DATE 20

blaby district COUNCIL

and

[Developer] LIMITED

DEVELOPMENT Agreement

Residential development of a former council depot site in Littlethorpe

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**DEVELOPMENT AGREEMENT (“this Agreement”) dated[ ] 20**

**PARTIES:**

(1) **BLABY DISTRICT COUNCIL** of Council Offices, Desford Road, Narborough, Leicester LE19 2EP (“**the Council**); and

(2) **[ ] LIMITED** (company number [ ]) whose registered office is at [ ] (“**the Developer**”).

**INTRODUCTION**

1. The Parties wish to secure the redevelopment of the Council’s former depot site in Littlethorpe owned by the Council and its replacement with 31(thirty one) residential dwellings (“**the Development**”) of which 7 (seven) are designated for affordable housing. There will be (“**the Dwelling Mix**”):
* 14 (fourteen) x 3 bedroom semi detached houses;
* 8 (eight) x 2 bedroom semi-detached houses;
* 5 (five) x 2 bedroom terrace houses; and
* 4 (four) x 1 bedroom bungalows constructed.

(B) On 1 November 2017, the Council published a notice on its website and on the Government’s Contracts Finder website pursuant to Regulation 110 of the Public Contracts Regulations 2015, seeking tenders for carrying out the Development.

(C) The Council wishes to enter into a joint venture relationship with the Developer for the Development as set out in this Agreement.

(D) The Council has selected the Developer and the Developer has agreed to undertake the Development.

(E) The Council enters into this Agreement in reliance on its powers in section 123 of the Local Government Act 1972, section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 in conjunction with the other powers relied on and all other enabling powers.

1. Interpretation
	1. The following phrases (which begin with capital letters in this Agreement) have the meanings set out below:

|  |  |  |
| --- | --- | --- |
| **“Adjudication Procedure”** |  | means the procedure set out in Clause 35 [*Adjudication*]; |
| **“Adjudicator”** |  | means a person appointed as adjudicator in accordance with the Adjudication Procedure; |
| **“Approved Designs”** |  | means the drawings and specifications prepared by the Developer for the Development as listed in Part 1 of Schedule 2 [*Developer’s Proposals*] and as amended by the Developer from time to time in accordance with Clause 10 [*Design*]; |
| **“Building Contract”** |  | means the form of Contract for the Works set out in Schedule 6 [*Forms of Building Contract, Appointments and Collateral Warranties*] or such other form as the Council approves; |
| **“Calendar Month”** |  | means a period from the first day of a month to the last day of the same month; |
| **“CDM Regulations”** |  | means the Construction (Design and Management) Regulations 2015; |
| **“Certificate of Practical Completion”** |  | means in relation to a Dwelling a certificate issued by the Certifying Officer after the issue of the NHBC Certificate that Practical Completion (as defined in the Building Contract) has been achieved in relation to that Dwelling;  |
| **“Certifying Officer”** |  | means the person appointed by the Developer for the purposes of issuing Certificates of Practical Completion under the Building Contract; |
| **“Code of Practice”** |  | means a code of good practice (whether statutory or advisory) issued by a Relevant Authority;  |
| **“Collateral Warranty”** |  | means a collateral warranty in favour of the Council from the Contractor, a Consultant or any Subcontractor with design responsibility, in the form specified in Schedule 6 [*Form of Building Contract, Appointment and Collateral Warranties*] or such other form as the Council approves;  |
| **“Commercially Sensitive Information”** |  | has the meaning given in the FOIA; |
| **“Condition Precedent”** |  | means the grant of all Satisfactory Planning Permissions the Developer (acting reasonably) considers necessary to carry out the Development together with the occurrence of the last date by which any appeal to the High Court or application for judicial review of such Planning Permissions has to be lodged in relation to the last of those Satisfactory Planning Permissions to be granted, unless during such period Planning Proceedings have been commenced in relation to that or any other Satisfactory Planning Permission. Where Planning Proceedings are commenced the condition precedent shall be the occurrence of the date on which those Satisfactory Planning Permissions are all finally upheld following the withdrawal of those Planning Proceedings or on the Final Determination of those Planning Proceedings leaving in place those Satisfactory Planning Permissions; |
| **“Condition Satisfaction Deadline”** |  | means the date 5 (five) Months after the date of this Agreement or such later date as may be determined in accordance with Clause 3 [*Conditions Precedent*]; |
| **“Confidential Information”** |  | has the meaning given in FOIA; |
| **“Consents”** |  | means those permissions, consents, approvals, licences, certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out and complete the Development in accordance with this Agreement including:1. any Planning Permissions (including reserved matters approvals);
2. building regulations consents and bye-laws approvals;
3. the requirements of all Relevant Authorities regulating the Development, the Works and/or the use of the Site; and
4. the consents of all parties having interests or rights in or over the Site who by the lawful exercise of their powers in the absence of such consent could prevent or impede the carrying out or progress of the Development or its use and enjoyment;
 |
| **“Construction Programme”** |  | means the programme for the construction of the Development prepared by the Developer under Clause 19 [*Construction Programme*] as amended from time to time in accordance with this Agreement; |
| **“Consultant”** |  | means a consultant or specialist advisers whose services are from time to time engaged by the Developer in connection with the Development; |
| **“Consultant Appointment”** |  | means a consultant appointment between the Developer and a Consultant in the form specified in Part 2 Schedule 6 [*Form of Building Contract, Appointment and Collateral Warranties*] or such other form as the Council approves; |
| **“Contamination”** |  | means the presence of any substance or substances either alone or in combination present in on or under the Site at the date of this Agreement in sufficient quantity to cause harm to human health or the environment;  |
| **“Contractor”** |  | means the contractor who enters into the Building Contract with the Developer; |
| **“Core Group”** |  | means the group of individuals set out at Clause 18.4 [*Joint Venture Obligations*]; |
| **“Core Group Meetings”** |  | means the meetings of the Core Group as further defined in Clause 18 [*Joint Venture Obligations*]; |
| **“Council’s Share”** |  | means the Council’s share of any Overage as determined in accordance with Clause 21 [*Proceeds of Sale of the Dwellings*]; |
| **“Council Default”** |  | has the meaning given in Clause 25.1 [*Termination for Council Default or Force Majeure*];  |
| **“Council Default Notice”** |  | has the meaning given in Clause 25.2 [*Termination for Council Default or Force Majeure*]; |
| **“Council Default Rectification Period”** |  | has the meaning given in Clause 25.2 [*Termination for Council Default or Force Majeure*]; |
| **“Deductions”** |  | means:1. any allowance discount and/or payment made to a Purchaser of a Dwelling in respect of any deposit or purchase monies;
2. where an interest free loan is made to a Purchaser, a sum equivalent to the interest for an equivalent period of that loan at the Bank of England base rate at the date of the loan;
3. the costs borne by the Developer in marketing any Dwelling to any Purchaser;
4. any net cost to the Developer (after deducting any payments made by the Purchaser) of providing any Extras; and/or
5. any amount paid or allowed by the Developer to a Purchaser in respect of that Purchaser’s solicitors’ fees, mortgage arrangement fees or surveyors’ fees being sums a purchaser of a residence would have usually and properly incurred;
 |
| **“Deductions Cap”** |  | means 3% (three per cent) of the Gross Sale Proceeds in respect of each Dwelling; |
| **“Developer Default”** |  | has the meaning given in Clause 24.1 [*Termination for Developer Default*]; |
| **“Developer Default Notice”** |  | has the meaning given in Clause 24.3 [*Termination for Developer Default*]; |
| **“Developer Default Rectification Period”** |  | has the meaning given in Clause 24.3 [*Termination for Developer Default*]; |
| **“Developer’s Proposals”** |  | means the proposals (including the initial Approved Designs) submitted by the Developer for the Development in response to the Council’s invitation to tender as set out in Schedule 2 [*Developer’s Proposals*];  |
| **“Developer’s Share”** |  | means the share of any Overage that may be retained by the Developer under Clause 21 *[Proceeds of Sale of the Dwellings];* |
| **“Developer’s Solicitors”** |  | means [ ] (Ref: [ ]); |
| **“Development”** |  | means the comprehensive development of the Site in accordance with the Dwelling Mix, Satisfactory Planning Permission, Developer’s Proposals and the Approved Designs including the design, site preparation and the Works and references to **“the Development”** include the whole or any part of the Development; |
| **“Development Budget”** |  | the budget for the Development drawn up under Clause 12 [*Preconditions to Start on Site*]and based on the draft in Part 1 Schedule 4 [*Finance*]; |
| **“Development Commencement Date”** |  | means the date on which the Works comprised in the Development start on Site; |
| **“Development Completion Date”** |  | means the date of sale of the last of the Dwellings which are due to be built as part of the Development; |
| **“Development Disposal Longstop Date”** |  | means the date 9 (nine) Months after the Development Target Completion Date or such later date as is provided for under Clause 19.5 [*Construction Programme*]; |
| **“Development Longstop Date”** |  | means the date 3 (three) Months after the Development Target Completion Date or such later date as is provided for under Clause 19.5 [*Construction Programme*]; |
| **“Development Period”** |  | means the period commencing on the Development Commencement Date and ending on the Development Completion Date; |
| **“Development Target Commencement Date”** |  | means the date 1 (one) Month after the Unconditional Date, which shall be the starting date for the purposes of the Construction Programme or such later date as is provided for under Clause 19.5 [*Construction Programme*];  |
| **“Development Target Completion Date”** |  | means [ ] Months after the Unconditional Date being the date by which the Developer is required to have secured that the Development Completion Date has occurred or such later date as is provided for under Clause 19.5 [*Construction Programme*]; |
| **“Disposal”** |  | means the sale by the Developer of a Dwelling to a Purchaser pursuant to this Agreement; |
| **“Dispute”** |  | means any dispute between the Parties relating to this Agreement; |
| **“Dispute Resolution Procedure”** |  | means the procedure set out in Clauses 33 [*Informal Dispute Resolution*] to 36 [*Expert Decision*] for the resolution of Disputes; |
| **“Dwelling”** |  | means a dwelling to be constructed upon the Site as part of the Development; |
| **“Dwelling Mix”** |  | means the mix of design types for the Dwellings set out at paragraph (A) of the Introduction as amended by agreement under Clause 2.2 [*Intention of the Parties*] (where applicable); |
| **“Environment”** |  | has the meaning given in section 1(2) of the Environmental Protection Act 1990; |
| **“Environmental Information Regulations”** |  | means the Environmental Information Regulations 2004;  |
| **“Environmental Law”** |  | means any Law or any notice, direction, imposition or requirement issued, imposed or directed by any competent authority which relates to the protection of human health or protection of the Environment; |
| **“Extras”** |  | means any of the items listed in Schedule 3 [*Extras*] as being additional or higher specification works carried out, or extras provided by the Developer at the request of a Purchaser, which are either provided at the cost of a Purchaser or provided at the cost of the Developer to the Purchaser and are over and above the Developer’s standard specifications applicable to that Dwelling; |
| **“Final Determination”** |  | means in respect of a Planning Application, a Planning Appeal or Planning Proceedings the date upon which a decision is issued and the usual period for appeal to the High Court or application for judicial review has expired without such appeal or application being lodged or (where such appeal or application is lodged) the date on which a final decision is made pursuant to such appeal or application or the date upon which a decision upon any re-determination of the appeal is given and the usual period for appeal to the High Court or application for judicial review has expired in each case leaving in place a Satisfactory Planning Permission; |
| **“FOIA”** |  | means the Freedom of Information Act 2000; |
| **“Force Majeure”** |  | means governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes (other than those involving the Developer, the Building Contractor, a Consultant or a Subcontractor or Supplier) currency restrictions or Acts of God;  |
| **“Gross Sale Proceeds”** |  | means the gross consideration (excluding any VAT) (wholly or partly) in cash plus the value of such other consideration paid by a Purchaser for the Transfer of a Dwelling (including any payment for Extras); |
| **“Net Sale Proceeds”** |  | means the Gross Sale Proceeds for a Dwelling less the lower of Deductions and the Deductions Cap for that Dwelling; |
| **“Good Industry Practice”** |  | means that degree of skill, care, prudence and foresight and operating practice reasonably to be expected of a skilled and experienced professional or building contractor engaged in the same type of undertaking as that of the Developer; |
| **“Group Company”** |  | means in relation to a company any company which is a holding company or subsidiary of that company or a subsidiary of such holding company where “holding company” and “subsidiary” have the meanings given to it by section 1159 of the Companies Act 2006; |
| **“Health and Safety File”** |  | has the meaning given in the CDM Regulations; |
| **“Highways Agreement”** |  | means any agreement under section 38 or section 278 of the Highways Act 1980 entered into by the Developer, and/or the Council (where so required by the Relevant Authority) in accordance with Clause 11.2 in such form as the Relevant Authority requires; |
| **“Highways Bond”** |  | means the bond to be obtained by the Developer in accordance with Clause 11.7 [*Necessary Consents*] from a major clearing bank or other recognised bondsman approved by the County Council in a form approved by the County Council to secure the obligation of the Developer to carry out and complete the Highway Works; |
| **“Information”** |  | has the meaning given under section 84 of the FOIA;  |
| **“Infrastructure Works”** |  | means any highway improvement works (including improvements to existing highways and the construction and adoption of new roads and/or footpaths), any sewerage improvement works (including improvements to existing sewers and the construction and adoption of new sewers so that each Dwelling is provided with sewerage services) and the connection of each Dwelling to the mains water supply and gas and/or electric supply as appropriate required to be undertaken in connection with the Development; |
| **“Insurances”** |  | means the insurance policies specified in Schedule 7 [*Insurances]* and which the Developer is required to maintain in accordance with Clause 23.4 [*Insurance and Reinstatement*] and such other insurance policies as the Developer elects to put in place in relation to the Development; |
| **“Interest Rate”** |  | means the rate specified from time to time under the Late Payments of Commercial Debts (Interest) Act 1998; |
| **“Land Sale Prices”** |  | means the price payable to the Council on the disposal of a Dwelling as set out in Part 2 of Schedule 4 [*Finance*]; |
| **“Law”** |  | means any of the following in force in England and Wales:1. any Act of Parliament or subordinate Law within section 21(1) of the Interpretation Act 1978;
2. any exercise of the Royal Prerogative;
3. until the repeal of section 2 of the European Communities Act 1972 any enforceable community right as defined in that section; and
4. any applicable judgment of a relevant court of law which creates binding precedent in England and Wales;
 |
| **“Liquidated Damages Rate”** |  | means a weekly rate of £200.00 (two hundred pounds) per Dwelling per week or part week; |
| **“Loan Agreement”** |  | means the form of loan agreement set out at Schedule 9 [*Loan Agreement*] as varied from time to time by the agreement of the Parties; |
| **“Market Value”** |  | means the price which the Developer reasonably considers (but without deliberately or negligently doing or omitting to do anything for the purpose of reducing any Overage that might otherwise be due) would reasonably be expected to be paid for the Dwelling at the relevant time on the open market for a sale at arm’s length with vacant possession by a willing vendor to a willing purchaser with all reasonable publicity and allowing a reasonable period for marketing subject to all incumbrances existing but free from the provisions of this Agreement;  |
| **“Month”** |  | means a period of a month from the date such period starts, such that a period of “**1 (one) Month”** is the period from a day in a month to the day before the corresponding day in the following month; |
| **“Necessary Consents”** |  | means any Consents which are necessary to carry out and complete the Development in accordance with this Agreement; |
| **“NHBC”** |  | means the National House Building Council scheme in which the Developer participates and under which the Developer will provide a 10 (ten) year warranty and insurance cover including Developer insolvency cover during the Development Period in respect of each of the Dwellings; |
| **“NHBC Certificate”** |  | means the NHBC cover note; |
| **“Open Spaces”** |  | means areas of land within the Site which do not fall within the curtilage of a Dwelling and which are not designated a public highway; |
| **“Overage”** |  | means the amount by which the Net Sale Proceeds from the Disposal of each Dwelling exceeds the Overage Threshold for that Dwelling; |
| **“Overage Threshold”** |  | means the Overage Threshold for each Dwelling as set out in Part 2 of Schedule 4 [*Finance*]; |
| **“Parties”** |  | means the Council and the Developer and “Party” shall be any one of them; |
| **“Performance Bond”** |  | means a performance bond in favour of the Council in the sum of £[ ] ([ ] pounds) in the form set out in Schedule 10 [*Form of Performance Bond*] from a good and substantial clearing bank or other recognised bondsman of good and substantial standing satisfactory to and approved by the Council; |
| **“Planning Act”** |  | means the Town and Country Planning Act 1990; |
| **“Planning Appeal”** |  | means:1. an appeal in the name of the Developer in a form previously approved by the Council (such approval not to be unreasonably withheld or delayed) in writing:
	* to the Secretary of State under section 78 of the Planning Act against a refusal of a Planning Application or the grant of a Planning Permission which is not a Satisfactory Planning Permission; or
	* to the Secretary of State under section 78 of the Planning Act against the non-determination of a Planning Application; or
2. the reference of a Planning Application to the Secretary of State under section 77 of the Planning Act following a request to that effect made by the Developer to the Secretary of State;
 |
| **“Planning Applications”** |  | means applications for all Planning Permissions the Developer considers necessary or desirable to carry out the Development, to be made by the Developer to the Planning Authority in accordance with Clause 3 [*Conditions Precedent*] as approved by the Council under Clause 3 [*Conditions Precedent*] and as varied from time to time in accordance with this Agreement; |
| **“Planning Authority”** |  | means the local planning authority for the area covering the Site under section 1 of the Town and Country Planning Act 1990; |
| **“Planning Conditions”** |  | means any conditions imposed on the grant of any Planning Permission; |
| **“Planning Counsel”** |  | means counsel with at least 10 (ten) years experience in planning law and practice as at the date of referral to him/her; |
| **“Planning Obligation”** |  | means any of the following which affects any part of the Site: |
|  |  | 1. a planning obligation (by agreement or otherwise) affecting the Site under Section 106 of the Planning Act;
2. an agreement under section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (whether or not in conjunction with section 111 of the Local Government Act 1972);
3. an agreement under sections 38 and/or 278 of the Highways Act 1980;
4. any agreement with a water undertaker or a drainage undertaker (within the meaning of the Water Industry Act 1991) or

the Environment Agency or an Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991) or other Relevant Authority as to water supply or drainage of surface and/or foul water from the Site; and or1. any agreement with any Relevant Authority relating to other services;
 |
| **“Planning Permission”** |  | means any planning permission issued for the Development in response to a Planning Application (including any reserved matters approval); |
| **“Planning Proceedings”** |  | means either:1. an application for judicial review under the Civil Procedure Rules, Schedule 1, RSC Order 53 or an application pursuant to Section 288 of the Planning Act including (in each case) any appeals to a higher court following a judgment of a lower court; or
 |
|  |  | 1. an application pursuant to Section 288 of the Planning Act arising from the grant of a Satisfactory Planning Permission including any appeal to a higher court following a judgment of a lower court; or
 |
|  |  |
|  |  | 1. an application (within the meaning of (1) or (2) above) arising from the grant of a Planning Permission, or a Planning Refusal following a reconsideration of a Planning Application by the Planning Authority or an appeal to the Secretary of State pursuant to (3) above;
 |
| **“Planning Refusal”** |  | means:1. a refusal of a Planning Application (including a deemed refusal under section 78(2) of the Planning Act); or
2. the grant of a Planning Permission which is not a Satisfactory Planning Permission;
 |
| **“Prohibited Materials”** |  | means goods, materials, substances or products which are generally accepted or (having regard to the knowledge generally available within the construction industry at the time of specification and/or use) are reasonable suspected of:1. being harmful in themselves;
2. being harmful when used in a particular situation or in combination with other materials;
3. becoming harmful with the passage of time; or
4. being damaged by or causing damage to the structure in which they are to be affixed

Goods, materials, substances or products are to be regarded as harmful if, in the context of their use in the Development (whether alone or in combination with other materials) they:1. are prejudicial to health and safety;
2. pose a threat to the structural stability or the physical integrity of any part of the Development; or
3. could materially reduce the normal life expectancy of any part of the Development;
 |
| **“Project Purchaser”** |  | means a Purchaser of the whole or substantial part of the Site; |
| **“Purchaser”** |  | means a purchaser of one or more of the Dwellings; |
| **“Quarter”** |  | means each period of 3 (three) Calendar Months ending on 31 March, 30 June, 30 September and 31 December; |
| **“Rectifiable Developer Default** |  | has the meaning given in Clause 24.3 [*Termination for Developer Default*]; |
| **“Registered Provider”** |  | means a social landlord registered under the Housing and Regeneration Act 2008; |
| **“Relevant Authority”** |  | means any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union (whilst applicable) having jurisdiction over the Development, the Developer or any activities undertaken by the Developer in connection with the Development or whose permission is required in connection with the Development; |
| **“Representative”** |  | means a member of the Core Group as defined in Clause 18.4 [*Joint Venture Obligations*] or such other person as is notified by one Party to the other in writing from time to time; |
| **“Request for Information”** |  | means a request for information made under the FOIA;  |
| **“Satisfactory Planning Permission”** |  | means a Planning Permission which:1. the Developer has indicated is satisfactory by notice served under Clause 3 *[Conditions Precedent]*; or
2. is deemed to be a Satisfactory Planning Permission under Clause 3.8 [*Conditions Precedent*];
 |
| **“Secretary of State”** |  | means the Secretary of State for Communities and Local Government or such other of Her Majesty’s Secretaries of State to whom the functions of the Secretary of State referred to in this Agreement are assigned under the Ministers of the Crown Act 1975; |
| **“Site”** |  | means the land on which the Development is to be undertaken being Council owned land all of which land is shown for the purposes of identification only edged red on the Site Layout Plan;  |
| **“Site Conditions”** |  | means the condition of the whole or any part the Site including:1. climatic, hydrological, hydrogeological, ecological, environmental and geotechnical conditions;
2. archaeological finds, areas of archaeological, scientific or natural interest, local conditions and facilities and the quality of existing structures;
3. contamination; and
4. the condition of any extraneous materials in, on or under the whole or any part of the Site (including surface and subsoil);
 |
| **“Site Development Plan”** |  | means the plan at Part 2 of Schedule 1 [*Plans*] showing the proposals for the development of the Site as amended from time to time in accordance with this Agreement; |
| **“Site Plan”** |  | means the plan at Part 1 of Schedule 1 [*Plans*] showing the current layout of the Site; |
| **“Subcontract”** |  | means any contract for the execution of part of the Works entered into with the Contractor and a Subcontractor; |
| **“Subcontractor”** |  | means a Subcontractor (of any tier) appointed by the Contractor to construct any part of the Works (other than a labour only subcontractor or a tradesperson or labourer employed to carry out a single function in respect of any part of the Works);  |
| **“Supplier”** |  | means a person the Developer uses to supply materials to be used in the construction of one or more Dwellings; |
| **“Target Date”** |  | means:1. the Development Target Commencement Date;
2. the Development Target Completion Date;
3. the Development Longstop Date; or
4. the Development Disposal Longstop Date;
 |
| **“Termination Date”** |  | means the date of termination of this Agreement under Clause 3 [*Conditions Precedent*], under Clause 24 [*Termination for Developer Default*] or under Clause 25 [*Termination for Council Default or Force Majeure*]; |
| **“Transfer”** |  | means the form of transfer of a Dwelling to be executed by the Council in the form set out in Schedule 8 [*Form of Dwelling Transfer*] and incorporating any amendments agreed between the Council and the Developer (each acting reasonably); |
| **“the Unconditional Date”** |  | means the first date upon which all of the Conditions Precedent have been satisfied as long as that date is before the Condition Satisfaction Deadline; |
| **“VAT”** |  | means Value Added Tax payable under the Value Added Tax Act 1994 or any similar tax levied in addition to it or in substitution for it; |
| **“Working Day”** |  | means any day other than Saturday, Sunday and bank or public holidays; and |
| **“Works”** |  | means the works (including the Infrastructure Works and any demolition works which are necessary to enable the Development to take place) to be carried out in the construction and completion of the whole or any part of the Development in accordance with the Approved Designs and the Construction Programme. |

* 1. In this Agreement:
		1. references to Clauses and Schedules are (unless stated otherwise) references to clauses and schedules of this Agreement;
		2. any reference to a Sub-clause or Paragraph (unless stated otherwise) is a reference is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears;
		3. the contents section, headings and references to them are not to affect its interpretation;
		4. references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;
		5. any references to Law, regulations, determinations, directions and statutory guidance shall be construed as references to that Law as amended, replaced consolidated or re-enacted and such references shall also include all regulations, determinations, directions and statutory guidance made or given under that Law;
		6. references to “**consent**” or “**approval**” are to the prior written consent of the consenting or approving Party and any breach of the terms of any consent given is to be a breach of this Agreement;
		7. the terms “**including**” and “**in particular**” are illustrative only and are not intended to limit the meaning of the words which precede them and neither the ejusdem generis rule of construction nor any similar rule or approach shall apply to the construction of this Agreement;
		8. references to “**persons**” include individuals, firms, partnerships, companies, cooperative and community benefit societies, corporations, associations, organisations, governments, states, agencies, foundations, trusts, unincorporated bodies of persons and any organisations having legal capacity (in each case whether or not having separate legal personality) and their successors, permitted assignees and transferees;
		9. references to any document are (unless specified) references to such documents as amended or supplemented from time to time;
		10. references to any document are (unless specified) references to such document as amended or supplemented from time to time;
		11. references to a person being an “**associate**” of another are to be interpreted in accordance with section 435 of the Insolvency Act 1986. A person is “**connected**” or “**associated**” with any person which is an associate of his/hers and with any company of which any director is an associate of his/hers; and
		12. any reference to "**Final Determination**" of any application, appeal or judicial review or other proceeding shall include all subsequent proceedings relating to it and any further planning decision following it and "**finally determine**" shall be construed accordingly.
	2. The Schedules to this Agreement are an integral part of this Agreement and are to have effect as if set out in full in the body of this Agreement. References to this Agreement include the Schedules.
	3. Where this Agreement requires something to be done:
		1. it must be done in accordance with this Agreement;
		2. if it is to be done within (or following the expiry of) a period after an action is taken, the day on which that action is taken does not count in the calculation of that period; and
		3. if the last day of the period within which it must be done is not a Working Day, the period shall be extended to include the following Working Day.
	4. All obligations, duties and responsibilities of the Developer under this Agreement are separate obligations, duties and responsibilities owed to the Council and are to be performed at the Developer’s own cost and expense (except where this Agreement expressly states otherwise).
	5. Any approval by the Council or any person on behalf of the Council pursuant to this Agreement of any matter submitted by another Party for approval shall not be deemed to be an acceptance by the Council of the correctness or suitability of the contents of the matter submitted for approval or consent.
	6. No approval, deemed approval, comment, omission to approve or comment by or on behalf of the Council shall affect any duties, responsibilities or liabilities of the Developer under this Agreement or otherwise.
1. Intention of the Parties
	1. The Parties wish the Site to be comprehensively redeveloped through the provision of 31 new Dwellings and associated Infrastructure Works.
	2. The Parties intend that the Development will be undertaken in accordance with the principles and concepts of the Approved Designs (once approved), the Dwelling Mix, the Developer’s Proposals and the Planning Permission(s) once obtained.
	3. The Developer warrants and represents to the Council (and the Council relies upon the Developer’s warranties, representations and undertakings) that:
		1. it is properly constituted and incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
		2. it has the power to enter into and to exercise its rights and perform its obligations under this Agreement;
		3. it has sufficient financial resources to carry out the Development and perform its obligations under this Agreement;
		4. all necessary action to authorise the execution of and the performance of its obligations under this Agreement has been taken;
		5. the obligations expressed to be assumed by the Developer under this Agreement are, legal, valid, binding and enforceable to the extent permitted by Law;
		6. the execution, delivery and performance by it of this Agreement does not contravene any provision of:
* any existing Law either in force, or enacted but not yet in force which is binding on the Developer;
* the Articles of Association of the Developer;
* any order or decree of any court of arbitrator; or
* any obligation which is binding upon the Developer or upon any of its assets or revenues;
	+ 1. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Developer, pending or threatened against it or any of its assets which will or might reasonably have a material adverse effect on the ability of the Developer to perform its obligations under this Agreement;
		2. it is not the subject of any other obligation, compliance with which will or is reasonably likely to have a material adverse effect on the ability of the Developer to perform its obligations under this Agreement;
		3. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Developer, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
		4. there are no material facts or circumstances in relation to the financial position of the Developer which have not been fully and fairly disclosed to the Council and which if disclosed might reasonably have a material adverse effect on the ability of the Developer to perform its obligations under this Agreement.
	1. The Developer undertakes to the Council that for so long as this Agreement remains in force:
		1. it will notify the Council promptly of any actual or threatened litigation, arbitration, administrative or adjudication or mediation proceedings before any court, arbitrator or Relevant Authority which would adversely affect, to an extent which is material in the context of the Development, the Developer’s ability to perform its obligations under this Agreement or after it becomes aware that such proceedings are threatened or pending and when any such proceedings are commenced;
		2. it will not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed) (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets in any way which would materially adversely affect the ability of the Developer to perform its obligations under this Agreement; and
		3. it will not change any part of its business in any way which would materially and adversely affect its ability to comply with its obligations under this Agreement.
	2. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Developer in this Agreement are cumulative and none shall be given a limited construction by reference to any other.
1. Conditions Precedent
	1. Other than this Clause 3, Clauses 4.1 [*Council Licence*] and 17 [*Probity*] and Clauses 27 [*Assignment and Subcontracting*] to 40 [*Costs*] inclusive which shall come into effect immediately as this Agreement is entered into, this Agreement is conditional upon satisfaction of the Condition Precedent within the Condition Satisfaction Deadline.
	2. The Developer shall use all reasonable endeavours at its own expense to obtain all Satisfactory Planning Permissions it (acting reasonably) considers necessary in order to undertake the Development as soon as practicable and in any event before the Condition Satisfaction Deadline and for that purpose the Developer shall:
		1. (unless it has done so before the date of this Agreement) subject to the Council having first approved the Planning Applications in accordance with Clause 3.4, lodge the Planning Applications with the Planning Authority within 15 (Fifteen) Working Days of the date of this Agreement; and
		2. enter into any Planning Obligation (in a form previously approved in writing by the Developer and the Council each acting reasonably) reasonably required by the Planning Authority or other Relevant Authority as a condition of granting a Satisfactory Planning Permission.
	3. The Developer shall ensure that no Open Spaces are included within the designs for the Development contained within any Planning Application.
	4. The Developer shall not lodge any Planning Application with the Planning Authority unless either:
		1. it has first been approved in writing by the Council;
		2. an identical application has previously been approved by the Council; or
		3. it is solely to implement a change to the Approved Designs which has been approved by the Council under Clause 10.5 [*Design*] or which does not require the approval of the Council in accordance with Clause 10.4 [*Design*].
	5. The Council if so requested by the Developer will:
		1. give such assistance as may be reasonably required to enable the Developer to obtain such Satisfactory Planning Permissions provided the Developer reimburses the Council (as appropriate) for all out-of-pocket costs (including external adviser’s costs but excluding any salaries of employees of the Council or other internal costs) incurred by the Council in giving such assistance; and
		2. enter into any Planning Obligations properly required by the Planning Authority as a pre-condition to the grant of a Satisfactory Planning Permission, the form of such agreement first having been approved in writing by the Council in its capacity as landowner such approval not to be unreasonably withheld or delayed provided that if so required by the Council the Developer covenants in such Planning Obligations with the Council fully to indemnify and keep indemnified the Council in respect of all costs claims demands and liabilities arising from those obligations which relate to the Development.
	6. The Developer:
		1. may not withdraw or amend or modify in any material respect a Planning Application, Planning Appeal or Planning Proceedings or submit further planning applications (other than a duplicate of a Planning Application or a Planning Application to which Clause 3.4.3 applies) without the prior written consent of the Council; and
		2. may apply for consent under Clause 3.6.1 at any time by making a written application to the Council setting out its proposals (including full details of any proposed amendments or modification to the Planning Application, Planning Appeal or Planning Proceedings or of the further planning application).
	7. The Developer shall:
		1. within 10 (ten) Working Days of receipt of a Planning Refusal send a copy of the Planning Refusal to the Council.
		2. within 10 (ten) Working Days of receipt of any Planning Permission:

.1 send a copy of such Planning Permission to the Council;

.2 give notice in writing to the Council as to whether or not the Developer (acting reasonably):

(a) considers the Planning Permission to be a Satisfactory Planning Permission; and

(b) if the Developer does consider it to be Satisfactory Planning Permission whether the Developer considers (acting reasonably) that, in conjunction with other Satisfactory Planning Permissions that have been granted it has all Satisfactory Planning Permissions it considers necessary or desirable to carry out the Development.

* 1. If the Developer does not notify the Council in writing under Clause 3.7.2 within 10 (ten) Working Days of receipt of a Planning Permission either that it considers such Planning Permission is not a Satisfactory Planning Permission or that it considers that further Satisfactory Planning Permissions are necessary or desirable to carry out the Development together (in each case) with the reasons for this then the Planning Permission shall be deemed to be a Satisfactory Planning Permission and the Developer shall be deemed to have all Satisfactory Planning Permissions necessary or desirable to carry out the Development.
	2. If there is a Planning Refusal the Developer shall at its own cost appeal against the Planning Refusal unless Planning Counsel advises that there is less than 60% (sixty per cent) chance of success. The Developer shall prosecute the Planning Appeal with all reasonable speed and diligence.
	3. If the Planning Authority issues a Planning Permission which is not a Satisfactory Planning Permission and the Developer has served notice accordingly under Clause 3.7.2 the Developer shall unless Planning Counsel advises that there is less than 60% chance of success at its own expense as soon as practicable lodge a Planning Appeal with the Secretary of State and prosecute the Planning Appeal with all reasonable speed and diligence.
	4. The Condition Satisfaction Deadline shall be extended until 3 (three) Months after the later of the date of the grant of the Planning Permission or the Final Determination of the Planning Application where prior to the Unconditional Date:
		1. Planning Applications for all of the Planning Permissions the Developer considers necessary to carry out the Development have been submitted but a decision on one or more of those Planning Applications has not been received by the Developer;
		2. a Planning Appeal against a Planning Refusal has been made but no Final Determination has been given;
		3. Planning Proceedings have been commenced but no Final Determination has been given; or
		4. the Planning Authority has resolved to grant a Planning Permission which would be a Satisfactory Planning Permission under the terms of this Agreement but the appropriate Planning Obligation has not been entered into.
	5. If the Conditions Precedent have not been satisfied (or waived by both Parties) by the Condition Satisfaction Deadline as (extended (if applicable) under Clause 3.11) then either the Council or the Developer may terminate this Agreement by giving to the other 5 (five) Working Days’ written notice to that effect.
	6. On termination of this Agreement under Clause 3.12:
		1. The Council shall have the right at its own cost to prosecute any Planning Application, Planning Appeal and/or Planning Proceedings which have not been finally determined on the Termination Date by serving notice to that effect on the Developer within 10 (ten) Working Days of the Termination Date and where this applies:

.1 the Council shall indemnify the Developer against all actions, claims, costs, proceedings, demands and expenses incurred by the Developer in respect of such Planning Application, Planning Appeal or Planning Proceedings arising after the date of the notice served by the Council;

.2 the Developer will at the request of the Council give written confirmation of such authority of the Council to take over such proceedings in such form and to such persons as the Council shall reasonably require; and

.3 the Developer shall make no further representations on any such Planning Application, Planning Appeal and/or Planning Proceedings without the written consent of the Council; and

* + 1. if the Council fails to serve notice under Clause 3.13.1 the Developer shall withdraw any Planning Application, Planning Appeal and/or Planning Proceedings and the Developer shall be liable for all costs arising out of or in connection with such withdrawal.
	1. Subject to Clause 3.13.1 the Developer will indemnify and keep indemnified the Council against all liabilities whatsoever arising out of or in connection with a Planning Application, a Planning Appeal and/or Planning Proceedings and in particular against any award of costs made in respect of a Planning Appeal and/or Planning Proceedings (except where such liabilities arise as a result of the act, default or neglect of the Council).
	2. The Developer and the Council agree with the other not to permit, cause or in any way allow Commencement of the Development or implement any Planning Permissions obtained pursuant to this Agreement prior to the Unconditional Date.
1. council licence
	1. The Council grants licence and authority on the terms of this Clause 4 for the Developer, Consultants, the Contractor and the Subcontractors in connection with the preparation for and carrying out of the Development and the exercise of their respective rights under this Agreement, to enter upon any part of the Site prior to the Unconditional Date for the purposes of Site surveys and investigations (including any which may relate to environmental and/or Contamination investigations) but the Developer shall ensure that by doing so it does not breach Clause 3.15 [*Conditions Precedent*]
	2. In consideration of the Developer undertaking to comply with its obligations under this Agreement, subject to Clause 4.1, on the Unconditional Date the Council shall grant a licence to the Developer, the Contractor, Consultants, the Subcontractors over the Site so as to enable the Developer to commence the Development.
	3. The Council shall provide vacant possession of the Site to the Developer on the Unconditional Date.
2. Site insurance Risk
	1. The Developer accepts the insurance risk in and as between the Developer and the Council and shall be regarded as the occupier of the Site from the Unconditional Date until:
		1. in respect of a Dwelling until its Transfer to a Purchaser; and
		2. in respect of adopted or adoptable roads, footpaths and sewers until when they have been adopted by the Relevant Authority.
3. Site Conditions
	1. Site Conditions are the sole responsibility of the Developer. The Developer is deemed to have and warrants that it has:
		1. investigated the Site Conditions and inspected and examined each part of the Site and its surroundings and (where applicable) any existing structures or works on or under the Site;
		2. satisfied itself as to the nature of the Site Conditions, the ground and subsoil, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Development;
		3. satisfied itself as to the boundaries of and the adequacy of the rights of access to and through the Site required for the construction of the Development and any accommodation it may require to fulfil its obligations under this Agreement; and
		4. satisfied itself as to the possibility of interference with access to or use of, or rights in respect of, the Site and with particular regard to the owners of any land adjacent to the Site.
	2. The Developer shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Council on grounds that any information whether obtained from the Council or otherwise (including information made available by the Council), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.
	3. The Developer shall be responsible for cleaning up and otherwise dealing with any Contamination on the Site including complying with, at its own cost, any applicable Laws, Consents, orders and requirements of a Relevant Authority.
4. CONSULTANTS
	1. The Developer shall appoint and manage all Consultants as necessary from time to time for the completion of the Development in accordance with this Agreement.
	2. The Developer shall not appoint any Group Company of the Developer as a Consultant without the prior approval of the Council.
	3. The Developer shall ensure that all Consultants with any responsibility for the design of the Development are approved and registered at all times (where required by NHBC for the purpose of the NHBC Certificate), such that a NHBC warranty is given on all Dwellings designed by them.
	4. The Consultant Appointment for each Consultant shall be in the form in Part 2 of Schedule 6 [*Forms of Building Contract, Appointments and Collateral Warranties*], or such other form the Council approves. Each of the Consultant Appointments shall be by deed.
	5. Within 20 (twenty) Working Days of the later of the date of this Agreement or the date of appointment of the Consultant, the Developer shall obtain Collateral Warranties from each of the Consultants in favour of the Council in the form in Schedule 3 to the form of appointment set out in Part 2 of Schedule 6 [*Forms of Building Contract, Appointments and Collateral Warranties*].
5. the contractor, SubcontractorS and suppliers
	1. The Developer shall employ and manage the Contractor and all Suppliers as are necessary from time to time for the completion of the Development in accordance with this Agreement.
	2. The Developer:
		1. shall not appoint or engage a Group Company of the Developer as a Contractor, Subcontractor or Supplier without the prior approval of the Council; and
		2. shall procure that any Group Company of the Developer does not accept an appointment or engagement from the Contractor or any Subcontractor in relation to the Developer without the prior approval of the Council.
	3. The Developer shall ensure that the main Contractor is approved and registered at all time for the purpose of the NHBC Certificate, such that a NHBC warranty is given on all Dwellings.
	4. The Developer shall procure that the Contractor (and any replacement Contractor) enters into the Building Contract in the form in Part 1 of Schedule 6 [*Forms of Building Contract, Appointments and Collateral Warranties*] or such other form as the Council approves.
	5. Within 20 (twenty) Working Days of the engagement of a Contractor or Subcontractor carrying out any element of design of the Development or any part of it the Developer shall procure Collateral Warranties from such Contractor and/or Subcontractors in favour of the Council in the form set out in Part 1 or Part 3 (as appropriate) of Schedule 6 [*Forms of Building Contract, Appointments and Collateral Warranties*].
6. CDM Regulations
	1. The Parties acknowledge that for the purposes of the CDM Regulations the Developer shall act as the sole “client” in relation to the Development.
	2. The Developer warrants to the Council that:
		1. it is and will at all times be competent to perform the duties imposed on a client by the CDM Regulations in relation to the Development;
		2. where it appoints other persons as Principal Designer and/or Principal Contractor under the CDM Regulations it shall ensure that such persons are competent to perform the relevant duties imposed by the CDM Regulations;
		3. it has allocated and will allocate adequate resources to enable it to comply with its obligations under this Clause 9;
		4. it has the competence, resources and capacity to, and shall, observe, perform and discharge and shall procure the observance and performance of any Code of Practice for the time being approved by the Health and Safety Executive pursuant to the Health and Safety at Work etc Act 1974 in connection with the CDM Regulations; and
		5. it will provide or secure the provision to all persons responsible for the Design of the Development all information in relation to the design and materials which might reasonably affect the health and safety of persons working on or in relation to the Works and their maintenance and repair.
	3. The Developer shall indemnify the Council against all claims and or losses arising out of or in connection with any breach of its obligations under this Agreement in respect of the CDM Regulations.
	4. The Developer shall deliver to the Council copies of all records, licences, permissions or other documents relating to the Development as are required to be maintained by the CDM Regulations (to the extent that they are not in the Health and Safety File) as soon as practicable after the Development Completion Date.
7. Design
	1. The initial Approved Designs for the Development are those referred to in Part 1 of Schedule 2 [*Developer’s Proposals*].
	2. Subject to Clauses 10.3 to 10.5 inclusive, the Developer shall develop the Approved Designs for the Development as a whole in accordance with the Planning Permissions, the Dwelling Mix, the Developer’s Proposals and this Agreement.
	3. The Developer shall ensure that the Approved Designs (and any variations to them) at all times comply with the Dwelling Mix and all applicable Consents (including all Satisfactory Planning Permissions).
	4. The Developer may vary the Approved Designs without the consent of the Council where:
		1. the variation is insubstantial or immaterial and of a routine nature; and
		2. in the case of a variation involving substitution of materials, the materials substituted are of equivalent or superior standard.
	5. The Developer shall not vary the Approved Designs in relation to any part of the Development or Infrastructure Works other than as set out in Clause 10.4 without the written consent of the Council.
	6. The Developer shall keep the Council provided throughout the Development with a complete set of Approved Designs as amended and varied from time to time in accordance with this Clause 10.
	7. The Developer undertakes and accepts all responsibility and risk for the design of the Dwellings.
	8. The Developer grants to the Council an irrevocable, royalty free, non-exclusive licence to copy, use and reproduce all of the Approved Designs in connection with the Development.
	9. The Developer shall pay all royalties or other sums payable for the supply and use of any patented articles, processes or inventions in carrying out the Development and shall obtain the necessary consent for the supply and use of drawings, or models of buildings the subject of copyright for the Development.
	10. The Developer shall indemnify the Council against all claims and proceedings which may be brought or made against the Council and all damages, costs and expenses to which the Council may be put through the Developer infringing any patent rights or copyright in relation to any such articles, processes and inventions.
8. Necessary Consents
	1. The Developer shall:
		1. apply for and obtain all Consents (including the Planning Permissions) from time to time as may be legally necessary for carrying out the Development;
		2. implement each Planning Permissions which the Developer elects to implement within the period of its validity in accordance with its terms;
		3. ensure that the Development is carried out in compliance with the Consents;
		4. within 10 (ten) Working Days of a Consent being obtained provide the Council with a copy;
		5. if a Consent (other than a consent to which Clause 3 [*Conditions Precedent*] applies) is unreasonably or improperly delayed or refused appeal the refusal (unless otherwise agreed by the Council) or take such other action as may be reasonably appropriate (at the Developer’s cost) in order to proceed with the Development.
	2. The Developer will, if necessary to carry out and complete the Development, use all reasonable endeavours to negotiate the terms of any Highways Agreements and agreements under Section 104 of the Water Industry Act 1991 or other statutory provisions requiring undertakings from the Developer) and any agreement for the supply of electricity, gas, water, drainage and other services.
	3. It is the sole responsibility of the Developer (not the Council) to negotiate the terms of agreements between the Council and occupiers of neighbouring property for the release of any rights of way, light and air or otherwise and the extinguishment of interests in, over or with respect to the Site to the extent that such rights and interests would be infringed by the Development or would prevent or impede the carrying out or progress of the Development or its use and enjoyment. Where the release or modification or any restrictive covenant cannot be negotiated the Developer shall take such action for its discharge or modification as may be available under Section 84 of the Law of Property Act 1925 or investigate what alternative solutions (including suitable indemnity insurance) may be found.
	4. The Developer shall be responsible for all party wall matters that arise in connection with the Development and shall at its own cost assist in dealing with those party wall matters through carrying out all Works necessary to comply with the Council’s party wall responsibilities as landowner. The Developer shall indemnify the Council against any liability in relation to party walls.
	5. The Developer will apply for and use all reasonable endeavours to obtain any necessary orders for the stopping up or diversion of highways or footpaths to the extent that they may be required to enable the Development to be carried out and have not been obtained prior to the Unconditional Date.
	6. The Council will if so requested by the Developer (but subject to the Developer reimbursing the Council for any reasonable out of pocket costs incurred in doing so) give such assistance as may be reasonably required and enter into any of the agreements referred to in Clauses 11.2 and/or 11.7 in a form which has been approved by the Council in its capacity as landowner within 15 (fifteen) Working Days of receipt of such documents provided the Developer covenants with the Council:
		1. to observe and perform all obligations (other than any obligation to transfer title or any legal interest) of the Council under the relevant agreement; and
		2. fully to indemnify and keep indemnified the Council in respect of all costs claims demands and liabilities arising from those obligations;
	7. If the Developer enters into any Highways Agreement relating to the highways improvements of existing highways, or the construction and adoption of new roads and/or footpaths which are to be adopted, then such agreement or agreements shall be supported by such appropriate bond(s) (**“the Highways Bond(s)”**) as shall be properly required by the highway authority.
	8. The Developer shall employ a competent and efficient approved building control inspector for the purposes of all Building Regulations approvals in relation to the Development.
9. Preconditions to start on sitE
	1. Before starting construction of the Development the Developer shall provide evidence satisfactory to the Council that:
		1. it has obtained all Necessary Consents (in addition to the Satisfactory Planning Permission) for the Development and which it is necessary or in the reasonable opinion of the Developer desirable to obtain prior to starting the Development;
		2. it has taken out the Insurances required under Clause 23 [*Indemnity,* *Insurance and Reinstatement*];
		3. it has provided the Performance Bond to the Council where this is required in accordance with Clause 12.5; and
		4. it has entered into all such other agreements or arrangements as are necessary to undertake the Development and which it is necessary or (in the reasonable opinion of the Developer) desirable to enter into before starting the Development.
	2. Before the Development Commencement Date the Developer shall prepare and submit to the Council for approval a detailed Development Budget.
	3. The Development Budget submitted under Clause 12.2 shall be based on the draft Development Budget in Part 1 of Schedule 4 [*Finance*].
	4. If the Developer amends the Development Budget the Developer shall provide a copy of the revised version to the Council.
	5. The Developer shall provide and maintain the Performance Bond in favour of the Council until the Development Completion Date where the Developer is required to enter into the Loan Agreement with the Council pursuant to Clause 13.5. It is a precondition to the Developer obtaining finance under the Loan Agreement that they have entered into the Performance Bond.
	6. The Developer shall notify the Council within 10 (ten) Working Days of the Development Commencement Date and the Development Completion Date.
10. Development
	1. The Developer will procure the commencement of the Development on or before the Development Target Commencement Date subject to the delivery by the Council of vacant possession of the Site on or before this date.

* 1. The Developer shall commence and carry out the Development:
		1. in accordance with the Dwelling Mix, the Approved Designs, the Site Development Plan, the Consents, the Developer’s Proposals and the Planning Permissions (including any Planning Obligations);
		2. in compliance with all Law;
		3. without infringement of any rights reservations, covenants, restrictions, stipulations or other encumbrances binding upon or affecting the parts of the Site upon which each Dwelling is to be constructed;
		4. in a good and workmanlike manner and with all due diligence and expedition;
		5. using staff who are properly skilled, trained and appropriately experienced for the work they are undertaking;
		6. so as to secure NHBC registration and warranty cover for each Dwelling;
		7. with such materials as may be specified in the Approved Designs and without the use of any Prohibited Materials;
		8. in accordance with all relevant Codes of Practice or British Standards (or European equivalent); and
		9. in compliance with Good Industry Practice.
	2. The Developer shall use all reasonable endeavours to procure that the Development is completed in accordance with the Construction Programme.
	3. The Developer shall in accordance with Good Industry Practice use reasonable endeavours to keep the Site in an orderly state so as to avoid danger to all persons on the Site (whether lawfully or not) and take reasonable measures to prevent trespass onto the Site by persons not entitled to be there.
	4. Where the Developer needs to borrow money to carry out the Development and the interest rate is (at the time of the loan) higher than the cost of borrowing the money from the Council, or where the Developer is required to make an internal rate of return on any money used for the Development which is higher than such rate, the Developer shall borrow the money from the Council. In connection with this, the Developer shall enter into the Loan Agreement with the Council in the form set out at Schedule 9 [*Loan Agreement*] or such other form as the Council and Developer agree. The maximum amount the Developer may borrow from the Council is the difference between the aggregate value of the Overage Thresholds for all of the Dwellings and the combined Land Sale Price for all of those Dwellings.
	5. The Developer shall complete the Infrastructure Works (including all changes to existing highways and sewers and the construction of all new sewers, highways and footpaths necessary for the Development) in time to secure their adoption by the Development Completion Date.
	6. The Developer shall be responsible for maintaining any Infrastructure Works that are to be adopted under this Agreement until their adoption.
1. Construction Requirements
	1. The Developer shall use reasonable endeavours to procure that during the Development Period:
		1. no advertisements, posters, placards or signs are affixed on or displayed from the Site without the consent of the Council and that any that are affixed at all times comply with the Town & Country Planning (Control of Advertisements) Regulations 1992;
		2. a notice is maintained on the Development with the name and logo of the Council in such form as the Council approves (acting reasonably);
		3. the Developer keeps the Site tidy and cleared of surplus materials, rubble, rubbish, debris, spoil or waste (including broken bricks and timber off-cuts) arising from the Works;
		4. proper provision is made for the support and use of any land, walls, buildings, roads, footpaths upon adjacent or near to the Site and which are affected by the Works; and
		5. at the date of issue of the Certificate of Practical Completion of each Dwelling, the part of the Site on which that Dwelling has been constructed (including any garden or curtilage) is left in a good and clean condition cleared of all unused building materials, plant and equipment used in the Works and temporary structures.
	2. The Developer shall ensure that all materials used in connection with the Development:
		1. are of satisfactory quality;
		2. are maintained in a safe, serviceable and clean condition in accordance with Good Industry Practice;
		3. are properly stored pending their use and, where appropriate, are protected from the elements;
		4. comply with all relevant rules, regulations, codes of practice and/or European or British Standards;
		5. do not include Prohibited Materials; and
		6. if they are hazardous, are used, labelled and stored in accordance with Good Industry Practice, and used only by appropriately trained and competent staff.
	3. The Developer shall use all reasonable endeavours to ensure that all equipment, apparatus or plant used in undertaking the Development:
		1. is used or operated so as to minimise so far as reasonably practicable noise and vibration likely to cause annoyance or disturbance;
		2. is used in a way which prevents so far as reasonably practicable the unlawful generation or migration of any hazardous substance (including any unlawful emission or discharge); and
		3. is used in a way which minimises so far as reasonably practicable the occurrence of any environmental claims or any circumstances likely to result in them.
2. SOCIAL VALUE
	1. The Developer shall:
		1. procure that the Contractor and each Subcontractor keeps such daily records of the workforce (including apprentices, trainees and by gender and ethnicity) on the Development as the Council shall reasonably require and submits copies to the Council upon written request; and
		2. use all reasonable endeavours to agree targets for new employment and training opportunities with the Council’s employment and training team.
	2. The Developer shall ensure that at least 2 (two) apprentices (and such additional number of apprentices and trainees (if any) as the Developer sets out in the Development Proposals) are engaged on the Development throughout the Development Period.
	3. The Developer shall procure that the Contractor and each Subcontractor providing apprenticeship or trainee placements:
		1. supervises all such apprentices or trainees on the Site at all times by suitably qualified and experienced operatives relevant to the trainee’s training programme;
		2. briefs all Consultants on the training elements of the Development and ensures that they comply with those requirements;
		3. keeps daily records of the number and types of apprentices or trainees employed by that Contractor and Subcontractor on the Development and reports accordingly on this at the Core Group Meetings; and
		4. records any additional cost of employing and/or recruiting apprentices and/or trainees and for the supervision of trainees and placements and provides details of such costs to the Council for monitoring purposes.
	4. Subject to the Developer’s obligations to comply with the Construction Programme the Developer shall use reasonable endeavours to appoint small and medium size enterprises as the Contractor, Consultants, and Suppliers in conjunction with the Development.
	5. Where it appears to the Developer in relation to the Development, that people of one social group, ethnic minorities, men or women or people with disabilities are under-represented in the Developer’s workforce compared to their representation in the national workforce generally, the Developer shall do the following to the extent appropriate and reasonably practicable:
		1. place and use job advertisements to reach people of those social groups, from those ethnic minorities, of that gender or with disabilities and encourage their applications;
		2. use employment agencies and careers offices in areas where members of those social groups, from those ethnic minorities, of that gender or with disabilities live and work;
		3. promote recruitment and training schemes for school leavers and for unemployed people intended to reach members of those social groups, ethnic minorities, of that gender or with disabilities; and
		4. provide appropriate training and encouragement of employees from those social groups, ethnic minorities of that gender or with disabilities to apply for promotion or transfer to do work in which people from those social groups, ethnic minorities, that gender or people with disabilities are under-represented.
	6. The Developer shall use reasonable endeavours to place obligations on Contractors, Subcontractors, Suppliers and Consultants that are equivalent to those placed on the Developer under Clause 15.5.
3. confidentiality and FOIA
	1. The Developer must assist and cooperate with the Council to enable the Council to comply with the FOIA and the Environmental Information Regulations.
	2. The Developer must and must procure that the Contractor, Consultants and Subcontractors:
		1. transfer any Request for Information it receives to the Council as soon as practicable and in any event within 2 (two) Working Days of receiving it;
		2. provide the Council with a copy of all such information in its possession or power in the form that the Client requires within 5 (five) Working Days (or such other period as the Council may specify) of the Council requesting that information; and
		3. provide all assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA (or regulation 5 of the Environmental Information Regulations).
	3. The Developer must not respond directly to a Request for Information unless expressly authorised to do so by the Council.
	4. The Developer acknowledges that the Council is responsible for determining at its absolute discretion (but having regard to any guidance or codes of practice issued by the Information Commissioner or the Ministry of Justice or its predecessor):
		1. whether any information is exempt from disclosure in accordance with the FOIA or the Environmental Information Regulations;
		2. in the case of a qualified exemption, whether the public interest in disclosing the information is greater than the public interest in maintaining the exemption; and
		3. whether any information is to be disclosed in response to a Request for Information.
	5. The Developer acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
		1. without consulting with the Developer; or
		2. following consultation with the Developer and having taken its views into account.

* 1. Where it receives a request for information relating to any Commercially Sensitive Information and/or any Confidential Information (as set out in Schedule 5 [*Commercially Sensitive and Confidential Information*]), the Developer must (unless it has decided not to disclose that information either because the FOIA and the Environmental Information Regulations do not apply or because it is exempt from disclosure under the FOIA and the Environmental Regulations) use reasonable endeavours to:
		1. notify the Developer of the Request for Information in accordance with Part VII of the Code of Practice issued by the Secretary of State under section 45 of the FOIA; and
		2. consider any representations made by the Developer before disclosing that Commercially Sensitive Information and/or Confidential Information under the FOIA.
	2. The Developer acknowledges that the list of Commercially Sensitive Information and/or Confidential Information in Schedule 5 [*Commercially Sensitive and Confidential Information*] is of indicative value only and that the Council may nevertheless be obliged to disclose any Commercially Sensitive Information and/or Confidential Information.
	3. If the Council decides to disclose any Commercially Sensitive Information and/or Confidential Information under the FOIA, the Council must use reasonable endeavours to notify the Developer of this decision before making the disclosure.
	4. Where the Developer holds information on behalf of the Council, the Developer must:
		1. have regard to any code of practice issued under section 46 of the FOIA;
		2. comply with any practice recommendation issued to it under section 48 of the FOIA; and
		3. comply with any retention and destruction of information policy which the Council notifies to it.
1. probity
	1. The Developer warrants that neither the Developer or any of his employees:
		1. have been convicted of any offence involving slavery or human trafficking; or
		2. have, to the best of the Developer’s knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
	2. The Developer shall take appropriate steps to ensure that the Contractor, Consultants, Suppliers and Subcontractors do not and have not engaged in slavery or human trafficking and in connection with this the Developer shall:
		1. implement due diligence procedures for the appointment of the Contractor, Consultants and Suppliers and ensure that the Contractor, Consultants and Suppliers carry out similar procedures in the appointment of Subcontractors, sub-consultants and any sub-suppliers who are engaged for the Development;
		2. require the Contractor, Consultants and Suppliers to warrant that neither they nor any of their employees:
			1. have been convicted of any offence involving slavery or human trafficking; or
			2. have, to the best of their knowledge, been subject of any investigation, inquiry or any enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
		3. require the Contractor, Consultants and Suppliers to include provisions having the same effect as this modern slavery clause in all Subcontracts with Subcontractors, sub-consultants and sub-suppliers who are engaged for the Development.
	3. The Developer shall not, and shall ensure that their employees, the Contractor, Consultants and Suppliers and their employees shall not:
		1. commit any offence under the Bribery Act 2010;
		2. commit any offence under legislation creating offences in respect of fraudulent acts;
		3. offer, give or agree to give any bribe, gift, consideration or financial or other advantage to any employee of the Council as an inducement or reward for:
			1. doing or not doing or for having done or not done any act in relation to the obtaining or execution of this Agreement or any other contract with the Council; or
			2. showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council.
		4. enter into this Agreement or any other contract with the Council in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge; or
		5. fail to terminate the contract with the Contractor, any Supplier or any Consultant when instructed to do so by the Council because of a corrupt gift or commission given or offered to the Contractor, Supplier or Consultant.
	4. The Developer shall maintain appropriate procedures to seek to prevent a breach of the Bribery Act 2010 or any of the Developer’s obligations under this Clause.
	5. In all contracts with the Contractor, Consultants, Suppliers and Subcontractors relating to the Development the Developer shall incorporate obligations, or ensure obligations are incorporated, which entitle them, the Consultant, the Supplier, or the Contractor (as applicable) to terminate the relevant contract because of a bribe, gift, consideration, commission or financial or other advantage given by or offered by a Contractor, Consultant, Supplier or Subcontractor (as applicable).
2. JOINT VENTURE OBLIGATIONS
	1. The Council and the Developer shall work together and the Developer shall require the Contractor, each key Subcontractor and each Consultant to work together, reasonably and in a spirit of trust, fairness and mutual co‑operation for the benefit of the Development within the scope of their respective roles expertise and responsibilities.
	2. The Council and the Developer shall notify, and the Developer shall require the Contractor, each Subcontractor and each Consultant to notify each of the others of any matters adversely affecting or threatening the Development together with their proposals for avoiding or remedying such matter. All such notifications are to be considered at the next Site meeting held by the Developer.
	3. The Developer and the Council shall establish a Core Group to manage the progress of the Development.
	4. The Core Group shall comprise the following:

|  |  |
| --- | --- |
| **Council** | **Developer** |
| [insert representative] | [Insert representative] |
| [insert representative] | [Insert representative] |
| Such other persons as are appointed by the Council from time to time.  | Such other persons as are appointed by the Developer from time to time.  |

* 1. The Core Group shall have Core Group Meetings each Month (or more often in the case of urgent matters) to discuss:
		1. all material measures taken and stages reached by the Developer in performing its obligations under this Agreement;
		2. any material problems or delays affecting the Development; and
		3. the minutes of all principal site and other project team meetings of the Consultants and/or Contractor, and/or the Subcontractors.
	2. Each Calendar Month prior to the meeting in that Calendar Month of the Core Group the Developer will supply to the Council a report on the progress of the Development containing copies of all minutes and other written records of site and other relevant meetings. This report shall contain cash flow statements detailing the Developer’s cash position in relation to the Development and any other items otherwise specified by the Council from time to time.
	3. Once the Dwellings are actively marketed for sale by the Developer the Developer shall prepare and provide a report to the Council in advance of each subsequent Core Group Meetings detailing how the sales of the Dwellings are progressing and the amount each Dwelling is marketed at. This shall be in addition to the Developer’s obligation to provide a copy of the latest Development Account in relation to the Dwellings.
	4. The Developer shall on reasonable request of the Council meet with the Council on Site so that the Council can see the progress being made with the Development. In exercising its rights under this Clause 18.8 the Council shall:
		1. arrange a suitable time to attend on Site with the Developer;
		2. if the Developer so requests, be accompanied by the Developer's project manager;
		3. not impede progress of the Development;
		4. not give any instructions directly to the Contractor, any Subcontractor or any Consultants or any other person carrying out the Works but relay all comments to the Developer; and
		5. comply with the Developer's reasonable requirements as to site safety.
1. Construction Programme
	1. Before the Development Commencement Date the Developer shall prepare and submit a proposed Construction Programme to the Council for approval. The proposed Construction Programme shall secure the completion of the Development by the Development Target Completion Date.
	2. If the Council notifies the Developer of its objection to any Construction Programme (with reasons) the Developer shall revise the Construction Programme in the light of those reasons so that it is acceptable to the Council. Any Disputes over the Construction Programme shall be resolved under the Dispute Resolution Procedure.
	3. If appropriate or necessary the Construction Programme shall be amended from time to time by agreement between the Developer and the Council (each acting reasonably) to take account of any circumstances which affect the progress of the Works but no amendment may be made to the Construction Programme which results in the Development being completed later than the Development Target Completion Date and any disputes relating to amendments to the Construction Programme shall be resolved under the Dispute Resolution Procedure.
	4. The Developer shall use all reasonable endeavours to procure that the Development Completion Date occurs on or before the Development Target Completion Date.
	5. Where one or more of the Target Dates has not, at the time such event occurs, occurred, the applicable Target Dates shall be extended by such period as shall be quantifiable (or, if not quantifiable, such period as is reasonable in all circumstances) by reference to any of following events or factors:
		1. any failure by the Council to hand over the Site with vacant possession by the Development Target Commencement Date;
		2. any delay in obtaining any road and/or footpath closure order or diversion needed to facilitate construction in accordance with the Construction Programme except to the extent that the delay is caused or contributed by the Developer, Contractor, any Consultant, any Supplier or any Subcontractor;
		3. exceptionally adverse weather conditions;
		4. loss or damage caused by any perils covered by the Insurances;
		5. any delay in receiving any consents required under this Agreement from the Council;
		6. any failure or delay by the Council to into any Planning Obligation or any of the documents referred to in Clause 11 [*Necessary Consents*] within the timescales required by this Agreement;
		7. any delay by a statutory undertaker in carrying out their part of the Works except to the extent that the Developer, Contractor, any Consultant, any Supplier or any Subcontractor has caused or contributed to the delay;
		8. the exercise after the Development Commencement Date by the United Kingdom Government of any statutory power which directly affects the execution of the Works; or
		9. any delay (which the Developer has taken all practicable steps to avoid or reduce) in receiving any necessary permission or approval from a Relevant Authority other than any permission or approval which the Developer is required to obtain before the Development Commencement Date.
	6. If the Developer experiences a delay or anticipates a delay of more than 20 (twenty) Working Days in meeting any Target Date, the Developer shall immediately and in any event within 5 (five) Working Days send a written notice to the Council stating the cause and anticipated length of the delay;
	7. When the delay ceases the Developer shall immediately and in any event within 5 (five) Working Days send a further notice to the Council notifying them of:
		1. the removal or cessation of the cause of any delay;
		2. the length of the delay that actually occurred; and
		3. any change to any of the Target Dates proposed by the Developer as a result of the circumstances as set out in Clause 19.5.
	8. Where the Development Target Completion Date is not achieved by the Developer (subject to any extension to the Development Target Completion Date being obtained in accordance with Clause 19.5) the Developer shall pay the Council the Liquidated Damages Rate for each of the Dwellings which has not been issued with a Certificate of Practical Completion from the Development Target Completion Date until the date on which the Dwelling is issued with a Certificate of Practical Completion.
2. Sales and Marketing of Dwellings
	1. The Developer shall issue and periodically review a marketing strategy for the Dwellings to achieve the Disposal of the Dwellings in a proper commercial manner for the maximum price reasonably obtainable in the most expeditious timescale.
	2. The Developer shall be responsible for engaging with a Registered Provider in relation to the Disposal of the affordable housing.
	3. The Developer's pricing policy and incentive policy for the Dwellings shall be in the absolute discretion of the Developer but with a view to obtaining as at the date of contractual completion the Market Value of all Dwellings.
	4. The only items supplied to a purchaser of a Dwelling that the Developer may regard as Extras are those set out in Schedule 3 [*Extras*]. The proportion of the overall amount paid by the Purchaser that the Developer treats as being attributable to the Extras shall not exceed such amount as is fair and reasonable.
	5. Sales of the Dwellings to their Purchasers shall take place on the following basis:
		1. each sale of a Dwelling shall be an arm’s length transaction;
		2. each Dwelling shall be sold with vacant possession upon completion;
		3. the Council, within 5 (five) Working Days of being requested to do so in writing by the Developer, shall execute a Transfer to the Purchaser for each Dwelling;
		4. the Developer shall notify the Council of the exchange of any contract for the sale of a Dwelling and of the proposed Gross Sale Proceeds and Net Sale Proceeds for that Dwelling;
		5. the Developer shall negotiate the sale of each individual Dwelling at its Market Value and with a view to maximising the Net Sale Proceeds; and
		6. the Developer shall not negotiate the Disposal of any Dwellings to any person connected with the Developer (as defined in Section 839 of the Income and Corporation Taxes Act 1988) without the prior written consent of the Council to the terms on which the Disposal is to take place.
3. PROCEEDS OF SALE OF THE DWELLINGS
	1. On each Disposal of a Dwelling the Gross Sale Proceeds shall be paid to the Developer’s Solicitors. The Developer shall procure that the Developer’s Solicitors shall pay the Land Sale Price and, subject to Clause 21.2, the Council’s Share of the Overage (if any) which corresponds to the relevant Dwelling as set out in Schedule 4 [*Finance*] to the Council on the same day.
	2. Where a Dwelling is sold for a price below the Overage Threshold for that Dwelling the Developer may set off half of the shortfall against payment of the Council’s Share of the Overage on future Dwelling sales.
	3. The Developer shall keep a record for each Dwelling sold of:
		1. the Gross Sale Proceeds from that Dwelling (including any payment by the Purchaser for Extras (itemised));
		2. the Land Sale Price for that Dwelling;
		3. the level of Overage (if any) for that Dwelling (or the amount of any shortfall against the Overage Threshold for that Dwelling);
		4. each of the Deductions (itemised) in respect of that Dwelling;
		5. the total of the Deductions and the level of the Deductions Cap for that Dwelling; and
		6. the Net Sale Proceeds for that Dwelling.
	4. If there is a Dispute over any amount due to the Council in relation to the Land Sale Price or any Overage the Dispute shall be resolved under the Dispute Resolution Procedure. If it is agreed or determined under the Dispute Resolution Procedure that further sums are due those sums shall be paid within 10 (ten) Working Days of the resolution of the Dispute together with interest at the Interest Rate on such sums from the date of Disposal of the relevant Dwelling to the date of payment.
	5. The Developer shall on an open book basis permit the Council or persons authorised by the Council to inspect, audit and take copies of all reports, books, accounting records and vouchers relating to the Development which the Council properly consider relevant to the calculation of any Overage Payment.
	6. The Developer shall procure that the Developer’s Solicitor’s undertake to the Council that they will not deal with the proceeds of Disposal of any of the Dwellings other than in accordance with this Clause 21.
	7. Where the Developer has not Disposed of all of the Dwellings by the Development Disposal Longstop Date, the Developer will be deemed to have Disposed of the undisposed Dwellings at a value 10 (ten) per cent above the Overage Threshold for those Dwellings. In relation to those Dwellings, the Developer shall pay the Council the Council’s Share of the Overage on each of those Dwellings and the Land Sale Price for each of them within 1 (one) Month following the Development Disposal Longstop Date.
4. Value Added Tax
	1. All sums payable under this Agreement are exclusive of value added tax and any obligation to pay money includes an obligation to pay any value added tax chargeable in respect of that payment.
	2. Any value added tax payable under this Agreement shall be paid at the same time as the taxable payment to which it relates.
	3. Any taxable person making a taxable supply under this Agreement to another taxable person shall issue the recipient with a tax invoice which contains all the information required by law prior to the payment of any value added tax due under this Agreement or at such earlier time as is required by Law.
	4. Each of the Parties warrants that it is registered for VAT. Pursuant to Clause 31 [*No Partnership or Agency*] the Parties:
		1. warrant that no partnership exists and believe that no partnership for VAT or other purposes is created between any of them by this Agreement;
		2. agree to seek confirmation from HM Revenue and Customs that no partnership for VAT purposes will be certified; and
		3. if HM Revenue and Customs rule that a further registration is required, co-operate fully with such requirements, including subsequent requirements to submit VAT returns and account for tax due.
	5. The Parties to this Agreement acknowledge that for VAT purposes this Agreement is "an agreement similar to an agreement under Section 106 of the Town and Country Planning Act 1990" (VAT Notice 742 paragraphs 7.11 to 7.13 inclusive refer) and that:
		1. in accordance with Notice 742, the Developer will treat supplies of construction services and related goods to the Council in relation to the Infrastructure Works (excluding construction of the Social Housing Dwellings) as not giving rise to supplies for VAT purposes, subject only to the agreement of HM Revenue and Customs to that treatment.
		2. the Developer in consultation with the Council shall as soon as reasonably practicable following the signing of this Agreement request the written agreement of HM Revenue and Customs to the treatment proposed in Clause 22.5.1 and the Developer and the Council shall use their respective reasonable endeavours (but without any obligation on any Party to undertake litigation or appeal) to persuade HM Revenue and Customs to accept that treatment; and
		3. in relation to the construction of the Social Housing Dwellings and if to the extent that HM Revenue and Customs rule that non-supply treatment does not apply to the Infrastructure Works in whole or in part, the Developer will issue tax invoices for such construction services in accordance with VAT Law (as applicable) to the Council (in relation to the Infrastructure Works and Social Housing Dwellings) showing, for each, the value and liability of such supplies.
	6. The Parties agree that they will each use reasonable endeavours to secure the agreement of HM Revenue and Customs to the following VAT treatment, the Developer will treat the sales of the Dwellings as being the "person constructing" those dwellings within the meaning of VAT Act 1994, Schedule 8, Group 5, Item 1 on the basis that in accordance with Schedule 8, Paragraph 8 of the VAT Act 1994 the Developer has the right to receive the proceeds arising from sales of the Dwellings.
5. Indemnity, INSURANCE AND REINSTATEMENT
	1. Save for where such liability arises as a result of the negligence, wilful misconduct, or breach by the Council of their obligations under this Agreement, the Developer shall indemnify the Council against all kinds of liability resulting from the Development in relation to:
		1. death or personal injury;
		2. loss or damage to property (including property belonging to the Council or for which either of them is responsible);
		3. breach of statutory duty; and
		4. third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis).
	2. The Developer covenants with the Council to indemnify and keep indemnified the Council against all losses costs expenses claims actions liabilities demands proceedings orders and damages which may arise in relation to any matter concerning the state and condition of the Site or damage to the pollution of the Environment or damage to property or harm to human health caused directly or indirectly by the activities of the Developer or by the use of the Site by the Developer and any breach or contravention of Environmental Law by the Developer.
	3. Clauses 23.1 and 23.2 shall not apply to any losses recoverable by the Council under any of the Insurances. In such circumstances, the Developer’s liability to the Council shall be limited to the payment of any excesses or deductibles applicable to those Insurances.
	4. The Developer shall take out and maintain in force throughout the Development Period or procure the taking out and maintenance of the Insurances as specified in Schedule 7 [*Insurances*] and any other insurances as may be required by Law.
	5. Neither Party shall take or fail to take any reasonable actions, or (to the extent that it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any of the Insurances in which that party is an insured, a co-insured or additional insured person or noted on the policy.
	6. Other than in respect of professional indemnity insurance, employer’s liability insurance and any motor insurance polices the Insurances shall:
		1. name the Council as co-insured in relation to all insurance policies covering the Dwellings and in relation to all insurance policies covering the Infrastructure Works and any demolition works;
		2. provide for non-vitiation protection in respect of any claim made by the Council (as applicable) as co-insured;
		3. contain a clause waiving the insurers’ subrogation rights against the Council (as applicable); and
		4. provide for 30 days prior written notice of their cancellation, non-renewal or amendment to be given to the Council.
	7. The Developer shall provide to the Council:
		1. summaries on request of all Insurance policies (except for professional indemnity insurance, where evidence of cover will be acceptable) together with any other information reasonably requested by the Council relating to such Insurance policies and the Council shall be entitled to inspect them during ordinary business hours; and
		2. evidence on request that the premiums payable under all insurance policies have been paid and that the Insurances are in full force and effect in accordance with the requirements of this Clause 23 and Schedule 7 [*Insurances*].
	8. Renewal certificates in relation to Insurances referred to in Clause 23.4 shall be obtained as and when necessary and copies shall be forwarded to the Council as soon as possible but in any event at least 10 Working Days before the renewal date.
	9. If the Developer is in breach of Clause 23.4 the Council may pay any premiums required to keep such Insurances in force and may recover such amounts from the Developer within 10 (ten) Working Days of written demand as a debt payable by the Developer.
	10. The Developer shall give the Council notification within 30 days after any claim on any of Insurances in excess of £10,000 (ten thousand pounds) and (if required by the Council) full details of the incident giving rise to the claim.
	11. Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Developer of its liabilities and obligations under this Agreement.
	12. The insurance premiums referred to in this Clause shall be the sole responsibility of the Developer.
	13. The Insurances referred to in this Clause 23 shall be effected with good and substantial insurers of repute.
	14. Where a claim is made or all insurance proceeds are received under any of the Insurances, such amounts:
		1. to the extent that they relate to damage to the Dwellings shall be applied to repair, reinstate and replace the Dwellings in respect of which the proceeds were received;
		2. to the extent that they relate to damage to the Infrastructure Works shall be applied to repair, reinstate and replace the Infrastructure Works in respect of which the proceeds were received; or
		3. to the extent that they do not relate to damage to the Dwellings or Infrastructure Works, shall be used to discharge all claims arising from the incident which led to the insurance claim being made.
6. Termination for developer default
	1. A Developer Default occurs if:
		1. the Works are not commenced by the Development Target Commencement Date;
		2. the Development Completion Date has not occurred before the Development Longstop Date;
		3. the Developer fails materially to observe and perform any of its obligations under this Agreement;
		4. the Developer;

.1 enters into any composition or arrangement with its creditors or ceases or threatens to cease to pay a material part of its debts;

.2 becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;

.3 is unable to pay its debts as defined in Section 123 of the Insolvency Act 1986 (omitting the words, “it is proved to the satisfaction of the Court that”);

.4 passes a resolution to wind up;

.5 has an order made for its winding up;

.6 has an administration order made in respect of it;

.7 has an encumbrancer take possession of or a receiver, manager, administrator or administrative receiver appointed over or a secured creditor enforce its security over any of its property;

.8 is subject to any equivalent insolvency related procedure in any part of the world; or

.9 suffers a material adverse change in its business or financial condition which threatens the ability to complete the Development;

* + 1. the Developer is in breach of Clause 17 [*Probity*].
	1. The Council may terminate this Agreement with immediate effect by notice served on the Developer where a Developer Default occurs which is not a Rectifiable Developer Default (subject to Clause 24.9).
	2. If a Developer Default occurs under any of Clauses 24.1.1 to 24.1.3 (inclusive) (“**a Rectifiable Developer Default**”) then the Council may require the Developer to remedy such Developer Default (provided it is capable of remedy) by serving on the Developer written notice (a “**Developer** **Default Notice**”) specifying such Developer Default and requiring it to be remedied within 20 (twenty) Working Days of such notice or such longer period as the Council allows (“**the Developer Default Rectification Period**”).
	3. If the Developer fails to remedy a Rectifiable Developer Default in accordance with a Developer Default Notice then subject to Clause 24.6 at any time after the expiry of the Developer Rectification Period the Council may terminate this Agreement by serving notice to that effect under Clause 24.7.
	4. The Developer may at any time before the expiry of the Developer Default Rectification Period serve a counter-notice in writing on the Council disputing the alleged Rectifiable Developer Default. If the Council does not accept such a counter-notice the Dispute shall be referred to the Dispute Resolution Procedure.
	5. If the Developer serves a counter-notice under Clause 24.5 then as from the date of such counter-notice until the resolution of the Dispute the Council shall not be entitled to serve notice to terminate the Developer’s obligations under Clause 24.7 as a result of that Developer Default. If it is agreed or determined that the counter notice was not justified the Council may terminate this Agreement under Clause 24.7 at any time after the Dispute was determined unless the Developer Default is remedied prior to that determination.
	6. The Council may terminate this Agreement with immediate effect by notice served on the Developer where the Developer fails to rectify a Rectifiable Developer Default within the Developer Default Rectification Period.
	7. Where this Agreement is terminated under this Clause 24 the Developer shall indemnify the Council against any actual costs reasonably and properly incurred by the Council in retendering the Developer’s obligations under this Agreement or in relation to entering into a new agreement with a developer to replace the Developer.
	8. Any dispute as to whether a Developer Default is a Rectifiable Developer Default shall be referred to the Dispute Resolution Procedure.
1. TERMINATION FOR COUNCIL DEFAULT OR FORCE MAJEURE
	1. A Council Default occurs if:
		1. the Council breaches Clause 4 [*Council Licence*] in any way which prevents the Developer from complying with the Developer’s obligations under this Agreement, or
		2. the Council fails to transfer a Dwelling when called upon to do so by the Developer in accordance with Clause 20 [*Sale and Marketing of Dwellings*]
	2. If a Council Default occurs then the Developer may require the Council to remedy such Council Default by serving on the Council written notice (a **“Council Default Notice”**) specifying such Council Default and requiring it to be remedied with 20 (twenty) Working Days or such longer period as the Developer allows (the **“Council Default Rectification Period”**).
	3. If the Council fails to remedy a Council Default within the Council Default Rectification Period then at any time after the expiry of the Council Default Rectification Period the Developer may terminate this Agreement by notice to that effect on the Council.
	4. Either Party may terminate the Agreement by written notice to the other where Force Majeure has prevented that other Party from complying with its obligations under this Agreement for a period of more than 2 (two) Months.
	5. Where this Agreement is terminated under this Clause 25:
		1. the Developer shall pay the Council the sum of the Land Sale Prices of the Dwellings unsold on the date of termination of this Agreement; and
		2. the Council shall transfer the Site (excluding any Dwellings that have been sold) to the Developer.
2. consequences of termination generally
	1. Any payments due on termination under Clause 24 [*Termination for Developer Default*] or Clause 25 [*Termination for Council Default or Force* Majeure] shall be paid within 20 (twenty) Working Days of the Termination Date and any sums unpaid on that date shall carry interest at the Interest Rate from the Termination Date until the date of payment.
	2. This Agreement is to remain in full effect so far as it remains to be observed and performed after the completion of a Transfer of the whole or any part of the Site.
	3. The termination of this Agreement (however it occurs) is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination. The clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable after termination. This includes the following Clauses:
		1. Clause 1 [*Interpretation*];
		2. Clause 6 [*Site Conditions*];
		3. Clause 7.5 [*Consultants*];
		4. Clause 8.5 [*Contractor,* *Subcontractors and Suppliers*];
		5. Clause 16 [*Confidentiality and FOIA*];
		6. Clause 21 [*Proceeds of sale of the Dwellings*];
		7. Clause 22 [*Value Added Tax*];
		8. Clause 23 [*Indemnity, Insurance and Reinstatement*];
		9. this Clause 26 [*Consequences of Termination Generally*]; and
		10. Clause 27 [*Assignment and Subcontracting*] to Clause 40 [*Costs*] inclusive.
	4. The compensation payable on termination under Clause 24 [*Termination for Developer Default*] or Clause 25 [*Termination for Council Default or Force Majeure*] shall be in full and final satisfaction of all claims that may be made arising out of the termination or any breach of this Agreement or the other circumstances that led to termination but termination of this Agreement (for any reason) shall be without prejudice to the obligation of any party to make any payment that has accrued due before the Termination Date.
3. assignment and Subcontracting
	1. This Agreement shall bind and benefit the Council and the Developer and their respective successors and permitted transferees and assignees.
	2. The Developer may not assign or dispose of his interest in this Agreement except:
		1. as may be required or permitted under this Agreement; or
		2. to a Group Company with the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
	3. The Council may simultaneously with the transfer of the whole or a substantial part of the Site assign its rights under this Agreement to a Project Purchaser provided that the Council first procures that such Project Purchaser first enters into a direct deed of covenant with the Developer (or such person as the Developer reasonably requires) to comply with the obligations of the Council under this Agreement.
4. Waiver and Severability
	1. A failure or delay in exercising any rights, powers or privileges under this Agreement will not operate as a waiver of them.
	2. The single or partial exercise of any right, power or privilege does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).
	3. Any waiver of a breach of this Agreement is not to be effective unless given in writing signed by the Party waiving its entitlement.
	4. No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Agreement.
	5. The receipt of money does not prevent the Party receiving it questioning the correctness of the amount or any other statement in respect of money.
	6. If any term of this Agreement is illegal, void or unenforceable the remainder of this Agreement will continue in force as though that term had not been included in it.
5. Entire Agreement
	1. Subject to Clause 29.2 this Agreement sets out the whole agreement between the Parties in relation to the transaction it provides for. It supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which any Party has made orally or in writing.
	2. Each Party warrants that it has not entered into this Agreement on the basis of any representation made by either of the others except to the extent that such representation is expressly included in it (but nothing in this Clause 29 excludes any liability for fraudulent misrepresentation).
6. Extent of Obligations and Further Assurance
	1. Nothing in this Agreement is to require the Council to act in any way which is inconsistent with its statutory duties or obligations as a local authority or to act as a fetter on the Council in the exercise of its statutory duties and obligations.
	2. Each Party undertakes (subject to Clause 30.1 and to any express provisions of this Agreement) to do all things and execute all further documents that either of the others may reasonably require to:
		1. give effect to this Agreement;
		2. to exercise any of their rights under this Agreement; or
		3. to procure the completion of the Development as contemplated by this Agreement.
7. No Partnership or Agency
	1. Nothing in this Agreement is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other Law concerning partnerships or limited liability partnerships.
	2. Neither Party shall hold itself out as the agent of the other or have any authority to bind the other except to the extent that this Agreement expressly provides otherwise and nothing in this Agreement nor any other document shall impose any obligation or liability on the Council with respect to any action of or obligations or liabilities assumed or incurred by the Developer or its agents, contractors or employees whether under contract, statute or otherwise.
8. Third Parties

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

1. informal Dispute Resolution
	1. Each Party agrees to attempt to resolve any Disputes which it has with the other amicably and in accordance with the partnering principles set out in Clauses 18.1 and 18.2 but nothing in this Clause is to prevent the exercise by either Party of its other rights under this Agreement.
	2. If a Party considers that either of the other Parties has committed a breach of its obligations under this Agreement or that a Dispute has arisen then (without prejudice to its other rights or remedies under the Agreement) it may write a letter to that Party (copied to the other Party) specifying:
		1. what the breach or Dispute is alleged to be;
		2. what steps that Party should take to remedy the breach or resolve the Dispute; and
		3. within what reasonable period such steps should be taken.
	3. If the breach is not remedied or the Dispute not resolved within the period set out in the letter then the Parties must follow the following escalation procedure within a further period of 10 (ten) Working Days whereby the Parties nominees will meet to seek to resolve the Dispute:

|  |  |  |
| --- | --- | --- |
|  | **Council’s nominee:** | **Developer’s nominee:**  |
| **First level**  | [ ] | [ ] |
| **Final level (if no resolution at first level within 10 Working Days)** | [ ] | [ ] |
|  | or such appropriately senior replacement as each Party may notify to the other from time to time |

1. Mediation
	1. Any Party to a Dispute may, if the Dispute is not resolved under Clause 33 [*Informal Dispute Resolution*], invite the other Party to attempt to settle the Dispute by mediation in accordance with the Model Mediation Procedure of the Centre for Effective Dispute Resolution (“**CEDR**”) in force at the time of referral or such other procedure as the Parties in Dispute agree.
	2. Unless otherwise agreed between the Parties, any mediator will be nominated by CEDR.
	3. Any mediation shall be completed within 25 (twenty five) Working Days of such referral or such longer period as the Parties to the Dispute may agree.
	4. The Parties shall not be bound to participate in a mediation and the refusal by any Party to participate in a mediation, or the withdrawal by either Party from a mediation shall not be a breach of this Agreement.
	5. Any terms of settlement arising from such mediation shall be recorded in writing and signed on behalf of the Parties to the Dispute and shall be final and binding on those Parties in relation to the Dispute the subject of such mediation.
2. Adjudication
	1. Any Party to a Dispute may, if the Dispute is not resolved under Clause 33 [*Informal Dispute Resolution*], by written notice given to the other Party refer any Dispute between them relating to this Agreement to an Adjudicator as set out in this Clause 35. The notice to refer the Dispute to adjudication shall contain details of at least 2 (two) persons either of whom the referring Party considers have the appropriate qualifications and practical expertise to act as the Adjudicator.
	2. The person appointed to consider and adjudicate on a Dispute (the **“Adjudicator”**) shall be agreed between the Parties. If the Parties cannot agree on the identity of Adjudicator within 4 (four) days of the date of the notice served under Clause 35.1, the Adjudicator shall be appointed within 7 (seven) days of the date of notice by the Royal Institute of Chartered Surveyors.
	3. The Adjudicator shall require the Parties in Dispute to submit in writing their respective arguments and information to support them within 7 (seven) days of the Adjudicator’s appointment. The Parties may impose a duty of confidentiality on the Adjudicator in relation to such information as they wish. The Adjudicator shall, in his/her absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.
	4. In any event, the Adjudicator shall provide to all Parties (including the Party not in Dispute) a written decision on the Dispute, within 28 (twenty-eight) days of appointment (or such other period as the Parties in Dispute may agree after the Dispute has been referred to the Adjudicator). The Adjudicator may extend the deadline for provision of the decision to 42 (forty-two) days with the consent of the Parties.
	5. The Adjudicator shall give brief written reasons for the decision unless both Parties decide that this is not necessary. Unless and until revised, cancelled or varied by the court, the Adjudicator’s decision shall be binding on the Parties who shall immediately give effect to it.
	6. Each Party shall bear its own costs arising out of the reference, including any legal costs and the costs and expenses of any witnesses. The Adjudicator’s fees and costs of any reference shall be borne by the Party making the referral except to the extent that, because of the decision reached the other Party should bear a proportion of the cost of the reference.
	7. The Adjudicator shall be deemed not to be an arbitrator but shall give the decision as an adjudicator. The Arbitration Act 1996 and the Law relating to arbitration shall not apply to the Adjudicator or his/her determination or the procedure by which he/she reaches the determination.
	8. The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the Law.
	9. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
3. Expert Decision
	1. As a means of dispute resolution the Parties to a Dispute may agree to refer the Dispute to “Expert Decision” in which case the procedures in this Clause 36 shall apply.
	2. The Expert must have appropriate qualifications and practical experience to resolve the particular Dispute and be agreed by the Parties to the Dispute. Either Party may by written notice propose to the other Party to the Dispute at least 2 (two) possible Experts each of whom has the appropriate professional qualifications and practical expertise to resolve the particular Dispute. If the Parties to the Dispute cannot agree the identity of the Expert within 10 (ten) Working Days of the notice under this Clause 36.2 the Expert is to be appointed by the President of the Law Society or next most senior officer available of the Law Society on the application of either Party.
	3. The Parties to the Dispute must promptly give the Expert (imposing such obligations of confidentiality as they wish) all information reasonably requested by the Expert relating to the Dispute. The Expert shall act immediately and may take the initiative in ascertaining the facts and the Law.
	4. The Parties must require the Expert to use all reasonable endeavours to give a decision within 20 (twenty) Working Days following receipt of the information requested or (if this is not possible) as soon after that as reasonably practicable. The Parties shall co-operate fully with the Expert to achieve this objective.
	5. Each Party shall bear its own costs arising out of the reference. The fees and expenses of the Expert are to be shared equally by the Parties to the Dispute except to the extent that, as a result of the decision reached, the Expert decides that one Party should bear all or a greater proportion of the costs of the reference. The decision of the Expert is final and binding upon each of the Parties (but this Clause is not to exclude the operation of any set off permissible under this Agreement).
	6. The Expert is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as Expert unless the act or omission is in bad faith. Any employee or agent of the Expert is similarly protected from liability.
4. Notices
	1. Notices or other communications under this Agreement will be duly served if given by and sent to the nominated representative of the Party to be served in accordance with the following table with the date of service and method of proof being as set out in it:

| **Method of service** | **Date of service** | **Proof of service** |
| --- | --- | --- |
| Personal delivery to the Representative. | Day of delivery. | Proof of handing to the Representative. |
| Personal delivery of a letter addressed to the Representative at the address for service. | Day of delivery if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter. | Proof of delivery. |
| First class letter addressed to the Representative at the address for service. | 48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day thereafter. | Proof of posting unless returned through the Post Office undelivered service within 21 days of posting. |
| Facsimile addressed to the Representative at the address for service. | Day of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter. | Transmission report showing a successful transmission to the correct number plus proof of posting of a hard copy. |

* 1. Each Party’s address for service is the address set out at the start of this Agreement or such other address as it notifies to the other(s) in writing.
1. Governing Law and Enforcement

The formation, construction, performance, validity and all aspects of this Agreement are to be governed by English law and the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

1. Counterparts

This Agreement may be executed in two counterparts each of which shall be deemed to be an original but the counterparts shall together constitute one and the same Agreement.

1. Costs

Each Party shall bear their own costs in relation to the negotiation and completion of this Agreement.

**IN WITNESS** of which the Parties have executed and delivered this Agreement as a deed on the date set out above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Schedule 1PLANS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 1**

**Plans**

**Part 1: Site Plan**

**[*To be inserted*]**

**Part 2: Site Development Plan**

**[*To be inserted*]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Schedule 2DEveloper’s proposals

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**SCHEDULE 2**

**Developer’s Proposals**

**Part 1: Approved Designs**

*[To be inserted from Developer’s Tender]*

**Part 2: Developer’s Proposals**

*[To be inserted from Developer’s Tender]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Schedule 3extras

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**SCHEDULE 3**

**Extras**

 [*Developer to provide*]

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# Schedule 4finance

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**SCHEDULE 4**

**Finance**

**Part 1: Development Budget**

[*To be provided by Developer*]

**Part 2: Land Sale Prices and Overage Thresholds**

|  |  |  |
| --- | --- | --- |
| Type of Dwelling | Land Sale Price per Dwelling - £ | Overage Threshold - £ |
| 3 bedroom semi-detached house | [*insert*] | [*insert*] |
| 2 bedroom semi-detached houses | [*insert*] | [*insert*] |
| 2 bedroom terraced houses | [*insert*] | [*insert*] |
| 1 bedroom bungalows | [*insert*] | [*insert*] |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Schedule 5COMMERCIALLY SENSITIVE AND CONFIDENTIAL INFORMATION

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**SCHEDULE 5
Commercially Sensitive and Confidential Information**

**[*To be inserted from Developer’s Tender*]**

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# Schedule 6FormS of BUILDING CONTRACT, appointments and Collateral Warranties

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**SCHEDULE 6**

**Forms of Building Contract, Appointments and Collateral Warranties**

**Part 1: Building contract and warranty**

[*Developer to provide*]

**Part 2: Consultant appointment and warranty**

[*Developer to provide*]

**Part 3: Subcontractor Collateral Warranty**

[*Developer to provide*]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Schedule 7Insurances

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**SCHEDULE 7**

**Insurances**

Construction all risks £5,000,000 (five million pounds) for each and every occurrence.

Professional Indemnity £5,000,000 (five million pounds) for any one claim

Public Liability £10,000,000 (ten million pounds) for each and every occurrence

Employers Liability £10,000,000 (ten million pounds) or any higher amount required by statute

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# Schedule 8form of dwelling transfer

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**SCHEDULE 8**

**Form of Dwelling Transfer**

**Form of Transfer of a Dwelling**

[*Council to provide*]

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# Schedule 9loan agreement

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCHEDULE 9

**Loan Agreement**

**On Council’s notepaper**

Developer

Date: [ ] 2017

Dear Sirs

1. We, Blaby District Council “**the Council**”), are pleased to make you the offer of a Loan (“**the Loan**”) in the principal sum of £[……..] on the terms and conditions of this letter.

2. In order to accept our offer of the Loan, on such terms and conditions, please:

* + have the enclosed copy of this letter counter-signed on your behalf by a duly authorised person, and return to us (for the attention of the signatory to this letter) the counter-signed copy; and
	+ supply to us a copy of a resolution of your Board approving the Loan and authorising a named individual, being one of your Directors, to counter-sign a copy of this letter by way of your accepting the offer of the Loan, on the terms and conditions of this letter. This copy resolution must certified by one of your Directors to be a true and complete copy of your Board minute.
1. The Loan must be used to meet construction costs and related development expenditure on the Development as defined in a Development Agreement between us dated [ ] (“**the Development Agreement**”) and for no other purpose. The Loan may be drawn down monthly on the basis of expenditure incurred in constructing the Development. With each drawdown application (which must be in writing) you must provide such evidence of that expenditure as we require from time to time.
2. You may, without our having first demanded repayment, repay the principal amount of the Loan outstanding or any part of it at any time, if at the same time you pay all unpaid interest on the Loan, but you may not re-borrow any principal amount which you repay.
3. You must repay the principal amount of the Loan then outstanding, and pay all unpaid interest on it, immediately on our demanding repayment, which we may do at any time after [***insert longstop date***]. You must repay the Loan by instalments from the proceeds of sale of each Dwelling comprised in the Development within 5 (five) Working Days of each sale, with [100%] of the Net Sale Proceeds less the Land Sale Price and the Council’s Share of any Overage.
4. Despite Paragraph 5 above or any other provision of this letter, the principal amount of the Loan then outstanding and all interest payable under this letter will become due and repayable immediately on our demand if:
	* you fail to repay when due the principal amount of the Loan then outstanding, or you fail to pay when due any interest payable under this letter, or you fail to pay within 5 (five) Working Days after it becomes due any other sum which becomes payable under this letter;
	* you are in breach of any provision of this letter and (if such breach is capable of remedy) you do not remedy the breach within 5 (five) Working Days after we give you notice requiring that you remedy the breach;
	* any other borrowing by you becomes repayable by way of acceleration;
	* a receiver or a manager or a receiver and manager is appointed over all or any of your assets;
	* an application is made to the court for an administration order in relation to you, or we receive notice from any person of its intention to appoint an administrator in relation to you, or any administrator is appointed in relation to you;
	* your winding up commences or application is made to the court for your winding up;
	* any distress or execution is levied on or affects any of your assets, and is not discharged within 5 (five) Working Days;
	* you are, or are deemed to be, unable to pay your debts, within the meaning of Section 123 of the Insolvency Act 1986;
	* you are subject to any other insolvency related procedure analogous to the above in any part of the world; or
	* you cease to carry on business.
5. The principal amount of the Loan outstanding from time to time will bear interest at the rate of 1% per year above the 2 year maturity rate from time to time of Public Works Loan Board. Interest will accrue and be calculated on a daily basis, and will be payable on any repayment of the Loan, with repayments being used first to discharge your liability to pay interest ahead of repayments of the principal of the Loan.
6. If you default in paying any sum from time to time due under this letter on its due date, then (in lieu of interest as stated in paragraph 7 above) interest will accrue and be calculated on a daily basis (payable on demand) on the amount in respect of which default has been made, from the date of default until actual payment (both before and after judgement) at the rate of 8% (eight per cent) per year above the Bank of England base rate as varied from time to time.
7. You must make all payments under this letter on their due dates in pounds sterling to us at our account no. [……….] with […………] of [………….] sort code [………..] or such other account or address as we may from time to time notify you in writing. If any payment becomes due on a day which is not a Working Day (as defined in paragraph 9 below), then (without affecting subsequent payment dates) the due date of such payment will be extended to the next Working Day. You must make all payments under this letter without set-off or counterclaim, and free and clear of any withholding or deduction for or on account of tax except as may be required by Law.
8. You must pay, or reimburse to us, on our demand and on a full indemnity basis, all costs and expenses (and Value Added Tax) which we may from time to time incur in connection with this letter including costs and expenses of documenting any amendment of terms, any enforcement and any other preservation of our rights.
9. Every notice or other communication under this letter (“**relevant communication**”) must be in writing. In addition to any other legally valid method of delivery, any relevant communication may be delivered in accordance with the following table, with the date of service and method of proof being as set out in it.

| **Method of Service** | **Date of Service** | **Proof of Service** |
| --- | --- | --- |
| Personal delivery to the Representative | Day of delivery | Proof of handing to the Representative |
| Personal delivery of a letter addressed to the Representative at the address for service. | Day of delivery if before 16.00 on a Working Day otherwise 10.00 on the next Working Day. | Proof of delivery. |
| First class letter addressed to the Representative at the address for service. | 48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day. | Proof of posting unless returned through the Post Office undelivered serviced within 21 days of posting. |
| Facsimile addressed to the Representative at the address for service. | Date of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day. | Transmission report showing a successful transmission to the correct number plus proof of posting of a hard copy. |

References in the above table to:

* **“Working Days”** are to any day other than a Saturday, a Sunday or a bank or public holiday;
* **“the Representative”** means in our case [our Chief Executive] and in your case [your Managing Director] or such other person we or you (respectively) notify to the other in writing; and
* the address for service is your registered office or our principal office (as applicable).
1. Time shall be of the essence in respect of your obligations under this letter. No failure by us to exercise, or delay by us in exercising, any right or remedy as to such obligations will operate as a waiver of that or any other right or remedy and no single, partial or defective exercise by us of any such right or remedy will prevent any other or further exercise by us of that or any other right or remedy.
2. Your rights, benefits and obligations under this letter are personal to you, and so cannot be effectively assigned or transferred. We may assign or transfer all or any of our rights, benefits or obligations under this letter.
3. This letter does not create any rights under the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than you and us, except a person to whom we assign or transfer all or any of our rights, benefits or obligations under it.
4. Terms defined in the Development Agreement and indicated by a capital letter in this letter are to have the same meanings in this letter.

Yours faithfully

………………………………….

[***Name of signatory***]**, duly authorised, for and on behalf of Council**

**Borrower’s signature confirming** **acceptance of the offer of the Loan, as defined in the above letter, on the terms and conditions of the above letter**

**Borrower’s signature …………………………………………**

**…………………………………………**

**Full name of borrower’s signatory (please print)**

**duly authorised, for and on behalf of Borrower**

**Date of Borrower’s signature ………………………………….. 2017**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Schedule 10form of performance bond

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 10
Form of Performance Bond**

DATE 201[ ]

**[SURETY] (1)**

**BLABY DISTRICT COUNCIL (2)**

**[DEVELOPER] (3)**

**Performance Bond**

Anthony Collins Solicitors LLP

134 St Edmund Street

Birmingham

B3 2ES

[www.anthonycollins.com](http://www.anthonycollins.com)

Tel: 0121 212 7473

Fax: 0121 212 7434

Ref: 46006.0001

**PERFORMANCE BOND (“this Bond”)** by deed dated  **201**

**PARTIES:**

**(1) [SURETY]** (company number [ ]) whose registered office is at [ ] (“**the Surety**”);

**(2) BLABY DISTRICT COUNCIL** of Council Offices, Desford Road, Narborough, Leicester LE19 2EP (“**the Council**); and

**(3) [THE DEVELOPER]** (company number [ ]) whose registered office is at [ ] (“**the Developer**”)

**INTRODUCTION**

(1) The Developer has entered into a development agreement (“**the Development Agreement**”) with the Council to carry out the redevelopment of a former depot site (“**the Site**”) at Warwick Road, Littlethorpe, Leicester LE19 2JA ("**the Development**”)

(2) The Surety has agreed with the Council at the request of the Developer to pay the Council the amount stated in this Bond in the circumstances set out in this Bond.

**THIS DEED WITNESSES** as follows:

1. **INTERPRETATION**
	1. In this Bond (unless the context requires otherwise):

|  |  |
| --- | --- |
| **“Bond Amount”** | means £500,000 (five hundred thousand pounds);  |
| **“Development Agreement”** | means the contract between the Council and the Developer for the Development of the Site; |
| **“Demand”** | means a written demand served on the Surety by the Council in accordance with Clause 2 [*Surety*]; |
| **“Expiry Date”** | means the Development Completion Date; |
| **“Loan Agreement”** | means an agreement under which the Council loans the Developer money to finance the costs of the Development; and |
| **“Party”** | means a party to the Bond; |

* 1. In this Bond:
		1. references to Clauses are (unless stated otherwise) references to clauses of this Bond;
		2. the headings and references to them are not to affect its interpretation;
		3. references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;
		4. where any word appears in capital letters which is not defined within this Bond it shall have the meaning given to it within the Development Agreement;
		5. any references to law, shall be construed as references to that law as amended, replaced, consolidated or re-enacted and in relation to Acts of Parliament shall include all regulations, determinations, directions and statutory guidance having the force of law made or given under them;
		6. references to “consent” or “approval” are to the prior written consent of the consenting or approving Party and any breach of the terms of any consent given is to be a breach of this Bond; and
		7. references to any document are (unless specified) references to such document as amended or supplemented from time to time.
	2. Where this Bond requires something to be done:
		1. it must be done in accordance with this Bond;
		2. if it is to be done within a period after an action is taken, the day on which that action is taken does not count in the calculation of that period; and
		3. if the last day of the period within which it must be done is not a Working Day, the period shall be extended to include the following Working Day.
	3. All the Surety’s obligations, duties and responsibilities under this Bond are separate obligations, duties and responsibilities owed to the Council and are to be performed at Surety’s own cost and expense (but without prejudice to any right of recovery the Surety may have against the Developer).
1. **SURETY**
	1. The Surety unconditionally and irrevocably undertakes that within 10 (ten) Working Days of the service of a Demand by the Council on the Surety, the Surety will pay to the Council the amount stated in such Demand up to a maximum of the Bond Amount.
	2. The Council may serve a Demand on the Surety if before the Expiry Date:
		1. a Developer Default occurs under the Development Agreement; or
		2. the Developer defaults under the terms of the Loan Agreement.
	3. Any Demand must include a certificate signed by the Council that one of the circumstances set out in Clause 2.2 has occurred. The certificate must state which of those circumstances has occurred.
	4. The maximum aggregate liability of the Surety under this Bond shall not exceed the Bond Amount.
2. **NO RELEASE**
	1. The Surety shall not be discharged or released by any alteration of the Development Agreement or the nature or extent of the Development to be carried out under it.
	2. No forbearance (whether by an allowance of time or otherwise) given by the Council in relation to the Developer’s obligations under the Development Agreement shall reduce or affect the liability of the Surety under this Bond.
	3. The Surety’s obligations and liability under this Bond shall continue despite any disclaimer of the Development Agreement by a liquidator or administrator appointed to the Developer. For the purposes of this Bond the Development Agreement shall be deemed to continue despite any such disclaimer.
3. **RELEASE**

The obligations of the Surety under this Bond shall be released and discharged absolutely upon the Expiry Date.

1. **UNDERTAKING TO PERFORM**

The Developer undertakes to the Surety (without limiting any other remedies of the Council or the Surety against the Developer) to perform and discharge its obligations under the Development Agreement.

1. **ASSIGNMENT**

The benefit of this Bond may be assigned without consent to any Project Purchaser.

1. **WAIVER AND SEVERABILITY**
	1. A failure or delay in exercising any rights, powers or privileges under this Bond shall not operate as a waiver of them.
	2. The single or partial exercise of any right, power or privilege shall not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).
	3. Any waiver of a breach of this Bond is not to be effective unless given in writing signed by the Party waiving its entitlement.
	4. No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Bond.
	5. The receipt of money does not prevent the Party receiving it questioning the correctness of the amount or any other statement in respect of money.
	6. If any term of this Bond is illegal, void or unenforceable the remainder of this Bond will continue in force as though that term had not been included in it.
2. **ENTIRE AGREEMENT**
	1. Subject to Clause 8.2 this Bond sets out the whole agreement between the Parties in relation to the transaction it provides for. It supercedes and invalidates all other commitments, representations and warranties relating to its subject matter which either Party has made orally or in writing.
	2. Each Party warrants that it has not entered into this Bond on the basis of any representation made by any other Party except to the extent that such representation is expressly included in it (but nothing in this Clause 8 excludes any liability for fraudulent misrepresentation).
3. **FURTHER ASSURANCE**

Each Party undertakes to do all things and execute all further documents that the other may reasonably require to give effect to this Bond.

1. **THIRD PARTIES**

Nothing in this Bond confers any benefit on a person who is not a party to it or gives any such third party a right to enforce any of its terms.

1. **VARIATIONS**
	1. No variation of this Bond is to bind either party and no person has authority on behalf of either Party to agree to any variations to this Bond except where the amendment is agreed to in writing by all Parties.
	2. No consents to any variation to this Bond are required from any person who is not a Party.
2. **NOTICES**
	1. Notices or other communications under this Bond will be duly served if given by and sent to the nominated representative of the Party to be served in accordance with the following table with the date of service and method of proof being as set out in it:

|  |  |  |
| --- | --- | --- |
| **Method of service** | **Date of service** | **Proof of service** |
| Personal delivery to the address for service. | Day of delivery. | Proof of handing to the Representative. |
| First class letter sent to the address for service. | 48 hours after posting if that is a Working Day otherwise 10.00 the next Working Day. | Proof of posting unless returned through the Post Office undelivered service within 21 days of posting. |
| Facsimile addressed to the address for service. | Day of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day. | Transmission report showing a successful transmission to the correct number plus proof of posting of a hard copy. |

* 1. Each Party’s address for service is the address set out at the start of this Bond or such other address as it notifies to the others in writing.
1. **GOVERNING LAW AND ENFORCEMENT**
	1. The formation, construction, performance, validity and all aspects of this Bond are to be governed by English law and the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.
	2. The rights and remedies given by this Bond are cumulative and do not exclude any other rights or remedies given by law or under this Bond.

**IN WITNESS** of which the Parties have executed and delivered this Bond as a Deed on the date set out at the start of this Bond

The **SEAL** of [**SURETY**] was )

affixed to this **DEED** in the presence of )

Authorised Signatory

The **SEAL** of **BLABY DISTRICT COUNCIL** )

was affixed to this **DEED** in the presence of )

Authorised Signatory

**EXECUTED AND DELIVERED** as a **DEED** )

for and on behalf of **[DEVELOPER]** )

**LIMITED** acting by )

 Director

 Director/Secretary

 Or

 Director

 Witness

 Witness name

 Witness address

**Execution clauses for Development Agreement**

**THE SEAL of BLABY DISTRICT COUNCIL** )

was affixed to this deed in the presence of )

 Authorised Signatory

**EXECUTED AND DELIVERED** )

**AS A DEED** )

for and on behalf of **[DEVELOPER] LIMITED**  )

acting by )

 Director

 Director/Secretary

 Or

 Director

 Witness

 Witness name

 Witness address