

DATED

2015

RUNNYMEDE BOROUGH COUNCIL

- and -

[]

-and-

[]

DEVELOPMENT AGREEMENT

- relating to -

Egham Gateway Phase 1 and Egham Leisure Centre (Initial Sites) and Further Sites

**Sharpe Pritchard
Elizabeth House
Fulwood Place
LONDON
WC1V 6HG
Tel: 020 7405 4600
Ref: JP**

**NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF
DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS**

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THIS AGREEMENT is made the day of 2015
BETWEEN

- (1) **RUNNYMEDE BOROUGH COUNCIL** of Civic Centre, Station Road, Addlestone, Surrey KT15 2A (**"the Council"**);
- (2) [] (Company Registration Number) whose registered office is at [] (**"the Developer"**); and
- (3) [] (Company Registration Number) whose registered office is at [] (**"the Guarantor"**)

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement and the Schedules annexed hereto (unless the context otherwise requires), the following expressions shall have the meanings ascribed to them:

Adjoining Property means any land and/or buildings abutting or near to any Development Site and includes all roads and footpaths;

Adverse Rights means all rights of light and air and other covenants rights and easements whatsoever (including any rights and easements in respect of any Apparatus) and all, (if any) other restrictions enjoyed over any Development Site by any Adjoining Property or third party so far as the same are still subsisting and are capable of being enforced;

Affordable Housing means housing that is affordable to those people who cannot afford to rent or buy accommodation generally available on the open market to be provided by the Developer as part of the Agreed Scheme for any Development Site;

Agreed Scheme means the scheme for the development of a Development Site as set out in the Final Site Development Plan for the relevant Development Site approved by the Council in accordance with this Agreement;

Agreements for Lease means any one or more agreements for lease relating to Commercial Development entered into by the Council (as landlord) in accordance with Schedule 3;

Apparatus means all, (if any), Conduits and apparatus serving any Adjoining Property or belonging to or used for the purposes of the undertaking of any statutory undertaker;

Appeal means all or any of the following as the case may be:

- an appeal to the Secretary of State under section 78(1) or section 78(2) of the Planning Act against a Planning Refusal
- an appeal of the decision made as a result of a Call-In
- an application by the Developer following the grant of Planning Permission by the Local Planning Authority subject to any Onerous Conditions to vary such conditions under section 73 of the 1990 Act together with any appeal to the Secretary of State (under the statutory provisions referred to above) against a refusal or a deemed refusal of such application;

Approved Agreement for Lease means each Agreement for Lease including pre-let agreement exchanged in accordance with and after the date of this Agreement between (1) the Council, (2) the Developer, (3) the relevant Occupational Tenant and (4) the surety (if any) under which (amongst other provisions) the Council agrees to grant and an Occupational Tenant agrees to accept a Lease and the surety (if any) agrees to join in such Lease as surety for that Occupational Tenant and the Developer agrees to carry out (inter alia) the construction of the relevant Building Works subject to the terms and conditions contained in such agreement to be entered into in accordance with the provisions of Schedule 3 and Approved Agreements for Lease will be construed accordingly;

Approved Amendments means the approved amendments to the Template Agreement and Template Lease at Appendix 2 to this Agreement;

Approved Contribution Capital means any incentive or capital contribution the cost of which is up to the relevant maximum amount as set out in the column headed "Additional Capital Contribution" to the table at Part 2 of Schedule 3;

Approved Rent Free Period means any rent free period up to the relevant maximum period as set out in the column headed "Rent Free" to the table at part 2 of Schedule 3;

Approved Tenants has the meaning attributed in paragraph 3.1 of Part 1 to Schedule 3;

Architect means in relation to the Initial Sites [] or in relation to the Further Sites such other suitably qualified and experienced architect as the Developer may from time to time appoint;

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Approved Building Contractor	means [] or such other building contractor or contractors of repute who is/are experienced in carrying out projects of the size and nature of the Development and who has been appointed to act and employed in such capacity under the terms of this Agreement;
Bid Documentation	means the information and documentation made available by the Council to the Developer prior to the submission of the Developer's Tender as set out in Part III of Schedule 5;
Building Contract	means a tendered contract for the carrying out of the whole or any material part of the Building Works approved by the Council to be entered into by the Developer with the Approved Building Contractor under the terms of this Agreement or, where another contract is entered into, such other contract and, in each case where such contract or other contract is varied or modified, in accordance with the provisions of this Agreement, such contract or other contract as so varied or modified;
Building Documents	means the plans, drawings, specifications, elevations, sections, calculations, bills of quantities, operating manuals, method statements, programmes, surveys and other data and any other documents prepared for or in connection with the Building Works and where such documents are varied or modified in accordance with this Agreement, those documents as so varied or modified;
Building Licence	means the licence(s) to be granted to the Developer by the Council pursuant to clause 17;
Building Obligations	means the Developer's building obligations in respect of each of the Development Sites as set out in Schedule 2;
Building Works	means the works of and in connection with the carrying out of the Development of each of the Development Sites or any part thereof and includes (unless the context otherwise requires) all site clearance and site preparation works, demolition (to the extent necessary), works for the provision and/or redirection of any Services (including drainage works) all highway works, plant and equipment installation testing and commissioning and all associated car parking and landscaping works;
Call-In	means the calling in of a Planning Application by the Secretary of State pursuant to section 77 of the Planning Act;

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Commencement of Development	of	means the date that a material operation as defined in Section 56(4) of the Planning Act (as amended) is due to be undertaken pursuant to the Satisfactory Permission for a Development Site as set out in the relevant Final Site Development Plan for such site;
Commercial Development		means all parts of the Agreed Scheme for any Development Site comprising commercial development;
Commercial Obligations	Lettings	means the Developer's lettings obligations in relation to any Commercial Development as set out in Schedule 3;
Commercial Condition	Pre-let	means the exchange of an Agreement or Agreements for Lease in accordance with the Commercial Lettings Obligations of at least 70% of the Commercial Development forming part of the Agreed Scheme for any Development Site;
Completion Certificate		means a certificate issued by the Employer's Representative to the effect that, in their professional opinion, Practical Completion of the Building Works, or such part thereof as may be specified in the said Certificate, has been achieved;
Condition Precedent Satisfaction Notice		means a written notice confirming that the Condition Precedent specified in the notice has been satisfied;
Conditions Precedent		means the Initial Sites Conditions Precedent or the Further Sites Conditions Precedent as applicable and "Condition Precedent" shall mean any one of them;
Conduits		means all pipes sewers drains mains ducts conduits gutters watercourses wires cables channels flues circuits optical fibres and all other conducting media through which any Services may pass which are in on or under any Development Site or which serve any Development Site from any Adjoining Property;
Confirmation Notice		has the meaning set out in clause 2.5.2.1
Consultant's Warranty		means a deed of warranty from a member of the Professional Team to be in a form proposed by or for the Developer in due course and approved by or for the Council (such approval not to be unreasonably withheld or delayed) with such variations as may be agreed between the Parties (acting reasonably) or as may be reasonably required by the relevant member of the Professional Team or its insurers;
Contractor's Warranty		means a deed of warranty from the Approved Building Contractor to be in a form proposed by or for the

	Developer in due course and approved by or for the Council (such approval not to be unreasonably withheld or delayed) with such variations as may be agreed between the Parties (acting reasonably) or as may be reasonably required by the Approved Building Contractor or its insurers;
Council's Representative	means the Council's Head of Commercial Services or such other person or persons notified to the Developer by the Council in writing from time to time and duly authorised on behalf of the Council. For the avoidance of doubt the Council's Representative may be an employee or appointee of the Council and may be different people for different purposes;
Council's Solicitors	means Sharpe Pritchard LLP of Elizabeth House, Fulwood Place, London WC1V 6HG (Ref: JP);
Counter-notice	has the meaning set out in clause 2.5.2.2;
CPO Powers	means the Council's Compulsory Purchase Order powers pursuant to section 226 of the 1990 Act;
Date of Implementation	means the date no later than six (6) months after the Unconditional Date for a Development Site upon which the Developer enters the relevant Development Site (or any part thereof) to commence the Building Works or, if earlier, the demolition which forms part of the Building Works, but excluding entry for the purposes of site and soil investigations, erection of security and site huts and other preliminary works;
Deemed Refusal	means a failure by the Local Planning Authority to make a decision in respect of a Planning Application within the period prescribed by the Planning Act;
Defect	means any one or more defects in the Building Works under the defects liability provisions of the relevant Building Contract, which are specified in a Defects Notice served by or for the Council pursuant to the provisions of paragraph 19 of Schedule 2 to this Agreement;
Defects Notice	means a notice, served by or for the Council in accordance with the provisions of paragraph 19 of Schedule 2, specifying the Defect and the Remedial Measures;
Delaying Factor	means any of the following events: <ul style="list-style-type: none"> a) national or local stoppages, labour disputes lock-outs strikes and other industrial disputes which affect any of the trades employed to carry out the Building Works riot disorder or

decree of Government;

- b) any failure or delay by the Council promptly to comply with its obligations hereunder;
- c) delays to the Building Works caused by the carrying out of any variation to the Agreed Scheme for a Development Site agreed in accordance with this Agreement;

Developer's Solicitors	means [] (Ref:);
Developer's Tender	means the tender submitted by the Developer for the Development and formally accepted by the Council with a Tender Return Date of [], as clarified prior to the date of this Agreement;
Development	means the development of each of the Development Sites in accordance with the relevant Agreed Scheme;
Development Business Plan	means the detailed development plan for the Development submitted as part of the Developer's Tender and attached at Schedule 6;
Development and Phasing Programme	means the detailed development and phasing programme for the Development of a Development Site as set out in the Final Site Development Plan for the relevant Development Site and as may be varied from time to time in accordance with paragraph 17.2 of Schedule 2;
Development Completion Date	means either the date specified by the Employer's Representative (pursuant to the Building Contract) or the date determined by the Expert appointed under clause 27.4 of this Agreement (as applicable) as the date on which the Building Works for the whole of the Development of a Development Site or any material part thereof are complete in accordance with the terms of this Agreement subject only to the existence of minor defects and/or minor omissions at the time of the inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the relevant Development and which it would be reasonable to include in a schedule of snagging items;
Development Costs	means the aggregate of all development costs to be incurred by the Developer in connection with the Development of a Development Site for the relevant Agreed Scheme including, for the avoidance of doubt, all costs incurred in seeking to fulfil the relevant Conditions Precedent prior to the relevant Unconditional Date as set out in the Final Site

	Development Plan for each Development Site;
Development Sites	means together the Initial Sites and the Further Sites and “Development Site” shall mean any one of them;
Disclosed Documents	means the documents contained or referred to in the registers of the title(s) set out in Part II of Schedule 5;
Dispute Resolution Procedure	means the procedure for the resolution of any disputes arising under this Agreement as set out in clause 27;
Employer's Representative	means the person or firm for the time being appointed by the Developer to act as employer's agent in relation to the Development and the Building Contract;
Final Site Development Plan Approval Condition	means the Council's approval to the Final Site Development Plan for a Development Site based on its final analysis of all relevant criteria including financial return, design and other qualitative and quantitative criteria including, without limitation, place shaping benefits, commercial returns and benefits to the local economy;
Final Site Development Plans	means the Developer's final development plans for each Development Site based on the Interim Site Development Plan for the relevant Development Site but adjusted to respond to any requirements of the local planning authority and submitted by the Developer to the Council following the satisfaction of the Planning Condition for the relevant site in the form of the template Final Site Development Plan annexed to this Agreement at Schedule 10 and “Final Site Development Plan” shall mean any one of them;
Fully Let Date	means the first date following Practical Completion of a Development Site that all Commercial Units within the Agreed Scheme for such site are Let;
Further Sites	means the further sites which may be brought forward for development in accordance with the provisions of this Agreement being the sites known as Egham Gateway 2 shown edged red on Plan 3 annexed, Addlestone TWO shown edged red on Plan 4 annexed, Addlestone THREE shown edged red on Plan 5 annexed and Egham Gateway Phase 2 shown edged red on Plan 6 annexed and “Further Site” shall mean any one of them;
Further Sites Conditions Precedent	means each of: - <ul style="list-style-type: none"> • the Planning Condition; • the Land Assembly and Vacant Possession Condition;

- the Management Condition;
- the Survey Condition;
- the Third Party Consents Condition;
- the Commercial Pre-let Condition; and
- the Final Site Development Plan Approval Condition

Further Sites Long Stop Date	means the long stop date for the satisfaction of the Further Sites Conditions Precedent for any Further Site being the date 12 months following satisfaction of the Planning Condition for the applicable Further Site or in the event the Council is required to use its CPO Powers to satisfy the Land Assembly Condition for such Further Site, then the date 2 years following satisfaction of the Planning Condition;
Heads of Terms	means the heads of terms for an agreement for lease or lease as referred to in Schedule 3;
Health and Safety Regulations	means the Construction (Design and Management) Regulations 2015 or any statutory replacement thereof;
Independent Certifier	means the person or firm for the time being appointed by the Developer to act as independent certifier in relation to the Development and the Building Contract and for the purposes of this Agreement but after first agreeing terms of reference for their appointment with the Council and which shall include the Independent Certifier owing a duty of care to the Council in signing off any of the Building Works or any Development Costs and in certifying any claims for payment;
Indicative Site Development Plans	means the site development plans identifying the Developer's initial design concepts for each of the Further Sites submitted by the Developer as part of the Developer's Tender and annexed to this Agreement at Schedule 8 and "Indicative Site Development Plan" shall mean any one of them;
Initial Sites	means the site known as Egham Gateway Phase 1 as shown edged red on Plan 1 comprising the land registered under the title number(s) set out in Part I of Schedule 7 and any unregistered land comprised therein and the site known as Egham Leisure Centre as shown edged red on Plan 2 comprising the land registered under the title number(s) set out in Part I of Schedule 7 and any unregistered land comprised therein Provided Always that in the event of any discrepancy between the Plans annexed and the Land Registry title boundaries the Land Registry title boundaries shall prevail and "Initial Site" shall mean

	any one of them;
Initial Sites Conditions Precedent	<p>means each of: -</p> <ul style="list-style-type: none"> • the Planning Condition • the Land Assembly and Vacant Possession Condition; • the Management Condition; • the Survey Conition; • the Third Party Consents Condition; • the Commercial Pre-let Condition; and • the Final Site Development Plan Approval Condition
Initial Sites Long Stop Date	means the date [twenty-four (24)] months after the date of this Agreement;
Initial Void Period	means the period of five (5) years following Practical Completion of a Development Site;
Inquiry	means an inquiry held following an Appeal or a Call-In;
Insured Risks	<p>means:</p> <ul style="list-style-type: none"> • fire, lightning, explosion, aircraft, (including articles dropped from aircraft), subsidence, riot, civil commotion, malicious persons, earthquake, storm, tempest, flood, bursting and overflowing of water pipes, tanks and other apparatus and impact by road vehicles; and • all other risks, (if any), required to be insured against pursuant to the relevant Building Contract; <p>subject to such exclusions conditions and excesses as may be imposed by the insurers and are normal in the UK insurance market at the relevant time;</p>
Interim Site Development Plans	means the Developer's interim site development plans for both of the Initial Sites submitted by the Developer as part of the Developer's Tender and annexed to this Agreement at Part 1 of Schedule 9 together with the Interim Site Development Plans for any of the Further Sites submitted by the Developer to the Council immediately prior to the Developer submitting a planning application for the relevant site in the form of the template Interim Site Development Plan annexed to this Agreement at Part II of Schedule 9 and "Interim Site Development Plan" shall mean any

	one of them;
Land Assembly and Vacant Possession Condition	means the Council securing all Third Party Interests and vacant possession of the Development Sites;
Lease	means a lease (or leases) of the whole (or part) of the Commercial Units to be granted to an Occupational Tenant in the form of the Template Lease or in the form required by an Approved Agreement for Lease or otherwise in accordance with the terms of Schedule 3 and Letting, Lettings, Let and Leases will be construed accordingly;
Leisure Facility	means the re-provision of the Council's existing leisure facilities at Egham Leisure Centre to be delivered by the Developer and meeting the minimum requirements set out in the Leisure Facility Specification; ¹
Leisure Facility Specification	means the specification for the Leisure Facility as set out in Schedule 4;
Letting Agents	means such reputable and professional letting agents as are appointed by the Developer in respect of the letting of the Commercial Units pursuant to the provisions of Schedule 3;
Long Stop Date	means the Initial Sites Long Stop Date or the Further Sites Long Stop Date (as applicable);
Management Condition	means the Council being satisfied with the strategy or mechanism proposed by the Developer relating to arrangements for the future provision, management and support of all common facilities within an Agreed Scheme to include provisions for the funding of maintenance of all open space and all unadopted areas included within the relevant Development (including roads and Conduits);
Notice of Unconditionality	means a written notice confirming that all of the Initial Sites Conditions Precedent or the Further Sites Conditions Precedent (as applicable) have been either satisfied or waived in accordance with this Agreement;
Occupational Tenant	means a tenant under any Pre-let Agreement or Approved Agreement for Lease or Lease and Occupational Tenants will be constructed accordingly;

¹ To be adapted if a refurbishment of the existing Facility only is proposed

Onerous Conditions

means any condition or conditions imposed in a Planning Permission or any obligation or obligations contained in a Planning Agreement or an Agreement pursuant to Section 278 of the Highways Act 1980 relating thereto which individually or in aggregate has or have the following effects:-

- (a) it prevents full development and/or use and/or occupation of any Development Site without the agreement or co-operation of someone other than the Developer;
- (b) it is a temporary planning permission or restricts the planning permission to a set period of time provided that a planning permission requiring commencement of development within a period of three (3) years or more shall not be an unsatisfactory condition for these purposes;
- (c) it makes the planning permission personal to either one person, a number of persons or a specified class or classes of persons save that any requirement that a specified % of the residential units to be constructed on any Development Site as part of the relevant Agreed Scheme are to be Affordable Housing and/or any requirement limiting the use of any commercial units included as part of an Agreed Scheme to any specific use class shall not be treated as unsatisfactory conditions;
- (d) it imposes requirements in respect of any land not comprised within the Planning Application red line drawing;
- (e) it prevents development without the agreement or co-operation of an independent third party which cannot be obtained on terms or at a cost or within a time that is reasonable in the circumstances; or
- (f) which is in the reasonable opinion of the Council otherwise unreasonable or unduly restrictive in the context of the relevant Agreed Scheme;

Parties

means the Council the Developer and the Guarantor and “Party” shall be construed as any one of them;

Permitted Plans

means the plans which are referred to in and form

	part of the Satisfactory Permission;
Phase	means any phase of the Development in accordance with the Final Site Development Plans;
Planning Act	means each of the Town and Country Planning Act 1990 (“the 1990 Act”), the Planning (Listed Building and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 and includes any amendment, consolidation or re-enactment of them, as well as any order, regulation, directive, byelaw, rule, consent or licence made or issued under or pursuant to them or by any public or local authority or by any Court of competent jurisdiction;
Planning Agreement	means an agreement required by any relevant authority pursuant to section 106 of the 1990 Act and/or section 38 and/ or section 278 of the Highways Act 1980 and/or section 104 of the Water Industries Act 1991 and/or section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or section 18 of the Public Health Act and/ or sections 98 to 101 of the Water Industries Act 1991 or any provision to a similar intent or an agreement with a water authority or other appropriate authority as to water supply or drainage and surface water and/or foul water from any Development Site or an agreement with a competent authority or body relating to other Services;
Planning Application	means an application for full planning consent for an Agreed Scheme submitted to the Local Planning Authority by the Developer;
Planning Application Submission Date	means the later of (i) the date six (6) months after the date of this Agreement in the case of the Initial Sites or the date six (6) months after the approval by the Council of the Interim Site Development Plan for a Development Site or (ii) the date the Council has approved the Planning Application in accordance with clause 3.3 hereof;
Planning Condition	means the Planning Date has occurred;
Planning Date	means the latest of the following dates: <ul style="list-style-type: none"> • in the event of the grant of a Satisfactory Permission by the Local Planning Authority, the date which is eight (8) weeks after the date of the grant of a Satisfactory Permission Provided That no Proceedings are current at such date or, if Proceedings are so instituted, the date which is twenty (20) Working Days after the disposal of Proceedings with the

result that a Satisfactory Permission has been granted or upheld;

- in the event of the grant of a Satisfactory Permission by the Secretary of State, the date which is eight (8) weeks after the date of grant of a Satisfactory Permission Provided That no Proceedings are current at such date or, if Proceedings are so instituted, the date which is twenty (20) Working Days after the disposal of Proceedings with the result that a Satisfactory Permission has been granted or upheld;
- in the event that a Planning Refusal is received or a Planning Permission which is not a Satisfactory Permission is granted or there is a Deemed Refusal and Proceedings (in either case) are instituted by or on behalf of the Developer the date which is twenty (20) Working Days after the disposal of Proceedings with the result that a Satisfactory Permission has been granted or upheld;

Provided Always that the grant of a Satisfactory Permission shall for the avoidance of doubt occur in the case of a grant of a Planning Permission by the Local Planning Authority on the date printed on the notice of such grant and in the case of the grant of a Planning Permission by the Secretary of State on the date printed on the letter or other document given by or on behalf of the Secretary of State notifying such grant;

Planning Decision

means any written grant of Planning Permission or a formal refusal of a Planning Application which is consequent on a decision of the Local Planning Authority or the Secretary of State or where the context permits the outcome of any Proceedings;

Planning Documents

means all plans, specifications, method statements, programme of works and any other documents as may reasonably be required to accompany any Planning Application;

[Planning Performance Agreement

means the planning performance agreement to be entered into by the Developer with the Local Planning Authority;]

Planning Permission

means the grant of full planning consent for the whole of an Agreed Scheme, issued either by the Local Planning Authority or the Secretary of State;

Planning Refusal	means a refusal of Planning Permission applied for under the provisions of this Agreement (including a Deemed Refusal) or the grant of an Unsatisfactory Permission;
Plan	means the plan(s) signed by the Parties and annexed to this Agreement;
Practical Completion	means practical completion of the Building Works or any part thereof pursuant to the Building Contract;
Prescribed Rate	means the rate of 4 per centum (4%) above the base rate from time to time of the Bank of England;
Proceedings	means all or any of the following as the case may be:- <ul style="list-style-type: none"> (1) a claim for judicial review under Part 54 of the Civil Procedure Rules made by any third party and arising from the grant of a Planning Permission by the Local Planning Authority or the Secretary of State (2) an application made by or on behalf of the Developer and arising from a Planning Refusal by the Secretary of State pursuant to Section 288 of the Planning Act including any appeal to a higher court following a judgment at first instance (3) any reconsideration by the Local Planning Authority or the Secretary of State (as the case may be) of a Planning Permission or an Appeal (as the case may be) following a previous Planning Decision being quashed pursuant to proceedings (within the meaning of paragraphs (1) (2) or (3) of this definition) and the matter being remitted to the Local Planning Authority or the Secretary of State (as the case may be) (4) proceedings (within the meanings set out in this definition) arising from a Planning Decision following a reconsideration of a Planning Application or an Appeal by the Local Planning Authority or the Secretary of State as specified in this definition (5) an application to the High Court by a third party pursuant to the Human Rights Act 1998;
Professional Team	means the architect, quantity surveyor, structural engineer, mechanical and electrical services engineer, Independent Certifier and other professional

	advisers who are from time to time appointed in connection with the design and delivery of the Building Works in relation to the Development;
Qualified Approval	means the written consent or approval of any Party required under this Agreement which shall not be unreasonably withheld or delayed;
Remedial Measures	means the measures specified in a Defects Notice that the Council considers are required to remedy the defects specified in such notice;
Reviewable Design Data	means the spreadsheets setting out the reviewable design data appended to this Agreement at Appendix 3;
Satisfactory Permission	means together, a Planning Permission and any Planning Agreement which is not subject to any Onerous Conditions;
Secretary of State	means the Secretary of State for Communities and Local Government or other minister or authority for the time being having or entitled to exercise the powers conferred upon the said Secretary of State by sections 77, 78 and 79 of the Planning Act or an inspector appointed to act on behalf of the said Secretary of State;
Services	means gas, water, electricity, foul and surface water, telecommunication cables and similar utilities;
Stakeholders	means all stakeholders having an interest in any of the Development Sites as notified by the Council to the Developer and to be included in the consultation programme;
Standard Conditions	means the Standard Conditions of Sale (Fourth Edition);
Statutory Approvals	means the Planning Permission and all other approvals, consents, permissions, licences and certificates of any local or other competent authority, which may, from time to time, be necessary to enable the Developer lawfully to commence and carry out the Building Works in relation to any Development Site and, where any such documents are varied, relaxed or waived in accordance with the provisions of this Agreement, such documents as so varied, relaxed or waived;
Subsequent Phase	means each Phase of the Development after Phase 1, in accordance with the Development Business Plan;
Survey Condition	means receipt by the Developer of full reports

following carrying out of the Surveys which do not disclose matters which in the opinion of the Council would render the whole or a material part of the Development of a Development Site incapable of being carried out, let or sold into the investment market or in respect of which funding could not be raised due to the results of such reports or otherwise leaving the Development with unquantifiable environmental liabilities in relation to matters referred to in such reports which are not reasonably acceptable to the Council (as applicable);

Surveys

means all environmental, archeological and ground condition surveys and all other site, building, services and soil investigations surveys inspections measurements and reports for a Development Site as the Developer or the Council may reasonably consider necessary to undertake prior to commencing the Development;

Target Rent

means the relevant figure set out in the column headed 'Rent (£ unit of measurement)' within the table at Part 2 of Schedule 3 being the highest yearly rent per square metre of Net Internal Area or Gross Internal Area or other unit of measurement as stated in the table at Part 2 of Schedule 3 payable in any year up to the first rent review date in respect of a Lease after expiry of any rent free period or other inducements;

Template Agreement

means the template Agreement for Lease annexed at Appendix 2 to this Agreement;

Template Lease

means the template lease annexed at Appendix 2 to this Agreement;

Termination Event

means any of the following events:-

- (a) if the Developer becomes insolvent; or
- (b) if the Guarantor becomes insolvent and the Developer has failed to provide an alternative guarantor satisfactory in all respects to the Council or the Developer has been unable to comply with the requirements of clause 29; or
- (c) if the Developer has failed to commence or complete the Building Works or any Phase in accordance with the Development Business Plan; or
- (d) if the Developer has committed any other substantial and material breach or breaches of its obligations under this Agreement notified to the Developer;

Third Party Consents	means the written agreement or consent to the carrying out the Building Works of any person holding the benefit of any Adverse Right including, where applicable, the written agreement or consent of any statutory undertaker and, where such agreement or consent is varied in accordance with this Agreement, such agreement or consent as varied;
Third Party Consents Condition	means the Developer securing all Third Party Consents required in order to facilitate the Development of any Further Site;
Third Party Interests	means any interest within any of the Further Sites at the date of this Agreement not within the ownership or control of the Council and owned by or leased to any third party the variation, acquisition or extinguishment of which is required to facilitate the Development of any such Further Sites as shown on Plans [];
Unconditional Date	means in relation to any Development Site either: (a) the date of service of a Confirmation Notice; or (b) if a Counter-notice is served, the date subsequently agreed or determined as the Unconditional Date in accordance with the provisions of clause 2.4.2; or (c) if neither a Confirmation Notice or a Counter-notice shall have been served within twenty (20) Working Days of service of a Notice of Unconditionality, the date twenty (20) Working Days after service of such Notice;
Units	means the units to be made available for letting within any Commercial Development and forming part of an Agreed Scheme;
Unsatisfactory Permission	means a Planning Permission or a Planning Agreement which is subject to one or more Onerous Conditions;
Vacant Unit	means any Commercial Unit which is intended to be the subject of a letting but there is either no Lease granted in respect of such Commercial Unit or no Approved Agreement for Lease in place under which the tenant has been granted access to the relevant unit prior to completion of the Lease on terms that it is responsible for payment of service charge, rates and other outgoings and including a Commercial Unit that is the subject of an Approved Agreement for Lease but in respect of which the Lease is not granted in accordance with an Approved Agreement for Lease as a result of the default of the Developer or the

	Insolvency or other default of the Occupational Tenant;
VAT	means Value Added Tax or similar tax from time to time replacing it or performing a similar fiscal function;
Void Payment	means the payment due in respect of all Vacant Units for service charge (exclusive of VAT) national non-domestic rates and annual rent during the Initial Void Period calculated by reference to the table at Part 2 of Schedule 3; and
Working Day	means any day on which, clearing banks in the City of London are (or would be but for a strike lock-out or other stoppage affecting such banks generally), open during banking hours for business.

1.2. Interpretation

- 1.2.1. Unless the context otherwise requires references to a clause by number in this Agreement or in a Schedule to this Agreement are to a numbered clause in this Agreement or to that Schedule, (as the case may be), and references to a Schedule are to a Schedule, of this Agreement.
- 1.2.2. Words importing the singular meaning, where the context so allows, include the plural meaning and vice versa.
- 1.2.3. Words of one gender include both other genders and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably in that manner.
- 1.2.4. The headings in this Agreement, together with the index and information on the front cover page, are for convenience only and do not affect its interpretation.
- 1.2.5. Save in respect of any references to the Town and Country Planning (Use Classes) Order 1987, references to a statute or a provision of a statute include any statute or provision of a statute amending, consolidating or replacing it for the time being in force.
- 1.2.6. Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of that restriction.
- 1.2.7. References to 'liability', unless the context otherwise requires, includes claims, demands, proceedings, damages, costs and expenses.
- 1.2.8. Reference to the "Council" "Developer" "Guarantor" and any other person shall, (where appropriate), include their respective officers, servants, agents and any person authorised by any of them.
- 1.2.9. If there shall be more than one person included in the expression "Developer" or "Guarantor" the covenants by them shall be joint and several.

2. CONDITIONS PRECEDENT

- 2.1. This Agreement shall last for an initial term of eight (8) years (“the **Initial Term**”) extendable at the Council’s discretion for up to a further five (5) years on serving not less than [twelve (12)] months’ prior written notice on the Developer prior to the determination of the Initial Term
- 2.2. This Agreement in relation to the Initial Sites (other than clauses [] (inclusive) and Schedules []) is conditional upon satisfaction or waiver of the Initial Sites Conditions Precedent on or before the Initial Sites Long Stop Date and in relation to the Further Sites (other than clauses [] (inclusive) and Schedules []) is conditional upon satisfaction or waiver of the Further Sites Conditions Precedent on or before the Further Sites Long Stop Date.
- 2.3. The Parties:-
 - 2.3.1. agree to co-operate with each other and use all reasonable endeavours to assist each other in discharging the Conditions Precedent; and
 - 2.3.2. will keep each other fully informed of all action it may take in accordance with clause 2.3.1 and will, when reasonably requested to do so, provide the other Party with any documents or correspondence relating to satisfaction or waiver of any of the Conditions Precedent.
- 2.4. As soon as the Developer or the Council (as applicable) considers that a Condition Precedent has been satisfied they shall serve a Condition Precedent Satisfaction Notice on the other
- 2.5.
 - 2.5.1. The Council or the Developer shall serve on the other the Notice of Unconditionality for a Development Site when, in its opinion (acting reasonably and in good faith), all the relevant Conditions Precedent have been satisfied or waived (as permitted under this Agreement) for such Development Site Provided That a Notice of Unconditionality may not be served by either Party whilst any dispute is being determined pursuant to clause 3.10.3 as to whether a Planning Permission is a Satisfactory Permission for the purposes of satisfying the Planning Condition or any Dispute Resolution Procedure has been invoked pursuant to clause 27
 - 2.5.2. Within ten (10) Working Days of receipt of a Notice of Unconditionality, the Council or the Developer (as applicable) shall serve on the other Party either:
 - 2.5.2.1. a notice confirming that they agree that the relevant Conditions Precedent have been satisfied or waived (each a Confirmation Notice); or
 - 2.5.2.2. if the Council or the Developer (as applicable) acting reasonably and in good faith does not consider the Notice of Unconditionality should have been served, a written Counter-notice setting out the reasons why and any dispute between the Council and the Developer shall be determined in accordance with clause 27
 - 2.5.3. If the Developer has not served either a Confirmation Notice or a Counter-notice within ten (10) Working Days of receipt of a Notice of Unconditionality from the Council then it shall be deemed to have accepted that the said Notice of Unconditionality was validly served

and the Unconditional Date for the relevant Development Site achieved

- 2.6. The Developer shall not be entitled to waive any of the Conditions Precedent
- 2.7. On the Unconditional Date this Agreement in relation to the relevant Development Site shall become unconditional
- 2.8. If all the Initial Sites Conditions Precedent have not been satisfied or waived in accordance with this Agreement for an Initial Site by the Initial Sites Long Stop Date or if all of the Further Sites Conditions Precedent have not been satisfied or waived in accordance with this Agreement for a Further Site by the applicable Further Sites Longstop Date then either the Council or the Developer may terminate this Agreement insofar as it relates to the Initial Site or Further Site (as applicable) only on giving seven (7) Working Days written notice to the other (but prior to the service of any notice by the Developer pursuant to clause 2.5.1 above) and on the expiry of such notice this Agreement shall automatically immediately cease and terminate insofar as it relates to the development of the Initial Site or the Further Site (as applicable) only and as if it had not been executed unless prior to the expiry of such notice the Council has notified the Developer in writing that it has waived any of the Conditions Precedent which at such date have not been discharged or waived and which the Council is entitled to waive Provided Always that if at the relevant Long Stop Date an inquiry and/or decision are awaited in respect of an Appeal or any Proceedings have been instituted but not fully resolved or a resolution to grant a Satisfactory Permission has been received but a Section 106 agreement has still to be concluded, then the relevant Long Stop Date will automatically be extended until the date Planning Permission is granted upheld or refused following final determination of an Appeal or any Proceedings or the Section 106 agreement has been finalised as applicable
- 2.9. In the event this Agreement is terminated pursuant to clause 2.8 above, the Developer shall forthwith at its own cost arrange for the removal of any entry it may have registered against the Council's freehold title to the relevant Development Site or any part or parts thereof and lodge any documentation necessary to effect such removal or cancellation at the Land Registry
- 2.10. On the Unconditional Date this Agreement shall become fully operative in relation to the development of the relevant Development Site.

3. PROVISIONS RELATING TO THE PLANNING CONDITION

3.1. Planning Performance Agreement

Within [14 days] of the date of this Agreement the Developer will enter into the Planning Performance Agreement

3.2. Architect's Appointment

The Developer will use reasonable endeavours to retain the same Architect to provide the lead architectural role through to Practical Completion of the relevant Development Site Provided Always that the Developer may request the Council's consent to a change to the Architect at any time in the event the Developer demonstrates to the Council's satisfaction acting reasonably that the Architect is persistently failing to perform to required standards and/or to required timescales or has become insolvent or has otherwise ceased to exist

- 3.3. Approval of Planning Application prior to submission to the Local Planning Authority
- 3.3.1. The Developer will allow Council representation on its design team and will at its own expense as soon as reasonably and commercially practicable after the date of this Agreement and in accordance with the Development Business Plan prepare the Planning Application and all Planning Documents for the Development Sites and submit the same to the Council's Representative for approval (which shall be unconnected with and not fettered by the Council's role as a planning authority) and the Council's Representative shall be entitled to circulate the proposed Planning Applications and Planning Documents to members of the Council as appropriate and thereafter to collate their comments for submission to the Developer.
 - 3.3.2. Any changes required to any Agreed Scheme by the Local Planning Authority during the planning pre-application process will require the Council's prior written consent (which shall be unconnected with and not fettered by the Council's role as a planning authority)
 - 3.3.3. Any changes proposed to an Agreed Scheme by the Developer at any stage shall require the Council's prior written consent
 - 3.3.4. The Council shall not unreasonably withhold or delay its approval to a Planning Application or any Planning Documents for a Development Site provided in each case they:-
 - a) are in accordance with the Developer's Tender; and
 - b) the relevant Interim Site Development Plan
 - 3.3.5. In the event the Council reasonably withholds its approval to a Planning Application or the Planning Documents and notifies its decision to the Developer giving full reasons then unless the Developer considers that a dispute exists, concerning the Council's reasons for withholding its approval (when clause 27 shall apply) the Developer shall amend augment supplement or revise the relevant Planning Application and/or Planning Documents as applicable and re-submit them for the Council's approval. Following re-submission the procedure set out in clause 3.3.1 above shall be reapplied as many times as is necessary
 - 3.3.6. Once the Council has approved the proposed Planning Application and Planning Documents for any Development Site it shall be known as the **"Approved Planning Application"** and thereafter shall not be amended or varied without the Council's prior written approval
 - 3.3.7. A Planning Permission may not be amended or varied at any time without the Council's prior written approval
- 3.4. Application for and Negotiations for Planning Permission
- 3.4.1. The Developer will at its own expense and no later than the relevant Planning Application Submission Date submit the Approved Planning Application to the Local Planning Authority for Planning Permission and thereafter will use all reasonable endeavours to obtain Planning Permission by the applicable Long Stop Date
 - 3.4.2. Before and/or following the submission of the Approved Planning Application the Developer will if requisite or desirable in order to obtain

it enter into discussions or negotiations with the Local Planning Authority

- 3.4.3. The Developer may in consequence of such discussions or negotiations with the Local Planning Authority if it appears requisite or desirable in order to obtain Planning Permission amend the Approved Planning Application or may withdraw and immediately submit a fresh application or an additional application for Planning Permission subject to the Developer supplying a copy of such amended fresh or additional application to the Council and obtaining the prior written approval of the Council (such approval not to be unreasonably withheld or delayed where such amended fresh or additional application satisfies the criteria set out in clause 3.3.4 above)
- 3.4.4. The Developer may in its reasonable discretion agree with the Local Planning Authority the extension of the statutory period for the giving of notice of its decision under section 78(2) of the Planning Act
- 3.5. In conducting discussions or negotiations with the Local Planning Authority the Developer will at all times:-
 - 3.5.1. keep the Council fully and properly informed of all applications the progress of applications material correspondence meetings negotiations proposals and proceedings;
 - 3.5.2. allow the Council (and/or its nominees) to attend at such meetings provided that the Council shall not act without the authority of the Developer at such meetings; and
 - 3.5.3. have due regard to the requirements of the Council as owner of the Development Site
- 3.6. Co-operation of the Council
The Council will co-operate with the Developer and use reasonable endeavours to assist the Developer to discharge the Planning Condition
- 3.7. Appeal against Planning Refusal
 - 3.7.1. In the event of a Planning Refusal the Developer will seek a legal opinion from a senior Planning Counsel having at least 10 years' experience approved by the Council and in the event Counsel considers an Appeal would have a greater than 50% chance of success and if the Council requests it then the Developer will Appeal against a Planning Refusal.
 - 3.7.2. If the Developer is required to Appeal against a Planning Refusal pursuant to clause 3.7.1 above the Developer will prosecute such appeal with all due diligence and will conduct its part in the appeal proceedings in a proper and efficient manner
 - 3.7.3. In prosecuting the Appeal the Developer will:-
 - 3.7.3.1. keep the Council properly and fully informed of all relevant information with respect to the appeal including all material correspondence notifications meetings instructions to and advice of counsel and evidence of expert and other witnesses and the dates of any enquiry hearing or for the submission of written representations;
 - 3.7.3.2. allow the Council and its planning consultants to attend at conferences with counsel and other relevant meetings

provided that the Council shall not act without the authority of the Developer at such conferences and/or meetings; and

- 3.7.3.3. have due regard to the requirements of the Council as owner of the Development Site

3.8. No Waiver

- 3.8.1. For the avoidance of doubt neither Party may waive the requirement for the Planning Date to have occurred in order for this Agreement to become unconditional in relation to any Development Site
- 3.8.2. Notwithstanding the provisions of clause 3.8.1 the Council only may irrevocably waive its right to treat an Onerous Condition as such by giving written notice to the Developer to that effect

3.9. Notification of Planning Decisions

- 3.9.1. The Developer will notify the Council within twenty (20) Working Days of the receipt of any Planning Decision resulting from a Planning Application (whether an original amended resubmitted or additional application) or the making of an Appeal whether issued by the Local Planning Authority the Secretary of State or the Court
- 3.9.2. The Developer will promptly notify the Council of any decision it may take as to the making amending or resubmission of any Planning Application or the making of an Appeal against a Planning Refusal
- 3.9.3. If before the applicable Long Stop Date or after the applicable Long Stop Date but before either Party has exercised its rights of determination under clause 2.8 the Local Planning Authority shall grant Planning Permission:-
 - 3.9.3.1. the Council will within ten (10) Working Days of receipt of a copy thereof notify the Developer in writing whether the Council considers the Planning Permission to be or is treating it as a Satisfactory Permission or whether acting reasonably and in good faith considers that the Planning Permission is subject to an Onerous Condition (such notification being referred to as a "**Planning Notice**" in this clause)
 - 3.9.3.2. in either case the Council shall state its grounds for so doing
 - 3.9.3.3. if the Developer (acting reasonably and in good faith) disputes that the Planning Permission is a Satisfactory Permission it shall within ten (10) Working Days of receipt of the Planning Notice (time being of the essence) notify the Council that a dispute exists
 - 3.9.3.4. if any dispute shall arise between the Council and the Developer as to whether a Satisfactory Permission has been granted for any Development Site which they shall be unable to resolve it shall be settled in accordance with clause 27

3.10. Permitted Plans

- 3.10.1. If a Satisfactory Permission is obtained, the Developer shall supply to the Council two complete sets of the Permitted Plans
- 3.10.2. The Developer shall not make any alterations to the Permitted Plans without the prior approval of the Council

- 3.10.3. If the Council withholds its approval to a proposed alteration of the Permitted Plans the Developer shall, unless it considers that a dispute exists (when clause 27 shall apply), amend augment supplement or revise a proposed alteration of the Permitted Plans and resubmit it for the Council's approval. Following resubmission the procedure set out in this clause 3 shall be reapplied.
- 3.10.4. The Council's Representative shall signify his agreement to any alteration to the Permitted Plans by either countersigning those drawings or in writing by reference to those drawings either from him or from the Council's solicitors on his behalf

4. PROVISIONS RELATING TO THE MANAGEMENT CONDITION

- 4.1. The Parties will work together and fully co-operate with each other to satisfy the Management Condition for a Development Site in accordance with the programme set out in the applicable Site Development Plan as soon as reasonably practicable
- 4.2. The Management Condition shall be satisfied on the date the Council's Solicitors are holding a management plan in a form satisfactory to the Council (acting reasonably)
- 4.3. The Council's approval to the management plan which satisfies the requirements of this Agreement shall not be unreasonably withheld or delayed

5. PROVISIONS RELATING TO THE SURVEY CONDITION

- 5.1. The Developer shall in accordance with the programme and budget set out and approved by the Council in the applicable Site Development Plan for a Development Site, commission and procure at the Council's cost all Surveys for each Development Site and the Council shall, upon request from or for the Developer, grant or procure the Developer such access to those parts of the applicable Development Site within the Council's ownership or control or otherwise so far as the Council is able to grant such permission as may be necessary for the purpose of carrying out all Surveys on reasonable prior written notice, subject to the Developer making good any damage caused to the relevant Development Site as a result of carrying out any such Surveys as soon as reasonably practicable to the Council's reasonable satisfaction.
- 5.2. Any reports, surveys, drawings, plans and other documents obtained whether pursuant to the satisfaction of the Survey Condition, the Planning Condition or otherwise shall be commissioned by the Developer on terms that they can be relied on and used by the Council at no additional cost to the Council.
- 5.3. In the event of any dispute arising between the Parties pursuant to this clause 5 as to whether a Survey is satisfactory for the purposes of satisfying the Survey Condition in relation to any Development Site either Party may refer the dispute to an Expert for determination pursuant to clause 27

**6. PROVISIONS RELATING TO THE LAND ASSEMBLY AND VACANT POSSESSION
CONDITION**

- 6.1. The Council will use all reasonable endeavours to satisfy the Land Assembly and Vacant Possession Condition for the Development Sites as soon as reasonably and commercially practicable in accordance with the Development Business Plan
- 6.2. The Council will keep the Developer fully and properly informed of its progress in satisfying the Land Assembly and Vacant Possession Condition
- 6.3. If having used all reasonable and commercially sensible endeavours the Council has been unable to satisfy the Land Assembly and Vacant Possession Condition for any Development Site by private treaty the Council may, subject to the Council obtaining all necessary authorities, proceed with the exercise of its CPO Powers in order to satisfy the Land Assembly and Vacant Possession Condition for any Development Site
- 6.4. Following a resolution to use its CPO Powers the Council shall proceed with all due expedition and in full consultation with the Developer to obtain a date for a public enquiry and, subject to confirmation of the CPO, exercise the Council's CPO Powers in order to satisfy the Land Assembly and Vacant Possession Condition for one or more of the Development Sites
- 6.5. In exercising the Council's CPO Powers and in negotiating compensation for the exercise thereof the Council will provide the Developer with a copy of any CPO Order obtained and shall keep the Developer properly and fully informed of all steps taken and of all relevant information with regard to such steps including material correspondence instructions to and advice of Counsel and evidence of expert and other witnesses and the dates of any enquiry hearing for the submission of written representations
- 6.6. In addition to its obligations under clause 2.3.1 the Developer will in the event of the CPO going to public inquiry co-operate with the Council and provide all necessary expert witness evidence required in connection with such inquiry
- 6.7. The Land Assembly and Vacant Possession Condition for any Development Site shall be deemed to be satisfied on the date the Council serves written notice on the Developer confirming it has secured all necessary Third Party Interests and vacant possession for the relevant Development Site
- 6.8. As soon as the Council has served a Condition Precedent Satisfaction Notice in respect of the Land Assembly and Vacant Possession Condition for any Development Site the Developer shall be responsible for securing the said site and taking all reasonable measures to prevent unauthorised access to the same Provided Always that in the event of any unauthorised entry occurring as a result of the Developer's breach of its obligations set out in this clause 6.8 the Developer shall indemnify the Council against any costs and proceedings subsequently incurred by the Council in recovering vacant possession of the relevant site

- 6.9. It is acknowledged that the Land Assembly and Vacant Possession Condition for any Development Site may also require the Council to secure any necessary Road Closure Orders Pedestrian Planning Orders and Traffic Regulation Orders.

7. PROVISIONS RELATING TO THE THIRD PARTY CONSENTS CONDITION

- 7.1. The Developer will use all reasonable endeavours to satisfy the Third Party Consents Condition for the Further Sites as soon as reasonably and commercially practicable in accordance with the Development Business Plan
- 7.2. The Developer will keep the Council fully and properly informed of its progress in satisfying the Third Party Consents Condition for any Further Site and will provide copies of all Third Party Consents obtained to the Council
- 7.3. The Third Party Consents Condition shall be deemed to be satisfied for any Further Site on the date the Developer notifies the Council it has received written confirmation of the grant of the last of the consents required for a Further Site

8. PROVISIONS RELATING TO THE COMMERCIAL PRE-LET CONDITION

The Developer will comply with the Commercial Pre-let Obligations in Schedule 3

9. PROVISIONS RELATING TO THE FINAL SITE DEVELOPMENT PLAN APPROVAL CONDITION

- 9.1. No later than eight (8) weeks after the grant of a Satisfactory Permission for a Development Site by the local planning authority, the Developer will provide to the Council the Final Site Development Plan for such Development Site
- 9.2. Within twenty (20) Working Days of receipt, the Council will notify the Developer in writing whether it (i) approves the Final Site Development Plan in which event the Final Site Development Plan Approval Condition for the relevant Development Site shall be satisfied; or (ii) approves the Final Site Development Plan but subject to the Council's comments being incorporated into it; or (iii) is refusing approval of the Final Site Development Plan
- 9.3. In the event the Council approves the Final Site Development Plan but subject to the Council's comments being incorporated, the Developer will within five (5) Working Days resubmit it to the Council in amended form for approval by the Council in accordance with clause 9.2 (save that the time period for the Council to respond to the Developer shall be reduced from twenty (20) to ten (10) Working Days)

10. OBLIGATIONS RELATING TO APPROPRIATION

The Council will, on receipt of written request from the Developer at any time use reasonable endeavours as soon as reasonably practicable to appropriate a Development Site for planning purposes pursuant to s122 of the Local Government Act 1972 after satisfaction of the relevant Planning Condition

11. CONSULTATION

The Parties will work together and fully co-operate with each other to implement the consultation strategy set out by the Developer in the Developer's Tender as annexed at Schedule 10 to engage with Stakeholders and the wider community in relation to an Agreed Scheme

12. VARIATIONS TO LONG STOP DATES THE DEVELOPMENT BUSINESS PLAN AND THE SITE DEVELOPMENT PLANS

12.1. The Long Stop Dates shall only be extended in accordance with the provisions of clause 2.7 and in no circumstances shall the Initial Sites Long Stop Date be extended beyond the date which is [thirty-six (36) months] from the date of this Agreement

12.2. The Development Business Plan shall be reviewed annually by the Parties and may only be altered by the agreement of all Parties (acting reasonably) or:

12.2.1. to reflect any extensions to the Long Stop Dates permitted in accordance with clause 2.7 above; or

12.2.2. to take into account any proper extension of time granted to the Developer which is attributable to a Delaying Factor

12.3. Any variations to the Site Development Plans which may be requested by the Developer from time to time will be subject to the Council's prior written consent

13. SITE DEVELOPMENT PLANS AND BUILDING OBLIGATIONS

13.1. The Developer shall provide the Final Site Development Plans for the Initial Sites and the Interim and Final Site Development Plans for the Further Sites to the Council for approval in accordance with their Agreement

13.2. Subject to satisfaction of the relevant Conditions Precedent including the Final Site Development Plan Approvals Condition for a Development Site, the Developer shall commence, carry out and complete the Development of the relevant Development Site in accordance with the specification and the construction plan approved by the Council as part of the Final Site Development Plan for the relevant Development Site and otherwise in accordance with the Building Obligations

14. COUNCIL OBLIGATIONS

14.1. To provide sufficient resources and staff to work on an Agreed Scheme with the Developer.

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

- 14.2. As landowner to comply with its obligations under this Agreement to satisfy any Conditions Precedent
- 14.3. To liaise work with and consult regularly with the Developer and make available any information which may be relevant to the planning and delivery of any Agreed Scheme

15. PAYMENT BY COUNCIL TO THE DEVELOPER OF DEVELOPMENT COSTS

- 15.1. The Council will pay by BACS payment (or as otherwise agreed by the Parties) to the Developer all Development Costs for a Development Site within 21 days of demand in accordance with the payment profile set out in the Final Site Development Plan for such site approved by the Council and the Council will send to the Developer an E-mail acknowledgement of receipt of any invoice, such payment to be made without deduction or set off save as provided by this clause
- 15.2. Each demand for payment pursuant to clause 15.1 above must be in the form of a VAT invoice from the Developer addressed to the Council in the form of the template invoice annexed at Appendix 1
- 15.3. All invoices issued pursuant to clause 15.1 above must be accompanied by a full breakdown of all contractors and consultants costs and copies of their invoices addressed to the Developer together with a certificate from the Developer that following verification by an independent quantity surveyor (in relation to construction cost invoices) or in other cases following verification by the Developer it is in order for the relevant invoices to be paid. For the avoidance of doubt the Council shall not be obliged to settle any invoice until the Developer complies (in all material respects) with the requirements on the Developer in these clauses 15.3 to 15.5
- 15.4. The Developer shall upon request from the Council from time to time provide such additional information and/or documentation as the Council may reasonably require in respect of any payment to be made by the Council pursuant to clause 15.1 above
- 15.5. The Developer shall request that the Approved Building Contractor includes with each invoice for payment an acknowledgment of receipt of payment of previous invoices submitted Provided That any failure by the Approved Building Contractor to comply with such request shall not prevent, inhibit, reduce, delay or otherwise prejudice the payment obligations of the Council pursuant to this clause 15
- 15.6. In the event the Council fails to pay any invoice within 21 days of receipt of the same then in the absence of any dispute, interest at the Prescribed Rate will become payable by the Council from the date 21 days after receipt until the date of payment
- 15.7. The Council will notify the Developer within five (5) Working Days if practicable and in any event within ten (10) Working Days of receipt in the event the Council disputes any sums set out in the relevant invoice and the reason why such sum is disputed and the Parties will work together to resolve any such disputes as soon as possible and in any event by the date for payment of the invoice. In the absence of agreement any dispute shall be determined by an Expert in accordance with the provisions of clause 27. For the avoidance of doubt if the Council fails to notify the Developer of any dispute within the said ten (10) Working Day period the Council shall be deemed to have accepted the amounts set out in the relevant invoice as being due and payable by the Council and in the event the Council disputes part only of the sums set out in any invoice (as distinct from the whole sum) the Council shall be under an obligation to pay the undisputed sum in accordance with the terms of this clause 15.
- 15.8. For the avoidance of doubt the Council will only be required to make payment of the Development Costs for a Development Site in accordance with the payment profile

and development milestones set out in the Final Site Development Plan for the relevant Development Site approved by the Council in accordance with this Agreement.

16. LICENCE TO CARRY OUT SURVEYS

- 16.1. With effect from the date of this Agreement the Developer shall be entitled as bare licensee and at the Developer's sole cost and own risk to enter any Development Site together with their respective contractors agents and workmen as may be necessary for the purpose of carrying out any intrusive and/or non-intrusive Surveys Provided That such Licence will not extend to the curtilage of any existing residential unit or permit the Developer to enter any existing buildings on the Development Site and access to any parts of the Development Site which are not vacant shall be subject to the prior written consent of the Council notwithstanding the provisions of this clause 16
- 16.2. The licence granted pursuant to clause 16.1 above is in the terms set out in clauses 16.3 to 16.7 below
- 16.3. The licence granted pursuant to clause 16.1 above shall not create any relationship of landlord and tenant as between the Council and the Developer nor any tenancy
- 16.4. The licence granted by this clause shall be exclusive to the Developer its authorised agents and contractors only and shall continue in respect of each of the Phases (unless determined under clause 16.7) until the earliest of:-
- 16.4.1. the termination of this Agreement; or
- 16.4.2. the grant of the Building Licence for the applicable Development Site
- 16.5. The Developer agrees and undertakes with the Council to enter onto such parts of a Development Site as may be necessary for the purpose of carrying out the Surveys only on not less than twenty (20) Working Days prior notice and subject to the Developer making good any damage caused to the Development Site as a result of carrying out any Surveys as soon as reasonably practicable and to the Council's reasonable satisfaction
- 16.6. The Developer shall provide to the Council at no cost full copies of all Surveys obtained pursuant to clause 16.1 above and shall use reasonable endeavours to procure that in the event this Agreement is terminated for any reason all Surveys shall be re-addressed to the Council
- 16.7. The Council may serve notice terminating the licence granted under this clause 16 immediately in the event that the Developer fails to perform its obligations set out in clause 16.5

17. BUILDING LICENCE

- 17.1. With effect from the Commencement of Development and until Practical Completion of the relevant Building Works for a Development Site or termination of this Agreement, if earlier, the Council will grant the Developer a licence of the relevant Development Site in the terms as set out in Schedule 1 for the purpose of carrying out the Building Works only
- 17.2. For the avoidance of doubt, the Council and its agents shall, notwithstanding the grant of the building licence pursuant to this clause 17 be entitled to enter the relevant Development Site at any reasonable time on prior appointment

with the Employer's Representative (except in case of emergency) for the purposes of:

- 17.2.1. inspecting the Building Works; and
- 17.2.2. ensuring that the Developer is observing and performing the provisions of this Agreement

The building licence granted pursuant to clause 17.1 above shall be exclusive to the Developer its authorised agents and contractors only and shall be for the purposes of carrying out the relevant Building Works only

- 17.3. The Council may serve notice terminating any building licence granted under this clause 17 immediately on the termination (howsoever occurring) of this Agreement or Practical Completion of the relevant Building Works or any breach of the Building Obligations whichever is earlier

18. STANDARD CONDITIONS

The Standard Conditions are incorporated in this Agreement so far as the same are not varied by or inconsistent with the terms of this Agreement and save as varied as follows: -

- 18.1. For the purposes of the Standard Conditions, "the Seller" is the Council, "the Buyer" is the Developer and "the property" is the Development Site
- 18.2. The "contract rate" of interest shall mean the Prescribed Rate.
- 18.3. Standard Conditions 1.4, 2.2, 2.3, 3.1, 3.3, 4.2, 6.1 and 9 shall not apply
- 18.4. No deposit shall be payable on exchange of this Agreement
- 18.5. Standard Conditions 5.1.1, 5.1.2 and 5.1.3 shall not apply and shall be substituted by the following, namely, "Each part of the Property constituting a Phase shall be at the risk of the Buyer from the date upon which a Lease or Building Lease in respect of each such Phase has been granted."
- 18.6. Standard Condition 7.5.2(a)(i) shall be deleted.
- 18.7. Standard Condition 7.6.2(a) shall be deleted.

19. ACKNOWLEDGMENT

The Developer hereby agrees and confirms that:

- 19.1. it has not been induced to enter into this Agreement by or in reliance upon any statement, either oral or in writing, by the Council or by any agent, servant or representative of the Council or by any third party, other than the Council's Solicitors written replies to written enquiries made by the Developer's Solicitors prior to the date of this Agreement and accepts that if any such statement has been made, other than as mentioned above, then it was not made as a condition, warranty or representation or for the purpose of inducing the Developer to enter into this Agreement;
- 19.2. in relation to the Building Works, it has entered into this Agreement on the basis of its own independent observations and enquiries and has satisfied itself as to the nature extent and practicability of the Building Works, the means of access to them and any restrictions in the character and state of the Development Sites, including ground conditions in or on which the Building Works or part or parts of them are to be constructed and all other matters, which can or might affect the Building Works, including all services to it and

acknowledges that it has no claim against the Council for want of knowledge of these or other matters.

- 19.3. prior to the submission of the Developer's Tender the Developer had been provided with access to the Bid Documentation and had full opportunity to take the same into account in the submission of the Developer's Tender

20. CANCELLATION

The Council shall be entitled to cancel this Agreement and recover from the Developer the amount of any loss resulting from such cancellation, if the Developer shall have offered, given or agreed to give to any officer or employee of the Council any gift or consideration of any kind, as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any such officer or employee in relation to this Agreement or if the like acts shall have been done by any person employed by the Developer, or acting on behalf of it, with the knowledge of the Developer or if in relation to this Agreement the Developer or any person employed by or acting on behalf of it shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward, the receipt of which is an offence under Sub-Section (2) of Section 117 of the Local Government Act 1972.

21. VALUE ADDED TAX

The Council shall pay to the Developer any value added tax chargeable in respect of any payment made by the Developer under the terms of or in connection with this Agreement or in respect of any payment made by the Developer, where the Council agrees in, or is obliged under, this Agreement to reimburse the Developer for such payment on receipt of a valid VAT invoice addressed to the Council.

22. PUBLIC RELATIONS AND PUBLICITY

The Parties will consult and agree on any public relations exercise for the promotion of any Agreed Scheme or any part thereof or the use of either Party's logos on any promotional material for an Agreed Scheme and neither Party shall by itself its servants agents or any sub-contractor communicate with or issue any statements to representatives of the press, television, radio or other media or otherwise use information on any matter relating to an Agreed Scheme without the prior approval of the other Party (not to be unreasonably withheld or delayed)

23. ENTIRE AGREEMENT BUT NO PARTNERSHIP

This Agreement constitutes the entire contract between the Parties but does not constitute a partnership or a joint venture between the Parties.

24. NON ASSIGNMENT

- 24.1. Subject to clause 24.2, this Agreement is personal to the Developer and shall not be capable of assignment or novation to any third party
- 24.2. The provisions of clause 24.1 shall not apply to the assignment or novation of this Agreement to the Guarantor pursuant to clause 29

25. **NOTICES**

- 25.1. Any Notice under this Agreement shall be in writing and any Notice to the Developer shall be deemed to be sufficiently served if sent to the Developer by special delivery post or left at the Developer's registered office and any Notices to the Council shall be deemed to be sufficiently served if left at, or sent by special delivery post to, the Council's offices at [] marked for the attention of the Head of Commercial Services
- 25.2. A notice to be served on the Developer and the Guarantor will be sufficiently served if a single notice is clearly addressed to both Parties
- 25.3. Subject to clause 25.4, any Notice sent under the provisions of this clause 25 shall be deemed to have been received if sent by:
- 25.3.1. special delivery, on the day of actual receipt; and
- 25.3.2. hand, upon delivery
- 25.4. If the day of receipt is not a Working Day then the day of receipt shall be the next, immediately following Working Day and if the Notice is received outside the hours of 9am to 5pm on a Working Day the day of receipt shall be the next immediately following Working Day

26. **COUNCIL AS LOCAL AUTHORITY**

- 26.1. Nothing in this Agreement shall prejudice reduce or affect any of the statutory powers, obligations and duties, for the time being, vested in the Council and all such rights, powers, obligations and duties shall, in regard to the Development Sites, the Development or the Developer and any buildings or works on or the occupiers of the Development Sites shall be enforceable and exercisable by the Council as fully and freely as if the Council were not the owner of or otherwise interested in the Development Sites and as if this Agreement had not been executed.
- 26.2. No approval, consent, direction or authority given or granted by the Council as a party to and in pursuance of the provisions of this Agreement shall be or be deemed to be given or granted by it in any other capacity (including as local or other statutory authority) and vice versa.

27. **DISPUTE RESOLUTION PROCEDURE**

- 27.1. If at any time hereafter any dispute doubt or question shall arise between the Council and the Developer and/or the Guarantor touching the construction meaning or effect of this Agreement or their respective rights and obligations hereunder or otherwise in relation to the Development Sites every such dispute doubt or question shall in the first instance be referred to the project team for determination with Council representation and thereafter to the Developer's development manager and Council Director. In the event this still fails to resolve the dispute in question the matter in dispute (save where otherwise expressly provided) will be referred to an independent expert ("**the Expert**") in manner set out below
- 27.2. On the Notice of any Party given to the other(s):
- 27.2.1. disputes as to the construction or interpretation of this Agreement shall be referred to conveyancing counsel to be appointed by agreement of the parties to the dispute or failing agreement within

- twenty (20) Working Days to be appointed by the President for the time being of the Law Society on the application of either or any party to the dispute;
- 27.2.2. disputes on matters other than the construction or interpretation of this Agreement shall be referred to a surveyor of at least ten (10) years post qualification experience of developments of similar type and complexity as this Development to be appointed by agreement of the parties to the dispute or failing agreement within twenty (20) Working Days to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either or any party to the dispute;
- 27.2.3. disputes as to whether a Planning Permission is a Satisfactory Permission shall be referred to planning counsel of at least ten (10) years' experience to be appointed by agreement of the parties to the dispute or failing agreement within twenty (20) Working Days to be appointed by the President for the time being of the Law Society on the application of either or any party to the dispute;
- 27.2.4. disputes as to whether a dispute falls within clause 27.1.1, 27.1.2 or 27.1.3 shall be referred to conveyancing counsel appointed in accordance with the provisions of clause 27.2.1 above
- 27.3. If at any time an Expert dies, or ceases, or is unable to act for any reason or unreasonably delays in making his determination, then any party to the dispute may discharge the Expert concerned and serve on the other a further notice under clause 27.2 and the provisions of this clause 27 shall apply to such further notice, including this clause 27.3
- 27.4. The Expert shall act as an expert and not as an arbitrator, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reaches his determination
- 27.5. The Expert shall determine the dispute referred to him acting impartially and in good faith. The Expert will establish the procedural rules to be applied to the determination which must accord with the following:
- 27.5.1. any party will be entitled to make submissions to the Expert and to supply the Expert with data and information which it considers to be relevant;
- 27.5.2. the Expert may request any party to provide him with such other written or other statements, documents or information as he may require in order to determine the Dispute referred to him and the parties shall comply promptly with any such request;
- 27.5.3. communications from a party to the Expert or from the Expert to a party shall be copied to the other party or parties at the same time and by the same method;
- 27.5.4. the Expert will be entitled to make such site visits or inspections as he considers are necessary or appropriate;
- 27.5.5. the Expert shall not take into consideration any document or statement which has not been made available to the other party or parties for comment;
- 27.5.6. a failure by a party to respond to any request or direction by the Expert shall not invalidate the Expert's determination.

- 27.6. Unless a shorter period is agreed between the parties at the time of the Expert's appointment and agreed by the Expert, the Expert shall be requested to give his determination in writing with reasons within sixty (60) Working Days of his appointment. The Expert's statement of reasons for his determination shall identify the documentation, investigations and other evidence considered by the Expert in arriving at his determination.
- 27.7. The Expert's time for reaching his determination may be extended by a period of twenty (20) Working Days with the consent of the referring party or by such longer period as may be agreed by the parties to the dispute and the Expert
- 27.8. The fees and expenses of the Expert shall be borne by the parties to the dispute in equal shares unless the Expert otherwise determines in his decision. The Expert shall have jurisdiction to direct the payment by the unsuccessful party or parties to the successful party or parties in any reference of a dispute to an Expert for determination of the successful party's legal costs of such reference. The amount of such costs shall be agreed between the parties if possible and in default of agreement shall be assessed by the court on the standard basis.
- 27.9. Save for fraud or manifest error the decision of the Expert shall be final and binding on the Parties, and shall not be subject to any further dispute resolution procedure or determination by a court

28. TERMINATION

- 28.1. Subject to clause 28.9 , on the occurrence of a Termination Event the Council may, on serving forty (40) Working Days' prior written notice (a "**Termination Notice**"), in addition to any other rights and remedies it may have, terminate this Agreement in relation to any Development Site for breach by giving notice to the Developer to that effect provided that any such Termination Notice shall:
 - 28.1.1. clearly state that it is served pursuant to this clause 28;
 - 28.1.2. specify the nature of the Termination Event; and
 - 28.1.3. at the same time be copied to the Guarantor
- 28.2. The Parties shall, as soon as reasonably practicable following the service of any Termination Notice, consult with each other and make such arrangements as are necessary to consider any proposals which may be made by the Developer and/or the Guarantor in relation to that notice and if there is any dispute regarding the circumstances giving rise to the service of the Termination Notice any Party may refer the Termination Notice to the Expert pursuant to clause 27.
- 28.3. If the specified Termination Event relates to insolvency of the Developer (and not the Guarantor) the right of the Council to terminate this Agreement will be overridden if within the period of forty (40) Working Days referred to in the Termination Notice the Guarantor:
 - 28.3.1. gives notice to the Council requiring it not to terminate this Agreement;
 - 28.3.2. acknowledges to the Council by entering into a deed of covenant with the Council in a form approved by the Council that it is assuming all the obligations of the Developer under this Agreement; and
 - 28.3.3. pays to the Council any monies it is agreed or determined have become due under this Agreement but which are then unpaid

- 28.4. If the specified Termination Event is of the type which may be remedied (a **"Remediable Termination Event"**) the right of the Council to terminate this Agreement will be overridden if within the period of forty (40) Working Days referred to in the Termination Notice either the Developer or the Guarantor:
- 28.4.1. gives notice to the Council requiring it not to terminate this Agreement;
 - 28.4.2. takes steps acceptable to the Council (acting reasonably) reasonably and substantially to remedy the relevant breach with all reasonable despatch; and
 - 28.4.3. pays to the Council any monies which it is agreed or determined have become due under this Agreement but which are then unpaid
- 28.5. If the Guarantor exercises its rights under clause 28.3 or 28.4 prior to the expiry of forty (40) Working Days from the Termination Notice, this Agreement shall continue in force as if the right of termination of this Agreement had not arisen, and this Agreement had originally been made between the Council and that party, to the exclusion of the Developer
- 28.6. If this Agreement is terminated, the Developer's interest in and all rights in relation to the relevant Development Site will terminate but each Party will retain all rights and remedies against the other for the breach of obligation under this Agreement before the termination
- 28.7. If this Agreement is terminated pursuant to this clause 28, the Developer shall forthwith arrange for the removal of any entries it may have registered against the Council's freehold title to the relevant Development Site and lodge any documentation necessary to effect such removal at the Land Registry
- 28.8. In the event of termination of this Agreement for any reason, no compensation will be payable by the Council to the Developer

29. GUARANTOR

- 29.1. If at the time of letting the Building Contract for a Development Site or prior to commencement of Development of any Development Site the Developer is unable to provide the Council with all evidence and documentation as may be reasonably required by the Council in order to satisfy itself of the Guarantor's ability or continued ability (as the case may be) to underwrite in full all of the Developer's outstanding obligations under this Agreement then the Developer will provide other appropriate security satisfactory in all respects to the Council in order to underwrite the Developer's obligations hereunder.
- 29.2. The Guarantor covenants with and guarantees to the Council as principal debtor and primary obligor that:
- 29.2.1. the Guarantor will perform and observe all the covenants and obligations on the part of the Developer in accordance with the terms of this Agreement;
 - 29.2.2. in the event of any default by the Developer then in every such case and at each time the Guarantor will and make good to the Council on demand all reasonable and proper costs reasonably and properly suffered or incurred by the Council through the default of the Developer.
- 29.3. It is agreed that the Guarantor's obligations are and will remain in full force and effect and that such obligations shall not be discharged nor lessened or affected by:

- 29.3.1. any act event or omission which would or might otherwise have the effect of discharging, impairing or affecting such obligations;
- 29.3.2. (without prejudice to the generality of this clause 29.3) any time or indulgence granted by the Council to the Developer or any neglect or forbearance of the Council in enforcing against the Developer (or any surety or other person liable) the payment of any sums required to be paid by the Developer or the observance or performance of the Developer's agreements covenants and conditions;
- 29.3.3. any variation of the terms of this Agreement to which the Guarantor is not a party where the effect of the variation is such that the Guarantor's liability is not materially increased; and
- 29.3.4. any other act or thing which but for this provision would or might operate to offer any legal or equitable defence for or impair or discharge the Guarantor's obligations under this clause 29

30. APPROVALS

- 30.1. Any consent or approval of the Council required under this Agreement is effective only if the consent or approval is given in writing by the Council's Representative.
- 30.2. In considering whether or not to grant its consent or approval under this Agreement the Council shall be entitled to take into account only its capacity as owner of the Development Sites or such parts thereof as shall be vested in the Council from time to time and not its interests as local authority.

31. CONFIDENTIALITY AND FOIA

- 31.1. No Party to this Agreement is without the prior written consent of the others (not to be unreasonably withheld or delayed) knowingly to disclose or publish or permit or cause to be disclosed or published any details of this Agreement save only:
 - 31.1.1. to the extent necessary in order to comply with the requirements of the London Stock Exchange and disclosure shall then only be made by the discloser after it has taken all such steps as may be reasonable in the circumstances to agree the contents of such announcement with the other Parties in writing before making such announcement (such agreement not to be unreasonably withheld or delayed);
 - 31.1.2. insofar as is reasonably necessary to such of the discloser's professional advisers or auditors as are under a professional duty of confidentiality (from which the discloser shall not release such adviser or auditor) in relation to information about clients' affairs;
 - 31.1.3. to HM Revenue & Customs or the rating authority;
 - 31.1.4. to the extent necessary to effect noting or registration at the Land Registry by means only of a unilateral notice but without sending this Agreement or any copy of it to the Land Registry;
 - 31.1.5. to the extent necessary to comply with statutory obligations provided that, subject to its statutory duties and obligations and any compliance with statute, the Council acknowledges that this Agreement is confidential and contains commercially sensitive information relating to

- the Developer and to the Guarantor the disclosure of which may be prejudicial to them, as detailed in clause 31.7 below;
- 31.1.6. to the extent necessary for audit purposes;
 - 31.1.7. to the extent necessary to obtain professional advice in relation to the determination of any dispute under clause 27 and to the Expert subject to the professional concerned undertaking to keep the same confidential on the same terms mutatis mutandis of this clause 31;
 - 31.1.8. to the extent ordered to do so by a court or any other competent authority;
 - 31.1.9. pursuant to any CPO inquiry;
 - 31.1.10. to the extent agreed in any press release approved by the other Parties (such approval not to be unreasonably withheld or delayed);
 - 31.1.11. in relation to the Developer and the Guarantor, in briefings to shareholders and potential shareholders or fund managers to those shareholders after the Developer or the Guarantor (as the case may be) has taken all such steps as may be reasonable in the circumstances to agree the contents of such briefing(s) with the Council in writing (such agreement not to be unreasonably withheld or delayed);
 - 31.1.12. to potential potential tenants and their advisors.
- 31.2. Clause 31.1 shall not apply to information that has demonstrably already come into the public domain.
- 31.3. The Developer and the Guarantor acknowledge that the Council is a public authority as defined by the Freedom of Information Act 2000 ("**FOIA**") and therefore recognise that any information relating to this Agreement (including this Agreement itself) or otherwise relating to the Developer and the Guarantor however held or recorded by the Council or held by the Developer and/or the Guarantor on behalf of the Council may be the subject of a request for information and possible disclosure under the FOIA.
- 31.4. The Developer and the Guarantor shall, and shall procure that their respective employees, sub-contractors and agents shall, assist the Council in complying with its obligations under the FOIA as reasonably necessary, including but not limited to, assistance in gathering information promptly to enable the Council to respond to a request for information within the requisite timescale.
- 31.5. The Developer and the Guarantor shall, and shall procure that their respective employees, sub-contractors and agents shall, transfer to a representative of the Council (or such other person as may be notified by the Council to the Developer and Guarantor) any information they hold on behalf of the Council in respect of this Agreement as soon as practicable, and in any event, within five (5) Working Days of receiving the request.
- 31.6. The Council shall supply to the Developer and the Guarantor full details of any request for information which relates to documents held by the Developer or the Guarantor on the Council's behalf as soon as reasonably practicable after receipt and shall consult with the Developer or the Guarantor (as the case may be) as to the Council's response to the request for information.
- 31.7. For the purposes of this clause 31:

31.7.1. "FOIA" means the FOIA (as amended from time to time) and any subordinate legislation made under it or any superseding enactment and regulations, the Environmental Information Regulations 2004 and any guidance issued by the Department for Constitutional Affairs, the Department of Environment and Food and Rural Affairs (or Government departments superseding these in relation to FOIA legislation) or the Information Commissioner; and

31.7.2. "request for information" means a request for information under the FOIA, whether or not expressly made by any person, to the Council.

31.8. The Developer and the Council are to procure that their professional advisers and agents are fully instructed and required to comply with this clause 31.

31.9. This clause 31 shall survive any termination of this Agreement.

32. NON-MERGER

This Agreement and the obligations of the Parties hereunder shall remain in full force and effect in respect of all matters agreements or conditions which have not been done observed or performed notwithstanding the grant of the any Building Licence

33. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No person other than the Parties hereto may enforce any term of this Agreement under that Act

EXECUTED and DELIVERED as a deed on the date set out at the head of this Agreement.

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF
DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

SCHEDULE 1

(Form of Building Licence)

DRAFT

SCHEDULE 2
(Building Obligations)

1. STATUTORY APPROVALS

The Developer shall:

- 1.1. obtain all Statutory Approvals at the time they are required for the carrying out of the Building Works and, if requested by the Council, supply to the Council a copy of such Statutory Approvals;
- 1.2. use reasonable endeavours to procure that Statutory Approvals continue in full force and effect;
- 1.3. not, without the Qualified Approval of the Council's Representative, apply for or agree to any variation, relaxation or waiver of any Statutory Approval (whether obtained before or after the date of this Agreement) or of any condition attached to any such Statutory Approval, and
- 1.4. prior to commencement of the Building Works enter into a Section 61 Agreement with the Council pursuant to the Control of Pollution Act 1974
- 1.5. Where the obtaining of any Statutory Approval requires the provision of any information or any action on the part of the Council, the Council shall provide such assistance to the Developer as is reasonably required for the obtaining of such Statutory Approval provided such assistance shall not involve the Council in any cost.

2. THIRD PARTY CONSENTS

- 2.1. The Developer shall obtain, at the time that the same are reasonably required to be obtained, all necessary Third Party Consents and pay such consideration as may be required for the giving of any such Third Party Consent.
- 2.2. Where the obtaining of any Third Party Consent requires the provision of any information or any action on the part of the Council, the Council shall provide such assistance to the Developer as is reasonably required for the obtaining of such Third Party Consent provided such assistance shall not involve the Council in any cost.
- 2.3. The Developer shall, if requested by the Council, supply to the Council a copy of any Third Party Consent obtained (with copies of all accompanying drawings and other documents).
- 2.4. In carrying out the Building Works, the Developer shall take all reasonable measures to avoid and/or limit the impact of anything which might:
 - 2.4.1. be or become a danger or nuisance to any Adjoining Owners or to members of the public;
 - 2.4.2. cause damage to any Adjoining Property or to any Apparatus; or
 - 2.4.3. (unless permitted by a Third Party Consent, and then only in accordance with the terms of that Third Party Consent) interfere with any Adverse Rights or Apparatus.

3. PREPARATION AND CONSULTATION IN RELATION TO THE BUILDING DOCUMENTS

3.1. The Developer shall:

- 3.1.1. prepare or procure the preparation of the Building Documents in accordance with this Agreement, taking into account the requirement to comply with Statutory Approvals and Third Party Consents.
- 3.1.2. notify the Council of the form of the Building Documents and take into account any reasonable comments by the Council in respect of the same Provided That the Council's comments and/or approval of any of the Building Documents shall not be taken as confirmation that the Building Documents are suitable in all respects for the purposes of carrying out the Development and fulfilling the obligations of the Developer hereunder and it shall remain the sole responsibility of the Developer to ensure that the Building Documents are in appropriate form and manner.

4. PREPARATION OF AND ENTERING INTO A BUILDING CONTRACT

The Developer shall enter into the Building Contract with the Approved Building Contractor. The Developer shall not replace the Approved Building Contractor except with a building contractor approved by the Council for the carrying out of the Building Works and on terms which give the Council the right to acquire the benefit of the Building Contract without charge in the event of termination of this Agreement for any reason Provided That in making representations and approving the selection and appointment of a building contractor the Council shall not thereby be taken to have released the Developer from its primary obligation to ensure the selection of a building contractor of repute with suitable experience in carrying out projects of the size and nature of the Development.

5. PERFORMANCE, VARIATION AND TERMINATION OF THE BUILDING CONTRACT

The Developer shall:

- 5.1. use all reasonable endeavours to comply with the Developer's obligations under the Building Contract;
- 5.2. use all reasonable endeavours to procure that the Approved Building Contractor complies with its obligations under the Building Contract,
- 5.3. notify the Council promptly of any failure by the Approved Building Contractor to comply with its obligations under the Building Contract and of any circumstances likely to give rise to such failure.

6. BUILDING CONTRACTOR'S WARRANTY

The Developer shall:

- 6.1. procure that the Approved Building Contractor provides a Contractor's Warranty (duly executed by the Approved Building Contractor) in relation to the Building Works which shall be delivered to the Council within twenty (20) Working Days of commencement of the Building Works;
- 6.2. In the event that the Approved Building Contractor's employment is terminated by the Developer, the Developer shall procure:

- 6.2.1. that any replacement building contract is entered into in accordance with the provisions of paragraphs 4 and 5;
- 6.2.2. a Contractor's Warranty (duly executed by any such replacement building contractor within twenty (20) Working Days of execution of such contract) is delivered to the Council.

7. PROFESSIONAL TEAM

The Developer shall:

- 7.1. be responsible for the appointment of a Professional Team (either directly or as sub consultants to the Building Contractor) and on terms which enable such appointments to be assigned to the Council (or such third party as the Council may direct) without charge in the event of termination of this Agreement for any reason
- 7.2. procure the appointment of reputable, competent and professional members of the Professional Team;
- 7.3. notify the Council of the identity of each proposed member of the Professional Team not less than twenty (20) Working Days prior to the appointment of the same;
- 7.4. not appoint and engage the services of any proposed member of the Professional Team (including any replacement of such member) where the Council has within five (5) Working Days of notification of the identity of the proposed member under paragraph 7.2 raised reasonable objection to such appointment Provided That where no such objection is raised in respect of the selection and appointment of any member of the Professional Team the Council shall not thereby be taken to have released the Developer from its primary obligation to ensure the selection of a Professional Team who are suitably reputable and competent to carry out the services for which they are appointed
- 7.5. procure that each member of the Professional Team provides a Consultant's Warranty in relation to the Building Works which shall be delivered to the Council within twenty (20) Working Days of each such member's appointment;
- 7.6. require as a condition of appointment of a member of the Professional Team that it maintain professional indemnity cover throughout the period that it retains liability for breach of the terms of its appointment with a reputable insurer for an amount relevant to any claim that may be made having regard to the extent of its appointment;
- 7.7. procure that each member of the Professional Team is appointed on terms that provide an option for the Council to novate the Professional Team in the event of any termination of this Agreement;
- 7.8. use all reasonable endeavours to enforce the due performance and observance of the obligations and duties of each member of the Professional Team;
- 7.9. procure that each member of the Professional Team grants (within the Consultant's Warranty or otherwise) to the Council without charge an irrevocable royalty free licence (capable of assignment to third parties nominated by the Council) to use and reproduce all drawings, plans, specifications, bills of quantities and other documentation for purposes connected with the Development only.

8. INSURANCE

The Developer shall procure from the start on site of the Building Works for each Development Site until the Development Completion Date for that Site:

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

- 8.1. insurance of the Building Works in the joint names of the Approved Building Contractor, the Council and the Developer against loss or damage by the Insured Risks in an amount equal to the full cost of reinstating the Building Works in the event of their damage or total destruction, together with the cost of demolition, clearance, local authority requirements, architects' and other professional fees;
- 8.2. maintenance of third party and public liability indemnity insurance cover in respect of any actions proceedings costs losses or damage to persons or property caused directly or indirectly or arising howsoever out of the carrying out of the Development on the Development Site to a minimum level of [£]m;
- 8.3. insurance cover in the joint names of the Developer and the Council in respect of any actions proceedings costs losses or damage to persons or property arising under the provisions of Part IIA of the Environmental Protection Act 1990 during the carrying out of the Development on the Development Site;
- 8.4. payment of all premiums and other money necessary to effect and maintain all insurances referred to in this paragraph 8 and, if requested by the Council, produce to the Council, a suitable extract of the policy or policies of such insurance and the receipt or receipts for the then current year's premium;
- 8.5. reasonable endeavours are used to procure compliance by the Approved Building Contractor and the Professional Team and by all persons acting for or under the control of the Developer with all requirements of the insurers and not do or permit or suffer to be done on the Development Site or in relation to the Building Works anything which might render void or voidable any policy of insurance effected in accordance with the provisions of this paragraph 8 or as a result of which payment of the policy money might be withheld, in whole or in part;
- 8.6. notification to the Council immediately upon the occurrence of any damage to or destruction of the Building Works whether by any of the Insured Risks or otherwise and, in any such case (subject to all necessary Third Party Consents and Statutory Approvals being obtained) as soon as reasonably practicable (having regard to the necessity to obtain Statutory Approvals and Third Party Consents) reinstate the Building Works in accordance with the provisions of this Agreement;
- 8.7. reinstatement, replacement or repair of the Building Works and where the proceeds of insurance are insufficient to cover the cost of such reinstatement, replacement or repair make good any deficiency out of its own monies.

9. MATERIALS AND DELETERIOUS MATERIALS

- 9.1. If the Developer is unable, despite using all reasonable endeavours, to obtain any of the materials referred to in the Building Documents (and/or the Building Contract) or if they shall not be procurable within a reasonable time) it may substitute for them alternative materials of no lesser quality.
- 9.2. Notwithstanding anything to the contrary contained or implied elsewhere in this Agreement, the Developer shall use all reasonable endeavours to ensure that no materials are used on or in connection with the Building Works:
 - 9.2.1. which, at the time of specification, are not approved or not recommended by or otherwise not in accordance with the current British Standards Specifications and Codes of Practice or European Union equivalent or in accordance with good building practice, (so far as they may be applicable to the Building Works);

- 9.2.2. which, at the time of specification, are not in accordance with the guidance for good practice in the selection of materials as set out in "Good Practice in the Selection of Construction Materials" issued by Ove Arup & Partners; or
- 9.2.3. which, at the time of specification, are or are generally known in the construction industry to be of deleterious, hazardous, unsatisfactory, unsuitable, unhealthy, harmful or unsafe quality to the integrity of buildings.

10. TRANSFER OF RISK RELATING TO THE DEVELOPMENT SITE

- 10.1. The Developer shall take the Initial Development Sites in their condition at the date of this Agreement and shall take the Further Development Sites in their condition at the date of satisfaction of the Land Assembly Condition for such sites and shall carry out any necessary works of remediation to the Development Sites having regard to the results of any Surveys together with all necessary demolition, clearance, sealing of public and private drains, pipes and services including (without prejudice to the generality of the foregoing) all necessary investigations and works to ensure that any asbestos on the Development Sites is appropriately dealt with.
- 10.2. If and when the Developer makes use of any existing walls, structures, buildings, drainage foundations or anything else on, over, under, adjoining or near to the Development Sites in connection with the Building Works or any part of them, the Council does not warrant that such existing facilities are fit for the purpose for which the Developer intends to use them or for any particular purpose and any such usage will be entirely at the Developer's own risk.
- 10.3. The Council will not be responsible for any liability which may be suffered or sustained in the event of such existing walls, structures, buildings, drainage foundations or anything else on, over, under, adjoining or near to the Development Site proving defective or unfit for the purpose for which they are used or intended to be used nor shall any defect or lack of fitness for purpose in any way lessen or affect the obligations of the Developer under this Agreement.

11. CARRYING OUT THE BUILDING WORKS

The Developer shall procure:

- 11.1. that the Building Works for the Initial Sites commence within six (6) months of the Unconditional Date for the Initial Sites; and
- 11.2. that all Building Works are carried out:
 - 11.2.1. in a good and workmanlike manner and in accordance with good building practice;
 - 11.2.2. with good and suitable materials;
 - 11.2.3. in accordance with the Agreed Scheme, Building Documents, Building Contract, Statutory Approvals Third Party Consents and the applicable Final Site Development Plan for the applicable Development Site and in relation to the Leisure Facility, in accordance with the Leisure Facility Specification all as may only be varied from time to time in accordance with this Agreement;
 - 11.2.4. without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding on or affecting the Development Site; and
 - 11.2.5. otherwise in accordance with this Agreement.

12. DETAILED PROVISIONS RELATING TO THE BUILDING WORKS

- 12.1. The Developer shall procure that until the date of issue of the Completion Certificate:
- 12.1.1. The Development Site be at all times secured as fully as may be practicable against unauthorised entry (including, without limitation, against unauthorised entry by children);
 - 12.1.2. no advertisements, posters, placards or signs be affixed to or displayed from or on the boundaries of the Development Site (other than those giving the names of the Developer and the roles played by the Approved Building Contractor, and the Professional Team or details of the Agreed Scheme) and to agree with the Council (both Parties acting reasonably) the design of anything to be affixed to or displayed on the said hoarding;
 - 12.1.3. no earth, clay, gravel, sand or other minerals be removed from the Development Site, otherwise than as may be necessary to enable the Building Works to be carried out;
 - 12.1.4. unauthorised structures or materials are removed from the Development Site;
 - 12.1.5. the Development Sites be kept tidy and properly cleared of surplus materials, rubble, rubbish or waste and no goods or materials be deposited or stored on the Development Sites, which are not required within a reasonable time for the carrying out of the Building Works;
 - 12.1.6. proper provision be made for the support and use of any land, walls, buildings, roads and footpaths upon, adjacent or near to the Development Sites and which are affected by the Building Works;
 - 12.1.7. all service media not required for servicing the Development Sites, within or outside the Development Site, are properly sealed, disconnected, stopped-up, diverted or removed and that proper protection, support and shelter is provided for all service media facilitating the Development Sites and that all requisite measures are taken to ensure that such service media are not damaged;
 - 12.1.8. the supply of services to all occupied parts of any of the Development Sites are maintained at all times;
 - 12.1.9. all necessary measures and precautions are taken to protect the Building Works from damage by the Insured Risks;
 - 12.1.10. hoardings be erected around the Development Sites in a secure manner and all reasonable safety and other measures be taken to prevent damage and injury and that there be kept to a minimum nuisance, inconvenience, disturbance, interference or damage to owners and occupiers of neighbouring properties, (including, without limitation, of Adjoining Property) and members of the public;
 - 12.1.11. good efficient and well maintained plant and equipment be used for the carrying out of the Building Works;
 - 12.1.12. wheel cleansing equipment for construction and other vehicles accessing the relevant part of the Development Site is installed and used whenever necessary;

- 12.1.13. proper arrangements be made with the supply authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Building Works;
 - 12.1.14. buildings, structures and retaining walls near to the Development Sites are not damaged by the Building Works;
 - 12.1.15. any roads near to the Development Sites are not obstructed beyond the terms of any Statutory Approval obtained or damaged and that any such obstruction is removed immediately or any such damage made good immediately;
 - 12.1.16. any roads near to the Development Sites are kept clear of mud, materials and debris and that they are cleansed of such mud, materials and debris resulting from the Building Works daily or otherwise as often as may be necessary or required by the Council;
 - 12.1.17. ground water is not pumped on to any roads near to the Development Sites;
 - 12.1.18. the Building Works are properly supervised at all times;
 - 12.1.19. the Building Works be maintained in good repair and condition;
 - 12.1.20. no crane the gib of which will overhang the boundary of the Development Sites is erected or placed on the Development Sites without first procuring the relevant Consents in respect of the same;
 - 12.1.21. the Development Sites are not used or occupied for any purpose other than for carrying out of the Building Works;
 - 12.1.22. the Council be notified immediately if any articles of value or of historic or prehistoric interest are discovered in the course of carrying out the Building Works and so that (subject to the rights of the Crown) the Council shall have the sole property in such articles and they shall be dealt with as the Council or the Council's Representative shall direct
- 12.2. The Developer agrees:
- 12.2.1. to use reasonable endeavours to comply where practicable with the Council's commitment to use local contractors through its Considerate Contractor Scheme;
 - 12.2.2. from the date of issue of the Completion Certificate to leave the Building Works cleared of all unused building materials, plant and equipment used in the Building Works and of temporary structures.

13. HEALTH AND SAFETY REGULATIONS

The Developer shall or shall procure compliance with the Health and Safety Regulations in the execution of the Building Works.

14. KEEPING THE COUNCIL INFORMED

The Developer shall keep the Council's Representative fully and regularly informed of:

- 14.1. all material measures taken and stages reached by the Developer in performing its obligations in this Agreement relating to the carrying out of the Building Works;
- 14.2. the progress of the Building Works;

- 14.3. material problems or delays affecting the Building Works and any change to the construction plan for a Development Site as approved by the Council as part of the Final Site Development Plan for such site will require the Council's Qualified Approval and shall, on request, supply the Council's Representative with copies of minutes and other written records of and other relevant meetings, of reports given by the Professional Team and of relevant certificates issued pursuant to the Health and Safety Regulations, (whether or not the Council and/or the Council 's Representative attend each or other relevant meetings).

15. REVIEW OF THE BUILDING WORKS

- 15.1. The Developer shall provide the Council's Representative with a monthly site report
- 15.2. The Developer shall procure that the Council's Representative is afforded an opportunity to accompany the Employer's Representative and/or the Independent Certifier on any site visits on not less than five (5) Working Days prior notice where practicable
- 15.3. The Developer shall procure that the Council's Representative is afforded an opportunity to attend any other meetings relating to the Building Works, having been given reasonable notice thereof and, on request, a copy of any material instruction, variation order, certificate and other instrument issued by the relevant person pursuant to the Building Contract in connection with the Building Works is promptly supplied to the Council's Representative.
- 15.4. The Council's Representative may on request at any time, accompanied by the Developer, the Employer's Representative and/or the Independent Certifier and after reasonable prior notice, enter upon any Development Site in order to view the state and progress of the relevant Building Works.

16. VARIATIONS TO AN AGREED SCHEME

- 16.1. The Developer may without the Council's consent substitute other materials for those required for an Agreed Scheme where the materials required cannot be obtained or where their delivery at the appropriate time or at reasonable cost cannot be guaranteed provided that such alternative materials are equal to or superior in quality performance appearance and life expectancy to the materials which they replace
- 16.2. Save as provided in paragraph 16.1 above the Developer may not otherwise vary or alter an Agreed Scheme without the prior written consent of the Council.
- 16.3 Where the Council requests any variation to the specification for any Agreed Scheme as set out in the Final Site Development Plan for a Development Site, the Developer shall as soon as reasonably practicable provide the Council with written details of the estimate cost of carrying out such Council variations (including the estimated cost of obtaining all necessary additional licences, consents, permissions and orders) and the anticipated effect (if any) on the timetable for the Building Works. and the Council shall be entitled to challenge any such costings or request price comparisons by way of justification. Within ten (10) Working Days after the Council receives the estimate referred to, the Council shall confirm to the Developer in writing whether or not the Council wishes the Developer to proceed with such Council variation. If the Council or

the Council's Representative does not so reply within such ten (10) Working Day period, or confirms during that period that the Council does not wish such Council variation to proceed, then the Council's request relating to such Council variations shall lapse and the Developer shall not give effect to it. If the Council or the Council's Representative does confirm to the Developer in writing within such ten (10) Working Day period that the Council wishes the Developer to proceed with the requested Council variation, then the agreed costs of such variation shall form part of the Development Costs for such Development Site and the Developer shall proceed to carry out the Council's requested variation as part of the Building Works.

17. REVIEWABLE DESIGN DATA

The Council shall review Reviewable Design Data in accordance with the provisions of this paragraph 17

17.1 The Reviewable Design Data shall be submitted to the Council digitally or by such other means as the Parties shall agree from time to time (acting reasonably).

17.2 If the Council so reasonably requires, the Developer shall submit any further or supplementary information data and documents (including details of calculations) for information which the Council may require for a full understanding of the Reviewable Design Data. The Developer shall take all such steps as may be reasonably required to satisfy the Council that the Reviewable Design Data complies with and is in accordance with the Approved Documents and/or this Agreement

17.3 The Developer shall as soon as reasonably practicable after the date of this Agreement provide to the Council an indicative programme of when Reviewable Design Data will need to be submitted under this paragraph in good time to ensure the delivery of the Business Development Plan shall not be delayed (the "**RDD Programme**"). The Developer shall update the RDD Programme regularly and issue to the Council for approval (not to be unreasonably withheld or delayed)

17.4 Following receipt of the Reviewable Design Data (herein referred to as a "**Submitted Item**"), the Council shall :-

17.4.1 within ten (10) working days (where the Submitted Item is delivered in accordance with the RDD Programme); or

17.4.2 as soon as reasonably practicable (where the Submitted Item is delivered outside the dates anticipated by the latest RDD Programme approved by the Council pursuant to paragraph 17.3)

return one copy of the Submitted Item to the Developer marked "A", "B" or "C"

17.5 When the Submitted Item is returned by the Council:

17.5.1 if it is marked "A", the Developer shall carry out the relevant Building Works in accordance with that document ;

17.5.2 if it is marked “BG”, the Developer may carry out the relevant Building Works in accordance with that document provided that the Council’s comments are incorporated into it and an amended copy of it is promptly submitted to the Council; or

17.5.3 if it is marked “C”, the Developer shall take due account of the Council’s comments on it

and shall either forthwith resubmit it to the Council in amended form for comment by the Council in accordance with paragraph 17.4 (save that the time period for the Council to return one copy of the amended Reviewable Design Data referred to in paragraph 17.4.1 shall be reduced from 10 Working Days to 5 Working Days) or notify the Council under paragraph 10 of this paragraph 17 Provided That if the Council does not respond to any item of Reviewable Design Data in the time stated in paragraph 17.4 and has still not responded as referred to in paragraph 17.5 then the Submitted Item shall be deemed as marked “A”

17.6 The Developer shall be responsible in all respects for the design of the Building Works including but not limited to the Reviewable Design Data and/or any further design which the Developer is to carry out as a result of a Submitted Item. Without prejudice to the generality of this paragraph the Developer shall be fully responsible and liable to the Council for :-

17.6.1 all aspects of design and design development;

17.6.2 selection of goods and materials;

17.6.3 the co-ordination and integration of all design and the interface between design elements for the Works whether carried out by the Developer or by any other party engaged on the Works by the Developer or the Building Contractor; and/or

17.6.4 for any design work in relation to the Works which may be carried out or which may have been carried out by sub-contractors engaged by the Developer or the Building Contractor

17.7 The Developer shall not commence or permit the commencement of the construction of the part or parts of the Building Works to which any Reviewable Design Data relates until it has submitted the relevant Reviewable Design Data for review and it is confirmed by the Council that the Developer is entitled to proceed with construction in accordance with paragraph 17.5. For the avoidance of doubt, the Council shall not be liable to pay for any work included in the Reviewable Design Data Schedule executed by the Developer otherwise than in accordance with Submitted Items marked “A” or “B” except where comments made by the Council on Submitted Items marked “B” are not in compliance with the plans, drawings, documents or information contained within the Approved Documents as referred to in paragraph 17.8.1

17.8 The Developer shall incorporate any comments of the Council under paragraphs 17.5.2 or 17.5.3 without any entitlement to additional monies and/or extensions of time

17.9 Notwithstanding any other provision of this paragraph 17, both Parties acknowledge that:-

17.9.1 confirmation or withdrawal of a comment in accordance with this Schedule 4 (Review Procedure) shall not signify acceptance by the Council that the Submitted Item or amended document is in accordance with this Agreement compliance with the Council's comment would give rise to a variation to which paragraph 16.3 should apply;

17.9.2 neither compliance with the design submission procedure in this paragraph 17 nor with the Council's comments shall diminish the Developer's obligations to ensure that the Reviewable Design Data and Building Works are in accordance with the Approved Documents and this Agreement

18. DELAY IN COMPLETING BUILDING WORKS

18.1. The Developer will carry out and complete the Development of each Development Site in accordance with the programme forming part of the Final Site Development Plan approved by the Council for the relevant Development Site.

18.2. If, on one or more occasions, the carrying out of the Building Works for any Development Site is delayed and the delay is notified to the Council's Representative by or for the Developer as being attributable to any Delaying Factor, then on each such occasion, the Developer shall be allowed an extension of time for carrying out the Building Works equivalent to the length of such delay notified.

18.3. If Practical Completion of the Building Works for a Development Site is delayed beyond the date for Practical Completion specified in the construction plan forming part of the Final Site Development Plan approved by the Council for the relevant Development Site, LADs based on lost rent and other income to the Council will become payable to the Council by the Developer at the rate of [£]/week

19. COMPLETION OF BUILDING WORKS AND DEFECTS

19.1. The Developer shall use all reasonable endeavours to complete the Building Works, (including, without limitation, all defects under the defects liability provisions in the Building Contract), in accordance with the Agreed Scheme as varied in accordance with this Agreement.

19.2. In relation to the Building Works, the Developer shall use reasonable endeavours to procure that:

19.2.1. the relevant certifying officer gives the Council's Representative not less than twenty (20) Working Days' notice of the date on which he or she intends to issue a Completion Certificate relating to the Building Works (or part thereof) as the case may be;

19.2.2. the relevant certifying officer has had due regard to all representations made to him or her by the Council's Representative (provided that such representations are made not less than five (5) Working Days before the date of intended issue of such Completion Certificate); and

19.2.3. a copy of such Completion Certificate in relation to the Building Works concerned has been supplied to the Council's Representative within three (3) Working Days of the date of its receipt by the Developer.

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

- 19.3. Within twenty (20) Working Days of receipt of a copy of the Completion Certificate under paragraph 19.2.3, the Council's Representative shall serve on the Developer:
- 19.3.1. a notice that he is satisfied that the Building Works or part thereof (as applicable) have been completed in accordance with this Agreement; or
 - 19.3.2. a Defects Notice if he considers that any Defects have not been included on any snagging list issued with the Completion Certificate.
- 19.4. If the Council's Representative shall fail to serve any notice whatever on the Developer in accordance with paragraph 19.3, then the Council's Representative shall be deemed to be satisfied that the Building Works have been completed and delivered in accordance with this Agreement.
- 19.5. If the Council's Representative serves a Defects Notice on the Developer in accordance with paragraph 19.3.2 then the Developer shall, subject to paragraph 19.6, complete the Building Works in compliance with the Defects Notice issued under paragraph 19.3.2 and on completion of the same it shall, in relation to such part of the Building Works not completed in accordance with this Schedule, comply with the provisions of paragraph 19.2 and the Council and the Developer shall comply with the provisions of paragraphs 19.2 - 19.4 as if such paragraphs were here set out in full and related only to such part of the Building Works (as applicable).
- 19.6. If the Developer disputes the Defects or the Remedial Measures set out in the Defects Notice the dispute shall be referred to an Expert for determination under clause 27 and if, following such referral, the Expert determines that there are Defects then the Developer shall complete the Building Works in compliance with the Defects Notice and to the satisfaction of the Expert.
- 19.7. In relation to each Phase of the Development the Developer shall use reasonable endeavours to procure that:-
- 19.7.1. the relevant certifying office gives the Council's Representative not less than twenty (20) Working Days' notice on the date on which he or she intends to issue a Completion Certificate in relation to the Building Works comprising the Phase concerned;
 - 19.7.2. the relevant certifying officer has had due regard to all representations made to him or her by the Council's Representative (provided any such representations are made not less than five (5) Working Days before the date of intended issue of such Completion Certificate); and
 - 19.7.3. a copy of such Completion Certificate in relation to the Building Works concerned has been supplied to the Council's Representative within three (3) Working Days of the date of its receipt by the Developer.

20. DEVELOPER TO SUPPLY DRAWINGS AND DOCUMENTATION

- 20.1. The Developer shall supply to the Council free of charge two complete sets in both hard copy and electronic form of all "as built" drawings for the Development within two (2) months of the issue of the final Completion Certificate for the Development.
- 20.2. The Developer shall supply to the Council free of charge six (6) complete sets in both hard copy and electronic form of all floor and general arrangement plans and drawings, the completed Health and Safety file, all operating manuals and all safety and test certificates on or within one (1) month of issue of the Completion Certificate. *[any other "Handover Requirements"]*

21. COMMERCIAL UNITS

In the event the Agreed Scheme for a Development Site includes Commercial Units and at Practical Completion of the Building Works for such Development Site there are Vacant Units, the Developer will provide a rent guarantee for the amount of the Void Payment for all such Vacant Units for the Initial Void Period.

22. INDEMNITY IN RELATION TO THE BUILDING WORKS

The Developer shall indemnify and keep the Council fully and effectually indemnified against all liability whatsoever, which may arise in relation to the carrying out of the Building Works or part of them or arising in consequence of anything done or omitted to be done on or about any of the Development Sites by the Developer at any time.

DRAFT

SCHEDULE 3

(Commercial Pre-let Obligations)

Part 1

1. GENERAL PRINCIPLES

- 1.1. The Developer shall seek prospective Occupational Tenants in the open market and at arm's length to the Developer for all of the Vacant Units in accordance with the terms of this Part 1.
- 1.2. The mix of uses to which the Commercial Units are to be allocated is set out in the table at Part 3 of this Schedule 3 and the Parties agree that the Developer may at any time propose modifications to these allocations (and the consequential changes to the rental figures applicable to them (provided that the Target Aggregate Initial Rent (as defined in Part 2 of this Schedule 3) is not reduced)) for the Council's approval, such approval not to be unreasonably withheld or delayed.

2. LETTING AGENTS

- 2.1. The Developer will procure that all references to the Development of any Development Site within any marketing material will refer to the Development by the name required by the Council.
- 2.2. The Developer will give the Council not less than five (5) Working Days' written notice of any meetings with the Letting Agents in connection with the implementation of the marketing of the Commercial Units which will occur on a monthly basis unless the Council agrees otherwise and will permit the Council to attend all such meetings and will procure that minutes of all such meetings are circulated to the Council within ten (10) Working Days after each such meeting.

3. APPROVED TENANTS

- 3.1. The Parties agree that an Approved Tenant shall be a prospective Occupational Tenant which is named in the table at Part 3 of this Schedule 3.
- 3.2. Either Party may (acting reasonably) at any time prior to the Heads of Terms being approved or determined to be approved in accordance with paragraph 4 of this Schedule 3 propose that any name be removed from the list at Part 3 of this Schedule 3 and the Parties will act in good faith to agree any such removal with any dispute being dealt with under clause 27 of this Agreement and once such a removal is agreed between the Parties or determined pursuant to clause 27 of this Agreement then that prospective tenant shall no longer be an Approved Tenant for the purpose of this Agreement.
- 3.3. The Developer may at any time propose to the Council that a new name is added to the list at Part 3 of this Schedule 3 and the Council will not unreasonably withhold or delay its approval to such a proposal where the new name is, in the Council's reasonable opinion, comparable with the tenants referred to in the list at Part 3 as varied from time to time in accordance with this paragraph 3.
- 3.4. If the Council does not approve the proposed new name pursuant to paragraph 3.3 the Council will give the reasons in writing when informing the Developer of its decision and any dispute shall be dealt with under clause 27 of this Agreement.

4. HEADS OF TERMS

4.1. The Developer will procure that the Letting Agents issue draft Heads of Terms for any new Letting to the Council before or by the date when they are first issued to the proposed Occupational Tenant or its representative.

4.2. The Parties agree that the Heads of Terms will reflect the following principles:-

4.2.1. As to the length of a Lease, Lettings are intended to be for terms certain of :-

- a) in the case of Commercial Units to be used for purposes within Use Class A3 of the Town and Country Planning (Use Classes) Order 1987, fifteen (15) years or more certain; and
- b) in the case of Commercial Units to be used for purposes within Use Class A1 of the Town and Country Planning (Use Classes) Order 1987, ten (10) years or more certain

Provided that the Council may at the request of the Developer approve a proposed letting for a shorter term (such approval not to be unreasonably withheld or delayed)

4.2.2. As to the financial term of a Lease:

- a) No fine or premium or any financial or other inducement may be offered to a proposed Occupational Tenant other than any Approved Rent Free Period or Approved Capital Contribution or inducement that does not adversely affect the Financial Model without the prior approval of the Council (such approval not to be unreasonably withheld or delayed)
- b) The Developer will be responsible for paying or (where the same does not comprise monetary consideration) providing the Approved Capital Contribution to the Occupational Tenant under the terms of the Approved Agreement for Lease;
- c) The Letting will be at the open market rent reasonably obtainable and the Developer will seek to obtain at least the applicable Target Rent for all of the Vacant Unit save where due to the prevailing market conditions the applicable Target Rent is not reasonably obtainable in the open market;
- d) The Parties agree that the Council will have absolute discretion as to whether to approve a proposal for a stepped rent or turnover rent;
- e) The Parties agree that an RPI indexed rent review will be the preferred approach and that if the Developer wishes to propose a market rent review then this will be subject to the Council's approval, not to be unreasonably withheld or delayed.

4.2.3. If any prospective Occupational Tenant requests the incorporation of access conditions or estate opening criteria within the Heads of Terms then any such matter will be subject to the Council's prior approval (not to be unreasonably withheld)

4.2.4. The other principal terms of the Agreement for Lease and Lease will be consistent with the terms of the Template Agreement and the Template Lease incorporating such of the Approved Amendments as the Developer may require.

4.3. The Council will promptly consider the draft Heads of Terms received from the Developer or the Letting Agents under paragraph 4.1 and will confirm in writing

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(together with reasons for its decision) within five (5) Working Days of such submission whether or not it approved the draft Heads of Terms (such approval not to be unreasonably withheld or delayed)

- 4.4. Any dispute between the Council and the Developer in respect of the draft Heads of Terms including as to whether the rent proposed in the draft Heads of Terms represents the open market rent reasonably obtainable for the Commercial Unit in question will be dealt with under clause 27 of this Agreement .
- 4.5. As soon as the Heads of Terms have either been approved by the Council or determined to have been approved by the Expert in accordance with clause 27 the Developer shall (if it has not already done so) instruct the Developer's solicitor to prepare and (in consultation with the Council's solicitors) to negotiate an Agreement for Lease and a Lease with the proposed Occupational Tenant.

5. FIRST DRAFT AGREEMENT FOR LEASE AND LEASE

Each Agreement for Lease and/or Lease will be substantially and materially in the form of the Template Agreement and Template Lease but the Developer :

- 5.1. may make any amendments or additions to the Template Agreement and Template Lease without the need for the Council's approval:-
 - 5.1.1. which are consistent with the Approved Amendments; or
 - 5.1.2. which are consistent with the approved Heads of Terms;
- 5.2. may make any amendments or additions to the Template Agreement and Template Lease without the need for the Council's approval which without prejudice to the terms of paragraph 5.1 would not materially adversely affect the investment value of the Commercial Unit.
- 5.3. Will not :-
 - 5.3.1. agree any other material amendments or additions to the Template Agreement and Template Lease; or
 - 5.3.2. agree any right for the Occupational Tenant to restrict the Council's right to grant any overriding lease;without (in either case) the prior approval of the Council acting in the Council's absolute discretion
- 5.4. Shall procure that the first draft Agreement for Lease and Lease is issued to the Council's solicitors by the Developer's solicitors at the same time that it is issued to the solicitors for the proposed Occupational Tenant and in doing so the Developer will procure that the Developer's solicitors will draw to the attention of the Council's solicitors any such amendments or additions as referred to in paragraph 5.2 and 5.3 above.

6. APPROVAL OF FIRST DRAFT

- 6.1. The Council will procure that the Council's solicitors will provide the Developer's solicitors with its substantive response to the draft Agreement for Lease and Lease within five (5) Working Days of receipt of such drafts. If the Council's solicitors have not within the said five (5) Working Days confirmed to the Developer's solicitors in writing :-

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- 6.1.1. its approval of any amendments or additions as referred to in paragraph 5.2 and 5.3 above;
- 6.1.2. its refusal of approval of such proposed amendments and additions (and giving reasons therefor); or
- 6.1.3. confirmed that it requires (acting reasonably) expert advice as to the proposed amendments or additions and specified what advice and to which amendments or additions it relates

then the Council shall be deemed to have approved the proposed amendments or additions and if paragraph 6.1.3 applies the Council shall be allowed a further period of five (5) Working Days within which to confirm either approval or refusal in accordance with paragraph 5.1.1 or 6.1.2 (*mutatis mutandis*) ("**Extended Period**") and the provisions of this paragraph 6.1 shall apply as if the five (5) Working Day period were construed as the Extended Period (save that paragraph 6.1.3 shall not apply)

- 6.2. Any dispute between the Council and the Developer as to the approval of any amendments or additions or as to whether the Council is acting reasonably shall be dealt with under clause 27 of this Agreement

7. NEGOTIATION OF AGREEMENT FOR LEASE AND LEASE

- 7.1. The Developer shall procure that the Developer's solicitors keep the Council's solicitors regularly informed as to material progress of the negotiations as to any Agreement for Lease and Lease.
- 7.2. Each Party shall procure that their solicitors diligently, expeditiously and acting reasonably progress the negotiation and completion of any Agreements for Lease and any Leases.
- 7.3. The Council shall use its reasonable endeavours to answer accurately within five (5) Working Days of the same being raised all reasonable questions raised of the Council in relation to the Property and their title to it from time to time and any incumbrances affecting it whether raised by the Developer or by a proposed Occupational Tenant.
- 7.4. The Council shall at the Developer's request and subject to having been given reasonable notice attend any meetings with proposed Occupational Tenants for the purpose of agreeing the terms of an Agreement for Lease or Lease.

8. AGREEMENT OF FINAL FORM AGREEMENT FOR LEASE AND LEASE

- 8.1. The Developer shall procure that the final draft Agreements for Lease and Lease in the form agreed between the Developer and the proposed Occupational Tenant is issued to the Council's solicitors by the Developer's solicitors at the same time that it is issued to the solicitors for the proposed Occupational Tenant for final approval and in doing so the Developer will procure that the Developer's solicitors will draw to the attention of the Council's solicitors any material amendments and additions which have not previously been drawn to the attention of the Council's solicitors pursuant to paragraph 7 above.
- 8.2. The Council will procure that the Council's solicitors will provide the Developer's solicitors with its substantive response to the draft Agreement for Lease and Lease within five (5) Working Days of receipt of such drafts and the principles set out in paragraphs 5.1 – 5.3 (inclusive) of this Schedule (*mutatis mutandis*) will apply to the Council's discretion as to whether to give or withhold its approval to any final draft Agreement for Lease and Lease. If the Council's solicitors have not within the said five (5) Working Days confirmed to the Developer's solicitors in writing :-

- 8.2.1. its approval of the final form Agreement for Lease and Lease
 - 8.2.2. its refusal of approval of the final form Agreement for Lease and Lease (and giving reasons therefor); or
 - 8.2.3. confirmed that it requires (acting reasonably) expert advice as to the proposed amendments or additions and specified what advice and to which amendments or additions it relates
- then the Council shall be deemed to have approved the final proposed amendments or additions and if paragraph 8.2.3 applies the Council shall be allowed a further five (5) Working Days within which to confirm either approval or refusal in accordance with paragraphs 8.2.1 – 8.2.2. (inclusive) (mutatis mutandis)
- 8.3. Any dispute between the Council and the Developer as to the approval by the Council of the final form of any Agreement for Lease or Lease shall be dealt with under clause 27 of this Agreement
- 9. EXCHANGE OF APPROVED AGREEMENT FOR LEASE AND LEASE**
- 9.1. As soon as reasonably practicable after the terms of any Agreement for Lease and Lease have been agreed or deemed agreed pursuant to paragraph 8, the Developer will procure that the Developer's solicitors will prepare engrossments of the Agreement for Lease and Lease and any ancillary documents for signing by the parties thereto and will issue the same to the Developer and to the Council's solicitors respectively.
 - 9.2. As soon as reasonably practicable but in any event within ten (10) Working Days after the receipt of the agreed form documentation under paragraph 9.1 the Developer and the Council shall each sign and execute the same and return the same to their respective solicitors with irrevocable authorisation to exchange the same subject to receipt of confirmation that the proposed Occupational Tenant is ready to exchange.
 - 9.3. After exchange of any Approved Agreement for Lease, the Developer will notify the Council and supply a certified copy of the relevant documentation.
- 10. COMPLETION OF A LEASE PURSUANT TO AN APPROVED AGREEMENT FOR LEASE OR PRE-LET AGREEMENT**
- 10.1. Prior to the engrossment of a Lease to be granted pursuant to an Approved Agreement for Lease, the Developer may propose variations to the form of the Lease :-
 - 10.1.1. where to do so would be in accordance with the terms of the relevant Approved Agreement for Lease; or
 - 10.1.2. if acting reasonably, the Developer can show that, as a result of the carrying out and completion of the Development, it is necessary to make such variations.
 - 10.2. The Developer shall procure that, at the time the engrossments of any Lease and other documents relevant thereto are issued to the Council's solicitors in anticipation of their completion in accordance with the terms of the relevant Approved Agreement for Lease, the Developer's solicitors shall confirm whether they believe that relevant Tenant is ready, able and willing to complete the relevant Lease and other documents or, if they are not so able to confirm, provide full details of any outstanding matter(s) or dispute between the Developer and the relevant Tenant.

11. SATISFACTION OR WAIVER OF CONDITION (COMMERCIAL PRE-LETTING)

- 11.1. The Parties agree that the Commercial Pre-let Condition for any Development Site will be satisfied once the Approved Agreements for Lease have been exchanged between the Parties and Occupational Tenants in accordance with the terms of this Schedule in respect (in the aggregate) of the Letting of 70% of the floor area of the Commercial Units.

12. COMPLIANCE WITH APPROVED AGREEMENTS FOR LEASE

- 12.1. The Developer shall :-

- 12.1.1. comply with all of its obligations in and pursuant to the terms of any Approved Agreement for Lease; and
- 12.1.2. use reasonable endeavours to procure that the relevant Occupational Tenant and any surety comply with their obligations pursuant to that Approved Agreement for Lease.

- 12.2. The Developer shall promptly send to the Council's solicitors copies of any notices served or received by the Developer pursuant to any Approved Agreement for Lease (including, without prejudice to the generality of the foregoing, any notice served by the relevant Occupational Tenant purporting to determine that Approved Agreement for Lease) and procure that the Developer's solicitors send the Council's solicitors copies of all material correspondence received from or sent to the Occupational Tenant's solicitors whether or not in relation to any such notices

- 12.3. The Council shall comply with all of its obligations in and pursuant to the terms of any Approved Agreement for Lease.

- 12.4. The Council shall promptly send to the Developer's solicitors copies of any notices served or received by the Council pursuant to any Approved Agreement for Lease (including without prejudice to the generality of the foregoing any notice served by the relevant Occupational Tenant purporting to determine that Approved Agreement for Lease) and procure that the Council's solicitors send the Developer's solicitors copies of all material correspondence received from or sent to the Occupational Tenant's solicitors whether or not in relation to any such notices

- 12.5. Without prejudice to the generality of paragraph 12.2, the Developer will keep the Council regularly informed as to compliance with the terms of any Approved Agreement for Lease

- 12.6. Neither the Developer nor the Council shall determine any Approved Agreement for Lease without the prior written approval of the other (such approval from either Party not to be unreasonably withheld or delayed)

13. End of Developer's Letting Obligations and Rights

The Developer will have no further obligations or rights to procure Lettings of any Vacant Unit on the earliest of :-

- 13.1. the Fully Let Date; or
- 13.2. the expiry of the Initial Void Period

Part 2

Calculation of Enhanced Performance Fee

DRAFT

Part 3

Mix of Uses and Approved Tenants

DRAFT

SCHEDULE 4

(Leisure Facility Specification)

DRAFT

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF
DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

SCHEDULE 5

**Part I
Initial SiteTitles**

DRAFT

Part II
Further SiteTitles

DRAFT

**NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF
DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS**

**Part III
(Bid Documentation)**

DRAFT

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DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

SCHEDULE 6
(Development Business Plan)

DRAFT

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DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

SCHEDULE 7
(Consultation Strategy)

DRAFT

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SCHEDULE 8

(Indicative Site Development Plans for Further Sites)

DRAFT

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

SCHEDULE 9

Part 1

(Interim Site Development Plans for Initial Sites)

Part 2

(Template Interim Site Development Plan)

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF
DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

SCHEDULE 10

(Template Final Site Development Plan)

DRAFT

NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS

Appendix 1: Form of Invoice

Appendix 2: Template form of Agreement for Lease and Lease

Appendix 3: Reviewable Design Data

DRAFT

**NOTE – THIS IS A TEMPLATE DOCUMENT AND WILL NEED TO BE UPDATED DURING THE COURSE OF
DIALOGUE TO REFLECT BIDDERS SPECIFIC PROPOSALS**

**THE COMMON SEAL of RUNNYMEDE
BOROUGH COUNCIL**

was hereunto affixed in the presence of:-

Authorised Signatory

DRAFT