

The Mayor and Burgesses of the London Borough of Haringey
Council

and

Grainger Seven Sisters Limited
Developer

and

Northumberland & Durham Property Trust Limited
Guarantors

Supplemental Agreement
in respect of a development agreement relating to Wards Corner, Seven Sisters

Contents

1	Definitions and interpretation	1
2	Saving	1
3	Variation	1
4	Variations to the Annexures	2
5	Guarantor	2
	Execution page	3
	Appendix A : Amended Version Principal Agreement	4
	Appendix B : Comparite Version Principal Agreement	5
	Appendix C : Overage Worked Example	6
	Appendix D : Draft CPO Indemnity Agreement	7

This Agreement is dated

23

January

2015

- (1) **The Mayor and Burgesses of the London Borough of Haringey** whose address is at Civic Centre, High Road, Wood Green, London N22 8LE (**Council**);
- (2) **Grainger Seven Sisters Limited** (registered in England and Wales No. 6111428) whose registered office is at Citygate, St James' Boulevard, Newcastle upon Tyne NE1 4JE (**Developer**);
- (3) **Northumberland & Durham Property Trust Limited** of registered in England and Wales No. 182763) whose registered office is at City Gate, St James' Boulevard, Newcastle-upon-Tyne NE1 4JE (**Guarantor**);

Supplement to the Principal Agreement

Recitals

- (A) The Council, the Developer and the Guarantor have agreed to vary the Principal Agreement.
- (B) This Agreement is supplemental to the Principal Agreement.

It is agreed as follows:

1 Definitions and interpretation

- 1.1 Terms defined in the Principal Agreement shall have the same meanings as in this Agreement.
- 1.2 Unless the contrary intention appears, the following definitions apply:
 - 1.2.1 **Amended Version Principal Agreement** means the amended version of the Principal Agreement annexed as Appendix A;
 - 1.2.2 **Comparite Version Principal Agreement** means the comparison version of the Amended Version Principal Agreement annexed as Appendix B;
 - 1.2.3 **Principal Agreement**: the Conditional Development Agreement dated 03 August 2007 between the Council (1) the Developer (2) and the Guarantor (3) or amended or varied;
 - 1.2.4 **CPO Indemnity Agreement** means the draft CPO Indemnity Agreement attached to Appendix D;
- 1.3 For the purposes of the Law of Property (Miscellaneous Provisions) Act 1989 the provisions of the Principal Agreement shall be incorporated into this Agreement to the extent not inconsistent with the express provisions of this Agreement.

2 Saving

Except as varied by this Agreement the Principal Agreement shall remain unchanged and in full force and effect.

3 Variation

- 3.1 It is agreed and declared that from the date of this Agreement the Principal Agreement shall be varied as set out in the Amended Version Principal Agreement with changes being highlighted for ease of reference in the Comparite Version Principal Agreement;

3.2 It is acknowledged by the parties that except as expressly varied by this agreement:

- (i) all time periods contained or referred to in the Principal Agreement shall be calculated from the date of the Principal Agreement (i.e. 03 August 2007) and not from the date of this agreement; and
- (ii) where any obligation under the Principal Agreement has been complied with before the date of this agreement it shall be taken to have been complied with for the purposes of this agreement and need not be undertaken again; and
- (iii) that the Amended Version Principal Agreement contains all the provisions of the Principal Agreement after the variations set out in clauses 3 and 5

4 Variations to the Annexures

The Overage Worked Example at Annex 2 of the Principal Agreement shall be replaced with the Overage Worked Example at Appendix C of this Agreement.

5 Guarantor

- 5.1 The Guarantor consents to the terms of this Agreement and acknowledge the terms contained herein and that the guarantee given by them in the Principal Agreement is not released or varied by this Agreement and applies to this Agreement.

7 CPO INDEMNITY AGREEMENT

- 7.1 The parties shall on the date of this Deed enter into the CPO Indemnity Agreement.

Execution page

Supplemental Agreement

In witness of which this document has been executed by the Parties as a Deed and delivered on the date set out at the beginning of this Deed.

Executed as a Deed by)
Grainger Seven Sisters Limited acting)
by:)

sign here:

Director

print name: _____

sign here:

Director/Secretary

print name: _____

Executed as a Deed by)
Northumberland & Durham Property)
Trust Limited acting by:)

sign here:

Director

print name: _____

sign here:

Director/Secretary

print name: _____

See attached/090517/201

1 Stoke Road, Guildford, Surrey GU1 4HP Tel: 44 (0) 20 7676 5000 Fax: 44 (0) 20 7676 5120; DX: 159020
London.

Clive & Co LLP registered in England and Wales No. OC326539. Registered Office: The St Botolph Building,
136 Houndsditch, London EC3A 7AR.

Appendix A: Amended Version Principal Agreement

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
HARINGEY**

Council

and

GRAINGER SEVEN SISTERS LIMITED

Developer

and

NORTHUMBERLAND & DURHAM PROPERTY TRUST LIMITED

Guarantor

Development Agreement

in respect of

Wards Corner, Seven Sisters, London Borough of Haringey

Table of Contents

1	Definitions and interpretation	1
2	Conditionality and Licence	17
3	Objective.....	18
4	The Secretary of State's Consent Condition	19
5	The LUL Condition.....	19
6	Design Condition	20
7	Planning Condition.....	20
8	Site Assembly Condition	22
9	Stopping Up Order Condition.....	23
10	The Necessary Consents Condition	24
11	Funding Condition.....	24
12	Viability Condition	24
13	Notices	24
14	Non-assignment.....	25
15	Disputes.....	26
16	Project Board	27
17	Default.....	27
18	Confidentiality	29
19	VAT.....	31
20	Interest.....	31
21	Guarantee	31
22	Interim Gap Funding	32
23	Good Faith.....	33
24	Miscellaneous	33
25	Apex House	34
26	The Council	34
	PART B	34
27	Unconditional Date	34
28	Completion Date	34
29	Licence	34
30	Development Account and Sale Proceeds Account.....	35
31	Overage	35
32	No Partnership	38
33	Non-merger	38
34	Indemnity.....	38
35	Liability of the Developer	38
	SCHEDULE 1	40
	SCHEDULE 2.....	44

SCHEDULE 3.....	46
1. A Developer Adverse Condition is one which contains an obligation or restriction of any one or more of the following kinds:.....	46
ANNEXURES.....	48
ANNEX 1 - Form of Appraisal.....	49
ANNEX 2 – Overage: Worked Example	50
ANNEX 3 – Schedule of Habitable Rooms.....	51

This Agreement is dated

3 August

2007

and made between:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** whose address is at Civic Centre, High Road, Wood Green, London N22 8LE ("**Council**"); and
- (2) **GRAINGER SEVEN SISTERS LIMITED** a limited liability company incorporated and existing under the laws of England Wales (registered in England and Wales No. 06111428) whose registered office is at Citygate, St James' Boulevard, Newcastle upon Tyne NE1 4JE ("**Developer**"); and
- (3) **NORTHUMBERLAND & DURHAM PROPERTY TRUST LIMITED** a limited liability company incorporated and existing under the laws of England Wales (registered in England and Wales No. 00182763) whose registered office is at Citygate, St James' Boulevard, Newcastle upon Tyne, NE1 4JE ("**Guarantor**").

It is agreed as follows:

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following definitions apply:

Adverse Interests interests of third parties in or affecting the Development Land or which may impede or prevent the carrying out of the Development (such as, but not limited to, easements, rights of way, rights of light and restrictive covenants) and including all occupational interests, leases and tenancies;

Apex House the land and buildings belonging to the Council and as known as Apex House, title to which is registered at the Land Registry under titles numbered NGL316769 and NGL437591;

Appeal an appeal against a Planning Refusal;

Applicable Period as defined in clause 1.10.4;

Appointments the form of appointment of each member of the Professional Team;

Appraisal an appraisal of the Development utilising the form of the Proforma Appraisal annexed as Annex 1;

Appropriation the appropriation by the Council of any land for town and country planning purposes under Section 237 of the Act;

Approved Assignee a company (not being an overseas company) which the Council:

- (a) is satisfied (acting reasonably) has the requisite experience, track record and financial standing necessary to enable it to perform the obligations of the Developer in this Agreement; and
- (b) has approved, such approval not unreasonably to be withheld or delayed;

Approved Fund a Fund which comprises any recognised Bank or financial institution operating within the United Kingdom registered with the Financial Services Authority or a foreign Bank which has come under the regulatory jurisdiction of the Financial Services Authority for the purposes of the Financial Services and Markets Act 2000 providing finance facility arrangements to the Developer for the purposes of enabling the Developer to comply with its obligations under this Agreement;

Associate in relation to a person or body, any other person or body:

- (a) who is a connected person or body (as defined in section 839 of the Income and Corporation and Taxes Act 1988) to the first mentioned person or body; or
- (b) with whom the first mentioned person or body is acting in concert (as defined in the City Code on Takeovers and Mergers)

and includes without limitation, in relation to any undertaking, any group undertaking of such undertaking (as such terms are defined in section 259 of the Companies Act 1985);

Authority any statutory, public, local or other competent authority or a court of competent jurisdiction;

Building Contract the building contract or building contracts to be entered into by the Developer with Building Contractor in relation to the Works and/or each Section and "*Building Contract*" means any one of such building contracts;

Building Contractor the building contractors appointed by the Developer under the Building Contracts in accordance with the provisions of this Agreement which building contractor is in each case reputable and appropriately experienced and "*Building Contractor*" shall mean any one of such building contractors;

Call Option Agreement a call option agreement of even date with this Agreement between the Council and the Developer and relating to the Council's Land which call option agreement is subject to the Secretary of States Consent Condition;

CDM Regulations the Construction (Design and Management) Regulations 2007;

Certificate of Practical Completion the certificate or statement issued by the Employer's Representative in accordance with his appointment certifying that the Works, or the relevant Section, have been practically completed in accordance with the relevant Building Contract in each case;

Clawback Provision Co-ordinator such person as may from time to time be appointed by the Council to represent the Council in relation to the calculation of Overage under clause 31 and details of whose appointment have been given to the Developer;

Commercial Unit a completed shop office commercial or leisure unit or other unit of accommodation (not being a Residential Unit) within the Development Site;

Compensation shall mean as defined in the CPO Indemnity Agreement;

Completion Date twenty (20) working days after the Unconditional Date;

Conditions collectively:

- (a) the Secretary of State's Consent Condition;
- (b) the LUL Condition;
- (c) the Design Condition;
- (d) the Planning Condition;
- (e) the Site Assembly Condition;
- (f) the Stopping Up Order Condition;
- (g) the Necessary Consents Condition;
- (h) the Funding Condition; and
- (i) the Viability Condition

and reference to a **Condition** or the **Conditions** shall be to any one or more of them.

Consents the Satisfactory Permission, all Planning Agreements, all other consents, permissions, agreements, licences and approvals under the Planning Act (and all other statutes containing provisions relating to town and country planning) (including the approval of any matters reserved by any such) building regulations and any other statute, bylaw or regulation of any Authority from time to time necessary for the Developer to undertake, complete and operate the Development in accordance with the provisions of this Agreement including (if they are destroyed or damaged) the reinstatement of the Works;

Construction Costs those elements of the Development Costs (as contained in the Development Account) as relate to the carrying out of the construction works necessary to implement and complete the Development;

Council Land the freehold land which is the subject of the Call Option Agreement;

Council's Solicitors the Head of Legal Services at the Council;

Council's Adjoining Land any land owned by the Council which adjoins but does not form part of the Development Land including Apex House;

Counsel Senior or Leading Counsel experienced in advising in relation to schemes in the nature of the Development or Compulsory Purchase or Judicial Review or Mediation or other related aspects of this Agreement, agreed between the Developer and the Council or in the absence of agreement appointed on the application of any of them by the President of the Bar Council;

CPO an order under Section 226 of the Planning Act (and other powers) for the compulsory acquisition of the Adverse Interests and/or Third Party Properties within the CPO Land;

CPO Costs shall mean as defined in the CPO Indemnity Agreement;

CPO Indemnity Agreement means the CPO Indemnity Agreement dated [] and made between (1) the Council (2) the Developer and (3) the Guarantor;

CPO Land that part or the whole of the Development Land which is to be the subject of the CPO as agreed under ~~clause 8.6~~ the terms of the CPO Indemnity Agreement;

Date of Sectional Practical Completion the date certified by the Employer's Representative in the Certificate of Practical Completion as being the date on which the relevant Section of the Works was practically completed in accordance with the Building Contract relating to that Section notwithstanding any Snagging Works and the terms "*practical completion*" and "*practically complete*" shall be construed accordingly as the date on which the relevant Section or Sections are determined as having been practically completed (as applicable);

Defect any omissions, imperfections, defects or other faults in workmanship and materials arising as a result of the Works or the relevant Section which are not in accordance with the relevant Building Contract and which occurs or manifests itself and is notified to the Developer during the Defects Liability Period;

Defects Liability Period the period of 50 weeks commencing on the relevant Date of Sectional Practical Completion;

Design Condition the approval or deemed approval by the Council (as landowner and not as planning authority) of the Detailed Design in accordance with clause 6;

Detailed Design the design of and specification for the Development in sufficient detail to support an application for Detailed Planning Permission for the Development approved by the Council in accordance with clause 6.5 of this Agreement subject to Variation;

Developer Adverse Conditions any one or more of the matters set out in Schedule 3;

Developer's Architects such firm of architects as may from time to time be appointed by the Developer or a Building Contractor in accordance with this Agreement;

Developer's Auditors such independent and appropriate qualified auditors who the Developer may appoint for the purposes of clause 31.8;

Developer's Mechanical and Electrical Services Engineers such firm of mechanical services engineers (if any) as may from time to time be appointed by the Developer or the Building Contractors in accordance with this Agreement;

Developer's Quantity Surveyor such reputable quantity surveyor as the Developer may appoint in accordance with this Agreement;

Developer's Solicitors Clyde & Co LLP of Beaufort House, Chertsey Street, Guildford, Surrey GU1 4HA or as otherwise notified by the Developer to the Council;

Developer's Structural Engineers such other firm of structural engineers as may from time to time be appointed by the Developer or a Building Contractor in accordance with this Agreement;

Development the carrying out of Works and operations in, on, under and/or above the Development Land pursuant to the Planning Permission including but not limited to the demolition of existing buildings and the construction of buildings and facilities comprising (without limitation):

Residential accommodation

shops, kiosks, Commercial Units (including government/local government offices to which the public have access), bars, restaurants, leisure and associated uses, private gardens and open space for residents, public open space, residents car parking and ancillary uses

in each case in accordance with the Detailed Design as varied or amended in accordance with this Agreement.

Development Account the account to be maintained by the Developer under clause 30 for the purposes of recording the Development Costs;

Development Completion Date the date on which the Developer has notified the Council that the Date of Sectional Practical Completion for all Sections comprised within the Development has occurred;

Development Costs those costs and expenses properly and reasonably incurred or paid by or allowed by or to the Developer in entering into and carrying out performing and/or procuring compliance with its obligations under this Agreement and the CPO Indemnity Agreement and/or the LUL Agreement, and in acquiring the whole or any part of the Development Land and in relation to the Development whether before or after the date of this Agreement including those falling within the headings set out in Schedule 2 but provided that there shall not be included within the Development Costs any costs or expenses which are directly or wholly attributable to the wrongful act or the default of the Developer;

Development Land the land on which the Development is to be carried out and any part of it;

Disposal the sale by the Developer whether by the sale or transfer of the Development Land or the grant of a lease or leases (or, in the case of the LUL land, an underlease or underleases) at a premium leaving only a nominal reversion and reserving only a nominal ground rent of any part or the whole of the Development Land;

Employer's Representative the architect or employer's agent (as appropriate according to the form of the Building Contract) who shall be a reputable and appropriately qualified consultant appointed by the Developer to monitor the Works in accordance with this Agreement and may include an Associate of the Developer;

Existing Properties means the following properties forming part of the Development Land:

Address	Type	Tenure	Acquisition Date
Properties Acquired			
709 Seven Sisters Road	Commercial / Residential	F/H	July-06
1 West Green Road	Commercial	F/H	June-06
715, 721 and 723 Seven Sisters Road	Commercial	F/H	January-08
Land at Wards Corner	Commercial	F/H	January-08
10 Suffield Road	Residential	F/H	July-06
18a Suffield Road	Residential	F/H	Feb-06
18 Suffield Road	Residential	F/H	October-05
22 Suffield Road – First and Second Floors	Residential	F/H	December-04
24a Suffield Road	Residential	F/H	December-07
24b Suffield Road	Residential	F/H	December-07
26 Suffield Road	Residential	F/H	January-06
4 Suffield Road	Residential	F/H	January-08
6 Suffield Road	Residential	F/H	January-08
251-253 High Road	Commercial	F/H	January 08

Expert the independent person referred to in clause 15;

Finally Determined (in relation to a Satisfactory Permission) seven (7) weeks have elapsed since a decision order or action to which section 288 of the Act applies or where that section does not apply thirteen (13) weeks have elapsed since the date of the decision, grant, order or action of the Local Planning Authority in respect of the grant of Planning Permission and either:

- (a) no Proceedings have been instituted in respect of that Planning Permission; or
- (b) any Proceedings which may have been instituted in respect of that Planning Permission during whichever shall be applicable of such periods have been exhausted (which shall occur on the withdrawal of

such Proceedings or when the time for appealing against the decision of any court has expired and no appeal has been lodged) with that Planning Permission being finally upheld;

Force Majeure the period or periods of delay in the carrying out of the Works and/or any Section reasonably and properly attributable to:

- (a) any matter which gives rise to an extension of time under the relevant Building Contract;
- (b) the insolvency or winding up of the Building Contractor;
- (c) any act default delay or omission on the part of the Council or LUL; and/or
- (d) any other matter outside the reasonable control of the Developer

(but in each case save insofar as the same arises as a direct result of the wrongful act or the omission or default of the Developer) and in each case as is certified by the Employer's Representative as being a reasonable period having regard to the nature of the delay;

Fund any person or persons providing finance to the Developer for the purposes of enabling the Developer to comply with its obligations under this Agreement;

Funding Condition the Developer securing funding for the Development and the Developer's obligations under this Agreement;

Gross Internal Area, Gross External Area and Net Internal Area respectively the gross internal area, gross external area and/or net internal area expressed in square feet or square metres of accommodation within the relevant part or the whole of the Development such area to be measured in accordance with the Code of Practice issued by the Royal Institution of Chartered Surveyors (Fifth Edition 2001) and all such measurements shall be made and agreed between the Council and the Developer (acting reasonably) and in the absence of Agreement the same shall be referred by or on behalf of the Council or the Developer for determination in accordance with the provisions of clause 15;

Habitable Room a room within a Residential Unit considered appropriate for occupation under the Council's Supplementary Planning Guidance 3a (Density, Dwelling Mix, Floorspace Minima, Conservations, Extensions and Lifetime Homes) comprising bedrooms, living rooms and dining rooms and space rooms used for these purposes provided that kitchens with a floor area over 13m² (net internal area) and/or large rooms over 20 m² (net internal area), which are capable of sub-division, will be counted as two Habitable Rooms.

Insolvent

- (a) in relation to a company that:
 - (i) it is deemed unable to pay its debts as defined in section 123 of the Insolvency Act 1986 (referred to as "the Insolvency Act" in the remainder of this definition); or

- (ii) an order is made for a voluntary arrangement under part I of the Insolvency Act; or
 - (iii) an administration order is made under part II of the Insolvency Act; or
 - (iv) a receiver or manager is appointed whether under part III of the Insolvency Act (including an administrative receiver) or otherwise; or
 - (v) it goes into liquidation as defined in section 247(2) of the Insolvency Act (other than a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent); or
 - (vi) a provisional liquidator is appointed under section 135 of the Insolvency Act; or
 - (vii) a scheme of arrangement is made under section 425 of the Companies Act 1985;
- (b) in relation to an individual that:
- (i) an order is made for an interim order or a proposal is made for a voluntary arrangement under part VIII of the Act; or
 - (ii) a bankruptcy order is made by the Court; or
 - (iii) he enters into a deed of arrangement; and
- (c) in relation to a partnership and/or the property of a partnership the appointment of a receiver or liquidator or the making of an application for an administration order;

Insured Risks such risks as are normally covered by an all risks policy together with such other risks as the Developer may from time to time reasonably require to be covered but excluding any risks against which insurance cannot, in the Developer's opinion, reasonably be obtained at reasonable cost in the London commercial insurance market from time to time and subject in all cases to any excess exclusions or limitation imposed by the insurers;

Interest Rate that rate of interest being 2% above the greater of base lending rate from time to time of the Royal Bank of Scotland plc and LIBOR;

Interim Gap Funding

LUL London Underground Limited;

LUL Agreement the agreement with LUL which satisfies the LUL Condition;

LUL Condition the Developer entering into an agreement with LUL (with the Council as a party to the extent necessary), which agreement is Unconditional, under which LUL grant development rights to the Developer and a 150 year (or longer) lease of the LUL airspace sufficient to enable the Developer to implement the Development and on terms that the Developer considers to be acceptable;

Material Variation means a Variation of the Detailed Design which materially and significantly changes those elements of the Detailed Design approved by the Council under clause 6.3;

Minor Variation a Variation to the Detailed Design which is not a Material Variation; and

Necessary Consents those of the Consents apart from and excluding Satisfactory Permission to the extent required to enable commencement of the Development;

Necessary Consents Condition the Developer securing the Necessary Consents in accordance with clause 10;

Open Market Value the price at which the sale of the relevant interest in the relevant land and buildings comprising any part or the whole of the Development might reasonably have been expected to complete with vacant possession unconditionally for cash consideration on the relevant date assuming:

- (a) a willing seller;
- (b) that, prior to the relevant date, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, the agreement of the price and terms and for the completion of the sale;
- (c) that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the relevant date;
- (d) that no account is taken of any additional bid by a prospective purchaser with a special interest;
- (e) that both parties to the transaction have acted knowledgeably, prudently and without compulsion; and
- (f) and having regard to the terms of this Agreement and/or the LUL Agreement;

Overage the sum calculated and payable to the Council in accordance with clause 31;

Participation Date the date being the earlier of the date on which 95% (by number of Residential Units and Commercial Units) of Residential Units and Commercial Units have been the subject of Disposal (or in the case of Commercial Units, lettings on rack rent terms) and 24 months after the Development Completion Date;

Planning Acts the regulatory framework for planning including (but not limited to) the Town and Country Planning Act 1990 (as amended) (**the Act**), the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 and **Planning Act** shall mean any of them or any consequential or replacement legislation or any statutory instruments enacted under any one of the above acts;

Planning Agreement any agreement or agreements in respect of and affecting the Development Land pursuant to all or any of the following provisions: Section 106 of the Act (including but without limitation the Section 106 Agreement); Section 38 and/or 278 of the Highways Act 1980 (including without limitation any Section 38 Agreement and/or Section 278 Agreement); ; or any provision to similar intent or any unilateral undertaking pursuant to Section 106 of the Act and including but not limited to the Affordable Housing Agreement;

Planning Application any planning application and supporting documentation in respect of the Development prepared by the Developer and submitted in accordance with clause 7 and incorporating the Detailed Design;

Planning Authority Haringey Council in its capacity as planning authority and includes any other body with equivalent responsibility in respect of the Development Land;

Planning Condition the obtaining of Satisfactory Permission in accordance with clause 7 which has been Finally Determined;

Planning Permission a planning permission granted pursuant to a Planning Application and includes (where requisite) any necessary listed building or conservation area consent;

Planning Refusal a refusal of a Planning Application (including a deemed refusal arising under section 78(2) of the Act) or the grant of a Planning Permission which is not a Satisfactory Permission;

Preparatory Works operations consisting of site clearance, demolition work, archaeological investigations (if any), investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion of services and erection of any temporary means of enclosure;

Price the price payable by the Developer for the Council Land (with vacant possession) being (subject to clause 22.1.2) the sum of
which price shall be payable under the Call
Option Agreement plus (to the extent payable) the Overage;

Proceedings all or any of the following as the case may be:

- (a) an application for judicial review under Part 54 of the Civil Procedure Rules arising from the grant, or any procedural step towards the grant of the Planning Permission including any appeals to a higher court following a judgement of a lower court;
- (b) an application pursuant to Section 288 of the Act arising from the grant of the Planning Permission by the Secretary of State, including any appeals to a higher court following a judgement of a lower court;
- (c) any reconsideration by the Planning Authority of the Planning Application or by the Secretary of State of an appeal (as the case may be) following a previous Planning Permission being quashed pursuant to an application within the meaning of paragraphs (a) or (b) above and the matter being remitted to the Local Planning Authority or the Secretary of State (as the case may be).

Professional Team the Developer's Architect, the Developer's Mechanical and Electrical Services Engineer, the Developer's Structural Engineers and the Employer's Representative and such other professional consultants as may be appointed by the Developer or the Building Contractor in respect of a material part of the Development;

Prohibited Materials any products, substances or materials or any combination of them which at the time of specification:

- (a) do not conform with British or European Standards or Codes of Practice or the recommendations of the Building Research Establishment; and
- (b) are generally known to the building profession at the time of their specification for inclusion in the relevant Section of the Works to be deleterious to health and safety, the performance or durability of buildings or structures or damaging to the environment in the particular circumstances in which they are specified to be used or are used;

Project Board the board established under clause 16 of this Agreement;

Project Management Fee 3% of the Construction Costs;

Public Requirements any notice, order, demand, proposal or requirement given or made by any local or other statutory authority whether before or after the date of this Agreement and all matters capable of registration by any local or other Authority (whether or not registered before the date of this Agreement);

Qualifying Certificate a certificate as described in clause 8.18.

Relevant Date five ten (5 10) years (or such later date as the Council and the Developer may agree) from the date of this Agreement provided that if on such date either:

- (a) the Planning Condition has not been satisfied but the Planning Application has been subject to call-in (or analogous process) or an Appeal or Proceedings have been commenced and the Developer is pursuing such Appeal, call-in, or Proceedings (in the latter two cases) by way of assistance to the Council in a reasonable manner; and/or
- (b) the Stopping Up Order Condition has not been satisfied and the Developer is pursuing an appeal against refusal of the Developer's application in respect of the same non-determination or grant in unacceptable terms or the period during which the same is subject to judicial challenge has not expired or the Developer or the Council are defending proceedings for judicial challenge; and/or
- (c) the CPO process and/or Appropriation has been initiated under clause 8 or under the CPO Indemnity Agreement but that process has not been finalised

then in any such circumstances on request by the Developer the Relevant Date shall be extended until the date twenty (20) Working Days after the

Planning Application is Finally Determined and the Planning Condition is either satisfied or not satisfied and/or the Stopping Up Order Condition is satisfied and/or the Site Assembly Condition is satisfied (as the case may be);

Residential Units units of accommodation within the Development intended for residential use and including accommodation for private residential purposes and Affordable Housing;

Resolution a resolution by the Planning Authority to grant Planning Permission which resolution incorporates the Planning Authority's section 106 requirements;

RIBA the Royal Institute of British Architects;

Sale Proceeds where there has been a Disposal, all monies and anything representing money's worth or value in lieu of money of a capital nature (excluding VAT) received as consideration for such Disposal;

Sale Proceeds Account the account to be maintained by the Developer under clause 30 for the purposes of recording the Sale Proceeds;

Satisfactory Permission detailed Planning Permission for the Development in a form and upon conditions which are satisfactory to the Developer in accordance with the provisions of clause 7;

Schedule of Habitable Rooms the schedule setting out the Developer's current intentions as to the provision and distribution of Habitable Rooms within the Development annexed as Annex 4 and subject to Variation in accordance with this Agreement;

Secretary of State the Secretary of State for Communities and Local Government or other authority for the time being having or entitled to exercise, the appropriate powers contemplated by this Agreement or person appointed to act on behalf of the minister or other authority;

Secretary of State's Consent the consent of the Secretary of State under and for the purpose of Sections 32-34 of the Housing Act 1985 (and any other necessary consent of the Secretary of State) in each case:

- (a) allowing the Council to enter into (and complete the sale of the Council's Land pursuant to) the Call Option Agreement; and
- (b) allowing this Agreement to be given its full effect without the need for further consent except as provided in this Agreement;

Secretary of State's Consent Condition the obtaining of the Secretary of State's Consent in a form which is satisfactory to the Council and the Developer (both acting reasonably)

Section any part of the Works being less than whole;

Section 38 Agreement any Agreement pursuant to Section 38 of the Highways Act 1980 to be entered into between (inter alia) (1) the relevant Authority and (2) the Developer and (3) (subject to the terms of this

Agreement) the Council which may be required by the relevant Authority as a condition of the grant of a Satisfactory Permission;

Section 106 Agreement any agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to be entered into between (inter alia) (1) the relevant Authority (2) the Developer and (3) subject to the terms of this Agreement) the Council which may be required by the relevant Authority as a condition of the grant of a Satisfactory Permission;

Section 278 Agreement shall mean any agreement pursuant to Section 278 of the Highways Act 1980 to be entered into between (inter alia) (1) the relevant Authority (2) the Developer and (3) (subject to the terms of this Agreement) the Council which may be required by the relevant Authority as a condition of the grant of a Satisfactory Permission;

Site Assembly Condition

- (a) the Developer completing the acquisition of and/or exchanging Unconditional agreement(s) (or such agreement(s) becoming Unconditional) for the acquisition of the freehold and/or leasehold interest in all Third Party Properties; and
- (b) the Developer completing the acquisition of and/or exchanging Unconditional agreement(s) (or such agreement(s) becoming Unconditional) for the acquisition, release, termination or variation of all Adverse Interests so as to enable the Development to be carried out retained or used (including the provision of full vacant possession of the entirety of the Development Land); and
- (c) the Developer completing the acquisition and/or exchanging Unconditional agreement(s) (or such agreement(s) becoming Unconditional) for the grant of any consent, waiver or approval in respect of or under any Adverse Interests so as to enable the Development to be carried out, retained and used; and
- (d) a confirmed CPO being obtained in respect of any Third Party Property and any Adverse Interests to the extent not so acquired or released (as the case may be) or the subject of any Unconditional agreement in the manner provided in (a) to (c) above and a General Vesting Declaration being made pursuant to the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 ("**Vesting Declaration**") in relation to all of the interests comprised in such Third Party Property and/or in relation to such Adverse Interests vesting the same in the Council;

Snagging Works any minor outstanding works which will be the subject of a snagging list in accordance with the provisions of the Building Contracts;

Standard Commercial Conditions the Standard Commercial Property Conditions (First Edition)

Stopping Up Order Condition the Developer securing the appropriate orders for the legal closure of all roads footpaths and other public highways and the diversion and/or stopping up of public utility apparatus within any road footpath right of way or other public highway to be so closed in accordance

with clause 8 and in each case to the extent required in order to carry out and complete the Development in accordance with this Agreement;

Third Party Properties any premises within or forming part of the Development Land which are either owned or occupied by any person other than the Developer or an Associate of the Developer, the Council or LUL;

Unconditional in the context of an agreement for lease or sale or any other agreement necessary to satisfy any of the Conditions, a legally enforceable agreement which is either unconditional or conditional only upon the Unconditional Date occurring;

Unconditional Date the date on which the Conditions have all been satisfied or waived in accordance with this Agreement;

Variation any variation amendment addition to or omission from the Base Scheme and/or the Schedule of Habitable Rooms and/or (as appropriate) the Detailed Design;

VAT value added tax and any similar tax substituted for it or levied in addition to it;

Viability Condition the Developer being reasonably satisfied that the Development should at least yield a Net Profit (as defined in clause 31.4) equal to 15% of DC (as defined in clause 31.4) assuming a Disposal or Disposals of the entirety of the Development (either as a whole or the sum of its parts) as at the Participation Date;

Working Day any day other than Saturday or Sunday or public or bank holidays when clearing banks in the United Kingdom are open to the public for the transaction of business and Working Days specifically excluding December 25th to January 3rd inclusive;

Works all works to be carried out by or on behalf of the Developer in preparation for and as part of the Development in accordance with the provisions of this Agreement including demolition of existing buildings and structures site preparation and remediation and the construction of the Development and all necessary services, protective hoardings and as all works provided in the Detailed Design;

- 1.2 References to clauses, schedules and annexures shall be deemed to be references to clauses of and schedules and annexures to this Agreement unless otherwise stated.
- 1.3 The clause, paragraph and schedule headings are for ease of reference only and shall not affect the construction or interpretation thereof;
- 1.4 References to the "parties" shall be references to the Council, the Developer and the Guarantor and references to a "party" shall be to any of them.
- 1.5 Any references to VAT shall include any tax of a similar nature substituted for or in addition to it unless the context otherwise requires.
- 1.6 Any reference in this Agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re-amended, re-enacted or applied by or under any other enactment and shall

include all instruments, orders, plans, regulations and permissions and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.

- 1.7 Where in this Agreement examples are given such examples shall not limit any general description preceding such examples.
- 1.8 References to the parties shall include their successors in title.
- 1.9 All references to the Council are to Haringey Council as landowner of the Council Land and Housing Authority and shall not in any way fetter or compromise the Haringey Council as local planning authority.
- 1.10 Where the consent or approval of a party is expressed to be required under this Agreement and is expressly subject to a proviso or requirement that the consent or approval shall not unreasonably be withheld or delayed then the party's consent in each case shall be subject to the following provisions:
 - 1.10.1 the party's consent shall not unreasonably be withheld or delayed;
 - 1.10.2 the party seeking consent ("Applicant") shall seek the relevant consent by an application either orally at the Project Board or to the respective representative in writing addressed to the party whose consent is required ("Consentor") setting out the consent sought, details of the clause within this Agreement under which it is requested, giving full reasons and making specific reference to the fact that the request for consent is subject to the provisions of this clause and that failure to respond to the request for consent will mean that consent will, in the circumstances set out in clause 1.10.6, be deemed to have been given;
 - 1.10.3 the Applicant providing, with the application, such supporting information as is reasonably necessary for the Consentor to properly consider the application;
 - 1.10.4 the Consentor shall give a written response to an application for such consent or approval within a period of ten (10) Working Days following the later of receipt of the application and (where such a request is made under clause 1.10.3 and 1.10.5(b)) such other information as is referred to at clause 1.10.3 or where a different time period is specified in this Agreement then within that time period (the "**Applicable Period**")
 - 1.10.5 the response referred to in clause 1.10.4 will either be:
 - (a) that the consent or approval requested is given, with or without conditions; or
 - (b) (where reasonable and proper) a request for further or omitted information will be made; or
 - (c) a refusal of such consent or approval, accompanied by reasonable and proper written reasons;
 - 1.10.6 if the Consentor fails within the Applicable Period to provide any of the responses set out in sub-clause 1.10.5 then and in such circumstances the consent or approval applied for shall be deemed for the purposes of this Agreement to have been given (where any such further information is provided then the provisions of this clause shall apply (*mutatis mutandis*) with effect from the date of provision);
 - 1.10.7 any dispute between the parties as to whether the application was properly made in accordance with this clause, or the consent or approval has been or should have been deemed to have been given in accordance with the

provisions of this sub-clause shall be referred by either party for determination under clause 15;

- 1.10.8 The provisions of this clause 1.10 shall not apply in relation to any statutory function or authority of the Council.
- 1.11 In relation to indemnities given to the Council by the Developer or the Guarantor under the terms of this Agreement:
 - 1.11.1 it does not extend to any consequential loss caused as a result of any physical damage sustained, indirect loss or loss of profits;
 - 1.11.2 the Council may take all reasonable steps at the Developer's reasonable request and cost to mitigate any losses which might result in a claim for indemnification being made provided that if the Council chooses not to mitigate its losses in accordance with the Developer's reasonable request then the Developer will only be liable for such losses and/or costs that the Council would have incurred had the Council so mitigated its loss;
 - 1.11.3 the Council shall as soon as reasonably practicable give notice in writing to the Developer of any claims brought against the Council which may cause the Developer to be liable;
 - 1.11.4 the Council shall not (unless and to the extent such actions would be unlawful) admit liability, settle or adjust or compromise any such claim without the written consent of the Developer (such consent not to be unreasonably withheld or delayed);
 - 1.11.5 at the written request and cost of the Developer or the Council shall give to the Developer all such assistance as the Developer may reasonably require (and it is proper for the Council to give) for the purposes of so defending, settling, compromising or otherwise dealing with such claims.
- 1.12 Any reference to the doing, omitting or permitting of any act or thing by the Council or the Developer includes the doing, omitting or permitting of that act or thing by any agent, servant or other employee of any of them;
- 1.13 Where any party to this Agreement consists of more than one person (corporate or otherwise) covenants and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally;
- 1.14 For the purposes of this Agreement something shall be material or shall have a material effect or shall materially affect the matter in question if it is more than de minimis or has more than a de minimis effect.
- 1.15 This Agreement supersedes the provisions of the Co-Operation Agreement dated 31st July 2005 between the Council (1) and the Guarantor (2) which is hereby terminated.

PART A

2 Conditionality and Licence

2.1 This part A of this Agreement shall together with clause 1 come into effect on the date of this Agreement.

2.2 If:

2.2.1 the Unconditional Date has not occurred by the Relevant Date; or

2.2.2 at any time prior to the Unconditional Date the Developer serves notice on the Council which notice:

(a) attaches the current Appraisal for the Development which Appraisal does not satisfy the Viability Condition; and

(b) states that in the Developer's reasonable opinion (with reasons) there is no reasonable prospect that the Development will satisfy the Viability Condition so as to enable the Unconditional Date to occur prior to the Relevant Date; or

2.2.3 at any time prior to the Unconditional Date the Developer serves notice on the Council which notice states that in the Developer's reasonable opinion (with reasons) there is no reasonable prospect that the Unconditional Date will occur by the Relevant Date;

then and in any such case the Council or the Developer may by serving notice on the other parties elect to terminate this Agreement with immediate effect at any time prior to the Unconditional Date but not after the occurrence of the Unconditional Date.

2.3 The Council hereby grants unto the Developer and persons authorised by the Developer full licence for the Developer to enter upon the Council Land for the purposes of enabling the Developer to carry out such site investigations, measuring, survey, inspections and testing relating to the Development and/or the Works ("**Preliminary Matters**") as the Developer shall reasonably require for the purposes of this Agreement provided that in respect of entry on to the Council Land the Developer shall notify the Council prior to taking access for such purposes (and shall give details of the proposed Preliminary Matters to be carried out) and subject to the Developer making good any physical damage caused during the carrying out of any Preliminary Matters and indemnifying the Council in the terms of clause 34 but in relation to the Preliminary Matters only. Any access to tenanted property shall be subject to the rights of the tenant in each case.

2.4 The Developer (only) shall have the right at its sole discretion and from time to time to waive any of the Conditions (save for the Secretary of State's Condition, the Planning Condition and the LUL Condition) in each case by serving notice on the Council stipulating which one or more Conditions are to be waived following which that Condition or Conditions shall be deemed satisfied.

2.5 Any termination of this Agreement pursuant to this clause 2 or otherwise shall be without prejudice to all accrued claims in respect of any antecedent breach of the terms of this Agreement.

2.6 Following termination of this Agreement under the provisions of any of clauses 2.2, 4.5, 5.5 or 17

- (a) the Council shall have the right at any time within 6 months of such termination to serve notice on the Developer requiring the Developer to sell the whole of the Developer's interest in the Development Land to the Council (to the extent that the Developer has the legal right to effect such sale and excluding the land the subject of the LUL Agreement) at a price in each case equal to (in the case of the Existing Properties) the aggregate of the total purchase price's paid or payable by or on behalf of the Developer for the acquisition of the relevant interest (including professional fees costs and expenses in respect of acquisition, Stamp Duty Land Tax and other taxes on the purchase) and a return of 6% per annum on all such land prices, costs expenses and other sums for the period from the date on which such sums were incurred until the date of repayment by the Council following exercise of the Council's right as aforesaid or (in all other cases) the Open Market Value of the relevant interest as at the date of service of the notice as agreed between the Council and the Developer or determined under clause 15. On exercise of such right by the Council, which shall apply in relation only to the whole of the Developer's interest (unless otherwise agreed by the Developer at its discretion) a contract for sale of the relevant interest shall come into immediate effect and completion will take place 20 working days after service of notice by the Council. The Council shall be entitled to nominate a third party purchaser to complete on its behalf, without prejudice to the obligation on the Council under this clause 2.6. The Standard Commercial Property Conditions current as at the relevant date shall apply to the sale and purchase hereby contemplated to the extent consistent with the foregoing provisions of this clause 2.6 PROVIDED THAT the Council shall be entitled at any time to proceed to exercise its powers of compulsory acquisition notwithstanding this clause 2.6 (but at its own cost and so that the Council (and not the Developer) shall be liable for all CPO Costs and Compensation arising from such exercise); and
- (b) the Council shall within six (6) months of termination of this Agreement either refund to the Developer any statutory compensation paid by the Developer in respect of any part of the Developer Land that comprises CPO Land which is then vested in the Council or which the Council is entitled to have vested in it (plus interest thereon at 6% per annum) or (at the Council's option) the Council shall transfer the said CPO Land to the Developer or as the Developer may direct for a nil consideration and free from this Agreement.

3 Objective

- 3.1 It is the objective of the Council and the Developer to secure a quality redevelopment of the Development Land which promotes the regeneration objectives for the area.
- 3.2 In pursuance of the objectives set out in clause 3.1, it is the parties' intentions that the Developer will use reasonable endeavours:
- (a) In respect of the individual Residential Units within the Development which are intended to be sold by way of Disposal to develop and promote a marketing strategy for such Residential Units which targets owner occupiers, including an initial marketing drive aimed at local residents, whilst not precluding simultaneous or subsequent marketing to other market sectors;

- (b) to promote design and quality standards for the Development and its constituent units which are consistent with the regeneration objectives set out in clause 3.1:
- (c) in respect of the individual Residential Units which are intended to be let rather than be subject to a Disposal to develop and promote a letting strategy in respect of such Residential Units which is consistent with the regeneration objectives referred to in clause 3.1 with the intention of ensuring that:
 - (i) the initial occupiers are those who have no recourse to public funds other than by virtue of a universal entitlement; and
 - (ii) the volume and nature of sales to investment vehicles does not, of itself, undermine the regeneration objectives set out in clause 3.1

but the Council acknowledges that: -

- (iii) the Developer may at its discretion either make Disposals of such Residential Units or let them under short term occupational leases; and
- (iv) such sales or lettings may be made by an Associate of the Developer or a fund to whom the Developer may transfer or grant a long lease of the whole or the relevant part of the Development Land.

4 The Secretary of State's Consent Condition

- 4.1 The Secretary of State's Consent Condition shall be satisfied by the obtaining by the Council of the Secretary of State's Consent.
- 4.2 Within a period of 10 working days following the date of this Agreement, the Council shall apply for and use all reasonable endeavours to obtain the Secretary of State's Consent as soon as reasonably practicable and shall keep the Developer fully informed as to the progress made in obtaining the Secretary of State's Consent at all times providing the Developer with copies of any relevant documentation and or information and such other information as the Developer may request from time to time.
- 4.3 The Council shall notify the Developer as soon as the Secretary of State's Consent has been obtained (or if it is refused then on receipt of such refusal) and shall provide a copy of any written notification either of consent or refusal promptly following receipt by the Council.
- 4.4 Within 10 working days following receipt of the Secretary of State's Consent the Council will notify the Developer and the Developer will notify the Council in each case as to whether or not the Secretary of State's Consent satisfies the Secretary of State's Consent Condition, and if not shall in each case state their respective written reasons.
- 4.5 In the event that the Secretary of State's Consent Condition has not been satisfied within a period of 6 months (or such longer period as the Council and the Developer may at any time in writing agree) following the date of this Agreement then, and in such circumstances, the Developer may by serving notice in writing on the Council, terminate this Agreement and the Call Option Agreement.

5 The LUL Condition

- 5.1 The LUL Condition shall be satisfied by the Developer (and where applicable the Council) entering into the LUL Agreement with LUL which LUL Agreement is Unconditional.
- 5.2 The Developer agrees to use all reasonable endeavours to procure satisfaction of the LUL Condition as soon as reasonably practicable after the date of satisfaction of the Secretary of State's Consent Condition.
- 5.3 The Developer shall keep the Council fully informed as to progress made in satisfying the LUL Condition.
- 5.4 On request by the Developer the Council shall enter into and be a party to the LUL Agreement subject to the Council approving the obligations and provisions binding on the Council (such approval not unreasonably to be withheld or delayed).
- 5.5 In the event that the LUL Agreement Condition has not been satisfied within a period of 18 months (or such longer period as the Council and the Developer may at any time in writing agree) following the date of this Agreement then, and in such circumstances, the Developer may by serving notice in writing on the Council, terminate this Agreement and the Call Option Agreement.

6 Design Condition

- 6.1 As soon as reasonably practicable after the date of satisfaction of the Secretary of State's Consent Condition and the LUL Condition the Developer shall prepare and submit to the Council a set of plans, drawings, elevations, a schedule of intended areas (which in relation to Residential Units shall be consistent with the Schedule of Habitable Rooms or as otherwise approved by the Council, such approval not unreasonably to be withheld) and uses and such other information appropriate to an application for detailed planning permission as the Council shall reasonably require in respect of the proposed Development (which shall comply with the LUL Agreement where applicable) for approval by the Council as the Detailed Design, such approval not to be unreasonably withheld or delayed and to be subject to clause 6.3.
- 6.2 In preparing the Detailed Design the Developer shall have due regard to the representations of the Council and any other relevant Authority, but shall not be bound by such representations.
- 6.3 The Council's approval under clause 6.1 shall be limited to:
 - (a) the height, site and massing of buildings and their external appearance and the external and public access areas within the Development but the Council shall not be required or entitled to approve any part of the interior design or internal layout of the Development; and
 - (b) Variations to the Schedule of Habitable Rooms.
- 6.4 Once approved in accordance with this clause 6, the plans, drawings, elevations, any Variation to the Schedule of Habitable Rooms and the proposed uses and other such information shall constitute the Detailed Design and shall only be the subject of Variation in accordance with paragraphs 5.5 and 5.6 of Schedule 1.

7 Planning Condition

- 7.1 Following satisfaction of the Secretary of State's Consent Condition, the LUL Condition and the Design Condition the Developer shall:

- 7.1.1 prepare the Planning Application and any other relevant and necessary supporting documentation which, to the extent not already approved pursuant to clause 6, shall be approved by the Council using the procedures set out in clause 6 (such approval not to be unreasonably withheld or delayed but subject always to clause 6.3);
- 7.1.2 submit the Planning Application to the Local Planning Authority as soon as reasonably practicable thereafter;
- 7.1.3 diligently pursue the grant of Planning Permission pursuant to the Planning Application and shall use its reasonable endeavours (subject as set out in this clause 7) to obtain at its own expense Satisfactory Permission as soon as reasonably practicable;
- 7.1.4 where it is necessary or desirable to do so, enter into discussions and negotiations with the Local Planning Authority and take such steps in the course of or following such discussions and negotiations as are commercially prudent with a view to obtaining Satisfactory Permission;
- 7.1.5 keep the Council fully informed of such discussions and negotiations and of the progress of the Planning Application and send to the Council copies of all material correspondence with the Local Planning Authority;
- 7.1.6 not withdraw the Planning Application or make any further application for planning permission relating to the Development Land in substitution for the Planning Application without complying with clause 7.1;
- 7.1.7 not make any Material Variation to the Planning Application without the approval of the Council (such approval not to be unreasonably withheld or delayed);
- 7.1.8 (subject to clause 7.2) enter into the Affordable Housing Agreement and any other Planning Agreement necessary in order to secure the Satisfactory Permission, provided that the same:
 - (a) do not contain any one or more Developer Adverse Conditions;
 - (b) accords with the LUL Agreement; and
 - (c) is acceptable to the Developer (acting reasonably);
- 7.2 The Council shall approve and enter into the Affordable Housing Agreement and any necessary Planning Agreement required in order to procure the grant or enable implementation of Satisfactory Permission, such approval not unreasonably to be withheld or delayed and the Council shall promptly enter into the Affordable Housing Agreement and any such Planning Agreement as landowner.
- 7.3 Within 10 (ten) Working Days of the Resolution (whether to grant the Planning Permission or of any Planning Refusal) the Developer shall send a copy of the Resolution to the Council.
- 7.4 Within 40 (forty) Working Days of a Resolution to grant the Planning Permission the Developer shall notify the Council either:
 - 7.4.1 that the Planning Permission is or will be on grant of the Planning Permission a Satisfactory Permission; or
 - 7.4.2 that the Planning Permission is or will be on grant of the Planning Permission not a Satisfactory Permission in which case the Developer shall state which Developer Adverse Conditions the Developer considers that it contains.

- 7.5 If the Developer fails to serve notice in accordance with clause 7.4 then in relation to that particular Planning Permission it shall be deemed to be a Satisfactory Permission.
- 7.6 The Developer may, but shall not be obliged to, commence or continue any Appeal or Proceedings.
- 7.7 The Developer shall bear and pay all costs incurred by the Developer in submitting the Planning Application and in pursuing the same including all costs incurred by the Developer in respect of any Appeal or Proceedings but shall not be obliged to pay or reimburse any costs or expenses incurred by the Council in its capacity as Local Planning Authority (save for payment by the Developer of the statutory fees due in respect of the cost of submission of the Planning Application and any Appeal) or by the Council in respect of the approval of any element of the Planning Application or in determining whether a Planning Permission is a Satisfactory Permission.
- 7.8 The Planning Condition shall be satisfied on the later of the following dates:
- 7.8.1 the date on which it is agreed or determined pursuant to clause 7.4 that the Planning Permission is a Satisfactory Permission (or if later the date of the actual grant of such Planning Permission); and
- 7.8.2 the date on which the Satisfactory Permission has been Finally Determined provided that the Developer may at its sole discretion waive the requirement that the Satisfactory Permission be Finally Determined.
- 7.9 The Council hereby agrees to use reasonable endeavours (including the provision of information) to support the Developer's application for and endeavours to obtain Planning Permission and will not object to the same (provided the same is submitted in accordance with the provisions of this Agreement) but will not act independently of the Developer in relation to the same.
- 7.9.1 .

8 Site Assembly Condition

- 8.1 The Developer shall (subject as provided below) use its reasonable endeavours at its own cost to procure satisfaction of the Site Assembly Condition as soon as reasonably practicable after the date of this Agreement having regard to the need to minimise site assembly costs, but in so doing the Developer shall not be obliged to expend in excess of excluding LUL and rights of light and for LUL and rights of light PROVIDED THAT in respect of the Council Land it shall be the Council's responsibility to obtain vacant possession of the Council Land at its own cost.
- 8.2 The Developer shall keep the Council regularly informed of progress made by the Developer in satisfying the Site Assembly Condition;
- 8.3 The Developer shall not be obliged to offer terms in respect of the acquisition of Third Party Properties and/or Adverse Interests which are in excess of the amount of statutory compensation which the relevant owner or occupier would be entitled to as a result of a CPO or (as appropriate) Appropriation. Furthermore, the Developer shall not be obliged to commence or continue negotiation with any occupier until the Developer has exchanged Unconditional agreements to acquire the freehold reversion.
- 8.4 The Council shall use reasonable endeavours to take such action as the Developer may reasonably require where such action is proper for a local

authority to undertake in order to assist the Developer in satisfying the Site Assembly Condition including (but not limited to):

- 8.4.1 deducing title to the Council Land to the extent it has not already done so at the date of this Agreement;
- 8.4.2 providing copies of any existing leases and/or tenancies to the extent it has not already done so at the date of this Agreement;
- 8.4.3 providing replies to CPSE 1 and 3 to the extent it has not already done so at the date of this Agreement;
- 8.4.4 entering into deeds of variation and/or (to the extent appropriate) deeds of surrender and/or (to the extent appropriate) agreements for surrender of any existing leases or other Adverse Interests;
- 8.4.5 (to the extent appropriate) serving notice to terminate any of the existing leases affecting the Council Land when requested to do so by the Developer;
- 8.4.6 accepting such title to any part of the Development Land not forming part of the Council Land on such basis and for such period as may be necessary to enable the Council to use its powers of Appropriation in respect of such part (including accepting a transfer of any such land as bare trustee for the Developer); and/or
- 8.4.7 obtaining vacant possession of the Council Land at its own cost.
- 8.5 If any party subject to a CPO approaches the Council to negotiate with the Council then the Council confirms it will not without the prior written consent of the Developer negotiate with that party, but if the Developer shall so consent following a request in writing by the Council, the Council shall use all reasonable endeavours to conclude such negotiations and acquire the relevant interest as soon as reasonably practicable on terms approved by the Developer.
- 8.6 The parties covenant with each other to comply with their respective obligations in the CPO Indemnity Agreement.
- 8.7 All costs (including CPO Costs and Compensation) borne by the Developer pursuant to this clause 8 and/or pursuant to the CPO Indemnity Agreement shall comprise Development Costs.

9 Stopping Up Order Condition

- 9.1 The Stopping Up Order Condition shall be satisfied by the Developer obtaining the necessary road closure orders and/or diversion/stopping up orders in respect of any roads, footpaths and other public highways within and/or serving the Development Land and required for the carrying out of the Development and the use thereof following completion of the Development and shall be taken as satisfied on the expiry of any period during which such order or orders may be challenged without any challenge having been made, or if made any such challenge has been finally determined leaving in place such order or orders.
- 9.2 The Developer agrees with the Council to use its reasonable endeavours at its own cost to procure satisfaction of the Stopping Up Order Condition as soon as reasonably practicable after the date of grant of the Satisfactory Permission.
- 9.3 The Developer shall keep the Council regularly informed as to the progress made by the Developer in satisfying the Stopping Up Order Condition.

- 9.4 Upon satisfaction of the Stopping Up Order Condition the Developer shall immediately notify the Council.
- 9.5 The Council shall provide such reasonable assistance as it is able to assist the Developer in satisfying the Stopping Up Order Condition.
- 10 The Necessary Consents Condition**
- 10.1 The Necessary Consents Condition shall be satisfied by the Developer obtaining the Necessary Consents (excluding the Necessary Consents obtained as part of the Planning Condition).
- 10.2 The Developer agrees with the Council to use its reasonable endeavours to procure satisfaction of the Necessary Consents Condition as soon as reasonably practicable after the date of grant of the Satisfactory Permission.
- 10.3 The Developer agrees with the Council to keep the Council informed as to the progress made by the Developer in satisfying the Necessary Consents Condition.
- 10.4 Upon satisfaction of the Necessary Consents Condition the Developer shall immediately notify the Council of all Necessary Consents.
- 11 Funding Condition**
- 11.1 The Developer (acting reasonably and in good faith) agrees with the Council following satisfaction of the Planning Condition, the LUL Condition and the Site Assembly Condition to use reasonable endeavours to obtain sufficient funding on terms which are commercially acceptable to the Developer acting reasonably so as to enable the Development to be undertaken and completed in accordance with the provisions of this Agreement and in order to satisfy the Funding Condition.
- 11.2 The Funding Condition shall be satisfied upon the Council's receipt of notice by the Developer to the effect that funding for the Development has been secured by means of an Unconditional agreement to provide such funding in a form which is acceptable to the Developer (acting reasonably).
- 11.3 The Developer shall serve the notice referred to in 11.2 as soon as it has entered into the agreement contemplated by clause 11.2 and the same is or has become Unconditional.
- 11.4 The Developer will keep the Council informed regarding progress with regard to the satisfaction of the Funding Condition.
- 12 Viability Condition**
- 12.1 As soon as reasonably practicable following satisfaction of the Planning Condition, the LUL Condition and the Site Assembly Condition the Developer agrees with the Council to prepare an appraisal for the Development utilising the pro-forma Appraisal in order to determine if the Viability Condition has been satisfied.
- 12.2 The Developer will keep the Council informed regarding the financial viability of the Development via the provision of updated Appraisals.
- 13 Notices**
- 13.1 Any notice in respect of this Agreement shall be in writing and shall be sufficiently served if sent by fax and confirmed by ordinary first-class post or if sent by registered or recorded delivery post or personal delivery to the parties at the addresses set out in this Agreement (or such alternative address as may be notified to the other parties) and copied to their solicitors and service

shall be deemed made on the next Working Day after transmission and if sent by registered or recorded delivery post on the Working Day next but one after the date of posting, and is by personal delivery on the day of delivery except that delivery after 5.30pm on a Working Day or on a non Working Day shall be deemed delivered at 9.30am on the next Working Day.

13.2 Any notice to be served on

13.2.1 the Council shall be marked for the attention of: the Head of Legal Services (or as subsequently notified);

13.2.2 the Developer shall be marked for the attention of the Company Secretary;

13.2.3 the Guarantor shall be marked for the attention of the Company Secretary

14 Non-assignment

14.1 The Developer shall not be entitled to assign or otherwise dispose of its rights or obligations under this Agreement other than pursuant to and in accordance with the succeeding provisions of this clause 14.

14.2 The Developer may (until the Unconditional Date with the prior written consent of the Council, such consent not unreasonably to be withheld or delayed), assign by way of security or charge the benefit of this Agreement and the CPO Indemnity Agreement to a Fund (approved by the Council, such approval not unreasonably to be withheld or delayed) or to an Approved Fund for the purposes of securing the provision of finance to the Developer and/or the Guarantor for the purposes of financing performance of the Developer's obligations under this Agreement and general borrowings for the legitimate business purposes of the Group of which the Developer forms part.

14.3 Subject to clause 22.4, the Fund or Approved Fund may (with the prior written consent of the Council, such consent not unreasonably to be withheld or delayed) assign the benefit of this Agreement and prior to the satisfaction of the Site Assembly Condition the CPO Indemnity Agreement to a third party (who until the Unconditional Date shall be an Approved Assignee) in the proper exercise of the Fund's security following a default under the facility arrangements provided that as a condition to the giving of such consent the Council may require a covenant by such third party to comply with the outstanding obligations of the Developer in this Agreement and the CPO Indemnity Agreement.

14.4 Subject to clause 22.4, the Developer may:

14.4.1 assign this Agreement and if prior to satisfaction of the Site Assembly Condition the CPO Indemnity Agreement to an Approved Assignee with the prior written consent of the Council, such consent not unreasonably to be withheld or delayed, provided that, where such assignment necessitates the obtaining of any additional Secretary of State's Consent or any amendment to any existing Secretary of State's Consent, that additional Secretary of State's Consent or amendment shall have been obtained (and the Council shall use reasonable endeavours to obtain the same at the Developer's cost) and provided further that as a condition to the giving of such consent the Council may require a covenant by such third party to comply with the outstanding obligations of the Developer in this Agreement and the CPO Agreement;

14.4.2 after the Unconditional Date (without any consent of the Council) assign this Agreement (and if required by the Developer the CPO Indemnity Agreement) to a company in the same group as the Developer and/or the Guarantor (as

the term "group" is defined in section 42 of the Landlord and Tenant Act 1954 but which shall include any company which is within the same group (defined as aforesaid) as Grainger Plc) provided in each case that such company is guaranteed by the Guarantor in the same terms (*mutatis mutandis*) as clause 21 and provided further that as a condition to the giving of such consent the Council may require a covenant by such third party to comply with the outstanding obligations of the Developer in this Agreement and if relevant the CPO Indemnity Agreement;

14.5 The Developer shall within twenty (20) Working Days following completion of any such assignment give notice thereof to the Council including an address for service of the Fund, third party, group company or otherwise.

14.6 The Approved Assignee shall enter into a covenant with the Council to comply with the Developer's obligations (including the obligation to carry out and complete the Works after the Unconditional Date pursuant to the Satisfactory Planning Permission and in accordance with Schedule 1) in this Agreement and if relevant the CPO Indemnity Agreement. Following the giving of such covenant the Developer named herein shall have no further liability under this Agreement and if relevant the CPO Agreement, save in relation to accrued claims.

15 Disputes

15.1 Where there is any dispute or difference between the parties concerning this Agreement such matter shall be determined by an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten years and who is a specialist in relation to such subject matter and such independent person shall be referred to in this Agreement as "the Expert".

15.2 The Expert shall be agreed between the parties or failing such agreement be nominated in the case of:

15.2.1 any dispute relating to the Works and/or the Development and/or as to values shall be determined by a surveyor who if the parties fail to agree shall be appointed by the president or vice-president or other duly authorised officer of the Royal Institution of Chartered Surveyors;

15.2.2 any dispute relating to planning issues by Counsel who if the parties fail to agree shall be chosen by the president of the Law Society;

15.2.3 any dispute as to the legal interpretation of this Agreement or as to whether the dispute falls within clause 15.2.1, 15.2.2 or 15.2.3 by leading counsel who if the parties fail to agree shall be appointed by the President of the Law Society

in any such case on the application of any party at any time.

15.3 The Expert shall act:

15.3.1 as expert and not as an arbitrator and his decision shall be final and binding upon the parties;

15.3.2 consider (*inter alia*) any written representations on behalf of either party (if made within seven Working Days of receipt of notification of the Expert) and counter-representations but shall not be bound them.

15.4 The parties shall use all reasonable endeavours to procure that the Expert gives his decision as speedily as possible but in any event within 20 Working Days of his appointment.

15.5 The costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination equally between them.

15.6 If the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for appointment of an Expert shall be repeated as often as necessary.

16 Project Board

16.1 The Developer and the Council (and their respective advisors) have established a Project Board as a forum within which to discuss matters relevant to the Development, to review proposals for the Development going forward and for the purposes of monitoring the continued progress of the Development and the Council and the Developer shall use reasonable endeavours to ensure that they and their respective advisors participate in the Project Board.

16.2 The Developer and the Council shall each make available a single point of contact in relation to the matters contemplated by and for the giving of consents and approvals under this Agreement. The representatives shall in the first instance be:

(a) for the Council: Lyn Garner, Director of Regeneration, Planning and Development

(b) for the Developer: David Walters

and the Council and the Developer shall be entitled to change their respective representatives on notice to the other.

16.3 The Council has appointed Cushman & Wakefield as its representative in relation to the Development; Cushman & Wakefield (or such other property advisors as the Council shall from time to time appoint and of whom notice shall be given to the Developer) ("Council's Advisor") and a representative from New Deal for Communities shall be entitled to attend and participate in meetings of the Project Board and consents or approvals issued by the Council's Advisor in writing shall be binding on the Council and may be relied upon as such by the Developer.

17 Default

17.1 The following events shall comprise "Developer's Default" for the purposes of this Agreement, namely:

17.1.1 the Developer being in material default of the performance of any of the material covenants, agreements and stipulations on its part herein contained and the default is of a fundamental nature having regard to the terms of this Agreement

AND (where the default is remediable) the Developer fails to remedy the same within a reasonable period of receiving notice (a "Preliminary Notice") the Council specifying the breach and requiring the same to be remedied within a period stipulated in the Preliminary Notice (being a period of not less than 90 Working Days) or fails to refer a dispute as to the whether the default stated in the Preliminary Notice is a default or as to whether the remedy required is appropriate or as to the period stipulated in the Preliminary Notice in any such case for determination by the Expert pursuant to clause 15 of this Agreement

OR (where the breach is irremediable) the Developer fails to pay to the Council a reasonable sum by way of reasonable compensation for the irremediable breach as stipulated in the Preliminary Notice or fails to refer a dispute as to the amount of compensation stated in the Preliminary Notice for determination by the Expert pursuant to clause 15 of this Agreement

in each case within 90 Working Days (or such longer period as is stipulated in the Preliminary Notice) of receipt of the Preliminary Notice; and/or

17.1.2 the Guarantor shall become Insolvent;

17.2 On the occurrence of Developer's Default the Council may (subject to clause 17.3) within 20 Working Days of the of a Developer's Default serve notice ("Default Notice") on the Developer electing to exercise its rights under clause 17.3 on the expiry of a period ("Default Period") of 90 Working Days (or such longer period as the Council reasonably consider appropriate and as stipulated in the Default Notice).

Any dispute as to the service of such a Default Notice shall be determined in accordance with clause 15.

17.3 Where the Default Notice relates to:

17.3.1 Developer's Default under clause 17.1.1 which is:

- (a) remediable, and the Developer has not either remedied or substantially commenced and is diligently proceeding to remedy the Developer's Default referred to in the Preliminary Notice or has not referred any dispute as to the Developer's Default for determination under clause 15; or
- (b) irremediable, and the Developer has not either paid the amount of compensation referred to in the Preliminary Notice or referred any dispute as to the amount thereof for determination under clause 15

in each case by the end of the Default Period then, and in either of such circumstances, this Agreement shall (save for the provisions of this clause 19 and clause 2.5 and subject to clauses 8.13.2, 17.5, 17.6 and 22.3) determine absolutely at the end of the Default Period;

17.3.2 Developer's Default is under clause 17.1.2 then this Agreement shall (save for the provisions of this clause 17 and clause 2.5 and subject to clauses 8.13.2, 17.4, 17.5, 17.6 and 22.3) determine absolutely at the end of the Default Period.

17.4 Where the Council has received notice of a Fund as provided at clause 14 the Council shall not be entitled to exercise its rights pursuant to clause 17.3 without:

17.4.1 where the Developer's Default arises under clause 17.1.1 first serving a copy of any Preliminary Notice served pursuant to clause 17.1.1 on the Fund; and

17.4.2 in any event serving a copy of the Default Notice served pursuant to clause 17.2 on the Fund;

and in each case service of such notice on the Fund shall be at the address last notified to the Council under clause 14.2.

17.5 If the Fund within ninety (90) Working Days of the date of receipt of a Default Notice served pursuant to clause 17.2 and/or 17.4 either:

- 17.5.1 tenders to the Council a duly perfected deed of covenant executed by the Fund (or such party as it nominates ("Nominee")) and the Council shall approve (such approval not to be unreasonably withheld or delayed) and being in a form approved by the Council (such approval not unreasonably to be withheld or delayed) to thereafter observe and perform or to procure the performance and observance of all of the covenants obligations restrictions and conditions on the part of the Developer contained in this Agreement which remain to be performed or observed and to remedy any outstanding breach; or
- 17.5.2 either (where the same is remediable) remedies or procures the remedy of the relevant breach or breaches as set out in the Default Notice in all material respects or (where the same is irremediable) pays the amount of compensation due;
- then the Council shall not be entitled and will not take any steps to exercise such right to determine this Agreement in relation to the default to which the Default Notice relates.

Where the Fund or its approved Nominee has provided a deed of covenant pursuant to clause 17.5 then, if required by the Fund, the Council shall enter into such reasonable documents and take reasonable steps to vest the benefit of this Agreement and if the Site Assembly Condition has not been satisfied the CPO Indemnity Agreement in the Fund (or the approved Nominee) provided that the Council's reasonable and proper costs incurred by it in so entering into such documents including the deed of covenant shall be borne by the Fund.

- 17.6 If reasonably required by the Developer and the Council shall, at the Developer's cost, enter into a direct undertaking under seal with the Fund in a reasonable form confirming to the Fund the operation of the provisions contained in this clause 17 in favour of the Fund.
- 17.7 Termination of this Agreement and the provisions of this clause 17 shall be without prejudice to any accrued claims by any party against the other.
- 17.8 This clause 17 shall cease to apply in all respects on the Completion Date.

18 Confidentiality

- 18.1 "Confidential Information" shall mean all information disclosed by one party to the other, orally in writing or in electronic form relating to this Agreement and/or the CPO Indemnity Agreement that is not in the public domain (except where disclosure is in the public domain due to a breach of this clause) and shall also (in relation to the undertaking, given by the Council in this clause 18) include information, documents, drawings, reports or data the Developer may acquire or generate under or in connection with this Agreement.
- 18.2 Subject to sub-clause 18.7, neither party shall, without the prior written consent of the other, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information received by it in relation to the party's business generally.
- 18.3 Each party:

- (a) shall treat all Confidential Information as secret and confidential and safeguard it accordingly;

- (b) shall not disclose any Confidential Information to any third party without the prior written consent of the other Party (not unreasonably to be withheld), except to such extent as may be necessary for the performance of the Agreement and in the case of the Developer as set out in clause 8.4; and
 - (c) shall not use any Confidential Information otherwise than for the purposes of the Agreement.
- 18.4 The Developer shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:-
- (a) is given only to such of the staff and professional advisors or consultants engaged to advise it and to its funders and/or to LUL and their staff and professional advisors in each case in connection with the Agreement as is strictly necessary for the performance of the Agreement and then only to the extent necessary for each such person's activities in the performance of the Agreement;
 - (b) is treated as confidential and not disclosed (without prior approval of the Council) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Agreement.
- 18.5 Where it is considered reasonably necessary in the reasonable opinion of the Project Board, the Developer and the Council shall ensure that its employees or advisors sign an appropriate confidentiality undertaking before commencing work in connection with the Agreement.
- 18.6 The provisions of Clause 18.2 and 18.3 above shall not apply to any Confidential Information:-
- (a) which is or becomes public knowledge (otherwise than by breach of this clause); or
 - (b) which is in the possession of the Party concerned, without restriction as to its disclosure, before receiving it from the disclosing Party; or
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (d) which is independently developed without access to the Confidential Information.
- 18.7 Nothing in this clause shall prevent the Council or the Developer or any person who holds Confidential Information:-
- (a) disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
 - (b) disclosing any Confidential Information in accordance with their respective obligations (if any) in the Freedom of Information Act;

- (c) (in the case of the Council) disclosing any Information for the purpose of:-
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with the Council have used their resources;
 - (d) (in the case of the Council) disclosing any Confidential Information obtained from the Developer
 - (e) (in the case of the Council) to any other department, office or agency of the Crown; or
 - (f) disclosing any information to any person engaged in providing any services to the relevant party or LUL for any purpose relating to or ancillary to the Agreement;
- provided that in disclosing Information under sub-paragraphs (d) or (e) only that information which is necessary for the purpose concerned shall be disclosed and a requirement shall be imposed that the Information is treated in confidence and that a confidentiality undertaking is given where appropriate.

18.7 The obligations imposed by this Clause shall apply during the continuance of this Agreement and for a period of twelve (12) months after its expiry or termination.

19 VAT

19.1 Save as otherwise provided in this Agreement, all sums payable or supplies made under this Agreement shall be subject to VAT where VAT is properly payable and subject to the receipt of a valid VAT invoice and for the avoidance of doubt any sums referred to exclude VAT.

19.2 The Council shall not elect to waive the exemption from charging VAT in respect of the Council Land except in either case to the extent it may be required to do so by law or in the case of an election in respect of the Council Land only at the written request of the Developer.

20 Interest

All sums payable pursuant to this Agreement which are not paid on the due date for payment shall bear interest at the rate of 2% per annum above the base rate from time to time of Barclays Bank PLC (except where expressed to the contrary in this Agreement) from the day on which payment was due until the date of actual payment.

21 Guarantee

21.1 In consideration of the Council entering into this Agreement the Guarantor covenants with and guarantees to the Council that the Developer shall duly perform and observe all the obligations on the part of the Developer owed to the Council contained in this Agreement and to indemnify the Council on demand against the consequences of any default by the Developer of such obligations; and

21.2 The Guarantor agrees with the Council that the guarantee set out in clause 21.1 shall become effective immediately upon demand by the Council without

the need for the Council to demonstrate the fact of, or the extent of the breach by the Developer, to the Guarantor.

- 21.3 The guarantee and covenant contained in this clause 21 shall continue notwithstanding that the Developer may cease to exist in any way or that this Agreement may be disclaimed or assigned under clause 14.
- 21.4 The Guarantor's liability shall not be discharged in whole or in part or otherwise be affected in any way by reason of:-
 - 21.4.1 any forbearance to enforce any provision of this Agreement against the Developer or the giving to Developer of time or other concession or taking holding varying realising or not enforcing any security for the liabilities of the Developer
 - 21.4.2 any legal limitation or incapacity relating to the Developer
 - 21.4.3 the invalidity or unenforceability of the obligations of the Developer under this Agreement
 - 21.4.4 any other act or omission of the Council or any other circumstance which but for this provision would discharge the Guarantor, other than a formal release.
- 21.5 The Developer shall be entitled at any time when this Agreement has been assigned under clause 14.4.1 or otherwise after the Works have commenced (and for the avoidance of doubt this does not include the Preparatory Works) to request the Council to approve the substitution of Guarantor by alternative security (being an alternative guarantor (but not an overseas company but where this Agreement is assigned under clause 14.4.1 shall include an Approved Assignee) or a bank guarantee (in an amount equating to 10% of the estimated costs of completing the remainder of the Works) or other security in each case approved by the Council, such approval not unreasonably to be withheld or delayed).

Subject to the Council's approval and to any substitute Guarantor executing in favour of the Council a Deed of Guarantee in terms (mutatis mutandis) similar to this clause 21 and/or to the perfecting of the relevant alternative security in each case in a form approved by the Council (such approval not unreasonably withheld or delayed) the Guarantor named in this Agreement shall be released from liability save in respect of accrued claims.

22 Interim Gap Funding

23 Good Faith

- 23.1 The parties shall owe to each other a duty of good faith in performing their respective obligations under this Agreement.

24 Miscellaneous

- 24.1 It is not intended that any third party should be entitled to enforce this Agreement pursuant to the provisions of The Contracts (Rights of Third Parties) Act 1999 which shall not apply to this Agreement.

24.2 For the purposes of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 this Agreement and the documents contained or referred to in it contains the entire Agreement between the parties and may only be varied or amended by a document signed by or on behalf of each of the parties.

24.3 This Agreement is governed by and shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

25 Apex House

25.1 The Council agrees that, in consideration of the Developer entering into this Agreement with the Council, the Council will not (unless the Developer agrees in writing otherwise) commence development of Apex House for private residential purposes (here meaning the installation of foundations) prior to the date 18 months after the Developer has commenced (here meaning the installation of foundations for the residential elements of the Development) the Development.

25.2 The Council further agrees (unless the Developer agrees in writing otherwise) to use all reasonable endeavours to ensure that any development of Apex House is at a level of quality and design which is not detrimental to the Development.

25.3 Clauses 25.1 and 25.2 shall not apply following termination of this Agreement under any of clauses 2.2, 4.5, 5.5 or 17.

26 The Council

Nothing in this Agreement will serve to fetter the exercise of the Council's statutory duties and powers which remain in full force and effect; the Council is entering into this Agreement in its capacity as Housing Authority, freehold owner of parts of the Development Site and the Accountable Body of the Bridge Sevens Sisters New Deal for Communities and without prejudice to its statutory functions.

PART B

27 Unconditional Date

Save as expressly set out to the contrary this Part B of this Agreement (save for this clause 27 which shall be of immediate effect) shall only come into effect on the Unconditional Date.

28 Completion Date

28.1 On the Completion Date :

28.1.1 the Council will transfer the Council Land to the Developer;

28.1.2 the Developer shall pay the Price (excluding the Overage, which shall be payable in the manner contemplated by clause 31); and

28.1.3 the Developer shall use reasonable endeavours to commence the Preparatory Works as soon as reasonable practicable after the Completion Date (subject to extensions of time for Force Majeure) and shall within twenty-four (24) months after the Completion Date (subject to extensions of time for Force Majeure) commence the Works in accordance with Schedule 1 and it is hereby agreed that the provisions of section 609 of the Housing Act 1985 shall apply to this covenant until the Satisfactory Planning Permission has been implemented for the purposes of section 56 of the Planning Act.

29 Licence

With effect from the Completion Date, the Council hereby grants to the Developer full licence for the Developer to oversail the Council's Adjoining Land with tower cranes for the purposes of the Development, subject in all cases to the rights of occupiers.

30 Development Account and Sale Proceeds Account

- 30.1 The Developer shall establish and maintain the Development Account and the Sale Proceeds Account with effect from the date of this Agreement until the Participation Date.
- 30.2 Whenever the Developer makes a payment of Development Costs, the Developer shall debit such payment to the Development Account with effect from that day and all Development Costs accrued as at the date of this Agreement shall be debited to the Development Account on the date hereof.
- 30.3 The Developer shall credit all Sale Proceeds received by the Developer or any Associate of the Developer which should properly be credited to the Sale Proceeds Account on the day of receipt by the Developer in cleared funds.
- 30.4 Any amount of VAT (save for any irrecoverable VAT which shall be a Development Cost) included in any such payment made by or on behalf of the Developer will be debited to the Development Account until it is recovered by the Developer from HM Revenue & Customs. VAT will not be credited to the Sale Proceeds Account.
- 30.5 Interest will accrue at the Interest Rate on a monthly basis on the net balance shown on each of the Development Account and the Sale Proceeds Account (as the case may be) from time to time in accordance with this Agreement until the Participation Date.
- 30.6 Such Interest as accrues pursuant to clause 30.5 will be debited to the Development Account and credited to the Sale Proceeds Account monthly in arrears on the usual quarter days and on the Participation Date.
- 30.7 The Council may at any time inspect or require a copy for itself of the Development Account and the Sale Proceeds Account and of all receipts, vouchers, certificates and other information evidencing such sums debited to and/or credited to the Development Account and/or (as appropriate) the Sale Proceeds Account. The Developer shall promptly deal with all proper queries reasonably raised in relation to the Development Account and the Sale Proceeds Account and shall provide to the Council a copy of the Development Account and the Sale Proceeds Account annually.
- 30.8 The Developer shall procure that the Developer's Auditors shall issue a certificate to the Developer and the Council as soon as reasonably practicable following the Participation Date as to the current balance of the Development Account and the Sale Proceeds Account provided that the cost of providing any such certificate shall be a Development Cost.
- 30.9 Where the Interim Gap Funding is paid under clause 22.1 then, to the extent so paid, such payment shall be credited in reducing the amount of the Development Costs (so that only the amount of the relevant Development Costs actually paid out by the Developer (net of the relevant element of the Interim Gap Funding) shall be debited to the Development Account) and the repayment of the Interim Gap Funding under clause 22.2 shall (subject to proviso (a) to clause 22.2.1) be treated as a Development Cost.

31 Overage

32 No Partnership

Nothing in this Agreement or arising through any of the other documents referred to herein shall be deemed to constitute a partnership between the Developer and/or the Council and/or the University and/or any other party to this Agreement.

33 Non-merger

So far as they remain to be performed or observed the provisions of this Agreement shall continue in full force and effect notwithstanding completion of the grant of any lease granted or transfer effected pursuant to this Agreement.

34 Indemnity

34.1 The Developer shall indemnify the Council in respect of any of the following matters arising directly or indirectly in relation to the Works and/or the Development or any operations relating to them on or adjacent to the Development Land:

34.1.1 the death of, or accident to any person;

34.1.2 the damage to or loss of any property;

34.1.3 the infringement of the rights of any third party caused by the carrying out of the Works;

34.2 any nuisance or disturbance suffered by any third party caused by the carrying out of the Works;

34.3 any breach of the terms of any Planning Agreement prior to the relevant Date of Sectional Practical Completion caused otherwise than by the Council; and

34.4 any other claims made against the Council as the result of the negligence of the Developer or, or breach of its obligations under this Agreement by the Developer.

35 Liability of the Developer

The parties agree and declared the Developer shall have no further liability under this Agreement in respect of the Works following the Development Completion Date.

Delivered as a deed on the date of this document.

SCHEDULE 1 DEVELOPMENT OBLIGATIONS

THE Developer covenants and agrees with the Council as follows:

1.1.1 Developer's obligations

- (a) To take all reasonable steps to procure that at the appropriate time:
 - (i) each member of the Professional Team is appointed on and thereafter complies with the terms of its Appointment; and
 - (ii) the Building Contractors are appointed on and thereafter comply with the terms of the relevant Building Contracts

and following such appointment to comply with its own obligations under them in each case to the extent necessary to ensure compliance with the Developer's obligations under this Agreement.

1.1.2 Termination of Appointments and Building Contracts

If the Developer terminates any Building Contract or Appointment then within ten Working Days to notify the Council and thereafter to use all reasonable endeavours as expeditiously as reasonably practicable to appoint another person or company on the terms of this Agreement in substitution for the person or company whose Appointment or the Building Contract was terminated.

1.1.3 Insurance

- (a) To procure that the Works are insured in the names of the Developer and the relevant Building Contractor in accordance with the relevant Building Contract in an amount not less than their full reinstatement cost against the Insured Risks and in the event of damage or destruction of the Works by any of the Insured Risks and to procure as soon as reasonably practicable that the insurance money is laid out and used in rebuilding and making good the loss or damage in accordance with the provisions of this Agreement and to make good any deficiency out of its own monies save to the extent that the deficiency arises as a result of the act or default or omission of the Council.
- (b) To provide on reasonable demand by the Council a copy of the insurance policy or policies referred to in paragraph 3.1

1.1.4 Consents

- (a) To make application for and use all reasonable endeavours expeditiously to obtain such of the Necessary Consents as have not already been obtained or obtain lawful relaxations or waivers of them.
- (b) To keep the Council properly informed as to the progress of each application for the Necessary Consents and of all negotiations relating to those applications and to provide to the Council copies of all applications, material correspondence and notes of material meetings relating to those application and negotiations.

- (c) To procure that all Necessary Consents obtained remain valid and unrevoked and shall renew any that become invalid or revoked before the relevant Date of Sectional Practical Completion.

1.1.5 The Development

- (a) To commence the Works in accordance with the Satisfactory Planning Permission and the Building Contract (which for the avoidance of doubt does not include Preparatory Works) within twenty-four (24) months of the Completion Date, subject to extensions of time for Force Majeure
- (b) To carry out and complete or procure the carrying out and completion in each case the Development as soon as reasonably practicable following commencement of the Works in accordance with the provisions of this Schedule provided that the Developer shall be entitled to extensions of time for Force Majeure in such periods as are properly certified by the Employer's Representative.
- (c) In carrying out or procuring the carrying out of the Works to ensure that the Works accord with:
 - (i) the Consents;
 - (ii) the Detailed Design;
 - (iii) all statutory requirements;
 - (iv) the terms of this Agreement and the LUL Agreement

and are carried out in a good and workmanlike manner using suitable sound materials of their several kinds.

- (d) Not to specify any of the Prohibited Materials in the Works.
- (e) Not to make any Material Variation to the Detailed Design without the Council's consent such consent not unreasonably to be withheld or delayed.
- (f) Not to make other Variations (apart from Minor Variations) to the Detailed Design without notifying the Council of the nature of any such Variations to the extent the same are material in the context of the Works.

1.1.6 CDM Regulations

To comply or procure compliance with the CDM Regulations in respect of the Works.

1.1.7 General Obligations

To use all reasonable endeavours to procure that:

- (a) proper provision is made for the security of the Development Land during the carrying out of the Works and for the protection of any materials, plant and equipment in or on it;
- (b) all surplus material is removed from the Development Land when it is no longer required for the Works;

- (c) the Development Land is maintained in a tidy condition and free from rubbish taking account of its use as a building site;
- (d) there is no excavation of the Development Land or extraction of soil or minerals except as required for the Works;
- (e) proper precautions are taken for the safety of all persons upon or in the vicinity of the Development Land including maintaining hoardings around the Development Land during the undertaking of the Works and such fences, security patrols, safeguards and arrangements of lighting the Works as may be necessary or desirable in the interest of public safety;
- (f) the Works are carried out in a manner which does not cause any legal nuisance, injury, loss or danger to or undue interference with the public or any owners or occupiers of adjoining or neighbouring property;
- (g) proper provision is made for the support of land, buildings and boundaries adjoining the Development Land and for the protection of all services benefiting land adjoining or near to the Development Land;
- (h) any adjoining highways, road and pavements are cleansed as often as may be necessary and are kept unobstructed;
- (i) the wheels of all construction traffic leaving the Development Land are washed;
- (j) proper arrangements are made with the requisite authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Works.

1.1.8 Nuisance

To take all steps reasonable to ensure that a nuisance does not arise during the course or as consequence of the undertaking of the Development and, where appropriate, to enforce the provisions of the Building Contract relating to the same.

1.1.9 Site visits

- (a) At all reasonable times to keep the Council informed as to the progress of the Works and to provide them with copies of regular updated programmes for the Works and to notify the Council of the time date and place of all principal site meetings convened to consider the progress of the Works and the Council shall be entitled to attend them.
- (b) To permit the Council at all reasonable times to enter onto the Development Land (accompanied by a representative of the Developer if the Developer shall so reasonably require and to procure that a representative is made available for such purpose) to view the progress and state of the Works subject nevertheless to:
 - (i) the Council giving no less than five Working Days prior notice being given to the Developer;

- (ii) the Council reporting to the site office before making any inspection and acting in accordance with the reasonable instructions of the Developer;
- (iii) the Council complying with the proper and reasonable safety requirements imposed by the Developer and/or Building Contractor; and
- (iv) the Council not interfering with the Development nor attempting to instruct or instructing any persons employed upon or in connection with the Development, and making any representations to the Developer.

1.1.10 Planning Agreements

- (a) To undertake or procure that any works to be undertaken pursuant to the terms of each Planning Agreement shall be undertaken in accordance with the terms of such Planning Agreement and otherwise in accordance with the requirements for undertaking the Works in accordance with this schedule and to use all reasonable endeavours to complete such works on or before the applicable Date of Sectional Practical Completion, where appropriate.
- (b) Where any such Planning Agreement requires the completion of works which are to be adopted by the Local Authority or Highways Authority (as applicable) to use all reasonable endeavours to procure that such works are so adopted in accordance with the terms of such Planning Agreement.

SCHEDULE 2 DEVELOPMENT COSTS

1. Development Costs include but are not limited to the following heads of expenditure:
 - (a) satisfying the Conditions
 - (b) acquiring the Council Land and the remainder of the Development Land and any other property required in order to implement the Development in accordance with this Agreement) including all proper and reasonable solicitors', surveyors' costs, agents fees, all stamp duty land tax and Land Registry fees on the transactions contemplated by this Agreement and/or the CPO Indemnity Agreement or necessary to give effect to this Agreement and/or the CPO Indemnity Agreement, search fees and defective title insurance or restrictive covenant indemnity insurance that may be required
 - (c) all CPO Costs and Compensation and any other costs or sums payable under the CPO Indemnity Agreement;
 - (d) the costs of entering into the LUL Agreement and all sums payable thereunder by the Developer;
 - (e) all costs relating to search fees, defective title insurance or restrictive covenant indemnity insurance that may be required
 - (f) all detailed design work including the Detailed Design;
 - (g) demolition site preparation and remediation works;
 - (h) all Construction Costs;
 - (i) all professional fees;
 - (j) all costs of marketing letting and sale of all Commercial Units, other commercial areas, and the Residential Units ;
 - (k) the cost of marketing and promoting the Development, all public relations, public consultations and community activities relating thereto and/or engagement with the local community both prior to and after the date hereof;
 - (l) incentives paid or allowed to tenants and occupiers of all Commercial Units, other commercial areas, and the Residential Units to the extent reasonably consistent with market practice at the relevant time;
 - (m) costs of any service and/or telecommunication diversions or any sums paid to utility providers including telecommunication providers;
 - (n) entering into the Planning Agreements (including all amounts payable pursuant thereto);
 - (o) all sums (including costs, stamp duty land tax, Land Registry fees and search fees) paid to the Council under the terms of this Agreement or the CPO Indemnity Agreement or to LUL under the LUL Agreement;

- (p) all amounts paid to the selling agents pursuant to the appointments entered into by the Developer pursuant to this Agreement;
- (q) advertising and promoting the Development or any part thereof including in relation to the Disposal or letting of the same;
- (r) all costs paid to the Council or third parties in acquiring the Adverse Interests;
- (s) the Project Management Fee;
- (t) all insurance premiums properly paid in respect of the Works and/or any part of the Development Land;
- (u) any VAT in respect of the items mentioned in this Schedule 2 insofar as the same is irrevocable (whether by way of repayment or credit) by the Developer and so that any VAT paid by the Developer shall be a Development Cost until such time as it is recovered in full by the Developer;
- (v) any costs properly and reasonably incurred by the Developer in managing repairing or maintaining or otherwise providing services in respect of (whether of a temporary or permanent nature) the Development and/or in setting up structures for and providing for the future management of the Development;
- (w) reasonable and proper fees charges and other costs (not being interest) properly paid to any Fund to the extent that the same relate to the provision of finance to the Developer for the purposes of enabling the Developer to comply with its obligations under this Agreement;
- (x) costs of provision of site offices and/or marketing suites whether on or off site;
- (y) repayment of the Interim Gap Funding plus interest under clause 22; and
- (z) all other costs and expenses properly and reasonably incurred by the Developer in connection with the Works or the Development or in respect of the matters contemplated by this Agreement and/or the LUL Agreement;

all of which costs and expenses shall exclude any costs and expenses specifically excluded by any paragraph of this Schedule 2 or any clause of this Agreement and PROVIDED THAT no amount allowed under one head of expenditure may be doubled counted under another.

2. The Developer shall ensure that full records of all Development Costs are kept and made available to the Council on a full "open book" basis.
3. Any dispute as to whether an item of cost is a Development Cost shall be referred for determination under clause 15.

SCHEDULE 3

DEVELOPER ADVERSE CONDITIONS

1. A Developer Adverse Condition is one which contains an obligation or restriction of any one or more of the following kinds:
 - 1.1 requiring the provision of Affordable Housing by the Developer whether on or off site or any contribution by the Developer towards the cost of provision of Affordable Housing;
 - 1.2 linking commencement, completion or occupation of any part or the whole of the Development to the provision of Affordable Housing whether on or off site;
 - 1.3 preventing development without the agreement or co-operation of an independent third party (not being an Associate of the Developer or the Guarantor) which cannot be obtained on terms at a cost or within a time period that in any such case is reasonable in the circumstances (or which cannot be obtained on terms, or at a cost, that is reasonable in the circumstances having regard to the Viability Condition);
 - 1.4 reduces the Net Internal Area of any part of the Development below that applied for in the Planning Application;
 - 1.5 would prevent or materially impede the Developer complying with its obligations in and the requirements of this agreement;
 - 1.6 imposing limits on the generation of noise which are unreasonable and will materially adversely affect the occupation or operation of the whole of the completed Development having regard to the fact that the Development is mixed use and includes a significant proportion of residential accommodation;
 - 1.7 requiring the Developer to operate and/or run or procure the operation and running of transport services whether by way of bus or taxi services or otherwise;
 - 1.8 links implementation of the Development with the carrying out of Works on any land not forming part of the Development Land;
 - 1.9 would not satisfy any provision in the LUL Agreement;
 - 1.10 which would be regarded by a reasonable and prudent developer bound by the terms of this Agreement as unreasonable or unduly restrictive in the circumstances, or has, or may reasonably be expected to have, a materially adverse effect on:
 - 1.10.1 any ability to carry out, or on the cost of carrying out, the Works or change of use contemplated by the Planning Application; and/or
 - 1.10.2 the capital or letting value (or both) of the Development Land following the Works; and/or
 - 1.10.3 the viability of the Development, so that the Development is unlikely to satisfy the Viability Condition.

THE COMMON SEAL of)
THE MAYOR AND)
BURGESSES)
OF THE LONDON)
BOROUGH OF HARINGEY)
was
hereunto affixed by order :

.....
Authorised Officer

EXECUTED as a **DEED** by
Grainger Seven Sisters
Limited in the presence of:

Director

Director/Secretary

EXECUTED as a **DEED** by
Northumberland & Durham
Property Trust Limited in
the presence of:

Director

Director/Secretary

ANNEXURES

Annex 1:	Form of Appraisal
Annex 2	Overage: Worked Example
Annex 3:	
Annex 3:	Schedule of Habitable Rooms

ANNEX 1 - Form of Appraisal

ANNEX 2 – Overage: Worked Example

ANNEX 3 – Schedule of Habitable Rooms

Appendix B: Comparite Version Principal Agreement

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
HARINGEY**
Council

and

GRAINGER SEVEN SISTERS LIMITED
Developer

and

NORTHUMBERLAND & DURHAM PROPERTY TRUST LIMITED
Guarantor

Development Agreement
in respect of
Wards Corner, Seven Sisters, London Borough of Haringey

Table of Contents

1	Definitions and interpretation.....	1
2	Conditionality and Licence.....	1917
3	Objective.....	2018
4	The Secretary of State's Consent Condition.....	2419
5	The LUL Condition.....	2419
6	Design Condition.....	2220
7	Planning Condition.....	2220
8	Site Assembly Condition.....	2422
9	Stopping Up Order Condition.....	3023
10	The Necessary Consents Condition.....	3024
11	Funding Condition.....	3124
12	Viability Condition.....	3124
13	Notices.....	3125
14	Non-assignment.....	3225
15	Disputes.....	3326
16	Project Board.....	3427
17	Default.....	3427
18	Confidentiality.....	3629
19	VAT.....	3831
20	Interest.....	3831
21	Guarantee.....	3831
22	Interim Gap Funding.....	3932
23	Good Faith.....	4134
24	Miscellaneous.....	4134
25	Apex House.....	4134
26	The Council.....	4134
	PART B.....	4134
	Part B.....	4134

27	Unconditional Date	4134
28	Completion Date	4234
29	Licence	4235
30	Development Account and Sale Proceeds Account	4235
31	Overage	4336
32	No Partnership	4638
33	Non-merger	4638
34	Indemnity	4638
35	Liability of the Developer	4639
	SCHEDULE 1	4740
	SCHEDULE 2	5144
	SCHEDULE 3	5346

1 A Developer Adverse Condition is one which contains an obligation or restriction of any one or more of the following kinds:

46

ANNEXURES

5648

ANNEX 1 - Form of Appraisal

5649

ANNEX 2 – Overage: Worked Example

5750

ANNEX 3 – Affordable Housing Agreement

5851

ANNEX 4 – Schedule of Habitable Rooms

5952

This Agreement is dated

3 August

2007

and made between:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** whose address is at Civic Centre, High Road, Wood Green, London N22 8LE ("**Council**"); and
- (2) **GRAINGER SEVEN SISTERS LIMITED** a limited liability company incorporated and existing under the laws of England Wales (registered in England and Wales No. 06111428) whose registered office is at Citygate, St James' Boulevard, Newcastle upon Tyne NE1 4JE ("**Developer**"); and
- (3) **NORTHUMBERLAND & DURHAM PROPERTY TRUST LIMITED** a limited liability company incorporated and existing under the laws of England Wales (registered in England and Wales No. 00182763) whose registered office is at Citygate, St James' Boulevard, Newcastle upon Tyne, NE1 4JE ("**Guarantor**").

It is agreed as follows:

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following definitions apply:

~~Acquisition Costs~~ means in relation to the acquisition of Adverse Interests and Third Party Properties (whether such acquisitions are by agreement or by the use of compulsory powers or following a Blight Notice) the sum of the following heads of compensation:

- (a) ~~all compensation (including but not limited to compensation in the nature of purchase price for land value, home loss and statutory disturbance) properly claimed and paid by the Council to occupiers and owners or beneficiaries (as the case may be) of the Adverse Interests and Third Party Properties (in accordance with the provisions of this Agreement) pursuant to a notice served pursuant to the Compulsory Purchase Act 1965, the Land Compensation Act 1973, Section 23 of the Land Compensation Act 1961 and/or Sections 10 and 20 of the Compulsory Purchase Act 1965;~~
- (b) ~~the proper and reasonable costs paid in relation to the professional expenses properly and reasonably incurred by third parties in respect of the acquisition of their interest in land and all proper legal and surveying fees plus any stamp duty land tax and land registry fees (excluding interest and penalties for late payment) arising out of the acquisition of any Adverse Interest and/or Third Party Properties by the Council and the vesting of such interest in the Council~~

Adverse Interests interests of third parties in or affecting the Development Land or which may impede or prevent the carrying out of the Development

www.clydeco.com

Abu Dhabi, Belgrade, Caracas, Doha, Dubai, Guildford, Hong Kong, London, Los Angeles, Moscow, Nantes, New York, Paris, Prague, Rio de Janeiro, Shanghai, Singapore, St Petersburg, Clyde & Co's offices and associated offices

(such as, but not limited to, easements, rights of way, rights of light and restrictive covenants) and including all occupational interests, leases and tenancies;

~~**Affordable Housing** means housing which is attainable to buy/rent for those people whose incomes are insufficient to allow them to afford to buy/rent locally on the open market and includes social housing and intermediate housing;~~

Apex House the land and buildings belonging to the Council and as known as Apex House, title to which is registered at the Land Registry under titles numbered NGL316769 and NGL437591;

Appeal an appeal against a Planning Refusal;

Applicable Period as defined in clause 1.10.4;

Appointments the form of appointment of each member of the Professional Team;

Appraisal an appraisal of the Development utilising the form of the Proforma Appraisal annexed as Annex 1;

Appropriation the appropriation by the Council of any land for town and country planning purposes under Section 237 of the Act;

~~**Appropriation Costs** all proper costs reasonable and properly incurred by the Council in accordance with clause 8.21 in obtaining and implementing a Council resolution for the exercise of Appropriation powers at the request of the Developer including without limitation proper and reasonable legal costs and surveyors' costs and other costs comparable to the nature and scope of the various heads set out in the definition of Stage 1 Costs, Stage 2 Costs and Acquisition Costs (mutatis mutandis and to the extent applicable) as if such definitions related to the exercise of such Appropriation powers rather than the CPO or any Blight Notice;~~

Approved Assignee a company (not being an overseas company) which the Council:

- (a) is satisfied (acting reasonably) has the requisite experience, track record and financial standing necessary to enable it to perform the obligations of the Developer in this Agreement; and
- (b) has approved, such approval not unreasonably to be withheld or delayed;

Approved Fund a Fund which comprises any recognised Bank or financial institution operating within the United Kingdom registered with the Financial Services Authority or a foreign Bank which has come under the regulatory jurisdiction of the Financial Services Authority for the purposes of the Financial Services and Markets Act 2000 providing finance facility

arrangements to the Developer for the purposes of enabling the Developer to comply with its obligations under this Agreement;

Associate in relation to a person or body, any other person or body:

- (a) who is a connected person or body (as defined in section 839 of the Income and Corporation and Taxes Act 1988) to the first mentioned person or body; or
- (b) with whom the first mentioned person or body is acting in concert (as defined in the City Code on Takeovers and Mergers)

and includes without limitation, in relation to any undertaking, any group undertaking of such undertaking (as such terms are defined in section 259 of the Companies Act 1985);

Authority any statutory, public, local or other competent authority or a court of competent jurisdiction;

Building Contract the building contract or building contracts to be entered into by the Developer with Building Contractor in relation to the Works and/or each Section and "Building Contract" means any one of such building contracts;

Building Contractor the building contractors appointed by the Developer under the Building Contracts in accordance with the provisions of this Agreement which building contractor is in each case reputable and appropriately experienced and "Building Contractor" shall mean any one of such building contractors;

~~**Blight Notice** a notice served under Part VI of the Act in respect of an interest in land in the Development Site;~~

Call Option Agreement a call option agreement of even date with this Agreement between the Council and the Developer and relating to the Council's Land which call option agreement is subject to the Secretary of States Consent Condition;

CDM Regulations the Construction (Design and Management) Regulations 2007;

Certificate of Practical Completion the certificate or statement issued by the Employer's Representative in accordance with his appointment certifying that the Works, or the relevant Section, have been practically completed in accordance with the relevant Building Contract in each case;

Clawback Provision Co-ordinator such person as may from time to time be appointed by the Council to represent the Council in relation to the calculation of Overage under clause 31 and details of whose appointment have been given to the Developer;

Commercial Unit a completed shop office commercial or leisure unit or other unit of accommodation (not being a Residential Unit) within the Development Site;

Compensation shall mean as defined in the CPO Indemnity Agreement;

Completion Date twenty (20) working days after the Unconditional Date;

Conditions collectively:

- (a) the Secretary of State's Consent Condition;
- (b) the LUL Condition;
- (c) the Design Condition;
- (d) the Planning Condition;
- (e) the Site Assembly Condition;
- (f) the Stopping Up Order Condition;
- (g) the Necessary Consents Condition;
- (h) the Funding Condition; and
- (i) the Viability Condition

and reference to a **Condition** or the **Conditions** shall be to any one or more of them.

Consents the Satisfactory Permission, all Planning Agreements, all other consents, permissions, agreements, licences and approvals under the Planning Act (and all other statutes containing provisions relating to town and country planning) (including the approval of any matters reserved by any such) building regulations and any other statute, bylaw or regulation of any Authority from time to time necessary for the Developer to undertake, complete and operate the Development in accordance with the provisions of this Agreement including (if they are destroyed or damaged) the reinstatement of the Works;

Construction Costs those elements of the Development Costs (as contained in the Development Account) as relate to the carrying out of the construction works necessary to implement and complete the Development;

Council Land the freehold land which is the subject of the Call Option Agreement;

Council's Solicitors the Head of Legal Services at the Council;

Council's Adjoining Land any land owned by the Council which adjoins but does not form part of the Development Land including Apex House;

Counsel Senior or Leading Counsel experienced in advising in relation to schemes in the nature of the Development or Compulsory Purchase or Judicial Review or Mediation or other related aspects of this Agreement, agreed between the Developer and the Council or in the absence of agreement appointed on the application of any of them by the President of the Bar Council;

~~**Costs** the Stage 1 Costs, Stage 2 Costs and the Acquisition Costs but excluding costs relating to the obtaining of vacant possession of the Council Land;~~

~~Costs~~ ~~Date~~ the date(s) of receipt of the Qualifying Certificate;

CPO an order under Section 226 of the Planning Act (and other powers) for the compulsory acquisition of the Adverse Interests and/or Third Party Properties within the CPO Land;

CPO Costs shall mean as defined in the CPO Indemnity Agreement;

CPO Indemnity Agreement means the CPO Indemnity Agreement dated [] and made between (1) the Council (2) the Developer and (3) the Guarantor;

CPO Land that part or the whole of the Development Land which is to be the subject of the CPO as specified by the Developer ~~agreed~~ under clause 8.6 ~~the terms of the CPO Indemnity Agreement~~;

Date of Sectional Practical Completion the date certified by the Employer's Representative in the Certificate of Practical Completion as being the date on which the relevant Section of the Works was practically completed in accordance with the Building Contract relating to that Section notwithstanding any Snagging Works and the terms "*practical completion*" and "*practically complete*" shall be construed accordingly as the date on which the relevant Section or Sections are determined as having been practically completed (as applicable);

Defect any omissions, imperfections, defects or other faults in workmanship and materials arising as a result of the Works or the relevant Section which are not in accordance with the relevant Building Contract and which occurs or manifests itself and is notified to the Developer during the Defects Liability Period;

Defects Liability Period the period of 50 weeks commencing on the relevant Date of Sectional Practical Completion;

Design Condition the approval or deemed approval by the Council (as landowner and not as planning authority) of the Detailed Design in accordance with clause 6;

Detailed Design the design of and specification for the Development in sufficient detail to support an application for Detailed Planning Permission for the Development approved by the Council in accordance with clause 6.5 of this Agreement subject to Variation;

Developer Adverse Conditions any one or more of the matters set out in Schedule 3;

Developer's Architects such firm of architects as may from time to time be appointed by the Developer or a Building Contractor in accordance with this Agreement;

Developer's Auditors such independent and appropriate qualified auditors who the Developer may appoint for the purposes of clause 31.8;

Developer's Mechanical and Electrical Services Engineers such firm of mechanical services engineers (if any) as may from time to time be appointed by the Developer or the Building Contractors in accordance with this Agreement;

Developer's Quantity Surveyor such reputable quantity surveyor as the Developer may appoint in accordance with this Agreement;

Developer's Solicitors Clyde & Co LLP of Beaufort House, Chertsey Street, Guildford, Surrey GU1 4HA or as otherwise notified by the Developer to the Council;

Developer's Structural Engineers such other firm of structural engineers as may from time to time be appointed by the Developer or a Building Contractor in accordance with this Agreement;

Development the carrying out of Works and operations in, on, under and/or above the Development Land pursuant to the Planning Permission including but not limited to the demolition of existing buildings and the construction of buildings and facilities comprising (without limitation):

Residential accommodation

shops, kiosks,

Commercial Units (including government/local government offices to which the public have access), bars, restaurants, leisure and associated uses, private gardens and open space for residents, public open space, residents car parking and ancillary uses

in each case in accordance with the Detailed Design as varied or amended in accordance with this Agreement.

Development Account the account to be maintained by the Developer under clause 30 for the purposes of recording the Development Costs;

Development Completion Date the date on which the Developer has notified the Council that the Date of Sectional Practical Completion for all Sections comprised within the Development has occurred;

Development Costs those costs and expenses properly and reasonably incurred or paid by or allowed by or to the Developer in entering into and carrying out performing and/or procuring compliance with its obligations under this Agreement ~~and~~ and the CPO Indemnity Agreement and/or the LUL Agreement, and in acquiring the whole or any part of the Development Land and in relation to the Development whether before or after the date of this Agreement including those falling within the headings set out in Schedule 2 but provided that there shall not be included within the Development Costs any costs or expenses which are directly or wholly attributable to the wrongful act or the default of the Developer;

Development Land the land on which the Development is to be carried out and any part of it;

Disposal the sale by the Developer whether by the sale or transfer of the Development ~~Land~~ Land or the grant of a lease or leases (or, in the case of

the LUL land, an underlease or underleases) at a premium leaving only a nominal reversion and reserving only a nominal ground rent of any part or the whole of the Development Land;

Employer's Representative the architect or employer's agent (as appropriate according to the form of the Building Contract) who shall be a reputable and appropriately qualified consultant appointed by the Developer to monitor the Works in accordance with this Agreement and may include an Associate of the Developer;

Existing Properties means the following properties forming part of the Development Land:

Address	Type	Tenure	Acquisition Date
Properties Acquired			
<u>709 Seven Sisters Road</u>	<u>Commercial / Residential</u>	<u>F/H</u>	<u>July-06</u>
<u>1 West Green Road</u>	<u>Commercial</u>	<u>F/H</u>	<u>June-06</u>
<u>715, 721 and 723 Seven Sisters Road</u>	<u>Commercial</u>	<u>F/H</u>	<u>January-08</u>
<u>Land at Wards Corner</u>	<u>Commercial</u>	<u>F/H</u>	<u>January-08</u>
10 Suffield Road	HouseResidential	F/H	15-Mar-July-06
<u>18a Suffield Road</u>	<u>Residential</u>	<u>F/H</u>	<u>Feb-06</u>
18 Suffield Road	GF-FlatResidential	L/E/H	13-Sep-October-05
18A22 Suffield Road - First and Second Floors	4 th Fl-FlatResidential	L/E/H	13-Decembe-1-Jan-0604
22 Suffield Road	House	F/H	27-Aug-04
24Aa Suffield Road	GF-FlatResidential	L/E/H	17-Decembe-1-Jun-0507
24Bb Suffield Road	4 th Fl-FlatResidential	L/E/H	19-Decembe-1-Apr-0607
26 Suffield Road	HouseResidential	F/H	04-Jan-January-06
<u>709 Seven Sisters4 Suffield Road</u>	<u>ShopResidential</u>	<u>F/H</u>	<u>15-January-Jun-0608</u>
<u>1 West Green6 Suffield Road</u>	<u>Shop plus-flatResidential</u>	<u>F/H</u>	<u>22-January-Jun-0708</u>
<u>251-253 High Road</u>	<u>Commercial</u>	<u>F/H</u>	<u>January 08</u>

Expert the independent person referred to in clause 15;

Finally Determined (in relation to a Satisfactory Permission) seven (7) weeks have elapsed since a decision order or action to which section 288 of the Act applies or where that section does not apply thirteen (13) weeks have elapsed since the date of the decision, grant, order or action of the Local Planning Authority in respect of the grant of Planning Permission and either:

- (a) no Proceedings have been instituted in respect of that Planning Permission; or
- (b) any Proceedings which may have been instituted in respect of that Planning Permission during whichever shall be applicable of such periods have been exhausted (which shall occur on the withdrawal of such Proceedings or when the time for appealing against the decision of any court has expired and no appeal has been lodged) with that Planning Permission being finally upheld;

Force Majeure the period or periods of delay in the carrying out of the Works and/or any Section reasonably and properly attributable to:

- (a) any matter which gives rise to an extension of time under the relevant Building Contract;
- (b) the insolvency or winding up of the Building Contractor;
- (c) any act default delay or omission on the part of the Council or LUL; and/or
- (d) any other matter outside the reasonable control of the Developer

(but in each case save insofar as the same arises as a direct result of the wrongful act or the omission or default of the Developer) and in each case as is certified by the Employer's Representative as being a reasonable period having regard to the nature of the delay;

Fund any person or persons providing finance to the Developer for the purposes of enabling the Developer to comply with its obligations under this Agreement;

Funding Condition the Developer securing funding for the Development and the Developer's obligations under this Agreement;

Gross Internal Area, Gross External Area and Net Internal Area respectively the gross internal area, gross external area and/or net internal area expressed in square feet or square metres of accommodation within the relevant part or the whole of the Development such area to be measured in accordance with the Code of Practice issued by the Royal Institution of Chartered Surveyors (Fifth Edition 2001) and all such measurements shall be made and agreed between the Council and the Developer (acting reasonably) and in the absence of Agreement the same shall be referred by or on behalf of the Council or the Developer for determination in accordance with the provisions of clause 15;

Habitable Room a room within a Residential Unit considered appropriate for occupation under the Council's Supplementary Planning Guidance 3a (Density, Dwelling Mix, Floorspace Minima, Conservations, Extensions and Lifetime Homes) comprising bedrooms, living rooms and dining rooms and space rooms used for these purposes provided that kitchens with a floor area over 13m² (net internal area) and/or large rooms over 20 m² (net internal area), which are capable of sub-division, will be counted as two Habitable Rooms.

Insolvent

- (a) in relation to a company that:
 - (i) it is deemed unable to pay its debts as defined in section 123 of the Insolvency Act 1986 (referred to as "the Insolvency Act" in the remainder of this definition); or
 - (ii) an order is made for a voluntary arrangement under part I of the Insolvency Act; or
 - (iii) an administration order is made under part II of the Insolvency Act; or
 - (iv) a receiver or manager is appointed whether under part III of the Insolvency Act (including an administrative receiver) or otherwise; or
 - (v) it goes into liquidation as defined in section 247(2) of the Insolvency Act (other than a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent); or
 - (vi) a provisional liquidator is appointed under section 135 of the Insolvency Act; or
 - (vii) a scheme of arrangement is made under section 425 of the Companies Act 1985;
- (b) in relation to an individual that:
 - (i) an order is made for an interim order or a proposal is made for a voluntary arrangement under part VIII of the Act; or
 - (ii) a bankruptcy order is made by the Court; or
 - (iii) he enters into a deed of arrangement; and
- (c) in relation to a partnership and/or the property of a partnership the appointment of a receiver or liquidator or the making of an application for an administration order;

Insured Risks such risks as are normally covered by an all risks policy together with such other risks as the Developer may from time to time reasonably require to be covered but excluding any risks against which insurance cannot, in the Developer's opinion, reasonably be obtained at reasonable cost in the London commercial insurance market from time to time and subject in all cases to any excess exclusions or limitation imposed by the insurers;

Interest Rate that rate of interest being 2% above the greater of base lending rate from time to time of the Royal Bank of Scotland plc and LIBOR;

Interim Gap Funding

LUL London Underground Limited;

LUL Agreement the agreement with LUL which satisfies the LUL Condition;

LUL Condition the Developer entering into an agreement with LUL (with the Council as a party to the extent necessary), which agreement is

Unconditional, under which LUL grant development rights to the Developer and a 150 year (or longer) lease of the LUL airspace sufficient to enable the Developer to implement the Development and on terms that the Developer considers to be acceptable;

Material Variation means a Variation of the Detailed Design which materially and significantly changes those elements of the Detailed Design approved by the Council under clause 6.3;

Minor Variation a Variation to the Detailed Design which is not a Material Variation; and

Necessary Consents those of the Consents apart from and excluding Satisfactory Permission to the extent required to enable commencement of the Development;

Necessary Consents Condition the Developer securing the Necessary Consents in accordance with clause 10;

Open Market Value the price at which the sale of the relevant interest in the relevant land and buildings comprising any part or the whole of the Development might reasonably have been expected to complete with vacant possession unconditionally for cash consideration on the relevant date assuming:

- (a) a willing seller;
- (b) that, prior to the relevant date, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, the agreement of the price and terms and for the completion of the sale;
- (c) that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the relevant date;
- (d) that no account is taken of any additional bid by a prospective purchaser with a special interest;
- (e) that both parties to the transaction have acted knowledgeably, prudently and without compulsion; and
- (f) and having regard to the terms of this Agreement and/or the LUL Agreement;

Overage the sum calculated and payable to the Council in accordance with clause 31;

Participation Date the date being the earlier of the date on which 95% (by number of Residential Units and Commercial Units) of Residential Units and Commercial Units have been the subject of Disposal (or in the case of Commercial Units, lettings on rack rent terms) and 24 months after the Development Completion Date;

Planning Acts the regulatory framework for planning including (but not limited to) the Town and Country Planning Act 1990 (as amended) (**the Act**), the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential

Provisions) Act 1990 and **Planning Act** shall mean any of them or any consequential or replacement legislation or any statutory instruments enacted under any one of the above acts;

Planning Agreement any agreement or agreements in respect of and affecting the Development Land pursuant to all or any of the following provisions: Section 106 of the Act (including but without limitation the Section 106 Agreement); Section 38 and/or 278 of the Highways Act 1980 (including without limitation any Section 38 Agreement and/or Section 278 Agreement); ; or any provision to similar intent or any unilateral undertaking pursuant to Section 106 of the Act and including but not limited to the Affordable Housing Agreement;

Planning Application any planning application and supporting documentation in respect of the Development prepared by the Developer and submitted in accordance with clause 7 and incorporating the Detailed Design;

Planning Authority Haringey Council in its capacity as planning authority and includes any other body with equivalent responsibility in respect of the Development Land;

Planning Condition the obtaining of Satisfactory Permission in accordance with clause 7 which has been Finally Determined;

Planning Permission a planning permission granted pursuant to a Planning Application and includes (where requisite) any necessary listed building or conservation area consent;

Planning Refusal a refusal of a Planning Application (including a deemed refusal arising under section 78(2) of the Act) or the grant of a Planning Permission which is not a Satisfactory Permission;

Preparatory Works operations consisting of site clearance, demolition work, archaeological investigations (if any), investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion of services and erection of any temporary means of enclosure;

Price the price payable by the Developer for the Council Land (with vacant possession) being (subject to clause 22.1.2) the sum of
which price shall be payable under the Call
Option Agreement plus (to the extent payable) the Overage;

Proceedings all or any of the following as the case may be:

- (a) an application for judicial review under Part 54 of the Civil Procedure Rules arising from the grant, or any procedural step towards the grant of the Planning Permission including any appeals to a higher court following a judgement of a lower court;
- (b) an application pursuant to Section 288 of the Act arising from the grant of the Planning Permission by the Secretary of State, including any appeals to a higher court following a judgement of a lower court;
- (c) any reconsideration by the Planning Authority of the Planning Application or by the Secretary of State of an appeal (as the case may

be) following a previous Planning Permission being quashed pursuant to an application within the meaning of paragraphs (a) or (b) above and the matter being remitted to the Local Planning Authority or the Secretary of State (as the case may be).

Professional Team the Developer's Architect, the Developer's Mechanical and Electrical Services Engineer, the Developer's Structural Engineers and the Employer's Representative and such other professional consultants as may be appointed by the Developer or the Building Contractor in respect of a material part of the Development;

Prohibited Materials any products, substances or materials or any combination of them which at the time of specification:

- (a) do not conform with British or European Standards or Codes of Practice or the recommendations of the Building Research Establishment; and
- (b) are generally known to the building profession at the time of their specification for inclusion in the relevant Section of the Works to be deleterious to health and safety, the performance or durability of buildings or structures or damaging to the environment in the particular circumstances in which they are specified to be used or are used;

Project Board the board established under clause 16 of this Agreement;

Project Management Fee 3% of the Construction Costs;

Public Requirements any notice, order, demand, proposal or requirement given or made by any local or other statutory authority whether before or after the date of this Agreement and all matters capable of registration by any local or other Authority (whether or not registered before the date of this Agreement);

Qualifying Certificate a certificate as described in clause 8.18.

Relevant Date five ~~ten~~ (5/10) years (or such later date as the Council and the Developer may agree) from the date of this Agreement provided that if on such date either:

- (a) the Planning Condition has not been satisfied but the Planning Application has been subject to call-in (or analogous process) or an Appeal or Proceedings have been commenced and the Developer is pursuing such Appeal, call-in, or Proceedings (in the latter two cases) by way of assistance to the Council in a reasonable manner; and/or
- (b) the Stopping Up Order Condition has not been satisfied and the Developer is pursuing an appeal against refusal of the Developer's application in respect of the same non-determination or grant in unacceptable terms or the period during which the same is subject to judicial challenge has not expired or the Developer or the Council are defending proceedings for judicial challenge; and/or

- (c) the CPO process and/or Appropriation has been initiated under clause 8 or under the CPO Indemnity Agreement but that process has not been finalised

then in any such circumstances on request by the Developer the Relevant Date shall be extended until the date twenty (20) Working Days after the Planning Application is Finally Determined and the Planning Condition is either satisfied or not satisfied and/or the Stopping Up Order Condition is satisfied and/or the Site Assembly Condition is satisfied (as the case may be);

Residential Units units of accommodation within the Development intended for residential use and including accommodation for private residential purposes and Affordable Housing;

Resolution a resolution by the Planning Authority to grant Planning Permission which resolution incorporates the Planning Authority's section 106 requirements;

RIBA the Royal Institute of British Architects;

Sale Proceeds where there has been a Disposal, all monies and anything representing money's worth or value in lieu of money of a capital nature (excluding VAT) received as consideration for such Disposal;

Sale Proceeds Account the account to be maintained by the Developer under clause 30 for the purposes of recording the Sale Proceeds;

Satisfactory Permission detailed Planning Permission for the Development in a form and upon conditions which are satisfactory to the Developer in accordance with the provisions of clause 7;

Schedule of Habitable Rooms the schedule setting out the Developer's current intentions as to the provision and distribution of Habitable Rooms within the Development annexed as Annex 4 and subject to Variation in accordance with this Agreement;

Secretary of State the Secretary of State for Communities and Local Government or other authority for the time being having or entitled to exercise, the appropriate powers contemplated by this Agreement or person appointed to act on behalf of the minister or other authority;

Secretary of State's Consent the consent of the Secretary of State under and for the purpose of Sections 32-34 of the Housing Act 1985 (and any other necessary consent of the Secretary of State) in each case:

- (a) allowing the Council to enter into (and complete the sale of the Council's Land pursuant to) the Call Option Agreement; and
- (b) allowing this Agreement to be given its full effect without the need for further consent except as provided in this Agreement;

Secretary of State's Consent Condition the obtaining of the Secretary of State's Consent in a form which is satisfactory to the Council and the Developer (both acting reasonably)

Section any part of the Works being less than whole;

Section 38 Agreement any Agreement pursuant to Section 38 of the Highways Act 1980 to be entered into between (inter alia) (1) the relevant Authority and (2) the Developer and (3) (subject to the terms of this Agreement) the Council which may be required by the relevant Authority as a condition of the grant of a Satisfactory Permission;

Section 106 Agreement any agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to be entered into between (inter alia) (1) the relevant Authority (2) the Developer and (3) subject to the terms of this Agreement) the Council which may be required by the relevant Authority as a condition of the grant of a Satisfactory Permission;

Section 278 Agreement shall mean any agreement pursuant to Section 278 of the Highways Act 1980 to be entered into between (inter alia) (1) the relevant Authority (2) the Developer and (3) (subject to the terms of this Agreement) the Council which may be required by the relevant Authority as a condition of the grant of a Satisfactory Permission;

Site Assembly Condition

- (a) the Developer completing the acquisition of and/or exchanging Unconditional agreement(s) (or such agreement(s) becoming Unconditional) for the acquisition of the freehold and/or leasehold interest in all Third Party Properties; and
- (b) the Developer completing the acquisition of and/or exchanging Unconditional agreement(s) (or such agreement(s) becoming Unconditional) for the acquisition, release, termination or variation of all Adverse Interests so as to enable the Development to be carried out retained or used (including the provision of full vacant possession of the entirety of the Development Land); and
- (c) the Developer completing the acquisition and/or exchanging Unconditional agreement(s) (or such agreement(s) becoming Unconditional) for the grant of any consent, waiver or approval in respect of or under any Adverse Interests so as to enable the Development to be carried out, retained and used; and
- (d) a confirmed CPO being obtained in respect of any Third Party Property and any Adverse Interests to the extent not so acquired or released (as the case may be) or the subject of any Unconditional agreement in the manner provided in (a) to (c) above and a General Vesting Declaration being made pursuant to the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 ("**Vesting Declaration**") in relation to all of the interests comprised in such Third Party Property and/or in relation to such Adverse Interests vesting the same in the Council;

Snagging Works any minor outstanding works which will be the subject of a snagging list in accordance with the provisions of the Building Contracts;

Standard Commercial Conditions the Standard Commercial Property Conditions (First Edition)

~~Stage 1 Costs~~ all proper costs (both internal and external) including without limitation all costs of land referencing, legal costs, surveyors' costs, mapping and planning costs and administrative costs reasonably and properly incurred by the Council (in accordance with this Agreement) in relation to:

- ~~(a) preparing a draft of the CPO;~~
- ~~(b) compiling the details of necessary Adverse Interests and the Third Party Properties to be acquired (including reasonable and necessary investigations and enquiries in relation to such other interests);~~
- ~~(c) the making of the CPO Order (but not publishing the same or referring it to the Secretary of State); and~~
- ~~(d) the preparation (but not service) of the requisite notices of the CPO;~~

~~Stage 2 Costs~~ all proper costs (both internal and external) reasonably and properly incurred by the Council in accordance with this Agreement in making the CPO and securing the confirmation of the CPO (including if necessary and subject to the terms of this Agreement) the presentation of a case at inquiry and appeal and any further costs of land referencing or mapping to the extent so reasonably and properly incurred in accordance with this Agreement) and including the following costs (and associated legal costs) and surveyors' costs:

- ~~(a) all costs fees and expenses relating to any public inquiry in respect of the CPO including the Council's in-house professional costs, the Council's administrative costs the Council's solicitor's and counsel's fees and expenses the fees and expenses of all expert witnesses and the inspector's expenses and the costs of the public inquiry venue;~~
- ~~(b) all legal and other professional fees, costs and expenses and all administrative costs that may reasonably and properly be incurred in undertaking all preparatory works and procedural requirements in connection with the CPO prior to any public inquiry (save to the extent charged as part of the Stage 1 Costs);~~
- ~~(c) all costs fees or expenses which the Council 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 proceedings for judicial review) or in relation to any Blight Notice;~~
- ~~(d) all costs reasonably and properly incurred by the Council (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 any Blight Notice or any proceedings relating either to the CPO or any Blight Notice;~~
- ~~(e) all costs reasonably and properly incurred by the Council as a result of taking or defending any action before the Lands Tribunal arising out of the CPO or any Blight Notice including any costs awarded to any other party by the Lands Tribunal;~~
- ~~(f) all legal valuation and other fees costs and expenses which the Council is required to pay to any party in connection with any claim including the negotiation of compensation transfer or conveyance of~~

~~title in connection with the CPO or any Blight Notice or in connection with the settling of objections raised against the CPO;~~

- ~~(g) all costs fees and expenses of pursuing or defending any application for judicial review in respect of the CPO or any Blight Notice or any application pursuant to Section 23 of the Land Acquisition Act 1981 or any court proceedings in respect of a Blight Notice;~~
- ~~(h) all irrecoverable Value Added Tax or other similar tax or duty which the Council shall be required to pay in connection with any of the above sums provided the Council shall use reasonable endeavours to recover all such Value Added Tax or similar tax or duty;~~
- ~~(i) all costs incurred in undertaking all post confirmation procedures in connection with the CPO including (but not limited to) all advertisement costs and services of all statutory notices service of a Notice to Treat and Notice of Entry and the making of any Vesting Declaration (as defined in paragraph (d) of the definition of Site Assembly Condition) and the cost of all negotiations and correspondence associated with these procedures;~~
- ~~(j) all costs incurred by the Council in pursuing any form of alternative dispute resolution procedure in order to resolve any dispute as to compensation including the payment of costs of any other party to such proceedings; and~~
- ~~(k) all costs incurred in respect of any other application to the High Court arising from the making or confirmation of a CPO including any appeal to a higher court following judgement at first instance;~~

~~but for the avoidance of doubt excluding any costs associated with the provision of staff provided or employed by NDC and provided that any other costs which the Project Board agree shall be borne by the Council.~~

Stopping Up Order Condition the Developer securing the appropriate orders for the legal closure of all roads footpaths and other public highways and the diversion and/or stopping up of public utility apparatus within any road footpath right of way or other public highway to be so closed in accordance with clause 8 and in each case to the extent required in order to carry out and complete the Development in accordance with this Agreement;

Third Party Properties any premises within or forming part of the Development Land which are either owned or occupied by any person other than the Developer or an Associate of the Developer, the Council or LUL;

Unconditional in the context of an agreement for lease or sale or any other agreement necessary to satisfy any of the Conditions, a legally enforceable agreement which is either unconditional or conditional only upon the Unconditional Date occurring;

Unconditional Date the date on which the Conditions have all been satisfied or waived in accordance with this Agreement;

Variation any variation amendment addition to or omission from the Base Scheme and/or the Schedule of Habitable Rooms and/or (as appropriate) the Detailed Design;

VAT value added tax and any similar tax substituted for it or levied in addition to it;

Viability Condition the Developer being reasonably satisfied that the Development should at least yield a Net Profit (as defined in clause 31.4) equal to 15% of DC (as defined in clause 31.4) assuming a Disposal or Disposals of the entirety of the Development (either as a whole or the sum of its parts) as at the Participation Date;

Working Day any day other than Saturday or Sunday or public or bank holidays when clearing banks in the United Kingdom are open to the public for the transaction of business and Working Days specifically excluding December 25th to January 3rd inclusive;

Works all works to be carried out by or on behalf of the Developer in preparation for and as part of the Development in accordance with the provisions of this Agreement including demolition of existing buildings and structures site preparation and remediation and the construction of the Development and all necessary services, protective hoardings and as all works provided in the Detailed Design;

- 1.2 References to clauses, schedules and annexures shall be deemed to be references to clauses of and schedules and annexures to this Agreement unless otherwise stated.
- 1.3 The clause, paragraph and schedule headings are for ease of reference only and shall not affect the construction or interpretation thereof;
- 1.4 References to the "parties" shall be references to the Council, the Developer and the Guarantor and references to a "party" shall be to any of them.
- 1.5 Any references to VAT shall include any tax of a similar nature substituted for or in addition to it unless the context otherwise requires.
- 1.6 Any reference in this Agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re-amended, re-enacted or applied by or under any other enactment and shall include all instruments, orders, plans, regulations and permissions and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.
- 1.7 Where in this Agreement examples are given such examples shall not limit any general description preceding such examples.
- 1.8 References to the parties shall include their successors in title.
- 1.9 All references to the Council are to Haringey Council as landowner of the Council Land and Housing Authority and shall not in any way fetter or compromise the Haringey Council as local planning authority.

- 1.10 Where the consent or approval of a party is expressed to be required under this Agreement and is expressly subject to a proviso or requirement that the consent or approval shall not unreasonably be withheld or delayed then the party's consent in each case shall be subject to the following provisions:
- 1.10.1 the party's consent shall not unreasonably be withheld or delayed;
- 1.10.2 the party seeking consent ("Applicant") shall seek the relevant consent by an application either orally at the Project Board or to the respective representative in writing addressed to the party whose consent is required ("Consentor") setting out the consent sought, details of the clause within this Agreement under which it is requested, giving full reasons and making specific reference to the fact that the request for consent is subject to the provisions of this clause and that failure to respond to the request for consent will mean that consent will, in the circumstances set out in clause 1.10.6, be deemed to have been given;
- 1.10.3 the Applicant providing, with the application, such supporting information as is reasonably necessary for the Consentor to properly consider the application;
- 1.10.4 the Consentor shall give a written response to an application for such consent or approval within a period of ten (10) Working Days following the later of receipt of the application and (where such a request is made under clause 1.10.3 and 1.10.5(b)) such other information as is referred to at clause 1.10.3 or where a different time period is specified in this Agreement then within that time period (the "Applicable Period")
- 1.10.5 the response referred to in clause 1.10.4 will either be:
- (a) that the consent or approval requested is given, with or without conditions; or
 - (b) (where reasonable and proper) a request for further or omitted information will be made; or
 - (c) a refusal of such consent or approval, accompanied by reasonable and proper written reasons;
- 1.10.6 if the Consentor fails within the Applicable Period to provide any of the responses set out in sub-clause 1.10.5 then and in such circumstances the consent or approval applied for shall be deemed for the purposes of this Agreement to have been given (where any such further information is provided then the provisions of this clause shall apply (mutatis mutandis) with effect from the date of provision);
- 1.10.7 any dispute between the parties as to whether the application was properly made in accordance with this clause, or the consent or approval has been or should have been deemed to have been given in accordance with the provisions of this sub-clause shall be referred by either party for determination under clause 15;
- 1.10.8 The provisions of this clause 1.10 shall not apply in relation to any statutory function or authority of the Council.
- 1.11 In relation to indemnities given to the Council by the Developer or the Guarantor under the terms of this Agreement:
- 1.11.1 it does not extend to any consequential loss caused as a result of any physical damage sustained, indirect loss or loss of profits;

- 1.11.2 the Council may take all reasonable steps at the Developer's reasonable request and cost to mitigate any losses which might result in a claim for indemnification being made provided that if the Council chooses not to mitigate its losses in accordance with the Developer's reasonable request then the Developer will only be liable for such losses and/or costs that the Council would have incurred had the Council so mitigated its loss;
- 1.11.3 the Council shall as soon as reasonably practicable give notice in writing to the Developer of any claims brought against the Council which may cause the Developer to be liable;
- 1.11.4 the Council shall not (unless and to the extent such actions would be unlawful) admit liability, settle or adjust or compromise any such claim without the written consent of the Developer (such consent not to be unreasonably withheld or delayed);
- 1.11.5 at the written request and cost of the Developer or the Council shall give to the Developer all such assistance as the Developer may reasonably require (and it is proper for the Council to give) for the purposes of so defending, settling, compromising or otherwise dealing with such claims.
- 1.12 Any reference to the doing, omitting or permitting of any act or thing by the Council or the Developer includes the doing, omitting or permitting of that act or thing by any agent, servant or other employee of any of them;
- 1.13 Where any party to this Agreement consists of more than one person (corporate or otherwise) covenants and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally;
- 1.14 For the purposes of this Agreement something shall be material or shall have a material effect or shall materially affect the matter in question if it is more than de minimis or has more than a de minimis effect.
- 1.15 This Agreement supersedes the provisions of the Co-Operation Agreement dated 31st July 2005 between the Council (1) and the Guarantor (2) which is hereby terminated.

PART A

2 Conditionality and Licence

- 2.1 This part A of this Agreement shall together with clause 1 come into effect on the date of this Agreement.
- 2.2 If:
- 2.2.1 the Unconditional Date has not occurred by the Relevant Date; or
- 2.2.2 at any time prior to the Unconditional Date the Developer serves notice on the Council which notice:
- (a) attaches the current Appraisal for the Development which Appraisal does not satisfy the Viability Condition; and
 - (b) states that in the Developer's reasonable opinion (with reasons) there is no reasonable prospect that the Development will satisfy the Viability Condition so as to enable the Unconditional Date to occur prior to the Relevant Date; or
- 2.2.3 at any time prior to the Unconditional Date the Developer serves notice on the Council which notice states that in the Developer's reasonable opinion (with reasons) there is no reasonable prospect that the Unconditional Date will occur by the Relevant Date;
- then and in any such case the Council or the Developer may by serving notice on the other parties elect to terminate this Agreement with immediate effect at any time prior to the Unconditional Date but not after the occurrence of the Unconditional Date.
- 2.3 The Council hereby grants unto the Developer and persons authorised by the Developer full licence for the Developer to enter upon the Council Land for the purposes of enabling the Developer to carry out such site investigations, measuring, survey, inspections and testing relating to the Development and/or the Works ("**Preliminary Matters**") as the Developer shall reasonably require for the purposes of this Agreement provided that in respect of entry on to the Council Land the Developer shall notify the Council prior to taking access for such purposes (and shall give details of the proposed Preliminary Matters to be carried out) and subject to the Developer making good any physical damage caused during the carrying out of any Preliminary Matters and indemnifying the Council in the terms of clause 34 but in relation to the Preliminary Matters only. Any access to tenanted property shall be subject to the rights of the tenant in each case.
- 2.4 The Developer (only) shall have the right at its sole discretion and from time to time to waive any of the Conditions (save for the Secretary of State's Condition, the Planning Condition and the LUL Condition) in each case by serving notice on the Council stipulating which one or more Conditions are to be waived following which that Condition or Conditions shall be deemed satisfied.
- 2.5 Any termination of this Agreement pursuant to this clause 2 or otherwise shall be without prejudice to all accrued claims in respect of any antecedent breach of the terms of this Agreement.

2.6 Following termination of this Agreement under the provisions of any of clauses 2.2, 4.5, 5.5 or 17

- (a) the Council shall have the right at any time within 6 months of such termination to serve notice on the Developer requiring the Developer to sell the whole of the Developer's interest in the Development Land to the Council (to the extent that the Developer has the legal right to effect such sale and excluding the land the subject of the LUL Agreement) at a price in each case equal to (in the case of the Existing Properties) the aggregate of the total purchase price's paid or payable by or on behalf of the Developer for the acquisition of the relevant interest (including professional fees costs and expenses in respect of acquisition, Stamp Duty Land Tax and other taxes on the purchase) and a return of 6% per annum on all such land prices, costs expenses and other sums for the period from the date on which such sums were incurred until the date of repayment by the Council following exercise of the Council's right as aforesaid or (in all other cases) the Open Market Value of the relevant interest as at the date of service of the notice as agreed between the Council and the Developer or determined under clause 15. On exercise of such right by the Council, which shall apply in relation only to the whole of the Developer's interest (unless otherwise agreed by the Developer at its discretion) a contract for sale of the relevant interest shall come into immediate effect and completion will take place 20 working days after service of notice by the Council. The Council shall be entitled to nominate a third party purchaser to complete on its behalf, without prejudice to the obligation on the Council under this clause 2.6. The Standard Commercial Property Conditions current as at the relevant date shall apply to the sale and purchase hereby contemplated to the extent consistent with the foregoing provisions of this clause 2.6 PROVIDED THAT the Council shall be entitled at any time to proceed to exercise its powers of compulsory acquisition notwithstanding this clause 2.6 (but at its own cost and so that the Council (and not the Developer) shall be liable for all CPO Costs and Compensation arising from such exercise); and
- (b) the Council shall within six (6) months of termination of this Agreement either refund to the Developer any statutory compensation paid by the Developer in respect of any part of the Developer Land that comprises CPO Land which is then vested in the Council or which the Council is entitled to have vested in it (plus interest thereon at 6% per annum) or (at the Council's option) the Council shall transfer the said CPO Land to the Developer or as the Developer may direct for a nil consideration and free from this Agreement.

3 Objective

- 3.1 It is the objective of the Council and the Developer to secure a quality redevelopment of the Development Land which promotes the regeneration objectives for the area.
- 3.2 In pursuance of the objectives set out in clause 3.1, it is the parties' intentions that the Developer will use reasonable endeavours to:
- (a) In respect of the individual Residential Units within the Development which are intended to be sold by way of Disposal to develop and

promote a marketing strategy for the such Residential Units within the Development which targets owner occupiers, including an initial marketing drive aimed at local residents, whilst not precluding simultaneous or subsequent marketing to other market sectors;

- (b) to promote design and quality standards for the Development and its constituent units which are consistent with the regeneration objectives set out in clause 3.1:
- (c) in respect of the individual Residential Units which are intended to be let rather than be subject to a Disposal to develop and promote a letting strategy in respect of such Residential Units which is consistent with the regeneration objectives referred to in clause 3.1 with the intention of ensuring that:
 - (i) the initial occupiers are those who have no recourse to public funds other than by virtue of a universal entitlement; and
 - (ii) the volume and nature of sales to investment vehicles does not, of itself, undermine the regeneration objectives set out in clause 3.1

but the Council acknowledges that: -

- (iii) the Developer may at its discretion either make Disposals of such Residential Units or let them under short term occupational leases; and
- (iv) such sales or lettings may be made by an Associate of the Developer or a fund to whom the Developer may transfer or grant a long lease of the whole or the relevant part of the Development Land.

4 The Secretary of State's Consent Condition

- 4.1 The Secretary of State's Consent Condition shall be satisfied by the obtaining by the Council of the Secretary of State's Consent.
- 4.2 Within a period of 10 working days following the date of this Agreement, the Council shall apply for and use all reasonable endeavours to obtain the Secretary of State's Consent as soon as reasonably practicable and shall keep the Developer fully informed as to the progress made in obtaining the Secretary of State's Consent at all times providing the Developer with copies of any relevant documentation and or information and such other information as the Developer may request from time to time.
- 4.3 The Council shall notify the Developer as soon as the Secretary of State's Consent has been obtained (or if it is refused then on receipt of such refusal) and shall provide a copy of any written notification either of consent or refusal promptly following receipt by the Council.
- 4.4 Within 10 working days following receipt of the Secretary of State's Consent the Council will notify the Developer and the Developer will notify the Council in each case as to whether or not the Secretary of State's Consent satisfies the Secretary of State's Consent Condition, and if not shall in each case state their respective written reasons.
- 4.5 In the event that the Secretary of State's Consent Condition has not been satisfied within a period of 6 months (or such longer period as the Council

and the Developer may at any time in writing agree) following the date of this Agreement then, and in such circumstances, the Developer may by serving notice in writing on the Council, terminate this Agreement and the Call Option Agreement.

5 The LUL Condition

- 5.1 The LUL Condition shall be satisfied by the Developer (and where applicable the Council) entering into the LUL Agreement with LUL which LUL Agreement is Unconditional.
- 5.2 The Developer agrees to use all reasonable endeavours to procure satisfaction of the LUL Condition as soon as reasonably practicable after the date of satisfaction of the Secretary of State's Consent Condition.
- 5.3 The Developer shall keep the Council fully informed as to progress made in satisfying the LUL Condition.
- 5.4 On request by the Developer the Council shall enter into and be a party to the LUL Agreement subject to the Council approving the obligations and provisions binding on the Council (such approval not unreasonably to be withheld or delayed).
- 5.5 In the event that the LUL Agreement Condition has not been satisfied within a period of 18 months (or such longer period as the Council and the Developer may at any time in writing agree) following the date of this Agreement then, and in such circumstances, the Developer may by serving notice in writing on the Council, terminate this Agreement and the Call Option Agreement.

6 Design Condition

- 6.1 As soon as reasonably practicable after the date of satisfaction of the Secretary of State's Consent Condition and the LUL Condition the Developer shall prepare and submit to the Council a set of plans, drawings, elevations, a schedule of intended areas (which in relation to Residential Units shall be consistent with the Schedule of Habitable Rooms or as otherwise approved by the Council, such approval not unreasonably to be withheld) and uses and such other information appropriate to an application for detailed planning permission as the Council shall reasonably require in respect of the proposed Development (which shall comply with the LUL Agreement where applicable) for approval by the Council as the Detailed Design, such approval not to be unreasonably withheld or delayed and to be subject to clause 6.3.
- 6.2 In preparing the Detailed Design the Developer shall have due regard to the representations of the Council and any other relevant Authority, but shall not be bound by such representations.
- 6.3 The Council's approval under clause 6.1 shall be limited to:
 - (a) the height, site and massing of buildings and their external appearance and the external and public access areas within the Development but the Council shall not be required or entitled to approve any part of the interior design or internal layout of the Development; and
 - (b) Variations to the Schedule of Habitable Rooms.

- 6.4 Once approved in accordance with this clause 6, the plans, drawings, elevations, any Variation to the Schedule of Habitable Rooms and the proposed uses and other such information shall constitute the Detailed Design and shall only be the subject of Variation in accordance with paragraphs 5.5 and 5.6 of Schedule 1.

7 7 Planning Condition

- 7.1 Following satisfaction of the Secretary of State's Consent Condition, the LUL Condition and the Design Condition the Developer shall:

- 7.1.1 prepare the Planning Application and any other relevant and necessary supporting documentation which, to the extent not already approved pursuant to clause 6, shall be approved by the Council using the procedures set out in clause 6 (such approval not to be unreasonably withheld or delayed but subject always to clause 6.3);

- 7.1.2 submit the Planning Application to the Local Planning Authority as soon as reasonably practicable thereafter;

- 7.1.3 diligently pursue the grant of Planning Permission pursuant to the Planning Application and shall use its reasonable endeavours (subject as set out in this clause 7) to obtain at its own expense Satisfactory Permission as soon as reasonably practicable;

- 7.1.4 where it is necessary or desirable to do so, enter into discussions and negotiations with the Local Planning Authority and take such steps in the course of or following such discussions and negotiations as are commercially prudent with a view to obtaining Satisfactory Permission;

- 7.1.5 keep the Council fully informed of such discussions and negotiations and of the progress of the Planning Application and send to the Council copies of all material correspondence with the Local Planning Authority;

- 7.1.6 not withdraw the Planning Application or make any further application for planning permission relating to the Development Land in substitution for the Planning Application without complying with clause 7.1;

- 7.1.7 not make any Material Variation to the Planning Application without the approval of the Council (such approval not to be unreasonably withheld or delayed);

- 7.1.8 (subject to clause 7.2) enter into the Affordable Housing Agreement and any other Planning Agreement necessary in order to secure the Satisfactory Permission, provided that the same:

- (a) do not contain any one or more Developer Adverse Conditions;
- (b) accords with the LUL Agreement; and
- (c) is acceptable to the Developer (acting reasonably);

- 7.2 The Council shall approve and enter into the Affordable Housing Agreement and any necessary Planning Agreement required in order to procure the grant or enable implementation of Satisfactory Permission, such approval not unreasonably to be withheld or delayed and the Council shall promptly enter into the Affordable Housing Agreement and any such Planning Agreement as landowner.

- 7.3 Within 10 (ten) Working Days of the Resolution (whether to grant the Planning Permission or of any Planning Refusal) the Developer shall send a copy of the Resolution to the Council.
- 7.4 Within 40 (forty) Working Days of a Resolution to grant the Planning Permission the Developer shall notify the Council either:
- 7.4.1 that the Planning Permission is or will be on grant of the Planning Permission a Satisfactory Permission; or
- 7.4.2 that the Planning Permission is or will be on grant of the Planning Permission not a Satisfactory Permission in which case the Developer shall state which Developer Adverse Conditions the Developer considers that it contains.
- 7.5 If the Developer fails to serve notice in accordance with clause 7.4 then in relation to that particular Planning Permission it shall be deemed to be a Satisfactory Permission.
- 7.6 The Developer may, but shall not be obliged to, commence or continue any Appeal or Proceedings.
- 7.7 The Developer shall bear and pay all costs incurred by the Developer in submitting the Planning Application and in pursuing the same including all costs incurred by the Developer in respect of any Appeal or Proceedings but shall not be obliged to pay or reimburse any costs or expenses incurred by the Council in its capacity as Local Planning Authority (save for payment by the Developer of the statutory fees due in respect of the cost of submission of the Planning Application and any Appeal) or by the Council in respect of the approval of any element of the Planning Application or in determining whether a Planning Permission is a Satisfactory Permission.
- 7.8 The Planning Condition shall be satisfied on the later of the following dates:
- 7.8.1 the date on which it is agreed or determined pursuant to clause 7.4 that the Planning Permission is a Satisfactory Permission (or if later the date of the actual grant of such Planning Permission); and
- 7.8.2 the date on which the Satisfactory Permission has been Finally Determined provided that the Developer may at its sole discretion waive the requirement that the Satisfactory Permission be Finally Determined.
- 7.9 The Council hereby agrees to use reasonable endeavours (including the provision of information) to support the Developer's application for and endeavours to obtain Planning Permission and will not object to the same (provided the same is submitted in accordance with the provisions of this Agreement) but will not act independently of the Developer in relation to the same.
- ~~7.10 The Council (as estate owner and housing authority but without thereby affecting the discretion of the Council's planning committee) agrees that:~~
- ~~7.10.1 all Affordable Housing referable (whether by public policy or otherwise) to the Development is to be discharged by off-site provision procured by and at the cost of the Council or a third party;~~
- ~~7.10.2 the Council will make available its site at Apex House (and/or another suitable site or sites within the Borough) for the provision of all Affordable Housing referable to the Development and will satisfy any requirement to procure~~

~~Affordable Housing referable to the Development at its own cost so as to enable the Development to be implemented in accordance with this Agreement; and~~

- ~~7.9.1 7.10.3 the Council will at its own cost discharge any planning or associated obligations, (including, for example, payment of education contributions and the like) referable to the provision of Affordable Housing.~~

8 Site Assembly Condition

- 8.1 The Developer shall (subject as provided below) use its reasonable endeavours at its own cost to procure satisfaction of the Site Assembly Condition as soon as reasonably practicable after the date of this Agreement having regard to the need to minimise site assembly costs, but in so doing the Developer shall not be obliged to expend in excess of excluding LUL and rights of light and for LUL and rights of light PROVIDED THAT in respect of the Council Land it shall be the Council's responsibility to obtain vacant possession of the Council Land at its own cost.
- 8.2 The Developer shall keep the Council regularly informed of progress made by the Developer in satisfying the Site Assembly Condition;
- 8.3 The Developer shall not be obliged to offer terms in respect of the acquisition of Third Party Properties and/or Adverse Interests which are in excess of the amount of statutory compensation which the relevant owner or occupier would be entitled to as a result of a CPO or (as appropriate) Appropriation. Furthermore, the Developer shall not be obliged to commence or continue negotiation with any occupier until the Developer has exchanged Unconditional agreements to acquire the freehold reversion.
- 8.4 The Council shall use reasonable endeavours to take such action as the Developer may reasonably require where such action is proper for a local authority to undertake in order to assist the Developer in satisfying the Site Assembly Condition including (but not limited to):
- 8.4.1 deducing title to the Council Land to the extent it has not already done so at the date of this Agreement;
- 8.4.2 providing copies of any existing leases and/or tenancies to the extent it has not already done so at the date of this Agreement;
- 8.4.3 providing replies to CPSE 1 and 3 to the extent it has not already done so at the date of this Agreement;
- 8.4.4 entering into deeds of variation and/or (to the extent appropriate) deeds of surrender and/or (to the extent appropriate) agreements for surrender of any existing leases or other Adverse Interests;
- 8.4.5 (to the extent appropriate) serving notice to terminate any of the existing leases affecting the Council Land when requested to do so by the Developer;
- 8.4.6 accepting such title to any part of the Development Land not forming part of the Council Land on such basis and for such period as may be necessary to enable the Council to use its powers of Appropriation in respect of such part (including accepting a transfer of any such land as bare trustee for the Developer); and/or
- 8.4.7 obtaining vacant possession of the Council Land at its own cost.

- 8.5 If any party subject to a CPO approaches the Council to negotiate with the Council then the Council confirms it will not without the prior written consent of the Developer negotiate with that party, but if the Developer shall so consent following a request in writing by the Council, the Council shall use all reasonable endeavours to conclude such negotiations and acquire the relevant interest as soon as reasonably practicable on terms approved by the Developer.
- 8.6 ~~Following the date of service of written notice by the Developer on the Council requesting the Council to comply with the provisions of this clause 8.6 (which the Developer shall be entitled to serve at its discretion and which shall attach a "red line" plan identifying the CPO Land) the Council shall as soon as reasonably practicable:~~ The parties covenant with each other to comply with their respective obligations in the CPO Indemnity Agreement.
- 8.6.1 ~~take all reasonable and necessary steps to compile the CPO schedule of interests to be acquired within the CPO Land including investigations and enquiries in relation to such issues using the services of a referencing company approved by the Developer (such approval not to be unreasonably withheld or delayed);~~
- 8.6.2 ~~prepare the following:-~~
- ~~(a) the requisite notices of the CPO to be served on all relevant owners and other interested parties entitled to receive those notices;~~
 - ~~(b) the draft CPO;~~
 - ~~(c) the map(s) accompanying the draft notice of the CPO;~~
 - ~~(d) the draft notice of the CPO; and~~
 - ~~(e) the draft statement of reasons~~
- ~~and on written request by the Developer (which the Developer shall be entitled to give at its discretion) and in accordance with a timetable and statement agreed by the Project Board referring to the necessity for a CPO as being in the public interest, the benefits of the Development and the fact that the Developer is giving an indemnity for costs in this Agreement (or such other indemnity as the Project Board agree) then seek to obtain a resolution of Members to make the CPO and place the matter on the forward plan of the Council in accordance with the Council's constitutional requirements (but not publish or advertise the same nor refer it to the Secretary of State unless requested to do so by the Developer) and provided that the Council will not in so doing take any action required in paragraph 8.9.~~
- 8.7 ~~The Council undertakes with the Developer to:~~
- 8.7.1 ~~keep the Developer fully informed at all times of the progress made;~~
 - 8.7.2 ~~provide copies of relevant advice, documentation and correspondence to the Developer on reasonable demand; and~~
 - 8.7.3 ~~consult with the Developer and take into account and have due regard to the Developer's comments in relation to all action taken by it pursuant to clause 8.6~~
- 8.8 The Developer shall:

- ~~8.8.1 pay to the Council the Stage 1 Costs in accordance with the provisions of clause 8.17 save for any costs to the extent incurred due to the Council's default or negligence; and~~
- ~~8.8.2 use all reasonable endeavours to assist the Council in performing its obligations under clause 8.6.~~
- ~~8.9 Subject to and as soon as practicable after the Developer has served notices on the Council requesting the Council to comply with this clause 8.9 (which the Developer shall be entitled to serve at its discretion) the Council shall:~~
 - ~~8.9.1 take all reasonable and necessary steps to enable the CPO to be made in accordance with statutory requirements and (following the Developer's request, but not before) give public notice of the making of the CPO;~~
 - ~~8.9.2 take all reasonable and necessary steps to enable the carrying out of all procedures relating to the service of the notices of making the CPO;~~
 - ~~8.9.3 submit the CPO to the Secretary of State for confirmation and thereafter the Council will take all reasonable and necessary steps to enable the confirmation of the CPO;~~
 - ~~8.9.4 notify the Developer of any objections thereto and of any communications with the confirming body and/or the Planning Inspectorate;~~
 - ~~8.9.5 take all reasonable and necessary steps to enable a public inquiry into the confirmation of the CPO to occur at the earliest possible date;~~
 - ~~8.9.6 notify and permit the Developer to attend all relevant conferences with Counsel relating to the CPO; and~~
 - ~~8.9.7 negotiate with objectors to the CPO (to the extent (in relation to compensation) of the indemnity for Stage 2 Costs which the Developer is to provide under this Agreement) including any mediation or alternative dispute resolution procedure agreed by the Developer, and to give any undertaking reasonably required by the objectors provided the terms of the undertaking are agreed by the Developer and provided further (and for the avoidance of doubt) that the Developer shall have no liability in respect of Acquisition Costs or Stage 2 Costs unless and until the Developer has served notice under clause 8.9.~~
- ~~8.10 If the CPO is confirmed by the Secretary of State the Council shall:~~
 - ~~8.10.1 take all reasonable and necessary steps to make public all necessary notices and ensure that the CPO may be implemented and all interests the subject of the CPO acquired and CPO compensation ascertained and where possible paid as soon as reasonably practicable after its confirmation;~~
 - ~~8.10.2 take all reasonable and necessary steps in connection with the promotion and pursuance of the confirmation and implementation of the CPO;~~
 - ~~8.10.3 keep the Developer informed at all times of the progress made in the making and implementation of the CPO;~~
 - ~~8.10.4 consult with the Developer whenever so reasonably required to do so by the Developer and to take into account and have regard to representations made by the Developer as to the progress and conduct of the promotion and pursuance of the confirmation of the CPO and the implementation thereof; and~~

- ~~8.10.5 notify the Developer of and permit the Developer to attend all relevant conferences with Counsel which relate to the CPO and are relevant to the Developer's interests under this Agreement.~~
- ~~8.11 The parties agree that:~~
- ~~8.11.1 the Council shall not (so far as the law permits) make the CPO and submit the CPO to the Secretary of State or make any Vesting Declaration pursuant to the confirmed CPO or take any action under either clause 8.6 or clause 8.8 until the Developer has served the relevant notice on the Council requesting the Council to take such action.~~
- ~~8.11.2 if the Council receives a written request from a landowner of the Third Party Properties and/or Adverse Interests for an advance payment of compensation under Section 52 of the Land Compensation Act 1973, the Developer (acting reasonably) shall agree with the Council an estimated figure for such payment on the basis of which the estimated figure shall be based; and~~
- ~~8.11.3 the Council shall copy to the Developer as soon as reasonably practicable any Blight Notice which it receives together with a statement certifying the rateable value of the relevant property within the rating list as at the date of the Blight Notice and the Developer shall propose a course of action to the Council for the Council's approval (acting reasonably) within ten (10) Working Days of being copied such notice including its views as to the validity of the notice and the amount of compensation which it considers is payable.~~
- ~~8.12 if a CPO is not confirmed by the Secretary of State, then unless instructed by the Developer not to resist such legal challenge, the Council shall take legal advice from Counsel on any legal challenge to the confirmation of the CPO or any decision, act or omission in respect of the CPO brought by any party and, provided that Counsel's advice is that the Council has more than 60% chance of success, shall take all reasonable and necessary steps to assist the Secretary of State in defending such legal challenge including instructing Counsel, preparing evidence and dealing with all procedural issues consulting fully throughout with the Developer and shall have due regard to any representations as the Developer may have.~~
- ~~8.13 As soon as practicable after the CPO has been confirmed and become operative the Council will:~~
- ~~8.13.1 take all reasonable and necessary steps as soon as reasonably practicable (to the extent of its legal authority) and in accordance with a timetable approved by the Developer to exercise its compulsory powers arising under the CPO and proceed to acquire all the interests referred to therein by means of a Vesting Declaration. The Site Assembly Condition shall (in respect of all such interests) be satisfied upon the issue of the Vesting Declaration in respect of all such interests where such Vesting Declaration has been advertised and is no longer open to Judicial challenge; and~~
- ~~8.13.2 transfer pursuant to Section 233 of the Act to the Developer (or as the Developer may direct) at the Developer's written request all parts of the CPO Land (excluding the Council Land which the Council shall transfer in accordance with the terms of the Call Option Agreement) at a nil consideration (other than the covenant for implementing the Works but without prejudice to the Developer's obligation in clause 8.16) and this clause 8.13.2 shall survive any termination of this Agreement, subject only to clause 2.6.~~

- ~~8.14 The Council shall take all reasonable and necessary steps to ensure that compensation is properly assessed in accordance with the compulsory purchase compensation code and the Developer shall provide all reasonable assistance to the Council in seeking to settle such claim. The Council shall take all reasonable and necessary steps to settle or determine such claim as soon as reasonably practicable and shall consult with the Developer in respect of such claim and shall take due regard to any representations as the Developer may have.~~
- ~~8.15 The Council shall at the request of the Developer take all reasonable and necessary steps to refer any compensation claim to the Lands Tribunal if it has not been settled within 6 (six) months of entry having been taken pursuant to the confirmed CPO.~~
- ~~8.16 The Developer covenants to pay to the Council the CPO Stage 2 Costs and all Acquisition Costs (including those arising from the service of a Blight Notice) in each case in accordance with clause 8.17 provided that this clause 8.16 and 8.17 shall not take effect (as regards the Stage 2 Costs and the Acquisition Cost unless and until the Developer has served notice under clause 8.9).~~
- ~~8.17 Subject to clause 8.16 the Developer will pay any Costs within 15 (fifteen) Working Days of receipt of a Qualifying Certificate.~~
- ~~8.18 A Qualifying Certificate shall not be valid unless it contains the following information and is signed by a duly authorised officer of the Council:~~
- ~~8.18.1 in relation to the first Qualifying Certificate a figure for the Costs for which payment is sought up to and including the Costs Date;~~
- ~~8.18.2 in relation to the second and subsequent Qualifying Certificate a figure for the Costs for which payment is sought in the period since the last Costs Date;~~
- ~~8.18.3 either a description of the work for which the payment is sought or the value of the Third Party Properties and/or Adverse Interests that is being acquired;~~
- ~~8.18.4 certification that the amount being sought is fair and reasonable in relation to the work undertaken or the Third Party Properties and/or Adverse Interests being acquired; and~~
- ~~8.18.5 where appropriate supporting invoices (including VAT invoices).~~
- ~~8.19 Qualifying Certificates in relation to Stage 1 Costs and Stage 2 Costs shall be a minimum of 1 (one) month apart~~
- ~~8.20 The Developer shall be entitled at any time to serve notice on the Council referring to this clause 8.20 following service of which notice the Council shall cease promoting the CPO and shall use all reasonable endeavours to withdraw cancel or otherwise terminate the CPO process as quickly as possible. Whilst the Developer will remain liable for Costs accrued to date and in respect of action taken or triggered by the Council prior to service of such notice by the Developer, the Developer shall have no further liability to Costs derived from actions carried out by the Council after the date of service of such notice, save actions by the Council in the proper compliance by the Council of its obligations under this clause 8.20.~~

- 8.21 ~~On written request by the Developer (which the Developer shall be entitled to make at its entire discretion) the Council shall take all reasonable and proper steps (without thereby fettering the discretion of either officers or members of the Council) to exercise its powers of Appropriation in respect of any Adverse Interests affecting any land within the Development Land which has been transferred to or acquired by the Council under clause 8.4.6 (but excluding any part of the Council Land) ("Relevant Land") where and to the extent applicable and if following such request the Council passes a resolution to appropriate any such interests:~~
- 8.21.1 ~~those interests burdening the Relevant Land to which the Appropriation resolution relates shall be deemed extinguished following the expiry of any period for commencing proceedings for judicial review or any other proceedings challenging the Appropriation has expired and no proceedings have been initiated in respect of the same or, if proceedings have been initiated, they have been withdrawn or otherwise settled or determined in such a manner that the Appropriation continues to operate to extinguish the relevant Adverse Interests;~~
- 8.21.2 ~~any compensation payable to the beneficiaries of any such interests affected by the Appropriation shall be paid by the Developer and the Developer shall, within 10 (ten) Working Days of demand, pay to or indemnify the Council in relation to all such compensation and the proper and reasonable costs and expenses of the Council incurred in complying with the provisions of this clause 8.21; and~~
- 8.21.3 ~~the Developer shall be entitled at any time to serve notice on the Council referring to this clause 8.21.3 following service of which notice the Council shall cease promoting the Appropriation and shall use all reasonable endeavours to withdraw cancel or otherwise terminate the Appropriation process as quickly as possible. Whilst the Developer will remain liable for Costs accrued to date and in respect of action taken or triggered by the Council prior to service of notice by the Developer, the Developer shall have no further liability to Costs for actions carried out by the Council after the date of service of such notice, save actions by the Council in the proper compliance by the Council of its obligations under this clause 8.21.3.~~
- 8.7 8.22 All costs (including CPO Costs and Compensation) borne by the Developer pursuant to this clause 8 and/or pursuant to the CPO Indemnity Agreement shall comprise Development Costs.

9 9 Stopping Up Order Condition

- 9.1 The Stopping Up Order Condition shall be satisfied by the Developer obtaining the necessary road closure orders and/or diversion/stopping up orders in respect of any roads, footpaths and other public highways within and/or serving the Development Land and required for the carrying out of the Development and the use thereof following completion of the Development and shall be taken as satisfied on the expiry of any period during which such order or orders may be challenged without any challenge having been made, or if made any such challenge has been finally determined leaving in place such order or orders.
- 9.2 The Developer agrees with the Council to use its reasonable endeavours at its own cost to procure satisfaction of the Stopping Up Order Condition as

soon as reasonably practicable after the date of grant of the Satisfactory Permission.

- 9.3 The Developer shall keep the Council regularly informed as to the progress made by the Developer in satisfying the Stopping Up Order Condition.
- 9.4 Upon satisfaction of the Stopping Up Order Condition the Developer shall immediately notify the Council.
- 9.5 The Council shall provide such reasonable assistance as it is able to assist the Developer in satisfying the Stopping Up Order Condition.

10 The Necessary Consents Condition

- 10.1 The Necessary Consents Condition shall be satisfied by the Developer obtaining the Necessary Consents (excluding the Necessary Consents obtained as part of the Planning Condition).
- 10.2 The Developer agrees with the Council to use its reasonable endeavours to procure satisfaction of the Necessary Consents Condition as soon as reasonably practicable after the date of grant of the Satisfactory Permission.
- 10.3 The Developer agrees with the Council to keep the Council informed as to the progress made by the Developer in satisfying the Necessary Consents Condition.
- 10.4 Upon satisfaction of the Necessary Consents Condition the Developer shall immediately notify the Council of all Necessary Consents.

11 Funding Condition

- 11.1 The Developer (acting reasonably and in good faith) agrees with the Council following satisfaction of the Planning Condition, the LUL Condition and the Site Assembly Condition to use reasonable endeavours to obtain sufficient funding on terms which are commercially acceptable to the Developer acting reasonably so as to enable the Development to be undertaken and completed in accordance with the provisions of this Agreement and in order to satisfy the Funding Condition.
- 11.2 The Funding Condition shall be satisfied upon the Council's receipt of notice by the Developer to the effect that funding for the Development has been secured by means of an Unconditional agreement to provide such funding in a form which is acceptable to the Developer (acting reasonably).
- 11.3 The Developer shall serve the notice referred to in 11.2 as soon as it has entered into the agreement contemplated by clause 11.2 and the same is or has become Unconditional.
- 11.4 The Developer will keep the Council informed regarding progress with regard to the satisfaction of the Funding Condition.

12 Viability Condition

- 12.1 As soon as reasonably practicable following satisfaction of the Planning Condition, the LUL Condition and the Site Assembly Condition the Developer agrees with the Council to prepare an appraisal for the Development utilising

the pro-forma Appraisal in order to determine if the Viability Condition has been satisfied.

- 12.2 The Developer will keep the Council informed regarding the financial viability of the Development via the provision of updated Appraisals.

13 Notices

- 13.1 Any notice in respect of this Agreement shall be in writing and shall be sufficiently served if sent by fax and confirmed by ordinary first-class post or if sent by registered or recorded delivery post or personal delivery to the parties at the addresses set out in this Agreement (or such alternative address as may be notified to the other parties) and copied to their solicitors and service shall be deemed made on the next Working Day after transmission and if sent by registered or recorded delivery post on the Working Day next but one after the date of posting, and is by personal delivery on the day of delivery except that delivery after 5.30pm on a Working Day or on a non Working Day shall be deemed delivered at 9.30am on the next Working Day.

- 13.2 Any notice to be served on

13.2.1 the Council shall be marked for the attention of: the Head of Legal Services (or as subsequently notified);

13.2.2 the Developer shall be marked for the attention of the Company Secretary;

13.2.3 the Guarantor shall be marked for the attention of the Company Secretary

14 Non-assignment

- 14.1 The Developer shall not be entitled to assign or otherwise dispose of its rights or obligations under this Agreement other than pursuant to and in accordance with the succeeding provisions of this clause 14.

- 14.2 The Developer may (until the Unconditional Date with the prior written consent of the Council, such consent not unreasonably to be withheld or delayed), assign by way of security or charge the benefit of this Agreement and the CPO Indemnity Agreement to a Fund (approved by the Council, such approval not unreasonably to be withheld or delayed) or to an Approved Fund for the purposes of securing the provision of finance to the Developer and/or the Guarantor for the purposes of financing performance of the Developer's obligations under this Agreement and general borrowings for the legitimate business purposes of the Group of which the Developer forms part.

- 14.3 Subject to clause 22.4, the Fund or Approved Fund may (with the prior written consent of the Council, such consent not unreasonably to be withheld or delayed) assign the benefit of this Agreement and prior to the satisfaction of the Site Assembly Condition the CPO Indemnity Agreement to a third party (who until the Unconditional Date shall be an Approved Assignee) in the proper exercise of the Fund's security following a default under the facility arrangements provided that as a condition to the giving of such consent the Council may require a covenant by such third party to comply with the outstanding obligations of the Developer in this Agreement and the CPO Indemnity Agreement.

- 14.4 Subject to clause 22.4, the Developer may:

- 14.4.1 assign this Agreement and if prior to satisfaction of the Site Assembly Condition the CPO Indemnity Agreement to an Approved Assignee with the prior written consent of the Council, such consent not unreasonably to be withheld or delayed, provided that, where such assignment necessitates the obtaining of any additional Secretary of State's Consent or any amendment to any existing Secretary of State's Consent, that additional Secretary of State's Consent or amendment shall have been obtained (and the Council shall use reasonable endeavours to obtain the same at the Developer's cost) and provided further that as a condition to the giving of such consent the Council may require a covenant by such third party to comply with the outstanding obligations of the Developer in this Agreement and the CPO Agreement;
- 14.4.2 after the Unconditional Date (without any consent of the Council) assign this Agreement (and if required by the Developer the CPO Indemnity Agreement) to a company in the same group as the Developer and/or the Guarantor (as the term "group" is defined in section 42 of the Landlord and Tenant Act 1954 but which shall include any company which is within the same group (defined as aforesaid) as Grainger Plc) provided in each case that such company is guaranteed by the Guarantor in the same terms (mutatis mutandis) as clause 21 and provided further that as a condition to the giving of such consent the Council may require a covenant by such third party to comply with the outstanding obligations of the Developer in this Agreement and if relevant the CPO Indemnity Agreement;
- 14.5 The Developer shall within twenty (20) Working Days following completion of any such assignment give notice thereof to the Council including an address for service of the Fund, third party, group company or otherwise.
- 14.6 The Approved Assignee shall enter into a covenant with the Council to comply with the Developer's obligations (including the obligation to carry out and complete the Works after the Unconditional Date pursuant to the Satisfactory Planning Permission and in accordance with Schedule 1) in this Agreement and if relevant the CPO Indemnity Agreement. Following the giving of such covenant the Developer named herein shall have no further liability under this Agreement and if relevant the CPO Agreement, save in relation to accrued claims.
- 15 45 Disputes**
- 15.1 Where there is any dispute or difference between the parties concerning this Agreement such matter shall be determined by an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten years and who is a specialist in relation to such subject matter and such independent person shall be referred to in this Agreement as "the Expert".
- 15.2 The Expert shall be agreed between the parties or failing such agreement be nominated in the case of:
- 15.2.1 any dispute relating to the Works and/or the Development and/or as to values shall be determined by a surveyor who if the parties fail to agree shall be appointed by the president or vice-president or other duly authorised officer of the Royal Institution of Chartered Surveyors;

- 15.2.2 any dispute relating to planning issues by Counsel who if the parties fail to agree shall be chosen by the president of the Law Society;
- 15.2.3 any dispute as to the legal interpretation of this Agreement or as to whether the dispute falls within clause 15.2.1, 15.2.2 or 15.2.3 by leading counsel who if the parties fail to agree shall be appointed by the President of the Law Society
- in any such case on the application of any party at any time.
- 15.3 The Expert shall act:
- 15.3.1 as expert and not as an arbitrator and his decision shall be final and binding upon the parties;
- 15.3.2 consider (inter alia) any written representations on behalf of either party (if made within seven Working Days of receipt of notification of the Expert) and counter-representations but shall not be bound them.
- 15.4 The parties shall use all reasonable endeavours to procure that the Expert gives his decision as speedily as possible but in any event within 20 Working Days of his appointment.
- 15.5 The costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination equally between them.
- 15.6 If the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for appointment of an Expert shall be repeated as often as necessary.

16 Project Board

- 16.1 The Developer and the Council (and their respective advisors) have established a Project Board as a forum within which to discuss matters relevant to the Development, to review proposals for the Development going forward and for the purposes of monitoring the continued progress of the Development and the Council and the Developer shall use reasonable endeavours to ensure that they and their respective advisors participate in the Project Board.
- 16.2 The Developer and the Council shall each make available a single point of contact in relation to the matters contemplated by and for the giving of consents and approvals under this Agreement. The representatives shall in the first instance be:
- (a) for the Council: ~~Niall Belger~~ Lyn Garner, Director of Urban-
Environment ~~Regeneration, Planning and Development~~
- (b) for the Developer: ~~Andrew Scrivener~~ David Walters
- and the Council and the Developer shall be entitled to change their respective representatives on notice to the other.
- 16.3 The Council has appointed Cushman & Wakefield as its representative in relation to the Development; Cushman & Wakefield (or such other property advisors as the Council shall from time to time appoint and of whom notice shall be given to the Developer) ("Council's Advisor") and a representative

from New Deal for Communities shall be entitled to attend and participate in meetings of the Project Board and consents or approvals issued by the Council's Advisor in writing shall be binding on the Council and may be relied upon as such by the Developer.

17 Default

17.1 The following events shall comprise "Developer's Default" for the purposes of this Agreement, namely:

17.1.1 the Developer being in material default of the performance of any of the material covenants, agreements and stipulations on its part herein contained and the default is of a fundamental nature having regard to the terms of this Agreement

AND (where the default is remediable) the Developer fails to remedy the same within a reasonable period of receiving notice (a "Preliminary Notice") the Council specifying the breach and requiring the same to be remedied within a period stipulated in the Preliminary Notice (being a period of not less than 90 Working Days) or fails to refer a dispute as to the whether the default stated in the Preliminary Notice is a default or as to whether the remedy required is appropriate or as to the period stipulated in the Preliminary Notice in any such case for determination by the Expert pursuant to clause 15 of this Agreement

OR (where the breach is irremediable) the Developer fails to pay to the Council a reasonable sum by way of reasonable compensation for the irremediable breach as stipulated in the Preliminary Notice or fails to refer a dispute as to the amount of compensation stated in the Preliminary Notice for determination by the Expert pursuant to clause 15 of this Agreement

in each case within 90 Working Days (or such longer period as is stipulated in the Preliminary Notice) of receipt of the Preliminary Notice; and/or

17.1.2 the Guarantor shall become Insolvent;

17.2 On the occurrence of Developer's Default the Council may (subject to clause 17.3) within 20 Working Days of the of a Developer's Default serve notice ("Default Notice") on the Developer electing to exercise its rights under clause 17.3 on the expiry of a period ("Default Period") of 90 Working Days (or such longer period as the Council reasonably consider appropriate and as stipulated in the Default Notice).

Any dispute as to the service of such a Default Notice shall be determined in accordance with clause 15.

17.3 Where the Default Notice relates to:

17.3.1 Developer's Default under clause 17.1.1 which is:

- (a) remediable, and the Developer has not either remedied or substantially commenced and is diligently proceeding to remedy the Developer's Default referred to in the Preliminary Notice or has not referred any dispute as to the Developer's Default for determination under clause 15; or
- (b) irremediable, and the Developer has not either paid the amount of compensation referred to in the Preliminary Notice or referred any dispute as to the amount thereof for determination under clause 15

in each case by the end of the Default Period then, and in either of such circumstances, this Agreement shall (save for the provisions of this clause 19 and clause 2.5 and subject to clauses 8.13.2, 17.5, 17.6 and 22.3) determine absolutely at the end of the Default Period;

17.3.2 Developer's Default is under clause 17.1.2 then this Agreement shall (save for the provisions of this clause 17 and clause 2.5 and subject to clauses 8.13.2, 17.4, 17.5, 17.6 and 22.3) determine absolutely at the end of the Default Period.

17.4 17.4 Where the Council has received notice of a Fund as provided at clause 14 the Council shall not be entitled to exercise its rights pursuant to clause 17.3 without:

17.4.1 where the Developer's Default arises under clause 17.1.1 first serving a copy of any Preliminary Notice served pursuant to clause 17.1.1 on the Fund; and

17.4.2 in any event serving a copy of the Default Notice served pursuant to clause 17.2 on the Fund;

and in each case service of such notice on the Fund shall be at the address last notified to the Council under clause 14.2.

17.5 If the Fund within ninety (90) Working Days of the date of receipt of a Default Notice served pursuant to clause 17.2 and/or 17.4 either:

17.5.1 tenders to the Council a duly perfected deed of covenant executed by the Fund (or such party as it nominates ("Nominee") and the Council shall approve (such approval not to be unreasonably withheld or delayed) and being in a form approved by the Council (such approval not unreasonably to be withheld or delayed) to thereafter observe and perform or to procure the performance and observance of all of the covenants obligations restrictions and conditions on the part of the Developer contained in this Agreement which remain to be performed or observed and to remedy any outstanding breach; or

17.5.2 either (where the same is remediable) remedies or procures the remedy of the relevant breach or breaches as set out in the Default Notice in all material respects or (where the same is irremediable) pays the amount of compensation due;

then the Council shall not be entitled and will not take any steps to exercise such right to determine this Agreement in relation to the default to which the Default Notice relates.

Where the Fund or its approved Nominee has provided a deed of covenant pursuant to clause 17.5 then, if required by the Fund, the Council shall enter into such reasonable documents and take reasonable steps to vest the benefit of this Agreement and if the Site Assembly Condition has not been satisfied the CPO Indemnity Agreement in the Fund (or the approved Nominee) provided that the Council's reasonable and proper costs incurred by it in so entering into such documents including the deed of covenant shall be borne by the Fund.

17.6 If reasonably required by the Developer and the Council shall, at the Developer's cost, enter into a direct undertaking under seal with the Fund in a reasonable form confirming to the Fund the operation of the provisions contained in this clause 17 in favour of the Fund.

17.7 Termination of this Agreement and the provisions of this clause 17 shall be without prejudice to any accrued claims by any party against the other.

17.8 This clause 17 shall cease to apply in all respects on the Completion Date.

18 Confidentiality

18.1 "Confidential Information" shall mean all information disclosed by one party to the other, orally in writing or in electronic form relating to this Agreement, and/or the CPO Indemnity Agreement that is not in the public domain (except where disclosure is in the public domain due to a breach of this clause) and shall also (in relation to the undertaking, given by the Council in this clause 18) include information, documents, drawings, reports or data the Developer may acquire or generate under or in connection with this Agreement.

18.2 Subject to sub-clause 18.7, neither party shall, without the prior written consent of the other, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information received by it in relation to the party's business generally.

18.3 Each party:

- (a) shall treat all Confidential Information as secret and confidential and safeguard it accordingly;
- (b) shall not disclose any Confidential Information to any third party without the prior written consent of the other Party (not unreasonably to be withheld), except to such extent as may be necessary for the performance of the Agreement and in the case of the Developer as set out in clause 8.4; and
- (c) shall not use any Confidential Information otherwise than for the purposes of the Agreement.

18.4 The Developer shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:-

- (a) is given only to such of the staff and professional advisors or consultants engaged to advise it and to its funders and/or to LUL and their staff and professional advisors in each case in connection with the Agreement as is strictly necessary for the performance of the Agreement and then only to the extent necessary for each such person's activities in the performance of the Agreement;
- (b) is treated as confidential and not disclosed (without prior approval of the Council) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Agreement.

18.5 Where it is considered reasonably necessary in the reasonable opinion of the Project Board, the Developer and the Council shall ensure that its employees or advisors sign an appropriate confidentiality undertaking before commencing work in connection with the Agreement.

18.6 The provisions of Clause 18.2 and 18.3 above shall not apply to any Confidential Information:-

- (a) which is or becomes public knowledge (otherwise than by breach of this clause); or
- (b) which is in the possession of the Party concerned, without restriction as to its disclosure, before receiving it from the disclosing Party; or
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (d) which is independently developed without access to the Confidential Information.

18.7 Nothing in this clause shall prevent the Council or the Developer or any person who holds Confidential Information:-

- (a) disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- (b) disclosing any Confidential Information in accordance with their respective obligations (if any) in the Freedom of Information Act;
- (c) (in the case of the Council) disclosing any Information for the purpose of:-
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with the Council have used their resources;
- (d) (in the case of the Council) disclosing any Confidential Information obtained from the Developer
- (e) (in the case of the Council) to any other department, office or agency of the Crown; or
- (f) disclosing any information to any person engaged in providing any services to the relevant party or LUL for any purpose relating to or ancillary to the Agreement;
provided that in disclosing Information under sub-paragraphs (d) or (e) only that information which is necessary for the purpose concerned shall be disclosed and a requirement shall be imposed that the Information is treated in confidence and that a confidentiality undertaking is given where appropriate.

18.7 The obligations imposed by this Clause shall apply during the continuance of this Agreement and for a period of twelve (12) months after its expiry or termination.

19 VAT

19.1 Save as otherwise provided in this Agreement, all sums payable or supplies made under this Agreement shall be subject to VAT where VAT is properly payable and subject to the receipt of a valid VAT invoice and for the avoidance of doubt any sums referred to exclude VAT.

19.2 The Council shall not elect to waive the exemption from charging VAT in respect of the Council Land except in either case to the extent it may be required to do so by law or in the case of an election in respect of the Council Land only at the written request of the Developer.

20 Interest

All sums payable pursuant to this Agreement which are not paid on the due date for payment shall bear interest at the rate of 2% per annum above the base rate from time to time of Barclays Bank PLC (except where expressed to the contrary in this Agreement) from the day on which payment was due until the date of actual payment.

21 Guarantee

21.1 In consideration of the Council entering into this Agreement the Guarantor covenants with and guarantees to the Council that the Developer shall duly perform and observe all the obligations on the part of the Developer owed to the Council contained in this Agreement and to indemnify the Council on demand against the consequences of any default by the Developer of such obligations; and

21.2 The Guarantor agrees with the Council that the guarantee set out in clause 21.1 shall become effective immediately upon demand by the Council without the need for the Council to demonstrate the fact of, or the extent of the breach by the Developer, to the Guarantor.

21.3 The guarantee and covenant contained in this clause 21 shall continue notwithstanding that the Developer may cease to exist in any way or that this Agreement may be disclaimed or assigned under clause 14.

21.4 The Guarantor's liability shall not be discharged in whole or in part or otherwise be affected in any way by reason of:-

21.4.1 any forbearance to enforce any provision of this Agreement against the Developer or the giving to Developer of time or other concession or taking holding varying realising or not enforcing any security for the liabilities of the Developer

21.4.2 any legal limitation or incapacity relating to the Developer

21.4.3 the invalidity or unenforceability of the obligations of the Developer under this Agreement

21.4.4 any other act or omission of the Council or any other circumstance which but for this provision would discharge the Guarantor, other than a formal release.

21.5 The Developer shall be entitled at any time when this Agreement has been assigned under clause 14.4.1 or otherwise after the Works have commenced (and for the avoidance of doubt this does not include the Preparatory Works) to request the Council to approve the substitution of Guarantor by alternative security (being an alternative guarantor (but not an overseas company but where this Agreement is assigned under clause 14.4.1 shall include an

Approved Assignee) or a bank guarantee (in an amount equating to 10% of the estimated costs of completing the remainder of the Works) or other security in each case approved by the Council, such approval not unreasonably to be withheld or delayed).

Subject to the Council's approval and to any substitute Guarantor executing in favour of the Council a Deed of Guarantee in terms (mutatis mutandis) similar to this clause 21 and/or to the perfecting of the relevant alternative security in each case in a form approved by the Council (such approval not unreasonably withheld or delayed) the Guarantor named in this Agreement shall be released from liability save in respect of accrued claims.

22 Interim Gap Funding

23 Good Faith

- 23.1 The parties shall owe to each other a duty of good faith in performing their respective obligations under this Agreement.

24 Miscellaneous

- 24.1 It is not intended that any third party should be entitled to enforce this Agreement pursuant to the provisions of The Contracts (Rights of Third Parties) Act 1999 which shall not apply to this Agreement.

- 24.2 For the purposes of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 this Agreement and the documents contained or referred to in it contains the entire Agreement between the parties and may only be varied or amended by a document signed by or on behalf of each of the parties.

- 24.3 This Agreement is governed by and shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

25 Apex House

- 25.1 The Council agrees that, in consideration of the Developer entering into this Agreement with the Council, the Council will not unless the Developer

agrees in writing otherwise) commence development of Apex House for private residential purposes (here meaning the installation of foundations) prior to the date 18 months after the Developer has commenced (here meaning the installation of foundations for the residential elements of the Development) the Development.

25.2 The Council further agrees (unless the Developer agrees in writing otherwise) to use all reasonable endeavours to ensure that any development of Apex House is at a level of quality and design which is not detrimental to the Development.

25.3 Clauses 25.1 and 25.2 shall not apply following termination of this Agreement under any of clauses 2.2, 4.5, 5.5 or 17.

26 The Council

Nothing in this Agreement will serve to fetter the exercise of the Council's statutory duties and powers which remain in full force and effect; the Council is entering into this Agreement in its capacity as Housing Authority, freehold owner of parts of the Development Site and the Accountable Body of the Bridge Sevens Sisters New Deal for Communities and without prejudice to its statutory functions.

PART B

Part B

27 Unconditional Date

Save as expressly set out to the contrary this Part B of this Agreement (save for this clause 27 which shall be of immediate effect) shall only come into effect on the Unconditional Date.

28 Completion Date

28.1 On the Completion Date :

28.1.1 the Council will transfer the Council Land to the Developer;

28.1.2 the Developer shall pay the Price (excluding the Overage, which shall be payable in the manner contemplated by clause 31); and

28.1.3 the Developer shall use reasonable endeavours to commence the Preparatory Works as soon as reasonable practicable after the Completion Date (subject to extensions of time for Force Majeure) and shall within twenty-four (24) months after the Completion Date (subject to extensions of time for Force Majeure) commence the Works in accordance with Schedule 1 and it is hereby agreed that the provisions of section 609 of the Housing Act 1985 shall apply to this covenant until the Satisfactory Planning Permission has been implemented for the purposes of section 56 of the Planning Act.

29 Licence

With effect from the Completion Date, the Council hereby grants to the Developer full licence for the Developer to oversail the Council's Adjoining Land with tower cranes for the purposes of the Development, subject in all cases to the rights of occupiers.

30 30 Development Account and Sale Proceeds Account

- 30.1 The Developer shall establish and maintain the Development Account and the Sale Proceeds Account with effect from the date of this Agreement until the Participation Date.
- 30.2 Whenever the Developer makes a payment of Development Costs, the Developer shall debit such payment to the Development Account with effect from that day and all Development Costs accrued as at the date of this Agreement shall be debited to the Development Account on the date hereof.
- 30.3 The Developer shall credit all Sale Proceeds received by the Developer or any Associate of the Developer which should properly be credited to the Sale Proceeds Account on the day of receipt by the Developer in cleared funds.
- 30.4 Any amount of VAT (save for any irrecoverable VAT which shall be a Development Cost) included in any such payment made by or on behalf of the Developer will be debited to the Development Account until it is recovered by the Developer from HM Revenue & Customs. VAT will not be credited to the Sale Proceeds Account.
- 30.5 Interest will accrue at the Interest Rate on a monthly basis on the net balance shown on each of the Development Account and the Sale Proceeds Account (as the case may be) from time to time in accordance with this Agreement until the Participation Date.
- 30.6 Such Interest as accrues pursuant to clause 30.5 will be debited to the Development Account and credited to the Sale Proceeds Account monthly in arrears on the usual quarter days and on the Participation Date.
- 30.7 The Council may at any time inspect or require a copy for itself of the Development Account and the Sale Proceeds Account and of all receipts, vouchers, certificates and other information evidencing such sums debited to and/or credited to the Development Account and/or (as appropriate) the Sale Proceeds Account. The Developer shall promptly deal with all proper queries reasonably raised in relation to the Development Account and the Sale Proceeds Account and shall provide to the Council a copy of the Development Account and the Sale Proceeds Account annually.
- 30.8 The Developer shall procure that the Developer's Auditors shall issue a certificate to the Developer and the Council as soon as reasonably practicable following the Participation Date as to the current balance of the Development Account and the Sale Proceeds Account provided that the cost of providing any such certificate shall be a Development Cost.
- 30.9 Where the Interim Gap Funding is paid under clause 22.1 then, to the extent so paid, such payment shall be credited in reducing the amount of the Development Costs (so that only the amount of the relevant Development Costs actually paid out by the Developer (net of the relevant element of the Interim Gap Funding) shall be debited to the Development Account) and the repayment of the Interim Gap Funding under clause 22.2 shall (subject to proviso (a) to clause 22.2.1) be treated as a Development Cost.

31 34 **Overage**

0517393 38941010.5

GFDCOM-589404-13
0517393 38941010.5

32 No Partnership

Nothing in this Agreement or arising through any of the other documents referred to herein shall be deemed to constitute a partnership between the Developer and/or the Council and/or the University and/or any other party to this Agreement.

33 Non-merger

So far as they remain to be performed or observed the provisions of this Agreement shall continue in full force and effect notwithstanding completion of the grant of any lease granted or transfer effected pursuant to this Agreement.

34 Indemnity

34.1 The Developer shall indemnify the Council in respect of any of the following matters arising directly or indirectly in relation to the Works and/or the Development or any operations relating to them on or adjacent to the Development Land:

34.1.1 the death of, or accident to any person;

34.1.2 the damage to or loss of any property;

34.1.3 the infringement of the rights of any third party caused by the carrying out of the Works;

34.2 any nuisance or disturbance suffered by any third party caused by the carrying out of the Works;

34.3 any breach of the terms of any Planning Agreement prior to the relevant Date of Sectional Practical Completion caused otherwise than by the of the Council; and

34.4 any other claims made against the Council as the result of the negligence of the Developer of, or breach of its obligations under this Agreement by the Developer.

35 Liability of the Developer

The parties agree and declared the Developer shall have no further liability under this Agreement in respect of the Works following the Development Completion Date.

Delivered as a deed on the date of this document.

SCHEDULE 1 DEVELOPMENT OBLIGATIONS

THE Developer covenants and agrees with the Council as follows:

1.1.1 Developer's obligations

- (a) To take all reasonable steps to procure that at the appropriate time:
 - (i) each member of the Professional Team is appointed on and thereafter complies with the terms of its Appointment; and
 - (ii) the Building Contractors are appointed on and thereafter comply with the terms of the relevant Building Contracts

and following such appointment to comply with its own obligations under them in each case to the extent necessary to ensure compliance with the Developer's obligations under this Agreement.

1.1.2 Termination of Appointments and Building Contracts

If the Developer terminates any Building Contract or Appointment then within ten Working Days to notify the Council and thereafter to use all reasonable endeavours as expeditiously as reasonably practicable to appoint another person or company on the terms of this Agreement in substitution for the person or company whose Appointment or the Building Contract was terminated.

1.1.3 Insurance

- (a) To procure that the Works are insured in the names of the Developer and the relevant Building Contractor in accordance with the relevant Building Contract in an amount not less than their full reinstatement cost against the Insured Risks and in the event of damage or destruction of the Works by any of the Insured Risks and to procure as soon as reasonably practicable that the insurance money is laid out and used in rebuilding and making good the loss or damage in accordance with the provisions of this Agreement and to make good any deficiency out of its own monies save to the extent that the deficiency arises as a result of the act or default or omission of the Council.
- (b) To provide on reasonable demand by the Council a copy of the insurance policy or policies referred to in paragraph 3.1

1.1.4 Consents

- (a) To make application for and use all reasonable endeavours expeditiously to obtain such of the Necessary Consents as have not already been obtained or obtain lawful relaxations or waivers of them.
- (b) To keep the Council properly informed as to the progress of each application for the Necessary Consents and of all negotiations relating to those applications and to provide to the Council copies of all applications, material correspondence and notes of material meetings relating to those application and negotiations.

- (c) To procure that all Necessary Consents obtained remain valid and unrevoked and shall renew any that become invalid or revoked before the relevant Date of Sectional Practical Completion.

1.1.5 The Development

- (a) To commence the Works in accordance with the Satisfactory Planning Permission and the Building Contract (which for the avoidance of doubt does not include Preparatory Works) within twenty-four (24) months of the Completion Date, subject to extensions of time for Force Majeure
- (b) To carry out and complete or procure the carrying out and completion in each case the Development as soon as reasonably practicable following commencement of the Works in accordance with the provisions of this Schedule provided that the Developer shall be entitled to extensions of time for Force Majeure in such periods as are properly certified by the Employer's Representative.
- (c) In carrying out or procuring the carrying out of the Works to ensure that the Works accord with:
 - (i) the Consents;
 - (ii) the Detailed Design;
 - (iii) all statutory requirements;
 - (iv) the terms of this Agreement and the LUL Agreement

and are carried out in a good and workmanlike manner using suitable sound materials of their several kinds.

- (d) Not to specify any of the Prohibited Materials in the Works.
- (e) Not to make any Material Variation to the Detailed Design without the Council's consent such consent not unreasonably to be withheld or delayed.
- (f) Not to make other Variations (apart from Minor Variations) to the Detailed Design without notifying the Council of the nature of any such Variations to the extent the same are material in the context of the Works.

1.1.6 CDM Regulations

To comply or procure compliance with the CDM Regulations in respect of the Works.

1.1.7 General Obligations

To use all reasonable endeavours to procure that:

- (a) proper provision is made for the security of the Development Land during the carrying out of the Works and for the protection of any materials, plant and equipment in or on it;
- (b) all surplus material is removed from the Development Land when it is no longer required for the Works;

- (c) the Development Land is maintained in a tidy condition and free from rubbish taking account of its use as a building site;
- (d) there is no excavation of the Development Land or extraction of soil or minerals except as required for the Works;
- (e) proper precautions are taken for the safety of all persons upon or in the vicinity of the Development Land including maintaining hoardings around the Development Land during the undertaking of the Works and such fences, security patrols, safeguards and arrangements of lighting the Works as may be necessary or desirable in the interest of public safety;
- (f) the Works are carried out in a manner which does not cause any legal nuisance, injury, loss or danger to or undue interference with the public or any owners or occupiers of adjoining or neighbouring property;
- (g) proper provision is made for the support of land, buildings and boundaries adjoining the Development Land and for the protection of all services benefiting land adjoining or near to the Development Land;
- (h) any adjoining highways, road and pavements are cleansed as often as may be necessary and are kept unobstructed;
- (i) the wheels of all construction traffic leaving the Development Land are washed;
- (j) proper arrangements are made with the requisite authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Works.

1.1.8 Nuisance

To take all steps reasonable to ensure that a nuisance does not arise during the course or as consequence of the undertaking of the Development and, where appropriate, to enforce the provisions of the Building Contract relating to the same.

1.1.9 Site visits

- (a) At all reasonable times to keep the Council informed as to the progress of the Works and to provide them with copies of regular updated programmes for the Works and to notify the Council of the time date and place of all principal site meetings convened to consider the progress of the Works and the Council shall be entitled to attend them.
- (b) To permit the Council at all reasonable times to enter onto the Development Land (accompanied by a representative of the Developer if the Developer shall so reasonably require and to procure that a representative is made available for such purpose) to view the progress and state of the Works subject nevertheless to:
 - (i) the Council giving no less than five Working Days prior notice being given to the Developer;
 - (ii) the Council reporting to the site office before making any inspection and acting in accordance with the reasonable instructions of the Developer;

- (iii) the Council complying with the proper and reasonable safety requirements imposed by the Developer and/or Building Contractor; and
- (iv) the Council not interfering with the Development nor attempting to instruct or instructing any persons employed upon or in connection with the Development, and making any representations to the Developer.

1.1.10 Planning Agreements

- (a) To undertake or procure that any works to be undertaken pursuant to the terms of each Planning Agreement shall be undertaken in accordance with the terms of such Planning Agreement and otherwise in accordance with the requirements for undertaking the Works in accordance with this schedule and to use all reasonable endeavours to complete such works on or before the applicable Date of Sectional Practical Completion, where appropriate.
- (b) Where any such Planning Agreement requires the completion of works which are to be adopted by the Local Authority or Highways Authority (as applicable) to use all reasonable endeavours to procure that such works are so adopted in accordance with the terms of such Planning Agreement.

SCHEDULE 2
DEVELOPMENT COSTS

1. 2-Development Costs include but are not limited to the following heads of expenditure:
- (a) satisfying the Conditions
 - (b) acquiring the Council Land and the remainder of the Development Land and any other property required in order to implement the Development in accordance with this Agreement) including all proper and reasonable solicitors', surveyors' costs, agents fees, all stamp duty land tax and Land Registry fees on the transactions contemplated by this Agreement and/or the CPO Indemnity Agreement or necessary to give effect to this Agreement and/or the CPO Indemnity Agreement, search fees and defective title insurance or restrictive covenant indemnity insurance that may be required
 - (c) ~~all Costs and Appropriation Costs~~CPO Costs and Compensation and any other costs or sums payable under the CPO Indemnity Agreement;
 - (d) the costs of entering into the LUL Agreement and all sums payable thereunder by the Developer;
 - (e) all costs relating to search fees, defective title insurance or restrictive covenant indemnity insurance that may be required
 - (f) all detailed design work including the Detailed Design;
 - (g) demolition site preparation and remediation works;
 - (h) all Construction Costs;
 - (i) all professional fees;
 - (j) all costs of marketing letting and sale of all Commercial Units, other commercial areas, and the Residential Units ;
 - (k) the cost of marketing and promoting the Development, all public relations, public consultations and community activities relating thereto and/or engagement with the local community both prior to and after the date hereof;
 - (l) incentives paid or allowed to tenants and occupiers of all Commercial Units, other commercial areas, and the Residential Units to the extent reasonably consistent with market practice at the relevant time;
 - (m) costs of any service and/or telecommunication diversions or any sums paid to utility providers including telecommunication providers;
 - (n) entering into the Planning Agreements (including all amounts payable pursuant thereto);

- (o) all sums (including costs, stamp duty land tax, Land Registry fees and search fees) paid to the Council under the terms of this Agreement or the CPO Indemnity Agreement or to LUL under the LUL Agreement;
- (p) all amounts paid to the selling agents pursuant to the appointments entered into by the Developer pursuant to this Agreement;
- (q) advertising and promoting the Development or any part thereof including in relation to the Disposal or letting of the same;
- (r) all costs paid to the Council or third parties in acquiring the Adverse Interests;
- (s) the Project Management Fee;
- (t) all insurance premiums properly paid in respect of the Works and/or any part of the Development Land;
- (u) any VAT in respect of the items mentioned in this Schedule 2 insofar as the same is irrevocable (whether by way of repayment or credit) by the Developer and so that any VAT paid by the Developer shall be a Development Cost until such time as it is recovered in full by the Developer;
- (v) any costs properly and reasonably incurred by the Developer in managing repairing or maintaining or otherwise providing services in respect of (whether of a temporary or permanent nature) the Development and/or in setting up structures for and providing for the future management of the Development;
- (w) reasonable and proper fees charges and other costs (not being interest) properly paid to any Fund to the extent that the same relate to the provision of finance to the Developer for the purposes of enabling the Developer to comply with its obligations under this Agreement;
- (x) costs of provision of site offices and/or marketing suites whether on or off site;
- (y) repayment of the Interim Gap Funding plus interest under clause 22; and
- (z) all other costs and expenses properly and reasonably incurred by the Developer in connection with the Works or the Development or in respect of the matters contemplated by this Agreement and/or the LUL Agreement;

all of which costs and expenses shall exclude any costs and expenses specifically excluded by any paragraph of this Schedule 2 or any clause of this Agreement and PROVIDED THAT no amount allowed under one head of expenditure may be doubled counted under another.

2. ~~2.1.2~~ The Developer shall ensure that full records of all Development Costs are kept and made available to the Council on a full "open book" basis.

3. ~~2.1.3~~ Any dispute as to whether an item of cost is a Development Cost shall be referred for determination under clause 15.

SCHEDULE 3

DEVELOPER ADVERSE CONDITIONS

1. 1-A Developer Adverse Condition is one which contains an obligation or restriction of any one or more of the following kinds:
 - 1.1 requiring the provision of Affordable Housing by the Developer whether on or off site ~~whether on or off site or~~ any contribution by the Developer towards the cost of provision of Affordable Housing;
 - 1.2 linking commencement, completion or occupation of any part or the whole of the Development to the provision of Affordable Housing whether on or off site;
 - 1.3 preventing development without the agreement or co-operation of an independent third party (not being an Associate of the Developer or the Guarantor) which cannot be obtained on terms at a cost or within a time period that in any such case is reasonable in the circumstances (or which cannot be obtained on terms, or at a cost, that is reasonable in the circumstances having regard to the Viability Condition);
 - 1.4 reduces the Net Internal Area of any part of the Development below that applied for in the Planning Application;
 - 1.5 would prevent or materially impede the Developer complying with its obligations in and the requirements of this agreement;
 - 1.6 imposing limits on the generation of noise which are unreasonable and will materially adversely affect the occupation or operation of the whole of the completed Development having regard to the fact that the Development is mixed use and includes a significant proportion of residential accommodation;
 - 1.7 requiring the Developer to operate and/or run or procure the operation and running of transport services whether by way of bus or taxi services or otherwise;
 - 1.8 links implementation of the Development with the carrying out of Works on any land not forming part of the Development Land;
 - 1.9 would not satisfy any provision in the LUL Agreement;
 - 1.10 which would be regarded by a reasonable and prudent developer bound by the terms of this Agreement as unreasonable or unduly restrictive in the circumstances, or has, or may reasonably be expected to have, a materially adverse effect on:
 - 1.10.1 any ability to carry out, or on the cost of carrying out, the Works or change of use contemplated by the Planning Application; and/or
 - 1.10.2 the capital or letting value (or both) of the Development Land following the Works; and/or
 - 1.10.3 the viability of the Development, so that the Development is unlikely to satisfy the Viability Condition.

THE COMMON SEAL of)
THE MAYOR AND)
BURGESSES)
OF THE LONDON)
BOROUGH OF HARINGEY)
was
hereunto affixed by order of :

.....
Principal Lawyer
Authorised Officer

EXECUTED as a **DEED** by
Grainger Seven Sisters
Limited in the presence of:

Director

Director/Secretary

EXECUTED as a **DEED** by
Northumberland & Durham
Property Trust Limited in
the presence of:

Director

Director/Secretary

ANNEXURES

Annex 1:	Form of Appraisal
Annex 2:	Overage: Worked Example
Annex 3:	Affordable Housing Agreement
Annex 4:	Schedule of Habitable Rooms

ANNEX 1 - Form of Appraisal

3.

ANNEX 2 – Overage: Worked Example

ANNEX 3—Affordable Housing Agreement**ANNEX 4 – Schedule of Habitable Rooms**

Document comparison by Workshare Compare on 19 January 2015 17:45:03

Input:	
Document 1 ID	interwovenSite://CCWORKSITE_UK/UK1_ARCHIVE/16589104/13
Description	#16589104v13<UK1_ARCHIVE> - Development Agreement - Grainger, Wards Corner
Document 2 ID	interwovenSite://CCWORKSITE_UK/UK1/38941010/13
Description	#38941010v13<UK1> - Development Agreement - Grainger, Wards Corner updated by Grainger 19.1.2015
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:		
	Count	
Insertions		180
Deletions		221
Moved from		0
Moved to		0
Style change		0
Format changed		0
Total changes		401

Appendix C: Overage Worked Example

WARDS CORNER OVERAGE SUMMARY

Wards Corner Worked Example of Overage/Contribution Payments

Appendix D: Draft CPO Indemnity Agreement