

DATED 10<sup>th</sup> December 2013

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

**GLA LAND AND PROPERTY LIMITED**  
as the GLA

**SWAN HOUSING ASSOCIATION LIMITED**  
as the Developer

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

and

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

**DEED OF AMENDMENT AND RESTATEMENT**

of

Principal Development Agreement relating to Blackwall Reach

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Agreed

**DATED**

10th December 2013

**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) **GLA LAND AND PROPERTY LIMITED** (company number 07911046) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**GLA**")
- (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) This Deed is supplemental to the Principal Development Agreement.
- (B) The Parties have agreed to vary the provisions of the Principal Development Agreement as described below.
- (C) The Localism Act 2011 ("**the Localism Act**") devolved the housing and regeneration functions of the Homes and Communities Agency ("**Agency**") in Greater London to the Greater London Authority. Section 190 of the Localism Act provides for property, rights and liabilities of the HCA to be transferred to the Greater London Authority or a subsidiary company of the Greater London Authority by transfer scheme. A scheme which transferred property, rights and liabilities of the HCA in Greater London (the "**HCA transfer scheme**") was made on 30 March 2012. The HCA transfer scheme transferred certain property, rights and liabilities to the Greater London Authority and certain property, rights and liabilities to GLA, a subsidiary company of the Greater London Authority.

**OPERATIVE PROVISIONS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1** In this Deed:

"**Principal Development Agreement**" means the Principal Development Agreement relating to Blackwall Reach Tower Hamlets dated 19 April 2011 and made between (1) The Mayor and Burgesses of the London Borough of Tower Hamlets (2) Homes and Communities Agency (3) Swan Housing Association Limited (4) Countryside Properties (in partnership) Limited and (5) Countryside Properties (UK) Limited.

"Parties" means the parties to this Deed.

"Revised Principal Development Agreement" means the document annexed to this Agreement as Appendix 1 along with the appendices and schedules annexed to that.

References to the Agency will be treated as references to GLA.

Save where the context otherwise requires, this Deed shall take effect and be read and construed subject to the provisions of Clause 1 of the Principal Development Agreement (as hereby varied) and the words and expressions defined in the Principal Development Agreement (as hereby varied) shall bear the same meaning in this Deed.

## 2 VARIATION

2.1 The Parties agree that the Principal Development Agreement shall be varied by:

- (a) the removal of the words shown in red strike out in the Revised Principal Development Agreement;
- (b) the addition of the words shown in blue underline in the Revised Principal Development Agreement;
- (c) the removal and replacement of the appendices set out in the table below:

Appendix Number	Title
2	Approved Plans
<del>5</del>	<del>Residents' Charter</del>
7	Programme
9	Land Ownership Plan
11	Performance Criteria
<del>12</del> 12	<del>Decant Strategy</del> Decant Strategy
16	Community Building Requirements
20	Agreed Residential Mix

So that, with effect from the date of this Deed, the annexures to the Revised Principal Development Agreement are those annexed to it by this Deed.

2.2 With effect from the date of this Deed the Principal Development Agreement shall take effect and be read and construed subject to the variations set out in this Clause 2 (*variation*).



- 2.3 The Parties confirm that the provisions of the Principal Development Agreement (save as varied by this Deed) shall continue in full force and effect.

### 3 COSTS

Each party shall bear its own costs in connection with the preparation, negotiation and completion of this Deed.

### 4 ACKNOWLEDGEMENT AND CONFIRMATION

The parties hereby record and agree and confirm that:

- (a) the Outline Planning Condition has been satisfied so that the Outline Planning Relevant Date is 19 April 2012, and the obligations of the Client pursuant to Clauses 11 and 13 of the Principal Development Agreement have been complied with;
- (b) the parties agreed to depart from the provisions of Clause 4.2 and Clause 4.4 of the Principal Development Agreement and that a reserved matters planning application for Phase 1A was submitted on 5 October 2012. A Section 106 agreement in respect of ~~Phase 1A~~ <sup>the Development to which affects Phase 1A</sup> was also completed on 30 March 2012;
- (c) further to Clause 4(b) above, the Planning Strategy and Clause 4 of the Principal Development Agreement shall be treated as ~~amended as necessary to reflect Clause 4 of the Principal Development Agreement;~~ <sup>amended in respect of Phase 1A</sup> satisfied;
- (d) the Relevant Date shall be treated as being 19 April 2012;
- (e) both the outline planning permission dated 30 March 2012 and issued under reference PA/12/00001/LBTH, and the planning permission in respect of Phase 1A dated 24 December 2012 and issued under reference PA/12/02752 are Satisfactory Planning Permissions.
- (f) the Mosque Land was acquired by the GLA on 26 March 2013, so that the obligations of the GLA under clause 8.4 of the Principal Development Agreement were complied with by that date and the parties confirm that clause 8.5 do not apply.
- (g) for the purposes of paragraph 1(a) ~~and 1(i)~~ of Schedule 6 of the Principal Development Agreement the Agreed Additional Costs (as defined in that Schedule) have been agreed in writing at the date of this Deed and are annexed to this Deed as Appendix ~~B~~ <sup>C</sup>.
- (h) pursuant to clause 58.3 and Appendix 16 to the Principal Development Agreement, the Developer will forthwith progress proposals for the ongoing management and use of the Community Building, and following approval of these proposals by the Client (acting reasonably) will procure that these proposals are carried out as part of the Development.

### 5 CONSENT OF GUARANTORS

Each of the parties to this Deed confirms that their respective obligations contained in the Principal Development Agreement continue in full force and effect and apply to the Principal Development Agreement as varied by this Deed.

6        **MEMORANDUM**

The Parties each agree to endorse a memorandum of this Deed on the parts of the Principal Development Agreement held by the Parties and as soon as reasonably practicable to supply to the other party a certified copy of the same.

7        **INVALIDITY OF CERTAIN PROVISIONS**

If any term of this Deed or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable the same shall be severable and the remainder of this Deed or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Deed shall be valid and be enforced to the fullest extent permitted by law.

8        **THIRD PARTY RIGHTS**

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

**IN WITNESS** whereof the parties have executed and intend this Deed to be delivered on the day and year first before written.

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

Head of Legal Services  
(Environment)

ME413/377

Executed as a deed by **GLA LAND AND** )  
**PROPERTY LIMITED** acting by )

Director

In the presence of:

Witness Signature

Witness Name (in BLOCK CAPITALS) L PRICE

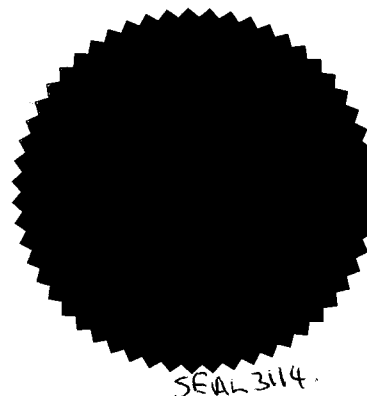
Witness occupation Head of Office

Witness Address City Hall, The Queen's  
Walk, SE1 2AA.

Executed as a deed by )  
**SWAN HOUSING ASSOCIATION** )  
**LIMITED** acting by: )

Director

Secretary



Executed as a deed by )  
**COUNTRYSIDE (IN PARTNERSHIPS)** )  
**LIMITED** acting by: )

Director

Director / Secretary

~~Director~~

~~Director~~

Executed as a deed by )  
**COUNTRYSIDE PROPERTIES (UK)** )  
**LIMITED** acting by: )

Director

Director

**Appendix A**  
**Revised Principal Development Agreement (with annexures as revised)**

*[Handwritten signatures and initials in blue ink]*

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

(AS REVISED BY A DEED OF AMENDMENT AND RESTATEMENT)

Conformed Copy

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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~~ reserved matters approval in relation to the Phase 1b Land ~~forthwith upon satisfaction of the Outline Planning Condition~~ within 9 months of the date of the Deed of Amendment.



- (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~~ the Required Demolition Date.
- (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 in total 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.

**"Deed of Amendment"** means the Deed of Amendment and Restatement to which this Agreement is appended.

**"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-mark~~trademarks, 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~~575 (inc. Criterion) 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 ~~134~~ Affordable Shared Equity Units of which 10 must be provided in relation to Phase 1a and ~~243~~ provided in relation to Phase ~~1b2~~;
- (d) a minimum of ~~1610~~ Affordable Shared Ownership Units;
- (e) a minimum of 534 Affordable Rented Units of which ~~5279~~ must be provided in relation to Phase 1a and ~~8112~~ in relation to Phase ~~1b2~~;
- (f) the Community Building extending to circa ~~52500~~ sqm 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~~the Required Demolition Date;



- (i) a minimum of 18,284,000 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 41,710 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;

11835,6303 sq ft Phase 1b;

1086,747650 sq ft Phase 2;

1390,189675 sq ft Phase 3;

193,9244,450 sq ft Phase 4;

- (l) ~~a new~~ replacement provision for the bus turnaround for Blackwall Reach;
- (m) up to 1680 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~~ [the Required Demolition Date](#).

**"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.

**"Required Demolition Date"** means [1 May 2016 or such date as the Council shall specify by which Robin Hood Gardens West must be demolished \(having regard to the Programme\)](#).

**"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"** means:

- (a) in respect of the Phase 1b Land, 30 July 201~~24~~<sup>45</sup>; 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 201~~45~~<sup>45</sup>;
  - (ii) in respect of Phase 3, 31 August 201~~67~~<sup>67</sup>;
  - (iii) in respect of Phase 4, 31 October 201~~78~~<sup>78</sup>;

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
- (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, wayleave, lease, deed of grant or other legal document entered into pursuant to any enactment relating to drainage, sewerage, the provision of electricity, gas, or telecommunications, 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~~ GLA City Hall The Queens Walk More London ~~W1T 7BN~~ London SE1 2AA (marked for the attention of ~~Emma Wilson, Project Manager~~ the Executive Director, Housing and Land) 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~~ Group 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~~ GLA City Hall The Queens Walk More London London SE1 82AA (marked for the attention of ~~Emma Wilson Project Manager~~ the Executive Director, Housing and Land) 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, unless the parties agree otherwise, at least every ~~three~~four 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~~every four weeks 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; or Statutory 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~~ the Required Demolition Date.

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 Workings 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 an 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.

## 50 **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.

## 51 **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.

## 52 **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, and the Developer shall indemnify the Client against all costs, expenses, liabilities or claims arising if the Client is required to enter into a Statutory Agreement in advance of commencement of Phase Works for a relevant Phase, in order to enable Phase Works to progress.

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, Statutory Agreement, 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 or Statutory 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.
- 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 ~~ee~~



~~operation~~cooperation 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 as set out in Clause 30.1(a).
- 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.



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~~may 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;~~
  - (i) ~~(ii)~~ the use of Community Payment for the benefit of the Blackwall Reach Trust;
  - (ii) ~~(iii)~~ provision of recreational facilities and activities for residents including specific groups including young people, women, disabled and elderly residents;
  - (iii) ~~(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
- (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

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.**



**Schedule 1**  
**Building Agreement**

DATED [•]

P [Signature] JC

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS**  
as Client

**GLA LAND AND PROPERTY LIMITED**  
as GLA

**SWAN HOUSING ASSOCIATION LIMITED**  
as Developer

**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 "**Client**")
- (2) **GLA LAND and PROPERTY LIMITED** a company registered in England and Wales under company number 07911046 and whose registered office is situated at Windsor House 42-50 Victoria Street London SW1H 0TL (the "**GLA**")
- (3) **SWAN HOUSING ASSOCIATION LIMITED** (IP no 28469R) of Pilgrim House High Street Billericay Essex CM12 9XY (the "**Developer**")

## BACKGROUND

- (A) This Agreement is entered into pursuant to the terms of the Principal Development Agreement.
- (B) The Client and the GLA (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 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.

**"Anticipated Completion Date"** means 31 March 2015 as such date may be extended pursuant to this Agreement.

**"Anticipated Block and Watertight Date"** means the date upon which it is anticipated that a Block will be Wind and Watertight as defined in this Agreement.

**"Anticipated Phase Approved Stage Date"** means the date upon which it is anticipated that the Phase will reach Wind and Watertight as defined in paragraphs (a)-(f) of the definition of Approved Stage.

**"Approved Stage"** means in respect of the Phase:

- (a) each Block has reached Wind and Watertight Stage;
- (b) in respect of the remainder of the Phase Works:
  - (i) no tower cranes, scaffolding or other static building equipment remains on the land to be demised with the Block; and
  - (ii) 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;
  - (iii) 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.

**"Approved Stage Certificate"** means a certificate to the effect that the Employer's Representative is satisfied that a Phase has reached Approved Stage.

**"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 [●].

**"Block Lease Completion Date"** means 10 Working Days after the Certificate of Wind and Watertight for the Block has been issued or such earlier date as the parties may agree in writing.

**"Block Lease"** means a lease of the Block in the form of the drafts contained in Appendix 5 to be granted by the Client to the Developer pursuant to Clause 18 (*Completion of Phase Lease*) for a term of 250 years from the Block Lease Completion Date.

**"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 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.

**"Certificate Date"** means the date upon which the Wind and Watertight Approved Stage Certificate is issued by the Employer's Representative pursuant to the terms of this Agreement and the Building Contract.

**"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.

**"Client's Certificate"** means the certificate issued by the Client's Surveyor confirming that the requirements of Clause 13 (*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"** has the meaning given to it in 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.

**"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 17 (*Estate Management Arrangements*).

**"Event of Default"** means any of the events described in Clause 19 (*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.

**"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.

**"Longstop Date"** means [●] being 24 months from and including the date of this Agreement as such period may be extended in accordance with this Agreement.

**"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 any space comprising part of the Phase that is designated as such under the outline planning permission for the Phase Works.

**"Overage"** has the meaning given to it in Schedule 5 [●].

**"Phase"** means the phase comprising the Phase 1a Land.

**"Phase 1a Land"** has the same meaning as in the Principal Development Agreement.

**"Phase Lease"** means a lease of the Phase in the form of the drafts contained in Appendix [ ] to be granted by the Client to the Developer pursuant to Clause 18 (*Completion of Phase Lease*) for a term of 250 years from the Phase Lease Completion Date.

**"Phase Price"** means £[●].

**"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 2.

**"Phase Works"** means 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.

**"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.

**"Principal Development Agreement"** means the Principal Development Agreement dated 19 April 2011 between (1) The Mayor and Burgesses of the London Borough of Tower Hamlets and (2) The Homes and Communities GLA (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"** means the programme contained in Appendix [●].

**"Prohibited Materials"** has the meaning given to it in the Principal Development Agreement.

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<sup>1</sup> This should include all key consultants.

**"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.

**"Sustainability Standards"** has the meaning given to it in the Principal Development Agreement.

**"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 [●] 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.

**"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 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 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.



**"Wind and Watertight Certificate"** 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.

**"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 is date of Build contract**]

- 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 GLA 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 GLA 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. Notwithstanding any other provision, the Client and the GLA shall provide such acceptance, consent, approval or agreement within ten (10) Working Days from the date of signed receipt by the Client (or such reduced timescales as are provided for in the relevant provisions of this Agreement) and in any event such acceptance, consent, approval or agreement will be deemed to have been given if not refused by the Client or the GLA within such ten (10) Working Days period.

## 2 LICENCE AND VACANT POSSESSION CONDITION

- 2.1 From and including the date of this Agreement the Client grants licence to the Developer to enter on to the Phase 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.

- 2.2 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.
- 2.3 The licences so granted do not confer on the Developer or any other person, any estate, right, title or interest in the Phase Land.
- 2.4 The Developer will vacate and remove its effects from the Phase Land on the termination of the licence.
- 2.5 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 16 (*Block Lease*); and
- 2.6 Risk in and to the Phase Land shall pass to the Developer on the date of this Agreement 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.
- 2.7 The Developer shall from the date of this Agreement becomes unconditional at its cost procure that adequate security for the Phase Land is provided.
- 2.8 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 (ten) Working Days of a request from the Phase Developer which approval shall not be unreasonably withheld. PROVIDED THAT Countryside Properties (In Partnership) 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 10 (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 10 (ten) 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.
- 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 59 (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 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 [five] 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 to 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 identity 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.
- 4.4 Within 10 (ten) Working Days of the completion of each Sub-Contract with significant design responsibility exceeding a value in excess of £200,000 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 5.1(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.

## 5 **THIRD PARTY RIGHTS**

- 5.1 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 10 (ten) 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 5.1(c) to the Client.
- 5.2 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 5 (*Third Party Rights*).

## 6 **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.

## 7 **CARRYING OUT OF THE DEVELOPMENT**

- 7.1 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 using all reasonable endeavours 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 act or omission or default on the part of the Client; and
- (c) 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.

7.2 The Developer shall as soon as reasonably practicable notify the Client of all and any delays to the carrying out of the Phase Works.

7.3 The Developer shall not be entitled to any extensions of time which are attributable to market or economic conditions or slowdown.

## 8 **WIND AND WATERTIGHT OR APPROVED STAGE AND PRACTICAL COMPLETION**

8.1 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 or Certificate of Approved Stage ("**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 10 (*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.

8.2 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.

8.3 If any Certificate is not issued by the Employer's Representative at or following an inspection meeting as referred to in Clause 8.2 then the procedure set out in Clause 8.1 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.

- 8.4 Within three Working Days of each Certificate Date the Developer shall procure that a copy of the Certificate is served upon the Client.
- 8.5 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 8.7 and Clause 8.8 nothing in this Agreement shall prejudice or restrict the Employer's Representative from issuing a Certificate.
- 8.6 Notwithstanding the issue of any Certificate 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.
- 8.7 If following inspection undertaken pursuant to Clause 8.1 the Client's Surveyor serves a list of Outstanding Phase Works in accordance with Clause 8.1 and notwithstanding the Outstanding Phase Works the Employer's Representative certifies that Wind and Watertight Stage or the Approved Stage has occurred then the issue of whether or not the Outstanding Phase Works should have been completed shall be referred to determination in accordance with Clause 21 (*Disputes*).
- 8.8 If any dispute is referred to determination as mentioned in Clause 8.7 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 8.1 to Clause 8.5 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 8.1 may be less than ten but not less than five Working Days.
- 8.9 The Developer shall provide the Client's surveyor with a copy of any Certificate or the Certificate of Practical Completion within 10 Working Days of each such certificate being issued.

## 9 DEFECTS LIABILITY

- 9.1 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.
- 9.2 The Developer shall give the Client's Surveyor not less than ten 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.
- 9.3 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 **SITE VISITS AND INSPECTION**

### 10.1 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 10.1.

### 10.2 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.

### 10.3 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.

### 10.4 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.

### 10.5 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.

## 11 **CONSTRUCTION INDUSTRY SCHEME**

This Clause 11 (*Construction industry scheme*) relates to the Construction Industry Scheme, provided for by chapter 3 part 3 FA 2004.

### 11.1 In this Clause 11 (*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.

- 11.2 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).
- 11.3 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.
- 11.4 In the event of any conflict between Clause 11 (*Construction industry scheme*) and any other term of this Agreement, the provisions of this Clause 11 (*Construction industry scheme*) shall prevail.

## 12 **INSURANCE**

- 12.1 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.
- 12.2 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.
- 12.3 The Developer shall (save where such matters are covered by the Building Contractor's insurance in accordance with Clause 12.1) 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

- 12.4 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.
- 12.5 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.
- 12.6 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.
- 12.7 The parties shall not do anything which may render void or voidable the Building Contractor's insurance of the Phase Land.

### 13 **CLIENT'S CERTIFICATE**

Subject to any delays that are certified by the Employers Representative hereunder 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.

### 14 **TITLE TO THE CLIENT LAND**

- 14.1 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.

- 14.2 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.

## 15 **MATTERS AFFECTING THE CLIENT LAND**

- 15.1 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.



- 15.2 The Developer in respect of the Phase Land is deemed to have full knowledge of all matters referred to in Clause 15.1 and shall raise no objection or requisition in relation to any such matter.

## 16 **BLOCK LEASE**

- 16.1 The Block Lease shall be in the form annexed 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).
- 16.2 The Block Lease shall be granted in respect of each Block comprising in the Phase, as provided below.
- 16.3 The Client shall not withhold approval to any amendment proposed pursuant to a Block Lease 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 17 (*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.
- 16.4 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 Block Lease.
- 16.5 The Block Leases shall demise the entirety of each Block.
- 16.6 At least 20 Working Days before the Anticipated Completion Date 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 Block Leases and the parties shall use all reasonable endeavours to agree such plans having regard to the provisions of Clause 18 (*Completion of Phase Lease*).
- 16.7 If the parties are unable to agree the terms of any amendments required in respect of the Block Lease, or the plans for the Lease then the matter shall be referred for determination pursuant to Clause 21 (*Disputes*).
- 16.8 Subject to determination of the terms of the Block Lease and the relevant plans the Client shall procure that the Client's Solicitors produce engrossments of the Block Lease in original and counterpart format and provide the counterparts of the Block Lease to the Developer's Solicitors at least five Working Days prior to the Date of Wind and Watertight.
- 16.9 Completion of the Block Lease shall take place on the Block Lease Completion Date.

## 17 ESTATE MANAGEMENT ARRANGEMENTS

17.1 Without prejudice to the provisions of Clause 16.1 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 Block Lease or Phase 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.

17.2 The Developer shall procure that the arrangements referred to in Clause 17 (*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).

17.3 The Developer and the Client shall promptly make such amendments to the draft Block Lease or Phase Lease as are required to reflect the arrangements approved by the Client in accordance with the provisions of Clause 17.1 and Clause 17.2.

## 18 COMPLETION OF PHASE LEASE

18.1 At least 20 Working Days before the Anticipated Approved Stage Date 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 the Phase (which comply with the requirements of the Land Registry) for use as the



demise plan for the Phase Lease shall use all reasonable endeavours to agree such plans having regard to the provisions of Clause 17 (*Estate Management Arrangements*).

- 18.2 Within 20 Working Days of the issue of the Approved Stage Certificate, and subject to Clause 15 (*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 GLA grants and the Developer shall accept the grant of the Phase Lease.
- 18.3 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 Phase Lease Completion Date.
- 18.4 Where appropriate the Developer shall procure that the Estate Management Company enters into the Lease.
- 18.5 Where the freehold in the Phase Land (or that part of it which is to be comprised in the Phase Lease) is vested in the GLA the GLA will join in the grant of the Lease.

## 19 **EVENTS OF DEFAULT**

- 19.1 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 7.1) (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 7.1);
  - (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.
- 19.2 Where an Event of Default has occurred the Client may (subject to Clause 19.3 and Clause 1.1 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.

19.3 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 19.1(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 21 (*Disputes*).

19.4 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.

## 20 **NOTICES**

20.1 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.

20.2 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 GLA at GLA, City Hall, The Queen's Walk, London, SE1 2AA (marked for the attention of the Executive Director of Land and Property



Directorate) or in both cases at such other address as the Client may notify from time to time.

20.3 Any notice which is required to be served on the Developer shall be served [*please provide details*].

20.4 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.

## 21 **DISPUTES**

21.1 Whenever there is a dispute between the Client or the GLA and the Developer which either party refers to resolution pursuant to this Clause 21 (*Disputes*) the Director of Development and Renewal of the Council, the Head of the London Region of the GLA 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.

21.2 Where in this Agreement reference is made to a dispute being referred to an expert in accordance with this Clause 21 (*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 21 (*Disputes*) as the "**Expert**".

21.3 For the purpose of this Clause 21 (*Disputes*) and all references for disputes to be determined pursuant to this Clause 21 (*Disputes*) the Developer's Guarantor shall not be entitled to refer any matter to determination pursuant to this Clause 21 (*Disputes*). References in this Clause 21 (*Disputes*) to the "**parties**" shall exclude the Developer's Guarantor.

21.4 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.

21.5 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.

## 22 **ENTIRE AGREEMENT, NON-MERGER**

22.1 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.

22.2 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.

## 23 **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.

## 24 **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.

## 25 **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.

## 26 **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.