to the ODA that any of the obligations of the ODA under this Agreement have been performed or otherwise discharged upon written request by the ODA; and

6.3 to observe and perform the obligations set out in Schedule 2.

7. PAYMENT

7.1 Payment of the Contribution pursuant to Schedule 1 of this Agreement shall be made by the ODA depositing the amount in an interest bearing account in the name of the Council.

7.2 If any sum remains unpaid after 28 days from the due date of payment, Interest shall accrue on the outstanding amount and all Interest accrued shall unless otherwise agreed be payable to the Council by the ODA.

8. LOCAL AUTHORITY POWERS

It is hereby agreed and declared by the parties that this Agreement is without prejudice to and shall not be construed as derogating from any of the rights, powers and duties of the Council pursuant to any of its statutory functions or in any other capacity.

9. LOCAL LAND CHARGES

This Agreement may be registered by the Council as a local land charge under the Local Land Charges Act 1975.

10. DISPUTE RESOLUTION

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or in connection with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing such agreement within 14 days of notification of a dispute, to be nominated (on the application of one of the parties) by the president for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be submission to arbitration within the meaning of the Arbitration Act 1996.

11. NOTICES

11.1 Any notice or written communication required to be served by one Party to this Agreement on another shall be in writing and shall be served if transmitted by electronic communication to a named recipient identified for that purpose (confirmed by delivery receipt) delivered by hand or sent by registered recorded or first class delivery post at the addresses given below (or such other addresses as shall be notified by the Parties to one another from time to time):

11.1.1 in the case of a notice to be served on the ODA addressed to the Director of Property, Olympic Delivery Authority, 23rd Floor, One Churchill Place, Canary Wharf, London E14 5LN; and

11.1.2 in the case of a notice to be served on the Council addressed to the Executive Director of Sustainable Communities, London Borough of Waltham Forest, Sycamore House, Waltham Forest Town Hall Complex, Forest Road, Walthamstow, London E17 4JF.

- 11.2 Any notice served pursuant to the Agreement shall cite the number and clause of the Agreement to which it relates and in the case of notice to the Council, the planning reference number for the Development.
- 11.3 Any document purporting on its face to have been signed by or on behalf of the Council or an identified officer of the Council shall be taken as conclusive proof of that fact.
- 11.4 Any communication transmitted electronically shall be deemed received on the date and time stated on the delivery receipt; any communication delivered by hand shall be deemed received on the date delivered if delivery occurred before 5pm, or if delivery occurred after 5pm then receipt shall be deemed on the next Working Day; any communication sent by registered recorded or first class delivery post shall be deemed received on the second Working Day after posting.

12. RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement provided that Sport England will have the right to enforce the obligations in clauses 5.2 and 6.3, . This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that statute.

13. EXECUTED AS A DEED

This Agreement is a deed within the meaning of section 1 of the Law of Property (Miscellaneous Provisions) Act 1989 and is executed as such.

14. APPLICABLE LAW

The construction, validity and performance of this Agreement shall be governed by English Law.

15. VAT

15.1 The Contribution is inclusive of any VAT chargeable thereon.

15.2 Save for the Contribution all other sums and amounts referred to in this Agreement are exclusive of VAT (if any) due or payable in any circumstances save where otherwise provided.

15.2 VAT shall only be payable on production of a valid VAT invoice.

16. DUTY TO ACT REASONABLY AND IN GOOD FAITH

The parties agree with one another to act reasonably and in good faith in the fulfilment of the objectives of this Agreement.

17. NO WAIVER

No waiver (whether express or implied) by the Council of any breach hereto shall constitute a continuing waiver or prevent the Council from enforcing any of the said obligations or from acting upon any subsequent breach or default in respect thereof by such party his successors in title or assigns or any person claiming through or under it an interest in the Site.

18. APPROVALS, CONSENTS AND EXPRESSIONS OF SATISFACTION

Where any approval, agreement, consent, confirmation, or an expression of satisfaction is required to be given pursuant to the terms of this

Agreement it must be obtained before the act or event to which it applies is carried out or done. The approval, agreement, consent, confirmation, or expression of satisfaction must be in writing and no party shall unreasonably withhold or delay any such approval, agreement, consent, confirmation, or expression of satisfaction and any approval, agreement, consent, confirmation, or an expression of satisfaction shall be deemed to be given for the purposes of this Agreement where it is unreasonably withheld or delayed provided that nothing herein shall fetter the statutory rights, powers or duties of the Council.

19. ENFORCEMENT

It is agreed that the provisions of this Agreement shall not be enforceable against any statutory undertaker or other such person who acquires an interest in the Site only for the purposes of the supply of any electricity, gas, water, drainage, telecommunication or other similar service.

20. TERMINATION

20.1 This Agreement shall terminate and be of no further effect without the requirement for any act of any party to this Agreement if:

20.1.1 the Planning Permission shall lapse without the Development having been Commenced; or

20.1.2 the Planning Permission shall be revoked; or

20.1.3 the Planning Permission shall be subject to a successful legal challenge by way of judicial review and at the conclusion of all legal proceedings forming part of that challenge (including any appeals) shall be quashed,

and in any such case the Council shall procure the removal of all entries relating to this Agreement in the register of local land charges and shall forthwith repay to the original payee in the case of clauses 20.1.1 and

20.1.2 all monies paid to the Council pursuant to Schedule 1 of this Agreement together with accrued interest and in the case of clause 20.1.3 all monies paid to the Council pursuant to Schedule 1 of this Agreement together with accrued interest insofar as these monies have not been expended in accordance with this Agreement.

20.2 The termination of this Agreement shall not affect the liability of any party prior to such termination in respect of any earlier breach.

21. SEVERANCE

If any provision in this Agreement shall be or shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable in any way then the provision in question shall be severed from the remainder of this Agreement (which shall continue in full force and effect) and the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected impaired or called into question.

22. MODIFICATION

If any part of the Planning Permission is modified following a judicial review challenge then the parties shall agree what effect (if any) such modification has on the provisions of this Agreement and any obligations no longer relevant or enforceable shall be varied to give effect to the intention of the parties.

EXECUTED AS A DEED on the day and year first before written by the parties hereto:

THE COMMON SEAL of THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF WALTHAM FOREST)
was hereunto fixed in the presence of:)

Jon Wallis

HEAD OF COMMERCIAL LAW FOR
DIRECTOR OF GOVERNANCE & LAW

63224

.....
Authorised Signatory

THE COMMON SEAL of the)
Olympic Delivery Authority was)
hereunto affixed in the presence of:)

D. Hone

.....
Authorised Signatory

M. H. Hill

.....
Authorised Signatory



SCHEDULE 1

The ODA's Covenants

The ODA covenants with the Council as follows:

1. To give written notice to the Council no later than 30 (thirty) days prior to the Commencement Date specifying the date that Commencement of the Development is anticipated to take place.
2. To pay the Contribution to the Council within 28 (twenty eight) days of receipt by the ODA of a Demand Notice PROVIDED THAT:
 - (a) it is accompanied by the Evidence referred to in Schedule 2, paragraph 1;
 - (b) in the case of a second or subsequent Demand Notice it is accompanied by an account referred to in Schedule 2, paragraph 2 from the Council; and
 - (c) it is received by the ODA no earlier than 28 (twenty eight) days prior to the Commencement Date and no later than 24 December 2012.

SCHEDULE 2

The Council's Covenants

The Council covenants with the ODA as follows:

1. Subject to paragraph 3 below not to serve on the ODA a Demand Notice unless in the Council's reasonable opinion the Contribution or an instalment of the Contribution is required by the Council to satisfy any purpose identified in paragraph 6 below which Demand Notice shall be accompanied by Evidence of the need for the Contribution or an instalment of the Contribution (as the case may be).
2. Subject to paragraph 3 below, that the Council may serve on the ODA one or more Demand Notices until the entire Contribution has been paid by the ODA to the Council, and in the case of any second or subsequent Demand Notice the Demand Notice shall be accompanied by an account identifying how much of the Contribution has been paid by the ODA to the Council to date, the dates of the payment of the instalments, and the balance remaining to be paid.
3. That no Demand Notice shall be capable of being served earlier than 28 (twenty eight) days prior to the Commencement Date; and no later than 24 December 2012 or the date that the Council has provided its Evidence whichever is the later
4. Each Demand Notice shall specify that payment is to be made pursuant to clause 7 no later than 30 days from the date or deemed date of service of the Demand Notice on the ODA.
5. To agree the Maintenance Schedule with Sport England before carrying out the Drapers Field Works

6.1 To apply subject to paragraph 6.2 the Contribution for the purpose of:

- (a) reimbursing the Council for forward funding the fees of consultants designing the measures for restoration and improvement of facilities on the Site
- (b) carrying out the Drapers Field Works subject to:
 - (i) the written approval of Sport England unless such approval is unreasonably withheld or delayed; and
 - (ii) being informed by the outcome of public consultations; and
 - (iii) being informed by the Council's Playing Pitch Strategy; and
 - iv) obtaining the relevant planning consents and any other consents, approvals, licences or permits whatsoever as may be required to carry out the Drapers Field Works and maintain these in accordance with the Maintenance Schedule;

6.2 If the relevant planning consents and any other consents, approvals, permits and licences as may be required as referred to in paragraph 6.1(b)(iv) above are not forthcoming within a reasonable time period for meeting the prescribed deadlines to procure the Drapers Field Works then the Council shall use all reasonable endeavours to secure expeditiously planning consents which aim to achieve the same planning objectives as the Drapers Field Works.

7 Dealing with Financial Contributions

- (a) The Council shall have the right to apply the Contribution or any part or parts thereof to revenue purposes or to capital purposes or partly to the one and partly to the other but subject always to the requirements of paragraph 7(b) below.

- (b) The Council shall not use the Contribution received by it pursuant to this Agreement otherwise than for the purposes set out in paragraph 6 above save that the Council may nonetheless agree in writing with the ODA to vary the purpose for which the Contribution may be used up to a maximum of 10% of the Contribution provided that the proposed variation shall be:
- i) necessary to make the Development acceptable in planning terms; and
 - ii) directly related to the Development; and
 - iii) fairly and reasonably related in scale and kind to the Development; and
 - iv) for the purposes set out in paragraph 5 of Schedule 2 of the Section 111 Agreement.
- (c) Any part of the Contribution not used within five years after the date on which it is paid shall forthwith be paid to the original payee together with Interest accrued.
- (d) The Council shall from time to time upon reasonable written request by the ODA (but not more frequently than once every calendar year) provide the ODA with a breakdown of expenditure from the Contribution.

8. **Council not to encumber**

The Council shall not encumber or otherwise deal with its interest in the Site or any part or parts thereof in any manner whatsoever whereby the obligations imposed by this Agreement are rendered impossible to carry out save where planning permission is granted for an alternative development of the Site and PROVIDED THAT this paragraph 8 shall not restrict the Council from encumbering or otherwise dealing with its interest in the Site or any part or parts thereof on a basis that is subject to the obligations imposed by this Agreement.

SCHEDULE 4

SPORT ENGLAND'S REQUIREMENTS

1. Provision of a full size, floodlit and fenced third generation Artificial Grass Pitch ("AGP") to Sport England Design Guidance Note Standards;
2. Construction of a new junior natural turf Playing Pitch including any drainage and pitch improvement works in accordance with 'Natural Turf for Sport' (Sport England, 2011) to meet the basic Performance Quality Standards as stipulated by Sport England;
3. The AGP and grass pitch installation and improvement works are to be carried out and supervised by a specialist Playing Pitch consultant complying with criteria set out in Appendix 1 of Natural Turf for Sport (Sport England, 2011) and to be agreed by Sport England
4. Improvement works to the changing pavilion to a standard and design agreed by Sport England; and
5. Installation of perimeter fencing or reinstatement of existing perimeter railings to the Site to a standard and design agreed by Sport England .
6. Completion and opening for use by the public of the Draper's Field Works no later than the 30th September 2013].