

**Note:** Text highlighted blue is unredacted text not previously disclosed. Text underlined is new text not contained in the previously disclosed version of the Development Agreement

**Conformed Copy**

**DATED 20 DECEMBER 2017**

**(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY**

**(2) LENDLEASE (HIGH ROAD WEST) LIMITED**

**(3) LENDLEASE CORPORATION LIMITED**

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**DEVELOPMENT AGREEMENT**  
**relating to land at High Road West, Tottenham, London**

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**BETWEEN:-**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of Civic Centre, High Road, Wood Green, London N22 8LE (the "**Council**"); and
- (2) **LENLEASE (HIGH ROAD WEST) LIMITED** (Company Number 11114089) whose registered office is situated at 20 Triton Street, Regent's Place, London, United Kingdom, NW1 3BF (the "**Partner**"); and
- (3) **LENLEASE CORPORATION LIMITED** (Company Number ACN000226228) whose registered office is situated at Level 14 Tower Three International Towers Sydney Exchange Place 300 Barangaroo Avenue Barangaroo, Nsw 2000, Australia (the "**Guarantor**")

**BACKGROUND:-**

- (A) The Council, the Partner and the Guarantor have entered into this Agreement to procure the comprehensive regeneration of land at High Road West, Tottenham described in this Agreement.
- (B) It is the parties' intention in the delivery of the Development to achieve the following overriding project objectives:-
  - (i) deliver comprehensive regeneration of the Site that creates a vibrant, attractive and sustainable neighbourhood and supports the delivery of a new sports and leisure destination for London;
  - (ii) regenerate the Love Lane Estate, ensuring that all current secure tenants are re housed within the area in high quality and high performing homes built to the London Mayor's Design Guide Standards;
  - (iii) deliver a broad mix of tenures including innovative new affordable housing products and (potentially) private rented sector in a tenure blind development;
  - (iv) create a new attractive, vibrant and economically successful local centre within the south of the Site, which supports both the future community and the creation of a leisure destination alongside planned development at THFC, whilst also measurably increasing employment opportunities;
  - (v) deliver new community infrastructure that meets the needs of an increased population, including a new library and learning centre and if necessary health and educational facilities;
  - (vi) secure wider social and economic benefits for the local community, including employment, education, health and community safety benefits as set out in the Tottenham People Programme;
  - (vii) deliver high quality design which will create a healthy, safe and economically active neighbourhood and high quality architecture that responds to the existing character and heritage of the area;
  - (viii) significantly increase the amount and quality of public space in the area, including delivering a new high quality public square, which is activated with community and other uses, to link White Hart Lane station to the High Road;
  - (ix) ensure that environmental sustainability is designed into the scheme addressing urban challenges such as climate change adaption, noise pollution and air quality; and
  - (x) ensure that the Council is able to recover its costs in relation to the Development.

- (C) In particular, the Council wishes to secure the delivery of its Core Requirements as follows:-
- (i) 1,400 new high quality homes;
  - (ii) 30% (by unit number) affordable housing including a total of 546 new high quality social rent homes;
  - (iii) 4,800 sq m GIA of A1, A3 and A4 retail space;
  - (iv) 3,000 sq m GIA of D2 leisure space;
  - (v) 1,000 sq m GIA of B1 business space;
  - (vi) a new 1,400 sq m library GIA and learning centre (including fit out);
  - (vii) improvements to the landscape and public realm including a major new link between an enhanced White Hart Lane Station and THFC;
  - (viii) shell and core (comprising not less than 1,260 sq m and not less than 300 sq m thermal store) for a new energy centre sized to accommodate all necessary combined heat and power and energy plant and equipment to supply heat to the High Road West development and the wider north Tottenham area in accordance with the Energy Centre Shell and Core Specification;
  - (ix) suitable infrastructure to be installed throughout the Site to transport heat from the Energy Centre to the Units in accordance with the Developers District Heating Technical Specification; and
  - (x) suitable infrastructure to be installed within all Units throughout the Site to ensure compatibility with the DEN in accordance with the Developers District Heating Technical Specification.
- (D) On 3 June 2016 OJEU notice reference 2016/5 106-188226 was published. Following a pre-qualification process, six bidders were invited to dialogue and submit outline solutions to the Council in December 2016. On 20 February 2017, the Council issued an Invitation to Continue Dialogue to three bidders, who were invited to submit final tenders for the redevelopment of the Site in June 2017. After evaluation, the Partner was selected as the preferred bidder.
- (E) The Partner has agreed to carry out the Works in accordance with this Agreement.
- (F) The Partner's role as described in this Agreement is that of the Council's developer to deliver regeneration on the terms of this Agreement.
- (G) The Partner is a wholly owned subsidiary of Lendlease Europe Holdings Limited (company number 03196202).

**IT IS AGREED:-**

**1. INTERPRETATION**

**1.1 In this Agreement:-**

**"1990 Act"** means the Town and Country Planning Act 1990

**"Additional Social Rented Homes"** means any social rent homes which the Partner proposes to construct as part of the Development in addition to the Replacement Social Rented Homes



<b>"Additional Sum"</b>	means the sum (if any) calculated by deducting the total of the Premium payable in respect of Phase 1 plus the Phase 1 Contribution from the Phase 1 Guaranteed Minimum Contributions
<b>"Affordable Housing Grant Condition"</b>	means the Partner or a Registered Provider procured by the Partner having entered into a grant agreement with GLA for affordable housing grant in respect of all of the Affordable Housing Units within the relevant Phase
<b>"Affordable Housing Units"</b>	means Residential Units where the rent or price is permanently reduced, directly or indirectly, by means of subsidy from the public, private or voluntary sectors (including for the avoidance of doubt shared ownership units) and which is provided or managed by the Council or a Registered Provider, identified in a scheme submitted to and approved in writing by (or in any event required by) the Local Planning Authority
<b>"Agreed Affordable Homes Mix"</b>	means the mix of Replacement Social Rented Homes and Council's Additional Social Rent Homes that meets the housing needs for the reprovision of existing eligible households eligibility being in accordance with the Council's High Road West Local Lettings Policy dated July 2021 with the mix for the balance of the Replacement Social Rented Homes and Council's Additional Social Rent Homes complying with planning policy overall
<b>"Appeal"</b>	<p>means an appeal to the Secretary of State under section 73 or 78 (as the case may be) of the 1990 Act against:-</p> <ul style="list-style-type: none"> <li>(a) a Planning Refusal or</li> <li>(b) a Call-in or</li> <li>(c) an appeal to the Secretary of State in accordance with section 20 of the Listed Buildings Act against a Planning Refusal or</li> <li>(d) an application under section 19 of the Listed Buildings Act for development without complying with one or more Onerous Condition(s) in a Conservation Consent</li> </ul>
<b>"Approved Documents"</b>	means the Partner's Tender and the Council's Specification and any development or amendment to them as may from time to time be approved by the Council under this Agreement
<b>"Approved Drawings"</b>	means the drawings, elevations, sections, specifications, plans and other design documents for the Works as may from time to time be approved by the Council under this Agreement
<b>"Approved Funder"</b>	means any mortgagee, chargee or investment purchaser or other person providing finance to the Partner for the Partner's obligations contained in this Agreement (which may be the Partner or a Group Company of the Partner)

	and details of whom have been notified to the Council
<b>"Approved Premium"</b>	means the Premium in respect of a Phase that has been approved by the Council pursuant to Clause 18.5
<b>"Approved Registered Provider"</b>	means [REDACTED] or such reputable and substantial Registered Provider that the Council may approve from time to time
<b>"Architect"</b>	means Studio Egret West and Pollard Thomas Edwards or such reputable and suitably qualified and experienced architects as the Council may approve pursuant to paragraph 4.2 of Part 1 of Schedule 3
<b>"Authorised Use"</b>	<p>means a use within Class A1 and/or Class A3 and/or Class A4 and/or Class B1 and/or Class D2 of the Town and Country Planning (Use Classes) Order 2006 which complies with the Marketing and Letting Strategy and delivers as a minimum the following mix of land uses:-</p> <ul style="list-style-type: none"> <li>(a) 2,000 sqm /A1 shops</li> <li>(b) 2,700 sqm A3/A4 restaurants, cafes, drinking establishments</li> <li>(c) 3,000 sqm D2 assembly and leisure and</li> <li>(d) 1,000 sqm B1 offices/light industrial</li> </ul>
<b>"Building Contract"</b>	<p>means the contract or contracts which may be made between the Partner and a Building Contractor for the carrying out of the Works based upon an appropriate industry standard form of building contract enabling the Partner to comply with its Open Book obligations in this Agreement and which:-</p> <ul style="list-style-type: none"> <li>(a) in the case of a contract relating to the Council Facilities whether in whole or in part, shall contain the Council's Minimum Building Contract Terms and be in a form approved by the Council such approval not to be unreasonably withheld or delayed and</li> <li>(b) in all cases shall be consistent with and where appropriate incorporate the Approved Documents and the Approved Drawings</li> </ul>
<b>"Building Contract Condition"</b>	means a Building Contract having been entered into in respect of the whole of the Works contained in the relevant Phase or the whole of the Works contained in the First Plot which may be conditional only on satisfaction of the outstanding Phase Conditions which remain to be satisfied
<b>"Building Contractor"</b>	means a reputable and suitably qualified person (not being an Unacceptable Construction Company) as the Partner may appoint to act as building contractor in relation to any Phase Works and which in the case of a contract relating to the Council Facilities where the building contractor is not a Group company of the Partner

	shall be first approved by the Council (such approval not to be unreasonably withheld or delayed)
<b>"Business Plan"</b>	means an overarching business plan for the delivery of the Development taking account of the matters contained in the other Strategies and the FOIA Protocol (where applicable) which will include the headings set out at Schedule 10
<b>"Call-in"</b>	means the reference of the Planning Application to the Secretary of State under section 77 of the 1990 Act
<b>"CDM Regulations"</b>	means the Construction (Design and Management) Regulations 2015 and/or any modification or replacement thereof for the time being in force
<b>"Certificate of Practical Completion"</b>	<p>means a certificate or statement issued by the Independent Certifier in relation to a Phase or part thereof certifying that the Works (or a relevant section of them) under the Building Contract in relation to such Phase have achieved practical completion PROVIDED THAT:-</p> <ul style="list-style-type: none"> <li>(a) soft landscaping need not be practically complete if it is scheduled to be carried out in the next planting season and</li> <li>(b) final surfaces of all roads and footpaths to be adopted need not be practically complete</li> </ul>
<b>"Change of Ownership"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in (including to the extent relevant any or all of the shares) the Partner and/or the Guarantor (as the case may be) (including the control over the exercise of voting rights conferred on such interest, control over the right to appoint or remove directors or the rights to dividends or profit) and/or</li> <li>(b) a person other than those set out or referred to in the Partner's Tender becoming a shareholder of the Partner and/or the Guarantor (as the case may be) and/or</li> <li>(c) any other arrangements that have or may have or which result in the same effect as limbs (a) and/or (b) above and</li> <li>(d) PROVIDED THAT in each case there is excluded any Change of Ownership which relates to a change in the legal or beneficial ownership of any shares in a company that is listed on a Recognised Investment Exchange (as defined in section 285 of the Financial Services and Marketing Act 2000)</li> </ul>
<b>"Conditions Precedent"</b>	means together the Site Wide Conditions and the Phase Conditions

<b>"Commercial Units"</b>	<p>means the commercial units comprising a total GIA of not less than:-</p> <p>5,847 sq m GIA of A1, A3 and A4 retail space;</p> <p>3,000 sq m GIA of D2 leisure space;</p> <p>3,074 sq m GIA of B1 business space;</p> <p>to be constructed by the Partner pursuant to this Agreement as varied in accordance with this Agreement and to be used for the Authorised Use only</p>
<b>"Commercial Occupier Relocation Strategy"</b>	<p>means the relocation strategy to be adopted in relation to the Development as the same may be amended and updated and approved by the Council from time to time and which shall include:-</p> <ul style="list-style-type: none"> <li>(a) the timing of the delivery by the Partner of Commercial Units for the relocation of existing commercial occupiers occupying any part of the Site and</li> <li>(b) the number and size of Commercial Units to be delivered so as to meet the specific needs of the occupiers</li> </ul>
<b>"Connected Party"</b>	<p>means a company, limited partnership or other vehicle which is any of the following:-</p> <ul style="list-style-type: none"> <li>(a) a person connected with the Partner and/or the Guarantor within the meaning of section 1122 of Corporation Tax Act 2010</li> <li>(b) a company which is a subsidiary or subsidiary undertaking of or which has the same holding company or parent undertaking as the Partner and/or the Guarantor (where subsidiary, subsidiary undertaking, holding company and parent undertaking have the same meanings given to them by sections 1159, 1162 and 1173 of the Companies Act 2006) or</li> <li>(c) such an entity in which the Partner and/or the Guarantor (jointly or otherwise) have a Controlling Interest</li> </ul>
<b>"Conservation Consent"</b>	<p>means any of the following as set out in the relevant section of the Listed Buildings Act specified below:-</p> <ul style="list-style-type: none"> <li>(a) conservation area consent pursuant to sections 8 and 74 and</li> <li>(b) a variation or discharge of conditions pursuant to section 19</li> </ul>
<b>"Construction Completion Date"</b>	<p>means the date shown as the date on which the Certificate of Practical Completion is issued for the relevant Phase Works</p>

<b>"Consultants"</b>	means the Masterplanners, Architect, highway engineers, mechanical and electrical engineering consultant, ground investigation consultant, environmental engineers, structural engineers, cost consultants, transport consultants, quantity surveyors and any other consultants having a material responsibility for design (none of which may be Unacceptable Construction Companies) employed from time to time by the Partner in addition to or in substitution for any of them in accordance with this Agreement and the term <b>"Consultant"</b> shall be construed accordingly
<b>"Controlling Interest"</b>	means:- <ul style="list-style-type: none"> <li>(a) an interest in shares in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company taking account of restrictions on voting rights contained in the articles of association of that company or</li> <li>(b) an interest in 50% or more of the total voting rights in a limited partnership or 50% or more of the decision making powers in any other vehicle</li> </ul>
<b>"Core Requirements"</b>	means the requirements set out in paragraph (C) of the Background section
<b>"Council Facility Block"</b>	means any building to be constructed as part of the works in which Council Facilities are to be constructed
<b>"Council Facilities"</b>	means that part of the Works comprising:- <ul style="list-style-type: none"> <li>(a) the Replacement Homes</li> <li>(b) the Library and Learning Centre</li> <li>(c) the Energy Centre Shell</li> <li>(d) the Primary Heat Network</li> <li>(e) the Secondary Heat Network</li> </ul>
<b>"Council's Minimum Building Contract Terms"</b>	means the minimum building contract terms required by the Council to be included in any Building Contract relating to the Council's Facilities which in relation to the Replacement Homes are contained the Replacement Homes Specification and which in relation to the Council's Facilities other than the Replacement Homes are to be agreed between the Council and the Partner alongside working up the specification for such works pursuant to paragraph 1.1 of Part 1 of Schedule 3
<b>"Council's Nominated Attendees"</b>	means the following:- <ul style="list-style-type: none"> <li>(a) <u>Assistant Director for Regeneration and Economic Development from time to time</u></li> <li>(b) <u>John O'Keefe and</u></li> </ul>

	(c) Sarah Lovell
	or such other representatives of the Council as the Council nominates from time to time for the relevant purpose and notifies the Partner in writing
<b>"Council's Onerous Conditions"</b>	are set out in Part 2 of Schedule 1
<b>"Council's Representative"</b>	means such representative of the Council as the Council nominates from time to time for the relevant purpose and notifies the Partner in writing
<b>"Council's Specification"</b>	means together:- <ul style="list-style-type: none"> <li>(a) the Energy Centre Shell and Core Specification</li> <li>(b) the Developers District Heating Technical Specification</li> <li>(c) the Demarcation Drawing</li> <li>(d) the Library and Learning Centre Specification and</li> <li>(e) the Replacement Homes Specification</li> </ul>
<b>"Council's Solicitors"</b>	means Pinsent Masons LLP, 55 Colmore Row, Birmingham B3 2FG (Ref: 658021.07004/AW46) or such other firm of solicitors as the Council notifies to the Partner in writing
<b>"Counsel"</b>	means counsel of not less than 10 years' experience in planning law appointed at the Partner's cost to act for the Partner and the Council jointly or in the case of dispute appointed by the President for the time being of the Law Society
<b>"CPO"</b>	means one or more Compulsory Purchase Orders authorising the acquisition of any interest or right in the Site by the Council pursuant to section 226 of the 1990 Act or section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (including for the avoidance of doubt the surrender of any interest or right to the Council)
<b>"CPO Costs"</b>	has the meaning set out in the CPO Indemnity Agreement
<b>"CPO Indemnity Agreement"</b>	means an agreement to be entered into on Today's Date between (1) the Council (2) the Partner and (3) the Guarantor in the form attached at Appendix 10 (as may be varied by agreement of the parties thereto)
<b>"CPOIA Payment"</b>	means all payments made by the Partner to the Council pursuant to the CPO Indemnity Agreement from time to time
<b>"Date of Practical Completion"</b>	means the date certified in any Certificate of Practical Completion for the Works or part of them as the date the Works were practically complete and <b>"relevant Date of</b>

**Practical Completion**" shall be construed accordingly

**"Defects Liability Period"**

means a period expiring 12 months from and including the relevant Date of Practical Completion or in respect of the Energy Centre Shell, the Primary Heat Network and the Secondary Heat Network such other period as set out in the Master Heat Agreement

**"Delay Event"**

means (PROVIDED THAT the relevant event has and/or is causing delay) and disregarding any concurrent events of delay:-

- (a) fire storm lightning tempest flood other extreme adverse weather conditions earthquake riot civil commotion war act of terrorism malicious damage explosion aircraft or other aerial devices and articles dropped therefrom labour lock-outs strikes and other industrial disputes non-availability of labour materials or equipment unforeseen adverse ground conditions change of law order of Government or other competent authority
- (b) any breach by the Council of its obligations which has an impact upon the Development and Phasing Programme
- (c) any extension of time properly awarded to the Building Contractor under a Building Contract PROVIDED THAT the same is not due to the failure of the Partner to comply with its obligations under this Agreement or the Building Contract and
- (d) any delay in delivery of the DEN by the DEN Contractor and/or DEN Operator which has an impact on the Development and Phasing Programme

**"Deleterious Materials"**

means any materials or substances which are not in accordance with the report entitled "*Good Practice in the Selection of Construction Materials*" (published under the auspices of the steering group representing the British Council for Offices and the British Property Federation and prepared by Ove Arup) at the date of this Agreement and/or the relevant British and/or European Standards and/or codes of practice or which are generally known within the construction industry at the time of specification or use to be deleterious to the durability and/or to the health and safety of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstance in which they are specified to be used

**"Delivery Methodology"**

means a methodology to be agreed and adopted by the Steering Group for delivery of the Development demonstrating that any effect on operations, housing and/or commercial activity in the other parts of the Site is fully mitigated during delivery of a Phase or Sub-Phase and which shall include the matters referred to in the

headings set out in the relevant section of Schedule 11

**"Delivery Methodology Condition"**

means the Council having approved a Delivery Methodology in relation to the Works to be contained in a Phase

**"DEN"**

means the district energy network facilitating the supply of heat and electricity to the Site and other end users in the North Tottenham area to be provided by the Partner and the DEN Operator in accordance with the terms of this Agreement and the Master Heat Agreement

**"DEN Contractor"**

means the contractor(s) appointed by the Council (or the DEN Operator) in consultation with the Partner (to the extent permitted under the Public Procurement Regulations) to design, supply, install, operate and maintain the Energy Centre, the Offsite Supply Network and the Private Wire Network

**"DEN Lease"**

means the sublease to be granted in respect of the internal area of the Energy Centre Shell in the form attached at Appendix 11 with such changes as shall be agreed between the Council, the Developer and the DEN Operator alongside agreement of the Master Heat Agreement and which shall contain such easements and rights of access (with or without workmen or contractors) to allow the DEN Operator to:-

- (a) install, repair, maintain, replace and/or remove any part of the, Energy Centre, the Offsite Supply Network and the Private Wire Network and
- (b) (following adoption in accordance with the Master Heat Agreement) repair, maintain, replace and/or remove any part of the Primary Heat Network and Secondary Heat Network

(subject to any damage caused to the Site in the exercise of these rights being made good) and which shall be granted for nil consideration

**"DEN Operator"**

means the Council's energy services company with responsibility for:-

- (a) operating and maintaining the Energy Centre, the Offsite Supply Network, the Private Wire Network and (from the date of adoption in accordance with the Master Heat Agreement) the Primary Heat Network and Secondary Heat Network and
- (b) supplying heat to the Units pursuant to Heat Supply Agreements

**"Deposit"**

means the sum of two hundred and fifty thousand pounds (£250,000) exclusive of VAT

**"Demarcation Drawing"**

means the plan attached at Appendix 15 setting out the scope of plant and equipment that the Partner shall



provide in accordance with this Agreement and the scope of the plant and equipment that the DEN Operator will provide in accordance with the Master Heat Agreement

**"Design and Sustainability Standards"**

means:-

- (a) in relation to the Residential Units, all standards for the relevant unit types as set out in the Housing Design Standards as at the date of the relevant Planning Application
- (b) in relation to the Commercial Units, a minimum of a BREEAM Very Good rating or its equivalent and
- (c) in relation to each development, the principles relating to design and sustainability contained in the High Road West Place Shaping Design Guide

or if any such design standard(s) is replaced, substituted or ceases to exist from time to time then the Council shall (acting reasonably) confirm to the Partner the relevant equivalent or comparable design standard and that shall be deemed to be the relevant minimum standard to be met by the Partner for the purposes of this definition

**"Design Code"**

means a design code for the Development to be agreed and adopted by the Steering Group adhering to the Design and Sustainability Standards and which shall include the matters referred to in the headings set out in the relevant section of Schedule 8 and the information contained in the relevant section of the Partner's Tender

**"Design Team"**

means the Architect, the Masterplanners and the Landscape Architects

**"Development"**

means the development of the Site in Phases to create a mixed use high quality scheme comprising:-

- (a) the Council Facilities and
- (b) the Partner's Works

**"Development Appraisal"**

means a financial appraisal for the Site using the Financial Model

**"Development Management Fee"**

means ■■■ of total construction and development costs on a Phase by Phase basis which accounts for internal resources which typically include associated leadership roles (e.g. project director commercial lead and development management lead) site wide and plot roles (e.g. development managers commercial team residential sales leasing marketing and communications teams and functional support such as environmental sustainability and community engagement) excluding external resources such as architects design consultants and planning advice)

**"Development and Phasing"**

means the development and phasing programme for the

<b>"Programme"</b>	Development forming part of the Partner's Tender as agreed and adapted alongside the Phase Plan (to be agreed and adopted pursuant to Clause 4.5) and updated from time to time by the Partner with the prior agreement of the Steering Group
<b>"Developers District Heating Technical Specification"</b>	means the document attached at Appendix 13 which sets out the specification for the design and installation by the Partner of the Primary Heat Network, the Heat Substations, the Secondary Heat Network and the Tertiary Heat Network
<b>"Disposition"</b>	has the meaning ascribed to it in section 2015(1)(ii) of the Law of Property Act 1925 and also includes the grant of any right or interest in any land or creation of any other encumbrances in respect thereof
<b>"Energy Centre"</b>	means the plant and equipment to be designed and installed by the DEN Operator/DEN Contractor within the Energy Centre Shell
<b>"Energy Centre Shell"</b>	means the shell and core of the energy centre within the Site shown within the Energy Centre Shell and Core Specification to be delivered by the Partner in accordance with the Energy Centre Shell and Core Specification and the Demarcation Drawing
<b>"Energy Centre Shell and Core Specification"</b>	means the documents attached at Appendix 12 setting out the specification of the Energy Centre Shell to be provided by the Partner
<b>"Environment"</b>	means:- <ul style="list-style-type: none"> <li>(a) land, including surface land, sub-surface strata, sea bed and river bed under water and natural and man-made structures</li> <li>(b) water, including coastal and inland waters, surface waters, ground waters and water in drains and sewers</li> <li>(c) air, including air inside buildings and in other natural and man-made structures above or below ground and</li> <li>(d) any and all living organisms or systems supported by those media, including humans</li> </ul>
<b>"Estate Management Strategy"</b>	means a strategy for the ongoing management maintenance and stewardship of the Site including public realm and communal facilities and all parts of it to be agreed and adopted by the Steering Group
<b>"Expert"</b>	means as set out in Clause 33
<b>"Extension Period"</b>	means any additional period provided for in Clauses 6.3.6, 9.4, 14.3, 15.3 or 17.5 up to the giving of an approval and/or consent following the period specified in the relevant Clause for the Council and/or Steering Group to give an approval and/or consent provided the

	reason for the additional period is not due to any breach of this Agreement by or any act or default of the Partner
<b>"Event of Default"</b>	means as set out in Clause 38
<b>"Financial Model"</b>	means the Microsoft Excel (or equivalent) based financial appraisal tool for the entire Development to be developed and agreed by the Steering Group on the basis of the financial information contained in the Partner's Tender as such appraisal shall be updated from time to time pursuant to this Agreement, to include:- <ul style="list-style-type: none"> <li>(a) Premiums for each Phase</li> <li>(b) Phase Appraisals</li> <li>(c) Council's cashflow showing summary expenditure to satisfy the Vacant Possession Condition and Premiums received from the Partner and</li> <li>(d) Site Wide Cost Account</li> </ul>
<b>"First Plot"</b>	means the first plot to be developed within the relevant Phase as agreed as part of the Business Plan or as otherwise agreed between the parties
<b>"FOIA Protocol"</b>	means the Freedom of Information Act Protocol to be agreed and adopted by the Steering Group PROVIDED THAT until such agreement and adoption of the FOIA Protocol it is agreed that there shall be none and that any reference to the FOIA Protocol in this Agreement shall have no effect
<b>"GIA"</b>	means Gross Internal Area as defined in the RICS Code
<b>"GLA"</b>	means the Greater London Authority
<b>"Golden Brick"</b>	means the date on which the building works are sufficiently progressed that construction is clearly underway and work has progressed above foundation level
<b>"Golden Brick Certificate"</b>	means the certificate issued by the Independent Certifier confirming that Golden Brick has occurred
<b>"Golden Brick Date"</b>	means the date on which the Golden Brick Certificate is issued (or is deemed to have been issued) or it is otherwise determined in accordance with this Agreement (as it may be varied or supplemented from time to time) that Golden Brick has occurred
<b>"Golden Brick Core Terms"</b>	means the terms set out in Schedule 13
<b>"Group Company"</b>	means a group company as defined in section 42 of the Landlord and Tenant Act 1954 and/or subject to the prior approval of the Council (such approval not to be unreasonably withheld or delayed) an entity in which the Tenant or a group company of the Tenant holds a 50% or

	more interest
<b>"Guarantee"</b>	means the guarantee set out in Schedule 5
<b>"Hazardous Substances"</b>	means any substances whether in solid, liquid or gaseous form, which are capable of causing harm to human health or to the Environment whether alone or in combination with any other substances
<b>"Heat Substation"</b>	means the plantroom(s) serving each residential block and commercial connection to be provided by the Partner in accordance with the Developers District Heating Technical Specification and the Demarcation Drawing
<b>"Heat Supply Agreement"</b>	means an agreement between the DEN Operator and the leaseholders of the Units or the Partner regulating the terms on which the DEN Operator will supply heat from the Energy Centre to the Units
<b>"High Road West Place Shaping Design Guide"</b>	means the design guide attached at Appendix 16
<b>"Housing Design Standards"</b>	means all applicable technical standards as set out in building regulations imposed pursuant to the Building Act 1984 (as amended) from time to time and any nationally described space standard that may be required by any competent authority from time to time including the London Plan Housing Supplementary Planning Guidance 2016 and PROVIDED THAT the minimum space standards specified in such guidance as at Today's Date shall apply to the Replacement Homes
<b>"Implementation"</b>	means commencement of development by the carrying out of a "material operation" (as defined in section 56(4) of the 1990 Act as amended) upon the Site (and <b>"Implement"</b> and <b>"Implemented"</b> shall be construed accordingly)
<b>"Independent Certifier"</b>	means such independent and reputable professional either as shall be jointly appointed by the Council and the Partner or who shall owe a duty of care to the Council to independently certify Practical Completion in relation to the Council Facilities
<b>"Independent Valuation"</b>	means an open market valuation of the relevant Additional Social Rented Homes provided by an independent valuer appointed by the Partner and who shall owe a duty of care to both the Partner and the Council
<b>"Infrastructure"</b>	means any infrastructure to be constructed within the Site as part of the Works including any roads, footpaths, bus lines, cycle tracks, cycle lanes and all associated traffic measures, verges, landscaped areas and features and all associated features, requirements, the diversion of any existing service media, the construction of all service media from the most convenient point of connection with the public service supply, balancing reservoirs or other balancing facilities, pumping station, sewage treatment works, waste disposal facilities, bio mass plant, electricity

substations and gas governors and such other infrastructure as may be required (from time to time) to facilitate the Development by the appropriate authorities to be constructed including the improving upsizing or upgrading of any existing plant or service media

**"Inquiry"**

means such public inquiry that may be called by the Secretary of State to hear evidence and determine the Planning Application

**"Insolvent"**

means:-

- (a) in relation to a company or corporation any of the following:-
  - (i) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of such company or corporation or
  - (ii) an application is made for an administration order in relation to such company or corporation or
  - (iii) in relation to such company or corporation, the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by such company or corporation or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or
  - (iv) a receiver or manager is appointed in relation to any property or income of such company or corporation or
  - (v) a liquidator is appointed in respect of such company or corporation or
  - (vi) a voluntary winding-up of such company or corporation is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies or
  - (vii) the occurrence at any time of any event or events in relation to such company or corporation in a territory outside the United Kingdom where at such time such company or corporation has its centre of main interests being an event or events

which under the Law of that territory at such time have a similar effect as one or more of any of the events previously described in this definition if such event or events so previously described had occurred in the United Kingdom and such company or corporation had had its centre of main interests in the United Kingdom and

(b) in relation to an individual:-

- (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of such individual or
- (ii) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against such individual or
- (iii) the occurrence at any time of any event or events in relation to such individual in a territory outside the United Kingdom where such individual has his centre of main interests being an event or events which under the Law of that territory at such time have a similar effect as one or more of any of the events previously described in this paragraph (b) if such event or events so previously described had occurred in the United Kingdom and such individual had had his centre of main interests in the United Kingdom

and "**Insolvency**" shall be construed accordingly

**"Insured Risks"**

means fire, lightning, explosion, earthquake, storm, tempest, flood, impact, terrorism bursting or overflowing of water tanks and pipes, earthquake, damage by aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, labour, disturbance and malicious damage and in each and every case to the extent that such insurance may ordinarily be available at reasonable commercial rates and subject to any condition exclusion or limitation which may be imposed by the insurer

**"Integrated Energy Strategy"**

means the strategy to be agreed and adopted by the Steering Group in respect of the energy arrangements at the Site which shall include the matters referred to in the relevant headings set out at Schedule 8

**"Landscape Architects"**

means Townshend or such reputable and suitably qualified and experienced landscape architect as the Council may approve pursuant to paragraph 4.2 of Part 1

of Schedule 3

<b>"Lease"</b>	means a Phase Lease and/or a Lease Back as the case may be and <b>"Leases"</b> shall be construed accordingly
<b>"Lease Back"</b>	means an underlease or a sub-underlease of Lease Back Land to be granted by the Partner or the Partner's successor in title under a Phase Lease or any third party that the Partner has directed to take a Phase Lease of a Phase or part of a Phase in substantially the forms attached at Appendix 8 with such amendments as shall be agreed between the Council and the Partner in accordance with this Agreement
<b>"Lease Back Land"</b>	means the land within each Phase upon which the Replacement Homes and the Library and Learning Centre are to be provided
<b>"Lease Completion"</b>	means completion of the relevant Lease
<b>"Lease Completion Date"</b>	means the latest of the tenth Working Day after:- <ul style="list-style-type: none"><li>(a) the date of service of a valid Phase Drawdown Notice in respect of a Phase or Sub-Phase and</li><li>(b) the date on which the form of the relevant Phase Lease is agreed or determined pursuant to Clause 19 and</li><li>(c) the date of agreement or determination of the Premium in relation to the Phase or Sub-Phase</li></ul>
<b>"Library and Learning Centre"</b>	means that part of the Site intended to comprise a new library and learning centre shown on the plan contained within the Library and Learning Centre Specification to be delivered by the Partner in accordance with the Library and Learning Centre Specification
<b>"Library and Learning Centre Planning Date"</b>	means the date for submission of a Planning Application to the Local Planning Authority pursuant to Clause 9 in respect of a Phase which is to contain the Library and Learning Centre
<b>"Library and Learning Centre Specification"</b>	means the plans, drawings, elevations and specification for the Library Learning Centre attached at Appendix 5 subject to such changes as shall be agreed between the parties in accordance with this Agreement
<b>"Licence to Enter"</b>	means any licence that may be granted pursuant to Clause 20
<b>"Listed Buildings Act"</b>	means the Planning (Listed Buildings and Conservation Areas) Act 1990
<b>"Local Planning Authority"</b>	means the London Borough of Haringey or any statutory successor to its planning functions
<b>"London Living Wage"</b>	means the hourly rate of pay for employees in London calculated annually by the Resolution Foundation overseen by the Living Wage Commission or their

	successor bodies from time to time or if such rate shall no longer exist its reasonable equivalent from time to time
<b>"Love Lane Estate"</b>	means that part of the Site shown on the plan attached at Appendix 3
<b>"Major Infrastructure"</b>	means Infrastructure that:- <ul style="list-style-type: none"> <li>(a) physically links preceding and adjacent Phase to the relevant Phase to be drawn down thereby enabling the relevant Phase that is to be drawn down to be accessed and serviced without the need to secure the agreement of a third party (other than the local highway authority or a utility supply company) or</li> <li>(b) has been constructed within a preceding and adjacent Phase where connections exist enabling the relevant Phase to be connected to the preceding Phase thereby enabling the relevant Phase that is to be drawn down to be accessed and serviced without the need to secure the agreement of an independent third party (other than the local highway authority or a utility supply company)</li> </ul>
<b>"Major Landowners Group"</b>	means a group to be established by the Council to include representatives of major landowners in the vicinity of the Site to include the Council, the Partner, THFC and the selected development partner for the Haringey Development Vehicle
<b>"Marketing and Letting Strategy"</b>	means the strategy to be agreed and adopted by the Steering Group for the marketing and letting of the Residential Units and the Commercial Units and which shall include the matters referred to in the relevant headings set out at Schedule 8
<b>"Masterplanners"</b>	means Studio Egret West and Pollard Thomas Edwards or such reputable and suitably qualified and experienced masterplanners as the Council may approve pursuant to paragraph 4.2 of Part 1 of Schedule 3
<b>"Master Heat Agreement"</b>	means the agreement to be entered into between the DEN Operator and the Partner as shall be agreed between the Council, the Developer and the DEN Operator in accordance with Clause 60, governing (amongst other things) the testing, commissioning and adoption of the Primary Heat Network and the Secondary Heat Network, the terms on which Units will be connected to the DEN and the form of Heat Supply Agreement
<b>"MHA Heads of Terms"</b>	means the documents attached at Appendix 14 confirming the commitment of the Parties to the delivery of the DEN and setting out the principles that the Parties agree will be reflected in the Master Heat Agreement
<b>"Material Change"</b>	means any one or more of the following:- <ul style="list-style-type: none"> <li>(a) the reduction of the quality of materials to be</li> </ul>



used in the Works or any part of them below the quality identified in the Approved Documents

- (b) any change to the Council Facilities which is not approved by the Council in its absolute discretion
- (c) any change or variation materially affecting the Development and Phasing Programme (and for these purposes any delay of more than six calendar months whether arising as a result of a single variation or as a series of connected or associated variations shall be deemed to be material)
- (d) any change to the Core Requirements which is not approved by the Council in its absolute discretion
- (e) any change which materially alters or adds to or diminishes the appearance structure or external elevations of the Development or any part of it
- (f) any change which:-
  - (i) reduces the aggregate amount of public realm at the Site to less than the amount detailed in the Satisfactory Planning Permission by more than 5% or prior to the grant of the Satisfactory Planning Permission to less than the amount established in the Partner's Tender by more than 5%; and/or
  - (ii) materially alters the position or layout of the public realm within the Development
- (g) any change which materially alters an area of the Development for which the Council is liable or will become liable for maintenance and repair
- (h) any change which would increase or decrease the total cost of the Development or the total cost of the relevant Phase by the lower of (i) REDACTED PROVIDED ALWAYS that such change does not adversely impact on the overall quality or design of the Development and/or
- (i) any change which would require an application under section 73 of the 1990 Act and/or the making of such an application

whether arising as a result of a single variation or as a series of connected or associated variations PROVIDED THAT a change required by the Local Planning Authority shall not be a Material Change

**"Milestone Condition"**

means:

(a) in respect of Phase 1b and 4 the occurrence of all of the following:-

- (i) completion of 61 Replacement Homes;
- (ii) start on site of the building which will contain Energy Centre Shell;
- (iii) completion of the refurbishment of The Grange; and
- (iv) the occurrence on all previous Phases of either completion of [REDACTED] of the piling on all of those previous Phases or if agreed with the Steering Group the provision of written evidence independently verified (with the party providing such verification owing a duty of care to the Council on terms approved by the Council (such approval not to be unreasonably withheld or delayed)) that the total sum of construction costs incurred in respect of all such previous Phases exceed [REDACTED] (or such other milestone as may be agreed by the Steering Group);

(b) in respect of Phase 7 the entering into of the Building Contract between the Partner and a Building Contractor for the whole of that part of the Works required to deliver the Library and Learning Centre on Phase 5 and provides for completion of works up to and including the structural frame, including, stair cores, staircases, risers, necessary frame penetrations and drainage, inclusive and associated works to ensure safe and secure access associated.

(c) in respect of Phases 8 – 12 (and any subsequent Phases) the occurrence on the previous Phase of either completion of [REDACTED] of the piling on that previous Phase or if agreed with the Steering Group the provision of written evidence independently verified (with the party providing such verification owing a duty of care to the Council on terms approved by the Council (such approval not to be unreasonably withheld or delayed)) that the total sum of construction costs incurred in respect of that previous Phase exceed [REDACTED] (or such other milestone as may be agreed by the Steering Group)

and for the avoidance of doubt the Phases shall be drawn down in numerical order (excepting Phase 1b) and reference to "previous Phase" will be to the previously numbered Phase or Phases (as the context requires) (excepting Phase 1b)

**"Mitigation Matter"**

means the failure of the Pre-Planning Viability Condition and/or the Post-Planning Viability Condition in relation to a Phase

**"Mitigation Plan"**

means a written plan presented by the Partner to the Council in accordance with Clause 34 setting out alternative proposals for mitigating a Mitigation Matter whilst still delivering the Council Facilities and the Core Requirements (which may include any or all of the following):-

- (a) reducing the level of the Partner's return
- (b) carrying forwards Phase Deficits
- (c) substituting alternative Phases
- (d) suspending the proposed development of a Phase
- (e) combining Phases
- (f) waiving Phase Conditions
- (g) reconfiguring a Phase's layout
- (h) dividing a Phase into a number of sub-phases
- (i) creating a "market rental" or other scheme to mitigate lack of demand or
- (j) other solutions

**"Necessary Consents"**

means all building regulations and other approvals, certificates, consents, licences and permits from any competent authorities or third parties whether statutory or otherwise which are necessary to authorise the commencement and carrying out of the Development and/or the Works in accordance with the provisions of this Agreement

**"Non-Material Change"**

means a change which is not a Material Change

**"Non-Payment"**

means failure by the Partner or the Guarantor to pay any sum due under this Agreement after:-

- (a) the Council has served on the Partner and the Guarantor written demand (the "**First Demand**") for that sum
- (b) not earlier than 10 Working Days after the date of the First Demand the Council has served on the Partner and the Guarantor a further written demand (the "**Second Demand**") notifying the Partner and the Guarantor of the Council's intention to treat non-payment of it as an Event of Default and
- (c) the Partner or the Guarantor has failed to make the relevant payment within 10 Working Days after the Second Demand or if later where there is a dispute regarding any payment 10 Working Days following the determination of the Expert that the relevant payment is due and payable by

the Partner

<b>"Notification"</b>	means the written notification of the grant or refusal of a Planning Application by the Local Planning Authority or the Secretary of State
<b>"Notification Date"</b>	means the date on which the Notification issued by the Local Planning Authority or the Secretary of State is received by the Partner
<b>"Offsite Supply Network"</b>	means the plant and equipment that facilitates the passage of heat from the Energy Centre to end users not located at the Site to be designed and installed by the DEN Operator/ DEN Contractor
<b>"Onerous Conditions"</b>	means Council's Onerous Conditions and/or Partner's Onerous Conditions
<b>"Open Book"</b>	means transparent and full disclosure of all documentation and calculations relating to the determination of costs incurred or anticipated to be incurred by or on behalf of the Partner in complying with its obligations in this Agreement in order to satisfy the Council that these costs are accurate, reasonable and represent value for money as further detailed in paragraph 1.2, Part 1 of Schedule 3 (subject to the FOIA Protocol (where applicable))
<b>"Overage Deed"</b>	means a deed in the form attached at Appendix 9 to be entered into between (1) the Council (2) the Partner and (3) the Guarantor with such amendments as shall be required in order to tailor the deed to the financial information applicable to the relevant Phase as contained in the Post Planning Appraisal for that Phase
<b>"Overarching Borough Agreement"</b>	means the agreement dated 17 February 2017 made between (1) GLA and (2) the Council
<b>"Partner Group"</b>	means the group of companies which includes the Partner (within the meaning of s42 of the Landlord and Tenant Act 1954)
<b>"Partner's Nominated Attendee's"</b>	<p>means the following:-</p> <ul style="list-style-type: none"><li>(a) <u>Avni Mehta</u></li><li>(b) <u>Peter Leonard</u> and</li><li>(c) Paul King</li></ul> <p>or such other representatives of the Partner as the Partner nominates from time to time for the relevant purpose and notifies the Council in writing</p>
<b>"Partner's Onerous Conditions"</b>	are set out in Part 1 of Schedule 1
<b>"Partner's Representative"</b>	means such representative of the Partner as the Partner nominates from time to time for the relevant purpose and

	notifies the Council in writing
<b>"Partner's Solicitors"</b>	means Ashurst LLP Broadwalk House 5 Appold Street London EC2A 2HA (Ref: RDV/LEN04.00007) or such other firm of solicitors as the Partner notifies to the Council in writing
<b>"Partner's Tender"</b>	means the document dated 30 June 2017 submitted in response to the Council's invitation to submit final tenders for the Development PROVIDED THAT for the avoidance of doubt, where there is a conflict between the Partner's Tender and the provisions of this Agreement, save in the event of manifest error, this Agreement shall prevail
<b>"Partner's Works"</b>	means the construction of 1,752 Private Sale Homes, 559 Affordable Housing Units (to be provided in addition to the Replacement Homes) and 143,500 square feet of green spaces at the Site (including the Tertiary Heat Network and Heat Substations serving the same) as more particularly described in the Partner's Tender and as varied in accordance with this Agreement
<b>"Permitted Part"</b>	means a Subsequent Phase or Subsequent Phases or part(s) thereof approved by the Council pursuant to Clause 40.6 PROVIDED THAT only where the Approved Developer is not a Group Company of the Partner the Permitted Part will not exceed 25 per cent of the total GIA of the Phase
<b>"Phase"</b>	means each of Phase 1 and each Subsequent Phase details of which are set out in the Phase Plan and the Development and Phasing Programme (as may be amended from time to time in accordance with this Agreement)
<b>"Phase Appraisal"</b>	means the financial appraisal for a Phase or Sub-Phase using the Financial Model and showing a Residual Land Value for the Phase or Sub-Phase to be developed and agreed by the Steering Group, as such appraisal shall be updated from time to time pursuant to this Agreement
<b>"Phase Capable of Termination"</b>	means the Phase(s) in relation to which the circumstances set out in Clause 38.1.2 have occurred
<b>"Phase Commencement Date"</b>	means the date which is <b>four months</b> after the date of Lease Completion for the relevant Phase (as extended by any applicable Delay Events)
<b>"Phase Conditions"</b>	means the Phase 1 Conditions and/or the Subsequent Phase Conditions as the case may be
<b>"Phase Condition Drop Dead Date"</b>	means:- <ul style="list-style-type: none"> <li>(a) in relation to Phase 1<u>A</u>, the relevant date set out in Schedule 7 and</li> <li>(b) in relation to Subsequent Phases, the relevant date contained in the Development and Phasing Programme</li> </ul>

<b>"Phase Condition Longstop Date"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) in relation to Phase 1<u>A</u>, the relevant date set out in Schedule 7 and</li> <li>(b) in relation to Subsequent Phases, the relevant date contained in the Development and Phasing Programme</li> </ul> <p>(in each case as extended in accordance with this Agreement)</p>
<b>"Phase Condition Target Date"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) in relation to Phase 1<u>A</u>, the relevant date set out in Schedule 7 and</li> <li>(b) in relation to Subsequent Phases the relevant date contained in the Development and Phasing Programme</li> </ul> <p>(in each case as extended in accordance with this Agreement)</p>
<b>"Phase Construction Drop Dead Date"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) in relation to Phase 1<u>A</u>, the relevant date set out in Schedule 7 and</li> <li>(b) in relation to any Subsequent Phase, the relevant date contained in the Development and Phasing Programme</li> </ul>
<b>"Phase Construction Longstop Date"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) in relation to Phase 1<u>A</u>, the relevant date set out in Schedule 7 and</li> <li>(b) in relation to any Subsequent Phase, the relevant date contained in the Development and Phasing Programme</li> </ul> <p>(in each case as extended in accordance with this Agreement)</p>
<b>"Phase Construction Target Date"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) in relation to Phase 1<u>A</u>, the relevant date set out in Schedule 7 and</li> <li>(b) in relation to any Subsequent Phase, the relevant date contained in the Development and Phasing Programme</li> </ul> <p>(in each case as extended in accordance with this Agreement)</p>
<b>"Phase Deficits"</b>	<p>means, in relation to any failure to satisfy the Post Planning Viability Condition in relation to any Phase, a sum equal to the negative Residual Land Value yielded</p>

	by the relevant Post Planning Appraisal
<b>"Phase Drawdown Notice"</b>	means a notice served by the Partner or the Council confirming that they consider that the relevant Phase Unconditional Date has occurred in relation to that Phase
<b>"Phase Lease"</b>	means a lease or leases to be granted by the Council in respect of the relevant Phase Lease Land substantially in the form attached at Appendix 7 with such amendments as shall be agreed between the Council and the Partner in accordance with this Agreement
<b>"Phase Lease Land"</b>	<p>means those part or parts of each Phase to be included within the relevant Phase Lease being the extent of the relevant Phase excluding:-</p> <p>(a) the land upon which the Council Facilities shall be provided and</p> <p>(b) any adopted highway which is to remain adopted highway</p> <p>as identified within the relevant Phase Plan and approved at Steering Group</p>
<b>"Phase Plan"</b>	means the plan identifying the respective Phases as shall be agreed and adopted in accordance with Clause 4.5 and thereafter as may be refined and updated from time to time through the Steering Group
<b>"Phase Unconditional Date"</b>	means the date upon which the last of the Phase Conditions for a Phase has been validly satisfied or deemed or determined to be satisfied
<b>"Phase Works"</b>	means those parts of the Works to be carried out on the relevant Phase
<b>"Phase 1"</b>	means that Phase identified on the Phase 1 Plan as "Phase 1"
<b>"Phase 2"</b>	means that Phase identified on the Phase Plan as "Phase 2" as at the date hereof
<b>"Phase 1 Conditions"</b>	<p>means:-</p> <p>(A) in respect of Phase 1A:-</p> <p>(a) the Planning Condition (to the extent this has not been satisfied as part of the steps taken to satisfy the Site Wide Conditions)</p> <p>(b) the Affordable Housing Grant Condition</p> <p>(c) the Vacant Possession Condition</p> <p>(d) the Building Contract</p>

	Condition and
	(e) the Delivery Methodology Condition
	(B) <u>in respect of Phase 1B:-</u>
	(a) <u>the Planning Condition (to the extent this has not been satisfied as part of the steps taken to satisfy the Site Wide Conditions)</u>
	(b) <u>the Vacant Possession Condition</u>
	(c) <u>the Building Contract Condition and</u>
	(d) <u>the Delivery Methodology Condition</u>
"Phase 1 Contribution"	means the Contribution (being the aggregate of 100% of CPO Costs and Relevant Expenses) in respect of Phase 1
"Phase 1 Guaranteed Minimum Contributions"	means [REDACTED] comprising (i) Phase 1 Guaranteed Residual Land Value and (ii) Phase 1 Contribution
"Phase 1 Guaranteed Residual Land Value"	means the sum calculated by deducting the Phase 1 Contribution from [REDACTED] (which sum shall not be less than zero)
"Phase 1 Plan"	means the plan showing the boundary of Phase 1 attached as Appendix 1
"Plan"	means the plans annexed to this Agreement at Appendix 1 and where reference is made to a numbered plan then that shall refer to the plan attached that is so numbered
"Planning Act"	means each of the 1990 Act, the Planning (Listed Building and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 and includes any amendment, consolidation or re-enactment of them, as well as any order, regulation, directive, byelaw, rule, consent or licence made or issued under or pursuant to them or by any public or local authority or by any Court of competent jurisdiction
"Planning Agreement"	means an agreement or agreements which the Local Planning Authority or Secretary of State require to be entered into as a pre-condition of the issue of or as a condition attaching to a Planning Permission under section 106 of the 1990 Act
"Planning Application"	means:- (a) in relation to the Site, the application for outline



planning permission for the whole of the Development and

- (b) in relation to each Phase, an application for detailed planning permission for the Development to be carried out on the relevant Phase or for Reserved Matters Approval and where appropriate Conservation Consent

**"Planning Condition"**

means the occurrence of the Planning Date in relation to the Site or the Phase (as appropriate)

**"Planning Date"**

means:-

in relation to the Site, the date on which the first of (a) – (d) occurs:-

- (a) if a Satisfactory Permission is granted by the Local Planning Authority or the Secretary of State (whether or not this follows any reconsideration by either) the date which is eight weeks from (but excluding) the date of the Satisfactory Permission PROVIDED THAT no Proceedings have been instituted before this date or
- (b) if Proceedings are instituted the date on which the Satisfactory Permission is finally granted or upheld whether after a reference back to the Secretary of State or the Local Planning Authority (as the case may be) and so that such Planning Permission remains intact and unmodified (or modified but still constituting a Satisfactory Permission) and such Planning Permission is no longer open to challenge in any way by the issue of further Proceedings or
- (c) subject to the periods referred to in paragraphs (e) or (f) of this definition as the case may be the date either the parties agree or the Expert determines that a Planning Permission is a Satisfactory Permission or
- (d) the date of execution of any Planning Agreement that is required by the Local Planning Authority or Secretary of State to be entered into as a pre-condition to the issue of the Satisfactory Permission and

in relation to each Phase the date on which the first of (e) – (f) occurs:-

- (e) if a Satisfactory Reserved Matters Approval for each Subsequent Phase is granted by the Local Planning Authority or the Secretary of State (whether or not this follows any reconsideration by either) the date which is eight weeks from (but excluding) the date of such Satisfactory Reserved Matters Approval PROVIDED THAT no Proceedings (as are appropriate to a

reserved matters approval) have been instituted before this date or

- (f) if Proceedings (as are appropriate to a reserved matters approval) are instituted the date on which the Satisfactory Reserved Matters Approval for such Subsequent Phase is finally granted or upheld whether after a reference back to the Secretary of State or the Local Planning Authority (as the case may be) and so that such reserved matters approval remains intact and unmodified (or modified but still constituting a Satisfactory Reserved Matters Approval) and such reserved matters approval is no longer open to challenge in any way by the issue of further Proceedings (as are appropriate to a reserved matters approval if applicable)

**"Planning Performance Agreement"**

means the planning performance agreement to be entered into by the Partner with the Local Planning Authority and the GLA

**"Planning Permission"**

means:-

- (a) in the case of the Site, the grant of outline planning permission for the whole of the Development and
- (b) in the case of each Phase, either detailed planning permission for the Works to be carried out in that Phase or Reserved Matters Approval (in relation to all reserved matters relevant for that Phase) together with Conservation Consent where appropriate

**"Planning Refusal"**

means a refusal of a Planning Application including a deemed refusal arising under section 78(2) of the 1990 Act or the grant of Planning Permission that does not discharge the Site Wide Planning Condition or the Planning Condition or imposes Onerous Conditions whether in a Planning Permission or in any associated Planning Agreement

**"Planning Submission Drop Dead Date"**

means:-

- (a) in relation to Phase 1, the relevant date set out in Schedule 7 and
- (b) in relation to any Subsequent Phase, the relevant date contained in the Development and Phasing Programme

**"Planning Submission Longstop Date"**

means:-

- (a) in relation to Phase 1, the relevant date set out in Schedule 7 and
- (b) in relation to any Subsequent Phase, the relevant date contained in the Development and

## Phasing Programme

(in each case as extended in accordance with this Agreement)

### **"Planning Submission Target Date"**

as defined in Schedule 7

### **"Planning Strategy"**

means a detailed strategy to be approved by the Steering Group setting out the approach and phased timetable for the satisfaction of the Planning Condition in relation to the Site and each Phase in compliance with the Design Code

### **"Post Planning Appraisal"**

means a Phase Appraisal in respect of a Phase to be prepared by the Partner pursuant to Clause 11.2 or 18.1 (as appropriate)

### **"Post Planning Viability Condition"**

means a Post Planning Appraisal in relation to both each Subsequent Phase and the overall Site that demonstrates:-

- (a) in the case of each Subsequent Phase, that the relevant Phase remains Viable and/or
- (b) in the case of each Sub-Phase that both (i) that Sub-Phase and (ii) that Sub-Phase and the remainder of the Phase of which that Sub-Phase forms part and in respect of which no Phase Lease has yet been granted, remains Viable; and in each case
- (c) that the overall Development remains Viable

### **"Premium"**

means:-

- (a) for Phase 1 the greater of the Phase 1 Guaranteed Residual Land Value and the Residual Land Value of Phase 1 (calculated with reference to the Post Planning Appraisal and Clause 18.3) and
- (b) for each Subsequent Phase the Approved Premium

### **"Pre Planning Appraisal"**

means a Phase Appraisal in respect of a Subsequent Phase to be provided by the Partner pursuant to Clause 8.2

### **"Pre Planning Viability Condition"**

means a Pre Planning Appraisal in relation to both each Subsequent Phase and the overall Site that demonstrates:-

- (a) in the case of each Subsequent Phase, that the relevant Subsequent Phase is Viable and/or
- (b) in the case of each Sub-Phase that both (i) that Sub-Phase and (ii) that Sub-Phase and the remainder of the Phase of which that Sub-Phase forms part and in respect of which no Phase Lease has yet been granted, is

Viable; and in each case

	(c) that the overall Development remains Viable
<b>"Prescribed Rate"</b>	means the rate of 4 per centum above the base rate from time to time of the Bank of England
<b>"Principal Contractor"</b>	means the principal or sole contractor for the purposes of the CDM Regulations
<b>"Principal Designer"</b>	means that person who is appointed to the role of principal designer for the purposes of the CDM Regulations
<b>"Primary Heat Network"</b>	means the plant and equipment that facilitates the passage of heat from the Energy Centre to the Heat Substation serving each residential block or non-residential connection at the Site designed and installed by the Partner in accordance with the Developers District Heating Technical Specification and the Demarcation Drawing and to be adopted by the Den Operator in accordance with the Master Heat Agreement
<b>"Private Rented Home"</b>	means any Residential Unit to be constructed as part of the Development which shall be made available for rent on the open market to third parties and which is not an Affordable Housing Unit
<b>"Private Sale Home"</b>	means any Residential Unit to be constructed as part of the Development which shall be made available for sale on the open market to third parties and which is not an Affordable Housing Unit
<b>"Private Wire Network"</b>	means the cables and other equipment that facilitate the supply of electricity from the Energy Centre to end users to be designed and installed by the DEN Operator / DEN Contractor
<b>"Proceedings"</b>	means any form of judicial proceedings or legal challenge including:-  (a) an application for judicial review under Civil Procedure Rule 54 including in each case any appeals to a higher court following a judgment of a lower court or  (b) an application pursuant to section 287 or 288 of the 1990 Act arising from the grant of a Satisfactory Permission or a Planning Refusal by the Secretary of State including in each case any appeals to a higher court following a judgment of a lower court or  (c) an application (within the meaning of paragraphs (a) or (b) above) arising from the grant of a Satisfactory Permission or a Planning Refusal following a reconsideration of a Planning Application by the Local Planning Authority or the Secretary of State or an Appeal to the Secretary of State following a previous

	Satisfactory Permission or Planning Refusal being quashed pursuant to an application within the meaning of paragraphs (a) or (b) above and the matter being remitted to the Local Planning Authority or the Secretary of State (as the case may be)
	(d) an application to the High Court by a third party pursuant to the Human Rights Act 1998
<b>"Procurement Strategy"</b>	means the strategy to be agreed and adopted by the Steering Group for the procurement strategy in respect of the Works which shall include the matters referred to in the relevant headings in Schedule 8
<b>"Project Management Fee"</b>	means [REDACTED] of total construction costs on a Phase by Phase basis which accounts for internal resources which typically includes associated leadership roles (e.g. project management lead) site wide and plot roles (e.g. delivery managers cost planning health and safety public realm and infrastructure teams and services under CDM Regulations) excluding external resources such as surveyors infrastructure and transport consultants
<b>"Project Objectives"</b>	means the objectives set out in paragraph (B) of the Background section
<b>"Public Procurement Regulations"</b>	means the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and/or the Concession Contracts Regulations 2016
<b>"Registered Provider"</b>	means a provider of Affordable Housing Units regulated by the Homes and Communities Agency (or its statutory successor)
<b>"Reimbursement Figure"</b>	means the Main Site Contribution and/or the Additional Site Contribution (as both defined in the CPO Indemnity Agreement)
<b>"Relevant Expenses"</b>	has the meaning set out in the CPO Indemnity Agreement
<b>"Relevant Replacement Homes"</b>	the Replacement Social Rented Homes to be included in the relevant Phase as agreed pursuant to Clause 57.2
<b>"Remaining Development"</b>	means any Phase which has yet to be drawn down by the Partner under this Agreement
<b>"Replacement Homes"</b>	means those 191 Residential Units which are to be re-provided in place of existing Council homes that were on the Site prior to any demolition or other works preparatory to the carrying out of the Development (including those where tenants have exercised the right to buy) on the basis of the Council's assessment of need communicated by the Council and acknowledged in the Partner's Tender
<b>"Replacement Homes Handover Documents"</b>	means those items set out in the Replacement Homes Specification
<b>"Replacement Homes"</b>	means the date for submission of a Planning Application



and Affordable Housing Units

<b>"Residual Land Value"</b>	means the value attributed to the Phase as calculated in accordance with paragraph 0 of Schedule 8
<b>"RICS Code"</b>	means the RICS Code of Measuring Practice 6th edition as the same may be updated or amended from time to time
<b>"Sales Overage"</b>	has the meaning given to it in the Overage Deed
<b>"Sales Revenue"</b>	means the aggregate of all amounts contained in the Financial Model as being anticipated Disposition proceeds and capitalised income streams arising in relation to the Development or the relevant Phase or the amount or value of any consideration anticipated to be received by the Partner for any Disposition within the Development including gross sales income from Private Sale Homes
<b>"Satisfactory Permission"</b>	means a Planning Permission and/or Conservation Consent granted pursuant to a Planning Application which is not subject to any Onerous Conditions
<b>"Satisfactory Reserved Matters Approval"</b>	means all Reserved Matters Approvals being received which do not contain Onerous Conditions
<b>"Secondary Heat Network"</b>	means the plant and equipment (including any meters) that facilitates the passage of heat from the Heat Substation serving each residential block or non-residential connection at the Site up to and including the heat interface unit serving each of the Units, designed and installed by the Partner in accordance with the Developers District Heating Technical Specification and the Demarcation Drawing and to be adopted by the Den Operator in accordance with the Master Heat Agreement
<b>"Secretary of State"</b>	means the Secretary of State or other minister, person or body for the time being having or entitled to exercise the powers now conferred on the Secretary of State by sections 77 and 79 and section 226 of the 1990 Act and/or s123 of the Local Government Act 1972
<b>"Services"</b>	means gas, water, electricity, heat, foul and surface water, telecommunication cables and similar utilities
<b>"Service Media"</b>	means apparatus and conducting media for the passage of foul and surface water, drainage, electricity, gas, heat, water and telecommunications and any other services and supplies of whatsoever nature
<b>"Site"</b>	means (subject to Clause 31.10.14) that land at High Road West, Tottenham and shown edged and hatched black on the plan attached at Appendix 2 (drawing number DR/T/1001/S0/R1)
<b>"Site Wide Conditions"</b>	means:-  (a) the Strategy Condition

	(b) the Statutory Consents Condition and
	(c) the Planning Condition applicable to the Site
<b>"Site Wide Condition Drop Dead Date"</b>	is defined in Schedule 7
<b>"Site Wide Condition Longstop Date"</b>	is defined in Schedule 7 (as extended in accordance with this Agreement)
<b>"Site Wide Condition Target Date"</b>	is defined in Schedule 7
<b>"Site Wide Costs"</b>	means costs as defined in Schedule 12
<b>"Site Wide Costs Account"</b>	means the cashflow account within the Financial Model set up to monitor the allocation and accumulation of Site Wide Costs and Sales Overage (as defined in the Overage Deed) through the Phases
<b>"Site Wide Unconditional Date"</b>	means the date on which the last of the Site Wide Conditions has been satisfied or deemed to be satisfied
<b>"Socio Economic and Skills Strategy"</b>	means the employment and skills plan forming part of the Partner's Tender incorporating a method statement for its implementation overarching outputs and key performance indicators to apply in relation to the Site and each Phase and the Partner's Socio Economic Commitments
<b>"Socio Economic Commitments"</b>	means the employment and skills opportunities to be offered by the Partner during the course of the Development in satisfaction of the commitments made in the Socio Economic and Skills Strategy
<b>"Socio Economic Outputs Condition"</b>	means the Partner having achieved the outputs and the key performance indicators identified in the Socio Economic and Skills Strategy in relation to the preceding Phases
<b>"Stakeholder and Resident Engagement Strategy"</b>	means the process of public consultation and engagement to reflect the Council's residents charter adopted by the Steering Group and as may be amended or updated from time to time
<b>"Standard Conditions"</b>	means the Standard Commercial Property Conditions (Second Edition) and Standard Condition shall be interpreted accordingly
<b>"Statutory Agreements"</b>	means an agreement or agreements to be entered into with a third party (which may be the Council acting pursuant to one or more of its statutory functions and not as landowner) relating to the provision, construction and thereafter adoption of roads and services under section 38 or section 278 of the Highways Act 1980 or under section 8 of the Public Health Act 1936 or section 104 of the Water Industry Act 1991 or under section 111 of the Local Government Act 1972 or any other similar legislation
<b>"Statutory Consents"</b>	means the obtaining of all necessary statutory consents



<b>"Condition"</b>	required by the Council for the disposal of the Site pursuant to this Agreement
<b>"Statutory Requirements"</b>	means the requirements from time to time in force by any Act of Parliament or instrument, rule or order made thereunder or of any regulation or bye-law of any local authority or statutory undertaker or supply authority
<b>"Steering Group"</b>	means the Council and Partner group appointed in accordance with and undertaking the role set out in Clause 31
<b>"Strategies"</b>	means the strategies listed in Clause 4.3
<b>"Strategy Condition"</b>	means the agreement and adoption by the Steering Group of the initial iterations of all of the Strategies
<b>"Subsequent Phase"</b>	means each Phase of the Development, excluding Phase 1 <u>Provided That for the purposes of the definitions of "Phase Condition Drop Dead Date" "Phase Condition Longstop Date" "Phase Condition Target Date" "Phase Construction Drop Dead Date" "Phase Construction Longstop Date" and "Phase Construction Target Date" Phase 1B will be treated as a Subsequent Phase for the purposes of each of those definitions</u>
<b>"Subsequent Phase Conditions"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) the Pre Planning Viability Condition (if the Subsequent Phase contains Private Sale Homes)</li> <li>(b) the Planning Condition</li> <li>(c) the Affordable Housing Grant Condition (if the Subsequent Phase contains Affordable Housing Units)</li> <li>(d) the Post Planning Viability Condition (if the Subsequent Phase contains Private Sale Homes)</li> <li>(e) the Vacant Possession Condition</li> <li>(f) the Milestone Condition</li> <li>(g) the Socio Economic Output Condition</li> <li>(h) the Building Contract Condition and</li> <li>(i) the Delivery Methodology Condition</li> </ul>
<b>"Subsequent Phase Conditions Trigger Date"</b>	means the relevant date set out in the Development and Phasing Programme upon which the Partner shall be obliged to start satisfying the Subsequent Phase Conditions in relation to each Subsequent Phase
<b>"Sub-Contract"</b>	means any sub-contract or trade contract which the Building Contractor or the Partner enters into in relation to the Development where such Sub-Contractor has a

	material design responsibility
<b>"Sub-Contractor"</b>	means the contractor under a Sub-Contract who shall not be an Unacceptable Construction Company
<b>"Sub-Phase"</b>	means any sub phase within a Phase as may be agreed between the parties from time to time pursuant to the Resident Rehousing Strategy
<b>"Tertiary Heat Network"</b>	means the heating and hot water systems downstream from the heat interface unit serving each Unit to be designed and installed by the Partner in accordance with the Developers District Heating Technical Specification and the Demarcation Drawing
<b>"THFC"</b>	means Tottenham Hotspur Football Club
<b>"The Grange"</b>	means that part of the Site shown edged red on the plan at Appendix 4
<b><u>"Third Party Agreement"</u></b>	<u>means any agreement entered into by the Council with a third party at the request of and/or with the written consent of the Partner as a result of the terms of a Necessary Consent and/or as part of satisfying the Vacant Possession Condition including for the avoidance of doubt (a) any agreement entered into or to be entered into with Transport for London, Network Rail Infrastructure Limited, Rail for London and/or Arriva and (b) any agreement between THFC and the Council (with or without other parties) in relation to the Site entered into pursuant to paragraph 7 of Schedule 13 to a Section 106 Agreement dated 31 August 2022, Provided That this definition shall not apply to Statutory Agreements or Planning Agreements</u>
<b>"Third Party Rights"</b>	means rights against each of the Building Contractor, Consultants and Sub-Contractors containing the minimum requirements set out at Schedule 6 and being in institutionally acceptable form approved by the Council
<b>"Today's Date"</b>	means the date of this Agreement
<b>"Total Development Costs"</b>	means as referred to in row T in paragraph 0 of Schedule 8
<b>"Unacceptable Construction Company"</b>	means a company who has been convicted of blacklisting or systematic discrimination against workers involved in political or trade unions in the last five years (from Today's Date) or a company who is convicted of blacklisting or systematic discrimination for the duration of this Agreement
<b>"Units"</b>	means all buildings to be constructed as part of the Development including the Private Rented Homes, Private Sale Homes, Affordable Housing Units, Additional Social Rented Homes, Commercial Units and any other units and <b>"Unit"</b> shall be construed accordingly
<b>"Vacant Possession"</b>	means that the Council is or is the beneficiary of agreements which enable it to become the proprietor of

the freehold interest in the whole of the relevant Phase (it being acknowledged that where any land is not yet registered as at Today's Date then possessory title only may be obtained but that in such event the Partner may at its own cost obtain suitable title indemnity insurance cover) and that no part or parts of the Phase are subject to any rights or covenants (including those benefitting other parts of the Site) which would prevent the undertaking of the Works or their occupation and extends to the removal of service meters from individual properties comprised in the relevant Phase, the removal of any public rights to use part or parts of the Phase as open space PROVIDED THAT this shall not extend to:-

- (a) any such option, right or contract pursuant to which the Council has agreed to provide a new home or commercial unit to a third party and/or to an Approved Registered Provider as part of the Resident Rehousing Strategy and/or the Commercial Occupier Relocation Strategy and/or
- (b) any rights easements and/or covenants subsisting from time to time in favour of statutory undertakers insofar as they do not materially adversely affect the delivery and subsequent beneficial occupation of the Development

and the existence of such matter shall not prevent the satisfaction of the Vacant Possession Condition

**"Vacant Possession Condition"**

means the securing by agreement, appropriation or otherwise of Vacant Possession of the whole of a Phase (or where a Phase is divided into Sub-Phases, then the whole of the relevant Sub-Phase)

**"Vacant Possession Strategy"**

means the detailed strategy including analysis commentary and timetable, to be adopted and updated by the Steering Group for the satisfaction of the Vacant Possession Condition in relation to the Site and each Phase

**"VAT"**

means Value Added Tax chargeable under the Value Added Tax Act 1994 or any equivalent tax or duty which may be imposed in substitution therefore or in addition thereto at the rate applicable from time to time

**"Viable"**

means, in respect of both the relevant Phase or Sub-Phase and the overall Development, the relevant Pre Planning Appraisal or Post Planning Appraisal (as appropriate) demonstrates that the Partner's return achieves the Required Return and **"Viability"** shall be construed accordingly

**"Warranty"**

means warranties from the Building Contractor, Consultants and Sub-Contractors in respect of the Council Facilities containing the minimum requirements set out at Schedule 6 and being in institutionally acceptable form approved by the Council and

**"Warranties"** shall be construed accordingly

**"Working Day"** means any day other than Saturday, Sunday or a public holiday in England and Wales and **"Working Days"** shall be construed accordingly

**"Works"** means all works required to implement the Development including (without limitation) the demolition of existing buildings and structures on the Site, site clearance, site preparation, and the diversion of any Service Media

1.2 In this Agreement:-

- 1.2.1 unless the context otherwise requires references to a Clause by number in this Agreement or in a Schedule to this Agreement are to a numbered Clause in this Agreement or to that Schedule, (as the case may be), and references to a Schedule are to a Schedule, of this Agreement;
- 1.2.2 reference to paragraphs in any Schedule unless otherwise specified means the paragraphs of that Schedule;
- 1.2.3 where the context so admits, words importing the singular number include the plural number` and vice versa, words importing one gender include all genders and references to a **"person"** are deemed to include any individual, firm, unincorporated association or body corporate and all such words are to be construed interchangeably in that manner;
- 1.2.4 the headings in this Agreement, together with the index and information on the front cover page are for convenience only and do not affect its interpretation;
- 1.2.5 in this Agreement references to any statute or statutory provision include references to:-
  - (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
  - (b) any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute (save that in the case of the Town and Country Planning (Use Classes Order 1987 it shall refer to that Order in the form in force at the date of this Agreement including for the avoidance of doubt the changes incorporated by SI 2006/84 (The Town and Country Planning (Use Classes) (Amendment) Order 2005));
- 1.2.6 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 permit infringement of the restriction;
- 1.2.7 references to **"liability"** unless the context otherwise requires, includes all actions, claims, demands and proceedings taken or made against the relevant party and all costs, damages, expenses, liabilities and losses incurred by the relevant party;
- 1.2.8 this Agreement is deemed to incorporate the Standard Conditions with such amendments (including the use of capital letters) as are necessary to make the Standard Conditions referable to this Agreement. If there is any conflict between the Standard Conditions and the express provisions of this Agreement, this Agreement prevails;
- 1.2.9 unless otherwise expressly stated, any references to the consent or approval of any party to this Agreement includes an obligation not to unreasonably withhold or delay such consent or approval;

- 1.2.10 any consent or approval of a party required under this Agreement save in circumstances in which it is unreasonably withheld or delayed in breach of this Agreement shall be required to be obtained before the actual event to which it applies is carried out or done and shall be effective only when the consent or approval is given in writing;
- 1.2.11 the word or words "**include**", "**including**" or "**in particular**" shall not have effect so as to limit in any way the words to which such word or words relate;
- 1.2.12 any reference to the Site, the Works, the Development, or Phase or a Sub-Phase includes reference to any part thereof;
- 1.2.13 it is acknowledged that (without prejudice to any of the other provisions of this Agreement) in assessing whether or not the Council has complied with any obligation to act reasonably it may have regard to all circumstances aims and interests that are relevant to it as local authority;
- 1.2.14 any reference to a month is a reference to a calendar month;
- 1.2.15 reference to a "**party**" means either the Council or the Partner and "**parties**" means both of them;
- 1.2.16 any reference to satisfied or satisfaction shall include circumstances where such arises by deeming or waiver;
- 1.2.17 where two or more people form a party to this Agreement the obligations they undertake may be enforced against them all jointly or against each individually;
- 1.2.18 where reference is made to an Expert it means to the Expert and in accordance with the procedures set out in Clause 33;
- 1.2.19 the requirement for a party to use all reasonable endeavours shall include an obligation to take all commercially prudent steps but shall not require that party to act in a manner contrary to its commercial interests (or in the case of the Council contrary to its statutory functions and/or published policies); and
- 1.2.20 in this Agreement all development obligations on the part of the Partner shall be satisfied either by the Partner carrying out the obligations and/or by the Partner procuring that the obligations are carried out by a Group Company PROVIDED THAT the Partner will still remain liable to the Council for the performance of its obligations in this Agreement.

## 2. **DEPOSIT**

- 2.1 On Today's Date the Partner has paid to the Council (receipt of which is hereby acknowledged) the Deposit.
- 2.2 The Deposit is non-refundable in any circumstances but shall be credited against the Premium.

## 3. **SITE WIDE CONDITIONS**

- 3.1 Other than Clauses 1-6 (inclusive), 20, 26-34 (inclusive), 36 to 55 (inclusive) and 57 and 58 and the related Schedules, the obligations in this Agreement are conditional upon the satisfaction of the Site Wide Conditions on or before the determination of this Agreement.
- 3.2 Without limiting or prejudice to any other provision of this Agreement:-
  - 3.2.1 the Partner and the Council (where appropriate) shall use all reasonable endeavours to procure the satisfaction of the Side Wide Conditions in accordance with their respective obligations in this Agreement as soon as reasonably practicable after the date of this Agreement;

- 3.2.2 the Partner and the Council shall assist each other with the performance of their obligations pursuant to Clause 3.2.1 by responding promptly to any written request for information as to the requesting party's views and requirements in relation to any of the Site Wide Conditions; and
- 3.2.3 the Partner and the Council shall each keep each other fully informed of the actions each is taking and the progress that is being made by each to satisfy the Site Wide Conditions that are for it to satisfy, including inviting the other to attend all meetings with third parties and providing the other with minutes of such meetings.

#### **4. STRATEGY CONDITION**

- 4.1 The Partner shall be responsible for preparing drafts of the Strategies for discussion at and approval by the Steering Group in accordance with the timescale in Clause 4.3 and for further revising the Strategies as directed by the Steering Group from time to time.
- 4.2 The Council shall afford all reasonable assistance to the Partner to facilitate the development of the Strategies in suitable format to be presented to the Steering Group for discussion and with the intent to obtain the Steering Group's approval in accordance with Clause 31.
- 4.3 The Partner and the Council shall use all reasonable endeavours to procure that the Strategies are agreed and adopted by the Steering Group in accordance with the following timetable:-
- 4.3.1 within three months after Today's Date:-
- (a) Stakeholder and Resident Engagement Strategy; and
  - (b) Socio Economic and Skills Strategy;
- 4.3.2 within four months after Today's Date:-
- (a) Business Plan;
  - (b) Vacant Possession Strategy;
  - (c) Design Code;
  - (d) Marketing and Letting Strategy;
  - (e) Resident Rehousing Strategy;
  - (f) Commercial Occupier Relocation Strategy;
  - (g) Integrated Energy Strategy;
  - (h) Estate Management Strategy; and
  - (i) Procurement Strategy.
- 4.4 The Strategy Condition will be satisfied when the Steering Group has agreed in writing that all of the Strategies have been approved.
- 4.5 The Phase Plan shall be agreed and adopted by the Steering Group as soon as reasonably practicable after Today's Date in line with agreement and adoption of the Resident Rehousing Strategy, the Commercial Occupier Relocation Strategy and the Vacant Possession Strategy pursuant to Clause 4.3.

**5. STATUTORY CONSENTS CONDITION**

- 5.1 As soon as reasonably practicable after Today's Date the Council will apply for consent of the Secretary of State to:-
- 5.1.1 dispose of such part(s) of the Site as are held within its housing revenue account pursuant to section 32 of the Housing Act 1985;
  - 5.1.2 dispose of such part(s) of the Site as are otherwise held pursuant to section 233 of the 1990 Act and/or section 123 of the Local Government Act 1972 (as applicable); and
  - 5.1.3 (where applicable) dispose of the Site pursuant to section 25 of the Local Government Act 1988.
- 5.2 The Council shall keep the Partner informed as to progress towards obtaining the consent(s) referred to in Clause 5.1.
- 5.3 The Statutory Consents Condition will be satisfied when the Council has notified the Partner that it has obtained the consent(s) referred in Clause 5.1 and provided a copy of such consent(s).

**6. SITE WIDE PLANNING CONDITION**

**6.1 Planning Performance Agreement**

Within two calendar months of Today's Date the Partner will deliver to the Council and release for the purpose of completion a duly executed copy of the Planning Performance Agreement.

**6.2 Consultations**

Within one month of agreement and adoption of the Stakeholder and Resident Engagement Strategy and before submitting the Planning Application in relation to the Site to the Local Planning Authority the Partner will commence consultations on the form of Planning Application in accordance with the Stakeholder and Resident Engagement Strategy.

**6.3 Approval of Draft Planning Application**

**6.3.1 The Partner shall:-**

- (a) invite the Council, the Council's Representative and the Council's planning consultants to all design meetings prior to submission of the draft Planning Application in relation to the Site for Council approval; and
- (b) allow the Council and the Council's Representative to make representations during and after such meetings and have due regard to such reasonable representations.

6.3.2 The Partner shall submit the final draft Planning Application in relation to the Site (together with all supporting documents) to the Council's Representative for the Council's approval (as landowner) as soon as reasonably practicable following agreement of the Strategies.

6.3.3 The Council's Representative shall be entitled to circulate the proposed Planning Application and all supporting documents to members of the Council as appropriate and thereafter to collate their comments for submission to the Partner.

6.3.4 The Council will not unreasonably withhold its approval to the draft Planning Application and/or all supporting documents PROVIDED THAT (amongst other things):-

- (a) the Partner has undertaken the consultation set out in Clause 6.2;

- (b) the Partner has complied with its obligations set out in Clause 6.3.1;
- (c) it complies with the Strategies and the Approved Documents;
- (d) it reflects the size, type and location of the Replacement Social Rented Homes as agreed by the Council pursuant to Clause 57.2; and
- (e) it is in accordance with the Development and Phasing Programme, the Project Objectives and the Core Requirements.

6.3.5 If the Council in its capacity as landowner reasonably withholds its approval to the draft Planning Application or the supporting documents then the Partner shall amend augment supplement or revise the draft Planning Application and/or supporting documents as applicable and re-submit them for the Council's approval in its capacity as landowner in accordance with this Clause.

6.3.6 The Council shall be entitled to three calendar months from the date of first submission of the draft Planning Application together with all supporting documents in which to approve the draft Planning Application and supporting documents. If the Council has not confirmed approval in writing in the three calendar month period then the period between the expiry of the three month period and the date on which approval is provided shall be an Extension Period.

#### 6.4 **Submission of Planning Application**

The Partner will use reasonable endeavours to submit to the Local Planning Authority in a form conforming in all respects with the requirements of the 1990 Act and as previously approved by the Council under Clause 6.3 the requisite number of copies of the Planning Application and the requisite fees before the Planning Submission Target Date.

#### 6.5 **Steps to Obtain a Satisfactory Permission**

6.5.1 The Partner will use all reasonable endeavours to obtain a Satisfactory Permission pursuant to the Planning Application for the Site (and to satisfy the Planning Condition) no later than the Site Wide Condition Target Date and will:-

- (a) after full consultation with and approval of the Council (as landowner) submit to the Local Planning Authority amendments to the Planning Application as reasonably required; and
- (b) enter into consultations and negotiations with the Local Planning Authority, all statutory and relevant consultees and the local community with a view to avoiding objections to the Planning Application (or obtaining the removal thereof).

6.5.2 The Partner will consult with and keep the Council informed of all steps taken by the Partner to pursue the Planning Application and (with as much notice as reasonably possible) of the dates of any committee meetings, public inquiries or hearings and supply the Council with copies of any Planning Application and all relevant and all material documents.

6.5.3 The Partner will:-

- (a) obtain the prior written approval of the Council (not to be unreasonably withheld or delayed) to any engagement by the Partner of planning counsel or other consultants;
- (b) give the Council as much reasonable advance written notice as possible of all consultations or conferences with any planning counsel instructed in connection with the Planning Application and all other substantive project or planning



review meetings with consultants and permit the Council's attendance at the same;

- (c) supply to the Council a draft of all instructions to any planning counsel and copies of all documents referred to therein; and
- (d) permit the Council an opportunity to comment thereon and to supply a copy of all actual instructions to planning counsel to the Council as soon as practicable.

## **6.6 Site Wide Longstop Date**

### **6.6.1 If on the Site Wide Condition Longstop Date:-**

- (a) there has been the issue of a Planning Permission or the Local Planning Authority or the Secretary of State has indicated that he is minded to grant a Planning Permission which in each case is a Satisfactory Permission and the grant of which is subject only to completion of a Planning Agreement;
- (b) a decision regarding an Appeal Call-in or referral to the Government Office made prior to such date has not been given;
- (c) Proceedings have been instituted and final determination is awaited; or
- (d) the advice of Counsel under Clauses 6.11.3 or 6.12.2 is awaited,

then the Site Wide Condition Longstop Date will be extended until 15 Working Days after all such matters have been finally disposed of or determined (including any hearing, inquiry, Appeal or further Proceedings in relation thereto) PROVIDED THAT the Site Wide Longstop Date shall in no circumstances extend beyond the Site Wide Condition Drop Dead Date.

## **6.7 Co-operation of the Council**

The Council (as landowner) will provide reasonable assistance to the Partner in seeking to discharge the Planning Condition, but the Council shall not be obliged to incur any external third party costs (unless and until the Partner indemnifies the Council for any such costs) and the Council (in its capacity as landowner) shall not act independently of the Partner.

## **6.8 Variation to or Withdrawal of Planning Application**

- 6.8.1 The Partner will not make any variation to the Planning Application without the prior approval of the Council (as landowner) (not to be unreasonably withheld where the Planning Application as varied would remain in compliance with the requirements of Clause 6.3.4) but the Council will be entitled in its absolute discretion to withhold in relation to a Material Change and/or where the Planning Application as varied would not comply with the requirements of Clause 6.3.4.
- 6.8.2 The Partner will not withdraw the Planning Application without the prior consent of the Council.

## **6.9 Notification of Decision**

The Partner will provide the Council with a copy of any Notification within 10 Working Days of the Notification Date.

#### **6.10 Extension of Time for Determination**

If:-

- 6.10.1 the Planning Application is not determined by the Local Planning Authority within the period prescribed by the 1990 Act; or
- 6.10.2 the Local Planning Authority requests agreement to extend the time for determination of the Planning Application,

the Partner will consult with the Council and obtain the prior approval of the Council to any extension of time for determination of the Planning Application.

#### **6.11 Planning Refusal**

If there is a Planning Refusal then the Partner and the Council will as soon as reasonably practicable consult with one another through the Steering Group to agree whether:-

- 6.11.1 (acting reasonably) the appropriate course of action is to amend and resubmit the relevant Planning Application in accordance with this Agreement; or
- 6.11.2 an Appeal against the Planning Refusal should be made (and if agreed the Partner will pursue such Appeal); and
- 6.11.3 if the Steering Group decides against resubmission or neither Party consider this an appropriate action and one party considers the Partner should Appeal, then the Partner shall take advice from Counsel upon the chances of a successful Appeal and provided Counsel's advice is that the Partner has more than 50% chance of success it shall pursue the Appeal including if applicable instructing Counsel, preparing evidence and dealing with all procedural issues and the Partner will consult fully with the Council throughout.

#### **6.12 Planning Refusal of an Appeal**

If there is a Planning Refusal of an Appeal then:-

- 6.12.1 the Partner and the Council will as soon as reasonably practicable consult with one another through the Steering Group to agree whether to institute and prosecute Proceedings against such refusal should be made and if agreed the Partner will pursue such Appeal; and
- 6.12.2 if the Parties cannot agree under Clause 6.12.1 then the Partner shall take advice from Counsel upon the chances within six months of a successful Appeal and provided Counsel's advice is that the Partner has more than 50% chance of success it shall pursue the Proceedings including if applicable instructing Counsel, preparing evidence and dealing with all procedural issues and the Partner will consult fully with the Council throughout.

#### **6.13 Conduct of Appeals or Proceedings**

If there is an Appeal or Proceedings the Partner will:-

- 6.13.1 pursue and conduct any Appeal with all due diligence and in a good and effective manner;
- 6.13.2 keep the Council properly and fully informed of all relevant information with respect to the Appeal including all material correspondence notifications meetings instructions to and advice of Counsel and evidence of expert and other witnesses and the dates of any enquiry hearing or for the submission of written representations;

- 6.13.3 allow the Council and its planning consultants to attend conferences with Counsel and other relevant meetings PROVIDED THAT the Council shall not act without the authority of the Partner at such conferences and/or meetings;
- 6.13.4 have due regard to the requirements of the Council;
- 6.13.5 if Proceedings are commenced with regard to any order, action or decision of the Local Planning Authority the Secretary of State, any court or other competent authority made in connection with the Planning Application or any Appeal use all reasonable endeavours to procure the grant of a Satisfactory Permission throughout those proceedings; and
- 6.13.6 reimburse to the Council such reasonable costs incurred by the Council in connection with the obtaining of Satisfactory Permission.

#### 6.14 **Deemed Satisfactory Permission**

If Planning Permission is granted it will be deemed to be a Satisfactory Permission unless within 15 Working Days of the Notification Date:-

- 6.14.1 the Council serves notice in writing (including reasons) on the Partner that it believes the Planning Permission is not a Satisfactory Permission because of the existence of a Council's Onerous Condition; and/or
- 6.14.2 the Partner serves notice in writing (including reasons) on the Council that it believes the Planning Permission is not a Satisfactory Permission because of the existence of a Partner's Onerous Condition,

and in the case of dispute the matter may be referred by either party to an Expert.

#### 6.15 **Planning Agreements**

- 6.15.1 In conjunction with pursuing the Planning Application the Partner will at its own cost negotiate the terms of and enter into any necessary Planning Agreement and shall obtain the Council's written approval to the terms of any Planning Agreement prior to entry into it.
- 6.15.2 The Partner shall diligently monitor expenditure of any monies paid to the Local Planning Authority pursuant to a Planning Agreement and in the event of non-expenditure within any applicable time period shall as soon as reasonably practicable following its expiry commence and diligently pursue an application to the Local Planning Authority for reimbursement of any unspent sums.

#### 6.16 **No Waiver**

- 6.16.1 For the avoidance of doubt neither party may waive the requirement for the Planning Date to have occurred in order for this Agreement to become unconditional in respect of the Side Wide Conditions.
- 6.16.2 Notwithstanding the provisions of Clause 6.16.1:-
  - (a) the Partner only may irrevocably waive its right to treat a Partner's Onerous Condition as such by giving written notice to the Council to that effect;
  - (b) the Council only may irrevocably waive its right to treat a Council's Onerous Condition as such by giving written notice to the Partner to that effect; and
  - (c) the Partner only may irrevocably waive part or all of the eight week challenge period referred to in (a) and (e) of the definition of Planning Date.

#### 6.17 **Permission Plans**

If a Satisfactory Permission is obtained, the Partner shall (at its own cost) supply to the Council two complete sets of the plans which are referred to in and form part of the Satisfactory Permission (the "**Permission Plans**").

#### 7. **PHASE CONDITIONS**

7.1 Other than Clauses 1-17 (inclusive), 20, 26-34 (inclusive) 36-55 (inclusive) and 57 and 58 and the related Schedules, the obligations contained in this Agreement in relation to each Phase are conditional upon the satisfaction of the Phase Conditions in respect of the relevant Phase on or before the determination of this Agreement.

7.2 Without limiting or prejudice to any other provision of this Agreement:-

7.2.1 the Partner and the Council (where appropriate) shall respectively use all reasonable endeavours to procure the satisfaction of the Phase Conditions in accordance with their respective obligations in this Agreement as soon as reasonably practicable after the date of this Agreement;

7.2.2 the Partner and the Council shall assist each other with the performance of its obligations pursuant to Clause 7.2.1 by responding promptly to any written request for information as to the requesting party's views and requirements in relation to any of the Phase Conditions;

7.2.3 the Partner and the Council shall each keep each other fully informed of the actions each is taking and the progress that is being made by each to satisfy the Phase Conditions that are for it to satisfy, including inviting the other to attend all meetings with third parties and providing the other with minutes of such meetings; and

7.2.4 within **one month** of achieving the Phase Unconditional Date the Partner will serve the Phase Drawdown Notice.

#### 8. **PRE PLANNING VIABILITY CONDITION**

8.1 This Clause applies only to each Subsequent Phase which contains Private Sale Homes.

8.2 On and from the Subsequent Phase Conditions Trigger Date the Partner shall use all reasonable endeavours to satisfy the Pre Planning Viability Condition prior to the satisfaction of the remaining Subsequent Phase Conditions. In this regard:-

8.2.1 the Partner shall use all reasonable endeavours to ensure that the Pre Planning Appraisal will demonstrate that the relevant Phase or Sub-Phase is Viable;

8.2.2 within 20 Working Days following the Subsequent Phase Conditions Trigger Date and in any event prior to submission of a Planning Application for the relevant Subsequent Phase, the Partner shall provide a Pre Planning Appraisal in relation to the relevant Subsequent Phase to the Steering Group together with (in accordance with the FOIA Protocol (where applicable)) full details of its workings and evidence of the sums contained therein on an Open Book basis and a written statement as to whether it considers that the Pre Planning Viability Condition is satisfied;

8.2.3 the Steering Group shall consider the Pre Planning Appraisal and shall determine whether or not the Pre Planning Viability Condition has been satisfied; and

8.2.4 the Pre Planning Viability Condition will be satisfied when the Steering Group has agreed in writing that the Pre Planning Appraisal satisfies each limb of the definition of Pre Planning Viability Condition and any dispute shall be referred to an Expert pursuant to Clause 33.

- 8.3 If it is agreed at a Steering Group or determined in accordance with Clause 33 that the Pre Planning Viability Condition has not been satisfied, the matter shall be deemed to be a Mitigation Matter.

**9. PHASE PLANNING CONDITION**

- 9.1 This Clause applies to all Phases.
- 9.2 Before submitting the Planning Application to the Local Planning Authority in relation to Phase 1 or any Subsequent Phase the Partner will commence consultations on the form of Planning Application in accordance with the Stakeholder and Resident Engagement Strategy.
- 9.3 The provisions of Clauses 6.3-6.17 (inclusive) shall apply *mutatis mutandis* to the Phase Planning Condition save that:-
- 9.3.1 the timescale for submission of the final draft Planning application in Clause 6.3.2 shall be six calendar months after the satisfaction of the Pre Planning Viability Condition.
- 9.3.2 in Clause 6.3.4, the following subclauses will be added:-
- (a) it is consistent with the Satisfactory Planning Permission obtained for the whole of the Development as part of the Site Wide Conditions; and
- (b) the timescale in Clause 6.3.6 shall be one calendar month;
- 9.3.3 reference to Site Wide Condition Target Date Site Wide Condition Longstop Date and Site Wide Condition Drop Dead Date are replaced with Phase Condition Target Date Phase Condition Longstop Date and Phase Condition Drop Dead Date.
- 9.4 The Council shall be entitled to one calendar month from the date of first submission of the draft Planning Application together with all supporting documents in which to approve the draft Planning Application and supporting documents. If the Council has not confirmed approval in writing in the one calendar month period then the period between the expiry of the one calendar month period and the date on which approval is provided shall be an Extension Period.

**10. AFFORDABLE HOUSING GRANT CONDITION**

- 10.1 This Clause applies only to any Phase which contains Affordable Housing Units.
- 10.2 The Partner will use all reasonable endeavours (and the Partner will procure that if relevant any Approved Registered Provider uses its reasonable endeavours) to obtain grant funding in relation to the Development in order to satisfy the Affordable Housing Grant Condition as soon as reasonably practicable and in respect of Phase 1 (if applicable) simultaneously with satisfaction of the Site Wide Conditions.
- 10.3 The Council (as landowner) will provide reasonable assistance to the Partner in seeking discharge of the Affordable Housing Grant Condition but shall not be obliged to incur any external third party costs and shall not act independently to the Partner.
- 10.4 The Affordable Housing Grant Condition shall be satisfied when the Partner provides the Council with a certified copy of a grant agreement which complies with the definition of Affordable Housing Grant Condition Provided That the Council may agree to waive the Affordable Housing Grant Condition where the Partner has complied with its obligation at Clause 10.2 but has been unable to obtain grant funding in order to satisfy the Affordable Housing Grant Condition.

**11. POST PLANNING VIABILITY CONDITION**

- 11.1 This Clause applies only to each Subsequent Phase which contains Private Sale Homes.

- 11.2 Within 20 Working Days of satisfaction of all other Phase Conditions, the Partner shall provide a Post Planning Appraisal in relation to the relevant Subsequent Phase to the Steering Group together with (in accordance with the FOIA Protocol (where applicable)) full details of its workings and evidence of the sums contained therein on an Open Book basis and a written statement as to whether it considers that the Post Planning Viability Condition is satisfied.
- 11.3 The Post Planning Appraisal shall specify the total estimated Phase Contribution (as defined in the CPO Indemnity Agreement) for the relevant Phase and a breakdown of the Phase Contribution per plot within the relevant Phase apportioned by reference to estimated gross development value of each plot and the anticipated start on site date for each plot PROVIDED THAT the Partner shall regularly update the Steering Group with any changes to such dates.
- 11.4 The Steering Group shall consider the Post Planning Appraisal and shall determine whether or not the Post Planning Viability Condition has been satisfied.
- 11.5 The Post Planning Viability Condition will be satisfied when the Steering Group has agreed in writing that the Post Planning Appraisal satisfies each limb of the definition of Post Planning Viability Condition and any dispute shall be referred to the Expert pursuant to Clause 33.
- 11.6 If it is agreed at Steering Group or determined in accordance with Clause 33 that the Post Planning Viability Condition has not been satisfied, the matter shall be deemed to be a Mitigation Matter.
- 11.7 Where there are no Private Sale Homes within a Phase, the Partner shall nonetheless run the Post Planning Appraisal within 10 Working Days of satisfaction of all Phase Conditions and within five Working Days thereafter shall serve a copy on the Council together with full details of its workings and evidence of the sums contained therein on an Open Book basis.

11.8

[REDACTED]

12. **[NOT USED]**

13. **VACANT POSSESSION CONDITION**

13.1 This Clause applies to all Phases.

13.2 The Council shall use all reasonable endeavours to satisfy the Vacant Possession Condition in accordance with the Vacant Possession Strategy PROVIDED THAT the Council shall have no liability for breach of this obligation in the event that the reason for failure to satisfy the Vacant Possession Condition is that the Partner has not served a Developer's Notice (as defined in the CPO Indemnity Agreement).

13.3 The Partner shall provide all reasonable assistance to the Council in seeking to satisfy the Vacant Possession Condition.

13.4 Where a CPO is anticipated to be required for the Phase pursuant to the Vacant Possession Strategy, the Council's obligations in Clause 13.2 shall not apply until such time as the Partner and the Guarantor have entered into the CPO Indemnity Agreement.

- 13.5 The parties agree that all land interests to be acquired in the Site will be acquired in the name of the Council.
- 13.6 The Partner shall not acquire any land interests in the Site (save from the Council in accordance with this Agreement and as provided for in the CPO Indemnity Agreement) and shall not do anything that could adversely affect the Council's negotiations and acquisitions.
- 13.7 The Council shall notify the Partner within 10 Working Days of the date on which it considers that the Vacant Possession Condition has been satisfied and the date of service of such notice shall be deemed to be the date on which the Vacant Possession Condition was satisfied.
- 13.8 If:-
- 13.8.1 all Phase Conditions have been satisfied save for the Vacant Possession Condition;
  - 13.8.2 the Council has secured by agreement, appropriation or otherwise Vacant Possession of the whole of a Sub-Phase; and
  - 13.8.3 the Post Planning Viability Condition has been satisfied in relation to both the Sub-Phase and the remainder of the Phase and Viability in relation to the overall Development is not prejudiced,
- then the Steering Group may elect to permit the Partner to serve a Phase Drawdown Notice in relation to that Sub-Phase.
- 13.9 On the service of a Phase Drawdown Notice for a Sub-Phase:-
- 13.9.1 the relevant Sub-Phase shall be treated as if it were a separate Phase of the Development for the purposes of this Agreement, for which the Phase Unconditional Date has occurred (and for which the Council shall be deemed to have served a notice in accordance with Clause 13.7);
  - 13.9.2 the remainder of the Phase (less the Sub-Phase) shall be treated as if it were a separate Phase of the Development for the purposes of this Agreement;
  - 13.9.3 the Council and the Partner shall use all reasonable endeavours to agree the form of Leases for the Sub-Phase in accordance with Clause 19 as soon as practicable after service of the Phase Drawdown Notice; and
  - 13.9.4 the Council and the Partner shall use reasonable endeavours to agree such variations to the Development and Phasing Programme as appropriate to take into account the drawdown of a Sub-Phase for development and in default of agreement between the parties any such variations shall be determined by the Expert in accordance with Clause 33.
- 13.10 If at any time within 20 Working Days prior to a Phase Condition Longstop Date the Council considers (acting reasonably) that it will not satisfy the Vacant Possession Condition in relation to that Phase by the Phase Condition Longstop Date but will do so within 12 calendar months thereafter it shall (but no more than once in respect of each Phase) by service of written notice on the Partner extend the Phase Condition Longstop Date up to a maximum of such 12 calendar month period to allow the Vacant Possession Condition to be satisfied and upon service of such notice the Phase Condition Longstop Date shall be deemed to be extended accordingly.
14. **MILESTONE CONDITION**
- 14.1 This Clause applies only to each Subsequent Phase excluding Phase 2.
- 14.2 The Partner will notify the Council when it believes that the Milestone Condition has been met and will provide such evidence as the Council requires (acting reasonably) to demonstrate that the Milestone Condition has been achieved.

- 14.3 The Milestone Condition will be satisfied when the Council has confirmed satisfaction in writing. The Council will not unreasonably withhold or delay such confirmation and such confirmation or refusal of confirmation shall be given by the Council within 20 Working Days of the notification given by the Partner in Clause 14.2 if such confirmation is not given within this period the period between the expiry of the 20 Working Day period and the date on which confirmation or refusal of confirmation is given shall be an Extension Period.
- 14.4 The Council may in its absolute discretion elect to waive this condition and the condition shall be discharged on the date of waiver.
15. **SOCIO ECONOMIC OUTPUTS CONDITION**
- 15.1 This Clause applies only to each Subsequent Phase.
- 15.2 The Partner will notify the Council when it believes that the Socio Economic Outputs Condition has been met and will provide such evidence as the Council requires (acting reasonably) to demonstrate that the Socio Economic Outputs Condition has been achieved.
- 15.3 The Socio Economic Outputs Condition will be satisfied when the Council has confirmed satisfaction in writing. The Council will not unreasonably withhold or delay such confirmation and such confirmation or refusal of confirmation shall be given by the Council within 20 Working Days of the notification given by the Partner in Clause 15.2. If such confirmation is not given within this period the period between expiry of the 20 Working Day period and the date on which confirmation is given shall be an Extension Period.
16. **BUILDING CONTRACT CONDITION**
- 16.1 This Clause applies to all Phases.
- 16.2 The Partner will use all reasonable endeavours to satisfy the Building Contract Condition as soon as reasonably practicable.
- 16.3 The Building Contract Condition will be satisfied when the Partner provides to the Council a certified copy of the relevant Building Contract which complies with the definition of Building Contract Condition.
17. **DELIVERY METHODOLOGY CONDITION**
- 17.1 This Clause applies to all Phases.
- 17.2 The Partner will submit the Delivery Methodology to the Council for approval as soon as reasonably practicable and no later than submission of a draft Planning Application.
- 17.3 The Council will not unreasonably withhold or delay its approval to the Delivery Methodology PROVIDED THAT (amongst other things) it is in accordance with:-
- 17.3.1 the Development and Phasing Programme;
- 17.3.2 the Project Objectives; and
- 17.3.3 the Core Requirements.
- 17.4 If the Council reasonably withholds its approval to the Delivery Methodology then the Partner shall amend augment supplement or revise the Delivery Methodology and re-submit it for the Council's approval in accordance with this Clause.
- 17.5 The Delivery Methodology will be satisfied when the Council has confirmed in writing its approval to the Delivery Methodology. The Council will not unreasonably withhold or delay such confirmation and in the event the approval is not given by the Council within 20 Working Days of submission



pursuant to Clause 17.2 then the period between expiry of the 20 Working Day period and the date on which the approval is given shall be an Extension Period.

**18. PREMIUM**

18.1 In relation to Phase 1, within 20 Working Days of the Phase Unconditional Date, the Partner will provide a Post Planning Appraisal to the Council together with full details of its workings and evidence of the sums contained therein on an Open Book basis and a written statement as to the amount of the Residual Land Value of Phase 1.

18.2 The Residual Land Value of Phase 1 referred to in Clause 18.1 shall not include as costs any sums relating to the Development Management Fee or the Project Management Fee.

18.3 If:-

18.3.1 the Residual Land Value for Phase 1 is higher than the Phase 1 Guaranteed Residual Land Value, the Premium payable in respect of Phase 1 shall be the Residual Land Value of Phase 1; and

18.3.2 the Residual Land Value for Phase 1 is the same or lower than the Phase 1 Guaranteed Residual Land Value, the Premium payable in respect of Phase 1 shall be the Phase 1 Guaranteed Residual Land Value.

18.4 In relation to any Subsequent Phase within 20 Working Days of the Phase Unconditional Date the Partner will provide a Post Planning Appraisal to the Council together with full details of its workings and evidence of the sums contained therein on an Open Book basis and a written statement as to the amount of the Residual Land Value of that Phase that the Partner is proposing to pay the Council as the Premium for that Phase.

18.5 The Council will notify the Partner within 20 Working Days as to whether it approves the Residual Land Value in respect of the Subsequent Phase.

18.6 If the Council does not approve the Residual Land Value proposed by the Partner pursuant to Clause 18.4 in respect of the Subsequent Phase then the matter shall be referred to the Expert pursuant to Clause 33.

18.7 In addition to the Premium payable in respect of Phase 1 the Partner shall pay the Additional Sum (if any) to the Council within 20 Working Days of final determination of the Contribution attributable to Phase 1 pursuant to the CPO Indemnity Agreement.

**19. FORM OF LEASES AND OVERAGE DEEDS**

19.1 The Council and Partner shall use all reasonable endeavours to agree the form of Leases for the relevant Phase Lease Land and/or Lease Back Land in accordance with this Clause 19 as soon as reasonably practicable after the relevant Planning Application has been submitted to the Local Authority (and having regard to the progress with the Planning Condition).

19.2 The Council and the Partner acknowledge that each Lease shall be finalised in accordance with the mechanism set out in this Clause 19 and that the form of each Lease shall be based on the drafts of the Phase Lease and Lease Back each of which are appended at Appendix 7 and Appendix 8 respectively (the "**Base Lease**").

19.3 The Parties acknowledge that the form of each Lease shall differ from Phase to Phase to cater for site specific or estate management issues, including:-

19.3.1 the location, nature and extent of the Phase Lease Land the Lease Back Land and the common parts;

19.3.2 the extent of any Sub-Phase;

- 19.3.3 the requirements of the Estate Management Strategy;
- 19.3.4 in relation to the Library and Learning Centre the matters set out in the Library and Learning Centre Specification;
- 19.3.5 the service charge regime including in relation to each Lease Back:-
  - (a) provision to prevent double counting between heads of cost;
  - (b) provision for commencement of payment of service charge sums to reflect the availability of services for the benefit of the land demised;
  - (c) a mechanism to reconcile service charge sums due in respect of the Council's financial year where this differs from the landlord's service charge accounting year; and
  - (d) provision enabling the Council to receive information and cost estimates relating to repairs and improvements to residential units let to secure tenants sufficiently far in advance to enable the Council to provide the required information to those tenants in order to recover the cost of the relevant works from them;
- 19.3.6 provisions to align the terms of leases of Replacement Homes with the terms on which the Council may be required to dispose of such properties to tenants exercising the "right to buy";
- 19.3.7 repair and decoration obligations;
- 19.3.8 the rights granted and reserved;
- 19.3.9 changes in law or market practice as relevant to a lease of the relevant type at the time of grant; and
- 19.3.10 the requirements of the DEN Operator and/or the DEN Contractor in respect of the:-
  - (a) installation of the Energy Centre, the Offsite Supply Network or the Private Wire Network; and/or
  - (b) operation and maintenance of the Energy Centre, the Offsite Supply Network, the Private Wire Network and (following adoption in accordance with the Heat Supply Agreement) the Primary Heat Network and the Secondary Heat Network.

19.4 No later than the Planning Date:-

- 19.4.1 the Council shall issue a draft Phase Lease for the relevant Phase, such draft Lease to be based on the relevant Base Lease incorporating such amendments or additions to the form of relevant Base Lease as the Council reasonably proposes having regard to the matters in Clause 19.3 and any other matters which the Council reasonably considers to be relevant to the Phase Lease Land (and such draft Lease shall also provide for all such temporary and permanent rights and easements, together with any other covenants or conditions which are required to enable the beneficial use and occupation of the relevant Phase Lease Land, as well as the continued use and/or the management of the landlord's adjoining land, estate and/or building);
- 19.4.2 the Partner shall issue draft Lease Back documents for the Lease Back Land in the relevant Phase, such draft Lease Back documents each to be based on the relevant Base Lease incorporating such amendments or additions to the form of relevant Base Lease as the Partner reasonably proposes having regard to the matters in Clause 19.3 and any other matters which the Partner reasonably considers to be relevant to the Lease Back Land (and such draft Lease Back documents shall also provide for all such

temporary and permanent rights and easements, together with any other covenants or conditions which are required to enable the beneficial use and occupation of the relevant Lease Back Land, as well as the continued use and/or the management of the landlord's adjoining land, estate and/or building); and

- 19.4.3 the Partner shall provide to the Council the lease, building and estate plan(s) to be appended to the each relevant draft Lease showing any colours or markings to be referred to by reference to a plan in the relevant lease (if any) (the "**Draft Plans**").
- 19.5 The Partner shall within 20 Working Days after receipt of the draft Phase Lease give written notice to the Council (a "**Lease Notice**") either accepting the draft Phase Lease or rejecting the draft Phase Lease, specifying in detail the reasons for such rejection, and returning an amended draft.
- 19.6 The Council shall within 20 Working Days after receipt of all of the draft Lease Back documents give written notice to the Partner (a "**Lease Back Notice**") either accepting the draft Lease Back documents or rejecting the draft Lease Back documents, specifying in detail the reasons for such rejection, and an amended draft(s).
- 19.7 The Council shall within 20 Working Days after receipt of the Draft Plans give written notice to the Partner (a "**Plans Notice**") either accepting the Draft Plans or rejecting the Draft Plans, specifying in detail the reasons for such rejection.
- 19.8 Where either party failed to serve a Lease Notice, a Lease Back Notice or a Plans Notice within the relevant 20 Working Day period then the draft Phase Lease the draft Lease Back documents and the Draft Plans for which no notice has been served shall be treated as being in agreed form and for the purposes of the Lease Completion Date, the Phase Lease shall be deemed to be agreed on such date.
- 19.9 Where either party serves either a Lease Notice, a Lease Back Notice or a Plans Notice on the other rejecting the draft Phase Lease the draft Lease Back documents or the Draft Plans as the case may be (an "**Amendment Notice**"):-
- 19.9.1 the Council and the Partner shall use all reasonable endeavours to agree the form of relevant Lease and/or the Draft Plans as soon as reasonably practicable but in any event within 20 Working Days of the date of service of the relevant Amendment Notice (and for the purposes of the Lease Completion Date, the relevant Phase Lease shall be deemed to be agreed on the date on which the last of any outstanding items set out in an Amendment Notice is agreed); or
- 19.9.2 if agreement has not been reached within this time frame then the Council and the Partner shall refer the matter to their senior representatives to consider and seek to reach agreement as soon as reasonably practicable but within 20 Working Days of the date of referral; or
- 19.9.3 if agreement has not been reached within this time frame, then either the Council or the Partner can refer the matter to an Expert and the Expert shall be required to determine the matter in question within 15 Working Days of this appointment and, upon the Expert determining the Draft Plans and/or the form of relevant Lease, then these shall be treated as the agreed form of plan(s) and relevant Lease for the relevant Phase Lease Land or Lease Back Land (and for the purposes of the Lease Completion Date, the relevant Phase Lease shall be deemed to be agreed on the date of such determination).
- 19.10 In relation to the Overage Deed:-
- 19.10.1 the provisions contained in the Overage Deed for a restriction on title shall be deleted in the event that either:-
- (a) the Phase Lease contains a right of forfeiture for non payment of Sales Overage; or

- (b) the Guarantor or a third party of covenant strength acceptable to the Council (acting reasonably) enters into the Overage Deed to guarantee payment of the Sales Overage or alternative security acceptable to the Council (acting reasonably) is provided for the obligation to pay the Sales Overage;

19.10.2 the Council and the Partner shall use reasonable endeavours to agree the form of the Overage Deed applicable to each Phase (including the terms of security for payment for it) as soon as reasonably practicable alongside agreement of the Phase Lease but if agreement has not been reached within 30 Working Days of provision by the Council to the Partner of a draft Overage Deed then the provisions of Clauses 19.9.2 and 19.9.3 shall apply mutatis mutandis in order to settle the applicable form of Overage Deed; and

19.10.3 no Overage Deed shall be entered into for a Phase or Sub Phase where the Council (acting reasonably) is satisfied that the commercial terms for the grant of the Phase Lease mean that no overage can become payable in respect of that Phase or Sub Phase.

## **20. LICENCE TO ENTER**

20.1 If the Partner wishes to access any vacant and unbuilt upon part of the Site prior to Lease Completion in relation to such area, then if the Council consents the Partner may enter onto such area in accordance with the terms set out in Schedule 4.

20.2 The Partner must provide to the Council:-

20.2.1 a copy of all Necessary Consents; and

20.2.2 details of the security and hoarding arrangements,

in relation to any works that it proposes to undertake pursuant to Clause 20.1, when requesting access to the Site. If the Partner does not provide such information, the Council may reasonably withhold consent to the request for a licence.

## **21. GRANT OF THE LEASES**

21.1 Subject to Clause 21.5 the Council shall grant and the Partner (or a Group Company or third party in accordance with Clause 40.2) shall accept each Phase Lease on the relevant Lease Completion Date and (subject to the provisions of Clauses 21.2, 57 and 58) the Partner its successor in title (or a third party in accordance with Clause 40.2) shall grant each Lease Back on the relevant Date of Practical Completion of the Council Facilities on the Lease Back Land.

21.2 In relation to the Phase Lease Land on which the Energy Centre Shell is to be located:-

21.2.1 the relevant Phase Lease granted by the Council shall reserve such access rights as are required to allow the Council, the DEN Operator and/or the DEN Contractor (as applicable) to enter the Phase Lease Land in order to install the Energy Centre and any other necessary components of the Offsite Supply Network and/or Private Wire Network and to carry out any testing and commissioning of the same and shall also include an obligation on such party to make good any damage caused by the exercise of such rights; and

21.2.2 subject to agreement and entry by the Partner and the DEN Operator into the Master Heat Agreement in accordance with Clause 60, prior to or on practical completion of the construction of the Energy Centre Shell the Partner shall grant the DEN Lease to the DEN Operator or to the Council (at the Council's discretion).

- 21.3 In relation to each parcel of Phase Lease Land the relevant Phase Lease granted by the Council shall reserve such access rights as are required to allow the Council, the DEN Operator and/or the DEN Contractor to enter the Phase Lease Land to:-
- 21.3.1 install, repair, maintain, replace and/or remove any part of the Offsite Supply Network and/or the Private Wire Network; and
- 21.3.2 (following adoption in accordance with the Master Heat Agreement) repair, maintain, replace and/or remove any part of the Primary Heat Network and Secondary Heat Network,
- and shall also include an obligation on such party to make good any damage caused by the exercise of such rights
- 21.4 In relation to every Phase the Partner shall:-
- 21.4.1 pay the relevant Premium on or before Lease Completion; and
- 21.4.2 pay the relevant part of the Reimbursement Figure on the terms set out in the CPO Indemnity Agreement.
- 21.5 The Council shall be entitled to refuse to complete any Phase Lease where any payments due under this Agreement remain unpaid.
- 21.6 The Council is entitled to decline to grant any Lease to any person other than the Partner save as set out in Clause 40.2.
- 21.7 Each Premium (and other sums payable pursuant to this Agreement or to any document ancillary or supplemental to it) shall be paid by CHAPS transfer (to such Council account as the Council shall nominate) on the relevant due date for payment.
- 21.8 If Lease Completion shall not have taken place before 2.00 pm on any day then completion shall be deemed to have occurred on the next following Working Day.
- 21.9 All items delivered by the Council through the post or document exchange in connection with this transaction and its completion shall be at the risk of the Partner.
- 21.10 Lease Completion will take place at the offices of the Council's Solicitor or as the Council shall direct.
- 21.11 On Lease Completion in relation to the Phase Lease for each Phase, the parties thereto (or such other parties as are agreed pursuant to Clause 40.2.2) will enter into an Overage Deed in relation to the land comprised in that Phase.
- 21.12 The rent payable pursuant to each Phase Lease shall be a peppercorn per annum (if demanded) and will commence to be payable from the date of the relevant Lease Completion Date.
- 21.13 Unless otherwise agreed by the parties the term of each Phase Lease will commence upon the Lease Completion Date and (subject to Clauses 57 and 58) each Lease Back upon the Lease Completion Date.
- 21.14 If as a result of any breach by the Partner a Phase Lease is not completed on the Lease Completion Date then the Partner shall on demand pay interest on any sums due under this Agreement at the Prescribed Rate from the Lease Completion Date until the later of Lease Completion and actual payment (after as well as before any judgment).
- 21.15 The Partner shall as soon as reasonably practicable after Lease Completion use reasonable endeavours to procure the registration of each Phase Lease (to the extent appropriate at the Land Registry), and shall provide a copy of its title to the Council within five Working Days of receipt.

- 21.16 The Partner agrees to use its reasonable endeavours to procure that there is no sale of more than one residential unit to the same entity (other than (i) Affordable Housing Units or (ii) sales of Private Sale Homes to a single entity for occupation by members of the same family).
- 21.17 The Partner shall:-
- 21.17.1 as soon as reasonable practicable after Today's Date subscribe to the Mayoral Concordat on new homes for Londoners;
  - 21.17.2 use reasonable endeavours to support and assist the Council in meeting its obligations and delivering its housing zone outputs as set out in the Overarching Borough Agreement including:-
    - (a) commitment to the London Living Wage;
    - (b) compliance with KPIs relating to planning efficiencies and effectiveness; and
    - (c) provision of such information and reports as may be required from time to time;
  - 21.17.3 work with the Council and the GLA to agree detailed outputs to form part of a Borough Intervention Agreement to be entered into pursuant to the Overarching Borough Agreement and which shall include obligations on the Partner as to the timing and delivery of the outputs referred to in Clause 21.17.2; and
  - 21.17.4 provide such information as is required from time to time by the GLA for performance monitoring purposes pursuant to the Overarching Borough Agreement.
- 21.18 For a period of three calendar months from commencement of its marketing activities for a Phase:-
- 21.18.1 save as set out in Clause 21.18.2 below, the Partner shall ensure that the Private Sale Homes anticipated to be delivered within the relevant Phase are marketed by way of advertisements in newspapers local to Haringey and on the Site hoardings (whether or not elsewhere); and
  - 21.18.2 the Partner may market the Private Sale Homes for Disposition during such period through the internet, but shall only actively progress Dispositions to residents currently living within a five mile radius of the Site who have expressed an interest in acquiring a legal interest in any Private Sale Homes within the Site (and shall share such list with the Council on reasonable request), or as otherwise agreed with the Council through Steering Group.
- 21.19 The Partner shall ensure that, upon grant of any underlease of any Unit:-
- 21.19.1 an obligation is imposed upon the relevant under-tenant to enter into a Heat Supply Agreement with the DEN Operator under which the DEN Operator shall supply heat and hot water to the relevant Unit and to procure that any replacement under-tenant shall enter into a replacement Heat Supply Agreement and, in each, covenant to comply with the terms of such heat supply agreement;
  - 21.19.2 an obligation is imposed upon the relevant under-tenant to exclusively procure heat and hot water from the DEN Operator and a covenant is imposed upon the relevant under-tenant to not generate heat or hot water within the Unit or procure heat or hot water from any other supplier;
  - 21.19.3 the relevant under-tenant is made aware of and consents to the obligations above; and
  - 21.19.4 the DEN Operator is informed of the date of completion of the underlease and provided with the contact details of the relevant under-tenant.

22. **DEDUCTION OF TITLE**

22.1 Title to the Site has been deduced prior to the date of this Agreement.

22.2 The Partner shall take each Phase Lease with full knowledge of the title to the relevant Phase:-

22.2.1 as set out or referred to in the relevant registers of the title at the Land Registry; and

22.2.2 as set out or referred to in Clause 24 below,

(including all matters arising in connection with the Planning Acts) and shall raise no requisition nor objection thereto save in relation to new matters disclosed by its pre-completion searches (excluding those disclosed by the Council prior to entry into this Agreement).

23. **POSSESSION**

Each Phase or Sub-Phase and the Lease Back Land shall be let with Vacant Possession on Lease Completion, save where otherwise agreed by the parties.

24. **MATTERS AFFECTING THE PHASE LEASE LAND OR LEASE BACK LAND**

Each Lease shall be granted subject to but where applicable with the benefit of:-

24.1 all local land charges, whether or not registered before the date of this Agreement and all matters capable of registration as local land charges, whether or not actually registered;

24.2 all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;

24.3 all actual or proposed orders, directions, notices, charges, restrictions, conditions, Agreements and other matters arising under any statute affecting the Site;

24.4 all matters in the nature of overriding interests as set out in section 2 of the Land Registration Act 2002 (as amended);

24.5 all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining owners affecting the Site, and all liability to repair or covenants to repair highways, pavements, paths, ways, passages, sewers, drains, gutters, fences and other like matters, without obligation on the Partner or the Council as appropriate to provide evidence of the creation of, or to define or apportion, any such liability;

24.6 any other matters if they are such as would or might reasonably be expected to have been revealed to the Partner if before the date of this Agreement had it made all searches enquiries and inspections regarding the Site which a prudent Partner or purchaser ought to make whether such searches enquiries or inspections have been made or not by or on behalf of the Partner or the Guarantor; and

24.7 any access licences and/or easements granted to THFC over the Site after the date hereof relating to crowd flow management in such form as the Council and the Partner approve both acting reasonably

25. **STANDARD CONDITIONS AND ANCILLARY MATTERS**

25.1 In relation to this Agreement the Standard Conditions shall apply as follows:-

25.1.1 the Standard Conditions applicable to the grant of a lease and as varied in Clause 25.2 shall be incorporated in this Agreement insofar as they are not inconsistent with the express terms and conditions of this Agreement and in the event of any conflict between

the express terms and conditions of this Agreement and the Standard Conditions the former shall prevail;

25.1.2 all references in the Standard Conditions to the "**seller**" and the "**buyer**" shall be deemed to be references to the "**Council**" and the "**Partner**" respectively and shall be construed accordingly; and

25.1.3 all references in the Standard Conditions to the "**property**" shall be deemed to be references to the Land and shall be construed accordingly.

25.2 In relation to this Agreement the Standard Conditions shall be varied as follows:-

25.2.1 Standard Conditions 1.4, 3.1.1, 3.1.3, 6.1, 6.2, 6.3, 6.4.2, 6.6.2, 6.6.5, 7.1.2, 7.1.4(b), 8.4, 9.1, 9.3, 10.1.3, 10.2.4 and 10.3 shall be deleted;

25.2.2 in Standard Condition 1.1.1(l) the definition of public requirement shall be deleted and replaced by the following:-

- (a) public requirement means any notice order demand request requirement or proposal having specific reference to the property which is given or made (whether before on or after the date of the contract and whether or not subject to any confirmation) by a body acting on statutory authority or any competent authority and includes;
- (b) all matters registered or registrable as local land charges (whether or not so registered); and
- (c) all actual or proposed charges orders directions conditions proposals demands restrictions agreements notices or other matters whatsoever (whether registered or not before Today's Date) affecting or relating to the property or any part thereof or any building or other structure thereon or any part thereof arising under the Planning Acts;

25.2.3 Standard Condition 1.3 shall be amended as set out in Clause 28;

25.2.4 in Standard Condition 3.1.2(c) the words "and could not reasonably" shall be deleted;

25.2.5 the following shall be added to the end of Standard Condition 3.1.2:-

"(f) *all outgoings, consents, restrictions, easements and liabilities affecting the property;*

(g) *any interests which override under the Land Registration Act 2002.*";

25.2.6 at the end of Standard Condition 8.8.2 add the words:-

*"on completion the party on whom a notice to complete was served shall pay to the other party its reasonable legal costs incurred in connection with the service of the notice and recalculating the completion statement together with disbursements properly incurred and VAT";*

25.2.7 for the purpose of Standard Condition 9.5.1 the Partner shall have failed to complete in accordance with a notice to complete if the money due on Lease Completion is not received by 2.00pm on the day on which the notice expires.

## 26. **SCHEDULES**

The parties shall comply with their respective obligations under the Schedules.



## **27. COPYRIGHT AND LICENCE TO USE DOCUMENTS**

### **27.1 Licence**

In relation to the Works concerning the Council Facilities and the Public Realm the Partner agrees to grant to the Council (from the date of completion of the Lease Back) an irrevocable, perpetual, royalty-free, non-exclusive licence to use and reproduce all designs, drawings, models, plans, specifications, design details, calculations, photographs, brochures, reports, notes of meetings, CAD materials and any other materials prepared by or on behalf of the Partner in connection with the part of Works and/or the Development (whether in existence or to be made) concerning the Council Facilities and all amendments and additions to them and any works, designs or inventions of the Partner incorporated or referred to therein for all purposes whatsoever relating to the part of the Works and/or the Development concerning the Council Facilities including (but without limitation) the construction, re-construction, completion, maintenance, use, letting, occupation, management, sale, promotion, advertisement, alteration, modification, refurbishment, re-development, extension, re-instatement and repair of the Council Facilities, such licence carrying the right to grant sub-licences and to be transferable without the prior consent of the Partner. For all other Works (to the extent that it can do so) the Partner agrees to grant a licence on the terms set out in this Clause 27.1 in the event that this Agreement is terminated.

### **27.2 Partner's Rights**

In respect of the materials referred to in Clause 27.1, the Partner:-

- 27.2.1 warrants that it has and, at the date when the materials may be delivered or made available to the Council, will have full title guarantee in relation to any copyright or other intellectual property rights existing in it free from and clear of any restriction and encumbrances or is entitled, as the licensee from such owner, to use and exploit all such rights to the extent necessary to enable it to enter into and perform its obligations under this Agreement;
- 27.2.2 acknowledges that, in respect of the materials of which the Partner is, or may at the time of their creation be, the author (as referred to in the Copyright, Designs and Patents Act 1988) the Partner hereby absolutely waives any moral rights which it might otherwise be deemed to possess pursuant to sections 77, 78 and 80 of such Act; and
- 27.2.3 warrants that, to the extent that the Partner is not the author, the author has not asserted, and has agreed to waive any such moral rights which it might otherwise be deemed to possess.

### **27.3 Access and Copies**

The Partner agrees:-

- 27.3.1 on request at any reasonable time to give the Council or any persons authorised by the Council full and sufficient access to the materials referred to in Clause 27.1 and, to provide copies of it (including copies on computer readable and modifiable discs); and
- 27.3.2 at the Partner's expense, to provide the Council with a set of all such materials relating to the relevant Works upon the Date of Practical Completion.

### **27.4 Sums Payable**

All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with this Agreement shall be borne by the Partner.

### **27.5 Assurance**

- 27.5.1 The Partner shall if reasonably requested by the Council at any time (and it is agreed that it shall be reasonable for the Council to so request in the event of termination of this

Agreement) execute such documents and perform such acts in terms agreed by the Partner (such agreement not to be unreasonably withheld or delayed) as may be required fully and effectively to assure to the Council the rights referred to in this Clause 27.

- 27.5.2 The Partner shall procure freely assignable rights for the Council to use all information plans and specifications supplied by the Partner to the Council including all site and soil surveys, planning drawings and submissions free of charge.

28. **NOTICES**

- 28.1 For the purposes of this Clause "**party**" includes the Guarantor as well as the Council and the Partner.

- 28.2 A notice to be served under or pursuant to this Agreement shall be validly served if the provisions hereinafter contained are complied with in respect of such notice or alternatively the party to whom such notice is addressed or its authorised agent acknowledges receipt in writing.

- 28.3 Any notice to be served under or pursuant to this Agreement may be served in any of the following manners:-

28.3.1 by personal delivery (in which case service shall be deemed to have been effected at the time of delivery); or

28.3.2 by prepaid first class special delivery post from any address in the United Kingdom (in which case service shall be deemed to have been effected at the expiration of 48 hours from the time of posting),

and for the avoidance of doubt notice may not be given by email or fax.

- 28.4 In proving service of any notice it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery or registered delivery.

- 28.5 If the party to whom any notice to be served under or pursuant to this Agreement shall consist of more than one person the service upon one of such persons shall be service upon all of them.

- 28.6 Any notice addressed to a party by name shall not be rendered invalid by reason of the party having died, become insolvent or changed name, whether or not the party serving the notice is aware of the fact.

- 28.7 The address to which there shall be sent or delivered any notice to be served upon any party to this Agreement under or pursuant to this Agreement shall in the case of the Council be the address or registered office of such party as stated at the commencement of this Agreement or as otherwise notified either to the party serving the notice (or on whose behalf the notice is served) the notification to have been given by notice in writing served in accordance with the provisions of this Clause 28 prior to the service of the notice first referred to in this Clause and shall in the case of the Partner and the Guarantor be its registered office from time to time.

- 28.8 Any notice required to be served or which may be served by a party to this Agreement may be given on that party's behalf by that party's solicitors.

- 28.9 Where any notice is to be served upon the Partner under or pursuant to this Agreement such notice and any envelope containing such notice shall be marked "*For the Urgent Attention of the Company Secretary*" and a duplicate shall be served on the Guarantor and marked "*For the Urgent Attention of the General Counsel*" or (in each case) such other person as shall have been notified as the person to whose attention any such notice should be drawn. Any such notification of another person shall be required to have been given either to the Council or to the Council's Solicitors and to have been given by notice in writing served in accordance with this Clause prior to the service of the notice first referred to in this Clause.

28.10 Where any notice is to be served upon the Council under or pursuant to this Agreement such notice and any envelope containing such notice shall be marked "For the Urgent Attention of the Assistant Director for Corporate Governance" with a copy to the Council's Solicitors or in each case such other person as shall have been notified as the person to whose attention any such notice should be drawn.

28.11 The foregoing provisions of this Clause shall in addition to the service of notices also apply (*mutatis mutandis*) to the delivery of documents, unless otherwise agreed in writing.

## 29. **VALUE ADDED TAX**

29.1 All sums payable under this Agreement by the Partner to the Council and by the Council to the Partner shall be exclusive of VAT.

29.2 Where pursuant to the terms of this Agreement the Council makes a supply to the Partner and VAT is chargeable in respect of such supply the Partner shall (on production by the Council of a valid VAT invoice addressed to the Partner) pay to the Council (in addition to the relevant consideration set out in this Agreement) a sum equal to such VAT.

29.3 Where pursuant to the terms of this Agreement the Partner makes a supply to the Council and VAT is charged in respect of such supply the Council shall (on production by the Partner of a valid VAT invoice addressed to the Council) pay to the Partner (in addition to the relevant consideration set out in this Agreement) a sum equal to such VAT.

29.4 Where the Partner is required by the terms of this Agreement to reimburse the Council for the costs or expenses of any supplies made to the Council the Partner will at the same time pay to the Council all VAT input tax incurred by the Council in respect of those supplies save to the extent that the Council is entitled to repayment or credit in respect of such VAT input tax from HM Revenue and Customs.

## 30. **INTEREST AND PAYMENTS**

Subject to Clause 21.14, if any party fails to pay any monies due to the other(s) within five Working Days after the date upon which the same shall fall due under this Agreement then whether before or after any Court judgment the paying party shall pay the payee interest thereon at the Prescribed Rate calculated on a daily basis from the date such monies became due until the date upon which the payee shall receive the same.

## 31. **STEERING GROUP**

31.1 Within 20 Working Days after Today's Date the parties shall convene an initial meeting of the Steering Group attended by the Council's Nominated Attendees and the Partner's Nominated Attendees at which:-

31.1.1 the individual initially performing the role of chairman shall be elected; and

31.1.2 a timetable for Steering Group meetings for the first year after Today's Date shall be agreed.

31.2 The Steering Group will consist of three representatives of each of the Council (being the Council's Nominated Attendees) who shall have due authority to make decisions in relation to the Steering Group's business on behalf of the Council) and the Partner (being the Partner's Nominated Attendees) who shall have due authority to make decisions in relation to the Steering Group's business on behalf of the Partner. For the avoidance of doubt notwithstanding the number of members of the Partner's consortium and/or its supply chain and/or any Approved Registered Provider the Partner shall only be entitled to three representatives.

31.3 The chairman of the Steering Group shall be rotated annually as between the Council and the Partner but the chairman shall have no casting vote.

31.4 The Council and the Partner:-

- 31.4.1 will ensure that the group meets at least once every two weeks during the first four months after Today's Date and at least once every month during the first year after the Strategies are agreed and thereafter at least every three months, at such location and with such parties and at such times and frequency as shall be appropriate from time to time;
- 31.4.2 will notify each other of any change to their Nominated Attendees;
- 31.4.3 will ensure that their Nominated Attendees attend meetings of the Steering Group (or that substitutes, named in advance and properly briefed, attend in their place) and that the Nominated Attendees act reasonably;
- 31.4.4 will furnish the Steering Group with such information in relation to the Development as that group may reasonably request; and
- 31.4.5 will each bear their own costs in attending the Steering Group (but the Partner will provide any secretariat needed for the Steering Group).

31.5 Either party can require a meeting on no less than five Working Days' notice. A minimum of two representatives of each of the Council and the Partner shall be required to be present in order for a meeting to be quorate.

31.6 The Partner agrees with the Council that:-

- 31.6.1 it shall prepare and distribute not less than 10 Working Days prior to each Steering Group meeting an adequately detailed written report (in accordance with the FOIA Protocol (where applicable)) setting out the past and future overall progress of the Development including a commentary by comparison to the progress (including marketing progress) of other similar or comparable schemes in the locality;
- 31.6.2 no less frequently than twice every year commencing on Today's Date it shall prepare (in accordance with the FOIA Protocol (where applicable)) and distribute to the Council and such advisers to the Council as the Council may notify in writing from time to time, not less than 20 Working Days prior to the relevant Steering Group meeting:-
  - (a) an updated Financial Model taking into account past and future Phases; and
  - (b) an updated Phase Appraisal for the then current Phase,together with a fully detailed explanation and statement prepared on an Open Book basis, setting out the basis upon which any changes have been made and a report from the Partner's valuation surveyor addressed to both the Partner and the Council setting out the basis upon which the Financial Model, updated projections of it, and the Phase Appraisal for the then current Phase each satisfy the Council's value for money requirements;
- 31.6.3 it shall present the documentation which it has prepared and distributed pursuant to Clause 31.6.1 and 31.6.2 above to the Steering Group meeting for discussion by the parties; and
- 31.6.4 it shall meet the reasonable and proper costs incurred by the Council in taking professional advice on the Financial Model and Phase Appraisal from time to time, such costs to be payable within 10 Working Days of presentation to the Partner of an invoice in relation to such costs. The Council will procure and provide to the Partner regular estimates of such costs from the professional advising the Council.

31.7 The Council may request that the Partner provides it with the information set out in Clause 31.6 at any time and following such request the Partner shall prepare and distribute such information to the Council within 20 Working Days and Clause 31.6.4 shall apply in relation to the Council's costs.

- 31.8 In relation to decision making and subject to Clause 31.11:-
- 31.8.1 the Steering Group will have responsibility for making decisions in relation to the Development in the first instance;
  - 31.8.2 the representatives of each of the Council and the Partner will have one collective vote respectively;
  - 31.8.3 decision making shall be by unanimous vote; and
  - 31.8.4 any matter that cannot be agreed within the Steering Group shall be resolved in accordance with Clause 33.
- 31.9 At each Steering Group meeting:-
- 31.9.1 the parties shall discuss and (where appropriate) seek to reach a mutual conclusion in respect of any matter which pursuant to this Agreement the Council and the Partner are jointly required to consider or approve (together with any other matter which the parties shall by mutual consent table for discussion at the Steering Group meeting); and
  - 31.9.2 detailed written minutes of the Steering Group meeting will be taken by the Partner and in each case shall be in a form agreed between the parties (acting reasonably) and to be circulated within 10 Working Days of the meeting for the approval of all of the parties (such approval not to be unreasonably withheld or delayed).
- 31.10 Subject to Clause 31.11 matters on which the Steering Group, or any sub-group formed by the Council and the Partner, will advise or assist, or in relation to which it will provide a determination, include:-
- 31.10.1 initial agreement and adoption of the Strategies;
  - 31.10.2 initial agreement and adoption of the Phase Plan;
  - 31.10.3 review and updating of the Strategies from time to time;
  - 31.10.4 all aspects of the operation of this Agreement (including the preparation of any Planning Applications);
  - 31.10.5 progress towards and reviewing the discharge of the Site Wide Conditions, the Phase 1 Conditions and Subsequent Phase Conditions and generally reviewing progress of the delivery of the Development in relation to Phases that have been drawn down;
  - 31.10.6 the Partner's progress in implementing the Business Plan and any updates or variations required or proposed to it;
  - 31.10.7 reviewing and interrogating each Pre Planning Appraisal;
  - 31.10.8 reviewing and interrogating each Post Planning Appraisal;
  - 31.10.9 reviewing and interrogating any updated Financial Model and Phase Appraisal for the then current Phase including methods and structures to incentivise the Partner to maximise Residual Land Value;
  - 31.10.10 approval of documents where requisite;
  - 31.10.11 approval of the CPO budget;
  - 31.10.12 progress towards achieving the Core Requirements and the Project Objectives;

- 31.10.13 updates on liaison and engagement with the residents during the scheme and resolving any resident complaints on which the Council shall lead;
  - 31.10.14 changes to the extent of the Site;
  - 31.10.15 the milestones applicable to each Subsequent Phase, achievement of which shall satisfy the Milestone Condition for that Phase,
  - 31.10.16 agreement and adoption of and variations to the Development and Phasing Programme;
  - 31.10.17 updates and details of any proposed forward funding/sale terms;
  - 31.10.18 the resources plan for development and project management services (to be reviewed not less than once a year);
  - 31.10.19 progress of delivery of the Council Facilities to the required quality specification, the Building Contracts relating to the delivery of the Council Facilities and cost increases and savings;
  - 31.10.20 reviewing and agreeing any necessary changes to the minimum GIA figures set out in the definition of "Commercial Units"; and
  - 31.10.21 progress towards completing all required documentation relating to the DEN,
- and the Council and the Partner may agree in writing additional roles or functions for the Steering Group.
- 31.11 The following matters may be discussed by the Steering Group but any decision as to their content and their approval shall be reserved to the Council as landowner (acting reasonably):-
    - 31.11.1 the amount of the Approved Premium subject to Clause 18.5;
    - 31.11.2 the Resident Rehousing Strategy;
    - 31.11.3 the Commercial Occupier Relocation Strategy;
    - 31.11.4 the Delivery Methodology;
    - 31.11.5 approval of the detailed masterplan for delivery of the Development;
    - 31.11.6 any changes to the Partner's design team specified in the Partner's Tender;
    - 31.11.7 the form of a Planning Application prior to submission pursuant to Clauses 6 and 9;
    - 31.11.8 any changes to the Council's Specification;
    - 31.11.9 the identity of any third party to enter into a sub-contracted arrangement pursuant to Clause 40.6;
    - 31.11.10 agreement and adoption of the FOIA Protocol; and
    - 31.11.11 any updates, variations or revisions to the above.
  - 31.12 The following matters may be discussed at Steering Group with final approval reserved to the Council in its absolute discretion whether or not any of the Drop Dead Dates in Schedule 7 should be extended.
  - 31.13 The Steering Group shall keep the Strategies under review and updated as appropriate.

- 31.14 The Partner will be responsible for implementing the Business Plan and the Strategies as the same may be updated from time to time with the approval of the Steering Group.
- 31.15 The Partner will keep the Council informed at regular intervals (primarily through Steering Group meetings) as to its progress in complying with Clause 31.14.
- 31.16 Where any matter is approved or consented to at Steering Group then such matter shall be deemed to be approved, agreed or consented to in writing for the purposes of this Agreement PROVIDED THAT the Council and the Partner either sign all the minutes of the Steering Group meeting at which such matter was approved or agreed or consented to or at the following Steering Group meeting it is acknowledged by the Council and the Partner that the minutes of such previous Steering Group meeting are correct or any modifications thereto are agreed at that meeting (and such agreement is acknowledged in writing by both parties or approved by signature of the minutes of that meeting).
- 31.17 The Council and the Partner shall procure that their representatives are duly authorised to discuss and agree matters in relation to the Development as empowered by the their due processes from time to time and each party shall be entitled without further enquiry to rely upon any representations as to those representatives' authority except where the other party's representatives notify that party that a matter under discussion requires further internal approvals from officers or members of the notifying party in which case the notifying party shall procure that such approvals are sought as expeditiously as practicable.
- 31.18 The Council and/or the Partner may on an ad hoc basis invite any or all of the following additional attendees to attend part or all of a Steering Group meeting subject to first obtaining the approval of the other party in advance of that meeting:-
- 31.18.1 such professional advisors or other persons having expertise relevant to the issues due for discussion at that Steering Group meeting as the Council and/or the Partner shall (acting reasonably) consider appropriate or necessary; and
- 31.18.2 representatives of up to three stakeholders and residents in relation to the Site identified by the Council and approved by the Partner (such approval not to be unreasonably withheld or delayed),
- but such additional attendees shall not be entitled to any Steering Group vote and shall not be counted in relation to a meeting being quorate.
- 31.19 The Council and the Partner shall not be obliged to discuss with, disclose or make available to any additional Steering Group attendee any financial confidential or commercially sensitive information.

## 32. **MAJOR LANDOWNERS GROUP**

- 32.1 The parties acknowledge and agree that the purpose of the Major Landowners Group is to ensure the co-ordinated delivery of regeneration across North Tottenham and delivery of the vision set out in the Tottenham Area Action Plan.
- 32.2 The parties will participate in and shall ensure that its representatives attend all meetings of the Major Landowners Group.
- 32.3 The parties agree that the Major Landowners Group shall meet every three months in the first year commencing on Today's Date and thereafter on a regular basis and that the matters it shall discuss and use reasonable endeavours to agree solutions for to shall include the following that affect all of the Development, the Northumberland Development Project (THFC) and Northumberland Park (HDV):-
- 32.3.1 commercial uses;
- 32.3.2 social infrastructure;

- 32.3.3 public realm and open space;
- 32.3.4 submission of planning applications;
- 32.3.5 sustainability and the DEN;
- 32.3.6 programme;
- 32.3.7 marketing and lettings programme;
- 32.3.8 co-ordination of socio-economic and cultural opportunities;
- 32.3.9 co-ordination of re-housing;
- 32.3.10 co-ordination of highway and transport works;
- 32.3.11 promotion of North Tottenham; and
- 32.3.12 any other matters that the Council and the Partner or other members of the Major Landowners Group agree should be discussed from time to time.

32.4 Decisions made by the Major Landowners Group shall not be binding on its participants.

32.5 The Council and the Partner shall not be obliged to discuss with, disclose or make available to the Major Landowners Group any financial, confidential or commercially sensitive information.

### 33. **DISPUTES**

#### 33.1 **General**

This Clause 33 shall apply to all matters that cannot be resolved by discussion between the Council and the Partner through the Steering Group.

#### 33.2 **Pre-Expert Dispute Resolution**

33.2.1 Save where expressly stated otherwise notwithstanding any other provision of this Agreement upon any dispute or difference arising between the parties in relation to this Agreement or the performance of the parties' obligations hereunder the Council and the Partner will, prior to referring the matter to an Expert or seeking any other remedy, operate the Dispute Resolution Mechanism set out in Clause 33.2.2.

33.2.2 The Dispute Resolution Mechanism will operate as follows:-

- (a) where either party (acting reasonably) considers that the other has failed to perform any of its obligations contained in this Agreement or considers any dispute or difference between the parties to have arisen or is likely to arise between the parties it shall give written notice of the same to the other party;
- (b) forthwith upon receipt of a notice under Clause 33.2.2(a) the First Tier Officers of each party (as hereafter defined) shall use reasonable endeavours to resolve such difference or dispute in a mutually acceptable manner;
- (c) if the First Tier Officers are unable to resolve such difference or dispute within 10 Working Days the matter shall be referred by each party to their respective Second Tier Officers (as hereafter defined) who shall use reasonable endeavours to resolve such difference or dispute in a mutually acceptable manner;



- (d) if the Second Tier Officers are unable to resolve such difference or dispute within 10 Working Days then either party shall be at liberty thereafter to refer the matter (where this Agreement so provides) to the Expert or seek such other remedy as may be appropriate;
- (e) for the purposes of this Clause 33.2.2 the First Tier officers will be:-
  - (i) for the Partner: The Managing Director, Development
  - (ii) for the Council: David Joyce
 and the Second Tier Officers shall be:-
  - (iii) for the Partner: Andrea Ruckstuhl
  - (iv) for the Council: Andy Donald

PROVIDED THAT either party may nominate a replacement officer of equivalent standing by giving notice in writing of the same to the other party.

### 33.3 Referral to Expert

- 33.3.1 Any dispute or difference between the parties in connection with this Agreement may, if the Council and the Partner agree, be referred to and settled by an independent expert (the "**Expert**") whose decision in relation to such matters shall be final and binding upon the Parties except in the case of fraud or manifest error.
- 33.3.2 The Council and the Partner agree that the determination of a dispute or difference between the parties in respect of the Residual Land Value of a Phase and Viability shall be a suitable matter to be determined by the Expert as provided for in this Agreement.

### 33.4 Selection of Expert

- 33.4.1 If the Dispute relates to the rights and liabilities of either Party or to the terms or conditions to be embodied in any deed or document it will be referred to Leading Counsel agreed upon by the Parties but in default of agreement appointed at the request of either of the Parties by or on behalf of the chairman for the time being of the General Council of the Bar.
- 33.4.2 If the Dispute relates to methods of accounting or otherwise to matters usually and properly within the knowledge of a chartered accountant it will be referred to a chartered accountant agreed upon by the Parties but in default of agreement appointed at the request of any of the parties by or on behalf of the President for the time being of the Institute of Chartered Accountants in England and Wales.
- 33.4.3 If the Dispute relates to matters usually and properly within the knowledge of a chartered surveyor it will be referred to an independent chartered surveyor agreed upon by the Parties but in default of agreement appointed at the request of the Parties by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors.
- 33.4.4 If the Dispute relates to engineering design or otherwise to matters usually and properly within the knowledge of a chartered civil, electrical or mechanical engineer it shall be referred to a chartered civil, electrical or mechanical engineer agreed upon by the Parties but in default of agreement appointed at the request of either of the Parties by or on behalf of the President for the time being of the Institute of Civil Engineers, Institution of Electrical Engineers or the Institution of Mechanical Engineers (as relevant) (and in default of agreement as to which it should be referred to, the President for the time being of the Institution of Mechanical Engineers can be requested by either party to determine this, prior to an appointment having been made).

33.4.5 If the Parties fail to agree as to the nature of the Dispute then it shall be referred to Leading Counsel agreed upon by them but in default of agreement appointed at the request of either of the parties by or on behalf of the Chairman for the time being of the General Council of the Bar to decide the nature of the Expert.

**33.5 Expert's Role**

The Expert acts as an expert and not an arbitrator and the provisions of the Arbitration Act 1996 shall not apply to the Expert, his decision or the procedure by which he reaches his decision.

**33.6 Notice of Appointment**

Subject to the provisions of Clause 33.1, the party wishing to appoint the Expert will give notice in writing to that effect to the other party, together with details of the matter which he wishes to refer to the Expert.

**33.7 Exclusion of Certain Persons**

A person can only be appointed to act as an Expert if at the time of the appointment he is not:-

33.7.1 a director, office holder or employee of; or

33.7.2 directly or indirectly retained as a consultant or in any other professional capacity by, any party to this Agreement or any company or person associated with any such party.

**33.8 Procedure**

33.8.1 Within 10 Working Days from his appointment the Expert will call the Parties to a meeting at which he will give directions as to the future conduct of the matter referred and will from time to time give such further directions as he shall see fit. The Expert will allow the Parties to make written representations and written counter-representations to him but will not be in any way fettered by such representations and counter-representations and will rely on his own judgment.

33.8.2 In determining a Residual Land Value and/or Viability the Expert shall be instructed to take account of the inputs and assumptions of the Financial Model.

**33.9 Assistance**

The Parties will give to the Expert such assistance as the Expert considers necessary to carry out his function.

**33.10 Decision**

The Expert will give notice in writing of his decision to the Parties within four weeks of his appointment or within such extended period as the Parties may agree in writing.

**33.11 Costs**

The costs of the reference to the Expert will be borne as he directs and failing any such direction will be shared equally between the Parties.

**33.12 Original Expert**

If the Expert (the "**Original Expert**"):-

33.12.1 fails to determine the matter referred to him;

33.12.2 fails to give notice of his decision within the time and in the manner provided for in this Clause 33;

33.12.3 relinquishes or does not accept his appointment;

33.12.4 dies; or

33.12.5 it becomes apparent for any reason that he is unable to complete the duties of his appointment,

either of the Parties may in accordance with Clause 33.2.1 to 33.11 apply for a substitute to be appointed (but not after the original Expert has given notice of his decision to the Parties in dispute). In such event the original Expert is no longer the expert, the provisions of this Clause apply as if the original Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this Clause 33 is deemed to include any substitute appointed pursuant to this Clause 33.12.

#### 34. **MITIGATION MATTERS**

34.1 If at any time during the currency of this Agreement there occurs a Mitigation Matter then the Partner shall inform the Steering Group and also serve written notice on the Council as soon as practicable upon becoming aware of such Mitigation Matter setting out details of such Mitigation Matter including evidence of its effect on the obligations of the parties in relation to the Development. Within 20 Working Days (or such longer period as the parties may agree) after the date of such notice the Partner shall prepare for presentation to the Council and the Steering Group its proposed Mitigation Plan (and such Mitigation Plan must demonstrate to the Council's satisfaction that such Mitigation Plan does not adversely affect the prospect of the Remaining Development being Viable).

34.2 As soon as practicable following the provision of a Mitigation Plan the Steering Group shall meet with the aim of agreeing the terms of the Mitigation Plan in order to mitigate the effects of the Mitigation Matter and facilitate the continued performance of this Agreement and delivery of the Development. If the Steering Group cannot agree the Mitigation Plan that the Partner has produced pursuant to Clause 34.1 within 20 Working Days then the terms of the Mitigation Plan shall be determined in accordance with Clause 33.

34.3 Upon agreement (or determination in accordance with Clause 33) between the Partner and the Council as to a proposed Mitigation Plan then a copy of that Mitigation Plan shall be signed by the parties and the Guarantor and the provisions of this Agreement shall apply *mutatis mutandis* to the Development as varied by the steps or actions set out in the Mitigation Plan. Where the Mitigation Plan involves the extension of any date or timescale contained in this Agreement (including those set out in and/or the Development and Phasing Programme), the Mitigation Plan will clearly set out the revised date or timescale and for the purposes of this Agreement, the parties agree that the date or timescale contained in the signed, agreed Mitigation Plan shall be substituted for the relevant date or timescale contained in this Agreement.

34.4 The parties shall at all times following the occurrence of a Mitigation Matter act together in good faith and use reasonable endeavours to overcome or minimise the consequences of the Mitigation Matter.

34.5 If appropriate the Partner shall notify the Council as soon as practicable after the Mitigation Matter ceases or no longer causes the Partner to be unable to comply with its obligations under this Agreement (as may have been modified pursuant to this Clause in consequence of a Mitigation Matter). Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Mitigation Matter.

34.6 If the Mitigation Plan does not resolve the Mitigation Matter then the Mitigation Matter shall be determined in accordance with Clause 33.

35. **ENVIRONMENTAL MATTERS**

35.1 **Acknowledgement**

The parties acknowledge that the terms on which the parties have agreed take into account and fairly and reasonably reflect:-

- 35.1.1 the state and condition of the Site (including the presence of Hazardous Substances);
- 35.1.2 the possible need to carry out remedial action save for establishing the costs of remediation;
- 35.1.3 that no warranty, guarantee, indemnity or representation is given or deemed to be given by the Council as to the state and condition of the Site, its suitability for any purpose and function if being acknowledged by the parties; and
- 35.1.4 the Partner and the Guarantor are commercial organisations and the Council is a large public body.

35.2 **Release of Council's Liability**

The Partner for itself and its successors in title agree that it will from each Lease Completion or (if earlier) the date on which the Partner occupies and/or carries out works on any Phase discharge and release the Council against any liability for or in relation to any Hazardous Substances present in, on, at, over or under that Phase or which may have migrated to any adjacent or nearby property after each relevant Lease Completion.

35.3 **Parties' Acknowledgement**

The parties hereby acknowledge and agree that the covenants and agreements contained in this Schedule constitute an agreement on liabilities for the purposes of the exclusion and apportionment of liability for contaminated land (and in particular paragraphs 7.29 and 7.30 of section 7 of Defra publication entitled "Contaminated Development Site Statutory Guidance April 2012") and should any enforcement action be instituted against the Council and/or the Partner by any regulatory authority (including without limitation the Environment Agency or relevant local authority (as appropriate)) then the parties agree that the relevant regulatory authority should allocate costs and liabilities of any remediation action in accordance with the agreement herein contained and if that regulatory authority does not do so then the parties nevertheless agree that as between themselves this agreement should operate to transfer such liability to the Partner.

35.4 **Indemnity**

The Partner agrees that the Council shall have no liability in relation to any Hazardous Substances present in on at under or from any Phase as from each relevant Lease Completion and the Partner agrees to indemnify and hold harmless the Council against all liabilities, damages, charges, fines and penalties, losses, costs, expenses (including properly incurred legal and professional fees) and claims related to or arising out of such Hazardous Substances.

36. **LONGSTOP AND TARGET DATES AND EXTENSIONS OF TIME**

- 36.1 If the Partner is materially delayed in completing or proceeding with the Development by reason of any Delay Event or an Extension Period then (except where the delay has been caused by the fault, default or negligence of the Partner and subject to Clause 36.4) and subject to the Partner having taken all reasonable steps to mitigate the impact of any Delay Event, the Council shall allow such further time for the completion of the Development as may be reasonably specified by the Council and the Development and Phasing Programme the Site Wide Condition Longstop Date and relevant Phase Condition Longstop Date and Phase Construction Longstop Date shall be amended in accordance with this Agreement.

- 36.2 Any extension of time referred to in Clause 36.1 will be agreed in writing between the Partner and Council (each acting reasonably).
- 36.3 In default of agreement between the parties any amendment to the Development and Phasing Programme and the length of the extension of time to the Site Wide Condition Longstop Date, Phase Condition Longstop Date and Phase Construction Longstop Date will be determined by the Expert in accordance with Clause 33.
- 36.4 In no circumstances shall the Site Wide Condition Longstop Date or any Phase Condition Longstop Date or Phase Construction Longstop Date be extended beyond the Site Wide Condition Drop Dead Date the Phase Condition Drop Dead Date or the Phase Construction Drop Dead Date respectively as set out in the table at Schedule 7 (subject to any extension allowed by the Council pursuant to Clause 31.12).

**37. FAILURE TO SATISFY CONDITIONS**

**37.1 Failure to Submit Planning Application**

If the Partner fails to submit a Planning Application to the Local Planning Authority by the Planning Submission Longstop Date and/or the Planning Submission Drop Dead Date then (unless the Planning Application is submitted prior to the service of the notice in this Clause) the Council may give 20 Working Days' notice to the Partner of its intention to terminate this Agreement and unless the Planning Application is submitted within such period, this Agreement shall terminate with immediate effect.

**37.2 Site Wide Conditions**

37.2.1 Without prejudice to any other right or ability to terminate this Agreement, if the Site Wide Unconditional Date has not occurred on or before the Site Wide Condition Longstop Date and/or Site Wide Condition Drop Dead Date then either the Council or the Partner may determine this Agreement at any time after the Site Wide Condition Longstop Date and/or the Site Wide Condition Drop Dead Date (as the case may be) by serving written notice to that effect on the other PROVIDED THAT a party may only terminate where there are no outstanding material breaches of its obligations in relation to all outstanding Site Wide Conditions under this Agreement.

37.2.2 On the date 20 Working Days after service of such notice this Agreement will determine (save where the Site Wide Unconditional Date has occurred prior to the date on which this Agreement would otherwise have determined under this Clause 37.2.1).

**37.3 Phase Conditions**

37.3.1 Without prejudice to any other right or ability to terminate this Agreement, if a Phase Unconditional Date has not occurred on or before the relevant Phase Condition Longstop Date and/or Phase Condition Drop Dead Date (subject to Clause 37.3.3) then either the Council or the Partner may determine this Agreement in relation only to the Phase for which the Phase Unconditional Date has not occurred at any time after the relevant Phase Condition Longstop Date and/or Phase Condition Drop Dead Date by serving written notice to that effect on the other PROVIDED THAT a party may only terminate as aforesaid where there are no outstanding material breaches of its obligations in relation to all outstanding Phase Conditions relating to that Phase.

37.3.2 On the date 20 Working Days after service of such notice this Agreement will determine in relation only to the relevant Phase (save where the relevant Phase Unconditional Date has occurred prior to the date on which the Agreement would otherwise have terminated under this Clause 37.3.1).

37.3.3 If on the relevant Phase Condition Longstop Date:-

- (a) a CPO has been submitted prior to such date to the Secretary of State for confirmation which comprises interests in the Site and/or new rights for the benefit of the Development and one or more objections to such CPO have been submitted prior to such date to the Secretary of State; or
- (b) a CPO comprising interests in the Site and/or new rights for the benefit of the Development has been confirmed by the Secretary of State but is the subject of Proceedings,

then the relevant Phase Condition Longstop Date will be extended until the date six calendar months after the date on which such matters have been finally disposed of or determined (including any hearing inquiry Appeal or further Proceedings in relation thereto).

38. **DEFAULT AND TERMINATION**

38.1 **Termination Event**

38.1.1 Notwithstanding and without prejudice to any other powers and remedies herein contained or otherwise available to the Council if any one or more of the following events occurs:-

- (a) the Partner and/or the Guarantor commits a material breach of any obligation on the part of the Partner contained in this Agreement and fails to remedy such breach within three months or such longer period as may be reasonable in the circumstances after written notice by the Council to the Partner and the Guarantor specifying both the breach complained of and the period of time within which the breach is required to be remedied;
- (b) the Partner becomes Insolvent and the Guarantor does not directly assume the responsibilities of the Partner under this Agreement;
- (c) the Guarantor becomes Insolvent (unless in the case of the Guarantor a replacement is provided in accordance with this Agreement to the Council's satisfaction (acting reasonably)); and
- (d) the Partner or the Guarantor commits a breach of Clause 52 and fails to demonstrate to the satisfaction of the Council that steps have been taken to prevent such breach re-occurring in future,

then subject always to the remaining provisions of this Clause 38 the Council shall have the right to terminate this Agreement by not less than 30 Working Days written notice served on the Partner and the Guarantor and (where the breach has not previously been rectified to the Council's reasonable satisfaction) to enter upon and take possession of the parts of the Site which at the date of entry have not had a Lease granted in respect of them together with the Works and the building materials chattels and plant and machinery thereon (other than those belonging to third parties) with power to hold and dispose of the same as an absolute owner as if this Agreement had not been entered into and thereupon this Agreement shall cease and determine without prejudice to any of the rights and remedies of any party in respect of any antecedent breach of any of the provisions of this Agreement;

38.1.2 Notwithstanding and without prejudice to any other powers and remedies herein contained or otherwise available to the Council if any one or more of the following events (each an "**Event of Default**") occurs in relation to a Phase:-

- (a) Non-Payment;

- (b) the Partner has not substantially commenced any Works in relation to that Phase by the relevant Phase Commencement Date; and
- (c) the Date of Practical Completion has not occurred by the relevant Phase Construction Longstop Date,

then subject always to the remaining provisions of this Clause 38 the Council shall have the right to terminate this Agreement in respect of the Phase(s) Capable of Termination by not less than 30 Working Days written notice served on the Partner and the Guarantor and (where the breach has not previously been rectified to the Council's satisfaction) to enter upon and take possession of the parts of the Phase(s) Capable of Termination which at the date of entry have not had a Lease granted in respect of them together with the Works and the building materials chattels and plant and machinery thereon (other than those belonging to third parties) with power to hold and dispose of the same as an absolute owner as if this Agreement had not been entered into and thereupon this Agreement shall cease and determine without prejudice to any of the rights and remedies of any party in respect of any antecedent breach of any of the provisions of this Agreement;

38.1.3 Where Leases have been granted then termination of this Agreement under Clause 38.1.1 or partial termination in relation to a Phase under Clause 38.1.2 shall not prejudice the continuation of the relevant Lease(s) but such Lease(s) shall be dealt with upon their own terms to the intent that if:-

- (a) the relevant Lease(s) shall continue in existence; and
- (b) either [REDACTED] of the piling on the relevant Phase has been completed or if the Partner has provided to the Council written evidence independently verified (with the party providing such verification owing a duty of care in favour of the Council on terms approved by the Council (such approval not to be unreasonably withheld or delayed)) that the total sum of all construction costs incurred for the Works carried out to the relevant Phase exceed [REDACTED] (exclusive),

then the Partner shall be entitled to continue the Development insofar as it relates to the relevant Phase(s) for which those conditions are met and to dispose of any Phase Lease Land in accordance with the relevant Lease but termination of this Agreement pursuant to Clause 38.1.1 shall result in the Partner losing its right to take further Leases pursuant to the terms hereof.

38.1.4 If the Council shall wish to exercise any or all of the powers of termination and re-entry contained in Clause 38.1.1 or 38.1.2 it shall first give not less than 30 Working Days prior written notice to that effect to the Approved Funder of whom the Council shall previously have received notice in writing (if any) whereupon such Approved Funder shall have the option at its own expense and within four calendar months thereafter either:-

- (a) to tender to the Council a deed (in a form approved by the Council such approval not to be unreasonably withheld) containing a covenant binding the Approved Funder to the performance of this Agreement; or
- (b) to tender to the Council a deed (in a form approved by the Council such approval not to be unreasonably withheld or delayed) containing a covenant binding another substantial party ("**Assignee**") to the performance of this Agreement who has an established and successful track record of carrying out and completing development projects of similar size type scope and complexity as the Development and who shall first have been approved by the Council (such approval not to be unreasonably withheld or delayed)

and in either case the deed with the Council shall be upon the terms and conditions contained in this Agreement but with such extension of time for the completion of the

Development as shall be reasonable in all the circumstances and if the Council and the Approved Funder shall be unable to agree as to what is a reasonable extension as aforesaid the question shall be referred to the Expert for determination pursuant to Clause 33 Provided That:-

- (c) where, an agreement has been entered into by the Council and the Partner pursuant to clauses 57.11.3, 57.11.6 or 59A.3.3 for the delivery of Replacement Homes or Council's Additional Social Rent Homes ("Affordable Housing Purchase Agreement"), then the deed of covenant referred to in Clause 38.1.4(a) or (b) must also require the covenantee to comply with the relevant Affordable Housing Purchase Agreement to the extent the obligations of the Partner therein remain to be performed; and
- (d) where, during the currency of this Agreement, a Third Party Agreement requires the person or entity who takes the role of Partner under this Agreement to enter into a direct agreement with one or more counterparties to such Third Party Agreement (including a requirement to grant a licence) then as a condition of this Clause 38.1.4 being exercised such direct agreement must also be entered into when the deed referred to at Clause 38.1.4(a) or (b) is entered into.

- 38.1.5 If the Approved Funder or Assignee tenders a deed to the Council in accordance with the provisions of Clause 38.1.4 hereof then this Agreement shall continue in full force and effect and shall be construed as if such Approved Funder or Assignee were the Partner pursuant to this Agreement.
- 38.1.6 If the Approved Funder or Assignee shall fail to tender a deed to the Council in accordance with the provisions of Clause 38.1.4 or the Approved Funder shall notify the Council of its intention not to do so then the Council may thereafter fully and freely exercise any or all of the powers of termination and re-entry contained in this Clause without further reference to the Approved Funder and subject to its general duty to mitigate damages shall be entitled to deal with the Site as it shall in its absolute discretion think fit complying with the following provisions of this Agreement.
- 38.1.7 Notwithstanding any other provision of this Clause 38, where the Date of Practical Completion has occurred in relation to all of the Works to be undertaken to the premises comprised in a Phase Lease, the Council will not be entitled to terminate this Agreement in relation to that Phase Lease and the land comprised within it and/or forfeit that Phase Lease but this shall not prejudice any other rights that the Council may have in relation to the Partner's obligations in this Agreement and/or the Phase Lease and any breach thereof.

## **38.2 Corrupt Gifts and Payment of Commission**

Any:-

- 38.2.1 breach by the Partner of Clause 52; or
- 38.2.2 commission of any offence by the Partner under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 in relation to this or any other Agreement with the Council; or
- 38.2.3 the giving of any fee the receipt of which is an offence under section 117(2) of the Local Government Act 1972,

shall entitle the Council to terminate this Agreement and recover from the Partner the amount of any loss resulting from such termination and recover from the Partner the amount of value of any such gift, consideration or commission.



39. **CONSEQUENCES OF TERMINATION**

39.1 If this Agreement is terminated for any reason:-

- 39.1.1 any Licence to Enter granted pursuant to Clause 20 shall immediately cease and determine;
- 39.1.2 the Partner will immediately return all documents plans and papers provided to it or the Guarantor by or on behalf of the Council and shall cancel any entry it may have made at the Land Registry or the Land Charges Registry in respect of this Agreement;
- 39.1.3 if the Council requires the Partner shall assign within 10 Working Days any agreement for lease or other agreements relating to the Development (other than funding agreements) or any part of it to the extent that they can be so assigned;
- 39.1.4 such termination is without prejudice to the provisions of this Agreement that state they will survive termination and any rights of either party against the other in respect of or arising out of any antecedent breach of any of the provisions of this Agreement; and
- 39.1.5 the provisions of clause 20.3 of the CPO Indemnity Agreement shall apply.

39.2 If this Agreement is partially terminated for any reason in accordance with Clause 38.1.2:-

- 39.2.1 any Licence to Enter granted pursuant to Clause 20 shall immediately cease and determine in relation to the relevant Phase;
- 39.2.2 the Partner will immediately return all documents plans and papers provided to it or the Guarantor by or on behalf of the Council and shall cancel any entry it may have made at the Land Registry or the Land Charges Registry in respect of this Agreement in each case in relation to the relevant Phase;
- 39.2.3 if the Council requires the Partner shall assign within 10 Working Days any agreement for lease or other agreements relating to the relevant Phase (other than funding agreements) or any part of it to the extent that they can be so assigned;
- 39.2.4 such termination is without prejudice to the provisions of this Agreement that state they will survive termination and any rights of either party against the other in respect of or arising out of any antecedent breach of any of the provisions of this Agreement; and
- 39.2.5 the provisions of clause 20.3 of the CPO Indemnity Agreement shall apply.

40. **ALIENATION**

40.1 **No Dealings Other than the Permitted Dealings**

This Agreement is personal to the Partner and the Partner shall not assign, charge, deposit by way of security, dispose, mortgage, underlet or otherwise deal with transfer or part with its interest under this Agreement or any part thereof save in accordance with Clause 40.2.

40.2 **Permitted Dealing**

- 40.2.1 The Partner may mortgage or charge or assign the benefit of this Agreement to an Approved Funder details of whom have been notified to the Council to secure monies advanced in connection with discharging the obligations under this Agreement and carrying out and disposing of the Development.

40.2.2 The Partner may direct the Council to grant any Phase Lease to a Group Company or to an Approved Funder or to a third party where such third party directly covenants with the Council to comply with the obligations in this Agreement relating to the relevant Phase or Sub-phase to be demised by the relevant Phase Lease PROVIDED THAT:-

(a) the identity of:

(i) any third party proposed tenant; and

(ii) the identity of any further Group Company/ies where Phase Leases have been granted to five Group Companies

has been approved by the Council (such approval not to be unreasonably withheld or delayed);

(b) the Partner will still remain liable to the Council for the performance of its obligations in this Agreement; and

(c) the Partner Group Company, the Approved Funder, the third party or the Partner (as shall be the tenant in the Phase Lease) shall enter into an Overage Deed on completion of the Phase Lease.

40.2.3 The Council may assign the benefit of this Agreement to a Government Minister or body under the direction of a Government Minister, a statutory successor of the Council or another local authority.

#### 40.3 **Notice of Dealing**

The Partner and the Council shall forthwith give written notice to the Council of any dealing permitted under Clause 40.2 of this Agreement.

#### 40.4 **Obligations to Remain in Full Force**

The Council and the Partner's obligations shall remain in full force and effect notwithstanding any such assignment, mortgage or charge of this Agreement referred to in this Clause 40.

#### 40.5 **Change of Ownership**

40.5.1 Subject to Clause 40.5 no Change of Ownership may occur during the term of this Agreement.

40.5.2 The Partner represents and warrants and represents to the Council that at the date of this Agreement the legal and beneficial ownership of the Partner is as set out in the Partner's Tender and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in the Partner.

40.5.3 The Partner shall obtain the Council's prior written consent (which may be refused or given subject to conditions) to any Change in Ownership.

40.5.4 Any Change of Ownership to which prior written consent of the Council has been given shall be permitted and the Council hereby consents to any dealings in any shares of any member of the Partner or Guarantor on a regulated Stock Exchange.

#### 40.6 **Sub-contracting**

40.6.1 The Partner may (at its discretion) elect to engage a third party developer to undertake the development of a Permitted Part, subject to the terms of this Clause 40.6.

40.6.2 The Partner will notify the Council of the proposed Permitted Part and the identity of the proposed third party developer and will provide such information as the Council

reasonably requests in relation thereto. The Council's approval must be obtained to both the Permitted Part and the proposed third party developer and (in the case of the latter) the Council will be entitled to have regard to (amongst other things) the questions and information it required from potential bidders at the Pre-Qualification Questionnaire stage of the procurement (as referred to in paragraph (viii) of the Background section in this Agreement, and Unacceptable Construction Companies.

- 40.6.3 If the Council approves the third party developer (the "**Approved Developer**"), and the relevant Permitted Part (the "**Approved Area**") the Partner may appoint the Approved Developer to undertake the development of the Approved Area in accordance with the Partner's obligations in this Agreement, PROVIDED THAT the Partner will still remain liable to the Council for the performance of its obligations in this Agreement in respect of any Approved Area.

#### 41. **FREEDOM OF INFORMATION**

- 41.1 The Partner and Guarantor shall use all reasonable endeavours to assist the Council in its compliance with the disclosure obligations imposed on the Council by:-

- 41.1.1 the Freedom of Information Act 2000 ("**FOIA**") and all subordinate legislation;
- 41.1.2 the Environmental Information Regulations 2004 and any other Implementing Regulations in the UK of EC directive (2003/4EC) on Public Access to Environmental Information (all of which shall together be referred to as the "**EIR**"),

and which may also include any binding guidance and Codes of Practice which may be published from time to time by the Department for Constitutional Affairs and the Information Commissioner in accordance with any such legislation (all of which shall together be referred to as the "**Rules**") to the extent that such obligations relate to information held by the Partner on behalf of the Council or otherwise in connection with this Agreement or the Development and for the avoidance of doubt, this includes the obligations on the Partner to:-

- (a) use all reasonable endeavours to provide the Council with any information held by it on behalf of the Council (and not by the Council itself) as is necessary in order to allow the Council to comply with valid requests for information received from individuals pursuant to the Rules and the Partner shall provide such assistance as soon as reasonably practicable after the Council makes a written request to the Partner to provide any necessary information to enable the Council to respond to a request for information within the requisite timescale); and
- (b) use all reasonable endeavours to inform the Council of any classes of information relating to the Development in its possession which it holds on behalf of the Council PROVIDED THAT this obligation shall not extend to provide such information more than twice in one year; and the Partner shall not be obliged to provide assistance or information insofar as the Partner may consider the same to constitute or contain commercially sensitive information.

- 41.2 Where a valid request for information under the Rules has been received by the Council; and responding to such a request (which for the avoidance of doubt includes confirming or denying that the information is held by the Council) would involve the disclosure of information about or in relation to the Partner, to the Development and/or this Agreement; then the Council shall consult with the Partner before confirming or denying that such information is held and/or disclosing the information in order for the parties to agree (such agreement not to be unreasonably withheld or delayed) to:-

- 41.2.1 the Partner confirming or denying holding the information or disclosing the information; and/or

41.2.2 whether any exemptions under the Rules or any other legislation may apply to prevent the confirmation or denial and/or the disclosure of such information.

41.3 In complying with the obligations of Clause 41.1, the Partner agrees that it shall at all times act in good faith and shall not knowingly act, or omit to act, (but excluding any acts or omissions to act requested by the Council) in such a way as to prevent the Council from complying with its obligations under the Rules.

41.4 The Partner and the Council are to procure that their professional advisers and agents are fully instructed and required to comply with this Clause.

41.5 This Clause shall survive the termination of this Agreement.

## 42. **CONFIDENTIALITY**

42.1 Subject to Clause 41 the Parties acknowledge that the terms of this Agreement (including the figures or financial expectations in or derived from the various appendices) are commercially sensitive and that disclosure of the same would prejudice the parties' commercial interests and shall be kept confidential and no party hereto shall make any press release or announcement in respect thereof without the approval of the others nor shall any party disclose the terms of this Agreement to any third party save:-

42.1.1 for the purpose of complying with the requirements of this Agreement;

42.1.2 where the information is already in the public domain;

42.1.3 where legally requisite;

42.1.4 in the case of disclosure by the Partner where commercially normal or sensible to do so;

42.1.5 to financial advisors funding partners and financial institutions;

42.1.6 to the extent necessary in order to comply with the requirements of the London Stock Exchange and disclosure shall then only be made by the discloser after it has taken all such steps as may be reasonable in the circumstances to agree the contents of such announcement with the other parties in writing before making such announcement (such agreement not to be unreasonably withheld or delayed);

42.1.7 to HM Revenue and Customs or the Rating Authority;

42.1.8 pursuant to any CPO Inquiry;

42.1.9 to respective auditors; or

42.1.10 to the extent necessary to obtain professional advice in relation to the determination of any dispute,

PROVIDED THAT where reasonable and appropriate an undertaking shall be obtained from the party to whom the confidential information is disclosed to keep such information confidential *mutatis mutandis*.

42.2 Without prejudice to the generality of Clause 42.1, the Partner acknowledges that information that may be disclosed by the Council or otherwise obtained by the Partner in connection with this Agreement ("**Information**") includes personal data which is subject to the Data Protection Act 1998 (the "**DPA**").

- 42.3 Insofar as the Information comprises personal data which is subject to the DPA ("**personal data**"), each party undertakes to the other:-
- 42.3.1 not to process (as defined in the DPA and as interpreted by the courts) any personal data, other than in accordance with the DPA and any relevant codes of practice issued by the Information Commissioner;
  - 42.3.2 only to use the personal data for the purposes set out in or pursuant to this Agreement;
  - 42.3.3 to implement appropriate technical and organisational measures to protect and return or destroy (at the other party's request) all personal data in the event of termination of this Agreement; and
  - 42.3.4 to notify the other party promptly of becoming aware of any actual, suspected or alleged loss, leak or unauthorised processing of any personal data.
43. **PUBLIC RELATIONS & PRESS ANNOUNCEMENTS**
- Prior to making any press announcements or similar public statements on this Agreement and/or any document referred to in it each party shall obtain the prior written approval of the other to the wording of the press statement or similar public announcement (such approval not to be unreasonably withheld or delayed).
44. **GUARANTEE**
- The Guarantor hereby covenants with the Council in the terms of the Guarantee.
45. **CONSENT AND APPROVAL BY THE COUNCIL**
- 45.1 Wherever in this Agreement any action or obligation is authorised or required or agreed to be taken and performed to or by the Council it shall be sufficient if such action or obligation is taken or performed by the Chief Executive of the Council or other officer having ostensible authority.
  - 45.2 Where any application for the consent of approval of the Council is made by the Partner the Partner will at the request of the Council attend such meetings as the Council may reasonably require so as to enable the Council to give due and proper consideration to the subject matter of such application.
  - 45.3 The Partner will unless prevented by the circumstances beyond its control provide to the Council such information relating to the Development and other matters the subject of the Agreement within 10 Working Days of request from the Council or such longer period as may be reasonable in the circumstances.
46. **REPRESENTATIONS AND FITNESS OF THE SITE**
- 46.1 The Partner acknowledges that it has not entered into this Agreement in reliance wholly or partly on any representation or statement made by or on behalf of the Council or any its officers employees or advisers save for any representation or statement which is expressly set out in this Agreement or which is contained in written replies given by the Council's Solicitors to written enquiries raised by the Partner's Solicitors prior to the date hereof.
  - 46.2 No condition representation or warranty howsoever arising whether collaterally or directly or indirectly shall be made or implied either as to the state or condition of the Site or any part or parts thereof or as to its fitness for the purposes of the Development or as to the location of any Service Media or cellarage and it shall be the sole responsibility of the Partner to satisfy itself in respect thereof.
  - 46.3 The Partner acknowledges that prior to the submission of the Partner's Tender the Partner had been provided with access to the bid documentation prepared by the Council and had full opportunity to take the same into account in the submission of the Partner's Tender.

47. **NON MERGER**

This Agreement shall remain in full force and effect in respect of anything which remains to be done observed or performed hereunder and the terms and conditions of this Agreement shall continue to apply notwithstanding:-

47.1 the issue of any Certificate of Practical Completion or the issue of any certificate of completion of making good defects; or

47.2 the transfer of any Phase or the occurrence of any Lease Completion.

48. **SEVERABILITY**

The illegality invalidity or unenforceability of any Clause or part of this Agreement will not affect the legality validity or enforceability of the remainder. If any Clause or part is found by any competent court of authority to be illegal invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without rendering them illegal invalid or unenforceable.

49. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

49.1 This Agreement does not create any rights enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party of this Agreement.

49.2 Save where expressly required by the provisions of this Agreement this Agreement may be rescinded or varied by the parties hereto and the Guarantor without the consent of or the need to give notice to any person not a party to it.

50. **GOOD FAITH**

50.1 Each of the parties and the Guarantor undertakes with the other that it will at all times:-

50.1.1 act in an open, transparent, pro-active and constructive manner with good faith towards the other in relation to the matters covered by this Agreement; and

50.1.2 perform its obligations contained herein to enable the objectives in this Agreement to be fulfilled to the mutual benefit of the parties; and in particular:-

(a) the Partner agrees to maintain full and accurate records and accounts (with all accompanying receipts vouchers completion statements and other documents) in connection with the its obligations under this Agreement; and

(b) at any time upon reasonable request the Partner shall afford the Council the opportunity to view such reasonable evidence on an open book basis as the Council may reasonably require in order to verify that the Partner has complied and is continuing to comply with its obligations under this Agreement.

50.2 Notwithstanding the provisions of Clause 50.1 above:-

50.2.1 nothing in this Agreement will:-

(a) constitute or be deemed to constitute a joint venture or partnership between the Council and the Partner and/or the Guarantor; or

(b) constitute or be deemed to constitute either the Council or the Partner or the Guarantor acting as agent of the other for any purpose whatsoever; and

- 50.2.2 the Council, the Partner and the Guarantor shall not hold itself out as agent of or have authority or power to procure the acceptance of any liabilities whatsoever on behalf of the other(s).

**51. LOCAL AUTHORITY POWERS**

- 51.1 Nothing contained or implied in this Agreement or any consent or approval granted pursuant to it shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as the local authority or Local Planning Authority or as the highway authority and/or water authority or other statutory authority and such rights powers duties and obligations under all public and private statutes bye-laws regulations and statutory instruments may be as fully and effectually exercised in relation to the Site or any other land as if it were not party to this Agreement and any approval consent direction or authority given by the Council as local or other statutory authority shall not be or be deemed to be an approval consent direction or authority given under this Agreement and vice versa.
- 51.2 The Council enters into this Agreement pursuant to section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other relevant statutory powers.

**52. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 52.1 The Partner shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Agreement or any other contract with the Council.
- 52.2 The Partner shall not conspire with any person to do any of the acts mentioned in this Clause.
- 52.3 The Partner shall use all reasonable endeavours to ensure that all persons engaged in the Development by the Partner are aware of the terms of this Clause.

**53. NO RESTRICTIONS ON ADJOINING PROPERTY**

Subject to the forms of each Lease, nothing herein contained or implied shall be deemed to restrict in any way the rights of the Council to lease, occupy, use, build on, develop or otherwise dispose of any adjoining property (outside of the Site) belonging to the Council respectively upon such conditions and terms as the Council may reasonably think fit nor shall impose or be deemed to impose any restrictions on the use of any land or buildings now or hereafter belonging to the Council and not comprised in the Site PROVIDED THAT the exercise of rights or the application of this Clause by the Council shall not prevent or interfere with or restrict or make more onerous and/or costly the Development.

**54. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the Council, the Partner and the Guarantor relating to the transactions hereby contemplated.

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

Neither the Partner nor the Guarantor shall be entitled to note this Agreement against the Council's registered title other than by virtue of a unilateral notice and shall not without the written consent of the Council send this Agreement or a copy thereof to the Land Registry.

**56. RELEASE**

The Partner and the Guarantor shall be released from all obligations and liabilities under this Agreement for each Phase on the date of the issue of the relevant certificate of completion of making good defects following the expiry of the Defects Liability Period relating to the relevant Phase.

57. **REPLACEMENT AFFORDABLE HOUSING**

- 57.1 The Partner shall lease the Replacement Social Rented Homes to the Council with full title guarantee on the terms of Clauses 19, 21 and this Clause 57.
- 57.2 Prior to submission of the Planning Application for each Phase in accordance with Clause 9 which is to contain Replacement Homes the Partner shall propose the size, type and location of the Replacement Social Rented Homes to be comprised in the relevant Phase for the approval of the Council and the Council shall not unreasonably withhold or delay its approval provided such proposals accord with the Resident Rehousing Strategy and the Phase Plan and in relation to the Replacement Social Rented Homes only the Agreed Affordable Homes Mix.
- 57.3 The form of each Lease Back of each Replacement Social Rented Home to be contained in in each Phase as approved by the Council pursuant to Clause 57.2 (the "**Replacement Homes Leases**") and the demise plans, building and any estate plan(s) to be including within them shall be in the form settled pursuant to the process set out in Clause 19.
- 57.4 As soon as reasonably practicable and no later than one month prior to the expected date for completion of the Replacement Homes Leases the Partner shall provide the Council with such evidence as the Council shall require (acting reasonably) of the Partner's title to the Relevant Replacement Homes so as to satisfy the Council that it may register the Replacement Homes Leases at the Land Registry with title absolute free from encumbrances save for those in existence immediately before the grant of the Phase Lease out of which the Replacement Homes Leases are to be granted.
- 57.5 The Partner shall provide the Council with engrossments of the Replacement Homes Leases no later than 10 Working Days before the anticipated date for completion of such leases.
- 57.6 Save as otherwise agreed by the parties completion of the Replacement Homes Leases shall take place at the offices of the Council's Solicitor (or as the Council shall direct) 10 Working Days after the later of:-
- 57.6.1 the Golden Brick Date;
- 57.6.2 agreement or determination of the forms of the Replacement Homes Leases and the plans to be included in them pursuant to Clause 19; and
- 57.6.3 provision to the Council of the Replacement Homes Handover Documents.
- 57.7 The consideration payable by the Council in respect of the Replacement Homes Leases shall be the sum of:-
- 57.7.1 [REDACTED] in respect of each of the 145 Replacement Social Rented Homes (being [REDACTED] of the relevant Replacement Social Rented Home Purchase Price); and
- 57.7.2 [REDACTED] in respect of each of the additional 46 Replacement Social Rented Homes (being [REDACTED] of the relevant Replacement Social Rented Home Purchase Price);
- with the balance of the Replacement Social Rented Home Purchase Price to be paid in accordance with the terms agreed pursuant to Clause 57.11.
- 57.8 If completion of the Replacement Homes Leases has not taken place by 2pm on any day then completion shall be deemed to have occurred on the next following Working Day.
- 57.9 The rent payable under each Replacement Homes Lease shall be a peppercorn per annum (if demanded).



57.10 Unless otherwise agreed by the parties the term of each Replacement Homes Lease shall commence on the date of completion thereof.

57.11

57.11.1 The Council and the Partner acknowledge that there may be a funding shortfall between the cost of delivering the Replacement Homes and the consideration to be paid pursuant to Clause 57.7 and that there may be a financial benefit to the Council which could be achieved by proceeding with a 'golden brick' or alternative structure relating to the Replacement Homes.

57.11.2 No later than three months prior to the Replacement Homes Planning Date the Council shall submit to the Partner a detailed proposal in respect of the relevant Phase setting out terms for the acquisition of the Replacement Homes on a 'golden brick' basis which shall incorporate such of the Golden Brick Core Terms as the Council shall require and which may include:-

- (a) the timing of payment of the consideration for the Replacement Homes;
- (b) payment of the consideration for the Replacement Homes by instalments against construction milestones (or if the Council prefers against periodic valuations); and/or
- (c) where any Council Facility Blocks contain solely Council Facilities the grant of a short lease of the Lease Back Land by the Council to the Partner in place of the Phase Lease relating to that land
- (d) The following payment profile shall be reflected in the documents to be entered into pursuant to clause 57.11.3 to document the Golden Brick Proposal:
  - (i) [REDACTED] of the relevant consideration per unit to be paid on Start on Site (as defined in clause 59A);
  - (ii) [REDACTED] of the relevant consideration per unit to be paid on the relevant Golden Brick Date;
  - (iii) [REDACTED] of the relevant consideration per unit to be paid in arrears against monthly valuations based on construction costs between the Golden Brick Date and the Date of Practical Completion in respect of the relevant unit such valuations to be certified by a Consultant appointed pursuant to paragraph 3 of Part 1 of Schedule 3 that will owe a duty of care to the Council pursuant to paragraph 3.3 of Part 1 of Schedule 3;
  - (iv) [REDACTED] of the relevant consideration per unit to be retained by the Council and paid to the Developer within 20 Working Days of the issue of a certificate to be issued by the Independent Certifier in respect of the relevant unit pursuant to paragraph 2.4 of Part 3 of Schedule 3.

("Golden Brick Proposal").

57.11.3 Following receipt of a Golden Brick Proposal the Council and the Partner shall use reasonable endeavours to agree the terms of the Golden Brick Proposal and as soon as reasonably practicable (and in any event prior to the satisfaction of the Building Contract Condition in respect of the Works comprising or relating to the relevant Replacement Homes) shall enter into such variations to this Agreement and/or such additional documents as are required to document the Golden Brick Proposal.

57.11.4 If the Council and the Partner agree the terms of the Golden Brick Proposal by the point one month prior to the Replacement Homes Planning Date but are unable to agree the variations to this Agreement and/or additional documents required to document the Golden Brick Proposal then the matter shall be referred for determination pursuant to Clause 33.

57.11.5 Notwithstanding the preceding provisions of this Clause 57.11 no later than three months prior to the Replacement Homes Planning Date the Council and the Partner shall each be entitled to submit to the other a proposal in respect of that Phase setting out alternative structure(s) relating to the Lease Back of the Replacement Homes which may include:-

(a) the timing of completion of the Replacement Homes Leases; and/or

(b) the timing of payment of the consideration for the Replacement Homes; and/or

(c) where any Council Facility Blocks contain solely Council Facilities the grant of a short lease of the Lease Back Land by the Council to the Partner in place of the Phase Lease relating to that land

("Alternative Proposal").

57.11.6 Following receipt of an Alternative Proposal the Council and the Partner shall use reasonable endeavours to agree the terms of the Alternative Proposal and shall enter into such variations to this Agreement and/or such additional documents as the parties shall agree are required to document the Alternative Proposal.

57.11.7 If the Council and the Partner are unable to agree the terms of the Alternative Proposal one month prior to Replacement Homes Planning Date then the previous provision of this Clause 57 are to apply and no effect is to be given to the Alternative Proposal.

57.11.8 If the Council and the Partner agree the terms of the Alternative Proposal by the point one month prior to the Replacement Homes Planning Date but are unable to agree the variations to this Agreement and/or additional documents required to document the Alternative Proposal then the matter shall be referred for determination pursuant to Clause 33.

57.11.9 Notwithstanding the completion of the Replacement Homes Leases the Partner hereby agrees with the Council that all of the sums due under the Replacement Homes Leases for service charges and any other sums shall not become due and shall not become payable and the Partner and the Council agree that the lessee's obligations in the Replacement Homes Leases shall not be binding (but for the avoidance of doubt any rights thereunder shall be binding) until the relevant Date of Practical Completion.

57.12 The Partner shall deliver the Replacement Social Rented Homes and the Council's Additional Social Rent Homes in accordance with the Agreed Affordable Homes Mix.

57.13 The Partner shall procure that no Replacement Homes or Council's Additional Social Rent Homes are located above the 10th floor of any building to be constructed on the Site unless otherwise agreed by the Council (in its absolute discretion).

## 58. LIBRARY AND LEARNING CENTRE

58.1 The Council and the Partner acknowledge that there may be a financial benefit to the Council which could be achieved by proceeding with an alternative structure relating to the Library and Learning Centre to that provided for in Clause 21.

58.2 No later than three months prior to the Library and Learning Centre Planning Date the Council shall submit to the Partner a detailed proposal in respect of the Phase containing the Library and

Learning Centre setting out terms for the acquisition of the Library and Learning Centre which may incorporate such of the Golden Brick Core Terms as the Council shall require and which may include:-

58.2.1 the timing of completion of the Lease Back of the Library and Learning Centre; and/or

58.2.2 the timing of payment of the consideration for the Library and Learning Centre including payment of the consideration for the Replacement Homes by instalments against construction milestones (or if the Council prefers against periodic valuations);

("Alternative LLC Proposal").

- 58.3 Following receipt of a Alternative LLC Proposal the Council and the Partner shall use reasonable endeavours to agree the terms of the Alternative LLC Proposal as soon as reasonably practicable (and in any event prior to the satisfaction of the Building Contract Condition in respect of the Works comprising or relating to the Library and Learning Centre) and shall enter into such variations to this Agreement and/or such additional documents as are required to document the Alternative LLC Proposal.
- 58.4 If the Council and the Partner agree the terms of the Alternative LLC Proposal by the point one month prior to the Library and Learning Centre Planning Date but are unable to agree the variations to this Agreement and/or additional documents required to document the Alternative LLC Proposal then the matter shall be referred for determination pursuant to Clause 33.
- 58.5 Notwithstanding the completion of the Library and Learning Centre Lease the Partner hereby agrees with the Council that all of the sums due under the Library and Learning Centre Lease for service charges and any other sums shall not become due and shall not become payable and the Partner and the Council agree that the lessee's obligations in the Library and Learning Centre Lease shall not be binding (but for the avoidance of doubt any rights thereunder shall be binding) until the relevant Date of Practical Completion.
59. **ADDITIONAL SOCIAL RENTED HOMES OPTION**
- 59.1 In the event that the Partner is proposing to include Additional Social Rented Homes within a Phase the Partner shall notify the Council not less than seven months prior to the date on which the Partner is to submit the final draft Planning Application in relation to that Phase to the Local Planning Authority pursuant to Clause 9.
- 59.2 The notification pursuant to Clause 59.1 shall include details of the size type and location of the Additional Social Rented Homes and the Partner's reasonable estimate of their open market value.
- 59.3 Following receipt of the notification pursuant to Clause 59.1 the Council and the Partner shall use reasonable endeavours to agree the commercial terms on which the Council may acquire the Additional Social Rented Homes and shall instruct the Independent Valuation as soon as reasonably practicable.
- 59.4 Within four months of the notification to the Council pursuant to Clause 59.1 (or if later within 10 Working Days of receipt of the Independent Valuation) the Council shall serve notice on the Partner either:-
- 59.4.1 stating that the Council does not wish to acquire the relevant Additional Social Rented Homes; or
- 59.4.2 stating that the Council does wish to acquire the relevant Additional Social Rented Homes at the value specified in the Independent Valuation.
- 59.5 The Council shall not be entitled to acquire part only of the Additional Social Rented Homes in a Phase.

- 59.6 In the event that the Council does not serve a notice pursuant to Clause 59.4 within the period provided for in Clause 59.4 then the Council shall be deemed to have served a notice pursuant to Clause 59.4.1
- 59.7 On receipt by the Partner of a notice pursuant to Clause 59.4.2 for the purposes of Clause 57 the relevant Additional Social Rented Homes shall be treated as if they were Replacement Social Rented Homes falling within the Phase of which they form part and (subject to Clause 57.11) the value specified in the Independent Valuation shall be paid by the Council to on completion of the relevant Lease(s) Back.
- 59.8 Notwithstanding the preceding provisions of this Clause 59 the Council reserves nominations rights in relation to the Additional Social Rented Homes and the Partner shall give effect to such nominations rights and shall procure that a Registered Provider acquiring any Affordable Housing Units also gives effect to them Provided That in the event of a conflict between the provisions of this Clause 59.8 and the requirements of a Planning Agreement then the provisions of the Planning Agreement shall prevail.

**59A. ADDITIONAL SOCIAL RENTED HOMES OPTION**

59A.1 In this Clause 59A the following definitions shall apply:

59A.1.1 **"AH Plot"** means for each Phase which is to contain Council's Additional Social Rent Homes the plot on which Council's Additional Social Rent Homes are to be delivered which plot is the subject of a separate Golden Brick Contract (in defined in with clause 59A4.3);

59A.1.2 **"Base Date"** means 21 December 2021;

59A.1.3 **"Council's Additional Social Rent Homes"** means the additional 355 high quality social rent homes to be delivered by the Partner within the Development in accordance with the Core Requirements and this Clause 59A;

59A.1.4 **"Indexation Date"** means the estimated mid point of construction of the relevant unit(s) as calculated at the date of the Post Planning Appraisal in relation to the Phase in which the relevant unit(s) are located which satisfies the Post Planning Viability Condition for that Phase;

[REDACTED]

59A.1.6 **"MLF Agreement"** means the Land Fund Grant Agreement – High Road West dated 21 December 2021 made between (1) Greater London Authority and (2) the Council;

59A.1.7 **"MLF Default Event"** means:

- (a) the Council being unable to draw down funding under the MLF Agreement; and/or
- (b) repayment of funds being required under the terms of the MLF Agreement;
- (c) funding being clawed back under the MLF Agreement; and/or
- (d) funding obtained under the MLF Agreement being unable to be used for the Development

save where such event(s) are solely and directly attributable to the Council's failure to comply with an obligation on the Council's part that is the Council's sole responsibility under [REDACTED]

**"Partner Loan Default Event"**

59A.1.10 **"Relevant Price Event"** means:

- (a) a MLF Default Event; and/or
- (b) a Partner Loan Default Event having occurred;

59A.1.11 **"Relevant Price"** means the price per unit of the Council's Additional Social Rent Homes calculated as follows:

- (a) £165,000 subject to upwards only indexation calculated by reference to the increase in the BCIS All-In Tender Price Index between the Base Date and the Indexation Date; plus

59A.1.12 **"Start on Site"** means the Partner having completed 25% of the piling on the relevant AH Plot to be delivered of which the relevant Council's Additional Social Rent Homes form part (excluding preparatory works such term to include the installation of piling mats). Where piling is not the selected form of foundation the Developer is to complete 25% of the agreed foundation method.

59A.2 At least seven months prior to the submission of the Planning Application for each Phase in accordance with Clause 9 which is intended to contain Council's Additional Social Rent Homes the Partner shall propose the size, type and location of the Council's Additional Social Rent Homes to be comprised in the relevant Phase for the approval of the Council and the Council shall not unreasonably withhold or delay its approval provided such proposals accord with the Phase Plan and the Resident Rehousing Strategy, the Agreed Affordable Homes Mix and the Council's Specification.

59A.3 Subject to this Clause 59A.3 the Council's Additional Social Rent Homes agreed pursuant to Clause 59A.2 shall be treated as if they were Replacement Social Rent Homes falling within the Phase of which they form part.

59A.3.1 The Council and the Partner agree that the provisions of Clause 57 (save for Clauses 57.2 and 57.7) shall apply to the Council's Additional Social Rent Homes and that:

59A.3.2 the Golden Brick Proposal in respect of the Council's Additional Social Rent Homes shall include a statement that the Relevant Price multiplied by the number of Council's Additional Social Rent Homes to be delivered in the relevant Phase is to be paid on the basis of the following payment profile which shall be reflected in the documents to be entered into pursuant to Clauses 57.11.3 to document that Golden Brick Proposal:

- (a) [REDACTED] of the Relevant Price per unit to be paid on Start on Site;
- (b) [REDACTED] of the Relevant Price per unit to be paid on the relevant Golden Brick Date;
- (c) [REDACTED] of the Relevant Price per unit to be paid in arrears against monthly valuations based on construction costs between the Golden Brick Date and the Date of Practical Completion in respect of the relevant unit such valuations to be certified by a Consultant appointed pursuant to paragraph 3 of Part 1 of Schedule 3 that will owe a duty of care to the Council pursuant to paragraph 3.3 of Part 1 of Schedule 3;
- (d) [REDACTED] of the Relevant Price per unit to be retained by the Council and paid to the Developer within 20 Working Days of the issue of the certificate to be issued by the Independent Certifier in respect of the relevant unit pursuant to paragraph 2.4 of Part 3 of Schedule 3.
- (e) any payment made by the Council pursuant to clause 59.4.1(a) shall constitute a deposit paid by the Council for the acquisition by it of the Replacement Homes Lease

59A.3.3 the Replacement Homes Lease (or such alternative structure agreed as part of the Golden Brick Proposal pursuant to clause 57.11.2) of the relevant Council's Additional Social Rent Units shall be entered into in accordance with Clauses 57.3, 57.4, 57.5 and 57.6;

59A.3.4 the documents to be entered into pursuant to Clause 57.11.3 to document the Golden Brick Proposal ("**Golden Brick Contracts**") shall be on terms that:

- (a) reflect the European Commission's SGEI Decision;
- (b) provide the Council with appropriate rights of step in (on market terms in a form agreed by the parties acting reasonably) to deliver the Council's Additional Social Rent Homes in order to protect the Council's financial interest in the same; and
- (c) provide that if prior to the Council having made all of the payments required to be made by it for all of the Council's Additional Social Rent Homes that are the subject of the Golden Brick Contract a Relevant Price Event occurs the Council shall be entitled to adjust the Relevant Price for the units that are the subject of the Relevant Price Event to take account of the Relevant Price Event as if the Relevant Price Event had occurred prior to the Golden Brick Contracts having been entered into ("**Price Reduction**") and:
  - (i) if the Relevant Price Event occurs prior to the Council having made all of the payments required to be made by it under the Golden Brick Contracts the Council shall be entitled to reduce those payments to take into account the Price Reduction;
  - (ii) if the Relevant Price Event occurs after the Council has made all of the payments required to be made by it under the Golden Brick Contracts (or if the sum that the Council is entitled to pursuant to

Clause 59A.4.3(c)(i) is less than the amount of the Price Reduction ("Reduction Balance")) the Partner shall within 10 Working Days of the Relevant Price Event repay to the Council a sum equivalent to the Price Reduction or the Reduction Balance (as the case may be).

60. **MASTER HEAT AGREEMENT**

60.1 Following Today's Date the Parties will discuss and agree (in good faith both acting reasonably) the terms of the Master Heat Agreement in accordance with this Clause 60.

60.2 The Parties acknowledge and agree that:-

60.2.1 the provisions to be included in the Master Heat Agreement will be based on the MHA Heads of Terms;

60.2.2 subject to Clause 60.3, there will be a requirement for further discussion and collaboration between the Parties to develop the principles set out in the MHA Heads of Terms and any other changes agreed between the Parties into the final Master Heat Agreement;

60.2.3 the Parties will use reasonable endeavours to agree and enter into the Master Heat Agreement in a timely manner taking into account:-

(a) any statutory consultation obligations that the Partner has in connection with the marketing and letting of the Units; and

(b) the timings of the Council's procurement process to appoint the DEN Contractor and the requirement for the DEN Contractor to input into the terms of the Master Heat Agreement.

61. **OFFSITE PIPE ROUTE**

61.1 The Parties agree and acknowledge that the DEN Operator / DEN Contractor shall be entitled to supply and install the Offsite Supply Network and any elements of the Private Wire Network serving end users that are not located on the Site (as marked red on the Demarcation Drawing) in accordance with the terms of the Master Heat Agreement.

61.2 As part of the Works pursuant to this Agreement the Partner shall (in cooperation with the DEN Contractor) identify and safeguard the most efficient, expedient and cost effective route for the relevant plant and infrastructure to take from the Site (the "**Offsite Pipe Route**").

61.3 Once the proposed Offsite Pipe Route has been identified, the Partner shall notify the DEN Operator and the Partner and the DEN Operator shall discuss and mutually agree (each acting reasonably) the final Offsite Pipe Route.

62. **THIRD PARTY AGREEMENTS**

62.1 The Partner hereby covenants to observe and perform the Partner's obligations contained in the terms of the Third Party Agreements.

62.2 Notwithstanding anything else in this Agreement the Partner hereby confirms and accepts that any Lease is granted subject to the existence of the Third Party Agreements.

62.3 If a Third Party Agreement is completed between Transport for London, Rail for London, Arriva Rail London, the Partner and the Council, or between Network Rail Infrastructure Limited, the Partner and the Council, and prior to any termination of this Agreement the Council incurs costs in complying with its obligations under such Third Party Agreements that are required to be complied with as a result of the Partner no longer being the developer of the Development, then the Partner shall reimburse the Council on demand for such liability actually incurred by the Council.

63. **PHASE 1A**

63.1 Notwithstanding anything else in this Agreement:-

63.1.1 the term of the Phase Lease for Phase 1A only will be 5 years from completion of the Phase Lease for Phase 1A. Accordingly, there will be no Lease Back of Phase 1A to the Council; and

63.1.2 the parties acknowledge that the form of Phase Lease for Phase 1A cannot be agreed or determined without the associated agreement to be entered into by the Council and the Partner pursuant to clauses 57.11.3 or 57.11.6 (as applicable) for the delivery of 61 Replacement Homes within Phase 1A having also been agreed and for the avoidance of doubt the parties note that such agreement will be subject to such additional terms as the parties agree are appropriate in the circumstances (each acting reasonably).

**EXECUTED AS A DEED** by the parties on the date which first appears in this Agreement.



## **SCHEDULE 1**

### **ONEROUS CONDITIONS**

#### **PART 1**

##### **PARTNER ONEROUS CONDITIONS**

1. Any condition or conditions imposed in a Planning Permission or any obligation or obligations contained in a Planning Agreement relating thereto which individually or in aggregate has or have the following effects:-
  - 1.1 it prevents full development and/or use and/or occupation of the Site (or in the case of Reserved Matters Approval, the relevant Phase) without the agreement or co-operation of someone other than the Partner or the Council as landowner or the acquisition of third party land;
  - 1.2 it is a temporary planning permission or restricts the planning permission to a set period of time PROVIDED THAT a planning permission requiring commencement of development within a period of three years or more shall not be an unsatisfactory condition for these purposes;
  - 1.3 it makes the planning permission personal to either one person, a number of persons or a specified class or classes of persons save that any requirement:-
    - 1.3.1 that a specified percentage of Residential Units reflecting that contained within the Planning Application are to be Replacement Homes and/or other Affordable Housing Units; and/or
    - 1.3.2 limiting the use of any Commercial Units included as part of the Development to any specific use class,which reflect any part of the Council's Specification shall not be treated as unsatisfactory conditions;
  - 1.4 it imposes requirements in respect of any land not comprised within the Planning Application redline drawing other than commuted sums contemplated in the Planning Application;
  - 1.5 it materially increases the cost of delivery of the Development in accordance with this Agreement so as to jeopardise the ability of the Site and/or any Phase to be Viable; and/or
  - 1.6 (where contained in a Planning Agreement) it requires financial planning contributions to be paid on terms or in stages which the Partner (acting reasonably) considers to be unreasonable

#### **PART 2**

##### **COUNCIL ONEROUS CONDITIONS**

1. Any condition or conditions imposed in a Planning Permission or any obligation or obligations contained in a Planning Agreement relating thereto which individually or in aggregate has or have the following effects:-
  - 1.1 it prevents full development and/or use and/or occupation of the Site (or in the case of Reserved Matters Approval, the relevant Phase) without the agreement or co-operation of someone other than the Partner or the Council as landowner;
  - 1.2 it is a temporary planning permission or restricts the planning permission to a set period of time PROVIDED THAT a planning permission requiring commencement of development within a period of three years or more shall not be an unsatisfactory condition for these purposes;

- 1.3 it makes the planning permission personal to either one person, a number of persons or a specified class or classes of persons save that any requirement:-
- 1.3.1 that a specified percentage of Residential Units reflecting that contained within the Planning Application are to be Replacement Homes and/or other Affordable Housing Units; and/or
  - 1.3.2 limiting the use of any Commercial Units included as part of the Development to any specific use class,
- which reflect any part of the Council's Specification shall not be treated as unsatisfactory conditions; and
- 1.4 it imposes requirements in respect of any land not comprised within the Planning Application redline drawing other than commuted sums contemplated in the Planning Application.

**SCHEDULE 2**

**NOT USED**

### **SCHEDULE 3**

#### **DEVELOPMENT OBLIGATIONS**

##### **PART 1**

##### **PREPARATION FOR WORKS**

#### **1. FURTHER DESIGN WORKS**

- 1.1 To the extent that any further design work needs to be carried out in order to create a complete and detailed specification for the Council Facilities, then the Council and the Partner shall co-operate and work together to create such detailed specification and the Partner shall procure that:-
- 1.1.1 such design work is in all respects consistent with the Council's Specification and the Design Code;
  - 1.1.2 it obtains the Council's written approval (which shall not be unreasonably withheld or delayed where paragraph 1.1.1 is complied with) to any designs that are so developed; and
  - 1.1.3 prior to commencing development of a Phase containing Council Facilities it obtains the Council's final consent to the composite design package in respect of the relevant Council Facilities (which shall not be unreasonably withheld or delayed where paragraph 1.1.1 is complied with).
- 1.2 The provisions of paragraphs 1.3 to 1.8, 2 and 3 below shall only apply in respect of those elements of the Works that comprise the Council Facilities.
- 1.3 The Building Contract will be on terms that:-
- 1.3.1 in relation to any element of the Works concerning the Council Facilities or any Infrastructure installed by the Building Contractor the Building Contractor shall enter into a Warranty or provide Third Party Rights in favour of the Council with such reasonable amendments as shall be approved by the Council (such approval not to be unreasonably withheld or delayed) and the Building Contractor shall procure that each Sub-Contractor shall enter into a Warranty or provide Third Party Rights in favour of the Council with such reasonable amendments as shall be approved by the Council (such approval not to be unreasonably withheld or delayed);
  - 1.3.2 without prejudice to paragraph 1.3.1, in relation to any element of the Works concerning the Energy Centre Shell, the Primary Heat Network and/or the Secondary Heat Network the Building Contractor shall enter into a Warranty or provide Third Party Rights in favour of the DEN Operator and the DEN Contractor with such reasonable amendments as shall be approved by the Council (such approval not to be unreasonably withheld or delayed) and the Building Contractor shall procure that each relevant Sub-Contractor with a design responsibility shall enter into a Warranty or provide Third Party Rights in favour of the DEN Operator and the DEN Contractor with such reasonable amendments as shall be approved by the Council (such approval not to be unreasonably withheld);
  - 1.3.3 (where the Building Contract relates to the Council Facilities only) give the Council the right to acquire the benefit of the Building Contract without charge in the event of termination of this Agreement for any reason;
  - 1.3.4 the Building Contractor will maintain (where responsible for design of a Council Facility Block) both during the completion of the relevant Works and for a period of 12 years from the Date of Practical Completion of the relevant Works professional indemnity insurance with a minimum level of cover of £5,000,000 for each and every claim; and

- 1.3.5 the period within which the Building Contractor is obliged to make good any defects in the Council Facilities is not less than 12 months from the issue of the certificate of practical completion under the Building Contract or, in respect of the Energy Centre Shell, the Primary Heat Network and Secondary Heat Network such other period as agreed pursuant to the Master Heat Agreement).
- 1.4 Save where the Procurement Strategy applies notwithstanding paragraph 2.3 in respect of Council Facilities and any Council Facility Block the Partner will obtain the Council's prior approval as to the selection of the proposed Building Contractor (or any replacement Building Contractor) such approval not to be unreasonably withheld or delayed and will not award the Building Contract without the Council's prior approval.
- 1.5 The Partner shall supply to the Council one complete certified copy of the Building Contract (and any bills of quantity drawings and specifications and other documentation referred to in it) within five Working Days of the same being entered into.
- 1.6 The Partner will:-
- 1.6.1 comply with its obligations under the Building Contract in all material respects and will not knowingly do any act or thing which would entitle the Building Contractor to treat the Building Contract as terminated by breach or adversely affect the rights of the Council under the Warranties or Third Party Rights or cause delays;
- 1.6.2 take all steps reasonably necessary to procure the due observance and performance of the duties and obligations of the Building Contractor under the Building Contract (including the defects liability provisions);
- 1.6.3 take all reasonable steps to enforce any rights the Partner has pursuant to any product guarantee or warranty in relation to any materials or plant and machinery incorporated in the Works or any part of them and where necessary assign such product guarantees or warranties to the Council at no cost to the Council;
- 1.6.4 not without the prior consent of the Council (such consent not to be unreasonably withheld or delayed) knowingly release, vary or waive the terms of the Building Contract nor knowingly or negligently stop itself from enforcing or seeking redress for any duty or obligation on the part of the Building Contractor under the Building Contract if as a result any right or remedy of the Council will be adversely affected; and
- 1.6.5 use reasonable endeavours to procure that throughout the carrying out of the Works the Building Contractor is continuously appointed and given prompt and adequate instructions in accordance with the terms of the Building Contract.
- 1.7 The Partner shall notify the Council as soon as reasonably practicable in writing of any material dispute arising pursuant to the Building Contract and shall promptly give the Council such details thereof as the Council may reasonably require.
- 1.8 The Partner shall deal with any such disputes in a manner that is consistent with its obligations hereunder and shall consider in good faith any representations made by or on behalf of the Council in relation thereto and shall take into account any such reasonable representations.
- 1.9 If the Partner shall determine the Building Contract it shall forthwith give notice thereof to the Council and shall appoint a new Building Contractor approved by the Council (acting reasonably and such consent not to be unreasonably withheld or delayed) who shall have the competence, experience, resources and suitability to discharge its obligations under the Building Contract as soon as practically possible PROVIDED ALWAYS that the obligations on the part of the Partner and the conditions contained in this Agreement shall remain in force and apply to the new building contract as to the Building Contract and to the new contractor as to the Building Contractor.

## **2. BUILDING CONTRACTOR'S WARRANTY**

2.1 The Partner shall procure that the Building Contractor either:-

2.1.1 provides a Warranty (duly executed by the Building Contractor); or

2.1.2 confers Third Party Rights on the Council,

in relation to the Phase Works concerning the Council Facilities and each Council Facility Block which shall be delivered to the Council at least 20 Working Days prior to commencement of the relevant Phase Works.

2.2 Without prejudice to paragraph 2.1, in respect of any element of the Works relating to the Energy Centre Shell, the Primary Heat Network and/or the Secondary Heat Network the Partner shall procure that the Building Contractor either:-

2.2.1 provides a Warranty (duly executed by the Building Contractor) in favour of the DEN Operator and the DEN Contractor; or

2.2.2 confers Third Party Rights on the DEN Operator and the DEN Contractor,

in respect of the relevant Works which shall be delivered to the Council at least 20 Working Days prior to commencement of the relevant Works.

2.3 In the event that the Building Contractor's employment is terminated by the Partner, the Partner shall procure that:-

2.3.1 any replacement building contract is entered into in accordance with the provisions of this Agreement; and

2.3.2 a Warranty (duly executed by any such replacement Building Contractor within 20 Working Days of execution of such contract) is delivered to the Council or Third Party Rights are conferred on the Council by the replacement Building Contractor (in relation to the part of the Works concerning the Council Facilities and each Council Facility Block only) within 20 Working Days of execution of such contract.

## **3. CONSULTANTS & SUB-CONTRACTORS**

3.1 The Partner shall be responsible for the appointment and engagement of the services of each requisite Consultant (whether directly or as a sub-consultant to the Building Contractor) save for the Independent Certifier which shall be jointly appointed through the joint decision of both parties. Each appointment and engagement will be made following consultation with the Council (in relation to the Works concerning the Council Facilities and each Council Facility Block only) and must be a reputable and suitably qualified person, firm or company experienced in development of the size, type, scope and complexity of the Development and having a minimum level of professional indemnity cover of £5,000,000 for each and every claim and public liability cover of £10,000,000 for each and every claim of which evidence shall be provided to the Council within 20 Working Days of their appointment. The Partner will in relation to the Works concerning the Council Facilities and each Council Facility Block:-

3.1.1 use reasonable endeavours to comply with its obligations under the terms of engagement in all material respects with each Consultant; and

3.1.2 take all steps reasonably necessary to procure the due observance and performance of the duties and obligations of each Consultant and shall not without the prior consent of the Council (such consent not to be unreasonably withheld or delayed) knowingly release, vary or waive nor knowingly or negligently stop itself from enforcing or seeking redress for any such duty or obligation if as a result any right or remedy of the Council under the Warranty or Third Party Rights provided by such Consultant will be adversely affected.

- 3.2 If the appointment of any Consultant is terminated prior to the completion of such Consultant's duties in respect of the Development the Partner shall forthwith engage a replacement firm or person following consultation with the Council (in relation to the part of the Works concerning the Council Facilities and each Council Facility Block only) to perform such duties in his place and all the relevant provisions of this Agreement will apply thereto.
- 3.3 The Partner will procure in relation to the Works concerning the Council Facilities and each Council Facility Block that every Consultant either:-
- 3.3.1 enters into a Warranty in favour of the Council (in relation to any element of the Works concerning the Council Facilities and each Council Facility Block) with such reasonable amendments (including as to the form of appointment) as shall be approved by the Council (such approval not to be unreasonably withheld or delayed):-
- (a) in the case of the Consultants who have already been appointed or who are appointed prior to the Phase Unconditional Date, on or before the Phase Unconditional Date; and
- (b) in the case of any Consultants who have yet to be appointed, within 20 Working Days of the date of their appointment; or
- 3.3.2 confers Third Party Rights on the Council.
- 3.4 Without prejudice to paragraph 3.3, the Partner will use reasonable endeavours to procure that every Consultant responsible for the design of the Energy Centre Shell, the Primary Heat Network and/or the Secondary Heat Network either:-
- 3.4.1 enters into a Warranty in favour of the DEN Operator and the DEN Contractor with such reasonable amendments (including as to the form of appointment) as shall be approved by the Council (such approval not to be unreasonably withheld or delayed):-
- (a) in the case of the Consultants who have already been appointed or who are appointed prior to completion of the relevant Works; and
- (b) in the case of any Consultants who have yet to be appointed, within 20 Working Days of the date of their appointment; or
- 3.4.2 confers Third Party Rights on the DEN Operator and the DEN Contractor.
- 3.5 In relation to the Works concerning the Council Facilities the Partner will use reasonable endeavours to enter or procure that either it or the Building Contractor enters into each Sub-Contract with the Sub-Contractor or as soon as reasonably practicable after the relevant Phase Unconditional Date and in any event prior to entry onto the Site of the relevant Sub-Contractor.
- 3.6 The Partner will use reasonable endeavours to procure that the Sub-Contracts will be on terms that:-
- 3.6.1 in relation to any element of the relevant Phase Works concerning the Council Facilities and each Council Facility Block provide that the Sub-Contractor shall either:-
- (a) enter into a Warranty in favour of the Council with such reasonable amendments as shall be approved by the Council (such approval not to be unreasonably withheld or delayed); or
- (b) confer Third Party Rights on the Council.

3.6.2 in relation to any aspect of the Phase Works involving installation of the Secondary Heat Network the Sub-Contractor shall either:-

- (a) enter into a Warranty in favour of the DEN Operator and DEN Contractor with such reasonable amendments as shall be approved by the Council (such approval not to be unreasonably withheld or delayed); or
- (b) confer Third Party Rights on the DEN Operator and the DEN Contractor.

3.6.3 the Sub-Contractor will (acting in accordance with industry good practice when electing which route to pursue) either offer to the Council product liability cover (where appropriate) or (where the Sub-Contractor has design responsibilities) maintain both during the completion of the relevant Phase Works and for a period of 12 years from the date of practical completion of the relevant Phase Works professional indemnity insurance with a minimum level of cover of £5,000,000 for each and every claim.

3.7 The Partner will use reasonable endeavours to obtain or procure that the Council's prior approval is obtained as to the selection of the proposed Sub-Contractor where the Council Facilities are concerned (such approval not to be unreasonably withheld or delayed).

3.8 In relation to the Works concerning the Council Facilities and each Council Facility Block the Partner shall use reasonable endeavours to supply to the Council one copy of each Sub-Contract (and any drawings and specifications and other documentation referred to in it, (save for any financial details which shall be redacted)) within 10 Working Days of the same being entered into.

3.9 In relation to the Works concerning the Council Facilities the Partner shall use reasonable endeavours to ensure that each Sub-Contractor maintains a minimum level of professional indemnity cover of £5,000,000 for each and every claim and public liability cover of £10,000,000 for each and every claim of which evidence shall be provided to the Council within 20 Working Days of their appointment.

#### **4. APPOINTMENTS**

4.1 The Partner will retain the Design Team to provide the overall design and masterplanning role on the Development through to the satisfaction of the Planning Condition in relation to Phase 1.

4.2 Thereafter the Partner may engage such other reputable and professionally qualified person or firm as the Partner may appoint to act as the architect and/or masterplanners and/or landscape architects in connection with the Development or part thereof with the Council's approval not to be unreasonably withheld or delayed. PROVIDED ALWAYS that the Partner may request the Council's consent to a change to the Architect and/or Masterplanners and/or Landscape Architects at any time in the event the Partner demonstrates to the Council's satisfaction acting reasonably that any of the Architect or Masterplanners or Landscape Architects is persistently failing to perform to required standards and/or to required timescales or has become insolvent or has otherwise ceased to exist.

4.3 In relation to the Works that concern the Council Facilities and each Council Facility Block the Partner shall not make or suffer to be made any alteration in the terms of any Building Contract or any of the appointments by the Partner of any of the Consultants or Sub-Contractors nor agree any release of the Building Contractor or any of the Sub-Contractors or Consultants thereunder, which would in either case materially adversely affect the rights of the Council under the Warranties or Third Party Rights PROVIDED THAT neither this paragraph nor any other provision of this Agreement shall prevent the Partner from arranging for any of the appointments of the Consultants to be novated to the Building Contractor.

4.4 If at any time the Partner identifies that the Building Contractor and/or any Consultant is or has become an Unacceptable Construction Company then it shall inform the Council and shall use reasonable endeavours to terminate the employment of such Building Contractor and/or Consultant once a suitable stage of construction has been reached by such party.



## **5. PRE-COMMENCEMENT CONDITIONS AND CONSENTS**

- 5.1 The Partner will not Implement or permit to be Implemented any part of the Works concerning any Council Facilities or any Council Facility Block until:-
- 5.1.1 the Partner has given to the Council's Representative not less than 10 Working Days' notice of its intention to commence the relevant Phase Works;
  - 5.1.2 the Partner has given to the Council's Representative a copy of the notice that it gives to the Health and Safety Executive under Schedule 1 of the CDM Regulations; and
  - 5.1.3 all matters to be complied with under any Satisfactory Permission or Planning Agreement prior to commencement of such work have been complied with.
- 5.2 In relation to the Works concerning the Council Facilities and each Council Facility Block the Partner will (where appropriate) use reasonable endeavours to procure that there are obtained as soon as requisite all Necessary Consents and that there are given all notices required to be given under any Statutory Requirements or Necessary Consents and will upon request provide copies to the Council.
- 5.3 Notwithstanding the provisions of paragraphs 5.1 and 5.2 above, subject to:-
- 5.3.1 securing all necessary consents and approvals;
  - 5.3.2 the parties (acting reasonably) reaching agreement on the costs involved; and
  - 5.3.3 the Partner being satisfied that undertaking such works will not prejudice its entitlement to off-set CIL,

the Council shall be entitled to call upon the Partner to soft strip existing buildings within Phase 1 in advance of having obtained a Satisfactory Planning Permission subject to the Council providing to the Partner a written indemnity in relation to the reasonable and proper abortive costs in the sum agreed between the parties (each party acting reasonably) in the event that this Agreement is terminated because the Phase 1 Conditions are not satisfied in accordance with this Agreement.

## **6. STATUTORY AGREEMENTS**

- 6.1 The Partner shall at all appropriate times negotiate all necessary Statutory Agreements for the construction and adoption of roads and Service Media to serve the Development and where necessary for the diversion of any existing Service Media passing over under or through the Site.
- 6.2 The Partner will consult in good faith with the Council and will supply the Council with a copy of the form of any such proposed Statutory Agreement to enable the Council to make representations to the Partner in relation thereto and the Partner will consider all such representations in good faith and take these into account.
- 6.3 The Partner shall pay all costs, charges, expenses and fees pursuant to each Statutory Agreement entered into under this paragraph and shall keep the Council indemnified against all reasonable costs, claims, demands, liability losses or proceedings arising thereunder or made or incurred against the Council as a result of any non-observance or non-performance of the Partner's obligations thereunder.
- 6.4 In so far as it is lawfully able to do so the Council shall enter into all such Statutory Agreements (in such form as may be approved by the Council such approval not to be unreasonably withheld or delayed) as and when necessary in order to enable the Partner to carry out the Works in accordance with its obligations under this Agreement PROVIDED THAT:-
- 6.4.1 the Partner shall meet all costs or expenditure required by the terms of the Statutory Agreement and shall meet the Council's reasonable legal fees incurred in approving and entering into the Statutory Agreement;

- 6.4.2 unless the Council (acting reasonably) accepts the same, there is no requirement that the Council carries out works or undertakes any liability pursuant to such Statutory Agreement;
  - 6.4.3 unless the Council (acting reasonably and in accordance with the Business Plan) accepts the same, the Council shall not be required to dedicate make available or otherwise transfer or dispose of any land which does not form part of the Site;
  - 6.4.4 the Statutory Agreement shall (in the reasonable opinion of the Council) not adversely affect any other land or interest owned or controlled by the Council;
  - 6.4.5 the Council shall not be required to enter into any Statutory Agreement unless it can procure (which it shall use all reasonable endeavours to do) that any person having a legal interest in the Site enters into that Statutory Agreement with it;
  - 6.4.6 the Statutory Agreement contains terms which fully release the Council from all liabilities, obligations, restrictions, conditions and the like under the Statutory Agreement once it has parted with its interest in the land which is the subject of the Statutory Agreement; and
  - 6.4.7 the Partner shall fully and effectually indemnify and keep the Council indemnified against all liabilities proceedings costs claims demands and expenses incurred or arising by the Council under or in connection with the Statutory Agreement.
- 6.5 The Partner shall supply to the Council a copy of each Statutory Agreement entered into pursuant to this paragraph (and any bills of quantity, drawings and specifications to be annexed thereto or other documentation referred to therein) save where the Council itself is a party to such Agreement within 10 Working Days of the same being entered into and will thereafter supply a copy to the Council of any variation thereto.

## **PART 2**

### **CARRYING OUT WORKS**

#### **1. COMMENCING AND COMPLETING WORKS**

- 1.1 The Partner must substantially commence the Works in relation to each Phase no later than the Phase Commencement Date and will use all reasonable endeavours to secure the issue of the Certificate of Practical Completion in respect of the Works concerning the Council Facilities and any Council Facility Block on or before the relevant Phase Construction Target Date.
- 1.2 The Partner will complete all the Works in relation to each Phase before the Phase Construction Longstop Date.
- 1.3 The Partner will carry out and complete the Works:-
- 1.3.1 in a good and workmanlike manner;
  - 1.3.2 using only suitable good quality materials reasonably suitable for their purpose;
  - 1.3.3 in accordance with:-
    - (a) the Approved Documents;
    - (b) the Approved Drawings;
    - (c) all Necessary Consents;
    - (d) all Statutory Requirements;
    - (e) all relevant British and European Standards and Codes of Practice from the date of the Building Contract;
    - (f) the Design Code;
    - (g) the Satisfactory Permission; and
    - (h) the terms of this Agreement.
- 1.4 The Partner shall ensure that no Deleterious Materials are used in any works or materials used comprised in or relating to the Development.
- 1.5 In carrying out the Development the Partner shall comply with all Planning Agreements affecting the Site including the payment of all sums payable thereunder and the discharge of all obligations thereunder at the times stated therein and shall indemnify and keep indemnified the Council against all actions proceedings claims demands losses costs expenses damages and liabilities arising directly from any breach of the Planning Agreements.
- 1.6 The Partner shall at all times liaise with and work in co-operation with the Council and local residents in relation to the interim management of the Site during the Works.

#### **2. CONDUCT OF TEAM DURING WORKS**

- 2.1 The Partner will:-
- 2.1.1 take or will procure that the Building Contractor takes all reasonable precautions to prevent any danger or undue disturbance or inconvenience to the general public (having regard to the carrying on of the Works in accordance with this Agreement); and

- 2.1.2 take all reasonable steps to minimise any nuisance or damage to the Council or to the owners and occupiers of any adjoining or neighbouring land or to any other persons and will promptly make good to the reasonable satisfaction of the Council or the relevant owner (as the case may be) any damage caused to any adjoining or neighbouring land *inter alia* having regard to the requirements of section 61 of the Control of Pollution Act 1974 (and where required, enter into a section 61 agreement).

2.2 The Partner will use reasonable endeavours:-

- 2.2.1 at all times during the carrying out of the Works act and require that the Building Contractor, the Consultants, Sub-Contractors and the Partner's agents and representatives shall not act in such manner as to cause an actionable nuisance to any persons living in or occupying adjoining property; and
- 2.2.2 at all times to procure that the Works are managed in accordance with the criteria of good site management and good building practice from time to time both by reference to standards reasonably applicable to the Works.

2.3 The Partner shall in carrying out the Works comply with the Considerate Constructors Scheme and the Code of Considerate Practice save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said Scheme and Code the former shall prevail.

3. **ACCESS, INSPECTIONS, SITE MEETINGS AND INFORMATION**

3.1 The Partner will permit the Council's Representative to have access to the relevant Phase at all reasonable times subject to prior reasonable notice to the Partner's Representative and subject to complying with all health and safety requirements set by the Partner.

3.2 The Partner will permit the Council's Representative to enter onto the relevant Phase:-

- 3.2.1 to view the progress and state of the Works and the materials used or intended for use therein; and

- 3.2.2 to check for compliance with the terms of this Agreement,

such entry being only at such intervals and times as may from time to time be reasonable and only after having given reasonable notice to the Partner's Representative and subject to complying with all health and safety requirements.

3.3 Within 20 Working Days after the first Phase Commencement Date the Council and the Partner will agree a calendar of project and/or site meetings which the Council's Representative and the Partner's Representative will attend.

3.4 The Council or the Partner may at any time on reasonable notice call a project and/or site meeting between the Council's Representative and the Partner's Representative to consider the progress of the Works.

3.5 In addition to the meetings to be held pursuant to paragraphs 3.3 and 3.4, the Council's Representative will be entitled to attend any meetings held at the Site which are chaired by a representative of the Partner and the purpose of which is to discuss the Works. The Partner will provide copies of any minutes of any such site meetings requested by the Council's Representative.

3.6 The Council's Representative and Partner's Representative will meet at least once each month (by telephone if the parties agree) to discuss the progress of the Works.

- 3.7 The Partner will keep the Council informed of:-
- 3.7.1 the stages reached by the Partner in performing the obligations on its part contained in this Agreement; and
- 3.7.2 any material problems or delays affecting the Works and how the Partner intends to resolve the same.
- 3.8 The Partner will procure that due regard is had to any reasonable representations made to the Partner's Representative by the Council's Representative in respect of the Works. The Council's Representative will not interfere with the Works nor attempt to instruct any persons employed upon the Works and in particular (but without limitation to the generality of the foregoing) the Council's Representative shall address any comments in relation to the Works to the Partner or the Partner's Representative.
- 3.9 Notwithstanding the exercise of such rights and any inspections carried out by or on behalf of the Council pursuant to the provisions of this paragraph the Partner will not be excused from or relieved of any liability or responsibility for the Works.
4. **CHANGES TO THE WORKS**
- 4.1 The Partner shall not make any Material Changes to the Permission Plans without the prior approval of the Council through the Steering Group.
- 4.2 The Council's Representative shall demonstrate his agreement to any alteration to the Permission Plans by either countersigning those drawings or in writing by reference to those drawings either from him or from the Council's Solicitors on his behalf.
- 4.3 The Works will be constructed in accordance with the Approved Documents and Satisfactory Permission subject to any Non-Material Changes and Material Changes allowed pursuant to this paragraph.
- 4.4 The Partner may make any Non-Material Change to the Works PROVIDED THAT the Partner shall (as soon as reasonably practicable and in any event within 20 Working Days) give written notice to the Council of any Non-Material Change it has made and provide full details thereof.
- 4.5 Subject to paragraph 4.6 and 4.7 the Partner may make a Material Change to the Works with the prior written approval of the Council (through the Steering Group) to be given in accordance with the following:-
- 4.5.1 if the Partner wishes to make any Material Change it will submit a written request with full details of the Material Change to the Council;
- 4.5.2 the matter will be discussed at the next following Steering Group meeting unless the Material Change is an urgent matter in which case the Partner may request that Council considers it without the requirement to convene a Steering Group meeting;
- 4.5.3 the Council may in its absolute discretion refuse approval to any Material Change of the type set out at paragraphs (b) or (e) of the definition of "**Material Change**"; and
- 4.5.4 the Council shall not unreasonably withhold or delay its consent to a Material Change of any other type.
- 4.6 Notwithstanding the provisions of this paragraph, a Material Change shall not require approval of the Council where such Material Change is required by the Satisfactory Planning Permission any statute or by any local or other competent authority (including but not limited to the planning authority) or the fire authority and if the Partner is required to make such a Material Change it will give prior written notice to the Council of the Material Change and provide full details thereof.

- 4.7 If any material plant or other pre-manufactured part or item specified in the Approved Documents cannot be obtained or if their delivery at the appropriate time or at reasonable cost cannot be guaranteed then the Partner may without any consent from the Council use such suitable alternative material, plant or other pre-manufactured part or item that the Partner can demonstrate to the Council's reasonable satisfaction shall not be of materially lesser quality appearance or performance.
- 4.8 Any Non-Material Change will form part of the Works and any varied or supplemental drawings showing such Non-Material Change shall form part of the Approved Drawings in each case from the date the Non-Material Change is made.
- 4.9 Any Material Change which the Council has approved or is permitted in accordance with paragraph 4.6 will form part of the Works and any varied or supplemental drawings showing such approved Material Change shall form part of the Approved Drawings from the date of the written approval.
- 4.10 If the parties are in dispute on any matter relating to a Non-Material Changes or a Material Change then the dispute will be referred for determination pursuant to Clause 33.
- 4.11 Subject to the FOIA Protocol (where applicable) the Partner shall on an Open Book basis share with the Council its calculations including any revised Financial Model and each Phase Appraisal demonstrating whether a Material Change would have the result of enhancing viability, land value and/or overage and all sums payable to the Council under this Agreement, the Phase Lease and/or the Overage Deed shall be adjusted accordingly.

## **5. AMENDED PLANS AND DOCUMENTS**

- 5.1 The Partner shall procure that all relevant documents in relation to the construction and development of the Council Facilities are provided to the Council prior to completion of the relevant Works including a complete set of operation and maintenance manuals including copies of all test certificates and commissioning reports, a schedule listing the names and addresses of the Contractor, the Sub-Contractors and principal suppliers who have been involved in the Development, and the building log information required by Part 2 of the Building Regulations.
- 5.2 The Partner shall procure that the Council is provided with a complete set of detailed "as built" specification and related drawings in respect of each relevant Phase in accordance with paragraph 1.1.3(v) of Part 3 of this Schedule.

## **6. DEVELOPMENT AND PHASING PROGRAMME & EXTENSIONS OF TIME**

The Partner will carry out and complete the Development in accordance with the Development and Phasing Programme as updated from time to time in accordance with this Agreement.

## **7. VARIATIONS**

- 7.1 If the Partner wishes to vary the extent or order of any Phase as shown on the Phase Plan or to vary the dates in the Development and Phasing Programme the Partner will seek the approval of the Steering Group to such variation, and will do so prior to the grant of any Lease insofar as possible. The Steering Group will not unreasonably withhold its approval where the variation sought does not prejudice or delay the Council's ability to rehouse any existing tenants or leaseholders at the Site that would be affected by the proposed variation.
- 7.2 The Development and Phasing Programme shall be varied with the Steering Group's consent (not to be unreasonably withheld or delayed):-
- 7.2.1 to reflect any extensions to any of the relevant dates for a Phase permitted in accordance with this Agreement; and
- 7.2.2 to take into account any extension of time granted to the Partner under Clauses 36.1 or 37.3.3 or Delay Events or Extension Periods.

7.3 Any other variations to the Development and Phasing Programme which may be requested by the Partner from time to time will be subject to the Council's written consent (not to be unreasonably withheld or delayed).

7.4 The Partner will be responsible for the proper and reasonable costs of the Council in dealing with any variation requested by the Partner to the extent of a Phase, including legal costs where such variation includes the surrender of part of a Lease and/or grant of any new Lease.

## 8. **INTERFACE WITH THE DEN CONTRACTOR**

8.1 In respect of the Phase on which the Energy Centre Shell is to be constructed and each subsequent Phase upon which Units shall be connected to the Energy Centre, the Partner shall use all reasonable endeavours to:-

8.1.1 ensure that the Building Contractor shall co-operate with the DEN Contractor in obtaining and providing information which is needed in connection with the supply, installation, testing and commissioning and connection of the Energy Centre, the Offsite Supply Network and/or the Private Wire Network;

8.1.2 ensure that the Building Contractor shall not cause any interruption or interference to the carrying out or progress of the works or services to be undertaken by the DEN Contractor;

8.1.3 provide the DEN Contractor with such access is reasonably required to the Site in order to carry out and progress the design, supply and installation of the Energy Centre, the Offsite Supply Network and/or the Private Wire Network); and

8.1.4 shall liaise and co-operate with the DEN Contractor in order to carry out the testing and commissioning process in accordance with the Master Heat Agreement.

## 9. **VALUE FOR MONEY**

9.1 The Partner shall procure that no more than [REDACTED] of all construction contracts for the Works are awarded to a Partner Group company.

9.2 In delivering all of the Works the Partner will comply with the Procurement Strategy.

9.3 The Partner will assist the Council in the appointment of an independent verification consultant who will be appointed by the Council at the Partners' cost.

9.4 The development manager and independent cost consultant appointed by the Partner will provide regular updates to the Steering Group in relation to the Procurement Strategy and how it is being implemented in practice.

9.5 The Partner will endeavour from time to time to ensure that the Procurement Strategy is aligned so far as possible with the Council's own procurement policies as notified to the Partner by the Council from time to time.

## 10. **COUNCIL REQUESTED MODIFICATIONS**

10.1 For the purposes of this paragraph "**Council's Requested Modifications**" means any changes requested by the Council (in its capacity as landowner only) additional to or in modification of the Replacement Homes Specification after that specification has been developed by the Partner and approved by the Council pursuant to this Agreement to RIBA Stage 3 (but for the avoidance of doubt "**Council's Requested Modifications**" shall not include any such changes requested before that stage is reached).

10.2 The Council may request the Partner to incorporate Council's Requested Modifications in the Replacement Homes Specification and if such request is made the Council and the Partner shall

co-operate and work together to incorporate the Council's Requested Modifications into the Council's Specification in a timely and cost efficient manner.

- 10.3 The Partner may reject a request for Council's Requested Modifications if, in the Partner's reasonable opinion:-
- 10.3.1 they would cause any material delay or disruption to the progress of the Works or any material delay in the issuing of the Certificate of Practical Completion for the relevant Works;
  - 10.3.2 they would detrimentally affect the character, quality or finish of the Works or the rental or investment value of the Phase;
  - 10.3.3 their execution would constitute a breach of Statutory Requirements;
  - 10.3.4 there is no reasonable prospect of obtaining the Necessary Consent(s) required for their execution; or
  - 10.3.5 accepting the Council's Requested Modifications would have a materially adverse impact on the Partner's proposals for estate management of the Phase in which the relevant Works are located.
- 10.4 The Council shall procure that the Council's Representative will provide the Partner with three copies of the request for Council's Requested Modifications. Such request shall incorporate all drawings, specifications and other information in sufficient detail to define the Council's requirements so as to enable the Partner to determine whether to approve such request.
- 10.5 If the Council shall request Council's Requested Modifications, the Partner shall as soon as reasonably practicable:-
- 10.5.1 inform the Council in writing whether the request for Council's Requested Modifications is approved in principle or objected to pursuant to paragraph 10.3 (specifying detailed reasons for the rejection); and
  - 10.5.2 (if it is approved) provide the Council with an indication of the reasonable and proper fees payable for investigating the cost and other implications of the proposed Council's Requested Modification on an Open Book basis and the time it will take to conclude such investigations (the "**Initial Estimate**").
- 10.6 Within 10 Working Days of receipt of the Initial Estimate the Council shall confirm in writing to the Partner whether it wishes the Partner to proceed with a full investigation of the costs and implications of the proposed Council's Requested Modification and if it does so confirm, the Partner shall within the time set out in the Initial Estimate:-
- 10.6.1 provide the Council with written details of the estimated cost of carrying out such Council's Requested Modifications (including all reasonable and proper professional fees and the estimated cost of obtaining any additional Necessary Consents) on an Open Book basis (with proper allowance being made for any cost savings attributable to the Council's Requested Modification); and
  - 10.6.2 confirm the anticipated effect (if any) on the timetable for the Works and a reasonable and proper estimate of any resulting extension required to the Phase Construction Longstop Date.
- 10.7 Within 10 Working Days after the Council receives the estimate referred to in paragraph 10.6.1, the Council's Representative shall confirm to the Partner in writing whether or not the Council wishes the Partner to proceed with such Council's Requested Modifications and if it does so confirm the Partner and the Council shall seek to agree (each acting reasonably) the details of the design of the Council's Requested Modification as soon as is practicable and within 10 Working Days of the



details being finalised the Partner will provide to the Council a revised estimate of the cost of carrying out such Council's Requested Modification on an Open Book Basis.

- 10.8 If the Council's Representative does not so reply within the 10 Working Day period referred to at either paragraph 10.6 or 10.7, or confirms during either period that the Council does not wish such Council's Requested Modifications to proceed, then the Council's request relating to such Council's Requested Modifications shall lapse and the Partner shall not give effect to it.
- 10.9 If the Council's Representative confirms to the Partner in writing within 10 Working Days from receipt of the revised estimate pursuant to paragraph 10.7 that the Council wishes the Partner to proceed with the Council's Requested Modifications, then the Council shall within 10 Working Days after such confirmation pay to the Partner the estimated cost as notified in accordance with paragraph 10.6.
- 10.10 If the Council's Representative does not so reply within such further 10 Working Day period, or confirms during that period that the Council does not wish such Council's Requested Modifications to proceed, then the Council's request relating to such Council's Requested Modifications shall lapse and the Partner shall not give effect to it.
- 10.11 Where the Partner has approved a request for Council's Requested Modifications and has received the payment referred to in paragraph 10.9 from the Council, then the Council's Requested Modifications shall be incorporated into the Replacement House Specification.
- 10.12 The provisions of Schedule 3 shall apply to Council's Requested Modifications incorporated within the Replacement Homes Specification as they do to the other Council Facilities.

## **PART 3**

### **COMPLETION OF THE COUNCIL FACILITIES**

#### **1. CERTIFICATES OF PRACTICAL COMPLETION**

##### **1.1 The Partner will procure that:-**

- 1.1.1 the Independent Certifier shall give the Council's Representative not less than 10 Working Days prior written notice of each date upon which it intends to inspect any relevant Works in relation to the Council Facilities for the purpose of issuing a Certificate of Practical Completion;
- 1.1.2 the Council's Representative may accompany the Independent Certifier on each such inspection;
- 1.1.3 the Partner shall use all reasonable endeavours to procure that the Independent Certifier be aware of and take account of:-
  - (a) the Council's requirement to receive the following in relation to any Council Facilities as a precondition of the issue of the Certificate of Practical Completion:-
    - (i) evidence of Building Control approvals and confirmation of Fire Officer approvals;
    - (ii) evidence of compliance with all relevant planning conditions and/or approval of reserved matters;
    - (iii) meter readings for heat, electricity and water;
    - (iv) three complete sets of all keys to the relevant premises;
    - (v) two sets of draft "as built" architect's and engineer's drawings for the relevant premises (with the final drawings to follow within 60 Working Days of issue);
    - (vi) copies of all relevant product guarantees and warranties;
    - (vii) health and safety file and occupiers manual in relation thereto;
    - (viii) copies of Energy Performance Certificates for the relevant premises;
    - (ix) the compliance reports for Home Quality Mark and BREEAM;
    - (x) copies of test certificates for mechanical and electrical installations and for all relevant drainage; and
    - (xi) (in respect of the Energy Centre Shell) any specific requirements set out in the Energy Centre Shell and Core Specification and/or any relevant requirements agreed between the Parties under the Master Heat Agreement,
  - (b) any representations properly made by the Council as to whether or not a Certificate of Practical Completion in relation to the Council Facilities should be issued or as to what qualifications should be made to such certificate when it is issued.

1.2 If the Independent Certifier shall not consider it appropriate to issue a Certificate of Practical Completion in relation to the Council Facilities the Partner will:-

1.2.1 procure that such further works as are necessary in order to enable the Independent Certifier to issue a Certificate of Practical Completion are carried out with all reasonable speed; and

1.2.2 procure that the Independent Certifier shall give the Council not less than five Working Days prior written notice to the effect that the Independent Certifier intends to re-inspect with a view to issuing a Certificate of Practical Completion in relation to the Council Facilities,

and thereupon all the foregoing provisions of this paragraph 1 shall apply (*mutatis mutandis*).

1.3 Nothing in this Agreement shall prevent or fetter the Independent Certifier from issuing a Certificate of Practical Completion in relation to the Council Facilities when they in their professional opinion consider it proper to do so nor shall the Independent Certifier be obliged to delay the issue of a Certificate of Practical Completion if any items found outstanding at an inspection are properly the subject of a snagging list and do not prevent the beneficial occupation of those parts of the Works in respect of which a Certificate of Practical Completion is to be issued.

1.4 The Partner shall instruct the Independent Certifier to provide a copy of the Certificate of Practical Completion relating to the Council Facilities to the Council as soon as reasonably practicable following the date of its issue.

## 2. DEFECTS LIABILITY PERIOD

2.1 The Partner will use all reasonable endeavours to procure that all defects in the Council Facilities are remedied as soon as reasonably practicable following Practical Completion and in any event during the Defects Liability Period.

2.2 In relation to the Council Facilities:-

2.2.1 during the Defects Liability Period the Independent Certifier and/or the Council and/or the Council's Representative may report defects to the Partner directly by email at the email address specified for this purpose from time to time. The following defects classified as emergency defects may be notified to the Partner initially by telephone. All such defects will be recorded on an emailed Defects Order:-

(a) **"Emergency Defects"** shall comprise gas leaks, dangerous electrical installations, total loss of heating, lighting, water, and/or power supplies; lift operation failure; or serious water leak which may cause substantial damage; or any other prevailing situation which may endanger residents and/or members of the public; such defects to be acknowledged and responded to by the Partner promptly and repaired within 24 hours;

(b) **"Urgent Defects"** shall comprise partial loss of electrical power, toilet facilities or water supplies; or faulty communal aerial systems; such defects to be acknowledged and responded to by the Partner within two calendar days of their notification and repaired by the end of the third calendar day;

(c) **"Priority Defects"** shall comprise minor leaks, faulty power points or electrical fans etc; to be acknowledged and responded to by the Partner within five days of their notification and repaired by the end of the seventh calendar day;

(d) **"Normal Works"** shall comprise works such as easing of internal doors and windows; minor cracks of decorative nature in walls, etc to be completed within 28 days of notification unless it is agreed in writing by the Partner that they can be left until the end of the Defects Liability Period;

2.2.2 In relation to any "**Emergency Defects**", "**Urgent Defects**", "**Priority Defects**" or "**Normal Works**" the Partner must acknowledge notification promptly. If the Partner fails to make good a relevant defect within the time period set out in paragraph 2.2 above the Council shall be entitled to appoint its own contractors to carry out the work required to make such defect good and the Partner will reimburse to the Council all costs so incurred.

2.3 The Partner shall use reasonable endeavours to procure that access to the Council Facilities for the purposes of making good defects will cause as little inconvenience to the Council and its authorised occupiers and as little damage to any premises comprised within the relevant Council Facilities as in each case is reasonably practicable and that any damage caused to such premises by such access shall be made good as soon as is reasonably practicable.

2.4 When the Independent Certifier is satisfied that all defects have been made good in accordance with the provisions of this paragraph, then it shall issue a certificate confirming such and all defects shall be deemed to have been made good for the purposes of this Agreement.

### 3. **POST PRACTICAL COMPLETION MATTERS**

Notwithstanding that any Certificate of Practical Completion may have been issued in respect of the Council Facilities, the Partner shall use all reasonable endeavours to enforce the provisions of the relevant Building Contract in relation to the carrying out and completion of the matters referred to in limbs (a) and (b) of the proviso to the definition of "**Certificate of Practical Completion**" in this Agreement with due diligence and without undue delay.

## **PART 4**

### **OTHER OBLIGATIONS**

#### **1. INSURANCE**

- 1.1 From the relevant Lease Completion Date (save where a Lease Back has been granted) the Partner will insure the Works comprised within that Phase in an amount not less than the full reinstatement cost from time to time of the Works (including professional fees and Value Added Tax where applicable) against the Insured Risks under an "all Risks" policy.
- 1.2 From the relevant Lease Completion Date the Partner will maintain employers' liability insurance, professional indemnity insurance and public liability insurance in an appropriate sum (from time to time) as agreed with the Council (acting reasonably) in respect of the Site and the Works. The Partner will ensure that the Council is identified as co-insured in respect of the policy of public liability insurance.
- 1.3 The Partner will:-
  - 1.3.1 pay or cause to be paid, all premiums and other monies necessary for effecting such insurance;
  - 1.3.2 at the request of the Council supply to the Council a copy of the insurance policies maintained under this paragraph 1 and satisfactory evidence of payment of premiums;
  - 1.3.3 not do, or permit to be done, upon the Site anything which may render the policy or policies of insurance void or voidable; and
  - 1.3.4 indemnify the Council (notwithstanding any supervision or approval of the Council or any person acting on behalf of the Council) and insure in an insurance office approved by the Council (such approval not to be unreasonably withheld or delayed) in the sum of £10,000,000) against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever caused to any person or to any property real or personal in so far as such injury or damage arises out of, or in the course of, or by reason of, the negligent execution of the Development except to the extent that the same is due to any act or neglect of the Council or any party for whom the Council is responsible.
- 1.4 The Partner shall apply all monies paid out in relation to claims received as soon as practicably to the matters in respect of which they are paid out. If the monies received are insufficient to make good the loss or damage caused or claimed the Partner will make up any deficiency from its own monies.

#### **2. DEFECTS INSURANCE**

- 2.1 The Partner must build every Residential Unit so as to comply with the requirements of the National House Building Council (or any successor organisation) (NHBC) or such other suitable insurer as the Council may (acting reasonably) approve from time to time and so as to qualify for the insurance cover provided by it which the Partner must obtain.
- 2.2 The Partner shall do all that is necessary to ensure that every first purchaser of a Residential Unit obtains the benefit of the insurance cover provided by NHBC or such other suitable insurer as the Council may (acting reasonably) approve from time to time.

#### **3. LANDSCAPING WORKS**

In the event that the Partner shall fail to carry out the landscaping works in accordance with the relevant Planning Permission and fails to carry out such works within 20 Working Days of being asked to do so by the Council (acting reasonably and taking into account the season in question) the Council shall be entitled to enter upon the Site (including any land then disposed of) to carry out

the landscaping works in accordance with the Approved Documents and the Partner shall be liable to the Council for the reasonably and properly incurred cost of such works.

#### **4. SEWERS, DRAINS AND OTHER CONDUITS**

Subject to the Satisfactory Planning Permission during the construction of the Development the Partner will use all reasonable endeavours to:-

- 4.1 lay out and construct to the satisfaction of the Council proper and sufficient branch and connecting sewers, drains, shafts, traps, gullies and gratings and to drain such branch and connecting sewers and drains into public sewers;
- 4.2 liaise with the Council in connection with the overall programming for the provision of services and comply with all reasonable instructions issued by it to ensure the smooth progress of the Development;
- 4.3 protect all pipes, ducts, cables and statutory undertakers' apparatus against damage as a result of carrying out the works;
- 4.4 take all necessary precautions to ensure the protection of all streams, waterways, surface water, sewers and drains against pollution as a result of carrying out the works and any temporary diversions of existing streams, waterways, sewers or other works must be carried out so as not to reduce the capacity of that stream, waterway, sewer or other works and to the satisfaction of the Council;
- 4.5 ensure that any shared Service Media are not blocked and that any connection to a shared Service Media is effected with the approval of the Council or, where appropriate, the relevant statutory undertaker; and
- 4.6 maintain all sewers, drains, pipes, ducts, cables and other conduits constructed by the Partner until adoption by the relevant statutory undertaker (or transfer to a management company).

#### **5. HEALTH AND SAFETY**

- 5.1 The Partner shall at all times comply with all obligations, requirements and duties arising under Health and Safety legislation in connection with the works comprising the Development.
- 5.2 The Partner shall at all times procure the compliance with all obligations, requirements and duties arising under Health and Safety legislation by any party appointed by the Partner in connection with the works comprising the Development or allowed on the Site.
- 5.3 The Partner shall notify the Council's Representative immediately on the occurrence of any of the following events which arise out of or in connection with the Development:-
  - 5.3.1 a fatal accident to any worker or a member of the public;
  - 5.3.2 any injury to a member of the public requiring reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time) ("RIDDOR");
  - 5.3.3 any dangerous occurrence, as defined by RIDDOR;
  - 5.3.4 the service of any improvement or prohibition notice under the Health & Safety at Work etc Act 1974;
  - 5.3.5 any incident having health & safety implications which attracts the attention of the police and/or the media; and

5.3.6 the commencement of any criminal prosecution under the Health & Safety at Work etc. Act 1974.

5.4 The Partner shall provide to the Council on a quarterly basis a Health and Safety Report containing the information relating to health and safety performance and as a minimum such report will contain the following information:-

5.4.1 accident incidence rates per 100,000 workers ("**AIR**") involved in the works associated with the Development, listing by month and rolling annual frequency rate for the lifetime of the works comprising the Development:-

- (a) accidents resulting in greater than three days lost time;
- (b) major injuries;
- (c) fatalities;
- (d) reportable diseases,
- (e) all as defined by RIDDOR, in accordance with the formula:-

$$\text{AIR} = (A / N) \times 100,000$$

where:-

A = the number of accidents or incidents of the defined type during the period;

N = the average number of workers on the Site during the period;

5.4.2 reportable injuries to members of the public;

5.4.3 a listing in respect of the works comprising the Development by month, and the rolling annual rate, showing the number of:-

- (a) days lost due to accidents occurring on the Site or ill-health incurred by workers directly from the said works on the Site;
- (b) dangerous occurrences as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time); and
- (c) enforcement notices served by the regulatory authorities served by the Health & Safety Executive,

5.4.4 a summary in respect of the works comprising the Development of:-

- (a) all accident investigations carried out in the relevant quarterly period;
- (b) all actions taken to rectify any identified health and safety deficiencies;
- (c) all initiatives to improve health and safety undertaken in the period (eg site inspections, tool box talks etc); and
- (d) all visits by the Health & Safety Executive, the Police or the Environment Council to the Site undertaken in the relevant quarterly period.

## 6. **WORKS UNDER STATUTORY AGREEMENTS TO BE ADOPTED**

6.1 In relation to the Works under Statutory Agreements which following their completion the Council and Partner agree will be adopted following their completion the Partner will use all reasonable

endeavours to enter into as soon as reasonably practicable and comply with the provisions of any Statutory Agreements.

6.2 The Council agrees to use reasonable endeavours to ensure that its technical team acts expeditiously in addressing correspondence from the Partner in relation to adoption matters.

6.3 The Partner will on completion of Works under Statutory Agreements:-

6.3.1 notify the relevant authority as soon as practicable after the relevant Works have been carried out;

6.3.2 request the relevant authority to issue the provisional certificate of completion under the relevant Statutory Agreement so as to enable the maintenance period thereunder to commence;

6.3.3 carry out any further works as shall be necessary during the relevant maintenance period; and

6.3.4 on expiry of the maintenance period request the relevant authority to issue the final completion certificate under the Statutory Agreement and to confirm that the relevant facility is adopted.

## **7. CDM REGULATIONS**

### **7.1 Client under CDM**

The Partner assumes the role as the client and will comply with its duties as client under the CDM Regulations. The Partner will take reasonable steps to procure the compliance by the Principal Contractor and by the Principal Designer with the CDM Regulations.

### **7.2 Partner's Responsibility**

For the purposes of the CDM Regulations in relation to the Works:-

7.2.1 the Partner will, where required, appoint or procure the appointment of a Principal Designer;

7.2.2 the Partner will procure that the Building Contractor assumes the role of Principal Contractor;

7.2.3 insofar as the Partner is to take reasonable steps to ensure that any party complies with their duties arising under the CDM Regulations, the Partner shall ensure or require at all times:-

(a) the competence of any such party so to observe, perform or discharge the said obligations, requirements and duties;

(b) that any such party is made fully aware of its obligations under the CDM Regulations; and

(c) that any such party allocates adequate resources to comply with the requirements and prohibitions imposed by or under the CDM Regulations.

### **7.3 Access to File and Plan**

The Partner will procure that at all reasonable times the Council or its authorised representative is allowed access to the CDM Health and Safety File and the CDM Construction Phase Plan relating to any of the Works.



#### 7.4 **Asbestos**

Without prejudice to the generality of the Partner's obligations under this Agreement and of the duties imposed upon the Partner by any Statutory Requirement in relation to asbestos:-

- 7.4.1 the Partner will observe, perform and discharge all obligations, requirements and duties arising under any Statutory Requirement relating to the removal, disposal, management, containment or otherwise dealing with asbestos in connection with the Works ("**Asbestos Controls**"); and
- 7.4.2 the Partner will use reasonable endeavours to procure observance, performance and discharge of all obligations, requirements and duties arising under the Asbestos Controls by any and all parties, contractors or sub-contractors appointed by the Partner in connection with the Works.

#### 7.5 **Partner's Indemnity**

The Partner will indemnify the Council in respect of any of the following matters arising directly or indirectly in relation to the Works the Site or any operations on the Site:-

- 7.5.1 the death of injury to or accident to any persons;
- 7.5.2 the damage to or loss of any third party property;
- 7.5.3 any breach of the statutory consents or statutory requirements;
- 7.5.4 the infringement of the rights of any third party caused by the carrying out of the Development;
- 7.5.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Development; and
- 7.5.6 any fine or penalty,

subject to the Council having taken all reasonable steps within its control to mitigate the impact of the above matters.

#### 8. **BOUNDARY FENCES**

- 8.1 Before the relevant Phase Commencement Date, the Partner must erect along all boundaries of the relevant Phase fences and hoardings, being not less than 2 metres in height and being in accordance with the Health and Safety Executive's, or other competent body's, recommendations, and shall maintain the same in position and good repair throughout the Development.
- 8.2 If the Partner shall commence work on the Development without first having erected all fences required under paragraph 8.1 then the Council shall have the right without notice to enter upon the Site in order to erect any such fences along the boundaries of the Phase (including the right to take down and erect any fences erected by the Partner in an incorrect position, whether on the Site or on adjoining land) and the cost of all such works undertaken by the Council (including any works of reinstatement to adjoining land) shall be paid by the Partner to the Council on demand.
- 8.3 Subject to the Business Plan the Partner shall share advertising rights and revenue in relation to all fences and hoardings equally with the Council and without prejudice to the generality of the foregoing the Council shall be entitled to require that its logos and other publicity and marketing material is placed along such fencing and hoardings at intervals and in locations agreed by the parties acting reasonably.

9. **SITE ACCESS**

- 9.1 Access for third parties will be maintained by the Partner as properly and reasonably required by the Council.
- 9.2 Where an alternative access route is not available the Partner shall maintain access at all times and for all purposes for the general public through any Phases upon which the Development is being carried out along routes approved by the Council acting reasonably.

10. **SECURITY**

The Partner will procure that:-

- 10.1 from the relevant Lease Completion Date each Phase will be at all times secured as fully as may reasonably be practicable against unauthorised entry; and
- 10.2 the Site is kept tidy and properly cleared of surplus materials, rubble, rubbish or waste and no goods or materials be deposited or stored on the Site which are not required within a reasonable time for the carrying out the Works.

11. **GENERAL**

- 11.1 Proper provision will be made for the support and use of any land, walls, roads, footpaths upon, adjacent or near to a Phase which are affected by the Works.
- 11.2 All necessary skip permits and scaffold licences will be obtained and complied with by the Partner.
- 11.3 All noise, vibration, dust, mud and disturbance will be kept as low a level as practicable and a Phase will be kept in good order and in a clean tidy and safe condition and all refuse will be regularly removed from a Phase.
- 11.4 Where appropriate there will be installed within a Phase and maintained in good working order proper and effective wheel washing facilities and (if appropriate) they will be used on all vehicles before they leave a Phase.
- 11.5 All mud, refuse and other debris emanating from a Phase which is deposited on any roads footpaths or other land or premises outside the Phase will be removed as often as Council reasonably requests.
- 11.6 The Works will be carried out in such a way that as little damage as possible is caused to any roads, footpaths, service media, street furniture, land buildings or other structures adjoining or neighbouring a Phase or the Site and to forthwith make good any damage caused to the Council's reasonable satisfaction.
- 11.7 To procure that during the carrying out of the Works vehicular and pedestrian access shall be maintained (insofar as is reasonably practicable or as necessary to avoid any legal liability on the part of the Council) to the rear of all neighbouring and adjacent service or loading areas and to cause the minimum disruption and inconvenience reasonably practicable to the owners and occupiers of such areas and premises.
- 11.8 There will be put in place and observed appropriate health and safety measures and arrangements to protect the health and safety of (and use all reasonable endeavours to avoid or mitigate any nuisance disturbance or danger to) the Council its workmen or licensees or to the owners or occupiers of any land or buildings adjoining or neighbouring a Phase or the Site or to members of the public.
- 11.9 The Works will be carried out in such a way as to:-
- 11.9.1 minimise damage disruption or inconvenience to the users of any affected car parks or car parking areas, play spaces and/or local schools their pupils and staff; and

11.9.2 ensure the continuity of play facilities made available for public use at the Site.

- 11.10 To the extent that any Infrastructure constructed within the Works constitutes Major Infrastructure the Partner shall use all reasonable endeavours to procure that such Infrastructure is constructed in such a way as to facilitate its connection to the Remaining Development to the intent that no part of the Remaining Development shall be landlocked in terms of either the provision of access or services to those Remaining Development following practical completion.

## **12. SOCIO ECONOMIC AND SKILLS STRATEGY**

### **12.1 Overview**

Socio Economic and Skills Strategy will set out the process by which the Partner can ensure that skills development and social and economic opportunities such as skills training and employment opportunities and social initiatives are integrated within the Development. This is achieved by the implementation and observation of the Socio Economic and Skills Strategy.

### **12.2 Obligations**

- 12.2.1 Prior to the commencement date for the Phase Works in relation to Phase 1 the Partner shall provide the Council through the Steering Group with contact details of its nominated representative responsible for liaising with the Council's Representative in respect of the Socio Economic Commitments.
- 12.2.2 The Partner shall provide to each Steering Group meeting a report (in a format to be agreed through Steering Group) outlining the achievements during the previous quarter against the Socio Economic Commitments and the Socio Economic and Skills Strategy and will provide details of the various employment and skills activities delivered in the previous quarter.
- 12.2.3 The Council's Representative shall be responsible for monitoring compliance with and implementation of the Socio Economic Skills Strategy and such monitoring shall form part of the Council's assessment of the Partner's compliance with the Socio Economic Commitments.
- 12.2.4 The Partner shall provide written confirmation and such evidence as the Council may reasonably require that the Socio Economic Commitments have been achieved in respect of the Development.
- 12.2.5 The Partner and the Council's Representative shall attend a meeting (to be convened by the Council's Representative) on the Construction Completion Date in relation to each Phase (or final part thereof) to review the completed Development and the Partner's performance against the Socio Economic Commitments and its compliance and implementation of the Socio Economic and Skills Strategy and to consider the scope for further improvement on future Phases.
- 12.2.6 Any and all costs relating to the compliance and implementation of the Socio Economic and Skills Strategy will be the responsibility of the Partner.

## **SCHEDULE 4**

### **LICENCE TO ENTER**

1. This Licence to Enter is exercisable by the Partner its contractors, consultants, sub-contractors and all those expressly authorised by the Partner.
2. Those exercising this Licence to Enter may enter onto unbuilt-on and unoccupied parts of a Phase with or without vehicles, workmen, plant, machinery and equipment for the purpose of:-
  - 2.1 carrying out site investigations and surveys;
  - 2.2 carrying out demolition works to existing buildings;
  - 2.3 erecting hoardings and securing the relevant land;
  - 2.4 erecting and maintaining site compounds; and/or
  - 2.5 as otherwise envisaged by Clause 20 of this Agreement.
3. The Partner acknowledges that all materials goods, plant, machinery, equipment and other items belonging to the Partner or its servants, agents or contractors will be at the sole risk and responsibility of the Partner and that the Council has no responsibility therefor and that the Council has no responsibility for servants, agents and contractors of the Partner.
4. In carrying out the Works the Partner will comply with and procure that those exercising this Licence to Enter will comply insofar as applicable with the provisions of Part 3 of Schedule 3, and the information provided to the Council pursuant to Clause 20.2.
5. In exercising this Licence to Enter in relation to the Love Lane Estate the Partner shall obtain the Council's prior written approval of:-
  - 5.1 the date and time of entry;
  - 5.2 a method statement in relation to the Partner's proposed activities; and
  - 5.3 the location of any boreholes
6. This Licence to Enter does not create any demise.
- 6.1 The Partner shall indemnify and keep indemnified the Council from and against all loss costs claims demands expenses actions proceedings damages and liabilities whatsoever arising as a result of the carrying out of the Works in this exercise of the rights under this Licence to Enter:-
  - 6.1.1 in respect of any injury to or death of any person resulting from any act or default of those exercising the Licence to Enter or any of their respective servants agents and sub-contractors; and
  - 6.1.2 in respect of any loss of or damage to any real or personal property (including without limitation any land and buildings roads footpaths service media and street furniture).
7. The Licence to Enter shall be terminable by the Council with immediate effect if the Partner or those authorised by it are in breach of any of the obligations in this Schedule and in any event shall terminate when the relevant works for which purpose the Licence to Enter has been granted, have been completed in accordance with this Agreement.
8. The Licence is subject to all rights easements restrictions subsisting highway rights and other matters whatsoever affecting the land the subject of the Licence to Enter.

9. The Partner shall be responsible for the payment of all existing and future rates taxes duties levies charges assessments impositions and other outgoings whatsoever which are assessed charged or imposed in respect of the land subject to the Licence to Enter and/or the Works and shall indemnify and keep indemnified the Council and its servants agents visitors and invitees from and against all loss damage actions costs claims demands expenses and liability of whatsoever nature which may arise in connection with these responsibilities.

## SCHEDULE 5

### GUARANTOR'S COVENANTS

1. In consideration of the Council entering into this Agreement the Guarantor:-
  - 1.1 guarantees to and covenants with the Council irrevocably and unconditionally as a continuing security that the Partner will perform and observe the obligations on the Partner's part contained in this Agreement (the "**Partner's Obligations**") and agrees that if the Partner shall in any respect fail to perform any of its obligations (including, but without limiting the generality of the foregoing, the payment of monies) arising under this Agreement that the Guarantor will, within 10 Business Days of receipt of a written demand from the Council which outlines in reasonable detail any default of the Partner and the amount of money or performance demanded, perform and fulfil or procure to be performed or fulfilled in place of the Partner each and every one of the Partner's Obligations in respect of which the Partner has defaulted or as may be unfulfilled by the Partner;
  - 1.2 as a separate and independent obligation irrevocably and unconditionally as a continuing security undertakes to indemnify the Council from and against all losses, damages, costs and expenses arising out of any default in performance of the Partner's Obligations (whether arising under a court order or judgment or as a result of any determination or Agreement);
  - 1.3 agrees that any sum payable to the Council must be paid without any deduction, set-off or counterclaim (other than any deduction, set-off or counterclaim available to the Partner under this Agreement);
  - 1.4 acknowledges that the Guarantor is:-
    - 1.4.1 a principal debtor or guarantor for all of the Partner's Obligations between the Council and the Guarantor, even if as between the Partner and the Guarantor, the Guarantor may only be a surety for the Partner;
    - 1.4.2 not released and this guarantee is not prejudiced by:-
      - (a) any time or indulgence given to the Partner;
      - (b) any variation or arrangement or alteration of terms being made or agreed with the Partner;
      - (c) any lack of or limitation on the powers of the Partner;
      - (d) the absence of authority of any person purporting to represent or act on behalf of the Partner;
      - (e) any act, omission, or thing whatsoever whereby the Guarantor might be released or as a result of which the Partner's Obligations may not be enforceable against the Partner; and
      - (f) the liquidation administration or other insolvency of or any change in the constitution of the Partner or the Guarantor; and
    - 1.4.3 until all amounts which become or may become payable by the Partner under this Agreement have been paid, not entitled to prove in any insolvency of the Partner in priority to the Council;
  - 1.5 if the Guarantor becomes Insolvent:-
    - 1.5.1 the Partner shall immediately notify the Council;

- 1.5.2 the Council may require the Partner to provide a guarantor reasonably acceptable to the Council to guarantee the Partner's Obligations in place of the Guarantor which alternative guarantor shall be provided;
  - 1.5.3 any substitute guarantor must covenant with the Council in the same terms as in this Agreement; and
  - 1.5.4 the Partner will pay the Council's reasonable and proper fees and costs in connection with any such substitution,
- 1.6 the Guarantor shall procure that the Partner remains at all times part of the Partner Group (SAVE IN THE CASE OF A Change of Ownership that relates to a change in the legal or beneficial ownership of any shares in a company that is listed on a Recognised Investment Exchange as defined in section 285 of the Financial Services and Marketing Act 2000) and for the avoidance of doubt the Guarantor shall not agree to any Change of Ownership of the Partner so that the Partner ceases to be part of the Partner's Group without the prior written consent of the Council having been obtained by the Partner pursuant to Clause 40.5.
2. The Guarantor confirms that it is in its own commercial interest to enter this Agreement as Guarantor and that it is not aware that by doing so it is prejudicing any of its creditors.
3. Notwithstanding any other provision of this Agreement, the liability of the Guarantor to the Council under or in connection with this Agreement (whether that liability arises under a specific provision of this Agreement, for breach of contract, negligence or otherwise) is no greater than the liability of the Partner to the Council under or in connection with this Agreement.

## **SCHEDULE 6**

### **MINIMUM REQUIREMENTS**

The Partner shall ensure that the forms of collateral warranty and/or third party rights procured and provided pursuant to this Agreement are executed as a deed and in all cases enure for 12 years and shall contain, as a minimum, provisions whereby the party providing the collateral warranty/third party rights:-

1. warrants that it has complied with and will continue to comply with its obligations under its, professional appointment or Building Contract or Sub Contract, as the case may be the copy of the relevant appointment, Building Contract or Subcontract having been provided to the Council;
2. warrants that in discharging its obligations and duties under its professional appointment or Building Contract or Sub Contract, as the case may be, it has exercised and will continue to exercise all reasonable skill, care and diligence;
3. warrants that it has used and will continue to use all reasonable skill, care and diligence not to specify or use in relation to the Development, any materials that by their nature or application contravene any British standard or EU equivalent or are generally considered to be deleterious within the warranting party's profession in the UK, in the particular circumstances in which they are specified for use, to health and safety and or the durability of the Development;
4. warrants that where the warranting party has responsibility for any design, that it maintains and will continue to maintain professional indemnity insurance or, where the warranting party has no design responsibility, that it maintains and will continue to maintain product liability insurance, in either case, at a minimum level of £5 million and on an each and every claim basis and at all times until 12 years after the completion of the Development provided such insurance is available on commercially reasonable rates and terms. If for any period such insurance is not available on commercially reasonable rates and terms, the warranting party will inform the beneficiary of the collateral warranty and will obtain such reduced cover as is available and as would be fair and reasonable in the circumstances. If requested to do so, the warranting party will provide documentary evidence that the required insurance is in place; and
5. agrees to step in rights in favour of the beneficiary where the beneficiary is either the Council, a funder or a purchaser of the whole or a part of the Development to the effect that:-
  - 5.1 the warranting party will not terminate or treat as terminated, its professional appointment or Building Contract or Sub Contract as the case may be, without having first notified the beneficiary of the collateral warranty that it intends to do so and affording the beneficiary 21 days within which to determine whether or not the beneficiary wants to step in and take the place of the warranting party's employer under its professional appointment or Building Contract or Sub Contract as the case may be; and
  - 5.2 in the event that the Development Agreement or Building Contract, as the case may be, is terminated, the beneficiary has 21 days within which to determine whether or not the beneficiary wants to step in and take the place of the warranting party's employer under its professional appointment or Building Contract or Sub Contract as the case may be.



## SCHEDULE 7

### DATES

<b>Determination</b>	<b>Phase 1A Date</b>
<b>Planning Submission Target Date</b> (Clause 6.4)	31 October 2021
<b>Planning Submission Longstop Date</b> (Clause 37.1)	1 October 2022
<b>Planning Submission Drop Dead Date</b> (Clause 37.1)	30 June 2023
<b>Site Wide Condition Target Date</b> (Clauses 6.5.1 and 9.3.3)	31 March 2024
<b>Site Wide Condition Longstop Date</b> (Clauses 6.6.1, 9.3.3 and 37.2.1)	The later of: 1 May 2024 and 13 months from and including the date of satisfaction of the Strategy Condition
<b>Site Wide Condition Drop Dead Date</b> (Clauses 9.3.3 and 37.2)	1 June 2025
<b>Phase Condition Target Date</b> (Clause 9.3.3)	31 May 2024
<b>Phase Condition Longstop Date</b> (Clauses 9.3.3 and 37.3.1)	The later of: 1 December 2025; and 38 months from and including the date of satisfaction of the Strategy Condition
<b>Phase Condition Drop Dead Date</b> (Clauses 9.3.3 and 37.3.1)	1 December 2026
<b>Phase Construction Target Date</b>  (Para 1.1 Part 2 Schedule 3)	1 December 2025
<b>Phase Construction Longstop Date</b>  (Para 1.2 Part 2 Schedule 3)	1 December 2029
<b>Phase Construction Drop</b>	1 December 2030

Determination	Phase 1A Date
Dead Date (Clause 37.3.1)	

## SCHEDULE 8

### STRATEGY HEADINGS

1. **Stakeholder and Resident Engagement Strategy**
  - 1.1 Purpose
  - 1.2 Stakeholders
  - 1.3 Principles of Engagement
  - 1.4 Objectives
  - 1.5 Council commitments, Council policy and statutory requirements
  - 1.6 Mechanisms for engagement
  - 1.7 Programme
    - 1.7.1 Programme of High Road West engagement activity
    - 1.7.2 Alignment with wider engagement activity
  - 1.8 Resources
  - 1.9 Roles and responsibilities
  - 1.10 Governance
2. **Socio Economic and Skills Strategy**
  - 2.1 Purpose
  - 2.2 Socio-economic context
  - 2.3 Strategic aims
  - 2.4 Projects, Programmes & Initiatives
  - 2.5 KPIs & On-going Measurement
  - 2.6 Alignment with wider Socio-Economic Investment
  - 2.7 Resources
  - 2.8 Roles and responsibilities
  - 2.9 Governance
3. **Vacant Possession Strategy**
  - 3.1 Purpose
  - 3.2 Alignment with CPOIA and DA
  - 3.3 Council commitments, Council policy and statutory requirements
  - 3.4 Phasing plan and development programme

- 3.5 Principles for securing vacant possession
  - 3.5.1 Engagement and negotiation
  - 3.5.2 Statutory processes
- 3.6 Resources
- 3.7 Roles and Responsibilities
- 3.8 Governance
- 4. **Design Code**
  - 4.1 Purpose
  - 4.2 How to use the Design Code
  - 4.3 Built Form and Character
    - 4.3.1 Criteria by land use
    - 4.3.2 Massing and grain
    - 4.3.3 Tall buildings
    - 4.3.4 Articulation of corners
    - 4.3.5 Entrances and signage
    - 4.3.6 Roofscapes
    - 4.3.7 Building lines
    - 4.3.8 Frontages
    - 4.3.9 Façades & materials
  - 4.4 Public Realm
    - 4.4.1 Integration of street furniture
    - 4.4.2 Lighting
    - 4.4.3 Paving and footways
    - 4.4.4 Wayfinding
    - 4.4.5 Materials
    - 4.4.6 Soft landscape and trees
    - 4.4.7 Water management
  - 4.5 Key Places
    - 4.5.1 Character areas (e.g. Moselle Square)
    - 4.5.2 Tall buildings (e.g. Library Tower)

- 4.5.3 Heritage assets (e.g. the Grange Community Centre)
- 4.5.4 Roles and responsibilities
- 4.5.5 Governance

## 5. **Marketing and Letting Strategy**

- 5.1 Purpose
- 5.2 Resource
- 5.3 Roles and responsibilities
- 5.4 Governance
- 5.5 Residential Properties
  - 5.5.1 Commitment to Mayoral Concordat
  - 5.5.2 Alignment with Council's housing policy approach and commitments to prioritisation of local residents
  - 5.5.3 Approach to maximisation of owner occupiers ahead of the wider market
  - 5.5.4 Approach and commitments to bulk sales to third parties
  - 5.5.5 Marketing approach
    - (a) Evidence and rationale to target market (for all tenures)
    - (b) Marketing channels for all tenures
    - (c) Location, accessibility and resourcing of sales suite
    - (d) Target sales pricing (incl. ground rents) and programme
    - (e) Approach to agreeing sales incentives
  - 5.5.6 Branding approach
- 5.6 Commercial Properties
  - 5.6.1 Commitment to Council's strategic priorities:
    - (a) Council's vision for the area, including placeshaping and economic health of the town centre
    - (b) Approach to developing a Local Centre that meets local community needs and which supports the hierarchy of town centres in the region
    - (c) Approach to supporting local business and employment growth, including access to and promotion of meanwhile space
    - (d) Approach to promoting a leisure-oriented centre, including day and evening economies, as well as arts and cultural activities

5.6.2 Marketing approach:

- (a) Evidence and rationale behind target market (all uses)
- (b) Approach and commitments to marketing opportunities to existing local/Haringey businesses
- (c) Marketing channels including use of creative media
- (d) Approach to affordable work space, including pricing, marketing and letting channels

5.7 Approach to promoting compatibility:

5.7.1 Between uses

5.7.2 Between uses and adjoining

5.7.3 Between uses and transport nodes

6. **Resident Relhousing Strategy**

6.1 Purpose

6.2 Residents effected by High Road West

6.2.1 Love Lane Secure Council tenants

6.2.2 Resident leaseholders

6.2.3 Non Resident leaseholders

6.2.4 Temporary Accommodation Tenants

6.2.5 Housing Association Tenants

6.2.6 Private Tenants

6.3 Council commitments, Council policy and statutory requirements

6.3.1 The Love Lane Resident Charter

6.3.2 The Love Lane Secure Tenant Guide

6.3.3 The Love Lane Leasehold Offer

6.3.4 The Estate Renewal, Relhousing and Repayments policy

6.4 Meeting residents' needs and maximising choice

6.4.1 Needs assessment process

6.4.2 Relhousing choice

6.4.3 Location of replacement homes

6.4.4 Design choices within the home

- 6.5 Phasing plan and development programme
  - 6.5.1 Minimising disruption
  - 6.5.2 Timing of delivery of new homes
  - 6.5.3 Timing of securing vacant possession
  - 6.5.4 Timing of demolition
  - 6.5.5 Vacant properties and land
- 6.6 Resource
- 6.7 Roles and responsibilities
- 6.8 Governance
- 7. **Commercial Occupier Relocation Strategy**
- 7.1 Purpose
- 7.2 Council commitments, Council policy and statutory requirements
  - 7.2.1 The High Road West Business Charter
  - 7.2.2 Fair negotiation
  - 7.2.3 Business support
  - 7.2.4 Minimising disruption
- 7.3 Maximising relocation choice and design input:
  - 7.3.1 Relocation options within the High Road West Site
  - 7.3.2 Relocation options within the borough
- 7.4 Phasing plan & development programme
- 7.5 Resources
- 7.6 Roles and Responsibilities
- 7.7 Governance
- 8. **Integrated Energy Strategy**
- 8.1 Compliance with Planning Policies
  - 8.1.1 Local
  - 8.1.2 GLA
  - 8.1.3 Design Standards
- 8.2 Council Design Criteria

- 8.3 Delivering the Carbon Standard
  - 8.3.1 Be Lean
  - 8.3.2 Be Clean
  - 8.3.3 Be Green
  - 8.3.4 Managing Overheating Risk
  - 8.3.5 Offsetting
- 8.4 Domestic and non-domestic emissions and carbon reduction approaches
- 8.5 End User Experience & Monitoring
  - 8.5.1 Reducing Fuel Poverty
  - 8.5.2 Monitoring technology and Smart metering
- 8.6 Links with other key documents
- 8.7 Role of ESCO in meeting carbon targets
- 8.8 Phasing and development programme
  - 8.8.1 Temporary solutions and approach to early phases
  - 8.8.2 Phased implementation
- 8.9 Resource
- 8.10 Roles and responsibilities
- 8.11 Governance
- 9. **Estate Management Strategy**
  - 9.1 Purpose
  - 9.2 Vision / Objectives / Values
  - 9.3 Masterplan
  - 9.4 Estates Management Structure
    - 9.4.1 Community involvement/integration
    - 9.4.2 Occupier & Stakeholder Communication
    - 9.4.3 Phasing & Implementation
  - 9.5 Estates Management Principles
    - 9.5.1 Placemaking
    - 9.5.2 Sustainability (incl. Environmental Policy)

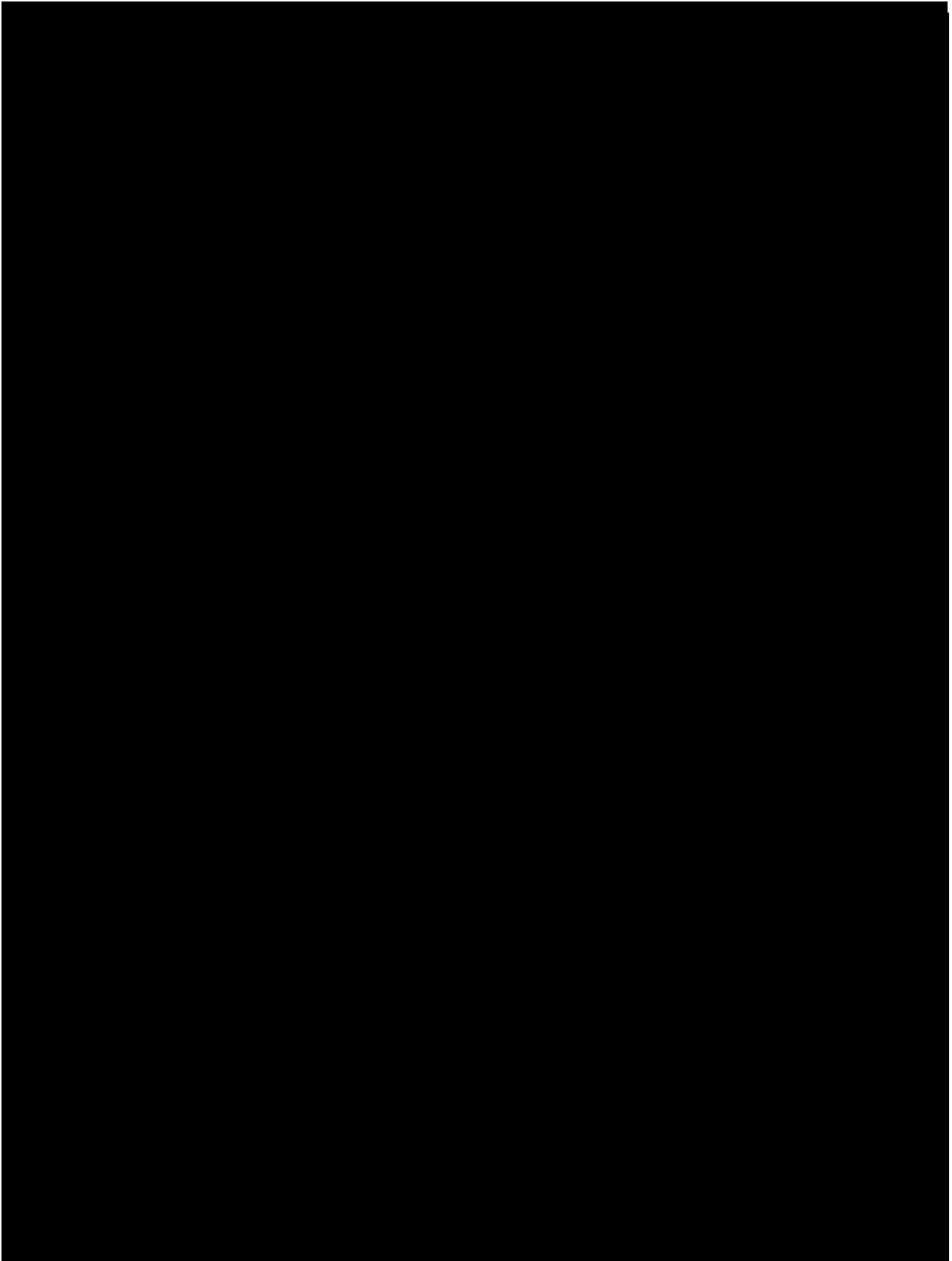


- 9.6 Public Realm
  - 9.6.1 Ownership
  - 9.6.2 Management
  - 9.6.3 Technology
  - 9.6.4 Branding & Signage
  - 9.6.5 Public Facilities
  - 9.6.6 Health & Safety
  - 9.6.7 Car Parking/Traffic Control
  - 9.6.8 Public Transport
  - 9.6.9 Servicing Areas
- 9.7 Events Management/Enlivenment
  - 9.7.1 Stadium Day Events
  - 9.7.2 Marketing Strategy
  - 9.7.3 Commercialisation Opportunities
  - 9.7.4 Filming & Photography
- 9.8 Service charge approach (for all tenures)
  - 9.8.1 Assumptions
  - 9.8.2 Budgeting
  - 9.8.3 Apportionments (weighting if applicable)
  - 9.8.4 Facilities Management Services
- 9.9 Resource
- 9.10 Roles and responsibilities
- 9.11 Governance
- 10. **Procurement Strategy**
  - 10.1 Purpose
  - 10.2 Procurement Principles
  - 10.3 Alignment to Council commitments & procurement policies
  - 10.4 Procurement Model
  - 10.5 Procurement Protocols
  - 10.6 Independent Cost, Time and Contract Administration Validation

- 10.7 Key Performance Indicators (KPIs)
- 10.8 Resources
- 10.9 Roles and responsibilities
- 10.10 Governance

**SCHEDULE 9**

**Residual Land Value Calculation**





**SCHEDULE 10**  
**BUSINESS PLAN**

1. **PURPOSE**
  - 1.1 Vision, Mission, Objectives
  - 1.2 Placemaking Strategy
2. **PROJECT FINANCIALS**
  - 2.1 Commercial Appraisal
  - 2.2 Site-wide / Infrastructure Accounting
  - 2.3 Funding Strategy
  - 2.4 Overage Strategy
  - 2.5 Affordable Housing
  - 2.6 Council Facilities
  - 2.7 Tax
3. **MASTERPLAN**
  - 3.1 Phasing & Programme
  - 3.2 Site Assembly Strategy
  - 3.3 Planning Strategy
  - 3.4 Socio-Economic Strategy
4. **MANAGEMENT, EXIT AND DISPOSAL STRATEGY**
  - 4.1 Exit & Disposal Strategy
  - 4.2 Estate Management
5. **DEVELOPMENT AGREEMENT**
  - 5.1 Governance of agreement
  - 5.2 Alignment with strategies
  - 5.3 Material amendments
6. **RISK REGISTER**
7. **RESOURCE PLANS**
8. **ROLES AND RESPONSIBILITIES**
9. **GOVERNANCE**

## **SCHEDULE 11**

### **DELIVERY METHODOLOGY**

#### **1. DELIVERY METHODOLOGY**

##### **1.1 Minimising disruption**

- 1.1.1 How disruption for the local community will be minimised.
- 1.1.2 Including how routes/access will be maintained – particularly for existing residents and businesses.
- 1.1.3 How access to transport will be maintained.
- 1.1.4 Proposals to ensure that adequate levels of parking are required.
- 1.1.5 Hours of operation.
- 1.1.6 How play areas and public open space will be affected/maintained/re-provided.
- 1.1.7 Proposals for rest-bite.
- 1.1.8 Proposals for dust and noise control for existing residents and community.
- 1.1.9 Approach to protection of trees and other landscape and heritage features.

##### **1.2 Creating/maintaining a vibrant place**

- 1.2.1 How an attractive and liveable area will be maintained/developed.
- 1.2.2 Approach to hoardings.

##### **1.3 Safety**

- 1.3.1 How a safe and secure environment will be maintained at all times.
- 1.3.2 How they will facilitate a route between the station and stadium.
- 1.3.3 Proposals for how staff/contractors will be clearly identified.

##### **1.4 Governance, Management and Engagement**

- 1.4.1 Structures provided to control delivery and change management.
- 1.4.2 Provisions of certification and adherence to statutory requirements.
- 1.4.3 Methods of engagement and reporting (Communications and engagement Plan) key contacts for phase delivery.

## SCHEDULE 12

### SITE WIDE COST REALLOCATION

Lendlease will be taking a 'value at risk' approach in order to support scheme viability in the following two areas:-

- Upfront investment costs: costs that have been spent in anticipation of drawdown of future plots, but which Lendlease does not yet have the land drawn down for. Lendlease therefore accepts the risk that, should future plots not be drawn down, then costs spent in advance on items such as planning, will not be recoverable.
- Site Wide Costs reallocation: under Lendlease's financial proposal, a high investment will be made upfront in placemaking and infrastructure costs in order to drive long term returns.

Please refer to the Site Wide Costs and Accounting Treatment section below for further details on these typical Site Wide Costs.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

**Site Wide Costs - Definition and Accounting Treatment**

For all Phases within the HRW scheme, Site Wide Costs will need to be allocated to each of the underlying Phases.

[Redacted]

[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]



- £10m Lendlease Contributions to support the delivery of wider social and economic benefits (please refer to p7-8 of Q14 in the ISFT Submission)
- Development Management and Project Management Fees for Phase 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## **SCHEDULE 13**

### **GOLDEN BRICK CORE TERMS**

1. An analysis of the sums to be paid by the Council in respect of the Replacement Social Rented Homes Purchase Price against agreed construction milestones or in proportion to the amount of the Works that have been completed, which may be detailed in accordance with a contract sum analysis.
2. Provision for the resolution of disputes as to applications for payment.
3. A retention in favour of the Council of [REDACTED] of the Replacement Social Rented Home Purchase Price for each such property comprised within the Phase.
4. Liquidated damages payable by the Partner to the Council in respect of delay to practical completion of works, calculated and based on a genuine pre-estimate of the Council's likely costs in the event of delay.
5. Provision for remediation of snagging items by way of a snagging list agreed between the Council and the Partner.
6. Provision for inspection by the Council or its representative to view the state and condition of the relevant works and the materials used and to verify any application for interim payment.
7. Provision for regular meetings to inspect the works and make representations.
8. A process for inspection by the Independent Certifier with a view to issue of the Golden Brick Certificate and for re-inspection in the event the Golden Brick Certificate is not issued.
9. Provisions to incorporate such of the Council's Minimum Building Contract Terms as the Council shall require.
10. Provisions to ensure that payments made are in accordance with the all relevant legislation including (without limitation) Chapter 3 of Part 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 as amended from time to time.

**THE COMMON SEAL of** )  
**THE MAYOR AND BURGESSES OF THE** )  
**LONDON BOROUGH OF HARINGEY** )  
was hereunto affixed )  
under the authentication of:-

Authorised by the Council to sign in that behalf

**EXECUTED** as a deed )  
(but not delivered until dated) by )  
**LENLEASE (HIGH ROAD WEST) LIMITED** on )  
being signed by :- )  
)

Director

In the presence of a witness

Signature of Witness:

Name:

Address:

Occupation:

**EXECUTED** as a Deed. )  
)  
Signed, sealed and delivered for and on behalf of )  
**LENLEASE CORPORATION LIMITED** by its )  
Attorneys under power of attorney in the )  
presence of:

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness

.....  
Name of Attorney

.....  
Date of power of attorney

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness

.....  
Name of Attorney

.....  
Date of power of attorney



**APPENDIX 1**  
**PHASE 1 PLAN**

## **APPENDIX 2**

### **SITE PLAN**

**APPENDIX 3**  
**LOVE LANE ESTATE PLAN**

**APPENDIX 4**  
**THE GRANGE**

**APPENDIX 5**  
**LIBRARY AND LEARNING CENTRE SPECIFICATION**

## **APPENDIX 6**

### **REPLACEMENT HOMES SPECIFICATION**

- a. Social Rented Housing Specification
- b. Employer's Requirements
- d. Design Process Chart

**APPENDIX 7**  
**PHASE LEASE**

## **APPENDIX 8**

### **LEASE BACK – REPLACEMENT HOME LEASE/LIBRARY AND LEARNING CENTRE LEASE**



**APPENDIX 9**  
**OVERAGE DEED**

**APPENDIX 10**  
**CPO INDEMNITY AGREEMENT**

## **APPENDIX 11**

### **DEN LEASE**

**APPENDIX 12**  
**ENERGY CENTRE SHELL AND CORE SPECIFICATION**

## **APPENDIX 13**

### **DEVELOPERS DISTRICT HEATING TECHNICAL SPECIFICATION**

**APPENDIX 14**  
**MHA HEADS OF TERMS**

**APPENDIX 15**  
**DEMARCATIION DRAWING**

**APPENDIX 16**

**HIGH ROAD WEST PLACE SHAPING GUIDE**