

**Appendix 10**  
**Planning Strategy**

JB



# Report

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## **Blackwall Reach Regeneration Project**

**Planning Strategy**

LBTH / HCA

March 2011

Prepared By .....Status . ..... Date.....

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**For and on behalf of GVA Grimley Ltd**

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## 1. Introduction

- 1.1 GVA is instructed by the Homes and Communities Agency (HCA) and London Borough of Tower Hamlets (LBTH) to provide planning advice in relation to the Blackwall Reach Regeneration Project (BRRP).
- 1.2 LBTH and the HCA wish to build upon the approval of the BRRP Development Framework in March 2008 to provide a clear framework for the delivery of the regeneration of this strategic site. This will be secured through the preparation of an outline planning application for the entirety of the site. The outline planning application will establish the development principles of the site and therefore govern future redevelopment.
- 1.3 The outline planning application should secure an appropriate level of flexibility to enable varying approaches to be taken forward whilst ensuring that a series of client driven 'fixes' are realised.
- 1.4 This report sets out the proposed Planning Strategy and approach to obtaining outline planning permission having regard to the requirement to maximise flexibility. The Strategy has been prepared in consultation with LBTH Planning and Environmental Officers and is also informed by Counsel advice received from Christopher Katkowski QC and from Berwin Leighton Paisner (BLP) and Capita Symonds Environmental (CSE).

## 2. Application Format

### Rationale for the Outline Planning Application

- 2.1 The HCA and LBTH will not be developing the site itself and as such has sought to procure a Developer Partner. The Joint Client is however keen to:
- 1) Retain strategic control over the project;
  - 2) Secure a series of 'fixes' within the scheme to ensure quality; and
  - 3) Promote a planning application during the summer of 2011.
- 2.2 The Joint Client will work with the Developer Partner to prepare up an outline planning application. An outline application is considered to be the most appropriate route forward because:
- 1) It secures the principle of the scheme;
  - 2) It provides certainty going forward;
  - 3) It can remain sufficiently flexible to embrace innovation and expertise brought to the team by the delivery partner within the boundary of the scheme fixes as set out within the Design Code;
  - 4) It provides a framework against which applications for the detail of the scheme can be considered; and
  - 5) It provides sufficient flexibility to enable a scheme to evolve over time should market conditions change without needing to re-commence the planning application process.

### Mechanics for Assessment of Scheme Detail

- 2.3 Following selection of the preferred delivery partner, it is anticipated that scheme details for each phase after Phase 1A will be advanced as reserved matters applications made pursuant to the grant of the outline planning permission.
- 2.4 In order to hedge against a delay or refusal of the outline planning application, which would risk undermining the decant strategy and allowing the demolition of Robin Hood



Gardens in advance of expiry of the Certificate of Immunity from Listing (May 2014), it is currently anticipated that the first phase of development (Phase 1A) will be bought forward as a stand alone detailed planning application by the Developer.

## Scope of the Outline Planning Application

2.5 In accordance with Government Circular 01/06 – Guidance on Changes to the Development Control System (2006) and the Town and Country Planning (Development Management Procedure) (England) Order 2010, (DMPO) under an outline application the following matters may be submitted for approval or reserved:

- Access – accessibility to and within the site for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network
- Layout – the way in which buildings, routes and open spaces are provided within the development and their relationship to buildings and spaces outside the development
- Scale – the height, width and length of each building proposed in relation to its surroundings
- Appearance – the aspects of a building or place which determine the visual impression it makes, excluding the external built form of the development
- Landscaping – the treatment of private and public space to enhance or protect the site's amenity through hard and soft measures, for example, through planting of trees or hedges or screening by fences or walls

2.6 Discussions are ongoing with Planning Officers with regard to whether approval is sought for layout and access. However, at present the Joint Client continues to require that greater flexibility is incorporated into the outline application to allow for alternative approaches to layout to be considered. As greater flexibility is required to the layout of the site, it is not possible or desirable to fix the internal access arrangements at this point in time. It is therefore intended that all matters are reserved.



### 3. Outline Application Mechanics

#### Information to be provided with an Outline Application

- 3.1 Government guidance contained within Circular 01/06 and the DMPO requires that when making an outline application the determining authority will be required to give detailed consideration on the use and amount of development proposed. In addition, even if layout, scale and access are reserved, an application will still need to provide a basic level of information on these issues. The guidance states that as a minimum, therefore, the application will be required to include information on the following:
- Use – The uses proposed for the development and any distinct development zone/s (where different uses will be appropriate) within the site.
  - Amount of development – The amount of development proposed for each use (this should include upper floorspace limits for each use as a 'worst case' for assessments).
  - Scale Parameters – An indication of the upper and lower limits for height, width and length of each building included within the development proposed.
  - Indicative Access Points – The area or areas where access points to the development proposed will be situated.
  - Indicative Layout – Showing the approximate location of buildings, routes and open spaces included in the development proposed (multiples may be considered as we discuss below).
- 3.2 It should also be recognised that the level of detail required within a planning application is driven by a number of factors, which although at times are complementary, also need to be considered independently. For example, where the proposals constitute Environmental Impact Assessment (EIA) Development, it is necessary to meet both the minimum requirements set by the DMPO as above and the requirements of the EIA Regulations (1999) (as amended) and their interpretation by the courts (see Section 5).
- 3.3 This section of the strategy therefore considers the approach to the outline planning application necessary to satisfy the DMPO. Section 5 considers the requirements of the EIA regulations where they are different to the regulations under the DMPO.



## Establishing the Outline Parameters

- 3.4 Having regard to the minimum requirements of an outline planning application as set out by Government guidance, we provide a summary below of the proposed approach to establishing the parameters of the outline planning application and how these may be presented.

### Maximum Amount of Development

- 3.5 The application will need to apply for a maximum quantum of development both in total and broken down by land use. The Design Code sets out that a minimum of 1,600 units should be provided on the site. This is informed by an assessment of scheme viability in consideration of current market conditions. However, this may not be the maximum quantum of development achievable on the site and sufficient flexibility should be incorporated to allow both for uplift identified by detailed capacity work undertaken by the design team in the preparation of the current application and for uplift derived from changing market circumstances so as to negate the need to make a fresh application for later phases.
- 3.6 As a guide, the theoretical 'maximum' capacity of the site for the purposes of the planning application may be derived through an assessment of appropriate residential densities. For example, the London Plan (2008) sets out appropriate density ranges in table 3A.2 and indicates that maximum densities may be 260 u/ha in 'urban' locations and 405 u/ha in 'central' locations. For the purposes of this exercise it could be assumed that land south of Poplar High Street (approximately 2.5ha net) may be capable of accommodating 'central' density characteristics and land north of Poplar High Street (approximately 3.5ha net) may be capable of supporting 'urban' density characteristics. These assumptions are based on an objective assessment of existing character against the criteria set out in the London Plan. The density ranges set out in the London Plan are not intended to be prescriptive and can be exceeded subject to townscape, infrastructure and environmental considerations. Assuming a modest 25% allowance above the London Plan ranges the theoretical capacity of the site can be calculated at approximately 2,400 units.
- 3.7 However, notwithstanding the above, the final maximum amount of development to be applied for will be determined following the next evolution of the scheme parameters in



collaboration with the Developer. It is intended that the Developer now works with the design team to inform and assist in preparing the outline planning application. The evolving parameter plans will also benefit from a 'townscape assessment' being undertaken by Kevin Murphy (KM Heritage). The townscape assessment will identify key heritage assets and review the maximum scheme parameters in terms of their impact on these.

- 3.8 The theoretical capacity analysis and subsequent sensitivity 'townscape assessment' will combine to determine the maximum number of units that will be applied for. The upper limits of floorspace will also be used as the basis of technical assessments including the Environmental Impact Assessment (EIA) and Transport Assessment (TA) as discussed later.

### Scale Parameters

- 3.9 Government guidance requires that even if all matters are reserved the outline application should provide information indicating the upper and lower limits for height, width and length of each building within the site boundary.
- 3.10 These limits may differ across the site as there will be clear areas where there is greater potential for taller buildings (e.g. adjacent to transport infrastructure at the southern portion of the site or where an opportunity arises for a landmark building in the north-west corner). In other areas taller buildings may be less appropriate (e.g. adjacent to residential properties at Ashton Street or the Naval Row Conservation Area).
- 3.11 It is our intention to set these scale parameters by defining a series of 'Development / Height Zones' within which we consider there will be potential for buildings up to a particular height, and a series of 'Building Typologies' which will define minimum and maximum lengths and widths.

### Development / Height Zones

- 3.12 The design team will therefore establish a number of 'Development / Height Zones' across the site where differing maximum heights of buildings will be allowed. These Development / Height Zones will be informed by a contextual assessment of townscape capacity to establish appropriate height limits and accord with the emerging masterplan to be prepared jointly by the design team and Developer. The application will be supported by a Design and Access Statement which will provide the assessment and justification for the



delineation of the Development / Height Zones and identified datums in support of the indicative masterplan(s).

- 3.13 The Development / Height Zones will immediately abut each other allowing buildings to cross the boundary of the Development Zone. However it should be noted that the height datum may vary between Zones and, unless prevented by the Design Code (see 4.4), step changes in building heights could occur where buildings straddle Zones.
- 3.14 This process will therefore establish maximum height parameters for the purposes of the outline planning application.

### *Building Typologies*

- 3.15 In order to define the maximum and minimum width and length of buildings the design team will establish a number of typical building typologies that may be accommodated on the site. These typologies will be developed having regard to the Key Requirements, key design and sustainability standards (e.g. minimum space) as required by the HCA, LBTH and the Greater London Authority (GLA) and with regard to the emerging masterplan.
- 3.16 The building typologies will be set out in an accompanying 'Design Code'. The Design Code will detail scale parameters which will therefore manage the delivery of different typologies to arrive in different parts of the site.
- 3.17 This process will therefore establish width and length parameters for the purposes of the outline planning application.

### *Access Points*

- 3.18 Although not for approval, the application will nevertheless need to indicate the general location of key access points. These will be detailed on Access Parameter Plans.

### *Indicative Layout*

- 3.19 As set out above, in accordance with Government guidance, an indicative layout is required for submission in order to demonstrate that the quantum of development applied for is capable of being accommodated on the site and to indicate the approximate

locations of buildings. In order to retain flexibility, there is the ability to submit multiple indicative layouts as part of the outline planning application.

- 3.20 The indicative masterplan(s) together with defined parameters will form the basis of the EIA of the scheme as discussed later. In order to 'sensitivity' test the outline application, two (or more) alternative indicative layouts may be developed for this purpose. Each alternative is to be assessed separately and it will be for the local planning authority to determine which (either all or any number of them) is acceptable. As approval is not sought for layout there is flexibility for variations to the indicative layouts to be brought forward at reserved matters stage however these must be sufficiently similar to the 'approximate' layouts assessed under the outline planning application.



## 4. Scope of Supporting information

- 4.1 The application will be accompanied by a suite of supporting documents as summarised below:

### *For Approval (or to be conditioned)*

- Forms, Certificate and Fees (including for Conservation Area Consent)
- Site Location Plan (Red Line Plan)
- Parameter plans identifying Development Zones, minimum and maximum Scale Parameters and Phasing
- Design Code
- Development Specification

### *Supporting Information*

- Indicative Layout Plans (as necessary)
- Supporting Statements including:
  - Planning
  - Transport Assessment
  - Statement of Community Involvement
  - Environmental Statement (including Flood Risk Assessment)
  - Sustainability Statement
  - Energy Strategy
  - Landscaping
  - Utilities and Drainage Statement
  - Construction Method Statement
  - Retail and Employment Needs Assessment / Survey [need for separate statements to be reviewed in the context of the ES structure to avoid unnecessary duplication]
- Design and Access Statement (to include townscape and landscape analysis)

- **Housing and School Re-location Strategy**
- **Overarching Section 106 Mechanism and Heads of Terms**

4.2 The Design and Access Statement, Design Code and Development Specification play a particularly important part in justifying and defining key design principles to be carried forward at the reserved matters stage. We discuss these further below.

## **Design and Access Statement**

4.3 As set out by Circular 01/06, the Design and Access Statement should link the general development principles established by the outline planning application to final detailed designs. The Statement will therefore explain how the proposed parameters have been considered and that these are appropriate and feasible taking into account the site context.

## **Design Code**

4.4 The Design Code will set out key rules under which the reserved matters applications will be considered. It should establish a set of written rules for the two and three dimensional design elements of the development. The rules set out within the Design Code will be controlled through conditions or legal agreements as appropriate, will provide greater confidence to the determining authorities that key design principles will be adhered to even though all matters are reserved. Examples of topic areas covered by the Design Code are summarised below (adapted from best practice guidance contained within 'Preparing Design Codes – A practice Manual', DCLG November 2006):

- **Introduction covering structure of the Code, masterplan and general principles**
- **Urban Form including 'Development Zone Rules' such as:**
  - Mix of uses
  - Scale parameters / densities / plot ratios
  - Connections and key access routes
  - Block types / patterns including facing distances, setbacks and building lines
  - Building frontage types
  - Protection of key vistas



- Urban character
- Street types covering local, secondary etc
- Urban Spaces including:
  - Open space / private space standards and form
  - Play spaces
  - Parking
  - Private communal space
  - Roof spaces
- Building Typologies and Built Form including:
  - Max and min heights, widths and lengths
  - Unit mix
  - Townscape features (e.g. roof lines etc)
  - Heritage assets (e.g. integration / protection)
  - Public realm features
- Technical Considerations including:
  - Energy efficiency targets / standards
  - Sustainability standards (covering waste, SuDS, water etc)
  - Access standards
  - Management and servicing etc
- Application of the Code

## Development Specification

- 4.5 A Development Specification will also be prepared which defines the parameters of the application, which will also provide the information to be assessed under the EIA process.

## 5. EIA Compliance

### Introduction

- 5.1 In accordance with Environmental Impact Assessment (EIA) Regulations (1999) (as amended), the outline application will be accompanied by an Environmental Statement (ES) which considers the likely significant environmental effects of the development and recommends methods of avoiding, reducing or offsetting any potential significant adverse effects (collectively known as 'mitigation measures').
- 5.2 With regard to the EIA/ES Regulations, the term 'Environmental Statement' is defined as "a statement:
- a. *that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but*
  - b. *that includes at least the information referred to in Part II of Schedule 4"*
- 5.3 This definition in association with the wording of the EIA Regulations makes it clear that the authority must obtain all the information it reasonably needs to assess and evaluate the likely significant environmental effects of the proposal before it reaches its decision.
- 5.4 In terms of EIA and outline planning permission the cases of *R v Rochdale MBC ex parte Tew* [1999 3PLR74] and *R v Rochdale MBC ex parte Milne* [2001 81PCR27] set out the approach that planning authorities need to take when considering EIA in the context of an application for outline planning permission if they are to comply with the Directive and the Regulations. The following points are useful:
- i. The Directive and Regulations require planning permission to be granted with the full assessment of the likely significant effects on the environment;
  - ii. An application for a 'bare' outline permission (i.e. not incorporating any defined scale parameters) with all matters reserved for later approval is unlikely to comply with the requirement of the EIA Regulations. Moreover it would not comply with the amended General Development Procedure Order (now superseded by the DMPO;



- iii. When granting outline consent, the permission must be 'tied' to the environmental information provided in the ES, and considered and assessed by the authority prior to approval;
  - iv. Flexibility in how a scheme may be developed is not precluded although each option will need to have been properly assessed and be within the remit of the outline permission; and
  - v. Development carried out pursuant to a reserved matters consent granted for a matter that does not fall within the remit of the outline consent will be unlawful.
- 5.5 The 'Rochdale case' set a precedent that illustrative and indicative sketches and layouts in themselves cannot provide a sufficient basis for the determination of applications for outline planning permission for EIA development. Outline applications for EIA development will be required to include details of all or any of the reserved matters in instances when it would not be reasonable to determine those applications without such details. These concerns have led to the parameter based approach which is well understood.
- 5.6 In essence therefore, the description of a scheme must be sufficiently detailed to enable the main effects of the scheme to be properly assessed. If not it will be in breach of Schedule 4 of the EIA Regulations. Secondly, through the use of conditions, any outline permission will need to be restricted so that any development that can take place is within the parameters of the matters assessed in the ES. We set out the proposed methodology for dealing with these points below.

## Methodology

- 5.7 The purpose of the ES will be to demonstrate that the principle and proposed quantum of development is capable of being accommodated on the site in terms of infrastructure, townscape and environmental considerations. This assessment will be undertaken in the context of the information to be submitted as part of the outline application as described in Sections 3 and 4 of this paper.

## Infrastructure

- 5.8 It is proposed that the likely significant effects in terms of infrastructure are assessed against the maximum quantum of development applied for.



## Environment and Townscape

- 5.9 In terms of environment and townscape, the ES will assess the approximate locations of land uses and buildings as defined by the parameters plan and indicative layout(s). If multiple indicative layouts are submitted, each of these will be assessed as a distinct variant within the ES and it will be for the local planning authority to determine which (either all or any number of them) is acceptable. Townscape assessments will also be carried out in the context of the 'rules' set out within the Design Code, which are expected to include as a minimum 1) limits on the percentage of each zone that may be delivered and 2) rules protecting key townscape assets.
- 5.10 Whilst it is not envisaged that the scheme will necessitate a multi-stage approach requiring later environmental assessment, should variants be proposed within the boundaries of the outline planning permission which could have different environmental impacts, it is considered that such an approach would be lawful where those effects could not have reasonably been anticipated at the outline stage. The 'Barker' judgement is useful in this regard as it indicates that certain effects can be assessed again or in more detail at reserved matters stage. The ES will be prepared in accordance with an agreed Scoping Report, which will be submitted to LBTH for approval and set out the proposed approach to the EIA and content of the ES.
- 5.11 As advised by CSE, the ES is not required to assess every development scenario but rather the 'likely significant effects'. The ES will therefore be structured so that the likely significant effects of the worse case development scenario for each criterion will be assessed. The 'likely worse case' is expected to be derived from the alternative indicative layout approaches. Rather than this being a single worse case scenario for all of the given criteria, the assessment may generate a range of impact within which the likely worse case may occur. Where the range is considered to be too great for the purposes of the EIA, it will be the role of the Design Code to introduce rules that enable these ranges to be reduced to a level where any environmental assessment is considered to be robust.
- 5.12 Where a developer partner introduces an alternative scheme that may have different impacts to the indicative scheme(s) tested by the ES, the Council will be able to consider whether deviations can be allowed within the parameters where they result in betterment or no worse environmental effects. In order to be robust however, and to accord with the requirements of the DMPO, the local planning authority must be able to determine that

such an alternative layout approach is sufficiently similar to the 'approximate' locations of buildings indicated by one of the indicative layouts submitted with the application (provided these were considered acceptable in the first place).

- 5.13 In the event that a developer partner comes forward with a scheme that can be accommodated within the defined outline parameters of the application but potential significant effects which have not been assessed within the original ES are considered likely, further environmental assessment may be required. However, if a scheme is bought forward outside the parameters of the outline application itself, a new planning application would be required.

### Key Issues

- 5.14 As the application is in outline with all matters reserved, a number of unique challenges are presented in assessing the likely significant environmental effects of the development. CSE has advised of a number of detailed key considerations and these are discussed at Appendix 1.



## 6. Consultation

- 6.1 The outline planning application will be subject to consultation with both statutory and non-statutory consultees and we discuss these briefly below.

### Statutory Consultees

- 6.2 Statutory consultees are organisations and bodies, defined by statute, which must be consulted on relevant planning applications. Most of the statutory consultation requirements are contained in the DMPO. However, some bodies are required to be consulted under other legislation. Examples of key statutory consultees include the GLA (and TfL), Environment Agency, CABE, English Heritage and Highway Agency. We provide a list of likely statutory consultees at Appendix 2 although it will be for the local planning authority to determine which statutory consultation requirements apply.

### Non-Statutory Consultees

- 6.3 It will also be for LBTH as the local planning authority to determine which non-statutory consultees will also be consulted on the outline planning application. LBTH has provided guidance on the types of bodies that may be consulted within its Statement of Community Involvement (SCI) (November 2009). These are summarised at Appendix 2 as well as other bodies identified in national guidance set out by the Department for Communities and Local Government (DCLG).
- 6.4 GVA will lead pre-application consultation with key statutory and non-statutory consultees. Meetings have already been carried out and are ongoing with the GLA, TfL, Docklands Light Railway (DLR) and the LTGDC. Fortnightly meetings will continue with key stakeholders during the pre-application process.

### Community Engagement

- 6.5 The LBTH SCI provides guidance on how and when the Council will consult with local communities and how the process will be carried out in relation to planning applications (available for download from the Council's website). As a major application, the LBTH SCI



states that the Council will endeavour to go beyond the minimum 'notice' requirements of a planning application. The SCI indicates that this is likely to include:

- Pre-application consultation to help inform emerging proposals;
- Holding public exhibitions on the development proposals when the planning application is submitted; and
- The right for residents to address the Strategic Development Committee before it determines an application.

6.6 Extensive community engagement has already been undertaken and this informed the preparation of the cabinet approved Development Framework. LBTH continues to coordinate community consultation with the assistance of Strategic Urban Futures.

## Appendix 1 – EIA Compliance Key Issues

Capita Environmental has identified the following key issues relevant to the EIA in respect of the outline planning application:

- 1) **Assessing Townscape Impact** – The final massing approach and external appearance of buildings will not be defined within the outline planning application. This presents a challenge in assessing the likely townscape impacts, particularly adjacent to heritage assets such as Conservation Areas. The ES will assess the maximum parameters scheme in the context of the Design Code, which may include rules 1) limiting the percentage of each zone that may be delivered and 2) protecting key townscape assets. The EIA will also inform the scale parameters ensuring appropriate height limitations where necessary as secured by the Parameter Plans.
- 2) **Flood Risk** – Likely flood risk will be assessed in consultation with the Environment Agency (EA). The Flood Risk Assessment (FRA) may identify areas of the site at higher risk of flooding than others. If unmitigated this could limit flexibility of layout. In order to address this, the ES will have to demonstrate that appropriate strategies can be put in place to deal with likely flood risk for variant layout approaches and that the parameters of the proposed Development Zones are therefore acceptable (e.g. finished floor levels raised etc). LBTH will be required to demonstrate that the site is sequentially suitable for residential development having regard the requirements of Planning Policy Statement 25 (Development and Flood Risk, 2006).
- 3) **Defining 'Worse Case'** – The ES is required to demonstrate that the principle of development as proposed is capable of being adequately accommodated on the site. As such the ES must assess the 'worst case' likely scenarios for each criterion (e.g. noise, wind etc). The ES will have to take account of the fact that under the outline application the 'worst case' development for each criterion may be different (e.g. taller elements may have greater visual impact but present beneficial acoustic screening etc). Worse case scenarios will therefore have to be carefully considered for each criterion.
- 4) **Phasing Assumptions** – The ES will have to take account of the proposed phasing plan. The phasing of development will influence trigger points for various environmental effects.



- 5) **Zoning** – It will be necessary for the Design Code and parameter limitations to be defined so that 'piecemeal' development does not arrive on each Development Zone in such a way that it disregards its relationship to the remaining phases of the development. The design coding is therefore important as it will ensure the site wide benefits are delivered.
- 6) **Reconciliation Mechanism** – Linked to the above, the EIA will inform the parameters and design coding so that the cumulative likely significant environmental impacts of all phases of development once complete can be mitigated. This will avoid a scenario where the final phase is incapable of implementation because the cumulative likely significant environmental impact would be too great.

## **Appendix 2 – Statutory And Non-Statutory Consultees**

### **Statutory Consultees**

The outline application is likely to be subject to consultation with the following statutory consultees (adapted from "Comprehensive list of nationally defined consultees in the planning application process - information report", DCLG, December 2009):

- Commission for Architecture and the Built Environment
- Civil Aviation Authority
- Department for Culture, Media and Sport
- Department of Energy and Climate Change
- Department for Environment, Food and Rural Affairs
- Department for Transport
- Environment Agency
- English Heritage
- Health and Safety Executive
- Highways Agency
- Local and Regional Bodies (e.g. GLA and LTGDC)
- Natural England
- Rail Network Operators (e.g. DLR)
- Sport England

### **Non-Statutory Consultees**

The local planning authority will also consult other non-statutory consultees. The London Borough of Tower Hamlets Statement of Community Involvement indicates that these may include the following:



- Local Area Partnership Forums (via Councillors and Chairs of the LAP Steering Groups)
- Tenants and Residents Associations and other area based organisations (see Community Engagement Strategy)
- Local Societies and Amenity Groups and other issues based organisations (as registered with LBTH Development Control Services)
- London Fire and Emergency Planning Authority (LFEPA)
- Police Borough Crime Prevention Design Advisor

Other non-statutory consultees as listed by DCLG guidance may include:

- Conservation Area Advisory Committees
- Health Authorities and Agencies
- Local Authority Environmental Health Officers
- Schools and Colleges (LBTH Education)
- Waste Disposal Authorities
- Water and Sewerage Undertakers

Please note that it will be for the local planning authority to determine the final list of non-statutory consultees and these will be scoped out in working up the outline planning application.

**Appendix 11**  
**Performance Criteria**

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## **Appendix 11**

## **Performance Criteria**

### **Phase 1a**

1. Submission of draft detailed planning application for Phase 1a for client approval five days prior to Submission of Planning
2. Submission of detailed planning application for Phase 1a following submission of the OPA.
3. Securing planning consent for Phase 1a four months following submission of planning.
4. Development Agreement becoming unconditional for Phase 1a 20 days following receipt of Planning Consent.
5. Commencing construction for Phase 1a by 5 months following the receipt of planning Consent
6. Completion of the Affordable Housing for Phase 1a 22 months following start on site
7. Reaching Practical completion for entire Phase 1a 22 months following start on site.
8. Compliance with all required design standards.
9. Compliance with the Residents Charter obligations.
10. Creating a minimum of 20% new and local jobs.
11. Creating a minimum number of training opportunities as determined by the S106 requirements.

### **Phase 1b**

1. Submission of draft reserved matters application for Phase 1b for client 10 days prior to the submission of the reserved matters application.
2. Submission of reserved matters planning application for Phase 1b six months prior to the anticipated PC date for Phase 1A
3. Securing planning consent for Phase 1b four months following the reserved matters application.
4. Development Agreement becoming unconditional for Phase 1b 20 days following consent of the reserved matters.
5. Commencing construction for Phase 1b within ten months of the phase becoming unconditional.
6. Completion of the Affordable Housing for Phase 1b by 24 months after start on site.
7. Reaching Practical completion for entire Phase 1b 32 months after start on site.
8. Compliance with all required design standards.
9. Compliance with the Residents Charter obligations.
10. Creating a minimum of 20% new and local jobs.
11. Creating a minimum number of training opportunities as determined by the S106 requirements.

## **Phase 2**

1. Submission of draft reserved matters application for Phase 2 for client approval 10 days prior to the submission of the reserved matters application.
2. Submission of reserved matters planning application for Phase 2 six months prior to the anticipated PC for Phase 1b.
3. Securing planning consent for Phase 2 four months following the reserved matters application.
4. Development Agreement becoming unconditional for Phase 2 20 days following consent of the reserved matters.
5. Commencing construction for Phase 2 within three months of the phase becoming unconditional or within one month of vacant possession of the site following decant, whichever is the latter.
6. Completion of the Affordable Housing for Phase 2 24 months after start on site.
7. Reaching Practical completion for entire Phase 2 24 months after start on site.
8. Compliance with all required design standards.
9. Compliance with the Residents Charter obligations.
10. Creating a minimum of 20% new and local jobs.
11. Creating a minimum number of training opportunities as determined by the S106 requirements.

## **Phase 3**

1. Submission of draft reserved matters application for Phase 3 for client approval 10 days prior to the submission of the reserved matters application.
2. Submission of reserved matters planning application for Phase 3 six months prior to the anticipated PC for Phase 2.
3. Securing planning consent for Phase 3 four months following the reserved matters application.
4. Development Agreement becoming unconditional for Phase 3 20 days following consent of the reserved matters.
5. Commencing construction for Phase 3 within five months of the phase becoming unconditional or within one month of vacant possession of the site following decant, whichever is the latter.
6. Completion of the Affordable Housing for Phase 3 30 months after start on site.
7. Reaching Practical completion for entire Phase 3 30 months after start on site.
8. Compliance with all required design standards.
9. Compliance with the Residents Charter obligations.
10. Creating a minimum of 20% new and local jobs.



11. Creating a minimum number of training opportunities as determined by the S106 requirements.

#### **Phase 4**

1. Submission of draft reserved matters application for Phase 4 for client approval 10 days prior to the submission of the reserved matters application.
2. Submission of reserved matters planning application for Phase 4 six months prior to the anticipated PC for Phase 3.
3. Securing planning consent for Phase 4 three months following the reserved matters application.
4. Development Agreement becoming unconditional for Phase 4 20 days following consent of the reserved matters.
5. Commencing construction for Phase 4 within four months of the phase becoming unconditional or in accordance with programme outlined in Appendix 7 whichever is the latter.
6. Completion of the Affordable Housing for Phase 4 54 months after start on site
7. Reaching Practical completion for entire Phase 4 54 months after start on site
8. Compliance with all required design standards.
9. Compliance with the Residents Charter obligations.
10. Creating a minimum of 20% new and local jobs.
11. Creating a minimum number of training opportunities as determined by the S106 requirements.

**Appendix 12**  
**Decant Strategy**

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## APPENDIX 12      DECANT STRATEGY

### 1      **Introduction**

- 1.1      The Council and The Developer have agreed to work together to pursue this Decant Strategy, in accordance with clause 17 of the Principal Development Agreement. This Appendix sets out both parties' strategy to obtain vacant possession of the relevant phases within the Development and provide rehousing.
- 1.2      Terms defined in this Appendix shall have the meanings given in the Principal Development Agreement ("the Agreement") unless otherwise specified.

### 2      **Definitions**

**Assured Tenancy Home** an Affordable Rented Unit on the Site let by the RP

**Code** means the Royal Institution of Chartered Surveyors Valuation Standards 6<sup>th</sup> Edition.

**Choice Based Lettings** means the Council's choice based Lettings Policy

**Estate** for the purposes of this Decant Strategy only means the land interests at Robin Hood Gardens, Anderson House, Woolmore Street and Mackrow street within Phases 2 and 3 of the site as detailed on the Appendix 2 hereto.

**Existing Home Owner** means Existing Freeholders and Existing Leaseholder living on the Estate listed in Appendix 2 excluding Secure Tenants

**Existing Unit** means the freehold or leasehold dwellings of Existing Freeholders or Existing Leaseholders that are situated within the Estate at the date of this Agreement.

**Market Value** means the market value of the Existing Units as determined by the Code.

**Existing Home Owner Offer** means an offer of one or more of the options set out in clause 4.6 which the Developer will make to Existing Home Owners,

**Final Demolition Notice** means a notice issued pursuant to Clause 12 of Schedule 5A of the Housing Act 1985.

**Home Loss Payment** means: in relation to Existing Home Owners residing in the property they own, a payment of 10% of the Market Value of their Existing Unit and in relation to Non-Resident Home Owners a payment of 7.5% of the market value of their Existing Unit if they have lived in the premises for 12 months.

**"Like for Like"** means a dwelling with the same number of bedrooms.

**New Unit Option** means the options set out in paragraphs 4.6 of this Appendix

**New Unit** means residential accommodation under the New Unit Option.

**Nominations Rights Deed** means the Nominations Rights Deed set out in Appendix 14 of the Development Agreement.

**Non-Resident Existing Home Owner** means a person holding a freehold or leasehold interest in an Existing Unit on the Estate for a term of 50 or more years which was granted or assigned to him on or before 30 March 2011, but who does not reside in the Existing Unit.

**Off Site Option** means the applicable options for Existing Home Owners set out in 4.6. of this Appendix

**Option to Remain** means the offer which the Developer will make to all existing Secure Tenants to relocate to a new dwelling within the Development. The form of tenancy which will be offered to Secure Tenants taking up the Option to Remain will preserve their existing terms and conditions including the right to buy and existing succession rights, and will incorporate the Standard Amendments including target rent ("The Assured Tenancy") and is set out at appendix 1A hereto.

**"Qualification Criteria"** means that an Existing Home Owner:

- (a) uses the Existing Unit as the only or principal home and they currently reside in it; or
- (b) has owned and occupied the Existing Unit as his only or principle home prior to Final Demolition Notice.

**Secure Tenant** means a tenant on the existing Estate with a secure tenancy in accordance with section 79 of the Housing Act 1985.

**Assured Tenancy Agreement** means the standard amendments to be made to the Assured Tenancy agreement in the Option to Remain agreed by the Developer as part of the tender set out in Appendix 1A hereto

**Target Rents** – means the capped rents set out in Appendix 3 hereto to be charged to the Secure Tenants by the Developer at the date of the first occupation of the new dwelling under the Assured Tenancy

**Other Terms used but not defined above have the same meanings as in the Development Agreement entered into between the Council, the Agency and the Developer**

### 3 **Secure Tenants**

3.1 There are 197 Secure Tenants on the Estate. A further 18 homes are void and 34 homes are owned by Existing Home Owners.

3.2 To date 179 of the Secure Tenants on the Estate have been registered by the Council for rehousing, along with approximately 50 separate waiting list cases there are satellite families that the Council will re-house. These applications will be refreshed by the Council and the remaining non-registered. Secure Tenants will be encouraged to register. The Council's approach is to arrange visits and offer ongoing advice to the Secure Tenants via a dedicated Lettings Officer, to establish and update their rehousing preferences, including whether they wish to take up the guaranteed Option to Remain.



- 3.3 Under Choice Based Lettings Secure Tenants are encouraged to bid for homes matching their entitlement under the Council's lettings policy. Secure Tenant decant cases are within the highest Priority Band [Band 1] and receive increasing priority as the clearance period approaches. Registered waiting list cases meeting the residence criteria can also receive additional priority and are encouraged to bid for properties, with the opportunity (but not the guarantee) of receiving a single offer of suitable accommodation.
- 3.4 When a Secure Tenant bids in accordance with paragraph 3.3 the Council shall nominate the Secure Tenant through the Nominations Agreement in accordance with the Council's Lettings Policy
- 3.5 The Option to Remain will cease to apply where the Secure Tenant accepts a permanent offer of accommodation under the Council's published Lettings Policy whether provided by the Developer or with any RP elsewhere in the Borough of Tower Hamlets, or outside the Borough of Tower Hamlets
- 3.6 The Council has committed to the local community that the principle of a **single direct decant** will apply to this Development, under which the decanting tenant may expect to be able to move directly to the home to which they are to be permanently relocated. A special provision is that the Developer will permit Secure tenants on the Estate who will be exercising the Option to Remain in the first decant phase, that is those decanting directly to a new Assured Tenancy within "Phase 1a or 1b of the Development have a voluntary right to decant for a second time to a new home to be built by the Developer in a later Phase on the Site. The Option to Remain would also be retained by Secure Tenant accepting an offer of alternative decant accommodation with the Council, or with one of the Council's Registered Provider partners, which is mutually agreed to be temporary at the point it is accepted.
- 3.7 The Council needs to be able to maintain a register of Secure Tenants who have exercised a temporary move as set out in 3.6 above as eligible returnees and, as these Secure Tenants will have to be included in future detailed design and other consultation exercises by the Developer, the Developer is required to provide information to the Council's Letting Officer on a weekly basis to permit the maintenance of the register of eligible returnees.
- 3.8 The Developer will undertake to consult and agree with Secure Tenants accepting a new Assured Tenancy on the Site under the Option to Remain, regarding the flexible layout of lounge and kitchen, fit out options offered for standard kitchen and bathroom fittings, carpets and decoration within a pre-agreed range hereto.
- 3.9 The Council will, in the event of not being able to agree voluntary rehousing, (either locally under this Decant Strategy or elsewhere through the Council's Choice Based Lettings arrangements), take the necessary steps to repossess the Council's properties, with Secure Tenants using all legal powers including "Ground 10 and 10A" of the Housing Act 1985 powers and such Court action as is reasonably required. The Council will use reasonable endeavours to take such action in a timely manner on or before 1 April 2012 the Council will service notice on the Secure Tenants and will work collaboratively with the Developer to ensure that the agreed vacant possession date in accordance with the programme for the relevant Phase is achieved subject to the land Acquisition Strategy.

### 3.10 **Priority for Decants**

Priority for the first occupation of the new Assured Tenancy Homes on the Site will be given to existing Secure Tenants on the Estate on the following basis unless the parties otherwise agree:-

- a) First decant priority for available new Affordable Rented Units will be to the Secure Tenants in 1-104 Robin Hood Gardens West,
- b) Second decant priority is to Secure Tenants in Woolmore Street and Anderson House.
- c) Third decant priority will be to other Secure Tenants on the Estate who have an assessed "Urgent Health" status under the Council's Lettings Policy published at the date of this Agreement.
- d) Fourth decant priority will be to Secure Tenants Robin Hood Gardens East numbers 105-214 and Mackrow Walk.

3.11 Properties will be offered in accordance with the Council's published Lettings Policy. Where the current property is larger than the household requires, the Developer will give the Secure Tenant the choice of moving to a smaller Affordable Rented Unit and provide a cash incentive per room lost. This will be at the rate set by the Council. The cost of the cash incentive will be met by the Council..

3.12 **Off-site Secure Tenant decants:** The Developer will use reasonable endeavours to offer opportunities for Secure Tenants to move to other of the Developer properties outside the Borough of Tower Hamlets should they express this desire and then the Option to Remain for a Secure Tenant will cease.

### 3.13 **Compensation for Secure Tenants**

Secure Tenants will be entitled to a statutory home loss payment of £4,700 paid by the Council (subject to review) and to a further one-off payment for disturbance and refitting of domestic equipment, carpets, curtains etc, in accordance with the policy administered by Tower Hamlets Homes on behalf of the Council.

3.14 Secure Tenants decanting for a second time voluntarily between the Developer's new-build phases within the Development will not be entitled to a second home loss payment however, they will be entitled to a second disturbance payment.

3.15 The Developer undertakes to discuss and agree the new Assured Tenancy Agreement with the Secure Tenants and the appointed Independent Tenant Liaison Officer as part of the tenant consultation.

## 4 **The Offer to Existing Home Owners**

4.1 The Council will contact all Existing Home Owners in writing, to offer explanatory visits on the buy-out process, the form of Existing Home Owner Offer, valuations and to promote a readiness to start negotiations in the same priority as in paragraph 3.10 above except urgent health.



- 4.2 The Council will make the Council's Offer to purchase the Existing Unit for Market Value to Existing Home Owners wishing to sell their home and make their own arrangements. The Council's Offer is based on its statutory duty should it be required to rely on the CPO. The Council's Offer ("the **Council's Offer**") will comprise of the following:
- 4.2.1 An offer to purchase the Existing Unit for Market value based on agreement following valuation by the Council and, if required by the Existing Home Owner, they will be able to commission a valuation by an independent valuer, which must be by an accredited surveyor/valuer, and the Council will refund the cost of such valuation to the Existing Leaseholder or Existing Freeholder;
  - 4.2.2 Existing Home Owners will receive a Home Loss Payment,
  - 4.2.3 Reimbursement for reasonable legal and other relocation costs upon production of verifiable receipts.
- 4.3 The Council shall provide written notice to the Developer of any Existing Home Owner who meets the Qualification Criteria and will request that the Developer meets with the Existing Home Owner during purchase negotiations to explain the Developer's Existing Home Owner Offer options. At the point the Existing Home Owner accepts the Council's offer to purchase their home the Council may require the Developer to make the Existing Home Owner an Offer ("the Existing Homeowner Offer") which shall be based on the value of the New Unit (as defined in Clause 4.6) to be purchased by the Existing Home Owner at that date and the equity the Existing Home Owner provides its acquisition asset out in 4.6 below. For the avoidance of any doubt the Existing Home Owner's contribution and the equity in the New Unit to be acquired will be fixed at this point in time. The Developer shall within five Working Days on receipt of such notice write to the Existing Home Owner and provide full details of the Existing Home Owner Offer.
- 4.4 The Developer will provide the Existing Home Owner with a period of 20 working days to provisionally accept or decline the Existing Home Owner Offer. If the Existing Home Owner accepts the Existing Home Owner Offer this will be subject to entering into satisfactory legal documentation with the Developer, which will include that the monies provided when the Council's Offer is exercised shall be paid directly to the Developer in satisfaction of the Existing Home Owner Offer made by the Developer. Where an Existing Home Owner accepts the Existing Home Owner Offer as set out in this Clause 4 the Developer will enter into an agreement for lease with the Existing Home Owner for the purchase of the New Unit or off Site property and require that the portion of the agreed purchase sum to be paid by the Existing Leaseholder or the Existing Freeholder (ie the equity stake which the Existing Home Owner is investing) is paid into escrow. The Existing Home Owner will be entitled to receive the interest accrued on this sum at the point the New Unit is acquired and the remaining monies held pass out of escrow to the Developer.
- 4.5 The Council's Offer to Existing Home Owner will apply to Existing Home Owners who meet the Qualification Criteria and who have lived in their property as their principal home for 12 months prior to the declaration of decant, ie they had to be resident at 9th Feb 2010 prior to

acquisition under the Scheme, and it will include the purchase of a replacement home on the same number of bedrooms.

4.6 The Developer will make available the following Existing Home Owner New Unit Options:

4.6.1 **"Homeswap Offer":** Existing Home Owners will sell their Existing Unit to the Council at Market Value but less any outstanding sums due to the Council and purchase from the Developer a new Like for Like new Housing Unit (New Unit) within the Development or another new property on a development belonging to the Developer. The purchase price for the New Unit will be deemed to be the Market Value for the New Unit. The Premium for the New Unit will be the Market Value of the Existing Unit plus the Home Loss payment ('the Premium'). The Existing Home Owner will use all its receipt from the sale of its Existing Unit (including having to take out an equivalent mortgage as was outstanding on the sale of the Existing Unit) plus any Home Loss payment to purchase an equivalent equity stake (in value terms) in the New Unit, provided that the value of the Existing Unit plus Home Loss payment is at least 25% of the New Unit Market Value. The difference between the Premium and the Market Value will be secured as a legal charge ('the Charge Amount') on the New Unit and this charge will be recorded as a first charge on the new unit unless there is a mortgagee in which case it will be registered as a second charge. Subject to clause 4.6.1.2 the Charge Amount will be repayable by the Existing Owner to the Developer if the New Unit is sold within 7 years of being first acquired. If the Existing Home Owner remains as registered proprietor and resides in the New Unit for a period of 7 years from the date of acquisition the Developer will agree to release the Charge Amount and cancel the first or second legal charge (as applicable) at no additional cost provided that this will not apply if the Existing Home Owner has either:

- (a) materially breached the terms of their lease of the New Unit ; or
- (b) is in arrears of any service charge or rent payments under the terms of the lease of the New Unit.,

then if (a) or (b) above apply the Existing Home Owner will have to remedy the breach in (a) or (b) above prior to any release of the Charge Amount and the charge. If the Existing Home Owner disposes of the New Unit (except for disposition on death) within the period of 7 years from the date it is first acquired, the Charge Amount that will have to be repaid to the Developer on the sale of the New Unit within the 7 year period if 4.6.21 (a) or (b) apply.

4.6.1.2 Save in the case for 4.6.1 (a) or (b) above if there is a sale of the New unit within the 7 year period from the first acquisition then the Charge Amount referred to in clause 4.6.1 above will be reduced over the 7 year period on a sliding scale. Release of Charge Amount in the legal charge would be made on payment of the net sum after reducing the Charge Amount by the percentage below in respect of each year between acquisition and sale on the following sliding scale;

Year 1	100%
Year 2	90%
Year 3	75%
Year 4	50%



Year 5	30%
Year 6	20%
Year 7	10%

4.6.1.3 In the event the New Unit is located within the Development and the New Unit is sold by the Existing Home Owner within the 7 year period, the Developer will be obliged to pay 60% of any proceeds received to the Council.

#### Worked Example

Mr A, Existing Home Owner sells his 1 bedroom flat to the Council for £100,000 and receives a Home Loss Payment of £10,000. Mr A redeems his mortgage of £10,000. Mr A then agrees to buy a new one bedroom flat from Developer which has a market value of £220,000 and takes out a new £10,000 mortgage and uses the remaining £100,000 he received to acquire a 50% equity stake in the New Unit. The Developer will also retain a 50% Equity Stake in the New Unit... If Mr A remains in the New Unit for at least 7 years, then the Developer will remove the legal charge on the property for nil cost and Mr A will retain the value in the entire property. However, if Mr A sells the New Unit after 5 years then he will have to repay the Developer the proportion of the difference between the premium and the purchase price (Charge Amount) reduced by the sliding scale referred to above (if applicable) the clawback of the sale proceeds.

### 4.6.2 Shared Ownership Offer

Existing Home Owner will sell their Existing Unit to the Council at Market Value but less any outstanding sums due to the Council and purchase from the Developer a Like for Like New Unit either within the Development or another new property on a development belonging to the Developer. The purchase price for the new property will be the Market Value for the New Unit. If the Existing Home Owner is not able to secure a mortgage, or have sufficient funds to purchase a 25% Equity Stake on the New Unit then it will use all its receipt from the sale of the Existing Unit plus any Home Loss payment to purchase an equity stake in the new dwelling and pay rent at 2.5% p.a. on the equity retained by the Developer. Whenever the new dwelling is sold the Developer shall be entitled to receive the Market Value of their equity stake in the New Unit at the time of sale.

#### Worked Example

Mr A, Existing Home Owner sells his 2 bedroom flat to the the Developer for £200,000 and receives a Home Loss Payment of £20,000. Mr A redeems his mortgage of £150,000. Mr A then agrees to buy a new two bedroom flat from the Developer which has a market value of £280,000. Mr A is not able to take out a new mortgage and so uses the remaining £70,000 he received (after redeeming his mortgage) to acquire a 25% equity stake in the new property. The Developer will then also charge him rent of £5,250 p.a. based on 2.5% of £210,000. (Developer's Retained Equity)

After 5 years, Mr A sells his flat for £400,000. He has to pay the Developer 75% (being the Developer's Retained Equity Stake) of the value of the flat at the date of

sale ie £300,000.

#### 4.6.3. Shared Equity Offer

Where Existing Homeowners are unable to obtain a mortgage on the New Unit the equity of the existing unit plus the Home Loss payment would be used to purchase an equity stake in the New Unit within the Site. The full purchase price of the New Unit would be the Market Value. The Developer would retain the unsold equity. Rent would not be payable on the Developers equity stake. Whenever the New Unit is sold, the leaseholder will have to repay to the Developer the value of the Developers equity stake. The Developer will be obliged to pay 60% of any proceeds received, to the Council.

4.7 The Developer will consult and agree with Existing Home Owners accepting a New Unit within the Site, under the Existing Home Owner Offer, regarding options for standard kitchen and bathroom fittings, carpets and decoration within a pre-agreed range.

4.8 The Developer will provide up to 34 New Units for Existing Home Owners within the Development, including the options in paragraphs 4.6.1 and 4.6.2 above, to enable the direct decant of all Existing Home Owners in the three defined decant phases, should all Existing Home Owners decide to take up one of the options in 4.6 above.

4.9 The Developer will ensure that a minimum of 20 New Units are available on-Site under the Offer for Existing Home Owners for the first decant phase (decanting to new-build Phase 1a), with the following bedroom-size requirements

1 x 1 bed unit

9 x 2 bed units

4 x 3 bed units

5 X 4 bed units

4.10 The Developer will ensure that a minimum of 14 check homes are available on-Site under the Offer for Existing Home Owners for the second decant phase Phase 1b with the following bed-size requirements.

4 X 1 bed units

5 X 2 bed units

4 X 3 bed units

2 X 4 bed units

4.11 Where Existing Home Owners opt to make their own arrangements, or to take-up an Off-Site option, the Developer will change those Shared Equity Units to Shared Ownership Units.

- 4.12 If for any unforeseen reason beyond the control of the Council and the Developer it becomes necessary to temporarily decant the Existing Home Owners accepting the Developer's Existing Home Owner Offer for either the New Unit or off site options, pending the availability of their permanent replacement home, the Developer will work jointly with the Council to find suitable properties to offer for temporary accommodation. In these circumstances the Developer will pay the cost of temporary accommodation having regard to the specific circumstances of the Existing Home Owner.
- 4.13 The Existing Home Owner will be allowed to withdraw from the Home Owner offer up to 3 months prior to taking possession of the New Unit. In these circumstances the Existing Home Owner would be refunded their monies held in escrow but the interest accrued would be forfeited to off set the cost of temporary accommodation but only if the Existing Home Owner gives up possession.



## Appendix 1A

### Assured Tenancy Agreement

#### ASSURED TENANCY AGREEMENT



This is an assured non shorthold tenancy within the meaning of the Housing Act 1988. An assured non shorthold tenancy means there is no automatic right for the landlord to repossess the property. They must show the court that they have a good reason for wanting possession, using one of the grounds for possession in the legislation.

The tenancy conditions are set out in this agreement.

<b>The agreement is between</b> (‘Swan’ ‘we’ or ‘us’)	<b>Swan Housing Association Ltd, Pilgrim House,</b> <b>High Street, Billericay, Essex, CM12 9XY</b>		
<b>And your full name(s)</b> (you, the tenant or tenants)			
<b>The agreement relates to</b> (the premises)			
<b>Maximum number of persons allowed to live in the premises</b>		<b>Description of the premises</b>	
<b>Your tenancy starts on</b>			

#### Please keep this document safe

This document is important. It sets out your rights and responsibilities. You should read it and make sure you understand it before signing it. By signing it you are saying that you understand it and agree to keep to the conditions set out in it.

Please ask before you sign if you are not sure what any of the conditions in this agreement means.

By signing this agreement you are entering into legally binding contract with Swan Housing Association. This means that you must keep to the conditions in this tenancy agreement otherwise it may end.

- I confirm that the information I/we gave in my/our housing application was and is still true.
- I confirm my consent for the use of information held on me to be used as stated in this agreement.
- I confirm I have read, understood and agree to the conditions of this agreement.

<b>Your signature(s)</b>	Lead tenant		Joint tenant	
<b>Date signed</b>				
<b>Our signature</b>			<b>Print name and position within</b>	
			<b>Swan in box below</b>	
<b>Date signed</b>				

<p>If you wish to serve a notice on Swan Housing Association as set out in Section 48 of the Landlord and Tenant Act 1987, please deliver to:</p>	<p><b>Swan Housing Association Ltd,</b>  <b>Pilgrim House, High Street,</b>  <b>Billericay, Essex. CM12 9XY</b></p>
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<b>Payments for the premises</b>	
The weekly payments for the premises at the date of this agreement shall be:	
<b>Basic rent</b>	£
<b>Eligible (for housing benefit) service charges (if applicable)</b>	£
<b>Ineligible (for housing benefit) service charges (if applicable)</b>	£
<b>Support charges (if applicable)</b>	£
<b>Other charges</b>	£
<b>Total charges</b>	£

<b>Services provided</b>					
<p>We will provide you with the following services, for which you must pay the service charge shown.</p> <p>If your heating and hot water comes from a system that heats all the building your premises is in, you will pay for your heating and hot water as a service charge.</p>					
<b>Eligible</b>	<b>Service provided</b>	<b>Weekly</b>	<b>Eligible</b>	<b>Service provided</b>	<b>Weekly</b>

		charge			charge

Other household occupants		
These are the people who will live in the premises from the start of this agreement with the tenant(s)		
Full name	Date of birth	Relationship to tenant



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Guidance notes	
These notes explain some of the terms used in this agreement	
<b>An assured tenancy</b>	This is a contractual periodic assured non-shorthold tenancy and includes a number of rights and responsibilities such as the right to transfer or exchange, the right to take in lodgers or sub-let, the right to carry out improvements as well as succession rights.

<b>The landlord</b>	Swan Housing Association, our employees, servants or agents. Where we use the terms 'we' or 'us' this also refers to Swan Housing Association.
<b>The tenant</b>	In the case of joint tenants the term 'the tenant' or 'you' applies to each person named on the agreement. Each tenant individually has the full responsibilities and rights set out in this agreement.
<b>The premises</b>	The premises or property which this agreement relates to, including any fixtures, fittings, gardens, paths, fences, garages and outbuildings that we own and you use as your home.
<b>Supported Housing</b>	Supported housing is for people who are disabled or vulnerable and need some support to live independently. Some tenancy conditions are not applicable to those living in supported housing.
<b>Landlord's fixtures and fittings</b>	All appliances in the premises supplied by Swan including installations for supplying or using gas, electricity and water.
<b>The neighbourhood</b>	Includes all roads, paths, walkways, public land, shops and play areas within the locality of the premises, including the boundary of the estate in which the premises located.
<b>Communal areas</b>	These are areas that are shared by two or more households, this includes hallways, stairwells, lifts and landings, parking and drying areas, corridors, grassed areas, paths and roads.
<b>Neighbours</b>	This includes everyone living in the local area or neighbourhood.
<b>Rent</b>	Where we use the term "rent" in this agreement, it refers to the total amount due and includes rent, service charges, support charges and water and heating charges (where they apply) or any other charges which you must pay as rent under this agreement.
<b>Service charges</b>	The service charge will be based on either our reasonable costs over the previous year or our estimate of costs for the current or next year. Any difference in actual cost will be taken into account when the charge is next set. The cost of these services may either be eligible for the payment of housing benefit or ineligible and shall be payable by you at the same time and in the same manner as if it were rent.
<b>Succession</b>	Succession is when a relative or partner takes over a tenancy following the death of the tenant. Succession can normally only happen to a tenancy once, though those previously holding a secure tenancy as a resident of Blackwall Reach will be entitled to 2 successions.
<b>Security of tenure</b>	As long as the premises are your only or main home and you keep to the terms of this agreement you will have the right to live there without interruption or interference from us.
<b>Assign or exchange</b>	This is when you legally transfer your tenancy to someone else and is usually only permitted when you swap homes with someone (mutual exchange), under the terms of a court order or with the agreement of Swan.
<b>Pet(s)</b>	This relates to any animal, bird, fish, reptile or insect kept in the premises.
<b>Lodger</b>	This is when you let a room to someone but they share other facilities such as the bathroom or kitchen and you still have access to the room.
<b>Sub-letting</b>	This is when someone lives in their own self-contained part of the premises and can stop you going into that part.



## **Section 1**

### **Your tenancy with Swan Housing Association**

**Your tenancy is a legally binding contract, it sets out your rights and responsibilities as the tenant and our rights and responsibilities as the landlord. We will require a recent photograph of all tenants at the start of their tenancy along with official identification.**

<b>1.1</b>	<b>About this tenancy</b>
1.1.1	This is an assured non-shorthold tenancy under the Housing Act 1988. Your and our rights and responsibilities under this agreement are set out in Sections 1, 2, 3 and 4. If you are joint tenants, each tenant is responsible for meeting the conditions of the agreement.
1.1.2	If you were living in another Swan home before signing this agreement, we will agree the date that your tenancy on the other premises will be ended (been surrendered) and you are required to hand in the keys to your former home by 12 noon on the next Monday following the Sunday that the tenancy ends.
1.1.3	As a former secure tenant of Blackwall Reach you have protected rights. This includes the preserved right to buy your home under the Housing Act 1985 and the right to manage.
<b>1.2</b>	<b>Changing or ending your tenancy</b>

1.2.1	Before we make any amendments or changes to this agreement we will consult you of the proposed changes and consider your views. We will make any changes within the requirements of our regulators and with your agreement.
1.2.2	<p>You (or if this is a joint tenancy, any one of you) can end this tenancy by giving us at least four weeks' notice in writing. This notice must end on a Sunday and at the end of the notice you must give us vacant possession and return the keys by 12 noon on the following Monday. The premises must be empty of all your furniture, belongings and rubbish and our fixtures and fittings should be left in good condition.</p> <p>If you do not give us proper notice you will have to pay the rent and other charges until we take possession of the premises. This is likely to be at least four weeks after we discover you have gone, because we will usually need to serve a notice. You will be liable for any costs incurred by us in seeking to terminate this agreement and/or to formally seek possession of the premises.</p>
1.2.3	<p>Once you have given us notice, you must:</p> <ul style="list-style-type: none"> <li>• Allow us to see inside the premises and show new tenants around the premises.</li> <li>• Give us your new address.</li> <li>• Pay rent and other charges due until the date the tenancy ends.</li> </ul>
1.2.4	We will not accept responsibility for any belongings you leave in the premises after your tenancy has ended. If you leave anything in the premises it will be deemed abandoned by you and we will deal with it as we see fit which may include selling or destroying the item(s), after we have attempted to give you notice. You will be liable for any costs we incur in storing/disposing/selling or otherwise dealing with items you leave in the premises at the end of the tenancy. The premises should be left in the same condition as it was at the start of this agreement or we can charge you for bringing the premises back to the condition it was when you moved in.
1.2.5	<p>Swan can only end the assured tenancy by a court order for possession on one of the grounds listed in Schedule 2 of the Housing Act 1988 (as amended) as set out at the back of this agreement, or as amended by statute from time to time.</p> <p>If you stop using the premises as your only or principal home then the tenancy will lose security of tenure and in such case we can terminate the tenancy agreement by serving upon you a valid 4 week Notice to Quit. Such notice will be validly served if served in accordance with clause 1.3.1 below.</p>
1.2.6	

1.2.7	
<b>1.3</b>	<b>Notices</b>
1.3.1	<p>Any notices relating to this tenancy will be validly served by us on you if we do it in one or more of the following ways:</p> <ul style="list-style-type: none"> <li>• Hand deliver it to you.</li> <li>• Post it by mail to the premises.</li> <li>• Place it through the letterbox of the premises.</li> <li>• Send it by post to your last known address.</li> <li>• Fix it to the front door or other prominent position of the premises.</li> </ul> <p>If we need to serve any notice on joint tenants, the notice will be considered to have been properly served on all joint tenants if we serve it on one or any of them.</p>
1.3.2	
<b>1.4</b>	<b>Our right to enter the premises</b>



1.4.1	<p>We may enter the premises at any reasonable time after giving you 24 hours' notice in writing, for the purpose of:</p> <ul style="list-style-type: none"> <li>• Inspecting the condition of the premises.</li> <li>• To carry out any work that may be necessary to the premises or adjoining buildings.</li> <li>• To inspect and maintain any gas and electrical installations.</li> <li>• To carry out annual servicing of gas appliances.</li> </ul> <p>If there is an emergency (for example, a water or gas leak or a fault with the electrical supply to the premises) and we need to enter the premises immediately to make it safe or carry out any repairs that are needed, we may take steps to gain entry without giving you notice. If it was your fault that we have to force entry we may ask you to pay for any damage done.</p>
1.4.2	
<b>Section 2</b> <b>Your rights as a tenant</b>	
<p><b>As an assured tenant you have the rights set out in this section. These rights mean that you have the right to remain in the premises unless Swan can prove to the court that there are grounds for possession as set out at Schedule 2 to the Housing Act 1988 (see page 14).</b></p>	
<b>2.1</b>	<b>Your right to live in the premises</b>
2.1.1	<p>We will not interrupt or interfere with your right to peacefully live in the premises, except when:</p> <ul style="list-style-type: none"> <li>• We need access to inspect the condition of the premises or to carry out work to the premises or any neighbouring premises.</li> <li>• A court has ended the tenancy and given us possession.</li> </ul>
<b>2.2</b>	<b>Right to assign or exchange</b>
2.2.1	<p>As a full assured tenant you will have the right to assign this tenancy by court order or to another tenant by way of an exchange provided that all of the following conditions are complied with:</p> <ul style="list-style-type: none"> <li>• Every tenant taking part in the exchange is a tenant of a Housing Association or a Local Authority or a New Town or a Housing Trust.</li> <li>• Where required under their tenancy agreement every tenant has the written permission of their landlord to the assignment of their tenancy to you or to another tenant satisfying the conditions in the above clause.</li> <li>• You have obtained our prior written permission to the exchange (such permission will not be unreasonably withheld).</li> <li>• Any reasonable conditions attached to such permission relating to the payment of outstanding rent, remedying any breach or the performing of any obligation of the tenancy have been complied with.</li> <li>• There is no outstanding notice or order for possession or other legal action outstanding (such as an injunction) against you or the proposed exchange tenant.</li> </ul>
<b>2.3</b>	<b>Right to succession</b>

2.3.1	<p>On your death the tenancy will:</p> <ul style="list-style-type: none"> <li>• Pass automatically to any surviving joint tenant.</li> <li>• If you are a sole tenant the tenancy will pass automatically to your spouse or civil partner under the provisions of Section 17 of the Housing Act 1988 provided that he/she occupies the premises as his/her only or principal home at the time of your death.</li> </ul>
2.3.2	<p>If on your death there is no person entitled to automatically succeed to the tenancy as set out in clause 2.3.1 the tenancy may pass to the person entitled under your Will or intestacy and we are entitled to recover possession of the premises by ending the tenancy with a Notice to Quit or obtaining an order from the Court under Ground 7 Schedule 2 of the Housing Act 1988 if the person is not entitled to succeed.</p>
2.3.3	<p>We however agree that if on your death no person is entitled to succeed under clause 2.3.1 another member of your family (as defined in Section 113 Housing Act 1985) may remain in the premises provided:</p> <ul style="list-style-type: none"> <li>• they occupied and have since your death continued to occupy the premises as their only or principal home <u>and</u></li> <li>• the premises have been their principal home continuously throughout the period of 12 months ending with your death <u>and</u></li> <li>• they notify us in writing of their claim to succeed within 1 month of your death (at its discretion we may allow a longer period) <u>and</u></li> <li>• we determine that the premises are suitable for occupation by the intending successor,( for example in terms of being under or over occupied or if the premises are specially adapted for example, for disabled access or if the premises is part of a scheme for particular tenants, for example those in receipt of support) <u>and</u></li> <li>• they agree to clear any arrears of rent and/or remedy any other breach under the tenancy</li> </ul> <p>If the family member qualifies under all of the conditions above:</p> <ul style="list-style-type: none"> <li>• and the tenancy vests in that qualifying family member under your Will or intestacy we will not seek possession of the premises under Ground 7, but</li> <li>• if the tenancy has not vested in that qualifying family member under your Will or intestacy we will bring the tenancy to an end by Notice to Quit or by Court Order under Ground 7 of Schedule 2 of the Housing Act 1988 (as appropriate) and will grant the qualifying family member a new tenancy of the premises.</li> </ul> <p>If the family member fulfils all of the conditions except that the premises are not suitable (e.g. because there would be under or over occupation, they have been adapted or are part of a scheme) then we may end the tenancy of the premises (by Notice to Quit or Ground 7 as appropriate), but may offer the family member a tenancy of another property.</p>
2.3.4	<p>If there is more than one family member who would qualify under clause 2.3.4 they should agree which one of them will claim the benefit. If any dispute between qualifying members is not resolved within a reasonable time we may decide (in our absolute discretion) which claim to accept.</p> <p>Subject to the above if any of the conditions set out in clauses 2.3.1 or 2.3.3 are not fulfilled we will end the tenancy by Notice to Quit or Court Order under Ground 7 (as appropriate) and recover possession of the premises.</p>

2.3.5	
2.3.6	
2.3.7	
<b>2.4</b>	<b>Right to take in lodgers or sublet part of the premises</b>
2.4.1	As a full assured tenant you may take in lodgers or sublet part of the premises with our written permission as long as the premises do not become overcrowded. You must not sublet the whole of the premises or you will lose your security of tenure and we will terminate the tenancy by Notice to Quit.
<b>2.5</b>	<b>Right to consultation and information</b>
2.5.1	We will consult you about anything we want to do that will substantially change the way we manage or maintain the premises and will take your views into consideration.
2.5.2	<p>You have the right to receive information from us on:</p> <ul style="list-style-type: none"> <li>• The terms of this tenancy agreement.</li> <li>• The repairs we are responsible for.</li> <li>• Our policy for consulting tenants, providing homes, transfers, exchanges and anti-social behaviour.</li> <li>• Our performance as a landlord.</li> </ul>
<b>2.6</b>	<b>Right to repair and carry out improvements</b>
2.6.1	<p>In certain circumstances you have the right to carry out repairs that could affect your health, safety or security, that we are responsible for and we will refund you reasonable costs. These circumstances include when:</p> <ul style="list-style-type: none"> <li>• You have written to tell us about the work that needs doing.</li> <li>• We have not carried out the work within our published timescales.</li> <li>• There is no good reason for us not doing the work.</li> </ul>

2.6.2	<p>You may carry out alterations or improvements to the premises only with our written permission. We will not unreasonably refuse your request but you may also need other permissions (for example planning permission and/or building regulations approval). Any alterations or improvements must be done to our satisfaction and will normally become our property when the tenancy ends. Alternatively we may ask you to remove at your own expense, any structures you have added and make good to the building if no such permission has been sought, if such structures are unsafe, or are a nuisance to neighbours or if they breach planning or building regulation consent.</p> <p>You may apply for compensation for certain kinds of improvements at the end of your tenancy. To do this you must have obtained our permission in writing before carrying out the improvement. We will tell you if the improvement would qualify for compensation when we grant permission.</p>
2.6.3	
2.7	<b>The Right to Acquire and the Right to Buy</b>
2.7.1	<p>As an assured tenant you will have the right to acquire the premises in line with section 16 of the Housing Act 1996. Certain properties that have been built or bought for certain types of households are excluded from the right to acquire.</p> <p>You also have the preserved Right to Buy the premises under the Housing Act 1985 and the Housing (Preservation of Right to Buy) Regulations 1993 (as amended). You have this right as a previous secure tenant living in Blackwall Reach.</p>
2.7.2	
<b>Section 3</b> <b>Your responsibilities as a tenant</b>	
<p><b>We expect our tenants to act in a responsible manner at all times and to have respect for the premises, the neighbourhood and the neighbours. These responsibilities apply to you, members of your household and any other person living in or visiting the premises, including children.</b></p> <p><b>You must adhere to these responsibilities as an obligation of your tenancy as failure to do so may result in this agreement being terminated and in Swan seeking possession of the premises.</b></p>	
3.1	<b>Rent and other charges</b>



3.1.1	<p>You must pay all rent, service charges and support charges in advance. Payments are due weekly on a Monday. You may make payments per calendar month or four weekly in advance of them becoming due.</p> <p>We may increase the rent once a year in accordance with sections 13 and 14 of the Housing Act 1988, by giving you at least four weeks notice in writing of the increase, save that if we decide to increase the rent in the first year of the tenancy we will increase the rent with effect from the first Monday in October upon giving you reasonable notice in writing. Any increase will start from the day we tell you in our notice unless you ask a Rent Assessment Committee to set a new rent for you.</p>
3.1.2	<p>We may add, delete or amend your service charges following consultation with you. We can increase your service charge once every 52 weeks and before we would make an increase we will consult you and organisations which represent your interests for your views. We may increase or decrease the service charge by giving you at least one month's notice of the change in writing at any time. You have the right to challenge the amount of payment by bringing it before the Leasehold Valuation Tribunal.</p> <p>If at the end of an accounting period, or other time, it appears that the amount that you have paid by way of a service charge is insufficient to cover the costs for the year, we will increase the service charge in the following accounting period, unless in our view this would make the charges unreasonable.</p>
3.1.3	<p>Similarly, at the end of an accounting period, or other time, if it appears you have paid more by way of a service charge than is necessary to cover the expected or actual costs for the year, we may set up a sinking fund to cover the cost of service charges in the future, where this would result in an unusually high service charge cost to you. The cost of services will be divided between all the properties concerned in accordance with the tenancy in place.</p> <p>We may change your service charge from a variable service charge to a fixed service charge or from a fixed charge to a variable service charge by giving you four weeks notice in writing. If we charge a fixed service charge, you will pay a fixed amount (decided by us acting reasonably) for the services that we provide and we can increase the service charge by giving you four weeks notice in writing.</p>
3.1.4	<p>You must pay all charges associated with the premises, including water, electricity, gas and other services, whether metered or billed and pay any Council Tax due on the premises.</p> <p>If you leave your present home to become our tenant in another home we will be entitled to use all rent payments made on your new home to pay off any arrears on your old home.</p>
3.1.5	
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3.1.8	
<b>3.2</b>	<b>Housing Benefit</b>
3.2.1	You agree that any housing benefit payments you are entitled to will be paid straight to us from the local authority that pays it, whether or not you are behind with your rent.
3.2.2	If you have a change of circumstance which means that your entitlement to housing benefit changes, you must tell us and the local authority immediately. If you fail to notify the local authority of a change they may claim back from us any housing benefit they have overpaid on your behalf. Any such monies will be shown as arrears on your rent account and you must clear such rent arrears.
3.2.3	If we have to pay back (repay) any housing benefit (or any similar benefit) we are paid for rent, your rent account will be in arrears and you must clear these arrears on the next rent payment day after we tell you about the repayment.
3.2.4	You are responsible for ensuring all of the rent and other charges for the premises are paid and you must pay any costs which are ineligible for housing benefit. These costs will include, but are not limited to those costs listed at the front of this agreement, and include water and sewage charges, heating and hot water and garage rental and any ineligible service charge. The costs in respect of which housing benefit may be payable may vary from time to time and may vary depending upon the housing benefit regulations at the time, as determined by the local authority with responsibility for the payment and administration.
<b>3.3</b>	<b>Supporting People (where applicable)</b>
3.3.1	If this tenancy has been granted so that you can receive support services, the support services we provide and your obligations are set out in the support agreement. The support we provide in these circumstances are an essential part of your tenancy. If you withdraw from support or do not require the support agreed we will review your tenancy and may take steps to end this agreement by issuing a notice seeking possession.
3.3.2	Where we provide support services (indicated by a charge included in the total weekly payments) we may vary the charges for support services in the same way as we may vary your service charges.
<b>3.4</b>	<b>Anti-social behaviour, nuisance and harassment</b>
3.4.1	You are responsible for the behaviour of those living in or visiting the premises (including children). We will investigate any complaints of nuisance or harassment and will take appropriate action if you, your

3.4.2	<p>household (including children), your pets or your visitors behave anti-socially. This includes but is not limited to, causing damage to the premises or behaviour that is likely to injure, or intimidate, or cause alarm or distress.</p> <p>We may take legal action to evict you, if you or any person living in or visiting the premises and/or shared areas behave in any of the following ways:</p> <ul style="list-style-type: none"> <li>• Do anything that causes or is likely to cause nuisance or annoyance to a person residing, working in or visiting the local area.</li> <li>• Do anything that interferes with the peace, comfort, or quiet enjoyment of other people living in the neighbourhood. This can include, but is not limited to, loud music, noisy parties, dogs barking, DIY, shouting or banging doors.</li> <li>• Harass, or threaten to harass, use, or threaten to use violence or intimidate a person in the neighbourhood because of their race, colour, gender, ethnic origin, nationality, age, sexuality, religion, mental illness, disability or for any other reason.</li> <li>• Use the premises for any criminal, immoral or illegal purpose. This includes, but is not limited to, being involved in the supply of any illegal or controlled drug or storing or handling stolen goods,</li> <li>• Harass, or threaten to harass, use, or threaten to use violence or intimidate our employees or representatives.</li> <li>• Use, or threaten to use violence towards any person living in or visiting the premises.</li> <li>• Write or publish threatening, abusive or insulting articles, leaflets, letters or graffiti.</li> </ul>
<b>3.5</b>	<b>Pets</b>
3.5.1	<p>Other than pets kept in a small cage or small aquarium or vivarium, you must not keep any pet or pets at the premises without our written permission. Any such permission may include conditions. We can withdraw our permission (by giving you reasonable notice) if we think that any pet you have is causing a nuisance or damage to the premises or is a public health risk, or is being ill-treated.</p> <p>We will not give permission for you to keep certain animals or pets that include, but are not limited to :</p> <ul style="list-style-type: none"> <li>• Dangerous dogs, as defined by legalisation.</li> <li>• Livestock or farm animals, including poultry.</li> <li>• Any wild animal.</li> <li>• Pets for commercial breeding purposes.</li> <li>• Pets in numbers unsuitable for your home (we will provide you with further advice depending on the pets and the premises).</li> </ul> <p>You are responsible for the behaviour of any pet kept at your premises. You must make sure that pets are kept under control and do not cause a nuisance or annoyance to neighbours or anyone in the area around the premises. You must not let any pet foul any communal or public area and are responsible for the cleaning and removal of any such fouling.</p> <p>3.5.3</p>

3.6	<b>Repairs</b>
3.6.1	<p>You must tell us immediately about any repairs which are needed that we may be responsible for. If you are elderly or disabled or living in supported housing we may carry out some of these repairs for you at a reduced or no charge. Full details of your responsibilities can be found in your Tenants' Handbook.</p>
3.6.2	<p>Apart from the parts of the premises that we are required to repair (see clauses 4.1 and 4.2) you must keep the premises in good repair and are responsible for carrying out the minor repairs, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Repairing any equipment, fixtures or fittings you have fitted.</li> <li>• Ensuring that your own fittings (such as cookers) are installed correctly and meet safety standards.</li> <li>• Replacing glass (including all cracked and broken glass resulting from damage caused by you).</li> <li>• Replacing lost keys and changing locks as a result.</li> <li>• Repairing any damage caused by the police forcing entry to the premises for any reason.</li> <li>• Checking and changing the battery in a smoke detector.</li> <li>• Unblocking a kitchen sink, wash basin or bath or replacing sink or bath plugs, and toilet-roll holders.</li> <li>• Supplying and replacing fuses, light bulbs, electric points, fluorescent tubes and starters.</li> <li>• Repairing or replacing rotary clothes dryers (except where provided in shared areas).</li> <li>• Shaving off the bottom of a door to fit over carpets.</li> <li>• Replacing a broken toilet seat or tightening a loose toilet seat.</li> <li>• Replacing a shower curtain.</li> <li>• Repairing minor cracks in the plaster.</li> <li>• Bleeding radiators and resetting heating time clocks or programmers.</li> <li>• Removing insects or pests such as ants or mice.</li> </ul> <p>In exceptional circumstances where there is a threat to your safety or to the security of the premises, or you have special requirements, we may carry out the repair for which you are responsible and charge you the cost of doing so.</p> <p>We are not responsible for any repairs or replacements needed to the premises if they are the result of damage or neglect by you, members of your household or visitors to the premises. If we need to carry out repairs because of this, you will be liable for any costs that may apply.</p> <p>You must not install or use oil, butane, gas or paraffin heaters without outside flues. You must not alter or add to any wire or pipe in the premises or install any new appliances without our written permission. All works carried out must be carried out by a suitable person and all relevant certificates must be provided.</p>
3.6.3	
3.6.4	



3.6.5	
<b>3.7</b>	<b>Decorations and cleanliness</b>
3.7.1	<p>You are responsible for keeping the inside of the premises clean and in good condition and well decorated. If you are elderly or disabled or living in supported housing we may be able to help you with internal decorating.</p>
3.7.2	<p>You must dispose of all household rubbish in a safe and proper manner, including recycling. You must not dump rubbish, household items, white goods or any other items on the shared parts, grassed areas, car parks or any other public area. You must make proper arrangements to get rid of items including unwanted furniture, and for special medical waste such as needles and syringes.</p>
<b>3.8</b>	<b>Improvements</b>
3.8.1	<p>You must not make any improvements, alterations or additions to the premises without first getting our permission in writing and any additional permissions which may be required such as Planning permission or Building Regulations consent. You must keep to any reasonable conditions we may make in giving you permission. Improvements, alterations or additions include (but are not limited to):</p>

<p>3.8.2</p> <p>3.8.3</p>	<ul style="list-style-type: none"> <li>• Installing new kitchen or bathroom</li> <li>• Building and/or electrical works</li> <li>• Putting up any structure in the garden of the premises, including fencing, sheds or greenhouses.</li> <li>• Decorating the exterior of the premises.</li> <li>• Erecting satellite dishes or TV or radio aerials or CCTV cameras.</li> <li>• Constructing hardstandings or driveways.</li> </ul> <p>You must not install central heating or a gas fire.</p> <p>You are responsible for repairing and maintaining all improvements and fixtures and fittings you have installed in the premises. If you do not get our permission, do the work badly or do not keep to our conditions, we can charge you the cost of us putting the premises right.</p>
<p><b>3.9</b></p>	<p><b>Gardens and outbuildings</b></p>
<p>3.9.1</p> <p>3.9.2</p>	<p>You are responsible for making sure that the premises gardens, including any grass, plants, hedges, trees, ivy, paths and driveways are well maintained, tidy and free from rubbish and weeds. You are also responsible for ensuring fences and gates, garages and other outbuildings at the premises are well maintained. You, members of your household or visitors to the premises must not use the garden to store vehicles that are not roadworthy or vehicle parts (including wheels and tyres).</p> <p>You must not plant any fast-growing species of tree, or allow any hedge to grow more than 1.8 metres (6') high, or to overhang pavements, walkways or neighbouring gardens. You must not plant any tree within 4 metres of a building or 1 metre of a wall, unless it is in a tub or planter. You must not remove any trees or boundary hedges or fencing without our written permission.</p>
<p><b>3.10</b></p>	<p><b>Vehicles and Parking</b></p>
<p>3.10.1</p> <p>3.10.2</p>	<p>You must not use any parking space except for the purpose of parking a roadworthy taxed and insured private vehicle or motorcycle belonging to you or any other person normally living with or visiting you. You, your household or visitors must not park on grass verges and greens or where they may block the way for other vehicles. Where there is parking enforcement or restrictions, the vehicle owner is responsible for displaying a valid parking permit.</p> <p>You must not park, or allow others to park, caravans, boats, trailers (except small trailers designed to carry no more than 350 Kg or 7 Cwt), mobile homes or commercial vehicles (other than light commercial vehicles that you or people living with you use every day) at the premises or on any shared parking areas without our permission. We can withdraw our permission with 7 days notice in writing.</p> <p>You must not use the premises, driveways or shared parking areas for carrying out vehicle repairs (except for minor repairs) or in a way that causes or is likely to cause a nuisance or annoyance to neighbours.</p>

3.10.3	
<b>3.11</b>	<b>Using the premises</b>
3.11.1	<p>You must not use the premises for any unlawful, immoral, illegal or criminal purposes. This includes, but is not limited to; running a brothel or allowing the premises to be used for sexual offences, storing stolen goods, receiving goods fraudulently, benefit fraud, or for storing or keeping illegal guns or other weapons.</p> <p>You must not allow anyone living in the premises to be involved in supplying any prohibited or controlled drug from the premises or in the neighbourhood.</p>
3.11.2	<p>You must take possession of the premises when the agreement begins (unless we have agreed otherwise) and then live there as your only or main home and keep it secure. If you have a joint tenancy, at least one of you must live in the premises as your only or main home. You must not take in lodgers, sublet or part with possession unless we have given you written permission.</p>
3.11.3	<p>You should not run a business from the premises without our written permission and before obtaining any required planning permission. Such permission will depend on the nature of the business and its likely impact on your neighbours. We may withdraw permission by giving you 48 hours written notice if we think that the business is causing a nuisance or breaking the law. You are not permitted to put any business or trade signs on or around the premises.</p>
3.11.4	<p>If you are going to be away from the premises for more than 6 consecutive weeks, you must tell us before you go and give us your forwarding address and a phone number and the contact details of a person we may contact in an emergency for access to the premises. If you fail to tell us you are going away and the premises is empty we may assume that you have stopped using it as your only or main home and take action to recover possession of the premises.</p>
	<p>You must not store or use dangerous, flammable or explosive liquids or gases in the premises or in any communal areas.</p>
	<p>You must not allow the premises to become overcrowded by exceeding the maximum number of people allowed to live in the premises.</p>
3.11.5	<p>In houses and bungalows, you may use any loft space for storage at your own risk. We will hold you responsible for any damage that is caused to the premises and we will not be liable for any damage caused to your possessions. The loft space in flats must not be used.</p>
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<b>3.12</b>	<b>Extra conditions if you live in a flat or maisonette</b>
3.12.1	<p>As well as the conditions already listed, as the tenant of a flat or maisonette <b>you must:</b></p> <ul style="list-style-type: none"> <li>• Use the rubbish chutes and rubbish bins for normal household waste only and not force large items down rubbish chutes or leave them in shared areas or outside your block.</li> <li>• Take good care of any shared drying area and should not damage any facilities that are provided.</li> <li>• Get permission before laying laminate or similar flooring. We will make a decision after considering the location, type and style of the premises.</li> <li>• Keep all security and shared communal doors closed at all times</li> </ul>
3.12.2	<p><b>You must not:</b></p> <ul style="list-style-type: none"> <li>• Leave belongings in the communal areas or put things on your balcony if they might cause an obstruction or be a danger to other people.</li> <li>• Place or store any vehicles, bikes, prams, pushchairs; goods or any other items in any communal area or balcony, or allow motorcycles or similar to be stored in any shared sheds or stores.</li> <li>• Leave any communal door open, or prevent it from being closed by placing an object in the way.</li> <li>• Put up or fix an outdoor radio mast or aerial or satellite dish to the outside of the building without our written permission and planning permission from the relevant local authority.</li> <li>• Throw any item(s) from any landing, balcony, corridor or window.</li> <li>• Smoke in any internal communal areas</li> <li>• Hang clothes or washing out of the window to dry or dry laundry on shared landings or balcony railings</li> <li>• Cause (or allow to be caused) damage to any shared facility or area, including but not limited to: <ul style="list-style-type: none"> <li>• Doors and windows, including locks, catches, handles, closers and intercom systems,</li> <li>• Lifts and stair wells,</li> <li>• Rubbish collection areas or bin stores.</li> </ul> </li> </ul>
<b>Section 4</b>	
<b>Our responsibilities as a landlord</b>	
<p><b>We agree to give you vacant possession of the premises at the start of this agreement and not to interrupt or interfere with your right to occupy the premises peacefully whilst you remain an Assured Tenant.</b></p>	
<b>4.1</b>	<b>Repairing the structure and outside of the premises</b>





4.2.2	
<b>4.3</b>	<b>Insurance</b>
4.3.1	We are responsible for insuring the structure of the building. We will not insure the contents of the premises. You must insure the contents of the premises, including decorations and accidental damage to fixtures, fittings, furniture and other belongings. We will accept no responsibility for loss or damage to your possessions caused by you, your household, pets or any other person.
<b>4.4</b>	<b>Performance and Complaints</b>
4.4.1	We must follow any guidance from our regulators about managing homes. If you feel that we have broken this agreement in any way, you should first complain to us in writing telling us how you think we have broken the agreement.
4.4.1	If we fail to deal with the complaint, or if you think that we have still broken the agreement, you can get further help and advice from a Citizen's Advice Bureau, a Law Centre or a Solicitor. You can also complain to the Housing Ombudsman. We can give you the Ombudsman's address on request. Further information about the complaints procedure is set out in the Tenant handbook.
4.4.2	
<b>4.5</b>	<b>Information, data protection and consent</b>
4.6.1	By agreeing to this tenancy you agree to Swan using the information held about you for the purposes set out below in 4.6.3 and 4.6.4. We will treat all information we receive in relation to this tenancy in line with the Data Protection Act 1998.
4.6.2	We will allow you to have reasonable access to personal information we hold about you (as long as someone has not given us this information in confidence). You can correct your information, or record your disagreement with any information we hold. If you need any copies of information, you may have to pay a reasonable fee to cover our expenses.  We will not give information about you or other people living with you to anyone else without your permission unless:
4.6.3	<ul style="list-style-type: none"> <li>• It is in the public interest to do so, to prevent or detect crime, or when considering whether to take legal action under the Crime and Disorder Act 1998.</li> <li>• In connection with investigations of benefit fraud.</li> <li>• It would put a child at risk if we did not do so.</li> <li>• A court orders us to release information.</li> <li>• It is for the purposes of legal proceedings (anticipated or in existence).</li> </ul> <p>In addition Swan may pass information in any matter related to a claim for benefits or while performing their duties as a landlord. This may include disclosing details about you and your household:</p> <ul style="list-style-type: none"> <li>• To a local authority regarding any enquiry or to provide information in relation to any claim you make for Housing Benefit.</li> <li>• To a local authority regarding who is living in the premises and liable for Council Tax.</li> <li>• To the Benefits Agency to assist with claims for benefits.</li> <li>• To social services, the probation service and other similar agencies</li> </ul>

4.6.4	<ul style="list-style-type: none"> <li>• To the Inland Revenue in the assessment or collection of any tax or duty</li> </ul>
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## Grounds for Possession Schedule 2 of the Housing Act 1988

A summary of the grounds under Schedule 2 to the Housing Act 1988 which Swan can use to seek possession of the premises are set out below.

### Mandatory Grounds:

**Ground 6** – This ground concerns the intention to demolish or reconstruct the premises.

**Ground 7** - This ground concerns inherited or succession rights and cannot be used against a surviving spouse.

**Ground 8** - This ground concerns arrears of rent that exceed 13 weeks. Note that this ground would not be used for those who previously held a secure tenancy with the London borough of Tower Hamlets.

### Discretionary Grounds:

**Ground 9** – This ground covers suitable alternative premises

**Ground 10** - This ground covers arrears of rent other than the times specified in ground 8.

**Ground 12** - This ground covers a tenancy breach, other than rent payments.

**Ground 13** - This ground covers waste, neglect or damage to the premises or communal areas and includes the acts of sub-tenants, lodgers, tenants family or visitors.

**Ground 14** – This is where a tenant, sub-tenant, lodger or visitor is causing a nuisance to neighbours or is using the premises for illegal or immoral purposes.

**Ground 14A** covers cases of domestic violence.

**Ground 15** – This relates to ill-treatment of furniture

**Ground 16** – This ground relates to premises being let as a consequence of employment by the landlord

**Ground 17** - This ground is when the tenancy has been granted as a result of a false statement knowingly made by the tenant or someone on their behalf.

There is also a ground for seeking possession if it can be shown that the tenant is no longer using the premises as

their principal home.

#### Other formats

**This tenancy agreement is also available in large print, please telephone 0300 303 2500 or email [allocations@swan.org.uk](mailto:allocations@swan.org.uk) with your request.**



## Appendix 1B

### Guide for Council tenants taking up the option to return to a new home as an assured tenant of the Developer

As a tenant of The Developer you will have an assured tenancy. The table below compares the key features of a Council secure tenancy and a Developer assured tenancy.

The Developer shall seek to meet with Secure Tenants and their independent advisor – if applicable - prior to the decant to explain the option to return, in terms of the preserved rights and the specific differences between the tenancy types as detailed below.

The modified Developer assured tenancy described in this schedule will be offered to Secure Tenants of the Council who take up the decant option to return to a New Unit for target rent to be provided by The Developer.

Council Secure Tenancy	The Developer assured tenancy (option to return)
All new residents are given a 'probationary tenancy' for 12 months, as a trial period, before progressing to a full Secure Tenancy if no rules have been broken and no notices served in this time – this is to encourage rent paying and tackle antisocial behaviour.	All new tenants are given assured tenancies. The former Secure Tenants who opt to decant to a new home to be provided by The Developer in the Development are to be given modified assured tenancies with key rights preserved contractually.
<p>Most Secure Tenants have the right to buy their home.</p> <p>If your secure tenancy was in existence before 18 January 2005, or you were a public sector tenant before 18 January 2005 (and you have been a public sector tenant continuously since that time), you do not have the Right to Buy until you have spent at least 2 years as a public sector tenant.</p> <p>For anyone else, you do not have the Right to Buy until you have spent at least 5 years as a public sector tenant.</p> <p>The Right to Buy scheme gives Secure Tenants a discount on the market value of their home. The longer you have been a tenant, the more discount you get, up to a maximum of £16,000.</p>	<p>If you are a secure tenant with the council and you have the right to buy before you are decanted to your new home with The Developer, this will be preserved. The Developer will offer you a contractual right to buy your new home.</p> <p>Non-decant tenants, and decant tenants, may also have the Right To Acquire, which offers a maximum of £16,000 discount to tenants wishing to purchase their home.</p> <p>To qualify for the Right to Acquire scheme the The Developer assured tenant must live in a property that was built or purchased using social housing grant funding on or after 1 April 1997.</p> <p>As well as occupying a qualifying property they must also have:</p> <ul style="list-style-type: none"> <li>spent a total of two years as a public sector tenant, if they became a public sector tenant before January 18th 2005.</li> <li>spent a total of five years as a public sector tenant, if their first public sector tenancy was created on or after January 18th 2005.</li> </ul> <p>THE DEVELOPER TO CONFIRM HOW THE RIGHT TO ACQUIRE APPLIES?</p>

The Council can change the terms of your tenancy agreement by following a set procedure.	The terms of the agreement cannot be varied without consultation and the written agreement of the tenant, unless the law changes and it requires The Developer to change the tenancy agreement.
You can only be evicted if a Court says so.	You can only be evicted if a Court says so.
The Council can vary your rent and service charge at any time by giving you four weeks' written notice.	<p>The Developer can vary your rent or service charge after giving you at least 28 days notice in writing.</p> <p>The Government has a system for working out rents for council and housing associations. Whether your landlord is The Developer or the Council, eventually you will pay a similar rent for your property. This process is called rent convergence.</p> <p>The rent which The Developer will charge for a New Unit, the first being available from 2014, will be a "target rent" so called because it is the point at which the council and RSL rents were planned to converge. It has been assumed that council and RSL rents would be converging by this time so that the rents would be comparable for similar properties, except that, as explained in the Community Charter, the rents for new properties will be expected to be higher than for an existing older property of a similar type and size.</p> <p>1 bed dwelling £104 per week  2 bed dwelling £122 per week  3 bed dwelling £135 per week  4 bed dwelling £143 per week  5 bed dwelling £150 per week  All rents to increase by RPI +9 0.5%</p>
<p>In certain circumstances tenants can transfer their tenancy to another person. This is what we call 'assigning a tenancy'. This can be done:</p> <ul style="list-style-type: none"> <li>• by mutual exchange with the written consent of your landlord</li> <li>• where divorce or custody of the children is being decided, a court may decide to transfer a tenancy from one spouse to the other, or</li> <li>• assignment to a person who would be entitled to succeed if the tenant died immediately before the assignment.</li> </ul>	<p>You have the right to swap this tenancy by assignment with someone who has the same right to exchange as you. They would need to be a secure or assured tenant with:</p> <ul style="list-style-type: none"> <li>• Another registered social landlord</li> <li>• A local authority</li> <li>• A new town</li> </ul> <p>However you must first get the Developer's written permission and the written permission of the other landlord.</p> <p>Where divorce or custody of the children is being decided, a court may decide to transfer a tenancy from one spouse to the other.</p>
If you die your tenancy will pass to your spouse or civil partner (as long as they are living with you when you die) or another member of your family as long as they lived with you for the last 12 months (provided you did not take over the tenancy from someone who	The Developer will grant two rights of succession. If you die your tenancy will pass to your spouse/same-sex partner, providing you did not take over the tenancy from someone who died. The successor must have been living at the property as their only or main home at the time of

died).	<p>your death.</p> <p>If nobody is entitled to succeed to the tenancy – eg because both succession rights have been taken up, the Developer will consider whether to grant a tenancy for this property or a suitable alternative, to a member of your household who either:</p> <ul style="list-style-type: none"> <li>• Lived with you for the year before your death</li> <li>• Looked after you, or</li> <li>• Has taken on the responsibility for your dependants</li> </ul> <p>If you move to a new property and start a new assured tenancy, you can pass on your tenancy even if you took over your previous tenancy from someone who died.</p>
<p>As a secure tenant, you have the right to take in lodgers. However, you must let your local housing office know in writing if you allow any person to occupy your home as a lodger.</p> <p>You may risk losing your home if you take in a lodger and do not remain in residence.</p> <p>If you are a secure tenant, you have the right to sub-let part of your home. However, you must first ask for written permission from the Council. Permission will not be unreasonably refused, but may be subject to certain conditions.</p> <p>You may risk losing your home if you:</p> <ul style="list-style-type: none"> <li>• sub-let part of your home and do not remain in residence</li> <li>• sub-let the whole of your property.</li> </ul>	<p>You can take in a lodger or sub-let part of your property, but you must first tell the Developer the name, age and sex of your intended lodger/sub-tenant, the part of your home they would occupy, and the charges you will make. In the case of a sub-tenant, you must get the Developer's written permission first.</p> <p>You must not sub-let all of your property or grant an assured sub-tenancy to any part of the property.</p>
<p>If you are going to be away for more than three months you should first get written permission from the Council to have someone look after your home.</p> <p>Whenever you are going to be away from home for more than one month you must let the Council know in writing.</p>	<p>If you are going away from your property for more than a month, you must let the Developer know in writing as soon as possible and ensure that your rent is paid as normal during the time you are away.</p>
<p>You must not let your home be overcrowded as legally defined.</p>	<p>You must not let your home become overcrowded, according to the agreed number of residents in the property - quoted in the tenancy agreement.</p>
<p>You will get at least 4 weeks' written notice if the Council intend to ask for a court order for possession of your home.</p>	<p>The Developer will give you at least 4 weeks' written notice if they intend to seek a possession order for your home, except in exceptional circumstances.</p> <p>Examples of exceptional circumstances are where there are incidents of domestic violence or criminal damage, but this is not a full list.</p>
<p>You must give at least 4 weeks' written notice if you wish to give up your home. Notice by one joint tenant</p>	<p>You must give at least 4 weeks' written notice if you wish to end your tenancy, with the notice ending on a Sunday. Your rent and service charges must be paid up to the date</p>

ends the rights of all joint tenants.	the tenancy ends.
The Council has a statutory duty to carry out certain repairs. This includes maintaining the structure and exterior of your home, the installations for gas, water and electricity inside your home and installations for sanitation (sinks, baths, toilets etc.), heating and hot water, and communal areas and facilities.	The Developer has an obligation to maintain and repair the structure and outside of the property, and any installations they have provided for space heating, water heating and sanitation, and for the supply of water, gas and electricity.
You must not carry out any improvement works to your home without getting the Council's written permission and any other required approval (eg planning permission) first.	You carry out any improvement works to your home with The Developer's written permission and any other required approval (eg planning permission) first.
You must get written permission from the Council and any other required approval (eg planning permission) to put up any tv or radio aerial or dish or attach any notices to the outside of your home.	You must get written permission from the Developer and any other required approval (eg planning permission) to put up any tv or radio aerial or dish or attach any notice to the outside of your home.
You are responsible for paying for the repair or special cleaning of any damage caused by your misuse of fixtures or fittings or that of other people who visit your home.	You are responsible for paying for the repair or special cleaning of any damage caused by your misuse of fixtures or fittings or that of other people who visit your home.
You must use your home only as a private dwelling house. You cannot run a business from your home.	You must use the property as your only or main home. You must not run a business from the property without getting written permission from The Developer first.
You must have written permission from the Council to keep a pet. Any pet kept in your home must not cause nuisance or annoyance to others, damage Council property or foul any communal areas.	<p>The Developer allows caged pets to be kept in all properties and, by written permission, pets such as dogs and cats will be permitted so long as they do not cause anti social behaviour. The Developer will allow all existing residents with pets to keep them when they decant into their new homes.</p> <p>Any pets must be kept under control and The Developer reserves the right to withdraw consent if the pet causes nuisance or annoyance to other residents, staff or contractors.</p>
If you have a garden you are responsible for keeping it maintained and tidy. You must have written permission from the Council to put up a shed or other structure.	If you have a garden you must keep it tended or tidy.
The Council can be forced to transfer the management of an estate or group of dwellings to a Tenant Management Organisation formed by the tenants if certain conditions are complied with and tenants vote in favour of such an arrangement. This is known as The Right to Manage.	<p>Housing Associations are not subject to the Right to Manage but the Developer has stated that it will support this if residents wish this to happen.</p> <p>THE DEVELOPER TO CONFIRM</p>
Parking  The	<b>The Developer will provide at cost</b> dedicated car parking spaces in accordance with the relevant policy. These dedicated spaces are provided in the following formats per phase:

<p>Developer has been advised by LBTH of the following;</p> <p>-currently 149 residents with permits / garages; the replacement units for existing tenants of Phases 1a and 1b should be provided with no less than 17 off-street spaces (of which at least two should be for disabled use) and no more than 20% of units should be provided with an off-street space (of which 10% should be for disabled use).</p> <p>Parking spaces may be provided in courtyards, undercrofts or parking structures.</p> <p>Existing residents who hold a residents' permit or lease a garage will be offered one of the 17 off-street parking spaces on a first come, first served basis (or on the basis of need, as agreed with the RP).</p> <p>Any resident who is eligible to apply for an off street space, but who was not allocated one, will be eligible to apply for a residents' parking permit.</p> <p>Disabled spaces will be allocated to disabled residents on the basis of priority need. Blue badge holders will be entitled to retain permits subject to meeting eligibility criteria.</p> <p>The Developer would seek to provide permits to those residents who have the permitted right to park within the boundary of Blackwall Reach.</p>	<p>Phase 1a – 30 spaces Phase 1b No parking Phase 2 – 26 spaces Phase 3 – 56 spaces Phase 4 – 56 spaces</p> <p>149 residents have been identified as qualifying for a car parking space, with 17 off street spaces being allocated to residents in Phase 1a in accordance with the tender on a first come first served basis. 10% of the overall spaces on site will be allocated disabled with 2 being provided in Phase 1a.</p> <p>Of the remaining 132 tenants who did not receive one of the 17 spaces provided in phase 1a and 1b 20% will be provided with a dedicated parking space across the remainder of the site. The remaining residents will be eligible to apply for a residents parking permit for non dedicated spaces.</p> <p>In addition to the allocated spaces a car club will be provided with suitable spaces located across the site. The use of the car club will be available to residents and the wider Borough. A green travel plan will assist in insuring that the 20% provision will be suitable for the proposed development. This travel plan could include a bus timetable, DLR timetable, cycle route locations and an oyster card for residents with an initial subsidy from the developer, provided via the Section 106 agreement.</p> <p>*** All parking proposals will require the approval of Council Planning Department and are subject to the planning process before being finalised*****</p>
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## **Appendix 2**

### **Phase 2**

- Anderson Hse, Woolmore Street No's 5,6,8,10,13 (E14 OEP) Leaseholder
- All Secure Tenanted Units at Robin Hood Gardens West
- All Secure Tenant in Anderson House
- Robin Hood Gardens, Woolmore Street  
No's 5,24,26,30,33,34,42,49,53 (E14 OHN)  
and No's 60,79,92,95 (E14 OHW) Leaseholders
- Woolmore Street, E14 0EW. No 8. Leaseholders
- Any Other Secure Tenants within the land in Phase 2

### **Phase 3**

- Mackrow Walk, E14 0EN. No's 2,4,5,9 Freehold
- All Secure Tenanted Units at Robin Hood Gardens East
- Robin Hood Gardens, Woolmore Street  
No's 118,122,129 (E14 OHG)  
and No's 163,167,168,169,173,175, 201,203 (E14 OHQ) Leaseholders
- Any other Secure Tenants within the land in Phase 3

## **APPENDIX THREE – TARGET RENTS**

**Listed below are the agreed target rents as at 1 April 2014 all rents will increase annually at the rate RPI + 0.5% thereafter**

- 1. 1 bedroom dwelling £104 per week**
- 2. 2 bedroom dwelling £122 per week**
- 3. 3 bedroom dwelling £135 per week**
- 4. 4 bedroom dwelling £143 per week**
- 5. 5 bedroom dwelling £150 per week**

**Appendix 13**  
**Press and Publicity Protocol**

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## APPENDIX 13

## PRESS AND PUBLICITY PROTOCOL

This document sets out the protocol between the Client and Developer and Countryside (where applicable) to support the effective and timely management of our communications programme. The existing protocol between the Council and the HCA has been reviewed in light of the appointment of the Developer as the preferred development partner for the Development.

The parties are committed to communicating openly with the national, local and trade media to help achieve the objective of keeping the local community and other key stakeholders informed about the regeneration programme and the consultation process.

This protocol will enable the Project Team for the Development to adopt a consistent approach to the approval of formal communication to external stakeholders, including the media, and community consultation materials.

### General Correspondence

All external correspondence, including the channel, must be approved by the Parties this includes letters, e-mails, agendas, minutes, meeting notes, web copy and blog posts, artist's impressions and presentation and publicity materials.

### Media Enquiries, Press Releases and Statements

Each member of the project team has a responsibility to inform the core communications team of milestone events to assist with strategic planning of public relations activity. The core communications team is responsible for composing and circulating all proactive and reactive media materials. The lead partner will usually be the Council but this may be agreed on a case-by-case basis.

Emma Wilson at the HCA and Niall McGowan and Robin Sager at the Council should also be kept informed.

Organisation	Primary Contact(s)
Homes and Communities Agency (HCA)	Judith Hewitt, Communications Manager, 0207 633 3484 or 07979 516 809 <a href="mailto:judith.hewitt@hca.gsx.gov.uk">judith.hewitt@hca.gsx.gov.uk</a>
Tower Hamlets Council (THC)	Lara Cerroni, Communications Team Leader, 020 7364 1961, <a href="mailto:lara.cerroni@towerhamlets.gov.uk">lara.cerroni@towerhamlets.gov.uk</a> Paul Armitage, Communications Advisor, 020 7364 1379, <a href="mailto:paul.armitage@towerhamlets.gov.uk">paul.armitage@towerhamlets.gov.uk</a>
The Developer	Paul Hebden, Swan, 01903 602 946 or 07413 729 505 <a href="mailto:paul_hebden@btinternet.com">paul_hebden@btinternet.com</a>

The date for photo opportunities, press releases or briefings to announce milestone events or report on progress will be agreed in advance by the Project Team. The lead party will be identified and take responsibility for drafting and circulating publicity materials. All parties must agree the final version within the stated deadline. If consensus is not reached on the wording of publicity materials (including press releases) or the deadline for comment is missed, the Council will have the final say on the version that is issued. The Council will inform the other parties when a release has been issued to the media and all partners will agree the distribution process (eg posting release on project blog and their own websites, issuing via e-newsletters and other electronic channels).

The first points of contact for all media enquiries are Lara Cerroni and Judith Hewitt and a Q&A of approved responses is maintained by the Council and HCA. A direct approach by the media to any member of the project team should be referred directly to Lara and cc'd to Judith. If a journalist requires further information not covered by the Q&A, a statement will be drafted and the approval procedure for signing off press releases will be followed. Requests for interviews will be considered on a case-by-case basis.

The nominated spokespeople whose names will appear on press releases and statements are as follows:

- HCA David Lunts, London Executive Director
- LBTH Mayor Lutfur Rahman /Aman Dalvi, Director for Development and Renewal
- The Developer Generic quotes will be supplied jointly by the Developer and Countryside. For press releases about specific subjects, such as affordable housing or design, the Developer and Countryside will agree whether the quote should be attributed to Developer or Countryside

### External Enquiry Protocol

On receipt of a telephone call or email with a query relating to the Development the enquirer should be referred to the relevant person in the table below.

- For press queries, these should be directed to the Council and HCA communications departments.
- Residential / housing queries should be directed to the Council's Housing Regeneration Team.

	<b><u>PRESS QUERIES</u></b>		<b><u>NON PRESS QUERIES – residents / housing</u></b>	<b><u>NON PRESS QUERIES – non housing</u></b>
	<b>THC</b>	<b>HCA</b>	<b>ALL</b>	<b>ALL</b>
<b>1<sup>st</sup> Contact</b>	Lara Cerroni THC Press Officer	Judith Hewitt	Robin Sager Housing Regeneration Office	
<b>Tel no</b>	<b>020 7364 1961</b>	<b>020 7633 3484</b>	<b>020 7364 2534</b>	<b>0207 808 4558</b>
<b>Email</b>	<a href="mailto:lara.cerroni@towerhamlets.gov.uk">lara.cerroni@towerhamlets.gov.uk</a>	<a href="mailto:judith.hewitt@hca.gov.uk">judith.hewitt@hca.gov.uk</a>	<a href="mailto:robin.sager@towerhamlets.gov.uk">robin.sager@towerhamlets.gov.uk</a>	
<b>2<sup>nd</sup> Contact</b>	Paul Armitage	TBA by J Hewitt when she is out of the office	Niall McGowan	Emma Wilson HCA



<b>Tel no</b>	<b>020 7364 1379</b>		<b>0207 364 2439</b>	<b>0207 633 3442</b>
<b>Email</b>	<a href="mailto:paul.armitage@towerhamlets.gov.uk">paul.armitage@towerhamlets.gov.uk</a>		<a href="mailto:niall.mcgowan@towerhamlets.gov.uk">niall.mcgowan@towerhamlets.gov.uk</a>	<a href="mailto:emma.wilson@hca.gsx.gov.uk">emma.wilson@hca.gsx.gov.uk</a>

### **Community consultation materials**

The Council, in partnership with Strategic Urban Futures (StUF), is responsible for the implementation of the community engagement strategy. The Council and StUF communicate directly with residents over the phone and face-to-face using the approved Q&A as a prompt. The production of materials to facilitate the consultation process including leaflets, posters, the website etc. will be subject to approval by the Project Team. The Council and StUF will draft and circulate all consultation materials to be signed off within the stated deadline with the Council having the final say on the version that is issued.

To ensure consistency across all communications materials, a 'brand' for the Development has been created. Guidelines on the use of the logo, font and colours are available for use by all the partners.

The Developer will be responsible for managing and hosting the project blog, [www.blackwallreach.co.uk](http://www.blackwallreach.co.uk) and will liaise with the Project Team on responses to comments. All publicity and consultation materials should be made available for uploading on the day of issue.

**Appendix 14**  
**Nominations Agreement**

A handwritten signature consisting of the letters 'J' and 'B' in a cursive, stylized font.

THIS RENT NOMINATION AGREEMENT is made the                      day of                      2011

**BETWEEN:**

- (1) **Swan Housing Association Limited** [Industrial and Provident Society NO. 28469R] whose registered office is at Pilgrim House High street Billericay Essex CM129XY  
("the Owner")
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS** of Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG ("the Council")

**RECITALS**

- (A) The Owner is the registered proprietor of the Affordable Housing Units and is an Registered Provider (RP) for the purposes of the Housing and Regeneration Act 2008
- (B) The Council is the local planning authority for the area in which the Affordable Housing Units are situated for the purposes of section 106 of the Town and Country Planning Act 1990.
- (C) Various planning obligations are secured against the Land on which Affordable Housing Units are built which inter alia seeks to secure the availability of the Affordable Housing Units for the Perpetuity Period in addition to the nomination rights of the Council subject to the Completion of this Agreement.
- (D) The Council and the Owner agree that this Agreement shall be entered into to secure the provision of Affordable Housing on the Land in the manner hereinafter appearing

**NOW THIS AGREEMENT WITNESSETH** as follows:

**1. DEFINITIONS**

In this Deed references to:

- 1.1 "Affordable Housing" shall mean the Affordable Rent Units and the Intermediate Housing Units housing
- 1.2 "Affordable Rent Units" means 534 of the Affordable Housing Units intended to be available at Restricted Rent as identified in Appendix 2
- 1.3 "Affordable Shared Equity Units" means all Affordable Housing Units to be constructed as part of the Phase Works and provided as part of the Development and disposed of by the approved RP on a Shared Equity Scheme which may be provided for this purpose.

- 1.4 "Alternative Affordable Housing Provider ("AAHP")" means a house builder housing contractor provider or funder of Affordable Housing who is not an RP but is approved by the Council to manage Affordable Housing and who is able to demonstrate accreditation under the Tenants Services Authority Housing Management Accreditation scheme and Affordable Home Ownership Housing Management schemes, such approval not to be unreasonably withheld or delayed
- 1.5 "Affordable Shared Ownership Units" means all the Affordable Housing Units to be constructed as part of the Phase Works and as part of the Development and disposed of by the approved RP on the basis of a Shared Ownership Lease (or Rent to Homebuy or any other similar replacement product promoted by HCA) to provide low cost home ownership to qualifying Home Owners under the Development Agreement.
- 1.6 "Common Housing Register" and "Choice Based Lettings" means a single housing list and lettings system shared by the Council in common with its RP partners giving access to available homes of the Council and its RP partners to persons in priority housing need.
- 1.7 "Development Agreement" means an Agreement between the parties the Homes and Communities Agency (HCA), Countryside Properties (UK) Ltd and Countryside properties (in Partnership) Ltd, about the 5 April 2011 (the Development Agreement).
- 1.8 "Estate Charges" shall mean such charges for the land as are payable by the Owner for the provision of services to the Affordable Rent Units and Shared Ownership Housing Units including any reasonable annual increases in such charges
- 1.9 "Homes and Communities Agency" means the national housing and regeneration agency for England created under the Housing and Regeneration Act 2008 or any successor body having such functions
- 1.10 "Land" shall mean the land being defined as the Site under a Development Agreement.
- 1.11 "Intermediate Housing Units" means Affordable Shared Ownership Units and Affordable Shared Equity Units.
- 1.12 "Nominations Procedure" shall mean the Council's standard procedure to make nominations (set out in the Housing Association Nomination Agreement dated January 1996) for tenants to housing associations, Registered Providers (RP's) or Alternative Affordable Housing Providers (AAHP's) in relation to housing association accommodation as set out in clauses 3 and 4 such standard procedure being modified to include a means test on affordability as may be specified and/or amended by the Council from time to time acting reasonably PROVIDED THAT the Council shall not vary amend or add to the Nominations Procedure without first informing the Owner of any such change giving the Owner a reasonable opportunity to make representations on any such change and taking any

such representations into account before deciding whether or not to make any such change.

- 1.13 "Owner" shall include the Owner's successors in title
- 1.14 "Planning Obligation Deed" shall mean the Section 106 Agreement entered into by HCA and the Owner with the Council pursuant to planning permission references no: [ ] regarding inter alia the Land and attached at Appendix 4
- 1.15 "Perpetuity Period" means a minimum term of One Hundred and Twenty Five years from the date of Practical Completion of the Affordable Housing Units
- 1.16 "Retail Price Index" means the United Kingdom General Index of Retail Prices (all Items) or if such index is no longer published or if the basis of calendar is changed such other published index of retail prices or the value of money as the Owner with the consent of the Council (which shall not be unreasonably withheld or delayed) shall decide
- 1.17 "Restricted Rent" means rent be charged (excluding Estate Charges) as Target Rent defined in the Decant strategy attached to the Development Agreement or for which guideline target rents are determined through the national rent regime or an equivalent rental arrangement agreed with the Council.
- 1.18 "Registered Provider ("RP")" means a provider of affordable housing registered as such by the HCA under section 111 of the Housing and Regeneration Act 2008
- 1.19 "Affordable Shared Ownership Housing Unit(s)" shall mean the Affordable Shared Ownership Units intended to be available for shared ownership housing on the Land as identified in Appendix 2.
- 1.20 "Affordable Shared Equity Housing Units" shall mean such of the Affordable Shared Equity Units intended to be available to Existing Leaseholders as defined in the Decant strategy of the Development Agreement for Affordable Shared Equity Housing on the Land.

**Other terms used but not defined above have the same meaning as the Development Agreement between the Council, the HCA Countryside and the Developer.**

## **2. GOVERNING LEGAL PROVISIONS**

- 2.1 Subject to clause 9 the Owner hereby undertakes and covenants in relation to its interest in the Land and in accordance with Section 16 of the Greater London Council (General Powers) Act 1974 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 so as to bind the Owner and its successors in title in perpetuity from the date of this Deed (being the relevant Perpetuity Period) that the Owner will observe the obligations set out hereinafter in this Deed



### 3. RENTAL NOMINATIONS PROCEDURE

In relation to the Affordable Rent Units the Owner will:

- 3.1 use the Affordable Rent Units for residential use for housing:
  - (A) residents of the London Borough of Tower Hamlets; or
  - (B) people who are on the Council's housing waiting list but not necessarily resident in the London Borough of Tower Hamlets at the time who are in Affordable Housing need on periodical tenancies and for no other purpose without the prior written approval of the Council such approval not to be unreasonably withheld or delayed
- 3.2 sign up participate and comply with the terms of the Council's Common Housing Register and Choice Based Lettings procedure as defined by the Council from time to time PROVIDED THAT if the Council's Common Housing Register and Choice Based Lettings procedure is no longer in operation the Owner will comply with the remainder of this clause 3 and clause 4
- 3.3 apply to the Council for nominations to the tenancies of 100% of the Affordable Rent Units under the Nominations Procedure a minimum of two months prior to the Affordable Rent Units first becoming available for letting
- 3.4 apply to the Council for a nomination to each tenancy using the Nominations Procedure on 100% of the subsequent occasions when an Affordable Rent Unit reverts to the Owner and the Developer and the Developer and is available for letting
- 3.5 accept the nominee of the Council as tenant, under the Nominations Procedure on each occasion under Clauses 3.3 and 3.4 above and the Owner will in case of rejection by the proposed tenant then the Owner will re-offer the right to nominate to the Council under the Nominations Procedure
- 3.6 PROVIDED THAT subject to the Development Agreement nothing in this Deed shall require the Owner to accept any nominee who does not fall within
  - 3.6.1 the Owner's policy on allocations or referrals or
  - 3.6.2 any reasonable criteria from time to time established by the Owner which should be satisfied by any tenant seeking a tenancy from the Owner
- 3.7 If there have been insufficient referrals or insufficient take up so that there are one or more Affordable Rent Units still available, then the above procedure will be repeated provided that if by two weeks prior to practical completion of the Affordable Rent Units there are Affordable Rent Units that remain unlet the Owner shall be entitled to offer any remaining Affordable

Rent Unit to people in need of Affordable Housing on the Common Housing Register who have not been referred by the Council

- 3.8 Subject to clause 11 below and any changes in legislation not sell, let or otherwise part with possession ("dispose") of the Affordable Rent Units except in accordance with this Clause unless the procedure set out in Clause 4 below is invoked

#### **4. SUBSTITUTE NOMINATIONS**

- 4.1 If the Owner has notified the Council in writing that it wishes to provide a substitute Affordable Rent Unit, it shall submit the notification to the Council at least 28 days before completion of the disposal of the Affordable Rent Unit of an immediately available nomination to a property ("the Substitute Nomination") which is:

- (a) of a size equal to or larger than the Affordable Rent Unit proposed to be disposed of when measured by reference to size and number of habitable rooms
- (b) within the boundaries of the London Borough of Tower Hamlets
- (c) in tenantable repair and condition including meeting Decent Homes standard as defined by the Government
- (d) not subject to any other nomination right owed to the Council
- (e) not subject to any restriction on nomination by reference to the type of tenant who may be nominated (requirements that it be used for persons in necessitous circumstances or other income restrictions of a like kind and circumstances set out in clause 3.6 above excepted)
- (f) available for letting on the terms set out in Clause 3 hereof for the remainder of the period until the expiry of this Deed

- 4.2 The Owner shall before the disposal of the Affordable Rent Unit for which the Substitute Nomination has been made:

4.2.1 execute and deliver to the Council documents containing covenants (to be in a form reasonably satisfactory to the Council) binding the Substitute Nomination to be held under this Deed (including the obligation to provide the Substitute Nomination) for the remainder of the period until expiry of this Nomination Deed and

4.2.2 notify the Council that the Substitute Nomination is available for nomination

- 4.3 If the Council objects in writing within 14 days of receipt of the said notification that in its opinion any of the criteria set out in 4.1 are not satisfied, then the disposal of the Affordable Rent Unit shall not take place

until either the Council withdraws its objection or the matter has been determined by a third party "(the Expert)" agreed between the parties or if not agreed within 14 days then appointed by the President for the time being of the Institute of Housing

4.4 The Expert shall act as an expert not arbitrator and shall be obliged to consider representations from both sides except that if either party has not made representations within 14 days of a request in writing by the Expert he may proceed without considering such representations AND the Expert shall be entitled to rely on his own experience and on whatever other evidence he reasonably chooses and shall produce a reasoned report stating whether in his view the criteria are met in full or are not met in full and his decision shall be binding on both parties. The Expert may award costs as he reasonably sees fit.

4.5 In the event that the Council does not object or the Expert accepts that the criteria are met, the Substitute Nomination shall proceed

4.6 In the event that the Owner agrees with the objection or the third party decides that any of the criteria are not met then the Owner may at its own option:

4.6.1 abandon the disposal of the Affordable Rent Unit or

4.6.2 notify the Council of another Substitute Nomination

4.7 It is hereby agreed that on delivery of the Substitute Nomination documents referred to in Clause 4.2.1 hereof, the Affordable Rent Unit referred to herein shall thenceforth be freed from the covenants and undertakings contained in this Deed and this Deed shall thereafter be construed as though the Substitute Nomination was an Affordable Rent Unit within this Deed for all purposes and a memorandum to that effect shall be endorsed on this Deed

## **5. AFFORDABLE SHARED OWNERSHIP REFERRALS**

In relation to the Affordable Shared Ownership Housing Units the Owner will:

5.1 not dispose of the Affordable Shared Ownership Housing Units other than by way of a lease which includes provision for the annual review of rent except as agreed by the Owner under the decant strategy ("the Decant Strategy") of the Development Agreement and in addition permits the tenant to acquire 100% of the equity in the Shared Ownership Housing Unit.

5.2. provide that the annual rent (clause 7.5) excluding Estate Charges in the lease equates to not more than 2.75 % of the value of the retained equity or such other greater figure as may be agreed under the Decant Strategy and in this context the value of the unit shall be determined upon the assumption that the unit

may be let or sold in the open market free of any restriction or condition limiting the use of the unit to Affordable Housing.

5.3 in the event that the Council requires the value of the retained equity (as referred to in clause 5.2 above) to be agreed the parties shall use all reasonable endeavours to agree to such value but in the event of default of agreement it shall be determined by an independent surveyor having at least five years experience in the valuation of housing within the London area and to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy.

5.4 on the first grant of a lease for each Affordable Shared Ownership Housing Unit following the leases to the Existing Home Owners under the Decant Strategy apply to the agent approved by the Homes and Communities Agency or such other source as the Council may agree from time to time (such agreement not to be unreasonably withheld or delayed) for a list of eligible applicants in accordance with the East London sub-region's "Shared Ownership Housing service level Deed ("Shared Ownership Housing Service Level Deed") PROVIDED THAT subject to the Development Agreement nothing in the Deed will require the Owner to grant a lease of a Affordable Shared Ownership Housing Unit to any person referred to who does not fall within

5.4.1 the Owner's policy on referrals or

5.4.2 any reasonable criteria from time to time established by the Owner and the Developer which should be satisfied by any person seeking a referral to a shared ownership lease.

5.5 The Owner will notify the agent referred to in clause 5.4 of the order of the Council's priorities for applicants for Shared Ownership Housing Units as set out in clause 5.6 of this Deed ("Council's Priorities") no less than four months prior to the date on which it is anticipated the Affordable Shared Ownership Housing Units will be complete and ready for occupation ("Practical Completion") and will ensure that offers are made strictly in accordance with the Council's Priorities.

5.6 In addition to those priorities set out in the Decant Strategy the Council's Priorities for this scheme in order of priority are as follows:

1. Public Sector Tenants being those tenants living in accommodation owned by the Council or a RSL or AAHP in Tower Hamlets and wholly releasing accommodation to which the Council has rights to nominate tenants
2. Leaseholders in blocks being vacated in anticipation of demolition who have a right to be re-housed by the Council

3. People registered on the Council's housing register or waiting list
  4. Key workers as defined by the Council from time to time who are employed in the borough of Tower Hamlets as agreed with the Council
  5. Other Council residents who may not release Council accommodation when they move
  6. Others living in Tower Hamlets in rented accommodation or living with family or friends who do not appear on the council's Housing Register or waiting list
  7. People with strong connections by family ties within the Borough of Tower Hamlets
- 5.7 The Owner will within 6 months prior to the date of the anticipated Practical Completion of the Affordable Shared Ownership Housing Units give notice to the Council of the proposed date of practical completion of the Shared Ownership Housing Units
- 5.8 The Owner shall make an assessment and consider whether offers may be made and will make appropriate offers and notify the Council accordingly
- 5.9 Subject to 5.6 above if there have been insufficient referrals or insufficient take up so that there are a number of properties still available, then the above procedure will be repeated provided that if by three months prior to practical completion of Affordable Shared Ownership Housing Units there are any properties that remain unsold then the Owner shall be entitled to offer any remaining Affordable Shared Ownership Housing Unit(s) to people who have not been referred to the Council

## **6. SHARED EQUITY DISPOSALS**

- 6.1 Affordable Shared Equity Housing Units are only intended to be made available to Existing Home Owners in accordance with the provisions of the Decant Strategy in exchange for the Existing Home Owners equity in their Existing Unit. The percentage equity to be granted will be the greater of:
- a) The 25% equity share of the Full Market Value of the New Unit; or
  - b) A percentage share equivalent to the Full Market Value of the Existing Unit and the Home loss payment less the value of any outstanding mortgage or charge on the Existing Unit
- 6.2 Any affordable Shared Equity Housing Units not taken up by the Existing Home Owners shall be dealt with under paragraph 9.2 below



## 7. RENT LEVELS

- 7.1 Subject to Clause 7.6 below The Owner hereby undertakes and covenants in relation to the Affordable Rent Units that the rent payable in respect of each of the Affordable Rent Units on first letting will not exceed the Target Rents referred to in the Decant Strategy for the relevant property type. Following this a subsequent offer on the relevant property will be at rent levels set out in provisions of the remainder of this clause 7.
- 7.2 The rent levels for tenants of Affordable Rent Units:
- 7.2.1 Affordable Rent Units will be subject to rent review which is to be implemented in the October of each year by the Owner starting from the full first year after tenancy commencement; and
- 7.2.2 shall not include any maintenance or Estate Charges which the Owner and the Developer shall apportion between and charge to the Private Housing Units and the Affordable Shared Ownership Units and the other non housing units at the Land in its normal manner
- 7.3 the Annual Review will either raise or lower the rent by no more than 0.5% greater than the percentage that the annual Retail Price Index has risen or fallen in the period of 12 months ending on 30<sup>th</sup> September immediately preceding the Annual Review unless one or more events set out in Appendix 1 hereto shall occur in respect of any of the Affordable Rent Units in which case the rent of the particular Affordable Rent Unit may be adjusted by the amount calculated in accordance with the criteria set out in Appendix 1 hereto
- 7.4 The Owner will comply with this clause 7 for the length of the term of the lease under which they hold the Affordable Rent Units in respect of each of the Affordable Rent Units unless any such Affordable Rent Unit has been substituted pursuant to Clause 4 or one or more of the events set out in Appendix 1 hereto shall occur in respect of any Affordable Rent Unit upon which event that Affordable Rent Unit shall be released from the undertakings and covenants hereby given
- 7.5 in respect of Shared Ownership Housing for Existing Home Owners the annual review of the rental element will take place from the 1<sup>st</sup> April one full year after practical completion and on 1<sup>st</sup> April thereafter and will be in line with the Annual Retail Price Index.
- 7.6 In the event that in the later phases within the Development (after 1a and 1b) the Viability Test as set out in the Development Agreement is not met then the parties will review the restriction on Target Rents and agree whether higher rent will improve the Viability of the relevant phase of the Development and if all the parties to the Development Agreement agree then a new rent shall be implemented.

## **8. LIMIT OF LIABILITY**

- 8.1 The Owner shall not be liable for any breach of covenant or other obligation set out in this Deed after it has parted with its interest in the Land or the part in respect of which such breach occurs (which shall include but shall not be limited to the granting of a long lease to an RSL or AAHP) save in connection with any antecedent breach.

## **9. RECYCLING OF CAPITAL RECEIPTS**

- 9.1 In relation to the Affordable Rent Units, if the matters referred to in Appendix 1 hereto occur, then any net disposal proceeds or insurance payments relating to rebuilding costs received by the Owner in relation to the Affordable Rent Unit to which the specified event occurs being payment of the value of the Affordable Rent Unit in the case of a Compulsory Purchase or payment by an insurance company of the reinstatement value in the case of the destruction of an Affordable Rent Unit but in either case excluding any sum due in respect of any charge or other loan on the Affordable Rent Unit any sum paid in respect of loss of rent professional costs in negotiating such sums and effecting the disposal or the cost of demolition and clearance of any site shall be used by the Owner and the Developer to provide new housing in the London Borough of Tower Hamlets pursuant to the Nominations Procedure for the remainder of the Perpetuity Period so that the Owner and the Developer shall use all reasonable endeavours to provide new housing within four years of the date of the receipt by the Owner unless otherwise agreed in writing with the Council which agreement will not be unreasonably withheld or delayed
- 9.2 Subject to the Decant Strategy the Owner Covenants that in the event that less than 34 Affordable Shared Equity Units are taken up by the Existing Owners than the Units can be converted to other Affordable Shared Ownership Units on the site.

## **10. EXEMPTIONS**

It is hereby agreed by the Council and the Owner that the terms of this Deed shall:

- 10.1 Not bind any mortgagee of an RSL or AAHP or any receiver appointed pursuant to the Law of Property Act 1925 as may be amended or any subsequent legislation or otherwise by a party who has provided loan facilities to an RSL or AAHP.
- 10.2 Cease to apply to any part or parts of the Land which are transferred or leased by any mortgagee referred to in 10.1 above or any receiver appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to an RSL or AAHP
- 10.3 Cease to apply to any completed residential units where an RSL or AAHP shall be required to dispose of the same pursuant to a right to buy under Part V of

the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 16 of the Housing Act 1996 or any similar or substitute right applicable

- 10.4 Cease to apply to any completed residential units where an RSL or AAHP sells to a tenant pursuant to a voluntary grant scheme under Section 21 of the Housing Act 1996 or any amendment replacement or substitute scheme
- 10.5 Not bind any mortgagee of any Shared Ownership Housing Unit Owner or any purchaser, tenant or occupier of any mortgagee of any Shared Ownership Housing Unit nor any receiver appointed by such mortgagee or any person deriving title through such mortgagee.
- 10.6 Cease to apply to any completed residential units referred to above in respect of which a shared ownership lease has been granted and where an RP or AAHP shall have disposed of 100% of the equity in such units under the terms of such lease.
- 10.7 Subject to the Decant Strategy Clauses 3.1 to 3.8 shall cease to apply to any additional Affordable Rent Units when the 197 for Secure Tenants is met. The remaining Affordable Rent Units will be subject to rights to nominate tenants a under the sub regional or pan London nominations agreement by virtue of the HCA investment in the Site PROVIDED THAT if these conditions are removed at any time, the nomination rights will revert to the Council.

## **11. NOTICES**

The following provisions shall apply in relation to service of notices etc pursuant to this Deed:-

- 11.1 Unless delivered personally, a notice to a party in connection with this Deed shall be sent by first class prepaid post
- 11.2 Unless delivered to a party personally, a notice shall be sent to the address which is set out in this Deed, unless the party has notified the serving party of another address in Great Britain for the service of notices under this Deed, in which case the notice shall be sent to that address
- 11.3 A notice served by first class post is deemed to have been served at 10a.m. on the second business day after the next collection of letters to follow its posting
- 11.4 In this clause, "address" does not include a fax number and "business day" means a day other than a Saturday or Sunday or a public holiday
- 11.5 A notice delivered personally shall be deemed to be served at the time of delivery unless such time shall not be on a business day or shall be after 4.00 pm on a business day in which case it shall be deemed to be delivered on the following business day.

11.6 A Notice addressed to the Council shall be sent to the Director of Development and Renewal at the Council.

## **12. MISCELLANEOUS PROVISIONS**

12.1 The Owner and the Council hereby agree that the Owner will use all reasonable endeavours to ensure that:

- (a) the tenants of the Affordable Rent Units do not (save where such action is permitted by law and the TSA's Tenants Charter) at any time part with possession of, sublet or assign an Affordable Rent Unit (or any part of an Affordable Rent Unit)
- (b) no tenant of an Affordable Rent Unit remains a tenant of the Owner and the Developer if the tenant is found to have fraudulently given information to either the Council or the Owner and the Developer in order to become a tenant of an Affordable Rent Unit which has a substantial influence on the decision to grant a tenancy of an Affordable Rent Unit to that person and
- (c) all units are categorised in accordance with London Borough of Tower Hamlets Accessible Housing Register prior to letting.
- (d) all units designated wheelchair accessible are marketed a minimum of six months prior to anticipated practical completion to enable the needs of incoming tenants to be taken into account during fit out of the units.

12.2 The consent or approval of the purchaser tenant and/or occupier of any Affordable Rent Unit or Shared Ownership Housing Unit and/or their mortgagees shall not be required in respect of any agreed variation adjustment or supplement to this Deed

12.3 This Deed gives no rights to any person who is not a party to this Deed under the Contracts (Rights of Third Parties) Act 1999

## **13. DISCHARGE OF PLANNING OBLIGATIONS**

13.1 Pursuant to section 106A of the Town and Country Planning Act 1990 the Council hereby agrees that the Owner has by entering into this Deed discharged the planning obligations in the Planning Obligation Deed which relate to the provision of Affordable Housing and the occupation of the Affordable Housing Units as therein defined

## **14. REGISTRATION**

14.1 This Deed shall be registered as a local land charge

## **APPENDIX 1**

### **EVENTS TERMINATING THE COVENANTS AND UNDERTAKINGS AS TO RENTS IN RESPECT OF A RENTED UNIT**

1. Purchase of an Affordable Rent Unit under a compulsory purchase order or private Act of Parliament whether for residential or other purposes ("Compulsory Purchase")
2. Destruction of an Affordable Rent Unit or the means of access to it by fire or other external force in circumstances where reinstatement would be unreasonable
3. Sale disposal or substitution of an Affordable Rent Unit in accordance with the provisions of this Deed

**Affordable Provision Blackwell Regeneration Project (15.12.2010)**



**IN WITNESS** whereof the parties hereunto have executed this Deed the day and year first before written

**EXECUTED** and delivered as a deed by )  
Swan Housing Association Limited )  
acting by )

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory

THE COMMON SEAL of THE MAYOR AND )  
BURGESSES OF THE LONDON BOROUGH )  
OF TOWER HAMLETS was hereunto affixed )  
by Order:- )

\_\_\_\_\_  
DULY AUTHORISED SIGNATORY

**Appendix 15**  
**Project Monitoring Protocol**



## **Appendix 15 - PROJECT MONITORING PROTOCOL**

This protocol is between

**The Mayor and Burgesses of the London Borough of Tower Hamlets** of the Town Hall Mulberry Place, 5 Clove Crescent, London E14 2BG ("the Council") and

**Swan Housing Association Limited** whose registered office is at Pilgrim House, High Street, Billericay, Essex CM12 9XY ("the Company").

### **1.0 INTRODUCTION**

- 1.1 The objective of this protocol is to provide a formal basis on which all relevant aspects of the Blackwall Reach Regeneration Project can be regularly monitored and reviewed by the Council and the Company to ensure contractual compliance; to enable the Council to provide regular monitoring to the Government Office for London and to provide regular information for other interested stakeholders including HCA, Councillors, CLG and the existing Tenants / Leaseholders.

### **2.0 THE PROJECT MONITOR**

- 2.1 The Council will appoint a Project Monitor. This role will be to co-ordinate and gather information in order to identify whether the Company and the Council are meeting their contractual obligations under the terms of the Development Agreement. The Project Monitor will operate at both strategic level, monitoring the overall programme and business plan and at an individual project level, monitoring against identified objectives and outputs including quality thresholds and programme.
- 2.2 The monitoring data will inform all parties about quality standards, progress of work as well as current and protected expenditure against funding sources. It will ensure the Council and the Company are kept regularly informed and will thus enable parties to consider and implement appropriate mitigation measures where necessary to ensure regulatory compliance and best value is delivered for all stakeholders.

### **3.0 MONITORING REQUIREMENTS**

In order for the Project Monitor to carry out its function a range of information and data will be required at regular intervals. The Project Monitor will be extending the facility provided to the Council's representative through the Development Agreement in terms of attendance, progress meetings and the like. The following set out the basic information and data required from the Company and is broken down into key areas related to:-

- a) Project Execution Plan.
- b) Finance and financial matters.
- c) Construction related output in terms of:-
  - Quality
  - Programme
  - Compliance.
- d) Leaseholder requirements
- e) Other issues – risks, issues log.

Note: a more detailed Monitoring Framework is to be worked up and agreed between the Council and the Company within one month of the Development Agreement coming into effect.

### **3.1 Project Execution Plan/Delivery Plan**

A high level Project Execution Plan is to be developed by the Company with the Council setting out the main works streams, phasing, timescales and funding sources. This should remain a "live" document for regular review and updating.

### **3.2 Finance and Financial Matters**

Pre-sales and sales with their respective values achieved for the calculation of overage purposes.

Any Social Housing Assistance applied for / received.

Section 106 payments made.

### **3.3 Construction Related Outputs**

3.3.1 Agreed quality indicators – steam changes, defects monitoring and reporting. Practical completion reviews and residents satisfaction surveys undertaken.

3.3.2 Programmes required for each work stream and phase.

3.3.3 Regular recording of progress – actual verses projected together with details of any variants.

3.3.4 Regular review of Project Target Completion dates which should include external and environmental work/Section 106.

3.3.5 Unit output data:-

- New build – units started / completed.
- Commercial – units started / completed.
- Community – units started / completed.

3.3.6 Change control procedure put in place to cover scope and/or cost variations and monitored monthly.

3.3.7 Compliance review/report – including planning, building control, CDM Regulations and any other statutory requirements.

3.3.8 Monthly Health Safety reports covering incidents, breches etc.

3.3.9 Regular Complaints monitoring and resolution status.

### **3.4 Other Issues**

3.4.1 Monthly review of Company's contractors KPI's.

3.4.2 Risk monitoring – monthly review of Risk Registers.

3.4.3 Project monitor to establish an Issues Log. The Company to contribute and participate in regular monitoring and updates.

- 3.4.4 Communications: The Company is to provide monthly reports on all communication with residents and other interested stakeholders including consultations/liaison meetings, resident discussions and RLO reports.
- 3.4.5 Draft copies of resident communications including numerous letters and the like to be issued to the Council for comment before distribution.
- 3.4.6 Provide all supporting information to reasonable and timely requests from LBTH in order to respond to specific adhoc enquiries dealt with during the monitoring period received from the Council, on behalf of councillors, senior managers or other external parties.
- 3.4.7 Copies of regular monthly progress meetings and notes.
- 3.4.8 Shared Equity / Shared Ownership.

#### **4.0 KEY PERFORMANCE INDICATORS**

- 4.1 The Council requires the development programmes to be delivered:-
- On time
  - Free from defects
  - Efficiently
  - Right first time
  - Safely.
- 4.2 During the one month period after implementation of Development Agreement the following stage is to be agreed:-
- The Company's Contractors Key Performance measures.
  - The Method of data capture.
  - The base line position of performance targets.
  - The reporting and accountability structure.

Develop a Project Execution Plan to deliver the above that includes (refer also to 3.1):-

- Roles and responsibilities.
  - Operational processes.
  - Training requirements.
  - Roll out programme.
  - Continuous Improvement Plan.
- 4.3 The suggested companies contractors KPI's are:-
- Programme
    - Time predictability – design and construction.
    - New build starts and completions.
    - Demolition and site clearance.
  - Cost
    - Cost predictability – delivered within budget.
    - Average time for final account agreement.

- Quality
  - Compliance with a specified design and quality standards.
- Defects
  - % of properties with zero defects at handover.
  - Time taken to rectify defects.
- Client Satisfaction
  - Number of registered complaints.
  - Average time taken to resolve complaints.
  - Number of repeat call complaints.
  - Resident satisfaction with product.
  - Resident satisfaction with quality of service.
  - Number of member enquiries
  - Average time taken to resolve member enquiries.
- Value Added
  - Number of local jobs created.
  - Number of training opportunities for local residents.
  - Additional investment levered into the scheme.
- Health and Safety
  - Number of reportable accidents.

#### 4.4 Proposed KPI's

See Appendix 11



**Appendix 16**  
**Community Building Requirements**

Handwritten signatures and initials, including a large stylized signature and the initials "JC".

## **COMMUNITY BUILDING REQUIREMENTS**

### **Community Building**

These requirements are an output specification only.

- 1.1 The Developer will build a general purpose Community Centre within Phase '1a' of the Site as indicated on the Plans approved under PA/12/02752 and one of the Key Requirements.
- 1.2 The Overall floor area of the facility is to be approximately 500 square metres. Clause 1.4 of Appendix 16 originally included for this work to be funded through S106 monies but the outline planning permission made no such provision. The cost of construction and fit-out of the Community Centre will therefore be an Agreed Additional Cost as defined in Schedule 6 of the Principal Development Agreement. .
- 1.3 The Agreed Additional Costs will be subject to Swan's demonstration of best value and will in any event be capped at the Agreed Additional Cost of £500,000 as agreed. The fit-out works will be procured by means of a competitive tender process with invitations to tender issued to a minimum of three contractors, approval of companies, evaluation processes and all documents to be approved by the Council and GLA, 10 days notice, etc etc.
- 1.4 In close consultation with the Council, GLA and any users and stakeholders to be identified by the foregoing parties, the Developer will carry out the following milestone activities by the target dates shown, for subsequent sign-off by the Council and HCA :
  - develop a technical specification, pricing and worked up budget for shell and core delivery (June 2013);
  - develop a detailed technical specification, pricing and budget for fit-out, meeting end user requirements as far as possible within this, based on the anticipated uses (December 2013) ;
  - procure consultants and contractors in relation to the fit-out of the centre on an open book basis, and manage the construction and fit-out of the building, providing monthly progress and completion reports, and delivery of the facility on time and within budget (June 2015);
  - develop and set out arrangements for, indicating the nature and indicative amount of any charges which will be applied to the lessees, including service charges and other management costs: these are to be reasonable for a building of this nature, bearing in mind its use and the expected non-profit making status of the organisation(s) and/or individuals which are expected to manage and provide or receive services therein (June 2014).
- 1.5 A consultation strategy to take forward this project will be prepared and submitted by the Developer by May 2013. This strategy will include representatives of the council, HCA, local residents and community stakeholders.
- 1.6 It is currently envisaged that Swan in partnership with residents and at least initially will manage the facility on a day to day basis. The Blackwall Reach Trust once established may, at the client's request be given the opportunity to manage the facility subject to acceptable business and resources plans and demonstration of its competence. Notwithstanding management arrangements it is important that this

facility is planned and developed for the use and access of all residents of Blackwall Reach, regardless of their gender, ethnicity, age or religion etc, and consideration must be given, and arrangements made where necessary, for existing Community Hall user groups.

- 1.7 This community facility will be built and operational by June 2015, which should be prior to the demolition of the existing Community Hall in Robin Hood Gardens Block Nos 1-104. .

**Appendix 17**  
**[Not used]**

Not used.

JB

**Appendix 18**  
**Local Employment Requirements**

JB

## **Appendix 18**

### **LOCAL EMPLOYMENT REQUIREMENTS**

#### **1. OBJECTIVES**

- 1.1 The parties agree to maximise the employment of local Tower Hamlets residents in employment created from or as a result of the Development.
- 1.2 The parties also agree to maximise the opportunities for local suppliers to supply good and services to the Development.

#### **2. AGREED ACTIONS**

- 2.1 In order to realise the above objectives the Developer agrees;
  - 2.2.1 To participate in the Council Employment and Enterprise initiatives
  - 2.2.2 To recognise that the Council is the primary agency working for the recruitment of local people and local businesses and act in accordance with this recognition
  - 2.2.3 To achieve at least 20% of all construction and ancillary jobs to be taken by local people (defined as Tower Hamlets residents), working with the Council Employment Initiatives in the first instance to recruit previously unemployed residents into construction vacancies.
  - 2.2.4 If the Council is unable to supply suitable candidates for identified vacancies within an agreed period (to be agreed with both parties acting reasonably but not less than 3 working days) the Developer can refer vacancies to other agencies agreed between the parties
  - 2.2.5 To use best endeavours to achieve throughout the period of the Development that at least 20% of all supplies and services shall be provided by local suppliers where available and practicable
  - 2.2.6 To provide all 16 – 19 year old residents of Blackwall Reach the opportunity to undertake an apprenticeship and / or training.
  - 2.2.7 To covenant with the prospective tenants / owners of the commercial / business element of the development to participate with the Council Employment and Enterprise initiatives in the recruitment of local labour.

#### **3. AGREED PROCESS**

- 3.1 In order to achieve the above actions the Developer agrees that prior to the commencement of the development it (together with the main contractor) will meet with representatives from the Council Employment & Enterprise team to set up a working group to consider and agree the implementation of employment training and enterprise initiatives and how to monitor progress thereof.
- 3.2 The Developer agrees to issue a written statement to prospective contractors and sub-contractors at the tendering of work stage and to the prospective tenants /



owners of the commercial / business element of the development when first identified, which sets out the Developer's commitment to the following;

- 3.2.1 ensuring that local people and businesses are able to benefit directly from the local employment opportunities arising from the construction of the development
- 3.2.2 ensuring that they and their contractors and sub-contractors and the prospective tenants / owners of the commercial / business element of the Development liaise with the Council in respect of job opportunities arising from both the construction and the end user commercial phases of the development
- 3.3 The Developer and their main Contractor will endeavour to provide the Council with a schedule/programme of work indicating the opportunities for contracted and subcontracted work and supplies.
- 3.4 The Developer and their main Contractor will provide to LBTH labour forecasting data at the earliest opportunity and review labour force requirements with LBTH on no less than a quarterly basis.
- 3.4 The Developer and their main contractor will provide with the Council monitoring information on a monthly basis reporting on (but not limited to);
  - 3.4.1 Number of Construction Days filled by Local Labour
  - 3.4.2 How many new apprenticeships have been created in this period?
  - 3.4.3 How Many apprenticeship have been safeguarded in this period?
  - 3.4.4 How Many new jobs for local people have been created in this period?
  - 3.4.5 How any jobs for local people have been safeguarded in this period?
  - 3.4.6 What % of the supply chain / qualifying services are local?
  - 3.4.7 What % of apprentices fall within the 16-19 year old bracket reside on RHG?

**Appendix 19**  
**Form of Parent Company Guarantee**

JB

- and -

---

**PARENT COMPANY GUARANTEE**

relating to

---

Draft Number: 1

**DAVIES ARNOLD COOPER**

6-8 Bouverie Street  
London EC4Y 8DD

T 020 7936 2222  
F 020 7936 2020

[www.dac.co.uk](http://www.dac.co.uk)

Ref: 167525.20

200

(1) [ ] (Company Registration Number [ ]) whose registered office is at [ ] (**Guarantor**)

(2) [ ] (Company Registration Number [ ]) whose registered office is at [ ] (**Beneficiary**)

**WHEREAS** the Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing;

1. The Guarantor will in all respects guarantee the due and proper performance of the Contract and the due observance and punctual performance of all the obligations, duties, undertaking, covenants and conditions by or on the part of the Contractor contained therein and to be observed and performed by it, which guarantee shall extend to include any variation or. addition to the Contract.
2. In the event of the Contractor failing to carry out, observe or perform all or any of the said obligations, duties, undertakings, covenants and conditions under the Contract (unless relieved from the performance of any part of the Contract by statute or by the decision of a court or tribunal of competent jurisdiction) then the Guarantor will be liable for and shall indemnify the Beneficiary against all losses, damages, costs and expenses whatsoever which the Beneficiary may incur by reason or in consequence of any default on the part of the Contractor under the Contract.
3. The Guarantor shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:
  - 3.1 any alteration to the nature or extent of the Works or Otherwise to the terms of the Contract;
  - 3.2 any allowance of time, forbearance, indulgence or other concession granted to the Contractor under the Contract or any other compromise or settlement of any dispute between the Beneficiary and the Contractor (but so that the Employer shall not pursue against the Guarantor a remedy contrary to the terms of any such compromise or settlement insofar as the Contractor shall have complied with such terms).

4. This Guarantee is a continuing guarantee and accordingly shall remain in operation until all obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full and is in addition to and not in substitution for any other security which the Beneficiary may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Contractor.
5. Insofar as any sums are due by the Contractor to the Beneficiary under the terms of the Contract then the Guarantor shall not claim any set off or counterclaim against the Contractor or prove in competition with the Beneficiary in respect of any payment by the Guarantor hereunder and in case the Guarantor receives any sums from the Contractor in respect of any payment of the Guarantor hereunder the Guarantor shall hold such monies in trust for the Beneficiary so long as any sums are payable (contingently or otherwise) under this Guarantee.
6. The Guarantor's obligation and liability under this Guarantee shall continue notwithstanding any disclaimer of the Contract by a liquidator or administrator appointed to the Contractor and the Contract shall for the purposes of this Guarantee be deemed to continue notwithstanding any such disclaimer.

IN WITNESS WHEREOF the Guarantor has executed this Deed of Guarantee the day and year first before written

**EXECUTED** as a **DEED** )  
by affixing the common seal of )  
 )  
in the presence of: )

Director

Director / Secretary

OR

**SIGNED** as a **DEED** by )  
 )  
acting by [a director and its secretary] )  
[two directors] )

Director

Director / Secretary

OR

**SIGNED as a Deed by**

)

)

in the presence of:

)

.....

**Signature if Witness**

.....

**Name**

.....

**Address**

.....

.....

.....

**Occupation**

.....

**Appendix 20**  
**Agreed Residential Scheme Mix**

BS

DL

JC

JB



Appendix 20      AGREED RESIDENTIAL SCHEME MIX

Key

Social rent tenure

Intermediate tenure

Private Tenure

Private Breakdown

Phase 1a Private

Beds		Size	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	0	0	0%
2B3P	61	657	3	0	0	0%
2B4P	70	753	3	0	0	0%
3B5P	86	926	5	0	0	0%
TOTAL				0	0	0%

01A

Phase 1a Affordable

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	14	7	7%
2B4P	70	753	3	15	5	5%
3B6P	100	1076	5	20	4	4%
4B7P	109	1173	6	18	3	3%
1B2P	50	538	2	50	25	26%
2B4P	70	753	3	51	17	17%
3B6P	100	1076	5	135	27	28%
4B7P	109	1173	6	48	8	8%
5B8P	133	1432	8	16	2	2%
TOTAL				367	98	100%

Ph 1A Tota    367

Private HR    0%    Social Rent    82%

Affordable    100%    Shared Ow    18%

Phase 1b Private

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	150	75	37%
2B3P	61	657	3	42	14	7%
2B4P	70	753	3	288	96	47%
3B5P	86	926	5	90	18	9%
TOTAL				570	203	100%

40,365

9,192

72,334

16,663

138,554

1B

Phase 1b Affordable

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	4	2	5%
2B4P	70	753	3	0	0	0%
3B5P	86	926	5	0	0	0%
3B6P	100	1076	5	20	4	10%
4B7P	109	1173	6	0	0	0%
1B2P	50	538	2	0	0	0%
2B4P	70	753	3	0	0	0%
3B5P	100	1076	5	180	36	86%
4B7P	109	1173	6	0	0	0%
TOTAL				204	42	100%

Ph 1b Total    774

Private HR    74%    Social Rent    88%

Affordable    26%    Shared Ow    12%

Phase 2 Private

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	94	47	37%
2B3P	61	657	3	87	29	23%
2B4P	70	753	3	60	20	16%
3B5P	86	926	5	160	32	25%
3B6P	100	1076	5	0	0	0%
4B7P	109	1173	6	0	0	0%
TOTAL				401	128	100%

25,295

19,042

15,070

29,623

-

-

89,029

ph2

Phase 2 Affordable

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	10	5	5%
2B3P	61	657	3	51	17	15%
2B4P	70	753	3	18	6	5%
3B6P	100	1076	5	10	2	2%
1B2P	50	538	2	20	10	9%
2B3P	61	657	3	60	20	18%
2B4P	70	753	3	15	5	5%
3B6P	100	1076	5	170	34	31%



4B7P	109	1173	6	72	12	11%
5B7P	133	1432	8	0	0	0%
TOTAL				426	111	100%

Ph 2 Total | 827

Private HR48%Social Rent79%

Affordable52%Shared Ow14%

Phase 3 Private

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	138	69	37%
2B3P	61	657	3	12	4	2%
2B4P	70	753	3	225	75	41%
3B5P	86	926	5	40	8	4%
3B6P	100	1076	5	145	29	16%
TOTAL				560	185	100%

37,136

2,626

56,511

7,406

31,216

134,894

ph3

Phase 3 Affordable

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	10	5	3%
2B4P	70	753	3	30	10	6%
3B6P	100	1076	5	25	5	3%
1B2P	50	538	2	70	35	21%
2B3P	61	657	3	24	8	5%
2B4P	70	753	3	126	42	25%
3B6P	100	1076	5	225	45	27%
4B7P	109	1173	6	48	8	5%
5B7P	119	1281	8	80	10	6%
TOTAL				628	168	97%

Ph 3 Total | 1188

Private HR47%Social Rent76%

Affordable53%Shared Ow9%

Phase 4 Private

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	132	66	17%
2B3P	61	657	3	177	59	16%
2B4P	70	753	3	750	250	66%
3B5P	86	926	5	25	5	1%
TOTAL				1084	380	100%

35,521

38,740

188,370

4,629

267,259

ph4

Phase 4 Affordable

Beds	Size sq m	Size sq ft	Hab Room	Hab Rm Total	Total no of Units	% of Total Units
1B2P	50	538	2	0	0	0%
2B3P	61	657	3	18	6	2%
2B4P	70	753	3	42	14	5%
4B7P	109	1173	6	138	23	9%
1B2P	50	538	2	18	9	3%
2B3P	61	657	3	57	19	7%
2B4P	70	753	3	171	57	22%
3B5P	86	926	5	190	38	15%
3B6P	100	1076	5	175	35	13%
4B7P	109	1173	6	330	55	21%
5B8P	119	1281	7	28	4	2%
TOTAL				1167	260	100%

Ph 4 Total | 2251

Private HR48%Social Rent83%

Affordable52%Shared Ow17%

## **Appendix 21 Developer's Tender**

JB

### **1. Final Tender (November 2010)**

- 1.1 Part A Design Submission
- 1.2 Part A Appendix 1 – Consortium Structure Diagram
- 1.3 Part A Appendix 2 – RBS Letter of Financial Support
- 1.4 Part A Appendix 2 – Swan FD Finance Letter
- 1.5 Part A Appendix 3 – Construction Management Statement
- 1.6 Part A Appendix 3 – Master Programme
- 1.7 Part A Appendix 3 – Phase 1a and 1b Programme
- 1.8 Part A Appendix 3 – Phase 1a and 1b Design Programme
- 1.9 Part A Appendix 3 – Stage 2 Tender Programme  
[note – no Appendix 4]
- 1.10 Part A Appendix 5 – Accommodation Schedule
- 1.11 Part A Appendix 6 – Lifetime Homes Method
- 1.12 Part A Appendix 7 – CSH PreAssessment
- 1.13 Part A Appendix 7 – BREEAM PreAssessment  
[note – no Appendix 8]
- 1.14 Part A Appendix 9 – Amenity Plan Masterplan Diagram Landscape
- 1.15 Part A Appendix 9 – Amenity Plan Masterplan Diagram Open Space
- 1.16 Part A Appendix 9 – Amenity Plan Masterplan Diagram Open Space Calculation
- 1.17 Part A Appendix 9 – Masterplan Diagrams – play
- 1.18 Part A Appendix 10 – Ezibuy Summary
- 1.19 Part A Appendix 11 – Worklessness Strategy
- 1.20 Part A Appendix 11 – Swan Corporate Worklessness Strategy
- 1.21 Part A Appendix 12 – Community Strategy
- 1.22 Part A Appendix 13 – Comprehensive Decant Strategy
- 1.23 Part A Appendix 14 – Transport Proposals
- 1.24 Part A Appendix 15 – Housing Management Letting Plan
- 1.25 Part A Appendix 16 – Housing Charter Questions
- 1.26 Part A Appendix 17 – Service Charge Comparison
- 1.27 Part A Appendix 18 – Utility Comparison
- 1.28 Part B ISFT Financial Cover Offer Letter
- 1.29 Part B Regen Uplift Table
- 1.30 Part B 1. Blackwall Reach Funding CPUKL
- 1.31 Part B 2. ISFT Matrix Submission
- 1.32 Part B 2. Summary of Offers 05.11.2010
- 1.33 Part B 3. Blackwall Appraisals Terms & Use
- 1.34 Part B 3. Confidentiality Agreement Appraisals Blackwall Reach
- 1.35 Part B 3. Phase 1a ITSFT Appraisal
- 1.36 Part B 3. Phase 1b ITSFT Appraisal
- 1.37 Part B 3. Phase 2 ITSFT Appraisal
- 1.38 Part B 3. Phase 3 ITSFT Appraisal
- 1.39 Part B 3. Phase 4 ITSFT Appraisal
- 1.40 Part B 4. Build Cost Estimate
- 1.41 Part B 5. Affordable Offer
- 1.42 Part B 6. Construction Management Statement
- 1.43 Part B 6. Headline Programme
- 1.44 Part B 6. master plan
- 1.45 Part B 6. phase 1a & 1b
- 1.46 Part B 6. phase 1a & 1b design
- 1.47 Part B 6. Tender Programme 05 11 10
- 1.48 Part B 7. Private Sale Market Report
- 1.49 Part B 7. ISFT Schedules Final
- 1.50 Part B 8. ISFT Income Commercial Schedule

- 1.51 Part B 8. Commercial Report
- 1.52 Part B 9. ISFT Required Appendix 1
- 1.53 Part B 9. ISFT Required Appendix 2 Swan
- 1.54 Part B 9. ISFT Required Appendix 2 Countryside
- 1.55 Part B 9. ISFT Required Appendix 3-5
- 1.56 Part B 9. ISFT Required Appendix 5
- 1.57 Part C Design & Access Statement
- 1.58 Part D 1. Masterplan A1
- 1.59 Part D 2. Masterplan Section
- 1.60 Part D 3. Plans A1
- 1.61 Part D 4. Elevations A3
- 1.62 Part D 5. Jestico & Whiles All Drawings

## **2. Clarification (December 2010)**

- 2.1 Clarifications Cover Letter
- 2.2 Regen Uplift Table
- 2.3 Matrix Comparison
- 2.4 Programme Clarifications
- 2.5 Comparison Plans – Bid Scheme Storeys
- 2.6 Comparison Plans – Bid Scheme Tenure
- 2.7 Comparison Plans – Bid Scheme Uses
- 2.8 Comparison Plans – Clarification Scheme Storeys
- 2.9 Comparison Plans – Clarification Scheme Tenure
- 2.10 Comparison Plans – Clarification Scheme Uses
- 2.11 Bid Scheme CGI
- 2.12 Comparison Scheme CGI
- 2.13 All Phases Plot By Plot Schedule 50% Affordable
- 2.14 50% Affordable Decant Schedule
- 2.15 Parking Schedule
- 2.16 Affordable Offer
- 2.17 Phase 1a Appraisals
- 2.18 Phase 1b Appraisals
- 2.19 Phase 2 Appraisals
- 2.20 Phase 3 Appraisals
- 2.21 Phase 4 Appraisals

**Appendix B**  
**Principal Development Agreement**

16.1 m/12

DATED

19 April

2011

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS**  
as the Council

**HOMES AND COMMUNITIES AGENCY**  
as the Agency

**SWAN HOUSING ASSOCIATION LIMITED**  
as the Developer

**COUNTRYSIDE PROPERTIES  
(IN PARTNERSHIP) LIMITED**  
as Countryside

and

**COUNTRYSIDE PROPERTIES (UK) LIMITED**  
as Countryside's Guarantor

**PRINCIPAL DEVELOPMENT AGREEMENT**

Relating to Blackwall Reach

We hereby certify this to be  
a true copy of the original

*Berwin Leighton Paisner*  
Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London EC4R 9HA

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DATED [19 April 2011]

## PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS** of The Town Hall Mulberry Place 5 Clove Crescent East India Dock London E14 2BG (the "Council")
- (2) **HOME AND COMMUNITIES AGENCY** of Central Business Exchange II, 414-428 Midsummer Boulevard Central Milton Keynes MK9 2EA (the "Agency")
- (3) **SWAN HOUSING ASSOCIATION LIMITED** (Industrial and Provident Society number 28469R) whose registered office is at Pilgrim House High Street Billericay Essex CM12 9XY (the "Developer")
- (4) **COUNTRYSIDE PROPERTIES (IN PARTNERSHIP) LIMITED** (company no 02771231) whose registered office is at Countryside House, The Drive, Brentwood, Essex CM13 3AT ("Countryside")
- (5) **COUNTRYSIDE PROPERTIES (UK) LIMITED** (company no 00614684) whose registered office is at Countryside House, The Drive, Brentwood, Essex CM13 3AT ("Countryside's Guarantor")

## BACKGROUND

- (A) The Council and the Agency (together the "Client") wish to secure the high quality sustainable regeneration of the Site on a comprehensive basis.
- (B) The Developer intends to deliver the Development in addition to acting in the capacity of Registered Provider.
- (C) Each of the Building Agreements between the Client and the Developer for the Development pursuant to this Agreement will contain provision for the payment of Overage (as such term is defined in the Building Agreement).
- (D) Countryside and Swan shall enter into a Building Contract for Phases 1a and 1b and simultaneously with Countryside entering into such Building Contract Countryside's Guarantor shall enter into the Parent Company Guarantee.
- (E) Swan proposes to appoint Countryside's Guarantor as Sub-Developer pursuant to the Building Agreement in respect of Phase 1b
- (F) The Client is in the course of establishing a community based trust, intended to be known as the Blackwall Reach Trust to have a continuing role in the long term stewardship and management of the Central Park.
- (G) The parties intend that the Developer will apply for detailed planning permission by making the Phase 1a Planning Application pursuant to Part A of this Agreement while the Client will make an Outline Planning Application in accordance with Part B of this Agreement.
- (H) The parties also intend that the Developer will apply for detailed planning permission in relation to the Phase 1b Land forthwith upon satisfaction of the Outline Planning Condition.
- (I) The parties further intend that:

- (i) Part C of this Agreement will set out their general obligations;
- (ii) Part D of this Agreement will apply to each of Phases 1(b), 2, 3 and 4;
- (iii) Part E of this Agreement will apply to each Phase as it becomes unconditional and the parties will enter into a Building Agreement for each Phase; and
- (iv) The Development shall be progressed in such manner that the buildings within the Client Land comprising and known as Robin Hood Gardens West (as referred to in the Decant Strategy) will be demolished by the Developer prior to 1<sup>st</sup> May 2014

- (J) The Council and the Agency have agreed with each other to act in such manner as will enable them each to comply with their obligations as the Client in accordance with the provisions of this Agreement and have entered into a collaboration which records this.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 In this Agreement:

"Acceptable Permission" means full planning permission comprising approval(s) of matters reserved by a Satisfactory Permission granted pursuant to an Outline Planning Application which is either agreed or determined in accordance with Clause 42 (*Applications for detailed permission*) to be in a form and upon conditions which are:

- (a) acceptable to the Client in that they do not contain any Onerous Conditions; and
- (b) acceptable to the Developer in that they do not contain any Unacceptable Conditions.

in each case unless a party has notified the other that it wishes to waive a right to object to a permission which contains an Onerous Condition in respect of a waiver by the Client and an Unacceptable Condition in respect of a waiver by the Developer and reference to "Acceptable Permissions" shall be to more than one of them.

"Acceptable Planning Condition" means the grant of an Acceptable Permission in respect of the Development and/or the Phase Works or any part of them.

"Acceptable Survey" means a survey which would constitute an Acceptable Survey pursuant to Clause 46 (*Surveys*).

"Additional Land" has the meaning given to it in Clause 53 (*Additional Land*).

"Additional Developer Interests" means any land or interests which the Developer requests and the Council (at its discretion) agrees to acquire, determine or otherwise include or that the Council considers necessary in the CPO (acting reasonably and at all times having regard to the Land Acquisition Strategy) being rights or interests not included within the Target Land but including (without limitation) land or other interests.

"Additional Public Realm" means the areas in the Site which are intended for public amenity including the areas shown shaded light green on the Phase Plan

(but excluding the Central Park) the precise extent of which is to be defined in the Building Agreement for each Phase.

**"Affordable Housing Units"** means all the Affordable Rented Units and the Intermediate Housing Units to be constructed as part of the Phase Works and provided as part of the Development.

**"Affordable Rented Units"** means all the Affordable Housing Units to be constructed as part of the Phase Works and retained as affordable housing for rental by the Approved RP.

**"Affordable Shared Equity Units"** means all the Affordable Housing Units to be constructed as part of the Phase Works and provided as part of the Development and disposed of by the Approved RP on a shared equity scheme to the Existing Leaseholders currently living on the Site which may be nominated by the Council for this purpose.

**"Affordable Shared Ownership Units"** means all the Affordable Housing Units to be constructed as part of the Phase Works as part of the Development and disposed of by the Approved RP on the basis of a shared ownership lease (or Rent to HomeBuy or any similar replacement product promoted by the HCA) to provide low cost home ownership to Qualifying Occupiers in accordance with the terms of this Agreement.

**"Affordable Workshop Space"** means a minimum of 5 units of workshop space of circa 2500 sq ft workshop space with metred utilities and all usual services including toilets and finished shop front on Practical Completion.

**"Agency"** includes any successor body or any body from time to time exercising the functions of the Agency under this Agreement.

**"Agreed Residential Scheme Mix"** means the spreadsheet set out in Appendix 20.

**"Anticipated Completion Date"** means the date which is indicated or otherwise established in accordance with the Programme (by the parties acting reasonably) as the date by which the Date of Practical Completion is to be achieved in respect of all of a Phase.

**"Appeal"** means any one or more of:

- (a) an appeal to the Secretary of State in accordance with sections 78 and 79 of the Planning Act against a refusal or non-determination of the Phase 1a Planning Application, the Outline Planning Application and/or any Detailed Application; and
- (b) proceedings pursuant to section 73 of the Planning Act for development without complying with one or more conditions of a planning permission granted pursuant to the Phase 1a Planning Application, the Outline Planning Application and/or any Detailed Application.

**"Approved Plans"** means the plans, specifications, programme and method statements for the Phase Works in respect of the relevant Phase:

- (a) as attached at Appendix 2; or
- (b) otherwise as approved by the client (at its discretion).

**"Approved RP"** means the Registered Provider or such other registered provider (in this context "registered provider" having the meaning given to it in the Housing and Regeneration Act 2008) as shall be proposed by the Developer and first approved in writing by the Client (acting reasonably).

**"Blackwall Reach Trust"** means a trust to be established by the Council to hold the Central Park or such other trust as may from time to time own the Central Park as described in clause 61.

**"Blight Notice"** means any blight notice served on the Client under the provisions of section 149 of the Planning Act or other legislation relevant to the CPO.

**"Block"** has the meaning set out in the Building Agreement.

**"Building Agreement"** means a building agreement to be entered into between the Client and the Developer in relation to each Phase and the carrying out of the Phase Works relating to that Phase substantially in the form of the draft attached in Schedule 1 (*Building Agreement*) Provided That (without limitation) no amendment may be made to the provisions thereof relating to Overage save with the approval of the Client which may be withheld at its absolute discretion.

**"Building Contract"** has the meaning given to it in the Building Agreement.

**"Central Park"** means the proposed park area to be provided by the Developer to replace the Green as shown for illustration on the Phase Plan within the Phase 2 Land which is broadly equivalent to the Green and in substantially the same location.

**"Central Park Plan"** means the plan attached at Appendix 9 and labelled "Central Park Plan".

**"Certificate of Practical Completion"** has the meaning given to in the Building Agreement.

**"Change in Control"** means

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Developer or the Registered Provider (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends), and/or,
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above of this definition of Change in Control.

**"Client"** means the Council and the Agency.

**"Client Land"** means all that land shown coloured blue on the Land Ownership Plan for identification and as more particularly described in Schedule 5 (*Client Land*).

**"Clients' Representative(s)"** means internal representative for the Council and internal representative from time to time for HCA and any reference to the relevant Client's Representative shall mean both of them unless stated otherwise.

**"Client's Solicitors"** means Berwin Leighton Paisner LLP of Adelaide House, London Bridge, London EC4R 9HA or such other solicitors whose details are notified to the Developer by the Client.

**"Client's Surveyor"** means such surveyor as the Client may appoint from time to time and whose details are notified to the Developer by the Client in accordance with the Project Monitoring Protocol.

**"Code of Measuring Practice"** means the Code of Measuring Practice published on behalf of the Royal Institution of Chartered Surveyors (6<sup>th</sup> Edition).

**"Commercial Units"** means a unit which is not intended for residential or community use which falls within either use class A1-A5; B1; D1 or D2 pursuant to the Use Classes Order (all of which the Developer shall provide with a finished shop front).

**"Common Estate Strategy"** means a strategy for the continuing common maintenance and repair lighting and cleansing of the Central Park the Additional Public Realm and all External Common Areas (as defined in the Lease) to a consistent standard in keeping with a high quality scheme as set out in the Key Requirements and in a form approved by the Client (such approval not to be unreasonably withheld or delayed).

**"Community Building"** means the proposed new building required by the Client the indicative requirements of which are set out in Appendix 16 and as the proposed location of which is shown on Phase 1a shaded white on the Land Ownership Plan.

**"Community Payment"** means the sum of £1million payable to the Council by the Developer to be held by the Council on behalf of the Blackwall Reach Trust (or any similar trust in whom the Central Park is from time to time vested) until the same is constituted as a legal entity and to be used for the purposes for which the said Trust is intended to be set up.

**"Confidential Information"** means in respect of the Client all information relating to the Client or the existence or terms of this Agreement in respect of which the Developer becomes aware in its capacity as a party to this Agreement or which is received by the Developer in relation to this Agreement from either the Client or any of its advisers or from any third party if the Information was obtained by that third party directly or indirectly from the Client or any of its advisers in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Developer means such specific information as the Developer shall have identified to the Client in writing prior to the date hereof as confidential information for the purposes of this Agreement.

**"Consents"** means the Satisfactory Permission, all other consents, permissions, agreements, licences and approvals under the Planning Act (and all other statutes containing provisions relating to town and country planning) (including the approval of any matters reserved by any such), Listed Buildings Act, building regulations and any other statute, bylaw or regulation of any competent authority from time to time which the Client and the Developer agree acting reasonably are necessary for the Developer to commence, undertake and complete the Development and/or the Phase Works or any part of them in accordance with the provisions of this Agreement including, if they are destroyed or damaged, the reinstatement of the Phase Works.

**"Consents Condition"** means the grant of all Consents and any judicial review period to have expired leaving each such Consent in place as provided in Clause 7 (*Consents Condition*) and Clause 44 (*Consents Condition*) (as the case may be).

**"Consultation Groups"** means such stakeholders as the Client and the Developer may agree (each acting reasonably) and reference to a **"Consultation Group"** shall be to any one or more of them as appropriate.

**"Consultation Strategy"** means the consultation strategy which is at Appendix 3 as varied by agreement between the parties in accordance with this Agreement.

**"Counsel"** means such suitably experienced leading counsel as the Client may nominate and who shall be approved by the Developer, whose approval shall not be unreasonably withheld.

**Countryside's Sub Development Agreement** means the Sub Developer Agreement which may be entered into by Countryside's Guarantor with Swan in accordance with the requirements of the Building Agreement for Phase 1b.

**"CPO"** means the proposed compulsory purchase order to be made in respect of all Third Party Interests to facilitate the Scheme as envisaged in accordance with the Land Acquisition Strategy.

**"CPO Costs"** means the costs and expenses incurred or to be incurred by the Client in respect of and/or relating to the CPO.

**"CPO Counsel"** means such suitably experienced counsel as the Client shall nominate and the Developer shall approve, such approval not to be unreasonably withheld.

**"CPO Land"** means all land and rights acquired by the Client in the course of satisfying the Site Assembly Condition in accordance with the provisions of this Agreement and which are required for the carrying out of the Phase Works in respect of the relevant Phase.

**"Data Subjects"** has the meaning given to that expression under the DPA.

**"Date of Practical Completion"** means the date stated or certified in each Certificate of Practical Completion issued in accordance with the relevant Building Agreement notwithstanding any Snagging Works.

**"Decant Strategy"** means the decant strategy contained in Appendix 12.

**"Design Code"** means the design code and design statement as referred to in the Planning Strategy.

**"Detailed Application"** means an application made by or on behalf of the Developer (which shall be made in joint names with the Client) in accordance with this Agreement pursuant to the Planning Act for approval of Reserved Matters in respect of any Phase Works in respect of the relevant Phase pursuant to a Satisfactory Permission which was granted pursuant to an Outline Planning Application and **"Detailed Applications"** shall be construed accordingly.

**"Developer"** means the Developer and the Registered Provider.

**"Developer's Solicitors"** means TLT of One Redcliff Street Bristol BS1 6TP or such other as solicitors whose details are notified to the Client by the Developer.

**"Developer's Tender"** means the documents submitted by the Developer on the basis of which it was selected by the Client as listed at Appendix 21 and included on the CD referred to in Appendix 21.

**"Development"** means the development of the Site so as to include the Key Requirements.

**"Development Costs"** means the reasonable and proper costs of the development which are to be incurred and as are referred to in the Financial Model.

**"DPA"** means the Data Protection Act 1998.

**"EIR"** means the Environmental Information Regulations 2004 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**"EIR Exception"** means any applicable exemption to EIR.

**"Employer's Representative"** means the person appointed as Employer's Representative under the relevant Building Agreement.

**"Existing Council Tenants"** means all those persons who at the relevant time are secure tenants of the Council as provided in the Decant Strategy who occupy any existing residential accommodation within the Phases.

**"Existing Freeholders"** means the owner of a freehold interest on a Freehold Unit within the Phases.

**"Existing Freehold Units"** means a residential unit the proprietor of which is an Existing Freeholder.

**"Existing Leaseholders"** means a long leaseholder of an Existing Leasehold Unit within the Phases.

**"Existing Leasehold Unit"** means a residential unit the proprietor of which is an Existing Leaseholder.

**"Exempted Information"** means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions.

**"Final Determination"** means the last date by which any Proceedings and/or Appeal are determined and any time for appealing or further appealing has expired, except that if any Proceedings are withdrawn or any Appeal is abandoned (and no other Proceedings or Appeal is current and any time for making them has expired) the date shall be the date of such withdrawal or abandonment.

**"Financial Model"** means the financial appraisal of each Phase of the Development as agreed by the Developer and the Client and included at Appendix 1.

**"Funding Condition"** has the meaning contained in Clause 55 of this agreement.

**"Green"** means the area presently known as Millennium Green which is shown for identification hatched orange of the Central Park Plan.

**"Gross Development Value"** means all income attributable to or in connection with the sale of Private Housing Units, the sale of the Affordable Housing Units and other income to include (but not by way of limitation) income from and the sale of car parking spaces, the sale or value of the Commercial Units and the sale or value of the Ground Rent Investment (as defined in Schedule 6) and as set out in the Financial Model.

**"Gross Internal Area"** means the area expressed in square footage (or metres) within each Private Housing Unit in accordance with the "Gross Internal Area" standard in the Code of Measuring Practice.

**"Highways Agreement"** means an agreement to be entered into with the relevant highways authority pursuant to sections 38 and/or 278 of the Highways Act 1980 for the provision of highways works as part of the Development and/or the Phase Works and any agreements to be entered into for the creation of walkways pursuant to section 35 of the Highways Act 1980.

**"Highways Condition"** means the requirement for the making of Road Closure Orders and the completion of a Highways Agreement and any relevant Statutory Agreements as provided in Clause 54 (*Highways Agreement/road closure*).

**"Information"** means in relation to:

- (a) FOIA has the meaning given under section 84 of FOIA; and
- (b) has the meaning given under the definition of environmental information in section 2 of the EIR.

**"Information Commissioner"** has the meaning set out in section 6 of the DPA.

**"Insolvent"** means:

- (a) in relation to a company that:
  - (i) a proposal is made for a voluntary arrangement under part I of the Insolvency Act 1986 (the "Act"); or
  - (ii) a petition is presented for an administration order under part II of the Act provided that if the petition is subsequently withdrawn or dismissed on the date of such withdrawal or dismissal it shall cease to be Insolvent; or
  - (iii) a receiver or manager is appointed whether under part III of the Act (including an administrative receiver) or otherwise; or
  - (iv) it goes into liquidation as defined in section 247 (2) of the Act (other than a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent); or
  - (v) a provisional liquidator is appointed under section 135 of the Act; or

- (vi) a proposal is made for a scheme of arrangement under section 425 of the Companies Act 1985 (other than for the sole purpose of amalgamation or reconstruction while solvent);
- (b) in relation to an individual that:
  - (i) an application is made for an interim order or a proposal is made for a voluntary arrangement under part VIII of the Act; or
  - (ii) a bankruptcy order is made under part IX of the Act; or
  - (iii) he enters into a deed of arrangement;
- (c) and in relation to a partnership and/or the property of a partnership the appointment of a receiver or liquidator or the presentation of an application for an administration order.

**"Intellectual Property Rights"** shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person.

**"Interest Rate"** means interest at the rate of 4% per annum above the base rate from time to time of Co-Operative Bank Plc.

**"Intermediate Housing Units"** means Affordable Shared Ownership Units and Affordable Shared Equity Units.

**"Key Requirements"** means the high quality regeneration of the Site on a comprehensive basis with a high quality scheme which will provide the following:

- (a) a minimum of 1621 new residential Units in accordance with the Agreed Residential Scheme Mix;
- (b) a minimum of 50% Affordable Housing Units on a phase by phase basis across the entire scheme as measured by habitable rooms;
- (c) a minimum of 34 Affordable Shared Equity Units of which 10 must be provided in relation to Phase 1a and 24 provided in relation to Phase 1b;
- (d) a minimum of 160 Affordable Shared Ownership Units;
- (e) a minimum of 534 Affordable Rented Units of which 52 must be provided in relation to Phase 1a and 112 in relation to Phase 1b;
- (f) the Community Building extending to circa 525sqm Gross Internal Area and to be provided in Phase 1a;
- (g) the provision of the Affordable Workshop Space;
- (h) the demolition of Robin Hood Gardens West prior to 01 May 2014;

- (i) a minimum of 18,284 sqm of Additional Public Realm and the Central Park of which there must be a minimum of 8,915 sqm as the Central Park to the north of Poplar High Street;
- (j) a minimum number of Commercial Units comprising of 4,100 sqm of commercial space and in respect of any A1 use of the Use Classes Order no individual unit shall exceed 5,000 sq ft;
- (k) the aggregate Gross Internal Area of the individual Private Housing Units in each Phase (measured in Gross Internal Area) shall be at least:

64,627 sq ft	Phase 1a;
118,630 sq ft	Phase 1b;
106,747 sq ft	Phase 2;
139,189 sq ft	Phase 3;
193,924 sq ft	Phase 4;

- (l) a new replacement bus turnaround for Blackwall Reach;
- (m) up to 168 car parking spaces for Existing Council Tenants that are decanted within the scheme;
- (n) all residential units to meet Lifetime Homes;
- (o) all residential units to be in accordance with the Mayor of London's London Housing Design Guide, Design for London August 2010 published by the London Development Agency or as amended from time to time;
- (p) 10% of the Affordable Rented Units should be fully adapted wheelchair accessible units and those units should have at least 2 bedrooms (unless otherwise agreed).

**"Land Acquisition Strategy"** means the land acquisition strategy for the Development which is at Appendix 4 as amended or updated from time to time in accordance with this Agreement.

**"Land Ownership Plan"** means the plan showing the indicative land ownerships within the Site contained in Appendix 9

**"Land Referencing Agents"** means such suitably experienced land referencing agent as the Developer shall nominate and the Client shall approve, such approval not to be unreasonably withheld.

**"Lease"** means a lease of a Phase (or part thereof) for a term of 200 years to be granted by the Client to the relevant Developer in accordance with the terms of the Building Agreement.

**"Listed Buildings Act"** means the Planning (Listed Buildings and Conservation Areas) Act 1990.

**"Marketing and Private Lettings Strategy"** means the marketing and lettings strategy in respect of the first lettings of all Private Housing Units, in the form at Appendix 6 as amended and updated from time to time in accordance with this Agreement.

**"Mortgagee"** means a mortgagee of the Developer's interest under this Agreement in compliance with Clause 22.2.

**"Mosque Land"** means that part of the Target Land shown hatched purple for identification only within Phase 1a on the Land Ownership Plan and marked "Mosque".

**"On Site Open Space"** means all that part of the relevant Phase that consists or forms part of an Open Space.

**"Onerous Condition"** means a condition in the nature of one or more of the conditions set out at Schedule 2 (*Onerous Conditions*).

**"Open Space"** has the meaning ascribed to it in section 336 of the Planning Act.

**"Open Space Condition"** means the condition set out in Clause 45 (*The Open Space Condition*).

**"Outline Planning Application"** means an application under the Planning Act for Outline Planning Permission to be made by/on behalf of the Client in accordance with the Key Requirements (where applicable) and the Planning Strategy and upon which the Client will consult with the Developer.

**"Outline Planning Condition"** means the obtaining by the Client of an outline planning permission for the Development which is free from Onerous Conditions and/or Unacceptable Conditions.

**"Outline Planning Permission"** means the grant of planning permission which would discharge the Outline Planning Condition.

**"Outline Planning Relevant Date"** means the first anniversary of the date of this Agreement or if on such date there are Proceedings or an Appeal on foot or (where a resolution to grant Outline Planning Permission has been made) a Planning Agreement has not been completed the earlier of:

- (a) the later of:
  - (i) the date of Final Determination of such Proceedings or Appeal; or
  - (ii) the completion of a Planning Agreement; or
- (b) the date which is 24 months after the date of this Agreement.

**"Overage"** means variable payments to be made by the Developer to the Client in accordance with each Building Agreement.

**"Parent Company Guarantee"** means a parent company guarantee to be entered into between Countryside's Guarantor with Swan in the form of the draft annexed at Appendix 19.

**"Performance Criteria"** means the performance criteria contained in Appendix 11.

**"Performance Criteria Condition"** means the condition set out in Clause 38 (*The Performance Criteria Condition*).

**"Permission Date"** means each date on which the relevant Acceptable Permission or Satisfactory Permission is issued in writing by the local planning authority or the Secretary of State or is determined to be issued pursuant to this Agreement (as applicable).

**"Personal Data"** has the meaning given to that expression under the DPA.

**"Phase Infrastructure"** means all the roads, footpaths, Service Media and landscaping to be constructed within or serving each Phase as part of the Phase Works for that Phase including off site works required for the development and full beneficial occupation of any Phase.

**"Phase Plan"** means the plan marked "Phase Layout" and contained in Appendix 9.

**"Phase Price"** means:

- (a) in respect of the Phase 1a Land £1;
- (b) in respect of the Phase 1b Land £1;
- (c) in respect of the Phase 2 Land £1;
- (d) in respect of the Phase 3 Land £1; and
- (e) in respect of the Phase 4 Land £6.5million pounds (reduced to the extent of the Overage paid before a Building Agreement is entered into for the Phase 4 Land in accordance with Clause 67 but never being less than one pound).

**"Phases"** means the phases within the Site identified on the Phase Plan comprising:

- (a) Phase 1a Land;
- (b) Phase 1b Land;
- (c) Phase 2 Land;
- (d) Phase 3 Land; and
- (e) Phase 4 Land;

and the expression **"the relevant Phase"** shall mean any one of those phases as the context may require and **"Phase"** shall be construed accordingly.

**"Phase Specifications"** means for each Phase the drawings and specification annexed to the Building Agreements which describe the Phase Works to be undertaken in relation to the relevant Phase which shall be consistent with the Key Requirements, the Approved Plans, the Sustainability Standards and Agreed Residential Scheme Mix and which shall contain:

- (a) layout drawings on a scale of 1:200 showing the proposed location of all the Units and all Phase Infrastructure for the relevant Phase;
- (b) details of the numbers, types and locations of each of the Units to be constructed including (without limitation) a plan specifying the numbers



and locations of each of the Affordable Rented Units, Affordable Shared Ownership Units, Affordable Shared Equity Units, Commercial Units and Private Housing Units;

- (c) elevation drawings showing the details and elevations of each of the Units;
- (d) details of any footpaths, common areas and/or Additional Public Realm within the relevant Phase indicating which roads and footpaths (if any) shall be adopted as a public highway (the extent of which is to be approved by the Client) and which are intended to be privately maintained;
- (e) drawings showing the hard and soft landscaping proposals for the Phase Works to that Phase and any public realm and open areas to be created as part of the Phase Works;
- (f) (where applicable) details of the location and elevations of the Community Building and Affordable Workshop Space;
- (g) such further drawings and specifications as may be required to delineate any other works that are required by this agreement to be included in the Phase Works for any Phase.

**"Phase Works"** means:

- (a) for each Phase all the demolition, site clearance, building and construction works to be undertaken by the relevant Developer within that Phase and (where applicable) off site works in accordance with the provisions of the Building Agreements to include all Units, all Phase Infrastructure, Additional Public Realm and other works as described in the Approved Plans and in the Phase Specifications annexed to the Building Agreement for that Phase;
- (b) in the case of Phase 1b also the demolition of that part of Robin Hood Gardens known as "Robin Hood Gardens West" (as referred to in the Decant Strategy) shown within the Phase 2 Land on the Land Ownership Plan to the reasonable satisfaction of and in accordance with the reasonable requirements of the Council;
- (c) in the case of Phase 2 also the demolition of that part of Robin Hood Gardens known as "Robin Hood Gardens East" (as referred to in the Decant Strategy) shown within the Phase 3 Land on the Land Ownership Plan to the reasonable satisfaction of and in accordance with the reasonable requirements of the Council;
- (d) in the case of Phase 1a the provision of the Community Building and the hoarding of to the Green together with the carrying out of all necessary Surveys on Phase 1b;
- (e) the provision of the Affordable Workshop Space in Phase 1b;
- (f) in the case of Phase 2 and Phase 3 the provision of the Central Park insofar as it is relevant to each Phase; and
- (g) any other works required to be undertaken as a condition of an Acceptable Permission or Satisfactory Permission or Planning Agreement.

**"Phase 1a Conditions"** means collectively and insofar as applicable to Phase 1a:

- (a) the Phase 1a Planning Condition; and
- (b) the Consents Condition.

**"Phase 1a Land"** means the land and buildings shown edged red on the Phase Plan marked "Phase 1a".

**"Phase 1a Planning Condition"** means the obtaining by the Developer of a Phase 1a Planning Permission which is a Satisfactory Permission

**"Phase 1a Planning Application"** means an application for detailed planning permission under the Planning Act for the Phase 1a Planning Permission to be made by or on behalf of the Developer in accordance with Clause 4 (*The Phase 1a Application*).

**"Phase 1a Planning Permission"** means the grant of detailed planning permission for the Phase 1a Land.

**"Phase 1a Unconditional Date"** means the date on which the Phase 1a Conditions have been satisfied or waived (where waiver is permitted under the terms of this Agreement).

**"Phase 1b Land"** means the land and buildings shown [edged red] on the Phase Plan marked "Phase 1b".

**"Phase 2 Land"** means the land and buildings shown [edged red] on the Phase Plan marked "Phase 2".

**"Phase 3 Land"** means the land and buildings shown [edged red] on the Phase Plan marked "Phase 3".

**"Phase 4 Land"** means the land and buildings shown [edged red] on the Phase Plan marked "Phase 4".

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

**"Planning Agreement"** means any agreement or unilateral undertaking under section 106 of the Planning Act or section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or any agreement under any other enactment having the same or similar effect in respect of works which may properly be required in order to facilitate the Development and/or the Phase Works or any part of them and/or the obtaining of a Satisfactory Permission or Acceptable Permission.

**"Planning Strategy"** means the planning strategy contained in Appendix 10.

**"Press and Publicity Protocol"** means the protocol contained in Appendix 13.

**"Primary Conditions"** means the Outline Planning Condition.

**"Primary Unconditional Date"** the date on which the Primary Conditions have been satisfied or waived (where waiver is permitted under this Agreement).

**"Private Housing Units"** means the Units to be constructed and/or provided as part of the Development as private residential dwellings.

**"Proceedings"** means any one or more of the following:

- (a) call-in proceedings consequent upon a direction by the Secretary of State that the Application be referred to him for determination under section 77 of the Planning Act;
- (b) an application to the court for judicial review or for leave to apply for judicial review;
- (c) an application or appeal to the court pursuant to section 288 of the Planning Act; and
- (d) legal challenge against any Road Closure Order.

**"Process"** has the meaning given to that expression under the DPA and Processed will be construed accordingly.

**"Professional Team"** has the meaning given to it in the Building Agreement.

**"Programme"** means the programme for the delivery of the Development which is at Appendix 7 as varied, amended and updated in accordance with this Agreement and which will in any event secure demolition of the buildings known as Robin Hood Gardens West prior to 01 May 2014.

**"Project Monitoring Protocol"** means the protocol set out in Appendix 15.

**"Qualifying Occupiers"** means those persons who cannot afford to rent or buy housing generally available in the open market.

**"Registered Provider"** means Swan Housing Association.

**"Relevant Date"** means the first anniversary of the date of this Agreement or (where a resolution to grant a Phase 1a Planning Permission has been made) if a Planning Agreement has not been completed or on such date there are Proceedings or an Appeal on foot or the Satisfactory CPO (if relevant) having been confirmed the period within which all applications for judicial review of it has not expired it shall be the earlier of:

- (a) the later of:
  - (i) the date of Final Determination of such Proceedings or Appeal; and
  - (ii) the date of expiration of six weeks after the confirmation of the Satisfactory CPO;
  - (iii) the date on which the Planning Agreement has been completed; or
- (b) the date which will be 24 months after the date of this Agreement.

**"Request for Information/RFI"** shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Development, this Agreement or any activities or business of the Client.

**"Reserved Matters"** means any one or more of the following matters in respect of which approval has not been sought in the Outline Planning Application:

- (a) siting;

- (b) design;
- (c) external appearance;
- (d) means of access; and
- (e) landscaping.

**"Residents' Charter"** means the residents' charter together with the additional resident charter obligations contained in Appendix 5.

**"Road Closure Order"** means all statutory and regulatory orders required for the stopping-up or closing of any part of a highway(s), footpath(s) or footway which are necessary to permit or as part of the Phase Works in respect of the relevant Phase.

**"Satisfactory CPO"** means in relation to any relevant Phase a CPO which is confirmed by the Secretary of State or upheld by the High Court:

- (a) without modifications; or
- (b) subject only to such modifications as the parties acting reasonably have previously agreed; or
- (c) with modifications which are satisfactory to the Client and the Developer acting reasonably or as determined by the Expert as being reasonable having regard to the extent of the Third Party Interests which need to be acquired for the purposes of the Phase Works in respect of the relevant Phase.

**"Satisfactory Permission"** means Outline Planning Permission for the Development and Phase 1a Planning Permission (as the case may be) which in both cases is either agreed or determined in accordance with the terms of this Agreement and which is in a form and upon conditions which are:

- (a) satisfactory to the Client in that it contains no Onerous Conditions; and
- (b) satisfactory to the Developer in that it contains no Unacceptable Conditions.

in each case unless a party has notified the other that it wishes to waive a right to object to a permission which contains an Onerous Condition in respect of a waiver by the Client and an Unacceptable Condition in respect of a waiver by the Developer.

**"Secondary Conditions"** means collectively and insofar as applicable to each Phase:

- (a) in respect of the Phase 1b Land, the Phase 2 Land, the Phase 3 Land and the Phase 4 Land only, the Acceptable Planning Condition;
- (b) in respect of the Phase 2 Land, the Phase 3 Land and the Phase 4 Land only, the Performance Criteria Condition;
- (c) in respect of the Phase 2 Land, the Phase 3 Land and the Phase 4 Land only the Site Assembly Condition;

- (d) the Consents Condition;
- (e) the Highways Condition;
- (f) in respect of the Phase 2 and 3 Land only the Open Space Condition;
- (g) in respect of the Phases 1b, 2, 3 and 4 the Surveys Condition ;
- (h) in respect of the Phase 2 Land, the Phase 3 Land and the Phase 4 Land only the Funding Condition;
- (i) in respect of the Phase 2 Land, the Phase 3 Land and the Phase 4 Land only, the Viability Condition;
- (j) the Statutory Consents Condition (other than in respect of the Phase 1(a) Land);

and for the avoidance of doubt the parties agree that the only conditions that apply to the Phase 1b Land are those referred to in sub paragraphs (a), (d), (e) and (j) above.

**"Secondary Conditions Long Stop Date"**<sup>1</sup> means:

- (a) in respect of the Phase 1b Land, 30 July 2012; and
- (b) in respect of the Phase 2 Land, Phase 3 Land and the Phase 4 Land such date as the Client (acting reasonably) may specify which shall not be earlier than:
  - (i) in respect of Phase 2, 31 December 2014;
  - (ii) in respect of Phase 3, 31 August 2016;
  - (iii) in respect of Phase 4, 31 October 2017,

save where at any such date there are in respect of the Phase Proceedings or an Appeal on foot or (where a resolution to grant Planning Permission has been made) a Planning Agreement has not been completed or the Satisfactory CPO having been confirmed the period within which all applications for judicial review of it has not expired, it shall be the earlier of:

- (a) the later of:
  - (i) the date of Final Determination of such Proceedings or Appeal; and
  - (ii) the date of expiration of six weeks after the confirmation of the Satisfactory CPO; and
  - (iii) the date on which a Planning Agreement has been completed; or

<sup>1</sup> Client to consider these long stop dates in light of the Programme.

*DAC on behalf  
of Countryside  
to South*

- (b) the date which is two years from the date of submission of the Detailed Application in respect of the relevant Phase pursuant to the terms of this Agreement.

**"Secondary Unconditional Date"** means the date on which the Secondary Conditions are satisfied in respect of a relevant Phase.

**"Secretary of State"** means the Secretary of State of the Department for Communities and Local Government (or other minister or authority at the relevant time having or entitled to exercise the powers now conferred on that Secretary of State by sections 78 - 79 of the Planning Act) and including, where appropriate, an inspector appointed to act on his behalf.

**"Scheme"** has the meaning set out in the Land Acquisition Strategy.

**"Site"** means the land and each and every part of it upon which the Development is being or is to be developed from time to time as the same is edged red on the Phase Plan for the purposes of identification only.

**"Site Assembly Condition"** means the requirement for the acquisition of the relevant Third Party Interests by private treaty or the making and confirmation of a Satisfactory CPO as provided in Clause 47 (*Site Assembly – Third Party Interests*) (as the case may be).

**"Snagging Works"** has the meaning given to it in the Building Agreement.

**"Statutory Agreements"** means any agreement entered into pursuant to any enactment relating to drainage, sewerage or other works which may properly be required in order to facilitate the Development, the Phase Works or any part of them.

**"Statutory Consent Condition"** means obtaining all necessary statutory consents required by the Council and/or the Agency (if any) in relation to the Phase Works on the relevant Phase the CPO or the grant of the Leases in relation to the relevant Phase.

**"Strategic Project Review Group"** shall mean:

- (a) an appropriate representative of the Council;
- (b) an appropriate representative of the HCA;
- (c) a representative of the Developer;
- (d) a representative of Countryside or Countryside's Guarantor (in relation to the Phase 1(a) Land and the Phase 1(b) Land) and any further phases it may be employed in respect of
- (e) the Client's Representative(s);
- (f) the Clients Surveyor,

or in each case any replacement of such individuals as is nominated by the Client or the Developer.

**"Sub Developer"** means in respect of Phase 1b only Countryside's Guarantor (where it enters into Countryside's Sub-Development Agreement) but otherwise such party (if any) approved by the Client as provided for in a Building Agreement.

**"Surveys"** means those ground condition surveys which the Developer undertakes pursuant to Clause 46 (*Surveys*) (as the case may be) and reference to a **"Survey"** shall be to any one of those surveys.

**"Surveys Condition"** means the condition relating to undertaking the Surveys as provided in Clause 46 (*Surveys*) (as the case may be).

**"Sustainability Standards"** means the building, design, quality and sustainability standards set out in Appendix 8.

**"Target Land"** means the land and interests more particularly described in the Land Acquisition Strategy Part 1 of Schedule 1;

**"Third Parties"** means the owners of Third Party Interests and **"Third Party"** shall be construed accordingly.

**"Third Party Interests"** means interests in and annexed to the Target Land or in accordance with the Land Acquisition Strategy any further land which is agreed by the Developer and the Client acting reasonably to be acquired by way of Additional Developer Interests in order to undertake the Scheme (including in the case of rights the extinguishment of any existing rights and the grant of any new rights required by the Developer) and reference to **"Third Party"** shall be construed accordingly.

**"Trust Area"** means the Site together with such neighbouring or adjoining neighbourhoods as the Client may reasonably specify for the Blackwall Reach Trust.

**"Unacceptable Condition"** means a condition in the nature of one or more of the conditions set out at Schedule 3 (*Unacceptable Conditions*).

**"Units"** means each building or part of a building which is designed or constructed for separate beneficial occupation and use and shall include all the Affordable Housing Units, Intermediate Housing Units, Commercial Units and Private Housing Units.

**"Use Classes Order"** means the Town and Country Planning Use Classes Order 1987.

**"Viability Condition"** means as set out in Schedule 6.

**"Viability Test"** means as set out in Schedule 6.

**"VAT"** means value added tax.

**"Working Day"** means any day other than Saturday or Sunday or public or bank holidays when clearing banks in the United Kingdom are open to the public for the transaction of business.

1.2 References to Clauses, Parts, Schedules and Appendices shall be deemed to be references to Clauses and Parts of and Schedules and Appendices to this Agreement unless otherwise stated.

1.3 Headings to Clauses and Schedules shall be disregarded.

1.4 Any references to VAT shall include any tax of a similar nature substituted for or in addition to it unless the context otherwise requires.

1.5 Any reference in this Agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re-amended, re-enacted or applied by or under any other enactment and shall include all instruments, orders, plans, regulations and permissions and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.

1.6 Where in this Agreement examples are given (including where the word **"including"** is followed by a list of items) such examples shall not limit any general description preceding such examples.

1.7 References to the **"parties"** shall be references to the Client and the Developer, and references to a **"party"** shall be to either of them.

1.8 All references to the Client are to the Council and the Agency as landowner of the Client Land and shall not in any way fetter or compromise the Council as local planning authority or the Council or the Agency in any other capacity, or in the exercise of any statutory duty.

1.9 Where in this Agreement the acceptance, consent, approval or agreement of a party is not to be unreasonably withheld it shall not be unreasonably delayed.

## 2 PART A - PHASE 1a

2.1 This Part A of this Agreement shall together with Clause 1 (*Definitions and Interpretation*) come into effect on the date of this Agreement except as, or to the extent, specifically stated.

2.2 It is the intention of the parties that Phase 1a Planning Application will be progressed by the Developer as herein provided contemporaneously with the Outline Planning Application referred to in Part B of this Agreement.

## 3 PHASE 1A CONDITIONS

The Phase 1a Conditions must be satisfied or waived, where permitted under this Agreement, on or before the Relevant Date for the Phase 1a Unconditional Date to be achieved.

## 4 THE PHASE 1A APPLICATION

4.1 The parties have agreed the Planning Strategy and shall comply with it.

4.2 The Developer shall consult with the Client in the preparation of the Phase 1a Application and shall submit it to the Client (as landowner) for approval no later than ten Working Days after the Outline Planning Application has been submitted to the local planning authority under the Planning Act, such approval not to be unreasonably withheld or delayed where the Phase 1a Application is consistent with the Approved Plans, the Phase Specifications, the Key Requirements and other requirements of this Agreement.

4.3 If the Client does not approve the Phase 1a Application or any part of it, it shall notify the Developer within ten Working Days of receipt setting out details of its objections and the Developer shall within ten Working Days of receipt of the notice from the Client (except where the required revisions are of a material nature in

which case a further time period for submission shall be agreed between the parties acting reasonably) submit a revised Phase 1a Application to the Client for approval, such approval to be on the same basis as referred to in Clause 4.2.

#### 4.4 The Developer shall:

- (a) submit the Phase 1a Application to the local planning authority within five Working Days of the Client's approval of it and will do so in the joint names of itself and the Client;
- (b) diligently pursue the Phase 1a Application and shall use all commercially prudent endeavours to obtain at its own expense the Satisfactory Permission as expeditiously as reasonably possible and in any event such that the Phase 1a Application and the Outline Planning Application will be considered contemporaneously by the local planning authority;
- (c) where it is necessary or desirable to do so, enter into discussions and negotiations with the local planning authority and all statutory consultees under the planning process and take such steps in the course of or following such discussions and negotiations as are commercially prudent with a view to obtaining Satisfactory Permission;
- (d) keep the Client fully informed of such material discussions and negotiations and of the progress of the Phase 1a Application and send to the Client copies of all material correspondence with the local planning authority and give as much notice as is reasonably practicable of, and allow the Client and its advisers to attend and participate at, meetings held with the local planning authority and take into account all reasonable representations made by the Client and its advisers;
- (e) as often as it is necessary or requisite to do so in the reasonable opinion of the Developer, seek advice from Counsel in connection with the Phase 1a Application and the bringing or contesting of any Appeal and/or Proceedings and shall provide to the Client copies of all instructions to Counsel;
- (f) if Counsel is instructed in connection with the Phase 1a Application or on any matter relating to the obtaining of the Satisfactory Permission, give as much notice as is reasonably practicable of and permit the Client and its advisers to attend all conferences with Counsel and to receive free of expense a copy of any written opinion or note of conference given by Counsel; and
- (g) not withdraw or amend the Phase 1a Application nor make any further Phase 1a Application for planning permission relating to the Phase Works in respect of the Phase 1a Land, other than as required or permitted by this Agreement, without the previous consent of the Client, such consent not to be unreasonably withheld.

4.5 The Client shall co-operate with the Developer and take all steps reasonably requested by the Developer (in its capacity as landowner only) to achieve a Satisfactory Permission.

4.6 The Client shall keep the Developer fully informed of all action it may take in accordance with Clause 4.5.

4.7 If the local planning authority fails within 16 weeks of the date of submission to give notice to the Developer of its decision in relation to the Phase 1a Application, or if it gives notice to the Developer that the Phase 1a Application has been referred to the Secretary of State, the Developer shall not agree to an extension of the period in respect of the Phase 1a Application without the consent of the Client, such consent not be unreasonably withheld.

4.8 Within five Working Days of the Developer's receipt of a copy of a resolution to grant, or the grant or refusal of the Phase 1a Application and of the outcome of any Proceedings and/or Appeal the Developer shall send a copy of the resolution to grant, or refusal, or decision to the Client.

4.9 Within ten Working Days of the Developer's receipt of a copy of a resolution to grant planning permission or the grant of planning permission pursuant to the Phase 1a Application the Developer shall notify the Client:

- (a) whether the planning permission is a Satisfactory Permission; or
- (b) if it is not, the reasons why the Developer considers that one or more of the conditions is an Unacceptable Condition.

4.10 Within ten Working Days of the Client's receipt of a copy of a resolution to grant planning permission or the grant of planning permission pursuant to the Phase 1a Application it shall notify the Developer:

- (a) whether the planning permission is a Satisfactory Permission; or
- (b) if it is not the reasons why the Client considers that one or more of the conditions is an Onerous Condition.

4.11 If the Client or the Developer does not provide the confirmation in the timescales provided at Clause 4.9 or Clause 4.10 or if there is any dispute or disagreement between them as to whether any planning permission amounts to a Satisfactory Permission then either of them may refer the question for determination in accordance with Clause 19 (*Disputes*) subject to the Developer and the Client first meeting within three Working Days of any dispute arising as to whether any condition of a planning permission is an Onerous Condition or an Unacceptable Condition with a view to settling such dispute.

4.12 If a dispute pursuant to this Clause 4 (*The Phase 1a Application*) has been referred to determination pursuant to Clause 19 (*Disputes*) but has not been determined by the last date for lodging an Appeal the Developer shall lodge an Appeal or Appeals to the Secretary of State against such refusal or Onerous Conditions or Unacceptable Conditions. If the Expert determines that the permission granted amounts to a Satisfactory Permission the Appeal shall be withdrawn, and if he determines that the permission is subject to an Onerous Condition or an Unacceptable Condition the provisions of Clause 4.13 shall apply.

4.13 Subject to Clause 4.16, in respect of the grant of permission which either of the parties may agree, or which an Expert may determine, contains either an Onerous Condition or an Unacceptable Condition, or a refusal the Developer shall not later than the last date for lodging an appeal lodge an Appeal or Appeals to the Secretary of State against such Onerous Conditions, Unacceptable Conditions or refusal.

4.14 The Developer shall at its own expense and with all due diligence prosecute any Appeal and shall:

- (a) keep the Client and its advisers fully advised as to the progress of the Appeal or Appeals; and
- (b) give the Client as much notice as is reasonably possible of and allow the Client and its advisers to attend all conferences with Counsel and before instructing Counsel the instructions to Counsel shall first be agreed with the Client such agreement not to be unreasonably withheld.

4.15 The Developer shall diligently pursue any Proceedings subject as provided in Clause 4.16 and the Client will provide such reasonable assistance as the Developer shall reasonably request in so doing.

4.16 In respect of any Proceedings and/or any Appeal the Developer shall (at its option) be released from its obligation to pursue such Proceedings and/or Appeal if it provides to the Client the written opinion of Counsel that such Proceedings and/or Appeal are on the balance of probabilities:

- (a) in respect of an Appeal more likely to fail than to proceed; or
- (b) in respect of a calling in by the Secretary of State, more likely than not to result in a refusal; or
- (c) in respect of proceedings relating to applications for judicial review or permission to apply for judicial review or an application or appeal to the court pursuant to section 288 of the Planning Act more likely to fail than to succeed; or
- (d) in respect of a legal challenge more likely to fail than succeed.

4.17 Any disputes between the parties in respect of this Clause 4 (*The Phase 1a Application*) shall be determined by an expert pursuant to Clause 19 (*Disputes*).

## 5 PLANNING AGREEMENTS FOR THE DEVELOPMENT

5.1 The Developer shall if so required by the local planning authority or other relevant body in respect of the Phase 1a Application, enter into such Planning Agreement and other Statutory Agreements as are reasonably and properly required to facilitate the grant of Satisfactory Permission except to the extent that any proposed Planning Agreement contains an Unacceptable Condition or an Onerous Condition. The Developer shall use reasonable endeavours to negotiate the terms of the Planning Agreement in tandem with negotiations and discussions with the local planning authority in respect of the Phase 1a Application, it being the parties intention that an agreed form Planning Agreement shall, where reasonably practicable, be in an agreed form at the point at which a resolution to grant planning permission is made by the local planning authority.

5.2 The form of the Planning Agreement shall first be approved by the parties whose approval shall not be unreasonably withheld. The Client shall not be required to approve a Planning Agreement which contains an Onerous Condition and (subject to any contrary provision of this Agreement) the Developer shall not be required to approve a Planning Agreement which contains an Unacceptable Condition.

5.3 The Council shall not be required to enter into a Planning Agreement but the Agency shall enter into a Planning Agreement as landowner where required by the Developer and only where:

- (a) the Planning Agreement accords with Clause 5.2;

- (b) the Agency receives a full indemnity from the Developer; and

- (c) the Planning Agreement is conditional upon implementation of the relevant Phase of the Development.

6

## SATISFACTION OF THE PLANNING CONDITION

The Phase 1a Planning Condition shall be satisfied on the date which is three months after the Permission Date in respect of the Satisfactory Permission unless at that date there are Proceedings or an Appeal on foot in relation to it, in which case the date shall be the date of Final Determination leaving in place the Satisfactory Permission.

7

## CONSENTS CONDITION (PHASE 1a)

7.1

The Developer shall as soon as reasonably practicable, having regard to the Programme, apply for and thereafter use all reasonable endeavours to obtain all Consents required to enable it to commence the Phase Works in respect of the Phase 1a Land. On obtaining each such Consent the Developer shall provide copies to the Client.

7.2

The Consents Condition shall be satisfied in respect of Phase Works in respect of the Phase 1a Land when the Developer has obtained all such Consents and upon such satisfaction the Developer shall immediately notify the Client.

8

## LAND ACQUISITION STRATEGY AND MOSQUE LAND

8.1

The parties shall comply with the Land Acquisition Strategy

8.2

The Council and the Agency shall take such steps as they determine are reasonably necessary in relation to the Land Acquisition Strategy and the Decant Strategy in relation to Phase 2 and (if they deem appropriate) other Phases in accordance with the relevant provisions of Part D of this Agreement for the purposes of enabling the Client and the Developer to comply with the Decant Strategy.

8.3

The Developer shall comply with such of the provisions of Part D of this Agreement insofar as appropriate as a consequence of Clause 8.1. and compliance with the Decant Strategy notwithstanding the fact that Part D has not otherwise become unconditional.

8.4

The Agency shall use all reasonable endeavours to procure the acquisition of the Mosque Land in order to facilitate the Phase 1a Application and the provision of the Community Building

8.5

In the event that the Agency has been unable to procure the unconditional exchange of an agreement to acquire the Mosque Land prior to 30 December 2011:

- (a) the Client shall use all reasonable endeavours to acquire the Mosque Land;
- (b) the Client and the Developer shall act reasonably to agree as appropriate such steps as are required by way of reserved matters application or otherwise to ensure that the Phase Works on the Phase 1a Land are adapted as far as necessary but will not otherwise be delayed; and
- (c) the Client will pay the additional costs reasonably and properly incurred by the Developer as a result of any additional reserved matters application for

Phase 1a provided that the Developer will mitigate the level of such costs in making such application.

## 9 PART B - OUTLINE PLANNING

9.1 This Part B of this Agreement shall, together with Clause 1 (*Definitions and interpretation*) and Part A come into effect on the date of this Agreement except as, or to the extent, specifically stated.

9.2 It is the intention of the parties that the Client and the Developer will procure the satisfaction of the Outline Planning Condition in respect of the Development as a whole as hereinafter provided.

## 10 PRIMARY CONDITIONS

The Primary Conditions must be satisfied or waived, where permitted under this Agreement, on or before the Outline Planning Relevant Date for the Primary Unconditional Date to be achieved.

## 11 THE OUTLINE PLANNING APPLICATION

11.1 The Client will no later than six months from date of this Agreement submit the Outline Planning Application and shall use all reasonable endeavours so to do but if it has not done so by that date the Developer may submit the Phase 1a Planning Application.

11.2 The Client shall (in the capacity of land owner only):

- (a) diligently pursue the Outline Planning Application and shall use all commercially prudent endeavours to obtain at its own expense a Satisfactory Permission as expeditiously as reasonably possible;
- (b) where it is necessary or desirable to do so, enter into discussions and negotiations with the local planning authority and all statutory consultees under the planning process and take such steps in the course of or following such discussions and negotiations as are commercially prudent with a view to obtaining Satisfactory Permission;
- (c) keep the Developer fully informed of such material discussions and negotiations and of the progress of the Outline Planning Application and send to the Developer copies of all material correspondence with the local planning authority and allow the Developer and its advisers to attend and participate at meetings held with the local planning authority and take into account all reasonable representations made by the Developer and its advisers;
- (d) as often as it is necessary or requisite to do so, seek advice from Counsel in connection with the Outline Planning Application and the bringing or contesting of any Appeal and/or Proceedings and shall provide to the Developer copies of all instructions to Counsel;
- (e) if Counsel is instructed in connection with the Outline Planning Application or on any matter relating to the obtaining of a Satisfactory Permission, permit the Developer and its advisers to attend all conferences with Counsel and to receive free of expense a copy of any written opinion or note of conference given by Counsel; and

- (f) not withdraw or amend the Outline Planning Application nor make any further Outline Planning Application for outline planning permission relating to the Development, other than as required or permitted by this Agreement, without the previous consent of the Developer not to be unreasonably withheld.

11.3 The Developer shall co-operate with the Client and take all reasonable steps reasonably requested by the Client to achieve a Satisfactory Permission.

11.4 The Developer shall keep the Client fully informed of all action it may take in accordance with Clause 11.3.

11.5 If the local planning authority fails within 16 weeks of the date of submission to give notice to the Client of its decision in relation to the Outline Planning Application, or if it gives notice to the Client that the Outline Planning Application has been referred to the Secretary of State, the Client shall not agree to an extension of the period in respect of the Outline Planning Application without the consent of the Developer which shall not be unreasonably withheld.

11.6 Within ten Working Days of the Client's receipt of a copy of a resolution to grant, or the grant or refusal of the Outline Planning Application and of the outcome of any Proceedings and/or Appeal the Client shall send a copy of the resolution to grant, or refusal, or decision to the Developer.

11.7 Within ten Working Days of the Client's receipt of a copy of a resolution to grant planning permission or the grant of planning permission pursuant to the Outline Planning Application the Client shall notify the Developer:

- (a) whether the planning permission is a Satisfactory Permission; or
- (b) if it is not, the reasons why the Client considers that one or more of the conditions is an Onerous Condition.

11.8 Within ten Working Days of the Developer's receipt of a copy of a resolution to grant planning permission or the grant of planning permission pursuant to the Outline Planning Application it shall notify the Client:

- (a) whether the planning permission is a Satisfactory Permission; or
- (b) if it is not the reasons why the Developer considers that one or more of the conditions is an Unacceptable Condition.

11.9 If either the Developer or the Client does not provide the confirmation as provided at Clause 11.7 or Clause 11.8 or if there is any dispute or disagreement between them as to whether any planning permission amounts to a Satisfactory Permission then either of them may refer the question for determination in accordance with Clause 19 (*Disputes*) subject to the Developer and the Client first meeting within three Working Days of any dispute arising as to whether any condition of a planning permission is an Onerous Condition or an Unacceptable Condition with a view to settling such dispute.

11.10 If a dispute pursuant to this Clause 11 (*The Outline Planning Application*) has been referred to determination pursuant to Clause 19 (*Disputes*) but has not been determined by the last date for lodging an Appeal the Client shall lodge an Appeal or Appeals to the Secretary of State against such refusal or Onerous Conditions or Unacceptable Conditions. If the Expert determines that the permission granted amounts to a Satisfactory Permission the Appeal shall be withdrawn, and if he



determines that the permission is subject to an Onerous Condition or an Unacceptable Condition the provisions of Clause 11.11 shall apply.

- 11.11 Subject to Clause 11.14, in respect of the grant of permission which either of the parties may agree, or which an Expert may determine, contains either an Onerous Condition or an Unacceptable Condition, or a refusal the Client shall not later than the last date for lodging an appeal lodge an Appeal or Appeals to the Secretary of State against such Onerous Conditions, Unacceptable Conditions or refusal.
- 11.12 The Client shall at its own expense prosecute any such Appeal with all due diligence and shall:
- (a) keep the Developer and its advisers fully advised as to the progress of the Appeal or Appeals; and
  - (b) allow the Developer and its advisers to attend all conferences with Counsel and before instructing Counsel the instructions to Counsel shall first be agreed with the Developer such agreement not to be unreasonably withheld.
- 11.13 The Client shall diligently pursue any Proceedings subject as provided in Clause 11.14 and the Developer will provide such reasonable assistance as the Client shall reasonably request in so doing.
- 11.14 In respect of any Proceedings and/or any Appeal the Client shall (at its option) be released from its obligation to pursue such Proceedings and/or Appeal if it provides to the Developer the written opinion of Counsel that such Proceedings and/or Appeal are on the balance of probabilities:
- (a) in respect of an Appeal more likely to fail than to proceed; or
  - (b) in respect of a calling in by the Secretary of State, more likely than not to result in a refusal; or
  - (c) in respect of proceedings relating to applications for judicial review or leave to apply for judicial review or an application or appeal to the court pursuant to section 288 of the Planning Act more likely to fail than to succeed; or
  - (d) in respect of a legal challenge more likely to fail than succeed.
- 11.15 Any disputes between the parties in respect of this Clause 11 (*The Outline Planning Application*) shall be determined by an expert pursuant to Clause 19 (*Disputes*).

## 12 PLANNING AGREEMENTS FOR THE DEVELOPMENT

- 12.1 The Developer shall, if so required by the local planning authority or other relevant body in respect of the Outline Planning Application, enter into such Planning Agreement and other Statutory Agreements as are reasonably and properly required to facilitate the grant of Satisfactory Permission except to the extent that any proposed Planning Agreement contains an Unacceptable Condition.
- 12.2 The form of the Planning Agreement shall first be approved by the parties whose approval shall not be unreasonably withheld. The Client shall not be required to approve a Planning Agreement which contains an Onerous Condition.

- 12.3 The Council shall not be required to enter into a Planning Agreement but the Agency shall enter into a Planning Agreement as landowner where required by the Developer and only where:

- (a) the Planning Agreement accords with Clause 12.2;
- (b) the Agency receives a full indemnity from the Developer; and
- (c) the Planning Agreement is conditional upon implementation of the relevant Phase of the Development.

## 13 SATISFACTION OF THE OUTLINE PLANNING CONDITION

The Outline Planning Condition shall be satisfied on the date which is three months after the Outline Planning Permission Date in respect of Satisfactory Permission unless at that date there are Proceedings or an Appeal on foot in relation to it, in which case the date shall be the date of Final Determination leaving in place the Satisfactory Permission.

## 14 PART C - GENERAL (ALL PHASES)

- 14.1 This Part C of this Agreement shall, together with Clause 1 (*Definitions and interpretation*), Part A and Part B come into effect on the date of this Agreement except as, or to the extent, specifically stated.
- 14.2 The parties shall comply with the provisions of this Part C in respect of each Phase and all of the Development and the Site.

## 15 FURTHER PLANNING APPLICATIONS

Except as otherwise provided for in this Agreement, the parties agree that neither of them shall make any application for planning permission in respect of the Development or the Site or any part of them which conflicts with a Satisfactory Permission without the approval of the other party, which shall be in its absolute discretion.

## 16 DECANT STRATEGY

- 16.1 The parties shall comply with the Decant Strategy in a manner which is consistent with the Programme.
- 16.2 Without prejudice to Clause 16.1 the Developer will in accordance with the Decant Strategy:
- (a) make the re-housing arrangements for Existing Council Tenants Existing Freeholders and Existing Leaseholders;
  - (b) provide physical assistance in re-housing Existing Council Tenants Existing Freeholders and Existing Leaseholders;
  - (c) offer assistance to residents via offsite deals where practicable to Existing Freeholders and Existing Leaseholders; and
  - (d) offer re-housing additionally via incentives to Existing Council Tenants Existing Freeholders and Existing Leaseholders.

## 17 RESTRICTION ON SALE OF CLIENT LAND

- 17.1 The Client shall not sell any of the Client Land and/ or (once acquired) the CPO Land except in accordance with the provisions of this Agreement and in order to facilitate the Development.
- 17.2 The Client may sell parts of the Client's Land or CPO Land with the prior agreement of the Developer which shall not be unreasonably withheld, in respect of any disposal of an interest which is not material to the Development and would not result in an increase in the amount of compensation payable in respect of the acquisition of Third Party Interests in the Site.
- 17.3 The Client shall not require the consent of the Developer in order to enter into lettings and/or licences or land exchanges of any land within the Site in relation to which:
- (a) details have been given by the party proposing to enter into the lettings and/or licences to the other prior to the date of this Agreement;
  - (b) the term shall expire or be capable of being terminated prior to commencement of any development upon such part of the Site pursuant to this Agreement on no more than three months' notice; and
  - (c) the security of tenure provisions of the Landlord and Tenant Act 1954 have been excluded (where relevant); or
  - (d) in the case of land exchanges for the purpose of facilitating Phase 4; or
  - (e) where the Council or the Agency are transferring land shaded white within Phase 4 on the Land Ownership Plan as part of the arrangements to acquire the Third Party Interests
- 17.4 The Client shall not require the consent of the Developer for any disposition or dealing of or with the Client's Land by the Client in compliance with its statutory obligations but will give the Developer as much notice as is reasonably practicable thereof.

## 18 NOTICES

- 18.1 Any notice in respect of this Agreement shall be in writing and shall be sufficiently served if sent by registered or recorded delivery post, or delivered by hand to the parties at the addresses set out in this Agreement (or such alternative address as may be notified to the other party from time to time) (with a copy also being sent to their solicitors) and service shall be deemed made on the next Working Day after delivery by hand and if sent by registered or recorded delivery post on the Working Day next but one after the date of posting.
- 18.2 Any notice which is required to be served on the Client shall be served on the Council at The Town Hall Mullberry Place 5 Clove Crescent East India Dock London E14 2BG (marked for the attention of Isabella Freeman Assistant Chief Executive (Legal Services) and The Agency at Maple House 149 Tottenham Court Road London W1T 7BN (marked for the attention of Emma Wilson, Project Manager) or in both cases at such other address as the Client may notify from time to time.
- 18.3 Any notice which is required to be served on the Developer shall be served on the Group Chief Executive Pilgrim House High Street Billericay CM12 9XY

- 18.4 Where the Client has received notice of a Mortgagee any notice required to be served on the Mortgagee shall be served on the address of such Mortgagee as provided to the Client.

- 18.5 Where Countryside has entered into a Building Contract or Countryside's Guarantor has entered into a Building Agreement for a Phase then any notice required to be served on a mortgagee under this clause in respect of that Phase shall also be served on Countryside's Guarantor.

## 19 DISPUTES

- 19.1 Whenever there is a dispute between the Client and the Developer which either party refers to resolution pursuant to this Clause 19 (*Disputes*), simultaneously with the procedure set out in the rest of this Clause 19 (*Disputes*) the Director of Development and Renewal of the Council, the Head of the London Region of the Agency, and the deputy Chief Executive of the Developer and Registered Provider shall arrange to meet within five Working Days of the referral for determination and shall consult in good faith and use all reasonable endeavours to resolve the issue in dispute.
- 19.2 Where in this Agreement reference is made to a dispute being referred to an expert in accordance with this Clause 19 (*Disputes*) then such matter shall be determined by an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten years and who is a specialist in relation to such subject matter and such independent person shall be referred to in this Clause 19 (*Disputes*) as the "Expert".
- 19.3 For the purpose of this Clause 19 (*Disputes*) and all references for disputes to be determined pursuant to this Clause 19 (*Disputes*) Countryside or Countryside's Guarantor shall not be entitled to refer any matter to determination pursuant to this Clause 19 (*Disputes*).
- 19.4 The Expert shall be agreed between the parties or failing such agreement be nominated in the case of any dispute relating to the Phase Works and/or the Development by the president or vice-president or other duly authorised officer of the Royal Institution of Chartered Surveyors and in the case of any dispute relating to planning issues by the president or vice-president of the Bar on the application of any party at any time, and the following provisions shall apply:
- (a) the Expert shall act as expert and not as an arbitrator and his decision shall be final and binding upon the parties save in the case of manifest error or fraud;
  - (b) the Expert shall consider (*inter alia*) any written representations on behalf of any party to the dispute (if made within ten Working Days of receipt of notification of the Expert) and counter-representations but shall not be bound them;
  - (c) the Expert shall supply to the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within ten Working Days of the parties' respective receipt of such copies;
  - (d) the parties shall use all reasonable endeavours to procure that the Expert gives his decision as speedily as possible but in any event within 20 Working Days of his appointment;

- (e) the costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination in equal proportions between them; and
- (f) if the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for appointment of an Expert shall be repeated as often as necessary.

19.5 Notwithstanding any other provisions of this Agreement any dispute as to legal construction or interpretation shall not be referred to the Expert but instead the parties submit to the jurisdiction of the courts of England and Wales.

## 20 ENTIRE AGREEMENT, NON-MERGER

20.1 This Agreement (together with any Lease or Building Agreement) contains the entire agreement between the parties and may only be varied or amended by a document signed by or on behalf of all of the parties. The Developer acknowledges that it is entering into this Agreement without placing any reliance upon any representation (written or oral) which may have been made by the Client or any agent, adviser or other person acting for the Client except such representations as may be made in this Agreement or may have been made in any written communication from the Client's Solicitors to the Developer's Solicitors.

20.2 So far as they remain to be performed or observed the provisions of this Agreement shall continue in full force and effect notwithstanding completion of any Building Agreement or the grant of any Phase Lease.

## 21 GOOD FAITH

The Client and the Developer shall each owe to the other a duty to act with the utmost good faith in relation to their respective obligations in this Agreement.

## 22 DEALING WITH THIS AGREEMENT

22.1 Except as set out at Clause 22.2 the Developer shall not assign or hold on trust, charge or otherwise dispose of its interest under this Agreement and/or under any Building Agreement.

22.2 The Developer may assign by way of security its benefit in this Agreement and/or under any Building Agreement to a Mortgagee subject to compliance with the terms of this Clause 22.2:

- (a) a Mortgagee must be a bank or other reputable finance company or institution at arm's length to the Developer which is to provide finance for the purposes of the Development (in whole or part);
- (b) a Mortgagee may include the Countryside's Guarantor or the Registered Provider's Guarantor where providing finance to the Developer on arm's length terms for the purposes of the Development;
- (c) the Developer must procure that the Mortgagee first provides to the Client a full and detailed summary of the proposed terms of such financing and the Developer shall provide to the Client such other information as the Client may reasonably request about such financing;

(d) the assignment to a Mortgagee is subject to the approval of the Client which shall not be unreasonably withheld or delayed;

(e) the Developer must procure that the Mortgagee provides to the Client the Mortgagee's address for service on or before the date of the assignment by way of security; and

(f) there shall at no time be more than two Mortgagees in respect of the Development and only one Mortgagee shall be entitled to exercise the right set out in Clause 23

22.3 At the request and cost of any Mortgagee the Client will enter into a deed of priority in relation to the rights of the Client and such Mortgagee shall have the right (but not an obligation) to step into and take over the implementation of the construction of the Development. The form of such deed shall correspond with the provisions of Clause 22.2 and Clause 23 and otherwise shall be in a form agreed between the Client and the Mortgagee provided that both of them act reasonably.

22.4 Within five Working Days of the completion of any assignment of the Developer's interest in the agreement pursuant to this Clause 22 (*Dealing with this Agreement*) the Developer shall serve notice of such assignment on the Client together with a certified copy of the assignment.

## 23 DETERMINATION

23.1 If the Phase 1a Planning Application has not been submitted by the date stipulated in Clause 4.4(a) and the Developer has not submitted the Planning Application within a further period of 14 days following written notice of this served on it by the Client the Client may determine Part A of this Agreement by serving a further notice on the Developer and upon the Developer's receipt of such notice Part A of this Agreement shall determine with immediate effect but subject, if applicable, to the terms of Clause 23.8.

23.2 If the Phase 1a Unconditional Date has not occurred by the Relevant Date then the Client or the Developer may determine Part A of this Agreement by serving five Working Days' notice on the other at any time before the Phase 1a Unconditional Date and upon expiry of such notice Part A of this Agreement shall determine with immediate effect but subject, if applicable, to the terms of Clause 23.8.

23.3 If the Primary Unconditional Date has not occurred by the Outline Planning Relevant Date then the Client or the Developer may determine Part B, Part D and Part E of this Agreement PROVIDED THAT where the Developer has submitted the Phase 1 Planning Application neither party may determine the provisions of this Agreement insofar as they relate to Phase 1a but without prejudice to any right to determine which otherwise arises pursuant to clauses 23.4, 23.5 or 23.6

23.4 If an Appeal against the refusal of planning permission pursuant to the Phase 1a Planning Application, or against the conditions imposed upon the grant of any planning permission pursuant to the Phase 1a Application results in the upholding of the refusal or the conditions appealed against or the Developer is relieved of its obligation to pursue an Appeal and/or Proceedings then (unless the parties have agreed that a further application shall be made) the Developer may at any time before the Relevant Date serve notice on the Client determining Part A of this Agreement with immediate effect.

- 23.5 If an Appeal against the refusal of planning permission pursuant to the Outline Planning Application, or against the conditions imposed upon the grant of any planning permission pursuant to the Outline Planning Application results in the upholding of the refusal or the conditions appealed against or if the Client is relieved of its obligation to pursue an Appeal and/or Proceedings then (unless the parties have agreed that a further application shall be made) the Client may at any time following that date but before the Outline Planning Relevant Date serve notice on the Developer determining Part B, Part D and Part E of this Agreement with immediate effect.
- 23.6 If the Developer commits any material breach of this Agreement or any Building Agreement or no less than four minor breaches in a 12 month period which taken together amount to a material breach, and fails to remedy such material breach or series of breaches within 30 Working Days after receiving notice from the Client specifying the breach, or if the Developer becomes Insolvent, then in any such case the Client may at any time thereafter (but in respect of a remediable breach only whilst such breach remains unremedied) serve a termination notice to determine this Agreement (referring to this Clause 23 (*Determination*)) and upon the expiry of a further period of 30 Working Days after service of such notice without the breach or breaches being rectified to the reasonable satisfaction of the Client in this Agreement with immediate effect but subject, if applicable, to the terms of Clause 23.8 and also Clause 19 (*Disputes*) if there is a dispute referred to the Expert by either party and in such case termination shall be 15 Working Days after the Expert notifies each party of his decision that the Client is entitled to determine this Agreement.
- 23.7 Any determination of the whole or part of this Agreement shall:
- (a) be without prejudice to any claim which any party may have against another arising before the date of determination;
  - (b) not affect the continuing effect of any provisions of this Agreement which are expressly stated to apply after the determination of this Agreement, and such provisions shall continue in effect until such time as all the obligations of the parties pursuant to such provisions have been complied with;
  - (c) in respect of the determination of the whole of this Agreement determine any Building Agreement; and
  - (d) permit the Client and the Agency a royalty free licence to use any drawings, plans or specifications prepared pursuant to it.
- 23.8 For the protection of any Mortgagee any notice by the Client to the Developer notifying the Client's intention to terminate the whole or part of this Agreement shall also be served at the same time upon a Mortgagee. A Mortgagee shall, if the Client serves notice of its intention to determine the whole or part of this Agreement, be entitled, within a period of 90 Working Days from the date of the Client's notice, itself to enter into, or direct a nominee (first approved by the Client) to enter into, a duly executed deed of covenant with the Client to comply with the outstanding obligations of the Developer under this Agreement or the relevant part of this Agreement (as the case may be) and where the Client's notice pursuant to Clause 23.6 specified an irremediable breach, covenanting to pay to the Client within ten Working Days of agreement or determination a sum by way of reasonable compensation for the irremediable breach within ten Working Days of such sum being agreed or determined. Such deed of covenant shall be in such

form as the Client may reasonably require. Any dispute as to the amount of such compensation shall be determined pursuant to Clause 19 (*Disputes*).

- 23.9 If a Mortgagee proposes to institute the provisions of Clause 23.8:
- (a) the Mortgagee shall pay the reasonable and proper costs and expenses of the Client in complying with Clause 23.8. Such costs to be payable within ten Working Days of written demand; and
  - (b) the Client shall be entitled to require that the Mortgagee keep it regularly informed of its progress and intentions and that the Mortgagee procures that the relevant parts of the Site are kept safe and secure to the reasonable satisfaction of the Client pending exercise by the Mortgagee of its rights pursuant to Clause 23.8.
- 23.10 The Client serve copies of any notice given by it to the Developer pursuant to this Clause 23 (*Determination*) upon any Mortgagee of which it has notice and upon the Guarantors.
- 23.11 In the case of serving any notice of breach the Client shall (insofar as practicable) set out details of the breach and steps required to remedy it (where remediable).
- 24 **THIRD PARTY RIGHTS**
- 24.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that act.
- 24.2 Obligations of the Registered Provider, the Developer, Countryside and the Countryside Guarantors are enforceable by the Agency, the Council and the Client.
- 25 **VAT**
- All supplies made under and sums payable under this Agreement shall be subject to VAT where VAT is properly payable and such VAT shall be paid by the party to whom the relevant supply is made or from whom the relevant sum is due at the same time as the supply is made or the sum is due subject to the receipt of a valid VAT invoice subject as mentioned below.
- 26 **INTEREST**
- All sums payable pursuant to this Agreement which are not paid on the due date for payment shall bear interest at the Interest Rate from the date on which payment was due until the date of actual payment.
- 27 **APPROVALS AND AUTHORISATIONS**
- 27.1 The Developer shall not be released from or relieved of any of its other obligations set out in this Agreement as a result of any approval, agreement or consent of the Client or anyone on the Client's behalf for a specific issue.
- 27.2 Where the approval, consent, agreement, acknowledgement or authority of the Client is required pursuant to this Agreement such approval, consent, agreement, acknowledgement or authority shall (without limitation) only be validly given if in writing and signed by or on behalf of the Council and the Agency by the Client's Representatives (or such other person from the Council or the Agency as the

relevant Client's Representative may advise is necessary for any particular purpose).

27.3 Where in this Agreement the Developer is required to submit to the Client for its approval, agreement or consent any plans, specifications or other information, in order for such submission to be validly submitted for the purposes of this Agreement it must be submitted to both of the Clients' Representatives and state on its face: "This is an application to the Client for approval pursuant to Clause [set out relevant clause reference] of the Principal Development Agreement and a response is required by [set out relevant date]".

27.4 If the Developer suggests that at any time the Client has failed to respond within the period required by or otherwise in accordance with this Agreement a further notice to this effect shall be provided addressed to the Council at The Town Hall Mullberry Place 5 Clove Crescent East India Dock London E14 2BG (marked for the attention of Isabella Freeman Assistant Chief Executive (Legal Services) and The Agency at Palestra 197 Blackfriars Road Southwark London SE1 8AA (marked for the attention of Emma Wilson Project Manager) or in both cases at such other address as the Client may notify from time to time.

## 28 MEETINGS AND CONSULTATION

28.1 It is the intention of the parties that there shall be an open sharing of all information between them in relation to the Development and all issues relating to it but, subject to Clause 28.2 not to the internal arrangements of the parties and except to the extent that any party may be prevented by law or the requirements of a regulatory body by which it is regulated, from disclosing information which is in its possession or control.

28.2 The Developer shall within five Working Days of request from the Client provide the Client with certified copies of the Developer's constitutive documents and all other deeds and documents governing the relationship between the Developer and Countryside or Countryside's Guarantor.

28.3 In respect of the Development, at least every three weeks the Strategic Project Review Group shall organise and shall hold a progress meeting (to which the Strategic Project Review Group shall invite such members of the Professional Team as may be reasonably necessary), to review all matters relating to the Development including the satisfaction of all conditions to this Agreement, strategic issues, programme and costs matters.

28.4 The Developer shall provide to the Strategic Project Review Group updates on the Programme for the Development on a regular basis and in any event not less frequently than monthly highlighting any proposed changes to the previous Programme and providing explanations for those changes Provided That no material change to the Programme shall be made save at the discretion of the Client or in accordance with Clause 66.

28.5 Consultation and communication with the wider community regarding the Development shall be undertaken in accordance with the Consultation Strategy.

28.6 From the date of this Agreement until the Date of Practical Completion of the final Phase of the Development the Developer shall procure that space is made available at a convenient location to be agreed between the parties acting reasonably where the Developer shall display information, photographs and other details of the Development updating such information and display from time to time as reasonably necessary to procure that the display provides up to date information

regarding the progress of the Development and for such information to be open to the public at reasonable hours.

28.7 The Developer and the Client shall agree (each party acting reasonably) a programme of liaison and consultation with the Consultation Groups and both the Developer and the Client shall undertake liaison and consultation in accordance with such programme.

28.8 The Developer shall on reasonable request from the Client and from time to time during the Development make presentations to the Consultation Groups and the local community.

## 29 RESIDENTS' CHARTER

29.1 The parties agree to implement and act in accordance with the Residents' charter in observing and performing their respective obligations in this Agreement.

29.2 Without prejudice to the generality of Clause 29.1 the Developer and Registered Provider will take account of the Residents Charter during the planning and construction phases of the Development in relation not only to Existing Council Tenants, Existing Freeholders and Existing Leaseholders but also residents from the surrounding area and wider statutory consultation requirements.

## 30 COUNTRYSIDE'S GUARANTOR

30.1 In consideration of the Client entering into this Agreement at the request of Countryside's Guarantor Countryside's Guarantor shall procure that:

(a) Countryside shall enter into a Building Contract with Swan in accordance with the Building Agreement for the construction of Phase 1a and Phase 1b subject to prior agreement of the Contract Sum thereunder; and Countryside's Guarantor shall simultaneously therewith enter into the Parent Company Guarantee with Swan and shall procure that the Building Contract contains the provisions required by clause 6.1(a) of the Building Agreement and Countryside's Guarantor shall guarantee Countryside's obligations under the Third Party Rights as defined in the Building Agreement; and

(b) Countryside's Guarantor shall (subject to it entering into Countryside's Sub Development Agreement) enter into a Building Agreement in respect of Phase 1b in respect of its obligations as Sub Developer only under Countryside's Sub Developer Agreement.

30.2 It is acknowledged that:

(a) the Sub Developer Agreement may relate to part of a Phase (but without limitation to the requirements of the Building Agreement, including Clause 22.4 of the Building Agreement which for the avoidance of doubt applies in respect of the whole Phase);

(b) HBOS as funder to Countryside will require within Countryside's Sub Development Agreement and associated documents and as part of its security reasonable provisions enabling it to step in to the position of Countryside's Guarantor and to make good any default of Countryside's Guarantor;

- (c) the Client will (without limitation) require the ability to approve (such approval to be unreasonably withheld or delayed) any contractor or representative appointed by HBOS;
- (d) such provisions shall be without prejudice to the provisions of Clauses 22 and 23 of this Agreement; and
- (e) such provisions shall in any event require provision of a covenant directly in favour of the Client by HBOS (or its approved contractor or representative) to observe and perform the obligations of Countryside's Guarantor pursuant to the Building Agreement and (where applicable) the Building Contract.

### 31 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 31.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.
- 31.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Client arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 31.3 The obligations of confidence referred to in Clause 31.2 shall not apply to any Confidential Information which:
- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
  - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
  - (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
  - (d) is independently developed without access to the Confidential Information of the other party.
- 31.4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- (a) to enable the disclosing party to perform its obligations under this Agreement or any Scheme Project Document; or
  - (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Developer acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Client may nevertheless be obliged to disclose such confidential information; or

- (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
- (d) in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential; or
- (e) to meet reasonable information requests from the Mortgagee (or the Mortgagee's professional advisers or insurance advisers) to the extent that such disclosure is necessary to the performance of this Agreement.

31.5 The Developer shall ensure that all Confidential Information obtained from the Client under or in connection with this Agreement:

- (a) is given only to such of its employees, professional advisers or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
- (b) is treated as confidential and not disclosed (without the Client's prior written approval) or used by any such staff or professional advisers or consultants otherwise than for the purposes of this Agreement; and
- (c) where it is considered necessary in the opinion of the Client the Developer shall ensure that such staff, professional advisers or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

31.6 Nothing in this Clause 31 (*Confidentiality and freedom of information*) shall prevent the Client:

- (a) disclosing any Confidential Information for the purpose of:-
  - (i) the examination and certification of the Client's accounts; or
  - (ii) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
- (b) or disclosing any Confidential Information obtained from the Developer:
  - (i) to any other department, office or Client of the Crown; or
  - (ii) to any person engaged in providing any services to the Client for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review,

provided that in disclosing information under Clause 31.6(a) or Clause 31.6(b) the Client discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

31.7 Nothing in this Clause 31 (*Confidentiality and freedom of information*) shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent

that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

31.8 The Developer acknowledges that the Client is subject to legal duties which may require the release of Information under FOIA and/or EIR and that the Client may be under an obligation to provide Information subject to a Request for Information.

31.9 The Client shall be responsible for determining in its absolute discretion whether:

- (a) any Information is Exempted Information or remains Exempted Information; or
- (b) any Information is to be disclosed in response to a Request for Information,

and in no event shall the Developer respond directly to a Request for Information to which the Client is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Client unless otherwise expressly authorised to do so by the Client.

31.10 Subject to Clause 31.11, the Developer acknowledges that the Client may be obliged under FOIA or EIR to disclose Information:

- (a) without consulting the Developer; or
- (b) following consultation with the Developer and having taken (or not taken, as the case may be) its views into account.

31.11 Without in any way limiting Clause 31.9 and Clause 31.10, in the event that the Client receives a Request for Information, the Client will, where appropriate, as soon as reasonably practicable notify the Developer.

31.12 The Developer will assist and co-operate with the Client as requested by the Client to enable the Client to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:

- (a) transfer any Request for Information received by the Developer to the Client as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- (b) provide all such assistance as may be required from time to time by the Client and supply such data or information as may be requested by the Client;
- (c) provide the Client with any data or information in its possession or power in the form that the Client requires within [five] Working Days (or such other period as the Client may specify) of the Client requesting that Information;
- (d) permit the Client to inspect such as requested from time to time.

31.13 Nothing in this Agreement will prevent the Client from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.

31.14 The obligations in this Clause 31 (*Confidentiality and freedom of information*) will survive the expiry or termination of this Agreement for a period of two years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that Information.

## 32 PRESS AND PUBLICITY PROTOCOL

32.1 The parties shall comply with the Press and Publicity Protocol when making any press statements or public announcement relating to the Development.

32.2 Neither party shall issue any press release, circular or other publicity (nor permit any person connected with it to do so) relating to the existence or provisions of this Agreement or any ancillary or related document, except as expressly required or permitted by the Press and Publicity Protocol.

## 33 DATA PROTECTION

33.1 The parties shall co operate with one another in order to enable each party to fulfil its statutory obligations under the DPA.

33.2 Without prejudice to the generality of Clause 33.1, the Developer warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to Process Personal Data for the purposes of performing its obligations under this Agreement and undertakes at all times during the currency of this Agreement to comply with the DPA in processing all Personal Data in connection with this Agreement.

### 33.3 Security of Client Personal Data

- (a) To the extent that it and/or any of its employees or agents receives, has access to and/or is required to Process Client Personal Data the Developer will (and will procure that any recipient of Client Personal Data disclosed by it will) comply with the DPA including the Data Protection Principles set out in schedule 1 of the DPA.
- (b) The Developer will at all times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to Client Personal Data and any person it authorises to have access to any Client Personal Data will respect and maintain the confidentiality and security of Client Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Client, when procuring delivery of the Phase Works and/or accessing the Client's manual and/or automated information systems.

### 33.4 Processing of Client Personal Data

- (a) The Developer will only process Client Personal Data for and on behalf of the Client for the purpose of procuring delivery of the Phase Works in accordance with this Agreement and where necessary only on written instructions from the Client to ensure compliance with the DPA.
- (b) The Developer will not disclose or transfer any Client Personal Data to any third party without the prior written consent of the Client save that the



Developer will be entitled to disclose Client Personal Data to employees and third parties where such disclosure is necessary for the Developer to deliver the Phase Works or required under a court order.

### 33.5 Access Requests

- (a) The Developer will use all reasonable efforts to assist the Client to comply with the DPA and subject access requests from Data Subjects under section 7 of the DPA and will:
  - (i) provide to the Client such assistance and access to all Personal Data stored or Processed in relation to the Phase Works and/or this Agreement as may be reasonably required; and;
  - (ii) promptly inform the Client on the receipt of any access request received by the Developer under section 7 of the DPA and not disclose or release any information in response to the access request without first consulting with the Client where the request relates to Client Personal Data or the Client's employees, agents or approved sub contractors.
- (b) The Developer will appoint an individual within its organisation authorised to respond to enquiries from the Client concerning the Developer's Processing of Client Personal Data and who will deal with all enquiries relating to Client Personal Data promptly, including those from the Client and the Information Commissioner and who will assist in ensuring compliance the rights of Data Subjects under the DPA relating to Client Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation to Client Personal Data.

### 33.6 Client Personal Data – General Obligations

- (a) The Developer will procure that any sub-contractor appointed by it having access to Client Personal Data complies with equivalent obligations to those contained in Clause 33.1 to Clause 33.6 (Inclusive).
- (b) The Developer will allow the Client to audit the Developer's compliance with this Clause 33 (*Data Protection*) on reasonable notice and/or, at the Client's request, provide the Client with evidence of the Developer's compliance with Clause 33 (*Data Protection*).
- (c) The Developer agrees to indemnify the Client against all claims and proceedings and all liability, losses, costs and expenses incurred in connection with any claims and proceedings by the Client as a result of its Processing of Client Personal Data or any breach of the DPA and/or this Clause 33 (*Data Protection*) by the Developer, its employees, agents or sub contractors.

### 33.7 Developer Personal Data

- (a) The Developer acknowledges that the Client will use the Developer Personal Data in connection with exercising its rights and performing its obligations under this Agreement and for all purposes connected with exercising its rights and discharging its obligations as the national housing and regeneration Client. The Developer acknowledges that such use may include disclosing Developer Personal Data to government departments

and other public authorities both within the UK and within the European Economic Area.

- (b) The Developer warrants and undertakes that in relation to the Developer Personal Data it has the explicit consent of every Data Subject (or other lawful authorisation) to disclose such data to the Client for the Client to use such Developer Personal Data in accordance with Clause 33.7(a).

### 34 CHANGE IN CONTROL

- 34.1 The Developer and the Registered Provider agree that none of them shall permit a Change in Control without the prior written consent of the Client.
- 34.2 Without prejudice to Clause 34.1 the Developer shall inform the Client as soon as reasonably practicable (and, in any event, within five Working Days) of any Change in Control occurring.

### 35 INDEMNITY

- 35.1 The Developer is to be responsible for any of the following matters arising directly or indirectly in relation to the Development or the Phase Works or any part of them, or any operations on the Site and/or the Client Land undertaken by or on behalf of the Developer:
  - (a) the death of, injury to, or accident to any person;
  - (b) the damage to or loss of any property;
  - (c) any breach of the Consents or any statutory obligations in respect of the carrying out of the Phase Works;
  - (d) the infringement of the rights of any third party caused by the carrying out of the Phase Works;
  - (e) any nuisance or disturbance suffered by any third party caused by the carrying out of the Phase Works;
  - (f) any claims made against the Client under parts I and II of the Land Compensation Act 1973;
  - (g) any other claims made against the Client as a result of the Developer breaching any obligations under this Agreement or any Planning Agreement;
  - (h) any costs incurred by the Client or any claims made against the Client arising from any indemnity which the Client as landowner may be required to give to any Third Party as a precondition to any Site investigations or other survey work undertaken by the Developer or a Developer; and
  - (i) all costs and expenses arising out of or in connection with or consequent upon the making of Road Closure Orders or entering into Highway Agreements,

and shall indemnify the Client and the Agency against any claims made against the Client and the Agency (and reasonable and proper costs incurred by either of them) in relation to any such matters.

35.2 The Client and the Agency shall take all reasonable steps to mitigate any liabilities incurred by them which they seek to recover pursuant to this Clause 35 (*Indemnity*).

#### 36 PART D - SUBSEQUENT PHASES

36.1 This Part D of this Agreement shall come into effect on the Primary Unconditional Date except as, or to the extent, specifically stated and it is acknowledged that Clause 36.4 and clause 36.6 shall be of immediate effect.

36.2 This Part D of this Agreement shall not apply in respect of the Phase 1a Land (other than the relevant provisions of Clauses 40, 41 and where if relevant 49.9) unless otherwise agreed.

36.3 The parties will from the Primary Unconditional Date implement and comply with this Part D in respect of Phase 1b.

36.4 The Phases shall be required to be progressed in accordance with the sequence set out in the Programme unless otherwise agreed in accordance with Clause 66.

36.5 Save in respect of the obligations contained in Clause 38 (*The Performance Criteria Condition*) and Clause 36.6, and save as otherwise agreed in writing the parties shall not be obliged to observe and perform their respective obligations under this Part D of this Agreement in respect of Phase 2, Phase 3 and Phase 4 if the Performance Criteria Condition in respect of each previous Phase is not satisfied (unless the Performance Criteria Condition has been waived in respect of that previous Phase by the Client).

36.6 Notwithstanding the provisions of Clauses 36.6 and 36.5:

- (a) The Developer, the Client and the Agency shall from time to time review whether in the interests of progressing the Development as a whole in accordance with the Programme they should implement any provisions of this Part D in respect of a Phase notwithstanding the fact that conditions remain unsatisfied in respect of a preceding Phase; and
- (b) The Developer shall in any event comply with any provision of this Part D where required by the Client, as a result of any liability arising as a result of the carrying out of the Development by the Developer on any previous Phase in respect of which the Secondary Unconditional Date has occurred or where necessary to comply with the Decant Strategy or Land Acquisition Strategy; and
- (c) The parties shall use their respective reasonable endeavours to procure that the Development is carried out so that the Decant Strategy can be complied with and the demolition of the buildings known as Robin Hood Gardens West can be completed prior to 01 May 2014

#### 37 SECONDARY CONDITIONS

37.1 The Secondary Conditions must be satisfied or waived, where permitted under this Agreement, in respect of each Phase by the relevant Secondary Conditions Long Stop Date for the Secondary Unconditional Date to be achieved for the relevant Phase.

37.2 Subject to Clause 66 (*Variation*) the Secondary Unconditional Date may not occur before the Phase 1a Unconditional Date.

#### 38 THE PERFORMANCE CRITERIA CONDITION

38.1 The Client shall regularly consider the performance of the Developer against the Performance Criteria in respect of its obligations undertaken up to that date (including for Phase 1a) and serve notice on the Developer as to whether in the reasonable opinion of the Client the Performance Criteria have been satisfied.

38.2 If the Client's notice served pursuant to Clause 38.1 confirms that the Performance Criteria have been satisfied at such date as all the other Secondary Conditions for the next Phase have been satisfied, the Performance Criteria Condition shall be satisfied on the date of the notice in respect of the relevant Phase.

38.3 The Client shall keep the Developer informed of its performance against the Performance Criteria as indicated above upon any occurrence of any date that a Certificate of Wind and Watertight (as defined in the Building Agreement) is issued and such intervals as the Parties may agree (acting reasonably).

38.4 For the avoidance of doubt and without limitation the Client shall be entitled to deem the Performance Criteria not to have been met in the event that:

- (a) any Building Agreement has been terminated; or
- (b) any Building Agreement has been subject to the exercise of the rights of any Mortgagee (or other person) to step-in as set out in the Building Agreement; or
- (c) the client has terminated this Agreement in respect of any previous Phase.

38.5 Any disputes between the parties in respect of this Clause 38 (*The Performance Criteria Condition*) shall be determined by an expert pursuant to Clause 19 (*Disputes*).

#### 39 STATUTORY CONSENTS CONDITION

39.1 The Client will notify the developer of the Statutory Consents for each Phase and thereafter use all reasonable endeavours to satisfy the Statutory Consents Condition.

39.2 The Developer shall cooperate with the Client and at the request of the Client take all reasonable steps to satisfy the Statutory Consents Condition.

39.3 As soon as reasonably practicable following satisfaction of the Statutory Consents Condition in respect of the relevant Phase the Client shall serve notice to that effect on the Developer, such notice to be accompanied by a copy of the relevant consents, and the Statutory Consents Condition will be satisfied in respect of the relevant Phase on date of such notice.

#### 40 DEVELOPMENT DESIGN

40.1 The parties acknowledge and agree that the further work in respect of the Phase Specifications shall be in accordance and consistent with the Approved Plans and shall not contravene or be inconsistent with any of the Design Code, the Key Requirements and/or the Sustainability Standards and the design development shall be undertaken in a collaborative and consultative manner.

40.2 Within ten Working Days of the date this Part D of this Agreement shall come into effect in respect of the relevant Phase the Developer shall prepare and submit to

the Client for approval the Phase Specifications in accordance with this Clause 40 (*Development Design*).

40.3 Following the submission of the Phase Specifications in accordance with Clause 40.2 the Client shall have 15 Working Days from the date of submission to notify the Developer whether:

- (a) it approves the Phase Specifications; and
- (b) If not those aspects of the Development where the Client considers that insufficient information has been provided by the Developer.

40.4 If the Client serves notice pursuant to Clause 40.3 that it does not approve the Phase Specifications the Developer shall consult with the Client and they shall use all reasonable endeavours to agree the matters in dispute within five Working Days following the receipt by the Developer of the Client's notice pursuant to Clause 40.3. If the Developer and the Client fail to agree the matters in dispute then either of them may refer the matter of disagreement to determination in accordance with Clause 19 (*Disputes*).

40.5 Once the Phase Specifications have been agreed or determined pursuant to this Clause 40 (*Development Design*) then such Phase Specifications (together with the Approved Plans insofar as they are consistent with such Phase Specifications) form Phase Specifications for the purposes of this Agreement and the Building Agreement.

#### 41 APPROVED PLANS

41.1 The Developer may propose to the Client a variation or variations to the Approved Plans from time to time which said variation(s) will require the written consent from the Client.

41.2 The Client shall act reasonably in relation to any minor or technical variation which is not inconsistent with the Developer's Tender or the Key Requirements or any variation that is necessary to accord with the Outline Planning Permission but consent shall otherwise be at its discretion.

#### 42 APPLICATIONS FOR DETAILED PERMISSION

42.1 Within ten Working Days of the approval or determination of the Phase Specifications the Developer shall prepare Detailed Applications in respect of the relevant Phase and all necessary supporting documentation required for the purposes of those Detailed Applications and submit them to the Client for approval which shall not be unreasonably withheld provided that each Detailed Application is consistent with the Phase Specifications, Approved Plans and the Key Requirements. Subject to the Client's approval the Developer shall submit such Detailed Applications to the local planning authority. The provisions of Clause 4.4 shall apply insofar as they are relevant to the Detailed Applications as if references to the Phase 1a Application were to the Detailed Applications.

42.2 Without prejudice to the generality of Clause 42.1 or any other provision of this Agreement the Developer shall use all reasonable endeavours to ensure that:

- (a) it has commenced and is materially progressing the preparation of the Detailed Application for a Phase no later than the Planning Preparation Trigger Point referred to in Schedule 6;

(b) it can submit the draft Detailed Application to the Client for approval within four months following the Planning Preparation Trigger point; and

(c) the Detailed Applications relating to any proposed next Phase are submitted to the local planning authority no later than six months prior to the intended issue of the Certificate of Practical Completion for any Phase which is already under development.

42.3 Within five Working Days of the Developer's receipt of the grant or refusal of each Detailed Application the Developer shall provide a copy of such grant or refusal to the Client.

42.4 Within ten Working Days of the Developer's receipt of a copy of each grant or refusal of each Detailed Application it shall (acting reasonably) notify the Client:

- (a) whether in the reasonable opinion of the Developer the planning permission is an Acceptable Permission; or
- (b) if it is not, the reason why the Developer considers that one or more of the conditions is an Unacceptable Condition.

42.5 Within ten Working Days of the Client's receipt of a copy of the grant or refusal of each Detailed Application it shall (acting reasonably) notify the Developer:

- (a) whether in the reasonable opinion of the Client the planning permission is an Acceptable Permission; or
- (b) if it is not, the reason why the Client considers that one or more of the conditions is an Onerous Condition.

42.6 If either the Client or the Developer does not provide the confirmation as provided at Clause 42.4 or Clause 42.5, or if there is any dispute or disagreement between them as to whether any planning permission amounts to an Acceptable Permission, then either of them may refer the question for determination in accordance with Clause 19 (*Disputes*) subject to the Client and the Developer first meeting within three Working Days of any dispute arising as to whether any condition of a planning permission is an Unacceptable Condition or an Onerous Condition with a view to settling such dispute.

42.7 If a dispute pursuant to this Clause 42 (*Applications for detailed permission*) has been referred for determination pursuant to Clause 19 (*Disputes*) but has not been determined by the last date for lodging an Appeal the Developer shall lodge an Appeal or Appeals to the Secretary of State against such refusal or Onerous Conditions or Unacceptable Conditions. If the Expert determines that the permission granted amounts to a Acceptable Permission the appeal shall be withdrawn, and if he determines that the permission is subject to an Onerous Condition or an Unacceptable Condition the provisions of Clause 42.8 shall apply.

42.8 The provisions of Clause 4.13 to Clause 4.16 (inclusive) shall apply as if references to a Satisfactory Permission were to an Acceptable Permission in relation to any Proceedings and/or Appeal relating to any Detailed Application and planning permission granted pursuant to one.

42.9 Any disputes between the parties in respect of this Clause 42 (*Applications for detailed permission*) shall be determined by an expert pursuant to Clause 19 (*Disputes*).

- 42.10 The parties shall also comply (where appropriate) with the provisions of Clause 5 (*Planning Agreements for the Development*) as if references to a Satisfactory Permission were to an Acceptable Permission.

#### 43 SATISFACTION OF THE ACCEPTABLE PLANNING CONDITION

The Acceptable Planning Condition shall be satisfied in relation to the Phase Works in respect of the relevant Phase three months after the Permission Date in respect of an Acceptable Permission unless at that date there are Proceedings or an Appeal on foot in relation to it, in which case the date shall be the Final determination leaving in place an Acceptable Permission.

#### 44 CONSENTS CONDITION

- 44.1 The Developer shall as soon as reasonably practicable, having regard to the Programme, apply for and thereafter use all reasonable endeavours to obtain all Consents required to enable it to commence the Phase Works in respect of the relevant Phase. On obtaining each such Consent the Developer shall provide copies to the Client.

- 44.2 The Consents Condition shall be satisfied in respect of the relevant Phase when the Developer has obtained all such Consents and upon such satisfaction the Developer shall immediately notify the Council.

#### 45 THE OPEN SPACE CONDITION

- 45.1 The Council shall if relevant and necessary as soon as reasonably practicable following the Phase 1a Unconditional Date advertise notice of an intention to dispose of any On Site Open Space in a newspaper circulating in the London Borough of Tower Hamlets for not less than two consecutive weeks.

- 45.2 If a notice needs to be advertised under Clause 45.1, the Council shall notify the Agency and Developer, within five Working Days of the end of the period within which objections may be made, of all objections received by the Council to the proposed disposal of any On Site Open Space.

- 45.3 The Council shall if relevant comply with its statutory obligations in respect of the proposed disposal of the On Site Open Space and shall keep the Agency and the Developer informed of the progress of such consultation.

- 45.4 If relevant following the publication of the required notice pursuant to Clause 45.1 if the Council resolves, that having taken account of any objections raised, to exercise its discretion to dispose of On Site Open Space, it shall notify such decision to the Agency and the Developer within five Working Days of such decision being made.

- 45.5 The Open Space Condition will be satisfied in relation to the relevant Phase when the relevant statutory procedures have successfully concluded (to the extent relevant and necessary) enabling the Council to dispose of the On Site Open Space free of legal challenge or appeal.

- 45.6 The Open Space Condition shall not apply to a Phase in the event that there is no On Site Open Space on or relating to that Phase.

#### 46 SURVEYS

- 46.1 Within ten Working Days of the date this Part D of this Agreement shall come into effect in respect of the relevant Phase the Developer shall provide the Client with details of each survey which it proposes to undertake in order to satisfy the Surveys Condition in respect of the relevant Phase. Such surveys being "the Surveys" for the purposes of this Clause 46 (*Surveys*).

- 46.2 The Developer shall as soon as reasonably practicable instruct consultants to undertake such intrusive Surveys as the Developer reasonably requires to undertake to the relevant Phase subject to and in accordance with this Agreement

- 46.3 Subject to the rights of any tenants, occupiers or other persons having rights over all or any part of the relevant Phase, the Client shall, upon written request from the Developer and subject to reasonable prior notice being given, permit the Developer and those properly authorised by the Developer for the purposes permitted under this Clause 46 (*Surveys*), to enter on to such parts of the Client Land as shall be agreed by the Client for the purposes of undertaking inspections and Surveys of the Client Land. Entry upon the Client Land shall be subject to dates and times of such entry being agreed with the Client, and the extent of intrusive Surveys which are to be carried out in each case such agreement shall not be unreasonably withheld.

- 46.4 The Developer shall indemnify the Client effectually against:

- (a) all actions, proceedings, costs, claims or demands howsoever arising in relation to entry upon the Client Land and the carrying out and completion of the Surveys; and
- (b) any liability due to any statutory requirements or requirements of competent authorities from time to time by reason of or arising out of the undertaking of the Surveys.

- 46.5 The Developer shall procure that those accessing the Client Land to undertake Surveys shall have or be covered by a third party liability insurance policy with a limit of indemnity of not less than £5,000,000.

- 46.6 The Developer shall upon completion of each such Survey or if earlier at the expiration or sooner determination of the licence granted by this Clause 46 (*Surveys*), at the Developer's own cost, reinstate and make good to the reasonable satisfaction of the Client any damage to the Client Land and/or anything on, in or under it and restore it to the state and condition existing before the carrying out of the Surveys.

- 46.7 The Developer agrees that all reports prepared by or on its behalf in relation to the Client Land as a result of or incidental to the Surveys shall also be addressed to the Client and that the Client shall be entitled to rely upon all such reports as if it had been a joint appointee of the consultants who prepared or procured them.

- 46.8 Within five Working Days of the Developer's receipt of each report in relation to a Survey the Developer shall provide a copy to the Client and shall notify the Client whether or not the Developer, acting reasonably, considers that the report amounts to an Acceptable Survey, or if the Survey report recommends that further or additional Surveys are undertaken notifying that the Developer proposes to undertake such additional Surveys. Any additional Surveys shall be undertaken as quickly as reasonably practicable.

- 46.9 An Acceptable Survey:

- (a) does not indicate that additional works will be required to be undertaken to parts of the Development which would increase the estimated Development Costs by more than 15% of the total shown on the Financial Model, whether such Survey report is taken alone or the increase is aggregated with other increases in such Development Costs identified in the reports for other Surveys; and
- (b) does not indicate that additional works will be required to be undertaken to part of the Development that would be likely to extend the Anticipated Completion Date for a Phase by more than 12 months beyond that anticipated by the Programme annexed to this Agreement.

46.10 The Developer shall use all reasonable endeavours to procure that all of the Surveys are undertaken and the reports of them prepared and provided to the Client as expeditiously as reasonably practicable. The Developer acknowledges that in respect of those parts of the Site which are neither its ownership nor forming the Client Land it may not be able to obtain access to undertake Surveys and so the provisions of this Clause 46 (*Surveys*) shall relate to those Surveys for which the Developer is able to obtain access.

46.11 The Surveys Condition shall be satisfied in respect of the relevant Phase on the earlier of the date:

- (a) of notice from the Developer to the Client that the Developer waives the Surveys Condition; and
- (b) a notice from the Developer to the Client that the Surveys are all Acceptable Surveys or if earlier the date of expiration of the period during which the Developer may notify the Client pursuant to Clause 46.8 without any such notice being served.

46.12 Notwithstanding Clause 36.1 in satisfying the Surveys Condition for the first Phase the Developer shall simultaneously and in so far as practicable comply with the provisions of this Clause 46 (*Surveys*) in relation to the other Phases (to the intent that the Developer completes all necessary surveys at the earliest practicable opportunity).

#### 47 SITE ASSEMBLY – THIRD PARTY INTERESTS

In order to satisfy the Site Assembly Condition in respect of the relevant Phase each of the following must occur:

- (a) confirmation of the Satisfactory CPO (if relevant) in terms and extent satisfactory as set out in Clause 49 (*The CPO – general*);
- (b) the expiry of six weeks from the date of publication of the confirmation of the Satisfactory CPO in accordance with section 23 of the Acquisition of Land Act 1981 without any statutory challenge being made or where such challenge is made, the final disposal of the proceedings and expiration of any further period for lodging an appeal, leaving a confirmed Satisfactory CPO in place; and
- (c) any contracts for the purchase of Third Party Interests becoming unconditional except for any condition that this Agreement is unconditional,

and the Site Assembly Condition shall be satisfied in respect of the relevant Phase on the last of them to occur.

#### 48 ACQUISITIONS BY PRIVATE TREATY AND TRANSFERS

48.1 The Developer and the Client shall comply with the Land Acquisition Strategy and the Decant Strategy in respect of the relevant Phase.

48.2 The Client will as soon as reasonably practicable enter into negotiations with the owners of all Third Party Interests and use all reasonable endeavours to negotiate contracts to purchase or extinguish the Third Party Interests in accordance with the Land Acquisition Strategy and having regard to the Programme and progress of the Secondary Conditions

48.3 The Developer shall provide such reasonable assistance to the Client in acquiring any Third Party Interest as the Client may reasonably request.

48.4 If an owner's or occupier's rights of servicing and access would be adversely affected by the confirmation of the Satisfactory CPO and if and to the extent that such rights are essential for use and occupation, the Developer and/or the Client (as the case may be) will (if reasonably practicable) offer to grant such owner or occupier comparable alternative rights consistent with the prudent and commercial operation of the Development.

48.5 The Client will notify the Developer of on-going negotiations for each Third Party Interest by the Developer at least monthly.

48.6 To the extent that the Client acquires any Third Party Interests it shall deduce title to them to the Developer within ten Working Days of completion of registration of the Developer as registered proprietor.

#### 49 THE CPO – GENERAL

49.1 The Council shall in relation to the relevant Phase as soon as reasonably practicable with the assistance of the Developer and its advisers and the Land Referencing Agents, insofar as it has not already done so:

- (a) procure compilation of a register of all Third Party Interests, to include full descriptions and mapping of parcels as would be necessary to make the Satisfactory CPO and the drafting and serving of requisitions for information on any affected parties pursuant to section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or section 330 of the act); and
- (b) procure commencement of the drafting of the CPO and all notices, certificates and statements which may be required in the making and promotion of the CPO.

49.2 The Council will keep the Developer fully informed at all times of progress under Clause 49.1 and will provide copies of all such documents and papers as they are compiled and drafted.

49.3 The Council will, having consulted with the Developer consider whether to use its compulsory purchase powers. If following completion of such consideration the Council exercises its discretion in favour of exercising such powers it shall proceed to make the CPO as soon as reasonably practicable in the light of the Programme and the Land Acquisition Strategy and comply with the statutory requirements in

relation to the making and giving notice of the CPO and use reasonable endeavours to obtain the confirmation by the Secretary of State of the CPO including leading the case at any public inquiry.

- 49.4 The Developer shall at its own expense appoint consultants to support the Client in seeking the confirmation of the CPO, including the giving of evidence as to matters within its or their competence or proper expertise, the provision of expert witnesses and attendance or giving assistance with or without its own counsel at any public inquiry if so required by the Council, acting reasonably.
- 49.5 The Council shall consult with the Developer as to the process of obtaining the CPO and in respect of any objections to the CPO.
- 49.6 The Council shall be entitled, , to make such amendments, additions, variations and/or substitutions to the CPO as it shall reasonably determine are necessary or desirable to assist in procuring confirmation of the CPO and shall have due regard to any reasonable representations which the Developer may make as to amendments, additions or variations.
- 49.7 If the CPO is confirmed by the Secretary of State or upheld by the High Court, in either case without modification (or only subject to modifications previously agreed by the parties acting reasonably), it shall be a Satisfactory CPO for the purposes of this Agreement. If the CPO is confirmed by the Secretary of State or upheld by the High Court with modifications (other than any previously agreed by the parties) then each party shall, within 20 Working Days of receipt of the confirmation or order of the High Court (as applicable) notify the other whether, acting reasonably, it considers that such modifications render the CPO a Satisfactory CPO.
- 49.8 If either the Council or the Developer does not provide the confirmation as provided for in Clause 49.7, or if there is any dispute or disagreement between them as to whether or not the CPO with modifications (other than ones previously agreed by the parties) confirmed by the Secretary of State, or upheld by the court, is a Satisfactory CPO either party may refer the question for determination in accordance with Clause 19 (*Disputes*).
- 49.9 The Developer shall contribute to or be responsible for the Council's costs, fees and expenses in promoting and securing the CPO (including any appeals, judicial reviews or third party challenges) and the Third Party Interests (including all land acquisition costs) as follows:
- (a) no later than the Phase 1a Unconditional Date, the Developer shall pay to the Council the sum of £250,000 (two hundred and fifty thousand pounds) as an upfront and (without limitation to Clauses 49.9 (b) to (d) (inclusive)) one off and non-refundable contribution towards the CPO Costs in relation to the CPO (or the proportion of it) for those interests to be compulsorily acquired in the Target Land; and
  - (b) the Developer shall promptly reimburse all costs, fees and expenses (including all land acquisition costs) associated with any Blight Notice in accordance with clause 52; and
  - (c) all costs, fees and expenses (including all land acquisition costs) associated with any Additional Land as referred to in Clause 53.1; and
  - (d) all costs, fees and expenses (including all land acquisition costs) associated with any Additional Developer Interests as referred to in clause 53.2.

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## CPO NOT CONFIRMED: APPEAL/JUDICIAL REVIEW

If the Secretary of State does not confirm the CPO as a whole in respect of the relevant Phase then:

- (a) the Council shall seek the written advice of the CPO Counsel as to whether there is ("**Positive Advice**") or there is not ("**Negative Advice**") in his opinion a better than 70% chance of either an appeal to the High Court against non-confirmation or partial confirmation or an application for judicial review succeeding leaving in place a Satisfactory CPO;
- (b) if the CPO Counsel gives Positive Advice, the Council shall appeal or apply for judicial review, whichever the CPO Counsel advises as being the more appropriate;
- (c) if the CPO Counsel gives Negative Advice the Council and the Developer shall consult as to whether it is reasonable to take any further steps to prepare and promote the CPO or any part of it, each party being entitled in its absolute discretion to take no further steps.

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## THE CPO - THIRD PARTY CHALLENGE

If a Third Party applies or seeks leave to apply for judicial review of the making of the CPO in respect of the relevant Phase or any decision of the Council connected with the preparation and promotion of the CPO in respect of the relevant Phase or a claim pursuant to S.23 of the Acquisition of Land Act 1981 to the High Court (the "**Challenge**") then:

- (a) the Council shall as soon as reasonably practicable notify the Developer and deliver copies of all proceedings, documents and correspondence it has received relating to the Challenge to the Developer;
- (b) the Council shall seek the written advice of the CPO Counsel as to whether or not in his opinion there is a better than 70% chance of the Challenge being successfully defended by the Council and for these purposes such defence shall include, where appropriate and necessary, an application to be joined to judicial review proceedings;
- (c) if the CPO Counsel advises that there is a better than 70% chance of a successful defence to the Challenge, the Council shall pursue such course of action;
- (d) if the CPO Counsel advises that in his opinion there is a less than 70% chance of any defence by the Council to the Challenge being successful, then the Council and the Developer shall consult as to whether it is reasonable to take any further steps to prepare and promote the CPO or any part of it, each party being entitled in its absolute discretion to take no further steps.

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## BLIGHT

52.1

If a Blight Notice shall be served upon the Council then:

- (a) the Council shall within five Working Days of receipt deliver a copy of the Blight Notice to the Agency and the Developer;

- (b) within five Working Days after receipt by the Developer of such Blight Notice the Council will consult with the Agency and the Developer concerning the Blight Notice and its implications;
- (c) within ten Working Days after receipt by the Council of a Blight Notice the Council shall investigate the grounds for service of such Blight Notice and the value of the interest the subject of the Blight Notice and the Council, the Agency and the Developer shall procure that the Client's Surveyor shall also consider and advise the value of the interest and the other compensation which may be payable to the owner of the interest concerned; and
- (d) within 20 Working Days after receipt by the Council of a Blight Notice the Council shall consult the Agency and the Developer and decide whether a counter-notice is to be served in response to the Blight Notice and in this respect:
  - (i) the Council shall have due regard to any reasonable representations which the Agency and the Developer may make and any advice from the Client's Surveyor;
  - (ii) the Council shall, if requested by the Developer and at the Developer's expense, take the opinion of the CPO Counsel on whether there is a lawful ground for the service of a counter-notice and if in CPO Counsel's opinion such a ground exists then subject to Clause 52.4 the Council shall serve such counter-notice; and
  - (iii) the Developer may request that the Council serve a counter-notice if it is agreed with the Council that there are grounds that the interest and subject of the Blight Notice is not required in whole or in part for the carrying out of the Developer.

52.2 In the case of a Blight Notice which the Council (with the agreement of the Agency and the Developer or in respect of which the CPO Counsel has issued a written opinion that there are no lawful grounds for service of a counter-notice) accepts and in respect of which it does not serve a counter-notice or which is determined by the Lands Tribunal to have been correctly served, the Council, the Agency and the Developer will jointly appoint the Client's Surveyor to negotiate on their behalf the compensation properly payable as a result of the Blight Notice.

52.3 The Developer shall pay to the Client within five Working days of written demand an amount equal to all compensation payable as a result of a Blight Notice and, subject to Clause 52.4, all associated costs, fees and expenditure incurred by the Client in relation to a Blight Notice.

52.4 Notwithstanding CPO Counsel's opinion that a ground(s) exists for lawful service of a counter-notice or a Developer's request under Clause 52.1(d)(iii) the Council may in the reasonable exercise of its discretion elect not to serve such counter-notice and if the Council so elects, agree to bear itself the costs incurred as a result of the Blight Notice.

### 53 ADDITIONAL LAND AND ADDITIONAL DEVELOPER INTERESTS

53.1 If the Client is required by a valid notice, served pursuant to either section 8 of the Compulsory Purchase Act 1965 or section 12 and schedule 1 of the Compulsory Purchase Act (Vesting Declarations) Act 1981, to acquire any additional land not

forming part of the relevant Phase or required for the purposes of carrying out the Phase Works in respect of the relevant Phase and in respect of which no notice to treat or notice of making of a general vesting declaration pursuant to the CPO has been served (the "Additional Land") the Council shall in consultation with the Developer elect that any one of the following shall apply:

- (a) the Additional Land shall at the Developer's expense be acquired by the Client and retained by it; or
  - (b) the Additional Land shall at the Developer's expense be acquired by the Council and leased to the Developer as part of the relevant Phase pursuant to a Building Agreement.
- 53.2 If the Council agrees or if the Council considers it necessary to do so (acting reasonably) and having regard to the Land Acquisition Strategy to acquire (or extinguish) any Additional Developer Interests this will be:
- (a) at the cost of the Developer who shall indemnify and keep indemnified the Client and the Council in respect of all costs, claims and liabilities incurred pursuant to part 2 of the schedule to the Land Acquisition Strategy; and
  - (b) the Additional Developer Interests shall only be included within the Third Party Interests to the extent that (without limitation) the Council is satisfied that it has authority to do so, so as to include the same in the CPO.

### 54 HIGHWAYS AGREEMENT/ROAD CLOSURE

54.1 The Developer shall as soon as is reasonably practicable prepare and agree with the Client (such agreement not to be unreasonably withheld) a plan showing the extent of highways adopted at the date of this Agreement and which require to be stopped up in order to carry out the Phase Works in respect of the relevant Phase including details of the exact location of the highways boundaries.

54.2 Once the plan has been agreed the Developer shall use all reasonable endeavours to obtain all of the Road Closure Orders as soon as reasonably practicable having regard to the Programme and if appropriate concurrently with the CPO so that any inquiry into the Road Closure Orders is held at the same time as the CPO inquiry.

54.3 The Developer shall use all reasonable endeavours to negotiate, agree terms for and enter into the Highways Agreement and into such Statutory Agreements as are necessary for the purposes of the Phase Works in respect of the relevant Phase, each to be in a form agreed by the Developer and the Client, each acting reasonably.

54.4 The Highways Condition shall be satisfied in respect of the relevant Phase on the later of:

- (a) the date which is six weeks after each date of publication of the notice of making or confirming of each Road Closure Order which is necessary for the relevant Phase (so that on that date there are in existence Road Closure Orders in place in respect of each part of the adopted highway required to be stopped up for the purposes of the relevant Phase, each being free from any legal challenge in respect of the validity of all or any of the Road Closure Orders) unless at that date there are Proceedings in existence in relation to any one or more of them in which case it shall be



the final date of Final Determination of all such Proceedings in place in each Road Closure Order;

- (b) the date on which the Highways Agreement has been entered into; and
- (c) the date on which the last to be completed of the Statutory Agreements has been entered into, such that on such date all Statutory Agreements necessary for the Phase Works in respect of the relevant Phase have been entered into.

54.5 To the extent that the Client incurs, costs, fees and expenditure in relation to any Road Closure Order or Highways Agreement the Developer shall pay to the Client such sum or sums within five Working Days of written demand.

54.6 In the event that the Client is required as landlord to enter into any Highways Agreement the Developer shall indemnify the Client in respect of the obligations under the relevant Phase Lease in a form reasonably acceptable to the Client.

## 55 FUNDING CONDITION

55.1 The Developer (acting reasonably) shall use all reasonable endeavours to obtain sufficient funding from established sources in the market (whether by debt, equity or otherwise) on terms which are commercially acceptable to the Developer to enable the Phase Works in respect of the relevant Phase to be undertaken and completed in accordance with the provisions of this Agreement and in order to satisfy this Funding Condition in respect of the relevant Phase.

55.2 It is agreed that the Funding Condition shall not apply to the Phase 1(a) Land on the Phase 1(b) Land

55.3 The Developer will keep the Client regularly and properly informed (and in any event not less than quarterly) regarding:

- (a) its efforts and progress with regard to the satisfaction of the Funding Condition;
- (b) progress in obtaining funding in accordance with the provisions of this Clause 55 (*Funding Condition*); and
- (c) the proposed sources and terms upon which funding is being sought.

55.4 The Funding Condition shall be satisfied in respect of the relevant Phase upon the receipt by the Client of the notice from the Developer that it has received funding pursuant to clause 55.1.

55.5 The Client may by notice to the Developer waive the Funding Condition.

## 56 VIABILITY CONDITION

56.1 This Clause 56 (*Viability Condition*) shall not apply to the Phase 1a Land or the Phase 1b Land.

56.2 The parties shall otherwise comply with the provisions of Schedule 6 in relation to the Viability Test and Viability Condition.

*On behalf of Countywide & others*

56.3 The Developer and the Client (and their respective advisers if they so wish) shall meet at least every three months to assess and review the viability of the Phase Works following the provision of an updated Financial Model.

56.3 The Viability Condition in respect of a Phase shall be satisfied as provided in Schedule 6.

## 57 TERMINATION

57.1 If an Appeal against the refusal of planning permission pursuant to any Detailed Application in respect of the relevant Phase, or against the conditions imposed upon the grant of any planning permission pursuant to any Detailed Application in respect of any relevant Phase results in the upholding of the refusal or the conditions appealed against or if the Developer is relieved of its obligation to pursue an Appeal and/or Proceedings then (unless the parties have agreed that a further application shall be made) the Client or the Developer may at any time serve notice on the other determining the obligations of the parties in respect of the relevant Phase under this Agreement with immediate effect.

57.2 If in respect of a Phase in relation to which the Secondary Unconditional Date has not occurred by the relevant Secondary Conditions Long Stop Date then either party may at any time thereafter by notice determine the obligations of the parties in respect of the relevant Phase under this Agreement with immediate effect.

57.3 The provisions of Clause 23.7 shall apply to any termination pursuant to this Clause 57 (*Termination*).

## 58 PART E

58.1 The provisions of this Part E shall come into effect on the Phase 1a Unconditional Date in respect of Phase 1a and the Secondary Unconditional Date in respect of each of the other Phases (as the case may be), except as, or to the extent, specifically stated.

58.2 Notwithstanding the provisions of Clause 58.1 the Parties will take such steps as they may from time to time agree are appropriate (acting reasonably) prior to the Secondary Unconditional Date to implement the provisions of this Part E to the extent required in order to facilitate the carrying out of the Development in accordance with the Programme.

58.3 Subject always to Clause 58.1 the Developer shall in any event procure the carrying out of the Development so as to provide all of the Key Requirements.

## 59 IMPLEMENTATION OF CPO AND ROAD CLOSURE ORDERS

59.1 Following the date on which this Part E of this Agreement shall come into effect in respect of the relevant Phase:

- (a) the Council will adhere to all statutory requirements in relation to the confirmation of the CPO and will draft all publicity documents on behalf of the Council after consultation with the Developer and have due regard to all reasonable comments made by the Developer;
- (b) the Council shall promptly give written notice to the Developer when the Council has complied with Clause 59.1(a);

- (c) the Developer and the Council will as soon as reasonably practicable having regard to the Programme after confirmation of the CPO work together to agree the proposed structure, programme, phasing for the acquisition and possession of the Third Party Interests pursuant to the CPO (such agreement not to be unreasonably withheld where reasonable opportunity and time is or has been given for the relocation of existing businesses so as to permit continuity of trading);
- (d) the Developer shall no later than six months after the date on which this Part E of this Agreement shall come into effect in respect of the relevant Phase:
- (i) give notice to the Council that the Developer has entered into a Building Contract pursuant to and in accordance with the terms of the relevant Building Agreement; and
- (ii) give notice to the Council in writing in which it specifies the time periods in line with the Programme in which it shall require the Council to proceed to make a general vesting declaration(s) and/or issue notices to treat with notice(s) of entry and, if so, the Third Party Interests to be included in and, as appropriate, the dates for making general vesting declarations or issuing a notice(s) to treat with a notice(s) of entry,
- provided that the Developer's notice to the Council pursuant to Clause 59.1(d)(ii) shall be of no effect until such time as notice pursuant to Clause 59.1(d)(i) has been given by the Developer;
- (e) in the event that the Developer has not served both notices pursuant to and in accordance with Clause 59.1(d), the Client shall be entitled to terminate this Agreement in respect of the relevant Phase;
- (f) the Council shall on receipt of the notice from the Developer in accordance with Clause 59.1(d) (or earlier if the Client elects to do so) make a general vesting declaration or declarations or issue notices to treat or notices of entry, in respect of such Third Party Interests and for possession of them at such times as the Developer shall from time to time specify in accordance with the Programme and the notice provided that for the avoidance of doubt the Council shall not be required to comply with this sub-clause in respect of a Phase in respect of which a Building Agreement has not been completed;
- (g) on the vesting date or the expiry of the notice of entry the Council will take possession of the Third Party Interests or the relevant interests or part of it and, if it is prevented from doing so, shall take all reasonable steps to secure possession through the Sheriff's Warrant procedure or any other method which may be lawful and appropriate. The Council will keep the Developer promptly informed of its progress in obtaining and securing vacant possession;
- (h) the Council shall, if required so to do by the Developer, refer the determination of the statutory compensation payable to the claimant to the Lands Tribunal. The Developer will provide all reasonable co operation to the Council and, if reasonably necessary, will appoint appropriately qualified and experienced consultants to assist in the prosecution of such reference or proceedings in such manner as the Council may reasonably require; and

- (i) where possession has been obtained through service of a notice(s) to treat with a notice(s) of entry and following agreement or determination by the Lands Tribunal of compensation, the Council will take such steps as are necessary, including if required the making of a deed poll to secure the transfer of the relevant property to the Council.

60

**THE BUILDING AGREEMENT**

60.1

Within 15 Working Days of the date on which this Part E of this Agreement shall come into effect in respect of the relevant Phase the Client and the Developer and (where required by Clause 30 and in respect of its obligations as Sub Developer only under Countryside's Sub Developer Agreement) Countryside's Guarantor will enter into a Building Agreement in respect of the relevant Phase.

60.2

Notwithstanding the provisions of Clause 60.1 the Client shall not be obliged to enter into a Building Agreement if the Performance Criteria Condition ceases to be met prior to completion of that Building Agreement.

60.3

As soon as reasonably practicable prior to completion of the Building Agreement relating to a Phase:

- (a) the parties shall use all reasonable endeavours to settle any variable provisions within the Building Agreement so as to be consistent with the requirements of any specific Phase and the relevant Phase Works as determined in accordance with the provisions of this Agreement;
- (b) in particular the Developer and the Client shall settle where indicated the provisions plans and annexures relating to the Blocks (including the extent of land demised by any Leases) and settle the Anticipated Completion Date, the Building Contract, the Phase Works, the Phase Specification, the Programme, the Sub Developer, the Sub Developer Agreement, the Additional Public Realm and any Additional Working Land in accordance with the provisions of this Agreement and as indicated in the draft Building Agreement; and
- (c) in so far as reasonably practicable the Developer shall use all reasonable endeavours to submit to the Client for approval the various matters relating to estate management arrangements set out in clause 19 of the Building Agreement.

60.4

Without prejudice to the generality of the foregoing Countryside shall comply with and perform all of Countryside's obligations <sup>as set out in clause 30.1(a)</sup> ~~and (in respect of Phase 1a and such further Phases as the Client may reasonably require) shall join in the Building Agreement relating to the relevant Phase.~~

60.5

Without prejudice to the generality of the foregoing and in accordance with clause 19 of the draft Building Agreement as soon as is practicable after the date hereof the Developer shall prepare and submit to the Client a draft Common Estate Strategy for approval by the Client and annexation to the Building Agreements having used all reasonable endeavours to consult with the Client in relation thereto

61

**BLACKWALL REACH TRUST**

61.1

The Council will use all reasonable endeavours to establish the Blackwall Reach Trust as soon as reasonably practicable.

*DATE  
on behalf of  
Countryside  
& Guarantor*

61.2 Insofar as reasonably practicable the Council will establish the Blackwall Reach Trust in accordance with the following principles:

- (a) the objects of the Blackwall Reach Trust will be to carry on activities which benefit the community within the Trust Area. The activities of the Blackwall Reach Trust will be to develop and undertake activities that engage and involve residents of the Trust Area. Activities will include:
- (i) the management of the Community Building (to be developed in Phase 1a) and the Affordable Workshop Space for the furtherance of engaging and involving Trust Area residents in the well being of the community;
  - (ii) the use of Community Payment for the benefit of the Blackwall Reach Trust;
  - (iii) provision of recreational facilities and activities for residents including specific groups including young people, women, disabled and elderly residents;
  - (iv) working with other agencies to run projects and activities which support the development of individual residents from the Trust Area and the maintenance of an active community;
- (b) it is intended that the Blackwall Reach Trust will be established once Development commences to enable it to participate in the consultation on the Site as the Development progresses;
- (c) the Council expects the Blackwall Reach Trust to receive the principal Rents from the Private Housing Units and the Intermediate Units to support the activities of the Trust and that it will have a leasehold interest in the Central Park; and
- (d) the Developer may be represented on the Blackwall Reach Trust during the period of the Development.

## 62 NOMINATIONS RIGHTS

62.1 If required by the Council, the Developer and the Registered Provider will procure that prior to the grant of each Lease pursuant to any Building Agreement the Registered Provider shall enter into a formal nomination rights deed in respect of all of the Affordable Housing Units constructed or to be constructed upon the relevant Phase substantially in the form contained in Appendix 14 with such variations as may be agreed between the Council and the Registered Provider.

62.2 The Registered Provider will in particular be obliged to offer Existing Council Tenants wishing to remain within the Development an Assured Tenancy in a protected form (giving parity with Council tenancies including rent protection) approved in advance by the Client (such approval not to be unreasonably withheld).

62.3 All Affordable Housing Units are to be managed by the Approved Registered Provider in accordance with the requirements set out in Appendix 14. The Developer will be required to protect the position of the Council with regard to individuals' tenancy rights and will in particular be required to avoid any "Ground 8" entitlements arising.

## 63 STRATEGIES AND PROTOCOLS

The parties shall implement and comply with:

- (a) the Marketing and Private Lettings Strategy;
- (b) the Project Monitoring Protocol;
- (c) the Local Employment Requirements Protocol.

## 64 THE AGENCY

The Agency will procure the transfer of all of its interests in the Site with vacant possession and in accordance with any registered restriction identified on the relevant Land Registry title so as (unless otherwise agreed) to enable the Council to grant the Leases as required by the Building Agreements.

## 65 THE COMMUNITY PAYMENT

65.1 The Developer shall make the Community Payment as set out in Clause 65.2.

65.2 The Developer shall discharge the Community Payment as follows:

- (a) it will pay to the Council £250,000 on the grant of the first Lease of part of the Phase 1a Land;
- (b) it will pay to the Council three further sums of £250,000 each on the grant of the First Lease of part of the Phase 2 Land, the Phase 3 Land and the Phase 4 Land.

65.3 It is the intention of the parties that the Council will pay the Community Payment when received to the Blackwall Reach Trust or will otherwise apply it to the intended purposes of the Blackwall Reach Trust.

## 66 VARIATION

66.1 The Developer may request a variation to the sequence of the Phases and the Client shall not unreasonably withhold or delay consent PROVIDED THAT such change in the sequence of the Phases does not:

- (a) Affect the overall timescales on the Programme;
- (b) Alter or affect the Key Requirements or the Decant Strategy;
- (c) Adversely affect the Viability Test or the satisfaction of the Viability Condition in relation to a Phase; or

<sup>2</sup> Bidders are requested to set out their plans to provide "joined up" management covering all tenures and including local management proposals. [TLT – what is intended here? Is it the Common estate Strategy?]

- (d) Otherwise prejudice the aims and aspirations of the Council or the Agency or the Anticipated Overage,

AND in any case is not inconsistent with the Developer's Tender

## Schedule 1 Building Agreement

### 67 OVERAGE

- 67.1 The Developer will pay the Client Overage in accordance with the requirements of the Building Agreement for each Phase.
- 67.2 Subject to Clause 67.3 the Developer will pay the Phase Price relating to the Phase 4 Land upon entering into the Building Agreement for Phase 4.
- 67.3 In the case of the Phase 4 Land only there will be deducted from the Overage payable (but not so as to produce a negative) the amount of the Phase Price actually paid by the Developer on entering into the Building Agreement the Developer shall use all reasonable endeavours (where commercially prudent and subject to the other terms of this Agreement) and shall act in good faith towards the Client with a view to maximising the Overage payable to the Client.
- 67.4 Without limiting the provisions of any Building Agreement the Developer shall provide the Client with such information as the Client's Representatives may from time to time reasonably require in relation to anticipated Overage.

### 68 THE COUNCIL AS LANDOWNER

All references to the Council are to the Mayor and Burgesses of the London Borough of Tower Hamlets as land owner of its part of the Client Land and shall not in any way fetter or compromise the Mayor and Burgesses of the London Borough of Tower Hamlets as local planning authority or in any other capacity, or in the exercise of any statutory duty.

**Delivered as a deed on the date of this document.**

DATED [•]

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS**  
as Client

**HOMES AND COMMUNITIES AGENCY**  
as Agency

**SWAN HOUSING ASSOCIATION LIMITED**  
as Developer

[•]  
as Sub-Developer

[•]  
as Sub-Developer's Guarantors

**BUILDING AGREEMENT**  
relating to  
Phase [•] of the development at Blackwall Reach  
London Borough of Tower Hamlets

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**DATED****PARTIES**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS** of The Town Hall Mullberry Place 5 Clove Crescent East India Dock London E14 2BG (the "Council")
- (2) **HOME AND COMMUNITIES AGENCY** of Central Business Exchange II, 414-428 Midsummer Boulevard, Central Milton Keynes, MK9 2EA (the "Agency")
- (3) **SWAN HOUSING ASSOCIATION LIMITED** (Industrial and Provident Society number 28469R ) whose registered office is at Pilgrim House High Street Billericay Essex CM12 9XY (the "Developer")
- (4) **[Insert details of named party approved by the Client or as provided for in the Principal Development Agreement]** (company no [•] ) whose registered office is at [•] (the "Sub-Developer")
- (5) **[Insert details of named party approved by the Client or as provided for in the Principal Development Agreement]** (company no [•] ) whose registered office is at [•] (the "Sub-Developer's Guarantor")

**BACKGROUND**

- (A) This Agreement is entered into pursuant to the terms of the Principal Development Agreement.
- (B) The Client and the Agency (together the "Client") wish to secure the Phase Works as part of the sustainable regeneration of the Site on a comprehensive basis.
- (C) The Developer intends to carry out and deliver the Phase Works.
- (D) The Sub-Developer's Guarantor has agreed to guarantee to the Client the Sub-Developer's performance of all the Sub-Developer's obligations under this Agreement and the Sub-Developer Agreement.

**OPERATIVE PROVISIONS****1 DEFINITIONS AND INTERPRETATION****1.1 In this Agreement:**

"Access Plan" means the separate plan or plans illustrating the continuity of accesses during the carrying out of the Phase Works agreed or determined in accordance with Schedule 3 (*Development Obligations*), paragraph 3 (*Method Statement and Access Plans*).

"Additional Working Land" means the area shown [•]. *[Note: To be inserted on Agreement where work forming part of the Phase Works is to be carried out upon any other part of the Client Land outside the phase]*

"Additional Public Realm" means the areas within the Phase which are intended for public amenity including the areas shaded light green on the Phase Plan but excluding the Central Park *[NB: precise area of Central Park in Phase and*

*any other areas intended to be available for public use to be ascertained and specified]*.

"Anticipated Completion Date" means the date which is [•] months after the [Secondary Unconditional Date] as such date may be extended pursuant to this Agreement. *[Note: to be inserted to accord with the Programme and as defined in the Principal Development Agreement]*

"Architect" means [•] of [•] or such other firm of chartered architects engaged by the Developer and first approved in writing by the Client (such approval not to be unreasonably withheld).

"Block" means each building to be comprised in the Phase together with the curtilage thereof as shown [•] on plan [•].

*[Note: the extent of each Block (so that in aggregate these correspond with the entire area within the Phase to be demised by the Leases) is to be determined prior to entering into this Agreement.]*

"Building Contract" means any construction contract or contracts at any time entered into by the Developer with any Building Contractors in relation to the Phase Works which shall contain provisions for certification of Wind and Watertight on the same terms as this Agreement (mutatis mutandis).

"Building Contractor" means Countryside Properties (In Partnership) Limited (guaranteed by Countryside Properties (UK) Limited) or such other reputable building contractor or building contractors who shall first be approved by the Client (such approval not to be unreasonably withheld) appointed by the Developer for the purposes of the Phase Works or any part of them in accordance with the terms of this Agreement.

"CDM Regulations" has the meaning given to it in the Principal Development Agreement.

"Central Park" has [the same meaning as in the Principal Development Agreement] *[Note: to correspond to the Central Park definition within the Principal Development Agreement but as more particularly delineated]*

"Certificate of Making Good Defects" means each certificate or statement issued by the Employer's Representative that the defects in the Phase Works which have appeared during the relevant Defects Liability Period have been made good pursuant to the terms of the relevant Building Contract.

"Certificate of Practical Completion" means each certificate or statement issued by the Employer's Representative in accordance with his appointment certifying that the Phase Works have been practically completed in accordance with the relevant Building Contract and "practically completed" and "practical completion" shall be construed accordingly.

"Certificate of Wind and Watertight" means a certificate to the effect that the Employer's Representative is satisfied that a Block is Wind and Watertight for the purposes of this Agreement.

"Client's Certificate" means the certificate issued by the Client's Surveyor confirming that the requirements of Clause 14 (*Client's Certificate*) have been satisfied.



**"Client Land"** has the meaning given to it in the Principal Development Agreement.

**"Client's Solicitors"** has the meaning given to it in the Principal Development Agreement.

**"Client's Surveyor"** has the meaning given to it in the Principal Development Agreement.

**"Client's Representative"** has the meaning given to it in the Principal Development Agreement.

**"Commencement"** means the carrying out of a material operation on the Phase Land as part of the Phase Works as defined in section 56 of the Planning Act excluding any operations relating to soil investigations, site investigations or works in respect of land contamination, archaeological investigations, site clearance and/or the erection of temporary fencing, hoardings and **"Commence"**, **"Commences"** and **"Commenced"** shall be construed accordingly.

**"Common Estate Strategy"** means as defined in the Principal Development Agreement. *[Note: to be appended to the actual Building Agreement once agreed under the Principal Development Agreement]*

**"Consents"** has the meaning given to it in the Principal Development Agreement.

**"Date of Practical Completion"**, **"Practical Completion"** and **"Practically Completed"** means the date stated or certified in each certification of Practical Completion issued in accordance with the Building Contract.

**"Date of Wind and Watertight"** means the date upon which the Certificate of Wind and Watertight is issued by the Employer's Representative pursuant to the terms of this Agreement and the Building Contract.

**"Defects Liability Period"** means the defects liability or rectification period being the period of 12 months calculated from the Date of Practical Completion of the relevant part of the Phase Works.

**"Design Code"** has the meaning given to it in the Principal Development Agreement.

**"Development"** has the meaning given to it in the Principal Development Agreement.

**"Developer"** includes any person or persons who shall at any time assume any of the rights and/or liabilities of the Developer as defined on page 1 of this Agreement.

**"Employer's Representative"** means such person (as appropriate according to the form of the relevant Building Contract) who shall be a reputable and appropriately qualified representative appointed by the Developer to monitor and certify Practical Completion and the Date of Wind and Watertight and who shall be a third party and not an employee of the Developer and who shall be approved by the Client (such approval not to be unreasonably withheld or delayed).

**"Estate Management Company"** means any company established by the Developer as referred to in Clause 18 (*Estate Management Arrangements*).

**"Event of Default"** means any of the events described in Clause 22 (*Events of Default*).

**"External Common Areas"** means all the areas within the Phase Land as comprise footpaths, roadways, car parks, accessways, hardstanding or landscaping together with any conduits or services not exclusively comprised within the demise of a Block (and for the avoidance of doubt the External Common Areas shall not include the Central Park [but shall include the Additional Public Realm]).

*[Note: if possible to amend to refer to specific areas pursuant to the Principal Development Agreement]*

**"Event of Force Majeure"** means, in respect of any part, any event or circumstance which is beyond the reasonable control of such party, and which results in or causes the delay or failure of that party to perform any of its obligations under this Agreement, including (but not limited to):

- (a) act of God;
- (b) strike, lock out of other industrial actions or trade disputes (whether involving employees of the party in question or of a third party);
- (c) war declared or undeclared, threat of war, terrorist act, revolution, riot, civil commotion, public demonstration, sabotage, act of vandalism;
- (d) lighting, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems;
- (e) import or export regulations or embargoes;
- (f) difficulties in or inability to obtain raw materials, labour, fuel, parts or machinery;
- (g) power failure or explosion, fault or failure of any plant and apparatus which could not have been prevented by Prudent Operating Practice;
- (h) governmental restraint, act of Parliament, other legislation, bye-law, prohibition, measure or directive of any kind of any governmental, parliamentary, local or other competent authority.

**"Interest Rate"** has the meaning given to it in the Principal Development Agreement.

**"Lease"** means a lease of the Phase or a Block in the form of the draft contained in Appendix 5 to be granted by the Client to the Developer pursuant to Clause 19 (*Completion of Phase Lease*) for a term of 250 years from the Completion Date. *[Note: the extent of the premises to be demised will correspond with the extent of the Client Land and the Third Party Interests acquired by the Client pursuant to the Principal Development Agreement in respect of the Phase but will exclude areas which the Client has agreed to adopt as maintainable at public expense or which are otherwise required to be excluded pursuant to the Principal Development Agreement and as referred to in Clause 17.5 below.]*

**"Longstop Date"** means the date which is [•] months from and including the date of this Agreement as such period may be extended in accordance with this Agreement. *[Note: date to be inserted to accord with the Programme*

**being no more than 24 months after the Anticipated Completion Date of the Phase]**

**"Method Statement"** means the separate method statements in respect of the carrying out of the Phase Works agreed or determined in accordance with Schedule 3 (*Development Obligations*), paragraph 3 (*Method Statement and Access Plans*).

**"Mortgagee"** has the meaning given to it in the Principal Development Agreement.

**"Open Space"** means [Note: To set out details of any open space which is identified by the parties as constituting Open Space under the Principal Development Agreement and being on the Phase Land].

**"Overage"** has the meaning given to it in Schedule 5 (*Payment of Overage by the Developer to the Client*).

**"Phase"** has the meaning set out in the Principal Development Agreement.

**"Phase Land"** means the land comprising [•] more particularly described in Schedule 1, Part 1 (*Description of Phase Land*) shown for the purposes of identification edged in red on the Plan. [Note: to describe Phase]

**"Phase Price"** means [this will be the Phase Price determined in accordance with the Principal Development Agreement if any].

**"Phase Specifications"** means the Phase Specifications for the Phase Works which have been prepared in accordance with the Principal Development Agreement and which comprise the drawings and specifications contained in Appendix [•].

**"Phase Works"** means:

- (a) the demolition, site clearance, building and construction works to be undertaken by the Developer on the Phase Land and off site (where applicable) to include all Units, all Phase Infrastructure and other works which are briefly described in Schedule 1, Part 1 (*Description of Phase Land*) and more particularly set out in the Phase Specifications; and
- (b) [Note: to insert further details of the Phase Works to correspond with the particular Phase and to accord with the Principal Development Agreement]

**"Plan"** means the plan contained in Appendix [•] marked "Building Agreement Plan".

**"Planning Act"** has the meaning given to it in the Principal Development Agreement.

**"Planning Agreement"** has the meaning given to it in the Principal Development Agreement.

**"Private Housing Units"** has the meaning given to it in the Principal Development Agreement.

**"Principal Development Agreement"** means the Principal Development Agreement dated [•] 2011 between (1) The Mayor and Burgesses of the London Borough of Tower Hamlets and (2) The Homes and Communities Agency (3) Swan

Housing Association Limited (4) Countryside Properties (In Partnership) Limited and (5) Countryside Properties (UK) Limited in relation to the Site.

**"Professional Team"** means all of the Employer's Representative, Architect, structural engineer, mechanical and electrical engineer, CDM Co-ordinator<sup>1</sup> and any replacement professionals whether appointed by a Developer or a Building Contractor the identity of each of whom shall be approved by the Client.

**"Programme"** has [Note: This is to be a detailed programme prepared by the Developer and approved by the Client such approval not to be unreasonably withheld where it corresponds in all material respects with the Programme as defined in the Principal Development Agreement] the Programme annexed to this Agreement for the Phase Works which shall in all respects be consistent with the Programme defined in the Principal Development Agreement [and so as to include a requirement that the demolition of Robin Hood Gardens West as shown on the Land Ownership Plan is completed in its entirety before 1 May 2014].

**"Prohibited Materials"** has the meaning given to it in the Principal Development Agreement.

**"Site"** has the meaning given to it in the Principal Development Agreement.

**"Snagging Works"** means any outstanding works which may be the subject of a snagging list in accordance with the provisions of the Building Contract the non-completion of which shall not adversely affect an occupier's ability to occupy the buildings which have been constructed.

**"Standard Conditions"** means the Standard Commercial Property Conditions (Second Edition) and the term **"Standard Condition"** means one of the Standard Conditions.

**"Sub-Contract"** means a contract for the undertaking of a part of the Phase Works and/or the design of them entered into by the Building Contractor with a Sub-Contractor.

**"Sub-Contractor"** means a sub-contractor appointed by the Building Contractor for the purposes of the Phase Works in accordance with the provisions of this Agreement.

**"Sub-Developer"** means [•].

[Note: Insert named party if appropriate]

**"Sub-Developer Agreement"** means any agreement between the Developer and the Sub-Developer pursuant to which any part of the Phase Works is to be carried out by the Sub-Developer.

**"Sub-Developer's Guarantor"** means [•]. [Note: delete where the sub-developer is Countryside Properties UK) Limited]

**"Sustainability Standards"** has the meaning given to it in the Principal Development Agreement.

<sup>1</sup> This should include all key consultants.

OK on behalf of Countryside  
19 April

**"Third Party Interests"** has the meaning given to it in the Principal Development Agreement.

**"Third Party Rights"** means the provisions set out in Parts 1 to 4 (Inclusive) of Appendix 6 which shall be incorporated as appropriate into the terms of each of the Professional Team appointments, the Building Contract and/or the Sub-Contracts in accordance with the provisions of Clause 5 (*Sub Developer*) providing for the Client to enforce the provisions of the Professional Team appointments, the Building Contract and the Sub-Contracts under the Contracts (Rights of Third Parties) Act 1999 subject to such amendments as the relevant warrantor requests and the Client agrees (such agreement not to be unreasonably withheld).

**"Units"** has the meaning given to it in the Principal Development Agreement.

**"Vacant Possession Condition"** means that (unless and to the extent that the parties otherwise agree) the Client has completed the acquisition or vesting of any Third Party Interests (as defined in and in accordance with the Principal Development Agreement) comprised in the Phase Land and has secured vacant possession thereof]

**"VAT"** has the meaning given to it in the Principal Development Agreement.

**"VAT Act"** means the Value Added Tax Act 1994.

**"VAT Election"** means an election to waive exemption from VAT in respect of the Phase Land pursuant to paragraph 2 of schedule 10 of the VAT Act.

**"Wind and Watertight"** means in respect of any Block that:

- (a) the structural frame, the external cladding, the external decoration, the roof, the external glazing, the doors, the gates, the doors to any bin stores, the gates to any car parking and any other external features of any building (including landscaping) within the proposed demise of the Block (or serving it) shall in all material respects be complete;
- (b) the framing between the individual units of accommodation for residential purposes and communal areas is fitted and lifts and staircases are installed and working;
- (c) the conduits intended to convey the service media for the Block are in place and that without limitation water, gas, electricity, BT Broadband and drainage are connected to the Block;
- (d) no tower cranes, scaffolding or other static building equipment remains on the land to be demised with the Block; and
- (e) the External Common Areas required for the use and enjoyment of that Block have been certified completed in all material respects to the reasonable satisfaction of the Client;
- (f) those of the External Common Areas that serve the Phase as a whole have been completed in all material respects to the reasonable satisfaction of the Client;
- (g) **[Note: To insert such other Phase 1 Works as the parties agree (acting reasonably) are required to have been completed to the reasonable satisfaction of the Client prior to the grant of the first**

**or where appropriate the relevant Lease including works required as a condition of any planning permission or Planning Agreement including the completion of any of the Key Requirements in accordance with the Programme to the extent that these are not comprised in a Block]**

- (h) **[Note: in the case of the Phase 2 Land and the Phase 3 Land to include the completion of the Central Park]**
- (i) **[Note: to include the completion to the reasonable satisfaction of the Client the Additional Public Realm where this is included in the Phase]**

**"Working Day"** has the meaning given to it in the Principal Development Agreement.

**"Work Start Date"** means [•] from and including the Secondary Unconditional Date as extended in accordance with the provisions of this Agreement. **[Note: date to be inserted in respect of the Phase to accord with the Programme in the Principal Development Agreement as the date by which works must be commenced]**

- 1.2 If the Developer is at any time more than one person any reference to such party in this Agreement shall include each such person and any covenants and/or obligations expressed or implied shall be joint and several covenants and obligations of such persons.
- 1.3 References to Clauses, Parts, Schedules and Appendices shall be deemed to be references to Clauses and Parts of and Schedules and Appendices to this Agreement unless otherwise stated.
- 1.4 Headings to Clauses and Schedules shall be disregarded.
- 1.5 Any references to VAT shall include any tax of a similar nature substituted for or in addition to it unless the context otherwise requires.
- 1.6 Any reference in this Agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re-amended, re-enacted or applied by or under any other enactment and shall include all instruments, orders, plans, regulations and permissions and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.
- 1.7 Where in this Agreement examples are given (including where the word "including" is followed by a list of items) such examples shall not limit any general description preceding such examples.
- 1.8 References to the **"parties"** shall be references to the Client and the Developer, and references to a **"party"** shall be to either of them.
- 1.9 All references to the **"Client"** are to the Council and the Agency as landowner of the Client Land and shall not in any way fetter or compromise the Council as local planning authority or the Council or the Agency in any other capacity, or in the exercise of any statutory duty.
- 1.10 Where in this Agreement the acceptance, consent, approval or agreement of a party is not to be unreasonably withheld it shall not be unreasonably delayed.

## 2 LICENCE AND VACANT POSSESSION CONDITION

2.1 The obligations of the Developer to commence and carry out the Phase Works the provisions of clauses 20, 2.8, 2.9, 13 and 19 Schedule 5 and the obligation of the Client to grant the Leases to the Developer under this Agreement are conditional upon the Client providing reasonable evidence to the Developer that the Vacant Possession Condition has been satisfied.

2.2 The Client shall use all reasonable endeavours to satisfy the Vacant Possession Condition [within 3 months of the date of this Agreement] [In accordance where applicable with the provisions of clause 59 of the Principal Development Agreement].

**[Note: period to be inserted to correspond with Programme and provisions of the Principal Development Agreement as appropriate]**  
**[Note: Clauses 2.1 and 2.2 will not be included in relation to the Phase 1a Land]**

2.3 From and including the date of this Agreement [or (if later) the date that the Vacant Possession Condition is met] the Client/Council/Agency grants licence to the Developer to enter on to the Phase Land [and where appropriate the Additional Working Land] for the purposes of complying with its obligations under this Agreement and entry on to the Phase Land by the Developer and those authorised by it shall be as licensee only and not otherwise.

**[Note: to set out any restrictions or conditions on entry to Additional Land to reflect specific issues on this or any preconditions to the licence to enter the Additional Land]**

2.4 The Developer may from time to time permit entry under licence to the Phase Land for the same purposes to all those properly authorised by the Developer.

2.5 The licences so granted do not confer on the Developer or any other person, any estate, right, title or interest in the Phase Land.

2.6 The Developer will vacate and remove its effects from the Phase Land on the termination of the licence.

2.7 The licence granted pursuant to this Clause 2 (Licence and Vacant Possession Condition) shall terminate on the earliest of:

- (a) the determination of this Agreement;
- (b) in relation to the area thereby demised the completion of a Lease pursuant to the provisions of Clause 17 (Lease); and
- (c) in the case of the Additional Working Land upon **[Note: Details to be inserted to reflect other works being carried out]** or if earlier upon **[•]** days written notice from the Client.

2.8 Risk in and to the Phase Land shall pass to the Developer on [the date of this Agreement] [or [the date this agreement becomes unconditional] and the Developer shall be responsible for all rates (including rates for unoccupied property) water rates, water charges and all existing future rates, taxes, charges, assessments impositions and outgoings whatsoever (including parliamentary or local) which may at any time be payable charged or assessed on property, in relation to the Phase Land and shall indemnify the Council in respect thereof. **[NB:**

**Insert second wording in square brackets if Phase is subject to the acquisition of Third Party Interests]**

2.9 The Developer shall from the date of this Agreement becomes unconditional at its cost procure that adequate security for the Phase Land is provided.

2.10 When licence is granted to enter the Additional Working Land the obligations of the Developer relating to the Phase Land shall apply equally to the Additional Working Land.

## 3 BUILDING CONTRACT

3.1 The identity of the Building Contractors and the terms of the Building Contract shall be approved by the Client within 10 Working Days of a request from the Phase Developer which approval shall not be unreasonably withheld PROVIDED THAT Countryside Properties (In Partnership) Limited (guaranteed by Countryside Properties (UK) Limited is deemed to be approved by the Client hereunder in respect of Phase 1a and Phase 1b.

3.2 The Developer shall consult the Client in respect of those Building Contractors which the Developer or it's Sub-Developer wishes to invite to tender and the Developer shall make available all material documentation it receives in respect of such proposed appointment.

3.3 The Developer shall ensure that no less than [ten] Working Days before it issues the tender package documentation, award criteria and evaluation methodology in respect of the appointment of the Building Contractor it consults with the Client as to the content of such documentation. The Client's prior approval shall be obtained before the tender package documentation, award criteria and evaluation methodology is issued to those parties invited to tender such approval not to be unreasonably withheld or delayed but in any event shall not be given any later than 10 Working Days after such request.

3.4 The Developer shall give to the Client a minimum of [five] Working Days' notice of the date, time and location of when it intends interviewing any of the Building Contractors and shall allow the Client to attend such interviewing process. The Developer shall have regard to any representations the Client wishes to make in relation to the appointment of the Building Contractor.

3.5 The form of the Building Contract shall be substantially in the form of the building contract with amendments attached as Appendix 3 with such amendments as the Client shall approve such approval not to be unreasonably withheld.<sup>2</sup>

3.6 The Developer shall appoint the Building Contractor as soon as reasonably practicable in the context of the Programme but in any event before Commencement of the Phase Works and it gives the Client notice pursuant to Clause [•] (Implementation of Road Closure Orders) of the Principal Development Agreement.

3.7 The Developer shall not without the prior written consent of the Client, which shall not be unreasonably withheld or delayed, dismiss the Building Contractor, vary the terms of the Building Contract, settle any material dispute with the Building

<sup>2</sup> Building Contract is to be in form approved and appended to BA. It must contain Third Party Rights and royalty free licence to use all plans and drawings and novated to Client in the case of step in.

Contractor, nor shall it terminate the Building Contract (except in the case of emergency such as Contractor Insolvency), but if the Building Contract shall be terminated, the Developer shall as expeditiously as reasonably practicable appoint a substitute Building Contractor in accordance with the provisions of this Agreement.

- 3.8 The Developer shall take all steps reasonably necessary to enforce the terms of the Building Contract against the Building Contractor including taking court proceedings if reasonable and appropriate.
- 3.9 Upon the Building Contract being entered into the Developer shall within ten Working Days provide to the Client's Representative a certified true copy of it including any material drawings and specifications and financial information attached to it together with proof of notice of the Client's interests given by the Developer to the Building Contractor in accordance with the provisions of Clause 4 (*Sub-Contractors*).
- 3.10 Where any Building Contract is determined, the procedure in this Clause 3 (*Building Contract*) shall apply in respect of a substitute Building Contractor.
- 3.11 For the avoidance of doubt the provisions of Clause 3.1 and Clause 3.5 (inclusive) shall not apply to Phases 1a and 1b (where it is agreed by the Client that Countryside Properties (In Partnership) Limited is the Building Contractor).

#### 4 SUB-CONTRACTORS

- 4.1 The identify of all Sub-Contractors [with significant design responsibility exceeding a value in the excess of £200,000] and the terms of their Sub-Contracts shall be approved by the Client whose approval shall not be unreasonably withheld.
- 4.2 The Developer shall procure that each proposed Sub-Contractor is experienced in undertaking design (if any) of works in the nature of those it is to undertake pursuant to the proposed Sub-Contract and that it is a Sub-Contractor of repute which has the benefit of professional indemnity and/or product liability insurance in a reasonable sum having regard to the nature and extent of the design (if any) and the works it is to undertake.
- 4.3 The Developer shall procure that the form of Sub-Contract shall be substantially in the form of the sub-contract with amendments attached as Appendix [•] with such material amendments as the Client shall approve such approval not to be unreasonably withheld or delayed.<sup>3</sup>
- 4.4 Within [five] Working Days of the completion of each Sub-Contract the Developer shall supply to the Client a certified copy of such Sub-Contract and evidence of the Sub-Contractor's professional indemnity and/or product liability insurance (as applicable), together with proof of notice of the Client's interest given by the Building Contractor to the Sub-Contractor in accordance with the provisions of Clause 6.1(c).
- 4.5 Where any Sub-Contract is determined the provisions of this Clause 4 (*Sub-Contractors*) shall apply in respect of any substitute Sub-Contractor.

<sup>3</sup> Sub Contract is to be in form approved and appended to BA. It must contain Third Party Rights and royalty free licence to use all plans and drawings and novated to Client in the case of step in.

#### 5 SUB DEVELOPER

- 5.1 The terms of any Sub Developer Agreement and the extent of the Phase Works comprised in the Sub Developer Agreement shall be approved by the Client, which approval shall not be unreasonably withheld or delayed but which approval shall not in any way reduce the obligations of the Developer under this Agreement or the Principal Development Agreement.
- 5.2 Without prejudice to the generality of the foregoing, the Sub Developer Agreement (if any) shall impose obligations upon the Sub Developer:
- (a) to comply with the provisions of this Agreement; and
  - (b) to comply with the provisions of Schedule 5 (*Payment of Overage by the Developer to the Client*) and to provide such information to the Developer and the Client as will enables the Overage to be calculated and paid and so that the amount of the Overage shall not be reduced by virtue of the existence of the Sub Developer Agreement.
- 5.3 Without prejudice to the generality of Clause 5.1, Clause 5.2 and Clause 17 the Client acknowledges that the Sub Developer Agreement may provide for the grant of a Lease of a Block by the Client directly to the Sub Developer at the direction of the Developer provided that:
- (a) this is reasonably required as a term of the arrangements between the Developer and Sub Developer;
  - (b) this is on terms consistent with the Common Estate Strategy and the provisions of Clause 18;
  - (c) the arrangement shall not prejudice the operation of Schedule 5 of this Agreement or the payment of Overage to the Client or otherwise adversely affect the security afforded to the Client by the restrictions required to be registered at HM Land Registry by virtue of this Agreement or the Lease (including without limitation Clause 21 which will require the restriction to be registered against the Sub Developer's interest in the Lease);
  - (d) the arrangements between the Developer and Sub Developer and costs relating thereto shall be disregarded in calculating Overage payable to the Client and the amount of the Overage shall not be reduced;
  - (e) save where the Sub Developer is Countryside's Guarantor the Sub Developer's obligations under the lease may (where reasonable) be required to be guaranteed by a party reasonably acceptable to the Client;
  - (f) the Sub Developer shall covenant directly with the Client that it will pay Overage directly to the Client where Overage would otherwise become payable by the Developer upon the sale or disposal of any Private Housing Units within the Block demised to it and that it will otherwise comply with the provisions of Schedule 5; and
  - (g) the ability of the Council to enforce the terms of the Lease against the tenant thereof or against any sub tenant as provided in the draft Lease (including payment of rents and other contributions to common repair, maintenance, cleansing and lighting) is not thereby adversely affected.

- 5.4 The Developer shall procure that upon entering into the Sub Developer Agreement the Sub Developer shall enter into a deed of covenant in a form reasonably acceptable to the Client covenanting to comply with the terms of the Sub Developer Agreement. *[Note: or (as appropriate) provide for the Sub Developer to join to the Agreement in respect of its obligations as Sub Developer only]*
- 5.5 The Developer shall procure that the Sub Developer's Guarantor shall enter into the Deed of Covenant referred to in Clause 5.3 as guarantor of the Sub Developer.
- 5.6 The Sub-Developer shall comply with the Sub-Developer Agreement.
- 5.7 Without prejudice to the generality of the foregoing, the Client shall serve a copy of any notice it serves on the Developer pursuant to Clause 22.2 upon the Sub Developer and the Sub Developer's Guarantor and the Sub Developer Agreement will terminate forthwith upon termination of this Agreement (save where the Sub Developer has exercised its rights under Clause 22.4 to step-in in respect of the whole Phase and the provisions of Clause 22.4 have been complied with).
- 5.8 The Developer shall not without the prior written consent of the Client, which shall not be unreasonably withheld or delayed, terminate or vary the terms of the Sub Developer Agreement.
- 5.9 The Developer shall take all steps reasonably necessary to enforce the terms of the Sub Developer Agreement against the Sub Developer including taking court proceedings if reasonable and appropriate and shall keep the Client promptly informed in the event of any dispute or alleged breach of contract arising in respect of the Sub Developer Agreement.

## 6 THIRD PARTY RIGHTS

- 6.1 Prior to Commencement of the Phase Works and to the extent the Developer has not already done so, the Developer shall:
- (a) enter into all Professional Team appointments, the Building Contract and/or the Sub-Contracts which shall contain the Third Party Rights giving the Client the rights as a third party to enforce the terms of the Professional Team appointment and/or Building Contract and/or Sub-Contract and any obligations or any guarantor to such appointment under the Contracts (Right of Third Parties) Act 1999;
  - (b) the Developer shall procure that there is provided to the Client a copy of each Professional Team appointment, the Building Contract and the Sub-Contracts containing the Third Party Rights within [five] Working Days of such appointment or contract being entered into;
  - (c) the Developer shall give notice to each member of the Professional Team, the Building Contractor and Sub-Contractor of the Client's interest as soon as reasonably practicable following their appointment but in any event prior to Commencement of the Phase Works; and
  - (d) give proof of delivery of the notices pursuant to Clause 6.1(c) to the Client.
- 6.2 Notwithstanding any other provisions of this Agreement, the Developer may not by agreement with a member of the Professional Team or the Building Contractor or Sub-Contractor rescind or vary the terms of any Professional Team appointment or the terms of the Building Contract or the Sub-Contract or the Sub-Development

Agreement in such a way as to alter the entitlement or prospective entitlement of the Client under this Clause 6 (*Third Party Rights*).

## 7 THE CLIENT'S SURVEYOR

The Developer shall reimburse the Client in respect of all reasonable and proper costs incurred by the Client in respect of the appointment of the Client's Surveyor.

## 8 CARRYING OUT OF THE DEVELOPMENT

- 8.1 In relation to the Phase Works the Developer shall comply with the obligations set out in Schedule 3 (*Development Obligations*) and shall use all reasonable endeavours to procure that it Commences the Phase Works as soon as reasonably practicable after the date of this Agreement (but in any event by not later than the Work Start Date) and that the Date of Practical Completion of the whole of the Phase Works is achieved on or before the Anticipated Completion Date provided that the Developer shall be entitled to claim extensions of time for the start of the Work Start Date and/or the Anticipated Completion Date (but not beyond the Longstop Date except in the Event of Force Majeure) (as appropriate) equal to:

- (a) periods which arise from any delay which may be allowed to the Building Contractor pursuant to the provisions of the Building Contract and certified by the Employer's Representative (but excluding any such extensions of time which result from some wrongful act or omission or default on the part of the Developer);
- (b) such other reasonable periods as are properly certified by the Employer's Representative and result from any delay which is caused by some wrongful act or omission or default on the part of the Client; and
- (c) (other than in relation to Clause 8.3) subject to such other reasonable periods as are properly certified by the Employer's Representative and result from any delay on the part of, or which is caused by, any other reason beyond the reasonable control of the Developer.

- 8.2 The Developer shall as soon as reasonably practicable notify the Client of all and any delays to the carrying out of the Phase Works.

- 8.3 The Developer shall not be entitled to any extensions of time which are attributable to market or economic conditions or slowdown.

## 9 WIND AND WATERTIGHT AND PRACTICAL COMPLETION

- 9.1 The Developer shall procure that the Employer's Representative shall give to the Client not less than 10 Working Days' prior notice of the Employer's Representative's intention to inspect the Phase Works for the purposes of issuing the Certificate of Wind and Watertight ("**Certificate**") and the Developer shall during the period of ten Working Days following each such notice afford to the Client and the Client's Surveyor all reasonable facilities for inspecting the Phase Works in accordance with Clause 11 (*Site visits and inspection*) and if within five Working Days of the relevant inspection the Client serves upon the Developer notice of any defects in the Phase Works ("**Outstanding Phase Works**") which the Client reasonably considers amount to more than Snagging Works and ought properly to be completed prior to the issue of the relevant Certificate, the Developer shall immediately bring them to the attention of the Employer's Representative and shall require the Employer's Representative to have regard to

(but not be bound by) any such written representations prior to the issue of the relevant Certificate of Wind and Watertight.

- 9.2 The Client and the Client's Surveyor shall be entitled to accompany the Employer's Representative upon each inspection of the Phase Works for the purpose of issuing the Certificates.
- 9.3 If any Certificate is not issued by the Employer's Representative at or following an inspection meeting as referred to in Clause 9.2 then the procedure set out in Clause 9.1 shall be repeated (save that the required notice may be less than 10 Working Days if reasonable) as often as may be necessary until the relevant Certificate is issued.
- 9.4 Within three Working Days of each Date of Wind and Watertight the Developer shall procure that a copy of the Certificate of Wind and Watertight is served upon the Client.
- 9.5 The Employer's Representative shall be entitled to issue any Certificate notwithstanding the existence of Snagging Works and any soft landscaping works which should not reasonably be undertaken until the next planting season. Subject to Clause 9.7 and Clause 9.8 nothing in this Agreement shall prejudice or restrict the Employer's Representative from issuing a Certificate of Wind and Watertight.
- 9.6 Notwithstanding the issue of any Certificate of Wind and Watertight or Certificate of Practical Completion the Developer shall procure the carrying out of any Snagging Works in accordance with its obligations under this Agreement as soon as reasonably practicable.
- 9.7 If following inspection undertaken pursuant to Clause 9.1 the Client's Surveyor serves a list of Outstanding Phase Works in accordance with Clause 9.1 and notwithstanding the Outstanding Phase Works the Employer's Representative certifies Wind and Watertight then the issue of whether or not the Outstanding Phase Works should have been completed shall be referred to determination in accordance with Clause 24 (*Disputes*).
- 9.8 If any dispute is referred to determination as mentioned in Clause 9.7 and it is determined that some or all of the Outstanding Phase Works should have been completed prior to the issue of the Certificate of Wind and Watertight then the Developer shall procure that the Outstanding Phase Works (or the relevant parts of them) are undertaken in accordance with the provisions of Schedule 3 (*Development Obligations*) as soon as reasonably practicable and the procedure set out at Clause 9.1 to Clause 9.5 shall be repeated until such time as the relevant Certificate of Wind and Watertight is issued or (in the case of further dispute) determined to have been properly issued albeit that the period of notice under Clause 9.1 may be less than ten but not less than five Working Days.
- 9.9 The Developer shall provide the Client's surveyor with a copy of the Certificate of Wind and Watertight and the Certificate of Practical Completion within 10 Working Days of each such certificate being issued.
- 9.10 The Developer shall procure that the Employer's Representative keeps the Client's Surveyor fully informed in relation to the intended issue of any Certificate of Practical Completion.

## 10 DEFECTS LIABILITY

- 10.1 The Developer shall at its own expense procure that any defects, shrinkages or other faults, which shall appear in the Phase Works or any part or parts of them within the relevant Defects Liability Period, are made good in accordance with the relevant Building Contract and the provisions of this Agreement as soon as reasonably practicable.
- 10.2 The Developer shall give the Client's Surveyor not less than [five] Working Days' notice of the date upon which the Employer's Representative proposes to make each final inspection pursuant to the relevant Building Contract prior to issuing each Certificate of Making Good Defects in respect of the Development and each part of it and shall permit the Client to be represented at each such meeting if they so desire.
- 10.3 The Developer shall procure that the Employer's Representative issues each Certificate of Making Good Defects in accordance with the relevant Building Contract and that within two Working Days of the issue of each one a copy is served on the Client.
- 10.4 The Developers liability for the construction of the Private Housing Units shall end when (following Practical Completion) the Developer provides evidence reasonably satisfactory to the Client that an NHBC or similar guarantee has been issued or when the Defects Liability Period ends in respect of those Private Housing Units whichever is the later but without prejudice to any antecedent claims or liabilities or the terms of the Lease.

## 11 SITE VISITS AND INSPECTION

- 11.1 The Developer shall:
- (a) at all times keep the Client and the Client's Surveyor informed as to the progress of the Phase Works and shall notify the Client and the Client's Surveyor of the time date and place of the client/Developer meetings convened to consider the progress of the Phase Works and the Client and the Client's Surveyor shall be entitled to attend them and the Developer shall procure that such meetings are held as often as reasonably necessary but not less frequently than once every four weeks; and
  - (b) send to the Client and the Client's Representative copies of the minutes of all meetings held pursuant to the provisions of this Clause 11.1.
- 11.2 The Developer shall permit the Client and the Client's Surveyor and other consultants at all reasonable times to enter on to the Phase Land (accompanied by a representative of the Developer if the Developer shall so reasonably require in which event the Developer shall procure that a representative is made available for such purpose) to view the progress and state of the Phase Works to inspect the workmanship and to ascertain generally that the Developer is complying with its obligations under the agreement. Such entry shall be subject to:
- (a) reasonable prior notice being given to the Developer; and
  - (b) the Client and the Client's Surveyor reporting to the site office before making any inspection and acting in accordance with the reasonable instructions of the Developer's surveyor.



11.3 The Client and the Client's Surveyor shall not interfere with the Phase Works, nor attempt to instruct or instruct any persons employed upon or in connection with the Phase Works.

11.4 Any representations which the Client or the Client's Surveyor wish to make in relation to the Phase Works shall be made to the Developer as soon as practicable and the Developer shall give due consideration to any such representations so made.

11.5 If as a result of inspections of the Phase Works it is found that there is a need for rectification of defective Phase Works or correction of Phase Works carried out, but not in accordance with this Agreement, the Developer shall, as soon as practicable having regard to the Programme, carry out such necessary Phase Works of rectification and/or correction and notify the Client of their completion so that the Client may inspect the relevant Phase Works.

## 12 CONSTRUCTION INDUSTRY SCHEME

This Clause 12 (*Construction industry scheme*) relates to the Construction Industry Scheme, provided for by chapter 3 part 3 FA 2004.

12.1 In this Clause 12 (*Construction industry scheme*) (but not otherwise):

"FA 2004" means the Finance Act 2004.

"Regulations" means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

"Contractor" means a person who is a contractor for the purposes of chapter 3 part 3 FA 2004.

12.2 Each of the Client and the Developer shall comply with chapter 3 part 3 FA 2004 and the Regulations (insofar as chapter 3 part 3 FA 2004 and the Regulations apply to any rights or obligations of the parties under this Agreement).

12.3 If the Client is required to make a payment to the Developer under this Agreement, the Client, as Contractor, shall verify, in accordance with paragraph 6 of the Regulations, whether the Developer is registered for gross payment or for payment under deduction or is not registered under chapter 3 part 3 FA 2004, and shall, once it has so verified, make the payment to the Developer subject to the following:

- (a) if the Developer is registered for gross payment under section 63(2) FA 2004, the Client shall make the payment to the Developer without any deduction; and
- (b) if the Developer is not registered under section 63(2) FA 2004 for gross payment under section 63(2) FA 2004, the Client shall make the payment to the Developer, subject to the deduction of the relevant percentage in accordance with section 61 FA 2004 and the Regulations.

12.4 In the event of any conflict between Clause 12 (*Construction industry scheme*) and any other term of this Agreement, the provisions of this Clause 12 (*Construction industry scheme*) shall prevail.

## 13 INSURANCE

13.1 From and including the date this Agreement becomes unconditional to and including the date of the grant of the Phase Lease the Developer shall procure that the Phase Works are insured and (where possible) in the joint names of the Developer the Client and the Building Contractor and otherwise in accordance with the relevant Building Contract in an amount not less than their full reinstatement cost against such risks as may from time to time be usually covered by a Contractor's all risks policy and in the event of damage or destruction of the Phase Works by any of the risks insured against the Developer shall as soon as reasonably practicable procure that the insurance money is laid out and used in rebuilding and making good the loss or damage in accordance with the provisions of this Agreement and will make good any deficiency in the proceeds out of its own resources.

13.2 All Insurance monies received by the Developer shall be held in an interest bearing account and monies shall only be drawn from it by the Developer in order to repair, rebuild or reinstate the relevant Phase Works.

13.3 The Developer shall (save where such matters are covered by the Building Contractor's insurance in accordance with Clause 13.1) before Commencement of the Phase Works insure or cause to be insured with an insurance company, or office, or underwriter of good repute approved by the Client (such approval not to be unreasonably withheld), third party liability insurance for a specified sum of not less than £20,000,000 for any one claim arising out of any one event in respect of the carrying out of the Phase Works or any part of them or anything preparatory, ancillary or subsequent to them including appropriate public and product liability insurance and insurance against interference or disturbance to rights of owners and occupiers of adjoining property (including services plant and machinery belonging to or operated by any statutory undertaker or any third party) and caused by any negligence, omission or default of the Developer

13.4 The Developer shall before Commencement of the Phase Works insure or cause to be insured with a reputable insurance company, or underwriters of good repute, approved by the Client (such approval not to be unreasonably withheld) in a sum of £10,000,000 any legal liabilities arising under the terms of the Employer's Liability (Compulsory Insurance) Act 1969.

13.5 If the Building Contract at any time fails to insure or keep insured the Phase Works in accordance with the Building Contract the Client may do all things necessary to effect and maintain such insurances and any money expended by the Client for that purpose shall be repayable by the Developer to the Client within five Working Days of receipt of a written demand as a liquidated debt.

13.6 The Developer shall from time to time as and when reasonably requested by the Client request the Building Contractor to provide written evidence of all such insurance.

13.7 The parties shall not do anything which may render void or voidable the Building Contractor's insurance of the Phase Land.

## 14 CLIENT'S CERTIFICATE

Subject to any permitted delays that are properly certified by the Employers Representative in accordance with the Building Contract (not being defaults on the part of the Developer or the Building Contractor or Sub Developer) the Client's

Certificate shall be issued by the Client's Surveyor within five Working Days of the date which is the latest of:

- (a) the date on which the Certificate of Practical Completion for the Phase Works is issued and a copy of it has been provided to the Client's Surveyor;
- (b) (if there is any dispute between the parties as to whether the Phase Works to which the Certificate of Practical Completion relates has properly been practically completed) the date which the Expert determines should have been the relevant Date of Wind and Watertight (if applicable);
- (c) the Client's receipt of a copy of evidence reasonably satisfactory to the Client that all obligations in respect of the relevant Phase Works pursuant to each Planning Agreement have been complied with;
- (d) the Client's receipt of such evidence as it shall reasonably require that all building regulation approvals necessary for the Phase Works have been obtained and completion certificates issued and that final inspection of the Phase Works has been carried out;
- (e) the Client's receipt of evidence that all of the conditions in all relevant planning permissions have been complied with in respect of the Phase Works; and
- (f) the Client's receipt of evidence that the Design Code and Sustainability Standards have been complied with in respect of the Phase Works.

## 15 TITLE TO THE CLIENT LAND

- 15.1 Title to the Phase Land has been deduced to the Developer and the Developer shall not raise any objection or requisitions in relation to such title save that the Developer may raise requisitions in relation to any matters arising pursuant to its pre-completion searches. The Developer shall not be entitled to require the Client to deduce any further title to the Phase Land.
- 15.2 Promptly upon the Client acquiring any Third Party Interests and following registration at the Land Registry the Client shall deduce title to such Third Party Interest as far as it is part of the Phase Land including delivery of official copies of the register entries and title plan, full copies of all title documents and replies to standard form enquiries before contract given by the vendor of such property.

## 16 MATTERS AFFECTING THE CLIENT LAND

- 16.1 The Phase Lease shall be granted subject to and with the benefit of such of the following as may apply:
  - (a) all local land charges (whether registered or not before the date of this Agreement) and all matters capable of registration as a local land charge or otherwise registrable by any competent authority or pursuant to statute or like instrument;
  - (b) all notices served and orders, demands, proposals or requirements made by any local or other public or competent authority whether before or after the date of this Agreement;

- (c) all actual or proposed charges, notices, orders, restrictions, agreements, conditions or other matters arising under any enactment relating to town and country planning;
- (d) all existing rights and easements and quasi-easements;
- (e) any unregistered interests which override registered dispositions under schedule 3 of the Land Registration Act 2002 and such unregistered interests as may affect the Client Land to the extent and for so long as they are preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002;
- (f) any unregistered interests which fall within any of the paragraphs of schedule 1 of the Land Registration Act 2002 and any interests which fall within section 11(4)(c) of the Land Registration Act 2002;
- (g) such unregistered interests as may affect the Site to the extent and for so long as they are preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002;
- (h) the matters contained, mentioned or referred to in the register of entries of those of the Client Land which are registered at the Land Registry and those matters details of which are set out in Schedule 1, Part 2 (*Registered Titles*) which includes the dates of the official entries and the title plans;
- (i) [the matters contained or referred to in Schedule 1, Part 3 (*Unregistered Titles*) in respect of those parts of the Client Land which are unregistered;] and
- (j) all matters disclosed or reasonably and properly expected to be disclosed by searches and enquiries, either formal or informal, by or for the Developer, or which a prudent buyer ought to make.

- 16.2 The Developer in respect of the Phase Land is deemed to have full knowledge of all matters referred to in Clause 16.1 and shall raise no objection or requisition in relation to any such matter.

## 17 LEASE

- 17.1 The Lease shall be in the form at Appendix 5 together with such amendments as the parties, acting reasonably, shall require and the other party approve (such approval not to be unreasonably withheld).
- 17.2 The Lease shall be granted in respect of each Block, comprised in the Phase as provided below.
- 17.3 The Client shall not withhold approval to any amendment proposed pursuant to Clause 17.1 where:
  - (a) it is required to enable any underletting of a Private Housing Unit to be compliant with the requirements of the Council of Mortgage Lenders (from time to time); and
  - (b) the Developer is able to demonstrate to the reasonable satisfaction of the Client that having regard to its proposals pursuant to Clause 18 (*Estate Management Arrangements*) the ability of the Council to procure maintenance and repair of each Block, the External Common Areas and the

Central Park and the payment to it of the rents reserved by the Lease is not materially prejudiced.

- 17.4 At least 30 Working Days before the Date of Wind and Watertight the parties shall consult and shall use all reasonable endeavours to agree any necessary amendments to the Lease as referred to in Clause 17.1.
- 17.5 The Leases shall demise the entirety of the Phase save for:
- (a) [any areas which the Client has agreed will be adopted as public highways (or which are otherwise required to be excluded as a result of their demise to utility or other statutory undertaking)];
  - (b) the Central Park; and
  - (c) **[Note: specify any areas which have not been comprised in the Client Land or the Third Party Interests pursuant to the Principal Development Agreement]**
  - (d) **[Note: To set out details of the Community Building and (if appropriate) the Mosque Land for Phase 1(a) and Affordable Workshop Space in Phase 1b]**
- 17.6 Within 5 Working Days of the date of the issue of the Certificate of Wind and Watertight the Developer shall prepare and shall submit to the Client for its approval, which shall not be unreasonably withheld, an up-to-date as-built demise plans in respect of each Block (which comply with the requirements of the Land Registry) for use as the demise plan for the Leases together with up-to-date as-built versions of such other plans as are necessary for the purposes of the Leases and the parties shall use all reasonable endeavours to agree such plans having regard to the provisions of Clause 19 (*Completion of Phase Lease*).
- 17.7 If the parties are unable to agree the terms of any amendments required in respect of the Lease, or the plans for the Lease then the matter shall be referred for determination pursuant to Clause 24 (*Disputes*).
- 17.8 Subject to determination of the terms of the Phase Lease and the relevant plans the Client shall procure that the Client's Solicitors produce engrossments of the Phase Lease in original and counterpart format and provide the counterparts of the Phase Lease to the Developer's Solicitors at least five Working Days prior to the Anticipated Completion Date.
- 18 ESTATE MANAGEMENT ARRANGEMENTS**
- 18.1 Without prejudice to the provisions of Clause 17.1 the Developer shall as soon as reasonably practicable following the date of this Agreement provide to the Client for its approval the following:
- (a) details of any Estate Management Company or other structure which it proposes to establish for the purposes of repairing and maintaining the External Common Areas and the Central Park to the standards required by the Lease at no cost to the Client;
  - (b) details of any amendments required to the draft Lease to reflect the proposed arrangements for such repair and maintenance;

- (c) details of any proposed amendments to the Common Estate Strategy which document will be annexed to each Lease; and
  - (d) details of such other documentation as may be required in respect of the foregoing.
- 18.2 The Developer shall procure that the arrangements referred to in Clause 18 (*Estate Management Arrangements*) accord with the Principal Development Agreement and shall demonstrate to the reasonable satisfaction of the Client that:
- (a) the External Common Areas will be repaired, maintained, lit and cleansed consistently across the Phase by a single party approved for these purposes by the Client;
  - (b) that the Central Park and the Additional Public Realm will be similarly repaired, maintained, lit and cleansed consistently by one party;
  - (c) that any other areas which have been agreed by the parties to constitute Open Space will be maintained as such;
  - (d) that the entire cost of such repair maintenance, lighting and cleansing and management of the External Common Areas and the Central Park shall be borne by the tenant for the time being of the Lease and the residents of the Blocks by way of service charge; and
  - (e) that the Client has the ability upon reasonable prior notice to make good any failure to maintain or repair the External Common Areas or the Central Park (either temporarily or permanently) and to have the ability to recover the cost of so doing from the said residents by virtue of a contractual covenant or similar arrangement approved by the Client (acting reasonably).

- 18.3 The Developer and the Client shall promptly make such amendments to the draft Lease as are required to reflect the arrangements approved by the Client in accordance with the provisions of Clause 18.1 and Clause 18.2.

## 19 COMPLETION OF PHASE LEASE

- 19.1 Within 20 Working Days of the issue of the Certificate of Wind and Watertight, and subject to Clause 16 (*Matters affecting the Client Land*) and payment of the Phase Price (as cleared funds) the Client shall grant [or (where appropriate) shall procure that the Agency grants] and the Developer shall accept the grant of the Lease.
- 19.2 Completion of the Phase Lease pursuant to this Agreement shall take place at the offices of the Client's Solicitors or elsewhere as they may reasonably direct and all completions shall take place on or before 2.00 pm on the [completion date].
- 19.3 Where appropriate the Developer shall procure that the Estate Management Company enters into the Lease.
- 19.4 Where the freehold in the Phase Land (or that part of it which is to be comprised in a Lease) is vested in the Agency the Agency will join in the grant of the Lease.

## 20 OVERAGE

The Developer shall comply with the provisions of Schedule 5 (*Payment of Overage by the Developer to the Client*).

## 21 RESTRICTION

21.1 The Developer shall register a notice on the charges register and a restriction on the proprietorship register of the Developer's title to the Lease upon its grant relating to the Client's entitlement to monies in accordance with Schedule 5 (*Payment of Overage by the Developer to the Client*) in the following form:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor to the registered proprietor that the provisions of schedule 5 of a Building Agreement dated [•] April 2011 and made between [*Insert Parties*] have been complied with or do not apply to that disposition."

21.2 Upon completion of the Lease the Client will provide to the Developer's solicitors consent to the application of the Developer to register the restriction referred to in Clause 21.1 by completion and signature of panel 15 of the Form RX1 and immediately following completion of each grant the Developer shall procure that the Developer's Solicitors apply to the Land Registry to register such notice and restriction at the same time as registering the Phase Lease such application being made within the priority period set out in the Developer's Solicitors' result of the Land Registry search made prior to completion.

## 22 EVENTS OF DEFAULT

22.1 An Event of Default occurs where:

- (a) the Phase Works are not Commenced by the Works Start Date (subject to extensions of time permitted in accordance with Clause 8.1) (time of the essence);
- (b) the Date of Practical Completion of the Phase Works has not occurred by the Anticipated Completion Date (subject to extensions of time permitted in accordance with Clause 8.1);
- (c) the Developer commits any material breach of this Agreement or series of minor breaches which taken together amount to a material breach, and fails to remedy such material breach or series of breaches within [15] Working Days after receiving notice from the Client specifying the breach, (but in respect of a remediable breach, only whilst such breach has not been remedied);
- (d) a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the undertaking assets, rights or revenues of the Developer or the Building Contractor and any such action is not lifted or discharged within [ten] Working Days;
- (e) any order is made by, any competent court for the appointment of an administrator in relation to the Developer or the Developer Guarantor;
- (f) any order is made by any competent court or any resolution is passed by the Developer for its winding-up or dissolution or for the appointment of a liquidator of the Developer or the Developer's Guarantor;
- (g) the Developer or the Developer's Guarantor ceases to carry on the whole or a substantial part of its business.

22.2 Where an Event of Default has occurred the Client may (subject to Clause 22.3 and Clause 22.4) by notice in writing to the Developer terminate this Agreement whereupon the Developer shall cease to have any further rights in relation to this Agreement and all buildings and works then upon any part of the Phase Land shall immediately vest in the Client and the Developer shall have no further interest in the Phase Land and the Developer shall immediately deliver full vacant possession of the Phase Land to the Client (subject only to any building works that are being undertaken on the Phase Land) and the Developer shall at its own cost cancel any notice, caution or land charge registered by the Developer or on its behalf in relation to the Phase Land or any part.

22.3 For the protection of any Mortgagee any notice by the Client to the Developer notifying the Client's intention to terminate this Agreement shall also be served at the same time upon a Mortgagee. A Mortgagee shall, if the Client serves notice of its intention to determine this Agreement, be entitled, within a period of [90] Working Days from the date of the Client's notice, itself to enter into, or direct a nominee (first approved by the Client, whose approval shall not be unreasonably withheld provided that such nominee is a reputable developer with good experience of undertaking projects in the nature of that contemplated by this Agreement and of good financial standing and if the Client reasonably requires a guarantor to the nominee) to enter into, a duly executed deed of covenant with the Client to comply with the outstanding obligations of the Developer under this Agreement and where the Client's notice is served pursuant to Clause 22.1(c) and specifies an irremediable breach, covenanting to pay to the Client within ten Working Days of agreement or determination a sum by way of reasonable compensation for the irremediable breach within ten Working Days of such sum being agreed or determined. The deed of covenant shall be in such form as the Client may reasonably require. Any dispute as to the amount of such compensation shall be determined pursuant to Clause 24 (*Disputes*).

22.4 [Where the Client serves notice upon the Developer pursuant to Clause 22.2 and without prejudice to the provisions of Clause 22.3 it shall also serve a copy of the such notice upon any Sub Developer contemporaneously therewith [and where the Mortgagee has not exercised its rights under Clause 22.3 the Client shall notify the Sub Developer and if the Sub Developer so requests prior to the expiry of the period of 90 Working Days referred to in Clause 22.3 shall enter into a deed of covenant with the Sub Developer in accordance with and subject to the provisions of Clause 22.3 provided that:

- (a) The Mortgagee does not call for the exercise of its rights under Clause 22.3;
- (b) the Sub Developer provides evidence to the Clients' reasonable satisfaction that it has available funds to Practically Complete the Phase Works and discharge all other obligations of the Developer under the Building Agreement;
- (c) the Client has approved arrangements by the Sub Developer for the delivery of the Affordable Housing Units by an Approved RP (other than the Developer) and the Client shall where appropriate use its reasonable endeavours to assist the Sub Developer (at the cost of the Sub Developer) in procuring an Approved RP to deliver the Affordable Housing Units;
- (d) the Sub Developer is not itself in breach of the provisions of this Agreement or the Sub Developer Agreement; and

- (e) the Sub Developer enters into such a deed of covenant within 30 Working Days of a request from the Client so to do.]

**[Note: the wording in square brackets is only to be included for a Phase where Countryside's Guarantor is the Sub Developer.]**

22.5 Any determination of this Agreement shall:

- (a) be without prejudice to any claim which any party may have against another arising before the date of determination;
- (b) not affect the continuing effect of any provisions of this Agreement which are expressly stated to apply after the determination of this Agreement, and such provisions shall continue in effect until such time as all the obligations of the parties pursuant to such provisions have been complied with; and
- (c) determine the Principal Development Agreement in respect of the Phase Works and the particular Phase in respect of which the breach occurred.

23 **NOTICES**

23.1 Any notice in respect of this Agreement shall be in writing and shall be sufficiently served if sent by registered or recorded delivery post, or delivered by hand to the parties at the addresses set out in this Agreement (or such alternative address as may be notified to the other party from time to time) (with a copy also being sent to their solicitors) and service shall be deemed made on the next Working Day after delivery by hand and if sent by registered or recorded delivery post on the Working Day next but one after the date of posting.

23.2 Any notice which is required to be served on the Client shall be served on the Council at The Town Hall Mullberry Place 5 Clove Crescent East India Dock London E14 2BG (marked for the attention of Isabella Freeman Assistant Chief Executive (Legal Services) and The Agency at Palestra 197 Blackfriars Road Southwark London SE1 8AA (marked for the attention of Emma Wilson, Project Manager) or in both cases at such other address as the Client may notify from time to time.

23.3 Any notice which is required to be served on the Developer shall be served *[please provide details]*.

23.4 Where the Client has received notice of a Mortgagee any notice required to be served on the Mortgagee shall be served on the address of such Mortgagee as provided to the Client.

24 **DISPUTES**

24.1 Whenever there is a dispute between the Client or the Agency and the Developer which either party refers to resolution pursuant to this Clause 24 (*Disputes*) the Director of Development and Renewal of the Council, the Head of the London Region of the Agency and the Deputy Chief Executive of the **Developer** shall arrange to meet within [five] Working Days of the referral for determination and shall consult in good faith and use all reasonable endeavours to resolve the issue in dispute.

24.2 Where in this Agreement reference is made to a dispute being referred to an expert in accordance with this Clause 24 (*Disputes*) then such matter shall be determined by an independent person who has been professionally qualified in respect of the

subject matter of the dispute or difference for not less than ten years and who is a specialist in relation to such subject matter and such independent person shall be referred to in this Clause 24 (*Disputes*) as the "Expert".

24.3 For the purpose of this Clause 24 (*Disputes*) and all references for disputes to be determined pursuant to this Clause 24 (*Disputes*) the Developer's Guarantor shall not be entitled to refer any matter to determination pursuant to this Clause 24 (*Disputes*). References in this Clause 24 (*Disputes*) to the "parties" shall exclude the Developer's Guarantor.

24.4 The Expert shall be agreed between the parties or failing such agreement be nominated in the case of any dispute relating to the Phase Works by the president or vice-president or other duly authorised officer of the Royal Institution of Chartered Surveyors and in the case of any dispute relating to planning issues by the president or vice-president of the Bar Council on the application of any party at any time, and the following provisions shall apply:

- (a) the Expert shall act as expert and not as an arbitrator and his decision shall be final and binding upon the parties save in the case of manifest error or fraud;
- (b) the Expert shall consider (*inter alia*) any written representations on behalf of any party to the dispute (if made within [ten] Working Days of receipt of notification of the Expert) and counter-representations but shall not be bound them;
- (c) the Expert shall supply to the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within [ten] Working Days of the parties' respective receipt of such copies;
- (d) the parties shall use all reasonable endeavours to procure that the Expert gives his decision as speedily as possible but in any event within 30 Working Days of his appointment;
- (e) the costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination in equal proportions between them; and
- (f) if the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for appointment of an Expert shall be repeated as often as necessary.

24.5 Notwithstanding any other provisions of this Agreement any dispute as to legal construction or interpretation shall not be referred to the Expert but instead the parties submit to the jurisdiction of the courts of England and Wales.

25 **ENTIRE AGREEMENT, NON-MERGER**

25.1 This Agreement contains the entire agreement between the parties and may only be varied or amended by a document signed by or on behalf of all of the parties. The Developer acknowledges that it is entering into this Agreement without placing any reliance upon any representation (written or oral) which may have been made by the Client or any agent, adviser or other person acting for the Client except such

representations as may be made in this Agreement or may have been made in any written communication from the Client's Solicitors to the Developer's solicitors.

- 25.2 So far as they remain to be performed or observed the provisions of this Agreement shall continue in full force and effect notwithstanding completion of the grant of the Phase Lease.

## 26 GOOD FAITH

The Client and the Developer shall each owe to the other a duty to act with the utmost good faith in relation to their respective obligations in this Agreement.

## 27 DEALING WITH THIS AGREEMENT

Except as set out at clause 22 (Dealing with this Agreement) of the Principal Development Agreement the Developer shall not assign or hold on trust, charge or otherwise dispose of its interest under this Agreement.

## 28 THIRD PARTY RIGHTS

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that act.

## 29 VAT

All supplies made under and sums payable under this Agreement shall be subject to VAT where VAT is properly payable and such VAT shall be paid by the party to whom the relevant supply is made or from whom the relevant sum is due at the same time as the supply is made or the sum is due subject to the receipt of a valid VAT invoice subject as mentioned below.

## 30 INTEREST

All sums payable pursuant to this Agreement which are not paid on the due date for payment shall bear interest at the Interest Rate from the date on which payment was due until the date of actual payment.

## 31 APPROVALS AND AUTHORISATIONS

- 31.1 The Developer shall not be released from or relieved of any of its obligations set out in this Agreement as a result of any approval, agreement or consent of the Client or anyone on the Client's behalf.
- 31.2 Where the approval, consent, agreement, acknowledgement or authority of the Client is required pursuant to this Agreement such approval, consent, agreement, acknowledgement or authority shall (without limitation) only be validly given if in writing and signed by or on behalf of the Council and the Agency.
- 31.3 Where in this Agreement the Developer is required to submit to the Client for its approval, agreement or consent any plans, specifications or other information, in order for such submission to be validly submitted for the purposes of this Agreement it must state on its face: "This is an application to the Client for approval pursuant to Clause [set out relevant clause reference] of the Building Agreement and a response is required by [set out relevant date]". Where the Client's failure to respond will lead to it being deemed to have approved or

consented to the submission, the application must state that clearly. Submissions to the Client shall be addressed to the Client's Surveyor.

## 32 DEVELOPER'S GUARANTOR

- 32.1 In consideration of the Client entering into this Agreement at the request of the Developer's Guarantors, the Developer's Guarantors [jointly and severally] undertake with and guarantee to the Client that:

- (a) the Developer will comply with and perform its obligations in this Agreement;
- (b) the Developer's Guarantor will make good to the Client any liability which the Client may suffer or incur by reason of a failure of the Developer to perform its obligations in this Agreement;
- (c) the Developer's Guarantor is not to be exonerated from this guarantee because of:
  - (i) any forbearance or other indulgence, neglect or delay of the Client in enforcing its rights against the Developer;
  - (ii) a variation of the terms of this Agreement to which the Developer's Guarantor is a party; or
  - (iii) the Client giving consent or approval of any application to it under this Agreement; and
- (d) the obligations of the Developer's Guarantor in this Clause 32 (*Developer's Guarantor*) commit the Developer's Guarantor to the Client as if the Developer's Guarantor were a primary obligor.

- 32.2 [Note: Insert any proposed additional guarantee provisions whether relating to any Sub Developer or otherwise]

## 33 INCORPORATION OF PROVISIONS FROM THE PRINCIPAL DEVELOPMENT AGREEMENT

- 33.1 The provisions of clause 31 (Confidentiality and Freedom of Information) and clause 33 (Data Protection) contained in the Principal Development Agreement shall apply to this Agreement as if the same were (*mutatis mutandis*) set out in full.
- 33.2 The Developer shall in addition comply with all of the provisions of the Principal Development Agreement insofar as it relates to the Phase or the carrying out of the Development upon or in connection with the Phase Land or the making of any payments relating to the Phase which is the subject of this Agreement (including the Community Payment referred to in the Principal Development Agreement).

## 34 GENERAL PROVISIONS

- 34.1 Nothing in this Agreement shall constitute a partnership or joint venture between the Parties or constitute the Developer as the agent of the Client or the Agency for any purpose whatsoever.
- 34.2 If at any time any of the provisions of this Agreement becomes illegal, invalid or unenforceable in any respect under any law or regulations of any jurisdiction,

neither the legality, validity or unenforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result.

- 34.3 No failure or delay on the part of the Client in exercising any right or power and no course of dealing between the parties hereto shall operate as a waiver nor shall any single or partial exercise of any right or power of the Client prevent any other or further exercise thereof or the exercise of any other right or power of the Client. The rights and remedies of the Client are cumulative and not exclusive of any rights or remedies which the Client would otherwise have.
- 34.4 Nothing contained in or done under this Agreement and no consents given by the Client or the Agency shall prejudice their rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bylaws, instruments, orders or regulations.
- 34.5 Nothing in this Agreement nor any other document shall impose any obligation or liability on the Client with respect to any actions of or obligations or liabilities assumed or incurred by the Developer or its agents, Building Contractors or employees whether under contract, statute or otherwise.
- 34.6 Any approval by the Client or the Agency or any person on behalf of the Client or the Agency pursuant to this Agreement of any matter submitted by the Developer for approval:
- (a) shall not be deemed to be an acceptance by the Client of the correctness or suitability of the contents of the subject of the approval or consent; and
  - (b) shall only be given in its capacity as landowner and shall not affect its other statutory duties as referred to in Clause 34.4.
- 34.7 This Agreement shall be governed by and construed in accordance with the Law of England and the parties hereby irrevocably submit to the jurisdiction of the English courts.

**Delivered as a deed on the date of this document.**

## **Schedule 1**

### **Phase Land and matters to which the Phase Land is subject**

#### **Part 1**

#### **Description of Phase Land**

[•]

#### **Part 2**

#### **Registered Titles**

[•]

#### **Part 3**

#### **Unregistered Titles**

[•]



**Schedule 2  
The Phase Works**

*[Details to be added pursuant to the Principal Development Agreement]*

***[Note: In the case of Phase 1(a) there will be added details of the works required to be carried out by the Developer at its own cost in relation to the proposed Community Building]***

**Schedule 3  
Development Obligations**

**1 GENERAL**

The provisions of this Schedule 3 (*Development Obligations*) shall apply to the Phase Works to be undertaken pursuant to this Agreement.

**2 CONSENTS**

2.1 The Developer shall make application for and use all reasonable endeavours to obtain the Consents (to the extent that these have not been obtained pursuant to the Principal Development Agreement) or obtain lawful relaxations or waivers of them in each case having regard to the Programme.

2.2 The Developer shall keep the Client properly informed as to the progress of each application for the Consents and of all negotiations relating to those applications and shall provide to the Client copies of all applications, material correspondence and notes of meetings relating to those applications and negotiations.

2.3 The Developer shall use all commercially prudent endeavours to procure that all Consents obtained remain valid and unrevoked and shall renew any that become invalid or revoked before the Date of Practical Completion of the Phase Works or the relevant part of them.

**3 METHOD STATEMENT AND ACCESS PLANS**

3.1 The Developer shall not Commence the Phase Works or any preparation for them until:

(a) a Method Statement; and

(b) Access Plans have been agreed or determined in accordance with this paragraph 3 (*Method Statement and Access Plans*).

3.2 As soon as reasonably practicable after the date of this Agreement the Developer shall submit to the Client for its approval a draft Method Statement which will set out the Developer's proposals for undertaking the Phase Works and Access Plans illustrating how the Developer shall ensure continuity of access and egress to all occupiers of the Phase Land and any areas adjacent to it and affected by the Phase Works shall be maintained throughout the carrying out of the Phase Works. The Client's approval of the draft Method Statement and Access Plans shall not be unreasonably withheld.

**4 HOARDINGS**

4.1 The Developer shall ensure that the Phase Land (or the parts in respect of which licences have been granted) is properly hoarded whilst any of the Phase Works are being undertaken.

***[Note: In the case of Phase 1b this will include a contemporaneous obligation to hoard the Green to the reasonable satisfaction of the Council and in accordance with its reasonable requirements in accordance with the Principal Development Agreement]***

4.2 The Client shall be entitled to affix to such hoardings such advertisements and artwork as it may reasonably require subject to the Developer being entitled to

affix all notices required to comply with statutes and such other reasonable notices as the Client may approve giving details of the Developer, the Building Contractor and the Professional Team and any Sub-Contractors but the Developer shall not otherwise be entitled to affix any advertisements to such hoardings.

## 5 THE DEVELOPMENT

5.1 The Developer shall as soon as reasonably practicable having regard to the Programme carry out and diligently complete or procure the carrying out and completion of the Phase Works in accordance with the provisions of this Schedule 3 (*Development Obligations*) and this Agreement.

5.2 The Developer shall carry out or procure the carrying out of the Phase Works in accordance with:

- (a) the Consents and the planning permission obtained pursuant to the Principal Development Agreement;
- (b) the Phase Specifications in relation to the Phase Works generally;
- (c) all statutory requirements;
- (d) the relevant Method Statement and Access Plans;
- (e) all relevant British and European Standards and Codes of Practice and in the case of conflict the provisions of the Codes of Practice shall prevail;
- (f) the Sustainability Standards;
- (g) *[Note: to insert relevant provisions for the Design Code from the Planning Strategy]*
- (h) the Considerate Constructors Scheme; and
- (i) the terms of this Agreement;
- (j) *[Note: to insert any other specific requirements to reflect provisions of the Principal Development Agreement]*

in a good and workmanlike manner using suitable good quality materials.

5.3 The Developer shall not specify any of the Prohibited Materials in the Phase Works and shall use all reasonable endeavours to procure that they are not used in the Phase Works.

5.4 In respect of the CDM Regulations:

- (a) the Developer shall be the only client in respect of the Phase Works in accordance with the CDM Regulations and shall be the principal Contractor for the Phase Works in accordance with them;
- (b) the Developer shall give notice to the Health and Safety Executive in accordance with the requirements of the CDM Regulations of its appointment referred to at paragraph 5.4(a) and shall comply with its obligations as the only client under the CDM Regulations; and

- (c) the Developer shall procure that designers and Building Contractors for the purposes of the CDM Regulations comply with their obligations under them and shall procure that full details of the Phase Works are given to the Health and Safety Executive and that a construction phase plan is prepared and submitted to the Health and Safety Executive all in accordance with the CDM Regulations.

## 6 PLANNING AGREEMENTS

6.1 The Developer shall comply with all of the obligations of the landowner as well as those of the developer (if any) in each of the Planning Agreements.

6.2 Any works to be undertaken pursuant to the terms of each Planning Agreement shall be undertaken in accordance with the terms of such Planning Agreement and otherwise in accordance with the requirements for undertaking the Phase Works in accordance with this Schedule 3 (*Development Obligations*).

6.3 Where any such Planning Agreement requires the completion of works which are to be adopted by the local authority or highways authority (as applicable) the Developer shall use all reasonable endeavours to procure that such works are so adopted in accordance with the terms of such Planning Agreement.

6.4 The Developer shall make payment of all sums due from the Developer pursuant to the terms of each Planning Agreement.

## 7 GENERAL OBLIGATIONS

7.1 In respect of those parts of the Phase Land of which the Developer has been given vacant possession the Developer shall procure that:

- (a) no material or equipment is brought on to the Phase Land except that required for the Phase Works;
- (b) proper provision is made for the security of the Phase Land during the carrying out of the Phase Works and for the protection of any materials, plant and equipment in or on it;
- (c) all surplus material is removed from the Phase Land when it is no longer required for the Phase Works;
- (d) the Phase Land is maintained in a reasonably tidy condition and free from rubbish;
- (e) there is no excavation of the Phase Land or extraction of soil or minerals except as part of the Phase Works;
- (f) proper precautions are taken for the safety of all persons upon the Phase Land including security patrols, safeguards and arrangements of lighting the Phase Works as may be necessary or appropriate in the interests of public safety (but subject as otherwise provided in this Agreement);
- (g) the Phase Works are carried out in a manner which causes as little interference as is reasonably practicable (taking into account the nature of the works) to the public or the owners or occupiers of the adjoining or neighbouring property;

- (h) proper provision is made for the support of land, buildings and boundaries adjoining the Phase Land and for the protection of all services benefiting land adjoining or near to the Phase Land;
- (i) any adjoining highways, road and pavements are cleansed as often as may be reasonably necessary and are kept unobstructed;
- (j) the wheels of all construction traffic leaving the Phase Land are washed; and
- (k) proper arrangements are made with the requisite authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Phase Works.

Not used.

**Schedule 4****7.2 Without prejudice to the generality of the foregoing:**

- (a) the Developer will be responsible for the carrying out of any works to existing service media or statutory undertaker apparatus (whether by diversion replacement or otherwise) required as a result of or ancillary to the Phase Works; and
- (b) the Developer shall procure that no services or utilities serving the Development or any part of the Phase Works shall be connected within the land presently known as [Bullivant Street].

**8 ARCHAEOLOGICAL WORKS**

- 8.1 If any fossils, coins, relics or other articles or structures of historical, antiquarian or archaeological interest are found on the Phase Land they shall be the property of the Client.
- 8.2 The Developer shall during the course of the Development observe and comply with the Codes of Practice published by the British Archaeologists and Developers Liaison Group 1986.

**9 TITLE MATTERS**

- 9.1 The Developer shall comply with the title matters relating to the Phase Land, short details of which are set out in Schedule 1 (*Phase Land and matters to which the Phase Land is subject*).
- 9.2 The Developer shall not knowingly permit any encroachment or easement to be made or acquired against or over the Phase Land and shall immediately notify the Client on becoming aware of any encroachment or easement being made or attempted.

**10 CLIENTS REPRESENTATIVE**

The Developer shall promptly reimburse the Client for the reasonable cost incurred by it in employing the Clients Surveyor.

**11 CLIENT'S CERTIFICATE**

The Developer shall carry out the Phase Works so as to enable the Client's Certificate to be issued in accordance with the Programme.

**Schedule 5**  
**Payment of Overage by the Developer to the Client**

**1 DEFINITIONS**

**1.1** In this Schedule 5 (*Payment of Overage by the Developer to the Client*):

**"Actual Overage Threshold Level"** means as calculated pursuant to paragraph 3 below.

**"Agreed Additional Costs"** means as set out in Schedule 6 of the Principal Development Agreement (if any) in relation to the Phase.

**"Agreed BCIS Costs Increase"** means the amount of the increase in the Tender Base Threshold Level (as defined in the Principal Development Agreement) where the Tender Base Threshold Level is increased by 50% of the increase in the BCIS All In Tender Price Index from the Agreed Date until the Secondary Unconditional Date for the Phase (as defined in the Principal Development Agreement) Provided that this shall be deemed to be zero where the viability test has been called for by the Developer pursuant to Schedule 6 of the Principal Development Agreement.

**"Agreed Base Value"** means either the Viability Base Value or the Tender Base Value as determined by Schedule 6 of the Principal Development Agreement (expressed in either case as pounds per square foot) being in the case of the Tender Base Value only the following:

Phase 1a	£351 per square foot
Phase 1b	£362 per square foot
Phase 2	£366 per square foot
Phase 3	£367 per square foot
Phase 4	£389 per square foot

**[Note: If the Viability Base Value is used this will be inserted into each Building Agreement in respect of each Phase as provided by Schedule 6 of the Principal Development Agreement instead of the Tender Base Value figures. In the case of Phase 1a and 1b the Agreed Base Value will always be the Tender Base Value.]**

**"Agreed Dates"** means the following in respect of the relevant Phase specified:

Phase 1a	31 <sup>st</sup> December 2011
Phase 1b	31 <sup>st</sup> July 2012
Phase 2	31 <sup>st</sup> July 2012
Phase 3	31 <sup>st</sup> July 2012
Phase 4	31 <sup>st</sup> July 2012

**"Agreed Threshold Level"** means the amount (expressed in pounds sterling) as calculated pursuant to paragraph 3 below.

**"BCIS All In Tender Price Index"** means the BCIS All In Tender Price Index published by the RICS Building Cost Information Service or (if such Index ceases to be published) the most comparable index agreed between the Developer and the Client (acting reasonably).

**"Blocks"** means the buildings which when completed will comprise the Private Housing Units [shown [edged red] on the Plan] and any reference to a **"Block"** means any one of the Blocks.

**"Disposal"** means the grant or transfer of any leasehold estate or interest in any Private Housing Unit on the terms of a Private Residential Long Lease.

**"Final Payment Date"** means in respect of each Block the earlier of:

- (a) the date 3 years from the date of the Certificate of Practical Completion (as defined in the Building Agreement) of the relevant Block to be constructed by the Developer or on its behalf as part of the Phase Works or if on that date the Actual Overage Threshold Level has not been reached, the date 6 years from the date of the Certificate of Practical Completion (as defined in the Building Agreement) of the relevant Block to be constructed by the Developer or on its behalf as part of the Phase Works; and
- (b) the earlier of:
  - (i) the completion by dating and delivery of the instrument of transfer, assignment, lease or other instrument; or
  - (ii) the payment of the price or delivery of valuable consideration is paid to the Developer or other person at the direction of the Developer,

in respect of the Disposal of the last of the Unsold Private Housing Units in the relevant Block.

**"Marketing and Private Letting Strategy"** has the meaning given to it in the Principal Development Agreement.

**"Market Value"** means the market value of the interests to be valued in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards (edition current at the date of valuation) with the following additional assumptions:

- (a) the relevant Private Housing Unit has been sold as a single lot;
- (b) the Phase Land has good and marketable title;
- (c) the relevant Private Housing Unit is with good and marketable long leasehold title for a term of not less than [125] years [less 3 days] on the basis of a Private Residential Long Lease and with vacant possession;
- (d) that the relevant Private Housing Unit has been constructed and completed in accordance with all the provisions of this Agreement and the Principal Development Agreement;

- (e) that the relevant Private Housing Unit has full vehicular and pedestrian access to and from a public highway; and
- (f) that the relevant Private Housing Unit is not sold subject to the provisions of this Schedule 5 (*Payment of Overage by the Developer to the Client*).

**"Overage"** means the payment or payments which are due from the Developer to the Client as calculated under paragraph 3 of this Schedule 5 (*Payment of Overage by the Developer to the Client*).

**"Payment Commencement Date"** means the date upon which Private Housing Sale Proceeds equal the Actual Overage Threshold Level.

**"Permitted Incentive"** means any cash incentive paid to a purchaser of a Private Housing Unit as evidenced by Land Registry Form TP1 and which may not be more than 5% of the gross purchase price.

**"Private Housing Sale Proceeds"** means the total of all the sale proceeds and other consideration and other sums paid or payable by the buyer of any Private Housing Unit in respect of a Disposal and sale proceeds of any car parking spaces (whether of a capital or revenue nature) including (without limitation):

- (a) any purchase price, premium, contribution or other sums less any Permitted Incentive;
- (b) the value of any land or other consideration provided in exchange to any Disposal;
- (c) all payments (not previously taken into account) received by the Developer by way of any grant, public subsidy or other public funding from any United Kingdom or European Union local, public or governmental authority; and
- (d) Market Value where applied in this Schedule.

**"Private Residential Long Lease"** means a lease of a Private Housing Unit for a term of not less than 125 years less 3 days reserving a nominal rent of not more than £350 per annum and reserving a premium in a sum which is not less than the Market Value of such Private Housing Unit.

**"Unsold Private Housing Units"** means the Private Housing Units in a Block respect of which no Disposal has been made by the Developer to a buyer in accordance with all the provisions in paragraph 4 (*Disposals*).

- 1.2 For the purposes of this Schedule 5 (*Payment of Overage by the Developer to the Client*) a buyer includes any person who shall acquire a Private Housing Unit whether on the grant or transfer of a leasehold interest to the buyer.

## 2 PAYMENT OF OVERAGE

- 2.1 The Developer shall notify the Client forthwith of the Payment Commencement Date.
- 2.2 The Overage shall then be paid to the Client forthwith upon receipt by the Developer of any further Private Housing Sale Proceeds.

- 2.3 In the case of a disposal of any Private Housing Unit after the Payment Commencement Date the Developer shall procure that its solicitors provide the Client with an undertaking to pay the Overage to the Client from and upon receipt of the Private Housing Sale Proceeds.

- 2.4 The Developer shall pay the Overage to the Council who may give a valid receipt for the Overage on behalf of the Client.

- 2.5 In respect of each Phase, within 10 Working Days of the Final Payment Date the Developer shall supply to the Client a schedule detailing the total aggregate of all Private Housing Sale Proceeds received in respect of the period between the date of this Agreement to and including the Final Payment Date together with a schedule setting out full details of the Unsold Private Housing Units (if any).

- 2.6 The Developer shall pay to the Client the Overage calculated in accordance with paragraph 3 (*Calculation of Overage*) within 10 Working Days of the agreement or determination of the amount of Overage.

- 2.7 Where the Client does not receive the Overage within the time period specified in paragraph 2.6 then the Developer shall in addition to the Overage pay to the Client on demand an amount equal to interest on that sum calculated at the Interest Rate in respect of the period from the Final Payment Date until the date of actual receipt of the Overage by the Client.

- 2.8 For the purposes of paragraph 3 below the parties shall use all reasonable endeavours to agree the Gross Internal Area (as defined in the Principal Development Agreement) of each Block contemporaneously with the issue of the certificate of Wind and Watertight and any dispute as to such area may be determined in accordance with the provisions of Clause 24 of this Agreement.

## 3 CALCULATION OF OVERAGE

- 3.1 Overage is to be calculated based on all surpluses achieved in excess of the Actual Overage Threshold Level referred to below.

- 3.2 The Overage shall be calculated as follows, where G is the Overage payable by the Developer to the Client:

$$A \times B = C$$

$$C + D + Z = X$$

$$E - X = F$$

$$F \times Y\% = G$$

Where

A = actual Gross Internal Area which shall be the built aggregate Gross Internal Area (in sq ft) of all the individual Private Housing Units in the Phase verified as at the date each Block is certified as Wind and Watertight.

B = Agreed Base Value £psf

C = Agreed Threshold Level

D = Agreed Additional Costs (if any)

Z = Agreed BCIS Costs Increase (if applicable) [*Note: If at the time the Building Agreement is entered into the "Viability Base Values" are being utilised "Z" can be removed.*]

X = Actual Overage Threshold Level

E = an amount equal to the aggregate of:

- (a) the total aggregate of all the Private Housing Sale Proceeds in respect of the Phase at any time during the period from the date of this Agreement to and including the Final Payment Date; and
- (b) (where applicable) the Market Value of all the Unsold Private Housing Units in respect of the Phase as at the Final Payment Date as agreed between the Client and the Developer or, failing agreement, determined in accordance with paragraph 6 (*Disputes*); and

F = surplus in excess of the Actual Overage Threshold Level

Y = 60% [(or 75% where stated in Schedule 6 of the Principal Development Agreement)] [*Note: percentage to be inserted on exchange of Phase specific Building Agreement*]

G = the Overage payable by the Developer to the Client.

**[Note - Where relevant the Overage calculation will need to be adjusted to account for the Developer's priority return referred to in paragraph 10.4 of Schedule 6 of the Principal Development Agreement and, in respect of Phase 4, the calculation must take account of any Phase Price paid by the Developer for Phase 4]**

#### 4 DISPOSALS

- 4.1 The Developer shall use all reasonable endeavours to maximise the Private Housing Sales Proceeds in respect of each and every Private Housing Unit and to diligently proceed with the marketing and sale of the same.
- 4.2 Without limitation to paragraph 4.1 the Developer shall:
  - (a) comply with the principles set out in the [Marketing and Private Letting Strategy]; and
  - (b) not to dispose of any interest in the Private Housing Units other than by means of a Disposal.
- 4.3 The Developer shall not less than on monthly intervals (to commence on the first Disposal) confirm in writing to the Client the Disposals that have been made and the Developer shall supply certified copies of each of Instruments of transfer, assignment, lease or other instruments by which the Disposals were effected.
- 4.4 If notwithstanding the terms of this Schedule 5 (*Payment of Overage by the Developer to the Client*) the Developer shall make any Disposal at below the Market Value or otherwise than by way of the grant of a single Private Residential Long Lease the Client shall be entitled to require that in calculating the Overage on any Final Payment Date there shall be substituted in respect of that Disposal an amount equal to the Market Value of the same in place of the Private Housing Sale

Proceeds received or receivable by the Developer or other person at the direction of the Developer.

- 4.5 The Developer shall not pay or allow any incentive in excess of a Permitted Incentive.

#### 5 RECORDS

- 5.1 The Developer shall keep all its records available for inspection by the Client on an open book basis and the Developer will supply to the Client on request such information, documentation, schedules, certificates, transfers, leases, contracts, accounts and invoices as the Client shall reasonably require at any time in order to calculate and/or verify the amount of any Overage and/or Private Housing Sale Proceeds.

- 5.2 The Developer shall allow the Client to inspect and survey the Phase Land and each Private Housing Unit wherever the Client considers it necessary to determine the Market Value of any part of the same.

#### 6 DISPUTES

If there shall be any dispute or disagreement between the Client and the Developer in relation to the amount of any Revenue Overage or on any of the terms or provisions of this Schedule 5 (*Payment of Overage by the Developer to the Client*) the dispute shall be determined in accordance with Clause 24 (*Disputes*)

#### 7 DECANT STRATEGY

The Developer shall in addition to the Overage pay to the Client any further sums that become due pursuant to the Decant Strategy (as defined in the Principal Development Agreement).

**EXECUTION PAGE**

The common seal of **THE MAYOR AND  
BURGESSES OF THE LONDON  
BOROUGH OF TOWER HAMLETS** was  
affixed in the presence of:

)  
)

[Authorised signatory]

[Authorised signatory]

The common seal of **HOMES AND  
COMMUNITY AGENCY** was affixed in the  
presence of:

)  
)

[Authorised signatory]

[Authorised signatory]

Executed as a deed by **SWAN HOUSING  
ASSOCIATION LIMITED** acting by:

)  
)  
)

Director

Director/Secretary

Executed as a deed by **[•]** acting by:

)  
)  
)

Director

Director/Secretary

Executed as a deed by **[•]** acting by:

)  
)  
)

Director

Director/Secretary



**Appendix 1  
Plan**

**[To be agreed as per the Principal Development Agreement]**

**Appendix 2**  
**Phase Specifications**

**[To be agreed as per the Principal Development Agreement]**

**Appendix 3**  
**Building Contract**

***[Note: to be provided to the Client's Surveyor for approval prior to exchange of this Agreement such approval not to be unreasonably withheld or delayed.]***

**Appendix 4**  
**Sub-Contract**

**Appendix 5**  
**Phase Lease**

DATED [•]

**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF TOWER HAMLETS**  
and/or

**THE HOMES AND COMMUNITIES AGENCY**  
as Landlord

**SWAN HOUSING ASSOCIATION LIMITED**  
as Tenant

**LEASE**

of Block [•] at Blackwall Reach in the London Borough of Tower Hamlets

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<b>LR1. Date of lease</b>	[•]
<b>LR2. Title number(s)</b>	<b>LR2.1 Landlord's title number(s)</b>
	[•]
	<b>LR2.2 Other title numbers</b>
	None
<b>LR3. Parties to this Lease</b>	<b>Landlord</b>
	<p><b>THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS</b> of The Town Hall, Mulberry Place, 5 Clove Crescent, East India Dock, London, E14 2BG</p> <p>and/or</p> <p><b>THE HOMES AND COMMUNITIES AGENCY</b> of 110 Buckingham Palace Road London SW1W 9SA</p> <p><b>Tenant</b></p> <p>[•]</p> <p>[of] [(company no [•]) whose registered office is at] [•]</p> <p><i>[Other parties [•]]</i></p> <p>[of] [(company no [•]) whose registered office is at] [•] [Guarantor]</p>
<b>LR4. Property</b>	<b>In the case of a conflict between this Clause and the remainder of this Lease then, for the purposes of registration, this Clause shall prevail</b>
	The property described in this Lease as the Premises shortly known as Phase [•] at Blackwall Reach in the London Borough of Tower Hamlets being the Premises as specified in Schedule 1 ( <i>Description of Premises</i> ) and defined in this Lease as the "Premises".

<b>LR5. Prescribed statements etc</b>	<b>LR5.1</b> <i>Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003</i>
	<p><b>LR5.2 This Lease is made under, or by reference to, provisions of:</b></p> <p>[Leasehold Reform Act 1967]</p> <p>[Housing Act 1985]</p> <p>[Housing Act 1988]</p> <p>[Housing Act 1996]</p>
<b>LR6. Term for which the Property is leased</b>	The term as specified in this Lease at Clause 1 ( <i>Definitions and interpretation</i> ).
<b>LR7. Premium</b>	£[1]
<b>LR8. Prohibitions or restrictions on disposing of this Lease</b>	This Lease contains a provision that prohibits or restricts dispositions
<b>LR9. Rights of acquisition etc</b>	<b>LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b>
	None
	<b>LR9.2 Tenant's covenant to (or offer to) surrender this Lease</b>
	None
	<b>LR9.3 Landlord's contractual rights to acquire this Lease</b>
	None
<b>LR10. Restrictive covenants given in this Lease by the Landlord in respect of land other than the Property</b>	None



<b>LR11. Easements</b>	<b>LR11.1 Easements granted by this Lease for the benefit of the Property</b>
	As specified in Clause 3.1 and set out in Schedule 2 ( <i>Rights Granted</i> ) of this Lease
	<b>LR11.2 Easements granted or reserved by this Lease over the Property for the benefit of other property</b>
	As specified in Clause 3.2 and set out in Schedule 3 ( <i>Exceptions and Reservations</i> ) of this Lease
<b>LR12. Estate rentcharge burdening the Property</b>	The provisions in Clause 4(a)
<b>LR13. Application for standard form of restriction</b>	<p>The Parties to this Lease apply to enter the following standard form of restriction against the title of the Property:-</p> <p>"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number [specify title number] [or [their conveyancer or specify appropriate details]] that the provisions of Clause 13.4 of the registered lease have been complied with [or that they do not apply to the disposition]."</p>
<b>LR14. Declaration of trust where there is more than one person comprising the Tenant</b>	Not applicable.

DATED 2011

## PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS** of The Town Hall, Mulberry Place, 5 Clove Crescent, East India Dock, London, E14 2BG and/or **THE HOMES AND COMMUNITIES AGENCY** of 110 Buckingham Palace Road SW1W 9SA (the "Landlord")
- (2) [•] [of] [(company no [•] whose registered office is at] [•] (the "Tenant")

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 In this Lease:

**"Additional Public Realm"** means *[Note: to delineate any areas shown shaded light green on the Phase Plan (excluding the Central Park) and any other land which is intended to be provided for public amenity]* including the [public amenity areas adjacent to the DLR].

**"Alterations"** means any alterations, variations or additions to the Premises requiring planning permission including alterations to existing buildings and structures and to new buildings and structures.

**"BRT"** means the Blackwall Reach Trust [•]. *[Note: to be referred to as established under the Principal Development Agreement]*

**"Building Agreement"** means the Building Agreement made [•] 20[ ] between (1) The Mayor and Burgesses of the London Borough of Tower Hamlets and (2) The Homes and Communities Agency (3) [•] and (4) [•] in relation to the sale and development of Phase [•] at the Estate.

**"Central Park"** means the new park areas as shown. *[Note: to correspond with definition in Principal Development Agreement and to annex a plan showing the "as built" park]*

**"Common Estate Strategy"** means the strategy for the maintenance of all common areas within the Estate in the form annexed hereto *[Note: strategy to be annexed as determined pursuant to the Principal Development Agreement and the Building Agreement]* with such variations thereto as may from time to time be approved by The London Borough of Tower Hamlets (such approval not to be unreasonably withheld or delayed).

**"Community Services"** means [such services for the benefit of the community in or around the Estate as a whole or any part thereof as BRT or (in the event that BRT shall cease to exist), the Landlord shall from time to time determine.].

**"Contractual Term"** means 250 years from and including the Term Commencement Date.

**"Environment"** means any and/or living organisms (including man, eco systems, property and the media of air (including air in buildings) natural or man made structures below or above ground water (as defined in section 104(1) of the Water Resources Act 1991 and within drains and sewers) buildings and land).

**"Environmental Law"** means all applicable laws including directives or regulation statutes or subordinate legislation or civil or common law, all court orders, ordinances, decrees or regulatory codes of practice, circulars, guidance notes and equivalent controls which relate to pollution or protection of the Environment or harm to or the protection of human health and safety or the health of animals or plants or compensation for such harm which are binding in relation to the Premises.

**"Estate"** means all the land at Blackwall Reach in the London Borough of Tower Hamlets shown for identification on plan *[Note: to insert specific reference corresponding to the Site within the Principal Development Agreement]* or such greater or lesser area as the Landlord (acting properly).

**"Estate Management Company"** means [insert name of entity established pursuant to Clause 18 of the Building Agreement].

**"External Common Areas"** means all the areas within the Premises as comprise footpaths, roadways, car parks, access ways, hard standing or landscaping (and for the avoidance of doubt the External Common Areas shall not include the Central Park but will include the Additional Public Realm).

**"Hazardous Material"** means any natural or artificial substance or matter (whether solid, liquid, gas, ion, vapour, electromagnetic or radiation and whether alone or in combination with any other substance) or noise, all or any of which constitutes or is capable of causing harm to or having a deleterious affect on the Environment or being a nuisance, or which restricts or makes more costly the use, development, ownership or occupation of properties.

**"including"** means "including, without limitation".

**"indemnify"** means to indemnify against all actions, claims, demands and proceedings taken or made against the Landlord or its tenants and all costs, damages, expenses, liabilities and losses incurred by the Landlord or its tenants (as the case may be).

**"Insured Risks"** means the risks set out in Clause 7.3 and "Insured Risk" shall be construed accordingly.

**"Interest Rate"** means 4% above the base lending rate from time to time of Cooperative Bank PLC or such other United Kingdom clearing bank nominated by the Landlord at any time or, if each of the United Kingdom clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Landlord may reasonably determine.

**"Intermediate Units"** means *[Note: Insert definition from the Principal Development Agreement]*

**"Landlord"** means the person for the time being in title to the reversion on the determination of the Term (being at the date of this Lease the [party/parties] stated as such in Clause LR3).

**"Permitted Use"** means:

- (a) In the case of the buildings or parts of any buildings constructed or to be constructed for retail or commercial purposes pursuant to the Planning Permission or any variation thereto retail and/or commercial use and all purposes ancillary thereto; and

- (b) in the case of any other part of the Premises, including any other buildings or parts of buildings, use as residential dwellings pursuant to the Planning Permission and all purposes reasonably ancillary thereto; and
- (c) in the case of the Additional Public Realm only for uses of public amenity.]

"Plan 1" means the plan contained in Appendix 1.

"Plan 2" means the plan contained in Appendix 2.

"Planning Permission" means planning permission reference number [•].

"Premises" means the property so stated in Clause LR4 of the Prescribed Clauses and more particularly described in Schedule 1 (*Description of Premises*).

"Prescribed Clauses" means the part of this Lease comprising LR1 to LR14 and situated after the contents page.

"Principal Rent" means the annual rent payable under Schedule 4 (*Provisions for the payment of Principal Rent*).

"Private Housing Units" means the Residential Units on the Premises to be used as private residential dwellings.

"Public Holidays" means Christmas Day, Boxing Day, New Years Day and any usual bank holidays within England and Wales.

"Residential Units" means all the buildings which have been constructed, designed or converted to residential dwellings including all flats, studios, apartments, maisonettes and houses.

"Rents" means the rents and sums reserved and payable under or referred to in Clause 4 (*Rents payable*).

"Surveyor" means such surveyor, engineer, architect or other professional advisor who is for the time being appointed by the Landlord to perform a function provided for in this Lease and notified to the Tenant in writing which person may be either:

- (a) a person employed by the Landlord; or
- (b) a consultant or other third party engaged by the Landlord.

"Tenant" means the party stated as such in Clause LR3 and shall include such party's successors in title to this Lease.

"Term" means the Contractual Term and any continuation of it.

"Term Commencement Date" means [•] 20[ ].

"Utilities" means electricity, gas, water, foul and surface water drainage, telephone and all forms of energy, telecommunications and other substances.

"Utilities Media" means pipes, sewers, drains, mains, conduits, gutters, wires, cables and all other conducting media for the passage of Utilities and includes all fixings, covers, meters, drainage and/or attenuation tanks and other ancillary apparatus.

"VAT" means value added tax or any tax of a similar nature imposed in substitution therefore.

"Waste" means any discarded, unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value.

"Working Day" means any day other than a Saturday, Sunday or a Public Holiday.

1.2 Unless otherwise indicated, references to Clauses and Schedules are to Clauses of and Schedules to this Lease and references in a Schedule to a paragraph is to a paragraph of that Schedule.

1.3 References to any statute or other legislation include references to any subsequent statute or legislation directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute or legislation and to all orders, bylaws, directions and notices made or served under them.

1.4 References to the Landlord or the Tenant include their respective successors in title.

1.5 References to the Premises and to the Estate include any part of them unless specific reference is made to the whole of them.

1.6 References to this Lease include any deed or document which is supplemental to, varies or is ancillary to this Lease from time to time.

1.7 References to the end of the "Term" include the determination of the Term before the end of the Contractual Term.

1.8 References to a "person" or "people" include any company, individual, authority, board or other legal person or entity.

1.9 Any covenant by any party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

1.10 Where two or more people form a party to this Lease, the obligations they undertake may be enforced against them all jointly or against each of them individually.

1.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Lease are to be unaffected.

1.12 The Prescribed Clauses, Schedules and appendices form part of this Lease and words and expressions set out in the Prescribed Clauses are to be treated as defined terms in this Lease.

## 2 LETTING AND TERM

In consideration of the payment of the Rents, the Landlord lets the Premises to the Tenant for the Contractual Term.

## 3 RIGHTS, RESERVATIONS AND SUBJECTIONS

3.1 The Premises are let together with the rights for the benefit of the Tenant set out in Schedule 2 (*Rights Granted*).

3.2 The rights set out in Schedule 3 (*Exceptions and Reservations*) are reserved out of the letting for the benefit of the Landlord and the owners and occupiers from time to time of the Estate and any other person having express or implied authority from the Landlord to benefit from them.

3.3 The grant of the Lease is subject to all rights, easements, covenants, restrictions and encumbrances of any third party over the Premises.

#### 4 RENTS PAYABLE

The Tenant will pay the following rents to the Landlord (or such other person as the Landlord may from time to time direct) during the Term without making any legal or equitable set-off, counterclaim or deduction unless required to do so by law:

- (a) the Principal Rent which shall be paid (if demanded) by one annual payment in advance on 1 January each year (and proportionately for any period of less than a year);
- (b) any VAT payable under Clause 4(a) which shall be paid on demand; and
- (c) any other sums payable under this Lease which shall be paid on the date or dates provided in this Lease.

#### 5 VAT

The Rents and any other sums payable by the Tenant under this Lease are exclusive of VAT. An obligation on the Tenant under this Lease to pay money includes an obligation to pay as additional rent any VAT chargeable on that payment at the same time. When a taxable supply is made for the purposes of VAT under this Lease, a valid VAT invoice is to be issued in respect of that supply.

#### 6 INTEREST

If the Tenant does not pay any Rents or other sums due to the Landlord under this Lease, whether or not reserved as rent, within 10 Working Days of the due date for payment the Tenant is to pay interest on those sums, both after as well as before judgment, at the Interest Rate for the period from and including the due date for payment to and including the date of actual payment.

#### 7 INSURANCE

7.1 The Tenant will insure the Premises (including all Residential Units) with substantial and reputable insurers based in the United Kingdom or through underwriters at Lloyd's previously approved by the Landlord (such approval not to be unreasonably withheld) against the Insured Risks and for the cover stated in Clause 7.2 and against public and employer's liability in respect of the Premises.

7.2 The Tenant's insurance will cover:

- (a) full rebuilding site clearance, professional fees and VAT (taking into account cover for the effects of inflation and escalation of costs and fees) and being no less a sum than the value of the Premises from time to time; and
- (b) public and employers liability insurance with cover for a sum of not less than £5,000,000 for each and every claim.

7.3 The insurance will be against the risks of fire, lightning, explosion, earthquake, landslip, subsidence, heave, riot, civil commotion, aircraft, (including vehicles dropped therefrom) aerial devices, storm, tempest, flood, water, including the bursting and overflowing of water pipes tanks and other apparatus, theft, impact by vehicles, malicious damage, terrorism (where insurance against such risks is available in the London market) and third party liability and in addition to the foregoing any other risks reasonably required by the Tenant or the Landlord.

7.4 The Tenant will:

- (a) insure in the name of the Tenant and note the Landlord's interest on the policy; and
- (b) ensure that any policy exclusions and excesses fall within normal commercial practice in the United Kingdom insurance market for properties similar to the Premises and in the same area as the Premises.

7.5 On written request made by the Landlord at any time (but not more than once during any consecutive period of 12 months) the Tenant will provide the Landlord with a copy of the Tenant's insurance policies taken out in accordance with this Clause 7 (*Insurance*) and evidence that they are in force and that the last premium has been paid.

7.6 Unless agreed in writing by the Landlord, the Tenant will diligently apply all the insurance proceeds received under the buildings insurance in reinstating damage to or destruction of the Premises by an Insured Risk as soon as reasonably practicable after the date of the damage or destruction, the Tenant making good any shortfall in the proceeds of insurance from its own monies and if the Tenant is prevented from reinstating the Premises within three years from the date of destruction or damage of the Premises in accordance with this Lease, the Tenant shall be relieved from such obligation and this Lease shall automatically determine (but without prejudice to the rights of either party in respect of any antecedent breach of covenant) and all relevant insurance money in respect of the Premises shall be held by the Tenant upon trust for the Landlord and the Tenant and distributed between the parties in such fair and reasonable proportions as they shall agree having regard to their respective interests in the Premises.

7.7 The Tenant will:

- (a) comply with the requirements and reasonable recommendations of the insurers of the Premises; and
- (b) notify the Landlord immediately in writing of any damage to or destruction of the Premises by any of the Insured Risks of which the Tenant becomes aware.

7.8 If the Tenant shall fail within 15 Working Days of written request to provide to the Landlord with evidence that insurances are being maintained in accordance with the provisions of this Lease or if the Landlord has reasonable grounds to believe that adequate insurance is not in place, the Landlord may in its absolute discretion (but shall not be obliged to) effect such insurance as it shall reasonably think fit or procure insurance equivalent to that provided for under this Lease and all the costs incurred by the Landlord in so doing (including all premiums, taxes and valuation costs) shall be paid by the Tenant to the Landlord on demand and if not paid may be recovered as rent in arrear.

**8 COSTS AND OUTGOINGS**

- 8.1 The Tenant will pay all outgoings of whatever nature in relation to the Premises including business rates and utilities costs (including standing charges and taxes payable on utility costs ("Outgoings")). This obligation does not require the Tenant to pay any such costs arising from any dealing by the Landlord with its interest in the Premises or to income or corporation tax payable by the Landlord on the Rents or any other sums due under this Lease.
- 8.2 The Tenant will pay to the Landlord within 28 days of demand a fair and proper proportion (to be conclusively determined by the Landlord or the Surveyor acting reasonably) of the reasonable expense of cleaning, lighting, repairing, renewing, decorating, maintaining and rebuilding:
- (a) [any party walls, fences, gutters, drains, roadways, pavements, entrance ways, staircases, access ways, passages, courtyards, external pavements, car parks and service or loading areas, service roads and other such amenities on the Estate and which are or may be used or enjoyed by an occupier of the Premises or the Estate in common with any other person or persons; and
  - (b) the structural parts, loadbearing framework, roof, foundations, joists and external walls of any adjoining property and Utilities Media in the Estate not exclusively serving the Premises.]
- 8.3 The Tenant will pay to the Landlord as additional rent within 15 Working Days of written demand the reasonable costs and expenses of the Landlord's solicitors, surveyors and other professional advisors and bailiffs fees and commissions including any irrecoverable VAT arising from:
- (a) the reasonable contemplation preparation and service of any notice and the taking of any proceedings by or on behalf of the Landlord under sections 146 or 147 Law of Property Act 1925 or under the Leasehold Property (Repairs) Act 1938, whether or not forfeiture is avoided by an order of the court;
  - (b) any application made by the Tenant for the Landlord's consent or the approval by the Surveyor for or approval of any matter under this Lease whether or not consent or approval is given (unless the court determines that the Landlord has unreasonably withheld that consent or approval) or the application is withdrawn;
  - (c) the preparation and service of any notice or schedule of dilapidations during or after the end of the Term;
  - (d) the recovery of any arrears of the Rents;
  - (e) the preparation and service by the Landlord of any notice under section 6 Law of Distress Amendment Act 1908 or section 17 Landlord and Tenant (Covenants) Act 1995; and
  - (f) any inspection, supervision or attendances of the Surveyor necessary in connection with any applications made by the Tenant or any default of the Tenant in complying with the terms of this Lease.

**9 REPAIRS AND MAINTENANCE**

- 9.1 The Tenant will at its own expense during the Term:
- (a) keep and maintain the Premises including all Residential Units and Commercial Units in good repair and condition and whenever necessary reinstate, decorate amend and keep the Premises with their appurtenances and all fixtures, additions and improvement that shall have been erected or made in or upon the Premises with all necessary repairs, reinstatements and amendment whatsoever, when, where and as often as occasions shall require;
  - (b) keep the External Common Areas adequately surfaced, adequately lit, in good repair and condition, cleaned and free from weeds and must keep all landscaped areas properly cultivated; and,
  - (c) procure that its obligations pursuant to Clause 9.1(b) are carried out in accordance with the Common Estate Strategy.
- 9.2 Following the service of any notice by the Landlord specifying any breach of the Tenant's covenant in Clause 9.1, the Tenant will carry out any repairs or other works to the Premises required by that notice within the period specified in the notice (or immediately in the case of emergency) or, if no period is specified, within a reasonable period after the receipt of the notice. The Landlord may serve notice under this Clause 9.2 to specify repairs or other works that are required to remedy any breach by the Tenant of its obligations under this Lease.
- 9.3 If the Tenant does not comply with Clause 9.2, the Tenant will permit the Landlord to enter and remain upon the Premises with or without workmen, plant and materials to carry out the repairs or other works required (but the Landlord shall not be obliged to do so) and the costs incurred by the Landlord in carrying out the repairs or other works are to be paid by the Tenant to the Landlord on demand.
- 9.4 Following the service of any notice, whether by the Landlord or any local, government or public authority, the Tenant will carry out any repairs or other works to the Premises required by that notice within the period specified in the notice (immediately in an emergency) or, if no period is specified, within a reasonable period after the receipt of the notice.
- 9.5 The Tenant will take any action that the Landlord may properly and reasonably require in respect of any defects in the Premises which might give rise to a duty or liability on the part of the Landlord under the Defective Premises Act 1972, any other statutory provision or at common law.
- 10 CENTRAL PARK [AND ADDITIONAL PUBLIC REALM]**
- 10.1 The Tenant must keep or procure the keeping of the Central Park [and the Additional Public Realm] adequately surfaced, in good repair and condition and free from weeds and must keep all landscaped areas properly cultivated in accordance with the Common Estate Strategy.
- 10.2 The Tenant must not store anything on the Central Park [or Additional Public Realm] or bring anything onto it that is or might become untidy, unclean, unsightly or in any way detrimental to the Central Park or Additional Public Realm and/or the Estate or the area generally.

- 10.3 The Tenant must not deposit any waste, rubbish or refuse on the Central Park [or Additional Public Realm].
- 10.4 The Tenant must not keep or store any vehicle, caravan or movable dwelling on the Central Park [or Additional Public Realm].
- 10.5 [The Tenant will procure that the Additional Public Realm is kept open for public amenity use]
- 10.6 The Tenant will procure that the Central Park and Additional Public Realm are lit and cleansed in accordance with, and it shall otherwise comply with, the Common Estate Strategy.
- 10.7 If the Tenant at any time fails to keep, maintain and manage the Central Park or Additional Public Realm in accordance with its obligations under this Clause 10 (*Central Park*) the Landlord may on notice to the Tenant procure the keeping, maintenance and management of the Central Park [and Additional Public Realm]. Any money the Landlord expends reasonably for that purpose must be repaid by the Tenant within 28 days of demand.
- 10.8 The Landlord may serve notice on the Tenant suspending the Tenant's obligations pursuant to Clause 10.1 and on service of such notice the Tenant will pay to the Landlord on demand a fair and proper proportion (to be conclusively determined by the Landlord or the Surveyor) of the costs incurred in connection with the repair, maintenance, cleansing and lighting of the Central Park and Additional Public Realm on demand.

*[Note: to be reviewed subsequent to the application of Clause 19 of the Building Agreement and Additional Public Realm references to be included where comprised in a Phase]*

## 11 DEVELOPMENT AND ALTERATIONS

- 11.1 The Tenant will not construct any building, structures or erections on the Premises other than those pursuant to the Planning Permission without the prior written consent of the Landlord (not to be unreasonably withheld or delayed).
- 11.2 The Tenant shall not make any external or structural Alterations to any building forming part of the Premises other than those pursuant to the Planning Permission without the prior consent of the Landlord (not to be unreasonably withheld or delayed).

## 12 USE OF THE PREMISES

- 12.1 The Tenant will not use the Premises for:

- (a) any noisy or offensive trades or businesses; or
- (b) any illegal or immoral purposes.

- 12.2 Without prejudice to the generality of the foregoing provisions of Clause 12 (*Use of the Premises*) the Tenant will not use the Premises for any purposes other than the Permitted Use.

## 13 ASSIGNMENT, UNDERLETTING AND CHARGING

- 13.1 The Tenant shall not at any time assign or charge part only of the Premises.

- 13.2 Any underletting of a Residential Unit by the Tenant for a term exceeding 50 years must be by deed and must:

- (a) include a covenant to pay by way of service charge a [fair and proper proportion] of the costs incurred in connection with the repair and maintenance of the Premises, External Common Areas and the Central Park in accordance with the terms of this Lease;
- (b) in respect of any underlease of a Private Housing Unit or [Intermediate Unit], include a covenant from the undertenant to pay a sum equal to its proportionate part of the Principal Rent by way of contribution to the Community Services [save in circumstances where the Landlord has exercised its right to require the undertenant to pay that sum direct to it];
- (c) include a covenant to become a member of the Estate Management Company; and
- (d) include provisions requiring the consent of the Landlord to be obtained in respect of any matter for which the consent of the Landlord is required under this Lease,

and must otherwise be consistent with and include tenant covenants no less onerous (other than as to the Principal Rent) than those in this Lease.

- 13.3 On any underletting in excess of [75] years the Tenant shall procure from the undertenant a deed of covenant in a form approved by and in favour of the Landlord and its successors in title containing the following covenants:

- (a) a covenant to observe and perform the tenant covenants in the underlease and any document that is supplemental or collateral to it and in so far as appropriate to the premises demised the tenant covenants in this Lease, except the covenants to pay the rents reserved by this Lease;
- (b) that in the event that the Landlord procures the keeping, maintenance and management of the External Common Areas and/or the Central Park pursuant to Clause 9 (*Repairs and maintenance*) and Clause 10 (*Central Park*) respectively, to pay to the Landlord or its nominee a fair and reasonable proportion (as the Landlord or the Surveyor may determine) of costs incurred pursuant to those Clauses;
- (c) in the event that the undertenant receives notice from the London Borough of Tower Hamlets that the Tenant has failed to account to the Landlord for the payment referred to in Clause 13.2(b) in respect of the Community Services to pay that sum to The London Borough of Tower Hamlets upon demand from it provided that the undertenant will not be required to make the payment twice in respect of the same period;
- (d) a covenant with the Landlord not to dispose of the underlet premises save to an assignee who has entered into a further deed of covenant on the same terms;

- 13.4 The Landlord and the Tenant shall apply to the Chief Land Register to enter a restriction in the following form (Form M) in the proprietorship register of the Tenant's title:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a

charge registered before the entry of this restriction, is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number [specify title number] [or [their conveyancer or specify appropriate details]] that the provisions of Clause 13.3 of the registered lease have been complied with [or that they do not apply to the disposition].”.

13.5 In relation to any underlease granted by the Tenant, the Tenant shall enforce the tenant covenants in the underlease and not waive any of them.

13.6 The Tenant shall give the Landlord notice of any assignment, charge, underlease or any other disposition of the Premises or any part within 15 Working Days of completion of the same.

#### 14 LEGISLATION AND PLANNING

14.1 The Tenant will comply with all statutes, other legislation and any notice, order, proposal, requisition, direction or other communication from any public authority in respect of the Premises, their use and occupation or the carrying out of any works to the Premises.

14.2 The Tenant will comply with all requirements and reasonable recommendations of any local, government or public authority and the insurers who insure the Premises relating to fire prevention and fire precautions including the installation, maintenance and testing of fire sprinklers, fire alarm systems, fire extinguishers and all other equipment or systems for detecting and extinguishing fires.

14.3 If the Tenant receives any notice, order, proposal, requisition, direction or other communication from any public authority or third party affecting or likely to affect the Premises, their use and occupation or the carrying out of any works to the Premises, the Tenant is at its own cost to provide a copy to the Landlord as soon as reasonably practicable but in any event within 5 Working Days of receipt.

14.4 The Tenant will not make an application for planning permission or implement any planning permission affecting the Premises without the prior written approval of the Landlord (such approval not to be unreasonably withheld).

#### 15 ENVIRONMENTAL LAW

15.1 The Tenant will comply with all requirements of Environmental Law and will obtain all necessary permits, licences, consents, registrations, authorisations or exemptions from any relevant statutory authority which are required for the use of the Premises including for the production, storage, use, handling or disposal of any Hazardous Material or Waste.

15.2 The Tenant will at its own cost:

- (a) supply the Landlord with copies of all notices, directions, reports or correspondence concerning any contamination of the Premises or any migration or other escape of Hazardous Materials or Waste which may result in proceedings being taken or threatened under Environmental Law; and
- (b) take and complete promptly and diligently all actions or precautions required by such notice, direction, report or correspondence including carrying out any remediation works and the Tenant hereby indemnifies the Landlord against all costs, losses, expenses, damages and liabilities arising in respect of any such works.

15.3 The Tenant will not do or omit to do anything that would or may cause any Hazardous Materials or Waste to escape, leak or be spilled or deposited on the Premises, discharged from the Premises or migrate to or from the Premises.

15.4 The Tenant will permit the Landlord and its employees and agents at all reasonable times after giving to the Tenant 48 hours written notice, except in an emergency, to enter the Premises to undertake investigations (including the taking of samples) in, on or under the Premises to ascertain the condition of the Premises and the nature, extent and mobility of Hazardous Materials or Waste in, on or under the Premises.

#### 16 LANDLORD'S TITLE

The Tenant shall observe and perform all the covenants and restrictions referred to in the entries of the Landlord's title at the Land Registry insofar as the same relate to the Premises and are still subsisting and capable of taking effect and to indemnify and keep the Landlord indemnified against all liability in any way relating thereto occasioned after the date hereof caused by the Tenant or persons deriving title therefrom.

#### 17 END OF THE TERM

17.1 At the end or sooner determination of the Term, the Tenant is to return the Premises to the Landlord with vacant possession, cleaned and in the state of repair, condition and decoration required by this Lease, and return all keys to the Premises to the Landlord.

17.2 Subject to the provisions of any legislation which prevents or restricts such an agreement, the Tenant is not entitled to any compensation under statute or otherwise at the end of the Term.

#### 18 INDEMNITY

The Tenant will indemnify the Landlord and keep the Landlord indemnified from and against all liability arising out or in respect of any breach by the Tenant of any of the Tenant's obligations contained in this Lease and/or of any act omission or negligence of the Tenant or any person on the Premises expressly or impliedly with the Tenant's authority.

#### 19 LANDLORD'S COVENANTS

19.1 Subject to the Tenant paying the Rents reserved by and complying with its other obligations under this Lease the Landlord will:

- (a) allow the Tenant to peacefully hold and enjoy the Premises and the rights hereby granted without any interruption or disturbance from the Landlord or from anyone lawfully claiming through, under, or in trust for it;
- (b) to pay the Principal Rent to BRT within 28 days of receipt or in the event that BRT is no longer in existence to take such reasonable steps to ensure while it is lawfully able to do so that the Principal Rent is used for the Community Services.

19.2 The obligations on the part of the Landlord in this Lease are not enforceable against any person who is no longer entitled to receive the Principal Rent under this Lease.

## 20 EXCLUSION OF LIABILITY IN RESPECT OF THE COMMUNITY SERVICES

The Landlord will not be liable to the Tenant or any other person for any loss, damage or inconvenience which may be caused whether in relation to the Community Services or otherwise by:

- (a) temporary interruption of services during periods of inspection, maintenance, repair and renewal, or
- (b) breakdown of or defect in any plant and machinery, services or conduits in the Premises, the Estate or any neighbouring or adjoining property, or
- (c) events beyond the reasonable control of the Landlord.

## 21 LANDLORD'S PROPERTY

21.1 The Landlord may deal with any adjoining or neighbouring property including the Estate in such a manner as it so chooses or develop or concur with or permit any development of or the implementation of any use of the Estate and any other adjoining or neighbouring property of the Landlord notwithstanding the effect of the development or use on the Premises and neither the Tenant nor the Premises shall be entitled to any easement or right (including but without limitation rights of light and air) and nothing contained or implied by this Lease shall give the Tenant the benefit of or the right to enforce or to have enforced or to prevent the release or modification of any right easement covenant condition or stipulation to prevent the development or use of the Estate or any other adjoining or neighbouring property.

21.2 The Landlord may vary the extent of the Estate and/or the Central Park by giving notice to the Tenant in writing whereupon the extent of the Estate and/or the Central Park (as the case may be) will be adjusted and this Lease will take effect accordingly. Provided That this will not materially increase the obligations and liabilities of the Tenant or derogate from the grant of this Lease.

## 22 ENFORCEMENT

22.1 This Lease is to be governed by and interpreted in accordance with English law.

22.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Lease. This Clause 22 (*Enforcement*) operates for the benefit of the Landlord who retains the right to sue the Tenant and enforce any judgment against the Tenant in the courts of any competent jurisdiction.

## 23 NO WARRANTY AS TO USE

The Tenant acknowledges that nothing contained in this Lease shall constitute or be deemed to constitute a warranty by the Landlord that the Premises are authorised under planning law or otherwise to be used for the Permitted Use or for any specific purpose.

## 24 FORFEITURE

The Landlord may re-enter onto the whole or any part of the Premises if the Principal Rent remains unpaid 15 Working Days after becoming due for payment (whether formally demanded or not) or there has at any time been a material breach by the Tenant of any covenant or obligation on its part in this Lease

("Relevant Default") whereupon this Lease shall absolutely determine (but without prejudice to any Landlord's right of action in respect of any antecedent breach of the Tenant's covenants in this Lease) provided that if this Lease and the Premises has been charged to any bank or similar lending institution or security ("Permitted Lender") and the Landlord has received written notice of the charge with an address for service of notices within the United Kingdom for the Permitted Lender the Landlord shall not issue any court proceedings or take steps to re-enter the Premises until the expiration of 40 Working Days after service by the Landlord on the Tenant and on the Permitted Lender specifying the breach of covenant complained of and shall not issue any court proceedings or take any such steps in respect of that Relevant Default if within such 40 Working Days period either the Tenant or any such Permitted Lender shall remedy such breach.

## 25 NEW LEASE

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

## 26 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Deed is not intended to have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

## 27 [LANDLORD'S STATUS AS A STATUTORY BODY

The Landlord has entered into this Lease solely in its capacity as a landowner in respect of the Premises and not in any other capacity and, for the avoidance of doubt, nothing in this Lease shall bind the Landlord or affect fetter or limit the Landlord's powers or rights in its capacity at local authority, local planning authority or as a statutory body in the exercise of any functions conferred on it by statute.]

## 28 PAYMENTS TO BRT

Any payments which the Landlord is under an obligation to make under the terms of this Lease to BRT shall be made after any deductions that the Landlord is legally obliged to make.

## 29 NOTICES

29.1 Any notices to be given under this Lease must be in writing given by one of the parties in the means set out in Clause 29.2.

29.2 The means of service referred to in Clause 29.1 is a notice given by hand or by special delivery post to the receiving party's registered office (where that party is a corporate body based in the United Kingdom) or to such party's address for service in the United Kingdom as set out in Clause LR3 of the Prescribed Clauses or as notified in writing to the party.

**Delivered as a deed on the date of this document.**



**Schedule 1**  
**Description of Premises**

The Premises comprise the land and buildings known as [•] on the Estate shown [edged] [and hatched] in [•] on Plan 1 including:

- 1 All the Residential Units and Commercial Units now or at any time upon or within the Premises.
- 2 The External Common Areas.
- 3 Any other building or buildings now or at any time erected on the Premises.
- 4 All roads, footpaths, structures and landscaping upon or within the Premises.
- 5 Any Alterations that may be made to the Premises in accordance with the terms of this Lease.
- 6 Any Utilities Media solely within and exclusively serving the Premises.

***[Note: final Lease will exclude Community Building/Affordable Workshop Space/Central Park where these are within the Phase]***

**Schedule 2**  
**Rights Granted**

The following rights are granted for the benefit of the Tenant and the owners and occupiers from time to time of the Premises and anyone else who may become entitled to such rights and anyone authorised by them:

- 1 The rights of support and protection which the Premises now enjoy over any part of the Estate.
- 2 The right to the passage of Utilities through any Utilities Media on or within any part of the Premises now or at any time serving the Premises.
- 3 The right (until adoption) to the free passage of Utilities through the Utilities Media from time to time running through, in, under or over, or attached to, the Estate together with the right to enter the Estate to inspect, make, lay, clean, reconstruct, divert, alter, maintain or connect into such Utilities Media until they have been adopted, such entry to be on the following terms:
  - (a) entry may take place only at times to be agreed with the Landlord;
  - (b) entry shall otherwise be subject to such conditions as the Landlord may reasonably require;
  - (c) entry may only be over such parts of the Estate as may be necessary and, in any event, may not be over any part of the Estate that has been built upon or is no longer in the Landlord's possession or control;
  - (d) the Tenant shall as soon as reasonably practicable make good all damage caused to the Estate in the exercise of this right to the satisfaction of the Landlord.
- 4 A right (until adoption) of way with or without vehicles over all roads from time to time on the Estate and (by foot only) over the footpaths on the Estate.
- 5 The right, so far as the Landlord can grant the same, in common with all other persons entitled to the like right, for all reasonable purposes in connection with the performance by the Tenant of its obligations in Clause 10 (*Central Park*) and to use the Central Park for [recreation only] in common with the public.

### Schedule 3 Exceptions and Reservations

The following rights are excepted and reserved for the benefit of the Landlord and the owners and occupiers from time to time of the Estate and anyone else who may become entitled to such rights and anyone authorised by them:

- 1 The right to build or carry out works on any other part of the Estate or any adjacent land notwithstanding any infringement or reduction in the access of light or air to the Premises.
- 2 The right to enter upon the Premises to inspect the state and condition of the Premises and to prepare schedules of condition on the Premises and for such other purposes set out in this Lease.
- 3 The right of way with or without vehicles over all roads from time to time on the Premises and (by foot only) over all the footpaths on the Premises including in order to gain access to and egress from the Central Park and for the purpose of public access through the Estate.
- 4 The right to the passage of Utilities through any Utilities Media on or within any part of the Premises now or at any time serving the Estate.
- 5 The right to connect into any Utilities Media within the Premises for the passage of Utilities and the right to lay, construct, inspect and repair and maintain and renew any Utilities within the Premises provided that:
  - (a) in the case of any new Utilities the Landlord shall first obtain the Tenant's prior written approval to the location and specification of the same (such approval not to be unreasonably withheld) or delayed;
  - (b) entry and installation may only be over such parts of the Premises as may be necessary and do not comprise buildings; and
  - (c) the Landlord shall as soon as reasonably practicable make good all physical damage caused to the Premises in the exercise of this right to the reasonable satisfaction of the Tenant.
- 6 The right of access onto the Premises in order to carry out any repair, maintenance, development, building, rebuilding, renewal or other works to the Estate where such work cannot reasonably and economically be carried out without such access provided that prior to exercising such rights the Landlord shall first obtain the Tenant's prior written approval to the areas which the Landlord shall access and of any works to be undertaken (such approval not to be unreasonably withheld or delayed).
- 7 All rights of entry onto the Premises granted by this Lease.
- 8 The rights of support and protection which the Estate now enjoys over any part of the Premises.
- 9 Rights of access over and to the Additional Public Realm and the right for the general public to use the Additional Public Realm for public amenity.
- 10 ***[Note: to include appropriate exceptions and reservations reasonably required by the Landlord for any areas within the Development or Phase that are excluded from the demise.]***

11 ***[Note: to include such further exceptions and reservations as the parties agree (acting reasonably) are necessary to facilitate the development and letting of any further Block or Phase]***

#### Schedule 4 Provisions for the payment of Principal Rent

1 In Schedule 4 (*Provisions for the payment of Principal Rent*) the following words and expressions shall have the following meanings:

"**Basic Rent**" has the meaning given to it in this Schedule 4 (*Provisions for the payment of Principal Rent*) paragraph 2.

"**Index**" means the Index of Retail Prices (all prices) published by the Office for National Statistics or any successor government department or appropriate government body.

"**Indexing Factor**" means the numerical fraction which shall have:

- (a) as its denominator the latest published value of the Index available as at the date one month before the date of this Lease; and
- (b) as its numerator the latest published value of the Index available as at the date one month before the relevant Review Date.

Provided nevertheless that in calculating the denominator and the numerator as hereinbefore provided any change in the reference as used to compile the Index after the date of this Lease shall be ignored and the calculation made on the basis of the figures which would have been shown on the Index if the reference base current at the date of this Lease had been retained.

"**Rent Commencement Date**" means the earlier of:

- (a) the date on which the first Residential Unit on the Premises shall be beneficially occupied; or
- (b) the date two years from the date of this Lease.

"**Review Date**" means the first anniversary of the Rent Commencement Date and every anniversary thereof during the Term and "**Relevant Review Date**" shall be construed accordingly.

2 The Principal Rent shall be an annual amount equal to the number of Private Housing Units and Intermediate Units either constructed on the Premises or for which planning permission for construction on the Premises has been granted multiplied by £100 ("**Basic Rent**") and for the period from the Rent Commencement Date to the Review Date the Basic Rent will be £[\*] . [*Note: to insert prior to exchange of Building Agreement for Phase*]

3 Upon each of the Review Dates the Principal Rent shall be adjusted to represent whichever shall be the greater of:

- (a) the Basic Rent; or
- (b) the Basic Rent multiplied by the Indexing Factor for that Review Date.

4 If it becomes impossible by reason of any change after the date of this Lease to ascertain the value of the Index or for any reason whatsoever to recalculate the Principal Rent by reference to the Index or if any dispute or question shall arise between the parties with regard to the amount of the Principal Rent or the construction or effect of this Schedule 4 (*Provisions for the payment of Principal*

*Rent*), the determination of the Principal Rent or other matter or difference shall be determined by an expert to be appointed either by agreement between the parties or in default of agreement by the president for the time being of the Royal Institution of Chartered Surveyors (or his duly appointed deputy or any person authorised by him to make appointments on his behalf) upon the application of either party, this being deemed to be a submission to expert and the provisions of the Arbitration Act 1996 shall not apply.

5 Where any expert shall be appointed in accordance with this Schedule 4 (*Provisions for the payment of Principal Rent*), the expert shall be required to reach his decision within 10 Working Days of his appointment and the expert shall have full power (in the event of the Index ceasing to be compiled on the same basis as at the date of this lease) to determine what would have been the increase in the Index had it continued to be compiled on the same basis as at the date of this lease or (if that determination shall also be impossible) the expert shall determine a reasonable rent on the Review Date having regard to the purposes and intent of the provisions of this Schedule 4 (*Provisions for the payment of Principal Rent*) for the readjustment of the Principal Rent and the costs of such expert shall be borne by the parties in equal shares.

6 If by any Review Date the amount of the Principal Rent has not been agreed or determined by an expert then:

- (a) the Tenant shall pay the Principal Rent at the relevant Review Date at the rate immediately before the relevant Review Date ("**Old Rent**"); and
- (b) the difference (if any) between the Principal Rent properly payable from that Review Date in accordance with the this Schedule 4 (*Provisions for the payment of Principal Rent*), paragraph 3 ("**New Rent**") and the Old Rent shall be payable either:
  - (i) within 15 Working Days of the parties agreeing the amount of any increase (if any) in the Principal Rent which is due in accordance with paragraph 3; or
  - (ii) where the parties do not agree the amount of the New Rent then the matter is referred to an independent expert in accordance with paragraph 5 within 15 Working Days of the matter being determined in writing by the independent expert in accordance with this Schedule 4 (*Provisions for the payment of Principal Rent*).

7 The Principal Rent shall be adjusted proportionally in the event that from time to time additional Private Housing Units are constructed upon the premises.

**EXECUTION PAGE**

Executed under the common seal of )  
**THE MAYOR AND BURGESSES OF THE** )  
**LONDON BOROUGH OF TOWER** )  
**HAMLETS**  
in the presence of:

Authorised Signatory

Authorised Signatory

Signed by [duly authorised person] on behalf )  
of **HOMES AND COMMUNITIES** )  
**AGENCY:** )

Authorised Signatory

Authorised Signatory

Executed as a deed by )  
**[TENANT]** acting by: )  
)

Director

Secretary

**Appendix 6**  
**Provisions to be utilised for Professional Team Appointments**

**Part 1**

**Non-novated Professional Team member in favour of Council/Agency**

**Schedule [•]  
Third Party Rights Schedule**

**1 Definitions and Interpretation**

- (a) In this Schedule, unless the contrary intention appears, the following definitions apply:

**"Appointment"** means the contract of appointment under which the Client has engaged the Consultant to perform professional services in relation to the Project.

**"Beneficiary"** means the "Council" or the "Agency" as defined under the Appointment and includes any person to whom the benefit of this Schedule and/or any rights arising under it have been validly assigned in accordance with paragraph 7 (*Assignment*).

**"Client"** means [•] (company no [•]) whose registered office is at [•] and includes any person to whom the benefit of the Appointment has been validly assigned.

**"Consultant"** means [•] (company no [•]) whose registered office is at [•].

**"Project"** means has the meaning given to it in the Appointment.

**"Property"** means [•] and a reference to the Property is to the whole or any part of it as the circumstances may require.

**"Proprietary Material"** means all information and documentation (in printed, electronic or other format) and (if applicable) any designs contained therein prepared by or on behalf of the Consultant in the course of or as a result of carrying out the Services.

**"Services"** means the services to be performed by the Consultant pursuant to the Appointment.

**"Statutory Requirements"** means the requirements of the Building Act 1984, the Building Regulations 2010, the Construction (Design and Management) Regulations 2007 and all other relevant statutory requirements codes of practice, regulations and permissions having the force of law and applicable to the Project.

- (b) Any obligation on the Consultant to do an act includes an obligation to procure that it is done.
- (c) If a party is placed under a restriction in this Schedule, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- (d) References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.

- (e) Words in this Schedule denoting the singular include the plural meaning and vice versa.
- (f) Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be constructed interchangeably in that manner.
- (g) The paragraph headings in this Schedule are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- (h) Unless the contrary intention appears, references to numbered paragraphs are references to the relevant paragraphs in this Schedule.
- (i) References in this Schedule to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.
- (j) If the Consultant is two or more persons, the expression the **"Consultant"** includes the plural number and obligations in this Schedule expressed or implied to be made with or by the Consultant are to be treated as made with or by such persons jointly and severally.

**2 Consultant's Warranties**

- (a) The Consultant warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Appointment in accordance with the terms of the Appointment, provided always that:
- (i) the Consultant shall owe no greater obligations to the Beneficiary under this Schedule than it owes to the Client under the Appointment; and
- (ii) the Consultant shall be entitled in any proceedings under this Schedule to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as if the Beneficiary had been named as a joint employer with the Client under the Appointment.
- (b) Without limiting paragraph 2(a), the Consultant warrants that, subject to the standard of skill, care and diligence to be exercised under the Appointment, unless otherwise instructed or authorised by the Client in writing, it has not specified or authorised for use, will not specify or authorise for use and that it will not knowingly permit the use and will immediately notify the Beneficiary of any proposed or actual use or specification in the Project of any materials and substances of which the Consultant becomes aware in the performance of the Services under the Appointment which, at the time of specification or use, are not in accordance with the British Property Federation/British Council for Offices report *Good practice in the selection of construction materials* (current edition).
- (c) The Consultant acknowledges that the Beneficiary shall be entitled to have relied and to continue to rely upon the warranties and undertakings given by the Consultant under this paragraph 2 (*Consultant's Warranties*).

### 3 Obligations prior to determination of the Consultant's engagement

- (a) The Consultant shall not exercise nor seek to exercise any right to determine its engagement under the Appointment for any reason, including any breach on the part of the Client, without giving to the Beneficiary not less than 21 days' notice of its intention to do so and specifying the grounds for the proposed determination.
- (b) Any period stipulated in the Appointment for the exercise by the Consultant of a right of determination shall be extended, as necessary, to take account of the period of notice required under paragraph 3(a).
- (c) Compliance by the Consultant with paragraph 3(a) shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice, unless the right of determination shall have ceased under the provisions of paragraph 4 ("Step-in" right).

### 4 "Step-in" right

- (a) The right of the Consultant to determine its engagement under the Appointment shall cease if, within the period of 21 days referred to in paragraph 3(a), the Beneficiary shall give notice to the Consultant in the form of the Annex to this Schedule
- (b) Upon compliance by the Beneficiary with the requirements of paragraph 4(a), the Appointment shall continue as if the right of determination on the part of the Consultant had not arisen and as if the Appointment had been entered into between the Consultant and the Beneficiary to the exclusion of the Client.
- (c) Notwithstanding that as between the Client and the Consultant the Consultant's right of determination of its engagement under the Appointment may not have arisen, the provisions of paragraph 4(b) shall apply if the Beneficiary gives notice to the Consultant (with a copy to the Client) stating that the agreement made between the Beneficiary and the Client has been determined in accordance with its terms and confirming that the Beneficiary wishes the Consultant to accept the Beneficiary in place of the Client under the Appointment to progress the Project in order that a "Notice of Completion of Making Good" may be issued pursuant to the Building Contract. The Consultant shall be bound to assume that, as between the Client and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under this paragraph 4(c).
- (d) The Consultant, by acting in accordance with the provisions of this paragraph 4 ("Step-in" right), shall not incur any liability to the Client
- (e) The Beneficiary shall not incur any liability to the Consultant unless and until it issues a notice to the Consultant pursuant to this paragraph 4.

### 5 Use of Proprietary Material

- (a) The copyright in the Proprietary Material shall remain vested in the Consultant, but the Consultant grants to the Beneficiary an irrevocable royalty-free and non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Project and/or the Property, including (without limitation) the execution and completion of the Project and the subsequent fitting out, maintenance, occupation, management, sale, advertisement, extension, refurbishment, alteration, reinstatement and repair of the Property.

- (b) The licence referred to in paragraph paragraph 5(a) carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Consultant's engagement under the Appointment.

- (c) The Consultant confirms to the Beneficiary that it has not infringed and shall not knowingly infringe any copyright or other intellectual property or design rights of any third party in relation to the Project including, without limitation, by copying wholly or substantially the work of any third party.

- (d) Insofar as the Consultant is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Proprietary Material, the Consultant waives any moral rights which it might otherwise be deemed to have under Chapter IV of that Act in respect of the Proprietary Material and the Property and shall (so far as it is within its power to do so) procure a similar waiver from its servants, agents and employees.

- (e) The Consultant shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared by the Consultant and such purposes as are reasonable foreseeable in accordance with the purposes set out at paragraph 5(a) above.

### 6 Insurance

- (a) Without limiting its other obligations under this Schedule or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover its professional liability under this Schedule, with a limit of indemnity of not less than £10,000,000 in respect of each and every claim, provided that such insurance continues to be available in the European Union market at commercially reasonable premium rates to consultants performing services substantially similar to the Services.

- (b) The insurance referred to in paragraph 6(a) will:

- (i) be subject only to such conditions and excesses as may be usual in the European Union market at the time; and
- (ii) be provided by reputable insurers with a place of business in the United Kingdom; and
- (iii) be maintained from the date of the Appointment and for a period expiring not less than 12 years after the completion of the Services and notwithstanding the expiry or termination of the Consultant's engagement under the Appointment.

- (c) As and when reasonably required to do so by the Beneficiary, the Consultant shall produce documentary evidence that the insurance required by this paragraph 6 (Insurance) is being properly maintained.

- (d) The Consultant shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this paragraph 6 (Insurance) on reasonable terms and at commercially reasonable premium rates or at all and in that event shall continue to maintain insurance on such terms and with such a limit of indemnity as may then be available to the Consultant.

7 **Assignment**

The Beneficiary may at any time, without the consent of the Consultant, assign the benefit of this Schedule and/or all rights arising under it by way of absolute legal assignment to any person acquiring an interest in the Property (subject to a maximum of two such assignments) and in addition may at any time assign the benefit of this Schedule by way of charge and/or by way of security without the consent of the Consultant being required. Assignments to a subsidiary or holding company of the Beneficiary or any other subsidiary of the Beneficiary's holding company shall not require the prior consent of the Consultant and shall not count towards such two occasions.

8 **Limitation**

No action or proceedings for any breach of this Schedule shall be commenced against the Consultant after the expiry of 12 years following practical completion of the Project.

9 **Notices and General**

- (a) Any notice or other communication required under this Schedule shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).
- (b) If the Consultant is a partnership each partner shall be jointly and severally liable under this Schedule.
- (c) If any provision of this Schedule shall be found to be ineffective, inoperable or unenforceable for any reason it shall be deemed to be deleted and the remaining provisions of this Schedule shall continue to have full force and effect.

10 **Governing law and disputes**

The application and interpretation of this Schedule shall in all respects be governed by English law and any dispute or difference arising under this Schedule shall be subject to the non-exclusive jurisdiction of the English courts.

**Annex to Part 1 of Schedule  
Form of Step-in notice and undertaking**

- 1 We refer to your notice dated [insert date of Consultant's notice] notifying us of your intention to terminate your appointment with [•] dated [insert date of appointment] (the "Appointment"). In accordance with paragraph 4 ("Step-in right") of Schedule [•] Part 1 of the Appointment, we give you notice that:
- (a) we may rely on the services that you have performed to date under the Appointment;
- (b) we require you to continue to observe your obligations under the Appointment for our benefit; and
- (c) we require you to continue with the performance of the services set out in the Appointment for our benefit.
- 2 In consideration of the above, we assume all responsibilities of [•] in accordance with the terms of the Appointment and agree to be bound by the same as if we

had always been the "Client" under the Appointment, in the place of [•]. In particular, we undertake to:

- (a) discharge, within 21 days of the date of this notice, any sums which have become properly due and payable to you under the Appointment and which remain unpaid; and
- (b) pay all sums which may subsequently become due to you under the Appointment.

Signed for and on behalf of [•]

.....  
Authorised Signatory

**Part 2**

**Consultant Third Party Rights Schedule - post-novation to Council/Agency**

**Schedule [•]  
Third Party Rights Schedule**

1 **Definitions and Interpretation**

- (a) In this Schedule, unless the contrary intention appears, the following definitions apply:

"Appointment" means the contract of appointment under which the Beneficiary engaged the Consultant to perform professional services in relation to the Project and by a deed of novation dated [•] the rights and obligations of the Beneficiary under the Appointment have been transferred to the Contractor.

"Beneficiary" means the "Council" or the "Agency" as defined under the Appointment and includes any person to whom the benefit of this Schedule and/or any rights arising under it have been validly assigned in accordance with paragraph 5 (Assignment).

"Consultant" means [•] (company no [•]) whose registered office is at [•].

"Contractor" means [•] (company no [•]) whose registered office is at [•].

"Project" means has the meaning given to it in the Appointment.

"Property" means [•] and a reference to the Property is to the whole or any part of it as the circumstances may require.

"Proprietary Material" means all information and documentation (in printed, electronic or other format) and (if applicable) any designs contained therein prepared by or on behalf of the Consultant in the course of or as a result of carrying out the Services.

**"Services"** means the services to be performed by the Consultant pursuant to the Appointment.

**"Statutory Requirements"** means the requirements of the Building Act 1984, the Building Regulations 2010, the Construction (Design and Management) Regulations 2007 and all other relevant statutory requirements codes of practice, regulations and permissions having the force of law and applicable to the Project.

- (b) Any obligation on the Consultant to do an act includes an obligation to procure that it is done.
- (c) If a party is placed under a restriction in this Schedule, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- (d) References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- (e) Words in this Schedule denoting the singular include the plural meaning and vice versa.
- (f) Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be constructed interchangeably in that manner.
- (g) The paragraph headings in this Schedule are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- (h) Unless the contrary intention appears, references to numbered paragraphs are references to the relevant paragraphs in this Schedule.
- (i) References in this Schedule to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.
- (j) If the Consultant is two or more persons, the expression the **"Consultant"** includes the plural number and obligations in this Schedule expressed or implied to be made with or by the Consultant are to be treated as made with or by such persons jointly and severally.

## 2 Consultant's Warranties

- (a) The Consultant warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Appointment in accordance with the terms of the Appointment, provided always that:
  - (i) the Consultant shall owe no greater obligations to the Beneficiary under this Schedule than it owes to the Contractor under the Appointment; and
  - (ii) the Consultant shall be entitled in any proceedings under this Schedule to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as if the Beneficiary had been named as a joint employer with the Contractor under the Appointment.

- (b) Without limiting paragraph 2(a), the Consultant warrants that, subject to the standard of skill, care and diligence to be exercised under the Appointment, it has not specified or authorised for use, will not specify or authorise for use and that it will not knowingly permit the use and will immediately notify the Beneficiary of any proposed or actual use or specification in the Project of any materials and substances of which the Consultant becomes aware in the performance of the Services under the Appointment which, at the time of specification, are not in accordance with the British Property Federation/British Council for Offices report *Good practice in the selection of construction materials* (current edition).
- (c) The Consultant acknowledges that the Beneficiary shall be entitled to have relied and to continue to rely upon the warranties and undertakings given by the Consultant under this paragraph 2 (*Consultant's Warranties*).

## 3 Use of Proprietary Material

- (a) The copyright in the Proprietary Material shall remain vested in the Consultant, but the Consultant grants to the Beneficiary an irrevocable royalty-free and non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Project and/or the Property, including (without limitation) the execution and completion of the Project and the subsequent fitting out, maintenance, occupation, management, sale, advertisement, extension, refurbishment, alteration, reinstatement and repair of the Property.
- (b) The licence referred to in paragraph paragraph 3(a) carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Consultant's engagement under the Appointment.
- (c) The Consultant confirms to the Beneficiary that it has not infringed and shall not knowingly infringe any copyright or other intellectual property or design rights of any third party in relation to the Project including, without limitation, by copying wholly or substantially the work of any third party.
- (d) Insofar as the Consultant is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Proprietary Material, the Consultant waives any moral rights which it might otherwise be deemed to have under Chapter IV of that Act in respect of the Proprietary Material and the Property and shall (so far as it is within its power to do so) procure a similar waiver from its servants, agents and employees.
- (e) The Consultant shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared by the Consultant and such purposes as are reasonably foreseeable in accordance with the purposes set out at paragraph 3 (a) above.

## 4 Insurance

- (a) Without limiting its other obligations under this Schedule or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover its professional liability under this Schedule, with a limit of indemnity of not less than £10,000,000 in respect of each and every claim, provided that such insurance continues to be available in the European Union market at commercially reasonable premium rates to consultants performing services substantially similar to the Services.
- (b) The insurance referred to in paragraph 4(a) will:



- (i) be subject only to such conditions and excesses as may be usual in the European Union market at the time; and
- (ii) be provided by reputable insurers with a place of business in the United Kingdom; and
- (iii) be maintained from the date of the Appointment and for a period expiring not less than 12 years after the completion of the Services and notwithstanding the expiry or termination of the Consultant's engagement under the Appointment.

- (c) As and when reasonably required to do so by the Beneficiary, the Consultant shall produce documentary evidence that the insurance required by this paragraph 4 (*Insurance*) is being properly maintained.
- (d) The Consultant shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this paragraph 4 (*Insurance*) on reasonable terms and at commercially reasonable premium rates or at all and in that event shall continue to maintain insurance on such terms and with such a limit of indemnity as may then be available to the Consultant.

#### 5 Assignment

The Beneficiary may at any time, without the consent of the Consultant, assign the benefit of this Schedule and/or all rights arising under it by way of absolute legal assignment to any person acquiring its interest in the Property (subject to a maximum of two such assignments) and in addition may at any time assign the benefit of this Schedule by way of charge and/or by way of security without the consent of the Consultant being required. Assignments to a subsidiary or holding company of the Beneficiary or any other subsidiary of the Beneficiary's holding company shall not require the prior consent of the Consultant and shall not count towards such two occasions.

#### 6 Limitation

No action or proceedings for any breach of this Schedule shall be commenced against the Consultant after the expiry of 12 years following practical completion of the Project.

#### 7 Notices and General

- (a) Any notice or other communication required under this Schedule shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).
- (b) If the Consultant is a partnership each partner shall be jointly and severally liable under this Schedule.
- (c) If any provision of this Schedule shall be found to be ineffective, inoperable or unenforceable for any reason it shall be deemed to be deleted and the remaining provisions of this Schedule shall continue to have full force and effect.

#### 8 Governing law and disputes

The application and interpretation of this Schedule shall in all respects be governed by English law and any dispute or difference arising under this Schedule shall be subject to the non-exclusive jurisdiction of the English courts.

### Part 3

#### Third Party Rights Schedule - Building Contractor in favour of Council/Agency

##### Schedule [•] Third Party Rights Schedule

#### 1 Definitions and Interpretation

- (a) In this Schedule, unless the contrary intention appears, the following definitions apply:

"Beneficiary" means the "Council" or "Agency" as defined under the Contract and includes any person to whom the benefit of this Schedule and/or any rights arising under it have been validly assigned in accordance with paragraph 7 (*Assignment*).

"Client" means [•] (company no [•]) whose registered office is at [•] and includes any person to whom the benefit of the Contract has been validly assigned.

"Contract" means the contract under which the Client has engaged the Contractor to carry out and complete the Works.

"Contractor" means [•] (company no [•]) whose registered office is at [•].

"Project" means project of carrying out the Works at the Property.

"Property" means [•] and a reference to the Property is to the whole or any part of it as the circumstances may require.

"Proprietary Material" means all information and documentation (in printed, electronic or other format) and (if applicable) any designs contained therein prepared by or on behalf of the Contractor in the course of or as a result of carrying out the Works.

"Statutory Requirements" means the requirements of the Building Act 1984, the Building Regulations 2010, the Construction (Design and Management) Regulations 2007 and all other relevant statutory requirements codes of practice, regulations and permissions having the force of law and applicable to the Project.

"Works" means the design and construction works carried out or to be carried out by the Contractor pursuant to the Contract.

- (b) Any obligation on the Contractor to do an act includes an obligation to procure that it is done.
- (c) If a party is placed under a restriction in this Schedule, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- (d) References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- (e) Words in this Schedule denoting the singular include the plural meaning and vice versa.

- (f) Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be constructed interchangeably in that manner.
- (g) The paragraph headings in this Schedule are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- (h) Unless the contrary intention appears, references to numbered paragraphs are references to the relevant paragraphs in this Schedule.
- (i) References in this Schedule to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.

## 2 Contractor's Warranties

- (a) The Contractor warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Contract in accordance with the terms of the Contract, provided always that:
  - (i) the Contractor shall owe no greater obligations to the Beneficiary under this Schedule than it owes to the Client under the Contract;
  - (ii) the Contractor shall be entitled in any proceedings under this Schedule to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as if the Beneficiary had been named as a joint employer with the Client under the Contract; and
  - (iii) the Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Works unless and until the Beneficiary has given notice to the Contractor under paragraph 4(a) or paragraph 4(c).
- (b) Without limiting paragraph 2(a), the Contractor warrants that:
  - (i) the Works as completed will comply with any performance specification or requirement included in the Contract;
  - (ii) the Works have been and will be carried out and completed in a good and workmanlike manner using good quality materials and in all respects in accordance with the Contract;
  - (iii) unless otherwise instructed or authorised by the Client or the Employer's Agent on his behalf under the Contract in writing, it has not specified or authorised for use, will not specify or authorise for use and that it will not use or knowingly permit the use and will immediately notify the Beneficiary of any proposed or actual use or specification in the Project of any materials and substances for the time being not in accordance with the British Property Federation/British Council for Offices report *Good practice in the selection of construction materials* (current edition); and
  - (iv) the Works as completed will in all respects comply with the Statutory Requirements.

- (c) The Contractor acknowledges that the Beneficiary shall be deemed to have relied and to continue to rely upon the warranties and undertakings given by the Contractor under this paragraph 2.

## 3 Obligations prior to determination of the Contractor's engagement

- (a) The Contractor shall not exercise nor seek to exercise any right to determine its engagement under the Contract for any reason, including any breach on the part of the Client, without giving to the Beneficiary not less than 21 days' notice of its intention to do so and specifying the grounds for the proposed determination.
- (b) Any period stipulated in the Contract for the exercise by the Contractor of a right of determination shall be extended, as necessary, to take account of the period of notice required under paragraph 3(a).
- (c) Compliance by the Contractor with paragraph 3(a) shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination, nor otherwise prevent the Contractor from exercising its rights after the expiration of the notice, unless the right of determination shall have ceased under the provisions of paragraph 4 ("Step-in" right).

## 4 "Step-in" right

- (a) The right of the Contractor to determine its engagement under the Contract shall cease if, within the period of 21 days referred to in paragraph 3(a), the Beneficiary shall give notice to the Contractor in the form of the Annex to this Schedule
- (b) Upon compliance by the Beneficiary with the requirements of paragraph 4(a), the Contract shall continue as if the right of determination on the part of the Contractor had not arisen and as if the Contract had been entered into between the Contractor and the Beneficiary to the exclusion of the Client.
- (c) Notwithstanding that as between the Client and the Contractor the Contractor's right of determination of its engagement under the Contract may not have arisen, the provisions of paragraph 4(b) shall apply if the Beneficiary gives notice to the Contractor (with a copy to the Client) stating that the development agreement made between the Beneficiary and the Client in relation to the Project has been determined in accordance with its terms and confirming that the Beneficiary wishes the Contractor to accept the Beneficiary in place of the Client under the Contract. The Contractor shall be bound to assume that, as between the Client and the Beneficiary, circumstances have occurred which permit the Beneficiary to give such notice under this paragraph 4(c).
- (d) The Contractor, by acting in accordance with the provisions of this paragraph 4 ("Step-in" right), shall not incur any liability to the Client
- (e) The Beneficiary shall not incur any liability to the Contractor unless and until it issues a notice to the Contractor pursuant to this paragraph 4.

## 5 Use of Proprietary Material

- (a) The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Beneficiary an irrevocable royalty-free and non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Project and/or the Property, including (without limitation) the execution and completion of the Project and the subsequent fitting

out, maintenance, occupation, management, sale, advertisement, extension, refurbishment, alteration, reinstatement and repair of the Property.

- (b) The licence referred to in paragraph 5(a) carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Contractor's engagement under the Contract.
- (c) The Contractor confirms to the Beneficiary that it has not infringed and shall not knowingly infringe any copyright or other intellectual property or design rights of any third party in relation to the Project including, without limitation, by copying wholly or substantially the work of any third party.
- (d) Insofar as the Contractor is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Proprietary Material, the Contractor waives any moral rights which it might otherwise be deemed to have under Chapter IV of that Act in respect of the Proprietary Material and the Property and shall (so far as it is within its power to do so) procure a similar waiver from its servants, agents and employees).
- (e) The Contractor shall procure for the Beneficiary a waiver corresponding to that in paragraph 5(d) from any sub-contractor employed by the Contractor who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Proprietary Material and/or of the Works
- (f) The Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose which is inconsistent with that for which it was prepared by the Contractor.

## 6 Insurance

- (a) Without limiting its other obligations under this Schedule or otherwise at law, the Contractor shall maintain professional indemnity insurance to cover its professional liability under this Schedule, with a limit of indemnity of not less than £[•],000,000 in respect of each and every claim, provided that such insurance continues to be available in the European Union market at commercially reasonable premium rates to contractors undertaking works substantially similar to the Works.
- (b) The insurance referred to in paragraph 6(a) will:
  - (i) be subject only to such conditions and excesses as may be usual in the European Union market at the time; and
  - (ii) be provided by reputable insurers with a place of business in the United Kingdom; and
  - (iii) be maintained from the date of the Contract and for a period expiring not less than 12 years after the completion of the Project and notwithstanding the expiry or termination of the Contractor's employment under the Contract.
- (c) As and when reasonably required to do so by the Beneficiary, the Contractor shall produce documentary evidence that the insurance required by this paragraph 6 (*Insurance*) is being properly maintained.
- (d) The Contractor shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this paragraph 6 (*Insurance*) on reasonable terms and at commercially reasonable premium rates or at all and in that event shall

continue to maintain insurance on such terms and with such a limit of indemnity as may then be available to the Contractor.

## 7 Assignment

The Beneficiary may at any time, without the consent of the Contractor, assign the benefit of this Schedule and/or any rights arising under it to any person acquiring an interest in the Property (subject to a maximum of two such assignments) and in addition may at any time assign the benefit of this Schedule by way of security without the comment of the Contractor being required. Assignments to a subsidiary or holding company of the Beneficiary or any other subsidiary of the Beneficiary's holding company shall not require the prior consent of the Contractor and shall not count towards such two occasions.

## 8 Limitation

No action or proceedings for any breach of this Schedule shall be commenced against the Contractor after the expiry of 12 years following practical completion of the Project.

## 9 Notices and General

- (a) Any notice or other communication required under this Schedule shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).
- (b) If any provision of this Schedule shall be found to be ineffective, inoperable or unenforceable for any reason it shall be deemed to be deleted and the remaining provisions of this Schedule shall continue to have full force and effect.

## 10 Governing law and disputes

The application and interpretation of this Schedule shall in all respects be governed by English law and any dispute or difference arising under this Schedule shall be subject to the non-exclusive jurisdiction of the English courts.

### Annex to foregoing Schedule Form of Step-In notice and undertaking

- 1 We refer to your notice dated [insert date of Contractor's notice] notifying us of your intention to terminate your engagement with [•] dated [insert date of contract] (the "**Contract**"). In accordance with paragraph 4 ("**Step-in**" right) of Schedule [•] (*Third Party Rights Schedule*) of the Contract, we give you notice that:
  - (a) we will rely on the works that you have performed to date under the Contract;
  - (b) we require you to continue to observe your obligations under the Contract for our benefit; and
  - (c) we require you to continue to undertake the Works in the Contract for our benefit.

2 In consideration of the above, we assume all responsibilities of [•] in accordance with the terms of the Contract and agree to be bound by the same as if we had always been the "Client" under the Contract, in the place of [•]. In particular, we undertake to:

- (d) discharge, within 21 days of the date of this notice, any sums which have become properly due and payable to you under the Contract and which remain unpaid; and
- (e) pay all sums which may subsequently become due to you under the Contract.

Signed for and on behalf of [•]

.....

Authorised Signatory

#### Part 4

#### Sub-Contractor Third Party Rights Schedule - Sub-Contractor in favour of Council/Agency

#### Schedule [•] Third Party Rights Schedule

#### 1 Definitions and Interpretation

- (a) In this Schedule, unless the contrary intention appears, the following definitions apply:

**"Beneficiary"** means the "Council" or "Agency" as defined under the Contract and includes any person to whom the benefit of the Contract has been validly assigned and/or any rights arising under this Schedule have been validly assigned in accordance with paragraph 7.

**"Contract"** means the contract under which [•] has engaged the Contractor to carry out and complete the Works.

**"Contractor"** means [•] (company no [•]) whose registered office is at [•].

**"Project"** means project of carrying out the Works at the Property.

**"Property"** means [•] and a reference to the Property is to the whole or any part of it as the circumstances may require.

**"Proprietary Material"** means all drawings, details, plans, specifications, schedules, reports, calculations, software and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Sub-Contractor in the course of or as a result of carrying out the Sub-Contract Works.

**"Statutory Requirements"** means the requirements of the Building Act 1984, the Building Regulations 2010, the Construction (Design and Management) Regulations

2007 and all other relevant statutory requirements codes of practice, regulations and permissions having the force of law and applicable to the Project.

**"Sub-Contract"** means the sub-contract dated [•] between the Contractor (1) and the Sub-Contractor (2) (and any further agreement varying or supplementing it) whereby the Sub-Contractor has undertaken to carry out and complete the Sub-Contract Works.

**"Sub-Contractor"** means [•] (company no [•]) whose registered office is at [•].

**"Sub-Contract Works"** means those parts of the Works to be carried out by the Sub-Contractor as more particularly defined and described in the Sub-Contract.

**"Works"** means the design and construction works carried out or to be carried out by the Contractor pursuant to the Contract.

- (b) Any obligation on the Sub-Contractor to do an act includes an obligation to procure that it is done.
- (c) If a party is placed under a restriction in this Schedule, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- (d) References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- (e) Words in this Schedule denoting the singular include the plural meaning and vice versa.
- (f) Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be constructed interchangeably in that manner.
- (g) The paragraph headings in this Schedule are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- (h) Unless the contrary intention appears, references to numbered paragraphs are references to the relevant paragraphs in this Schedule.
- (i) References in this Schedule to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.

#### 2 Sub-Contractor's Warranties

- (a) The Sub-Contractor warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Sub-Contract in accordance with the terms of the Sub-Contract, provided always that:
- (i) the Sub-Contractor shall owe no greater obligations to the Beneficiary under this Schedule than it owes to the Contractor under the Sub-Contract;
  - (ii) the Sub-Contractor shall be entitled in any proceedings under this Schedule to rely on any limitation in the Sub-Contract and to raise the equivalent

rights in defence of liability (but excluding set-offs or counterclaims) as if the Beneficiary had been named as a joint employer with the Contractor under the Sub-Contract; and

- (iii) the Sub-Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Sub-Contract Works unless and until the Beneficiary has given notice to the Sub-Contractor under paragraph 4(a) or paragraph 4(c).

(b) Without limiting paragraph 2(a), the Sub-Contractor warrants that:

- (i) The Sub-Contract Works as completed will comply with any performance specification or requirement included in the Sub-Contract;
- (ii) the Sub-Contract Works have been and will be carried out and completed in a good and workmanlike manner using good quality materials and in all respects in accordance with the Sub-Contract;
- (iii) it has not specified or authorised for use, will not specify or authorise for use and that it will not use or knowingly permit the use and will immediately notify the Beneficiary of any proposed or actual use or specification in the Project of any materials and substances for the time being not in accordance with the British Property Federation/British Council of Offices report *Good practice in the selection of construction materials* (current edition); and
- (iv) the Sub-Contract Works as completed will in all respects comply with the Statutory Requirements.

(c) The Sub-Contractor acknowledges that the Beneficiary shall be deemed to have relied and to continue to rely upon the warranties and undertakings given by the Sub-Contractor under this paragraph 2.

### 3 Obligations prior to determination of the Sub-Contractor's engagement

- (a) The Sub-Contractor shall not exercise nor seek to exercise any right to determine its engagement under the Sub-Contract for any reason, including any breach on the part of the Contractor, without giving to the Beneficiary not less than 21 days' notice of its intention to do so and specifying the grounds for the proposed determination.
- (b) Any period stipulated in the Sub-Contract for the exercise by the Sub-Contractor of a right of determination shall be extended, as necessary, to take account of the period of notice required under paragraph 3(a).
- (c) Compliance by the Sub-Contractor with paragraph 3(a) shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of determination, nor otherwise prevent the Sub-Contractor from exercising its rights after the expiration of the notice, unless the right of determination shall have ceased under the provisions of paragraph 4.

### 4 "Step-in" right

- (a) The right of the Sub-Contractor to determine its engagement under the Sub-Contract shall cease if, within the period of 21 days referred to in paragraph 3(a), the Beneficiary shall give notice to the Sub-Contractor in the form of the Annex to this Schedule

(b) Upon compliance by the Beneficiary with the requirements of paragraph 4(a), the Sub-Contract shall continue as if the right of determination on the part of the Sub-Contractor had not arisen and as if the Sub-Contract had been entered into between the Sub-Contractor and the Beneficiary to the exclusion of the Contractor.

(c) Notwithstanding that as between the Contractor and the Sub-Contractor the Sub-Contractor's right of determination of its engagement under the Sub-Contract may not have arisen, the provisions of paragraph 4(b) shall apply if the Beneficiary gives notice to the Sub-Contractor and the Contractor to that effect and the Beneficiary complies with the requirements on its part under paragraph 4(a). The Sub-Contractor shall be bound to assume that, as between the Contractor and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under this paragraph 4(c).

(d) The Sub-Contractor, by acting in accordance with the provisions of this paragraph 4, shall not incur any liability to the Contractor.

### 5 Use of Proprietary Material

(a) The copyright in the Proprietary Material shall remain vested in the Sub-Contractor, but the Sub-Contractor grants to the Beneficiary an irrevocable royalty-free and non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Project and/or the Property, including (without limitation) the execution and completion of the Project and the subsequent fitting out, maintenance, occupation, management, sale, advertisement, extension, refurbishment, alteration, reinstatement and repair of the Property.

(b) The licence referred to in paragraph 5(a) carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Sub-Contractor's engagement under the Sub-Contract.

(c) Insofar as the Sub-Contractor is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Proprietary Material, the Sub-Contractor waives any moral rights which it might otherwise be deemed to have under Chapter IV of that Act in respect of the Proprietary Material and the Property.

(d) The Sub-Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose beyond which is inconsistent with that for which it was prepared by the Sub-Contractor.

### 6 Insurance

(a) Without limiting its other obligations under this Schedule or otherwise at law, the Sub-Contractor shall maintain professional indemnity insurance to cover its professional liability under this Schedule, with a limit of indemnity of not less than £[•],000,000 in respect of each and every claim, provided that such insurance continues to be available in the European Union market on reasonable terms and at commercially reasonable premium rates to sub-contractors undertaking works substantially similar to the Sub-Contract Works.

(b) The insurance referred to in paragraph 6(a) will:

- (i) be subject only to such conditions and excesses as may be usual in the European Union market at the time; and

- (ii) be provided by reputable Insurers with a place of business in the United Kingdom; and
- (iii) be maintained from the date of the Sub-Contract and for a period expiring not less than 12 years after the completion of the Sub-Contract Works and notwithstanding the expiry or termination of the Sub-Contractor's employment under the Sub-Contract.

- (c) As and when reasonably required to do so by the Beneficiary, the Sub-Contractor shall produce documentary evidence that the insurance required by this paragraph 6 is being properly maintained.
- (d) The Sub-Contractor shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this paragraph 6 on reasonable terms and at commercially reasonable premium rates or at all and in that event shall continue to maintain insurance on such terms and with such a limit of indemnity as may then be available to the Sub-Contractor.

#### 7 Assignment

The Beneficiary may at any time, without the consent of the Sub-Contractor, assign the benefit of this Schedule and/or any rights arising under it to any person acquiring an interest in the Property (subject to a maximum of two such assignments) and in addition may at any time assign the benefit of this Schedule by way of security without the consent of the Sub-Contractor being required. Assignments to a subsidiary or holding company of the Beneficiary or any other subsidiary of the Beneficiary's holding company shall not require the prior consent of the Sub-Contractor and shall not count towards such two occasions.

#### 8 Limitation

No action or proceedings for any breach of this Schedule shall be commenced against the Sub-Contractor after the expiry of 12 years following practical completion of the Project.

#### 9 Notices and General

- (a) Any notice or other communication required under this Schedule shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).
- (b) If any provision of this Schedule shall be found to be ineffective, inoperable or unenforceable for any reason it shall be deemed to be deleted and the remaining provisions of this Schedule shall continue to have full force and effect.

#### 10 Governing law and disputes

The application and interpretation of this Schedule shall in all respects be governed by English law and any dispute or difference arising under this Schedule shall be subject to the non-exclusive jurisdiction of the English courts.

#### Annex to Part 1 of Schedule Form of Step-in notice and undertaking

- 1 We refer to your notice dated [insert date of Sub-Contractor's notice] notifying us of your intention to terminate your engagement with [•] [insert Contractor's details] dated [insert date of sub-contract] (the "Sub-Contract"). In accordance

with paragraph 4 ("Step-in" right) of Schedule [•] (Third Party Rights Schedule) of the Sub-Contract, we give you notice that:

- a) we will rely on the works that you have performed to date under the Sub-Contract;
- b) we require you to continue to observe your obligations under the Sub-Contract for our benefit; and
- c) we require you to continue to undertake the Sub-Contract Works in the Sub-Contract for our benefit.

- 2 In consideration of the above, we assume all responsibilities of [insert Contractor's details] in accordance with the terms of the Sub-Contract and agree to be bound by the same as if we had always been the "Contractor" under the Sub-Contract, in the place of [insert Contractor's details]. In particular, we undertake to:

- d) discharge, within 21 days of the date of this notice, any sums which have become properly due and payable to you under the Sub-Contract and which remain unpaid; and
- e) pay all sums which may subsequently become due to you under the Sub-Contract.

Signed for and on behalf of [•]

.....  
Authorised Signatory

**Appendix 7**  
**Private Sale Unit Specification**

## **Appendix 8 Programme**



**Schedule 2  
Onerous Conditions**

Those conditions which the Client would find unacceptable

- 1 Any condition which in the reasonable opinion of the Client would prevent the delivery of the Key Requirements; and
- 2 Without prejudice to the generality of paragraph 1 above:
  - (a) would result in the provision of less than 1,621 Units (excluding for these purposes any Commercial Units and the Community Building) upon the Development; or
  - (b) would result in the provision of less than 50% Affordable Housing Units (as a percentage of the aggregate number of Affordable Housing Units and Private Housing Units).

**Schedule 3  
Unacceptable Conditions**

Those conditions which the Developer would find unacceptable

A condition or conditions imposed in the Planning Permission or a Planning Agreement in respect of the Site as a whole which contains or refers to one or more prohibitions or restrictions of any of the following kind:-

- (a) it requires the execution of an Agreement under Section 106 of the Town and Country Planning Act 1990 in relation to land other than (and whether or not also included) the Site save that any obligation contained in such an agreement relating to off site highway works shall not constitute an Onerous Condition;
- (b) it limits the occupation and/or use of the whole or any material part of the Site to any designated occupier or class of occupier or to any specific period of time (whether by imposing a geographic qualification upon the proposed occupier or otherwise) save that any obligation to provide Affordable Housing in accordance with the Key Requirements and the obligation to provide a Community Building and the Affordable Workshop Space shall not constitute an Onerous Condition
- (c) it prevents the Development or any part of it being carried out without the agreement or co-operation of an independent third party which cannot be obtained by the Purchaser on terms or at a cost or within a time which in any such case is reasonable in the circumstances (it being acknowledged without limitation that a cost below £250,000 or an anticipated time of less than 6 months shall be deemed to be reasonable);
- (d) It would, if implemented, cause a breach of any obligations on the part of the Developer pursuant to this Agreement or a Building Agreement;
- (e) it would require (in addition to making the Community Payment and compliance by the Developer with the terms of this Agreement) payments in excess of the following:
  - (i) £4000 per residential Unit; and
  - (ii) Phase 1B - £2m;
  - (iii) Phase 2 - £1m;
  - (iv) Phase 3 - £4m;
  - (v) Phase 4 - £1m.

PROVIDED THAT an obligation to deliver the Key requirements shall not be an Unacceptable Condition

**Schedule 4**

[Not Used]

**Schedule 5  
Client Land**

The interests of the Client in the land as described in the attached Schedule.

**Schedule 5  
Client Land**

**The Client Land comprises all such interest as the Agency and the Council have within the site compiled on the following titles:**

Title Number	Property shown on attached plan as:	Part or Whole	Office Copy Entries Date and Time	Ownership	Description of part (if applicable)
68703 (freehold)	Land described as Providence Place, Union Street, Woolmore Street, and Wrights Place - Tinted blue	P	07/04/2010 13:41:34	LBTH	Land described as Providence Place in title plan (old plan drawn in 1903, new OS Map – Land at Bullivant stree to the east of St Matthias Centre
143875 (Freehold)	38 Cotton Street, Poplar - Cross-hatched blue	W	07/04/2010 12:34:37	LBTH	
186441 (Freehold)	Odd 19 – 31 Cotton Street, Poplar - Edged and numbered 1 in red	W	07/04/2010 12:36:14	LBTH	
321092 (Freehold)	180 & 182 East India Dock Road, Poplar - Cross hatched green	P	07/04/2110 12:37:34	LBTH	North of Cotton Street, South of East India Dock Road and East of Bazely Street
EGL337790 (Freehold)	Land being south east side of Cotton Street, London - Tinted brown	W	07/04/2010 12:00:01	LBTH	
EGL496346 (Freehold)	St Matthias Centre, Bullivant Street, London - Tinted yellow	W	07/04/2010 12:27:34	LBTH	
LN250423 (Freehold)	North East Side of the junction of Cotton Street and Woolmore Street, Poplar - Edged and numbered 2 in red	W	07/04/2010 12:28:56	LBTH	
LN64895 (Freehold)	Land at cotton Street, Poplar -Tinted pink	P	07/04/2010 12:30:21	LBTH	Adjacent East of 40 Cotton Street

1

NGL12936 (Freehold)	40 Cctton Street, Poplar - Cross hatched yellow	W	07/04/2010 12:31:53	LBTH	
NGL133489 (Freehold)	Land on the West Side of Cotton Street, Poplar - Tinted green	P	07/04/2010 12:33:14	LBTH	End of West side of Woolmore Street, Junction of Cotton Street
NGL58991 (Freehold)	As Shown on the Illustrative Plan - Edged and numbered 1 in mauve	W	29/03/2010 12:31:31	LBTH	

109879 (Freehold)	Land lying to the South of Poplar High Street, London - Edged and numbered 1 in blue	W	06/4/10 14:52:04	HCA	
120517 (Freehold)	287 Poplar High Street - Edged and numbered 2 in blue	W	16/09/2010 16:22:20	LBTH (public highway)	
144189 (Freehold)	322 High Street, - Edged and numbered 3 in blue	W	16/09/2010 16:25:04	LBTH (public highway)	
147553 (Freehold)	324 High Street, Poplar - Edged and numbered 4 in blue	W	16/04/10 16:27:19	LBTH (public highway)	
163952 (Freehold)	Land lying to the South of Poplar High Street - Edged and numbered 5 in blue	W	16/09/2010 16:31:43	HCA	
225036 (Freehold)	308 Poplar High Street, - Edged and numbered 6 in blue	W	16/09/2010 16:39:18	LBTH (public highway)	
232697 (Freehold)	Land and Buildings on the North Side of Ditchburn Street, Poplar - Edged and numbered 7 in blue	P	06/04/10 15:12:57	LBTH (Part high way)	North Side of Ditchburn Street, adjacent to the South of 306-316 of Poplar High Street

2

234552 (Freehold)	312 Poplar High Street - Edged and numbered 8 in blue	P	16/09/2010 16:48:29	LBTH (Public Highway)	Adjacent to North Side of 306 to 316 Poplar High Street, South Side of Poplar High Street, west of Prestons Way and East of Prestons Road
235450 (Freehold)	The Ship, Public House, 314 High Street, Poplar - Edged and numbered 9 in blue	W	17/09/10 11:31:13	LBTH (public highway)	
278519 (Freehold)	20 - 44 Blackwall Way - Edged and numbered 10 in blue	W	06/04/10 1 15:17:10	LBTH (public highway)	
296619 (Freehold)	326 Poplar High Street, Poplar - Edged and numbered 11 in blue	W	17/09/2010 11:35:14	LBTH (public highway)	
340045 (freehold)	283 High Street, Poplar - Edged and numbered 12 in blue	W	17/09/2010 11:39:22	LBTH (public highway)	
348919 (Freehold)	1, 3 and 5 Ditchburn Street, Poplar - Edged and numbered 13 and 14 in blue	W	06/04/10 16:04:13	LBTH	
377740 (freehold)	291 Poplar High Street, - Edged and numbered 15 in blue	W	17/09/2010 11:44:42	LBTH	
392717 (freehold)	22, 24, 26, 30 and 32 Blackwall Way - Edged and numbered 16 in blue		06/04/10 16:06:52	LBTH	East side of Ditchburn Street going towards

3

		P			Junction of Prestage Way. Just a small corner
431093 (freehold)	310 Poplar High Street, - Edged and numbered 17 in blue	W	17/09/2010 11:48:20	LBTH	
440237 (freehold)	285 High Street, Poplar - Edged and numbered 18 in blue	W	17/09/2010 11:53:14	LBTH	
EGL195503 (freehold)	318 Poplar High Street, London E14 0BB - Tinted green	W	06/04/10 16:10:46	HCA	
EGL235295 (Freehold)	306 - 316 Poplar High Street, London E14 0BB - Tinted pink	W	02/12/10 12:06:59	HCA	
EGL236464 (freehold)	316 Poplar High Street, Poplar - Tinted brown	W	15/04/10 15:10:55	LBTH	
EGL265274 (Freehold)	Land forming part of and lying to the south and east of Preston's Road - Tinted mauve	P	15/04/10 15:28:07	HCA	Adjacent to the east side of Blackwall Station and south of Prestons Road
EGL280904 (freehold)	As shown on the Plan - Tinted yellow	P	06/04/2010 16:16:39	HCA	South of Prestons Road, West to Blackwall Station, North and West of Aspen Way
EGL300207	London Docklands Development Corporation of Thames Quay, 191 Marsh Wall, London E14 9TJ - Edged and numbered 19 in blue	W	06/04/10 14:50:12	CAUTION IN FAVOUR OF LONDON DOCKLANDS DEVELOPMENT CORPORATION	Now part of HCA

4

EGL375911 (freehold)	Landscape strip on the south side of Poplar High Street, Poplar - Edged and numbered 20 in blue	W	15/04/10 15:17:41	LBTH	
EGL375912 (Freehold)	Land at Prestons Road, London - Cross-hatched brown	W	14/09/2010 16:25:40	LBTH	
EGL411029 (Freehold)	304 Poplar High Street, London - Edged and numbered 1 in red	W	14/09/2010 14:25:40	HCA	
LN121318 (freehold)	328, 330, 332, Poplar High Street, - Edged and numbered 24 in blue	W	15/09/2010 15:10:21	LBTH	
LN135660 (freehold)	16 Ditchburn Street, Poplar - Edged and numbered 25 in blue	W	07/04/10: 10:41:54	LBTH	
LN189999 (Freehold)	316 and the site of 318 and 318a Poplar High Street, Poplar - Edged and numbered 26 in blue	P	115/09/2010 15:13:03	LBTH	Land to the north west of 316 poplar high street
LN210887 (freehold)	281, 289, 293, 297, 299, 301, 303 and 305 Poplar High Street, - Cross-hatched yellow	W	07/04/10 10:44:13	LBTH	
LN231418 (Freehold)	295 Poplar High Street, London - Edged and numbered 27 in blue	W	07/04/2010 15:19:09	LBTH	
LN3931 (freehold)	334 High Street, Poplar - Edged and numbered 28 in blue	W	15/09/2010 15:26:22	LBTH	

5

LN6185 (freehold)	306 Poplar High Street and 5 and 7 Preston's Road, Poplar - Edged and numbered 29 in blue	W	15/09/2010 15:26:22	LBTH	
LN63720 (Freehold)	3 Ditchburn Street, Poplar - Edged and numbered 30 in blue	W	07/04/10 10:52:27	LBTH	
LN93980 (freehold)	North side of Ditchburn Street, Poplar - Edged and numbered 5 in red	W	07/04/10 10:55:15	LBTH	
NGL261809 (Freehold)	Land lying to the south of Poplar High Street, - Edged and numbered 31 in blue	W	16/09/2010 15:51:57	LBTH	
NGL397279 (freehold)	7 Ditchburn Street, Poplar - Hatched green	W	07/04/10 11:00:35	COMMISSION FOR THE NEW TOWNS (HCA)	
NGL487061 (freehold)	302 High Street - Edged and numbered 32 in blue	W	16/09/10 15:51:57	LBTH	
EGL200588 (Freehold)	Land and Building on the south side of Naval Row and on the east side of Blackwall Way, London - Tinted yellow	W	29/07/2010 10:03:15	HCA	

6

NGL59132 (Freehold)	Sites of 6 – 64 (even numbers) Woolmore street, 30 – 57 Mackrow Street and 30 – 40 (even numbers) Robin Hood Lane, Poplar – Tinted in Blue	P	22/11/10 17:04:37	LBTH	Land to the south of Anderman House
EGL265424 (Freehold)	Land and buildings lying on the west side of Robin Hood Lane - Hatched in green	P	22/11/10 15:47:14	LBTH	Land to the North West of Robin Hood gardens
EGL267684 (Freehold)	10 Woolmore Street, London E14 0EW - Edged & numbered 3 in blue	W	22/11/10 16:03:24	LBTH	
EGL375912 (Freehold)	Land at Prestons Road, London - Edged & numbered 4 in blue	P	22/11/10 16:04:57	LBTH	Land at the junction of poplar high street and preston road (South west of Robin Hood Gardens)
EGL394216 (Freehold)	Lidgett Street - (part of Robin Hood Gardens) Tinted Brown	P	22.11.10 16:08:28	LBTH	Part land to the North West of Robin Hood Gardens and part land Mid West of Robin Hood Gardens
EGL394220 (Freehold)	Land on the east side of Cotton Street, London - Cross hatched in blue	P	22.11.10 16:11:01	LBTH	Land to the Midwest of Robin Hood Gardens
EGL394221 (Freehold)	Land on the east side of Cotton Street - Cross hatched in green	P	22.11.10 16:12:32	LBTH	Land to the South East of Cotton Street adjacent to the West of Robin Hood Garden, and adjacent to the east of Mermaid House
EGL394223 (Freehold)	261 and 263 High Street, Poplar (part of Robin Gardens) - Edged & numbered 1 in red	W	22.11.10 16:14:23	LBTH	
EGL394224	265 and 267 High Street, Poplar (part of	W	22.11.10	LBTH	

7

(Freehold)	Robin Hood Gardens) - Tinted mauve		16:15:37		
EGL436121 (Freehold)	2 Woolmore Street, London E14 0EW - Edged & numbered 2 in red	W	22.11.10 16:22:16	LBTH	
LN222337 (Freehold)	2 and 4 Woolmore Street, Poplar - Edged & numbered 9 in red	W	22.11.10 16:46:29	LBTH	
LN23128 (Freehold)	1 Lidgett Street and 29 Mackrow Street, Poplar - Cross hatched in mauve	W	22.11.10 16:48:51	LBTH	
LN240498 (Freehold)	Queens Palace of varieties and 279 Poplar High Street, London - Tinted yellow	P	22.11.10 16:50:19	LBTH	Land adjacent to robin hood gardens at south east of robin hood gardens
LN24198 (Freehold)	45 Cotton Street, Poplar - tinted pink	W	22.11.10 16:52:01	LBTH	
NGL280483 (Freehold)	Land lying to the south of Woolmore Street, Mackrow Street, Poplar - Edged & numbered 10 & 11 in red	P	22.10.11 16:53:39	LBTH	6 Woolmore Street
NGL428084 (Freehold)	4 Woolmore Street, London E14 0EW - Edged & numbered 7 in blue	W	22.11.10 16:55:14	LBTH	
181133 (Freehold)	41 Cotton Street, Poplar - Edged & numbered 12 in red	W	22.11.10 16:56:48	LBTH	
182575 (Freehold)	Part of School Site, Woolmore Street, Poplar - Tinted Green, edged & lettered A & B in Green	W	22.11.10 16:58:23	LBTH	
299422 (Freehold)	267 High Street, Poplar E14 0BQ - Edged & numbered 13 in red	W	22.11.10 16:59:46	LBTH	
NGL92278 (Freehold)	269 Poplar High Street, Poplar - Cross hatched in brown	W	22.11.10 17:01:07	LBTH	
376410 (Freehold)	Land on the west side of Lidgett Street being at the rear of 41 Cotton Street, Poplar - Edged & numbered 8 in blue	P	22.10.11 17:05:02	LBTH	Land to the South and East of Woolmore Street and East of Cotton Street, adjacent to the west of

8

					Anderson House
395405 (Freehold)	43 Cotton Street Poplar - Edged & numbered 9 in blue	W	22.11.10 17:07:35	LBTH	
68703 (Freehold)	Shown on Illustrative plan as Cross hatched Yellow	W	22/11/10 17:10:16	LBTH	
	Titles not revealed on SIM Result				
25023 (Freehold)	39 Cotton Street, Poplar - Edged & Numbered 10 in blue	W	29.03.2011 15:36:16	LBTH	

61881 (Freehold)	The Garage, Robin Hood Lane - Tinted green & edged & lettered A in Green	W	17/09/2010 11:59:02	LBTH	
109879 (Freehold)	Land lying to the South of Poplar High Street - Edged & numbered 1 in red	W	16/09/2010 16:20:48	HCA	
120517 (Freehold)	287 Poplar High Street - Tinted green & edged & lettered B in Green	W	16/09/2010 16:22:20	LBTH	
144189 (Freehold)	322 High Street - Edged & numbered 2 in red	W	16/09/2010 16:25:04	LBTH	
147553 (Freehold)	324 High Street, Poplar - Edged and numbered 3 in red	W	16/09/2010 16:27:19	LBTH	
163952 (Freehold)	Land Lying to the South of Poplar High Street - Edged and numbered 4 in red	W	16/09/2010 16:31:43	HCA	
225036 (Freehold)	308 Poplar High Street - Edged & numbered 5 in red	W	16/09/2010 16:39:08	LBTH	
234552 (Freehold)	312 Poplar High Street - Edged & numbered 6 in red	W	16/09/2010 16:48:29	LBTH	
235450 (Freehold)	The Ship, Public House 314 High Street, Poplar - Edged & numbered 7 in red	W	17/09/2010 11:31:13	LBTH	
296619 (Freehold)	326 Poplar High Street - Edged & numbered 8 in red	W	17/09/2010 11:35:14	LBTH	

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340045 (Freehold)	283 High Street, Poplar - Tinted green & edged & lettered C in green	W	17/09/2010 11:39:22	LBTH	
377740 (Freehold)	291 Poplar High Street - Tinted green & edged & lettered D in green	W	17/09/2010 11:44:42	LBTH	
431093 (Freehold)	310 Poplar High Street - Edged & numbered 9 in red	W	17/09/2010 11:48:20	LBTH	
440237 (Freehold)	285 High Street, Poplar - Tinted green & edged & lettered E in green	W	17/09/2010 11:53:14	LBTH	
EGL265424 (Freehold)	Land and buildings lying on the west side of Robin Hood Lane - Tinted pink	P	13/09/2010 15:24:36	LBTH	Part land to the north west of robin hood gardens part land to the north east and east of robin hood gardens
EGL375912 (Freehold)	Land at Preston's Road - Tinted green & edged & lettered M in green	P	14/09/2010 16:20:05	LBTH	Land to the north west of 304 poplar high street corner of poplar high stand and prestons road
EGL394216 (Freehold)	Land known as Lidgett Street (part of Robin Hood Gardens) - Edged Blue	P	14/09/2010 16:24:05	LBTH	Part land to the north east of Robin Hood plus and part land to the mid east of Robin Hood Gardens
EGL411029 (Freehold)	304 Poplar High Street - Edged & numbered 11 in red	W	14/09/2010 16:25:40	HCA	
LN121318 (Freehold)	328, 330, 332 Poplar High Street - Edged & numbered 32 in red	P	15/09/2010 15:10:21	LBTH	Land to the north east of 316 poplar high street
LN189999 (Freehold)	316 and the site of 318 and 318a Poplar High Street - Edged & numbered 33 in red	P	15/09/10 15:13:03	LBTH	Land to the north east of 306-314 poplar high street
LN210887 (Freehold)	281, 289, 293, 297, 299, 301, 303, and 305 Poplar High Street - Tinted blue	W	07/04/2010 10:46:17	LBTH	

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LN231418 (Freehold)	295 Poplar High Street - Tinted green & edged & lettered O in green & edged & numbered 34 in red	W	15/09/2010 07/04/2010 10:45:26	LBTH	
LN240498 (Freehold)	Queens Palace of Varieties and 279 Poplar High Street - Tinted green & edged & lettered P in green	P	15/09/2010 15:21:56	LBTH	North of Preston Road and East of Poplar High Street
LN3931 (Freehold)	334 High Street - Edged & numbered 35 in red	P	07/04/2010 10:46:42	LBTH	Land to the North East of 316 Poplar High Street
LN6185 (Freehold)	306 Poplar High Street and 5 and 7 Preston's Way - Edged & numbered 36 in red	P	07/04/2010 10:48:09	LBTH	Land to the north of building numbered 306-314 Poplar High Street
LN65593 (Freehold)	Shown on illustrative plan as Tinted brown	P	15/09/2010 15:28:29	LBTH	Land to the north of Woolmore Street and South of Ashton Street
NGL100173 (Freehold)	307 Poplar High Street - Tinted green & edged & lettered R in green	W	15/09/2010 16:26:54	LBTH	
NGL162394 (Freehold)	20 and 22 Robin Hood Lane - Tinted green & edged & lettered V in green	W	15/09/2010 16:40:09	LBTH	
NGL200812 (Freehold)	15 Woolmore Street - Tinted green & edged & lettered W in green	W	16/09/2010 15:40:13	LBTH	
NGL261809 (Freehold)	Land lying to the south of Poplar High Street - Tinted green & edged & lettered X in green	W	16/09/2010 15:42:12	LBTH	
NGL280483 (Freehold)	Land lying to the south of Woolmoore Street and Mackrow Street - Cross hatched brown	P	16/09/2010 15:44:41	LBTH	Land to the North of Robin Hood Gardens and South of Mackrow Walk
NGL426755 (Freehold)	6 Mackrow Walk - Tinted green & edged & lettered Y in green	W	16/09/2010 15:46:47	LBTH	
NGL441291 (Freehold)	8 Mackrow Walk - Tinted green & edged & lettered Z in green	W	16/09/2010 15:49:18	LBTH	

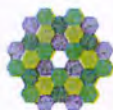
11

NGL487061 (Freehold)	320 High Street - Edged & numbered 37 in red	W	16/09/2010 15:51:57	LBTH	
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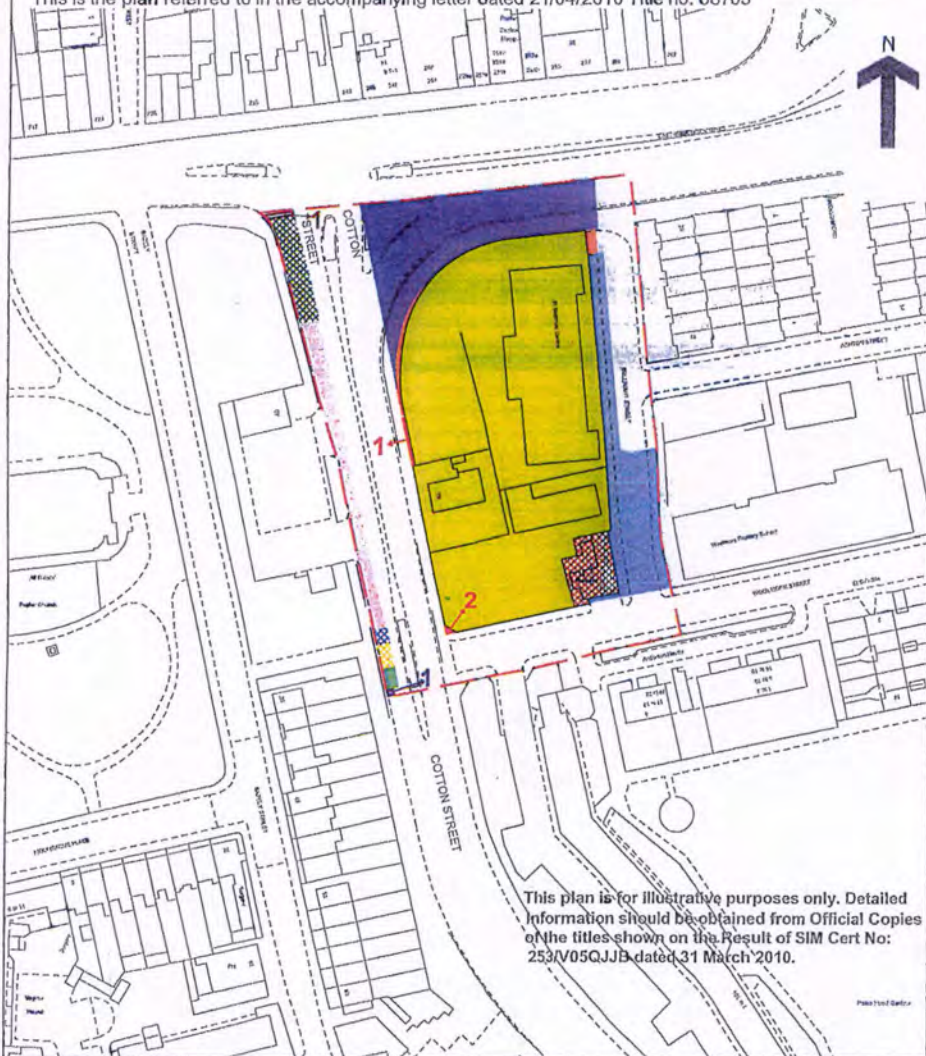
# Land Registry Illustrative plan

Title number 68703  
Ordnance Survey map reference TQ3830NW  
Scale 1:1250  
Administrative area Tower Hamlets



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This is the plan referred to in the accompanying letter dated 21/04/2010 Title no. 68703



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This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

## ILLUSTRATIVE PLAN (LEAD TITLE 68703) SIM CERTIFICATE REFERENCE 253/V05QJJB

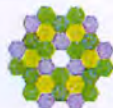
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68703	Tinted blue	
143875	Cross-hatched blue	***
186441	Edged and numbered 1 in red	
321092	Cross-hatched green	***
EGL265263	Cross-hatched brown	
EGL274752	Edged and numbered 1 in brown	***
EGL306738	Tinted mauve	***
EGL337790	Tinted brown	
EGL496346	Tinted yellow	
EGL535840	Tinted yellow	
LN250423	Edged and numbered 2 in red	
LN64895	Tinted pink	***
NGL12936	Cross-hatched yellow	***
NGL133489	Tinted green	***
NGL58991	Edged and numbered 1 in mauve	***

\*\*\* Full title extent not shown

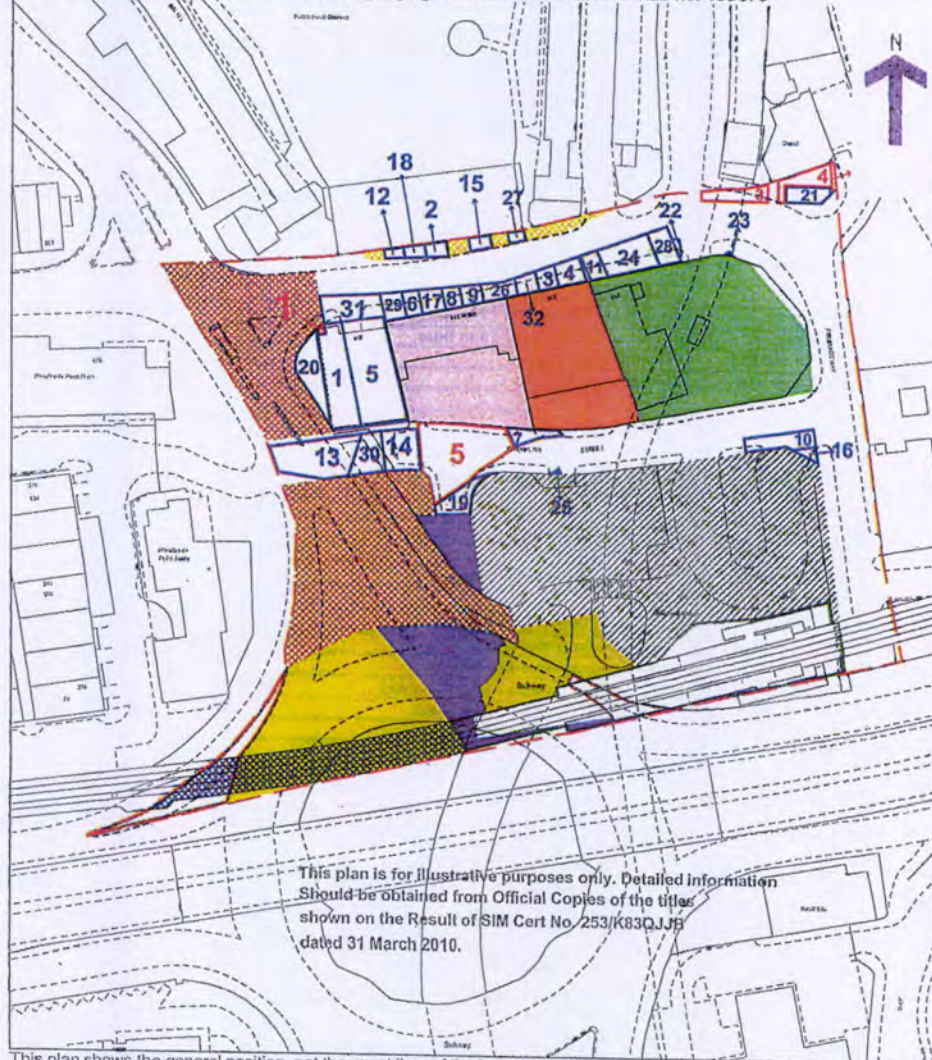


# Land Registry Illustrative plan

Title number 109879  
Ordnance Survey map reference TQ3880NW  
Scale 1:1250  
Administrative area Tower Hamlets



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This is the plan referred to in the accompanying letter dated 21/04/2010 Title no. 109879



This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

## ILLUSTRATIVE PLAN (LEAD TITLE 109879) SIM CERTIFICATE REFERENCE 253/K83QJJB

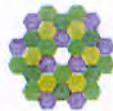
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109879	Edged and numbered 1 in blue	
120517	Edged and numbered 2 in blue	***
144189	Edged and numbered 3 in blue	
147553	Edged and numbered 4 in blue	
163952	Edged and numbered 5 in blue	
225036	Edged and numbered 6 in blue	
232697	Edged and numbered 7 in blue	
234552	Edged and numbered 8 in blue	
235450	Edged and numbered 9 in blue	
278519	Edged and numbered 10 in blue	
296619	Edged and numbered 11 in blue	***
340045	Edged and numbered 12 in blue	***
348919	Edged and numbered 13 and 14 in blue	***
377740	Edged and numbered 15 in blue	***
392717	Edged and numbered 16 in blue	
431093	Edged and numbered 17 in blue	
440237	Edged and numbered 18 in blue	
EGL195503	Tinted green	
EGL235295	Tinted pink	
EGL236464	Tinted brown	
EGL265274	Tinted mauve	
EGL280904	Tinted yellow	***
EGL300207	Edged and numbered 19 in blue	
EGL375911	Edged and numbered 20 in blue	
EGL375912	Cross-hatched brown	***
EGL376638	Cross-hatched blue	***
EGL376639	Edged green	***
EGL411029	Edged and numbered 1 in red	
EGL449333	Edged brown	***
EGL557561	Edged and numbered 2 in red	***
EGL560734	Edged and numbered 21 in blue	
EGL561480	Edged and numbered 22 in blue	
EGL561752	Edged and numbered 3 and 4 in red	
EGL562566	Edged and numbered 23 in blue	
LN121318	Edged and numbered 24 in blue	
LN135660	Edged and numbered 25 in blue	
LN189999	Edged and numbered 26 in blue	
LN210887	Cross-hatched yellow	***
LN231418	Edged and numbered 27 in blue	***
LN3931	Edged and numbered 28 in blue	
LN6185	Edged and numbered 29 in blue	
LN63720	Edged and numbered 30 in blue	
LN93980	Edged and numbered 5 in red	
NGL261809	Edged and numbered 31 in blue	
NGL397279	Hatched green	
NGL487061	Edged and numbered 32 in blue	
NGL54415	Edged and numbered 6, 8, 9, 17, 29 and part of 26 in blue	

\*\*\* Full title extent not shown

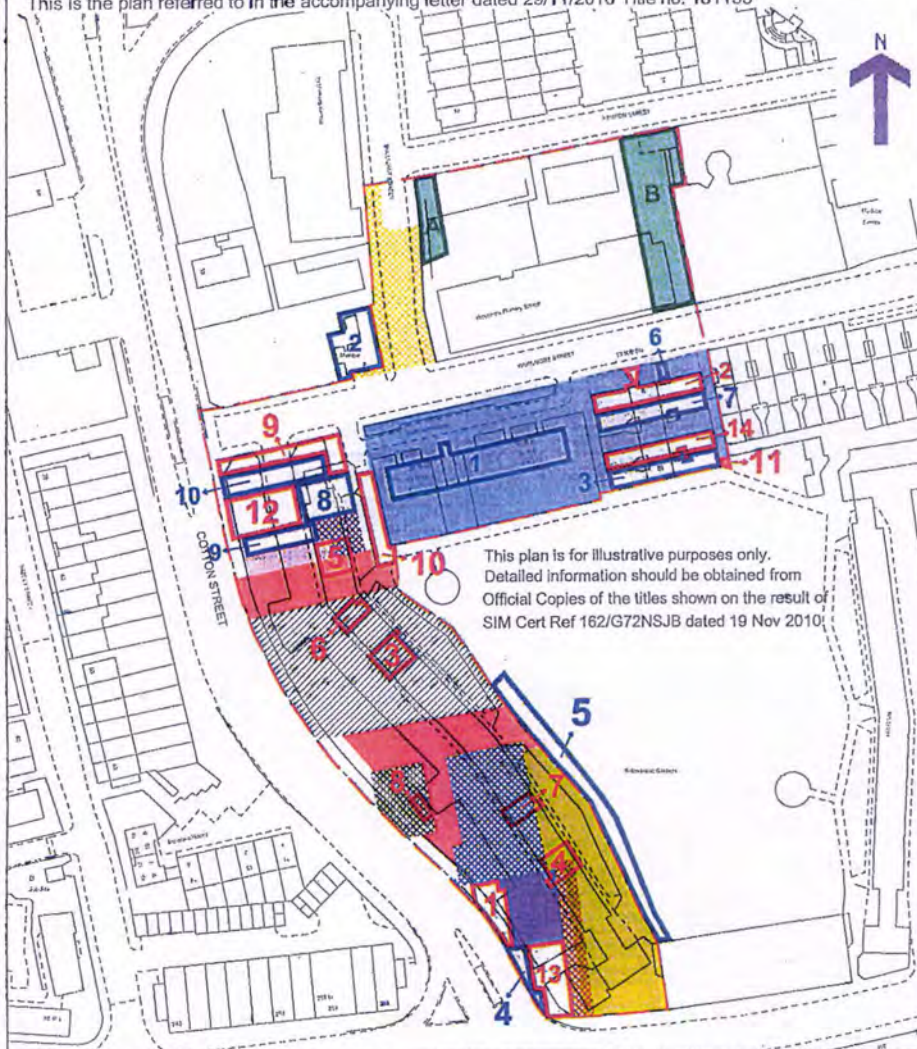


# Land Registry Illustrative plan

Title number **181133**  
Ordnance Survey map reference **TQ3880NW**  
Scale **1:1250**  
Administrative area **Tower Hamlets**



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This is the plan referred to in the accompanying letter dated 29/11/2010 Title no. 181133



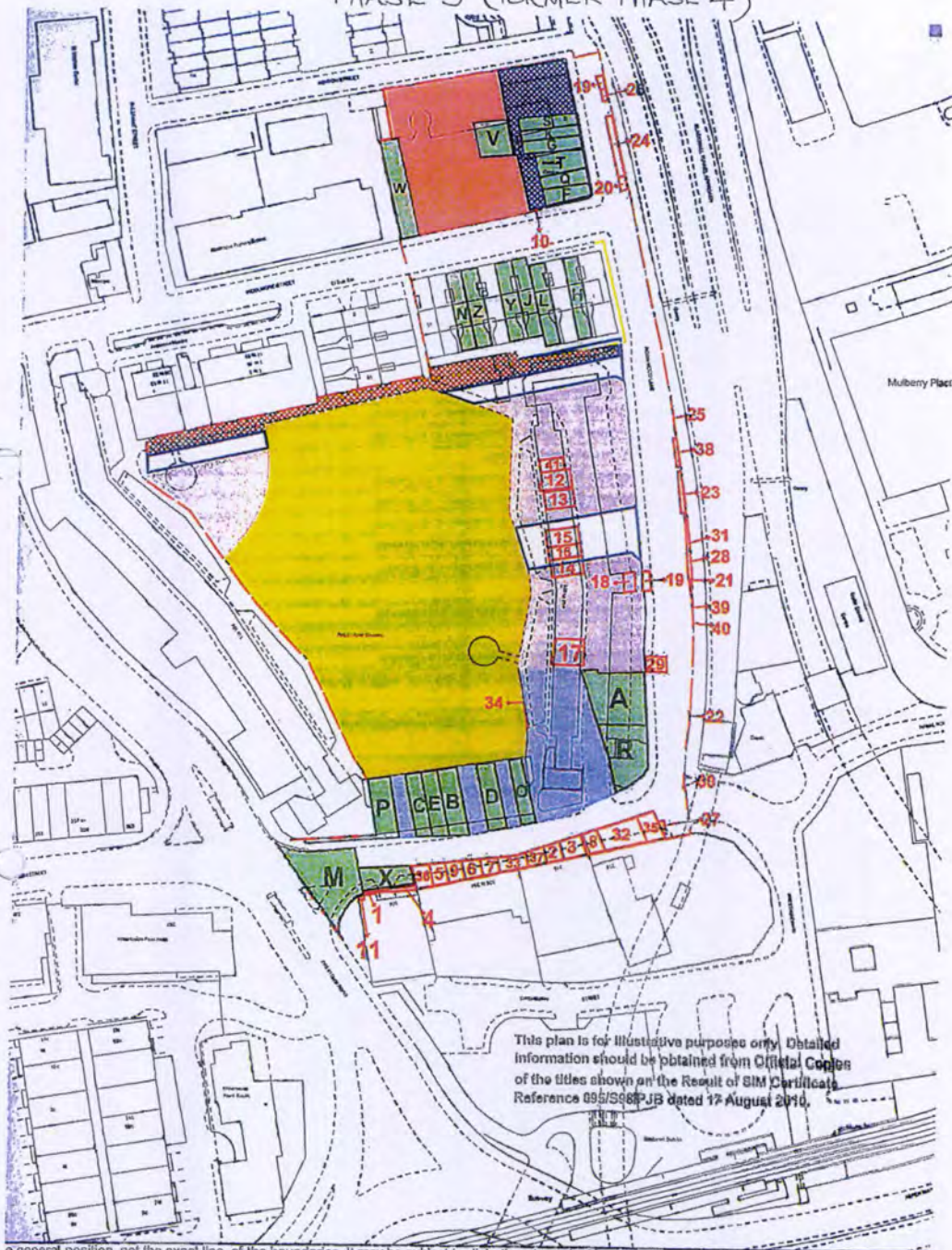
This plan is for illustrative purposes only.  
Detailed information should be obtained from  
Official Copies of the titles shown on the result of  
SIM Cert Ref 162/G72NSJB dated 19 Nov 2010.

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale.  
Measurements scaled from this plan may not match measurements between the same points on the ground. See Land  
Registry Public Guide 19 - Title Plans and Boundaries.

ILLUSTRATIVE PLAN		
SIM CERT REF 162/G72NSJB		
LEAD TITLE 181133		
TITLE NUMBER	PLAN REFERENCE	
EGL181729	Part of edged & numbered 1 in blue	
EGL227312	Part of edged & numbered 1 in blue	
EGL262531	Part of edged & numbered 1 in blue	
EGL265263	Edged & numbered 2 in blue	
EGL265424	Hatched in green	full extent of title not shown
EGL267684	Edged & numbered 3 in blue	
EGL375912	Edged & numbered 4 in blue	full extent of title not shown
EGL394216	Tinted brown	full extent of title not shown
EGL394220	Cross hatched in blue	
EGL394221	Cross hatched in green	full extent of title not shown
EGL394223	Edged & numbered 1 in red	full extent of title not shown
EGL394224	Tinted mauve	
EGL426468	Edged & numbered 5 in blue	full extent of title not shown
EGL436121	Edged & numbered 2 in red	
EGL471347	Part of edged & numbered 1 in blue	
EGL472080	Edged & numbered 3 in red	
EGL486500	Edged & numbered 4 in red	
EGL490819	Edged & numbered 5 in red	
EGL490851	Edged & numbered 6 in red	
EGL494221	Edged & numbered 7 in red	
EGL505115	Edged & numbered 6 in blue	
EGL508338	Edged & numbered 8 in red	
EGL526239	Part of edged & numbered 1 in blue	
LN222337	Edged & numbered 9 in red	
LN23128	Cross hatched in mauve	
LN240498	Tinted yellow	full extent of title not shown
LN24198	Tinted pink	
NGL280483	Edged & numbered 10 & 11 in red	full extent of title not shown
NGL428084	Edged & numbered 7 in blue	
181133	Edged & numbered 12 in red	
182575	Tinted green, edged & lettered A & B in green	
299422	Edged & numbered 13 in red	
NGL92278	Cross hatched in brown	
NGL501122	Edged & numbered 14 in red	
NGL59132	Tinted blue	full extent of title not shown
376410	Edged & numbered 8 in blue	
395405	Edged & numbered 9 in blue	
68703	Cross hatched in yellow	full extent of title not shown
Titles not revealed on SIM result		
25023	Edged & numbered 10 in blue	



# PHASE 3 (FORMER PHASE 4)



a general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match when the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

## ILLUSTRATIVE PLAN (LEAD TITLE 61881)

SIM CERTIFICATE REFERENCE 095/598PJ

TITLE NUMBER	PLAN REFERENCE	
61881	Tinted green & edged & lettered A in green	
109879	Edged & numbered 1 in red	***
120517	Tinted green & edged & lettered B in green	
144189	Edged & numbered 2 in red	
147553	Edged & numbered 3 in red	
163952	Edged & numbered 4 in red	***
225036	Edged & numbered 5 in red	
234552	Edged & numbered 6 in red	
235450	Edged & numbered 7 in red	
296619	Edged & numbered 8 in red	
340045	Tinted green & edged & lettered C in green	
377740	Tinted green & edged & lettered D in green	
431093	Edged & numbered 9 in red	
440237	Tinted green & edged & lettered E in green	
EGL160888	Tinted green & edged & lettered F in green	
EGL166667	Tinted green & edged & lettered G in green	
EGL166928	Tinted green & edged & lettered H in green	
EGL223656	Tinted green & edged & lettered J in green	
EGL264771	Edged mauve	
EGL265268	Tinted green & edged & lettered K in green	
EGL265424	Tinted pink	***
EGL288770	Tinted green & edged & lettered L in green	
EGL292609	Part of edged & numbered 15 & part of edged & numbered 16 in red	
EGL293459	Edged & numbered 41 in red & part of edged & numbered 12 in red	
EGL305457	Edged & numbered 10 in red	
EGL337599	Edged & numbered 16 in red & part of edged & numbered 14 in red	
EGL342684	Cross-hatched blue	
EGL375912	Tinted green & edged & lettered M in green	***
EGL383576	Tinted green & edged & lettered N in green	
EGL394216	Edged blue	***
EGL411029	Edged & numbered 11 in red	
EGL422818	Edged & numbered 12 in red	
EGL426468	Tinted yellow	
EGL443357	Edged & numbered 13 in red	
EGL449081	Edged & numbered 14 in red	
EGL451728	Part of edged & numbered 15 in red	
EGL451737	Part of 14, 15 & 16 in red	
EGL478798	Part of 15 & 16 in red	
EGL490829	Edged & numbered 17 in red	
EGL508337	Edged & numbered 18 in red	
EGL508341	Edged & numbered 18 in red	
EGL518800	Edged brown	
EGL560714	Edged & numbered 19 in red	***



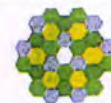
EGL560736	Edged & numbered 20 in red	***
EGL560971	Edged & numbered 21 & 22 in red	***
EGL561124	Edged & numbered 23 in red	***
EGL561228	Edged & numbered 24 in red	***
EGL561299	Edged & numbered 25 in red	***
EGL561406	Edged & numbered 26 in red	***
EGL561480	Edged & numbered 27 in red	***
EGL561612	Edged & numbered 28 in red	***
EGL561622	Edged & numbered 29 in red	***
EGL561752	Edged & numbered 30 in red	***
EGL562043	Edged & numbered 31 in red	***
LN121318	Edged & numbered 32 in red	
LN189999	Edged & numbered 33 in red	
LN210887	Tinted blue	
LN231418	Tinted green & edged & lettered O in green & edged & numbered 34 in red	
LN240498	Tinted green & edged & lettered P in green	***
LN3931	Edged & numbered 35 in red	
LN6185	Edged & numbered 36 in red	***
LN65593	Tinted brown	
LN82805	Tinted green & edged & lettered Q in green	
NGL100173	Tinted green & edged & lettered R in green	
NGL117498	Tinted green & edged & lettered S in green & part of edged & lettered K in green	
NGL136298	Tinted green & edged & lettered T in green	
NGL162394	Tinted green & edged & lettered V in green	
NGL200812	Tinted green & edged & lettered W in green	
NGL261809	Tinted green & edged & lettered X in green	
NGL280483	Cross-hatched brown	***
NGL426755	Tinted green & edged & lettered Y in green	
NGL441291	Tinted green & edged & lettered Z in green	
NGL487061	Edged & numbered 37 in red	
NGL54415	Edged & numbered 5, 6, 7, 9 & 36 in red & part of edged & numbered 33 in red	
NGL59132	Edged yellow	***
SGL710382	Edged & numbered 38 in red	***
SGL710408	Edged & numbered 39 in red	***
SGL711583	Edged & numbered 40 in red	***

\*\*\* Full title extent not shown

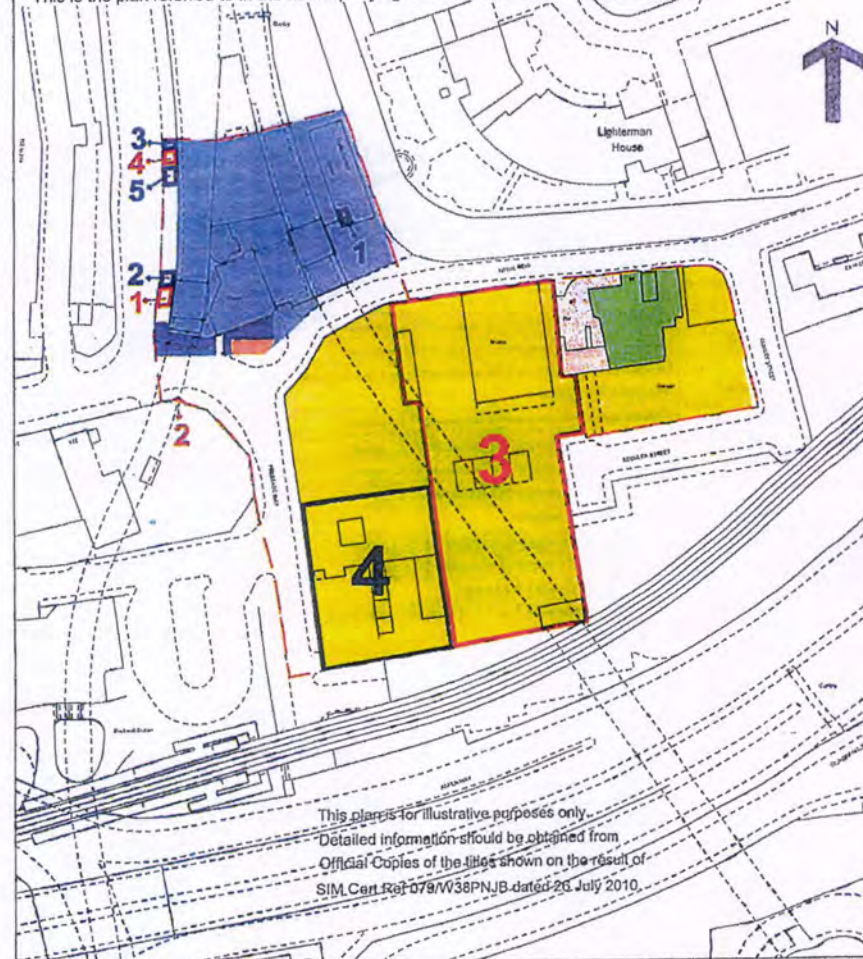
## PHASE 4 (FORMER PHASE 3)

### Land Registry Illustrative plan

Title number 341333  
Ordnance Survey map reference TQ3880NW  
Scale 1:1250  
Administrative area Tower Hamlets



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This is the plan referred to in the accompanying letter dated 02/08/2010 Title no. 341333



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SIM Cert Ref 079/W38PNJB dated 26 July 2010.

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.



	<b>ILLUSTRATIVE PLAN</b>	
	<b>SIM CERT REF 079/W38PNJB</b>	
	<b>LEAD TITLE 341333</b>	
<b>TITLE NUMBER</b>	<b>PLAN REFERENCE</b>	
341333	Tinted green	
EGL200588	Tinted yellow	
EGL519073	Edged & numbered 1 in blue	
EGL557437	Tinted pink	
EGL557561	Tinted blue	full extent of title not shown
EGL560734	Tinted brown	
EGL560971	Edged & numbered 2 & 3 in blue	full extent of title not shown
EGL561752	Tinted mauve	full extent of title not shown
EGL561925	Edged & numbered 1 in red	
EGL562566	Edged & numbered 2 in red	
NGL212320	Edged & numbered 4 in blue	
NGL476279	Edged & numbered 3 in red	
SGL710408	Edged & numbered 4 in red	full extent of title not shown
SGL711583	Edged & numbered 5 in blue	full extent of title not shown

**Schedule 6**  
**Viability Test and Viability Condition**

1 In this schedule:

- (a) **Agreed Additional Costs** means the reasonable and proper costs which the Developer incurs in carrying out additional works or providing other facilities in either case at the request of both Clients (which are not otherwise required as part of the Phase Works or the delivery of the Key Requirements and are in any event agreed in writing as being "Agreed Additional Costs" between the Developer and the Clients for the purposes of this Agreement and the relevant Building Agreement);
- (b) **Best Consideration** means:
- (i) the Independent Surveyor has certified to the Client that any statutory obligation of either Client to obtain best consideration upon the grant of the Leases of the relevant Phase will be satisfied; and
- (ii) the Client is satisfied (acting reasonably) that having regard to the advice of the Independent Surveyor it is more likely than not to receive a financial return by way of Overage which is no less than the Overage Target for the Phase;
- (c) **Developers Profit** means:
- 19% of (Revised Gross Development Value excluding the Viability Sum and the aggregated sales values for the Affordable Housing Units);
- (d) **Financial Appraisal Model** in carrying out the Viability Test for any Phase means the following calculation:
- A - B
- Where
- A = Revised Gross Development Value
- B = Revised Gross Development Costs
- (e) **Ground Rent Investment** means the anticipated investment value of the ground rent income stream receivable by the Developer together with any other value or consideration attributable to the tenant's interest in the Lease following Disposal of the Private Housing Units;
- (f) **Independent Surveyor** means the independent surveyor appointed pursuant to paragraph 16 of this Schedule;
- (g) **Overage Target** means the following amounts in respect of each Phase being:
- Phase 2 £5 million
- Phase 3 £6 million
- Phase 4 £7 million

(h) **Planning Preparation Trigger Points** has the meaning given in paragraph 9 of this Schedule;

(i) **Revised Gross Development Costs** for each Phase is the aggregate of the following in each case determined consistently with the Financial Model and as agreed between the Client and the Developer or in the absence of such agreement as determined by the Independent Surveyor:

legal costs in relation to the Building Agreement +  
Additional Land costs (where relevant) +  
SDLT  
site investigation costs +  
reserved matters Planning costs +  
S106 costs +  
design & build Construction costs including professional fees +  
NHBC costs +  
marketing suite costs +  
residential sales legal costs +  
marketing / advertising costs +  
sales agent costs +  
finance and interest costs at 3.5% above 3 month LIBOR +  
Developer's Profit

And for the avoidance of doubt Revised Gross Development Costs shall exclude any Agreed Additional Costs;

(j) **Revised Gross Development Value** for each Phase means the aggregate of the following in each case determined consistently with the Financial Model as agreed between the Client and the Developer or in the absence of such agreement as determined by the Independent Surveyor:

the Tender Base Threshold Level for the Phase +  
anticipated value of the Ground Rent Investment +  
anticipated value of the Commercial Units +  
anticipated value of any car parking spaces +  
anticipated aggregated sales values for the Affordable Housing Units +  
the Viability Sum;

(k) **Tender Base Value** means in respect of any Phase the value per square foot (psf) of Gross Internal Area which gives rise to the application to determine the threshold level for the payment of Overage and being (in respect of the Phase stated) as follows:

Phase 1a £351 psf;  
Phase 1b £362 psf;  
Phase 2 £366 psf;  
Phase 3 £367 psf;  
Phase 4 £389 psf;

(l) **Tender Base Threshold Level** means for any Phase, the relevant Tender Base Value multiplied by the anticipated aggregate of the Gross Internal Area of all the individual Private Housing Units within the relevant Phase;

*On behalf of  
County Council  
Shan*

*Calculation*

- (m) **Viability Base Threshold Level** means when the Viability Test is undertaken and satisfied, the aggregate of the Tender Base Threshold Level plus the Viability Sum for that Phase;
- (n) **Viability Base Value** means the value per square foot calculated by dividing the Viability Base Threshold Level by the aggregate of the anticipated Gross Internal Area of all the individual Private Housing Units within the relevant Phase;
- (o) **Viability Condition** means that in respect of Phase 2, Phase 3 and Phase 4 ~~if~~ either the Developer has accepted the application of the Tender Base Value or (ii) the Viability Test has been undertaken and satisfied and the Client has agreed in accordance with paragraph 6 of this Schedule that Best Consideration has been achieved;
- (p) **Viability Sum** is initially £0 but then the amount of money that the Developer and the Client agree is needed to be added to the Revised Gross Development Value so that the Viability Test is passed and Best Consideration achieved in accordance with paragraph 13(h) below;
- (q) **Viability Test**, if undertaken at the Developers request, will be deemed to be satisfied when the Financial Appraisal Model equals £1 (excluding Overage). If the Financial Appraisal Model produces a result less than a £1 the Viability Test is deemed not to have been satisfied.

*OK on behalf of County etc & shown*

- 2 The Developer shall serve notice upon the Client no later than the date referred to in paragraph 9.4 confirming in relation to Phase 2, Phase 3 or Phase 4 that either:
- (a) it accepts that the Tender Base Value will apply to that Phase to calculate Overage; or
- (b) it does not accept that the Tender Base Value will apply to calculate Overage.
- 3 If the Developer does not accept the application of the Tender Base Value a Viability Test shall be applied for Phase 2, Phase 3 and Phase 4 (subject to paragraph 6 below) in order to satisfy the Viability Condition.
- 4 If the Developer does confirm its acceptance of the Tender Base Value for a Phase then the Viability Condition will be deemed satisfied in respect of that Phase.
- 5 In the event that the Developer calls for a Viability Test the Developer will complete a Financial Appraisal Model for the relevant Phase using realistic up-to-date assumptions on values and costs as agreed by the Client and the Developer or failing such agreement as determined by the Independent Surveyor to ascertain the Revised Gross Development Value and Revised Gross Development Costs for the Phase.
- 6 Where the Viability Test has been called for, the Client must give its approval in order for the Phase to proceed and the Viability Condition to be treated as satisfied and (without limitation) the Client will be entitled to withhold approval if it is not satisfied (acting reasonably) that it is achieving Best Consideration.
- 7 The Viability Test can be undertaken at two stages at the election of the Developer being at:

- (a) the Pre Planning Submission Viability Test in which case paragraph 9 shall apply; and
- (b) the Post Planning Consent Pre Drawdown Viability Test in which case paragraph 10 shall apply;

Provided That (and subject to paragraphs 9.5 and 10.5) the Developer may only elect once in each case and must notify the Client of its election prior to the date required for the Pre Planning Submission Viability Test referred to in paragraph 9.4.

- 8 Where the Viability Test is undertaken and satisfied the Viability Base Value shall be the Viability Base Threshold Level divided by the anticipated Gross Internal Area of the Private Housing Units.

#### 9 Pre Planning Submission Viability Test

- 9.1 On the basis the Performance Criteria for the previous Phases are and continue to be met, the Developer shall undertake planning work in accordance with the timeframes and the Planning Preparation Trigger Points for the Phases as set out in this Agreement.

- 9.2 The Planning Preparation Trigger Points shall be 12 months prior to the anticipated Date of Practical Completion for the previously commenced Phase. The Detailed Application in respect of the Phase should therefore be submitted within 4 months thereafter.

- 9.3 ~~On achieving the principles of an acceptable design within the parameters of the Outline Planning Permission, the Key Requirements and the Approved Plans and the approval of the Client as required by this Agreement the Developer will prepare and progress the Detailed Application in accordance with clause 4.2.1 of this Agreement~~

*OK on behalf of County etc and shown*

- 9.4 The Developer will undertake the Pre-Planning Submission Viability Test, 10 Working Days before the date upon which it is required to submit the draft Detailed Application to the Client for its approval. Subject to the Client's approval, this could entail a variation to the Key Requirements. If the Viability Test is satisfied and the Client gives its approval to the Viability Test and Detailed Application, the Developer may submit the Detailed Application.

- 9.5 If the Viability Test is not passed or Best Consideration is not achieved, the Developer will have 4 months from the date of such Viability Test to continue to review the Viability Test and seek Client approval. At the end of such 4 month period if the Viability Test is still not satisfied nor Client approval obtained, the Developer or the Client may serve notice on the other to determine the obligations of the parties in respect of the relevant Phase and the provisions of Clause 23.7 shall apply to such determination.

*OK on behalf of County etc and shown*

#### 10 Post Planning Consent Pre-Drawdown Viability Test

- 10.1 Following grant of an Acceptable Permission in respect of the Phase and the expiry of a period of 3 months and 3 Working Days post exchange of the Planning Agreement relating thereto a Post Planning Consent Pre-Drawdown Viability Test shall be undertaken by the Developer within 10 Working Days thereafter.

- 10.2 The Viability Test shall be conducted in the same manner as the Pre-Planning Submission Viability Test but the Revised Gross Development Costs shall be based on the current build cost, affordable revenue, the estimated private housing sales



receipts and the proposed budgeted other values and costs as well as the Developer's Profit.

- 10.3 Insofar as reasonably possible the Viability Test should be last of the Secondary Conditions to be satisfied. In the event that other Secondary Conditions are still to be satisfied these must be satisfied within 4 months of the date on which Viability Test is satisfied and in either case the Building Agreement for the Phase must be completed within 4 months of satisfaction of the Viability Test. The Viability Test will otherwise be deemed not to have been satisfied and shall be repeated.

- 10.4 If the Planning Pre-Drawdown Viability Test is not satisfied or Best Consideration is not achieved, then the Developer will have 9 months from the date of such Viability Test to continue to review the Viability Test or seek Client approval. Subject to the Client's approval, this could entail a variation to the Key Requirements. If the Developer agrees to accept a lower level of developers profit than the Developer's Profit, then it shall be entitled to recover any profit shortfall as a priority return prior to Overage being paid pursuant to the Building Agreement. At the end of the 9 month period, if the Viability Test is still not passed nor Client approval obtained, the Developer or the Client may serve notice on the other to determine the obligations of the parties in respect of the relevant Phase and the provisions of Clause 23.7 shall apply to such determination.
- DAC on behalf of Countryside & Swan*

11 The Developer shall:

11.1 keep the Client's Representatives fully and regularly informed of its progress with this Schedule and the matters referred to herein;

11.2 make available to the Client all such documentation as the Client's Representatives and/or the Independent Surveyor may reasonably require in order to consider the Viability Test and the application of this Schedule; and

11.3 shall in any event act in good faith in relation to the operation of this Schedule.

12 For the avoidance of doubt in calculating Revised Gross Development Costs the finance and interest costs referred to in the definition of the Revised Gross Development Costs shall be reviewed at the start of Phases 2, 3 and 4, to ensure they are competitive and shall be agreed between the Client and the Developer (acting reasonably).

13 It is also agreed in relation to the Revised Gross Development Costs that:

- (a) costs in relation to the set-up, management or administration of the arrangements between Swan and Countryside or Countryside's Guarantor (or any other Sub-Developer) shall not be included (or any dispute between them);
- (b) the same costs may not be included more than once and a consistent approach shall be applied across each Phase in respect of the apportionment of costs incurred in relation to more than one Phase;
- (c) development management fees shall not be included;
- (d) all costs shall be reasonably and properly incurred;
- (e) the Developer shall work with the Client on an open book basis;
- DAC on behalf of Countryside & Swan*

(f) the Developer shall demonstrate to the reasonable satisfaction of the Client that the assessment and calculation of the Revised Gross Development Costs and the Revised Gross Development Value is consistent with the assessment and calculation of the Development Costs and the Gross Development Value (as the case may be);

(g) notwithstanding the provisions of this Schedule the Developer shall continue to comply with the Programme; and

(h) in calculating the Viability Sum this shall be such sum as the Developer and the Client agree (acting reasonably) is the minimum required such that when aggregated with the Tender Base Threshold Level will be less than the anticipated Private Housing Sales Proceeds (defined in Schedule 5 of the Building Agreement) while enabling the Client to achieve Best Consideration through the Overage.

14 In the event that the Viability Test is not applied the Overage shall be 60% for the purposes of the Building Agreement and the Tender Base Value shall be the Agreed Base Value for the purposes of calculating the Overage pursuant to the Building Agreement for that Phase.

15 In the event of a Viability Test being undertaken in respect of a Phase, the Overage shall be increased to 75% and the Viability Base Value shall be the Agreed Base Value for the purposes of calculating the Overage pursuant to the Building Agreement for that Phase.

16 In this Schedule, where any issue is required to be dealt with by, or submitted for the determination of, an Independent Surveyor, the following provisions of this paragraph 16 are to apply:

16.1 The Independent Surveyor is to be appointed by the parties jointly, or if they cannot or do not agree on the appointment, appointed by whichever of the following is appropriate:

- (a) the president from time to time of the Royal Institution of Chartered Surveyors; or
- (b) or the duly appointed deputy of the president, or other person authorised by him to make appointments on his behalf.

16.2 The person so appointed is to:

16.2.1 act as an expert, and not as an arbitrator; ~~and~~

16.2.2 in certifying Best Consideration to the Client, the Independent Surveyor must be satisfied that the Revised Gross Development Costs (other than Developers Profit) represent competitively tendered prices/costs and are fair and reasonable in the circumstances and will produce any reports or red book valuations reasonably required by the Client; ~~and~~

*DAC for behalf of Countryside & Swan*

16.2.3 must afford the parties the opportunity within such a reasonable time limit as he may stipulate to make representations to him on costs and values that make up the Revised Gross Development Value and Revised Gross Development Costs and permit each party to make submissions on the representations of the other.

- 16.3 Neither the Client nor the Developer may without the consent of the other disclose to the Independent Surveyor correspondence or other evidence to which the privilege of non production ("without prejudice") properly attaches.
- 16.4 The fees and expenses of the Independent Surveyor, including the cost of his nomination, are to be borne as the Independent Surveyor may direct (but in the absence of such a direction, by the parties in equal shares), but (unless they otherwise agree) the parties shall bear their own costs with respect to the determination of the issue by the Independent Surveyor.
- 16.5 One party may pay the costs required to be borne by another party if they remain unpaid for more than 21 days after they become due and then recover these and any incidental expenses incurred from the other party on demand.
- 16.6 If the Independent Surveyor refuses to act, becomes incapable of acting or dies, the Client or the Developer may request the appointment of another expert in his stead under paragraph 16.1.
- 16.7 The determination of the Independent Surveyor, except in case of manifest error, is to be binding on the Client and the Developer.

**EXECUTION PAGE**

Executed under the common seal of  
**THE MAYOR AND BURGESSES OF THE**  
**LONDON BOROUGH OF TOWER**  
**HAMLETS**  
 in the presence of:

Authorised Signatory

Authorised Signatory

Signed by duly authorised person on behalf  
 of **HOMES AND COMMUNITIES**  
 AGENCY:

Authorised Signatory

Authorised Signatory

Executed as a deed by  
**SWAN HOUSING ASSOCIATION**  
**LIMITED** acting by:

Director



Secretary

Director





2600

Executed as a deed by  
**COUNTRYSIDE (IN PARTNERSHIPS)**  
**LIMITED** acting by:

)  
)  
  
Director  
  
~~Secretary~~  
Director

Executed as a deed by  
**COUNTRYSIDE PROPERTIES (UK)**  
**LIMITED** acting by:

)  
)  
  
Director  
  
~~Secretary~~  
Director

**Appendix C**  
**Approved Additional Costs**  
*Agreed*

*x* ~~*JP*~~ *JC* *x* *hm*  
*12*  
*JB*

## Blackwall Reach PDA – Agreed Additional Costs

It is agreed that there are no Agreed Additional Costs for Phase 1A.

The Agreed Additional Costs for Phase 1B are £1,121,000 which has been derived from the following :

1. Agreed fixed contribution of £500,000 from LBTH / GLA to fund the fully fitted out community centre on Phase 1A.
2. Agreed fixed contribution of £1,169,000 from LBTH / GLA to cover the interest cost of Swan carrying the loss of Phase 1A (which is now 100% affordable in order to assist the decant of Robin Hood Gardens), until Phase 1B has been constructed.
3. Swan to reimburse LBTH / GLA the S106 savings of £374,500 being the difference between what they contractually were obliged to pay and what is actually contained in the S106 Agreement for Phase 1A (£390,000 minus £17,500).
4. Swan to reimburse LBTH / GLA the S106 savings of £173,500 being the difference between what they contractually were obliged to pay and what the likely cost will be as contained in the S106 Agreement for Phase 1B (£2,980,000 minus £2,806,500).

For future Phases of Development, the Agreed Additional Costs in relation to S106 payments will be calculated as follows :

The figures in Box <sup>B</sup>A for each Phase are the contractual payments contained within the PDA. The actual S106 payments as contained in the Section 106 dated March 2012 for each Phase will be inserted in Box ~~B~~A. The Agreed Additional Cost for each Phase is calculated once the actual S106 for that Phase is made, as follows : Box A minus Box B for each Phase. If the answer to the calculation is positive, this sum will be added to the Agreed Threshold Level as calculated in Schedule 5 of the Building Agreement. If the answer to the calculation is negative, this sum will be deducted from the Agreed Threshold Level as calculated in Schedule 5 of the Building Agreement.

Phase	BOX A = Actual S106 paid	BOX B = Contracted S106 Payment	Agreed Additional Cost = BOX A minus BOX B
2		£1,956,000	
3		£5,412,000	
4		£3,560,000	