

**THE LONDON BOROUGH OF HARINGEY
(HIGH ROAD WEST PHASE A)
COMPULSORY PURCHASE ORDER 2023**

DOCUMENT CD 10.4

WITNESS 2: SELINA MASON, LENDLEASE

APPENDICES TO REBUTTAL

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In 2014, The Artworks Elephant was commissioned by Southwark Council to run for a four year period and was operated through a joint venture between Lendlease, the master develop for Elephant Park, and Stow Projects, an urban creative property and regeneration developer. For four years, the Artworks Elephant provided a community led space for dozens of start-ups and local entrepreneurs, offering a flexible, affordable, and safe place for them to operate and grow. A key goal for the Artworks Elephant project was to support and inspire local businesses to continue trading and move on to bigger things after the temporary incubator pop-up closed.

Sustainability

10 Dec 2019

by

Lendlease Author Better Places



Comprised of 38 recycled shipping containers, The Artworks Elephant became a flexible, affordable, and safe place for local entrepreneurs to start up micro-enterprises and test business models. The diverse mix of businesses included global food and beverage outlets, architects, personal therapies, barbers and beauticians, bakers, and interior designers. There were also social enterprises supporting English language classes for the local Latin American community (Free2Learn); and another which supported construction skills and work placements for disadvantaged people (Be OnSite). A proportion of businesses have grown and gone on to flourish on a larger scale, including five businesses occupying retail units at Elephant Park, the £2.3 billion regeneration project being delivered by Lendlease and Southwark Council.

Constructing and operating (and decommissioning) the Artworks Elephant site generated broad economic benefits. The construction in 2013 through to its decommission in 2019, created an estimated c.£13.4 million in total economic impact. This includes construction and decommissioning costs of c.£2.5 million.

The colourful, carnival-style design and ambience of Artworks Elephant also contributed significant value to the urban landscape. Reverting c.2000 regular visitors per year, it facilitated a much-enjoyed public space that truly felt inclusive to all local communities and cultures - from workers, students, builders, and residents from the Latin American, Caribbean, African, Asian and European communities.

The initiative enabled local people to test their business concept and model in a vibrant, funky and well-connected location; with low cost rent and low risk compared to the market. Rent deposits were affordable and there were no lengthy leases to get locked into due to providing flexible rolling monthly contracts. This provided maximum opportunity for businesses to survive and flourish. Lendlease is committed to supporting local businesses at Elephant Park beyond The Artworks. They continue to provide spaces through which local Elephant & Castle based start-ups and growing operators can build successful businesses by providing affordable rent opportunities through support packages that include incentives and discounted structured terms on rents.

Elephant Park Business Support Case Study - Tasty Jerk – October 2023

Support offered: Business planning, pricing policy, supply chains, employment contracts, property search, market research, branding.

Background

Tasty Jerk had been operating from the temporary Artworks development since 2015 and had built a good local reputation for authentic and well-cooked Caribbean food, which could be eaten on the premises in their small cafe, taken away or delivered via Uber Eats. In three years, owners Linda and Rayon, had built an annual turnover in excess of £100k; Lendlease supported their plans to relocate to a permanent premises, grow their business and employ more staff.



Above left: Co-owner of Tasty Jerk, Rayon Above right: The Artworks in which Tasty Jerk was located.

Overcoming Barriers

As Linda and Rayon lived close to Elephant and Castle, they were very keen to relocate close to their existing footprint. The new units at Elephant Park were their preferred location but we carried out a property search and competition report to understand what alternative premises were available.

With dedicated 1-2-1 business support over a twelve-month period, both directly and with a third-party business consultant provided by Lendlease, we supported Rayon and Linda to overcome the following barriers to growth:

- To ensure that their financial recording and business planning was sufficient; supporting Rayon and Linda to break down the cost of their menu to understand the profit of each dish contributed to their bottom line. This aided with controlling costs. Ingredients were sourced locally and in small quantities so as to avoid the potential

for overstock and waste food, however, this meant there was a risk that they were paying a premium for their ingredients.

- To prepare for relocation Rayon and Linda were supported to refine their brand identity, invest in their front of house aesthetic and streamline their operations by employing more staff. Advice was provided about staff recruitment, employment contracts, budgeting to employ on the London Living Wage and setting rotas to maximise their resources.
- The couple were not familiar with VAT registration rules; helped was provided to ensure that they were compliant, create a five-year business plan and cashflow forecast to help them understand their futures costs and necessary turnover in their preferred unit until 2023.
- The set up and design costs were a significant investment, exceeding the resources that Linda and Rayon had access to. We prepared inventories and sourced fit-out quotations and worked closely with the team at Lendlease to get an affordable deal for them to move into Elephant Park. Our cost payment plan provided both Rayon and Linda alongside Lendlease reassurance that the overheads were achievable in the long term.

Relocation Success

Business support was provided face-to-face, via email and by telephone. It was essential to fit in with the schedule of a busy working couple and much of the remote communication occurred at night or in the morning. There were many hurdles to overcome, and we built a trusting relationship with Rayon and Linda and Lendlease to get them open and trading.

Tasty Jerk have now been trading at Elephant Park over three years and are looking to expand into a larger unit on the development.



Above: Tasty Jerk on Sayer Street in Elephant Park



Member Article

Operators at Elephant Park continue to support local community with initiatives

As lockdown lifts and life in London begins to return to normal, many of the F&B operators at Lendlease's Elephant Park are continuing to help provide relief and support to their local community.

Throughout lockdown, the sustainable community food market operator, Mercato Metropolitano (MM), with some support from the team at Lendlease, has been delivering bags of essential supplies to over a thousand vulnerable, elderly and isolated families living in and around Elephant and Castle in association with Age UK and Surrey Square Primary School. MM Factory, an urban and artisanal production facility, is due to open at Elephant Park later this year. As an advocate of sustainable development through local economic growth, MM will also provide training and employment opportunities for the community, in collaboration with local educational institutions. The grocery, deli and food markets of Mercato Metropolitano in Elephant & Castle remain open, with the additional offering of delivery and takeaway.

Currently trading with contactless delivery of Essentials Hampers, Caffeine Survival Kits and Bakery Boxes, HEJ coffee, has used its in-house roastery to provide for the local community throughout the Covid-19 crisis. The independent operator has partnered with One Life Cycle, a local youth cycling team sponsored by the company, to facilitate the deliveries. HEJ coffee has also donated coffee and hot chocolate to The Outside Project, a local LGBTIQ homeless charity. The Outside Project is operating emergency hotels that provide sanctuary to those who feel endangered, who are homeless; as well as the 'hidden' homeless who feel they are on the outside of services due to prejudice in society and in their homes.

Open for deliveries and takeaway, vegan Ethiopian restaurant, Beza, which previously operated within Artworks Elephant – Lendlease's pop-up retail park created to support and incubate small local businesses – established a crowd fundraising page and raised over £1,500 to support the delivery of hot meals for local vulnerable families within the community. Beza partnered with Southwark Council, Pembroke House and Feed The Workers, a charity that connects restaurants wanting to support and provide for NHS nurses, doctors and carers working on the frontline.

Tasty Jerk, the Caribbean take-away restaurant and former Artworks Elephant tenant, is partnering with homeless hostel, Rest Up, cooking and delivering hot meals 3 days per week in addition to their delivery and takeaway service. To help support the small business, Rest Up hostel, has also committed to paying a discounted rate where possible, to ensure Tasty Jerk can keep their emerging brand operating throughout the pandemic.

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MEMBER

Amanda
05 AUG 2020



Guy Thomas, Head of Retail at Lendlease, commented: "Elephant & Castle benefits from a strong sense of community, and these initiatives from our operators highlight the want to support local people, and one another, during this period of adversity. We are proud that our Social Impact team at Lendlease has been able to work closely with and support our operators in these initiatives and others as we begin our journey back to business as usual, having adapted together throughout this challenge. This is an important part of the work we at Elephant Park in connecting with local communities, and it is great to see how our new F&B operators have continued to work hard to support those in need during the crisis."

Andrea Rasca, Founder and 'Chief Executive Dreamer' of Mercato Metropolitano, added: "We are dedicated to working towards serving and supporting the local community, through everything we do. This pandemic has tested us all socially and economically; but we recognise that we are stronger together and we need to support the people around us. During the lockdown, we worked with Lendlease, our partners and local organisations to find the vulnerable people in need and provide them with the essentials. Our commitment to ensuring all parts of our society have access to natural, traceable and nutritious food will continue with further initiatives since our business revolves around this mission."

Keen to find ways to provide their services to the local community, other Elephant Park operators have implemented the following offers; Tap In is delivering craft beer boxes every Wednesday and Friday via the website, whilst Jama Havana have partnered with Tap In to offer a takeaway service from the brand's bar; Dima Beautiful is offering vouchers and quarantine kits via Instagram; and Irish childcare provider, Tigers Childcare is able to offer socially distanced visits for parents keen to sign their children up whilst they are currently closed.

This was posted in Bdaily's Members' News section by [Amanda](#).

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<https://bdaily.co.uk/articles/2020/08/05/operators-at-elephant-park-continue-to-support-local-community-with-initiatives>

Accessed: 19/10/2023 18:51

Formula B

(as amended)

Cralla / Bell

17:37

Dated 18 March 2021

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BARKING AND DAGENHAM

(1)

AND

LAGMAR (BARKING) LIMITED

(2)

Agreement
for the grant of leases
of premises at and adjoining
Vicarage Field Shopping Centre, Barking,
London



Tel +44 (0)370 903 1000 Fax +44 (0)370 904 1099 mail@gowlingwlg.com www.gowlingwlg.com

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THIS AGREEMENT is made on

18 March 2021

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARKING AND DAGENHAM** of Barking Town Hall, Town Hall Square, Barking, IG11 7LU ("Council"); and
- (2) **LAGMAR (BARKING) LIMITED** (Scottish company registration number ^{sc}303267) whose registered office is at 50 Lothian Road, Festival Square, Edinburgh, EH3 9WJ ("Developer").

CMS

BACKGROUND

- (A) The Council:
 - (i) owns the freehold interest in Vicarage Field; and
 - (ii) is in the process of acquiring (or intends to acquire) the Additional Interests by private treaty or compulsory purchase in accordance with the CPO Indemnity Agreement.
- (B) The Developer owns the head leasehold interest in Vicarage Field pursuant to the Existing Lease.
- (C) In consideration of the grant by the Council to the Developer and/or the Developer's Nominee (as appropriate) of a new Phase Lease or Phase Leases of Vicarage Field and the Additional Interests, the Developer has agreed to deliver, at its own cost and on a Phase by Phase basis, a comprehensive regeneration of Vicarage Field and the Additional Interests which as at the date of this Agreement is intended to:
 - (i) deliver a high quality, mixed-use development; and
 - (ii) provide new high quality retail space, offices (including affordable business floor space), healthcare facilities, leisure uses, high quality new homes with a range of unit sizes, car parking, cycle parking, improved servicing, improved public realm and the creation of new high streets in the heart of Barking; and
 - (iii) help to satisfy the Council's objectives to:
 - (a) raise the town centre's profile and create attractive new workspaces and centres of employment;
 - (b) promote the creative industries and participation in arts and culture with new leisure and cultural venues;
 - (c) provide a wider choice of quality good value homes with accelerated house building;
 - (d) improve local transport and access to the town centre; and
 - (e) continue to improve the quality of buildings, spaces and heritage in the town centre

substantially in accordance with the Outline Planning Permission.

- (D) The Parties have agreed enter into this Agreement to record the property transactions and other detailed terms required to facilitate the development mentioned in recital (C).

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

Acceptable CPO has the meaning prescribed in the CPO Indemnity Agreement.

Additional Interests has the meaning prescribed in the CPO Indemnity Agreement.

Building Contract means, in relation to the relevant Phase Works, a building contract or contracts in relation to those Phase Works on terms that a Prudent Developer of works of a similar type, size, scope, value and complexity to the relevant Phase Works might reasonably agree in the open market.

Building Condition Contract means:

(a) in relation to the Phase 1 Phase Works, the Developer or the Developer's Nominee (as appropriate) has entered into or (subject only to the grant of the relevant Phase Lease) will enter into an unconditional Building Contract or a Letter of Intent in relation to all of (or, in the case of a Letter of Intent, some of) the Phase 1 Phase Works with the relevant Building Contractor; and

(b) in relation to each of the other Phases, the Developer or the Developer's Nominee (as appropriate) has agreed a Building Contract or a Letter of Intent in relation to the relevant Phase Works with the relevant Building Contractor.

Building Contractor a substantial and appropriately qualified building contractor whom a Prudent Developer of works of a similar type, size, scope, value and complexity to the relevant Phase Works might reasonably appoint to undertake the relevant Phase Works.

Completion actual completion of the grant of the relevant Phase Lease (whether it takes place on the relevant Phase Completion Date or on a different day).

Council Property means (together):

- (a) Vicarage Field; and
- (b) on and from the date that the Council acquires the same (pursuant to the CPO or otherwise), each of the Additional Interests respectively

and each and every part of the same.

Council's Solicitors Gowling WLG (UK) LLP of Two Snowhill, Birmingham, B4 6WR (reference [REDACTED] or such other solicitors as the Council may appoint in relation to the matters the subject of this Agreement and notify to the Developer in writing from time to time.

Council's Solicitors' Nominated Account the Council's Solicitors' client account numbers [REDACTED] sort code [REDACTED] or such other account as may be notified in writing to the Developer's Solicitors from time to time.

Council Title Matters the matters mentioned in schedule 2 so far as they are subsisting and affect the relevant Phase Premises and are capable of being enforced.

Council Title Number means EGL270709.

CPO has the meaning specified in the CPO Indemnity Agreement.

CPO Condition means the Developer has served both:

- (a) an Acceptable CPO Notice; and
- (b) the Developer's Second Notice

in each case pursuant to and in accordance with the relevant provisions of (and as defined in) the CPO Indemnity Agreement.

CPO Indemnity Agreement means the CPO indemnity agreement in respect of the Additional Interests dated today and made between the Council (1) and the Developer (2).

Delaying Factor means, in relation to the satisfaction (and/or attempted satisfaction) of the General Conditions, the Phase Conditions, the progress and/or completion of the Development as a whole and/or any relevant Phase Works (as appropriate) in each case in accordance with the relevant provisions of this Agreement:

- (a) Force Majeure;
- (b) any unreasonable delay by the Council in granting approval or consent (or giving notice of the

Council's refusal to do so) for any matter for which the Council's approval or consent is required (and is required not be unreasonably withheld or delayed) under the terms of this Agreement;

- (c) any other breach by the Council of any obligation on the part of the Council under this Agreement and/or under the CPO Indemnity Agreement;
- (d) any cause or event for which any Building Contractor is (in accordance with the terms of the relevant Building Contract) granted an extension of time for completion of the Phase Works the subject of that Building Contract;
- (e) the occurrence of one or more of the contingencies normally covered by a contractor's "All-Risks" policy;
- (f) the discovery of any fossils, coins, articles of antiquity and structures and other remains or things of geological, historical or archaeological interest discovered at the relevant Phase Premises;
- (g) the impact of a Public Health Event; and
- (h) any other matter in relation to the satisfaction (and/or attempted satisfaction) of the General Conditions or the Phase Conditions or affecting the progress of the Development and/or the relevant Phase Works (as the case may be) which shall be beyond the reasonable control of the Developer or the Developer's Nominee (as the case may be) where the Developer or the Developer's Nominee (as the case may be) has used reasonable endeavours to prevent and/or mitigate the effect of any delay

provided that, in the case of clause (d) of this definition, to the extent (if at all) that a cause or event for which the relevant Building Contractor is granted an extension of time for delay caused by or arising out of:

- i. the wilful or negligent act or default or omission of the Developer or the Developer's Nominee (as the case may be) or any party for whom the Developer or the Developer's Nominee (as the case may be) is responsible; or
- ii. the failure of the Developer or the Developer's Nominee (as the case may be) to enforce the performance (to the extent reasonable so to do) of any contractual obligation owed to the Developer or the Developer's Nominee (as the case may be) by any third party in relation to the relevant Phase Works,

that cause or event shall be deemed not to be a Delaying

	Factor.
Development	the development (and each and every part of it) of Vicarage Field as authorised by a Satisfactory Planning Permission.
Developer's Nominee	such nominee (if any) in respect of any Phase Lease and/or Phase Works who may or may not be a Funder, the identity of whom the Developer shall have confirmed to the Council in writing.
Developer's Solicitors	CMS Cameron McKenna Nabarro Olswang LLP, Cannon Place, 78 Cannon Street, London, EC4N 6AF (reference: [REDACTED]) or such other solicitors as the Developer may appoint in relation to the matters the subject of this Agreement and notify to the Council in writing from time to time.
Drawdown Pre-requisites	has the meaning prescribed in clause 9.3.
Existing Lease	the lease of Vicarage Field dated 6 December 1989 and made between The Mayor and Burgesses of The London Borough of Barking and Dagenham (1) and Countryside Properties Public Limited Company (2) as that lease may have been or be amended and/or varied from time to time.
Existing Premises	the premises demised by the Existing Lease.
Expert	has the meaning prescribed in clause 29.
Extension Period	has the meaning prescribed in clause 3A.3.
Force Majeure	means: <ul style="list-style-type: none"> (a) fire, storm, tempest and other adverse weather conditions, war, hostilities, rebellion, revolution, insurrection, military or usurped power, civil war; and (b) labour lock-outs, strike and other industrial disputes affecting any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for any Phase Works, riot, civil commotion, disorder, decree of government, non-availability of material or equipment or utilities; or (c) any other cause or circumstance provided that each and every such cause or circumstance: <ul style="list-style-type: none"> (i) materially adversely affects the performance of the terms and provisions of this Agreement; and (ii) cannot reasonably be avoided or provided

against; and

- (iii) is not due to the act, default or negligent act or omission of the Developer or the Developer's Nominee (as the case may be) or any party for whom or the Developer's Nominee (as the case may be) is responsible.

Funder

has the meaning prescribed in clause 5.3(a).

Funding Agreement

means, in respect of the relevant Phase Works, an unconditional agreement between a Funder (1) and the Developer or the Developer's Nominee (as the case may be) (2) whereby the Funder will finance some or all of the cost of the preparation for, and the carrying out and completion of, those Phase Works and, for the purposes of the reading and interpretation of this definition and the application of this definition in the context of this Agreement only, such agreement shall be deemed to be unconditional where:

- (a) except for any conditions precedent mentioned in clause (b) of this definition, all of the other conditions precedent in such agreement have been satisfied or waived (as the case may be) in accordance with the provisions of such agreement; and
- (b) (if such be the case) such agreement is or becomes conditional only upon the satisfaction of any other Phase Conditions in relation to the relevant Phase.

Funding Condition

means, in respect of each relevant Phase, the Developer has provided the Council with reasonable evidence that the Developer or the Developer's Nominee (as appropriate) has available from its own resources and/or pursuant to one or more Funding Agreements sufficient funds to finance the cost of the preparation for, and the carrying out and completion of, the whole of the relevant Phase Works.

General Conditions

means (together) the:

- (a) CPO Condition;
- (b) Viability Condition;
- (c) Management Condition; and
- (d) (in respect of Phase 1 only) Phase Conditions in respect of Phase 1.

Guarantor Condition

means, in respect of each relevant Phase (if any), the Developer or the Developer's Nominee (as appropriate) has delivered (and unconditionally released) to the Council a Phase Guarantee duly executed by a Phase Guarantor.

Letter of Intent

a letter (or letters) from the Developer or the Developer's Nominee (as appropriate) to the Building Contractor executed prior to, and in anticipation of, the completion of a Building Contract in respect of the relevant Phase Works which (inter alia):

- (a) evidences the Developer's or the Developer's Nominee's (as appropriate) and the Building Contractor's intention to enter into the relevant Building Contract within a reasonable period;
- (b) authorises the Building Contractor to have access to the relevant Phase Premises;
- (c) instructs the Building Contractor to commence those elements of the relevant Phase Works specified in the Letter of Intent notwithstanding that the Building Contract has not been entered into;
- (d) contains a covenant by the Building Contractor to undertake those elements of the relevant Phase Works specified in the relevant letter; and
- (e) contains a covenant by the Developer or the Developer's Nominee (as appropriate) to pay the Building Contractor for the works which it undertakes in accordance with the relevant letter.

Longstop Date

means (as the same may be extended from time to time by any relevant Extension Periods as mentioned in clauses 4.6 and 4.7):

- (a) [REDACTED] or [REDACTED]
- (b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Management Condition

the agreement by the Parties or the determination by the Expert (as the case may be) of the Management Regime.

Management Regime

has the meaning prescribed in clause 4.2(c).

Necessary Condition**Consents**

means, in respect of the relevant Phase Works, the Developer or the Developer's Nominee (as appropriate) has obtained all:

- (a) road closure orders, stopping-up orders and traffic regulation orders; and

- (b) other consents, licences, permissions, certificates, permits and approvals in legally effectual form, whether of a public or a private nature

which shall be necessary for the lawful commencement of the relevant Phase Works (and, for the avoidance of doubt, this definition shall not include any item or matter falling within the definition of "**Statutory Requirements**"), and "**Necessary Consents**" shall be construed accordingly.

**Outline
Permission**

Planning the outline planning permission numbered 16/01325/OUT and dated 19 April 2017 issued by the local planning authority as that planning permission may be amended, varied and/or superseded from time to time in accordance with schedule 1.

Parties

means (together) the Council and the Developer, and "**Party**" means the relevant one of them.

Phase

means the relevant phase of the Development, and "**Phase 1**" and "**Phase 2**" etc shall be construed accordingly.

Phase Completion Date

means:

- (a) in relation to the grant of the Phase 1 Phase Lease the date 10 Working Days after the later of:
 - (i) the Unconditional Date; and
 - (ii) the date of agreement or determination of the last of the Drawdown Pre-requisites in relation to Phase 1 in accordance with clause 9.3; and
- (b) in relation to the grant of each subsequent Phase Lease, the date 10 Working Days after the later of:
 - (i) the relevant Phase Unconditional Date; and
 - (ii) the date of agreement or determination of the last of the Drawdown Pre-requisites in relation to the relevant Phase in accordance with clause 9.3; and
 - (iii) (in relation to the grant of the Phase 2 Phase Lease only) the date of agreement or determination of the Phase 2 Phase Premium in accordance with clauses 17.1 – 17.4.

Phase Conditions

means (together) in respect of each Phase (including

Phase 1):

- (a) the Building Contract Condition;
- (b) (as appropriate in respect of the relevant Phase) either:
 - (i) the Funding Condition; or
 - (ii) the Guarantor Condition;
- (c) the Necessary Consents Condition;
- (d) [REDACTED]
- (e) the Planning Condition;
- (f) the Professional Appointments Condition; and
- (g) the Statutory Agreements Condition; and
- (h) (where relevant) the Title Condition.

Phase Commencement Date	Conditions	means, in respect of each Phase (other than Phase 1), the date being [REDACTED] after the date of practical completion of the Phase Works (or, where those Phase Works have been carried out in more than one phase or section, the date of practical completion of the final phase or section) in respect of the previous Phase to have been drawn down.
Phase Guarantee		has, in respect of the relevant Phase, the meaning prescribed in clause 5.5(c).
Phase Guarantor		has, in respect of the relevant Phase, the meaning prescribed in clause 5.5(b).
Phase Lease		has, in relation to the relevant Phase, the meaning prescribed in clause 9.3(b), and "Phase Leases" shall be construed accordingly.
Phase Longstop Date		means (as the same may be extended from time to time by any relevant Extension Periods as mentioned in clauses 5.9 and 5.10, in respect of: <ul style="list-style-type: none">(a) Phase 1, the Longstop Date; and(b) each subsequent Phase [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

Phase Premises

has, in respect of the relevant Phase, the meaning prescribed in clause 9.3(c).

Phase Premium

means, in respect of:

- (a) the Phase 1 Lease [REDACTED] and
- (b) the other Phase Leases together, the Premium Balance.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

Phase Specification

in respect of the relevant Phase Works, has the meaning specified in clause 9.3(d).

Phase Unconditional Date

means, in respect of:

- (a) Phase 1, the Unconditional Date; and
- (b) each subsequent Phase, the date on which the last of the Phase Conditions in respect of that Phase is satisfied.

Phase Works

means, in respect of each Phase, that part of the Development to be delivered on, or in connection with, that Phase (including any temporary landscaping works and/or provision of amenities as mentioned in clause 7.4) as described in the relevant Phase Specification (as the same may be amended, varied and/or superseded from time to time).

Plan 1 and Plan 2 etc

the relevant plan attached to this Agreement at schedule 3.

Planning Condition	has the meaning specified in schedule 1.
Premium	means, subject to clause 17.4 [REDACTED] (exclusive of VAT).
Premium Balance	the balance of the Premium after allowing for [REDACTED] payable as the Phase 1 Phase Premium as mentioned in clause 17.7.
Prescribed Rate	2% per annum above the base rate from time to time of Lloyds plc or such other UK clearing bank as the Council may from time to time notify to the Developer in writing.
Professional Appointments Condition	means, in respect of the relevant Phase Works the Developer or the Developer's Nominee or the Building Contractor (as appropriate) has appointed all professional consultants (excluding sub-contractors) reasonably required to enable the Developer or the Developer's Nominee (as appropriate) to carry out and complete the relevant Phase Works.
Prudent Developer	<p>a developer who has:</p> <ul style="list-style-type: none"> (a) an established and successful track record of carrying out and completing development projects of a similar type, size, scope, value and complexity to the Development; (b) sufficient available internal resources to satisfy the obligations of the Developer as "developer" under this Agreement; (c) an approach to development risk which: <ul style="list-style-type: none"> i. is reasonable and commercial; and ii. is institutionally acceptable; and iii. would be acceptable to the relevant Funder; and iv. reflects the type, size, scope, value and complexity of the Development and/or the relevant Phase Works (as appropriate).
Public Health Event	<p>the outbreak of COVID-19 and/or any other similar pandemic, including any of the following occurring as a response to or in consequence of that outbreak:</p> <ul style="list-style-type: none"> (a) any control, law or measure imposed or any control administered by any local or other competent statutory and/or governmental authority relating to the control of disease or control of movement of people, goods or services or a restriction on transfer of any of the same imposed or administered as a response to an outbreak of disease or as a means of preventing

the significant transmission of a disease;

- (b) the death, isolation, quarantining, absence (including where such absence is as a result of:
 - i. illness;
 - ii. possible illness;
 - iii. orders imposed by an Authority; or
 - iv. guidance recommended by any such authority)

of any persons ("**Relevant Persons**") employed or engaged by the Developer or the Developer's Nominee (as the case may be) in respect of the Development and/or any particular Phase or which the Developer or the Developer's Nominee (as the case may be) would (in the usual course of business) need to engage with in respect of the Development and/or any particular Phase in order for the Developer or the Developer's Nominee (as the case may be) to be able to properly undertake any of its obligations contained in this Agreement;

- (c) the events referred to in clause (b) of this definition occurring to anyone associated with any of the Relevant Persons resulting in the absence of the Relevant Persons;
- (d) any supply-chain disruption or shortage of any goods or services required in order for the Developer or the Developer's Nominee (as the case may be) to be able to properly undertake any of its obligations contained in this Agreement; or
- (e) any disruption to, scarcity of or unavailability of any services of any kind (including utilities, searches services, HM Land Registry services, surveying services, postal services and banking services);
- (f) any unavailability (at the commercially competitive rates which, in circumstances where the Public Health Event did not apply, would be available) of finance or the withdrawal of either any finance or offer of finance; or
- (g) any other event or circumstance which is beyond the reasonable control or mitigation of the Developer which causes a delay to the relevant action

in each case to the extent only that such circumstance directly affect the Development and/or any particular Phase or Phases only.

Public Inquiry	has the meaning prescribed in the CPO Indemnity Agreement.
Standard Conditions	Part 1 of the Standard Commercial Property Conditions (Third Edition – 2018 Revision).
Statutory Condition	<p>Agreements means, in respect of the relevant Phase, the Developer or the Developer's Nominee (as appropriate) has entered into any agreement under:</p> <ul style="list-style-type: none"> (a) s106 of the Town and Country Planning Act 1990; and/or (b) s104 of the Water Industry Act 1991; and/or (c) s38 or s278 of the Highways Act 1980 <p>which shall be necessary for the lawful carrying out of the relevant Phase Works, and "Statutory Agreements" shall be construed accordingly.</p>
Title Condition	means, if relevant to the relevant Phase, that a Developer Title Notice or a Council Title Notice (as those terms are defined in clause 5.5) has been served.
Unconditional Date	the date on which, in accordance with clause 4, the Parties agree or the Expert determines (as the case may be) that the last of the General Conditions has been satisfied
VAT	value added tax and any future tax of a similar nature.
Viability Condition	the Development is, in the reasonable opinion of the Developer or the Developer's Nominee (as appropriate), financially viable.
Vicarage Field	that land and buildings currently known as the "Vicarage Field Shopping Centre" in Barking and shown for the purposes of identification edged red (but excluding the land and buildings shown coloured brown) on Plan 1, the freehold interest in which is registered at the Land Registry under title number EGL270709.
Working Day	any day on which clearing banks in the City of London are open during banking hours (or would be but for a strike, lock-out or other stoppage affecting particular banks or banks generally).

1.2 Interpretation

In this Agreement, unless otherwise stated or the context otherwise requires:

- (a) every obligation on a Party comprising more than one person is joint and several;

- (b) references to a person include a corporate or unincorporated body (and vice versa);
- (c) any obligation by a Party not to do any act or thing shall include an obligation not to knowingly permit or suffer such act or thing to be done by anyone directly or indirectly under the control of that Party;
- (d) where the Council is entitled or required to exercise any right or do any other act or thing (including the giving of consent or approval) such right may be exercised, and such other act or thing may be done, by the Council's representative on the Council's behalf;
- (e) words importing one gender include any other gender, and words importing the singular include the plural (and vice versa);
- (f) any reference to a recital, clause or schedule shall mean a recital, clause or schedule of this Agreement, and any reference in a schedule to a paragraph is to the relevant paragraph in that schedule;
- (g) title headings are for reference only and shall not affect its construction;
- (h) the words "including" and "include" shall each be deemed to be followed by the words "**without limitation**";
- (i) any obligation upon either Party to use "**reasonable endeavours**" shall oblige that Party to take (or procure to be taken) all such reasonable, practicable and effective steps to achieve the relevant objective in all the circumstances, and such steps may include that Party incurring such third party costs as, in all the circumstances, may be reasonable to expect of a Prudent Developer and/or a reasonable and commercial local authority landowner (as the case may be) in relation to a project of a similar type, size, scope, value and complexity to the Development, but the relevant Party shall not be obliged to:
 - (i) sacrifice its own commercial interests; nor
 - (ii) take, appeal or oppose any proceedings in any court, public inquiry or other hearing;
- (j) any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under them or deriving validity from them; and
- (k) all agreements and obligations by either Party contained in this Agreement (whether or not expressed to be covenants) shall be deemed to be, and shall be construed as, covenants by such Party.

2 INCORPORATION OF STANDARD CONDITIONS

This Agreement incorporates the Standard Conditions as varied by, and so far as they are consistent with, the express terms of this Agreement.

3 **CONDITIONAL AGREEMENT**

This Agreement (other than:

- (a) this clause 3;
- (b) clauses 1, 4 – 6, 8, 16, 18, 19 – 23 and 25 – 35; and
- (c) any other clauses which comprise or include an obligation or a right to be wholly or partly performed or exercised (as the case may be) by either Party in the satisfaction (or attempted satisfaction) of any one or more General Condition prior to the Unconditional Date and any other clauses relevant to such obligations and rights)

is conditional on the General Conditions being satisfied on or before the Longstop Date in accordance with the terms of this Agreement.

3A **EXTENSION PERIODS**

3A.1 If, at any time, either Party believes that, in the relevant circumstances, any Delaying Factor(s) should be taken into account, it shall promptly notify the other in writing of the details.

3A.2 The Parties (each acting reasonably) shall endeavour to agree:

3A.2(a) whether (and, if so, what) Delaying Factor(s) should be taken into account in the relevant circumstances; and

3A.2(b) the reasonable and proper period by which the time limit for satisfaction of the relevant General Conditions or Phase Conditions and/or the performance of the relevant obligations pursuant to the terms of this Agreement (as the case may be) should be extended by reason of the occurrence of any such Delaying Factor(s)

and, if there shall be any disagreement arising out of this clause 3.2(A), the matter in dispute shall be referred to the Expert for determination.

3A.3 The period of extension, if any, agreed or determined by the Expert in accordance with clause 3A.2 shall be the relevant "Extension Period" in relation to the relevant circumstances.

4 **GENERAL CONDITIONS**

Satisfying the General Conditions

4.1 The Developer will use reasonable endeavours to satisfy the General Conditions as soon as reasonably practicable and, in any event, prior to the Longstop Date.

4.2 Without prejudice to the generality of clause 4.1:

- (a) the Developer shall, as soon as reasonably practicable, provide written details to the Council for its approval (such approval not to be unreasonably withheld or delayed) of the Developer's proposed regime, enforceable by the Council as freeholder and binding on (and between) the lessees of each of the Phase Leases, to secure the comprehensive and consistent management and maintenance (in accordance with the

principles of good estate management and market norms from time to time) of the public and other common parts of the completed elements from time to time of the Development;

- (b) if the Parties cannot agree the proposed regime, the dispute shall be referred by either Party to the Expert for determination; and
- (c) the regime so agreed and determined shall be the **"Management Regime"** for the purposes of this Agreement.

4.3 Without prejudice to the generality of clause 4.1, the Parties shall each observe and perform their respective obligations in schedule 1.

Advise the Council of progress

4.4 The Developer shall:

- (a) keep the Council fully informed at regular intervals (and additionally on reasonable request by the Council) of progress in relation to the satisfaction of each of the General Conditions; and
- (b) promptly provide the Council with such documentation with regard to the same as the Council may reasonably require from time to time.

Council's assistance

4.5 The Council shall, at the reasonable and proper cost of the Developer, provide to the Developer such other assistance (if any) as the Developer may from time to time reasonably require from the Council in connection with the Developer's efforts pursuant to clause 4.1.

Extension of the Longstop Date

4.6 If the Developer fails to satisfy the General Conditions on or before the Longstop Date by reason of any Delaying Factors, then (subject to clause 4.7):

- (a) the Longstop Date shall be extended from time to time by the relevant Extension Period; and
- (b) the term **"Longstop Date"** shall be construed accordingly.

4.7 If the Longstop Date is extended as mentioned in clause 4.6 then:

- (a) the Longstop Date may be extended up to, but not beyond, the later of:

(i) [REDACTED] or

(ii) [REDACTED]
[REDACTED]
[REDACTED]

(b) the Parties shall, not less frequently than annually following the original Longstop Date, each use reasonable endeavours to agree:

- (i) whether the Delaying Factor(s) that triggered the relevant Extension Period still subsist(s); and, if not,
- (ii) whether the relevant Extension Period should cease or be shortened (and, in the latter event, by how much)

and, if there shall be any disagreement arising out of this clause 4.7(b), the matter in dispute shall be referred to the Expert for determination; and

- (iii) if the Parties agree, or the Expert determines, that the Delaying Factor(s) that triggered the relevant Extension Period no longer subsist(s) and that the relevant Extension Period should cease or be shortened (and, in the latter event, by how much), the term "**Longstop Date**" shall be construed accordingly.

On satisfaction of the General Conditions

4.8 When either Party reasonably believes that a General Condition has been satisfied that Party (in this clause 4 the "**Sender**") shall serve written notice on the other (in this clause 4 the "**Recipient**") specifying which of the General Conditions the Sender believes has been satisfied (in this clause 4 a "**GC Satisfaction Notice**") and, with the GC Satisfaction Notice, the Sender will provide reasonable evidence that the relevant General Condition has been satisfied.

4.9 Subject to clauses 4.10 and 4.11, the General Condition specified in the GC Satisfaction Notice shall be deemed to be satisfied on the date of service of the GC Satisfaction Notice.

4.10 The Recipient (acting reasonably) may, within 5 Working Days of receipt of the GC Satisfaction Notice, give written counternotice (in this clause 4 a "**GC Counternotice**") to the Sender disputing that the relevant General Condition has been satisfied and specifying the Recipient's reasons for that opinion.

4.11 If the Recipient does not serve any GC Counternotice within the period of 5 Working Days mentioned in clause 4.10, the Recipient will be deemed to have agreed that the relevant General Condition has been satisfied in accordance with the relevant provisions of this Agreement.

4.12 If:

(a) the Recipient serves a GC Counternotice in the period of 5 Working Days mentioned in clause 4.10; and

(b) the Parties cannot agree whether the relevant General Condition has been satisfied

then:

(c) the dispute shall be referred by either Party to the Expert for determination; and

- (d) the date on which the relevant General Condition shall be deemed to have been satisfied or not (as the case may be) shall be the date of the Expert's determination.

Effect of the Unconditional Date

- 4.13 On the Unconditional Date this Agreement shall become unconditional and the provisions of this clause 4 shall cease to have effect.

5 PHASE CONDITIONS

Satisfying the Phase Conditions

- 5.1 On and from the relevant Phase Conditions Commencement Date the Developer shall use reasonable endeavours to satisfy the Phase Conditions in relation to the relevant Phase as soon as reasonably practicable and, in any event, prior to the relevant Phase Longstop Date.

Funding Condition and Guarantor Condition

- 5.2 Without prejudice to the generality of clause 5.1, the Developer shall, in respect of the relevant Phase, notify the Council in writing as soon as reasonably possible after the Phase Conditions Commencement Date whether the Developer intends to seek to satisfy:

- (a) the Funding Condition; or
- (b) the Guarantor Condition

and the Parties agree that, in respect of each Phase:

- (c) the Developer need only satisfy one, but not both, of the Funding Condition and the Guarantor Condition; and
- (d) it shall be the Developer's decision (in the Developer's absolute discretion) as to which of the Funding Condition or the Guarantor Condition the Developer shall seek to satisfy in relation to the relevant Phase.

- 5.3 Where, in respect of the relevant Phase, the Developer decides to try and satisfy the Funding Condition, the Developer shall provide the Council with:

- (a) for the Council's approval (such approval not to be unreasonably withheld or delayed) details of any substantial and reputable bank and/or private equity and/or debt provider (including any direct and/or indirect investor in such provider) and/or other financial institution that the Developer intends to utilise to fund the whole or any part or parts of the cost of the preparation for and/or the carrying out and/or completion of the Development, and the funder so approved or determined shall be a "**Funder**" for the purposes of the relevant Phase; and
- (b) reasonable evidence that the Developer or the Developer's Nominee (as appropriate) has available from its own resources and/or pursuant to one or more Funding Agreements sufficient funds to finance the cost of the preparation for, and the carrying out and completion of, the relevant Phase Works.

5.4 Where, in respect of the relevant Phase, the Developer decides to try and satisfy the Guarantor Condition:

- (a) the Developer shall, in relation to the relevant Phase, provide the Council with both:
 - (i) details of a proposed Phase Guarantor in respect of the obligations in schedule 6 of the Developer or the Developer's Nominee (as appropriate); and
 - (ii) a draft Phase Guarantee from the proposed Phase Guarantor in substantially the form of the agreed draft at schedule 11 with such amendments (if any) as the Developer reasonably considers are required

for the Council's approval (such approval in each case not to be unreasonably withheld or delayed) provided that, in the case of clause 5.4(a)(i), the Council shall not be acting unreasonably in withholding the Council's approval of the proposed Phase Guarantor if, inter alia, the proposed Phase Guarantor suggested by the Developer:

- (iii) enjoys diplomatic or state immunity; and/or
- (iv) does not have assets in the European Union or in another jurisdiction in respect of which a reasonable and accurate assessment of the financial strength of the proposed guarantor can be made; and/or
- (v) is not of a financial standing and covenant strength to be able to comply with and discharge obligations on the part of the guarantor in the relevant Phase Guarantee

and:

- (b) the proposed Phase Guarantor so agreed or determined shall be the "**Phase Guarantor**"; and
- (c) the form of Phase Guarantee so agreed or determined shall be the "**Phase Guarantee**"

Title Condition

5.5 In relation to any Phase in respect of which the Phase Premises comprise or include any Additional Interests then, without prejudice to the generality of clause 5.1:

- (a) the Developer shall notify the Council in writing ("**Developer Title Notice**") as soon as reasonably practicable after the Phase Conditions Commencement Date that the Developer (acting reasonably and properly) is satisfied that the Council has acquired those Additional Interests in accordance with the terms of the CPO Indemnity Agreement (as to which, clause 12.2 shall apply);
- (b) if the Developer fails to serve the Developer Title Notice on the Council before the other Phase Conditions in respect of the relevant Phase have been satisfied, the Council shall be entitled to serve notice in writing on the Developer confirming that the Council (acting reasonably and properly) is satisfied that the Council has acquired those Additional Interests in accordance with the terms of the CPO Indemnity Agreement ("**Council Title Notice**")

and, for the avoidance of doubt, the Parties agree that the Title Condition shall be deemed not to be one of the Phase Conditions applicable to the relevant Phase where the Phase Premises in respect of that Phase do not comprise or include any Additional Interests.

Advise the Council of progress

5.6 The Developer shall:

- (a) keep the Council fully informed at regular intervals (and additionally on reasonable request by the Council) of progress in relation to the satisfaction of each of the relevant Phase Conditions; and
- (b) promptly provide the Council with such documentation with regard to the same as the Council may reasonably require from time to time.

Council's assistance

5.7 If the Council (in its capacity as landowner) is required to:

- (a) enter into an agreement to satisfy the Necessary Consents Condition and/or the Statutory Agreements Condition, the Council shall do so promptly on being requested by the Developer, and at the reasonable and proper cost of the Developer, provided that:
 - (i) the Developer indemnifies the Council from and against all liability that the Council may incur arising out of, or in connection with, being a party to the same; and
 - (ii) the Council shall first have approved the terms of such agreement (such approval not to be unreasonably withheld or delayed); or
- (b) provide the Council's approval to any matter or thing [REDACTED] in order to enable the Developer to satisfy any of the Phase Conditions, the Council shall not unreasonably withhold or delay its approval.

5.8 The Council shall, at the reasonable and proper cost of the Developer, provide such other assistance (if any) as the Developer may from time to time reasonably require in connection with the Developer's efforts pursuant to clause 5.1.

Extension of the Phase Longstop Date

5.9 If, in respect of any Phase (other than Phase 1), the Developer fails to satisfy the Phase Conditions by the relevant Phase Longstop Date by reason of any Delaying Factors, then (subject to clause 5.10):

- (a) that Phase Longstop Date shall be extended from time to time by the relevant Extension Period; and
- (b) the term "**Phase Longstop Date**" in respect of the relevant Phase shall be construed accordingly.

5.10 If the Phase Longstop Date is extended in respect of the relevant Phase as mentioned in clause 5.9:

(a) it shall not, in any event, be later than [REDACTED]
[REDACTED] and

(b) the Parties shall, not less frequently than annually following the original Phase Longstop Date, each use reasonable endeavours to agree:

(i) whether the Delaying Factor(s) that triggered the relevant Extension Period still subsist(s); and

(ii) whether the relevant Extension Period should cease or be shortened (and, in the latter event, by how much)

and, if there shall be any disagreement arising out of this clause 5.10(b), the matter in dispute shall be referred to the Expert for determination; and

(iii) if the Parties agree, or the Expert determines, that the Delaying Factor(s) that triggered the relevant Extension Period no longer subsist(s) and that the relevant Extension Period should cease or be shortened (and, in the latter event, by how much), the term "**Phase Longstop Date**" shall be construed accordingly.

On satisfaction of the Phase Conditions

5.11 When either Party reasonably believes that a Phase Condition has been satisfied that Party (in this clause 5 the "**Sender**") shall serve written notice on the other (in this clause 5 the "**Recipient**") specifying which of the Phase Conditions the Sender believes has been satisfied (in this clause 5 a "**PC Notice**") and, with the PC Notice, the Sender will provide reasonable evidence that the relevant Phase Condition has been satisfied.

5.12 Subject to clauses 5.13 and 5.15, the Phase Condition specified in the PC Notice shall be deemed to be satisfied on the date of service of the PC Notice.

5.13 The Recipient (acting reasonably) may, within 5 Working Days of receipt of the PC Notice, give written counternotice (in this clause 5 a "**PC Counternotice**") to the Sender disputing that the relevant Phase Condition has been satisfied and specifying its reasons for that opinion.

5.14 If the Recipient does not serve any PC Counternotice within the period of 5 Working Days mentioned in clause 5.13 then the Recipient will be deemed to have agreed that the relevant Phase Condition has been satisfied in accordance with the relevant provisions of this Agreement.

5.15 If:

(a) the Recipient serves a PC Counternotice in the period of 5 Working Days mentioned in clause 5.13; and

(b) the Parties cannot agree whether the relevant Phase Condition has been satisfied

then:

- (c) the dispute shall be referred by either Party to the Expert for determination; and
- (d) the date on which the relevant Phase Condition shall be deemed to have been satisfied or not (as the case may be) shall be the date of the Expert's determination in accordance with the relevant provisions of this Agreement such determination (in the absence of fraud or manifest error) to be final and binding on the Parties.

6 NON-SATISFACTION OF THE GENERAL CONDITIONS / PHASE CONDITIONS

6.1 If:

- (a) the General Conditions shall not have been satisfied by the Longstop Date; or
- (b) the Phase Conditions in relation to any Phase (other than Phase 1) shall not have been satisfied by the relevant Phase Longstop Date:

(the "**Reason for Termination**") then:

- (c) either Party (the "**Sender**") may at any time thereafter (but not after the General Conditions or the relevant Phase Conditions (as the case may be) shall have been satisfied whether before or after the Longstop Date or the relevant Phase Longstop Date (as appropriate)) give to the other (the "**Recipient**") not less than 10 Working Days' notice in writing to determine this Agreement ("**Termination Notice**");
- (d) any purported Termination Notice shall only be considered validly served in accordance with the provisions this Agreement where such Termination Notice confirms appropriately full and complete details of the Reason for Termination which the Sender believes justify the sending of the Termination Notice; and
- (e) (subject always to clause 6.2) upon receipt by the Recipient of a validly served Termination Notice, this Agreement (save for clauses 19, 20, 21.2(c), 25, 29, 32, 35 and any clauses which are expressly stated to continue) shall determine at the expiry of the 10 Working Days' notice period.

6.2 If the Recipient disputes the validity of the Termination Notice, the Recipient shall, within 10 Working Days of receipt of the same, notify the Sender in writing whereupon either Party may refer the matter to the Expert.

6.3 If the Expert:

- (a) agrees with the Sender that the Termination Notice was validly served in accordance with the relevant provisions of this Agreement, this Agreement shall (subject to clause 6.4) forthwith determine and cease to have effect; or
- (b) agrees with the Recipient that the Termination Notice was not validly served in accordance with the relevant provisions of this Agreement then:
 - (i) such Termination Notice shall be of no effect;

- (ii) this Agreement will continue to bind both the Council and the Developer as if the relevant Termination Notice had not been served; and
- (iii) the Sender may not serve any further Termination Notice in respect of the same Phase where the Sender is seeking to justify that further Termination Notice with any Reason for Termination which is the same as, or substantially similar to, the Reason for Termination referred to in any previous Termination Notice which the Expert has determined was not validly served in accordance with the relevant provisions of this Agreement.

On termination

6.4 If this Agreement is determined as mentioned in clause 6.1(d) or clause 6.3(a) (as the case may be):

- (a) determination shall not apply in respect of any Phase in relation to which a Phase Lease has previously been granted, and this Agreement shall remain in full force and effect in respect of that/those Phase(s) and the relevant Phase Works;
- (b) determination shall be without prejudice to any antecedent rights or liabilities of either Party against the other in respect of their respective obligations and rights under this Agreement; and
- (c) the Developer will make application to remove all entries it has made to protect this Agreement (including those at the Land Registry) within 20 Working Days of the date of determination and, in default, the Developer hereby irrevocably appoints the Council as its agent for the purposes of this clause.

7 AGREEMENT FOR GRANT OF THE PHASES LEASES AND LICENCES

Phase Leases

7.1 Subject to clauses 3 – 6, the Council shall grant and the Developer and/or one or more of the Developer's Nominees (as appropriate) shall accept each of the Phase Leases for (in aggregate) the Premium at the times specified in, and otherwise on the terms of, this Agreement.

7.2 Each Phase Lease shall each be executed as an original and a counterpart.

7.3 If a Phase Lease is executed by an attorney for the Developer or a Developer's Nominee (as the case may be), the Developer shall (or, as appropriate, shall procure that the relevant Developer's Nominee shall), on completion, provide the Council with a copy of the relevant power of attorney certified in accordance with section 3 of the Powers of Attorney Act 1971.

Phase Licence

7.4 If the Phase Works to be carried out as part of the relevant Phase include demolition works and/or any proposed temporary landscaping and amenities ("**Off-Phase Works**") on or to any part of the Council Property which is:

- (a) greater than the relevant Phase Premises; and

- (b) not demised by any Phase Lease that has previously been granted; and
- (c) not part of the Existing Premises from time to time having regard to any part(s) of the same that have been surrendered as mentioned in clause 8.4(c),

(a "Licence Area") the Council will:

- (d) notwithstanding any provisions in the Existing Lease; and
- (e) provided that the Developer has (where required) obtained planning approval for, and all other Necessary Consents and Statutory Agreements in respect of, the Off-Phase Works

grant to the Developer or the Developer's Nominee (as appropriate) consent to enter onto the Licence Area and to carry out and complete the Off-Phase Works on the Licence Area by way of a separate licence, such licence to be:

- (f) completed contemporaneously with the relevant Phase Lease; and
- (g) granted on terms to be agreed or determined in accordance with clause 9.1 and clause 9.2 respectively.

Deposit

7.5

8 EXISTING LEASE REPAIR, RENT, SURRENDER AND USER PROVISIONS ETC

General

- 8.1 The Parties agree that, in accordance with the remaining provisions of this clause 8, the Developer or (as appropriate) the Developer's Nominee (in either case, as lessee) shall not be in breach of the Existing Lease or any Phase Lease respectively if (and to the extent that) the Developer's or the Developer's Nominee's (as the case may be) failure to observe or perform its obligations in either of the same results from any act or thing done in observance and/or compliance with the Developer's obligations in this Agreement and the provisions of the Existing Lease and any relevant Phase Lease shall be deemed to be so varied and read and construed as set out below.

Repair etc

- 8.2 Subject to clause 8.3, the Council (as the "landlord" of the Existing Lease and so as to bind both itself any future landlord of the Existing Lease) agrees that, in the period between the date of this Agreement and:
- (a) the Unconditional Date; or (if earlier)
 - (b) the date on which this Agreement is terminated,

the Developer (and/or any other "tenant" of the Existing Lease and so as to benefit both the Developer and any future tenant of the Existing Lease) shall only be required to observe and

perform the lessee's obligations in the Existing Lease relating to repair and maintenance (the **"Repair Obligations"**) to the extent necessary to comply with:

- (c) health & safety or other legislative requirements;
- (d) safety/security requirements;
- (e) the requirements of the insurers of Vicarage Field; and
- (f) the principles of good estate management

and during this period only the provisions of the Existing Lease shall be deemed to be so varied and read and construed accordingly.

8.3 If this Agreement is terminated, the relief afforded to the Developer by clause 8.2 shall cease to have effect, and the Repair Obligations shall again apply with effect from the date of termination of this Agreement.

8.4 The Council (as the "landlord" of the Existing Lease and any Phase Lease so as to bind both itself and any future landlord of the Existing Lease and/or any Phase Lease) agrees that, on and from the Unconditional Date the Developer (as "tenant" of the Existing Lease and so as to benefit both the Developer and any future tenant of the Existing Lease and/or any tenant or future tenant of any Phase Lease) shall:

- (a) as and when reasonably required to facilitate any part or parts or the whole of the Development pursuant to the terms of this Agreement, have the right from time to time to demolish the whole or any part or parts of any building or structure from time to time upon the Existing Premises provided that the Developer has (where required) obtained planning approval for, and all other Necessary Consents and Statutory Agreements in respect of such works;
- (b) as and when reasonably required to facilitate any part or parts or the whole of the Development pursuant to the terms of this Agreement, have the right to carry out such works and/or alterations upon the Existing Premises and/or the relevant Phase Premises as may from time to time be reasonably required provided that the Developer has (where required) obtained planning approval for, and all other Necessary Consents and Statutory Agreements in respect of such works;
- (c) simultaneously with or at any time after the grant of any Phase Lease have the right (without the Co [REDACTED]'s consent) to surrender to the lessee of the relevant Phase Lease [REDACTED] any part or parts of the Existing Premises to the extent that such part or parts is/are demised as Phase Premises pursuant to the grant of that Phase Lease, and the Parties agree that:
 - (i) the deed of surrender shall record the apportionment of rent as between the Existing Lease and the relevant Phase Lease as agreed as mentioned in clause 9.1(e) or as determined by the Expert as mentioned in clause 9.2 (as the case may be); and
 - (ii) the Council (as freeholder of the Existing Premises) shall join in the deed of surrender for the sole purpose of acknowledging the surrender and the rent apportionment;

- (d) (to the extent any part or parts of the Existing Premises ("**Relevant Part(s)**") has/have not been surrendered) have the right to use the Relevant Part(s) for any purpose in accordance with the terms of any Phase Lease which has been granted subject to that/those Relevant Part(s);
- (e) comply with the Repair Obligations only to the extent necessary to comply with the criteria at clause 8.2 (c) – (f)

and the provisions of the Existing Lease and any Phase Lease shall thereafter be deemed to be so varied and read and construed accordingly.

Rent

8.5 Notwithstanding the terms of the Existing Lease, the Parties agree that [REDACTED]
[REDACTED]
[REDACTED] and the Existing Lease shall be read and construed accordingly during that period (but not further or otherwise).

8.6 The Parties agree that:

- (a) the aggregate of:
 - (i) the "base ground rent" (as defined in the fourth schedule to the Existing Lease, but subject to reduction in accordance with the apportionment/deed of surrender provisions in clause 8.4(c)) payable directly to the Council (as the immediate "landlord" of the premises demised by the Existing Lease from time to time having regard to clause 8.4(c)); and
 - (ii) the "Base Rent" (as that term is defined in the Phase Lease) reserved under each Phase Lease subsisting from time to time

shall [REDACTED] and

- (b) the "Landlord's Percentage" (as that term is defined in the Phase Lease) in each Phase Lease shall [REDACTED] commencing on and from Practical Completion of the Phase Works applicable to that Phase, and thereafter [REDACTED]

9 COMPLETION ARRANGEMENTS

Drawdown Pre-requisites

- 9.1 Prior to the anticipated date of completion of each Phase Lease the Developer shall, in relation to that Phase Lease, provide the Council with:
- (a) a Land Registry compliant demise plan or plans in respect of the proposed Phase Premises;
 - (b) a draft Phase Lease based on the agreed form at schedule 5 and with such amendments as the Developer reasonably considers are required, including:

- (i) to describe properly the premises to be demised;
- (ii) to exclude from the demise any areas which shall have been adopted or are subject to an agreement to adopt; and
- (iii) to ensure that adequate and appropriate rights are:
 - (A) granted to enable the Phase Premises to be properly used and operated in accordance with the terms of the relevant Phase Lease; and
 - (B) reserved to adequately protect the interests of the Council in relation to its retained land

having regard to, inter alia, the terms of any previously completed Phase Lease(s) and the Existing Lease;

- (c) a detailed specification of the proposed Phase Works;
- (d) if relevant (and other than in relation to Phase 1) a draft Phase Licence as mentioned in clause 7.4 which shall, inter alia:
 - (i) include:
 - (A) provisions relating to the Developer's use of the Licence Area post-completion of the Off-Phase Works (as those terms are defined in clause 7.4) and pending the grant of a Phase Lease that includes the Licence Area; and
 - (B) a Land Registry compliant plan or plans in respect of the proposed Licence Area; and
 - (ii) be granted subject to any third party rights affecting the Licence Area; and
- (e) a calculation of how the "base ground rent" (as defined in the fourth schedule to the Existing Lease) should, in the Developer's reasonable opinion, be apportioned between the Existing Lease (to the extent that the Existing Lease has not then previously been surrendered and/or may then be surrendered by reference to the relevant Phase Lease as mentioned in clause 8.4(c)), any apportionment previously agreed or determined in respect of any Phase Lease previously granted and/or the relevant Phase Lease to be granted

for the Council's approval (such approval in each case not to be unreasonably withheld or delayed).

9.2 If the Parties fail to agree any of the items mentioned in clause 9.1 within 10 Working Days of receipt of the last of those items, either Party may refer the matter(s) in dispute to the Expert for determination.

9.3 The Parties agree that:

- (a) the items so agreed or determined shall (together) be the **"Drawdown Pre-requisites"**; and
- (b) the lease so agreed or determined shall be the **"Phase Lease"**;
- (c) the premises so agreed or determined shall be the **"Phase Premises"**;
- (d) the specification so agreed or determined shall be the **"Phase Specification"**;
- (e) (where relevant) the licence (including the relevant plan(s)) so agreed or determined shall be the **"Phase Licence"**

in respect of the relevant Phase.

Timing

- 9.4 Completion of the grant of each Phase Lease shall take place no later than 2.00pm on the relevant Phase Completion Date, and clause 9.7 applies instead of Standard Condition 9.1.2.
- 9.5 Neither Party can be required to complete before 9.30am or after 5.30pm on a Working Day, nor at any time on a day which is not a Working Day.

If the Council is not the registered proprietor of the Phase Premises on completion

- 9.6 If, in relation to the grant of any Phase Lease, the Council has acquired the freehold interest in the relevant Phase Premises (**"Freehold"**) before the relevant Phase Completion Date, but is not registered at the Land Registry as proprietor of the same by that date:
 - (a) the Developer shall nevertheless complete that Phase Lease on the relevant Phase Completion Date and shall not be entitled to (and shall not) raise any requisition in connection with the Council not being the registered proprietor of the Freehold;
 - (b) completion shall not relieve the Council of the Council's obligation to procure that the Council is promptly registered as proprietor of the Freehold (which the Council covenants to use reasonable endeavours to achieve as soon as reasonably possible);
 - (c) pending registration of the Council's title to the Freehold, the Council shall keep the Developer fully informed of the progress of its application for registration and shall deal promptly with any requisitions raised by the Land Registry; and
 - (d) the Council shall promptly provide the Developer with official copies of the register and title plan issued by the Land Registry following completion of its application for registration of the Freehold.

Money due on completion

- 9.7 If the money due on completion is received in the Council's Solicitors' Nominated Account after 2.00pm on a Working Day (or at any time on a day which is not a Working Day) then, for the purposes of Standard Condition 10.3, the relevant completion shall be treated as taking place on the next Working Day as a result of the payor's default.

Restrictions

- 9.8 The Council cannot be required to grant any Phase Lease other than:
- (a) as a whole;
 - (b) to the Developer or a Developer's Nominee (as appropriate); and
 - (c) for the relevant Phase Premium.

Management Regime

- 9.9 The Council cannot be required to grant the Phase 1 Lease unless the Developer has (and the Developer hereby covenants that it will do so) unconditionally put in place and commenced the ongoing and continuous operation (or procured the unconditional putting in place and commencement of the ongoing and continuous operation) of such agreement(s) as is/are necessary to implement Management Regime fully and effectively.

Opinion letter in respect of the Developer

- 9.10 The Council cannot be required to grant any Phase Lease to the Developer or to any body corporate incorporated outside England and Wales (in any event a **"Proposed Lessee"**) unless, on or before completion of the relevant Phase Lease, the Developer delivers, or procures delivery, to the Council (and the Developer hereby covenants to so deliver to the Council or to procure the delivery to the Council of) an opinion letter:

- (a) in a form approved by the Council; and
- (b) given by a reputable firm of private practice lawyers practising in, and competent in the law of, the relevant jurisdiction and who shall be approved by the Council

(such approval in each case not to be unreasonably withheld or delayed) which confirms that:

- (c) the Proposed Lessee is duly incorporated and existing under the laws of that jurisdiction;
- (d) the Proposed Lessee has corporate power to hold land in England and Wales and to enter into (and will be bound by) its obligations under the relevant Phase Lease;
- (e) the choice of the law of England and Wales in relation to the relevant Phase Lease is valid in, and will be given effect to by, the courts of that jurisdiction;
- (f) the Proposed Lessee's irrevocable submission to the non-exclusive jurisdiction of the courts of England and Wales and the appointment of agents there to accept service of process on its behalf in relation to the relevant Phase Lease are valid and binding on the Proposed Lessee;
- (g) the Proposed Lessee has validly executed relevant Phase Lease;
- (h) the Proposed Lessee is not the subject of any insolvency proceedings, winding up or analogous procedure in that jurisdiction; and

- (i) any other matters relevant to the legality, validity and enforceability of the Proposed Lessee's obligations that the Council may reasonably require.

Phase Licence

- 9.11 Where relevant, the Council cannot be required to grant any Phase Lease unless the Developer or the Developer's Nominee (as appropriate) completes the relevant Phase Licence (as defined in clause 9.3(e)), and (where relevant) the Developer hereby covenants to so complete (or to procure the completion of) the same.

No agency

- 9.12 Unless the Council's Solicitors agree in writing otherwise, they will not be acting as the agent of the Developer's Solicitors or the solicitors acting for the Developer's Nominee (as appropriate) on completion of any Phase Lease, and the deeds and documents to which lessee of the Phase Lease is entitled are to be sent to the Developer's Solicitors or the solicitors acting for the Developer's Nominee (as appropriate) by ordinary post or document exchange without liability on the part of the Council or the Council's Solicitors for any subsequent loss in the post or document exchange.

Notice to complete

- 9.13 Standard Condition 1.1.3 is varied to:

"A party is ready, able and willing to complete:

- (a) if it could be, but for the default of the other party; and
- (b) in the case of the seller, even though the seller is a contracting purchaser of the property or the property remains subject to a charge or mortgage which shall be discharged, or from which the property shall be released, on completion."

10 VAT

- 10.1 Standard Condition 2 does not apply.

- 10.2 The Developer shall pay to the Council VAT at the appropriate rate properly chargeable on the Premium and on all other payments due to the Council under this Agreement and, wherever in this Agreement any sum is stated to be payable in respect of any supply, that sum shall be exclusive of any VAT thereon and the Developer covenants to pay the relevant VAT to the Council:

- (a) at the same time as the principal amount is due; or
- (b) (if later) within 5 Working Days of receipt of a correctly addressed, valid invoice in respect of that VAT.

11 MATTERS AFFECTING THE PHASE PREMISES

- 11.1 Each Phase Lease is granted subject to and (where appropriate) with the benefit of:

- (a) the Existing Lease so far as the same affects the relevant Phase Premises;
- (b) the other Council Title Matters so far as the same affect the relevant Phase Premises;
- (c) all matters capable of registration as local land charges or otherwise (whether or not actually registered) and all notices, orders, demands, proposals, requirements or agreements served or made by any competent authority before or after exchange of this Agreement;
- (d) (without limiting clause 11.1(c)) all charges, agreements, conditions, proposals, directions, notices, orders, restrictions or other matters affecting the relevant Phase Premises under town and country planning, highways or other legislation made, imposed or served before or after exchange of this Agreement;
- (e) all outgoings, rights, easements, quasi-easements and wayleaves affecting the relevant Phase Premises;
- (f) all unregistered interests with overriding status set out in the Land Registration Act 2002 and any liability for or right in respect of the repair of a church chancel; and
- (g) (to the extent not dealt with in this clause 11.1) the matters mentioned in Standard Condition 4.1.2.

11.2 Standard Condition 4.1.3 does not apply.

12 TITLE

Title to Vicarage Field

- 12.1 The Council has deduced title to Vicarage Field to the Developer, and the Developer is not entitled to raise any requisition on title except in respect of any entry registered against the Council Title Number after the time and date of the relevant official copies referred to in schedule 2 (but not where such entry relates to either a matter disclosed to the Developer before exchange of this Agreement or any of the matters referred to in clause 11.1).

Title to the Additional Interests

- 12.2 The Parties shall each comply with their respective obligations in the CPO Indemnity Agreement in relation to the acquisition of the Additional Interests.
- 12.3 If and to the extent that, in respect of any Phase Lease, the Phase Premises comprise or include any Additional Interests, the Council's title shall comprise where the relevant Additional Interest(s) is/are acquired by the Council in accordance with the CPO Indemnity Agreement :
- (a) by private treaty, the title deduced to the Council by the relevant vendor(s) plus a copy of the document evidencing the disposition to the Council; or
 - (b) pursuant to the CPO, the relevant general vesting declaration or notice to treat/notice of entry (as the case may be) made in accordance with the CPO Indemnity Agreement

and the Developer is not entitled to raise any requisition on such title except in respect of any matter arising after the date of the Council's acquisition (but not where such entry relates to either a matter disclosed to the Developer before exchange of this Agreement or any of the matters referred to in clause 11.1).

Other title provisions

- 12.4 Standard Conditions 7.2.2 and 7.2.3 apply in relation to any requisition permitted under clause 12.1 (but do not otherwise apply) and the Council may rescind this Agreement if:
- (a) the Council is unable or, on reasonable grounds, unwilling to deal with any such requisition to the Developer's reasonable satisfaction; and
 - (b) the Council gives the Developer notice requiring it to withdraw the requisition and the Developer fails to do so within 5 Working Days of that notice being given.
- 12.5 Standard Condition 7.4.2 does not apply.
- 12.6 The Council grants each Phase Lease with full title guarantee.
- 12.7 The Council shall comply with its obligations in schedule 9.

13 ENVIRONMENTAL CONDITION OF THE PHASE PREMISES

[illegible]

[Redacted text block]

[Redacted text block]

13.3 [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

13.4 [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

13.5 [Redacted text block]

13.6

14 PHASE WORKS

The Parties shall, in relation to the Phase Works in respect of each Phase, comply with their respective obligations in schedule 6.

15 INSURANCE

15.1 Subject to clause 15.2, the provisions relating to insurance in the Existing Lease shall continue to apply from the date of this Agreement

15.2 On and from completion of any Phase Lease, the provisions relating to insurance in that Phase Lease shall apply to the relevant Phase Premises.

15.3 Standard Conditions 8.2.2, 8.2.3, 8.2.4 and 8.2.5 do not apply.

16 NOTICES

16.1 Any notice to be served on, or communication to be sent to, either Party under or in connection with this Agreement must be in writing and signed by or on behalf of the Party giving it, and shall be deemed to be properly served if sent by Recorded Delivery post or delivered by hand (but not by fax or e-mail):

(a) in the case of the Council, to its address on page 1 of this Agreement addressed to the Director of Law and Governance (and a copy shall also be sent to the Council's Solicitors, but failure to serve such copy shall not invalidate service of the original on the Council); or

(b) in the case of the Developer, to The Directors, Lagmar (Barking) Limited, 50 Lothian Road, Festival Square, EH3 9WJ, Edinburgh with a copy to Legal Counsel,

PineBridge Benson Elliot LLP, 50 Hans Crescent, London, SW1X 0NA (and a copy shall also be sent to the Developer's Solicitors, but failure to serve such copy shall not invalidate service of the original on the Developer)

or, in either case, to such other alternative address and/or such alternative person (in either case within the jurisdiction) as the Council or the Developer (as the case may be) may nominate in writing to the other from time to time, and any such notice or communication shall be deemed to be served on the second Working Day after being put in the post properly addressed or (as the case may be) upon the date of delivery if service is by hand.

- 16.2 This clause shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17 PREMIUM [REDACTED]

Indexation of the Premium

- 17.1 In this clause 17 the following expressions shall have the following meanings:

(a) **"Index"** means the Consumer Prices Index (all items, including owner occupiers' housing costs) published by the Office of National Statistics or such other body on whom the duties for preparation and publication of the Index shall devolve;

(b) **"Review Date"** means [REDACTED] and [REDACTED]

(c) **"Multiple"** means the figure calculated to two decimal places by the following formula:

$$M = A + B$$

where:

"M" is the Multiple

"A" is the most recent published figure for the Index at [REDACTED] and [REDACTED]

"B" is the most recent published figure for the Index at the Review Date

provided that if, on the Review Date, the Multiple is less than 1, the Multiple at that date shall nevertheless be deemed to be 1.

- 17.2 If the Review Date occurs before [REDACTED] the Council shall, as soon as reasonably practicable after the Review Date, notify the Developer in writing of the amount the reviewed Premium calculated with effect as at the Review Date in accordance with the formula in clause 17.1(c) for the Developer's approval (such approval not to be unreasonably withheld or delayed).

- 17.3 If:

(a) the Index shall cease to exist, or

- (b) the Developer (acting reasonably) disputes the Council's calculation of the reviewed Premium; or
 - (c) it becomes impossible or impractical:
 - (i) by reason of any change after the date of this Agreement in the method used to compile the Index; or
 - (ii) for any other bona fide reason
- to calculate the reviewed Premium

then, in any such event, either Party may refer the matter to the Expert for determination.

- 17.4 The amount agreed by the Parties or determined by the Expert in accordance with this clause 17 shall, with effect on and from the Review Date, be the Premium.
- 17.5 Time is not of the essence for the purposes of the review of the Premium in accordance with this clause 17.

Phase Premium

- 17.6 The Phase Premium payable to the Council in respect of the Phase 1 Lease shall be [REDACTED]
- 17.7 The aggregate premium payable for the grant of each of the other Phase Leases shall be the Premium Balance, which the Developer shall pay (or shall procure that the Developer's Nominee shall pay) to the Council [REDACTED]
- [REDACTED]
- [REDACTED]

18 DEALINGS WITH THIS AGREEMENT

- 18.1 Subject to clause 18.2, 18.3, 18.4 and 18.5 the Developer shall not charge, assign or otherwise transfer the benefit of this Agreement or hold it on trust for any other person, or enter into any agreement to do so.
- 18.2 The Developer may novate the whole of this Agreement to any third party (a "Novatee") by way of a deed of novation (a "Novation Deed") provided that the Developer:
- (a) first obtains the approval of the Council to the identity of the proposed Novatee and the proposed form of Novation Deed (in each case such approval not to be unreasonably withheld or delayed); and
 - (b) contemporaneously with completion of the Novation Deed assigns to the Novatee the Existing Lease;

- (c) where necessary, delivers to the Council on completion (and the Developer hereby covenants to so deliver to the Council) an opinion letter in relation to the Novatee that complies with clause 9.11 (save that, for the purpose of this clause, references in clause 9.11 to "Phase Lease" shall be deemed to be references to the Novation Deed and the Existing Lease).

18.3 For the avoidance of doubt, subject only to satisfaction of the requirements set out at clause 18.2:

- (a) the Council will, without payment of any premium, complete the Novation Deed as soon as reasonably practicable after written request from the Developer so to do; and
- (b) provided that it complies with the requirements of the Existing Lease in relation to consent for assignment, the Novation Deed shall be considered the consent of the Council (as "landlord" of the Existing Lease) to the assignment of the Existing Lease to the Novatee.

18.4 The Developer may provide a security assignment of and/or a security charge over this Agreement to any Funder and, if it does, so, it shall promptly notify the Council in writing of that fact together with the details of the name and registered office address of the assignee/charge.

18.5 Notwithstanding the remainder of this clause 18 the Council and the Developer each acknowledge and agree that any Council consent to a novation of the CPO Indemnity Agreement pursuant to the terms of the CPO Indemnity Agreement shall be deemed to be a Council consent to a novation of this Agreement to the same Novatee, and at the same time, pursuant to the terms of this Agreement.

19 CONFIDENTIALITY AND PUBLIC RELATIONS

Confidentiality

19.1 Subject to clause 19.2, the Parties shall keep confidential the contents and existence of this Agreement and the details and existence of the discussions and dealings between them in connection with the matters the subject of this Agreement.

19.2 The previous clause does not, however, prevent a Party from disclosing any information:

- (a) if required to do so by law, including any court;
- (b) if required by any competent authority, including the UK Listing Authority, HM Revenue & Customs or the rating authority;
- (c) to its professional advisers and employees, but on the condition that they comply with the same duty of confidentiality;
- (d) in the case of the Council, to its Officers or Members or to the extent necessary to comply with its constitution or standing orders;
- (e) in the case of the Developer, to any prospective Funder, purchaser or Novatee, but on the same condition;

- (f) to the extent necessary for audit purposes;
- (g) to the extent necessary in relation to the determination of any dispute under clause 29;
- (h) in accordance with the public relations strategy mentioned in clause 19.3; or
- (i) relating to a specific Phase after completion of the grant of the Phase Lease in respect of that Phase.

Public relations

- 19.3 The Developer shall, as soon as reasonably practicable, work up and deliver to the Council for its approval (such approval not to be unreasonably withheld or delayed) a consultation and public relations strategy relating to the Development and, once agreed, the Parties shall comply with the same as the same may be amended or updated from time to time and approved by each of the Council and the Developer (such approval in each case not to be unreasonably withheld or delayed).

20 FREEDOM OF INFORMATION ACT / ENVIRONMENTAL INFORMATION REGULATIONS

- 20.1 In this clause:

- (a) **"EIR"** means the Environmental Information Regulations 2004 and any related guidance issued by the Department for Environment, Food and Rural Affairs (or any Government department from time to time having responsibility in relation to environmental legislation) and/or the Information Commissioner;
- (b) **"FOIA"** means the Freedom of Information Act 2000 and any guidance issued by the Ministry of Justice (or any Government department from time to time having responsibility in relation to freedom of information legislation) or the Information Commissioner;
- (c) **"Information Commissioner"** means the UK independent body known as the Information Commissioner (and any successor body); and
- (d) **"Request for Information"** means a request for information under the FOIA and/or the EIR, whether or not expressly made by any person, to the Council.

- 20.2 The Developer acknowledges that the Council is a public authority as defined by the FOIA and/or the EIR and therefore recognises that any information relating to this Agreement (including this Agreement itself) or otherwise relating to the Developer, however held or recorded by the Council or held by the Developer on behalf of the Council, may be the subject of a Request for Information and possible disclosure under the FOIA and/or the EIR.

- 20.3 The Developer shall (and shall use reasonable endeavours to procure that its respective employees, contractors and agents shall), to the extent that information is held by the Developer on behalf of the Council, and following written request from the Council so to do, provide such reasonable assistance to the Council as the Council may reasonably request in complying with the Council's respective obligations under the FOIA and/or the EIR, including reasonable assistance in gathering information promptly to enable the Council to respond to a Request for Information within the timescales set out in s10 of the FOIA or Regulation 5 of the EIR (as the case may be).

- 20.4 The Developer shall (and shall use reasonable endeavours to procure that its employees, contractors and agents shall), to the extent that information is held by the Developer on behalf of the Council, and following written request from the Council so to do, transfer to a representative of the Council (or to such other person as may be notified by the Council in writing to the Developer for this purpose) any such information reasonably required to enable the Council to respond to a Request for Information and which the Developer holds on behalf of the Council in respect of this Agreement as soon as practicable after the Council requests such information.
- 20.5 The Council shall inform the Developer of any Request for Information which relates to this Agreement as soon as possible and, at the same time, inform the Developer of the date by which the Council intends to make a final decision whether or not to release information in response to that Request for Information.
- 20.6 Following receipt of the Council's request under clause 20.5 and up to 2 Working Days prior to the date notified to the Developer in clause 20.5 the Developer may make representations to the Council as to whether (or not), and on what basis, information should (or should not) be disclosed. The Council shall have regard to the Developer's representations, but the Council shall be responsible for determining in its unfettered statutory discretion (and notwithstanding any other provision in this Agreement or any other agreement) whether and to the extent (if at all) that any information is exempt in accordance with the provisions of the FOIA or the EIR.

Compliance by third parties

- 20.7 The Developer shall procure that:
- (a) its professional advisers and agents appointed from time to time in relation to the Development are fully instructed and required to comply with this clause 20; and
 - (b) its contractual arrangements with any Funder and/or Novatee (as defined in clause 18.2) shall include provisions in the same terms as this clause 20 that are enforceable by the Council direct against such third party under the Contracts (Rights of Third Parties) Act 1999.

21 REGISTRATION AT THE LAND REGISTRY

- 21.1 The Developer shall not apply to the Land Registry for an agreed notice to be entered on the register in respect of this Agreement.
- 21.2 If the Developer applies for a unilateral notice to be entered in the register of the Council's title to the Council Property or any other affected land in respect of this Agreement:
- (a) the Developer shall promptly supply the Council with a copy of the title information document and official copies of the register and title plan issued by the Land Registry on completion of the application; and
 - (b) the Council shall not apply to the Land Registry for the cancellation of the notice while this Agreement subsists; but
 - (c) the Developer shall not object to any application by the Council for the cancellation of the notice if this Agreement terminates.
- 21.3 Unless obliged to do so by law, neither Party shall supply this Agreement or any copy of it to the Land Registry, whether with an application for a unilateral notice or otherwise.

22 ENTIRE AGREEMENT / NO REPRESENTATIONS

- 22.1 This Agreement constitutes the entire agreement between the Parties relating to the matters the subject of this Agreement, and there are no other arrangements between them relating to such matters.
- 22.2 The Developer acknowledges that, in entering into this Agreement, it places no reliance on any statement or representation made by or on behalf of the Council other than any made by the Council's Solicitors in written replies to written enquiries raised by the Developer's Solicitors before exchange of this Agreement.
- 22.3 This clause 22 does not, however, limit or exclude any liability for fraud.

23 VARIATIONS TO THIS AGREEMENT

Any variations to this Agreement which the Parties shall agree (each in its absolute discretion) shall be set out in a deed executed by each of them.

24 LATE PAYMENT

Any sum due from one Party to the other under this Agreement which is not paid when it is due (or within any period specifically allowed by this Agreement) shall bear interest at the Prescribed Rate on and from the date when it fell due to, but excluding, the date of payment.

25 COSTS

The Developer shall be responsible for the Council's legal and other costs and expenses in relation to the negotiation and completion of this Agreement and the other documents anticipated by, and the matters the subject of, this Agreement. [REDACTED]

26 GOOD FAITH

The Parties hereby agree that they will act in a proper, reasonable and diligent manner, and that they owe a duty of good faith to each other, in relation to all matters arising under this Agreement.

27 NO PARTNERSHIP

This Agreement is not a partnership or joint venture between the Parties and neither the Council nor the Developer shall hold itself out to be an agent of the other for any purpose, and neither Party has any authority to bind the other.

28 NON MERGER

To the extent that they remain to be observed and performed, all the provisions of this Agreement will continue in full force and effect notwithstanding the completion of all or any of the Phase Leases.

29 DISPUTES

- 29.1 Any dispute between the Parties arising out of or in connection with this Agreement shall be referred to an independent expert who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than 10 years ("**Expert**") and who shall be appointed by agreement between the Parties or, in the absence of agreement within 10 Working Days of a request in writing from either Party to the other to agree an appointment, either Party may refer the appointment to the President or other most senior available officer of the Royal Institution of Chartered Surveyors.
- 29.2 Where any matter is submitted for the determination of the Expert in accordance with clause 29.1, he shall:
- (a) act as an expert and not as an arbitrator and shall have an unfettered discretion to determine the matter in question;
 - (b) invite the Parties to submit written representations to him within 10 Working Days which he shall copy to the other Party;
 - (c) invite the Parties to submit written counter-representations within 5 Working Days of receipt by each Party of the other's original written representations, which he shall again copy to the other;
 - (d) consider each Party's written representations and counter-representations, but shall not be bound or fettered by them; and
 - (e) endeavour to deliver his written determination to the Parties no later than 10 Working Days after all written representations and counter-representations have been received by him, giving written reasons for the decision and directing which Party, and to what extent, should be responsible for paying his costs (as mentioned in clause 29.5) and, if he considers it appropriate, directing that one Party be responsible for paying the whole or part of the other's costs incurred in connection with the referral to the Expert (as mentioned in clause 29.7).
- 29.3 If the Expert dies, delays or becomes unwilling or incapable of acting, the Parties shall jointly appoint, or there shall be appointed, another Expert in his place in accordance with the procedure in clause 29.1.
- 29.4 The Expert's written determination shall be final and binding on the Parties save in the case of manifest error or fraud.
- 29.5 The costs of the Expert and of his appointment ("**Expert's Costs**") shall be payable by the Parties in such proportions as he shall direct and:
- (a) in making his determination, he may determine whether either Party has acted unreasonably in relation to the matter in dispute and take this into account; and
 - (b) in the absence of any such direction, his costs shall be borne equally between the Parties.
- 29.6 If either Party ("**Defaulting Party**") fails to pay its share of the Expert's Costs;

- (a) the other Party shall be entitled to discharge the Defaulting Party's share and recover the same from the Defaulting Party together with interest on such sum at the Prescribed Rate from the date on which the other Party incurs such sum until the date on which the Defaulting Party reimburses such amount; and
- (b) the Defaulting Party agrees to pay the other Party the relevant amount due under this clause within 10 Working Days of written demand from time to time.

29.7 The Parties shall each be responsible for their own costs in relation to any reference to, and determination by, the Expert unless, and to the extent that, he determines otherwise.

30 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 30.1 Unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce a provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 30.2 The Parties may rescind or vary this Agreement without the consent of any third party to whom a right of enforcement has been expressly provided.

31 INVALID, UNLAWFUL OR UNENFORCEABLE PROVISIONS

- 31.1 If any provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such provision shall, to that extent, be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.
- 31.2 Notwithstanding the foregoing, in the event of such omission from this Agreement, the Parties shall negotiate in good faith to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so omitted.

32 GOVERNING LAW AND JURISDICTION

- 32.1 This Agreement and any dispute or claim arising out of or in connection with it (whether contractual or non-contractual in nature) is governed by the law of England and Wales.
- 32.2 The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales in respect of any matter, dispute or claim arising out of or in connection with this Agreement (whether contractual or non-contractual in nature).
- 32.3 The Developer irrevocably appoints:

(a) [REDACTED] or [REDACTED]

- (b) such other party resident within the jurisdiction of the courts of England and Wales as the Developer may nominate in writing to the Council from time to time

as its agent to accept on its behalf service of any notices or proceedings arising out of or in connection with this Agreement (whether the matter, dispute or claim to which they relate is contractual or non-contractual in nature).

33 ANTI-CORRUPTION

The Developer covenants that the Developer:

- (a) has not given nor agreed to give, and will not give or agree to give, any person any bribe on behalf of itself or any other party with the object of obtaining a business advantage for itself or any other party in relation to this Agreement or any of the transactions anticipated by this Agreement;
- (b) has, and will maintain, in place its own policies and procedures to ensure compliance with any applicable anti-corruption law;
- (c) has not engaged, and will not engage, in any activity or practice which would constitute an offence under any applicable anti-corruption law; and
- (d) shall from time to time, at the reasonable request of the Council, confirm in writing that the Developer has complied with the Developer's covenants in this clause 33 and shall provide such reasonable information (if any) as may be reasonably requested by the Council in support of such compliance.

34 KEY PERSONS

The Developer shall use reasonable endeavours to ensure that:

- (a) an appropriate number of competent, suitably qualified and experienced, trustworthy and reliable management and non-management personnel are at all times assigned to, and engaged in the performance and discharge of, its obligations and responsibilities under this Agreement;
- (b) any replacement person or persons shall also be competent, suitably qualified and experienced, trustworthy and reliable; and
- (c) the personnel engaged in performing the Developer's obligations and responsibilities under this Agreement shall be considerate towards, and co-operate with and not obstruct, any other contractors or advisers from time to time carrying out duties on or in relation to the Council Property.

35 SAVING OF COUNCIL'S STATUTORY POWERS

- 35.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of, or fetter the discretion of, the Council in the exercise of its functions as a local authority ("**Functions**").
- 35.2 The rights, powers, duties, obligations and discretion of the Council in connection with its Functions may be as fully and effectually exercised in relation to the Council Property as if this Agreement had not been entered into.
- 35.3 Any act or thing done by the Council (including the giving or grant of any notice, consent of approval) pursuant to the terms of this Agreement (or any failure or omission by the Council to do or give or grant the same) shall not be deemed to be done or given or granted (or not as the case may be) by the Council in any capacity other than as the owner of the freehold or other interest in the Council Property.

35.4 Nothing contained or implied in this Agreement shall (or shall be deemed to):

- (a) involve the delegation by the Council of any of its rights, powers, duties or obligations as a local authority, or
- (b) oblige the Council to expend more or receive less money in complying with this Agreement than it may lawfully do nor to do (or omit to do) any act or thing which would or may be unlawful or ultra vires or amount to maladministration.

IN WITNESS whereof this Agreement has been executed by the Parties as a deed and delivered on the date stated above.

SCHEDULE 1

Planning

1 DEFINITIONS

In this schedule, unless the context otherwise requires, the following expressions shall have the following meanings:

Acceptable Planning Permission means, in respect of the relevant Phase Works, a Planning Permission (and any related Planning Agreement) for that Phase that does not contain:

- (a) any Onerous Conditions; or
- (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Condition

as agreed by the Developer and the Council in accordance with the terms of this schedule.

Adverse Matter (as the case may require) any condition in the relevant Planning Permission or Planning Agreement for the relevant Phase Works which, in each such case, would materially:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appeal all or either of the following:

- (a) an application to the Local Planning Authority under section 73 of the Planning Act against the presence of an Onerous Condition in a Planning Permission (or any related Planning Agreement); or
- (b) an application to the Secretary of State under sections 78 and 79 of the Planning Act following a Planning Refusal by the

Local Planning Authority.**Calling-In**

a direction by the Secretary of State that a Planning Application be referred to him for determination under section 77 of the Planning Act.

Challenge Period

the period of six weeks calculated from and including the Permission Date.

Decision Notice

a written notice of the grant or refusal of Planning Permission or Outline Planning Permission by the Local Planning Authority or the Secretary of State.

Finally Determined

means:

- (a) in relation to any Proceedings, when those Proceedings have been withdrawn; or (as the case may be)
- (b) when the period for bringing Proceedings has elapsed without any Proceedings being instigated; or (as the case may be)
- (c) if Proceedings are instigated, the date which is the expiry of the Challenge Period after the upholding of any Acceptable Planning Permission.

Local Planning Authority

the local planning authority for the area in which Vicarage Field is situated.

Onerous Condition

a condition in a Planning Permission or any term of any related Planning Agreement which:

- (a) makes a Planning Permission personal to the Developer or to any specific person or class of persons;
- (b) makes the Planning Permission limited in time;
- (c) imposes time limits within which the relevant Phase Works must be commenced or applications for approval of reserved matters must be made which are more restrictive than those set out in sections 91 and 92 of the Planning Act;
- (d) contains any Adverse Matter(s); and/or

(e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Open Market Value

market value as defined in the RICS Valuation – Global Standards 2017 – UK national supplement (issued November 2018, effective 14 January 2019) as varied from time to time and which for the purposes of this schedule shall include a further assumption that market value takes into account the value (if any) of any works carried out to the land at the relevant time by or on behalf of the Developer, including any intellectual property rights related to that Phase.

Outline Planning Application

an application submitted in accordance with this Agreement for outline planning permission for (inter alia) the carrying out of the relevant Phase Works.

Outline Planning Permission

an outline planning permission which is granted:

- (a) subject to conditions which remain to be satisfied; and
- (b) pursuant to any Outline Planning Application.

Permission Date

means, in respect of the relevant Planning Permission:

- (c) the date written, printed or stamped on the Planning Permission issued by the Local Planning Authority; or
- (d) the date written, printed or stamped on the letter or other document issued by, or on behalf of, the Secretary of State following an Appeal or a Calling-In.

Planning Act

the Town and Country Planning Act 1990.

Planning Agreement

an agreement or undertaking in respect of and affecting (inter alia) the relevant Phase Works, whether or not also affecting other property, pursuant to:

- (a) section 106 of the Planning Act; or
- (b) section 111 Local Government Act 1972.

Planning Application

an application submitted in accordance with this Agreement for the grant of detailed planning permission (whether a full planning application or a Reserved Matters Application) for the carrying out of

(inter alia) the relevant Phase Works.

Planning Condition

the condition set out in paragraph 2.1.

Planning Permission

the grant of a detailed planning permission or a Reserved Matters Approval pursuant to a Planning Application.

Planning Refusal

any of the following:

- (a) a refusal by the Local Planning Authority to grant the relevant Planning Permission;
- (b) a refusal by the Local Planning Authority to vary or remove an Onerous Condition attached to the relevant Planning Permission (or any related Planning Agreement) pursuant to an application made by the Developer under section 73 of the Planning Act;
- (c) a refusal by or on behalf of the Secretary of State to grant a Planning Permission following an Appeal or a Calling-In;
- (d) a failure by the Local Planning Authority to determine the relevant Planning Application within the period required under section 78(2) of the Planning Act; or
- (e) the grant of a Planning Permission which is not an Acceptable Planning Permission.

Proceedings

as applicable:

- (a) an application for judicial review or an application pursuant to sections 287 or 288 of the Planning Act in respect of an Acceptable Planning Permission or an Acceptable Reserved Matters Approval, including (in each case) any appeals to a higher court following a judgment of a lower court; or
- (b) the reconsideration of any Planning Application by the relevant decision making body or person following a previous Acceptable Planning Permission or being quashed pursuant to an application within the meaning of paragraph (a) of this definition; or
- (c) any application or appeal to the High Court (including subsequent appeal to the Court of Appeal and/or Supreme Court) against or in respect of the decision of the Local Planning Authority or the Secretary of State or a Court.

Reserved Matters Application means, in respect of (inter alia) the relevant Phase Works, an application submitted in accordance with this Agreement for reserved matters approval in respect of an Outline Planning Permission for (inter alia) the relevant Phase Works.

Reserved Matters Approval means, in respect of (inter alia) the relevant Phase Works, approval of the relevant reserved matters pursuant to the relevant Reserved Matters Application.

Secretary of State the Secretary of State for Housing, Communities and Local Government or other minister or authority having or being entitled to exercise the powers now conferred upon the Secretary of State for Housing, Communities and Local Government by sections 77, 78 and 79 of the Planning Act.

2 OBTAINING ACCEPTABLE PLANNING PERMISSION

Planning Condition

2.1 The Planning Condition is the satisfaction of each of the following requirements:

- (a) the grant of an Acceptable Planning Permission; and
- (b) the expiry of the Challenge Period without any Proceedings being begun or, if Proceedings are begun during the Challenge Period, those Proceedings are Finally Determined leaving in place an Acceptable Planning Permission.

Obtaining an Acceptable Planning Permission

- 2.2 The Developer shall within 3 months of the date of the relevant Phase Conditions Commencement Date or, if later, the date of approval by the Council of the relevant Planning Application or Outline Planning Application (as the case may be) pursuant to this schedule at the Developer's own cost submit the relevant Planning Application and/or Outline Planning Application(s) in the sole name of the Developer and/or the Developer's Nominee (as appropriate) and in each case in a form approved by the Council (such approval not to be unreasonably withheld or delayed).
- 2.3 The Developer shall pursue the Planning Application or Outline Planning Application(s) diligently and use its reasonable endeavours (including entering into discussions or negotiations with, and otherwise complying with all reasonable and proper requirements of, the Local Planning Authority) to obtain an Acceptable Planning Permission as soon as reasonably practicable after such submission and, in any event, before the relevant Phase Longstop Date.
- 2.4 The Developer shall, at its own cost, keep the Council informed of the progress of each Planning Application or Outline Planning Application and provide a copy of any Decision Notice to the Council within 10 Working Days of the receipt of the same by the Developer.
- 2.5 The Developer may, in consequence of discussions or negotiations with the Local Planning Authority and if it appears to the Developer requisite or desirable in order to obtain an Acceptable Planning Permission, amend or withdraw any Planning Application and/or submit a

new Planning Application provided that, in any such case, the Developer has first obtained the approval of the Council (such approval not to be unreasonably withheld or delayed).

- 2.6 During the subsistence of this Agreement, the Developer shall not apply for, and shall procure that the Developer's Nominee does not apply for, any planning permission in respect of Vicarage Field or the Additional Interests other than in accordance with the provisions of this schedule.

If Planning Permission is granted

- 2.7 In the event that a Planning Permission is granted by the Local Planning Authority:
- (a) the Developer shall, as soon as reasonably practicable, provide to the Council a full and complete copy of the relevant Decision Notice;
 - (b) the Developer shall notify the Council in writing within 20 Working Days following receipt by the Developer of the relevant Decision Notice whether the Planning Permission and any related Planning Agreement is an Acceptable Planning Permission or if, in the Developer's opinion (acting reasonably), it is not (and, in the latter case, the Developer shall, with the notice, provide detailed written reasons why not); and
 - (c) the Council shall notify the Developer in writing within 20 Working Days following the receipt by the Council of the relevant Decision Notice from the Developer whether the Planning Permission and any related Planning Agreement is an Acceptable Planning Permission or if, in the Council's opinion (acting reasonably), it is not (and, in the latter case, the Council shall, with the notice, provide detailed written reasons why not).
- 2.8 In the event that:
- (a) the Developer has not provided any notice to the Council in accordance with, and within the time limits referred to in, paragraph 2.7(b), the Developer shall be deemed to have confirmed to the Council that the relevant Planning Permission and any related Planning Agreement is not an Acceptable Planning Permission;
 - (b) the Council has not provided any notice to the Developer in accordance with and within the time limits referred to in paragraph 2.7(c), the Council shall be deemed to have agreed with the Developer's opinion as to whether (or not) the relevant Planning Permission and any related Planning Agreement is (or is not) an Acceptable Planning Permission.

- 2.9 Time shall be of the essence in respect of paragraphs 2.2 – 2.8.

Satisfaction of the Planning Condition

- 2.10 The Planning Condition shall be satisfied when the requirements at paragraph 2.1 are satisfied.

Waiver

- 2.11 The Developer may not unilaterally waive the Planning Condition save that the Developer shall be entitled, following the grant of an Acceptable Planning Permission, to waive the Planning

Condition subject to the Developer first having obtained reasonable Judicial Review insurance in respect of that Acceptable Planning Permission for an amount and otherwise on terms first approved by the Council (such approval not to be unreasonably withheld or delayed).

Planning Condition not satisfied

- 2.12 Subject to paragraph 2.13 and paragraph 3, in the event that either the Developer or the Council has served (or is deemed to have served) notice on the other under **paragraphs 2.7 and/or 2.8** to the effect that a Planning Permission (and any related Planning Agreement) is not an Acceptable Planning Permission, the Planning Condition in respect of the relevant Phase shall not have been satisfied.

Developer may repeat the procedure

- 2.13 For the avoidance of doubt the Developer shall be free to repeat the procedure set out in this schedule 3 as many times as the Developer (acting reasonably) shall deem appropriate in an attempt to satisfy the Phase Condition in respect of the relevant Phase.

3 APPEALS AND PROCEEDINGS

- 3.1 Subject to this paragraph 3, the Developer may, in the Developer's absolute discretion, make an Appeal and/or begin Proceedings without the prior written consent of the Council.
- 3.2 If the Developer makes an Appeal or begins Proceedings or there is a Calling-In, the Developer is to:
- (a) make and conduct the Appeal or the Proceedings or pursue the Calling-In (as the case may be) at its own cost and expense;
 - (b) keep the Council properly informed on the progress of the Appeal, Proceedings or Calling-In, including the dates of any inquiry, hearing or for the submission of written representations; and
 - (c) give the Council reasonable prior written notice of, and not object to the Council attending at, and taking part in, conferences with counsel and other relevant material meetings.

PROCEEDINGS BY THIRD PARTIES

- 3.3 If Proceedings are begun or are threatened by a third party, including by the Local Planning Authority, following the grant of Planning Permission or any resolution to grant Planning Permission, the Developer is to:
- (a) give written notification to the Council;
 - (b) confirm to the Council whether (or not) the Developer (in the Developer's absolute discretion) intends to contest such Proceedings;
 - (c) where the Developer does elect to contest such Proceedings only:
 - (i) do so at its own cost and expense;

- (ii) keep the Council properly informed on the progress of the Proceedings, including the dates of any inquiry, hearing or for the submission of written representations; and
- (iii) give the Council reasonable prior written notice of, and not object to the Council attending at, and taking part in, conferences with counsel and other relevant material meetings.

Planning Agreement(s)

3.4 The Developer will enter into any Planning Agreement(s) reasonably required by the Local Planning Authority in relation to (inter alia) any Phase Works whether prior to the grant of an Acceptable Planning Permission or as a condition of the Acceptable Planning Permission subject to the following conditions being satisfied:

- (a) the Planning Agreement does not contain terms which:
 - (i) take effect before the date of the Acceptable Planning Permission; or
 - (ii) are Onerous Conditions;
- (b) the Planning Agreement is to be conditional on the Acceptable Planning Permission being implemented; and
- (c) the Planning Agreement is otherwise approved by each Party (such approval in each case not to be unreasonably withheld or delayed).

4 Reference to the Expert

4.1 In the event that:

- (a) either the Developer or the Council has served (or is deemed to have served) notice on the other under paragraph 2.7 and/or 2.8 (as appropriate) to the effect that a Planning Permission is not an Acceptable Planning Permission and the other Party (acting reasonably) does not agree; or
- (b) the Parties disagree whether the Acceptable Planning Permission has been Finally Determined,

either Party may serve notice (a "**Determination Notice**") on the other requiring the question of whether the Planning Permission contains any Onerous Condition or whether the Acceptable Planning Permission has been Finally Determined (as the case may be) to be determined by the Expert.

4.2 Any Determination Notice served in the circumstances mentioned in paragraph 4.1(a) must be served within 10 Working Days after the service (or deemed service) of the relevant notice pursuant to paragraph 2.7 and/or 2.8 (as appropriate).

SCHEDULE 2

Council Title Matters

- 1 The Existing Lease.
- 2 Any other matters contained or referred to in the register entries for the Council Title Number as at 09:18:33 on 5 February 2021.

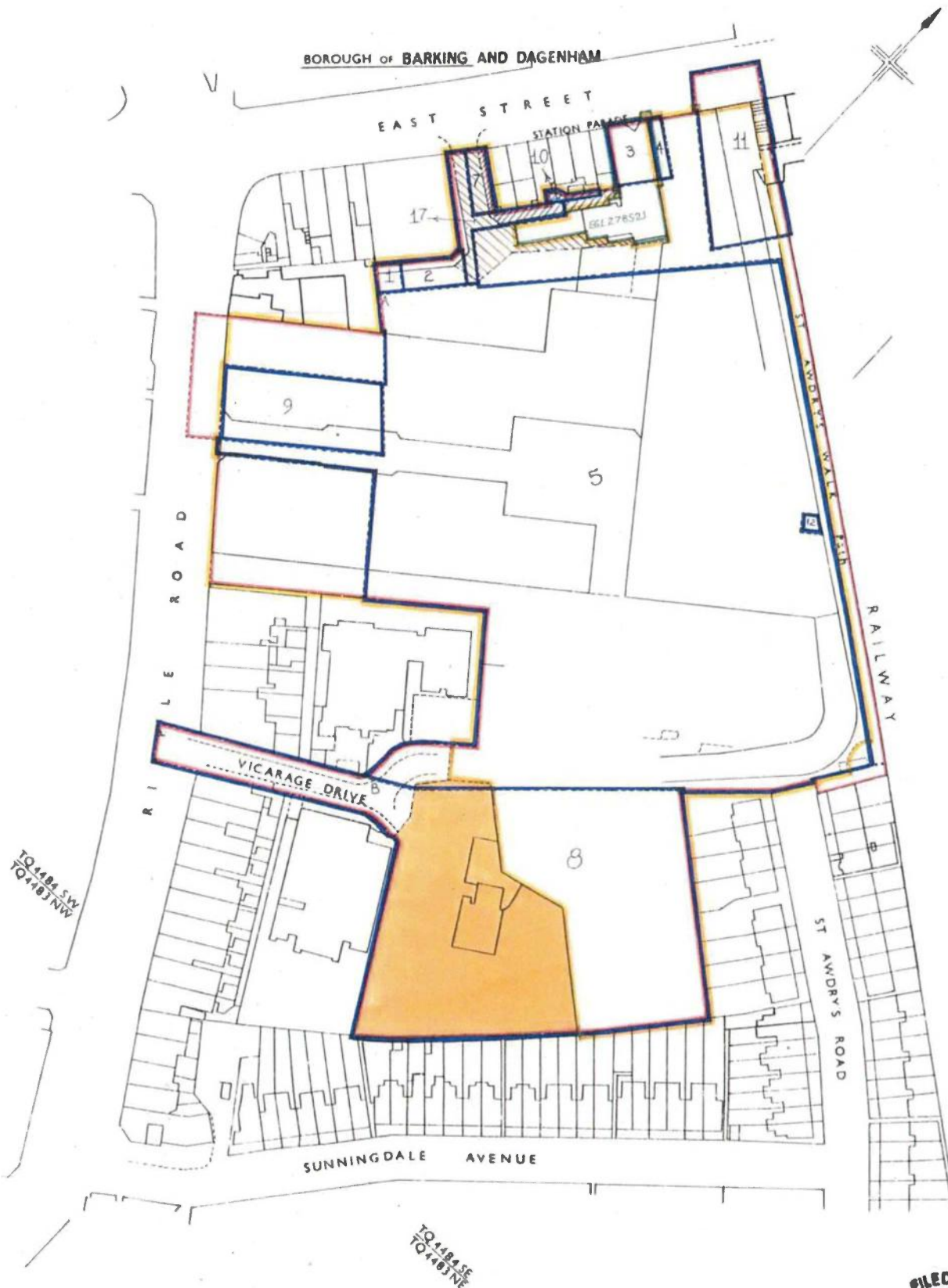
SCHEDULE 3

Plans

H. M. LAND REGISTRY

NATIONAL GRID PLAN @ TQ4484 SECTION K
GREATER LONDON

Scale 1/1250



© Crown Copyright 1990

TITLE No. **EGL270709**

SCHEDULE 4



[Redacted Content]

SCHEDULE 5

Phase Lease



DATE: 202[•]

LEASE RELATING TO [PHASE [•], VICARAGE FIELD,]BARKING, LONDON

Between

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BARKING & DAGENHAM**

and

[•]

CMS Cameron McKenna LLP
Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
F +44 20 7367 2000
cms.law

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LAND REGISTRY PRESCRIBED CLAUSES**LR1. Date of lease**

[•] 20[•].

LR2. Title number(s)**LR2.1 Landlord's title number(s)**

[EGL270709[, [•] and [•]]].

LR2.2 Other title numbers

[EGL259168[, [•] and [•]]].

LR3. Parties to this lease**Landlord**

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARKING AND DAGENHAM of Barking Town Hall, Town Hall Square, Barking IG11 7LU.

Tenant

[•] (incorporated and registered in [•] under company registration number [•]), the registered office of which is at [•].

Other parties

None.

LR4. Property

The Property as specified in this Lease in the definition of the "Property" at clause 1.

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

LR5. Prescribed statements etc.

None.

LR6. Term for which the Property is leased

From and including the date of this deed to and including [•]¹.

LR7. Premium

[•] pounds (£[•]) inclusive of VAT.

LR8. Prohibitions or restrictions on disposing of this lease

This Lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None.

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None.

LR9.3 Landlord's contractual rights to acquire this lease

None.

¹ the date which is 250 years from and including the date of the Phase 1 lease.

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None.

LR11. Easements**LR11.1 Easements granted by this lease for the benefit of the Property**

The easements granted for the benefit of the Property as specified in this Lease at clause 4.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements granted or reserved by this lease over the Property as specified in this Lease at clause 5.1.

LR12. Estate rentcharge burdening the Property

None.

LR13. Application for standard form of restriction

None.

LR14. Declaration of trust where there is more than one person comprising the Tenant

[The Tenant is more than one person. They are to hold the Property on trust][for themselves as joint tenants][●][None].

LEASE

DATE: [●] 20[●].

PARTIES:

- (1) The Landlord specified in LR3 of the Prescribed Clauses (the “**Landlord**”); and
- (2) The Tenant specified in LR3 of the Prescribed Clauses (the “**Tenant**”).

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

The following definitions apply in this Lease:

“**Accounting Year**” has the meaning given in Schedule 2 Part B;

“**Affordable Housing**” means any housing required under the terms of any planning consent or statutory agreement to be used for affordable, social or low-cost housing;

“**Apartment Lease**” means any underlease granted to a tenant (and owner) of any privately owned residential apartment(s) (excluding Affordable Housing) from time to time at the Property but excluding, for the avoidance of doubt, any residential apartment(s) for which ownership is retained by the Relevant Tenant (as part of its own business) for letting as (as opposed to sale by) a private landlord or otherwise for occupation by persons on a co-living or similar basis;

“**Business Day**” means a day other than Saturday, Sunday or a day on which banks are authorised to close in London for general banking business;

“**Contractual Term**” means the contractual term specified in LR6 of the Prescribed Clauses;

“**Deed of Covenant**” means a deed of covenant in the form of the agreed draft annexed to this Lease at Annexure 1 (and any variations to the same from time to time approved by the Tenant, acting reasonably) to be entered into by the Tenant and any other Phase Tenant(s) to govern the respective rights and obligations between the Tenant and any other Phase Tenant(s) pursuant to this Lease and any other Phase Lease(s)²;

“**Estate**” means the land collectively demised by this Lease and each Phase Lease from time to time (and which, at the date of this deed, is intended to be the full extent of the Intended Estate) and including:

- (a) all buildings and appurtenances; and
- (b) all additions, improvements, fixtures, Service Media and other works

from time to time in, on, over or under such land;

“**Estate Common Parts**” means (notwithstanding that the same are demised pursuant to this Lease or may now or in the future be demised pursuant to any other Phase Lease) any and all external or basement parts of the Estate provided or which are otherwise designed or intended from time to time for the common use or enjoyment of tenants and/or occupiers of, and/or visitors to, the Estate and/or by members of the general public and which, in the event of a dispute as to the location or extent of the same, shall be determined by the Estate Management Company (whose decision will be final and binding (except in the case of manifest error));

² Note to draft: this drafting is currently generic (rather than Phase-specific) as we do not yet have full clarity on the phasing of development of the Estate. As and when we have a greater understanding of the rights/cross rights which are actually needed between the respective Phases, the drafting can be tailored accordingly. For example, if all of the individual Phases interact with all of the other Phases, and the various cross-rights are known at the date of the grant of a Phase Lease, there may be a single Deed of Covenant to which all Phase Tenants will accede. Or, if only a couple of the Phases interact with each other, then we may only need to be a Deed of Covenant between those two Phases and no Deed of Covenant at all for the other Phases.

"Estate Management Company" means [●] (incorporated and registered in [●] under company registration number [●] and any other person or entity from time to time responsible for providing the Estate Services;

"Estate Management Agreement" means a deed to be entered into or acceded to by the Tenant and each Phase Tenant with the Estate Management Company and the Landlord to govern the delivery by the Estate Management Company of the Estate Services and payment by the Tenant and each Phase Tenant of its proportionate share of the cost to the Estate Management Company of providing the same;

"Estate Management Outgoings" means the proportion of the costs properly attributed to the Property by the Estate Management Company for delivery of the Estate Services;

"Estate Services" means the services (and any of them) to be delivered at the Estate by the Estate Management Company pursuant to the Estate Management Agreement;

"Existing Lease" means the lease dated 6 December 1989 and made between (1) The Mayor and Burgesses of the London Borough of Barking and Dagenham and (2) Countryside Properties Public Limited Company, as registered at the Land Registry with title number EGL259168, and any document which is collateral or supplemental to or varying such lease whether entered into before or after the date of this deed;

"Excluded Risk" means:

- (a) any risk that is not an Insured Risk; and
- (b) any risk listed in the definition of Insured Risks not actually insured from time to time (or in respect of which there is a partial exclusion or limitation to the extent that the partial exclusion or limitation applies) because insurance cover for that risk is either not ordinarily available in the London insurance market, or is available there only at a premium or subject to conditions which the person responsible for insurance considers, in its reasonable discretion, to be unacceptable;

"Expert" has the meaning given in clause 18.1;

"Full Reinstatement Cost" means:

- (a) the Tenant's; or
- (b) (if the Investment Tenant insures as mentioned in clause 8.1.1) the Investment Tenant's; or
- (c) (if the Landlord insures as mentioned in clause 8.2) the Landlord's,

reasonable estimate of the full cost of reinstating the Property (or relevant part thereof), including the costs of demolition and site clearance, temporary works, compliance with local authority and all other statutory requirements in connection with any works of repair or reinstatement, architects', surveyors' and other professional fees and other incidental expenses, and in each case with due allowance for inflation and VAT;

"Gross Occupational Income" has the meaning given in Schedule 2 Part B;

"Group" means a group of companies within the meaning of section 42 of the Landlord and Tenant Act 1954;

"Guarantor" means any person who has entered into a guarantee pursuant to this Lease;

"Insured Risks" means (to the extent that the same are from time to time generally insurable in the London insurance market at reasonable cost and on reasonable terms) fire, explosion, lightning, earthquake, subsidence, heave, landslip, flood, storm, bursting or overflowing of water tanks, pipes, or other water or heating apparatus, impact, aircraft (other than hostile aircraft) and things dropped from such aircraft, riot, civil commotion, malicious damage, acts of terrorism and such other risks as may from time to time actually be insured against but subject always to such exclusions, excesses, limitations, terms and conditions as may be usual in the insurance market at the time or otherwise required by the insurers;

"Intended Estate" means the land shown for identification only edged blue on Plan 2;

“Interest Rate” means the rate of two per cent above the base lending rate from time to time of Barclays Bank plc or, if that rate is no longer published, then two per cent above the rate of interest which the Landlord reasonably considers to be most closely comparable to London clearing banks’ minimum lending rates generally applicable in the United Kingdom from time to time;

“Investment Lease” means any underlease of whole or part of the Property granted substantially in consideration of a premium or other capital receipt and which (whilst not precluding occupation by the tenant for its own business purposes) is acquired by the tenant for the principal purpose as an investment (as opposed to for its own occupation for a fixed term of years);

“Investment Tenant” means (in respect of any Investment Lease) the tenant from time to time of that Investment Lease;

“Landlord” means the first party to this deed and its successors in title and persons entitled to the reversion immediately expectant on the termination of this Lease;

“Lease” means this deed as varied or supplemented by any document which is expressly stated to be supplemental or collateral to this deed;

“Main Rent” has the meaning given in Schedule 2 Part B;

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

“Occupational Lease” has the meaning given in Schedule 2 Part B;

“Occupational Tenant” has the meaning given in Schedule 2 Part B;

“Officer” means the Head of Property Services for the time being of the Landlord or such other party as the Landlord (acting reasonably) may from time to time notify to the Tenant in writing as being “the Officer” for the purpose of this Lease;

“Phase Land” means such part(s) of the Intended Estate (excluding the Property) as is/are demised pursuant to a Phase Lease from time to time;

“Phase Lease” means any lease granted by the Landlord from time to time of any phase(s) of the Intended Estate (excluding the Property) pursuant to the terms of the agreement pursuant to which this Lease is granted, and which shall include (as the context so admits) any new or replacement lease granted by the Landlord from time to time during the Term (whether or not pursuant to the terms of any Undertenant Forfeiture Protection Deed) of the whole or any part of the same demise of an earlier Phase Lease:

“Phase Tenant” means the tenant from time to time of any Phase Lease;

"Phase Works" means the initial development of the Property in accordance with the terms of the agreement pursuant to which this Lease is granted;

"Plan" means any plan attached to this Lease and **"Plan 1"**, **"Plan 2"** shall mean such plan as so numbered;

"Planning Acts" means all legislation relating to town and country planning (including the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008);

"Practical Completion" means practical completion of:

- (a) the Phase Works; or
- (b) any Qualifying Works,

(as appropriate) in accordance with the relevant building contract(s) for the same, with a copy of any certificate(s) of practical completion certifying the carrying out and completion of the same being provided to the Landlord;

"Property" means land and buildings from time to time at [●], as shown edged red on Plan 1 and comprising parts of title number[s] [●][and [●]], including:

- (a) all additions, alterations and improvements thereto which may be carried out during the Term; and
- (b) any Service Media within and from time to time exclusively serving the same and which are owned at the date of this deed by the Landlord or the tenant under the Existing Lease,

but excluding:

- (c) any Service Media within such land and buildings which do not serve the same exclusively or which are not owned at the date of this deed by the Landlord or the tenant under the Existing Lease; and
- (d) all tenant's and trade fixtures, fittings and chattels;

"Qualifying Works" has the meaning set out in Schedule 3;

"Registers of Title" means the property and charges registers of title number[s] [●][and [●]] as at the date of this deed other than:

- (a) financial charges; [and
- (b) [●]³];

"Relevant Commercial Space" means those parts of the Property (if any) which are from time to time let or designed or intended to be let:

- (a) for any use within Use Class A1, A2, A3, A4 or A5 of the Use Classes Order;
- (b) for any use within Use Class B1, B2 or B8 of the Use Classes Order;
- (c) for any use within Use Class D1 of the Use Classes Order; and/or
- (d) for any non-residential use within Use Class D2 of the Use Classes Order; and/or
- (e) for any non-residential use not within Use Classes A, B, C or D of the Use Classes Order (known colloquially at the date of this deed as *sui-generis* uses but, for the avoidance of doubt, excluding any *sui-generis* use comprising a residential use such as co-living, hostels and houses in multiple occupation),

but excluding:

³ exclude any matters extinguished under private treaty or by virtue of the CPO but which have yet to be removed from the title.

- (i) any parts of the Property let or designed or intended to be let from time to time for any other use (including any parts of the Property comprising Residential Areas or let or designed or intended to be let from time to time as a hotel or other residential institution);
- (ii) any Estate Common Parts forming part of the Property; and
- (iii) any space or facility (including parking) whose use is ancillary to the use of:
 - (A) the Residential Areas and which is (or which is designed or intended to be) used, either exclusively or predominantly, by the tenants and occupiers of the Residential Areas; and
 - (B) any parts of the Property let or designed or intended to be let from time to time as a hotel or other residential institution and which is (or which is designed or intended to be) used, either exclusively or predominantly, by the tenants and occupiers of such hotel or other residential institution,

and whether or not the same form part of the Estate Common Parts;

“Relevant Matters” means:

- (a) the matters contained or referred to in [the Title Documents] and in the Registers of Title;
- (b) the Existing Lease (so far as it affects the Property); and
- (c) [●];

“Relevant Mortgagee” means any mortgagee or chargee of the Property or this Lease:

- (a) of whom the Landlord has received notice pursuant to clause 11.3; and
- (b) in respect of whom the Landlord has not received notice from the Tenant that the mortgage or charge in favour of such mortgagee or chargee has been discharged;

“Relevant Tenant” means:

- (a) the Tenant; or
- (b) (where the whole or any part(s) of the Property is/are subject to an Investment Lease) the relevant Investment Tenant,

holding the immediate reversionary interest to any Occupational Lease;

“Rent” means the aggregate of the Main Rent and the sums (if any) payable by the Tenant to the Landlord pursuant to Schedule 2 Part A;

“Residential Areas” means all those parts of the Estate from time to time used (or designed or intended to be used) for residential purposes or other purposes which are ancillary to such residential purposes and including, for the avoidance of doubt, any residential apartment(s) (including Affordable Housing) for which ownership is retained by the Relevant Tenant (as part of its own business) for letting as (as opposed to sale by) a private landlord or otherwise for occupation by persons on a co-living or similar basis, and which shall include (where the context so admits) any building on the Property comprising multiple residential apartment(s) together with internal and/or external common parts which do not form part the Estate Common Parts;

“Retained Land” means any land or property neighbouring or adjoining the Property (excluding other parts of the Intended Estate) in which the Landlord has a freehold or leasehold interest, whether in possession or in reversion at any time during the Term;

“Service Media” means media, structures, plant, machinery and equipment used for the generation, passage, reception and/or storage of Utilities;

“Tenant” means the second party to this deed and, except where otherwise expressly stated, its successors in title as tenant of this Lease;

“**Term**” means the Contractual Term together with any continuation or extension thereof (whether statutory or by the Tenant holding-over or for any other reason);

[“**Title Documents**” means the deeds and documents listed in Schedule 1;]

“**Undertenant Forfeiture Protection Deed**” means a deed in the form of the draft annexed to this Lease at Annexure 2 (and any variations to the same from time to time approved by the Landlord and the Tenant, both acting reasonably);

“**Use Classes Order**” means the Town and Country Planning (Use Classes) Order 1987 (as at 31 August 2020);

“**Utilities**” means electricity, gas, water, foul water and surface drainage, heating, ventilation and air conditioning, smoke and fumes, signals, telecommunications, satellite and data communications and all other services and utilities; and

“**VAT**” means value added tax and/or any similar tax from time to time replacing it or performing a similar fiscal function.

2. INTERPRETATION

2.1 In this Lease:

- 2.1.1 the contents page, headings and sub-headings are for ease of reference only and do not affect its meaning;
- 2.1.2 obligations owed by or to more than one person are owed by or to them jointly and severally;
- 2.1.3 words in the singular include the plural and vice versa; and
- 2.1.4 references to one gender include all genders.

2.2 In this Lease, unless otherwise specified:

- 2.2.1 a reference to legislation is a reference to all:
 - (a) directives, decisions and regulations of the Council or Commission of the European Union;
 - (b) Acts of Parliament;
 - (c) orders, regulations, consents, licences, notices and bye-laws made or granted:
 - (i) under any Act of Parliament; or
 - (ii) under any directive, decision or regulation of the Council or Commission of the European Union; or
 - (iii) by a local authority or by a court of competent jurisdiction; and
 - (d) any mandatory codes of practice issued by a statutory body,
 in each case having effect in the United Kingdom (or any part of it) from time to time;
- 2.2.2 a reference to particular legislation (unless expressly stated to the contrary) is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time;
- 2.2.3 a reference to a person includes an individual, firm, partnership, company, association, organisation or trust (in each case whether or not having a separate legal personality);
- 2.2.4 a reference to a company includes any company, corporation or any other body corporate (wherever incorporated);
- 2.2.5 the words “**including**” and “**include**” shall each be deemed to be followed by the words “**without limitation**”; and

- 2.2.6 references to the Property and/or the Intended Estate and/or the Estate and/or the Retained Land include any part(s) of the Property and/or the Intended Estate and/or the Estate and/or the Retained Land (as appropriate).
- 2.3 In this Lease:
- 2.3.1 a reference to the consent or approval of the Landlord means:
- (a) the prior consent or approval in writing (which, if reasonably required by the Landlord, is to be contained in a deed) of the Landlord;
 - (b) so long as the reversion immediately expectant upon the determination of this Lease remains vested in The Mayor and Burgesses of the London Borough of Barking and Dagenham, the consent of the Officer given on behalf of the Landlord; and
 - (c) that (unless otherwise specified) such consent or approval is not to be unreasonably withheld or delayed.
- 2.3.2 references to the end of the Term are to the end of the Term whether before or at the end of the term of years granted by this Lease; and
- 2.3.3 a requirement that a notice or other communication to be given or made under or in connection with this Lease must be signed by the party giving or making it will be deemed to be satisfied if the notice or other communication is signed on behalf of the person giving it (and, for so long as the reversion immediately expectant upon the determination of this Lease remains vested in The Mayor and Burgesses of the London Borough of Barking and Dagenham, will be deemed to be satisfied if the notice or other communication is signed on behalf of the Officer).
- 2.4 In this Lease, unless otherwise specified:
- 2.4.1 a reference to a clause, Part or Schedule is to a clause of or a Schedule (or a Part of a Schedule) to this Lease;
- 2.4.2 any reference in a Schedule to a paragraph is to that paragraph in that Schedule or in the relevant Part of that Schedule (as the case may be); and
- 2.4.3 a reference to this Lease includes its Schedules and Annexures.

3. GRANT AND TERM

In consideration of the sum of [●] pounds (£[●]) (plus VAT of [●] pounds (£[●])) [previously] [now] paid by the Tenant to the Landlord (receipt of which the Landlord acknowledges), the Landlord leases the Property to the Tenant with full title guarantee for the Contractual Term, the Tenant yielding and paying during the term the Rent (and any VAT properly payable thereon).

4. RIGHTS GRANTED

Rights over the Retained Land

- 4.1 The Landlord grants the following rights to the Tenant over the Retained Land:
- 4.1.1 unless and to the extent that the Service Media are or become adopted and maintainable at public expense, the right:
- (a) of full, free and uninterrupted passage and running of all Utilities through the Service Media owned by the Landlord on, under or over the Retained Land at the date of this deed which may from time to time serve the Property; and
 - (b) to connect into, and thereafter use for the passage and running of all Utilities, the Service Media owned by the Landlord situate on, under or over the Retained Land at the date of this deed which are capable of serving the Property in addition to the Retained Land Provided That such Service Media have sufficient capacity to conveniently accommodate such connection and use,

subject to:

- (i) the right of the Landlord (acting reasonably) to vary the route of any such Service Media; and
- (ii) temporary interruption by the Landlord for inspection, test, maintenance, repair, alteration, replacement or other works of/to the Service Media or for reasons beyond the Landlord's control or in the interests of good estate management,

from time to time Provided Always That such works shall be carried out in such manner as to minimise so far as reasonably practicable any interruption to the Property;

4.1.2 the right, on reasonable prior written notice of not less than 72 hours (except in an emergency when as much notice as reasonably practicable shall be given), with or without workman and relevant machinery, to enter onto such part or parts of the Retained Land as from time to time are unbuilt upon as may be reasonable and/or necessary to:

- (a) repair, maintain, alter or inspect the Property to the extent only that such actions cannot reasonably be carried out without having access to the Retained Land;
- (b) connect into, inspect, repair, maintain, cleanse, empty or replace the Service Media referred to in clause 4.1.1;
- (c) exercise any of the rights, or to comply with any of the obligations, of the Tenant under this Lease,

the person exercising such rights:

- (i) carrying out any works in a good and workmanlike manner and (save where entry is effected in the case of emergency) in accordance with any requisite third party consents and a programme and method statement agreed in advance with the Landlord (acting reasonably);
- (ii) not obstructing or interfering with (and using reasonable endeavours to procure that others exercising these rights shall not obstruct or interfere with) the lawful exercise by third parties of their rights in respect of the Retained Land;
- (iii) complying with the reasonable requirements from time to time of the Landlord;
- (iv) reimbursing the Landlord any reasonable and proper security costs and expenses properly incurred by the Landlord or any lessee or other occupier necessitated by the exercise of the right of entry; and
- (v) acting in a reasonable and proper manner and as expeditiously as possible, causing as little damage, disturbance and inconvenience as reasonably practicable in their exercise and making good any damage caused in the exercise of such rights as soon as reasonably practicable and to the reasonable satisfaction of the Landlord;

4.1.3 the right of such support and protection for the Property from the Retained Land as exists at the date of this deed;

4.1.4 the right at any time and from time to time to execute works and erections upon or to alter or rebuild any of the buildings erected upon the Property notwithstanding that the access of light and air to any buildings at any time upon the Retained Land may be interfered with;

- 4.1.5 (subject to the rights of any third parties) the right at any time, on reasonable prior written notice, to allow jibs and cranes on the Property temporarily to oversail the Retained Land, subject to any persons seeking to exercise this right having first entered into an oversailing licence or deed of covenant with the Landlord containing such reasonable terms and conditions relating to insurance, health and safety and damage caused to the Retained Land as the Landlord may reasonably require;
- 4.1.6 until such time as Vicarage Drive is adopted, the right to pass and repass with or without vehicles over and along Vicarage Drive at all times and for all purposes connected with use of the Property; and
- 4.1.7 [●].
- 4.2 The rights granted by clause 4.1 are, unless otherwise specified, not granted to the Tenant exclusively, but are to be used in common with the Landlord, any tenants and lawful occupiers of the Retained Land, and other persons authorised by them respectively.

Rights over other Phase Land

- 4.3 Subject to the Tenant having delivered to a Phase Tenant one original signed and unconditionally released Deed of Covenant, this Lease is also granted with the benefit of the following rights over that Phase Tenant's Phase Land:
- 4.3.1 unless and to the extent that the Service Media are or become adopted and maintainable at public expense, the right:
- (a) of full, free and uninterrupted passage and running of all Utilities through the Service Media owned by that Phase Tenant on, under or over that Phase Land at the date of such Deed of Covenant which may from time to time serve the Property; and
 - (b) to connect into, and thereafter use for the passage and running of all Utilities, the Service Media owned by that Phase Tenant situate on, under or over that Phase Land at the date of such Deed of Covenant which are capable of serving the Property in addition to that Phase Land Provided That such Service Media have sufficient capacity to conveniently accommodate such connection and use,
- subject to:
- (i) the right of the Phase Tenant (acting reasonably) to vary the route of any such Service Media; and
 - (ii) temporary interruption by the Phase Tenant for inspection, test, maintenance, repair, alteration, replacement or other works of/to the Service Media or for reasons beyond the Phase Tenant's control or in the interests of good estate management,
- from time to time Provided Always That such variation shall be carried out in such manner as to minimise so far as reasonably practicable any interruption to the Property;
- 4.3.2 the right, on reasonable prior written notice of not less than 72 hours (except in an emergency when as much notice as reasonably practicable shall be given), with or without workman and relevant machinery, to enter onto such part or parts of that Phase Land as from time to time are unbuilt upon as may be reasonable and/or necessary to:
- (a) repair, maintain, alter or inspect the Property to the extent only that such actions cannot reasonably be carried out without having access to that Phase Land;
 - (b) connect into, inspect, repair, maintain, cleanse, empty or replace the Service Media referred to in clause 4.3.1;

- (c) exercise any of the rights, or to comply with any of the obligations, of the Tenant under this Lease,

the person exercising such rights:

- (i) carrying out any works in a good and workmanlike manner and in accordance with any requisite third party consents and (save where entry is effected in the case of emergency) a programme and method statement agreed in advance with the Phase Tenant (acting reasonably);
 - (ii) not obstructing or interfering with (and using reasonable endeavours to procure that others exercising these rights shall not obstruct or interfere with) the lawful exercise by third parties of their rights in respect of the relevant Phase Land;
 - (iii) complying with the reasonable requirements from time to time of the Phase Tenant;
 - (iv) reimbursing the Phase Tenant any reasonable and proper security costs and expenses properly incurred by the Phase Tenant or any lessee or other occupier necessitated by the exercise of the right of entry; and
 - (v) acting in a reasonable and proper manner and as expeditiously as possible, causing as little damage, disturbance and inconvenience as reasonably practicable in their exercise and making good any damage caused in the exercise of such rights as soon as reasonably practicable and to the reasonable satisfaction of the Phase Tenant;
- 4.3.3 the right of such support and protection for the Property from that Phase Land as exists at the date on which the original signed and unconditionally released Deed of Covenant is delivered to the relevant Phase Tenant;
- 4.3.4 the right at any time and from time to time to execute works and erections upon or to alter or rebuild any of the buildings erected upon the Property notwithstanding that the access of light and air to any buildings at any time upon that Phase Land may be interfered with;
- 4.3.5 (subject to the rights of any third parties) the right at any time, on reasonable prior written notice, to allow jibs and cranes on the Property temporarily to oversail that Phase Land, subject to any persons seeking to exercise this right having first entered into an oversailing licence or deed of covenant with the Phase Tenant containing such reasonable terms and conditions relating to insurance, health and safety and damage caused to that Phase Land as the Phase Tenant may reasonably require;
- 4.3.6 the right to use such of the Estate Common Parts as are situated on that Phase Land Provided That the exercise of this right is subject to payment of the Estate Management Outgoings in accordance with the terms of the Estate Management Agreement;
- 4.3.7 the right, on reasonable prior written notice of not less than 72 hours (except in an emergency when as much notice as reasonably practicable shall be given), with or without workman and relevant machinery, to enter onto such parts of that Phase Land as from time to time are unbuilt upon as may be reasonable and/or necessary to:
- (a) inspect the condition of the Estate Common Parts;
 - (b) ascertain performance of Estate Services by the Estate Management Company; and
 - (c) [●]; and
- 4.3.8 [●],

Provided Always That (with the intent of binding the remainder of the land comprised within the Intended Estate for the benefit of the Property), at any time:

- (i) prior to the grant of any Phase Lease; or
- (ii) during any period following the grant of a Phase Lease in which that relevant Phase Land once again becomes vested in the Landlord,

(but not further or otherwise) the Landlord grants (without any obligation upon the Tenant to enter into a Deed of Covenant with the Landlord) such rights to the Tenant in respect of such parts of the Intended Estate as if references in this clause 4.3 to Phase Tenant were references to the Landlord and references to the date on which the original signed and unconditionally released Deed of Covenant is delivered to the relevant Phase Tenant were references to the date of this deed or the date on which such land once again becomes vested in the Landlord (as applicable).

- 4.4 The rights granted by clause 4.3 are, unless otherwise specified, not granted to the Tenant exclusively, but are to be used in common with any tenants and lawful occupiers of the relevant Phase Land, and other persons authorised by them respectively.

5. EXCEPTIONS AND RESERVATIONS

Reservations and reservations over the Retained Land

- 5.1 The following rights are excepted and reserved from this Lease for the benefit of the Retained Land:

- 5.1.1 unless and to the extent that the Service Media are or become adopted and maintainable at public expense, the right:

- (a) of full, free and uninterrupted passage and running of all Utilities through the Service Media demised to the Tenant on, under or over the Property at the date of this deed which may from time to time serve the Retained Land; and
- (b) to connect into, and thereafter use for the passage and running of all Utilities, the Service Media demised to the Tenant situate on, under or over the Property at the date of this deed which are capable of serving the Retained Land in addition to the Property Provided That such Service Media have sufficient capacity to conveniently accommodate such connection and use,

subject to:

- (i) the right of the Tenant (acting reasonably) to vary the route of any such Service Media; and
- (ii) temporary interruption by the Tenant for inspection, test, maintenance, repair, alteration, replacement or other works of/to the Service Media or for reasons beyond the Tenant's control or in the interests of good estate management,

from time to time Provided Always That such works shall be carried out in such manner as to minimise so far as reasonably practicable any interruption to the Retained Land;

- 5.1.2 the right, on reasonable prior written notice of not less than 72 hours (except in an emergency when as much notice as reasonably practicable shall be given), with or without workman and relevant machinery, to enter onto such part or parts of the Property as from time to time are unbuilt upon as are reasonable and necessary to:

- (a) repair, maintain, alter or inspect the Retained Land to the extent only that such actions cannot reasonably be carried out without having access to the Property;
- (b) connect into, inspect, repair, maintain, cleanse, empty or replace the Service Media referred to in clause 5.1.1;

- (c) exercise any of the exceptions and reservations, or to comply with any of the obligations, of the Landlord under this Lease,

the person exercising such rights:

- (i) carrying out any works in a good and workmanlike manner and (save where entry is effected in the case of emergency) in accordance with any requisite third party consents and a programme and method statement agreed in advance with the Tenant (acting reasonably);
- (ii) not obstructing or interfering with (and using reasonable endeavours to procure that others exercising these rights shall not obstruct or interfere with) the lawful exercise by third parties of their rights in respect of the Property;
- (iii) complying with the reasonable requirements from time to time of the Tenant;
- (iv) reimbursing the Tenant any reasonable and proper security costs and expenses properly incurred by the Tenant or any lessee or other occupier necessitated by the exercise of the right of entry; and
- (v) acting in a reasonable and proper manner and as expeditiously as possible, causing as little damage, disturbance and inconvenience as reasonably practicable in their exercise and making good any damage caused in the exercise of such rights as soon as reasonably practicable and to the reasonable satisfaction of the Tenant;

5.1.3 the right of such support and protection for the Retained Land from the Property as exists at the date of this deed;

5.1.4 the right at any time and from time to time to execute works and erections upon or to alter or rebuild any of the buildings erected upon the Retained Land notwithstanding that the access of light and air to any buildings at any time upon the Property may be interfered with;

5.1.5 (subject to the rights of any third parties) the right at any time, on reasonable prior written notice, to allow jibs and cranes on the Retained Land temporarily to oversail the Property, subject to any persons seeking to exercise this right having first entered into an oversailing licence or deed of covenant with the Tenant containing such reasonable terms and conditions relating to insurance, health and safety and damage caused to the Property as the Tenant may reasonably require; and

5.1.6 [●].

5.2 The rights excepted and reserved by clause 5.1 are excepted and reserved to the Landlord but may be exercised by anyone authorised by the Landlord.

Exceptions and reservations in favour of other Phase Land

5.3 Subject to a Phase Tenant having delivered to the Tenant one original signed and unconditionally released Deed of Covenant, this Lease is also granted subject to the following exceptions, reservations and subjections over the Property in favour of that Phase Tenant (any tenants and lawful occupiers of that Phase Tenant, and other persons authorised by them) in respect of that Phase Tenant's Phase Land:

5.3.1 unless and to the extent that the Service Media are or become adopted and maintainable at public expense, the right:

- (a) of full, free and uninterrupted passage and running of all Utilities through the Service Media owned by or otherwise demised to the Tenant on, under or over the Property at the date of such Deed of Covenant which may from time to time serve that Phase Land; and

- (b) to connect into, and thereafter use for the passage and running of all Utilities, the Service Media owned by or otherwise demised to the Tenant situate on, under or over the Property at the date of such Deed of Covenant which are capable of serving that Phase Land in addition to the Property provided that such Service Media have sufficient capacity to conveniently accommodate such connection and use,

subject to:

- (i) the right of the Tenant (acting reasonably) to vary the route of any such Service Media; and
- (ii) temporary interruption by the Tenant for inspection, test, maintenance, repair, alteration, replacement or other works of/to the Service Media or for reasons beyond the Tenant's control or in the interests of good estate management

from time to time Provided Always That such variation shall be carried out in such manner as to minimise so far as reasonably practicable any interruption to that Phase Land;

- 5.3.2 the right, on reasonable prior written notice of not less than 72 hours (except in an emergency when as much notice as reasonably practicable shall be given), with or without workman and relevant machinery, to enter onto such part or parts of the Property as from time to time are unbuilt upon as may be reasonable and/or necessary to:

- (a) repair, maintain, alter or inspect that Phase Land to the extent only that such actions cannot reasonably be carried out without having access to the Property;
- (b) connect into, inspect, repair, maintain, cleanse, empty or replace the Service Media referred to in clause 5.3.1;
- (c) exercise any of the rights, or to comply with any of the obligations, of that Phase Tenant under the relevant Phase Lease,

the person exercising such rights:

- (i) carrying out any works in a good and workmanlike manner and in accordance with any requisite third party consents and (save where entry is effected in the case of emergency) a programme and method statement agreed in advance with the Tenant (acting reasonably); and
- (ii) not obstructing or interfering with (and using reasonable endeavours to procure that others exercising such rights shall not obstruct or interfere with) the lawful exercise by third parties of their rights in respect of the Property;
- (iii) complying with the reasonable requirements from time to time of the Tenant;
- (iv) reimbursing the Tenant any reasonable and proper security costs and expenses properly incurred by the Tenant or any lessee or other occupier necessitated by the exercise of the right of entry;
- (v) acting in a reasonable and proper manner and as expeditiously as possible, causing as little damage, disturbance and inconvenience as reasonably practicable in their exercise and making good any damage caused in the exercise of such rights as soon as reasonably practicable and to the reasonable satisfaction of the Tenant;

- 5.3.3 the right of such support and protection for that Phase Land from the Property as exists at the date on which the original signed and unconditionally released Deed of Covenant is delivered to the Tenant;
- 5.3.4 the right at any time and from time to time to execute works and erections upon or to alter or rebuild any of the buildings erected upon that Phase Land notwithstanding that the access of light and air to any buildings at any time upon the Property may be interfered with;
- 5.3.5 (subject to the rights of any third parties) the right at any time, on reasonable prior written notice, to allow jibs and cranes on that Phase Land temporarily to oversail the Property, subject to any persons seeking to exercise this right having first entered into an oversailing licence or deed of covenant with the Tenant containing such reasonable terms and conditions relating to insurance, health and safety and damage caused to the Property as the Tenant may reasonably require;
- 5.3.6 the right to use such of the Estate Common Parts as are situated on the Property Provided That the exercise of this right is subject to payment of sums due from that Phase Tenant for the delivery by the Estate Management Company of the Estate Services;
- 5.3.7 the right, on reasonable prior written notice of not less than 72 hours (except in an emergency when as much notice as reasonably practicable shall be given), with or without workman and relevant machinery, to enter onto such parts of the Property as from time to time are unbuilt upon as may be reasonable and/or necessary to:
 - (a) inspect the condition of the Estate Common Parts;
 - (b) ascertain performance of Estate Services by the Estate Management Company; and
 - (c) [●]; and
- 5.3.8 [●],

Provided Always That (with the intent of binding the Property for the benefit of the remainder of the land comprised within the Intended Estate), at any time:

- (i) prior to the grant of any Phase Lease; or
- (ii) during any period following the grant of a Phase Lease in which that relevant Phase Land once again becomes vested in the Landlord,

(but not further or otherwise) the rights shall (without any obligation upon the Landlord to provide a Deed of Covenant to the Tenant) be excepted and reserved from this Lease for the benefit of such parts of the Intended Estate as if references in this clause 4.3 to Phase Tenant were references to the Landlord and references to the date on which the original signed and unconditionally released Deed of Covenant is delivered to the Tenant were references to the date of this deed or the date on which such land once again becomes vested in the Landlord (as applicable).

5.4 **Deeds of Covenant**

The Tenant shall, unless otherwise agreed in writing by the Landlord and the relevant prospective Phase Tenant, enter into a Deed of Covenant with each Phase Tenant simultaneously with the grant of the relevant Phase Lease.

6. **THIRD PARTY RIGHTS OVER THE PROPERTY**

- 6.1 This Lease is granted subject to and (where appropriate) with the benefit of the Relevant Matters.
- 6.2 The Tenant shall by way of indemnity only comply with the matters contained or referred to in the [Title Documents and the] Registers of Title so far only as they relate to the Property and remain enforceable.

7. FINANCIAL MATTERS**7.1 Rent**

The Tenant shall pay to the Landlord the Rent (and any VAT properly payable thereon) at the times provided in Schedule 2.

7.2 Utilities

The Tenant shall pay all charges, including connection and hire charges, relating to the supply and consumption of Utilities to or at the Property.

7.3 Rates and taxes

The Tenant shall pay and discharge all present and future rates, duties, taxes and assessments of any nature charged on or payable in respect of the Property (or in respect or by reason of any works carried out by or on behalf of the Tenant or any other tenant or occupier of the Property) whether payable by the Landlord, owner, occupier or tenant of the Property and whether of a capital or income, recurring or non-recurring nature except:

7.3.1 such as the Landlord, as owner, is by law bound to pay and discharge notwithstanding any contract to the contrary; and

7.3.2 any tax imposed on or otherwise payable by the Landlord (or any superior landlord) in respect of:

- (a) the grant of this Lease;
- (b) the receipt of the rents reserved by this Lease; or
- (c) any ownership of, dealing with or disposition by the Landlord with its interest in the Property.

7.4 Landlord's costs

The Tenant shall pay to the Landlord, within ten (10) Business Days of receipt by the Tenant of written demand and reasonable proof of expenditure by the Landlord, the reasonable and proper fees, costs and expenses reasonably and properly charged, incurred or payable by the Landlord and its advisers or agents in connection with any application for a consent or approval of the Landlord (including the preparation of any documents) which is needed by virtue of this Lease, whether or not such consent or approval is granted and/or whether or not the application is withdrawn but not, for the avoidance of doubt, where any Expert, arbitrator or Court of competent jurisdiction determines that the Landlord has unreasonably withheld or delayed that consent or approval.

7.5 VAT

7.5.1 Where the Tenant is to pay the Landlord for any supply made to the Tenant by the Landlord, the Tenant shall also pay any VAT which may be payable in connection with that supply subject to provision of a valid VAT invoice addressed to the Tenant, and such VAT shall be paid at the same time as the principal amount to which it relates or, if later, within ten (10) Business Days of receipt by the Tenant of such VAT invoice.

7.5.2 Where the Tenant is to pay the Landlord the costs of any supplies made to the Landlord, the Tenant shall (upon receiving adequate evidence of such payment by the Landlord) also pay to the Landlord any VAT payable in connection with that supply subject to provision of a valid VAT invoice addressed to the Tenant, except to the extent that the Landlord is able to obtain a credit for the VAT from HM Revenue & Customs, and such VAT shall be paid at the same time as the principal amount to which it relates or, if later, within ten (10) Business Days of receipt by the Tenant of such VAT invoice.

7.6 Interest

If any sum payable under this Lease is not paid to the Landlord within ten (10) Business Days of written demand and reasonable proof of expenditure being provided to the Tenant, unless and to

the extent that such sum is subject to a *bona fide* dispute, the Tenant shall pay interest to the Landlord on such sum at the Interest Rate for the period from and including the due date until actual payment (both before and after any judgment).

7.7 To comply with Schedules

To comply with the covenants on the part of the Tenant in Schedule 2 and Schedule 3.

8. INSURANCE

8.1 The Tenant shall:

- 8.1.1 insure, or cause to be insured by an Investment Tenant, all parts of the Property (excluding plate glass) with substantial and reputable insurers against the Insured Risks for the Full Reinstatement Cost but subject always to such exclusions, excesses, limitations, terms and conditions as may be usual in the insurance market at the time or otherwise required by the insurers;
- 8.1.2 use reasonable endeavours to procure that the Landlord's interest is noted on the insurance policy/policies under which the Property is insured;
- 8.1.3 at the reasonable request of the Landlord (not more than once in any calendar year), provide the Landlord (or, where insurance is effected by an Investment Tenant, use reasonable endeavours to procure that the Landlord is provided) with details of the insurance policy/policies under which the Property is insured, together with evidence of payment of the last premium for the insurance policy/policies;
- 8.1.4 within ten (10) Business Days of written demand and reasonable proof of expenditure pay any increase in the insurance premium for any Retained Land which is properly attributable to the use of the Property or anything done or omitted to be done on the Property by the Tenant, an Investment Tenant or any other tenant or occupier of the Property in breach of the terms of this Lease Provided Always That this clause shall not apply in respect of any increase in premium that arises as a result of the construction or completion of the Phase Works nor the subsequent use of the Property in line with any planning consent permitting the Phase Works; and
- 8.1.5 not knowingly do or omit to do anything which may make any insurance of the Property void or voidable.

8.2 In case of default by the Tenant under clause 8.1.1 then:

- 8.2.1 unless and to the extent that such default is subject to a *bona fide* dispute; and
- 8.2.2 if the Landlord chooses (in its absolute discretion) to so insure,

the Tenant shall pay to the Landlord, within ten (10) Business Days of written demand and reasonable proof of expenditure by the Landlord, the reasonable and proper costs and expenses reasonably and properly incurred or payable by the Landlord (and directly attributable to the default by the Tenant under clause 8.1.1) in insuring any relevant part(s) of the Property with substantial and reputable insurers against the Insured Risks for its Full Reinstatement Cost, but subject always to such exclusions, excesses, limitations, terms and conditions as may be usual in the insurance market at the time or otherwise required by the insurers Provided Always That the Landlord shall:

- 8.2.3 use reasonable endeavours to procure that the Tenant and any Investment Tenants' interests are noted on the insurance policy/policies under which the Property is insured pursuant to this clause 8.2;
- 8.2.4 at the reasonable request of the Tenant (not more than once in any calendar year), provide the Tenant with details of the insurance policy/policies under which the Property is insured, together with evidence of payment of the last premium for the insurance policy/policies; and
- 8.2.5 be permitted to insure pursuant to this clause 8.2 only during any period for which the Tenant is in default under clause 8.1.1.

- 8.3 If, following substantial damage or destruction of any part(s) of the Property by an Insured Risk, reinstatement or rebuilding or replacement (as the case may be) of the damaged or destroyed part(s) (and which may, as the context admits, include the rebuilding of a new or replacement building) has not commenced by the date which is the fifth anniversary of the date of the damage or destruction, any proceeds received from the insurance policy/policies under which the relevant part(s) of the Property is/are insured shall belong to the Landlord, the Tenant and each Investment Tenant of the part(s) of the Property so damaged or destroyed in such proportions as shall be fair and reasonable having regard to the value of their respective interests in the same at the date of the damage or destruction. Any dispute as to the respective proportions pursuant to this clause 8.3 shall be determined by the Expert.

9. REPAIR

- 9.1 Subject to clause 9.2, the Tenant shall, with effect from Practical Completion of the Phase Works, keep or cause to be kept the structure and exterior of all completed buildings from time to time on the Property maintained in accordance with the principles of good estate management.

- 9.2 The Tenant shall not be liable under clause 9.1:

- 9.2.1 in the event of damage or destruction to any building from time to time on the Property by an Insured Risk or an Excluded Risk, but the Tenant shall procure (or shall procure that each Investment Tenant of the part(s) of the Property so damaged or destroyed shall so procure) that, until such time as reinstatement of the damage or destroyed parts (or rebuilding of a new or replacement building, as applicable) has commenced, subject to the Tenant or the relevant Investment Tenant(s) (as applicable) being able to obtain any requisite consents and subject to the necessary labour and materials being and remaining available (which, in each case, the Tenant shall use reasonable endeavours to obtain (or procure that an each Investment Tenant of the part(s) of the Property so damaged or destroyed shall use reasonable endeavours to obtain) as soon as reasonably practicable following the damage or destruction):

- (a) the building is (or any remaining parts are) structurally safe;
- (b) any works of demolition are completed as soon as reasonably practicable and the relevant parts of the Property are thereafter cleared of debris and levelled and (except during any period in which the same are hoarded/fenced off to the general public pursuant to clause 9.2.1(c)) landscaped; and
- (c) hoardings and/or other fences are erected and maintained around the relevant parts of the Property for so long as necessary to prevent access by the general public,

in accordance with the principles of good estate management; nor

- 9.2.2 in relation to any part(s) of the Property which is/are the subject of any Major Works or Qualifying Works, during the carrying out of the relevant works.

- 9.3 If the Tenant shall be in breach of clause 9.2 and shall fail to remedy the breach within a reasonable period of being requested in writing so to do by the Landlord, the Landlord shall (in accordance with the provisions of clause 12.4) be entitled to enter onto the Property and undertake the necessary works at the Tenant's cost, which the Tenant shall pay to the Landlord within ten (10) Business Days of written demand from time to time.

- 9.4 The Tenant shall:

- 9.4.1 subject always to clause 9.2, keep any outside parts of the Property (other than any Estate Common Parts upon the Property) clean and tidy, any landscaped areas properly weeded and any unbuilt-upon areas adequately surfaced, all in accordance with the principles of good estate management; and

- 9.4.2 use reasonable endeavours to procure that, as part of delivering the Estate Services, the Estate Management Company keeps any Estate Common Parts upon the Property

clean and tidy, any landscaped areas forming part of the Estate Common Parts properly weeded and any unbuilt-upon areas of the Estate Common Parts adequately surfaced as part of the Estate Services, all in accordance with the principles of good estate management.

10. USE OF THE PREMISES

10.1 Restrictions on use

The Tenant shall not and shall not knowingly permit any other person to:

- 10.1.1 use the Property otherwise than for a use or uses permitted under the Planning Acts;
- 10.1.2 use any part of the Property as a betting shop [during the first ten years of the Term] [prior to [●] *[for Phases other than Phase 1, insert date which is 10 years from the date of grant of the Phase 1 lease]*];
- 10.1.3 do anything on the Property which is illegal;
- 10.1.4 subject to clause 10.1.6 (and otherwise than in the ordinary course of works at, or a use or uses of, the Property permitted under the Planning Acts, and then only in accordance with all requisite consents):
 - (a) carry out any acts at the Property which are noisy, noxious or dangerous; or
 - (b) store at the Property dangerous or inflammable materials;
- 10.1.5 allow waste to accumulate at the Property nor allow any material which generally known to be deleterious, polluting or dangerous (to persons or property) to enter any Service Media, other parts of the Estate or the Retained Land;
- 10.1.6 knowingly do anything on or in connection with the Property which shall be or cause an actionable nuisance, injury or physical damage to the Retained Land or other parts of the Intended Estate, or to the owners or occupiers thereof, or to the general public;
- 10.1.7 overload or obstruct any Service Media which serve the Property; nor
- 10.1.8 obstruct any of the Estate Common Parts.

10.2 Alterations

The Tenant shall not carry out Major Works without the consent of the Landlord by deed (in the form produced by the Landlord and approved by the Tenant (such approval not to be unreasonably withheld or delayed)), such consent not to be unreasonably withheld or delayed Provided Always That the consent of the Landlord shall not be required:

- 10.2.1 following damage or destruction to any building from time to time on the Property by an Insured Risk or an Excluded Risk, for any works which are in line with any planning consent permitting reinstatement of the damage or destroyed parts (or rebuilding of a new or replacement building, as applicable);
- 10.2.2 for any works which do not comprise Major Works,

and Provided Further That, for the purposes of this clause 10.2, the Landlord shall be unreasonable in withholding its consent to Major Works which involve a change of use of any Relevant Commercial Space to any use not comprising Relevant Commercial Space on any ground related to the loss or potential loss of Anticipated Equity Rent (as that term is defined in Schedule 3) from that Relevant Commercial Space in circumstances where there are, in the opinion of the Relevant Tenant (acting reasonably), no potential alternative, commercially viable works which would be Qualifying Works (as defined in Schedule 3) capable of producing an increase in the capitalised value of the Anticipated Equity Rent applicable to the building(s) the subject of the proposed Major Works which would exceed the amount of the corresponding Landlord's Contribution (as defined in Schedule 3) as would otherwise apply to any such potential alternative Qualifying Works.

10.3 Town centre CCTV and help point systems

The Tenant shall use reasonable endeavours to co-operate with the Landlord to ensure optimum connectivity between the Landlord's town centre CCTV system and help point system (if any) and any like equipment operated by or on behalf of the Tenant.

10.4 Yield up

At the end of the Term the Tenant shall yield up the Premises free of its own occupation in the condition required by this Lease.

11. DEALINGS**11.1 Assignments**

11.1.1 The Tenant shall not assign or agree to assign any part (as opposed to the whole) of this Lease.

11.1.2 The Tenant shall not assign the whole of this Lease without the consent by deed of the Landlord, such consent not to be unreasonably withheld or delayed, and such deed evidencing the consent (if granted) shall:

- (a) contain a covenant by the Tenant with the Landlord to comply with the covenants in paragraph 4 of Schedule 2 Part B to the extent that the relevant information in respect of the Accounting Year in which the assignment is completed is not delivered by the Tenant to the assignee or to the Landlord on completion of the assignment; and
- (b) otherwise be in the form produced by the Landlord and approved by the Tenant (such approval not to be unreasonably withheld or delayed).

11.1.3 For the purposes of section 19(1A) of the Landlord and Tenant Act 1927, the Landlord may not require an authorised guarantee agreement (as defined in section 16 of the Landlord and Tenant (Covenants) Act 1995) as a condition of its consent pursuant to clause 11.1.2.

11.2 Underletting

11.2.1 Subject always to clause 11.2.3, the Tenant shall not underlet the whole or any part of any Relevant Commercial Space:

- (a) except to an Occupational Tenant by way of an Occupational Lease or to an Investment Tenant by way of an Investment Lease; and
- (b) in the case of an Investment Lease, without first satisfying the following requirements:
 - (i) any Investment Tenant shall covenant with the Tenant (in the deed mentioned at the end of this clause 11.2.1(b)) that, whilst the Investment Lease is vested in the Investment Tenant, to observe and perform the covenants and conditions contained in this Lease (other than any covenant relating to the payment of rents) but, in the case of an Investment Lease of part of the Property, only insofar as may be applicable to an underletting of part;
 - (ii) any Investment Lease shall contain the same covenants and obligations *mutatis mutandis* as are imposed upon the Tenant pursuant to Schedule 2 and Schedule 3 (together the "**Schedule Obligations**"); and
 - (iii) any Investment Tenant shall covenant directly with the Landlord (in the deed mentioned at the end of this clause 11.2.1(b)) that, whilst the Investment Lease is vested in the Investment Tenant, it will:
 - (aa) comply with the Schedule Obligations; and

- (bb) pay to the Tenant the rents reserved under the Investment Lease;
- (iv) any Investment Lease contains a provision that:
 - (aa) any assignee of the Investment Lease enters into a similar covenant to those contained in clauses 11.2.1(b)(i) and 11.2.1(b)(iii); and
 - (bb) any Investment Lease deriving title out of that Investment Lease shall contain the same covenants and obligations *mutatis mutandis* as are imposed upon the Tenant pursuant to this clause 11.2,

nor without the consent of the Landlord given by deed (such consent not to be unreasonably withheld or delayed). For the avoidance of doubt, the consent of the Landlord shall not be required for any Occupational Lease.

11.2.2 Subject always to clause 11.2.3, the Tenant shall not underlet the whole or any part of the immediate reversion to any Apartment Lease without first procuring that:

- (a) any intended Investment Tenant shall covenant with the Tenant that, whilst the Investment Lease is vested in the Investment Tenant, to pay to the Tenant (or, if reasonably required, directly to the Landlord) the amounts reserved by Schedule 2 Part A;
- (b) any such Investment Lease shall contain the same covenants and obligations *mutatis mutandis* as are imposed upon the Tenant pursuant to Schedule 2 in respect of Ground Rent (as that term is defined in Schedule 2 Part A); and
- (c) the Investment Lease contains a provision that:
 - (i) any assignee of the Investment Lease enters into a similar covenant to that contained in clause 11.2.2(a); and
 - (ii) any Investment Lease deriving title out of that Investment Lease shall contain the same covenants and obligations *mutatis mutandis* as are imposed upon the Tenant pursuant to this clause 11.2.2.

11.2.3 Nothing in this Lease shall prohibit the grant of an underlease of:

- (a) any part of the Property to a statutory undertaker for the purposes of its statutory undertaking;
 - (b) any part of any Relevant Commercial Space which is required to be let at nil or discounted rent pursuant to the terms of any planning agreement relating to the Property (including Affordable Housing);
 - (c) external or basement parts of the Property to the Estate Management Company for use as Estate Common Parts; or
 - (d) the amenity areas, common parts or basement levels of any buildings from time to time on the Property (or the means of access thereto) which are used in common with the owners or occupiers of adjacent or neighbouring buildings to a management company engaged by the Tenant and the owners of such adjacent or neighbouring buildings to manage and provide services to such amenity areas or basement levels; or
 - (e) any parts of the Property not comprising Relevant Commercial Space,
- without the consent of the Landlord and, for the avoidance of doubt, the provisions of clause 11.2.1 shall not apply to such underleases.

11.2.4 The Tenant shall:

- (a) in accordance with the principles of good estate management, use reasonable endeavours to observe and perform all the covenants and conditions on the

part of the lessor in, and shall use reasonable endeavours to enforce the observance and performance of the lessee's obligations in, all Occupational Leases and each Investment Lease of which (in each case) it is the immediate landlord;

- (b) provide (electronically or otherwise) to the Landlord within twenty (20) Business Days of written demand from time to time (but no more frequently than once in any period of 12 months) written particulars of all derivative interests of, or in, the Property of which the Tenant is actually aware, including details of:
 - (i) rent/licence fee payable in respect of them; and
 - (ii) all Investment Leases and Occupational Leases granted since the previous particulars were delivered to the Landlord (save where such details have previously been delivered to the Landlord).

11.3 Notification of dealings

Within fifteen (15) Business Days of any assignment or charging of the Property or this Lease or of the grant by the Tenant of an Investment Lease of any Relevant Commercial Space, or within five (5) Business Days of the Tenant receiving notice under the terms of an Investment Lease of the grant by an Investment Tenant of an Investment Lease of any Relevant Commercial Space (unless the Investment Tenant shall itself notify the Landlord directly), the Tenant shall give the Landlord written notice of that dealing together with a certified copy of any document effecting or evidencing the dealing (certified by solicitors to be a true copy of the original) for retention by the Landlord.

11.4 Registration at the Land Registry

11.4.1 The Tenant shall:

- (a) apply to register this Lease within ten (10) Business Days of the date of the grant of this Lease and use reasonable endeavours to procure completion of that registration as soon as reasonably practicable; and
- (b) within five Business Days of the registration of the grant of this Lease deliver to the Landlord official copies of the registered title.

11.4.2 The Landlord shall not be liable to the Tenant for the Tenant's failure to register and/or to protect this Lease or any rights granted by it.

12. LEGAL REQUIREMENTS

12.1 Legislation and planning

The Tenant shall:

- 12.1.1 comply with or cause to be complied with all legislation (including any notice, order, proposal, requisition, direction or other communication from any public authority) affecting the Property, its use and occupation and the health and safety of persons working at or visiting the Property (including any relating to the protection of the environment or the control of environmental hazards and pollution), whether the legislation requires the owner, landlord, tenant or occupier to comply;
- 12.1.2 not do or knowingly permit, or omit to do, anything to be done at the Property which may result in:
 - (a) any Retained Land failing to comply with legislation; or
 - (b) the Landlord incurring any cost, penalty or liability under any legislation;
- 12.1.3 in respect of any planning agreement to which the Landlord shall at the written request of the Tenant be a party, indemnify the Landlord against all costs, charges, claims, demands and liabilities arising as a consequence of the Landlord being a party thereto (unless arising through the act, default or omission of the Landlord or any of its

employees, agents or representatives) Provided Always That whilst the Landlord is The Mayor and Burgesses of the London Borough of Barking and Dagenham or any statutory successor it shall not be obliged to enter into any such planning agreement to the extent that it is unable to do so at law;

12.1.4 pay any charge imposed under legislation relating to town and country planning in respect of the use of the Property, or any works carried out at the Property; and

12.1.5 in relation to community infrastructure levy (or any similar or replacement charge or levy):

- (a) pay any community infrastructure levy (or any similar or replacement charge or levy);
- (b) serve a notice assuming liability (and provide a copy of such notice to the Landlord) and not withdraw it (or carry out such equivalent or similar steps as may be required or permitted in relation to any similar or replacement charge or levy); and
- (c) indemnify the Landlord against all liabilities arising out of community infrastructure levy (or any similar or replacement charge or levy),

in each case in respect or by reason of any works carried out at the Property.

12.1.6 give the Landlord a copy of any notice received by the Tenant, relating to the Property or the Estate or any occupier of them, or to the Landlord's interest in them, upon having received it.

12.2 **Exclusion of warranty**

The Landlord does not warrant or represent that the Property may be used for any specific purpose, including any use as mentioned in the definition of Relevant Commercial Space.

12.3 **Defective Premises Act 1972**

The Tenant shall promptly give the Landlord written notice of any defect in the Property which may make the Landlord liable to do, or not to do, any act to comply with the duty of care imposed by the Defective Premises Act 1972. The Tenant shall display or cause to be displayed any notices at the Property needed to enable the Landlord to comply with the Defective Premises Act 1972.

12.4 **Entry by the Landlord**

The Tenant shall permit the Landlord (and persons duly authorised by the Landlord) at all reasonable times during ordinary business hours and on not less than five (5) Business Days' notice (except in the case of emergency when as much notice as reasonably practicable shall be given) to enter upon such parts of the Property (but not, for the avoidance of doubt, any part of the Property that is let pursuant to an Occupational Lease or any Apartment Lease) as may be reasonable and/or necessary:

12.4.1 to examine its state and condition; and

12.4.2 to enable the Landlord to exercise any rights or comply with any obligations under this Lease

Provided That the person(s) exercising such rights shall:

- (a) carry out any works in a good and workmanlike manner and in accordance with any requisite third party consents and (save where entry is effected in the case of emergency) a programme and method statement agreed in advance with the Tenant (acting reasonably);
- (b) not obstruct or interfere with (and shall use reasonable endeavours to procure that others exercising these rights shall not obstruct or interfere with) the lawful exercise by third parties of their rights in respect of the Property;
- (c) comply with the reasonable requirements from time to time of the Tenant;

- (d) reimburse the Tenant any reasonable and proper security costs and expenses properly incurred by the Tenant or any lessee or other occupier necessitated by the exercise of the right of entry; and
- (e) act in a reasonable and proper manner and as expeditiously as possible, cause as little damage, disturbance and inconvenience as reasonably practicable in their exercise and make good any damage caused in the exercise of such rights as soon as reasonably practicable and to the reasonable satisfaction of the Tenant.

13. INDEMNITY

13.1 Subject always to clause 13.2, the Tenant shall indemnify the Landlord against all third-party liabilities, claims, demands and proceedings directly arising from any breach of the Tenant's obligations under this Lease.

13.2 The indemnity pursuant to clause 13.1 shall be subject to the Landlord:

- 13.2.1 first having notified the Tenant of the Landlord's proposed actions and allowing the Tenant a reasonable opportunity to make representations in respect of such actions, which representations the Landlord shall have due regard to but shall not automatically be bound by;
- 13.2.2 using reasonable endeavours to mitigate or minimise any liabilities covered by this indemnity;
- 13.2.3 notifying the Tenant in writing as soon as reasonably practicable after becoming aware of any liabilities which may be covered by this indemnity;
- 13.2.4 providing the Tenant promptly following receipt with copies of all claims, demands and proceedings and other papers served on the Landlord in respect of such matter; and
- 13.2.5 not settling, compromising or otherwise disposing of any claim relating to any relevant liabilities without the prior written consent of the Tenant, such consent not to be unreasonably withheld or delayed,

and shall specifically exclude any and all liabilities to the extent that they are due to or exacerbated by any act, neglect or default of the Landlord or any of its employees, agents or representatives.

14. LANDLORD'S COVENANT FOR QUIET ENJOYMENT

The Landlord agrees with the Tenant that the Tenant may hold and use the Property during the Term without any interruption (except as authorised by this Lease) by the Landlord or by any person lawfully claiming through, under or in trust for the Landlord.

15. LANDLORD'S OBLIGATIONS

15.1 Insurance

The Landlord shall not knowingly do or omit to do anything which may make any insurance of any building on the Property void or voidable.

15.2 Planning

15.2.1 In reliance upon the indemnity contained in clause 12.1.3, the Landlord shall enter into such planning agreements relating to the Property as the Tenant may from time to time reasonably require Provided That the Landlord shall nevertheless be entitled to refuse to enter into a planning agreement if to do so would entail the Landlord being obliged to make a payment of money, or assume any material liability, which (following written demand by the Landlord) the Tenant has refused to indemnify fully the Landlord against and Provided Further That whilst the Landlord is The Mayor and Burgesses of the London Borough of Barking and Dagenham or any statutory

successor it shall not be obliged to enter into any such planning agreement to the extent that it is unable to do so at law.

- 15.2.2 In its capacity as landlord only (and not, for the avoidance of doubt, as local planning authority), the Landlord shall not object to any application, appeal, discussion or negotiation made or entered into by or behalf of the Tenant, or those deriving title out of this Lease, with a view to obtaining planning permission in connection with the Property Provided That the Landlord shall nevertheless be entitled to object to such application, appeal, discussion or negotiation if the implementation of such planning consent to which such application, appeal, discussion or negotiation relates would entail the Landlord being obliged to make a payment of money, or assume any liability, which (following written demand by the Landlord) the Tenant, or those deriving title out of this Lease (as applicable) has refused to indemnify fully the Landlord against.

15.3 Interference with light

The Landlord shall not object to nor make or pursue any claim in respect of any potential or actual interference with light to the remainder of the Intended Estate nor any part of the Retained Land which is caused by the Phase Works and/or any alterations made to the Property from time to time (whether or not such alterations shall be Major Works and/or Qualifying Works).

15.4 Forfeiture Protection

The Landlord shall (promptly following notice from the Tenant) enter into an Undertenant Forfeiture Protection Deed with:

- 15.4.1 any Investment Tenant who has entered into an Investment Lease; and/or
15.4.2 any statutory undertaker who has entered into an underlease of part of the Property for the purposes of its statutory undertaking,

in accordance with the provisions of this Lease.

15.5 To comply with Schedules

The Landlord shall comply with its obligations in Schedule 2 and Schedule 3.

15.6 Phase Leases and Deeds of Covenant

Unless otherwise agreed in writing by the Tenant and the relevant prospective Phase Tenant, the Landlord shall not complete any Phase Lease without first procuring that the relevant Phase Tenant enters into a Deed of Covenant with the Tenant simultaneously with the grant of the relevant Phase Lease.

15.7 Estate Management Agreement

If, following the grant of a Phase Lease, any part of that relevant Phase Land once again becomes vested in the Landlord, the Landlord shall:

- 15.7.1 promptly accede to the Estate Management Agreement; and
15.7.2 (until such time as each part of the relevant Phase Land is again let pursuant to a Phase Lease, but not further or otherwise) comply with the provisions of the same,

as if it were a Phase Tenant in respect of those part of the relevant Phase Land vested in it, and hereby covenants with the Tenant that it shall comply with the provisions of the Estate Management Agreement as if it were a Phase Tenant in respect of those part of the relevant Phase Land vested in it pending the Landlord's formal accession to the obligations of the former Phase Tenant under the Estate Management Agreement.

16. FORFEITURE

16.1 Landlord's right to forfeit

Subject always to clauses 16.2 and 16.3, if:

- 16.1.1 the Main Rent or any part thereof (and any VAT properly payable thereon) has not been paid to the Landlord within 20 Business Days of the due date for payment (save where such sum is subject to a *bona fide* dispute); or
- 16.1.2 the Tenant has failed materially to comply with any material covenant on the part of the Tenant contained in this Lease,

the Landlord may forfeit this Lease by court action only (and not by peaceable re-entry). The Term will then end, but this will be without prejudice to any claim which the Landlord may have against the Tenant for any failure to comply with the terms of this Lease.

16.2 Protection provisions

If the Landlord becomes entitled to exercise its right of forfeit pursuant to clause 16.1 following the occurrence of an event mentioned in clause 16.1.1 or clause 16.1.2:

- 16.2.1 the Landlord will;
 - (a) before seeking to enforce such right, give to the Tenant not less than 30 Business Days prior written notice of the Tenant's default and, if the Tenant remedies such default within that period of 30 Business Days (or such longer period as may be reasonable having regard to the nature of the default), the Landlord shall not be entitled to exercise its rights under clause 16.1; and
 - (b) before enforcing its rights under clause 16.1 (whether before or following court action) comply with the provisions of each Undertenant Forfeiture Protection Deed then subsisting; and
- 16.2.2 without prejudice to clause 16.2.1, if there is any Relevant Mortgagee:
 - (a) the Landlord's rights under clause 16.1 to seek enforcement by court action shall not arise until the Landlord has given notice of the default to each Relevant Mortgagee in accordance with the requirements of this clause 16.2.2 and either:
 - (i) no Relevant Mortgagee has before the end of the time period stated in clause 16.2.2(c), given notice under clause 16.2.2(c) that a Relevant Mortgagee intends to remedy the default; or
 - (ii) where any Relevant Mortgagee has before the end of the time period stated in clause 16.2.2(c), given notice under clause 16.2.2(c) that a Relevant Mortgagee intends to remedy the default, the time period stated in the Landlord's notice (to all such Relevant Mortgagees) for remedying the relevant default, has expired without that default having been remedied;
 - (b) a Landlord's notice to any Relevant Mortgagee must:
 - (i) be sent to the address for the Relevant Mortgagee stated in the notice given by the Tenant pursuant to clause 11.3; and
 - (ii) state the default and the time period within which the default must be remedied (not being less than 45 Business Days); and
 - (c) if the Landlord has given notice under clause 16.2.2(b), any Relevant Mortgagee may, within 30 Business Days of service of the Landlord's notice, give notice to the Landlord stating whether or not a Relevant Mortgagee intends to remedy the default,

and each Relevant Mortgagee may enforce the terms of this clause 16.2.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999, but the rights of the Landlord and the Tenant and any Guarantor to terminate, rescind or agree any variation, waiver or settlement under this Lease are not subject to the consent of any Relevant Mortgagee.

16.3 Phase Works

The Landlord's right to forfeit pursuant to clause 16.1 shall be suspended (and shall not apply) until Practical Completion of the Phase Works.

17. MISCELLANEOUS**17.1 Mutual Management Co-Operation**

The Tenant shall use reasonable endeavours (save where the Property or any buildings from time to time on the Property are intended to be redeveloped or are in the course of being redeveloped) to market and manage any Relevant Commercial Space, or use reasonable endeavours to cause such Relevant Commercial Space to be marketed and managed by an Investment Tenant, to the commercial advantage of the Landlord and the Relevant Tenant in accordance with the principles of good estate management (it being allowed to have regard to prevailing market conditions from time to time affecting developments and premises which are similar to the Estate and the Property) Provided That this clause 17.1 shall not apply in respect of any part of any Relevant Commercial Space which is required to be let at nil or discounted rent pursuant to the terms of any planning agreement relating to the Property (including Affordable Housing).

17.2 Notices

17.2.1 A notice given in connection with this Lease must be given in writing and signed by or on behalf of the party giving it, unless this Lease states that it need not be given in writing.

17.2.2 A notice given in connection with this Lease will be validly served if personally delivered or if sent by a registered post service (within the meaning of the Postal Services Act 2000) or first class recorded delivery or first class ordinary post and (in each case) addressed to:

(a) the Landlord:

(i) (whilst the Landlord is The Mayor and Burgesses of the London Borough of Barking and Dagenham) at its address on page 1 of this Lease and addressed to the Landlord's Director of Law and Governance); and otherwise

(ii) at any postal address in the United Kingdom shown from time to time for the registered proprietor on the title number set out in clause LR2.1 or, if no such address is given, at its last known address in the United Kingdom; or

(b) the Tenant at its registered office,

or (in any event) to such other address and/or such alternative person as may from time to time be notified in writing by one party to the other.

17.2.3 Writing does not include, and notices given in connection with this Lease may not be given by, email or any other electronic means.

17.2.4 Any such notice shall be deemed to be served on the second Business Day after being put in the post properly addressed or (as the case may be) upon the date of delivery if service is by hand.

17.3 Governing law and jurisdiction

17.3.1 This Lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by the law of England and Wales.

17.3.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with

this Lease or its subject matter or formation (including non-contractual disputes or claims).

- 17.3.3 [Whilst the Tenant is [●] it irrevocably appoints [●] of [●] (or such other person based within the jurisdiction of the courts of England and Wales as it may notify to the Landlord in writing from time to time) as its agent to accept on its behalf service of any notices or proceedings arising out of or in connection with this Lease (whether the matter, dispute or claim to which they relate is contractual or non-contractual in nature).]⁴

17.4 Contracts (Rights of Third Parties) Act 1999

Unless expressly stated nothing in this Lease will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

17.5 Landlord and Tenant (Covenants) Act 1995

This Lease is a new tenancy for the purposes of section 1 of the Landlord and Tenant (Covenants) Act 1995.

17.6 Invalid, unlawful or unenforceable provisions

If any provision of this Lease shall be held to be invalid, unlawful or unenforceable to any extent, such provision shall, to that extent, be omitted from this Lease and shall not affect the validity, legality or enforceability of the remaining parts of this Lease.

18. DISPUTES

- 18.1 Any dispute between the Landlord and the Tenant arising out of or in connection with this Lease stated to be referable to an Expert (or which the Landlord and the Tenant shall otherwise agree shall be referred to an Expert) shall be referred to an independent expert who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than 10 years ("Expert") and who shall be appointed by agreement between the Landlord and the Tenant or, in the absence of agreement within ten (10) Business Days of a request in writing from either the Landlord or the Tenant to the other to agree an appointment, either the Landlord or the Tenant may refer the appointment to the President or other most senior available officer of the Royal Institution of Chartered Surveyors (or such other institution relevant to the general subject matter of the dispute or difference).

- 18.2 Where any matter is submitted for the determination of the Expert in accordance with clause 18.1, he shall:

- 18.2.1 act as an expert and not as an arbitrator and shall have an unfettered discretion to determine the matter in question;
- 18.2.2 invite the Landlord and the Tenant to submit written representations to him within ten (10) Business Days, which he shall copy to the other party;
- 18.2.3 invite the Landlord and the Tenant to submit written counter-representations within five (5) Business Days of receipt by each party of the other's original written representations, which he shall again copy to the other;
- 18.2.4 consider each of the Landlord's and the Tenant's respective written representations and counter-representations, but shall not be bound or fettered by them; and
- 18.2.5 endeavour to deliver his written determination to the Landlord and the Tenant no later than ten (10) Business Days after all written representations and counter-representations have been received by him, giving written reasons for the decision and directing which party, and to what extent, should be responsible for paying his costs (as mentioned in clause 18.5) and, if he considers it appropriate, directing that one party be responsible for paying the whole or part of the other's costs incurred in connection with the referral to the Expert (as mentioned in clause 18.7).

⁴ Drafting note: to be included only if the Tenant is domiciled outside of England and Wales.

- 18.3 If the Expert dies, delays or becomes unwilling or incapable of acting, the Landlord and the Tenant shall jointly appoint, or there shall be appointed, another Expert in his place in accordance with the procedure in clause 18.1.
- 18.4 The Expert's written determination shall be final and binding on the Landlord and the Tenant save in the case of manifest error or fraud.
- 18.5 The costs of the Expert and of his appointment ("**Expert's Costs**") shall be payable by the Landlord and the Tenant in such proportions as the Expert shall direct and:
- 18.5.1 in making his determination, he may determine whether either the Landlord or the Tenant has acted unreasonably in relation to the matter in dispute and take this into account; and
- 18.5.2 in the absence of any such direction, his costs shall be borne equally between the Landlord and the Tenant.
- 18.6 If either the Landlord or the Tenant ("**Defaulting Party**") fails to pay its share of the Expert's Costs;
- 18.6.1 the other shall be entitled to discharge the Defaulting Party's share and recover the same from the Defaulting Party together with interest on such sum at the Interest Rate from the date on which the other incurs such sum until the date on which the Defaulting Party reimburses such amount; and
- 18.6.2 the Defaulting Party agrees to pay the other party the relevant amount due under this clause within ten (10) Business Days of written demand from time to time.
- 18.7 The Landlord and the Tenant shall each be responsible for their own costs in relation to any reference to, and determination by, the Expert unless, and to the extent that, he determines otherwise.
- 19. SAVING OF LANDLORD'S STATUTORY POWERS**
- 19.1 In this clause 19 (but not further or otherwise), "**Landlord**" means The Mayor and Burgesses of the London Borough of Barking and Dagenham and its statutory successors where it or they (as the case may be) is/are the lessor under this Lease.
- 19.2 Nothing contained or implied in this Lease shall prejudice or affect the rights, powers, duties and obligations of, or fetter the discretion of the Landlord in the exercise of its functions as a local authority ("**Functions**").
- 19.3 The rights, powers, duties, obligations and discretion of the Landlord in connection with its Functions may be as fully and effectually exercised in relation to the Property as if this Lease had not been entered into.
- 19.4 Any act or thing done by the Landlord (including the giving or grant of any notice, consent or approval) pursuant to the terms of this Lease (or any failure or omission by the Landlord to do or give or grant the same) shall not be deemed to be done or given or granted (or not as the case may be) by the Landlord in any capacity other than as the owner of a reversionary interest in the Property.
- 19.5 Nothing contained or implied in this Lease shall (or shall be deemed to):
- 19.5.1 involve the delegation by the Landlord of any of its rights, powers, duties or obligations as a local authority; or
- 19.5.2 oblige the Landlord to expend more or receive less money in complying with this Lease than it may lawfully do nor to do (or omit to do) any act or thing which would or may be unlawful or ultra vires or amount to maladministration.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

SCHEDULE 1
[TITLE MATTERS]

SCHEDULE 2 RENT

Part A Net Ground Rents

1. NET GROUND RENTS

1.1 In this Lease, the following definitions shall apply:

"Ground Rent" means the ground rent, if any (and however it is reserved and made payable), reserved as rent in any Apartment Lease; and

"Net Ground Rents" means, in respect of each Accounting Year (as defined in Part B), the aggregate of [REDACTED]

1.2 With effect on and from Practical Completion of the Phase Works, the Tenant shall, in respect of each Accounting Year, pay to the Landlord [REDACTED] of the Net Ground Rents (if any) within 20 Business Days after the end of that Accounting Year.

1.3 The Tenant:

1.3.1 shall not:

- (a) otherwise than by the grant of an Investment Lease in accordance with the provisions of clause 11.2.2 (or the corresponding provisions in any Investment Lease), assign or in any way alienate, nor knowingly permit any Investment Tenant to assign or alienate, any right to receive or recover any Ground Rent (whether under the terms of this Lease or as that term is to be defined in any Investment Lease, as applicable); nor
- (b) allow payment, nor knowingly permit any Investment Tenant to allow payment, of any Ground Rent to any third party other than on the basis that such sums shall be capable of receipt by duly authorised agents of the Tenant or the relevant Investment Tenant (as applicable), it being understood that receipt by any such third party shall be treated as receipt by the Relevant Tenant personally for the purposes of this Lease and any Investment Lease to enable calculation of the Net Ground Rents (whether under the terms of this Lease or the terms of any Investment Lease, as applicable); and

1.3.2 shall use reasonable endeavours to exercise any rights and remedies it or any Investment Tenant may have against third parties relating to any Ground Rent.

1.4 The parties agree that, if notwithstanding (and in breach of) paragraph 1.3.1(a), the Tenant or any Investment Tenant does assign or in any way alienate any right to receive or recover any Ground Rent, the Relevant Tenant shall nevertheless be deemed to be in receipt of the relevant sums for the purpose of ascertaining the Net Ground Rents.

Part B Main Rent

1. DEFINITIONS

1.1 In this Lease, the following definitions shall apply:

"Accounting Date" means 31 December in each year of the Term, or such other date as the Tenant may, at least 2 months before the start of the Accounting Year next following the date of such notice, notify to the Landlord in writing from time to time (but not more than once in any 12 month period);

"Accounting Year" means each period of twelve months ending on an Accounting Date Provided That:

- (a) for all purposes of this Lease, the first Accounting Year shall be the period starting on the date of Practical Completion of the Phase Works to and including the first Accounting Date which is more than three months after the date of Practical Completion of the Phase Works;
- (b) upon a change of the Accounting Date, the period from the previous Accounting Date to the new Accounting Date shall be treated as an Accounting Year; and
- (c) the final Accounting Year shall be the period from but including the final Accounting Date before the end of the Term to and including the last day of the Term (however it arises);

“Base Rent” means [WORDS] pounds (£[FIGURE]) per annum;⁵

“Equity Rent” means, for each Accounting Year, the sum obtained by multiplying the Net Income in respect of that Accounting Year by the Landlord’s Percentage;

“Estimated Main Rent” has the meaning given in paragraph 2.2(f);

“Gross Occupational Income” means a sum equal to the aggregate of all sums received by or on behalf of the Relevant Tenant directly from Occupational Tenants in the relevant Accounting Year in respect of the Relevant Commercial Space (if any) and includes:

- (a) annual rents (including interim rents determined under the Landlord and Tenant Act 1954), turnover rents, licence fees, premiums and all other consideration received by the Relevant Tenant for or in respect of any Occupational Lease;
- (b) sums received for or in respect of the grant, waiver, release or variation by or surrender to the Relevant Tenant of:
 - (i) any Occupational Lease; or
 - (ii) any covenant, licence, easement, right, liberty, privilege or obligation granted by or pursuant to or in connection with any Occupational Lease or otherwise,
 or any agreement for the same;
- (c) sums paid out by insurers under any loss of rent insurance or otherwise in respect of the loss of any of the sums mentioned in paragraph (a) of this definition;
- (d) mesne profits in respect of loss of use and enjoyment of the whole or any part of the Relevant Commercial Space;
- (e) the reasonable market value of any benefits in kind given by any Occupational Tenant in return for a reduced (including nil) rent, licence fee or charge for use and/or occupation of the Relevant Commercial Space;
- (f) damages or any settlement for trespass or breach of covenant under any Occupational Lease, and the proceeds of any distraint or judgment execution;
- (g) sums (including interest) withdrawn from any rent deposit or paid under any guarantee, indemnity covenant or bank guarantee, or paid by any guarantor or former lessee or otherwise received under any other financial security for the payment of rents or the performance of covenants under an Occupational Lease;
- (h) consideration (including forfeited deposits) in relation to any option or pre-emption rights granted by or pursuant to or in connection with any Occupational Lease;
- (i) interim payments which are paid in respect of rent, or which offset (or which the Relevant Tenant intends to offset) Permitted Deductions;
- (j) sums for or in respect of compromising or settling any judicial or quasi-judicial proceedings brought or threatened by or against the Relevant Tenant;

⁵ Insert relevant proportion of [REDACTED] attributed to this Phase Lease in accordance with the terms of the agreement pursuant to which it is granted

- (k) distributions in the liquidation, bankruptcy or insolvency of any company or individual; and
- (l) all interest on:
 - (i) any of the foregoing items in relation to late payment; and
 - (ii) increased rent or licence fee following a review which is agreed or determined after the relevant review date,

Provided Always That, for the purposes of calculating the Gross Occupational Income:

- (i) the Gross Occupational Income Exclusions shall be excluded and do not form part of the Gross Occupational Income;
- (ii) sums received by the Relevant Tenant which would otherwise comprise Gross Occupational Income prior to the Practical Completion of the Phase Works shall form part of the Gross Occupational Income in the first Accounting Year;
- (iii) any sum counted under one item of Gross Occupational Income is not to that extent to be counted again under another item;
- (iv) any VAT and other taxes charged by the Relevant Tenant to Occupational Tenants, or otherwise defrayed or to be defrayed, in connection with any item which falls within this definition of Gross Occupational Income shall not form part of the Gross Occupational Income;
- (v) if any Occupational Lease shall include any Relevant Commercial Space together with parts of the Property that fall outside the definition of Relevant Commercial Space, all sums as mentioned in paragraphs (a) – (l) of this definition in respect of that Occupational Lease shall be apportioned by the Relevant Tenant on a fair and reasonable basis between the Relevant Commercial Space and the other parts of the Property; and
- (vi) any moneys received under any Occupational Lease prior to their due date for payment will be deemed to have been received on their due date for payment.

“Gross Occupational Income Exclusions” means:

- (a) any sums (whether of a capital or income nature) received by the Relevant Tenant otherwise than in respect of Relevant Commercial Space and, without prejudice to the generality of the foregoing, any sums (whether of a capital or income nature) received by the Relevant Tenant in respect of the Residential Areas;
- (b) items of Gross Occupational Income to which the Relevant Tenant may be entitled but which has not been received by the Relevant Tenant in the relevant Accounting Year (but which, for the avoidance of doubt, shall be included in the calculation of Gross Occupational Income for the Accounting Year in which it is received by the Relevant Tenant);
- (c) any contributions made by the Landlord to the “Cost of the Qualifying Works” pursuant to Schedule 3 or made by any Occupational Tenant in respect of improvements or modernisation to the Property;
- (d) sums received which are subsequently within the same Accounting Year properly refunded or credited to the relevant payee;
- (e) any sums received by the Tenant which has been brought into account as Gross Occupational Income by virtue of the same having previously been received by any Investment Tenant (and vice versa);
- (f) contributions towards or reimbursements of service or similar charges (including contributions to any sinking fund), insurance premiums, outgoings and utilities in relation to the Property (and, where items of Gross Occupational Income to which the

Relevant Tenant may be entitled are at any time inclusive of sums which would be excluded pursuant to this paragraph (f), a fair and reasonable deduction shall be made by the Relevant Tenant from the Gross Occupational Income to reflect the intentions of this paragraph (f));

- (g) sums in respect of reimbursement of professional costs;
- (h) any proceeds of insurance received by the Relevant Tenant in respect of the Property (other than any proceeds of loss of rent insurance or otherwise in respect of the loss of any of the sums mentioned in paragraph (a) of the definition of Gross Occupational Income); and
- (i) any other sums relating to the Relevant Commercial Space which the Landlord and the Tenant (both acting reasonably) agree ought reasonably and properly not to be brought into account in the calculation of Gross Occupational Income.

“Gross Other Income” means any sums received by the Relevant Tenant, outside the terms of any Occupational Lease, in respect of the Relevant Commercial Space by way of:

- (a) advertising revenues;
- (b) parking fees and charges; and
- (c) fees for trading and exhibitions and promotions and other similar uses of, and other similar activities in or on, the Relevant Commercial Space,

but excluding, for the avoidance of doubt, any:

- (i) capital premium in connection with the grant or variation by or surrender to the Relevant Tenant of an Investment Lease of such Relevant Commercial Space;
- (ii) sums received by the Tenant which has been brought into account as Gross Other Income by virtue of the same having previously been received by any Investment Tenant (and vice versa); and
- (iii) such sums generated in respect of any Estate Common Parts which are credited to a service charge or sinking fund and/or otherwise received directly by the Estate Management Company towards payment for the delivery of the Estate Services;

“Inducements” means the cost or value of any inducement provided by or on behalf of the Relevant Tenant to an Occupational Tenant which (having regard to all relevant factors and market practice current at the date on which the relevant expenditure is incurred) it is reasonable and proper for the Relevant Tenant to pay or incur as an incentive for that Occupational Tenant to enter into an Occupational Lease negotiated on an arm’s length basis, including:

- (a) any sum paid by the Relevant Tenant to a relevant Occupational Tenant; and
- (b) the assumption by the Relevant Tenant of any existing or future liability of the Occupational Tenant;

“Landlord’s Percentage” means:

- (a) [REDACTED] and thereafter
- (b) [REDACTED]

or such lesser percentage as may be applicable from time to time if the Landlord’s share of the Net Income is reduced as a result of any de-gearing agreed between the Landlord and the Tenant pursuant to paragraph 6.2.5 of Schedule 3;

“Main Rent” means:

- (a) from and including the date of this Lease to and including the day before the date of Practical Completion of the Phase Works, the Base Rent; and

- (b) during each Accounting Year, the higher of:
 - (i) the Base Rent; and
 - (ii) the Equity Rent,
 in respect of the relevant Accounting Year;

“Net Income” means, in relation to the relevant Accounting Year, the aggregate of:

- (a) the Gross Occupational Income in respect of that Accounting Year less the Permitted Deductions in respect of the same Accounting Year; and
- (b) the Gross Other Income in respect of that Accounting Year after deducting the reasonable and proper costs and expenses incurred (except where such expenditure and costs are actually recovered from third parties, and the Tenant hereby covenants to use reasonable endeavours to recover, or to procure that the relevant Investment Tenant uses reasonable endeavours to recover, the same from such third parties) in connection with the Relevant Commercial Space generating such Gross Other Income in respect of the same Accounting Year;

“Occupational Lease” means a lease, licence for occupation, concession agreement or other agreement, arrangement or documented right (or any agreement to grant any of the same) permitting occupation of the whole of any part(s) of any Relevant Commercial Space by a person for the purposes of its own business;

“Occupational Tenant” means any person occupying any Relevant Commercial Space pursuant to an Occupational Lease;

“Permitted Deductions” means a sum equal to the aggregate of all expenditure and costs actually incurred to the extent that they (or in the case of (III) the relevant proportion of them):

- (I) are borne by or on behalf of the Relevant Tenant; and
- (II) are properly incurred; and
- (III) are incurred in connection with the Relevant Commercial Space; and
- (IV) are incurred in the relevant Accounting Year (or, if not accounted for in that Accounting Year, were incurred in the immediately preceding Accounting Year); and
- (V) are incurred in keeping with the principles of good estate management; and
- (VI) are not recovered from any person (including any insurers); and
- (VII) are not directly attributable to any material breach by the Relevant Tenant of:
 - (A) this Lease or any Investment Lease (as the case may be); or
 - (B) its obligations (as lessor) in any of the Occupational Leases;
 - (C) any other contractual obligations entered into by the Relevant Tenant in relation to the Relevant Commercial Space,

including:

- (a) outgoings on the Relevant Commercial Space, including all non-domestic rates, water rates, water charges, and all present and future rates, duties, taxes and assessments of any nature charged on or payable in respect of the Relevant Commercial Space (or in respect or by reason of any works carried out by or on behalf of the Relevant Tenant on or to the Relevant Commercial Space), and whether of a capital or recurring nature or of a wholly novel character;
- (b) in complying, performing and observing the covenants of the Tenant in this Lease or the Investment Tenant in any Investment Lease (other than, in any such case, the obligation to pay rents) and/or of the lessor in any Occupational Lease;
- (c) in connection with:
 - (i) the repair, maintenance, lighting, cleaning, decorating and management of (and the provision of any other services pursuant to any service charge

- regime relating to) the Relevant Commercial Space (or common facilities used by the Relevant Commercial Space in common with other parts of the Property) in accordance with the covenants on the part of the Relevant Tenant in this Lease or any Investment Lease or any Occupational Lease;
- (ii) insuring the Relevant Commercial Space, and obtaining third party liability insurances and such other insurances as are effected by the Relevant Tenant in accordance with the covenants on the part of the Relevant Tenant in this Lease or any Investment Lease or any Occupational Lease;
 - (iii) the provision of services at or to the Relevant Commercial Space (including any rent, rates, water rates and charges or other utility or telecommunication costs etc in relation to any management office or other accommodation), together with all expenditure (including agents', legal, accounting, audit and other professional fees) incidental thereto;
- (d) in complying with or otherwise observing legislation;
 - (e) expenditure (including agents', legal, accounting, audit and other professional fees) incidental to:
 - (i) the grant or renewal of any Occupational Leases or any other actions mentioned in paragraph (b) of the definition of Gross Occupational Income;
 - (ii) securing full or partial vacant possession of any part(s) of the Relevant Commercial Space;
 - (iii) the collection of rents and services charges and other sums due pursuant to any Occupational Lease;
 - (iv) carrying out, agreeing or otherwise determining rent reviews and interim rent applications (including any costs of arbitration or court proceedings); and
 - (v) enforcing rights and remedies of the Tenant against Occupational Tenants (and defending, preserving and maintaining the rights and remedies of the Tenant);
 - (f) the grant or refusal of any consent or approval of the lessor required under this Lease or any Occupational Leases Provided That the Relevant Tenant shall use reasonable endeavours to recover such sums from the relevant Occupational Tenant;
 - (g) all Inducements;
 - (h) all Estate Management Outgoings;
 - (i) promotional and advertising costs in connection with the underletting of the Relevant Commercial Space to prospective Occupational Tenants and the promotion, marketing and advertising of the Relevant Commercial Space generally (including contributions to the marketing and promotion budget of a merchant traders' association or similar of which the Relevant Tenant is a member);
 - (j) costs associated with any traffic, parking or transport surveys pursuant to any travel plan or other planning agreement obligations arising following Practical Completion of the Phase Works;
 - (k) shortfalls in any service charge cost recovery or insurance cost recovery as a consequence of empty units, capped contributions from any Occupational Tenant or occupation by or on behalf of the Relevant Tenant of any Relevant Commercial Space for management or other purposes in accordance with good estate management;
 - (l) management charges for the management of the Relevant Commercial Space under the Occupational Leases but, if the Relevant Tenant shall itself carry out such matters, a proper and reasonable fee shall instead be deemed to be incurred by the Relevant Tenant (not exceeding the cost that would reasonably be charged by reputable and experienced consultants in the open market for such management service);

- (m) construction costs and professional fees, planning application costs and other incidental costs associated with any scheme of redevelopment, improvement, renewal and/or refurbishment or works undertaken by the Relevant Tenant in the interest of good estate management;
- (n) costs incurred in reinstating the Relevant Commercial Space where not fully met by insurance monies received (except where a policy has been rendered void or partially void by any act or default of the Relevant Tenant, or where and to the extent that the shortfall results from the Relevant Tenant not having insured in the Full Reinstatement Value);
- (o) any sums lawfully required to be paid by way of compensation to any Occupational Tenant to the extent required by any legislation (for example but not limited to any payment in respect of improvements pursuant to the Landlord and Tenant Act 1927 or in respect of disturbance pursuant to section 37 of the Landlord and Tenant Act 1954);
- (p) any VAT and other taxes chargeable on such expenditure and costs for which the Relevant Tenant is accountable but which is irrecoverable by the Relevant Tenant from HMRC;
- (q) in relation to any Accounting Year where the Permitted Deductions exceeded the Gross Occupational Income for such Accounting Year, the amount of such excess (and so on from one Accounting Year to the next until such excess is fully absorbed) together with interest on the amount of such excess at two per cent (2%) below the Interest Rate calculated from the date on which the Permitted Deduction is incurred until the excess falls away; and
- (r) any other expenditure which the Landlord and the Tenant (both acting reasonably) agree ought reasonably and properly to be brought into account,

Provided Always That, for the purposes of calculating Permitted Deductions:

- (i) in the case of Inducements and Estate Management Outgoings, any such expenditure and costs incurred prior to the Practical Completion of the Phase Works shall be counted in the first Accounting Year;
- (ii) any sum counted under one item of Permitted Deductions is not to that extent to be counted again under another item;
- (iii) notwithstanding the remainder of this definition, expenditure that is satisfied or offset by any item(s) falling within the definition of Gross Occupational Income Exclusions is not to be double-counted also as a Permitted Deduction;
- (iv) if any such expenditure and costs are incurred by the Relevant Tenant in connection with Relevant Commercial Space together with any parts of the Property that fall outside the definition of Relevant Commercial Space, such expenditure and costs shall be apportioned by the Relevant Tenant on a fair and reasonable basis between the Relevant Commercial Space and the other parts of the Property; and
- (v) there shall be excluded (or, if included, there shall be deducted):
 - (A) any tax charged in respect of the whole or any part of the Gross Occupational Income (other than VAT to the extent mentioned in paragraph (p) of this definition) or in respect of any disposition or deemed disposition of, or dealing with, the whole or any part of the Relevant Tenant's interest in the Property (or any agreement relating to the same);
 - (B) any expenditure in connection with any anticipated or actual mortgaging or charging or other funding (or the redemption (in whole or in part) of any mortgage, charge or other funding) or disposal of the whole or any part of the Relevant Tenant's interest

- in the Property (and in connection with any agreement relating to any of the same);
- (C) any expenditure (including stamp duty land tax) in connection with the grant, variation, surrender or determination of this Lease or any Investment Lease;
 - (D) any expenditure incurred by the Tenant where the like expenditure is incurred by any Investment Tenant and brought into account under the equivalent provision to this definition contained in the relevant Investment Lease (and vice versa); and
 - (E) any expenditure (including any community infrastructure levy or similar development tax) in connection with or relating to the Phase Works or which falls within the definition (in Schedule 3) of the "Cost of the Qualifying Works";
- (vi) any expenditure and costs recovered under any Occupational Lease will be deemed to have been recovered upon receipt of such expenditure and costs in cleared funds but only where paid by or on behalf of an Occupational Tenant on an undisputed basis; and
 - (vii) any expenditure and/or cost not recovered under any Occupational Lease in the Accounting Year in which that expenditure and/or cost was incurred by the Relevant Tenant shall be treated as a Permitted Deduction in the Accounting Year in which that expenditure and/or cost was incurred, but shall be credited against the Permitted Deductions in the Accounting Year in which that expenditure and/or cost is recovered by the Relevant Tenant (subject as provided in (vi) above);

"Rent Payment Dates" means 25 March, 24 June, 29 September and 25 December in each year; and

"Year End Certificate" has the meaning given in paragraph 2.10.

2. PAYMENT OF MAIN RENT

Payment prior to the first Accounting Year

- 2.1 Until the commencement of the first Accounting Year, the Tenant shall pay (yearly and proportionately for any part of a year preceding the commencement of the first Accounting Year) the Main Rent (being the Base Rent as mentioned in paragraph (a) of the definition of "Main Rent") by equal quarterly payments in advance on the Rent Payment Dates, the first payment (being a proportion calculated on a daily basis from the date of this Lease to the day before the next Rent Payment Date) to be made on the date of this Lease.

Provision of the Estimated Rent Statement

- 2.2 At least thirty Business Days prior to the commencement of each Accounting Year, the Tenant shall provide the Landlord with a written statement ("**Estimated Rent Statement**") containing the Tenant's reasonable and detailed estimate of the amount likely to represent:

- (a) the Net Ground Rents (if any);
- (b) the Gross Occupational Income;
- (c) the Permitted Deductions;
- (d) the Gross Other Income, together with such costs and expenses anticipated to be brought into account for the purposes of ascertaining Net Income in connection with such Gross Other Income;
- (e) the Net Income; and
- (f) the Main Rent ("**Estimated Main Rent**")

for the forthcoming Accounting Year.

- 2.3 The Tenant shall act in good faith in the preparation of the Estimated Rent Statement and, subject to receipt of the last corresponding "Estimated Rent Statement" pursuant to each Investment Lease relevant for the preparation of the Estimated Rent Statement, shall use reasonable endeavours to ensure that the same is accurate.

Variation up or down in rents anticipated to be payable

- 2.4 If, before or during any Accounting Year, the Tenant reasonably expects that the estimated amount of the Main Rent is likely to vary (up or down) by 10% or more compared to the figure for the Estimated Main Rent specified in the most recent Estimated Rent Statement for that Accounting Year, the Tenant may revise its estimated amount of the Main Rent by notice to the Landlord in writing (and giving a reasonable explanation for the change) and the Estimated Main Rent will thereafter be based on that revised estimate of the Main Rent and the remaining instalments of the Estimated Main Rent shall be adjusted so that the revised estimate of the Main Rent will have been paid by the end of that Accounting Year.

- 2.5 The Tenant may revise the Estimated Main Rent more than once in relation to any Accounting Year.

Payment during each Accounting Year

- 2.6 Subject always to paragraphs 2.4 and 2.7, the Tenant shall, in each Accounting Year, pay (yearly and proportionately for any part of an Accounting Year) the Estimated Main Rent by equal quarterly payments in advance on the Rent Payment Dates, the first payment (being a proportion calculated on a daily basis from the date of Practical Completion of the Phase Works to the day before the next Rent Payment Date (but taking in account any sums already paid in respect of that period pursuant to paragraph 2.1) to be made on the date of Practical Completion of the Phase Works), and each such payment shall be on account of the Main Rent due in respect of the relevant Accounting Year.

- 2.7 Notwithstanding the provisions of paragraphs 2.4 and 2.6, the Tenant shall not be liable to the Landlord to pay any part of the Estimated Main Rent attributable to any Investment Lease unless and until, in respect of the relevant Investment Lease, it has actually received such sums in cleared funds by way of undisputed rent under that Investment Lease.

Payment of rent pending receipt of the Estimated Rent Statement

- 2.8 If any Rent Payment Date falls prior to the Estimated Rent Statement for the relevant Accounting Year having been provided to the Landlord in accordance with paragraph 2.2, the amount payable by the Tenant on that Rent Payment Date shall, subject always to the provisions of paragraph 2.7, be equal to a quarter of 105% of the aggregate amount payable by the Tenant by way of Estimated Main Rent on each Rent Payment Date in the previous Accounting Year.

- 2.9 If the Tenant makes any payments in accordance with paragraph 2.8 then, subject always to the provisions of paragraph 2.7, within fifteen (15) Business Days of the Estimated Rent Statement for the relevant Accounting Year being provided to the Landlord in accordance with paragraph 2.2 either:

2.9.1 the Tenant shall pay to the Landlord; or (as the case may be)

2.9.2 the Landlord shall credit to the Tenant against the payment of on-account rent due on the next Rent Payment Date,

the difference (if any) ("**Difference**") between:

2.9.3 the aggregate amount actually paid by the Tenant on account of the Main Rent due in respect of the relevant Accounting Year pursuant to paragraph 2.6 (and paragraph 2.8); and

2.9.4 subject always to the provisions of paragraph 2.4, the amount properly payable by the Tenant pursuant to paragraph 2.2 for the same period by reference to the relevant Estimated Rent Statement.

Year End Certificate

- 2.10 No later than 16 weeks following the expiry of each Accounting Year (or, if later, within 6 weeks following receipt of the last corresponding "Year End Certificate" pursuant to each Investment Lease relevant for the calculation of the Main Rent), the Tenant shall provide the Landlord with a written certificate containing the Tenant's detailed and accurate summary of:
- (a) the Net Ground Rents (if any);
 - (b) the Gross Occupational Income;
 - (c) the Permitted Deductions;
 - (d) the Gross Other Income;
 - (e) the costs and expenses brought into account for the purposes of ascertaining Net Income in connection with such Gross Other Income;
 - (f) the Net Income; and
 - (g) the Main Rent
- for the preceding Accounting Year ("Year End Certificate").
- 2.11 The Tenant shall act in good faith in the preparation of the Year End Certificate and shall use reasonable endeavours to ensure that the same is accurate.
- 2.12 If any dispute or difference shall arise between the Landlord and the Tenant in relation to the Year End Certificate (including any of the items included in it or omitted from it), paragraph 3 shall apply.
- 2.13 The date on which the Main Rent shall be agreed by the parties or determined by the Expert (as the case may be) shall be the "**Relevant Date**" for the purposes of paragraph 2.14.

Annual reconciliation

- 2.14 If the Main Rent for the relevant Accounting Year as agreed by the parties or determined by the Expert (as the case may be) is:
- 2.14.1 more than the aggregate rent actually paid by the Tenant on account for that Accounting Year pursuant to paragraph 2.6, the Tenant shall, within fifteen (15) Business Days of the Relevant Date, pay the amount of the underpayment to the Landlord; or
 - 2.14.2 less than the aggregate rent actually paid by the Tenant on account for that Accounting Year pursuant to paragraph 2.6, the Landlord shall credit the amount overpaid against the payment of on-account rent due on the next Rent Payment Date (or, in relation to the reconciliation in respect of the final Accounting Year, shall refund the amount overpaid to the Tenant),

Provided Always That the Tenant shall not be liable to the Landlord to pay any part of the underpayment due pursuant to paragraph 2.14.1 as is attributable to Investment Leases unless and until, in respect of each Investment Lease, it has actually received such amount in cleared funds by way of undisputed payment under that Investment Lease.

3. DISPUTE RESOLUTION

If any dispute or difference shall arise between the Landlord and the Relevant Tenant in relation to this Schedule 2 (including as mentioned in paragraph 2.12):

- 3.1 the Landlord and the Tenant shall (and the Tenant shall use reasonable endeavours to procure that the relevant Investment Tenant shall) acting reasonably seek amicably to resolve the dispute; but
- 3.2 failing agreement between the Landlord and the Relevant Tenant within 2 calendar months of the dispute first arising, the matter shall be referred to the Expert for determination in accordance with clause 18.

4. ACCOUNTING RECORDS

The Tenant shall (and shall use reasonable endeavours to procure that the relevant Investment Tenant shall) until the expiration of six years following the agreement or determination (as the case may be) and payment of the Main Rent and the Net Ground Rents in respect of each Accounting Year:

- 4.1.1 keep (or procure that there are kept) at a place in England or Wales full, detailed and accurate accounting records in respect of the Gross Occupational Income, the Permitted Deductions and the Net Ground Rents for the relevant Accounting Year (“Accounting Records”);
- 4.1.2 record and maintain the Accounting Records:
 - (a) in the principal domestic currency of the UK; and
 - (b) in accordance with good accounting practice and good estate management;
- 4.1.3 make the Accounting Records available for inspection by the Landlord (and the Landlord hereby agrees to keep such Accounting Records and other supporting documents and other evidence confidential) and by any Expert appointed in accordance with this Schedule at all reasonable times on reasonable demand, together with copies of all supporting vouchers, receipts, documents and other evidence to verify the same; and
- 4.1.4 permit the Landlord and any Expert appointed in accordance with this Schedule to copy without charge the items mentioned in paragraph 4.1.3 and retain such copies.

5. OBJECTIVES, ACKNOWLEDGEMENTS AND TENANT’S OBLIGATIONS

- 5.1 The Landlord and the Tenant acknowledge that the objective of this Schedule 2 Part B is to ensure that all Net Income (whether such sum is paid to the Tenant or to any Investment Tenant) shall be shared with the Landlord on the basis of a “side-by-side” arrangement, but that:
 - 5.1.1 where the Tenant is not the Relevant Tenant of any such Relevant Commercial Space:
 - (a) the amount which is to be brought into account for ascertaining the Equity Rent under this Lease is the amount (if any) of the “Equity Rent” (as that term is to be defined in that Investment Lease *mutatis mutandis* with the definition of Equity Rent in this Lease) paid to the Tenant in cleared funds under each relevant Investment Lease, such that the Tenant shall not be liable to the Landlord to account for sums paid by Occupational Tenants of which it is not the immediate lessor in respect of any Relevant Commercial Space until such time as it has actually received the Landlord’s ‘share’ from its Investment Tenant;
 - (b) the Tenant shall not be liable to pay to the Landlord under paragraph 2.6 or paragraph 2.8 any part of the Estimated Main Rent attributable to any Relevant Commercial Space of which it is not the immediate beneficiary unless and until, in respect of the relevant Investment Lease, it has actually received such sums in cleared funds by way of undisputed “Estimated Main Rent” under that Investment Lease; and
 - (c) the Tenant shall not be liable to account to the Landlord under paragraph 2.14 in respect of any balancing payment of Net Income of which it is not the immediate beneficiary in respect of any Relevant Commercial Space until such time as it has actually received the corresponding “Year End Certificate” in respect of, and corresponding payment under, each such Investment Lease;
 - 5.1.2 the Landlord does not share in any sums (whether of a capital or income nature) received by any Relevant Tenant otherwise than in respect of any Relevant Commercial Space;

- 5.1.3 nothing in this Schedule 2 Part B shall prohibit the Tenant from reserving, under any Investment Lease, a percentage of "Net Income" (as that term is to be defined in that Investment Lease *mutatis mutandis* with the definition of Net Income in this Lease) which exceeds (but which must not be less than) the Landlord's Percentage (as that term is defined in this Lease); and
- 5.1.4 where any Occupational Lease is granted, there may be a possibility of the Occupational Tenant subletting the whole or part of its premises. Any such subletting is ignored and the rent paid by the Occupational Tenant under the Occupational Lease is what is to be brought into account for ascertaining the Gross Occupational Income.
- 5.2 The Tenant shall:
- 5.2.1 not assign or in any way alienate, nor knowingly permit any Investment Tenant to assign or alienate, any right to receive or recover any sums from any Occupational Tenants relevant for the calculation of the Net Income (whether under the terms of this Lease or as that term is to be defined in any Investment Lease, as applicable);
- 5.2.2 not allow payment, nor knowingly permit any Investment Tenant to allow payment, of any sums to be made by any Occupational Tenant to any third party other than on the basis that such sums shall be capable of receipt by duly authorised agents of the Tenant or the relevant Investment Tenant (as applicable), it being understood that receipt by any such third party shall be treated as receipt by the Relevant Tenant personally for the purposes of this Lease and any Investment Lease to enable calculation of the Net Income (whether under the terms of this Lease or the terms of any Investment Lease, as applicable);
- 5.2.3 use reasonable endeavours (and shall use reasonable endeavours to procure that the relevant Investment Tenant uses reasonable endeavours) to exercise any rights and remedies it may have against third parties (not being Occupational Tenants, in relation to whom clause 11.2.4(a) shall apply) relating to the Gross Occupational Income, the Permitted Deductions and the Gross Other Income; and
- 5.2.4 to the extent that any expenditure and costs as would be Permitted Deductions are recovered from a third party (in circumstances where the same have not been recovered from Occupational Tenants), credit such sums recovered from third parties against the Permitted Deductions, but Provided Always That any such expenditure and costs incurred, but not recovered, by the Tenant or any Investment Tenant in pursuing any third parties (including agents', legal, accounting, audit and other professional fees) shall, if and to the extent that they fall within the scope of paragraphs (I) – (VII) of the definition of Permitted Deductions, be treated as Permitted Deductions.
- 5.3 The Landlord and the Tenant agree that, if notwithstanding (and in breach of) paragraph 5.2.1, the Tenant or any Investment Tenant does assign or in any way alienate any right to receive or recover any sums from any Occupational Tenants relevant for the calculation of the Net Income, the Relevant Tenant shall nevertheless be deemed to be in receipt of the relevant sums for the purpose of ascertaining the Gross Occupational Income (as the case may be).

SCHEDULE 3 QUALIFYING WORKS

1. DEFINITIONS

In this Schedule 3, the following definitions shall apply:

“Accounting Date” has the meaning prescribed Schedule 2 Part B;

“Accounting Year” has the meaning prescribed Schedule 2 Part B;

“Agreement for Works” an agreement for works to be agreed between the Landlord and the Relevant Tenant in accordance with the provisions of this Schedule 3;

“Anticipated Equity Rent” means the Relevant Tenant’s reasonable estimate of the Equity Rent;

“Cost of the Qualifying Works” means the aggregate of all costs and expenses in respect of the Qualifying Works to the extent that they are:

- (i) properly payable;
- (ii) properly attributable to the Qualifying Works;
- (iii) borne by or on behalf of the Relevant Tenant;
- (iv) not attributable to any act or default of the Relevant Tenant in breach of the terms of:
 - (A) this Lease or the relevant Investment Lease; or
 - (B) the Qualifying Works Contract or the terms of appointment of the relevant consultants in respect of the Qualifying Works; and
- (v) not recovered from:
 - (A) any insurer or other third party (and the Tenant shall (or shall use reasonable endeavours to procure that the Investment Tenant shall) use reasonable endeavours to recover the same); or
 - (B) any sinking fund or reserve fund maintained by or on behalf of the Relevant Tenant (and the Tenant shall (or shall use reasonable endeavours to procure that the Investment Tenant shall) utilise moneys from such fund(s) to mitigate the Cost of the Qualifying Works where it is in keeping with the principles of good estate management to do so);

and including the following:

- (a) all sums due to the Qualifying Works Contractor in accordance with the terms of the Qualifying Works Contract;
- (b) all sums due to the Professional Team in accordance with the terms of their appointments respectively with the Relevant Tenant and all other professional fees and costs incurred by the Relevant Tenant in formulating the proposals for the Qualifying Works and obtaining consents and permissions thereto (or, where any project management or development management service or legal service or task that might otherwise be performed by external consultants is, instead, undertaken by suitably qualified in-house personnel of, or by any member of the same Group as, the Relevant Tenant, a reasonable and proper sum in respect of such work which shall not exceed the cost that would reasonably be charged by reputable and experienced consultants in the open market for such service or task);
- (c) all sums required by any statutory undertaker in connection with the diversion of existing services or the provision of new services;
- (d) the cost of complying with the requirements of all competent authorities and any permissions (including those of the fire authority);

- (e) the cost of providing such additional security and/or cleaning and/or other services/facilities as are required as a result of the Qualifying Works (over and above the usual cost of the same);
- (f) the cost of obtaining, defending and complying with any planning permissions and other consents necessary for the Qualifying Works and all amounts payable pursuant to any planning agreement or planning obligation or infrastructure agreement relating to highways and services and the like;
- (g) all costs, expenses and fees connected with any marketing, advertising or publicity relating to promoting the initial underletting of any Relevant Commercial Space rendered vacant by, or created by, the Qualifying Works;
- (h) all costs (including all premiums and other capital sums and any statutory or other compensation) paid to any Occupational Tenant of any Relevant Commercial Space (or other occupier of part or parts of the Property) in order to secure vacant possession of any Relevant Commercial Space required for or in connection with the Qualifying Works;
- (i) all professional charges, fees and disbursements of the Relevant Tenant, including:
 - (i) letting agents in respect of the first underletting (or any attempted underletting leading to the first underletting) following completion of the Qualifying Works of any Relevant Commercial Space rendered vacant, or created, as a result of the Qualifying Works;
 - (ii) solicitors in respect of such underlettings; and
 - (iii) agents, surveyors and solicitors in connection with the approval of the fitting-out works of the relevant Occupational Tenant;
- (j) all sums payable pursuant to paragraph 7;
- (k) all insurance premiums for insuring the Qualifying Works during the period when the Qualifying Works are being carried out (over and above the usual cost of insuring the part(s) of the Property to which the Qualifying Works are being carried out);
- (l) any expenditure in connection with the financing of the Qualifying Works, including legal costs, arrangement fees, monitoring fees and any other costs and expenses attaching thereto;
- (m) the cost of site investigations and surveys in respect of contamination and ground conditions;
- (n) all rates, water rates, taxes, assessments and other outgoings or impositions lawfully assessed in respect of the part(s) of the Property that the Qualifying Works are being carried out in respect of, but only during the period that the Qualifying Works are being carried out;
- (o) the cost of enforcing rights and remedies against the Qualifying Works Contractor, the members of the Professional Team and other parties;
- (p) the cost of defending, preserving and maintaining the rights and interests of the Relevant Tenant in the Property;
- (q) all other expenditure or outgoings incurred in connection with the Qualifying Works that ought reasonably and properly to be brought into account;
- (r) if and to the extent that the Relevant Tenant finances the Qualifying Works:
 - (i) from a third party source (that is a commercial source unrelated to the Relevant Tenant or any member of the same Group as the Relevant Tenant or any of their respective investors or partners), all interest on any of the items mentioned in paragraphs (a) - (q) of this definition calculated (in respect of each relevant item of expenditure) on and from the date that such expenditure is incurred by the Relevant Tenant to and including the Qualifying Works Calculation Date;

- (ii) from its own resources (as opposed to from third party resources as mentioned in paragraph (r)(i) of this definition), all interest which is notionally borne by the Relevant Tenant on any of the items mentioned in paragraphs (a) – (q) of this definition calculated (in respect of each relevant item of expenditure) on and from the date that such expenditure is incurred by the Relevant Tenant to and including the Qualifying Works Calculation Date provided that, for the purposes of this paragraph (r)(ii), the relevant rate of interest shall be the Interest Rate;
 - (s) irrecoverable VAT
- but, in calculating the Cost of the Qualifying Works:
- (A) there shall be excluded (or, if included, there shall be deducted) the in-house fees, costs and expenses of the Relevant Tenant or any member of the same Group as the Relevant Tenant;
 - (B) the Cost of the Qualifying Works shall be net of any premiums, capital receipts, insurance/other payments, allowances, grant, interest and other sums received by or on behalf of the Relevant Tenant by way of credit or set-off against or otherwise in connection with:
 - (i) any of the items mentioned in paragraphs (a) - (s) of this definition; or
 - (ii) the Qualifying Works;
 - (C) in relation to paragraph (r) of this definition:
 - 1) no interest shall be brought into account where paragraph 6.2.2 applies, and
 - 2) where paragraph 6.2.2 does not apply and interest accrues during any period on any item of expenditure and is brought into account as mentioned in paragraph (r)(i), interest as mentioned in paragraph (r)(ii) shall not also accrue on the same item of expenditure during the same period (and *vice versa*), and
 - (D) any deductions which the Relevant Tenant is required to make and/or any retentions which the Relevant Tenant holds (including any deductions of tax pursuant to the provisions of s61(1) Finance Act 2004) shall be disregarded, and the amount of the relevant deductions and/or retentions shall only be included in the Cost of the Qualifying Works to the extent that they are actually paid by the Relevant Tenant to the relevant payee on or before the Qualifying Works Calculation Date or are reasonably anticipated to be so paid within a reasonable period after the Qualifying Works Calculation Date; and
 - (E) sums counted under one head of expense are not, to that extent, to be counted under any other head;

“Equity Rent” has the meaning prescribed in Schedule 2 Part B;

“Estimated Cost” has the meaning prescribed in paragraph 3.2.5;

“Estimates” has the meaning prescribed in paragraph 3.2.6;

“Initial Period” means the period of commencing on the date of this Lease and ending [REDACTED];

“Landlord’s Contribution” has the meaning prescribed in paragraph 6.1;

“Landlord’s Percentage” means the ‘Landlord’s Percentage’ applicable to the calculation of the Equity Rent for the purposes of Schedule 2 Part B immediately prior to the relevant Qualifying Works Calculation Date [REDACTED];

“Professional Team” means those consultants and other third parties appointed by the Relevant Tenant in connection with the Qualifying Works;

“Qualifying Works” means works proposed to be carried out on or to any Relevant Commercial Space from time to time after the expiry of the Initial Period by or on behalf of any Relevant Tenant where the following conditions are fulfilled:

- (a) the Relevant Tenant is not obliged (save in order to comply with any legislation) to carry out such works pursuant to the terms of this Lease or the relevant Investment Lease (as applicable);
- (b) the Tenant has not served (and hereby covenants not to serve) notice on the Landlord pursuant to section 3(1) of the Landlord and Tenant Act 1927 in respect of the proposed works;
- (c) the cost of carrying out the proposed works is not accounted for as part of the Permitted Deductions (as defined in Schedule 2);
- (d) the Relevant Tenant reasonably anticipates that the proposed works, if completed, will, within a reasonable period (having regard to the nature and extent of the proposed works) of the Qualifying Works Calculation Date, result in a sustained:
 - (i) increase in the Anticipated Equity Rent; or (as the case may be)
 - (ii) decrease in the rate of decline in the Anticipated Equity Rent
 compared to the average Main Rent in respect of each of the 3 Accounting Years immediately preceding the date of the relevant Qualifying Works Notice

Provided Always That:

- (iii) any works proposed to be carried out on or to any Relevant Commercial Space within 5 years of Practical Completion of any previous Qualifying Works to that same Relevant Commercial Space shall not be Qualifying Works; and
- (iv) any works of reinstatement, rebuilding or replacement following substantial damage or destruction of the Property by an Insured Risk as mentioned in clause 8.3 shall not be Qualifying Works unless the Landlord has previously received its share of any insurance proceeds attributable to that damage or destruction as mentioned in that clause;

“Qualifying Works Calculation Date” means the date which is 6 calendar months after Practical Completion of the relevant Qualifying Works (as certified by the architect or employer’s agent or other relevant consultant pursuant to the Qualifying Works Contract);

“Qualifying Works Contract” means any building/construction/demolition contract entered into between the Relevant Tenant and the relevant contractor in respect of the carrying out of the Qualifying Works, and **“Qualifying Works Contractor(s)”** shall be construed accordingly;

“Qualifying Works Notice” has the meaning prescribed in paragraph 3.1; and

“Settlement Date” means the date being 30 Working Days after the Cost of the Qualifying Works shall be agreed or determined pursuant to paragraph 5.

2. GENERAL

- 2.1 The following provisions shall apply on each and every occasion after the expiry of the Initial Period that any Relevant Tenant wishes to carry out any works which it reasonably believes are Qualifying Works and, for the avoidance of doubt, any works carried out by or on behalf of any Relevant Tenant during the Initial Period shall not be Qualifying Works.
- 2.2 The Landlord and the Tenant shall (and the Tenant shall use reasonable endeavours to procure that the Investment Tenant shall) each act reasonably and in good faith in connection with the operation of this Schedule 3.

3. DETERMINATION OF QUALIFYING WORKS ETC

Tenant's notice and provision of relevant information

- 3.1 If any Relevant Tenant wishes to carry out any works which it reasonably considers to be Qualifying Works, the Tenant shall (or shall use reasonable endeavours to procure that the

Investment Tenant shall) serve at least 6 months' (or, in the case of Major Works which are also Qualifying Works, 12 months') written notice (a "**Qualifying Works Notice**") to such effect on the Landlord and (at the same time) shall provide sufficient written details of the proposed works to the Landlord to enable the Landlord (acting reasonably) to respond to the Relevant Tenant as mentioned in paragraph 3.4 and, if the Relevant Tenant serves the Qualifying Works Notice, the following paragraphs shall apply.

- 3.2 The details mentioned in the paragraph 3.1 to be provided with the Qualifying Works Notice shall comprise:
- 3.2.1 plans and specifications of the proposed works;
 - 3.2.2 a draft Agreement for Works;
 - 3.2.3 an outline development programme for the carrying out of the proposed works (including the proposed start on site and estimated date for Practical Completion in respect of the relevant works);
 - 3.2.4 a report from the Relevant Tenant's external consultant (addressed to (or jointly to) the Landlord, or in respect of which the Landlord shall otherwise have the same reliance) setting out the market justification for the proposed works and evidencing the level of occupier interest in, and demand for, any Relevant Commercial Space that will be created or rendered vacant by the proposed works;
 - 3.2.5 the Relevant Tenant's proper estimate of the likely cost (net of VAT) of the proposed works ("**Estimated Cost**");
 - 3.2.6 the Relevant Tenant's proper estimates of the Anticipated Equity Rent (including any Permitted Deductions applicable to the calculation of the same) in each of the 5 years following the estimated Qualifying Works Calculation Date on the basis that:
 - (a) the proposed works proceed as Qualifying Works (and assuming that there is to be no reduction in the Landlord's Percentage); and, separately,
 - (b) the proposed works do not proceed,
 (together the "**Estimates**"); and
 - 3.2.7 an outline cash flow statement of the anticipated Cost of the Qualifying Works from the estimated date of commencement of the proposed works (assuming that they proceed as Qualifying Works) to the anticipated date of Practical Completion.
- 3.3 For the avoidance of doubt, the Landlord and the Tenant agree that:
- 3.3.1 the Estimates and the Estimated Cost shall be estimates only and not binding upon the parties;
 - 3.3.2 the Landlord shall be entitled to request such other reasonable information as it may reasonably require in connection with the proposed works, and the Tenant shall (or shall use reasonable endeavours to procure that the Investment Tenant shall) provide such information and evidence as soon as reasonably practicable; and
 - 3.3.3 the Landlord shall be entitled to make representations to the Relevant Tenant in relation to the information submitted pursuant to paragraphs 3.2 and 3.3.2 and the Relevant Tenant shall have due regard to such representations but shall not be bound by them.

Agreement or determination of Qualifying Works

- 3.4 Within:
- 3.4.1 3 months of service of the Qualifying Works Notice; or (if later)
 - 3.4.2 a reasonable period (being a maximum of 2 months) of the provision of the information mentioned in paragraph 3.3.2,
- or (in either event) within such longer period as the Landlord and the Relevant Tenant may agree, the Landlord shall give written notice (a "**Qualifying Works Counternotice**") to the

Relevant Tenant confirming whether or not the Landlord accepts that the proposed works are Qualifying Works.

3.5 If the Landlord:

3.5.1 indicates in the Qualifying Works Counternotice that the proposed works are not in its reasonable opinion Qualifying Works, or

3.5.2 fails to give the Qualifying Works Counternotice within the period specified in paragraph 3.4,

then (in either such event) the question of whether the proposed works are Qualifying Works may at any time thereafter be referred by the Tenant (or by the Relevant Tenant in the name of the Tenant) for determination in accordance with paragraph 9.

3.6 If:

3.6.1 the Landlord indicates in the Qualifying Works Counternotice that the proposed works are not in its reasonable opinion Qualifying Works and such decision is accepted by the Relevant Tenant; or

3.6.2 it is determined by an Expert (following a reference under paragraph 9) that such works are not Qualifying Works,

then (in either such event) the proposed works shall not be Qualifying Works.

3.7 If:

3.7.1 the Landlord indicates in the Qualifying Works Counternotice that it accepts that the proposed works are Qualifying Works; or

3.7.2 it is determined by an Expert (following a reference under paragraph 9) that such works are Qualifying Works,

then (in either event) the proposed works shall be Qualifying Works for the purposes of this Schedule 3.

3.8 At any time following service of the Qualifying Works Notice, the Relevant Tenant may, in its absolute discretion, withdraw the Qualifying Works Notice and waive the right to the Landlord's Contribution and, if the Relevant Tenant withdraws the Qualifying Works Notice, the proposed works shall not be Qualifying Works for the purposes of this Schedule 3.

Election as to Landlord's Contribution

3.9 If paragraph 3.7 of this Schedule applies, the Landlord shall give written notice to the Relevant Tenant:

3.9.1 (if paragraph 3.7(a) applies) on the date of service of the Qualifying Works Counternotice; or

3.9.2 (if paragraph 3.7(b) applies) within 3 months of the date on which it is determined by an Expert (following a reference under paragraph 9) that such works are Qualifying Works

electing how the Landlord wishes to make the Landlord's Contribution (in accordance with paragraph 6) and providing (where reasonably necessary) a detailed explanation of its proposal

[REDACTED]

Agreement evidencing Landlord's consent to Qualifying Works

3.10 If paragraph 3.7 applies, then:

3.10.1 the Landlord and the Tenant shall use reasonable endeavours (and the Tenant shall use reasonable endeavours to procure that the Investment Tenant shall use reasonable endeavours) to agree the Agreement for Works as soon as reasonably practicable after the date of the Qualifying Works Notice, both parties acting reasonably and properly;

- 3.10.2 any dispute in relation to the detailed terms of the Agreement for Works shall be referred for determination by the Expert in accordance with paragraph 9; and
- 3.10.3 for the avoidance of doubt, the Landlord shall not be regarded (for the purposes of clause 10.2.2) as having formally consented to any Qualifying Works which also comprise Major Works under that clause unless and until the Agreement for Works has been completed.

Alterations

- 3.11 If the Relevant Tenant wishes from time to time to make any alterations to:
 - 3.11.1 any proposed works notified to the Landlord in accordance with paragraph 3.1; or
 - 3.11.2 any works that have been agreed or determined to be Qualifying Works in accordance with this paragraph 3,
 which, in either case:
 - 3.11.3 reduces by more than 10% the likely Anticipated Equity Rent cumulatively in the 5 years following the estimated Qualifying Works Calculation Date as mentioned in paragraph 3.2.6; or
 - 3.11.4 increases the Estimated Cost by more than 10%,
 the Relevant Tenant or the Landlord (as the case may be) shall promptly notify the detail of such changes to the other in writing (a “**Qualifying Works Change Notice**”).
- 3.12 On every occasion that a Qualifying Works Change Notice is served in accordance with paragraph 3.11, then (unless the Landlord notifies the Relevant Tenant in writing to the contrary within 20 Working Days of service of the relevant Qualifying Works Change Notice by the Relevant Tenant) the date of service of the Qualifying Works Change Notice shall be treated as the date of receipt by the Landlord of a new proposal by the Relevant Tenant (and paragraphs 3.1 - 3.11 shall again apply) in respect of the new information and/or the Estimated Cost and/or the Estimates (as the case may be) as altered, but provided always that the minimum notice period in paragraph 3.1 shall not apply to such Qualifying Works Change Notice and the time period within paragraphs 3.4.1 and 3.4.2 shall be reduced to one month in either case in relation to any such Qualifying Works Change Notice.

Delays to start on site

- 3.13 If the Relevant Tenant does not make a substantial start on site in relation to the relevant Qualifying Works within 6 months of the proposed start on site date specified in the outline development programme referred to in paragraph 3.2.3, the Landlord shall be entitled to serve a fresh notice (“**Subsequent Notice**”) under paragraph 3.9 electing how it wishes to make the Landlord’s Contribution (in accordance with paragraph 6) and, on service of the same, any previous election made (or deemed to be made) by the Landlord under paragraph 3.9 (including pursuant to this paragraph 3.13) in respect of those Qualifying Works shall be deemed to have been superseded.
- 3.14 The procedure in paragraph 3.13 shall apply on each occasion that the Relevant Tenant does not make a substantial start on site in relation to the relevant Qualifying Works within 6 months of the service by the Landlord of a Subsequent Notice.

Appointment of Qualifying Works Contractor / Professional Team

- 3.15 The Tenant shall (or shall use reasonable endeavours to procure that the Investment Tenant shall) appoint the Qualifying Works Contractor and each member of the Professional Team on an arm’s length basis and:
 - 3.15.1 pursuant to a procurement process that a prudent employer might reasonably employ; and
 - 3.15.2 otherwise on terms that a prudent employer might reasonably agree in the open market in respect of works of a similar type, size, scope, value and complexity to the relevant Qualifying Works.

Method statement

- 3.16 Promptly after the same becomes available, the Tenant shall (or shall use reasonable endeavours to procure that the Investment Tenant shall) provide the Landlord with a written method statement of the relevant Qualifying Works and such method statement shall include, inter alia, a statement as to which part(s) of the Property will from time to time be affected by the proposed works or the relevant Qualifying Works (as the case may be), what the impact of the same will be and how it is proposed to minimise that impact.

4. ACCOUNTING RECORDS ETC

- 4.1 The Tenant shall (or shall use reasonable endeavours to procure that the relevant Investment Tenant shall) from the date of agreement or determination (as the case may be) that any proposed works are Qualifying Works until the expiration of 1 year following the date of agreement or determination (as the case may be) of the Cost of the Qualifying Works in respect thereof:
- 4.1.1 keep (or procure that there are kept) at a place in England or Wales full, detailed and accurate accounting records in respect of the Qualifying Works in question (the "Accounting Records");
 - 4.1.2 record and maintain the Accounting Records:
 - (a) in the principal domestic currency of the UK; and
 - (b) in accordance with good accounting practice and good estate management;
 - 4.1.3 make the Accounting Records available for inspection by the Landlord (and the Landlord hereby agrees to keep such Accounting Records and other supporting documents and other evidence confidential) and by any Expert appointed in accordance with this Schedule at all reasonable times on reasonable demand together with copies of all supporting vouchers, receipts documents and other evidence to verify the same; and
 - 4.1.4 permit the Landlord and any Expert appointed in accordance with this Schedule to copy without charge the items mentioned in paragraph 4.1.3 and retain such copies.
- 4.2 On each Rent Payment Date (as defined in Schedule 2 Part B) during the carrying out of the Qualifying Works the Tenant shall (or shall use reasonable endeavours to procure that the relevant Investment Tenant shall) provide to the Landlord for its information with a written breakdown of:
- 4.2.1 the then current total expenditure incurred which, in the Relevant Tenant's reasonable opinion, is likely to form part of the Cost of the Qualifying Works;
 - 4.2.2 the Relevant Tenant's reasonable estimate of the anticipated future sums likely to form part of the Cost of the Qualifying Works;
 - 4.2.3 the Relevant Tenant's reasonable estimate of the likely Landlord's Contribution; and
 - 4.2.4 the Relevant Tenant's reasonable estimate of the likely Qualifying Works Calculation Date

and the Landlord shall be entitled to make representations to the Relevant Tenant in relation to the information provided, and the Tenant shall (or shall use reasonable endeavours to procure that the relevant Investment Tenant shall) have due regard to such representations, but shall not be bound by them.

5. COST OF THE QUALIFYING WORKS

- 5.1 On or before the Qualifying Works Calculation Date the Tenant shall (or shall use reasonable endeavours to procure that the relevant Investment Tenant shall) provide the Landlord with full written details of, and an itemised breakdown of the expenditure which it reasonably believes should comprise the Cost of the Qualifying Works.
- 5.2 If any dispute or difference shall arise between the Landlord and the Relevant Tenant in relation to the calculation of the Cost of the Qualifying Works:

- 5.2.1 the Landlord and the Tenant shall (or the Tenant shall use reasonable endeavours to procure that the Investment Tenant shall) acting reasonably seek amicably to resolve the dispute; but
- 5.2.2 failing agreement between the Landlord and the Tenant within 3 calendar months following the provision of the details and the breakdown mentioned in paragraph 5.1, paragraph 9.1.2 shall apply.

6. LANDLORD'S CONTRIBUTION

- 6.1 The Landlord shall make a contribution towards the Cost of the Qualifying Works (agreed or determined in accordance with paragraph 5) equal to the sum obtained by multiplying the Cost of the Qualifying Works by the Landlord's Percentage ("**Landlord's Contribution**").
- 6.2 The Landlord shall pay the Landlord's Contribution by means of:
 - 6.2.1 a capital payment made on the Settlement Date; or
 - 6.2.2 by quarterly instalments (on account during the carrying out of the Qualifying Works and the balance, if any, on the Settlement Date), each such instalment being:
 - (a) paid within 20 Working Days of written demand from the Relevant Tenant following each Rent Payment Date; and
 - (b) for the amount (the details of which shall be notified in writing by the Relevant Tenant to the Landlord with the relevant demand) equal to the product obtained by multiplying:
 - (i) the net cost incurred by the Relevant Tenant in the preceding quarter which in the Relevant Tenant's reasonable opinion is likely eventually to form part of the Cost of the Qualifying Works; by
 - (ii) the Landlord's Percentage

(and, if the aggregate of the instalments paid by the Landlord exceeds the Landlord's Contribution, the Relevant Tenant hereby covenants to reimburse the overpayment to the Landlord on the Settlement Date); or
 - 6.2.3 forgoing all or part (in the Landlord's entire discretion) of the Main Rent that would otherwise be due to the Landlord with effect from the Rent Payment Date next following the Settlement Date (or, if the Settlement Date is a Rent Payment Date, then with effect from such date); or
 - 6.2.4 a combination of the methods specified in paragraphs 6.2.1 - 6.2.3 which, together, satisfy the Landlord's Contribution; or
 - 6.2.5 such other method or methods (or such combination of the same whether with or without one or more of the methods mentioned in paragraphs 6.2.1 - 6.2.3) which the Landlord may propose and the Tenant shall approve (such approval not to be unreasonably withheld or delayed) and which, together, satisfy the Landlord's Contribution.
- 6.3 The Tenant agrees and acknowledges that:
 - 6.3.1 the total aggregate amount or value paid and/or foregone and/or otherwise contributed by the Landlord pursuant to paragraph 6.2 shall not exceed the Landlord's Contribution (save that, in the circumstances mentioned in paragraph 6.2.3, the Landlord shall be responsible for, and shall pay, interest at the Interest Rate on the unpaid balance from time to time of the Landlord's Contribution (or, as the case may be, on the unpaid balance from time to time of that part of the Landlord's Contribution that the Landlord has elected to contribute pursuant to paragraph 6.2.3) over the period of the payment of the same); and
 - 6.3.2 the decision:

- (a) as to which method or combination of methods to employ to make the Landlord's Contribution (save in the circumstances mentioned in paragraph 6.2.5); and
- (b) as to what proportion of the Landlord's Contribution to contribute by each of the chosen methods (if more than one)

shall be at the Landlord's sole discretion, and neither the Tenant nor the relevant Investment Tenant shall be entitled to dispute or challenge the Landlord's decision.

- 6.4 Subject as mentioned in paragraph 6.3, the Landlord and the Tenant shall each use reasonable endeavours to agree the detailed mechanism for making the Landlord's Contribution.

7. LANDLORD'S COSTS

- 7.1 The Tenant shall (or shall use reasonable endeavours to procure that the Investment Tenant shall) pay to the Landlord within 10 Business Days of demand from time to time the Landlord's reasonable and proper internal and external costs and expenses reasonably and properly incurred in connection with or properly arising out of this Schedule 3, including:

- 7.1.1 the review of the information provided under paragraph 3 and making any representations in relation to the same;
- 7.1.2 the agreement or determination (as the case may be) that any proposed works are, or are not, Qualifying Works;
- 7.1.3 the agreement or determination (as the case may be) of the Agreement for Works as mentioned in paragraph 3.10;
- 7.1.4 the reasonable and proper inspection/monitoring from time to time of the Qualifying Works; and
- 7.1.5 the agreement or determination (as the case may be) of the Cost of the Qualifying Works.

- 7.2 Paragraph 7.1 shall apply whether or not the relevant works in any case are agreed or determined to be Qualifying Works, and whether or not (following the agreement or determination that the relevant works are Qualifying Works) such works are carried out and/or completed.

8. VAT

The Landlord shall pay to the Tenant any VAT at the rate for the time being in force properly payable in respect of any supplies made by the Tenant to the Landlord in connection with this Schedule 3, and all consideration due from the Landlord under the terms of this Schedule 3 shall be exclusive of any VAT properly payable thereon and the Tenant shall provide the Landlord with a valid VAT invoice at the same time as the demand.

9. DISPUTE RESOLUTION

If any dispute or difference shall arise between the Landlord and the Relevant Tenant in relation to the question of whether the proposed works are Qualifying Works and/or in relation to the detailed terms of the Agreement for Works:

- 9.1.1 the Landlord and the Tenant shall (or the Tenant shall use reasonable endeavours to procure that the relevant Investment Tenant shall) acting reasonably seek amicably to resolve the dispute; but
- 9.1.2 failing agreement between the Landlord and the Relevant Tenant within 2 calendar months of the dispute first arising, the matter shall be referred to the Expert for determination in accordance with clause 18.

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Each Investment Tenant holding the immediate reversionary interest to any Relevant Commercial Space may enforce the terms of this Schedule 3 against the Landlord as Relevant

Tenant subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

[Insert signature blocks]

ANNEXURE 1
FORM OF DEED OF COVENANT



DATE: 202[•]

**DEED OF [MUTUAL] COVENANT
RELATING TO THE
PHASES [Z] AND [Y], VICARAGE FIELD, BARKING, LONDON**

Between

[TENANT OF PHASE [Z]]

and

[TENANT OF PHASE [Y]]

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
F +44 20 7367 2000

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THIS DEED dated 202[●]

BETWEEN:-

- (1) **[TENANT OF PHASE [Z]]** (incorporated and registered in [●] under company registration number [●]), the registered office of which is at [●] (the “**Phase [Z] Tenant**”); and
- (2) **[TENANT OF PHASE [Y]]** (incorporated and registered in [●] under company registration number [●]), the registered office of which is at [●] (the “**Phase [Y] Tenant**”).

RECITALS:-

- (A) The Phase [Z] Tenant has on or about the date of this Deed become the tenant of the Phase [Z] Lease.
- (B) The Phase [Y] Tenant is, at the date of this Deed, entitled to the term granted by the Phase [Y] Lease.
- (C) The Phase [Z] Lease requires that, in order to benefit from the rights over Phase [Y] that are mentioned in clause 4.3 of the Phase [Z] Lease, the Phase [Z] Tenant must provide the Phase [Y] Tenant with a deed of covenant in substantially the form of this Deed.
- (D) The Phase [Y] Lease requires that, in order to benefit from the rights over Phase [Z] that are mentioned in clause 4.3 of the Phase [Y] Lease, the Phase [Y] Tenant must provide the Phase [Z] Tenant with a deed of covenant in substantially the form of this Deed.

WITNESSES as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed, the following words and expressions shall have the following meanings:

“**Phase [Z]**” means the premises from time to time demised pursuant to the Phase [Z] Lease;

“**Phase [Y]**” means the premises from time to time demised pursuant to the Phase [Y] Lease;

“**Phase [Z] Lease**” means the lease of Phase [Z] dated [●] and made between (1) The Mayor and Burgesses of the London Borough of Barking and Dagenham (as landlord) and (2) [●] (as tenant), as varied from time to time and including any instrument supplemental or collateral thereto whether or not expressly stated to be so; and

“**Phase [Y] Lease**” means the lease of Phase [Y] dated [●] and made between (1) The Mayor and Burgesses of the London Borough of Barking and Dagenham (as landlord) and (2) [●] (as tenant), as varied from time to time and including any instrument supplemental or collateral thereto whether or not expressly stated to be so, as the same is registered at the Land Registry under title number [●].

- 1.2 In this Deed:

1.2.1 the contents page, headings and sub-headings are for ease of reference only and do not affect its meaning;

1.2.2 obligations owed by or to more than one person are owed by or to them jointly and severally;

1.2.3 words in the singular include the plural and vice versa; and

1.2.4 references to one gender include all genders.

- 1.3 In this Deed, unless the context otherwise requires:

- 1.3.1 a reference to particular legislation (unless expressly stated to the contrary) is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time;
- 1.3.2 a reference to a person includes an individual, firm, partnership, company, association, organisation or trust (in each case whether or not having a separate legal personality);
- 1.3.3 a reference to a company includes any company, corporation or any other body corporate (wherever incorporated);
- 1.3.4 the words “including” and “include” shall each be deemed to be followed by the words “without limitation”;
- 1.3.5 references to clauses are to clauses of this Deed; and
- 1.3.6 a reference to Phase [Z] or Phase [Y] shall mean each and every part of such premises unless expressly stated otherwise in the relevant provision.

2. PHASE [Z] TENANT'S COVENANTS

- 2.1 Subject to compliance by the Phase [Y] Tenant with the provisions of clause 3.2.1, the Phase [Z] Tenant acknowledges and agrees that:

- 2.1.1 it shall be bound by the provisions of clause 5.3 of the Phase [Z] Lease in favour of the Phase [Y] Tenant (and any tenants and lawful occupiers of the Phase [Y] Tenant, and other persons authorised by them) in respect of Phase [Z]; and
- 2.1.2 the Phase [Y] Tenant (and any tenants and lawful occupiers of the Phase [Y] Tenant, and other persons authorised by them) shall have the benefit of the provisions of clause 4.3 of the Phase [Y] Lease over Phase [Z],

and, in the case of conflict between the provisions of clause 4.3 of the Phase [Y] Lease and the provisions of clause 5.3 of the Phase [Z] Lease, the provisions of clause 4.3 of the Phase [Y] Lease shall have priority.

- 2.2 The Phase [Z] Tenant covenants with the Phase [Y] Tenant:

- 2.2.1 to observe and perform the provisions of:
 - (a) clause 4.3 of the Phase [Z] Lease; and
 - (b) clause 5.3 of the Phase [Y] Lease,
 in the exercise of rights over Phase [Y] and, in the case of conflict between the provisions of clause 4.3 of the Phase [Z] Lease and the provisions of clause 5.3 of the Phase [Y] Lease, the provisions of clause 5.3 of the Phase [Y] Lease shall have priority
- 2.2.2 not to assign the Phase [Z] Lease unless the assignee, on or before the date of the deed or document effecting the assignment, shall have delivered and unconditionally released to the Phase [Y] Tenant a signed original deed of [mutual] covenant in substantially the same form as this Deed (including this clause);
- 2.2.3 to procure that a restriction in standard form L is entered into the proprietorship register of the title of the Phase [Z] Lease as follows:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate

signed by a conveyancer that the provisions of clause 2.2.2 of a Deed of [Mutual] Covenant dated [●] and made between (1) [Phase [Z] Tenant] and (3) [Phase [Y] Tenant] have been complied with, or that they do not apply to the disposition.”

- 2.2.4 not to make any application to the Land Registry to vary or withdraw the restriction to be entered into the proprietorship register of the title of the Phase [Z] Lease pursuant to clause 2.2.3 unless and until it shall have complied with the provisions of clause 2.2.2 in relation to any assignment of the Phase [Z] Lease.
- 2.3 Subject to compliance with clause 3.2.2, the Phase [Z] Tenant covenants with the Phase [Y] Tenant and its successors in title to the Phase [Y] Lease:
- 2.3.1 promptly to sign and complete the deed of [mutual] covenant which has been delivered and unconditionally released to it (as mentioned in clause 3.2.2), and to return an original or certified copy of the same to the new tenant of the Phase [Y] Lease, and the Phase [Z] Tenant acknowledges that the benefit of the provisions of clause 4.3 of the Phase [Z] Lease over Phase [Y] shall be suspended and cease to apply until such time as it has signed and completed the said deed of [mutual] covenant mentioned in clause 3.2.2 with the new tenant of the Phase [Y] Lease; and
- 2.3.2 that it shall sign such form(s) as shall be necessary to procure the removal at the Land Registry of the restriction to be entered into the proprietorship register of the title of the Phase [Y] Lease pursuant to clause 3.2.3, it being acknowledged that such restriction is to be replaced with a corresponding new restriction to be entered in accordance with the terms of clause 3.2.3 of the deed of [mutual] covenant (as mentioned in clause 3.2.2) between the new tenant of the Phase [Y] Lease and the Phase [Z] Tenant.

3. PHASE [Y] TENANT'S COVENANTS

- 3.1 Subject to compliance by the Phase [Z] Tenant with the provisions of clause 2.2.1, the Phase [Y] Tenant acknowledges and agrees that:
- 3.1.1 it shall be bound by the provisions of clause 5.3 of the Phase [Y] Lease in favour of the Phase [Z] Tenant (and any tenants and lawful occupiers of the Phase [Z] Tenant, and other persons authorised by them) in respect of Phase [Y]; and
- 3.1.2 the Phase [Z] Tenant (and any tenants and lawful occupiers of the Phase [Z] Tenant, and other persons authorised by them) shall have the benefit of the provisions of clause 4.3 of the Phase [Z] Lease over Phase [Y],

and, in the case of conflict between the provisions of clause 4.3 of the Phase [Z] Lease and the provisions of clause 5.3 of the Phase [Y] Lease, the provisions of clause 4.3 of the Phase [Z] Lease shall have priority.

- 3.2 The Phase [Y] Tenant covenants with the Phase [Z] Tenant:

- 3.2.1 to observe and perform the provisions of:
- (a) clause 4.3 of the Phase [Y] Lease; and
- (b) clause 5.3 of the Phase [Z] Lease,
- in the exercise of rights over Phase [Z] and, in the case of conflict between the provisions of clause 4.3 of the Phase [Y] Lease and the provisions of clause 5.3 of the Phase [Z] Lease, the provisions of clause 5.3 of the Phase [Z] Lease shall have priority;

- 3.2.2 not to assign the Phase [Y] Lease unless the assignee, on or before the date of the deed or document effecting the assignment, shall have delivered and unconditionally released to the Phase [Z] Tenant a signed original deed of [mutual] covenant in substantially the same form as this Deed (including this clause);
- 3.2.3 to procure that a restriction in standard form L is entered into the proprietorship register of the title of the Phase [Y] Lease as follows:
- “No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of clause 3.2.2 of a Deed of [Mutual] Covenant dated [●] and made between (1) [Phase [Z] Tenant] and (3) [Phase [Y] Tenant] have been complied with, or that they do not apply to the disposition.”
- 3.2.4 not to make any application to the Land Registry to vary or withdraw the restriction to be entered into the proprietorship register of the title of the Phase [Y] Lease pursuant to clause 3.2.3 unless and until it shall have complied with the provisions of clause 3.2.2 in relation to any assignment of the Phase [Y] Lease.
- 3.3 Subject to compliance with clause 2.2.2, the Phase [Y] Tenant covenants with the Phase [Z] Tenant and its successors in title to the Phase [Z] Lease:
- 3.3.1 promptly to sign and complete the deed of [mutual] covenant which has been delivered and unconditionally released to it (as mentioned in clause 2.2.2), and to return an original or certified copy of the same to the new tenant of the Phase [Z] Lease, and the Phase [Y] Tenant acknowledges that the benefit of the provisions of clause 4.3 of the Phase [Y] Lease over Phase [Z] shall be suspended and cease to apply until such time as it has signed and completed the said deed of [mutual] covenant mentioned in clause 2.2.2 with the new tenant of the Phase [Z] Lease; and
- 3.3.2 that it shall sign such form(s) as shall be necessary to procure the removal at the Land Registry of the restriction to be entered into the proprietorship register of the title of the Phase [Z] Lease pursuant to clause 2.2.3, it being acknowledged that such restriction is to be replaced with a corresponding new restriction to be entered in accordance with the terms of clause 2.2.3 of the deed of [mutual] covenant (as mentioned in clause 2.2.2) between the new tenant of the Phase [Z] Lease and the Phase [Y] Tenant.

4. SERVICE OF NOTICES

- 4.1 Any notice under the terms of this Deed will be treated as validly served if:
- 4.1.1 personally delivered; or
- 4.1.2 sent by a registered post service (within the meaning of the Postal Services Act 2000) or first class recorded delivery or first class ordinary post,
- and addressed to:
- 4.1.3 the registered office of the recipient; or
- 4.1.4 in the case of:
- (a) the Phase [Z] Tenant, at c/o [●] and addressed to [●]; and
- (b) the Phase [Y] Tenant, at c/o [●] and addressed to [●],

or such other addressee and/or address or addresses in the United Kingdom as may be notified in writing by a party to this Deed from time to time.

- 4.2 Any such notice shall be deemed to be served on the second Business Day after being put in the post properly addressed or (as the case may be) upon the date of delivery if service is by hand.

5. THIRD PARTY RIGHTS

Save where expressly stated, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

6. VALIDITY

If any provision of this Deed is held not to be valid, but would be valid if part of the wording were deleted or modified then, provided that such deletion or modification does not create a disadvantage to either the Phase [Z] Tenant or the Phase [Y] Tenant (in which event the provision in question shall remain unenforceable), such provision shall apply with such deletion or modification as may be necessary to make it enforceable.

7. JURISDICTION

- 7.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by the law of England and Wales.

- 7.2 Subject to clause 7.3, the parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

- 7.3 Any party may seek to enforce an order of the courts of England and Wales arising out of or in connection with this Deed, including in relation to any non-contractual obligations, in any court of competent jurisdiction.

- 7.4 [Whilst the Phase [Z] [Y] Tenant is [] it irrevocably appoints [] of [] (or such other person based within the jurisdiction of the courts of England and Wales as it may notify to the Phase [Y] [Z] Tenant in writing from time to time) as its agent to accept on its behalf service of any notices or proceedings arising out of or in connection with this Deed (whether the matter, dispute or claim to which they relate is contractual or non-contractual in nature).]¹

8. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

[insert signature blocks]

¹ Drafting note: to be included if either tenant is domiciled outside of England and Wales.

ANNEXURE 2
FORM OF UNDERTENANT FORFEITURE PROTECTION DEED



DATE: 20[●]

**FORFEITURE PROTECTION DEED
RELATING TO
[BUILDING AT][PHASE [●], VICARAGE FIELD], BARKING, LONDON**

Between

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BARKING AND DAGENHAM**

and

[INVESTMENT TENANT]

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF
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THIS DEED is made on

20[●]

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARKING AND DAGENHAM** of Barking Town Hall, Town Hall Square, Barking IG11 7LU (the “**Landlord**”); and
- (2) [●] [(incorporated and registered in England and Wales under company registration number [●]), the registered office of which is at [●]][(a [limited liability company] established under the laws of [●], the registered office of which is at [●] and whose address for service in the United Kingdom for the purposes of this Deed is [●]) (the “**Tenant**)”].

WHEREAS:

- (A) The Headlease is vested in the Intermediate Landlord and the reversion immediately expectant upon the determination of the Headlease is vested in the Landlord.
- (B) The Intermediate Landlord proposes to grant an underlease of [the whole][part] of the Headlease Demise to the Tenant.
- (C) The Landlord and the Tenant have agreed to enter into this Deed to provide protection for the Tenant and any Chargee in the event of forfeiture of the Headlease in the circumstances set out in this Deed.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following words and expressions shall have the following meanings:

“**Business Day**” means a day other than Saturday, Sunday or a day on which banks are authorised to close in London for general banking business;

“**Charge**” means a legal charge over the Property, whether fixed or floating, given by the Tenant and of which the Landlord has received notice in writing;

“**Chargee**” means any person who has a Charge from time to time;

“**Chargee Forfeiture Confirmation Date**” has the meaning given to it in clause 2.2.2;

“**Chargee Nominee**” means an entity nominated by or on behalf of a Chargee and whose identity has been notified in writing to the Landlord;

“**Chargee Request**” has the meaning given to it in clause 2.2.2;

“**Chargee Request Period**” means the period of 30 Business Days from and including the Chargee Forfeiture Confirmation Date;

“**Court Order**” has the meaning given to it in clause 2.2;

“**Deeds of Covenant**” means any deeds of covenant entered into by the Intermediate Landlord pursuant to the provisions of clause 4.3 and/or clause 5.3 of the Headlease that are subsisting as at the Forfeiture Confirmation Date (if clause 2.2.1 applies) or the Chargee Forfeiture Confirmation Date (if clause 2.2.2 applies);

“**Estate Management Agreement**” has the meaning given to it in the Headlease;

“**Forfeiture Confirmation Date**” has the meaning given to it in clause 2.2.1;

“Headlease” means the lease dated [●] between (1) The Mayor and Burgesses of the London Borough of Barking and Dagenham (as landlord) and (2) [Lagmar (Barking) Limited] (as tenant) in relation to Phase [●], Vicarage Field], Barking, London, as varied from time to time and including any instrument supplemental or collateral thereto whether or not expressly stated to be so;

“Headlease Demise” means the premises from time to time demised pursuant to the Headlease;

“Intermediate Landlord” means [Lagmar (Barking) Limited] (incorporated and registered in [Scotland] under company registration number [SC303267]), the registered office of which is at [50 Lothian Road, Festival Square, Edinburgh EH3 9WJ], and its successors in title from time to time to the term granted by the Headlease;

“Investment Underlease” means the underlease of [Building [●] at][Phase [●], Vicarage Field], Barking, London (being [the whole][part] of the Headlease Demise) [dated [●] and made between][to be granted by] the Intermediate Landlord [and][to] the Tenant, as varied from time to time and including any instrument supplemental or collateral thereto whether or not expressly stated to be so;

“Landlord” means the party first named above as **“Landlord”** which expression shall include the immediate reversioner to the Headlease from time to time;

“New Lease” means a new lease of the Property to be granted pursuant to this Deed on the terms set out in clause 3;

“Property” means [Building [●] at][Phase [●], Vicarage Field], Barking, London as demised by, and more particularly described in, the Investment Underlease;

“Statutory Declaration” has the meaning given to it in clause 2.6;

“Tenant” shall mean the party first named above as **“Tenant”** which expression shall include successors in title from time to time to the term granted by the Investment Underlease;

“Tenant Request” has the meaning given to it in clause 2.2.1; and

“Tenant Request Period” means the period of 30 Business Days from and including the Forfeiture Confirmation Date.

1.2 In this Deed unless the context otherwise requires:

1.2.1 words importing the singular number shall, where appropriate, include the plural number and vice versa;

1.2.2 section and clause headings are for ease of reference only;

1.2.3 references in this Deed to clauses are references to the relevant clause of this Deed;

1.2.4 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 includes an obligation not to permit or suffer an infringement of the relevant restriction;

1.2.5 reference to:

(a) a person, firm, company, corporation, government, state or agency of any state or any association, trust, or partnership (whether or not having separate legal personality) includes any of the foregoing;

(b) any document or agreement is to that document or agreement as amended, novated, supplemented, extended, restated or replaced from time to time; and

- (c) a treaty or legislation (both primary and subordinate) or to a provision of a treaty or legislation includes a modification or re-enactment of it, a treaty or legislative provision substituted for it and a regulation, statutory instrument or order issued under it.

1.3 [The provisions of clauses 2 and 3 will take effect on and from completion of the Investment Underlease.]

2. PROTECTION FROM FORFEITURE

2.1 If the Headlease is sought to be forfeited by the Landlord in accordance with its terms, the Landlord shall, within ten Business Days of seeking to exercise its right to forfeit the Headlease by issuing forfeiture proceedings at Court and serving those proceedings on the Intermediate Landlord, provide written notice to the Tenant and any Chargee specifying the date of the Court application.

2.2 If the Landlord obtains an order of the Court for possession of all or any part of the Property on the basis of forfeiture (a “**Court Order**”), the following provisions will apply:

2.2.1 from the earlier of the following:

- (a) the date on which any application by the Tenant for relief from forfeiture in respect of the Court Order is concluded (having exhausted any appeals and/or the time limits for seeking any appeals have expired without leave to appeal having been granted) and without relief having been granted or without a vesting order by way of relief from forfeiture being granted to the Tenant; and
- (b) the date on which the Tenant confirms by way of an irrevocable binding notice to the Landlord that it will not seek a vesting order by way of relief from forfeiture and/or relief from forfeiture in respect of the Court Order,

(the “**Forfeiture Confirmation Date**”) then, subject to clause 3.2, the Tenant will be entitled to request in writing to the Landlord (the “**Tenant Request**”) during the Tenant Request Period (as to which time shall be of the essence) that a New Lease be granted and, following a Tenant Request made during the Tenant Request Period, the Landlord will (subject to clauses 2.2.3 and 2.8 and, if clause 2.5.1 applies, the Tenant providing the Landlord with a sworn Statutory Declaration) within 40 Business Days of service of the Tenant Request grant, and the Tenant will accept, a New Lease;

2.2.2 if:

- (a) the Tenant serves notice in writing on the Landlord confirming that it does not intend to exercise its right to take a New Lease pursuant to clause 2.2.1; or (if sooner)
- (b) the Tenant Request Period expires without the Tenant making a request for a New Lease pursuant to clause 2.2.1,

(the date of service of such notice or the date of expiry of the Tenant Request Period (as the case may be) being the “**Chargee Forfeiture Confirmation Date**”) then, subject to clause 3.2, the Chargee or the Chargee Nominee will be entitled to request in writing to the Landlord (the “**Chargee Request**”) during the Chargee Request Period (as to which time shall be of the essence) that a New Lease be granted and, following a Chargee Request made during the Chargee Request Period, the Landlord will (subject to clauses 2.2.3 and 2.8 and, if clause 2.5.1 applies, the Chargee or the Chargee Nominee

(as the case may be) providing the Landlord with a sworn Statutory Declaration) within 40 Business Days of service of the Chargee Request grant, and the Chargee (or the Chargee Nominee) will accept, a New Lease; and

2.2.3 in the event that:

(a) any application for relief from forfeiture is made by any party which results in an order of the Court that the Headlease be reinstated prior to the grant of the New Lease; or

(b) the Court makes a vesting order in respect of the Headlease,

then the provisions of this clause 2.2 entitling the Tenant, the Chargee or the Chargee Nominee (as applicable) to request (and requiring the Landlord to grant) a New Lease shall immediately cease to apply.

2.3 The Landlord shall:

2.3.1 during the period that the Tenant is entitled to request a New Lease under clause 2.2.1, permit the Tenant to continue in occupation of the Property pending completion of the grant of the New Lease pursuant to clause 2.2.1; or

2.3.2 during the period that the Chargee or the Chargee Nominee is entitled to request a New Lease under clause 2.2.2, permit the Chargee or the Chargee Nominee to take (and continue in) occupation of the Property pending completion of the grant of the New Lease pursuant to clause 2.2.2,

and such occupation shall be as licensee, but on the terms of the Investment Underlease.

2.4 The arrangements in respect of the New Lease referred to in clause 2.2 shall not prevent the Tenant or any Chargee from making an application to the Court for relief in respect of forfeiture of the Headlease to the extent that such a remedy may be available to the Tenant or any Chargee in respect of the Headlease Demise or the Property and shall be in addition to, and not in substitution for, any right to apply for such relief.

1954 Act

2.5 If:

2.5.1 the Investment Underlease is contracted out of the Landlord and Tenant Act 1954 ("**1954 Act**"); and

2.5.2 the Landlord receives a Tenant Request made during the Tenant Request Period in accordance with clause 2.2.1 or a Chargee Request made during the Chargee Request Period in accordance with clause 2.2.2 (as the case may be)

the Landlord will, promptly after the New Lease has been agreed as mentioned in clause 3.1, serve on the Tenant or the Chargee or the Chargee Nominee (as the case may be) a notice in relation to the tenancy to be created by the New Lease in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

2.6 If the Landlord serves a notice as mentioned in clause 2.5, the Tenant or the Chargee or the Chargee Nominee (as the case may be), or a declarant duly authorised by the relevant one of them, may (but shall not be obliged to) swear and provide to the Landlord a statutory declaration in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("**Statutory Declaration**").

Non merger

- 2.7 For the avoidance of doubt, this Deed shall survive and remain enforceable by the Landlord, the Tenant and any Chargee during the Tenant Request Period or the Chargee Request Period (as appropriate) following any determination of the Headlease as aforesaid.

Deeds of Covenant and Estate Management Agreement

- 2.8 It shall be a condition of the grant of the New Lease that, simultaneously with the grant of the New Lease, the Tenant or the Chargee or the Chargee Nominee (as the case may be) shall:

2.8.1 deliver to each counterparty of the Deeds of Covenant, a signed and unconditionally released new deed of covenant on the same terms as each such Deed of Covenant as if the Tenant or the Chargee or the Chargee Nominee (as the case may be) were an assignee of the Headlease; and

2.8.2 accede to the Estate Management Agreement,

as a successor in title to the Intermediate Landlord, and the Tenant or the Chargee or the Chargee Nominee (as the case may be) shall comply with the Intermediate Landlord's obligations pursuant to the Deeds of Covenant and the Estate Management Agreement (including payment obligations) during any period of occupation of the Property as licensee pursuant to clause 2.3.1 or clause 2.3.2 (as the case may be).

3. TERMS OF THE NEW LEASE

- 3.1 The New Lease will be in respect of the same demise and otherwise on the same terms and at the same rent as the Investment Underlease as at the Forfeiture Confirmation Date (or, as the case may be, the Chargee Forfeiture Confirmation Date), but with such variations as may be:

3.1.1 required, if any, to reflect the obligations of the Intermediate Landlord to other Phase Tenants (as that term is utilised in the Headlease) in connection with *inter alia*:

- (a) the delivery by the Estate Management Company of the Estate Services (as those terms are defined in the Headlease) pursuant to the Estate Management Agreement; and/or
- (b) the rights and reservations for the benefit of the Property and/or other Phase Land (as defined in the Headlease) in accordance with the principles set out in clauses 4.3 and 5.3 of the Headlease; or

3.1.2 otherwise agreed by the Landlord and the Tenant or the Chargee or the Chargee Nominee (as appropriate),

and the contractual term of the New Lease shall be equal to the remaining term of the Investment Underlease (had the same remained subsisting).

- 3.2 The New Lease shall be granted without payment of any fine or premium provided that:

3.2.1 upon the grant of the New Lease, the Tenant, the Chargee or the Chargee Nominee (as applicable, being the lessee under the New Lease) will; or

3.2.2 if the rights contained in this Deed are exercised, but the New Lease is never granted, the Tenant will, within ten Business Days of written demand,

pay to the Landlord:

- 3.2.3 all reasonable and properly incurred costs and disbursements of the Landlord incurred in relation to the implementation of this Deed, including the preparation, negotiation and completion of the New Lease and the documents as mentioned in clause 2.8; and
- 3.2.4 any arrears of rent or other payments due to the Intermediate Landlord under the Investment Underlease or otherwise in respect of the Property up to the date of grant of the New Lease, including any period of occupation as mentioned in clause 2.3,
- and (if clause 3.2.1 applies) the Tenant, the Chargee or the Chargee Nominee (as applicable) will promptly make good any breach of covenant relating to the Property which triggered the Landlord's right to forfeit the Headlease.

4. ASSIGNMENT

- 4.1 This Deed shall be binding upon and enure to the benefit of the Landlord's successors, transferees and assigns to/of the reversionary interest(s) in the Headlease, which includes, for the avoidance of doubt, the successors, transferees and assigns to/of any part of such reversionary interest(s).
- 4.2 The Landlord may not assign, transfer or otherwise dispose of the whole or any part of its reversionary interest in the Headlease to any person (in any such event a "**Disponee**") unless the Disponee, as the landlord, accedes to this Deed or enters into a new deed on the same terms as this Deed (in any such event a "**Replacement Deed**") provided that this clause shall not apply to any assignment, transfer or other disposal (as the case may be) that does not include any part of the Landlord's reversionary interest in the Property.
- 4.3 On completion of a Replacement Deed, this Deed shall automatically cease and determine, but without prejudice to the rights that either party may have against the other in respect of any antecedent breach by the other.
- 4.4 This Deed shall be binding upon and enure to the benefit of the Tenant's successors, transferees and assigns of the Tenant's interest in the whole of the Investment Underlease.
- 4.5 The Tenant may not assign, transfer, novate or dispose of, or grant any interest in, its rights and/or obligations pursuant to this Deed to any person save for any assignment to any successor in title to its interest in the whole of the Investment Underlease.
- 4.6 The Landlord hereby agrees to the Tenant making an application to enter the following restriction in Standard Form L in the Proprietorship Register of title number [EGL270709]:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of clause 4.2 of a forfeiture protection deed dated [●] 202[●] made between (1) The Mayor and Burgesses of the London Borough of Barking and Dagenham and (2) [●] have been complied with or that they do not apply to the disposition."

5. SERVICE OF NOTICES

- 5.1 Any notice under the terms of this Deed to be given to the Landlord will be treated as validly served if:
- 5.1.1 personally delivered; or
- 5.1.2 sent by a registered post service (within the meaning of the Postal Services Act 2000) or first class recorded delivery or first class ordinary post,

and addressed to the Landlord's Director of Law and Governance at the postal address in the United Kingdom shown from time to time for the registered proprietor of title number [EGL270709] or, if no such address is given or such title ceases to exist, at the Landlord's last known address in the United Kingdom or (in any event) to such other address and/or such alternative person as may be notified in writing to the Tenant by the Landlord from time to time.

- 5.2 Any notice under the terms of this Deed to be given by the Landlord to the Tenant will be treated as validly served if:

5.2.1 personally delivered; or

5.2.2 sent by a registered post service (within the meaning of the Postal Services Act 2000) or first class recorded delivery or first class ordinary post,

and addressed to the Tenant:

5.2.3 at its registered office[; or

5.2.4 at c/o [●]]

or such other address or addresses in the United Kingdom as may be notified in writing to the Landlord by the Tenant from time to time.

- 5.3 Any notice under the terms of this Deed to be given by the Landlord to any Chargee or Chargee's Nominee will be treated as validly served if:

5.3.1 personally delivered; or

5.3.2 sent by a registered post service (within the meaning of the Postal Services Act 2000) or first class recorded delivery or first class ordinary post

and addressed to the Chargee or the Chargee's Nominee (as the case may be) at the address in the United Kingdom stated by the Tenant by notice in writing to the Landlord (or such other address or addresses in the United Kingdom as may be notified in writing to the Landlord by the Tenant or the Chargee or the Chargee's Nominee (as the case may be) from time to time).

- 5.4 Any such notice shall be deemed to be served on the second Business Day after being put in the post properly addressed or (as the case may be) upon the date of delivery if service is by hand.

6. CONFLICT

If there is any conflict between the terms of this Deed and the Headlease, the terms of this Deed shall, to the extent only of such conflict, prevail.

7. THIRD PARTY RIGHTS

- 7.1 Save as set out in clause 7.2, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 7.2 Any Chargee will have rights under the Contracts (Rights of Third Parties) Act 1999 so as to take the benefit of the Landlord's covenants under clauses 2.1, 2.2 and 3.

8. VALIDITY

If any provision of this Deed is held not to be valid but would be valid if part of the wording were deleted or modified then, provided that such deletion or modification does not create a disadvantage to either the Landlord or the Tenant (in which event the provision in question shall

remain unenforceable), such provision shall apply with such deletion or modification as may be necessary to make it enforceable.

9. JURISDICTION

- 9.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by the law of England and Wales.
- 9.2 Subject to clause 9.3, the parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).
- 9.3 Any party may seek to enforce an order of the courts of England and Wales arising out of or in connection with this Deed, including in relation to any non-contractual obligations, in any court of competent jurisdiction.
- 9.4 [Whilst the Tenant is [REDACTED] it irrevocably appoints [REDACTED] of [REDACTED] (or such other person based within the jurisdiction of the courts of England and Wales as it may notify to the Landlord in writing from time to time) as its agent to accept on its behalf service of any notices or proceedings arising out of or in connection with this Deed (whether the matter, dispute or claim to which they relate is contractual or non-contractual in nature).]¹

10. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

11. SAVING OF LANDLORD'S STATUTORY POWERS

- 11.1 In this clause 11 (but not further or otherwise), "**Landlord**" means The Mayor and Burgesses of the London Borough of Barking and Dagenham and its statutory successors where it or they (as the case may be) is/are the lessor under the Headlease.
- 11.2 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of, or fetter the discretion of the Landlord in the exercise of its functions as a local authority ("**Functions**").
- 11.3 The rights, powers, duties, obligations and discretion of the Landlord in connection with its Functions may be as fully and effectually exercised in relation to the Headlease Demise and the Property as if this Deed had not been entered into.
- 11.4 Any act or thing done by the Landlord (including the giving or grant of any notice, consent or approval) pursuant to the terms of this Deed (or any failure or omission by the Landlord to do or give or grant the same) shall not be deemed to be done or given or granted (or not as the case may be) by the Landlord in any capacity other than as the owner of a reversionary interest in the Headlease Demise and the Property.
- 11.5 Nothing contained or implied in this Deed shall (or shall be deemed to):
- 11.5.1 involve the delegation by the Landlord of any of its rights, powers, duties or obligations as a local authority; or

¹ Drafting note: to be included if the Tenant is domiciled outside of England and Wales.

- 11.5.2 oblige the Landlord to expend more or receive less money in complying with this Deed than it may lawfully do nor to do (or omit to do) any act or thing which would or may be unlawful or ultra vires or amount to maladministration.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

[Insert signature blocks]

SCHEDULE 6

Phase Works

1 DEFINITIONS

In this schedule, unless the context otherwise requires, the following expressions shall, in respect of the relevant Phase Works, have the following meanings:

Appointments: the appointments of the Professional Team.

Architect: such independent firm or company of architects who shall be suitably qualified, experienced and competent bearing in mind the size, scope, complexity and value of the Phase Works as may be appointed by the Developer from time to time and notified to the Council in writing.

CDM Regulations: the Construction (Design and Management) Regulations 2015.

Cladding Consultant: such independent firm or company of cladding consultants who shall be suitably qualified, experienced and competent bearing in mind the size, scope, complexity and value of the Phase Works as may be appointed by the Developer from time to time and notified to the Council in writing.

Collateral Warranty: a collateral warranty in substantially the agreed form annexed at schedule 8.

Construction Period: means, in respect of the relevant Phase Works, the construction period as specified in the relevant Building Contract.

Environmental Consultant: such independent firm or company of environmental consultants who shall be suitably qualified, experienced and competent bearing in mind the size, scope, complexity and value of the Phase Works as may be appointed by the Developer from time to time and notified to the Council in writing

Professional Team: means, in respect of the relevant Phase Works:

- (a) the Architect, the Cladding Consultant, the Environmental Consultant and the Structural Engineer; and
- (b) any other consultant having a material design responsibility in respect of the Phase Works as may be appointed by the Developer or the Developer's Nominee or the Building Contractor from time to time; and
- (c) such other consultants (if any) as the Parties (acting reasonably) agree from time to time as may be appointed by the Developer or the Developer's Nominee or the Building Contractor from time to time.

Structural Engineer: such independent firm or company of structural engineers who shall be suitably qualified, experienced and competent bearing in mind the size, scope, complexity and

value of the Phase Works as may be appointed by the Developer from time to time and notified to the Council in writing

Substantially Commence: the carrying out of any material operation (as defined in s56(4) of the Town and Country Planning Act 1990), other than operations consisting of site clearance, demolition, archaeological investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary buildings or means of enclosure, or the temporary display of site notices or advertisements.

2 DEVELOPER'S OBLIGATIONS PRIOR TO STARTING THE PHASE WORKS

Before commencing the relevant Phase Works the Developer shall, at its own expense:

- (a) prepare or cause to be prepared a detailed schedule of the condition of the party walls/structures in respect of any roads, pavements or premises adjoining or neighbouring the relevant Phase Premises which the Council or the Developer (each acting reasonably) believes may be materially affected by the carrying out of the Phase Works; and
- (b) provide a copy of the same to the Council for its approval (such approval not to be unreasonably withheld or delayed);
- (c) erect on the relevant Phase (and thereafter maintain in good order and condition throughout the Construction Period) a notice board or boards:
 - (i) in such style and of such size and in such position as the Council approve (such approval not to be unreasonably withheld or delayed); and
 - (ii) indicating that the Phase Works are being carried out in association with the Council, and indicating also the names of the Developer, the Building Contractor and the key members of the Professional Team; and
- (d) provide along or within the boundaries of the Phase (and thereafter maintain in good order and condition throughout the Construction Period) such hoardings, fences, lights, warning signs, guards and other devices, measures and works as may be reasonably necessary for the security of the Phase Premises and the safety and convenience of the public from time to time.

3 CARRYING OUT THE PHASE WORKS

3.1 Following completion of each Phase Lease, the Developer shall use reasonable endeavours to promptly commence and thereafter diligently carry out and complete the relevant Phase Works:

- (a) in a good and workmanlike manner and with reasonable skill and care and in accordance with good design and building practice;
- (b) using good quality, new (where appropriate) and suitable materials;
- (c) in accordance with:

- (i) the Satisfactory Planning Permission (including any planning conditions and any related s106 agreement);
- (ii) the Phase Specification;
- (iii) the relevant Building Contract; and
- (iv) all Necessary Consents and Statutory Agreements so far as the same are relevant to the relevant Phase.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CDM Regulations

3.4 In respect of the relevant Phase Works the Developer shall:

- (a) elect to be, or procure that the relevant Building Contractor elects to be, the only client under the CDM Regulations and (in either case) supply the Council with a copy of the election; and
- (b) comply with (or, where the Building Contractor has elected to be the only client, use reasonable endeavours to procure that the Building Contractor complies with) the CDM Regulations.

4 BUILDING CONTRACTOR AND PROFESSIONAL TEAM

Building Contractor

4.1 The Developer will:

- (a) comply with the obligations on the part of the employer under the Building Contract;
- (b) use reasonable endeavours to procure the due performance and observance of the obligations of the Building Contractor under the Building Contract; and
- (c) (as soon as reasonably practicable after becoming aware of the same) notify, the Council promptly of any (or any anticipated or threatened) material breach of the Building Contract by the Building Contractor and of:
 - (i) the circumstances giving rise to (or likely to give rise to) such material breach;
 - (ii) the likely consequences of such breach; and
 - (iii) the Developer's plan to mitigate the consequences of, and otherwise deal with, such breach.

4.2 The Developer shall not without:

- (a) first informing the Council of the Developer's intention to do so and the reasons for the Developer doing so; and
- (b) having regard to (but not being bound by) the Council's representations

either:

- (c) release the Building Contractor from the Building Contract; nor
- (d) waive any of its rights and remedies against the Building Contractor; nor
- (e) make any alterations (save any which may properly be required pursuant to the Necessary Consents and which shall as soon as reasonably practicable be notified in writing to the Council) to the terms of the Building Contract

where to do so will, or may, have a materially adverse effect on the interests of the Council.

Professional Team

4.3 The Developer shall (or shall, where the Building Contractor is actually the "employer" under any such Appointment, procure that the Building Contractor shall):

- (a) promptly notify the Council in writing of the details of any consultant as mentioned in paragraphs (b) and/or (c) of the definition of Professional Team appointed by the Developer or the Developer's Nominee or the Building Contractor from time to time;
- (b) comply with the obligations on the part of the employer under each of the Appointments;
- (c) use reasonable endeavours to procure the due performance and observance of the obligations of each member of the Professional Team under the relevant Appointments; and

(d) as soon as reasonably practicable after becoming aware of the same, notify the Council promptly of any (or any anticipated or threatened) material breach of any member of the Professional Team of its Appointment and of:

- (i) the circumstances giving rise to (or likely to give rise to) such material breach;
- (ii) the likely consequences of such breach; and
- (iii) the Developer's plan to mitigate the consequences of, and otherwise deal with, such breach.

4.4 The Developer shall not (or, where the Building Contractor is actually the "employer" under any such Appointment, shall procure that the Building Contractor shall not) without:

- (a) first informing the Council of the Developer's intention to do so and the reasons for the Developer doing so; and
- (b) having regard to (but not being bound by) the Council's representations

either:

- (c) release any member of the Professional Team from their respective Appointment; nor
- (d) waive any of its rights and remedies against any member of the Professional Team

where to do so will, or may, have a materially adverse effect on the interests of the Council.

Delivery of Collateral Warranties to the Council

4.5 The Developer shall use reasonable endeavours to procure that a duly executed Collateral Warranty (together with a certified copy of the relevant Building Contract or Appointment (as the case may be)) is unconditionally delivered to the Council by the Building Contractor and each member of the Professional Team within 10 Working Days of the date on which the Building Contract or relevant Appointment (as the case may be) is completed.

Termination of the Building Contract and any Appointment

4.6 The Developer shall not (or, where the Building Contractor is actually the "employer" under the relevant Appointment, shall procure that the Building Contractor shall not) without:

- (a) first informing the Council of the Developer's intention to do so and the reasons for the Developer doing so; and
- (b) having regard to (but not being bound by) the Council's representations

terminate:

- (c) the Building Contract; or
- (d) any Appointment.

4.7 If the Building Contract or any Appointment is terminated, the Developer shall:

- (a) forthwith give notice in writing to the Council of such event; and
- (b) as soon as reasonably practicable, use its reasonable endeavours to appoint a substitute Building Contractor on no less onerous terms than the previous Building Contract; and
- (c) as soon as reasonably practicable (where the Developer is to the employer under relevant Appointment) appoint or (where the Developer is not to the employer under relevant Appointment) use reasonable endeavours to procure the appointment of the relevant member of the Professional Team on no less onerous terms than the previous Appointment.

5 WORKING PRACTICES

5.1 The Developer shall use reasonable endeavours to procure that the Building Contractor shall:

- (a) comply with:
 - (i) the requirements of the police and the local Highways Authority in respect of:
 - (A) the routes to be taken by, and the 'stacking' of, vehicles serving the Phase Works; and
 - (B) the times of use of such vehicles; and
 - (ii) the Council's reasonable written requirements provided to the Developer in respect of the parking (outside the Phase) of vehicles belonging to contractors, tradesmen and others working on or in relation to the Phase Works;
- (b) minimise noise, vibration, dust, mud and disturbance as far is reasonably practicable and keep the Phase Premises in a reasonably tidy condition (having regard to the carrying out of the Phase Works);
- (c) ensure that:
 - (i) no vehicles required in connection with the Phase Works or deliveries to, or the carrying away of any materials from, the Phase Premises park illegally; and
 - (ii) no obstruction is otherwise caused to the highways leading to and from the Phase Premises;
- (d) install in a suitable position within the Phase Premises, and maintain in good and safe working order and condition, appropriate, proper and effective wheel washing facilities, and shall use the same as necessary on all vehicles before they leave the Phase Premises;

- (e) diligently and expeditiously remove all mud, refuse and other debris emanating from the Phase Premises which is deposited on any roads, footpaths or other land or premises outside the Phase Premises;
- (f) carry out the Phase Works in such a way that as little damage as reasonably possible is caused to any roads, footpaths, service media, street furniture, land, buildings or other structures adjoining or neighbouring the Phase Premises, and shall, as soon as reasonably practicable (or immediately in case of emergency or risk to life or limb), after becoming aware of the same make good at its own expense any damage in fact caused to the Council's reasonable satisfaction;
- (g) cause the minimum amount of damage, interference and disruption as is reasonably possible to the day to day operation and use of (and shall provide continuity of adequate and safe access/egress for service and other vehicles and for pedestrians) to/from all properties adjoining or neighbouring the Phase Premises;
- (h) not pollute or contaminate any sewer, drain, river or watercourse, and shall comply with all lawful requirements of the Environment Agency or the Council or any other competent authority or body in relation thereto;
- (i) not store or place on the Phase Premises any temporary buildings, materials or plant other than those reasonably necessary for carrying out the Phase Works;
- (j) not place or store any items outside the Phase Premises without first obtaining all requisite licences, consents and approvals;
- (k) not use the Phase Premises or the hoardings and fences erected in accordance with paragraph 2(c) for the display of any advertisements, notices or signs except such as may be approved in writing by the Council (such approval not to be unreasonably withheld or delayed), and the Council may require that any such advertisement, notice or sign shall refer to the fact that the Phase Works are being carried out in conjunction with the Council;
- (l) procure that all plant, machinery and tools (including pneumatic percussion tools where permitted) shall be fitted with suitable, modern silencers or shall otherwise be properly screened and shall be shut down when not in use;
- (m) erect appropriate directional construction-related signs and other signage inside and outside the Phase Premises; and
- (n) following completion to an adoptable standard of all highways, roads, sewers and drains which form part of the Phase Works and which are intended for adoption, and until they are actually adopted, procure the lighting, cleaning, repair and maintenance of the same to an adoptable standard.

6 DEVELOPER'S (NOT COUNCIL'S) RESPONSIBILITY

6.1 The Phase Works shall be carried out at the risk of the Developer and (without limitation) the Developer shall be responsible for:

- (a) (and, if the same are charged to the Council, shall indemnify the Council against) 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 Phase Premises and the Phase Works;

- (b) the safety and security of the Phase Premises and the Phase Works; and
- (c) all health and safety matters relating to the Phase Premises and the Phase Works.

6.2 The Developer hereby agrees and acknowledges that:

- (a) all materials, goods, plant, machinery, equipment and other items belonging to the Developer or the Building Contractor or their respective servants, agents or contractors shall, as between the Council and the Developer, be the sole risk and responsibility of the Developer, and that the Council has no responsibility for the same; and
- (b) all servants, agents and contractors of the Developer and of the Building Contractor and all persons visiting the Phase Premises shall, as between the Council and the Developer, be persons for whom the Developer is solely responsible, and that the Council has no responsibility for them.

7 MEETINGS

7.1 Every month calculated from the date of this Agreement (or more frequently as either Party may reasonably require) the Council may:

- (a) convene a meeting with the Developer which will be attended by senior representatives of both Parties and such of their respective consultants as each of them may reasonably require; or
- (b) require a written progress report from the Developer

which will (in either event):

- (c) review in detail all recent and future aspects of the progress of the Development, including:
 - (i) scheme design;
 - (ii) the appointment of the Building Contractor and each member of the Professional Team; and
 - (iii) relevant time limits/targets and other programme-related matters;
- (d) identify issues which will require to be resolved prior to and/or dealt with at the next meeting/report; and
- (e) initiate action to address such issues.

7.2 If a meeting is convened as mentioned in paragraph 7.1:

- (a) the Developer shall attend at a date and time to be agreed by the Parties (acting reasonably) and shall procure the attendance at such meetings of the Building Contractor and such members of the Professional Team as either Party shall reasonably require; and

- (b) the Council will prepare a draft agenda for each meeting and deliver a copy to the Developer at least 1 Working Day prior to the date of the meeting, and shall promptly following each meeting prepare minutes of the same and deliver a copy to the Developer.

8 SITE VISITS

8.1 The Developer shall permit the Council and other persons reasonably authorised by the Council:

- (a) at their own risk; and
- (b) at all reasonable times of the day; and
- (c) on reasonable prior appointment (save in the case of emergency); and
- (d) on reporting to the Building Contractor and subject to complying with the reasonable requirements from time to time of the Building Contractor as to safety or otherwise; and
- (e) accompanied by a representative of the Developer and/or the Building Contractor if the Developer and/or the Building Contractor shall so require and if a representative shall be made available for that purpose

to enter onto the Phase Premises:

- (f) to view the progress and state of the Phase Works; and
- (g) generally for the purpose of ascertaining that the covenants on the part of the Developer in this Agreement are being duly observed and performed

but so that the persons so entering shall not interfere with the progress of the Phase Works and shall address any comments to the Developer and not to the Building Contractor or any of the Developer's other employees or consultants.

9 TERMINATION

9.1 The Council and the Developer shall each comply with their respective obligations in schedule 10.

Council is not liable for the Developer's losses

10 If this Agreement is determined in accordance with schedule 10 then, except as mentioned in schedule 10, the Council shall not be liable to the Developer for any loss of profit or any other losses, costs, damages, expenses or liabilities caused to or incurred by the Developer as a result of or arising out of such determination or otherwise.

Schedule 7

SECRET

[illegible]

[illegible]

	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>
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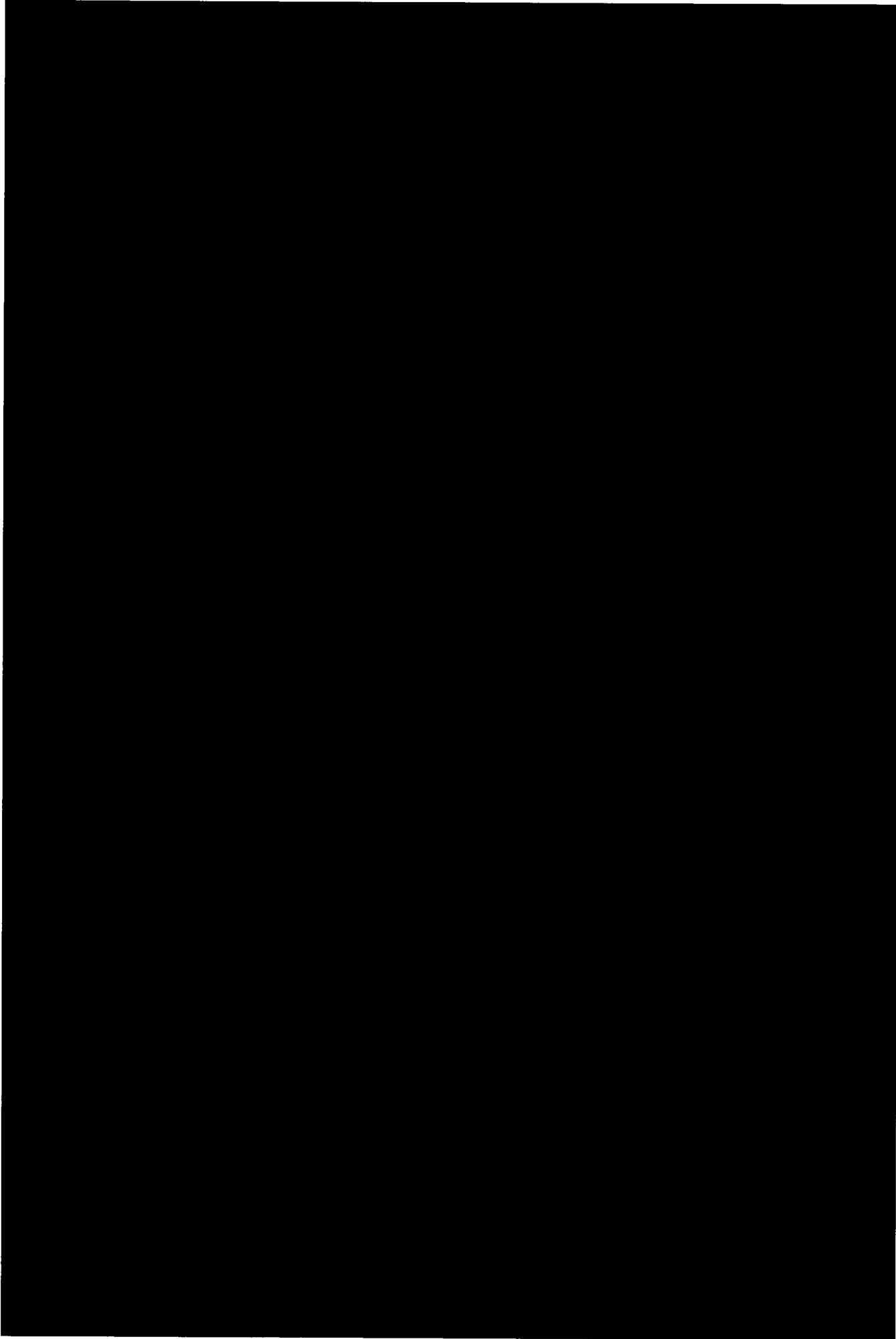
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SCHEDULE 8

Collateral Warranty

**CONSULTANCY AGREEMENT FOR [INSERT ROLE OF CONSULTANT] RELATING TO
[PROJECT] AT [SITE]
RELATING TO [PROJECT] AT [SITE]**

[WHERE THE CONSULTANT IS A DESIGN CONSULTANT]

Between

[INSERT EMPLOYER DETAILS]

and

[INSERT CONSULTANT DETAILS]

CMS Cameron McKenna Nabarro Olswang LLP

Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
F +44 20 7367 2000
cms.law

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THIS AGREEMENT is made on [●] 202[●]

BETWEEN:

- (1) **[Name of employer]** (registered in [England and Wales] with company number [●]) whose registered office is at [●] (“**Employer**”); and
- (2) **[Name of consultant]** (Registered in England and Wales with company number [●]) whose registered office is at [●] (“**Consultant**”)

BACKGROUND:

The Employer wishes to procure the execution of the Project and wishes to appoint the Consultant to provide services in connection with the Project.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement the following words and expressions shall have the following meanings unless the context requires otherwise:

“**Adequate Procedures**”: shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act);

“**Anti-Corruption Policies**”: policies and procedures of the Original Employer intended to ensure compliance with the Relevant Requirements;

“**Beneficiary**”: any person with the benefit of Beneficiary Rights by virtue of clause 14.4, clause 14.9 or clause 14.10;

“**Beneficiary Rights**”: as defined in clause 14.4;

“**Building Regulations**”: the Building Act 1984 and all relevant subordinate legislation made under such Act;

“**CDM Regulations**”: the Construction (Design and Management) Regulations 2015 and any codes of practice or regulations issued from time to time in respect hereof by any competent authority, all as may be amended, updated or replaced from time to time;

“**Construction Act**”: Part II of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;

“**Construction Contract**”: the contract or contracts executed or to be executed by the Original Employer and the Contractor for the execution of the Project which is intended to be in the form referred to in Schedule 1 and to incorporate such further amendments as the Original Employer and the Contractor agree;

“**Contractor**”: the contractor for the time being appointed by the Original Employer in connection with the Project or, each of them, if more than one;

“**Council**”: THE LONDON BOROUGH OF BARKING AND DAGENHAM of Barking Town Hall, Town Hall Square, Barking, G11 7LU

“**Documents**”: all plans, drawings, details, calculations, specifications, schedules, reports and other documents (and the designs contained within them) prepared and/or provided from time to time by or on behalf of the Consultant for the Project;

“**Employer’s Agent**”: as set out in Schedule 1;

“Fee”: as set out in Schedule 3;

“Funder”: any Pre-Notified Beneficiary, bank, financial institution or other person providing finance to the Original Employer and/or a Purchaser in relation to the Site and/or the Works;

“Funding Agreement”: any agreement entered into or to be entered into by the Original Employer with a Funder;

“Gross Internal Area”: the gross internal area measured in accordance with the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers Code of Measuring Practice (Sixth Edition);]

“Group Company”: in relation to a company, any Holding Company or Subsidiary from time to time of that company, and any Subsidiary from time to time of a Holding Company of that company;

“Holding Company” and **“Subsidiary”**: respectively, a **“holding company”** and **“subsidiary”** as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that (a) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members’ rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership, and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;

“Key Personnel”: the key personnel set out in Schedule 1;

“Lease Agreement”: any agreement entered into or to be entered into by the Original Employer with a Tenant;

“Original Employer”: [[insert name of original employer] (registered in England and Wales with company number [●])];

“Original Employer’s Solicitors”: CMS Cameron McKenna Nabarro Olswang LLP (registered in England with company number OC343050) of Cannon Place, 78 Cannon Street, London EC4N 6AF or such other firm of solicitors as may be appointed by the Original Employer from time to time;

“Pay Less Notice”: a notice pursuant to section 111 of the Construction Act;

“Payment Notice”: a notice pursuant to section 110 of the Construction Act;

“Practical Completion”: the date of issue of the Practical Completion Certificate under the Construction Contract or, if the Works under the Construction Contract are to be carried out in Sections, the date of issue of the Section Completion Certificate of the last Section of the Works in time to complete;

“Pre-Notified Beneficiaries”: the person or persons set out below:

[insert name, company number and registered office address (a [Funder][Purchaser][Tenant])]

(For the avoidance of doubt, a Pre-Notified Beneficiary may be a Funder, Purchaser or a Tenant);

“Principal Person”: the member of the Key Personnel named as the Principal Person;

“Professional Team”: the consultants appointed by the Original Employer (whether or not novated to the Contractor) to undertake design and other functions in connection with the

Project including those listed and individually defined in Schedule 1 (or any replacement thereof);

“Programme”: the master programme for the Project produced by or on behalf of the Original Employer including any variation to such programme from time to time;

“Prohibited Materials”: any good, product, substance and/or material that is not in conformity with any relevant British or European Standards or Codes of Practice or which is generally known in the United Kingdom construction industry to be deleterious to health and safety or durability in the particular circumstances in which it is used or which is not used in accordance with the guidance contained in the “Good Practice in the Selection of Construction Materials” (2011) publication by the British Council for Offices;

“Project”: the project defined in Schedule 1;

“Purchase Agreement”: any agreement entered into or to be entered into by the Original Employer with a Purchaser;

“Purchaser”: any Pre-Notified Beneficiary or any other person having or acquiring a first freehold or first long leasehold interest in the Site and/or the Works or each part thereof whether before or after completion of the Project;

“Relevant Requirements”: has the meaning set out in clause 13.1.1;

“Scheme”: The Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011;

“Section”: has the meaning given to it under the Construction Contract;

“Services”: the services described in or referred to in Schedule 2 and any additional services instructed under clause 3.2;

“Site”: the land or property defined in Schedule 1;

“Statutory Requirements”: any Act of Parliament, European Community laws or European Directives, codes of practice, any regulations, consents and bye-laws of any local authority or statutory undertaker which has any jurisdiction with regard to the Project or to the Works or with whose systems the Works or part of the Works are or will be connected or any other requirements affecting the Project and/or the Site and/or the Works;

“Sub-Contractor”: any sub-contractor engaged by the Contractor for the design and/or execution of any part of the Works;

“Sustainability Standard”: [all of] the following:

- (a) a rating of not less than [“Very Good”][“Excellent”][“Outstanding”] under the edition of the Building Research Establishment’s BRE Environmental Assessment Method [BREEAM New Construction][BREEAM In-Use][BREEAM Refurbishment] current as at the date of this agreement[;]; and]
- (b) an Energy Performance Certificate rating of not less than [“A”];

“Target Area Requirements”: [the requirements in respect of target areas and/or critical dimensions as set out in any Lease Agreement entered into before the date of this agreement or which the Original Employer or the Contractor has brought to the attention of the Consultant in sufficient time to enable the Consultant to perform its obligations so as to see that the Original

Employer is not in breach of its obligations to the Tenant under such Lease Agreement [the following Gross Internal Areas and/or critical dimensions:];

“Tenant”: any Pre-Notified Beneficiary or any other person having or acquiring a first leasehold interest in the Site and/or the Works or each part thereof (but excluding a Purchaser);

“Third Party Agreement”: any Funding Agreement, Lease Agreement, Purchase Agreement, planning permission, section 106 agreement, section 278 agreement, section 38 agreement and/or other document which the Original Employer or the Contractor has brought to the attention of the Consultant in sufficient time to enable the Consultant to comply with the same;

“VAT”: value added tax chargeable under the Value Added Tax Act 1994; and

“Works”: has the meaning given to it under the Construction Contract.

1.2 In this agreement (except where the context otherwise requires):

- 1.2.1 any reference to a recital, clause or schedule is to the relevant recital, clause or schedule of or to this agreement and any reference to a clause, sub-clause or paragraph is to the relevant clause, sub-clause or paragraph of the clause or schedule in which it appears;
- 1.2.2 clause, schedule and paragraph headings shall not affect the interpretation of this agreement;
- 1.2.3 a reference to any Pre-Notified Beneficiary, any other Beneficiary or any party shall include that person’s personal representatives, successors and permitted assigns (but not so as to permit more than the number of assignments provided for under the terms of this agreement);
- 1.2.4 words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.5 a reference to one gender shall include a reference to the other genders;
- 1.2.6 any reference to “persons” includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, governmental or state agencies, foundations and trusts (in each case whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- 1.2.7 a reference to “this agreement” or to any other agreement or document referred to in this agreement is a reference to this agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time;
- 1.2.8 if a period of time is specified and dates from a given day or the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.9 a reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute as amended from time to time;
- 1.2.10 any obligation on a party not to do something includes an obligation not to allow that thing to be done;

- 1.2.11 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 The schedules and recitals form an integral part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules and recitals.
2. **DURATION OF APPOINTMENT**
- 2.1 The appointment of the Consultant shall commence from the date of this agreement or from the time when the Consultant shall have begun to perform the Services (whichever is the earlier) and this agreement shall be deemed to apply to the performance of the Services from the date of commencement of the Consultant’s appointment.
3. **SERVICES**
- 3.1 Subject to clause 4.2, the Consultant shall provide the Services.
- 3.2 If requested the Consultant shall (subject to additional payment in accordance with Schedule 3) carry out such additional services as the Employer may from time to time reasonably require in writing.
4. **STANDARD OF CARE**
- 4.1 The Consultant shall in performing the Services and its duties under this agreement comply with all Statutory Requirements insofar as the same relate to the Services.
- 4.2 Without prejudice to the generality of clause 4.1, in performing the Services under this agreement the Consultant has exercised and shall exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the Consultant’s profession experienced in performing such services for projects of a similar size, scope and complexity to the Project and subject to the foregoing shall:
- 4.2.1 have regard to, comply with and carry out the Services at such times and in a manner so that no act, omission or default of the Consultant shall constitute, cause or contribute to any breach by the Original Employer or the Contractor of its obligations under any Third Party Agreement;
- 4.2.2 comply with all reasonable and lawful instructions and directions given to it by the Employer;
- 4.2.3 have regard to, comply with and carry out the Services to see that the Sustainability Standard is met;
- 4.2.4 perform its obligations under this agreement so as to see that all Target Area Requirements are met;
- 4.2.5 ensure that the design of all elements of the Project for which the Consultant is responsible complies with all the requirements of the Original Employer notified to the Consultant in respect of the Project;
- 4.2.6 perform its duties, undertake its responsibilities and comply with its obligations pursuant to the CDM Regulations; and

- 4.2.7 allocate adequate resources to enable it to comply with its obligations pursuant to the CDM Regulations and co-operate with the other members of the Professional Team, the Contractor and the Sub-Contractors so far as is necessary to assist each party to comply with its respective obligations under the CDM Regulations.

5. PROGRAMMING AND CO-ORDINATION

- 5.1 The Consultant shall perform the Services and its obligations under this agreement at such times as shall be appropriate having regard to the Programme and shall at all times keep the Employer fully and properly informed on all aspects of the progress and performance of the Services.
- 5.2 The Consultant shall immediately draw the attention of the Employer and the other members of the Professional Team to any circumstances encountered or foreseen by the Consultant which the Consultant is aware might impair the efficient planning, programming, execution or completion of the Project and/or affect health and safety or undermine prevailing cost estimates.
- 5.3 The Consultant shall at all times perform the Services in co-operation with the Original Employer, the Contractor and the other members of the Professional Team and their respective representatives, officers, agents and employees and shall in particular produce any information necessary for the co-ordination of the design for which the Consultant is responsible with any design prepared by any such other members of the Professional Team.
- 5.4 Where any part of the Works associated with the Consultant's discipline is with the Employer's approval or at its request designed by any other member or members of the Professional Team and/or the Contractor and/or any Sub-Contractor the Consultant shall be responsible for the provision of clear performance specifications to such other member(s) of the Professional Team, the Contractor and/or Sub-Contractor(s) and for checking such design using the skill, care and diligence required by clause 4.2 and shall co-ordinate and integrate such design work with the design of the Works relating to the Consultant's discipline.

6. MATERIALS

- 6.1 Without prejudice to the generality of clause 4.2, the Consultant warrants to the Employer that it has not specified and will not specify for use in the Works any Prohibited Materials. The Consultant shall immediately give notice to the Employer if it becomes aware at any time that any Prohibited Materials have been used or are to be used in the Project and/or the Works.
- 6.2 The Consultant may suggest to the Employer economically viable changes to the Works which may result in the improvement of environment performance in the carrying out of the Works or of the completed Project. The Consultant shall provide the Employer with all reasonable information requested regarding the environmental impact of the supply and use of any materials, substances and goods selected by the Consultant.

7. PERSONNEL

- 7.1 The Consultant shall procure that the Principal Person shall be responsible for the overall provision, management and co-ordination of the Services and that there will be no change of responsibility without the prior written agreement of the Employer.
- 7.2 Without prejudice to clause 7.1 the Consultant shall procure that the Key Personnel are engaged in the performance of the Services and that there will be no change of responsibility in respect of any of them unless the Employer has given its prior written agreement to any proposed

replacement (such agreement not to be unreasonably withheld or delayed) or a member of the Key Personnel no longer remains in the Consultant's employment.

- 7.3 The Consultant shall provide such other personnel of appropriate ability and experience as may be required for the performance of the Services.
- 7.4 The Consultant shall make sufficient visits to the Site as are required for the proper performance of the Services and generally use reasonable endeavours to assist the proper execution and completion of the Project in accordance with the terms of the Construction Contract (to the extent that the Construction Contract has been disclosed to the Consultant). For the avoidance of doubt, the Fee is inclusive of all such Site visits.
- 7.5 The Employer may request the removal of any person engaged by the Consultant in the performance of the Services if in the Employer's reasonable opinion such person's performance or conduct is or has been unsatisfactory and the Consultant shall promptly remove such person and if in the Employer's reasonable opinion a replacement is necessary or appropriate shall replace such person with a competent and suitably qualified person who shall have been previously approved in writing by the Employer (such approval not to be unreasonably withheld or delayed).

8. AUTHORITY OF CONSULTANT

- 8.1 Save as expressly set out in the Services, the Consultant shall not have any express or implied authority to act on the Employer's behalf or to bind or commit the Employer in any way whatsoever without first obtaining the written consent of the Employer.
- 8.2 The Consultant shall not make any alteration to or omission from the design as approved or agreed with the Employer nor, except in an emergency, shall it issue any instruction or give any approval or do any other thing which would or might materially increase the cost of executing and completing the Project or affect the Programme without first obtaining the prior written approval of the Employer's Agent.

9. REPORTING AND RECORDS

- 9.1 The Consultant shall in the performance of the Services act on instructions only from the Employer and if the Consultant acts on an instruction from any other person it shall do so entirely at its own risk and cost and the Employer shall have no liability in relation thereto.
- 9.2 The Consultant shall procure that the Principal Person (or its approved representative) attends site meetings and progress meetings at such location and at such times as the Employer shall reasonably decide to report on and discuss the progress of the Project and/or the Works.
- 9.3 The Consultant shall retain all correspondence originating from the Consultant or addressed to it relating to the Project for as long as the Consultant may have any liability under this agreement but not less than (i) 12 years from Practical Completion or (ii) 12 years from the date of the termination of the Consultant's employment under this agreement, whichever is the earlier.

10. REMUNERATION

- 10.1 Subject to the performance of the Services in accordance with this agreement the Employer shall pay the Fee to the Consultant in accordance with Schedule 3.

11. DOCUMENTS AND COPYRIGHT

- 11.1 Copyright in the Documents prepared by the Consultant shall be retained by the Consultant but the Consultant hereby grants to the Employer a worldwide, royalty-free, perpetual, irrevocable and non-exclusive licence to copy and use all or any such Documents and to reproduce the same for any purpose whatsoever relating to the Project and/or the Site (other than the reproduction of the designs contained in any Documents for any extension of the Works). Such licence shall be assignable and shall include the right to grant sub-licences.
- 11.2 The Consultant shall not be liable to the Employer for any use of the Documents for any purpose other than those for which the same are or were prepared and/or provided.
- 11.3 The Consultant shall (if so requested by the Employer at any time) give the Employer access to and/or provide copies of all or any of the Documents referred to in clause 11.1, provided that the Employer shall be responsible for the Consultant's reasonable copying costs.
- 11.4 The Consultant hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part I of the Copyright, Designs and Patents Act 1988 in relation to the Project or any part thereof or to any of the Documents.
- 11.5 The Consultant warrants to the Employer that it has copyright in the Documents and/or an irrevocable licence to use the copyright in the Documents (such licence including the right to grant sub-licences on the terms set out in clause 11.1) and that the use of the Documents for the purposes of the Project will not infringe the rights of any third party.
- 11.6 Without prejudice to clause 11.5, if the Consultant does not have either copyright in the Documents or an irrevocable licence to use such copyright in the form set out in clause 11.5 it shall obtain such copyright or copyright licence in favour of the Employer.

12. CONFIDENTIALITY

- 12.1 Subject to clause 12.2, the Consultant shall not without the Employer's prior written approval:
- 12.1.1 disclose to any person (other than its legal and insurance advisers and auditors) or otherwise make use of any confidential information (including without limitation the contents of any Third Party Agreements) relating to the Employer, the Site, the Project or otherwise;
 - 12.1.2 take or authorise the taking of any photographs of the Site, the Project and/or the Works for use in any publicity or advertising;
 - 12.1.3 publish alone or in conjunction with others any articles, photographs or other illustrations relating to the Site, the Project and/or the Works or any part thereof; or
 - 12.1.4 Disclose to any publication, journal, newspaper, film or any radio or television programme any information relating to the Site, the Project and/or the Works.
- 12.2 Clauses 12.1.1 and 12.1.4 shall not apply to the extent that the information:
- 12.2.1 is generally available to the public (other than as a result of its disclosure by the Consultant or its persons in breach of clause 12.1); or
 - 12.2.2 has previously been confirmed in writing by the Employer as (i) not being confidential and/or (ii) capable of being publicly disclosed by the Consultant; or
 - 12.2.3 Is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction to be disclosed by the Consultant provided

that, to the extent it is legally permitted to do so, the Consultant gives the Employer as much notice of such disclosure as possible.

- 12.3 The provisions of this clause 12 shall survive termination of the Consultant's engagement under this agreement but shall lapse following any novation of this agreement under clause 14.7

13. **ANTI-CORRUPTION COMPLIANCE**

- 13.1 The Consultant warrants to the Employer that the Consultant, its employees, agents, sub-consultants or sub-contractors shall:

13.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

13.1.2 not engage in or tolerate any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

13.1.3 have and maintain in place throughout the duration of this agreement its own policies and procedures including but not limited to Adequate Procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements and clause 13.1.2 and enforce them where appropriate; and

13.1.4 Promptly report to the Employer any request or demand for any undue financial or other advantage of any kind received by the Consultant or its persons in connection with the performance of this agreement.

- 13.2 The Consultant shall comply, and shall procure compliance by its employees, agents and sub-contractors, with any Anti-Corruption Policies implemented by the Original Employer and made known to the Consultant.

- 13.3 The Consultant shall provide, or procure the provision of, such documentation or other information as the Employer may from time to time request to satisfy itself that the Consultant has complied with its obligations under this clause 13.

- 13.4 The provisions of this clause 13 shall survive termination of the Consultant's engagement under this agreement.

14. **ASSIGNMENT, THIRD PARTY RIGHTS AND NOVATION**

- 14.1 The Employer may assign its entire benefit under this agreement and such assignee may then assign such benefit under this agreement in each case by way of absolute legal assignment without the consent of the Consultant being required. Subject to clause 14.2, any assignments additional to those provided by this clause shall only be permitted with the consent of the Consultant.

- 14.2 The Employer's benefit under this agreement may be assigned:

14.2.1 by way of security and/or by way of re-assignment on redemption by or to the Employer; and/or

14.2.2 to any Group Company of the Employer;

Which assignment(s) shall not count as an assignment for the purposes of clause 14.1

- 14.3 The Consultant agrees not to contend or argue that any person to whom the benefit of this agreement is assigned in accordance with clause 14.1 or clause 14.2 is precluded from recovering any loss or damage resulting from any breach of this agreement by the Consultant by reason of the fact that such person is an assignee only or otherwise not the Original Employer or because the loss or damage suffered has been suffered by such party only and not by the Original Employer.
- 14.4 Subject to clause 14.10, the Council any Funder, Purchaser or Tenant specified in a notice served on the Consultant by the Original Employer (or by the Original Employer's Solicitors) in substantially the form set out in Schedule 5 shall be entitled to the benefit of and/or to enforce in its own right the rights set out in Schedule 4 ("Beneficiary Rights").
- 14.5 The Employer and the Consultant may agree to vary the Services and/or the Fee without the consent of any Beneficiary but may not otherwise vary any terms of this agreement or novate this agreement (other than as set out in clause 14.7) without the consent of all Beneficiaries.
- 14.6 Where it is a requirement of any Third Party Agreement or where any Beneficiary requests a collateral warranty rather than a right pursuant to this clause 14, the Consultant shall upon written request by the Employer execute as a deed and deliver to the Employer within 14 days collateral warranties on terms equivalent to those set out in Schedule 4 Part 2.
- 14.7 The Consultant shall within 14 days of a request to do so by the Original Employer execute and deliver a novation agreement in the form attached in Schedule 6 to novate this agreement from the Original Employer and the Consultant to the Contractor and the Consultant. Following any such novation of this agreement, the Consultant shall at all times have regard to the obligations of the Contractor under the Construction Contract and shall carry out the Services at such times and in a manner so that no act, omission or default of the Consultant shall constitute, cause or contribute to any breach by the Contractor of its obligations under the Construction Contract.
- 14.8 If the Consultant defaults in the execution and delivery of any novation agreement required under clause 14.7, in addition to any other right which the Employer may have, the Employer may suspend payment of any sum due to the Consultant under this agreement until the Consultant has remedied its default.
- 14.9 Upon any novation of this agreement pursuant to clause 14.7, the Original Employer shall immediately be entitled to the benefit of and/or to enforce in its own right the Beneficiary Rights.
- 14.10 From the date of this agreement, each Pre-Notified Beneficiary shall be entitled to the benefit of and/or to enforce in its own right the Beneficiary Rights.

15. **INSURANCE**

- 15.1 The Consultant confirms that it maintains and shall maintain professional indemnity insurance with an insurer or underwriter covering the Consultant's obligations under this agreement on the basis and with a limit of indemnity of not less than the amount stated in Schedule 1 until 12 years from Practical Completion (or 12 years from the date of termination of the Consultant's engagement under this agreement, whichever is earlier) provided such insurance remains generally available to members of the Consultant's profession in the United Kingdom insurance market at commercially reasonable rates and terms.
- 15.2 The Consultant shall notify the Employer immediately if such insurance ceases to be available and shall co-operate with the Employer to discuss the best means of protecting their respective interests in such circumstances and shall at the Employer's option maintain such insurance

above commercially reasonable rates if the Employer reimburses the Consultant in respect of the net cost of such insurance above commercially reasonable rates or again at the Employer's option the Consultant shall obtain in respect of any relevant period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.

- 15.3 If the Consultant fails to maintain professional indemnity insurance in accordance with this clause 15 and fails to remedy such default within 14 days of a written request from the Employer then in addition to any other right which the Employer may have the Employer may procure such insurance cover as may be available to provide alternative equivalent protection and to recover as a debt the cost of maintaining such insurance for the Consultant.
- 15.4 The Consultant shall as and when reasonably required by the Employer provide satisfactory documentary evidence by way of a broker's letter or certificate or equivalent to the Employer that the insurance referred to in this clause is being maintained.

16. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER

- 16.1 The Consultant's engagement under this agreement may be terminated by the Employer forthwith:

16.1.1 if the Consultant fails to comply with any of the provisions of this agreement and fails to rectify such non-compliance within 14 days of written notice from the Employer requiring rectification; or

16.1.2 if:

16.1.2.1 the Consultant suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay his or her debts or has having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

16.1.2.2 the Consultant commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of the Consultant with one or more other companies or the solvent reconstruction of the Consultant; or

16.1.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Consultant (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Consultant with one or more other companies or the solvent reconstruction of the Consultant; or

16.1.2.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Consultant (being a company); or

- 16.1.2.5 the holder of a qualifying floating charge over the assets of the Consultant (being a company) has become entitled to appoint or has appointed an administrative receiver; or
 - 16.1.2.6 a person becomes entitled to appoint a receiver over the assets of the Consultant or a receiver is appointed over the assets of the Consultant; or
 - 16.1.2.7 the Consultant (being a partnership) is dissolved; or
 - 16.1.2.8 the Consultant (being an individual) is the subject of a bankruptcy petition or order, or (being a partnership) has any partner to whom the foregoing applies; or
 - 16.1.2.9 a creditor or encumbrancer of the Consultant attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Consultant's assets and such attachment or process is not discharged within 14 days; or
 - 16.1.2.10 any event occurs, or proceeding is taken, with respect to the Consultant in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this sub-clause 16.1.2.2; or
 - 16.1.2.11 the Consultant suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business the Consultant shall cease for any reason to be or the Consultant ceases, or threatens to cease, to remain liable for its obligations contained in or arising from this agreement; or
 - 16.1.2.12 the Consultant (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
 - 16.1.2.13 There is a change of control of the Consultant (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 16.2 Without prejudice to clause 16.1 the Employer may by giving 14 days' written notice to the Consultant:
- 16.2.1 terminate the Consultant's engagement under this agreement; or
 - 16.2.2 omit or reduce all or any part or parts of the Services to be performed by the Consultant
17. **SUSPENSION**
- 17.1 The Employer shall be entitled to suspend the Services or any part thereof by written notice to the Consultant.
 - 17.2 Upon any suspension of the Services the Consultant's fee entitlement shall be as provided for in clause 18.3
 - 17.3 If a suspension of the Services lasts more than 6 months the Consultant may make a written request for the Services to be resumed and if no such instruction to resume is given within 28 days after such request the Consultant may terminate its engagement under this agreement by written notice to the Employer.

18. OBLIGATIONS FOLLOWING TERMINATION/SUSPENSION OF THE SERVICES

- 18.1 Upon any suspension under clause 17.1 or termination of its engagement under this agreement or the Consultant shall take immediate steps to bring to an end the performance of the Services in an orderly manner but with all reasonable speed and economy and shall deliver to the Employer the Documents (whether completed or in the course of preparation) together with all correspondence and documentation in the possession of or under the control of the Consultant relating to the Services (provided that the Consultant may, at its own expense, retain a copy of all or any such correspondence and documentation for its own records).
- 18.2 If the Consultant's engagement is terminated for any of the reasons set out in clause 16.1 then the Employer shall not be bound to make any further payment to the Consultant and any sums reasonably incurred by the Employer in obtaining the completion of the Services by another party above the amount which the Employer would have incurred if the Consultant had properly performed its obligations under this agreement shall be recoverable by the Employer from the Consultant as a debt.
- 18.3 In the event of any termination of the Consultant's engagement for any reason other than those set out in clause 16.1 or upon any suspension of the Services the Consultant will be entitled to a fair proportion of the Fee for any of the Services properly performed up to and including the date of the termination or suspension having regard to the instalment schedule set out in Schedule 3 and the payments already made to the Consultant under this agreement.
- 18.4 Upon any termination of the Consultant's engagement howsoever arising and/or upon any suspension of the Services the Employer shall not be liable to the Consultant for any loss of profit, loss of contract or any other losses and/or expenses of whatsoever nature arising out of or in connection with such termination or suspension.
- 18.5 Any termination of the Consultant's engagement shall be without prejudice to the accrued rights and remedies of either party in respect of any act omission or default of the other prior to such termination.
- 18.6 The provisions of this agreement shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

19. NOTICES

- 19.1 Any notice given under this agreement shall be in writing and be served either by hand delivering it or sending it by prepaid recorded or special delivery post or facsimile to the address of the party contained in this agreement and for the attention of the relevant party set out in Schedule 1 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:
- 19.1.1 at the time of delivery if hand delivered or sent by prepaid recorded or special delivery post;
- 19.1.2 At the time of transmission if sent by facsimile.
- 19.2 For the avoidance of doubt, the parties agree that the provisions of this clause shall not apply in relation to the service of any process in any legal action or proceedings arising out of or in connection with this agreement.

20. SUB-CONTRACTING

- 20.1 The Consultant shall not assign or transfer any of its rights or obligations under this agreement or sub-contract any part of the Services without the Employer's prior written consent.
- 20.2 The Consultant shall remain liable to the Employer for the performance of the Services if any of the Services are sub-contracted by the Consultant to others as provided for in clause 20.1

21. ENTIRE AGREEMENT

- 21.1 This agreement constitutes the entire agreement between the Consultant and the Employer and supersedes any previous agreement between the Consultant and the Employer relating to the Project.
- 21.2 No variation in the terms of this agreement shall be valid or enforceable unless in writing and signed on behalf of the Employer and the Consultant.
- 21.3 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

22. LIABILITY AND LIMITATION

- 22.1 The liability of the Consultant under this agreement shall not be modified, released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Employer nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Employer of any independent firm, company or party whatsoever to review the progress of or otherwise report to the Employer in respect of the Project nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Employer.
- 22.2 No proceedings in respect of the Consultant's liability under this agreement may be commenced following the expiry of (i) 12 years from Practical Completion or (ii) 12 years from the date of the termination of the Consultant's employment under this agreement, whichever is the earlier.

23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 23.1 Save as set out in clause 14 and in Schedule 4, this agreement is not intended to confer any rights on any person who is not a party to it.

24. DISPUTES

- 24.1 Without prejudice to the right of either party to refer any dispute or difference to adjudication under the Construction Act or litigation at any time, the parties may seek to avoid or resolve any dispute or difference by direct, good faith negotiations between senior executives from each party.
- 24.2 Any adjudication under the Construction Act shall be governed by the Scheme but subject to the following:
- 24.2.1 the adjudicator to decide the dispute or difference shall be either an individual agreed by the Employer and the Consultant or on the application of either party an individual to be nominated as the adjudicator by the President or a Vice-President of the Royal Institution of Chartered Surveyors;

- 24.2.2 the adjudicator shall have power to determine more than one dispute at the same time and (if required to do so by the respondent to any reference) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as it determines any dispute referred to it;
- 24.2.3 At the same time as it gives any decision the adjudicator shall give reasons for the decision in writing.
- 24.3 If any dispute being referred to adjudication under this agreement raises issues which are substantially the same as or connected with issues raised in a dispute or difference arising between the Employer and any other member of the Professional Team and/or the Contractor and if such other dispute has already been referred for determination (pursuant to any such contract) then at the Employer's request the parties shall (wherever practicable and subject to the consent of the relevant adjudicator being obtained and the adjudicator being independent of all of the parties) refer the dispute or difference under this agreement to the same adjudicator for a decision with a view to the two references being consolidated.
- 24.4 Neither the Employer nor the Consultant shall (except in the proper course of disclosure to their professional advisers and insurers) for any reason disclose to any person and shall at all times treat as confidential any intention to refer any dispute to adjudication under this agreement or any information relating to any dispute which has been referred to adjudication under this agreement.
25. **LAW AND JURISDICTION**
- 25.1 The Employer and the Consultant hereby agree that any and all disputes as to the construction, interpretation, validity and application of this agreement and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with the law of England.
- 25.2 Save in relation to any enforcement proceedings, the Employer and the Consultant irrevocably submit to the exclusive jurisdiction of the English courts over any claim, dispute or matter arising under or in connection with this agreement.

[DELETE CLAUSE 26 BELOW IF CONSULTANT IS NOT A PARTNERSHIP]

26. **[PARTNERSHIP]**

- 26.1 The partners of the Consultant executing this agreement jointly and severally warrant that in doing so they have power to bind all the partners of the Consultant jointly and severally and agree that all warranties, covenants and provisions herein contained shall be deemed to have been made by and on behalf of all existing and future partners of the Consultant jointly and severally.
- 26.2 The partners of the Consultant are listed in schedule 7.]

IN WITNESS whereof this agreement has been executed and delivered as a deed the day and year first before written

SCHEDULE 1 PROJECT PARTICULARS

1. THE SITE

[●]

2. THE PROJECT

The design, carrying out and completion of [●]

3. THE FORM OF CONSTRUCTION CONTRACT

[JCT Design and Build Contract 2016 Edition] with bespoke amendments

4. THE PROFESSIONAL TEAM

Architect [●]

Principal Designer [●]

Civil and Structural Engineer [●]

Employer's Agent [●]

Mechanical and Electrical Engineer [●]

[insert any others]

5. THE KEY PERSONNEL

Principal Person: [●]

[●]

6. THE PROFESSIONAL INDEMNITY INSURANCE AMOUNT

£[5],000,000 ([five] million pounds sterling) for each and every claim annually until (i) 12 years from the date of Practical Completion of the Works or (ii) 12 years from the date of termination of the Consultant's employment under this agreement, whichever is the earlier

7. NOTICES

Details of persons for the service of notices:

Consultant: [●]

Employer: [●]

[End of schedule 1]

**SCHEDULE 2
SERVICES**

[End of schedule 2]

SCHEDULE 3**FEE**

1. The Fee, excluding any additional fee for any additional services instructed pursuant to clause 3.2, is the fixed lump sum of £[●].
2. The Fee shall include all disbursements, expenses and overheads of every kind incurred by the Consultant (other than planning and building regulation fees, which shall be reimbursed after the Consultant has disbursed them, and any copying charges incurred pursuant to clause 11.3) but shall be exclusive of VAT and shall be payable in accordance with the following payment schedule:
[●]
3. In relation to each instalment identified in paragraph 2 the Consultant shall submit to the Employer an invoice by the date identified as the payment due date in respect of sums due to the Consultant under this agreement in such form and with such supporting documentation as the Employer may reasonably require. The payment due date for each instalment shall be 10 days from the date identified in paragraph 2 or if later the date of receipt by the Employer of the Consultant's invoice in accordance with this paragraph 3
4. The final date for payment shall be 28 days following the payment due date of the relevant instalment.
5. Within 5 days after the date on which any payment becomes due to the Consultant under this agreement the Employer shall give a Payment Notice to the Consultant specifying the amount of the payment which it proposes to make in relation to the Consultant's invoice and the basis on which that amount is calculated. Subject always to paragraph 9, if the Employer does not issue a Payment Notice as required under this paragraph 5, the amount due shall be the amount stated in the Consultant's invoice issued pursuant to paragraph 3 (which invoice shall be deemed to be the Payment Notice for the purposes of paragraph 6.
6. At least 5 days prior to the final date for payment of any instalment under this agreement the Employer may give to the Consultant a Pay Less Notice indicating any intention to pay less than the sum stated as due in the Payment Notice. A Pay Less Notice shall specify both the sum the Employer considers to be due to the Consultant at the date the Pay Less Notice is given and the basis on which that sum has been calculated.
7. If any payment due under this agreement is not paid by the final date for payment referred to in paragraph 4 and no notice is given under paragraph 6 the Consultant shall be entitled to suspend performance of all or part of its obligations hereunder by giving not less than 7 days' notice to the Employer stating the ground or grounds on which it intends to suspend performance and identifying each of the obligations it intends to suspend. The right to suspend performance shall cease when the Employer makes payment in full of the amount properly due and any period during which performance is validly suspended pursuant to this paragraph 7 shall be disregarded in computing the time taken by the Consultant to complete any of the Services affected by the suspension. The Consultant shall have no claim against the Employer for any loss of profit, loss of contract or any other losses and/or expenses of whatever nature arising out of any suspension of all or part of its obligations under this agreement save for any claim for a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of any such suspension of all or part of its obligations.

8. Upon presentation of a valid VAT invoice the Employer shall pay to the Consultant the total amount of VAT properly chargeable by the Consultant on the supply to the Employer of the Services.
9. The Employer need not pay any sum due if the Consultant after the last date upon which the Pay Less Notice could have been given by the Employer in respect of that sum becomes insolvent, within the meaning of Sections 113(2) – (5) of the Construction Act.
10. If the Employer brings to an end any part or parts of the Services pursuant to clause 16.2 or 16.2.2 the Employer shall be entitled to make a corresponding adjustment to the Fee and the Consultant's entitlement to payment under this agreement shall be limited to a fair proportion of the Fee having regard to the Services which have been omitted or reduced pursuant to an instruction under clause 16.2 or 16.2.2. The Consultant shall have no claim against the Employer for any loss of profit, loss of contract or any other losses and/or expenses of whatever nature arising out of an instruction to omit or reduce any of the Services.
11. If the Employer requests the Consultant to carry out further Services pursuant to clause 3.2 of this agreement (or in any case where this agreement provides for an additional fee to be paid to the Consultant) the Employer will pay to the Consultant such additional fee as may be agreed between the parties and as may be authorised in writing by the Employer before such further services are commenced. The Employer shall not be responsible for any fees or expenses in respect of such additional services which have not been authorised or accepted in writing by the Employer.
12. In no circumstances shall the Consultant's entitlement to payment for each stage exceed the percentage of the Fee allocated to such stage in the instalment schedule. In the event that commencement of a stage is delayed for any reason, the instalment schedule for that stage shall be adjusted accordingly to commence following actual commencement of that stage. Without prejudice to the foregoing in the event that the Project is delayed at any time the instalment schedule may be adjusted by agreement between the Employer and the Consultant.

[End of schedule 3]

SCHEDULE 4
PART 1 - BENEFICIARY RIGHTS (CLAUSE 14.4)

1. DUTY OF CARE

- 1.1 The Consultant warrants and undertakes to the Beneficiary that it has performed and will continue to perform all of its obligations under this agreement in accordance with all the terms and conditions thereof.
- 1.2 The Consultant shall immediately give notice to the Beneficiary if it becomes aware at any time that any Prohibited Materials have been used or are to be used in the Project and/or the Works.

2. DOCUMENTS AND COPYRIGHT

- 2.1 The Consultant hereby grants to the Beneficiary a royalty-free, irrevocable and non-exclusive licence to copy and use all or any of the Documents prepared by it and to reproduce the same for any purpose whatsoever relating to the Project and/or the Site (other than the reproduction of the designs contained in such Documents for any extension of the Works). Such licence shall be assignable and shall include the right to grant sub-licences.
- 2.2 The Consultant shall not be liable to the Beneficiary for any use of the Documents for any purpose other than those for which the same are or were prepared and/or provided.
- 2.3 The Consultant shall (if so requested by the Beneficiary any time) give the Beneficiary (as the case may be) access to and/or provide copies of all or any of the Documents referred to in paragraph 2.1 subject to the Beneficiary confirming to the Consultant that it agrees to be responsible for the Consultant's reasonable copying costs.
- 2.4 The Consultant warrants to the Beneficiary that it has copyright in the Documents and/or an irrevocable licence to use the copyright in the Documents (such licence including the right to grant sub-licences on the terms set out in paragraph 2.1) and that the use of the Documents for the purposes of the Project will not infringe the rights of any third party.
- 2.5 Without prejudice to paragraph 2.3, if the Consultant does not have either copyright in the Documents or an irrevocable licence to use such copyright in the form set out in paragraph 2.4 it shall obtain such copyright or copyright licence in favour of the Beneficiary.

3. PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Consultant shall notify the Beneficiary immediately if insurance under clause 15.1 of this agreement ceases to be available and shall co-operate with the Beneficiary to discuss the best means of protecting the Consultant and the Beneficiary's respective interests in such circumstances and shall at the Beneficiary's option maintain such insurance above commercially reasonable rates if the Beneficiary reimburses the Consultant in respect of the net cost of such insurance above commercially reasonable rates or again at the Beneficiary's option the Consultant shall obtain in respect of any relevant period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 3.2 If the Consultant fails to maintain professional indemnity insurance in accordance with clause 15.1 of this agreement and fails to remedy such default within 14 days of a written request from the Beneficiary then in addition to any other right which the Beneficiary may have the Beneficiary may procure such insurance cover as may be available to provide alternative equivalent protection and to recover as a debt the cost of maintaining such insurance from the Consultant.

- 3.3 The Consultant shall as and when reasonably required by the Beneficiary provide satisfactory documentary evidence by way of a broker's letter or certificate or equivalent to the Beneficiary that the insurance referred to in this clause is being maintained.

4. ASSIGNMENT

- 4.1 The Beneficiary may assign the entire benefit of these Beneficiary Rights and such assignee may then assign such benefit in each case by way of absolute legal assignment without the consent of the Consultant being required. Subject to paragraph 4.2, no further assignments shall be permitted.

- 4.2 The benefit of these Beneficiary Rights may be assigned:

4.2.1 by way of security and/or by way of re-assignment on redemption by or to the Beneficiary; and/or

4.2.2 to any Group Company of the Beneficiary

Which assignment(s) shall not count as an assignment for the purposes of paragraph 4.1

- 4.3 The Consultant agrees not to contend or argue that any person to whom the benefit of these Beneficiary Rights is assigned in accordance with paragraph 4.1 or paragraph 4.2 is precluded from recovering any loss or damage resulting from any breach of these Beneficiary Rights by the Consultant by reason of the fact that such person is an assignee only or otherwise not the original Beneficiary or because the loss or damage suffered has been suffered by such party only and not by the original Beneficiary.

5. CONSULTANT'S LIABILITY

- 5.1 The liability of the Consultant under these Beneficiary Rights shall not be modified, released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Project nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary.

- 5.2 To avoid doubt, save for the circumstances set out in paragraph 5.1, paragraph 5.1 is not intended to affect the Consultant's right to argue contributory negligence in respect of any claim or dispute which may arise or to affect the Consultant's right to bring a contribution claim or claims (either under the Civil Liability (Contribution) Act 1978 or otherwise) against any person other than the Beneficiary or the Employer.

- 5.3 No proceedings in respect of the Consultant's liability under these Beneficiary Rights may be commenced more than (i) 12 years from Practical Completion or (ii) 12 years from the date of termination of the Consultant's employment under this agreement, whichever is the earlier.

- 5.4 Subject to paragraph 5.5 the Consultant shall be entitled in any action or proceedings by the Beneficiary under these Beneficiary Rights to rely on any limitation in this agreement and to raise the equivalent rights in defence of liability as it would have against the Beneficiary if the Beneficiary was jointly named as the employer under this agreement.

- 5.5 Nothing in paragraph 5.4 shall entitle the Consultant to contend in any action or proceedings that the Beneficiary can only recover reduced or nominal damages because the employer under

this agreement has suffered no loss or a loss that is less than that actually suffered by the Beneficiary or to raise against the Beneficiary any set-off or counterclaim that the Consultant would be entitled to raise against the Employer.

- 5.6 For the avoidance of doubt, following any novation of this agreement under clause 14.7, the Consultant shall be bound by these Beneficiary Rights in every way as if the Contractor were, and had been from the inception, a party to this agreement in lieu of the Original Employer in relation to any Beneficiary which, prior to the date of the novation agreement, was conferred the benefit of these Beneficiary Rights under clause 14.4

6. LAW AND JURISDICTION

- 6.1 Any and all disputes as to the construction, interpretation, validity and application of these Beneficiary Rights and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with the law of England.
- 6.2 Save in relation to any enforcement proceedings, any claim, dispute or matter arising under or in connection with these Beneficiary Rights shall be subject to the exclusive jurisdiction of the English courts.

7. NOTICES

- 7.1 Any notice given under these Beneficiary Rights shall be in writing and be served either by hand delivering it or sending it by prepaid recorded or special delivery post:
- 7.1.1 in the case of the Consultant, its address as contained in this agreement and for the attention of the relevant party set out in Schedule 1 (or as otherwise notified by the Consultant to the Beneficiary in writing); and
- 7.1.2 in the case of the Beneficiary (subject to paragraph 7.2), its address as stated in the notice given by the Original Employer or the Original Employer's Solicitors to the Consultant under clause 13.4 (or such other address as may be notified by the Beneficiary to the Consultant in writing).
- 7.2 Where the Beneficiary is a Pre-Notified Beneficiary, its address for receiving notices shall be its registered office address or such other address as may be notified by the Beneficiary to the Consultant in writing from time to time.
- 7.3 Any notice given this paragraph 7 shall be deemed to have been received at the time of delivery if hand delivered or sent by prepaid recorded or special delivery post.
- 7.4 For the avoidance of doubt, this paragraph 7 shall not apply in relation to the service of any process in any legal action or proceedings arising out of or in connection with these Beneficiary Rights.

8. DETERMINATION BY THE CONSULTANT

- 8.1 This paragraph 8 only applies where the Beneficiary is a Funder, a Purchaser or the Original Employer.
- 8.2 The Consultant warrants to the Beneficiary that it shall not terminate or treat as terminated this agreement or discontinue the performance of any of its services or obligations under this agreement without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so specifying the grounds for so doing. For the avoidance of doubt,

temporary suspension under Section 112 of the Construction Act or paragraph 7 of Schedule 3 shall not constitute discontinuance but the Consultant shall notify the Beneficiary immediately if such temporary suspension commences.

- 8.3 If the Beneficiary serves on the Consultant a notice in accordance with paragraphs 8.4 and 8.6 the Consultant shall not terminate or treat as terminated its engagement under this agreement or discontinue the performance of any of its services or obligations under this agreement but service of such notice shall not prejudice any other right or remedy the Consultant may have under or in connection with this agreement.
- 8.4 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to paragraph 8.2) if the Beneficiary serves upon the Consultant a notice to do so the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer under and in connection with this agreement.
- 8.5 As against the Employer and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under paragraph 8.4 and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve such notice.
- 8.6 Subject to paragraph 8.7, any notice given under paragraph 8.4 shall include undertakings from the Beneficiary to the Consultant that:
- 8.6.1 the Beneficiary or its appointee shall perform all the obligations of the Employer under this agreement; and
 - 8.6.2 Within 21 days of the date of the notice the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under this agreement.
- 8.7 No undertaking given by the Beneficiary pursuant to paragraph 8.6 shall affect or derogate from any right of action the Employer may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with this agreement happening prior to the date of service of notice by the Beneficiary under paragraph 8.4.
- 8.8 If the employment of the Consultant under this agreement is terminated before service of any notice under paragraph 8.4 then, if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as this agreement but with such revisions as the Beneficiary shall reasonably require and the Consultant may approve acting reasonably to reflect altered circumstances. The new agreement shall include an obligation on the Beneficiary to pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under this agreement within 7 days of the Beneficiary and the Consultant entering to the new agreement.
- 8.9 If the Beneficiary's notice under paragraph 8.8 requires the Consultant to enter into the new agreement with the Beneficiary's appointee rather than the Beneficiary itself, the notice shall include an undertaking from the Beneficiary to undertake to the Consultant that it will act as the appointee's guarantor for the payment of all sums which may be properly due to the Consultant from the appointee from time to time under such agreement provided that the Consultant shall not pursue the Beneficiary directly for any sum due under the new agreement unless the appointee is in breach of its obligations to pay such sum to the Consultant.

9. SECURITY TRUSTEE

- 9.1 This paragraph 9 shall apply only where the Beneficiary is a Funder.
- 9.2 Where the Beneficiary is acting as security trustee, it may enforce the benefit of these Beneficiary Rights on behalf of any participating lender to the same extent as such lender would be entitled to do had such rights been conferred upon it directly.

10. FURTHER RIGHTS

- 10.1 This paragraph 10 shall apply only where the Beneficiary is a Purchaser.
- 10.2 The Beneficiary (or the Beneficiary acting by its solicitors) is itself entitled to give notice to the Consultant conferring the benefit of Beneficiary Rights (but not including this paragraph 10 upon any Tenant and/or Funder.

11. CONFIDENTIALITY

- 11.1 This paragraph 11 shall apply only where the Beneficiary is the Original Employer.
- 11.2 Subject to paragraph 11.3, the Consultant shall not without the Beneficiary's prior written approval:
- 11.2.1 disclose to any person (other than its legal and insurance advisers and auditors) or otherwise make use of any confidential information (including without limitation the contents of any Third Party Agreements) relating to the Beneficiary, the Site, the Project or otherwise;
 - 11.2.2 take or authorise the taking of any photographs of the Site, the Project and/or the Works for use in any publicity or advertising;
 - 11.2.3 publish alone or in conjunction with others any articles, photographs or other illustrations relating to the Site, the Project and/or the Works or any part thereof; or
 - 11.2.4 Disclose to any publication, journal, newspaper, film or any radio or television programme any information relating to the Site, the Project and/or the Works.
- 11.3 Paragraphs 11.2.1 and 11.2.4 shall not apply to the extent that the information:
- 11.3.1 is generally available to the public (other than as a result of its disclosure by the Consultant or its persons in breach of paragraph 11.2); or
 - 11.3.2 has previously been confirmed in writing by the Beneficiary as (i) not being confidential and/or (ii) capable of being publicly disclosed by the Consultant; or
 - 11.3.3 Is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction to be disclosed by the Consultant provided that, to the extent it is legally permitted to do so, the Consultant gives the Beneficiary as much notice of such disclosure as possible.

12. ANTI-CORRUPTION COMPLIANCE

- 12.1 This paragraph 12 shall apply only where the Beneficiary is the Original Employer.
- 12.2 The Consultant warrants to the Beneficiary that the Consultant, its employees, agents, sub-consultants or sub-contractors shall:
- 12.2.1 comply with all Relevant Requirements;

- 12.2.2 not engage in or tolerate any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
 - 12.2.3 have and maintain in place throughout the duration of this agreement its own policies and procedures including but not limited to Adequate Procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements and paragraph 12.2.2 and enforce them where appropriate; and
 - 12.2.4 Promptly report to the Beneficiary any request or demand for any undue financial or other advantage of any kind received by the Consultant or its persons in connection with the performance of this agreement.
- 12.3 The Consultant shall comply, and shall procure compliance by its employees, agents and sub-contractors, with any Anti-Corruption Policies made known to the Consultant.
- 12.4 The Consultant shall provide, or procure the provision of, such documentation or other information as the Beneficiary may from time to time request to satisfy itself that the Consultant has complied with its obligations under this paragraph 12.

PART 2 – FORM OF COLLATERAL WARRANTY

Part 2 – Form of Consultant Warranty

THIS DEED is made on 20[●]

BETWEEN:

- (1) [●] [(registered number [●])] [whose registered office is at] [of] [●] (“Beneficiary”, which expression includes its permitted assignees);
- (2) [●] [(registered number [●])] [whose registered office is at] [of] [●] (Consultant) [;and
- (3) [●] [(registered number [●])] [whose registered office is at] [of] [●] (Employer)].

WHEREAS:

- (A) [●](Employer)][The Employer] has engaged the Consultant under an agreement in writing dated [●] (Appointment) in relation to [●] (Services) relating to the design and construction of [●] (Works) at [●] (Site).
- (B) The Employer has engaged [[●] (“Contractor”)] under an agreement in writing dated [●] (Construction Contract) in relation to the Works.
- (C) *[recite nature of Beneficiary’s interest]*.
- (D) In consideration of the payment by the Beneficiary of ten pounds sterling (receipt of which is hereby acknowledged by the Consultant), the Consultant has agreed to enter into this deed for the benefit of the Beneficiary.
- (E) Any capitalised terms not otherwise defined in this deed shall have the same meaning as is given to them in the Appointment.

WITNESSES:

1. DUTY OF CARE

- 1.1 The Consultant covenants with the Beneficiary that it has performed and will continue to perform all of its obligations under the Appointment in accordance with all the terms and conditions thereof.
- 1.2 Without prejudice to the generality of clause **Error! Reference source not found.**, the Consultant further warrants and undertakes to the Beneficiary that it has exercised and will continue to exercise all the reasonable skill, care and diligence in carrying out the Services to be expected of a properly qualified and competent consultant experienced in carrying out commensurate services for works of a similar size, scope, complexity and timescale to the Works.
- 1.3 The Consultant shall immediately give notice to the Beneficiary if it becomes aware at any time that any Prohibited Materials have been used or are to be used in the Works.

2. COPYRIGHT

- 2.1 Copyright in all plans, drawings, details, calculations, specifications, schedules, reports and other documents (Documents) prepared and/or provided from time to time by or on behalf of the Consultant in connection with the Works shall be retained by the Consultant but the Consultant hereby grants to the Beneficiary a royalty-free, irrevocable, non-exclusive licence to

copy and use all or any of the Documents and to reproduce the same for any purpose whatsoever relating to the Works and/or the Site. Such licence shall be assignable and shall include the right to grant sub-licences. The Consultant will not be liable for any use of the Documents for any purpose other than that for which the same are or were prepared and/or provided.

- 2.2 The Consultant shall (if so requested at any time) give access to and/or provide copies of all or any of the Documents referred to in clause 2.1 (subject to reimbursement of the Consultant's reasonable copying costs).
- 2.3 The Consultant hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part I of the Copyright, Designs and Patents Act 1988 in relation to the Works or any part thereof or to any of the documents referred to in clause 2.1.
- 2.4 The Consultant warrants that it has copyright in the documents referred to in clause 2.1 and/or an irrevocable licence to use the copyright in the same (such licence including the right to grant sub-licences on the terms set out in clause 2.1) and that the use of such documents for the purposes of the Works will not infringe the rights of any third party.
- 2.5 Without prejudice to clause 2.4 if the Consultant does not have either copyright in such documents or an irrevocable licence to use such copyright in the form set out in clause 2.1 it shall obtain such copyright or copyright licence.

3. PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Consultant confirms that it maintains and shall maintain professional indemnity insurance with an insurer or underwriter covering the Consultant's obligations under this deed on the basis of and with an indemnity limit of not less than £[●],000,000 for each and every claim until the expiry of 12 years from the date of issue of the Practical Completion Statement under the Construction Contract (or the equivalent statement or certificate) or, if the Construction Contract provides that the Works are to be carried out in Sections (which term shall have the meaning as set out in the Construction Contract), the date of issue of the Section Completion Statement for the last Section in time to complete (or the equivalent statement or certificate) provided that such insurance remains generally available to consultants of the Consultant's profession in the United Kingdom insurance market at commercially reasonable rates and terms.
- 3.2 The Consultant shall notify the Beneficiary immediately if insurance under clause 3.1 ceases to be available and shall co-operate with the Beneficiary to discuss the best means of protecting the Consultant and the Beneficiary's respective interests in such circumstances and shall at the Beneficiary's option obtain and maintain in respect of any relevant period such reduced cover (if any) as may then be available generally available to members of the Consultant's profession in the United Kingdom insurance market at commercially reasonable rates and terms.
- 3.3 Subject to clause 3.2, if the Consultant fails to obtain and/or maintain professional indemnity insurance in accordance with clause 3.1 and fails to remedy such default within 14 days of a written request from the Beneficiary then in addition to any other right which the Beneficiary may have the Beneficiary may procure such insurance cover as may be available to provide alternative equivalent protection and to recover as a debt the cost of maintaining such insurance from the Consultant.
- 3.4 The Consultant shall as and when reasonably required to do so provide satisfactory documentary evidence by way of broker's letter or equivalent that the insurance referred to in this clause **Error! Reference source not found.** is being maintained.

4. ASSIGNMENT

4.1 The Beneficiary (which for the purposes only of this clause 4.1 shall mean the person named as the first party to this deed only) may assign the benefit of this deed and such assignee may then assign the benefit of this deed in each case by way of absolute legal assignment without the consent of the Consultant being required. Subject to clause 4.2 any assignments additional to those provided by this clause shall only be permitted with the consent of the Consultant (which consent shall not be unreasonably withheld or delayed).

4.2 The Beneficiary's benefit under this deed may be assigned:

4.2.1 by way of security and/or by way of re-assignment on redemption by or to the Beneficiary; and/or

4.2.2 to any group company of the Beneficiary;

which assignment(s) shall not count as an assignment for the purposes of clause 4.2.1. For purposes of this clause, "group company" shall mean, in relation to the Beneficiary, any subsidiary or holding company from time to time of the Beneficiary and any subsidiary from time to time of a holding company of the Beneficiary.

4.3 The Consultant agrees not to contend or argue that any person to whom the benefit of this deed is assigned in accordance with clause 4.2.1 or 4.2.2 is precluded from recovering any loss or damage resulting from any breach of this deed by the Consultant by reason of the fact that such person is an assignee only or otherwise not the Employer or because the loss or damage suffered has been suffered by such party only and not the Employer.

5. CONSULTANT'S LIABILITY

5.1 The liability of the Consultant under this deed shall not be modified, released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Works nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary.

5.2 To avoid doubt, save for the circumstances set out in paragraph 5.1, paragraph 5.1 is not intended to affect the Consultant's right to argue contributory negligence in respect of any claim or dispute which may arise or to affect the Consultant's right to bring a contribution claim or claims (either under the Civil Liability (Contribution) Act 1978 or otherwise) against any person other than the Beneficiary or the Employer.

5.3 No proceedings in respect of the Consultant's liability under this deed may be commenced more than (i) 12 years from Practical Completion or (ii) 12 years from the date of termination of the Consultant's employment under the Appointment, whichever is the earlier.

5.4 Subject to paragraph 5.5 the Consultant shall be entitled in any action or proceedings by the Beneficiary under this deed to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Beneficiary if the Beneficiary was jointly named as the employer under the Appointment.

5.5 Nothing in paragraph 5.4 shall entitle the Consultant to contend in any action or proceedings that the Beneficiary can only recover reduced or nominal damages because the employer under

the Appointment has suffered no loss or a loss that is less than that actually suffered by the Beneficiary or to raise against the Beneficiary any set-off or counterclaim that the Consultant would be entitled to raise against the Employer.

6. DETERMINATION BY THE CONSULTANT

- 6.1 The Consultant warrants to the Beneficiary that it shall not terminate or treat as terminated the Appointment or discontinue the performance of any of its services or obligations under the Appointment without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so specifying the grounds for so doing. For the avoidance of doubt, temporary suspension under Section 112 of the Construction Act or paragraph 7 of schedule 3 shall not constitute discontinuance but the Consultant shall notify the Beneficiary immediately if such temporary suspension commences.
- 6.2 If the Beneficiary serves on the Consultant a notice in accordance with clauses 6.3 and 6.5 the Consultant shall not terminate or treat as terminated its engagement under the Appointment or discontinue the performance of any of its services or obligations under the Appointment but service of such notice shall not prejudice any other right or remedy the Consultant may have under or in connection with the Appointment.
- 6.3 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to clause 6.1) if the Beneficiary serves upon the Consultant a notice to do so the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer under and in connection with the Appointment.
- 6.4 As against the Employer and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 6.3 and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve such notice.
- 6.5 Subject to clause 6.6, any notice given under clause 6.3 shall include undertakings from the Beneficiary to the Consultant that:
- 6.5.1 the Beneficiary or its appointee shall perform all the obligations of the Employer under the Appointment; and
 - 6.5.2 within 21 days of the date of the notice the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.
- 6.6 No undertaking given by the Beneficiary pursuant to clause 6.5 shall affect or derogate from any right of action the Employer may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening prior to the date of service of notice by the Beneficiary under clause 6.3.
- 6.7 If the employment of the Consultant under the Appointment is terminated before service of any notice under clause 6.3 then, if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require and the Consultant may approve acting reasonably to reflect altered circumstances. The new agreement shall include an obligation on the Beneficiary to pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the

Appointment within 7 days of the Beneficiary and the Consultant entering to the new agreement.

- 6.8 If the Beneficiary's notice under clause 6.7 requires the Consultant to enter into the new agreement with the Beneficiary's appointee rather than the Beneficiary itself, the notice shall include an undertaking from the Beneficiary to undertake to the Consultant that it will act as the appointee's guarantor for the payment of all sums which may be properly due to the Consultant from the appointee from time to time under such agreement provided that the Consultant shall not pursue the Beneficiary directly for any sum due under the new agreement unless the appointee is in breach of its obligations to pay such sum to the Consultant.

7. LAW AND JURISDICTION

- 7.1 Any and all disputes as to the construction, interpretation, validity and application of this deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with the law of England.
- 7.2 Save in relation to any enforcement proceedings, any claim, dispute or matter arising under or in connection with this deed shall be subject to the exclusive jurisdiction of the English courts.

8. NOTICES

- 8.1 Any notice given under this deed shall be in writing and be served either by Any notices given under this deed shall be in writing and may be served by hand or by prepaid special delivery post or recorded delivery addressed to the party to whom it is given such notice to be served in the case of a corporation to its registered office for the time being In any other case notice may be served at the address hereinbefore set out or such other address as may be notified by the relevant party to the other party and any notice so given by prepaid special delivery or recorded post shall be deemed to have been served 48 hours after the time of posting and any notice delivered by hand shall be deemed to have been served immediately upon delivery.

IN WITNESS whereof this document has been executed and delivered as a deed the day and year first before written

SCHEDULE 5
FORM OF NOMINATION OF A BENEFICIARY (CLAUSE 14.4)

From: [●] (registration number [●]) whose registered office is at [●]

To: [●] (registration number [●]) whose registered office is at [●]

Date: 20[●]

BY [HAND] [RECORDED DELIVERY] [SPECIAL DELIVERY] [FAX]

Dear Sirs

Consultancy Agreement dated [●] 201[●] between us and you [as novated from us and you to [●] and you pursuant to a novation agreement dated 201[●]] relating to [insert project details] at [insert site details]

We hereby give notice of the appointment of a Beneficiary pursuant to clause 14.4 of the Consultancy Agreement. The Beneficiary's details are as follows:

1. **Name of Beneficiary:** [●] [registered in [England] with company number [●]];
2. **Beneficiary's address:** [●];
3. **The Beneficiary is a:** [Funder][Purchaser][Tenant][;][●]
4. **[Beneficiary's interest: [●].]**

In accordance with clause 14.4, this Beneficiary is hereby entitled to the benefit of, and to enforce in his own right, the rights set out in schedule 4 of the Consultancy Agreement.

Yours faithfully

.....

[●][[Original Employer's Solicitors] on behalf of [●]]

[End of schedule 5]

SCHEDULE 6
NOVATION AGREEMENT (CLAUSE 14.7)

THIS AGREEMENT is made the day of 202[●]

BETWEEN:

- (1) [●] (Registration number [●]) [Whose registered office is at?] [Of] [●] ("**Employer**"); and
- (2) [●] (registration number [●]) [whose registered office is at] [of] [●] ("**Consultant**"); and
- (3) [●] (registration number [●]) [whose registered office is at] [of] [●] ("**Contractor**").

WHEREAS:

- (A) The Employer has appointed the Consultant to provide [●] services (Services) by an agreement dated [●] (Consultancy Agreement).
- (B) The Employer has appointed the Contractor under a contract (Construction Contract) to design and construct certain works as therein described (Works).
- (C) The Employer, the Consultant and the Contractor have agreed that from the date of this Agreement the Contractor shall assume the obligations of the Employer and that the Consultant shall perform its obligations under the Consultancy Agreement in favour of the Contractor and that the Employer and the Consultant shall each release the other from any obligations owed by the other to them under the Consultancy Agreement.

IT IS HEREBY AGREED as follows:

1. NOVATION

- 1.1 The Employer hereby releases and discharges the Consultant from any and all obligations and liabilities owed to the Employer under the Consultancy Agreement.
- 1.2 The Consultant undertakes to perform the Consultancy Agreement and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Consultancy Agreement in lieu of the Employer.
- 1.3 The Consultant hereby releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Consultancy Agreement and accepts the liability of the Contractor under the Consultancy Agreement in lieu of the liability of the Employer.
- 1.4 Without prejudice to clause 1.2, the Consultant warrants to the Contractor that it shall be liable for any loss or damage suffered or incurred by the Contractor arising out of any negligent act, default or breach by the Consultant in the performance of its obligations under the Consultancy Agreement prior to the date of this Agreement. Subject to any limitation of liability in the Consultancy Agreement, the Consultant shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Employer (or suffered or incurred to the same extent by the Employer).
- 1.5 The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Consultancy Agreement up to the date of this Agreement have been paid by the Employer.
- 1.6 The Contractor undertakes to perform the Consultancy Agreement and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Consultancy Agreement in lieu of the Employer.

2. LAW AND JURISDICTION

- 2.1 The Employer, the Consultant and the Contractor hereby agree that any and all disputes as to the construction, interpretation, validity and application of this Agreement and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with the law of England.
- 2.2 Save in relation to any enforcement proceedings, the Employer, the Consultant and the Contractor irrevocably submit to the exclusive jurisdiction of the English courts over any claim, dispute or matter arising under or in connection with this Agreement.

3. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this document has been executed and delivered as a deed the day and year first before written

[End of schedule 6]

**[SCHEDULE 7
PARTNERS OF THE CONSULTANT (CLAUSE 26)**

[IF THE CONSULTANT IS NOT A PARTNERSHIP, DELETE THIS SCHEDULE 7. IF IT IS, LIST ITS PARTNERS HERE BY NAME]

[End of schedule 7]



DATE: **2020**

NON-DESIGN CONSULTANCY AGREEMENT FOR [INSERT ROLE]

Between

[INSERT EMPLOYER DETAILS]

and

[INSERT CONSULTANT DETAILS]

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
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THIS AGREEMENT is made on 202[●]

BETWEEN:

- (1) [Name of employer] (registered in [England and Wales] with company number [●]) whose registered office is at [●] (**Employer**); and
- (2) [Name of consultant] (registered in England and Wales with company number [●]) whose registered office is at [●] (**Consultant**).

BACKGROUND:

The Employer wishes to procure the execution of the Project and wishes to appoint the Consultant to provide services in connection with the Project.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement the following words and expressions shall have the following meanings unless the context requires otherwise:

“Anti-Corruption Policies”: policies and procedures of the Employer intended to ensure compliance with the Relevant Requirements;

“Beneficiary”: any person with the benefit of Beneficiary Rights by virtue of clause 14.4 or clause 14.6;

“Beneficiary Rights”: as defined in clause 14.4;

“Building Regulations”: the Building Act 1984 and all relevant subordinate legislation made under such Act;

“CDM Regulations”: the Construction (Design and Management) Regulations 2015 and any codes of practice or regulations issued from time to time in respect hereof by any competent authority, all as may be amended, updated or replaced from time to time;

“Construction Act”: Part II of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;

“Construction Contract”: the contract or contracts executed or to be executed by the Employer and the Contractor for the execution of the Project which is intended to be in the form referred to in Schedule 1 and to incorporate such further amendments as the Employer and the Contractor agree;

“Contractor”: the contractor for the time being appointed by the Employer in connection with the Project or, each of them, if more than one;

“Council”: THE LONDON BOROUGH OF BARKING AND DAGENHAM of Barking Town Hall, Town Hall Square, Barking, G11 7LU

“Documents”: all plans, drawings, details, calculations, specifications, schedules, reports and other documents (and the designs contained within them) prepared and/or provided from time to time by or on behalf of the Consultant for the Project;

“[Employer’s Agent”: as set out in Schedule 1;]

“Employer’s Solicitors”: CMS Cameron McKenna Nabarro Olswang LLP of Cannon Place, 78 Cannon Street London EC4N 6AF or such other firm of solicitors as may be appointed by the Employer from time to time;

“Fee”: as set out in Schedule 3;

“Funder”: any Pre-Notified Beneficiary, bank, financial institution or other person providing finance to the Employer and/or a Purchaser in relation to the Site and/or the Works;

“Funding Agreement”: any agreement entered into or to be entered into by the Employer with a Funder;

“Group Company”: in relation to a company, any Holding Company or Subsidiary from time to time of that company, and any Subsidiary from time to time of a Holding Company of that company;

“Holding Company and Subsidiary”: respectively, a “holding company” and “subsidiary” as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that (a) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members’ rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership, and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;

“Key Personnel”: the key personnel set out in Schedule 1;

“Lease Agreement”: any agreement entered into or to be entered into by the Employer with a Tenant;

“Pay Less Notice”: a notice pursuant to section 111 of the Construction Act;

“Payment Notice”: a notice pursuant to section 110 of the Construction Act;

“Practical Completion”: the date of issue of the Practical Completion Certificate under the Construction Contract or, if the Works under the Construction Contract are to be carried out in Sections, the date of issue of the Section Completion Certificate of the last Section of the Works in time to complete;

“Pre-Notified Beneficiaries”: the person or persons set out below:

- (a) *[insert name, company number and registered office address (a [Funder][Purchaser][Tenant])]*

(For the avoidance of doubt, a Pre-Notified Beneficiary may be a Funder, Purchaser or a Tenant);

“Principal Person”: the member of the Key Personnel named as the Principal Person;

“Professional Team”: the consultants appointed by the Employer (whether or not novated to the Contractor) to undertake design and other functions in connection with the Project including those listed and individually defined in Schedule 1 (or any replacement thereof);

“Programme”: the master programme for the Project produced by or on behalf of the Employer including any variation to such programme from time to time;

“Prohibited Materials”: any good, product, substance and/or material that is not in conformity with any relevant British or European Standards or Codes of Practice or which is generally known in the United Kingdom construction industry to be deleterious to health and safety or durability in the particular circumstances in which it is used or which is not used in accordance with the guidance contained in the “Good Practice in the Selection of Construction Materials” (2011) publication by the British Council for Offices;

“Project”: the project defined in Schedule 1;

“Purchase Agreement”: any agreement entered into or to be entered into by the Employer with a Purchaser;

“Purchaser”: any Pre-Notified Beneficiary or any other person having or acquiring a first freehold or first long leasehold interest in the Site and/or the Works or each part thereof whether before or after completion of the Project;

“Relevant Requirements”: has the meaning set out in clause 13.1.1;

“Scheme”: The Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011;

“Section”: has the meaning given to it under the Construction Contract;

“Services”: the services described in or referred to in Schedule 2 and any additional services instructed under clause 3.2;

“Site”: the land or property defined in Schedule 1;

“Statutory Requirements”: any Act of Parliament, codes of practice, any regulations, consents and bye-laws of any local authority or statutory undertaker which has any jurisdiction with regard to the Project or to the Works or with whose systems the Works or part of the Works are or will be connected or any other requirements affecting the Project and/or the Site and/or the Works;

“Sub-Contractor”: any sub-contractor engaged by the Contractor for the design and/or execution of any part of the Works;

“Tenant”: any Pre-Notified Beneficiary or any other person having or acquiring a first leasehold interest in the Site and/or the Works or each part thereof (but excluding a Purchaser);

“Third Party Agreement”: any Funding Agreement, Lease Agreement, Purchase Agreement, planning permission, section 106 agreement, section 278 agreement, section 38 agreement and/or other document which the Employer has brought to the attention of the Consultant in sufficient time to enable the Consultant to comply with the same;

“VAT”: value added tax chargeable under the Value Added Tax Act 1994; and

“Works”: has the meaning given to it under the Construction Contract

- 1.2 In this agreement (except where the context otherwise requires):
- 1.2.1 any reference to a recital, clause or schedule is to the relevant recital, clause or schedule of or to this agreement and any reference to a clause, sub-clause or paragraph is to the relevant clause, sub-clause or paragraph of the clause or schedule in which it appears;
 - 1.2.2 clause, schedule and paragraph headings shall not affect the interpretation of this agreement;
 - 1.2.3 a reference to any Pre-Notified Beneficiary, any other Beneficiary or any party shall include that person's personal representatives, successors and permitted assigns (but not so as to permit more than the number of assignments provided for under the terms of this agreement);
 - 1.2.4 words in the singular shall include the plural and in the plural shall include the singular;
 - 1.2.5 a reference to one gender shall include a reference to the other genders;
 - 1.2.6 any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, governmental or state agencies, foundations and trusts (in each case whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
 - 1.2.7 a reference to "this agreement" or to any other agreement or document referred to in this agreement is a reference to this agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time;
 - 1.2.8 if a period of time is specified and dates from a given day or the day of an act or event, it shall be calculated exclusive of that day;
 - 1.2.9 a reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute as amended from time to time;
 - 1.2.10 any obligation on a party not to do something includes an obligation not to allow that thing to be done;
 - 1.2.11 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

The schedules and recitals form an integral part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules and recitals.

2. DURATION OF APPOINTMENT

- 2.1 The appointment of the Consultant shall commence from the date of this agreement or from the time when the Consultant shall have begun to perform the Services (whichever

is the earlier) and this agreement shall be deemed to apply to the performance of the Services from the date of commencement of the Consultant's appointment.

3. SERVICES

- 3.1 Subject to clause 4.2, the Consultant shall provide the Services.
- 3.2 If requested the Consultant shall (subject to additional payment in accordance with Schedule 3) carry out such additional services as the Employer may from time to time reasonably require in writing.

4. STANDARD OF CARE

- 4.1 The Consultant shall in performing the Services and its duties under this agreement comply with all Statutory Requirements insofar as the same relate to the Services.
- 4.2 Without prejudice to the generality of clause 4.1, in performing the Services under this agreement the Consultant has exercised and shall exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the Consultant's profession experienced in performing such services for projects of a similar size, scope and complexity to the Project and subject to the foregoing shall:
- 4.2.1 have regard to, comply with and carry out the Services at such times and in a manner so that no act, omission or default of the Consultant shall constitute, cause or contribute to any breach by the Employer of its obligations under any Third Party Agreement;
- 4.2.2 comply with all reasonable and lawful instructions and directions given to it by the Employer;
- 4.2.3 perform its duties, undertake its responsibilities and comply with its obligations pursuant to the CDM Regulations; and
- 4.2.4 allocate adequate resources to enable it to comply with its obligations pursuant to the CDM Regulations and co-operate with the other members of the Professional Team, the Contractor and the Sub-Contractors so far as is necessary to assist each party to comply with its respective obligations under the CDM Regulations.

5. PROGRAMMING AND CO-ORDINATION

- 5.1 The Consultant shall perform the Services and its obligations under this agreement at such times as shall be appropriate having regard to the Programme and shall at all times keep the Employer fully and properly informed on all aspects of the progress and performance of the Services.
- 5.2 The Consultant shall immediately draw the attention of the Employer and the other members of the Professional Team to any circumstances encountered or foreseen by the Consultant which the Consultant is aware might impair the efficient planning, programming, execution or completion of the Project and/or affect health and safety or undermine prevailing cost estimates.

- 5.3 The Consultant shall at all times perform the Services in co-operation with the Employer, the Contractor and the other members of the Professional Team and their respective representatives, officers, agents and employees.

6. MATERIALS

- 6.1 Without prejudice to the generality of clause 4.2, the Consultant warrants to the Employer that it has not knowingly allowed and will not knowingly allow for use in the Works any Prohibited Materials. The Consultant shall immediately give notice to the Employer if it becomes aware at any time that any Prohibited Materials have been used or are to be used in the Project and/or the Works.

7. PERSONNEL

- 7.1 The Consultant shall procure that the Principal Person shall be responsible for the overall provision, management and co-ordination of the Services and that there will be no change of responsibility without the prior written agreement of the Employer.
- 7.2 Without prejudice to clause 7.1 the Consultant shall procure that the Key Personnel are engaged in the performance of the Services and that there will be no change of responsibility in respect of any of them unless the Employer has given its prior written agreement to any proposed replacement (such agreement not to be unreasonably withheld or delayed) or a member of the Key Personnel no longer remains in the Consultant's employment.
- 7.3 The Consultant shall provide such other personnel of appropriate ability and experience as may be required for the performance of the Services.
- 7.4 The Consultant shall make sufficient visits to the Site as are required for the proper performance of the Services and generally use reasonable endeavours to assist the proper execution and completion of the Project in accordance with the terms of the Construction Contract (to the extent that the Construction Contract has been disclosed to the Consultant). For the avoidance of doubt, the Fee is inclusive of all such Site visits.
- 7.5 The Employer may request the removal of any person engaged by the Consultant in the performance of the Services if in the Employer's reasonable opinion such person's performance or conduct is or has been unsatisfactory and the Consultant shall promptly remove such person and if in the Employer's reasonable opinion a replacement is necessary or appropriate shall replace such person with a competent and suitably qualified person who shall have been previously approved in writing by the Employer (such approval not to be unreasonably withheld or delayed).

8. AUTHORITY OF CONSULTANT

- 8.1 Save as expressly set out in the Services, the Consultant shall not have any express or implied authority to act on the Employer's behalf or to bind or commit the Employer in any way whatsoever without first obtaining the written consent of the Employer.

9. REPORTING AND RECORDS

- 9.1 The Consultant shall in the performance of the Services act on instructions only from the Employer and if the Consultant acts on an instruction from any other person it shall

do so entirely at its own risk and cost and the Employer shall have no liability in relation thereto.

- 9.2 The Consultant shall procure that the Principal Person (or its approved representative) attends site meetings and progress meetings at such location and at such times as the Employer shall reasonably decide to report on and discuss the progress of the Project and/or the Works.
- 9.3 The Consultant shall retain all correspondence originating from the Consultant or addressed to it relating to the Project for as long as the Consultant may have any liability under this agreement but not less than (i) 12 years from Practical Completion or (ii) 12 years from the date of the termination of the Consultant's employment under this agreement, whichever is the earlier.

10. REMUNERATION

- 10.1 Subject to the performance of the Services in accordance with this agreement the Employer shall pay the Fee to the Consultant in accordance with Schedule 3.

11. DOCUMENTS AND COPYRIGHT

- 11.1 Copyright in the Documents prepared by the Consultant shall be retained by the Consultant but the Consultant hereby grants to the Employer a worldwide, royalty-free, perpetual, irrevocable and non-exclusive licence to copy and use all or any such Documents and to reproduce the same for any purpose whatsoever relating to the Project and/or the Site. Such licence shall be assignable and shall include the right to grant sub-licences.
- 11.2 The Consultant shall not be liable to the Employer for any use of the Documents for any purpose other than those for which the same are or were prepared and/or provided.
- 11.3 The Consultant shall (if so requested by the Employer at any time) give the Employer access to and/or provide copies of all or any of the Documents referred to in clause 11.1, provided that the Employer shall be responsible for the Consultant's reasonable copying costs.
- 11.4 The Consultant hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part I of the Copyright, Designs and Patents Act 1988 in relation to the Project or any part thereof or to any of the Documents.
- 11.5 The Consultant warrants to the Employer that it has copyright in the Documents and/or an irrevocable licence to use the copyright in the Documents (such licence including the right to grant sub-licences on the terms set out in clause 11.1) and that the use of the Documents for the purposes of the Project will not infringe the rights of any third party.
- 11.6 Without prejudice to clause 11.5, if the Consultant does not have either copyright in the Documents or an irrevocable licence to use such copyright in the form set out in clause 11.5 it shall obtain such copyright or copyright licence in favour of the Employer.

12. CONFIDENTIALITY

12.1 Subject to clause 12.2, the Consultant shall not without the Employer's prior written approval:

12.1.1 disclose to any person (other than its legal and insurance advisers and auditors) or otherwise make use of any confidential information (including without limitation the contents of any Third Party Agreements) relating to the Employer, the Project or otherwise;

12.1.2 take or authorise the taking of any photographs of the Project and/or the Works for use in any publicity or advertising;

12.1.3 publish alone or in conjunction with others any articles, photographs or other illustrations relating to the Project and/or the Works or any part thereof; or

12.1.4 disclose to any publication, journal, newspaper, film or any radio or television programme any information relating to the Project and/or the Works.

12.2 Clauses 12.1.1 and 12.1.4 shall not apply to the extent that the information:

12.2.1 is generally available to the public (other than as a result of its disclosure by the Consultant or its persons in breach of clause 12.1); or

12.2.2 has previously been confirmed in writing by the Employer as (i) not being confidential and/or (ii) capable of being publicly disclosed by the Consultant; or

12.2.3 is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction to be disclosed by the Consultant provided that, to the extent it is legally permitted to do so, the Consultant gives the Employer as much notice of such disclosure as possible.

12.3 The provisions of this clause 12 and clause 13 shall survive termination of the Consultant's engagement under this agreement.

13. ANTI-CORRUPTION COMPLIANCE

13.1 The Consultant warrants to the Employer that the Consultant, its employees, agents, sub-consultants or sub-contractors shall:

13.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

13.1.2 not engage in or tolerate any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

13.1.3 have and maintain in place throughout the duration of this agreement its own policies and procedures including but not limited to adequate procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements and clause 13.1.2 and enforce them where appropriate; and

- 13.1.4 promptly report to the Employer any request or demand for any undue financial or other advantage of any kind received by the Consultant or its persons in connection with the performance of this agreement.
- 13.2 For the purposes of clause 13.1.3, the meaning of “adequate procedures” shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act).
- 13.3 The Consultant shall comply, and shall procure compliance by its employees, agents and sub-contractors, with any Anti-Corruption Policies implemented by the Employer and made known to the Consultant.
- 13.4 The Consultant shall provide, or procure the provision of, such documentation or other information as the Employer may from time to time request to satisfy itself that the Consultant has complied with its obligations under this clause 13.
- 14. ASSIGNMENT AND THIRD PARTY RIGHTS**
- 14.1 The Employer may assign its entire benefit under this agreement and such assignee may then assign such benefit under this agreement in each case by way of absolute legal assignment without the consent of the Consultant being required. Subject to clause 14.2, any assignments additional to those provided by this clause shall only be permitted with the consent of the Consultant.
- 14.2 The Employer’s benefit under this agreement may be assigned:
- 14.2.1 by way of security and/or by way of re-assignment on redemption by or to the Employer; and/or
- 14.2.2 to any Group Company of the Employer;
- which assignment(s) shall not count as an assignment for the purposes of clause 14.1.
- 14.3 The Consultant agrees not to contend or argue that any person to whom the benefit of this agreement is assigned in accordance with clause 14.1 or clause 14.2 is precluded from recovering any loss or damage resulting from any breach of this agreement by the Consultant by reason of the fact that such person is an assignee only or otherwise not the original Employer or because the loss or damage suffered has been suffered by such party only and not by the original Employer.
- 14.4 Subject to clause 14.6, the Council any Funder, Purchaser or Tenant specified in a notice served on the Consultant by the Employer (or by the Employer’s Solicitors) in substantially the form set out in Schedule 5 shall be entitled to the benefit of and/or to enforce in its own right the rights set out in Schedule 4 (“Beneficiary Rights”).
- 14.5 The Employer and the Consultant may agree to vary the Services and/or the Fee without the consent of any Beneficiary but may not otherwise vary any terms of this agreement without the consent of all Beneficiaries.
- 14.6 From the date of this agreement, each Pre-Notified Beneficiary shall be entitled to the benefit of and/or to enforce in its own right Beneficiary Rights.
- 14.7 Where it is a requirement of any Third Party Agreement or where any Beneficiary requests a collateral warranty rather than a right pursuant to this clause 14, the Consultant shall upon written request by the Employer execute as a deed and deliver to

the Employer within 14 days collateral warranties on terms equivalent to those set out in **Error! Reference source not found.**4 Part 2.

15. INSURANCE

15.1 The Consultant confirms that it maintains and shall maintain professional indemnity insurance with an insurer or underwriter covering the Consultant's obligations under this agreement on the basis and with a limit of indemnity of not less than the amount stated in schedule 1 until 12 years from Practical Completion (or 12 years from the date of termination of the Consultant's engagement under this agreement, whichever is earlier) provided such insurance remains generally available to members of the Consultant's profession in the United Kingdom insurance market at commercially reasonable rates and terms.

15.2 The Consultant shall notify the Employer immediately if such insurance ceases to be available and shall co-operate with the Employer to discuss the best means of protecting their respective interests in such circumstances and shall at the Employer's option maintain such insurance above commercially reasonable rates if the Employer reimburses the Consultant in respect of the net cost of such insurance above commercially reasonable rates or again at the Employer's option the Consultant shall obtain in respect of any relevant period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.

15.3 If the Consultant fails to maintain professional indemnity insurance in accordance with this clause 15 and fails to remedy such default within 14 days of a written request from the Employer then in addition to any other right which the Employer may have the Employer may procure such insurance cover as may be available to provide alternative equivalent protection and to recover as a debt the cost of maintaining such insurance for the Consultant.

15.4 The Consultant shall as and when reasonably required by the Employer provide satisfactory documentary evidence by way of a broker's letter or certificate or equivalent to the Employer that the insurance referred to in this clause is being maintained.

16. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER

16.1 The Consultant's engagement under this agreement may be terminated by the Employer forthwith:

16.1.1 if the Consultant fails to comply with any of the provisions of this agreement and fails to rectify such non-compliance within 14 days of written notice from the Employer requiring rectification; or

16.1.2 if:

(a) the Consultant suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay his or her debts or has having no reasonable prospect of so doing, in either

case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

- (b) the Consultant commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of the Consultant with one or more other companies or the solvent reconstruction of the Consultant; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Consultant (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Consultant with one or more other companies or the solvent reconstruction of the Consultant; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Consultant (being a company); or
- (e) the holder of a qualifying floating charge over the assets of the Consultant (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over the assets of the Consultant or a receiver is appointed over the assets of the Consultant; or
- (g) the Consultant (being a partnership) is dissolved; or
- (h) the Consultant (being an individual) is the subject of a bankruptcy petition or order, or (being a partnership) has any partner to whom the foregoing applies; or
- (i) a creditor or encumbrancer of the Consultant attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Consultant's assets and such attachment or process is not discharged within 14 days; or
- (j) any event occurs, or proceeding is taken, with respect to the Consultant in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this sub-clause 16.1.2; or
- (k) the Consultant suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business the Consultant shall cease for any reason to be or the Consultant ceases, or threatens to cease, to remain liable for its obligations contained in or arising from this agreement; or

- (l) the Consultant (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
 - (m) there is a change of control of the Consultant (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 16.2 Without prejudice to clause 16.1 the Employer may by giving 14 days' written notice to the Consultant:
 - 16.2.1 terminate the Consultant's engagement under this agreement; or
 - 16.2.2 omit or reduce all or any part or parts of the Services to be performed by the Consultant
- 17. **SUSPENSION**
 - 17.1 The Employer shall be entitled to suspend the Services or any part thereof by written notice to the Consultant.
 - 17.2 Upon any suspension of the Services the Consultant's fee entitlement shall be as provided for in clause 18.3.
 - 17.3 If a suspension of the Services lasts more than 6 months the Consultant may make a written request for the Services to be resumed and if no such instruction to resume is given within 28 days after such request the Consultant may terminate its engagement under this agreement by written notice to the Employer.
- 18. **OBLIGATIONS FOLLOWING TERMINATION/SUSPENSION OF THE SERVICES**
 - 18.1 Upon any suspension under clause 17.1 or termination of its engagement under this agreement or the Consultant shall take immediate steps to bring to an end the performance of the Services in an orderly manner but with all reasonable speed and economy and shall deliver to the Employer the Documents (whether completed or in the course of preparation) together with all correspondence and documentation in the possession of or under the control of the Consultant relating to the Services (provided that the Consultant may, at its own expense, retain a copy of all or any such correspondence and documentation for its own records).
 - 18.2 If the Consultant's engagement is terminated for any of the reasons set out in clause 16.1 then the Employer shall not be bound to make any further payment to the Consultant and any sums reasonably incurred by the Employer in obtaining the completion of the Services by another party above the amount which the Employer would have incurred if the Consultant had properly performed its obligations under this agreement shall be recoverable by the Employer from the Consultant as a debt.
 - 18.3 In the event of any termination of the Consultant's engagement for any reason other than those set out in clause 16.1 or upon any suspension of the Services the Consultant will be entitled to a fair proportion of the Fee for any of the Services properly performed up to and including the date of the termination or suspension having regard to the

instalment schedule set out in Schedule 3 and the payments already made to the Consultant under this agreement.

- 18.4 Upon any termination of the Consultant's engagement howsoever arising and/or upon any suspension of the Services the Employer shall not be liable to the Consultant for any loss of profit, loss of contract or any other losses and/or expenses of whatsoever nature arising out of or in connection with such termination or suspension.
- 18.5 Any termination of the Consultant's engagement shall be without prejudice to the accrued rights and remedies of either party in respect of any act omission or default of the other prior to such termination.
- 18.6 The provisions of this agreement shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

19. NOTICES

- 19.1 Any notice given under this agreement shall be in writing and be served either by hand delivering it or sending it by prepaid recorded or special delivery post or facsimile to the address of the party contained in this agreement and for the attention of the relevant party set out in Schedule 1 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:
- 19.1.1 at the time of delivery if hand delivered or sent by prepaid recorded or special delivery post;
- 19.1.2 at the time of transmission if sent by facsimile.
- 19.2 For the avoidance of doubt, the parties agree that the provisions of this clause shall not apply in relation to the service of any process in any legal action or proceedings arising out of or in connection with this agreement.

20. SUB-CONTRACTING

- 20.1 The Consultant shall not assign or transfer any of its rights or obligations under this agreement or sub-contract any part of the Services without the Employer's prior written consent.
- 20.2 The Consultant shall remain liable to the Employer for the performance of the Services if any of the Services are sub-contracted by the Consultant to others as provided for in clause 20.1.

21. ENTIRE AGREEMENT

- 21.1 This agreement constitutes the entire agreement between the Consultant and the Employer and supersedes any previous agreement between the Consultant and the Employer relating to the Project.
- 21.2 No variation in the terms of this agreement shall be valid or enforceable unless in writing and signed on behalf of the Employer and the Consultant.
- 21.3 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

22. LIABILITY AND LIMITATION

- 22.1 The liability of the Consultant under this agreement shall not be modified, released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Employer nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Employer of any independent firm, company or party whatsoever to review the progress of or otherwise report to the Employer in respect of the Project nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Employer.
- 22.2 No proceedings in respect of the Consultant's liability under this agreement may be commenced following the expiry of (i) 12 years from Practical Completion or (ii) 12 years from the date of the termination of the Consultant's employment under this agreement, whichever is the earlier.

23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 23.1 Save as set out in clause 14 and in Schedule 4, this agreement is not intended to confer any rights on any person who is not a party to it.

24. DISPUTES

- 24.1 Without prejudice to the right of either party to refer any dispute or difference to adjudication under the Construction Act or litigation at any time, the parties may seek to avoid or resolve any dispute or difference by direct, good faith negotiations between senior executives from each party.
- 24.2 Any adjudication under the Construction Act shall be governed by the Scheme but subject to the following:
- 24.2.1 the adjudicator to decide the dispute or difference shall be either an individual agreed by the Employer and the Consultant or on the application of either party an individual to be nominated as the adjudicator by the President or a Vice-President of the Royal Institution of Chartered Surveyors;
- 24.2.2 the adjudicator shall have power to determine more than one dispute at the same time and (if required to do so by the respondent to any reference) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as it determines any dispute referred to it;
- 24.2.3 at the same time as it gives any decision the adjudicator shall give reasons for the decision in writing.
- 24.3 If any dispute being referred to adjudication under this agreement raises issues which are substantially the same as or connected with issues raised in a dispute or difference arising between the Employer and any other member of the Professional Team and/or the Contractor and if such other dispute has already been referred for determination (pursuant to any such contract) then at the Employer's request the parties shall (wherever practicable and subject to the consent of the relevant adjudicator being obtained and the adjudicator being independent of all of the parties) refer the dispute or

difference under this agreement to the same adjudicator for a decision with a view to the two references being consolidated.

- 24.4 Neither the Employer nor the Consultant shall (except in the proper course of disclosure to their professional advisers and insurers) for any reason disclose to any person and shall at all times treat as confidential any intention to refer any dispute to adjudication under this agreement or any information relating to any dispute which has been referred to adjudication under this agreement.

25. **LAW AND JURISDICTION**

- 25.1 The Employer and the Consultant hereby agree that any and all disputes as to the construction, interpretation, validity and application of this agreement and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with the law of England.
- 25.2 Save in relation to any enforcement proceedings, the Employer and the Consultant irrevocably submit to the exclusive jurisdiction of the English courts over any claim, dispute or matter arising under or in connection with this agreement.

[DELETE CLAUSE 26 BELOW IF CONSULTANT IS NOT A PARTNERSHIP]

26. **[PARTNERSHIP]**

- 26.1 The partners of the Consultant executing this agreement jointly and severally warrant that in doing so they have power to bind all the partners of the Consultant jointly and severally and agree that all warranties, covenants and provisions herein contained shall be deemed to have been made by and on behalf of all existing and future partners of the Consultant jointly and severally.
- 26.2 The partners of the Consultant are listed in Schedule 6.]

IN WITNESS whereof this agreement has been executed and delivered as a deed the day and year first before written

SCHEDULE 1 PROJECT PARTICULARS

1. THE SITE

1.1 [●]

2. THE PROJECT

2.1 The design, carrying out and completion of [●]

3. THE FORM OF CONSTRUCTION CONTRACT

3.1 [JCT Design and Build Contract 2016 Edition] with bespoke amendments

4. THE PROFESSIONAL TEAM

Architect [●]

Principal Designer [●]

Civil and Structural Engineer [●]

Employer's Agent [●]

Mechanical and Electrical Engineer [●]

[insert any others]

5. THE KEY PERSONNEL

5.1 Principal Person: [●]

[●]

6. THE PROFESSIONAL INDEMNITY INSURANCE AMOUNT

6.1 £[5],000,000 ([five] million pounds sterling) for each and every claim annually until (i) 12 years from the date of Practical Completion of the Works or (ii) 12 years from the date of termination of the Consultant's employment under this agreement, whichever is the earlier

7. NOTICES

7.1 Details of persons for the service of notices:

Consultant: [●]

Employer: [●]

[End of schedule 1]

**SCHEDULE 2
SERVICES**

[End of schedule 2]

SCHEDULE 3**FEE**

1. The Fee, excluding any additional fee for any additional services instructed pursuant to clause 3.2, is the fixed lump sum of £[●].
2. The Fee shall include all disbursements, expenses and overheads of every kind incurred by the Consultant (other than planning and building regulation fees, which shall be reimbursed after the Consultant has disbursed them, and any copying charges incurred pursuant to clause 11.3) but shall be exclusive of VAT and shall be payable in accordance with the following payment schedule:
[●]
3. In relation to each instalment identified in paragraph 2 the Consultant shall submit to the Employer an invoice by the date identified as the payment due date in respect of sums due to the Consultant under this agreement in such form and with such supporting documentation as the Employer may reasonably require. The payment due date for each instalment shall be 10 days from the date identified in paragraph 2 or if later the date of receipt by the Employer of the Consultant's invoice in accordance with this paragraph 3.
4. The final date for payment shall be 28 days following the payment due date of the relevant instalment.
5. Within 5 days after the date on which any payment becomes due to the Consultant under this agreement the Employer shall give a Payment Notice to the Consultant specifying the amount of the payment which it proposes to make in relation to the Consultant's invoice and the basis on which that amount is calculated. Subject always to paragraph 9, if the Employer does not issue a Payment Notice as required under this paragraph 5, the amount due shall be the amount stated in the Consultant's invoice issued pursuant to paragraph 3 (which invoice shall be deemed to be the Payment Notice for the purposes of paragraph 6).
6. At least 5 days prior to the final date for payment of any instalment under this agreement the Employer may give to the Consultant a Pay Less Notice indicating any intention to pay less than the sum stated as due in the Payment Notice. A Pay Less Notice shall specify both the sum the Employer considers to be due to the Consultant at the date the Pay Less Notice is given and the basis on which that sum has been calculated.
7. If any payment due under this agreement is not paid by the final date for payment referred to in paragraph 4 and no notice is given under paragraph 6 the Consultant shall be entitled to suspend performance of all or part of its obligations hereunder by giving not less than 7 days' notice to the Employer stating the ground or grounds on which it intends to suspend performance and identifying each of the obligations it intends to suspend. The right to suspend performance shall cease when the Employer makes payment in full of the amount properly due and any period during which performance is validly suspended pursuant to this paragraph 7 shall be disregarded in computing the time taken by the Consultant to complete any of the Services affected by the suspension. The Consultant shall have no claim against the Employer for any loss of profit, loss of contract or any other losses and/or expenses of whatever nature arising out of any

suspension of all or part of its obligations under this agreement save for any claim for a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of any such suspension of all or part of its obligations.

8. Upon presentation of a valid VAT invoice the Employer shall pay to the Consultant the total amount of VAT properly chargeable by the Consultant on the supply to the Employer of the Services.
9. The Employer need not pay any sum due if the Consultant after the last date upon which the Pay Less Notice could have been given by the Employer in respect of that sum becomes insolvent, within the meaning of Sections 113(2) – (5) of the Construction Act.
10. If the Employer brings to an end any part or parts of the Services pursuant to clause 16.2 or 16.2.2 the Employer shall be entitled to make a corresponding adjustment to the Fee and the Consultant's entitlement to payment under this agreement shall be limited to a fair proportion of the Fee having regard to the Services which have been omitted or reduced pursuant to an instruction under clause 16.2 or 16.2.2. The Consultant shall have no claim against the Employer for any loss of profit, loss of contract or any other losses and/or expenses of whatever nature arising out of an instruction to omit or reduce any of the Services.
11. If the Employer requests the Consultant to carry out further Services pursuant to clause 3.2 of this agreement (or in any case where this agreement provides for an additional fee to be paid to the Consultant) the Employer will pay to the Consultant such additional fee as may be agreed between the parties and as may be authorised in writing by the Employer before such further services are commenced. The Employer shall not be responsible for any fees or expenses in respect of such additional services which have not been authorised or accepted in writing by the Employer.
12. In no circumstances shall the Consultant's entitlement to payment for each stage exceed the percentage of the Fee allocated to such stage in the instalment schedule. In the event that commencement of a stage is delayed for any reason, the instalment schedule for that stage shall be adjusted accordingly to commence following actual commencement of that stage. Without prejudice to the foregoing in the event that the Project is delayed at any time the instalment schedule may be adjusted by agreement between the Employer and the Consultant.

[End of schedule 3]

SCHEDULE 4
PART 1 BENEFICIARY RIGHTS (CLAUSE 14.4)

1. DUTY OF CARE

- 1.1 The Consultant warrants and undertakes to the Beneficiary that it has performed and will continue to perform all of its obligations under this agreement in accordance with all the terms and conditions thereof.
- 1.2 The Consultant shall immediately give notice to the Beneficiary if it becomes aware at any time that any Prohibited Materials have been used or are to be used in the Project and/or the Works.

2. DOCUMENTS AND COPYRIGHT

- 2.1 The Consultant hereby grants to the Beneficiary a royalty-free, irrevocable and non-exclusive licence to copy and use all or any of the Documents prepared by it and to reproduce the same for any purpose whatsoever relating to the Project and/or the Site. Such licence shall be assignable and shall include the right to grant sub-licences.
- 2.2 The Consultant shall not be liable to the Beneficiary for any use of the Documents for any purpose other than those for which the same are or were prepared and/or provided.
- 2.3 The Consultant shall (if so requested by the Beneficiary any time) give the Beneficiary (as the case may be) access to and/or provide copies of all or any of the Documents referred to in paragraph 2.1 subject to the Beneficiary confirming to the Consultant that it agrees to be responsible for the Consultant's reasonable copying costs.
- 2.4 The Consultant warrants to the Beneficiary that it has copyright in the Documents and/or an irrevocable licence to use the copyright in the Documents (such licence including the right to grant sub-licences on the terms set out in paragraph 2.1) and that the use of the Documents for the purposes of the Project will not infringe the rights of any third party.
- 2.5 Without prejudice to paragraph 2.3, if the Consultant does not have either copyright in the Documents or an irrevocable licence to use such copyright in the form set out in paragraph 2.4 it shall obtain such copyright or copyright licence in favour of the Beneficiary.

3. PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Consultant shall notify the Beneficiary immediately if insurance under clause 15.1 of this agreement ceases to be available and shall co-operate with the Beneficiary to discuss the best means of protecting the Consultant and the Beneficiary's respective interests in such circumstances and shall at the Beneficiary's option maintain such insurance above commercially reasonable rates if the Beneficiary reimburses the Consultant in respect of the net cost of such insurance above commercially reasonable rates or again at the Beneficiary's option the Consultant shall obtain in respect of any relevant period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 3.2 If the Consultant fails to maintain professional indemnity insurance in accordance with clause 15.1 of this agreement and fails to remedy such default within 14 days of a

written request from the Beneficiary then in addition to any other right which the Beneficiary may have the Beneficiary may procure such insurance cover as may be available to provide alternative equivalent protection and to recover as a debt the cost of maintaining such insurance from the Consultant.

- 3.3 The Consultant shall as and when reasonably required by the Beneficiary provide satisfactory documentary evidence by way of a broker's letter or certificate or equivalent to the Beneficiary that the insurance referred to in this clause is being maintained.

4. **ASSIGNMENT**

- 4.1 The Beneficiary may assign the entire benefit of these Beneficiary Rights and such assignee may then assign such benefit in each case by way of absolute legal assignment without the consent of the Consultant being required. Subject to paragraph 4.2, no further assignments shall be permitted.

- 4.2 The benefit of these Beneficiary Rights may be assigned:

4.2.1 by way of security and/or by way of re-assignment on redemption by or to the Beneficiary; and/or

4.2.2 to any Group Company of the Beneficiary

which assignment(s) shall not count as an assignment for the purposes of paragraph 4.1.

- 4.3 The Consultant agrees not to contend or argue that any person to whom the benefit of these Beneficiary Rights is assigned in accordance with paragraph 4.1 or paragraph 4.2 is precluded from recovering any loss or damage resulting from any breach of these Beneficiary Rights by the Consultant by reason of the fact that such person is an assignee only or otherwise not the original Beneficiary or because the loss or damage suffered has been suffered by such party only and not by the original Beneficiary.

5. **CONSULTANT'S LIABILITY**

- 5.1 The liability of the Consultant under these Beneficiary Rights shall not be modified, released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Project nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary.

- 5.2 To avoid doubt, save for the circumstances set out in paragraph 5.1, paragraph 5.1 is not intended to affect the Consultant's right to argue contributory negligence in respect of any claim or dispute which may arise or to affect the Consultant's right to bring a contribution claim or claims (either under the Civil Liability (Contribution) Act 1978 or otherwise) against any person other than the Beneficiary or the Employer.

- 5.3 No proceedings in respect of the Consultant's liability under these Beneficiary Rights may be commenced more than (i) 12 years from Practical Completion or (ii) 12 years

from the date of termination of the Consultant's employment under this agreement, whichever is the earlier.

- 5.4 Subject to paragraph 5.5 the Consultant shall be entitled in any action or proceedings by the Beneficiary under these Beneficiary Rights to rely on any limitation in this agreement and to raise the equivalent rights in defence of liability as it would have against the Beneficiary if the Beneficiary was jointly named as the employer under this agreement.
- 5.5 Nothing in paragraph 5.4 shall entitle the Consultant to contend in any action or proceedings that the Beneficiary can only recover reduced or nominal damages because the employer under this agreement has suffered no loss or a loss that is less than that actually suffered by the Beneficiary or to raise against the Beneficiary any set-off or counterclaim that the Consultant would be entitled to raise against the Employer.

6. LAW AND JURISDICTION

- 6.1 Any and all disputes as to the construction, interpretation, validity and application of these Beneficiary Rights and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with the law of England.
- 6.2 Save in relation to any enforcement proceedings, any claim, dispute or matter arising under or in connection with these Beneficiary Rights shall be subject to the exclusive jurisdiction of the English courts.

7. NOTICES

- 7.1 Any notice given under these Beneficiary Rights shall be in writing and be served either by hand delivering it or sending it by prepaid recorded or special delivery post:
- 7.1.1 in the case of the Consultant, its address as contained in this agreement and for the attention of the relevant party set out in Schedule 1 (or as otherwise notified by the Consultant to the Beneficiary in writing); and
- 7.1.2 in the case of the Beneficiary (subject to paragraph 7.2), its address as stated in the notice given by the Employer or the Employer's Solicitors to the Consultant under clause 13.4 (or such other address as may be notified by the Beneficiary to the Consultant in writing).
- 7.2 Where the Beneficiary is a Pre-Notified Beneficiary, its address for receiving notices shall be its registered office address or such other address as may be notified by the Beneficiary to the Consultant in writing from time to time.
- 7.3 Any notice given this paragraph 7 shall be deemed to have been received at the time of delivery if hand delivered or sent by prepaid recorded or special delivery post.
- 7.4 For the avoidance of doubt, this paragraph 7 shall not apply in relation to the service of any process in any legal action or proceedings arising out of or in connection with these Beneficiary Rights.

8. DETERMINATION BY THE CONSULTANT

- 8.1 This paragraph 8 only applies where the Beneficiary is a Funder or a Purchaser.

- 8.2 The Consultant warrants to the Beneficiary that it shall not terminate or treat as terminated this agreement or discontinue the performance of any of its services or obligations under this agreement without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so specifying the grounds for so doing. For the avoidance of doubt, temporary suspension under Section 112 of the Construction Act or paragraph 7 of schedule 3 shall not constitute discontinuance but the Consultant shall notify the Beneficiary immediately if such temporary suspension commences.
- 8.3 If the Beneficiary serves on the Consultant a notice in accordance with paragraphs 8.4 and 8.6 the Consultant shall not terminate or treat as terminated its engagement under this agreement or discontinue the performance of any of its services or obligations under this agreement but service of such notice shall not prejudice any other right or remedy the Consultant may have under or in connection with this agreement.
- 8.4 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to paragraph 8.2) if the Beneficiary serves upon the Consultant a notice to do so the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer under and in connection with this agreement.
- 8.5 As against the Employer and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under paragraph 8.4 and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve such notice.
- 8.6 Subject to paragraph 8.7, any notice given under paragraph 8.4 shall include undertakings from the Beneficiary to the Consultant that:
- 8.6.1 the Beneficiary or its appointee shall perform all the obligations of the Employer under this agreement; and
- 8.6.2 within 21 days of the date of the notice the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under this agreement.
- 8.7 No undertaking given by the Beneficiary pursuant to paragraph 8.6 shall affect or derogate from any right of action the Employer may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with this agreement happening prior to the date of service of notice by the Beneficiary under paragraph 8.4.
- 8.8 If the employment of the Consultant under this agreement is terminated before service of any notice under paragraph 8.4 then, if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as this agreement but with such revisions as the Beneficiary shall reasonably require and the Consultant may approve acting reasonably to reflect altered circumstances. The new agreement shall include an obligation on the Beneficiary to pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under this agreement within 7 days of the Beneficiary and the Consultant entering to the new agreement.

- 8.9 If the Beneficiary's notice under paragraph 8.8 requires the Consultant to enter into the new agreement with the Beneficiary's appointee rather than the Beneficiary itself, the notice shall include an undertaking from the Beneficiary to undertake to the Consultant that it will act as the appointee's guarantor for the payment of all sums which may be properly due to the Consultant from the appointee from time to time under such agreement provided that the Consultant shall not pursue the Beneficiary directly for any sum due under the new agreement unless the appointee is in breach of its obligations to pay such sum to the Consultant.

9. **SECURITY TRUSTEE**

- 9.1 This paragraph 9 shall apply only where the Beneficiary is a Funder.
- 9.2 Where the Beneficiary is acting as security trustee, it may enforce the benefit of these Beneficiary Rights on behalf of any participating lender to the same extent as such lender would be entitled to do had such rights been conferred upon it directly.

10. **FURTHER RIGHTS**

- 10.1 This paragraph 10 shall apply only where the Beneficiary is a Purchaser.
- 10.2 The Beneficiary (or the Beneficiary acting by its solicitors) is itself entitled to give notice to the Consultant conferring the benefit of Beneficiary Rights (but not including this paragraph 10) upon any Tenant and/or Funder.

PART 2 – FORM OF COLLATERAL WARRANTY

Part 2 – Form of Consultant Warranty

THIS DEED is made on 20[●]

BETWEEN:

- (1) [●] [(registered number [●])] [whose registered office is at] [of] [●] (“Beneficiary”, which expression includes its permitted assignees);
- (2) [●] [(registered number [●])] [whose registered office is at] [of] [●] (Consultant) [;and
- (3) [●] [(registered number [●])] [whose registered office is at] [of] [●] (Employer)].

WHEREAS:

- (A) [●](Employer)][The Employer] has engaged the Consultant under an agreement in writing dated [●] (Appointment) in relation to [●] (Services) relating to the design and construction of [●] (Works) at [●] (Site).
- (B) The Employer has engaged [[●] (“Contractor”)] under an agreement in writing dated [●] (Construction Contract) in relation to the Works.
- (C) *[recite nature of Beneficiary’s interest]*.
- (D) In consideration of the payment by the Beneficiary of ten pounds sterling (receipt of which is hereby acknowledged by the Consultant), the Consultant has agreed to enter into this deed for the benefit of the Beneficiary.
- (E) Any capitalised terms not otherwise defined in this deed shall have the same meaning as is given to them in the Appointment.

WITNESSES:

1. DUTY OF CARE

- 1.1 The Consultant covenants with the Beneficiary that it has performed and will continue to perform all of its obligations under the Appointment in accordance with all the terms and conditions thereof.
- 1.2 Without prejudice to the generality of clause **Error! Reference source not found.**, the Consultant further warrants and undertakes to the Beneficiary that it has exercised and will continue to exercise all the reasonable skill, care and diligence in carrying out the Services to be expected of a properly qualified and competent consultant experienced in carrying out commensurate services for works of a similar size, scope, complexity and timescale to the Works.
- 1.3 The Consultant shall immediately give notice to the Beneficiary if it becomes aware at any time that any Prohibited Materials have been used or are to be used in the Works.

2. COPYRIGHT

- 2.1 Copyright in all plans, drawings, details, calculations, specifications, schedules, reports and other documents (Documents) prepared and/or provided from time to time by or on behalf of the Consultant in connection with the Works shall be retained by the Consultant but the Consultant hereby grants to the Beneficiary a royalty-free, irrevocable, non-exclusive licence to

copy and use all or any of the Documents and to reproduce the same for any purpose whatsoever relating to the Works and/or the Site. Such licence shall be assignable and shall include the right to grant sub-licences. The Consultant will not be liable for any use of the Documents for any purpose other than that for which the same are or were prepared and/or provided.

- 2.2 The Consultant shall (if so requested at any time) give access to and/or provide copies of all or any of the Documents referred to in clause 2.1 (subject to reimbursement of the Consultant's reasonable copying costs).
- 2.3 The Consultant hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part I of the Copyright, Designs and Patents Act 1988 in relation to the Works or any part thereof or to any of the documents referred to in clause 2.1.
- 2.4 The Consultant warrants that it has copyright in the documents referred to in clause 2.1 and/or an irrevocable licence to use the copyright in the same (such licence including the right to grant sub-licences on the terms set out in clause 2.1) and that the use of such documents for the purposes of the Works will not infringe the rights of any third party.
- 2.5 Without prejudice to clause 2.4 if the Consultant does not have either copyright in such documents or an irrevocable licence to use such copyright in the form set out in clause 2.1 it shall obtain such copyright or copyright licence.

3. PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Consultant confirms that it maintains and shall maintain professional indemnity insurance with an insurer or underwriter covering the Consultant's obligations under this deed on the basis of and with an indemnity limit of not less than £[●],000,000 for each and every claim until the expiry of 12 years from the date of issue of the Practical Completion Statement under the Construction Contract (or the equivalent statement or certificate) or, if the Construction Contract provides that the Works are to be carried out in Sections (which term shall have the meaning as set out in the Construction Contract), the date of issue of the Section Completion Statement for the last Section in time to complete (or the equivalent statement or certificate) provided that such insurance remains generally available to consultants of the Consultant's profession in the United Kingdom insurance market at commercially reasonable rates and terms.
- 3.2 The Consultant shall notify the Beneficiary immediately if insurance under clause 3.1 ceases to be available and shall co-operate with the Beneficiary to discuss the best means of protecting the Consultant and the Beneficiary's respective interests in such circumstances and shall at the Beneficiary's option obtain and maintain in respect of any relevant period such reduced cover (if any) as may then be available generally available to members of the Consultant's profession in the United Kingdom insurance market at commercially reasonable rates and terms.
- 3.3 Subject to clause 3.2, if the Consultant fails to obtain and/or maintain professional indemnity insurance in accordance with clause 3.1 and fails to remedy such default within 14 days of a written request from the Beneficiary then in addition to any other right which the Beneficiary may have the Beneficiary may procure such insurance cover as may be available to provide alternative equivalent protection and to recover as a debt the cost of maintaining such insurance from the Consultant.
- 3.4 The Consultant shall as and when reasonably required to do so provide satisfactory documentary evidence by way of broker's letter or equivalent that the insurance referred to in this clause **Error! Reference source not found.** is being maintained.

4. ASSIGNMENT

4.1 The Beneficiary (which for the purposes only of this clause 4.1 shall mean the person named as the first party to this deed only) may assign the benefit of this deed and such assignee may then assign the benefit of this deed in each case by way of absolute legal assignment without the consent of the Consultant being required. Subject to clause 4.2 any assignments additional to those provided by this clause shall only be permitted with the consent of the Consultant (which consent shall not be unreasonably withheld or delayed).

4.2 The Beneficiary's benefit under this deed may be assigned:

4.2.1 by way of security and/or by way of re-assignment on redemption by or to the Beneficiary; and/or

4.2.2 to any group company of the Beneficiary;

which assignment(s) shall not count as an assignment for the purposes of clause 4.2.1. For purposes of this clause, "group company" shall mean, in relation to the Beneficiary, any subsidiary or holding company from time to time of the Beneficiary and any subsidiary from time to time of a holding company of the Beneficiary.

4.3 The Consultant agrees not to contend or argue that any person to whom the benefit of this deed is assigned in accordance with clause 4.2.1 or 4.2.2 is precluded from recovering any loss or damage resulting from any breach of this deed by the Consultant by reason of the fact that such person is an assignee only or otherwise not the Employer or because the loss or damage suffered has been suffered by such party only and not the Employer.

5. CONSULTANT'S LIABILITY

5.1 The liability of the Consultant under this deed shall not be modified, released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Works nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary.

5.2 To avoid doubt, save for the circumstances set out in paragraph 5.1, paragraph 5.1 is not intended to affect the Consultant's right to argue contributory negligence in respect of any claim or dispute which may arise or to affect the Consultant's right to bring a contribution claim or claims (either under the Civil Liability (Contribution) Act 1978 or otherwise) against any person other than the Beneficiary or the Employer.

5.3 No proceedings in respect of the Consultant's liability under this deed may be commenced more than (i) 12 years from Practical Completion or (ii) 12 years from the date of termination of the Consultant's employment under the Appointment, whichever is the earlier.

5.4 Subject to paragraph 5.5 the Consultant shall be entitled in any action or proceedings by the Beneficiary under this deed to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Beneficiary if the Beneficiary was jointly named as the employer under the Appointment.

5.5 Nothing in paragraph 5.4 shall entitle the Consultant to contend in any action or proceedings that the Beneficiary can only recover reduced or nominal damages because the employer under

the Appointment has suffered no loss or a loss that is less than that actually suffered by the Beneficiary or to raise against the Beneficiary any set-off or counterclaim that the Consultant would be entitled to raise against the Employer.

6. DETERMINATION BY THE CONSULTANT

- 6.1 The Consultant warrants to the Beneficiary that it shall not terminate or treat as terminated the Appointment or discontinue the performance of any of its services or obligations under the Appointment without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so specifying the grounds for so doing. For the avoidance of doubt, temporary suspension under Section 112 of the Construction Act or paragraph 7 of schedule 3 shall not constitute discontinuance but the Consultant shall notify the Beneficiary immediately if such temporary suspension commences.
- 6.2 If the Beneficiary serves on the Consultant a notice in accordance with clauses 6.3 and 6.5 the Consultant shall not terminate or treat as terminated its engagement under the Appointment or discontinue the performance of any of its services or obligations under the Appointment but service of such notice shall not prejudice any other right or remedy the Consultant may have under or in connection with the Appointment.
- 6.3 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to clause 6.1) if the Beneficiary serves upon the Consultant a notice to do so the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer under and in connection with the Appointment.
- 6.4 As against the Employer and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 6.3 and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve such notice.
- 6.5 Subject to clause 6.6, any notice given under clause 6.3 shall include undertakings from the Beneficiary to the Consultant that:
- 6.5.1 the Beneficiary or its appointee shall perform all the obligations of the Employer under the Appointment; and
 - 6.5.2 within 21 days of the date of the notice the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.
- 6.6 No undertaking given by the Beneficiary pursuant to clause 6.5 shall affect or derogate from any right of action the Employer may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening prior to the date of service of notice by the Beneficiary under clause 6.3.
- 6.7 If the employment of the Consultant under the Appointment is terminated before service of any notice under clause 6.3 then, if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require and the Consultant may approve acting reasonably to reflect altered circumstances. The new agreement shall include an obligation on the Beneficiary to pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the

Appointment within 7 days of the Beneficiary and the Consultant entering to the new agreement.

- 6.8 If the Beneficiary's notice under clause 6.7 requires the Consultant to enter into the new agreement with the Beneficiary's appointee rather than the Beneficiary itself, the notice shall include an undertaking from the Beneficiary to undertake to the Consultant that it will act as the appointee's guarantor for the payment of all sums which may be properly due to the Consultant from the appointee from time to time under such agreement provided that the Consultant shall not pursue the Beneficiary directly for any sum due under the new agreement unless the appointee is in breach of its obligations to pay such sum to the Consultant.

7. LAW AND JURISDICTION

- 7.1 Any and all disputes as to the construction, interpretation, validity and application of this deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with the law of England.
- 7.2 Save in relation to any enforcement proceedings, any claim, dispute or matter arising under or in connection with this deed shall be subject to the exclusive jurisdiction of the English courts.

8. NOTICES

- 8.1 Any notice given under this deed shall be in writing and be served either by hand or by prepaid special delivery post or recorded delivery addressed to the party to whom it is given such notice to be served in the case of a corporation to its registered office for the time being. In any other case notice may be served at the address hereinbefore set out or such other address as may be notified by the relevant party to the other party and any notice so given by prepaid special delivery or recorded post shall be deemed to have been served 48 hours after the time of posting and any notice delivered by hand shall be deemed to have been served immediately upon delivery.

IN WITNESS whereof this document has been executed and delivered as a deed the day and year first before written

SCHEDULE 5
FORM OF NOMINATION OF A BENEFICIARY (CLAUSE 14.4)

From: [●] (registration number [●]) whose registered office is at [●]

To: [●] (registration number [●]) whose registered office is at [●]

Date: 20[●]

BY [HAND] [RECORDED DELIVERY] [SPECIAL DELIVERY] [FAX]

Dear Sirs

Consultancy Agreement dated [●] 201[●] between us and you relating to [insert project details] at [insert site details]

We hereby give notice of the appointment of a Beneficiary pursuant to clause 14.4 of the Consultancy Agreement. The Beneficiary's details are as follows:

1. Name of Beneficiary: [[registered in [England] with company number [●]]];
2. Beneficiary's address: [●];
3. The Beneficiary is a: [Funder][Purchaser][Tenant];[●]
4. Beneficiary's interest: [●].]

In accordance with clause 14.4, this Beneficiary is hereby entitled to the benefit of, and to enforce in his own right, the rights set out in schedule 4 of the Consultancy Agreement.

Yours faithfully

.....

[●][[Employer's Solicitors] on behalf of [●]]

[End of schedule 5]

SCHEDULE 6
PARTNERS OF THE CONSULTANT (CLAUSE 26)

[IF THE CONSULTANT IS NOT A PARTNERSHIP, DELETE THIS SCHEDULE 6. IF IT IS, LIST ITS PARTNERS HERE BY NAME]

[End of schedule 6]

Executed and delivered as a deed by)
the **[EMPLOYER]**)
acting by:) Authorised Signatory
.....)
and)
Authorised Signatory

Executed and delivered as a deed by)
the **CONSULTANT**)
acting by:) Authorised Signatory
.....)
and)
Authorised Signatory

OR

Executed and delivered as a deed by)
the **CONSULTANT**)
acting by:) Authorised Signatory
.....)
and)
Authorised Signatory

SCHEDULE 9

Council Property

- 1 Subject to paragraph 2, the Council shall not, in relation to the Council Property during the life of this Agreement, instruct or allow anyone else to:
 - 1.1 encumber or deal with the title to the Council Property except with the prior written consent of the Developer (such consent not to be unreasonably withheld or delayed where such dealing will not in any way materially delay or have any other material adverse impact upon the Development);
 - 1.2 solicit or respond to any approach to encumber or deal with the title to the Council Property with anyone other than in accordance with this Agreement; or
 - 1.3 seek buyers for the Council's Property or entertain offers for the Council Property other than in accordance with this Agreement.
- 2 Nothing in paragraph 1 shall prevent or inhibit the Council (and the Council shall not be in breach of its obligations under paragraph 1) in:
 - 2.1 granting leases and tenancies which are:
 - (a) pursuant to statutory obligations or the exercise of statutory rights; or
 - (b) pursuant to pre-existing contractual obligations as at the date hereof (which have been disclosed by the Council as a "Council Title Matter" prior to the date hereof); or
 - (c) (in relation to business premises) either periodic or for a fixed term and excluded from sections 24 to and including 28 of the Landlord and Tenant Act 1954 (where applicable); or
 - (d) (in relation to residential premises) on a properly created assured shorthold tenancy and on terms permitting the Council to obtain vacant possession when required to implement the Development (or any part thereof);
 - 2.2 surrendering any lease or tenancy; or
 - 2.3 entering into licences to occupy on terms permitting the Council to obtain vacant possession when required to implement the Development (or any part).
- 3 The Council shall not be under any obligation to carry out any works of repair, renewal, replacement or improvement in respect of the Council Property.
- 4 The provisions of this schedule 9 shall not apply after the expiry or earlier termination of this Agreement.

[illegible]

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[REDACTED]

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[Redacted text block containing multiple paragraphs of obscured content]

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SCHEDULE 11

Phase Guarantee

This Deed is made on

202[]

Between

- (1) [] (Company No. []) whose registered office is at [] (the "Guarantor"); and
- (2) **The London Borough of Barking and Dagenham** of Barking" Town Hall, Town Hall Square, Barking, IG11 7LU (the "Council");

Recitals

- (A) This Deed is supplemental to the Agreement for Lease.
- (B) The Guarantor has agreed to guarantee the Guaranteed Obligations under the Agreement for Lease on the terms set out below.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed:

- (a) **Agreement for Lease** means the agreement for lease relating to premises at and adjoining Vicarage Field Shopping Centre, Barking, London dated [] 2021 and made between (1) the Council and (2) the Developer as the same may have been, or be, amended and/or varied from time to time up to and including, but not after, the date of this Deed;
- (b) **[Developer]** means [Lagmar (Barking) Limited (Scottish company registration number 303267) whose registered office is at 50 Lothian Road, Festival Square, Edinburgh, EH3 9WJ] **[CMS Note – OR, as appropriate, the details of any party who may have replaced Lagmar at the relevant time];**
- (c) **Expert** has the meaning set out in the Agreement for Lease;
- (d) **Guaranteed Obligations** means the Developer's obligations in schedule 6 of the Agreement for Lease in so far only as the same may relate to the preparation for and/or the carrying out of and/or the completion of the Relevant Phase Works and not any other or further works and/or obligations and/or liabilities whether pursuant to schedule 6 of the Agreement for Lease or otherwise and, for the avoidance of doubt, shall not include any variation of those obligations or any new obligations resulting (in any such case) from the Agreement for Lease being modified, amended or supplemented in any manner after the date of this Deed without the consent of the Guarantor;
- (e) **person** includes any firm and any entity having legal capacity;
- (f) **Relevant Phase Works** means []; **[CMS Note – details of the specific Phase Works to be covered by each Guarantee to be included here]**

- (g) **Replacement Deed of Guarantee** means a deed of guarantee on the same terms as this Deed (*mutatis mutandis*) under which a Replacement Guarantor assumes the obligations of the Guarantor hereunder;
- (h) **Replacement Guarantor** has the meaning set out at paragraph 9.3; and
- (i) **Working Day** means any day except a Saturday, Sunday or statutory holiday.

1.2 Clause headings are not part of this Deed.

1.3 Unless the contrary intention is expressed, terms used in this Deed that are defined in the Agreement for Lease have the same meaning as in the Agreement for Lease.

2 GUARANTEE

The Guarantor irrevocably and unconditionally guarantees to the Council that the Developer will perform and observe all of the Guaranteed Obligations (but not further or otherwise) and that, if the Developer fails to do so, the Guarantor will perform and observe, or will procure that the Developer performs and observes, them or shall otherwise cause it/them to be performed and observed.

3 NO RELEASE

The liability of the Guarantor pursuant to this Deed shall not be affected or released as a result of:

- (a) the Agreement for Lease being modified, amended or supplemented in any manner without the consent of the Guarantor;
- (b) the termination of the Agreement for Lease;
- (c) any waiver or concession or allowance of time or compromise or forbearance given to or made with the Developer (and the terms of this Deed shall apply to the terms of such compromise as they apply to the Agreement for Lease);
- (d) any neglect of the Council in enforcing the obligations of the Developer; or
- (e) any other act, omission, fact or circumstance which might otherwise release, discharge or diminish the liability of a guarantor except an express release in writing of the Guarantor by the Council.

4 INSOLVENCY OF THE DEVELOPER

4.1 In clause 4.2, "**Event of Insolvency**" means, in relation to the Developer:

- (a) it being deemed unable to pay its debts as defined in s123 of the Insolvency Act;
- (b) a proposal being made for a voluntary arrangement under Part I of the Insolvency Act;
- (c) an administration order being made under Part II of the Insolvency Act;
- (d) a receiver or manager (including an administrative receiver) being appointed over any of its property;
- (e) an order being made or resolution being passed for its winding-up or an order being made for the winding-up of the company under Part IV of the Insolvency Act or for

voluntary winding-up (other than a members' voluntary winding-up which is for the sole purpose of amalgamation and reconstruction while solvent);

- (f) a provisional liquidator being appointed under s135 of the Insolvency Act;
- (g) a proposal being made for a scheme of arrangement under s1 of the Insolvency Act;
- (h) an administrative receiver being appointed over the whole or any part of the property or assets of the company or any mortgagee taking possession of such property or assets;
- (i) it being removed from the Register of Companies; or
- (j) the occurrence in the jurisdiction in which the Developer is registered of any proceedings or events analogous to those specified in clauses 4.1(a) – (i).

4.2 In the event that the Developer suffers an Event of Insolvency:

- (a) no liability of the Guarantor under this Deed shall be diminished by reason of the Developer's inability to pay its creditors in full; and
- (b) the Guarantor acknowledges and agrees not to exercise any right or remedy that the Guarantor may have against the Developer in respect of any amount paid or other obligation performed by the Guarantor under this Deed.

5 EXTENT OF LIABILITY

5.1 This Deed creates a guarantee and not an indemnity, and accordingly, the Council shall be entitled to recover no more under this Deed in respect of any matter than the Council would have been entitled to recover from the Developer in respect of the Developer's failure to perform and observe all of the Guaranteed Obligations, and the Guarantor shall:

- (a) have no greater liability to the Council than the Developer owes in this respect under the Agreement for Lease; and
- (b) be entitled to rely upon any limitation in the Agreement for Lease and to raise the equivalent rights in defence of liability, set-off and counterclaim as the Guarantor would have had if the Guarantor had been named as the "Developer" under the Agreement for Lease in place of the Developer.

5.2 This Guarantee is a continuing guarantee, regardless of any intermediate payment or discharge in whole or in part.

5.3 The Guarantor shall not be released from liability under this Guarantee in respect of the Guaranteed Obligations until the later of:

- (a) the date upon which the Guaranteed Obligations have been satisfied in full ("**End Date**"); and
- (b) where, on or before the End Date, the Council has made a pre-existing, bona fide claim in writing to the Guarantor and:
 - (i) the parties have not agreed that claim; and
 - (ii) the Expert has not determined that claim; or

- (iii) that claim has not been finally dealt with by the Courts or the Expert or an arbitrator or adjudicator (as the case may be)

to the extent (if at all) that such a claim subsists in respect of such matters which are the subject of the claim, the date such claim is agreed, determined or finally dealt with (as appropriate) and, in any such case, settled in full by the Guarantor.

- 5.4 The Council shall not be required to issue any legal proceedings or obtain any judgment against the Developer in any court before enforcing any of the rights and remedies conferred upon it by this Deed.
- 5.5 Any judgment of the court or the decision of an Expert or arbitrator or adjudicator against the Developer in favour of the Council (or vice versa) under the Agreement for Lease in respect of the Guaranteed Obligations shall be conclusive evidence for the purposes of this Deed as to any liability of the Developer or the Council (as appropriate) to which such judgment or award or decision relates (unless and until the same is set aside by any competent tribunal) but, if the Council commences any proceedings in court or expert determination or arbitration proceedings or adjudication against the Developer under or in connection with the Agreement for Lease, the Council covenants that the Council shall so notify the Guarantor simultaneously with the Developer upon their commencement.
- 5.6 The Council agrees that, if the Guarantor requests in writing within 20 Working Days of service of such notification that the Guarantor be joined as a party to or be heard in such proceedings, the Council will promptly take all reasonable steps to have the Guarantor joined or given rights of audience in such proceedings.

6 COUNCIL NOTICE

Whenever (if at all) that the Council serves any notice (whether in hard or electronic form) on the Developer relating to any breach and/or alleged breach by the Developer of the Agreement for Lease which may, in the Council's reasonable opinion, in any way relate or be relevant to:

- (a) the Guaranteed Obligations; and/or
- (b) any other aspect of this Deed

the Council covenants with the Guarantor that the Council will, simultaneously with (or promptly following) such service, provide a full and complete copy of such notice to the Guarantor.

7 DISPUTES

- 7.1 Any dispute in respect of this Deed may be referred by either the Guarantor or the Council for determination by the Expert in accordance with clause 29 ("Disputes") of the Agreement for Lease as if that clause were repeated here (mutatis mutandis) except that in that clause any reference to:
 - (a) a "Party" or "Parties" means a party or the parties to this Deed and not to the Agreement for Lease; and
 - (b) "this Agreement" means this Deed and not the Agreement for Lease.
- 7.2 If the subject of a dispute under this Deed is also the subject of a dispute under the Agreement for Lease, either the Council or the Guarantor may request that the dispute be resolved under the same proceedings or using the same principles by giving written notice to

the other, following which the parties shall take such reasonable and proper steps as may be required to give that effect.

8 EXPENSES

The Guarantor must pay the Council within ten Working Days of written demand and reasonable proof of expenditure the amount of all costs and expenses (including proper legal fees) reasonably and properly incurred by the Council in connection with the proper enforcement of, or the proper preservation of, any rights against the Guarantor under this Guarantee.

9 ASSIGNMENT AND REPLACEMENT GUARANTOR

9.1 The Council may not assign, transfer, charge or otherwise part with the benefit of this Deed save to the same party, and at the same time, to whom the Council may assign the benefit of the Agreement for Lease.

9.2 Subject always to clause 9.3, the Guarantor may not assign, transfer or otherwise part with its rights or obligations under this Guarantee.

9.3 The Developer shall be entitled from time to time to require that the Council release the Guarantor from the then outstanding obligations of the Guarantor under this Deed and, in place of the Guarantor (and subject to clause 9.4), accept a replacement guarantor approved by the Council (such approval not to be unreasonably withheld or delayed provided that it shall always be reasonable for the Council to refuse approval to any proposed replacement guarantor which:

- (a) enjoys diplomatic or state immunity; and/or
- (b) does not have assets in the European Union or in another jurisdiction in respect of which a reasonable and accurate assessment of the financial strength of the proposed replacement guarantor can be made; and/or
- (c) is not of a financial standing and covenant strength to be able to comply with and discharge the then outstanding obligations of the Guarantor under this Deed)

("Replacement Guarantor") provided that:

- (d) the Guarantor agrees to such release; and
- (e) the Developer procures that the Replacement Guarantor enters into a Replacement Deed of Guarantee with the Council simultaneously with and as a pre-condition to any release of the Guarantor

and each of the Guarantor and the Council covenants to join in and execute the Replacement Deed of Guarantee to evidence its consent thereto.

9.4 Notwithstanding clause 9.3, the parties agree that the Council cannot be required to enter into a Replacement Deed of Guarantee with a Replacement Guarantor incorporated outside England and Wales unless, on or before completion of the Replacement Deed of Guarantee, the Guarantor delivers, or procures delivery, to the Council (and the Guarantor hereby covenants to so deliver to the Council or to procure the delivery to the Council of) an opinion letter:

- (a) in a form approved by the Council; and

- (b) given by a reputable firm of private practice lawyers practising in, and competent in the law of, the relevant jurisdiction and who shall be approved by the Council

(such approval in each case not to be unreasonably withheld or delayed) which confirms that:

- (c) the Replacement Guarantor is duly incorporated and existing under the laws of that jurisdiction;
- (d) the Replacement Guarantor has corporate power to enter into (and will be bound by) its obligations under the Replacement Deed of Guarantee;
- (e) the choice of the law of England and Wales in relation to the Replacement Deed of Guarantee is valid in, and will be given effect to by, the courts of that jurisdiction;
- (f) the Replacement Guarantor's irrevocable submission to the non-exclusive jurisdiction of the courts of England and Wales and the appointment of agents there to accept service of process on its behalf in relation to the Replacement Deed of Guarantee are valid and binding on the Replacement Guarantor;
- (g) the Replacement Guarantor has validly executed the Replacement Deed of Guarantee;
- (h) the Replacement Guarantor is not the subject of any insolvency proceedings, winding up or analogous procedure in that jurisdiction; and
- (i) any other matters relevant to the legality, validity and enforceability of the Replacement Guarantor's obligations that the Council may reasonably require.

- 9.5 The Guarantor shall (or shall procure that the Replacement Guarantor shall) pay the Council's reasonable and proper costs and expenses in connection with, or arising out of, the negotiation and completion of the Replacement Deed of Guarantee.

10 SERVICE OF NOTICE

- 10.1 Any notice to be served on, or communication to be sent to, either party under or in connection with this Deed must be in writing and signed by or on behalf of the party giving it, and shall be deemed to be properly served if sent by Recorded Delivery post or delivered by hand (but not by fax or e-mail):

- (a) in the case of the Council, to its address on page 1 of this Deed addressed to the Director of Law and Governance; or
- (b) in the case of the Guarantor, to its address on page 1 of this Deed addressed to []

or, in either case, to such other alternative address and/or such alternative person (in either case within the jurisdiction) as the Council or the Guarantor (as the case may be) may nominate in writing to the other from time to time, and any such notice or communication shall be deemed to be served on the second Working Day after being put in the post properly addressed or (as the case may be) upon the date of delivery if service is by hand.

- 10.2 This clause shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11 RIGHTS OF THIRD PARTIES

Except in respect of clause 9.3 which may be enforced by the Developer against both the Guarantor and the Council, it is not intended that a third party should have the right to enforce a provision of this Guarantee pursuant to the Contracts (Rights of Third Parties) Act 1999.

12 FURTHER ASSURANCE

The Guarantor shall execute such further documents (if any) as the Council may from time to time reasonably require to perfect or enforce the obligations created by this Deed.

13 SET OFF

The Council may not set off any matured obligation due from the Guarantor under this Guarantee (to the extent beneficially owned by the Council) against any matured obligation owned by the Council to the Guarantor, regardless of the place of payment, booking branch or currency of either obligation.

14 GOVERNING LAW

14.1 This Deed and any dispute or claim arising out of or in connection with it (whether contractual or non-contractual in nature) is governed by the law of England and Wales.

14.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales in respect of any matter, dispute or claim arising out of or in connection with this Deed (whether contractual or non-contractual in nature).

14.3 [The Guarantor irrevocably appoints [] of [] as its agent to accept on its behalf service of any notices or proceedings arising out of or in connection with this Deed (whether the matter, dispute or claim to which they relate is contractual or non-contractual in nature.)
[required if the Guarantor is not registered in England and Wales]

Executed as a deed

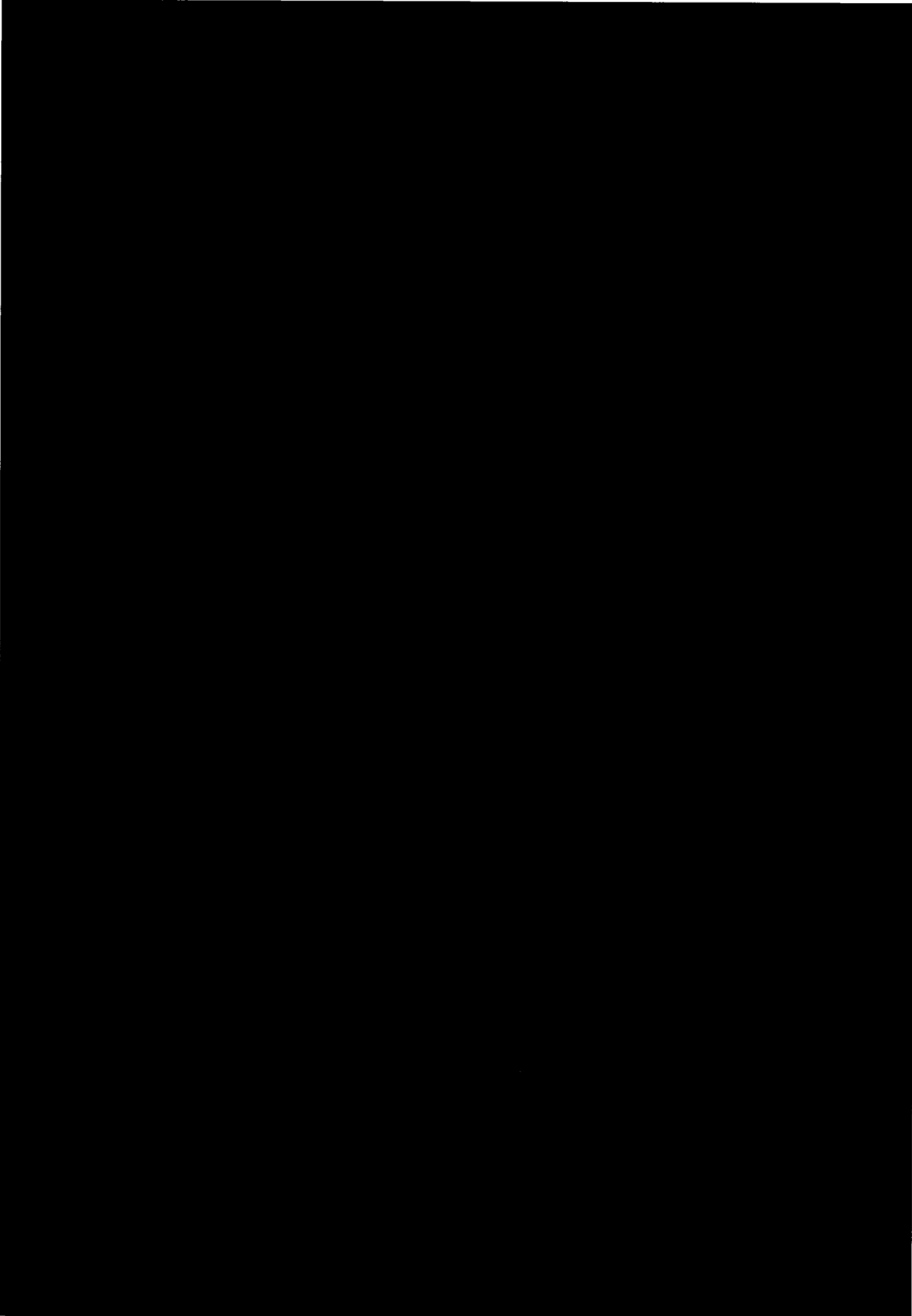
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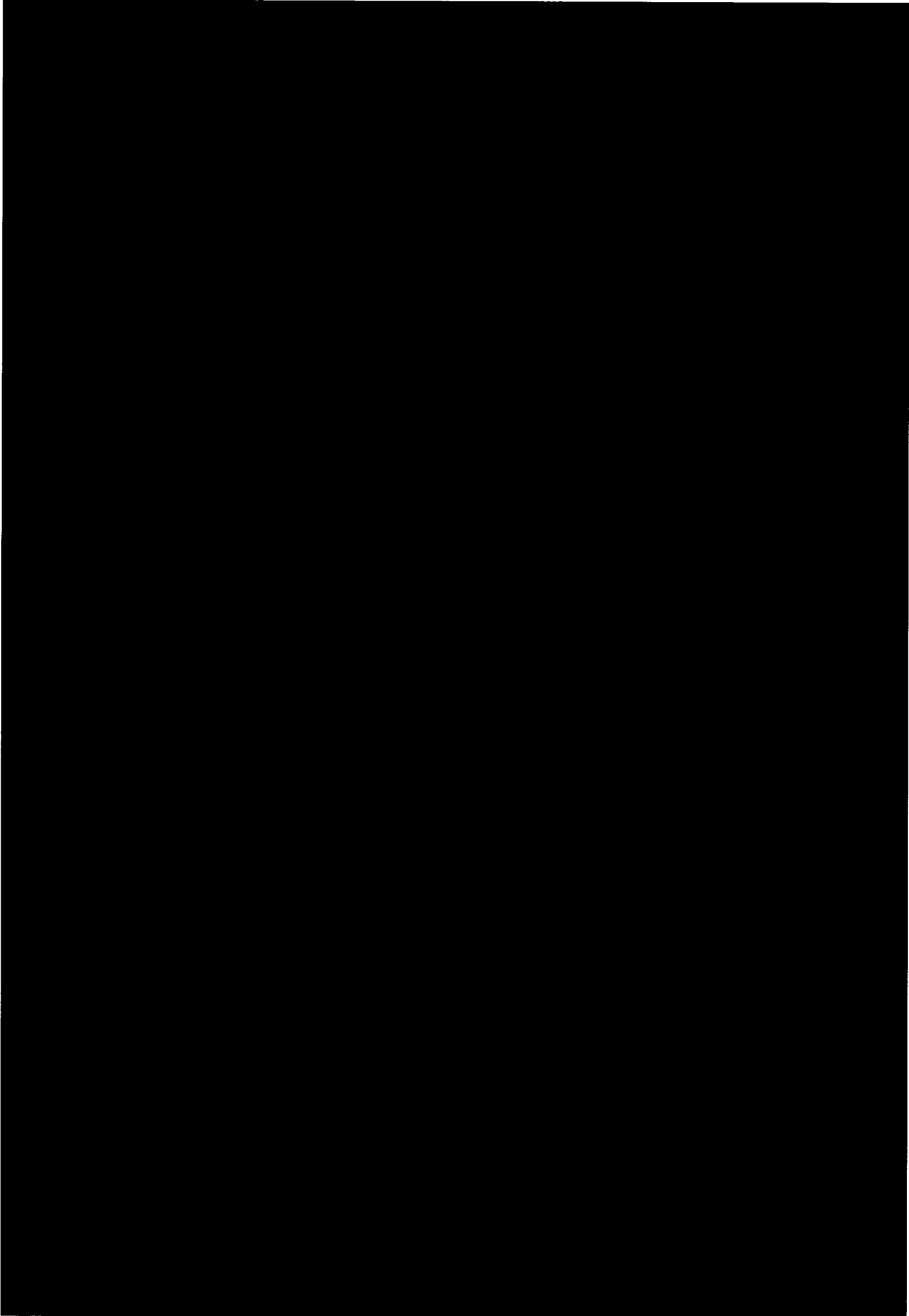
Executed as a deed (but not delivered until the date hereof))
by affixing the COMMON SEAL of)
THE MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF BARKING AND DAGENHAM)
to this Deed, affixed in the presence of)
being an officer of the London Borough of Barking and Dagenham)
authorised to attest to the Common Seal thereof)

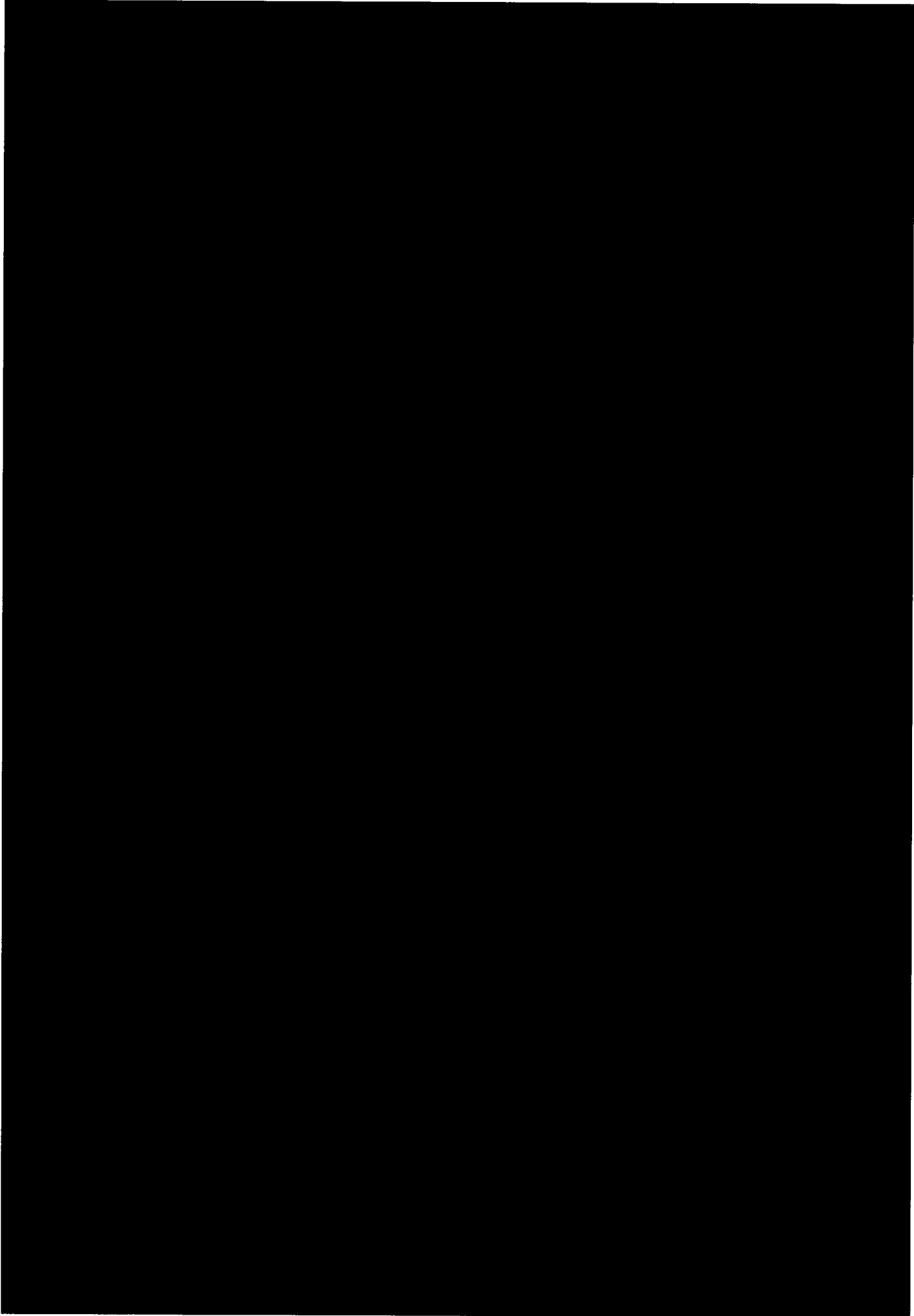
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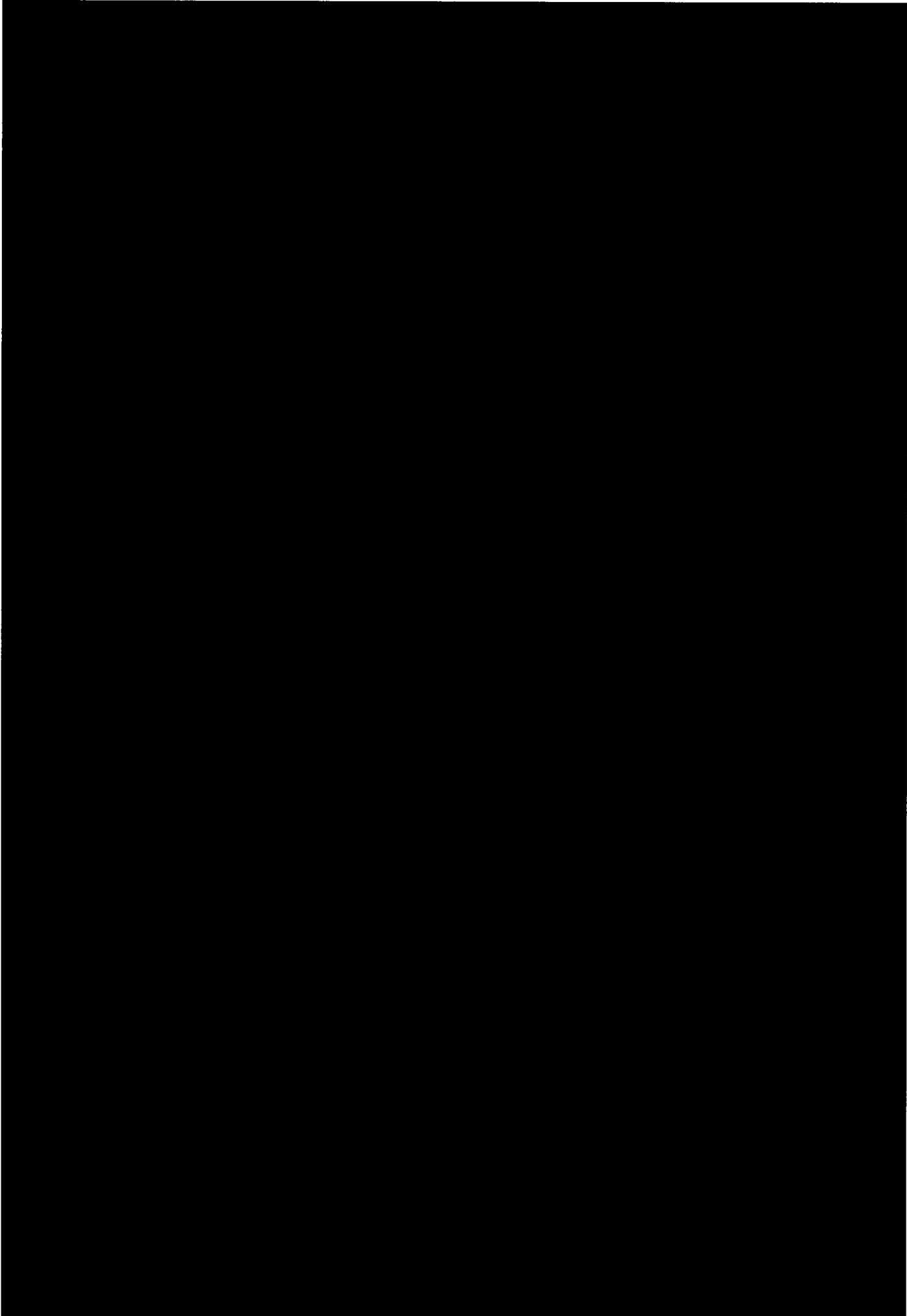
SCHEDULE 12











Executed as a deed (but not delivered until the date hereof))
by affixing the COMMON SEAL of)
THE MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF BARKING AND DAGENHAM)
to this Deed, affixed in the presence of)
being an officer of the London Borough of Barking and Dagenham)
authorised to attest to the Common Seal thereof)

(Minute No.)

Executed as a deed by **LAGMAR**)
(BARKING) LIMITED acting by a)
director and its secretary or two)
directors:)



Director



Director/Secretary



23 October 2023

Mr Richard Serra
Tottenham Hotspur Football & Athletic Co Ltd
Lillywhite House, 782 High Road,
London, N17 0BX

Dear Mr Serra

High Road West - Access Licence

As you are aware, on 31 August 2022 the London Borough of Haringey (the "Council") granted planning permission (reference HGY/2021/3175) for the redevelopment of High Road West (the "Permission").

The Permission was granted following the Council and Lendlease (High Road West) Limited ("Lendlease") entering into an agreement pursuant to s106 of the Town and Country Planning Act 1990 (the "Section 106 Agreement").

Defined terms within the remainder of this letter have the same meaning as that ascribed to them within the Section 106 Agreement.

Pursuant to paragraph 7 of Schedule 13 of the Section 106 Agreement requires Lendlease to grant or procure the grant to THFC for the purpose of operating the THFC Stadium on Event Days access to a Route via a Temporary Access Licence and/or an Access Licence.

The Annex to Schedule 13 titled "Licence Specified Terms" sets out the heads for the Temporary Access Licence/ Access Licence.

With a view to agreeing the terms of a Temporary Access Licence / Access Licence with THFC, please find attached Lendlease's position in respect of each of the Licence Specified Terms.

You will hopefully appreciate that Lendlease has taken a pragmatic approach to the Licence Specified Terms which reflect its desire to work co-operatively with THFC during both the construction and operational phases of the delivery of the High Road West development.

We would be grateful if you could review the proposed terms and provide any comments you may have as soon as practicable.



Yours sincerely,

Avni Mehta

Avni Mehta
Project Lead – High Road West
Lendlease



Item	Section 106 Agreement Specified Terms	Lendlease Position / Comment
Definition of Event	Football matches, or non-football events to be held at the THFC Stadium which is expected to attract an audience requiring crowd flow management (currently set at more than ten thousand (10,000) people but which could increase to 36,000 in the future)	No comment required.
Licence Fee	[] per Event	A peppercorn.
Number of Events (annually from 1 August -31 July each year)	Football matches and up to 16 other Events	No comment required.
Notice Period	3 months prior to an Event Day for non-football Events. Six weeks prior to a football Event Day PROVIDED THAT if a scheduled football Event for which THFC has previously given sufficient notice is re-scheduled less than six weeks prior to the Event Day, THFC will be permitted to provide shorter notice if the following terms are met: (a) such notice is given to the Developer within three days of THFC receiving notification; and (b) notice is given at least one week prior to the Event Day.	No comment required.
Purpose of Licence	The Developer will allow THFC and its agents to enter onto the Access Land for the agreed access hours on the Event Day for the purposes of erecting mobile and temporary pedestrian control barriers along the Route and signage to facilitate stadium visitor egress from the THFC Stadium through the Development to White Hart Lane train station. Any Temporary Access Licence will include public access rights.	Lendlease acknowledge the purpose of the licence and will work with THFC to fulfil the Purpose of the Licence.
Duration of Access per Event	Four hours prior to scheduled commencement of an Event and three hours after either the final whistle of a football match or the scheduled completion time of a non-football Event as the case may be, unless otherwise agreed in writing between the parties.	No comment or action for Lendlease.
Requirements of THFC	THFC to carry out a Primary Access Route inspection alongside a representative of the Developer (or any management company)	Lendlease will agree that THFC are not required to provide an indemnity on the

Item	Section 106 Agreement Specified Terms	Lendlease Position / Comment
	<p>THFC to erect barriers/signage/equipment during Event access period</p> <p>THFC to remove barriers/signage/equipment after completion of the Event, during Event access period</p> <p>THFC to remove any litter and clean where necessary to restore the Access Land to its pre-Event state.</p> <p>THFC to make good any damage to the Access Land.</p> <p>THFC to provide indemnity to Developer for damage and losses arising from actions of THFC on the Property.</p> <p>THFC to hold public liability insurance with minimum coverage to be agreed between the parties, for every Event.</p>	<p>understanding that THFC will not seek an indemnity from Lendlease.</p> <p>Lendlease's expectation is that THFC will hold public liability insurance of not less than £10million on an each and every claim basis. We would anticipate that THFC would hold this level of cover as a matter of course given the scale of the commercial operation. We would expect this cover to be evidenced on an annual basis (or equivalent) demonstrating that suitable cover is in place.</p>
Requirements of the Developer (or any management company)	<p>The Developer (or any management company) to be a member of the Safety Advisory Group for stadium events requiring crowd flow management.</p> <p>Developer (or any management company) to carry out pre-access Route inspection alongside a representative of THFC.</p> <p>Developer (or any management company) to maintain the Route to a satisfactory standard for safe passage.</p>	<p>Lendlease will not seek any costs from THFC for complying with these obligations.</p>
Routes	<p>The Access Licence will identify the proposed Primary Access Route over the Access Land</p> <p>The Developer will provide plans to THFC of general intended route.</p> <p>In order to accommodate the construction of the ongoing Development, the Route may be updated as approved pursuant to the conditions of the Planning Permission.</p> <p>The Developer will further be permitted in the event of unforeseen circumstances (for example flooding or power outages) to restrict access to the Primary Access Route, to specify an Alternative Access Route and shall provide as much notice to THFC as reasonably practicable.</p> <p>Minimum specification of the route will be in accordance with the Route Specification appended to the Access Licence.</p>	<p>Please see attached plans showing the current intended location of the routes during the construction and operational phases that will provide for stadium visitor egress on Event Days and be available for public access at other times.</p> <p>The Council has agreed in principle that the Council is a party to the access arrangements by way of a tri-partite agreement under which the Council and Lendlease (where Lendlease has an interest in the relevant land) will grant access licences to THFC for the temporary routes and will grant THFC an easement in respect of the permanent route.</p>