

DATED 8 April 2014

THE GREATER LONDON AUTHORITY (1)

ST JAMES WEST LONDON LIMITED (2)

and

ST JAMES GROUP LIMITED (3)

PROMOTION AGREEMENT

**relating to a proposed Compulsory Purchase
Order for housing and regeneration at the
former Southall Gasworks**

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BETWEEN:

- (1) **THE GREATER LONDON AUTHORITY** of City Hall, The Queen's Walk, London, SE1 2AA (the "**Authority**");
- (2) **ST JAMES WEST LONDON LIMITED** (company no 06013820) whose registered office is at 19 Portsmouth Road Cobham Surrey KT11 1JG (the "**Developer**"); and
- (3) **ST JAMES GROUP LIMITED** (company no 3190056) whose registered office is at 19 Portsmouth Road Cobham Surrey KT11 1JG (the "**Surety**").

RECITALS

- (A) The Developer has put forward proposals to the Authority for the carrying out of the Development.
- (B) In order for the Development to be carried out it is necessary for further interests in land to be acquired by the Developer.
- (C) The Developer wishes the Authority to consider exercising its powers of compulsory purchase in the event that such acquisitions cannot be made by private treaty.
- (D) The Authority and the Developer have agreed that the Developer will bear the costs of preparations for the proposed use of such powers and the costs and expenses associated with the making of the proposed compulsory purchase order should the Authority so decide, and the compensation and acquisition costs and associated expenses of the acquisition of the land to be acquired on the terms of this Agreement.
- (E) The Authority and the Developer have further agreed on provisions to incentivise the Developer to carry out the Development.
- (F) The Surety has agreed to enter into this Agreement to guarantee the obligations of the Developer as primary obligor.

THE PARTIES AGREE AS FOLLOWS:

1 Definitions and Interpretation

- 1.1 In this Agreement unless the context otherwise requires the words and expressions listed below shall bear the meanings set under them:

"**Authority's Agent**" means Deloitte LLP of Athene Place 66 Shoe Lane London EC4A 3BQ or any substitute firm of suitably qualified surveyors approved by the Developer and appointed by the Authority to act as agent of the Authority for the purposes of assessing and negotiating

Compensation with Owners pursuant to this Agreement and otherwise providing valuation and compulsory purchase advice in relation to the Development and having a duty of care to the Developer;

"Authority's Solicitors" means Wragge & Co LLP 55 Colmore Row Birmingham B3 2AS or such other solicitors who may be appointed by the Authority to act for it in relation to this Agreement and whose appointment is notified to the Developer;

"Base Rate" means interest at the base rate of Barclays Bank Plc for the time being and from time to time (after as well as before judgment) or such other equivalent commercial rate as the Authority may reasonably designate if the base rate ceases to be published compounded at quarterly rests on 31st March, 30th June, 30th September and 31st December in each year;

"Blight Notice" means any valid blight notice served on the Authority under the provisions of Section 149 of the Planning Act or any statutory amendment or modification in respect of any Interest in the Order Land;

"Bond" means a financial bond to be provided in accordance with clause 7.4 by a financial institution and in a form to be approved by the Authority;

"Change of Control" means that a person (other than a company whose shares are listed on a stock exchange for public trading) had Controlled any person and then ceases to do so;

"Communication Strategy" means a protocol for external communications to be agreed and revised between the Authority and the Developer from time to time;

"Compensation" means all amounts properly paid or payable to persons in respect of Interests under the law relating to compensation for compulsory purchase including the value of land or an interest in land taken, disturbance, injurious affection, severance (pursuant to a claim under section 8 of the Compulsory Purchase Act 1965) and depreciation (pursuant to a claim under section 3 of the Land Compensation Act 1973 or under Part 1 of the Land Compensation Act 1973) whether arising in consequence of an acquisition by agreement or following a notice to treat, a deemed notice to treat as a result of a Blight Notice or the making of a GVD, any compensation for injurious affection arising in consequence of the Development under section 10 of the Compulsory Purchase Act 1965, and such fees, VAT and statutory interest as are payable in accordance with those provisions;

"Confidential Information" means the PCE and all other information in respect of the business of the Authority the Developer or the Surety including, without prejudice to the generality of the foregoing, any ideas, business methods, pricing or financial information, business financial marketing development or manpower plans, customer lists or details, computer systems and software, products or services including information concerning the Authority's the Surety's or the Developer's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Authority the Surety or the Developer and any other information which, if disclosed, will be liable to cause harm to the

Authority the Surety or the Developer;

"Conflict of Interest" includes a conflict between the Authority's duty to act in the public interest and the Developer's interest as a developer of residential and commercial property;

"Contract Information" means this Agreement in its entirety (including from time to time agreed changes to this Agreement);

"Control" means that a person (A) possesses the power to direct or cause the direction of the management and policies of another person (B) by reason either that A has direct ownership of voting shares in B, or that A holds the power to appoint directors of B and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Counsel" means David Elvin QC or such other counsel as the Authority shall appoint with the approval of the Developer (unless there is a Conflict of Interest);

"CPO" means a compulsory purchase order to be made by the Authority in respect of the Interests and New Rights required to facilitate the Development and to be made pursuant to Section 333ZA of the Greater London Authority Act 1999;

"CPO Costs" means the costs and expenses incurred by the Authority (whether before or after the date of this Agreement) in performing its obligations under this Agreement and (without prejudice to the generality of the foregoing) as specified in Schedule 2 less the sum referred to in Clause 24;

"Default Sum" means in relation to a Proposed Drawdown Notice 60% of the aggregate Estimated Compensation payable for the acquisition of the Interests set out in the Proposed Drawdown Notice subject to a minimum sum of £3,000,000 and maximum sum of £9,000,000;

"Delivery Timetable" means a timetable prepared by the Developer for the carrying out of the Development in phases assuming the confirmation by the Secretary of State of a Satisfactory CPO;

"Developer's Agent" means a firm selected by the Developer for the purpose of providing valuation and other advice as the Developer may seek from time to time;

"Developer's Interests" means any and all Interests in the ownership of the Developer immediately before the coming into effect of a GVD or the service of a notice to treat;

"Developer's Solicitors" means Ashurst LLP of Broadwalk House, 5 Appold Street, London, EC2A 2HA or such other solicitors who may be appointed by the Developer to act for it and whose appointment is notified to the Authority;

"Development" means the comprehensive redevelopment of the Site and the Order Land for housing and regeneration substantially in accordance with the description and quantum of development referred to in the Ealing Permission and the Hillingdon Permission;

"Drawdown Notice" means a notice served in accordance with clause 8 of this Agreement by the Developer on the Authority requesting the exercise of the confirmed CPO powers by one of the following means:

- (i) the making of a GVD;
- (ii) the service of notice to treat and notice of entry;
- (iii) the service of notice to treat; or
- (iv) in the event of notice to treat having already been served, the service of notice of entry

in respect of the Interests described in the notice;

"Escrow Deposit" means funds deposited in an escrow account on terms approved by the Authority, such terms to ensure that the funds will at all times be available to the Authority and that no person other than the Authority shall have access to the same where the Surety is subject to an Event of Insolvency;

"Ealing Permission" means conditional outline planning permission reference P/2008/3981-S dated 29 September 2010 for the demolition of 22 houses, the remediation of the land and redevelopment of the site to deliver a large mixed use development including residential, non-food retail, food retail, restaurants, bars and cafes, hotel, conference and banqueting, cinema, health care facilities, education facilities, office/studio units, sports pavilion, an energy centre, multi-storey car park and associated car and cycle parking, landscaping, public realm, open space and children's play space;

"End Date" means the date three years less eight weeks following the publication of notice of confirmation of the CPO or if before that date the Steering Group so determines, six years less eight weeks from such publication of notice of confirmation of the CPO;

"Estimated Compensation" means the total of the sums specified in [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] the PCE;

"Event of Insolvency" means by reference to the Insolvency Act 1986 ("the Act") in relation to the Surety the following events or circumstances:

- (a) it is deemed to be unable to pay its debts for the purpose of s123 of the Insolvency Act 1986; or
- (b) an Administration Order is made under Part II of the Act; or
- (c) a receiver or manager (including an administrative receiver) is appointed whether

under Part III of the Act or under the Law of Property Act 1925 or otherwise; or

- (d) a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part IV of the Act (save in the case of a voluntary winding up solely for the purpose of amalgamation or reconstruction whilst solvent); or
- (e) it is removed from the register at Companies House;

“Exchange Land” means land to be given in exchange for any Open Space Land;

“Exchange Land Certificate” means the certificate to be given by the Secretary of State in respect of the Exchange Land pursuant to the provisions of section 19 of the Acquisition of Land Act 1981;

“Exchange Land Deed” means a deed to be entered into between the Parties providing for the undertaking by the Developer of any works required to discharge any undertaking given in connection with any Exchange Land Certificate, such deed to substantially reflect the principles set out at Schedule 4 of this Agreement;

“FOI Legislation” means Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004, and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

“Group Company” means any company which is for the time being a subsidiary of the Developer or any holding company of the Developer or another subsidiary of any holding company of the Developer (in each case within the meaning of Section 1159 of the Companies Act 2006);

“Group One Interests” means the Interests in the plots numbered 21-25 (inclusive), 32, 33, 34, 36, 39, 83-104 (inclusive), 113, 114 and 115 on the Order Map and the Developer's Interests unless otherwise agreed by the Authority and the Developer in writing;

“Group Three Conditions” means the aggregate of:

- (a) securing the discharge of conditions 12 (site wide construction management plan) 36 (strategy for phased remediation) 62 (appointment ecological clerk of works) 63 (ecological surveys) 77 (programme of archaeological work) 78 (programme of archaeological recording) attached to the Ealing Permission to the extent necessary to allow development (or the first phase of development as the case may be) to commence;
- (b) submitting a reserved matters application for the first phase or multiple phases of the Development to include the delivery of at least 500 residential units;

- (c) selecting and agreeing appointment terms with a contractor to commence work on the western access;
- (d) selecting and agreeing appointment terms with a remediation contractor for the remediation of at least the first phase of the development to include at least 500 residential units;
- (e) commence remediation of the Pump Lane western access bridge footings;
- (f) insofar as the land to be acquired pursuant to the CPO comprises of the relevant Group Three Interests:
 - (i) commence either the temporary or permanent Pump Lane western access bridge footings; and/or
 - (ii) appoint the site preparation contractor for at least:
 - i. in relation to the garage, properties in the Crescent and properties in Randolph Road, the first phase of the works (including demolition, site clearance, highway or gas main works as the case may be) comprised in the eastern access;
 - ii. in relation to properties in Beaconsfield Road, the first phase of works (including demolition, site clearance, highway or gas main works as the case may be) comprised in providing access to the site from Beaconsfield Road;
 - iii. in relation to land required for the construction of the Springfield Road footbridge, the first phase of works associated with moving the existing medium pressure gas main in the vicinity of that bridge; and/or
 - iv. in relation to the land required for the construction of the Minet Park Footbridge, the remediation of the bridge foundations;

"Group Three Interests" means the Interests in the plots numbered 18 – 20 (inclusive), 26 – 31 (inclusive), 40 – 62 (inclusive), 63 – 82 (inclusive), and 108--112 on the Order Map unless otherwise agreed by the Authority and the Developer in writing;

"Group Two Conditions" means the aggregate of:

- (a) securing the discharge of conditions 77 (programme of archaeological work) and 78 (programme of archaeological recording) attached to the Ealing Permission to the extent necessary to allow development (or the first phase of development as the case may be) to commence;
- (b) securing the discharge of conditions 7 (construction management scheme) 19 (land survey & remediation scheme) 30 (ecological management plan) 31 (appointment

ecological clerk of works) 32 (ecological surveys) and 37 (programme of archaeological work) attached to the Hillingdon Permission to the extent necessary to allow development (or the first phase of development as the case may be) to commence;

- (c) preparing and obtaining the Developer's board approval of a refined masterplan suitable for consultation;
- (d) preparing an affordable housing strategy for the first phase or multiple phases of the Development to include the delivery of at least 500 residential units;
- (e) insofar as the land to be acquired pursuant to the CPO comprises of the relevant Group Two Interests:
 - (i) instruct the relevant detailed design elements of the Pump Lane western access;
 - (ii) select and agree appointment terms for remediation contractors for the remediation of the land forming the Pump Lane western access bridge footings; and/or
 - (iii) complete the detailed design of and submit any necessary planning applications for the temporary Pump Lane western access bridge;

"Group Two Interests" means the Interests in the plots numbered 1–17 (inclusive), 35, 37, 38, 105, 106, 107 and 116 - 124 (inclusive) on the Order Map unless otherwise agreed by the Authority and the Developer in writing;

"GVD" means a general vesting declaration or declarations made pursuant to the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981;

"Hillingdon Permission" means conditional detailed planning permission reference 54814/APP/2009/430 dated 29 September 2010 for new access roads from the Hayes by-pass and Southall town centre to the application site for vehicle, cycle and pedestrian access, including drainage and a flood relied pond. Widening of South Road across the railway line, for the creation of a bus lane and three new accesses onto Beaconsfield road. Two bridges over the Grand Union Canal and Yeading Brook to provide pedestrian and cycle access to the Minet Country Park and Springfield Road;

"Independent Surveyor" means an independent chartered surveyor selected from the list in Schedule 5 and jointly appointed by the Developer and the Authority from time to time or (if they cannot agree upon his appointment) who is suitably experienced and at least ten years qualified and appointed by the President for the time being of the Royal Institution of Chartered Surveyors upon the application of either Party;

"Information" means information recorded in any form relating directly to and held specifically

for the purposes of this Agreement by the Authority or as agent on behalf of the Authority;

"Information Request" means a written request for Information;

"Interest" means any interest in the Order Land (including any New Right) capable of being acquired pursuant to the CPO;

"Joint Committee" means a joint committee of the House of Commons and House of Lords established to consider petitions against the CPO pursuant to Special Parliamentary Procedure;

"Lands Tribunal" means the Upper Tribunal (Lands Chamber);

"Letter of Good Standing" means a letter from the Financial Director of the Surety and addressed to the Authority confirming that the Surety's net assets are on the date of the letter not less than £100,000,000 (plus or minus £5,000,000);

"Mayoral Decision" means a decision of the Mayor of London on behalf of the Authority or a person acting in accordance with powers delegated to that person by the Mayor to make the CPO and if necessary apply for the Exchange Land Certificate;

"New Right" means any right of oversailing land and any new easement over land required to enable the Development to be carried out maintained or used;

"Open Space Land" means the plots numbered 1 - 13 (inclusive) and 63 on the Order Map being land used for the purposes of public recreation

"Order Land" means the land edged red and comprising numbered plots on the Order Map;

"Order Map" means the plan attached at Schedule 1 (or such amended plan as may be agreed between the Parties prior to the making of the CPO);

"Owner" means the owner of an Interest or New Right;

"Party" means a party to this Agreement;

"Performance Event" means:

- (a) the Developer fails to pay any sum due under this Agreement and the Surety fails to make that payment within 10 Working Days of being notified by the Authority that such sum has fallen due and is unpaid by the Developer or in the case of sums in respect of the costs of employees of the Authority within 20 Working Days of such notification;
- (b) the Developer fails to remedy a material breach of this Agreement within 10 Working Days of the Authority notifying the Developer in writing of the breach or such longer period as shall be reasonable and specified in the notice by the Authority and

thereafter and subject to the Authority notifying the Surety of such material breach the Surety fails to remedy the material breach within 10 Working Days of such notification or such longer period as shall be reasonable and specified in the notice;

"Planning Act" means the Town and Country Planning Act 1990;

"Property Cost Estimate" or **"PCE"** means the estimate of Compensation payable by the Authority set out in Schedule 2 for the acquisition of each Interest (other than any Interest in the ownership of the Developer from time to time) as may be varied from time to time by written agreement of the Parties or by the Steering Group pursuant to clause 10;

"Proposed Drawdown Notice" means a notice providing details of Interests which the Developer proposes will be the subject of a Drawdown Notice served by the Developer on the Authority pursuant to clause 8.3 or clause 8.4;

"Public Inquiry" means a public local inquiry into any objections and/or representations made to the CPO or the issue of an Exchange Land Certificate;

"Referencing Agent" means Persona Associates (Company Number 2371248) whose registered office is at 4 Peel House, Barttelot Road, Horsham RH12 1DE;

"Requisition Notice" means a requisition for information notice about the ownership of Interests served by the Authority pursuant to its statutory powers;

"Satisfactory CPO" means a CPO for the acquisition of such Interests as are required to enable the Development to be constructed in its entirety and brought into beneficial use;

"Secretary of State" means the Secretary of State for Communities and Local Government (or any successor department) or any other Minister exercising powers on his behalf;

"Site" means the land required for the Development in the Developer's ownership as at the date of this Agreement and as shown edged red on the Site Plan;

"Site Plan" means the plan annexed hereto and marked "Site Plan";

"Special Parliamentary Procedure" means the procedure for consideration of the CPO referred to in s19(1) of the Acquisition of Land Act 1981 and set out in the Statutory Orders (Special Procedure) Act 1946 and the standing orders of the House of Commons and the House of Lords respectively;

"Steering Group" means the steering group of representatives of the Authority and the Developer established in accordance with clause 10.1;

"Supplemental Section 106 Agreement" means an agreement made pursuant to section 106A of the Planning Act between the Authority (1) the Developer (2) the Surety (3) LB Ealing (4) and Transport for London (5) modifying an agreement made pursuant to section 106 of the Planning Act dated 29 September 2010 between the Authority (1) Birch Sites Limited (2)

National Grid Gas PLC (3) LB Ealing (4) LB Hillingdon (5) and Transport for London (6) to provide for:

- (a) the acceleration of certain contributions payable to LB Ealing in the event that the Developer fails (i) to complete specified numbers of residential units by milestone dates or (ii) to achieve the Group Two Conditions or Group Three Conditions in the event that the Developer requires the Authority to implement the CPO; and
- (b) the payment of the legal and other costs incurred by the Authority Transport for London and LB Ealing in negotiating and completing the agreement;

"Termination Event" means:

- (a) a valid Drawdown Notice is not served in respect of every Interest by the End Date;
- (c) the Secretary of State refuses to confirm the CPO or the CPO as confirmed by the Secretary of State is not a Satisfactory CPO and a period of six weeks expires from the decision of the Secretary of State without the decision of the Secretary of State being challenged in legal proceedings;
- (d) the CPO is subject to Special Parliamentary Procedure and the Joint Committee reports that:
 - (i) the CPO be not approved; or
 - (ii) the CPO be amended by the omission of one or more Interests such that the Developer gives notice to the Authority that the CPO is not a Satisfactory CPO pursuant to clause 6.12;
- (e) legal proceedings to challenge the decision of the Secretary of State to confirm the CPO or to confirm a CPO not being a Satisfactory CPO are dismissed and any right of appeal has expired without an appeal being made or if made being dismissed;
- (f) legal proceedings to challenge the decision of the Secretary of State to issue the Exchange Land Certificate or to confirm a Satisfactory CPO are successful and any right of appeal has expired without an appeal being made or if made being dismissed and three months have elapsed following such expiry or dismissal in which the Authority and the Developer have not agreed to make and submit a new CPO;
- (g) an Event of Insolvency occurs in relation to the Surety;

"Third Party" means a person, partnership, company or any other undertaking not being the Developer or the Surety or the Authority;

"Transparency Commitment" means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the

Authority is committed to publishing its contracts, tender documents and data from invoices received;

"**Use Classes Order**" means the Town and Country Planning (Use Classes) Order 1987 currently in force at the date of this Agreement; and

"**Working Days**" means days on which clearing banks in the City of London are (or would be but for strike lock out or other stoppage affecting particular banks or banks generally) open during business hours.

1.2 Unless there is something in the subject or context inconsistent therewith:

- (a) words importing the neuter gender only shall include the masculine or feminine gender (as the case may be) and words importing the masculine gender only shall include the feminine gender and vice versa and words importing persons shall include firms companies and corporations and vice versa;
- (b) words importing the singular number only shall include the plural number and vice versa;
- (c) reference to a clause or paragraph or schedule is to a clause or paragraph or schedule in this Agreement and the index the clause and paragraph and schedule titles or headings appearing in this Agreement are for reference only and shall not affect the construction hereof;
- (d) words denoting an obligation on a Party to do an act matter or thing include an obligation to procure that it be done and words placing the Party under a restriction include an obligation not to permit or allow infringement of the restriction;
- (e) any consent or approval of any Party required under this Agreement shall be required to be obtained before the actual event to which it applies is carried out or done and shall be effective only when the consent or approval is given in writing or is deemed to have been given;
- (f) any consent or approval of any Party required under the Agreement shall not be unreasonably withheld or delayed;
- (g) reference to any Act of Parliament or Regulation shall include any amendment of such Act or Regulations from time to time.

2 Negotiations and Acquisitions by Private Treaty Subject to clause 2.5 the Developer shall have the conduct of negotiations for the acquisition by private treaty of the Interests from the date of this Agreement until the making of the CPO when unless otherwise agreed by the Authority either generally or in respect of particular Interests the Authority and the Authority's Agent shall assume the conduct of negotiations in respect of such acquisition provided that the Authority and/or the Authority's Agent may assume conduct of the negotiations at an

earlier date in accordance with clause 2.5.

- 2.2 The Developer will as soon as reasonably practicable following completion of this Agreement and at its own expense continue negotiations for the acquisition of all Interests and will thereafter use reasonable endeavours to acquire all Interests until the making of the CPO.
- 2.3 As soon as practicable after the acquisition of an Interest the Developer will supply to the Authority details of the Interest, the consideration paid, a copy of the form of transfer and (if requested) copies of all title documents supplied to the Developer's Solicitors in respect of any such Interest.
- 2.4 The Developer will at all times during the negotiations for the acquisition of any Interest:
- (a) keep the Authority informed consult liaise and where requested hold meetings with the Authority's Agent regarding the negotiations;
 - (b) supply the Authority's Agent with copies of all material, written correspondence, telephone attendance notes, minutes of meetings, reports, heads of terms and any other documents and correspondence relating to the negotiations; and
 - (c) invite the Authority and the Authority's Agent to attend meetings with statutory bodies or residents at the request of the Authority or the Owner.
- 2.5 Before the making of the CPO the Authority shall:
- (a) only negotiate for the acquisition of an Interest where the Owner refuses to negotiate with the Developer;
 - (b) only negotiate for the acquisition of an Interest by the Developer; and
 - (c) not make any offer to purchase without the prior approval of the Developer in writing.

3 Dealings with Acquired Land

- 3.1 In the event that the Authority becomes entitled to an Interest in land which is to be provided as exchange land for which the Developer has paid the purchase price the Developer shall have the use of that land subject to such rights of others as then subsist from that date and the Developer shall be responsible for and shall manage such Interests appropriately including:
- (a) securing, maintaining and repairing such land;
 - aa) carrying out any works to be undertaken by the Developer in accordance with the terms of an Exchange Land Deed;
 - (b) paying any applicable outgoings such as rent and service charges; and
 - (c) maintaining public liability insurance in an amount not less than five million pounds for

each and every occurrence.

3.2 Every Interest and right in the Order Land or the Site acquired by the Authority at the expense of the Developer other than an Interest or right in the Exchange Land shall be held by the Authority in trust for the Developer absolutely and shall be transferred to the Developer or its nominee (whose identity is approved by the Authority in its absolute discretion if it is not a Group Company or a London Borough Council) forthwith.

3.3 Every transfer from the Authority to the Developer or its nominee (whose identity is approved by the Authority in its absolute discretion if it is not a Group Company or a London Borough Council) of an Interest or New Right shall include an indemnity in favour of the Authority in the following terms:

"The Transferee covenants with the Transferor for the benefit of the Transferor to indemnify and keep the Transferor and any successor to its statutory functions indemnified against all and any actions, judgments, penalties, damages, losses, costs, claims, expenses, liabilities and demands wholly or partly arising from or consequent upon the condition of the [Property]."

3.4 The provisions of this clause 3 shall continue to apply at all times notwithstanding termination of this Agreement.

4 Pre CPO Activity

4.1 The Authority and the Developer shall instruct the Referencing Agent to:

- (a) review the investigation of the nature and extent of the Interests undertaken by the Referencing Agent for the Developer before the date of this Agreement;
- (b) review the Order Map; and
- (c) prepare the tables to the CPO

and report accordingly to the Developer and the Authority.

4.2 The Developer shall promptly submit to the Authority its proposals if any for the Exchange Land.

4.3 The Authority shall:

- (a) as soon as reasonably practicable after receiving a report from the Referencing Agent instruct the Authority's Agent to review the PCE having regard to the draft tables to the CPO and to submit the revised PCE to the Authority and the Developer for approval;
- (b) as soon as reasonably practicable after receiving notification of any variations or amendments to the draft tables to the CPO from the Referencing Agent instruct the Authority's Agent to amend or update the PCE as appropriate and to submit the

amended or updated PCE to the Authority and the Developer for approval;

- (c) assist with the preparation of the draft tables to the CPO by serving Requisition Notices.

4.4 The Authority shall as soon as reasonably practicable after receiving a final report from the Referencing Agent together with a final draft of the Order Map and tables 1 and 2 to the CPO submit:

- (a) a draft of the CPO;
- (b) a draft application for the Exchange Land Certificate (if any);
- (c) a draft notice of making the CPO; and
- (d) a draft of the supporting statement of reasons and certificates

to the Developer for approval in its absolute discretion.

4.5 By giving its written approval to the draft CPO and any application for the Exchange Land Certificate as mentioned in clause 4.4 the Developer shall acknowledge that such:

- (a) draft CPO includes all the Interests and New Rights; and
- (b) draft application for an Exchange Land Certificate includes all the Open Space Land required to enable the Developer to carry out and complete the Development and bring the Development into beneficial use.

4.6 The Authority may instruct Counsel where it considers it necessary in relation to the making of the Mayoral Decision the preparation of the case for and documents supporting the CPO and the application for an Exchange Land Certificate and except where there is a Conflict of Interest shall:

- (a) arrange joint consultations with Counsel and the Developer;
- (b) provide an opportunity for the Developer to comment on any instructions to Counsel for any consultation;
- (c) invite representatives of the Developer to attend all joint consultations with Counsel; and
- (d) ensure that a copy of any notice or minute of any consultations with Counsel is made and copied to the Developer

and the reasonable and proper costs incurred by the Authority in connection with instructions to and consultations with Counsel are to be CPO Costs.

- 4.7 In the event of any Conflict of Interest the Authority shall inform the Developer of its intention to instruct Counsel and of the reason for the Conflict of Interest and take reasonable account of the Developer's representations in that regard.

5 Blight Notices

- 5.1 If a Blight Notice shall be served upon the Authority then:

- (a) the Authority shall within 5 Working Days deliver a copy of the Blight Notice to the Developer;
- (b) within 15 Working Days after receipt by the Authority of a Blight Notice the Authority shall investigate the grounds for service of such Blight Notice and the value of the Interest the subject of the Blight Notice and the Authority shall procure that the Authority's Agent shall also consider the Compensation which may be payable to the Owner of the Interest concerned;
- (c) within 25 Working Days after receipt by the Authority of a Blight Notice the Authority shall consult the Developer and decide whether to accept the Blight Notice or whether a counter notice is to be served in response to the Blight Notice and in this respect:
 - (i) the Authority shall have due regard to any representations which the Developer may make; and
 - (ii) the Authority shall if requested by the Developer and at the Developer's expense instruct Counsel in terms approved by the Developer to opine on whether there is a lawful ground for the service of a counter notice and if in Counsel's opinion such a ground exists then the Authority shall unless the Developer otherwise requests serve such counter notice.

- 5.2 In the case of a Blight Notice which the Authority (with the agreement of the Developer or in respect of which Counsel has issued a written opinion or has countersigned a written notice of conference or telephone advice that there are no lawful grounds for service of a counter notice) accepts and in respect of which it either does not serve a counter notice or serves a counter notice which is not upheld by the Lands Tribunal the Authority will appoint the Authority's Agent to negotiate on its behalf the Compensation payable.

6 The CPO

- 6.1 The provisions of this clause 6 shall only apply after the latest of the dates when:

- (a) the Mayoral Decision has been made;
- (b) all of the conditions (if any) identified in the Mayoral Decision to be satisfied before the CPO is to be made have been satisfied;
- (c) the Exchange Land Deed has been exchanged and dated (but only where the CPO

includes an Interest which is Open Space Land);

- (d) the Developer has demonstrated to the Authority:
- (i) there is a compelling case in the public interest for the making of the CPO;
 - (ii) the Developer has the financial capacity to satisfy its obligations under this Agreement and carry out and complete the Development if the CPO is made and in due course a Satisfactory CPO is confirmed and implemented;
 - (iii) there is evidence of a reasonable prospect of the Development being carried out if a Satisfactory CPO is confirmed by means of a letter from a director of the Developer or a Group Company ("**the Berkeley Group**") addressed to the Authority stating that it is the intention of the Berkeley Group to progress the Development in line with the Delivery Timetable together with details of the Berkeley Group's history of delivering similar mixed use schemes of comparable size;
 - (iv) the satisfactory financial capacity of the Surety by means of its most recent annual group accounts;
 - (v) there is no impediment to delivery of the Development within the meaning of paragraphs 22 and 23 of ODPM Circular 06/2004 (Compulsory Purchase and the Crichel Down Rules);
 - (vi) the Interests are required for the purposes of the CPO; and
 - (vii) there is no alternative to the making of a CPO and the subsequent confirmation and implementation of a Satisfactory CPO if the Development is to be carried out and completed.
- (e) a version of the PCE has been agreed between the Authority and the Developer following update as necessary to reflect the final Order Map.
- 6.2 The Authority may omit from the CPO any Interest where the Owner offers to transfer or grant such Interest to the Authority or the Developer on terms (including without limitation the carrying out of works or the provision of exchange land) which are approved by the Developer in its absolute discretion.
- 6.3 Subject to clause 6.2 the Authority shall make the CPO in the form approved by the Developer pursuant to clause 4.4 and use reasonable endeavours to obtain confirmation of the CPO by the Secretary of State (and if the CPO includes Open Space Land) as soon as reasonably practicable.
- 6.4 The Authority may agree with the Secretary of State such amendments variations and/or modifications to the CPO and any application for an Exchange Land Certificate as it may

determine to be necessary or desirable to assist in procuring the confirmation of the CPO provided that no such modification shall be proposed or agreed without consultation with the Developer and the Authority shall have due regard to any representations made by the Developer.

- 6.5 The Developer will not object to the CPO and will at its own expense use all reasonable endeavours to support the Authority in seeking the confirmation of the CPO including the issue of any Exchange Land Certificate and (if requested in writing by the Authority to do so) the giving of evidence as to matters within the competence or proper expertise of the Developer the provision of expert witnesses and attending or giving assistance at any Public Inquiry or in the event of Special Parliamentary Procedure at any session of the Joint Committee.
- 6.6 If the Secretary of State receives any objections to the CPO the Authority and the Developer shall use their reasonable endeavours to secure the withdrawal of those objections and, if necessary, the earliest possible date for a Public Inquiry into the confirmation of the CPO.
- 6.7 In the event of any disagreement as to the course of action to be taken in dealings with any objector the matter shall be referred to the Steering Group.
- 6.8 The Authority shall at the Developer's cost:
- (a) brief Counsel and engage appropriate witnesses to appear at any Public Inquiry or Joint Committee Session selected from a list approved by the Developer on the recommendation of Counsel in support of the CPO;
 - (b) regularly consult with the Developer in relation to the progress of the CPO and the holding of any Public Inquiry or Joint Committee Session and supply to the Developer as soon as reasonably practicable copies of all relevant documentation relating to the CPO.
- 6.9 The Authority except where there is a Conflict of Interest shall:
- (a) arrange joint consultations with Counsel and the Developer in relation to the preparation of the case for any Public Inquiry or Joint Committee Session (including the selection of witnesses and the scope of evidence);
 - (b) provide an opportunity for the Developer to comment on and approve any joint instructions to Counsel for any consultation;
 - (c) invite representatives of the Developer to attend all joint consultations with Counsel;
 - (d) ensure that a copy of any note or minute of any consultations with Counsel is made and copied to the Developer

and the reasonable and proper costs incurred by the Authority in connection with instructions

to and consultations with Counsel are to be CPO Costs.

- 6.10 In the event of any Conflict of Interest the Authority shall inform the Developer of its intention to instruct Counsel and of the reason for the Conflict of Interest and take reasonable account of the Developer's representations in that regard.
- 6.11 If the CPO is confirmed by the Secretary of State:
- (a) the Authority will promptly draft the statutory notices of confirmation of the CPO inclusive of the particulars referred to in section 3(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 ("**the Combined Notice of Confirmation**") for the Developer's approval (and the Developer shall respond within 5 Working Days) and the Authority shall then publish and serve the Combined Notice of Confirmation and otherwise comply with the relevant statutory requirements in relation to the publication of notice of the confirmation of the CPO so as to enable it to become operative as soon as reasonably practicable;
 - (b) the Authority shall promptly give written notice to the Developer when the Authority has complied with clause 6.11(a);
 - (c) where it is agreed or determined in accordance with this clause 6 to be a Satisfactory CPO the Authority shall as soon as reasonably practicable after publication and service of the Combined Notice of Confirmation instruct the Authority's Agent to review the PCE and submit the PCE as revised to the Authority and the Developer for approval.

Modified CPO

- 6.12 If the Secretary of State confirms the CPO with modifications not previously approved by the Developer the Developer shall within 15 Working Days of the confirmation of the date of the CPO give notice to the Authority as to whether or not the CPO is a Satisfactory CPO.
- 6.13 If:
- (a) the Secretary of State refuses to confirm the CPO (other than as a result of a report of the Joint Committee that the CPO not be approved); or
 - (b) the Developer gives notice under clause 6.12 that the CPO as confirmed is not a Satisfactory CPO (unless the reason that the CPO is not a Satisfactory CPO is a result of a report of the Joint Committee that the CPO be amended by the omission of one or more Interests)

the Authority shall instruct Counsel (in terms approved in writing by the Developer) to provide written advice as to whether there is ("**Positive Advice**") or there is not ("**Negative Advice**") a better than 50% chance of either an appeal to the High Court against non-confirmation or confirmation with modifications or an application for judicial review or the instigation of other

appropriate legal proceedings succeeding leaving in place a Satisfactory CPO.

6.14 If under clause 6.13 Counsel gives:

- (a) Positive Advice then the Authority shall appeal or apply for judicial review or instigate other appropriate legal proceedings whichever Counsel advises as being the most appropriate (naming the Developer as an interested party to the proceedings) with the view to securing a Satisfactory CPO; or
- (b) Negative Advice then with the Developer's approval and notwithstanding such advice the Authority may appeal or apply for judicial review or instigate other appropriate legal proceedings whichever Counsel advises as being the most appropriate (naming the Developer as an interested party to the proceedings) with the view to securing a Satisfactory CPO.

6.15 The reasonable and proper cost of any appeal or application for judicial review or instigation of other legal proceedings as the case may be pursuant to clause 6.14 shall be CPO Costs.

6.16 If without the Developer's approval and notwithstanding Negative Advice the Authority elects either to appeal or apply for judicial review or instigate other legal proceedings as the case may be then:

- (a) if such appeal or application or proceedings is/are unsuccessful and does not leave in place a Satisfactory CPO all costs and fees incurred by the Authority in making such an appeal or application or proceedings shall be borne by the Authority and shall not form part of the CPO Costs and shall be excluded from the indemnity in clause 9; and
- (b) if such appeal or application or proceedings is/are successful and leaves in place a Satisfactory CPO all reasonable costs and fees incurred and all compensation and other sums for which the Authority becomes liable as a result shall form part of the CPO Costs and shall be included within the indemnity in clause 9.

Third Party Proceedings

6.17 If a third party applies or seeks permission to apply for judicial review of the making of the CPO or any decision of the Authority connected with the making preparation and promotion of the CPO or an application for an Exchange Land Certificate ("**an Application**") or applies under section 23 of the Acquisition of Land Act 1981 to question the validity of any Confirmed CPO or the validity of any Exchange Land Certificate (a "**Statutory Challenge**") then unless otherwise agreed in writing between the Authority and the Developer:

- (a) the Authority shall forthwith and in any event within 5 Working Days notify the Developer and deliver copies of all proceedings documents and correspondence it has received relating to the Application or Statutory Challenge to the Developer;

- (b) the Authority shall instruct Counsel (in terms approved in writing by the Developer) to provide written advice as to whether there is ("**Positive Advice**") or there is not ("**Negative Advice**") in their opinion a better than 50% chance of the Application or Statutory Challenge being successfully defended by the Authority.

6.18 If under clause 6.17 Counsel gives:

- (a) Positive Advice the Authority shall lodge a defence;
- (b) Negative Advice then with the Developer's approval the Authority may lodge a defence
- (c) Negative Advice notwithstanding such advice the Authority may lodge a defence in which case the costs of such defence shall be dealt with in accordance with clause 6.20 below

at all times in consultation with the Secretary of State where relevant.

6.19 Any defence pursued pursuant to clause 6.18 will (if the Developer so requires) include an application for the Developer to be joined to the proceedings and the reasonable and proper cost of defending the Application or Statutory Challenge shall be CPO Costs.

6.20 If without the Developer's Approval and notwithstanding the receipt of Negative Advice under clause 6.17 and the Authority elects to lodge a defence of the Application or Statutory Challenge in any event then:

- (a) if such a defence is unsuccessful and does not leave in place the relevant decision of the Authority all costs and fees incurred by the Authority in making such defence shall be borne by the Authority and shall not be CPO Costs; and
- (b) if such a defence is successful and leaves in place the relevant decision then all reasonable costs and fees incurred shall be CPO Costs.

7 Continuing Financial Standing

7.1 The Surety shall provide to the Authority a copy of its statutory accounts within 10 Working Days of filing.

7.2 The Surety shall provide to the Authority a Letter of Good Standing:

- (a) with every Drawdown Notice;
- (b) within 10 Working Days of request; and
- (c) in any event no less frequently than at six-monthly intervals.

7.3 Notwithstanding any other provision of this Agreement the Developer shall not serve a Drawdown Notice at any time at which the Surety is unable to comply with clause 7.2 unless

prior to service of such Drawdown Notice the Surety has made provision in accordance with clause 7.4 in respect of each Interest to which the Drawdown Notice relates.

7.4 In the event that the Surety is unable to comply with clause 7.2 it shall within 10 Working Days provide to the Authority a bank guarantee or a Bond or an Escrow Deposit in a sum not less than the aggregate of the following in relation to each Interest in respect of which a Drawdown Notice has been served and, where clause 7.3 applies, has been prepared and is proposed to be served:

- (a) 100% of the Estimated Compensation less any sum already paid to the Owner; and
- (b) in respect of any Interest for which Compensation has not been determined or agreed:
 - (i) a contingency sum reflecting the Authority's Agent's worst-case estimate of the Compensation that is likely to be awarded as estimated by the Authority's Agent less the Estimated Compensation; and
 - (ii) a sum reflecting the Authority's Agent's estimate of the cost to the Authority of defending a claim to the Lands Tribunal; and
 - (iii) a sum reflecting the Authority's Agent's estimate of the third party fees which are likely to be payable by the Authority in respect of that Interest

each to be agreed by the Steering Group or failing agreement referred to the Independent Surveyor.

8 Implementation of the CPO

8.1 The provisions of this clause 8 shall only apply after the date on which the:

- (a) Supplemental Section 106 Agreement has been exchanged and dated; or
- (b) in the event that the Authority is satisfied that the Developer has used reasonable endeavours to satisfy its obligation in clause 8.1(a) but has been unable to secure completion of the Supplemental Section 106 Agreement by the date of confirmation of the CPO, the Developer provides a binding commitment to the Authority (in a form and content satisfactory to the Authority) to provide for the acceleration of certain contributions payable to the London Borough of Ealing in the event that the Developer fails to complete specified numbers of residential units by milestone dates or to achieve the Group Two Conditions or Group Three Conditions in the event that the Developer requires the Authority to implement the CPO.

8.2 The Developer may serve a Drawdown Notice for any Group One Interest at any time following publication of notice of the confirmation of the CPO.

8.3 The Developer may not serve a Drawdown Notice for any Group Two Interest before the

Group Two Conditions in relation to that Interest are satisfied unless the Developer includes the Group Two Interest in a Proposed Drawdown Notice served on the Authority and:

- (a) the Authority otherwise agrees; or
- (b) the Steering Group otherwise agrees in the period of three months ending on the End Date; or
- (c) the Developer pays to the Authority the Default Sum for that Proposed Drawdown Notice before the end of the period of three months ending on the End Date.

8.4 The Developer may not serve a Drawdown Notice for any Group Three Interest before the Group Three Conditions in relation to that Interest are achieved unless the Developer includes the Group Three Interest in a Proposed Drawdown Notice served on the Authority and:

- (a) the Authority otherwise agrees; or
- (b) the Steering Group otherwise agrees in the period of three months ending on the End Date; or
- (c) Developer pays to the Authority the Default Sum for that Proposed Drawdown Notice before the end of the period of three months ending on the End Date.

8.5 If the Developer serves a Drawdown Notice contrary to the terms of clause 8.3 or clause 8.4 the Drawdown Notice shall not be a valid Drawdown Notice.

8.6 The Authority hereby covenants with the Developer that:

- (a) it will promptly comply with any valid Drawdown Notice;
- (b) use any Default Sum received from the Developer as to 55% for housing or regeneration purposes and 45% for the payment of sums due to Ealing Borough Council under the terms of the Supplemental Section 106 Agreement;
- (c) as long as this Agreement is subsisting it will not pursuant to the CPO either, make any GVD or serve any notice to treat (other than a deemed notice to treat) other than in accordance with a valid Drawdown Notice approved by the Authority and in the event that the Authority makes a GVD or serves notice to treat otherwise than in accordance with a valid Drawdown Notice) then the Developer may elect that this Agreement shall not apply to the Interests comprised in such GVD or notice to treat.

8.7 The Developer shall prepare and the Parties shall agree and keep under review a settlement strategy which shall provide a protocol for securing the early settlement of any claims for compensation, including by proactively managing claims and inviting Owners to make early requests for an advance payment of Compensation under Section 52 of the Land Compensation Act 1973 ("the Settlement Strategy").

- 8.8 After the giving of notice of the making of a GVD or the service of notice(s) to treat in respect of any Interests the Authority will instruct the Authority's Agent to negotiate on their behalf and in accordance with the Settlement Strategy the Compensation payable in respect of such Interests in accordance with the statutory compensation code and shall as soon as reasonably practicable provide the Developer copies of all relevant documents and correspondence relating to claims for Compensation.
- 8.9 Where the Authority is requested to make an Advance Payment of in respect of any Interest acquired pursuant to the CPO the Authority shall as soon as reasonably practicable and in any event within 5 Working Days serve a copy of the particulars of the claimant's Interest on the Developer and shall instruct the Authority's Agent to assess the amount of the Compensation payable in respect of such request.
- 8.10 Neither the Authority nor the Authority's Agent shall offer or agree Compensation or in the case of an Advance Payment offer or make a payment in excess of [REDACTED] [REDACTED] without the prior written approval of the Developer.
- 8.11 Where the Developer does not approve an offer or agreement of Compensation by the Authority or the Authority's Agent the issue of Compensation shall be referred in the first instance to the Steering Group in accordance with clause 10 and in the event that the Steering Group fails to determine the issue, in the second instance to an Independent Surveyor for determination [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 8.12 If the amount of Compensation offered by the Authority or the Authority's Agent is not accepted by Owner and is referred for determination to the Lands Tribunal:
- (a) the Developer will provide all reasonable cooperation to the Authority;
 - (b) the Independent Surveyor shall be appointed as an expert witness to assist in the prosecution of the reference or proceedings and the reasonable and proper costs incurred by the Authority in relation to a reference to an Independent Surveyor and/or to the Lands Tribunal shall be CPO Costs;
 - (c) the Authority will not make a sealed offer without the prior approval of the Developer; and
 - (d) the Authority will not appeal any decision of the Lands Tribunal without the prior approval of the Developer and in prosecuting any such appeal the Authority shall:
 - (i) supply copies of all relevant correspondence and other documents pertaining to the appeal to the Developer;

- (ii) liaise with and have due regard to the views of the Developer as to the manner of prosecution of the appeal;
- (iii) keep the Developer apprised of the progress and result of the appeal.

8.13 Where a claim for Compensation is referred to the Lands Tribunal the Authority shall instruct Counsel in relation to the proceedings and brief Counsel to attend any hearings and shall:

- (a) provide an opportunity for the Developer to comment on any instructions to Counsel for any consultations including in relation to the reference and preparation for proceedings and the selection of experts and the scope of evidence;
- (b) invite representatives of the Developer to attend all consultations with Counsel; and
- (c) provide a copy of any note or minute of any consultations with Counsel for the Developer.

8.14 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 Authority will take such steps as are necessary including if required the making of a deed poll to secure the transfer title of the relevant property to the Authority.

8.15 The Developer shall consult the Authority on the terms of any Section 73 Application before its submission to the local planning authority and promptly provide the Authority with a copy of any planning permission granted pursuant to a Section 73 Application immediately after the date of its grant.

9 Indemnity

9.1 The Developer will subject to the provisions of this clause 9 pay to and indemnify the Authority from and against all or any of the CPO Costs:

- (a) payable by the Authority to an Owner, in respect of which the Developer shall render payment to the Authority by the later of 10 Working Days after receipt of a written request issued by the Authority or 20 Working Days before the relevant sum is due to be paid by the Authority;
- (b) not within clause (a), in respect of which the Developer shall render payment to the Authority no later than 10 Working Days after receipt of a written request issued by the Authority from time to time such request not to be made earlier than the date on which the relevant CPO Costs are incurred or fall due to be paid by the Authority.

9.2 The Developer shall make all payments due under this clause 9 by no later than 12 noon on the due date by cleared funds into a bank account nominated in writing by the Authority to the Developer.

9.3 The Authority will submit to the Developer promptly after the date of this Agreement and the

end of every third month thereafter:

- (a) an estimate, together with the assumptions on which the estimate is based, of the CPO Costs (other than Compensation) anticipated to be incurred by the Authority and payable pursuant to clause 9.1(b) initially from the date of this Agreement until the end of the third month thereafter and subsequently for each period of three months ("**the Budget Period**"); and
- (b) an account of the CPO Costs (other than Compensation) incurred by and invoiced to the Authority during the preceding Budget Period

but the submission of the estimate shall not limit the obligation of the Developer to pay to or indemnify the Authority against any CPO Costs under this clause 9 which are not in accordance with the estimate or otherwise.

9.4 The Authority shall as soon as practicable supply to the Developer copies of all title documents supplied to its solicitors in respect of the acquisition of any Interest in the Order Land by agreement and promptly notify the Developer of the anticipated date of completion of the acquisition of any such Interest.

9.5 The Developer shall notwithstanding the termination of this Agreement make payments in accordance with the provisions of this Agreement as if the Agreement were still in full force and effect in respect of expenditure which:

- (a) the Authority was legally bound to make as at the date of termination of this Agreement; or
- (b) the Authority had been legally bound to make on or before the date of termination of this Agreement and had not been previously paid to the Authority by the Developer in accordance with the provisions of this Agreement; or
- (c) was payable or becomes payable by the Authority as a consequence of:
 - (iv) a Blight Notice served on or before the date of termination of this Agreement;
 - (v) the making of a GVD;
 - (vi) the service of a notice to treat which the Authority is unable to withdraw or as a consequence of the withdrawal or abandonment of a notice to treat;
 - (vii) the withdrawal of the CPO or the non-confirmation of the CPO in whole or part

and the provisions of clause 3 shall continue to apply at all times.





9.6 The Developer and the Authority agree that there shall be no Compensation payable in respect of any of the Developer's Interests.

10 The Steering Group

10.1 The Authority and the Developer shall establish a steering group comprising two representatives of the Authority and two representatives of the Developer to provide:

- (a) a conduit to communicate strategy, programme and progress between the Authority and the Developer; and
- (b) a means of resolving certain disputes arising under the terms of this Agreement including any relating to:
 - (i) the strategy or methodology for the acquisition of Interests;
 - (ii) the making of offers to acquire Interests;
 - (iii) the terms for settling any objections to the CPO and the issue of the Exchange Land Certificate;
 - (iv) the making of offers of Compensation (save for the making of any Advance Payment (as defined in clause 8.7) which the Authority has a statutory duty to make);
 - (v) alterations to the PCE; and
 - (vi) any proposals by the Developer for variations to the Group Two Conditions or the Group Three Conditions having regard to any offer of public sector funding to accelerate the programme for the carrying out of the Development and any other relevant consideration.

10.2 The initial members of the Steering Group shall be appointed by the Authority and the Developer from the names set out in the following table:

<u>The Authority</u>	<u>The Developer</u>
	
	
	

10.3 Subject to giving prior notice to the other Party the Authority and the Developer may invite the Authority's Solicitors and the Developer's Solicitors and their other respective professional advisers to attend meetings of the Steering Group.

10.4 The quorum for meetings of the Steering Group shall be all the members of the Steering group or such deputies of equivalent seniority as either Party shall notify to the other Party in writing in advance of a meeting.

- 10.5 The chair of the Steering Group shall rotate between a representative of the Authority and a representative of the Developer with the first meeting being chaired by a representative of the Developer.
- 10.6 The Steering Group shall make decisions at its meetings by a majority of the votes of the members (or their deputies) in attendance at the meeting or outside its meetings by a unanimous resolution in writing.
- 10.7 The Steering Group shall meet quarterly and at such other times as either Party may request by notice in writing to the other Party at City Hall or such other venue as may be agreed.
- 10.8 No determination made by the Steering Group shall operate so as to vary the terms of this Agreement (unless specifically provided for in this Agreement).

11 Alienation

- 11.1 The Developer shall not without the consent of the Authority assign or charge or deal in any other way with its rights under this Agreement or any part or parts of them other than to another Group Company provided that the Developer may novate this Agreement to another Group Company with the consent in writing of the Surety who shall be a party to the agreement of novation and continue to be bound by the obligations on its part contained in clause 22.
- 11.2 In the event of a Change of Control of the Developer or of the Surety to someone other than a Group Company:
- (a) the Developer and the Surety will use reasonable endeavours having regard to commercial and confidentiality constraints to provide to the Authority such information as the Developer and the Surety consider appropriate and the Authority reasonably requests about the circumstances of that Change of Control; and
 - (b) having regard to the information provided under clause 11.2(a) the Authority will either:
 - (i) approve the Change of Control by written notice to the Developer and the Surety; or
 - (ii) give written notice to the Developer and the Surety that clause 11.3 shall apply.
- 11.3 If this clause 11.3 applies:
- (a) following a Change of Control of the Surety to someone other than to a Group Company then from the date of the Authority's notice under clause 11.2(b)(ii) it shall be deemed that clause 7.4 shall apply as if the Surety had been unable to satisfy the requirements of clause 7.2 and the Surety shall comply with the requirements of

clause 7.4 in accordance with the terms of that clause; or

(b) following a Change of Control of the Developer to someone other than to a Group Company then such Change of Control shall on the date of the Authority's notice under clause 11.2(b)(ii) be deemed to be a Performance Event for the purposes of clause 15 and the Authority may terminate this Agreement by giving not less than 20 Working Days' notice in writing to the Developer and the Surety in accordance with clause 15.1(c).

12 Confidentiality and Transparency

12.1 The Parties agree in respect of Confidential Information disclosed pursuant to this Agreement or discovered further to the operation of this Agreement:

- (a) to keep the Confidential Information in strict confidence and secrecy;
- (b) not to use the Confidential Information save for complying with its obligations under this Agreement;
- (c) subject to clauses 12.1(d) and 12.2, not to disclose the Confidential Information to a Third Party without prior written consent of the other Party (save in respect of disclosure to any sub-contractors appointed in accordance with this Agreement who of necessity need the same in the performance of this Agreement subject to such sub-contractor providing the Parties with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this clause 12); and
- (d) to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees, agents and sub-contractors who of necessity need the same in the performance of this Agreement and in such circumstances to ensure that such employees, agents and sub-contractors are aware of the confidential nature of the Confidential Information subject to any such agents and sub-contractors providing the Parties with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this clause 12.

12.2 The obligations set out in clause 12.1 shall not apply to any Confidential Information which:

- (a) can be shown by documentary evidence was already in its lawful possession and at the free disposal of either Party otherwise than directly or indirectly from the other Party;
- (b) was lawfully obtained without any obligations of confidence, by any person who has not derived it directly or indirectly from either Party;
- (c) is or has come into the public domain through no fault of either Party or their personnel;

- (d) is required by law or by order of a court of competent jurisdiction to be disclosed but only to the extent required by such law or order;
 - (e) is disclosed with the prior written consent of the Authority or the Developer (as relevant); or
 - (f) has, notwithstanding clause 12.1, been disclosed pursuant to clause 13.
- 12.3 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause 12 and that (without prejudice to all other rights, powers and remedies which would otherwise arise as a matter of law) they shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause 12 and no proof of special damages shall be necessary for the enforcement of the provisions of this clause 12.
- 12.4 The obligation of confidentiality in this clause 12 shall survive the termination of this Agreement.
- 12.5 The Parties acknowledge that clause 13 shall take precedence over this clause 12 to the extent of any inconsistency.
- 12.6 The Developer acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, subject to clause 12.7 but notwithstanding any other provision of this Agreement, the Developer hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 12.7 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication provided that in so doing the Authority shall use reasonable endeavours to redact all Confidential Information to the full extent of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Authority shall consult with the Developer regarding any redactions to the Contract Information to be published pursuant to clause 12.6 and shall take reasonable account of the Developer's representations but the Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

13 Freedom of Information

- 13.1 The Developer acknowledges that the Authority:
- (a) is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and
 - (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Developer and if so, subject to the provisions of this clause 13, may at its discretion disclose such Information.

- 13.2 Subject to clause 13.3 and without prejudice to the generality of clause 13.1 the Developer shall and shall procure that its sub-contractors (if any) shall:
- (a) transfer to the Authority each Information Request relevant to this Agreement that it or they (as the case may be) receive as soon as practicable in order to enable the Authority to comply with the timescales imposed by the FOI Legislation; and
 - (b) in relation to Information held by the Developer on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided as soon as practicable in order to enable the Authority to comply with the timescales imposed by the FOI Legislation and in such forms as the Authority may reasonably specify.
- 13.3 The time limit in clause 13.2(b) shall apply only if and to the extent that the Authority
- (a) requests such Information from the Developer within 5 Working Days of receipt of the Information Request; and
 - (b) requests additional time where it is able to do so under the FOI Legislation if the Developer notifies the Authority that it considers such time is necessary.
- 13.4 The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Developer shall not purport to respond on behalf of the Authority to any person making an Information Request (save to acknowledge receipt) unless expressly authorised to do so by the Authority.
- 13.5 The Authority shall use reasonable endeavours to keep the Developer promptly informed of any enquiry under FOI Legislation received in relation to the CPO.
- 13.6 For the avoidance of doubt save in relation to costs arising under clause 13.5 any costs incurred by the Authority in connection with this clause 13 shall not be CPO Costs.

14 External Communications

- 14.1 Neither Party shall by itself, its employees or agents communicate and both Parties shall use reasonable endeavours to procure that its consultants shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning the CPO except in accordance with a Communications Strategy.
- 14.2 The Developer shall prepare and the Parties shall agree and keep under review a Communications Strategy which shall include consultation between the Parties on any media release to be issued on any matter concerning the CPO.
- 14.3 The Parties shall use reasonable endeavours to include provision in the appointment of consultants in connection with the CPO so as to give effect to the Communications Strategy,

and to the Confidentiality and Transparency (clause 12) and Freedom of Information (clause 13) requirements of this Agreement.

15 Termination

15.1 On the occurrence of:

- (a) a Termination Event (other than a Performance Event or an Event of Insolvency) either Party may terminate this Agreement by giving not less than three months' notice in writing to the other whereupon this Agreement shall terminate on the expiry of that three month notice period unless, on or before that date, the Termination Event giving rise to the notice has been remedied by any party (including for the avoidance of doubt by the Surety acting under clause 22.2(a));
- (b) an Event of Insolvency the Authority may terminate this Agreement by giving not less than three months' notice in writing to the Developer whereupon this Agreement shall terminate on the expiry of that notice period save where a Group Company of the Developer and/or the Surety as the case may be ("**the Substitute Surety**") either:
 - (i) holding net assets equal to or greater than those of the Surety at the date of this Agreement, or
 - (ii) otherwise approved by the Authority

has offered to take the place of the Surety under this Agreement within 1 month of notice being given under this clause 15.1(b) and entered into a deed in a form approved by the Authority whereby the Substitute Surety agrees to perform and observe all the obligations on the part of the Surety contained in clause 22 as if the Substitute Surety were an original party to this Agreement prior to the expiry of such three month notice period;

- (c) a Performance Event the Authority may terminate this Agreement by giving not less than 20 Working Days' notice in writing to the Developer and the Surety whereupon this Agreement shall terminate on the expiry of that notice period unless on or before that date, the Performance Event giving rise to the notice has been remedied.

PROVIDED ALWAYS that the Party seeking to terminate this Agreement is not themselves in material and continuing breach of any of its terms.

15.2 The termination of this Agreement shall

- (a) be without prejudice to any accrued rights and liabilities or any rights or remedies of either Party against the other for breach non-observance or non-performance of that Party's obligations under this Agreement but otherwise neither Party shall have any continuing liability to the other unless expressly set out in this Agreement; and

(b) not affect the continued application of clause 3.

16 Interest

Unless otherwise specified in this Agreement if any monies due under this Agreement remain unpaid 10 Working Days after they have become due then interest at 2% above Base Rate shall be payable on such monies as from the date they became due until they are paid.

17 VAT

Nothing in this Agreement shall entitle the Authority to claim indemnity in respect of any Value Added Tax on supplies to the Authority and which the Authority is entitled to reclaim as an input.

18 Notices

18.1 All notices requests demands approvals consents and other communications hereunder shall be in writing and shall be duly and validly given if delivered personally or sent by prepaid registered or recorded delivery mail to a Party at the address specified in this clause 18 by written notice to the other Party and shall be deemed to have been received if by mail on the second Working Day after the day of posting unless it is proved to have been received later in which case it shall be treated as given on receipt.

18.2 Any notices to be given by the Authority shall be valid and effectual if signed by the Authority's Executive Director of Housing and Land or other officer or agent duly authorised on their behalf.

18.3 Any notice to be given to the Authority shall be delivered to its address set out above or such other address as may be notified to the other Parties from time to time.

18.4 A notice to be given by a Party under this Agreement may be given by the relevant Party's solicitors.

18.5 Any notice to be given to the Developer or the Surety shall be delivered to their registered office from time to time.

19 The Independent Surveyor

19.1 Where:

- (a) the Authority or the Developer fail to approve or agree any matter under this Agreement; or
- (b) save in respect of matters under clause 10.1(b)(iii) the Steering Group fails to determine any matter referred to it

such matter may be referred by the Authority or the Developer to the Independent Surveyor

for determination.

- 19.2 The Independent Surveyor shall forthwith give to the Parties notice in writing of his appointment and shall in that notice invite each of them (but without imposing any obligation on them so to do) to submit to the Independent Surveyor within a period of 10 Working Days from the date of the giving of such notice of his appointment (or such longer period as he may direct) such reports information and representations ("representations") as either of the Parties shall think fit and copies of the representations so submitted shall contemporaneously be submitted (by the Party making the submission) to the other Party.
- 19.3 Within 10 Working Days of receipt of the other Party's representations (if any) (or such longer period as the Independent Surveyor may direct) both Parties shall be entitled to submit to the Independent Surveyor cross representations on the other Party's representations ("cross representations") and copies thereof shall contemporaneously be submitted by the Party making the submission to the other Party.
- 19.4 For the purposes of this Agreement the Independent Surveyor:
- (a) will act as an expert and not as an arbitrator;
 - (b) will be entitled to seek such other professional advice as he considers necessary;
 - (c) will consider the representations and cross representations (if any) but will not be in any way limited or fettered thereby;
 - (d) will be entitled to rely on his own judgement and opinion; and
 - (e) shall be required to give reasons for his decision.
- 19.5 The Independent Surveyor will within 15 Working Days after his appointment or (if later) within 10 Working Days of the receipt of the last of the representations and cross representations made by the Parties give to each of the Parties written notice of his determination.
- 19.6 If the Independent Surveyor does not give notice of his determination within the time and in the manner aforesaid or if he relinquishes his appointment or dies or if for any reason it becomes apparent that he will be unable to complete his duties hereunder the Parties jointly may appoint or failing agreement either Party may apply for the appointment of a new Independent Surveyor in his place and this procedure may be repeated as many times as may be necessary.
- 19.7 The Independent Surveyor's fees or charges shall be borne by the Developer as a CPO Cost.
- 19.8 The decision of the Independent Surveyor shall in all cases be final and binding on the Parties save in the case of manifest error.

20 **Authority's powers and duties**

Nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligation of the Authority or fetter the discretion of the Authority in the exercise of its functions under any enactment.

21 **Variations**

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

22 **Surety Obligations**

22.1 The Surety agrees with and guarantees to the Authority as primary obligor in the terms set out in this clause 22.

22.2 The Surety guarantees to the Authority that the Developer will duly observe and perform all the obligations on the Developer's part contained in this Agreement and that in the event of any default in payment or in the performance and observance by the Developer the Surety will within 1 month of demand by notice to the Authority either:

- (a) opt to perform all the obligations on the Developer's part contained in this Agreement as if originally named as the Developer in this Agreement including by paying and making good to the Authority all losses damages costs and expenses arising or incurred by the Authority as a result of the Developer's breach; or
- (b) appoint a Group Company to perform the obligations on the Developer's part contained in this Agreement ("**the Substitute Developer**") (and the terms of this clause 22 shall in that event apply *mutatis mutandis* to the Substitute Developer as they do to the Developer) and the Substitute Developer and the Surety enter into a deed in a form approved by the Authority whereby the Substitute Developer agrees to perform and observe all the obligations on the part of the Developer contained in this Agreement as if the Substitute Developer were an original party to this Agreement and the Surety confirms the application of clause 22 *mutatis mutandis* to the Substitute Developer within 3 months of the date of the demand.

22.3 That none of the following will release exonerate or in any way affect the liability of the Surety:

- (a) any time or indulgence granted by the Authority to the Developer or any delay or forbearance of the Authority in enforcing the payments to be made by the Developer or the observance and performance of the Developer's obligations in this Agreement;
- (b) any variation of the terms of this Agreement agreed between the Authority and the Developer where the Surety is party;
- (c) in the event that the Developer suffers an Event of Insolvency is dissolved or ceases

to exist;

- (d) the Authority exercising any right or remedy against the Developer for any failure to pay the sums due under or to observe its obligations in this Agreement;
- (e) the Authority taking any action or refraining from taking any action in connection with any other security held by the Authority in respect of the observance by the Developer of the obligations on its part in this Agreement including the release of any such security;
- (f) any legal limitation or disability on the Developer or any invalidity of this Agreement;
- (g) any other act omission or thing whereby but for this provision the Surety would have been released or exonerated.

22.4 That while any liabilities of the Developer or the Surety to the Authority under this Agreement remain outstanding the Surety will:

- (a) not claim in any liquidation bankruptcy composition or arrangement of the Developer in competition with the Authority; and
- (b) not participate in any security held by the Authority in respect of the Developer's obligations to the Authority under this Agreement nor stand in the place of the Authority in respect of any such security.

22.5 For the avoidance of doubt the provisions of this clause 22 are cumulative and successive and the Authority's rights under this guarantee and indemnity shall apply to each and every breach of this Agreement and if any breach shall be remedied this guarantee and indemnity shall continue to apply to any other breach of this Agreement and no satisfaction or waiver of any previous breach shall affect this guarantee and indemnity in respect of any subsequent breach of this Agreement.

22.6 Any sum payable by the Surety shall be paid without any deduction or set-off against the Authority or the Developer provided that nothing in this clause 22 shall give rise to liability of the Surety which exceeds that which it would have incurred had the covenant(s) in question been given by the Surety as the contracting party.

23 The Contracts (Rights of Third Parties) Act 1999

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

24 Costs

On or prior to the date hereof the Developer has paid the Authority's legal and surveyors costs in the sum of [REDACTED] in connection with the negotiation and entering into of this Agreement.

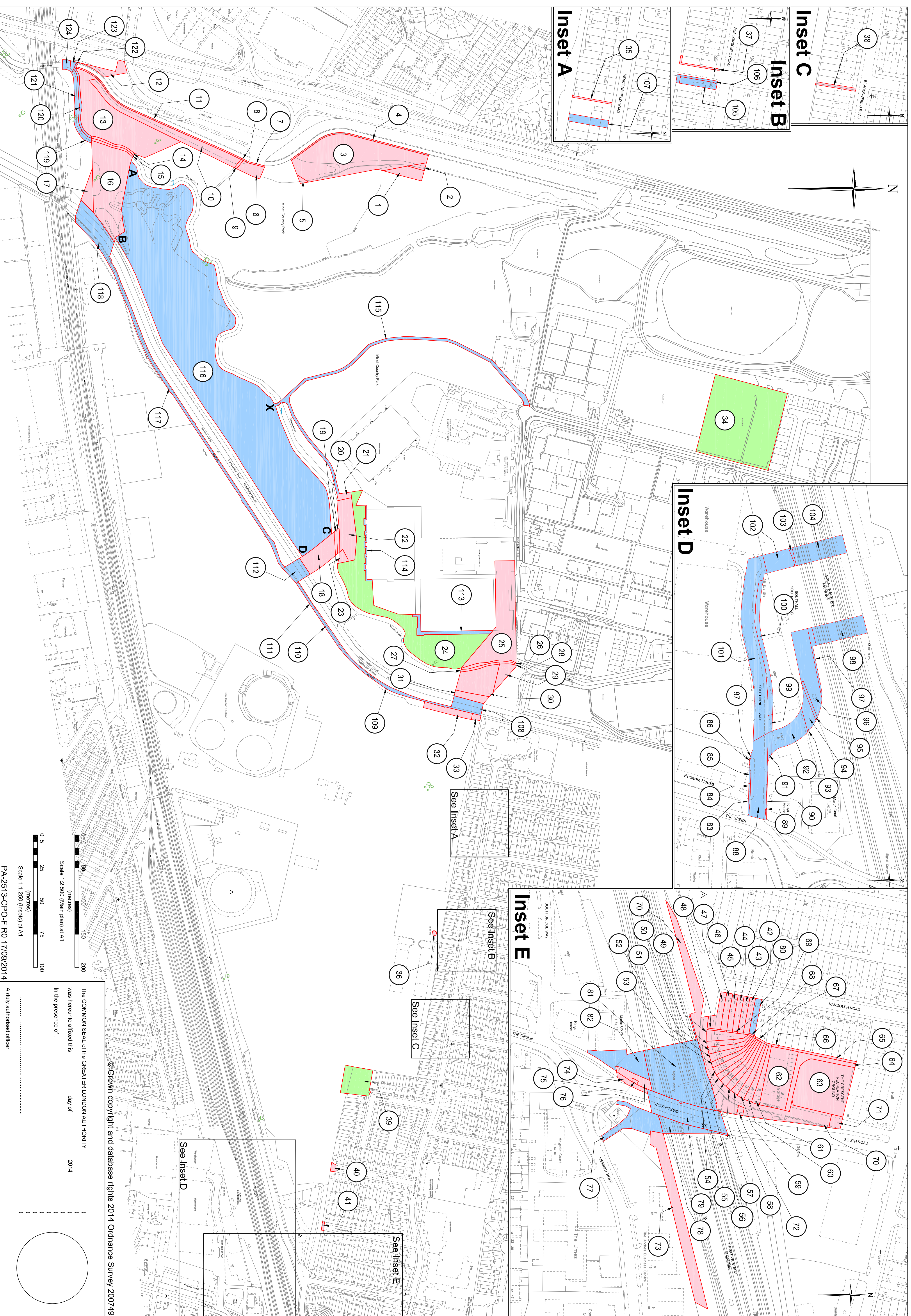
25 Law

This Agreement and any issues, disputes or claims arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

IN WITNESS whereof this Agreement has been executed on the date first above written

SCHEDULE 1

Order Map



SCHEDULE 2

The CPO Costs

- 1 The CPO costs shall subject to the terms of this Agreement mean all the costs of the Authority (including for the avoidance of doubt all costs incurred by the Authority in obtaining advice from external consultants) in performing its obligations under this Agreement including (without prejudice to the generality of the foregoing):
 - 1.1 The Authority's professional legal administrative and valuation costs fees and expenses in connection with the attempted or actual acquisition of Interests by the Developer or the Authority, the preparation and procedural requirements of the CPO (including in obtaining the Mayoral Decision and pursuing Special Parliamentary Procedure if required) and its implementation after confirmation and any other matter arising under the terms and scope of this Agreement
 - 1.2 All costs fees and expenses relating to any Public Inquiry or sessions of the Joint Committee if required in respect of the CPO including Counsel's fees the Authority's expenses the fees and expenses of all expert witnesses and the inspector's expenses
 - 1.3 Any costs fees or expenses which the Authority incurs itself or is obliged to pay to any party in the course of or as a result of any proceedings relating to the CPO and its implementation (including any costs fees or expenses awarded by the High Court in any action for judicial review or pursuant to the Acquisition of Land Act 1981 or incurred as a result of the withdrawal or non confirmation of the CPO)
 - 1.4 Compensation or other sums properly payable for any other matters not directly based on the value of land payable in connection with the CPO
 - 1.5 Any advance payments made by the Authority pursuant to Section 52 of the Land Compensation Act 1973 in connection with the CPO
 - 1.6 Home loss payments basic loss payments and occupier's loss payments pursuant to the Land Compensation Act 1973
 - 1.7 Disturbance payments made pursuant to Section 37 of the Land Compensation Act 1973 and compensation payments arising under Part 1 of that Act
 - 1.8 Compensation pursuant to Section 20 of the Compulsory Purchase Act 1965
 - 1.9 Stamp duty land tax and land registry fees arising out of the acquisition of any Interest and the vesting or acquisition of such Interests in the Authority or the Developer or the transfer of such Interests by the Authority to owners of the Open Space Land and stamp duty land tax on this Agreement (if any)

- 1.10 Any reasonable and proper costs incurred by the Authority (including the payment of costs of any other party) as a result of taking or defending any action in any court arising out of the CPO or the proceedings relating to it (including the passing of the Mayoral Decision the passing of any in principle Mayoral Decision the making of any vesting declaration or the service of any notice to treat or notice of entry) or arising out of or connected with the Development
- 1.11 Any reasonable and proper costs incurred by the Authority (including the payment of costs of any other party as mentioned in paragraph 1.3 of this schedule) as a result of taking or defending any action before the Lands Tribunal arising out of the CPO including any costs awarded to any other party by the Lands Tribunal
- 1.12 Any reasonable and proper legal valuation and other expenses which the Authority is required to pay to any party in connection with any claim referred to in paragraphs 1.4 to 1.8 above including the negotiation of Compensation transfer or conveyance of title or in connection with the settling of objections or representations raised against the CPO
- 1.13 Any Compensation payable pursuant to sections 333ZB (1) of the Greater London Authority Act 1999 and Schedule 3 of the Housing and Regeneration Act 2008 as a result of the carrying out of the Development
- 1.14 Any other statutory compensation payable in connection with the CPO or as a result of the carrying out of the development contemplated by the CPO
- 1.15 Any of the above costs arising as a result of the service of a Blight Notice or the acquisition or attempted acquisition of any Interest by agreement
- 1.16 The costs of implementing the warrant procedure necessary to secure vacant possession
- 1.17 The fees of the Authority's Agent
- 1.18 Any irrecoverable Value Added Tax or other tax or duty which the Authority shall be required to pay in connection with any of the above sums
- 1.19 Any statutory interest payable in connection with any sums in this schedule
- 1.20 All costs associated with the service of a notice to quit and a Landlord and Tenant 1954 Act notice in order to gain possession including the costs of any court proceedings or otherwise to secure possession and any compensation payable pursuant to the Landlord and Tenant Act 1954 as a consequence of the service of such a notice but only if the Developer requests the Authority to take steps to secure possession as landlord rather than by making a GVD or serving notice to treat and entry
- 1.21 Any costs fees and expenses incurred in connection with references to the Independent Surveyor or meetings of the Steering Group

- 1.22 Any costs of holding and managing all Interests acquired by the Authority pursuant to this Agreement including (without limitation) all outgoings in respect of any of the Interests acquired by the Authority such as (but not limited to) the payment of rent insurance and service charge and for works to maintain site security and taking steps to protect health and safety which are incurred as a result of the Developer failing to comply with its obligation in clause 3.1 provided that the Parties agree that where any such outgoings are properly due to the Developer in its capacity as landlord then the Authority shall be released from its obligation as the owner of the relevant Interest to make any such payment
- 1.23 Any costs arising from the provisions of any undertaking entered into by the Authority in a form approved by the Developer acting reasonably in relation to or as a consequence of the making of the CPO

SCHEDULE 3

Property Cost Estimate

SCHEDULE 4

Principles for Exchange Land Deed

The Exchange Land Deed will:

- 1 Identify the exact boundaries and quantum of the Open Space Land;
- 2 Identify the exact boundaries and quantum of the Exchange Land, which shall be not "less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons to whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased" for the purposes of satisfying the test in section 19 of the Acquisition of Land Act 1981;
- 3 Identify works to be carried out to the Exchange Land as may be necessary to make it suitable to satisfy the test in section 19 of the Acquisition of Land Act 1981 ("**the Exchange Land Works**");
- 4 Contain a commitment from the Developer to carry out, at its own expense, the Exchange Land Works following confirmation of the CPO and acquisition of the Exchange Land and in accordance with a programme to be agreed with the Authority;
- 5 Reflect the constraints on exercise of compulsory purchase powers in respect of the Open Space Land until the Exchange Land has been acquired and the Exchange Land Works have been completed; and
- 6 Provide for the Exchange Land Works to be maintained by the Developer to the reasonable satisfaction of the Authority until the date on which the Exchange Land vests in the London Borough of Hillingdon or the London Borough of Ealing (as the case may be).

SCHEDULE 5

Independent Surveyors

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