

CONFORMED COPY

Dated 23 July 2010

THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF SOUTHWARK
and
LEND LEASE (ELEPHANT & CASTLE) LIMITED

REGENERATION AGREEMENT

in respect of
Elephant & Castle

Linklaters

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Ref L-139700/Andy Bruce

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This Agreement is made on 23 July 2010 **between:**

Parties:

- 1 THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** whose address for the purposes of this agreement is 160 Tooley Street, London SE1 2TZ ("**Council**"); and
- 2 LEND LEASE (ELEPHANT & CASTLE) LIMITED** (company no 7196467) whose registered office is situate at 142 Northolt Road, Harrow, Middlesex HA2 0EE and such expression includes any lawful assignee of the Developer ("**Developer**").

1 Definitions and Interpretation

Unless the contrary intention appears, the following definitions apply to this agreement:

"Acceptable Funding" means finance or funding for the Development (in whole or part) upon commercial, market terms and which may be debt or equity funding or a mixture of them (from one or more Funders), all of which is on terms and in an amount acceptable to the Developer, acting reasonably having regard (*inter alia*) to the relevant Phase Viability Model or Building Viability Model and the Developer's internal policies, and in good faith;

"Affordable Housing" means Social Rented Housing and Intermediate Affordable Housing provided to specified eligible households whose needs are not met by the market, in each case to be provided as part of the Scheme whether on or off the Site;

"Affordable Housing Requirement" means the Council's requirement that all Affordable Housing is to be divided equally between Social Rented Housing and Intermediate Affordable Housing;

"Annual Business Plan" means the business plan for the forthcoming year in respect of the Scheme as a whole as the same is updated from time to time in accordance with the provisions of this agreement;

"Appraisal" means a financial appraisal in the relevant format set out at annexure 7 as updated from time to time in accordance with the terms of this agreement;

"Appropriate" means the making of a resolution by the Council to appropriate pursuant to section 122 of the Local Government Act 1972 the relevant Council Land for planning purposes and cognate words shall be construed accordingly;

"Architect" means such architect or architects as may be appointed by the Developer for the Scheme, each of which shall be appointed in accordance with the requirements of this agreement;

"Best Consideration Condition" means the consent of the Secretary of State to be sought in accordance with Clause 9;

"Blight Notice" means any blight notice served on the Council in respect of land or premises required for the Development of Rodney Road Phase and/or Heygate Phase under the provisions of section 150 of the Planning Act;

“Board Approval Condition” means in relation to any Phase that the board of directors of the Guarantor approves proceeding with the Development on such Phase as provided in Clause 8;

“BREEAM” means Building Research Establishment Environmental Assessment Method;

“Building” means any building together with its supporting infrastructure which forms part of the Scheme;

“Building Contract” means the building contract or building contracts for the Works, or any part of them, (including any additional or substitute building contracts and if construction management procurement is used any trade contracts in respect of material construction works), to be entered into by the Developer with a Building Contractor;

“Building Contractor” means such reputable building contractor or building contractors (including if construction management procurement is used trade contractors in respect of material construction works) who shall be appointed by the Developer for the purposes of the Works or a part of them in accordance with the requirements of this agreement;

“Building Viability Model” means the Appraisal for a Building in the form set out at annexure 7.2 as updated from time to time in accordance with the terms of this agreement;

“Buyer” means the purchaser of:

- (a) a leasehold interest in the Site; or
- (b) shares in a Group Company or an Investment Vehicle, in each case owning a leasehold interest in the Site;

in each case in accordance with Clause 15;

“CDM Regulations” means the Construction (Design and Management) Regulations 2007;

“Certificate of Making Good Defects” means each certificate or statement issued by the Employer’s Representative that the defects, omissions, shrinkages or other faults in the Works or the relevant Section which have appeared during the performance of the relevant Works (including any Snagging Works) and/or the relevant Defects Liability Period have been made good pursuant to the terms of the relevant Building Contract;

“Certificate of Practical Completion” means each certificate or statement issued by the Employer’s Representative in accordance with his appointment certifying that the Works, or the relevant Section, have been practically completed in accordance with the Building Contract and “practically completed” and “practical completion” shall be construed accordingly;

“Code for Sustainable Homes” means the Code for Sustainable Homes published by the Department for Communities and Local Government;

“Completion Date” means the date provided in this agreement for completion of the grant of a Headlease;

“Conditions” means the Primary Conditions and/or the Secondary Conditions as the context may require;

“Confidential Information” means information relating to this agreement which is:

- (a) of a commercially sensitive nature;
- (b) stated as being Confidential Information by the party making it available (acting reasonably) at the time it is made available to the other party; and
- (c) made available from one party to the other or to their respective advisers whether orally, in writing, electronically or in machine readable form and includes information, accounts, analyses, compilations, notes, studies, plans, memoranda and other documents derived from, containing or reflecting such information

but excludes information:

- (d) which is or becomes publicly available, other than through breach of this agreement; or
- (e) which is, or comes into, a party’s possession from a third party lawfully authorised to disclose it;

“Consents” means in relation to any Phase the Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be), all other consents, permissions, agreements, licences and approvals under the Planning Act, Listed Buildings Act, building regulations and any other statute, bylaw or regulation of any competent authority from time to time necessary for the Developer to undertake and complete the Development on such Phase in accordance with the provisions of this agreement;

“Construction Phasing Plan” means the plan which indicates the construction sequencing of the Development which is at annexure 4 as amended in accordance with this agreement;

“Consultation Strategy” means the consultation strategy which is to form part of the Master Regeneration Plan as varied by agreement between the parties in accordance with this agreement;

“Council Land” means all that freehold land owned by the Council within the Site from time to time but which at the date of this agreement includes the land within Rodney Road Phase and Heygate Phase more particularly shown edged red on Plan 8.1 including the land described in Schedule 4 and, subject to Clauses 5.13 and 5.14, the land shown coloured pink and blue on Plan 8.1;

“Council’s Solicitors” means Herbert Smith LLP of Exchange House, Primrose Street, London EC2A 2HS (Ref: 6810/6126/30905680) or such other solicitors whose details are notified to the Developer by the Council;

“Council’s Surveyor” means the Head of Property at the Council or such other surveyor as the Council may appoint from time to time and whose details are notified to the Developer by the Council;

“CPO” means in relation to any Phase the proposed compulsory purchase order or orders to be made pursuant to section 226 of the Planning Act and (if necessary) section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (and/or any

other appropriate power available to the Council from time to time) in respect of all Third Party Interests required to facilitate the Development on such Phase;

“CPO Deed” means the deed relating to CPO matters applicable to the Shopping Centre Phase to be entered into between the parties on the date of this agreement in the form at annexure 12;

“CPO Land” means in relation to any Phase all land acquired by the Council in the course of satisfying the Site Assembly Condition in accordance with the provisions of this agreement, and (in addition for the Shopping Centre Phase only) in accordance with the CPO Deed, and which in each case is required for the carrying out of the Development on such Phase;

“Date of Construction Commencement” means the date on which works in relation to the Development commence on the relevant land by the carrying out of any work of construction in the course of the erection of a building but excluding:

- (a) any demolition works;
- (b) any installation of infrastructure or services including (without limitation) conduits or roads;

“Date of Practical Completion” means the date stated or certified by the Employer’s Representative in each Certificate of Practical Completion as being the date on which the Works or the relevant Section were practically completed in accordance with the relevant Building Contract notwithstanding any Snagging Works;

“Defects Liability Period” means the defects liability or rectification period being the period of 24 months calculated from the Date of Practical completion of the Residential Units and 12 months calculated from the Date of Practical Completion of the relevant part of the remainder of the Works;

“Design Stage Certificate” means the design stage or interim certificate issued pursuant to the Code for Sustainable Homes in respect of each Residential Unit confirming that the design of the Residential Unit has been designed to achieve sufficient credits to achieve Level 4 in the version of the Code for Sustainable Homes which is current at the date of this agreement (or the level in any subsequent version which is equivalent to the current Level 4 requirements);

“Design Sub-Contractor” means any sub-contractor with responsibility for the design of a material part of the Works;

“Developer’s Solicitors” means Linklaters LLP of One Silk Street London EC2Y 8HQ (Ref: Andy Bruce) or such other as solicitors whose details are notified to the Council by the Developer;

“Development” means the construction of the Scheme;

“Development Requirements” means the minimum development requirements for the Development as detailed in Schedule 6 as varied from time to time pursuant to this agreement;

“Eadon Agreement” means the agreement dated 3 October 2008 made between the Council (1) and Eadon Limited (2);

“EIR Regulations” means the Environmental Information Regulations Act 2004;

“Employer’s Representative” means such person (as appropriate according to the form of the Building Contract) who shall be an appropriately qualified representative appointed by the Developer to monitor and certify the Works or the relevant part of them and who shall be appointed in accordance with the requirements of this agreement;

“Environment” means the natural and man-made environment and all or any of the following media namely air (including air within buildings and air within other natural or man-made structures above or below ground), water (including ground water) and land;

“Environmental Law” means all statutes, regulations and subordinate legislation, European laws, treaties and common law which at any time relate to the pollution or protection of the Environment or harm to or the protection of human health and safety or the health of animals and plants;

“Escrow Undertaking Instruction Letter” means the letter to be entered into by the parties and the Council’s Solicitors in the form attached at annexure 17;

“Expert” means an expert appointed pursuant to Clause 20;

“First Building Conditions” means collectively:

- (a) an RSL has entered into a binding contract in respect of the Affordable Housing units within the Building being considered and which is in full force and effect and has become unconditional (except for any condition that this agreement is unconditional);
- (b) a fixed price Building Contract has been entered into with the Building Contractor in respect of the Building being considered including sufficient detailed design of the Building being available and which is in full force and effect and has become unconditional (except for any condition that this agreement is unconditional); and
- (c) detailed planning permission or approval of all reserved matters under an outline planning permission in respect of the Building being considered has been obtained which, together with any related Statutory Agreement, is not subject to any Onerous Conditions and which has become immune from challenge on the same basis as provided for in paragraph 4 of Schedule 1;

“First Deed of Guarantee” means the guarantee to be given by Lend Lease Corporation Limited in the form attached at annexure 13.1;

“FOI Act” means the Freedom of Information Act 2000;

“Fourth Deed of Guarantee” means the guarantee to be given by Lend Lease Corporation Limited in the form attached at annexure 13.4;

“Funder” means an entity providing finance or funding for the Development (in whole or part);

“Funding Condition” means in relation to any Building that the Developer has secured Acceptable Funding for the development of that Building as provided in Clause 36;

“Gross External Area” means the gross external area of the relevant premises measured or calculated in accordance with the RICS Code of Measuring Practice (6th Edition);

“Group Company” means a company which is a member of the same group of companies (as defined by section 42 of the Landlord and Tenant Act 1954) as the entity referred to in the context in which the definition is used and shall include any other vehicle of similar status (including limited partnerships and unit trusts);

“GLA” means the Greater London Authority;

“Guarantor” means any person or persons who from time to time guarantee the obligations of the Developer under this agreement;

“Hazardous Substances” means any substance or organism which alone or in combination with others is capable of causing harm to human health or damage to the environment and includes any hazardous or toxic materials or pollutants;

“HCA” means the Homes and Communities Agency;

“Headlease” means any one of Rodney Road Headlease, Heygate Headlease and the Shopping Centre Headlease and **“Headleases”** shall be a reference to more than one or all of them as applicable;

“Heygate Headlease” means a headlease of Heygate Phase to be granted by the Council as provided in this agreement and which shall be in the form at annexure 10 with such amendments as the parties shall agree (both acting reasonably) which are necessary to take account of that part of the Development to form the demise, as designed;

“Heygate Headlease Premium” means the sum of FORTY-SIX MILLION POUNDS (£46,000,000) plus VAT (if any) payable on and after completion of the Heygate Headlease in the instalments set out in Clause 48.2.2;

“Heygate Phase” means that phase of the Scheme comprising the land shown edged red and coloured orange on the Phase Plan and, subject to Clauses 5.13 and 5.14, the land shown coloured pink and blue on the Phase Plan, as varied from time to time in accordance with this agreement;

“Highways Agreement” means an agreement to be entered into with the Highways Authority pursuant to sections 38 and/or 278 of the Highways Act 1980 for the provision of highways works as part of the Development and any agreements to be entered into for the creation of walkways pursuant to section 35 of the Highways Act 1980;

“Highways Authority” means the appropriate highway authority as defined under the Highways Act 1980 for the highway in question;

“Highways Condition” means in relation to any Phase the requirement for the making of Road Closure Orders and the completion of a Highways Agreement and any relevant Statutory Agreements as provided in Clause 7;

“Insolvent” means:

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

“**Interest Rate**” means interest at the rate of 3 per cent per annum above the base rate from time to time published by the Bank of England;

“**Intermediate Affordable Housing**” shall have the meaning which is defined in Annex B of the version of Planning Policy Statement 3 published in June 2010;

“**Investment Lease**” means a lease of any Plot (in whole or part) granted for a premium and for a term of 50 years or more;

“**Investment Vehicle**” means a special purpose vehicle established by the Developer for the purpose of securing investment in the Scheme (in whole or part) and in which:

- (a) the Developer or the Guarantor have and maintain in excess of 50 per cent beneficial interest (whether directly or indirectly held);
- (d) the Developer or the Guarantor is an active participant in both management of the entity and the principal development activities; and
- (c) such active participant detailed above in (b) has voting rights which are dominant to the combined voting rights of every other active participant;

“**Legal Charge**” means a legal charge in favour of the Council in the form attached at annexure 15 together with such amendments as the parties shall agree (both acting reasonably);

“Liaison Groups” means such stakeholders in the Development as the Council and the Developer may agree (each acting reasonably) and reference to a **“Liaison Group”** shall be to any one or more of them as appropriate;

“Listed Buildings Act” means Planning (Listed Buildings and Conservation Areas) Act 1990;

“Management Board” means the strategic oversight body established pursuant to Clause 14;

“Master Regeneration Plan” means the business plan and development principles to be prepared by the Developer in the format set out at annexure 6 as the same is updated from time to time in accordance with the provisions of this agreement;

“Masterplan” means the plan attached at annexure 1 as amended, supplemented and updated from time to time in accordance with the provisions of this agreement;

“MUSCO Condition” means the matters referred to in Clause 10;

“MUSCO Provider” means the supplier of MUSCO Services;

“MUSCO Services” means the proposed supply of utilities infrastructure and services including hot water (also to be used for space heating), electricity, non-potable water, fibre infrastructure (for broadband and data) and other services to the Site as well as other properties together with any supporting facilities and the associated infrastructure;

“Onerous Condition” means any Council's Onerous Condition and/or Developer's Onerous Condition as the case may be;

“Option” means an option over Heygate Headlease which shall be in the form of annexure 16;

“Permitted Lease” means any of the following:

- (a) any lease of a unit or units (or any other parts of a Building) for residential use or ancillary to such residential use;
- (b) any lease of a Building (in whole or part) for the purpose of residential property management;
- (c) any lease granted without fine or premium and for a term of less than 50 years;

“Permitted Part” means a part of the Site which the Developer is permitted to dispose to a Buyer as provided for in Clause 15;

“Phase” means a phase forming part of the Scheme being any one or more of Rodney Road Phase, Heygate Phase and Shopping Centre Phase and **“Phases”** shall be construed accordingly;

“Phase Plan” means the plan which indicates the extent of each Phase which is at annexure 2 as amended in accordance with this agreement;

“Phase Viability Model” means the Appraisal for a Phase in the form set out at annexure 7.1 as updated from time to time in accordance with the terms of this agreement;

“Plan” means one of the numbered plans at annexure 8;

“Planning Condition” means in respect of:

- (a) Rodney Road Phase, the obtaining of Satisfactory Outline Permission and completion of any related Statutory Agreement for the Development on Rodney Road Phase as provided in Schedule 1;
- (b) Heygate Phase, the obtaining of Satisfactory Outline Permission and completion of any related Statutory Agreement for the Development on Heygate Phase as provided in Schedule 1;
- (b) Shopping Centre Phase, the obtaining of Satisfactory Outline Permission and completion of any related Statutory Agreement for the Development on the Shopping Centre Phase as provided in Schedule 1;

“Plot” means a plot forming part of the Scheme as shown and numbered on the Plot Plan as such Plot may be varied in accordance with this agreement, and **“Plots”** shall be construed accordingly;

“Plot Plan” means the plan which indicates the extent of each Plot which is at annexure 3 as amended in accordance with this agreement;

“Post Completion Certificate” means a post completion or final certificate issued pursuant to the Code for Sustainable Homes in respect of each Residential Unit confirming that each Residential Unit has achieved Level 4 in the version of the Code for Sustainable Homes which is current at the date of this agreement (or the level in any subsequent version which is equivalent to the current Level 4 requirements);

“Primary Conditions” means collectively:

- (a) the Planning Condition;
- (b) the Site Assembly Condition;
- (c) the Primary Viability Condition;
- (d) the Highways Condition;
- (e) the Board Approval Condition;
- (f) the Best Consideration Condition; and
- (g) (in respect of Heygate Phase and Shopping Centre Phase only) the MUSCO Condition;

“Primary Viability Condition” means in relation to any Phase, the requirement of the Developer that the Development on that Phase is viable as provided in Clause 6.5;

“Professional Team” means all of the Employer’s Representative, Architect, structural engineer, mechanical and electrical engineer, CDM Co-ordinator, acoustics engineer, and such other professional advisers (where appropriate) with primary responsibility for the design of a material part of the Works and any replacement professionals in relation to the Scheme appointed by the Developer or the Building Contractor and which shall be appointed in accordance with this agreement;

“Programme” means the programme for the delivery of the Development which is at annexure 5 as varied, amended and updated in accordance with this agreement;

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

- (a) do not conform with British Standards or the recommendations of the Building Research Establishment; and/or
- (b) are generally known to the building profession 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;

“**Purchase Notice**” means any purchase notice served on the Council in respect of land or premises required for the Development of Rodney Road Phase and/or Heygate Phase pursuant to section 137 of the Planning Act;

“**Residential Unit**” means an individual dwelling for residential purposes constructed, created or converted as part of the Scheme and “**Residential Units**” means more than one of them;

“**RICS**” means The Royal Institution of Chartered Surveyors;

“**Road Closure Order**” means all statutory and regulatory orders required for the stopping-up or closing of the whole or any part of a highway, footpath or footway which are necessary to permit or facilitate the Development (in whole or part) and which are in a form acceptable to the Developer (acting reasonably);

“**Rodney Road Headlease**” means a headlease of Rodney Road Phase to be granted by the Council as provided in this agreement and which shall be in the form at annexure 10 with such amendments as the parties shall agree (both acting reasonably) which are necessary to take account of that part of the Development to form the demise, as designed;

“**Rodney Road Headlease Premium**” means the sum of FOUR MILLION POUNDS (£4,000,000) plus VAT (if any) payable at completion of the Rodney Road Headlease;

“**Rodney Road Phase**” means that phase of the Scheme comprising the land shown edged red and coloured yellow on the Phase Plan as varied from time to time in accordance with this agreement;

“**RSL**” means a Registered Provider of Social Housing under the Housing and Regeneration Act 2008;

“**Satisfactory CPO**” means in relation to any Phase a CPO which is confirmed by the Secretary of State or (where Proceedings have been lodged in respect of it) upheld by the High Court:

- (a) without modifications; or
- (b) subject only to such modifications as the parties acting reasonably have agreed and which agreed modifications were requested of the Secretary of State by the Council; or
- (c) with modifications which are satisfactory to the Council and the Developer acting reasonably or as determined by the Expert as being reasonable having regard to the extent of the Third Party Interests which need to be acquired for the purposes of the Development on such Phase;

“**Scheme**” means the development of a mixed use scheme in accordance with the Masterplan;

“Second Deed of Guarantee” means the guarantee to be given by Lend Lease Corporation Limited in the form attached at annexure 13.2;

“Secondary Conditions” means collectively:

- (a) the Funding Condition; and
- (b) the Secondary Viability Condition;

“Secondary Viability Condition” means in relation to any Building, the requirement of the Developer that the Development of that Building is viable as provided in Clause 35.2;

“Secretary of State” means the Secretary of State for Communities and Local Government (or other minister or authority at the relevant time having or being entitled to exercise the powers now conferred on that Secretary of State by sections 77 to 79 of the Planning Act and to authorise compulsory acquisition pursuant to section 226 of the Planning Act) and including, where appropriate, an inspector appointed to act on his behalf;

“Section” means a section of the Works comprising the whole or any part of a Phase, Plot or Building and **“Sections”** shall refer to all of them;

“Security Land” means the Council’s freehold interest in two parcels of land within Heygate Phase shown edged by a red line on Plan 8.2 (as varied pursuant to clause 3.8);

“Shopping Centre” means the Elephant & Castle shopping centre comprising that part of the Shopping Centre Phase as shown coloured pink on Plan 8.3;

“Shopping Centre Headlease” means a headlease of the Shopping Centre Phase to be granted by the Council as provided in this agreement and which shall be in the form at annexure 10 with such amendments as the parties shall agree (both acting reasonably) which are necessary to take account of that part of the Development to form the demise, as designed;

“Shopping Centre Phase” means that phase of the Scheme comprising the land shown edged red and coloured green on the Phase Plan as varied from time to time in accordance with this agreement;

“Site” means the Rodney Road Phase, the Heygate Phase and the Shopping Centre Phase and each and every part of the land upon which the Development is being or is to be developed from time to time;

“Site Assembly Condition” means in relation to any Phase, the matters referred to in Clause 5.1;

“Snagging Works” means any outstanding works or minor defects, shrinkages or other faults which may be the subject of a snagging list in accordance with the provisions of the Building Contract;

“Social Rented Housing” shall have the meaning which is defined in Annex B of the version of Planning Policy Statement 3 published in June 2010;

“Sublease” means a sublease of a Plot to be granted out of Heygate Headlease as provided in this agreement and which shall be in the form at annexure 11 with such

amendments as the parties shall agree (both acting reasonably) which are necessary to take account of that part of the Development to form the demise, as designed;

“**TfL**” means Transport for London;

“**Third Deed of Guarantee**” means the guarantee to be given by Lend Lease Corporation Limited in the form attached at annexure 13.3;

“**Third Parties**” means the owners of Third Party Interests and “**Third Party**” shall be construed accordingly;

“**Third Party Interests**” means interests in and annexed to all land which is required by the Developer or agreed by the Developer and the Council acting reasonably to be acquired in order to undertake the Development (in whole or part) but including in the case of rights the extinguishment of any existing rights and the grant of any new rights required by the Developer provided that the Developer can demonstrate to the satisfaction of the Council (acting reasonably) that such new rights are required in order to facilitate the Development (in whole or part) and where the absence of such new rights would adversely affect the timing or cost or delivery or value of the Development (other than to a minimal degree);

“**Third Party Rights**” means provisions in the terms of each of the Professional Team appointments and/or the Building Contract and/or sub-contract with Design Sub-Contractors equivalent to the relevant form of Warranty providing for the Council a right to enforce the provisions of the Professional Team appointments and/or the Building Contract and/or sub-contract with Design Sub-Contractors under the Contracts (Rights of Third Parties) Act 1999 subject to such amendments as the relevant warrantor or the Developer requests and the Council agrees such agreement not to be unreasonably withheld;

“**Unconditional Date**” means in respect of any Phase the date on which each and every one of the Primary Conditions has been satisfied or waived (where waiver is permitted under this agreement) and remains satisfied or waived in respect of that Phase at such date;

“**Unit**” means any part of the Scheme which is designed or intended to be let and “**Units**” shall be construed accordingly;

“**VAT**” means value added tax or any tax of a similar nature substituted for or in addition to it unless the context otherwise requires;

“**Warranty**” means a warranty in the relevant approved form which is at annexure 9 subject to such amendments as the relevant warrantor or the Developer requests and the Council agrees such agreement not to be unreasonably withheld and reference to “**Warranties**” shall be to all or more than one of them as required pursuant to this agreement;

“**Working Day**” means any day other than Saturday or Sunday or Public or Bank Holidays when clearing banks in the United Kingdom are open to the public for the transaction of business; and

“**Works**” means all works in relation to the Development including (without limitation) demolition, site preparation, remediation, construction, including infrastructure, services, accessways, parking facilities and landscaping comprising the Development

and each and every part of it, in accordance with the provisions of this agreement, and such expression includes any part of such works as the context may require.

- 1.1 References to Clauses, parts, schedules and annexures shall be deemed to be references to Clauses and parts of and schedules and annexures to this agreement unless otherwise stated.
- 1.2 Headings to Clauses and schedules shall be disregarded.
- 1.3 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.
- 1.4 Where in this agreement examples are given (including where the word “**including**” is followed by a list of items) such examples shall not limit any general description preceding such examples.
- 1.5 References to the “**parties**” shall be references to the Council and the Developer, and references to a “**party**” shall be to either of them.
- 1.6 All references to the Council are to The Mayor and Burgesses of the London Borough of Southwark as land owner of the Council Land and shall not in any way fetter or compromise The Mayor and Burgesses of the London Borough of Southwark as local planning authority or in any other capacity, or in the exercise of any statutory duty.
- 1.7 Where in this agreement the acceptance, consent, approval or agreement of a party is not to be unreasonably withheld it shall not be unreasonably delayed. Any refusal of such a matter must include the notification of a properly reasoned basis for such refusal.
- 1.8 Terms defined in Schedule 1 and Schedule 5 shall have the meanings given to them in such Schedules.

Part A

2 Part A

This part A of this agreement shall together with Clause 1 and Schedule 1 come into effect on the date of this agreement except or to the extent specifically stated.

3 Costs and Demolition

- 3.1 From the date of this agreement up to the date on which the Unconditional Date is achieved in respect of Heygate Phase (or termination of this agreement in respect of Heygate Phase, if earlier), the Developer shall reimburse to the Council a sum equal to the reasonable and proper cost which the Council (as landowner and not planning authority) has incurred from the date of this agreement in respect of professionals fees, costs and disbursements regarding the implementation of the Development up to a maximum of Two Hundred and Twenty Five Thousand Pounds (£225,000) plus VAT per annum payable quarterly in arrears (the “**Council Cost Contribution**”) and the Developer shall pay the Council Cost Contribution within 28 days of receipt of a

VAT invoice from the Council together with a detailed statement of sums incurred and copy receipts and invoices in relation to such expenditure together with such other reasonable evidence required by the Developer and notified in advance to the Council.

3.2

3.2.1 Subject to Clause 3.2.3, from the day after the date on which the Unconditional Date is achieved in respect of the Heygate Phase until the Date of Practical Completion of the whole of the Heygate Phase (excluding any parts disposed of to Buyers in accordance with Clause 15) or termination of this agreement in respect of the Heygate Phase, if earlier, the Developer shall reimburse to the Council a sum equal to the reasonable and proper cost which the Council (as landowner and not planning authority) has incurred from the day after the date on which the Unconditional Date is achieved in respect of professionals fees, costs and disbursements regarding the project management of the Heygate Phase of the Development up to a maximum of Four Hundred and Fifty Thousand Pounds (£450,000) plus VAT per annum payable quarterly in arrears and the Developer shall pay such costs within 28 days of receipt of a VAT invoice from the Council together with a detailed statement of sums incurred and copy receipts and invoices in relation to such expenditure together with such other reasonable evidence required by the Developer and notified in advance to the Council.

3.2.2 Subject to Clause 3.2.3, from the day after the date on which the Unconditional Date is achieved in respect of the Shopping Centre Phase until the Date of Practical Completion of the whole of the Shopping Centre Phase (excluding any parts disposed of to Buyers in accordance with Clause 15) or termination of this agreement in respect of the Shopping Centre Phase, if earlier, the Developer shall reimburse to the Council a sum equal to the reasonable and proper cost which the Council (as landowner and not planning authority) has incurred from the day after the date on which the Unconditional Date is achieved in respect of professionals fees,

costs and disbursements regarding the project management of the Shopping Centre Phase of the Development up to a maximum of Four Hundred and Fifty Thousand Pounds (£450,000) plus VAT per annum payable quarterly in arrears and the Developer shall pay such costs within 28 days of receipt of a VAT invoice from the Council together with a detailed statement of sums incurred and copy receipts and invoices in relation to such expenditure together with such other reasonable evidence required by the Developer and notified in advance to the Council.

3.2.3 The parties acknowledge that notwithstanding anything else in this agreement:

- (i) the aggregate payment due to the Council under Clauses 3.2.1 and 3.2.2 (together the “**Council Project Management Fee**”) shall be capped at £450,000 plus VAT per annum and, for example, if the Unconditional Date has been achieved in respect of both Heygate Phase and the Shopping Centre Phase then the Council shall apportion its costs reasonably and properly between those two Phases so that the Developer shall not be obliged to pay more than £450,000 plus VAT per annum in aggregate; and
- (ii) if the Developer is not carrying out construction works on Heygate Phase or Shopping Centre Phase at any time after 1 January 2030 (and the Council Project Management Fee would otherwise be payable) then the Council Project Management Fee shall be suspended from that date unless and until the Developer resumes construction works on either or both of Heygate Phase and Shopping Centre Phase. Such suspension in payment will apply equally to any future suspension of construction works (*mutatis mutandis*).

3.3 The Council acknowledges that the Developer shall not be obliged to incur any Development Costs in excess of:

- (a) a total sum of Twelve Million Two Hundred Thousand Pounds (£12,200,000) (including the Accrued Development Costs) in order to satisfy the Primary Conditions for Rodney Road Phase and Heygate Phase and to satisfy the Planning Condition for the Shopping Centre Phase; and
- (b) a total sum of One Million Six Hundred Thousand Pounds (£1,600,000) in order to satisfy the First Building Conditions and Secondary Conditions in respect of such First Building on Heygate Phase.

If:

3.3.1 the Unconditional Date for Rodney Road Phase and/or Heygate Phase is not achieved

by the relevant date set out in Clause 27.1 (as extended by such Clause); or

- 3.3.2** this agreement is terminated in respect of Rodney Road Phase and/or Heygate Phase for any reason whatsoever (save if it is terminated by the Council for any material breach of any covenant by the Developer);

then subject to Clauses 3.4 and 3.5 the Council shall reimburse the Developer:

- (i) 75 per cent of such Development Costs it has properly incurred fairly apportioned as the case may be between Rodney Road Phase and Heygate Phase together with those properly incurred in relation to the Shopping Centre Phase (irrespective of the fact that this agreement may still be on foot in relation to the Shopping Centre Phase) up to an aggregate maximum of Nine Million and One Hundred and Fifty Thousand Pounds (£9,150,000) plus VAT in respect of attempting to satisfy the Primary Conditions for Rodney Road Phase and/or Heygate Phase (as the case may be) and/or to satisfy the Planning Condition for the Shopping Centre Phase; and
- (ii) 75 per cent of such Development Costs it has properly incurred up to a maximum of One Million Two Hundred Thousand Pounds (£1,200,000) plus VAT in respect of attempting to satisfy the First Building Conditions and Secondary Conditions for the first Building on Heygate Phase;

and such reimbursement by the Council shall be effected either:

- A.** by cash payment to the Developer within 28 days of receipt of a VAT invoice from the Developer together with a detailed statement of sums incurred and copy receipts and invoices in relation to such expenditure together with such other reasonable evidence required by the Council; or
- B.** subject to Clause 3.8, by transfer to the Developer of the Security Land at nil consideration with vacant possession. The Council shall within five Working Days of the date set out in Clause 3.3.1 or 3.3.2 (as the case may be) deduce title to such land including delivery of official copies of the register entries and title plan, full copies of all title documents and any letting documents and replies to standard form enquiries before contract. The completion date shall be the date 15 Working Days after the date set out in Clause 3.3.1 or 3.3.2 (as the case may be). The SCP Conditions shall apply in relation to the sale of such land.

3.4 If all of the Primary Conditions in respect of Rodney Road Phase have been satisfied except for the Board Approval Condition and in consequence of such refusal of the board of directors either party terminates this agreement in accordance with Clause 27.1 in respect of Rodney Road Phase the Council's obligation to reimburse the Developer's costs, expenses and liabilities in Clause 3.3 (other than the proportion properly attributable to Heygate Phase or Shopping Centre Phase) shall no longer apply.

3.5 If all of the Primary Conditions in respect of Heygate Phase have been satisfied except for the Board Approval Condition and in consequence of such refusal of the board of directors either party terminates this agreement in accordance with Clause

27.1 in respect of Heygate Phase then the Council's obligation to reimburse the Developer's costs, expenses and liabilities in Clause 3.3 (other than the proportion properly attributable to Rodney Road Phase or Shopping Centre Phase) shall no longer apply.

3.6 As soon as reasonably practicable following the exchange of this agreement, the Developer will use all reasonable endeavours to initiate the procurement process for the demolition of the existing buildings on Heygate Phase in a sequential manner. The costs incurred by the Developer in connection with initiating such procurement process (but not the costs for demolition itself) are part of the anticipated costs referred to in Clause 3.3(a) above. The parties acknowledge that their intention is to agree terms on which early demolition of part or parts of Heygate Phase can begin, subject to satisfactory programming and to such early demolition being in the best interests of the Development. The Council acknowledges that the Developer shall not be obliged to procure the carrying out of any demolition works if (in the Developer's opinion, acting reasonably) such works might adversely prejudice or prevent the cost-efficient delivery of the Development on Heygate Phase or its viability, but the Developer shall use all reasonable endeavours when negotiating terms with the relevant demolition contractors that the early costs of such demolition shall be borne by such contractors or otherwise are carried out in the most cost-effective manner reasonably practicable.

3.7 The costs of any such agreed demolition on Heygate Phase prior to the Unconditional Date for Heygate Phase shall be borne by the Developer as Development Costs (but are not part of the anticipated costs referred to in Clause 3.3(a) above) but in the event that:

3.7.1 the Unconditional Date for Heygate Phase is not achieved by the date set out in Clause 27.1.2 (as extended by such Clause 27.1); or

3.7.2 this agreement is terminated in respect of Heygate Phase for any reason whatsoever,

(the "**Trigger Date**") then the Council shall reimburse the Developer such demolition costs, expenses and liabilities as it has properly incurred either:

A. by cash payment to the Developer within 28 days of receipt of a VAT invoice from the Developer plus VAT and interest at three per cent above the Bank of England base rate from the date such costs were incurred to the date of payment; or

B. subject to Clause 3.8, by transfer to the Developer of the Security Land at nil consideration with vacant possession. The Council shall within five Working Days of the Trigger Date deduce title to such land including delivery of official copies of the register entries and title plan, full copies of all title documents and any letting documents and replies to standard form enquiries before contract. The completion date shall be the date 15 Working Days after the Trigger Date. The SCP Conditions shall apply in relation to the sale of such land.

3.8 If the open market value of the Security Land is higher than or lower than (other than to a minimal degree) the aggregate amount to be reimbursed to the Developer together with the Developer's reasonable and proper legal fees, stamp duty land tax

and Land Registry fees in connection with the acquisition of the Security Land, the Developer and the Council (acting reasonably) shall adjust the amount of land to be transferred to the Developer so that no party is unfairly prejudiced. Any dispute regarding the calculation of such open market value shall be determined by the Expert pursuant to Clause 20.

- 3.9** Notwithstanding anything else in this agreement, the Council acknowledges that it shall be responsible for the demolition costs, expenses and liabilities relating to Rodney Road Phase up to a maximum sum of TWO MILLION POUNDS (£2,000,000) plus VAT.

4 Primary Conditions

- 4.1** The provisions of Schedule 1 shall apply and the parties will comply with their respective obligations in Schedule 1 and paragraphs 2, 3 and 7 of Schedule 5.
- 4.2** In respect of each Phase, Part B of this agreement is conditional upon the Primary Conditions being satisfied (or waived in accordance with Clause 4.4 or 4.5) in relation to that Phase and upon (but not before) the Primary Conditions being satisfied or waived as aforesaid in relation to a Phase, Part B of this agreement shall become operative in relation only to such Phase.
- 4.3** In relation to each Phase, the parties shall use all reasonable endeavours to satisfy each of the Primary Conditions as soon as reasonably practicable having regard to the Programme.
- 4.4** The Developer may in its absolute discretion at any time in relation to any Phase, waive the Primary Viability Condition in respect of that Phase, by serving notice on the Council to that effect, whereupon the Primary Viability Condition shall be deemed satisfied.
- 4.5** The Developer may in its absolute discretion at any time in relation to any Phase, waive the requirement for approval of any reserved matters pursuant to an outline planning permission for any Phase, by serving notice on the Council to that effect whereupon the need for such reserved matters shall be irrelevant for the purpose of ascertaining whether or not the Planning Condition has been satisfied.
- 4.6** If the Unconditional Date in respect of any Phase has not occurred by the relevant deadline set out in Clause 27.1, the termination rights in that Clause shall apply in relation to the relevant Phase.
- 4.7** As soon as both the Planning Condition and the Primary Viability Condition for Heygate Phase have been satisfied and for so long as the Developer continues to believe that Heygate Phase is viable, and where it is reasonable to do so in the light of prevailing market conditions, the Developer shall use all reasonable endeavours to satisfy the First Building Conditions in relation to the first Building intended to be constructed on Heygate Phase and the remainder of the Primary Conditions for Heygate Phase. The Developer may in its absolute discretion at any time waive the First Building Conditions (in whole or part), by serving written notice on the Council to that effect, whereupon such First Building Conditions which are notified shall be deemed satisfied.

- 4.8** The Developer shall keep the Council and the Management Board fully informed of its progress in fulfilling the obligations set out in Clause 4.7.

5 Site Assembly Condition

- 5.1** In order to satisfy the Site Assembly Condition in respect of any Phase the following must occur:
- 5.1.1** (where relevant pursuant to the provisions of this Clause 5) receipt by the Developer of written evidence in a form satisfactory to the Developer (acting reasonably) of the Appropriation of the relevant part of the Council Land within that Phase notified by the Developer pursuant to Clause 5.2;
 - 5.1.2** confirmation of the Satisfactory CPO for that Phase (if required by the Developer);
 - 5.1.3** the expiry of six weeks from the date of publication of the notice of confirmation of the Satisfactory CPO for that Phase in accordance with section 15 of the Acquisition of Land Act 1981 without any statutory challenge being made under section 23 of the said Act, or where such challenge is made, the final disposal of the proceedings and expiration of any further period for lodging an appeal, leaving a confirmed Satisfactory CPO in place for that Phase;
 - 5.1.4** any contracts for the Council's and/or Developer's purchase of Third Party Interests within that Phase are in full force and effect and have become unconditional (except for any condition that this agreement is unconditional) and are capable of being fulfilled;
 - 5.1.5** subject to the provisions of Clause 5.9, the Developer must be satisfied (acting reasonably) that the relevant Headlease will be granted with vacant possession and free from encumbrances which may adversely affect the timing or cost or delivery or value of the Development (other than to a minimal degree) but with the necessary rights required by the Developer to facilitate the Development;

and the Site Assembly Condition shall be satisfied on the last of them to occur.

- 5.2** The Developer shall notify the Council as soon as reasonably practicable after the satisfaction of the Planning Condition and the Highways Condition in respect of any Phase(s) of any Third Party Interests relevant to such Phase which may adversely affect the Development. Where the Developer can demonstrate to the satisfaction of the Council (acting reasonably) that the CPO is not sufficient to remove such Third Party Interests the Developer may request that these be extinguished or over-ridden in order to facilitate the Development in whole or part by the Council Appropriating the relevant Council Land for planning purposes to enable it to override such Third Party Interests, but any failure or refusal of the Council to deal with such Third Party Interests shall not prevent the satisfaction of the Site Assembly Condition or prevent the grant of a Headlease if the relevant Third Party Interests do not adversely affect the timing or cost or delivery or value of the Development (other than to a minimal degree). The Council shall consider exercising powers to appropriate interests in the Council Land or part of it as agreed between the parties but so as to involve the Appropriation of as minimal a part of the Council Land as is necessary and shall thereafter rely upon section 237 of the Planning Act to over-ride the Third Party Interests.
- 5.3** Where the Council resolves to use its powers of Appropriation as referred to at Clause 5.2 the Appropriation requirement as set out in that Clause shall be satisfied on the date on which the Council notifies the Developer of such resolution or if later the expiration of the period within which any such resolution may be called in pursuant to the Council's scrutiny powers, or may be challenged by way of an application for judicial review.
- 5.4** The Council acknowledges that any acquisition by it of any Third Party Interests will be for planning purposes.
- 5.5** Simultaneously with entry into this agreement the parties shall enter into the CPO Deed. The Council acknowledges that the Council shall be wholly responsible for the costs of obtaining and implementing any CPO or any acquisition of any Third Party Interest required to facilitate the Development (in whole or part) on Rodney Road Phase or Heygate Phase. In the CPO Deed the Developer has agreed to indemnify the Council in relation to CPO Costs (as defined therein) in relation only to the Shopping Centre Phase on the terms set out in the CPO Deed. The Developer shall reimburse the Council for any reasonable and proper compensation payments paid to the owners of Third Party Interests which have been overridden pursuant to Clause 5.2 together with the Council's reasonable and proper professional fees incurred in connection with such Appropriation.
- 5.6** The Council shall deduce its title to the Council Land to the Developer promptly following the exchange of this agreement including delivery of official copies of the register entries and title plan, full copies of all title documents and any letting documents and replies to standard form enquiries before contract given by the Council as vendor of such property.
- 5.7** Promptly upon the Council acquiring any Third Party Interests the Council shall deduce title to such Third Party Interest as far as it is part of the Scheme including delivery of official copies of the register entries and title plan, full copies of all title documents and any letting documents and replies to standard form enquiries before contract given by the vendor of such property.

- 5.8** The Council shall be responsible for the removal of expired or irrelevant entries on the registered titles to the Site, but only insofar as that is reasonably practicable prior to the grant of a Headlease. Following the grant of a Headlease the Council shall provide all reasonable assistance to the Developer (or tenant, as the case may be) in removing such expired or irrelevant entries.
- 5.9** If the Council cannot secure immediate vacant possession as required by Clause 5.1.5, the Council shall promptly supply to the Developer full details of the arrangements preventing vacant possession being given and the parties shall work together to consider alternative solutions that would enable this agreement to be varied (if required) and the Site Assembly Condition to be deemed satisfied.
- 5.10** In progressing any CPO(s) in respect of Rodney Road Phase and/or Heygate Phase the Developer shall submit to the Council for approval (such approval not to be unreasonably withheld) its proposed boundary (including details of Third Party Interests) for such CPO(s) and in pursuing the CPO(s) the Council shall liaise with and have due regard to the views of the Developer:
- 5.10.1** in setting the strategy for pursuing the CPO(s);
 - 5.10.2** in settling the Statement of Reasons and in this regard the Council shall provide the Developer with a draft of the Statement at least 4 weeks before the relevant CPO is made;
 - 5.10.3** through providing a monthly update report and through meeting with the Developer (and if so desired by the Developer its advisers) on a regular basis concerning the progress of the CPO(s);
 - 5.10.4** in connection with pursuing the case for securing confirmation of the CPO(s) and the preparation of the Statement of Case and evidence for any public inquiry and shall at the reasonable request of the Developer allow the Developer and its advisers to attend any conferences with Counsel which the Council arranges in relation to the CPO(s);
 - 5.10.5** in connection with any proposals to request any amendments, modifications, variations or exclusions to or from the CPO(s);
 - 5.10.6** in connection with any Blight Notices or Purchase Notices served on the Council in respect of the CPO(s);
 - 5.10.7** in relation to the programme for and method of exercising its powers under the CPO so as to acquire and/or over-ride any Third Party

Interests and to secure vacant possession of the land to enable Rodney Road Phase and Heygate Phase to proceed;

- 5.10.8** in connection with any statutory challenge under the Acquisition of Land Act 1981 or any judicial review proceedings relating to the making, pursuing, confirmation or exercise of powers under, the CPO(s);
- 5.10.9** in connection with any references made to the Upper Tribunal (Lands Chamber) or such other body or tribunal which shall from time to time have jurisdiction for determining disputes) in relation to the CPO(s);

and the Developer shall at the reasonable request of the Council do all acts and things reasonably necessary in its capacity as developer to support the Council in making and pursuing the CPO(s) in relation to Rodney Road Phase and/or Heygate Phase.

- 5.11** The Council will at the request of the Developer enter into any contracts, deeds, wayleaves and other agreements with adjacent property owners as may reasonably be required in order to facilitate the Development.

- 5.12** The Council shall:

- 5.12.1** terminate the Eadon Agreement at the earliest available opportunity after consultation with the Developer and if the Developer so requests;
- 5.12.2** promptly notify the Developer of any correspondence, notices, negotiations or other discussions proposed to be undertaken and/or actually undertaken with the counterparty to the Eadon Agreement or its advisers or other representatives and the Council shall supply copies of all such material to the Developer and consult with the Developer regarding the best course of action to be undertaken so as to protect the best interests of the Development;
- 5.12.3** not make or agree any variation or amendments to the terms of the Eadon Agreement or waive any rights it may have under the Eadon Agreement;
- 5.12.4** not to give any approval or consent under the Eadon Agreement without first obtaining the Developer's approval (not to be unreasonably withheld except where by withholding consent the Developer will place

the Council in breach of its obligations to Eadon Limited);

5.12.5 until termination of the same, promptly enforce its rights under the Eadon Agreement and any transfers, leases or other documents entered into pursuant to the Eadon Agreement in each case after consultation with the Developer and if the Developer so requests.

5.13 The parties acknowledge and agree that if the Freehold Transfer, Basement Lease and Market Square Lease (as defined in the Eadon Agreement) (together the “**Eadon Sale and Leaseback Documents**”) proceed to completion before the Heygate Headlease is completed, the demise of the Heygate Headlease shall include without any increase in the Heygate Headlease Premium:

5.13.1 the land shown coloured pink and blue on Plan 8.1 (the “**Eadon Sale and Leaseback Land**”) such that the Heygate Headlease is granted subject to and with the benefit of the leases to Eadon Limited; and

5.13.2 the benefit of the easements over the land retained by Eadon Limited.

5.14 The parties acknowledge and agree that if the Eadon Agreement remains in effect when the Heygate Headlease is to be completed but the Eadon Sale and Leaseback Documents have not yet completed, then the demise of the Heygate Headlease will omit the Eadon Sale and Leaseback Land. Promptly following:

5.14.1 completion of the Eadon Sale and Leaseback Documents the Council shall grant and the Developer (or the party nominated by it pursuant to Clause 47.7) shall accept the grant of a headlease supplemental to the Heygate Headlease on the same terms (mutatis mutandis) as the Heygate Headlease but in respect of the Eadon Sale and Leaseback Land such that the supplemental headlease:

- (i) is granted subject to and with the benefit of the leases to Eadon Limited; and
- (ii) has the benefit of the easements over the land retained by Eadon Limited; or

5.14.2 the termination of the Eadon Agreement (or otherwise in any circumstances whereby the Eadon Sale and Leaseback Documents will not be completed), the Council shall grant and the Developer (or the party nominated by it pursuant to Clause 47.7) shall accept the

grant of a headlease supplemental to the Heygate Headlease on the same terms (mutatis mutandis) as the Heygate Headlease but in respect of the land shown coloured pink on Plan 8.1 only;

and the provisions of this agreement regarding the grant of the Heygate Headlease (in particular Clauses 46 and 47) shall apply equally to the supplemental headlease referred to above and the parties acknowledge there shall be no separate premium for the grant of the supplemental headlease nor shall there be any increase in the Heygate Headlease Premium notwithstanding such supplemental headlease.

6 Primary Viability Condition

- 6.1** The Developer and the Council shall comply with their respective obligations in paragraphs 2, 3 and 7 of Schedule 5.
- 6.2** The Developer shall supply the Phase Viability Model for each Phase to the Council on a quarterly basis from the date of this agreement until the earlier of:
- 6.2.1** the date that this agreement is determined in whole or in part (and if it is determined in part the Developer's obligation to provide the Phase Viability Model shall continue in relation to the operative part of this agreement); and
 - 6.2.2** the date on which the Primary Conditions have been satisfied in respect of the relevant Phase of the Development,
- and each Phase Viability Model shall be accompanied by a commentary detailing any material changes in the model since the previous version sent to the Council and setting out the basis of any material changes to the assumptions, inputs or costs together with reasonable supporting evidence.
- 6.3** The Project Cash Flow and Phase Viability Model for any Phase shall take into account and budget for (inter alia) any issues which might adversely prejudice or prevent the cost-efficient delivery of the Development on such Phase and shall ensure that all such known costs are inputted into the Phase Viability Model including (without limitation):
- 6.3.1** the availability and cost of Acceptable Funding which the Developer (acting reasonably) believes would apply to the delivery of the Development on such Phase;
 - 6.3.2** the cost of any properly anticipated or demanded works or financial contributions required in respect of the Development of such Phase (either in whole or part) towards rail or tube infrastructure (whether paid to Network Rail, TfL, London Underground or any other entity) and including any payments

paid or payable under any Planning Obligation;

- 6.3.3** subject to Clause 10.2, the infrastructure, infrastructure services and other utilities properly required in respect of the Development of such Phase and the cost, timetable and certainty of delivery of such items including, in the case of the provision of MUSCO Services by the Council, costs in respect of fall-back or standby services required or alternative expenditure in order to ensure the Development achieves its required carbon efficiency requirements, should MUSCO Services fail to be provided on time or to the standard required;
- 6.3.4** subject to Clause 10.2, the infrastructure services to be supplied by the MUSCO Provider must be of sufficient certainty and standard to ensure the Development achieves its required carbon efficiency requirements;
- 6.3.5** the requirement for good and marketable title to the Site;
- 6.3.6** the environmental and ground conditions;
- 6.3.7** the Annual Business Plan;
- 6.3.8** reasonable contingencies including up to 10 per cent. on Construction Costs and 10 per cent. on total Development Costs (as those terms are defined in Schedule 5) as well as reasonable allowances for inflation;
- 6.3.9** the mix of Affordable Housing and private housing PROVIDED THAT for the sake of the inputs in the Phase Viability Model, so far as is practicably possible, the mix of Affordable Housing and private housing is to be allocated for any Phase in accordance with the required amount of Affordable Housing in the relevant Planning Permission or Planning Obligation for that Phase; and
- 6.3.10** any condition imposed by a Planning Permission or required in any Planning Obligation which might adversely prejudice or prevent the practical or financial viability of the Scheme.

6.4 The Developer agrees:

- 6.4.1** to act reasonably and properly in the preparation of the Project Cash Flow and Phase Viability Model, in applying inputs and assumptions and in apportioning costs pursuant to Clause 6.3 and Schedule 5;
 - 6.4.2** to provide all relevant information reasonably required by the Council to enable it to understand and analyse the Project Cash Flow and Phase Viability Model in good faith and on an open book basis; and
 - 6.4.3** to afford the Council together with its professional advisers reasonable opportunity to discuss the Project Cash Flow and Phase Viability Model and to consider any reasonable submissions as to the contents thereof.
- 6.5** In order to satisfy the Primary Viability Condition in relation to any Phase, the Developer must be satisfied that having considered the matters set out in Clause 6.3 and (without limitation) all other matters which might adversely prejudice or prevent the practical or financial viability of the Scheme, and having considered the reasonable representations of the Council, the Developer (in its absolute discretion) believes the Development on such Phase is viable.
- 6.6** Upon being satisfied of such viability in accordance with Clause 6.5, the Developer shall notify the Council accordingly.
- 6.7** This Primary Viability Condition must continue to be satisfied at the date on which all of the other Primary Conditions have been satisfied, so that the Primary Viability Condition is always the last Primary Condition to be satisfied.

7 Highways Condition

- 7.1** The Developer shall as soon as reasonably practicable having regard to the Programme, in respect of each Phase submit to the Council for approval (such approval not to be unreasonably withheld) plans showing the extent of the public highways which are required to be stopped up in order to carry out the Development of each Phase including details of the exact location of the highways boundaries. The plans shall be amended from time to time as agreed between the parties (acting reasonably) where necessary for the purposes of this agreement. The Developer acknowledges that it shall not require the stopping-up of the whole or a substantial part of Heygate Street in order to carry out the Development.
- 7.2** The Developer shall use all reasonable endeavours to apply for all of the Road Closure Orders relevant to a Phase as soon as reasonably practicable having regard to the Programme and if appropriate the Council shall take such steps as are open to it to ensure that any objections to any Road Closure Orders are considered concurrently with the CPO so that any inquiry into the Road Closure Orders is held at the same time as the CPO inquiry. The Council shall support the making of any such Road Closure Orders. The Developer shall supply the draft form of Road Closure

Order to the Council for approval (such approval not to be unreasonably withheld) and shall take into account all reasonable comments made by the Council.

- 7.3** The Developer shall use all reasonable endeavours to negotiate, agree terms for, and enter into any necessary or desirable Highways Agreements with the Highways Authority as are reasonably and properly required to facilitate the grant of Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) for such Phase or the carrying out of the Development on such Phase (except to the extent that any proposed Highways Agreement contains a Developer's Onerous Condition), each to be in a form agreed by the Developer acting reasonably.
- 7.4** The Council shall, if required by the Highways Authority, enter into such Highways Agreements as are reasonably and properly required to facilitate the grant of Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) for such Phase or the carrying out of the Development on such Phase (except to the extent that any proposed Highways Agreement contains a Council's Onerous Condition), each to be in a form agreed by the Council acting reasonably.
- 7.4** The Highways Condition in relation to any Phase shall be satisfied on the later of:
- 7.4.1** the date which is six weeks after each date of publication of the notice of making or confirming of each Road Closure Order which is necessary for the Development to be carried out on such Phase (so that on that date there are in existence Road Closure Orders in place in respect of each part of the adopted highway required to be stopped up for the purposes of the Development on such Phase, each being free from any legal challenge in respect of the validity of all or any of the Road Closure Orders but which may cater for such staggered implementation of road closures as the Developer reasonably requires) unless at that date there are Proceedings in existence in relation to any one or more of them in which case it shall be the final date of final determination of all such Proceedings, leaving in place each Road Closure Order;
 - 7.4.2** the date on which the relevant Highways Agreements have been entered into; and
 - 7.4.3** the date on which the last to be completed of the Statutory Agreements has been entered into, such that on such date all Statutory Agreements necessary for the Development on such Phase have been entered into;

PROVIDED ALWAYS that the Developer may in its absolute discretion at any time in relation to any Phase waive the requirements of Clauses 7.5.2 and/or 7.5.3, by

serving notice on the Council to that effect, whereupon such requirements shall be deemed satisfied.

- 7.5** The Council acknowledges that the Council shall be wholly responsible for the costs of obtaining and implementing any Road Closure Order required to facilitate the Development (in whole or part) on Rodney Road Phase or Heygate Phase.
- 7.6** The Council acknowledges that notwithstanding any Road Closure Order, the Council shall adopt such highways within the Site as the Developer may require, so long as the total surface area of such adopted highways is no greater than the surface area of adopted highways within the Site at the date of this agreement.

8 Board Approval Condition

- 8.1** As soon as reasonably practicable following the satisfaction of all Primary Conditions in respect of a Phase except for this Primary Board Approval Condition (and the ongoing need for the Primary Viability Condition to continue to be satisfied), the Developer shall procure that the board of directors of the Guarantor meet as soon as reasonably practicable to consider the proposal that the Development on such Phase proceeds.
- 8.1** The Council acknowledges that the Developer shall not be bound to proceed with any Development on a Phase if the board of directors of the Guarantor declines the proposal to proceed for whatever reason.
- 8.2** The Developer shall promptly notify the Council of the decision of the board of directors of the Guarantor and shall supply an extract from those board minutes recording the decision, edited as the company secretary (or other person responsible for such minutes) deems appropriate in its absolute discretion, acting in good faith.

9 Best Consideration Condition

- 9.1** The Council shall use all reasonable endeavours to procure (as soon as practicable hereafter) the consent of the Secretary of State in accordance with the provisions of section 123(2) of the Local Government Act 1972 and/or section 233 of the Planning Act and/or section 32 of the Housing Act 1985 to the disposal of each Phase of the Development for the Rodney Road Headlease Premium and the Heygate Headlease Premium (as relevant) and in respect of the Shopping Centre Headlease for no premium (in each case on the terms set out in this agreement).
- 9.2** The Best Consideration Condition in relation to any Phase shall be satisfied on the date that the Secretary of State gives its consent in accordance with section 123(2) of the Local Government Act 1972 and/or section 233 of the Planning Act and/or section 32 of the Housing Act 1985 (whether in relation to an individual Phase or in relation to all Phases taken together).
- 9.3** If within 3 months following the exchange of this agreement the Secretary of State's consent is not obtained on terms acceptable to the Developer (acting reasonably), the Management Board shall meet promptly thereafter to review whether or not the Developer should proceed with any other workstreams whilst such Condition remains unfulfilled.

10 MUSCO and the MUSCO Condition

10.1 The MUSCO Condition will be satisfied by an agreement or agreements (including a service agreement) being in full force and effect and becoming unconditional (except for any condition that this agreement is unconditional) and which provide for the delivery of MUSCO Services for the benefit of Heygate Phase and the Shopping Centre Phase of the Scheme (and if required by the Council for the benefit of other land within the Borough) on terms acceptable to both parties acting reasonably and in particular, but without prejudice to the generality of the foregoing containing:

- 10.1.1** details of the precise scope of the MUSCO Services;
- 10.1.2** details of the design and specification of the MUSCO Services;
- 10.1.3** satisfactory obligations as to the specifications and fitness for purpose of the MUSCO Services;
- 10.1.4** provision for the delivery of such services ready for connection up to the boundary of each Plot within the relevant Phase and on a fully operational basis for each Building in a Phase in each case by no later than the dates required in accordance with the Programme;
- 10.1.5** rates for such services on market terms (or better) for the duration of the provision of such services;
- 10.1.6** terms of sufficient certainty and standard to ensure Heygate Phase and the Shopping Centre Phase of the Scheme achieve their required carbon efficiency requirements;
- 10.1.7** a monetary guarantee and/or scheme of liquidated and ascertained damages to provide compensation in the event that the MUSCO Services fail to be provided on time or to the standard required or otherwise are not fully operational in accordance with the Programme;
- 10.1.8** obligations to ensure that the contractors for the MUSCO Provider co-operate with the Building Contractors on site in order to minimise delay and interference with the Works;
- 10.1.9** terms which

- (i) will be acceptable to occupiers of the Buildings to be constructed as part of the Scheme; and

- (ii) will not affect adversely the open market sales value of the completed Scheme or any part of the Scheme; and

10.1.10 an obligation on the part of the Developer to:

- (i) connect into the MUSCO Services;
- (ii) procure that any buyers of land or third party developers have an obligation direct with the MUSCO Provider to connect to the MUSCO Services on the same terms (*mutatis mutandis*)

in each case subject to the MUSCO Provider complying with such obligations on its part as may be usual and acceptable.

10.2 For the avoidance of doubt it is agreed and declared that the Phase Viability Model does not and shall not include any expenditure towards the provision of the MUSCO Services unless either (i) the Developer waives this MUSCO Condition in which case the cost of providing such MUSCO Services (or incurring additional expenditure as a consequence of not doing so whether to obtain required carbon efficiency requirements or satisfy the Local Planning Authority or otherwise) shall be a Development Cost or (ii) the parties agree otherwise in writing.

10.3 If it has not been possible to satisfy the MUSCO Condition by the date on which the Developer is ready to submit the Application for the earliest of the Planning Permissions referred to in paragraph 5 of Schedule 1 (the “**Intended Application Date**”) then:

10.3.1 the Developer shall give notice to the Council of the Intended Application Date and shall either delay the making of such Application for a period of up to 6 months from that date while it works up an alternative Application or Applications designed to provide an interim solution for a Phase, Plot or a Building as the case may be which does not incur additional Development Costs and which is acceptable to the Developer or make an Application without reference to the provision of MUSCO Services pending agreement between the Council and the Developer in accordance with clause 10.3.2;

10.3.2 in parallel the Developer and the Council will work together to establish an alternative solution to the satisfaction of both parties acting reasonably; and

10.3.3 the dates referred to in Clause 27.1 shall be extended by the period of such delay not to exceed 6 months.

10.4 The parties will negotiate with each other in good faith and will use all reasonable endeavours at all times to satisfy the MUSCO Condition and all negotiations with the MUSCO Provider shall be undertaken at the direction of a MUSCO Project Team to

consist of two members appointed by the Council and two members appointed by the Developer which shall report regularly to the Management Board.

10.5 On the signing of this agreement the Council will provide to the Developer copies of all draft documentation and relevant correspondence between the Council and the MUSCO Provider for its review and comment.

10.6 In the event that the parties are unable to agree an alternative solution in accordance with clause 10.3.2 by the date which is 6 months from the Intended Application Date then the Developer may at any time thereafter waive the MUSCO Condition in relation to Heygate Phase and/or Shopping Centre Phase by notice in writing to the Council to that effect, whereupon the MUSCO Condition shall be deemed satisfied in relation to such Phase(s).

11 Public Sector Funding

11.1 The Council shall work with the Developer to identify sources of third party public sector funding, including but not limited to:

11.1.1 the HCA;

11.1.2 TfL; and

11.1.3 the GLA.

11.2 If the Council and the Developer (acting reasonably) identify available sources of public funding which may be of benefit to the Development then the relevant party shall apply to secure such funding for the Development in addition to any third party private sector funding.

11.3 Neither party shall be required to acquire any liability in respect of the securing of funding, and in the case of the Council it shall not be required to apply for sources of public funding where to make such an application would be a breach of an existing Council policy.

12 Implementing the Masterplan

12.1 The Developer agrees with the Council not to undertake the development of the whole or any part of a Phase within the Scheme unless it is consistent with the Masterplan.

12.2 The parties acknowledge that whilst the plan at annexure 1 comprises the Masterplan at the date of this agreement, such proposal is the subject of further negotiation and discussion with the objective of developing a more comprehensive statement of their joint objectives for the redevelopment of the Site having regard to:

12.2.1 any changes to such plan which have arisen through the development or proposed development of any Phase including (without limitation) discussions or negotiations with potential tenants, Funders, investors or purchasers of the Development (or any part of it), the Local Planning Authority in respect of obtaining a Satisfactory Planning Permission or Satisfactory Outline

Permission (as the case may be) or any third party in respect of the acquisition of an interest in land relevant to the Scheme or any relevant transport providers;

12.2.2 the parties' intention of maximising the marketability and lettability of each part of the Development to meet the requirements from time to time of prospective investors and occupiers thereof;

12.2.3 the parties' intention of maximising the profitability and viability of each part of the Development;

12.2.4 the parties' commitment to providing a certain percentage of Affordable Housing; and

12.2.5 the parties' commitment to providing a more sustainable environment to cover BREEAM ratings, the Code for Sustainable Homes and the potential provision of MUSCO Services.

12.3 The Developer shall prepare and regularly update the Masterplan (as often as may be required) and submit such revisions to the Council for approval, such approval not to be unreasonably withheld where such revision is reasonably required and providing such revision is consistent with the Development Requirements but the Council must act in the best interests of the Development and its reasonableness in giving such approval shall be judged in the context of the Development only.

12.4 In making submission to the Council pursuant to this Clause 12 if the Developer has provided all information reasonably necessary to enable the Council to consider such submission and the Council fails to give a reasoned response to the Developer's submission within a reasonable time following receipt of such submission which shall be not less than 20 Working Days after receipt, then the Developer shall be entitled to serve notice on the Deputy Chief Executive of the Council stating that the Council has failed to respond to such submission and requiring a reasoned response within a further period of 10 Working Days, following which such approval shall be deemed to have been given if no further reasoned response is received by the Developer.

13 Master Regeneration Plan and other Information

13.1 Promptly following the date of this agreement, the Developer shall as soon as reasonably practicable in light of the Programme prepare and supply to the Council the Master Regeneration Plan, together with the following additional documents:

13.1.1 the latest Masterplan, Phase Plan, Plot Plan, Construction Phasing Plan and Programme;

13.1.2 the latest Appraisal for the Development as a whole;

13.1.3 the latest details of the infrastructure services required to service each Phase;

- 13.1.4 the latest strategy for obtaining Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) and all related Statutory Agreements for the Development;
 - 13.1.5 the latest letting and marketing strategy which identifies (where possible) potential tenants, Funders, investors and purchasers and their requirements;
 - 13.1.6 the latest procurement strategy setting out details of how the construction of each Phase is proposed to be delivered; and
 - 13.1.7 the latest strategy for transport connections for the Scheme in light of the negotiations with Network Rail, Transport for London, London Underground and any other relevant transport providers.
- 13.2** Promptly following the date of this agreement, the Developer shall as soon as reasonably practicable prepare and supply to the Council and the Management Board the Annual Business Plan and update it annually. The Annual Business Plan shall include but not be limited to:
- 13.2.1 the estimated expenditure forecast;
 - 13.2.2 a review against the previous Annual Business Plan;
 - 13.2.3 an update on potential Planning Overage and Profit Overage;
 - 13.2.4 a review of potential Planning Obligations;
 - 13.2.5 details of any anticipated and actual sales of any land interests in the Site; and
 - 13.2.6 generally the issues and challenges facing the Scheme in the year ahead.
- 13.3** The parties acknowledge that the Developer shall be responsible for the production and updating of the Master Regeneration Plan and the Annual Business Plan and responsibility for all discussions or negotiations with:
- 13.3.1 potential tenants, Funders, investors or purchasers of any part of the Development; and
 - 13.3.2 the Local Planning Authority (except as set out in Schedule 1) however the Developer shall at all times have regard to the role of the Management Board as detailed in Clause 14 below;

in each case in consultation with the Council and the Management Board.

- 13.4** The parties acknowledge that together they shall have joint responsibility for all discussions or negotiations with:
- 13.4.1** Network Rail, TfL, London Underground and any other relevant transport providers; and
 - 13.4.2** the GLA.
- 13.5** The Developer will consult with the MUSCO Provider (if available) with a view to establishing the detail of all infrastructure services available to service each Phase, when such services will be available and at what cost.
- 13.6** The Developer shall prepare and update the Master Regeneration Plan, Phase Plan and Plot Plan together with the strategy documents set out in Clauses 13.1.4 and 13.1.7 above as often as may be required and promptly submit such revisions to the Council for approval, such approval not to be unreasonably withheld where such revision is reasonably required and the revision does not prevent the Development Requirements being met but the Council must act in the best interests of the Development and its reasonableness in giving any such approval shall be judged in the context of the Development only. Whenever the Council reasonably requires and on giving reasonable notice to the Developer, the Council and the Developer shall meet to discuss any such proposed revisions.
- 13.7** In making submission to the Council pursuant to this Clause 13 if the Developer has provided all information reasonably necessary to enable the Council to consider such submission and the Council fails to give a reasoned response to the Developer's submission within a reasonable time following receipt of such submission which shall be not less than 20 Working Days after receipt, then the Developer shall be entitled to serve notice on the Deputy Chief Executive of the Council stating that the Council has failed to respond to such submission and requiring a reasoned response within a further period of 10 Working Days, following which such approval shall be deemed to have been given if no further reasoned response is received by the Developer.
- 13.8** For the avoidance of doubt, the Council acknowledges that the Construction Phasing Plan, Programme, Appraisal and other information set out in Clauses 13.1.3, 13.1.5 and 13.1.6 supplied to the Council from time to time shall not be subject to the Council's approval.
- 13.9** The parties acknowledge that there shall be an annual review of the Development Requirements and the split of Social Rented Housing and Intermediate Affordable Housing comprised within the Affordable Housing Requirement. If the parties agree an amendment is required to such elements, then they shall vary this agreement to reflect such changes.

14 Management Board

- 14.1** The Management Board will have a strategic role in:
- 14.1.1** monitoring and providing a forum for discussing the parties' rights and obligations under this agreement;
 - 14.1.2** debating the current version and any revisions to the Masterplan and Master

Regeneration Plan proposed by the Developer pursuant to Clauses 12.3 and 13.6;

14.1.3 monitoring the delivery of the Development Requirements and providing a forum for discussing the level of Development Requirements and split of Social Rented Housing and Intermediate Affordable Housing comprised within the Affordable Housing Requirement; and

14.1.4 reviewing the artwork and design proposals for any hoardings proposed by the Developer.

- 14.2** The Management Board is to be made up of not less than two individuals appointed by the Council and not less than two individuals appointed by the Developer. The Management Board is to be chaired by one of the representatives appointed by the Developer. The initial members of the Management Board for the Council shall be the Council's Deputy Chief Executive and the Strategic Director of Regeneration & Neighbourhoods and for the Developer shall be Richard Cable and Richard Coppell.
- 14.3** The Developer and the Council each undertakes with the other to appoint as members of the Management Board individuals who have appropriate experience in major project development and who are otherwise appropriately qualified.
- 14.4** The Developer and the Council may each at any time appoint a suitable alternate representative on its respective behalf in place of a member of the Management Board by two Working Days' notice to the other.
- 14.5** The Council and the Developer shall respectively ensure that each of its appointed representatives attend each meeting of the Management Board.
- 14.6** The Developer shall convene not less frequently than quarterly meetings of the Management Board, giving each member at least five Working Days notice of a meeting, at which the Council and the Developer shall review progress and matters relevant to the continued progress of the Development.
- 14.7** Either party shall be entitled to convene an extraordinary meeting on 10 Working Days notice to the other, but not more than six times a year.
- 14.8** An agenda, prepared by the party convening the meeting, for each meeting accompanied by all papers to be considered or submitted at the meeting is to be sent to each member of the Management Board at least 48 hours before the meeting whenever practical.
- 14.9** Minutes of each meeting are to be circulated by the Developer to the Council and the members of the Management Board within five Working Days afterwards.
- 14.10** If any member of the Management Board is unable to attend a meeting, he or she may appoint another person, who is to have appropriate experience and qualification as referred to in Clause 14.3 to attend in his stead, and must notify the other members of the Management Board accordingly.

14.11 Each of the Council and the Developer may invite with the other party's consent (not to be unreasonably withheld) representatives of other parties actively involved in the Development as necessary or desirable to the efficient running of the Management Board and/or the Development.

14.12 Meetings of the Management Board should normally involve the attendance (in person or by alternate) of representatives at the meeting. Where the Management Board decides it is appropriate, meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

15 Land Sales

15.1 Subject to the following provisions of this Clause 15, the Developer shall not be permitted to dispose of any Plot (in whole or part) except by way of any or all of the following means:

15.1.1 the grant of an Investment Lease or an agreement to grant an Investment Lease;

15.1.2 the sale of 100% of the shares in a Group Company to whom an Investment Lease has been granted pursuant to Clause 15.7;

15.1.3 the sale of less than 100% of the shares in a Group Company to whom an Investment Lease has been granted pursuant to Clause 15.7, where the relevant company remains an Investment Vehicle; and

15.1.4 the sale of less than 100% of the shares in a Group Company to whom an Investment Lease has been granted pursuant to Clause 15.7, where the Developer retains a minority holding, such that the relevant company is not an Investment Vehicle;

(each a "**Disposal**") in each case in accordance with the provision of this Clause 15.

15.2 The Developer shall be permitted to make a Disposal of any Plot (in whole or part) which comprises (either alone or in aggregate) up to 30 per cent of the total Site area (such Site measurement to exclude (a) the Plot allocated to the potential MUSCO Services facility or its alternative and (b) the area allocated towards a park or its alternative) PROVIDED ALWAYS that:

15.2.1 any such Disposals provide that the Buyer is contractually obliged to ensure that the first comprehensive development by the Buyer of such land (if carried out) is consistent with the Masterplan as at the date of the Disposal and does not prevent the Development Requirements from being met; and

15.2.2 the land area to be disposed of (either alone or in aggregate) pursuant to this Clause 15.2 shall not comprise an area more than 50% of the total land area of the relevant Phase (such Phase measurement for Heygate Phase to exclude (a) the Plot allocated to the potential MUSCO Services facility or its alternative and (b) the area allocated towards a park or its alternative).

15.3 Save where a Disposal is made in accordance with Clause 15.2, the Developer shall be permitted to make a Disposal of any Plot (in whole or part) on the following terms:

15.3.1 save for any Buyer set out in Clause 15.6, the identity of any such Buyer shall be approved by the Council, such approval not to be unreasonably withheld (and the parties acknowledge that the Council shall not be unreasonably withholding consent if the Developer has not ensured that the Buyer provides evidence as required in Clause 15.3.4 below);

15.3.2 the Developer shall ensure that the agreement for the Disposal shall require that if the Buyer commences the first comprehensive development on the land disposed of, then:

- (i) the Buyer shall covenant to the Developer such first comprehensive development shall be in compliance with the terms of Clauses 40, 41.2, 42 and Schedule 2 (and in respect of any Residential Units also Schedule 3) to this agreement in relation to the Works insofar as relevant to the land disposed of (the obligations and rights referred to in such Clauses and Schedules being owed by the Buyer to the Developer, not the Council); and
- (ii) the Buyer shall covenant with the Developer that it shall carry out and complete such first comprehensive development of the land (but where the development is staged or phased, such obligation shall only apply to the part commenced but not the parts on which development has not yet commenced);

and the Developer shall provide any other evidence that the Council reasonably requires to enable the Council to ensure that the terms of this Clause 15.3.2 have been observed;

15.3.3 the Developer shall use all reasonable endeavours to enforce the terms of any agreement for Disposal against the Buyer (but not including taking court proceedings unless the Developer in its absolute discretion so decides) and the Council shall

have no direct enforcement rights against the Buyer; and

15.3.4 the Developer shall ensure that the Buyer provides the Council with such evidence of its financial standing that the Council reasonably requires to enable the Council to ensure that the Buyer (together with any guarantor) is of sufficient financial standing to enable it to carry out the development which the Buyer has been appointed to carry out.

15.4 Any Disposals by the Developer pursuant to this Clause 15 (save for Disposals to wholly-owned Group Companies of the Developer or the Guarantor or an Investment Vehicle pursuant to Clause 15.7) shall be on arm's length open market terms.

15.5 Notwithstanding anything else in this Clause 15, the Council acknowledges that:

15.5.1 there shall be no restriction on the Developer's ability to effect disposals of all or any part of the Site:

- (i) after the Works have reached practical completion on such part of the Site; or
- (ii) comprising the grant of any easements, rights or encumbrances over or in respect of infrastructure or proposed infrastructure on the Site; or
- (iii) comprising Permitted Leases or agreements to grant Permitted Leases;

15.5.2 the Developer may charge any or all of its interests in a Plot in whole or part (whether held leasehold or via company shareholdings) to a Funder where:

- (i) such Funder is a bank or other reputable finance company or institution or investor at arm's length to the Developer which is to provide finance or funding for the purposes of the Development (in whole or part) or a special purpose vehicle owned by such bank, finance company, institution or investor specifically for the purpose of providing such finance or funding;
- (ii) the identity of such Funder is approved by the Council, such approval not to be unreasonably withheld;

Provided always that not more than three Plots on which construction works have not yet commenced may be charged (in whole or part) to any Funder(s) at any one time but for the avoidance of doubt there shall be no restriction on the number of Plots that may be charged (in whole or part) where construction works have commenced on such Plot(s).

15.6 Notwithstanding anything else in this agreement, no consent or approval from the Council shall be required in respect of the identity of a Buyer if and to the extent it comprises First Base Limited or Oakmayne Properties Limited or the owner of the Elephant and Castle Shopping Centre or any wholly-owned subsidiary of any of such entities Provided that any such company is not at the relevant time Insolvent and the

Developer shall supply details of such identity to the Council before any such legal commitment is entered into. For the avoidance of doubt, the provisions of this Clause 15.6 relate only to the satisfaction of Clause 15.3.1 and not to any other provisions of this Clause 15.

15.7 Notwithstanding the other provisions of this Clause 15, the Developer shall be permitted to make a Disposal to a wholly-owned Group Company of the Developer or the Guarantor or an Investment Vehicle without obtaining the Council's consent and without complying with the other requirements of this Clause 15 provided the Developer shall procure that:

15.7.1 if such wholly-owned Group Company or Investment Vehicle undertakes any development on the land disposed of, then such development shall be in compliance with the same provisions of this agreement in relation to the Works as would apply to a development carried out by the Developer itself; and

15.7.2 any Disposal by such wholly-owned Group Company or Investment Vehicle (or Disposal of an interest in such wholly-owned Group Company or Investment Vehicle) shall be in accordance with this Clause 15 (including this Clause 15.7 to the extent that any such Disposal is to another wholly-owned Group Company of the Developer or the Guarantor or an Investment Vehicle).

15.8 Notwithstanding anything else in this agreement if the Buyer is not an Investment Vehicle or a wholly-owned Group Company of the Developer or the Guarantor, then the Developer's obligations and liabilities under this agreement in relation to the land which is the subject of the Disposal, shall cease to have effect and shall no longer apply (except for the Developer's obligations in Clause 15.3.3 and the obligation to account for the receipts of such land sale in accordance with Clause 15.10.2 and Schedule 5).

15.9 Where in this Clause 15 reference is made to a sale of shares in a Group Company which owns an Investment Lease, then such Clause shall be interpreted as applying equally (*mutatis mutandis*) to any new grant of an Investment Lease to a company in which the Developer or the Guarantor has a shareholding.

15.10 For the purposes of calculating Profit Overage in accordance with Schedule 5:

15.10.1 for so long as the Buyer remains a wholly-owned Group Company of the Developer or the Guarantor or an Investment Vehicle, the provisions of Schedule 5 shall apply to the Developer as if it were carrying out the development and receiving proceeds or expending Development Costs in place of the

wholly-owned Group Company or Investment Vehicle; and

- 15.10.2** where the Developer effects a Disposal pursuant to Clause 15.1.2 or Clause 15.1.4, then provided that the Development Account is credited with sale proceeds representing the value of the relevant company's entire interest in the Scheme (the Developer topping-up any such sale proceeds to reflect any minority shareholding in such company it is retaining) such Disposal shall be treated as an absolute disposal such that the provisions of Schedule 5 shall only apply to the sale proceeds received and otherwise shall not apply as if the Developer were carrying out the development itself.

16 Restriction on Disposal of Council Land

- 16.1** Except as set out in Clause 16.2, and save if this agreement is terminated in respect of that part of the Council Land, the Council agrees that it shall not dispose of any interest in, or create any easements, rights or encumbrances on or over any part of the Council Land without the prior consent of the Developer.

- 16.2** The Council shall not require the consent of the Developer in order to enter into lettings and/or licences of any land within the Site in relation to which:

- 16.2.1** the term shall expire or be capable of being terminated prior to commencement of any development upon such part of the Site pursuant to this agreement; and

- 16.2.2** security of tenure has been excluded;

but in each case the Council shall supply full details to the Developer before (and after) any legal commitment is entered into.

17 Building Contractor and Professional Team for the Scheme

- 17.1** If the Developer begins any part of the tender process for the appointment of the Building Contractor for any Phase (or any part of a Phase) prior to the Unconditional Date for such Phase the provisions of Clause 37 shall apply in relation to that part of the tender process as if they were set out in full in this Part A of this agreement.

- 17.2** The Developer shall appoint members to the Professional Team who are appropriately qualified and who have good experience in providing services in the nature of those for which they are to be appointed in respect of the Development on the relevant Phase(s). The Developer shall notify the Council within 10 Working Days of the termination of the appointment of any member of the Professional Team and shall, to the extent necessary, appoint substitute members to the Professional Team as soon as reasonably practicable.

- 17.3** The Developer shall provide to the Council a certified copy of each appointment of each member of the Professional Team within 10 Working Days of their appointment together with evidence of the current professional indemnity insurance of the appointee together with a duly completed form of Warranty or Third Party Right.
- 17.4** Where the Developer is the employer of a member of the Professional Team it shall comply with its obligations under the terms of each such appointment and shall use all reasonable endeavours to procure that each such member of the Professional Team complies with its obligations (but not including taking court proceedings unless the Developer in its absolute discretion so decides).
- 17.5** Where the appointment of any member of the Professional Team is determined the procedure in this Clause 17 shall apply in respect of substitute appointments.

18 Site Survey

- 18.1** Prior to the date on which a Headlease has been granted in respect of a Phase, the Developer may serve notice upon the Council that it requires access to those parts of the Council Land specified in such notice for the purposes of undertaking site, environmental and ground condition surveys. Within 10 Working Days of receipt of each such notice the Council acting reasonably shall notify the Developer whether, having regard to the then current use of such specified parts of the Council Land, it is reasonably practicable to permit the Developer to undertake such surveys upon such specified parts of the Council Land, and where the Council (acting reasonably) confirms that such access is agreed the Developer shall be entitled to enter upon such parts of the Council Land for the purposes of undertaking such surveys, but such entry shall be as licensee only.
- 18.2** The Developer shall provide to the Council copies of all reports and surveys prepared on the Developer's behalf and as a result of the undertaking of such surveys.

19 Notices

- 19.1** Any notice in respect of this agreement shall be in writing and shall be sufficiently served if sent by ordinary first-class post, or if sent by registered or recorded delivery post, or delivered by hand to the parties at the addresses set out in this agreement (or such alternative address as may be notified to the other party from time to time) (with a copy also being sent to their solicitors) and service shall be deemed made on the next Working Day after delivery by hand and if sent by registered or recorded delivery post on the Working Day next but one after the date of posting.
- 19.2** Any notice which is required to be served on the Council shall (except where this agreement provides otherwise) be served on The Strategic Director of Communities, Law & Governance at 160 Tooley Street, London SE1 2TZ or to such other address as the Council may from time to time notify the Developer.
- 19.3** Any notice which is required to be served on the Developer shall be served on the Company Secretary of the Developer (with copies to the Elephant & Castle Development Director and to the Head of Legal) at 142 Northolt Road, Harrow, Middlesex HA2 0EE or to such other address as the Developer may from time to time notify the Council.

19.4 Where the Council has received notice of a Funder any notice required to be served on it shall be served at the address of such Funder as provided to the Council from time to time.

20 Disputes

20.1 Where in this agreement reference is made to a dispute being referred to an expert in accordance with this Clause 20 then such matter shall be determined by an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years and who is a specialist in relation to such subject matter and such independent person shall be referred to in this Clause 20 as the “**Expert**”.

20.2 The Expert shall be agreed between the parties or failing such agreement be nominated: (a) in the case of any dispute relating to the Works and/or the Development by the president or vice-president or other duly authorised officer of the RICS (b) in the case of any dispute relating to planning issues by the president or vice-president of the Bar Council on the application of any party at any time and (c) in the case of any dispute relating to any accounting procedures by the President of the Institute of Chartered Accountants, and the following provisions shall apply:

20.2.1 the Expert shall act as expert and not as an arbitrator and his decision shall be final and binding upon the parties save in the case of manifest error or fraud;

20.2.2 the Expert shall consider (inter alia) any written representations on behalf of any party to the dispute (if made within 10 Working Days of receipt of notification of the Expert, except where there is any dispute relating to practical completion of any of the Works when the period shall be five Working Days) and counter-representations but shall not be bound them;

20.2.3 the Expert shall supply to the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within 10 Working Days of the parties’ respective receipt of such copies;

20.2.4 the Expert shall be required to take into account the provisions of this agreement;

20.2.5 where the Expert is to determine whether or not the Developer is entitled to an extension of time for the purposes of a Building Start Date or Building Longstop Date his

determination shall include a determination as to the length of such extension;

20.2.6 the parties shall use all reasonable endeavours to procure that the Expert gives his decision as speedily as possible but in any event within 15 Working Days of his appointment ;

20.2.7 the costs of appointing the Expert and his costs and disbursements in connection with his duties under this agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination in equal proportions between them; and

20.2.8 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.

20.3 Where any dispute referred to determination pursuant to this Clause 20 is a matter which the Developer or the Building Contractor has also referred to dispute resolution by an expert pursuant to the relevant Building Contract the Developer shall be entitled to require that the determination of both disputes is undertaken by the same expert by serving notice to that effect on the Council either at the time of referral of the dispute to the Expert or within five Working Days of the notification of a referral to Expert determination by the Council provided that any such determination shall be undertaken in accordance with the relevant provisions of this Clause 20 and references in Clause 20.2 to the "**parties**" shall include the relevant Building Contractor.

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

21 Indemnity and Liability

21.1 The Developer is to be responsible for any of the following matters arising as a result of the carrying out of the Development or the Works on any Phase undertaken by or on behalf of the Developer:

21.1.1 the death of, injury to, or accident to any person (except to the extent that any death or personal injury is due to the negligence of the Council);

21.1.2 the damage to or loss of any property;

21.1.3 any breach of the Consents or any statutory obligations in respect of the carrying out of the Works;

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

21.1.5 any other claims made against the Council as a result of the Developer breaching any obligations under this agreement;

and the Developer shall indemnify the Council against any claims made against the Council in relation to any such matters. The Council shall take all reasonable steps to mitigate any liabilities incurred by it which it seeks to recover pursuant to this Clause 21 and shall not settle any claim without the prior approval of the Developer which shall not be unreasonably withheld.

21.2 The Developer shall be released from its obligations to the Council in respect of the design and construction of the Scheme on a Plot by Plot basis (except in relation to any breaches of obligation previously notified to the Developer) with effect from the later of:

21.2.1 the date of the issue of the last Certificate of Making Good Defects to be issued in respect of the relevant Plot, such that on that date a Certificate of Making Good Defects has been issued in respect of the whole of that Plot (excluding any parts disposed of to Buyers in accordance with Clause 15); and

21.1.2 the date upon which the Council has received all of the Warranties or Third Party Rights to which it is entitled under the terms of this agreement in respect of that Plot.

22 Entire Agreement, Non-Merger

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

22.2 So far as they remain to be performed or observed the provisions of this agreement shall continue in full force and effect notwithstanding completion of the grant of any Headlease.

23 Good Faith

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

24 Dealing with this Agreement

- 24.1** Except as set out in this Clause 24 the Developer shall not assign or hold on trust, charge or otherwise dispose of its interest under this agreement.
- 24.2** The Developer may assign by way of security its benefit in this agreement (in whole or part) to a Funder where:
- 24.2.1** such Funder is a bank or other reputable finance company or institution or investor at arm's length to the Developer which is to provide finance or funding for the purposes of the Development (in whole or part) or a special purpose vehicle owned by such bank, finance company, institution or investor specifically for the purpose of providing such finance or funding;
 - 24.2.2** the identity of such Funder is approved by the Council, such approval not to be unreasonably withheld.
- 24.3** At the request and cost of any Funder the Council (in its capacity as freeholder) will enter into a deed of priority in relation to the rights of the Council and such Funder but such Funder shall have the priority right (but not an obligation) to step into and take over the implementation of the construction of the Development. The form of such deed shall be in a form agreed between the Council, the Developer and the Funder, each acting reasonably.
- 24.4** Subject to Clause 24.5 the Developer may (but shall not be obliged to) assign its benefit in or novate this agreement (and if such assignment or novation relates to the Shopping Centre Phase, the CPO Deed) to an Investment Vehicle or Funder in respect of any Plot or Phase with the prior approval of the Council which shall not be unreasonably withheld provided that the proposed Investment Vehicle or Funder first enters into a deed of covenant (in the event of an assignment) or a deed of novation (in the event of a novation) with the Council to comply with all of the obligations of the "**Developer**" under this agreement (and if such assignment or novation relates to the Shopping Centre Phase, the CPO Deed) in relation to such Plot or Phase in such form as the Council may reasonably require and the Council shall enter into such deed of novation promptly. The Developer shall pay the Council's proper and reasonable costs in relation to any such agreement.
- 24.5** In the event that the Developer proposes to assign its benefit in or novate this agreement to an Investment Vehicle or Funder in respect of any Plot or Phase, the Developer and/or the Guarantor may request the Council releases either or both of them (as the case may be) from their obligations in this agreement and/or the CPO Deed and/or under the First and/or Third and/or Fourth Deeds of Guarantee (as the case may be) relating to such Plot or Phase. The Developer will together with such request provide such evidence as the Council reasonably requests to determine the financial standing of the Funder or the Investment Vehicle and any proposed guarantor(s) for such vehicle(s). The Council's consent to the release of the Developer and/or the Guarantor shall not be unreasonably withheld if the financial standing of the Funder and/or the Investment Vehicle and/or the proposed guarantor

is equal to or greater than the reasonable prospective liability to be incurred by the Developer in respect of the part disposed of and upon such consent being given the Council shall expressly release the Developer and/or the Guarantor (as the case may be) by deed from their respective obligations in this agreement and/or the CPO Deed and/or under the First and/or Third and/or Fourth Deeds of Guarantee (as the case may be). The Developer acknowledges that the Guarantor shall not be released in respect of its obligations in the Second Deed of Guarantee.

- 24.6** Within 10 Working Days of the completion of any assignment of the Developer's interest in this agreement pursuant to this Clause 24 the Developer shall serve notice of such assignment on the Council together with a certified copy of the assignment.
- 24.7** The Developer shall be entitled to appoint a Group Company as its project manager and/or development manager and such appointments shall not constitute a breach of this Clause 24. The Developer acknowledges that any in-house fees resulting from such appointment shall not be included as Development Costs.
- 24.8** Notwithstanding anything else in this agreement, no consent or approval from the Council shall be required in respect of the identity of a Funder or Investment Vehicle if and to the extent it comprises the owner of the Elephant and Castle Shopping Centre or any wholly-owned subsidiary of such entity Provided that any such company is not at the relevant time Insolvent and the Developer shall supply details of such identity to the Council before any such legal commitment is entered into. For the avoidance of doubt, the provisions of this Clause 24.8 relate only to the approval of the identity of such entities and not to any other provisions of this Clause 24.
- 24.9** The Council acknowledges that:
- 24.9.1** following satisfaction of the Planning Condition for Heygate Phase, the parent company of the Developer shall be permitted to dispose of share capital and voting rights in the Developer without any consent or approval from the Council so long as the requirements set out in the definition of Investment Vehicle remain satisfied (mutatis mutandis) in respect of the Developer;
 - 24.9.2** the proceeds of any disposal of share capital and/or voting rights in the Developer pursuant to clause 24.9.1 shall belong entirely to the parent company of the Developer and shall not form part of Interim Development Income for the purposes of calculating Profit Overage in Schedule 5.

25 Construction Phasing and Programme for the Scheme

- 25.1** The parties agree that the Development shall be brought forward in accordance with the Construction Phasing Plan subject to such variations to it as may be proposed by the Developer (acting reasonably) from time to time.

- 25.2** At least one month before the proposed start of the Works on any Phase, the Developer shall submit to the Council an updated Programme to take account of the actual date being the Unconditional Date for that Phase.
- 25.3** The Developer shall provide updates on the Programme for the Development on a regular basis and in any event not less frequently than quarterly highlighting changes to the previous Programme and providing explanations for those changes and if the Developer believes at any time that there shall be a delay to the Programme it shall update the Council promptly providing reasons for the delay.

26 Registration at the Land Registry

- 26.1** Immediately following the date of this agreement the Council shall provide to the Developer sufficient written consent (including any necessary completed Land Registry forms) to enable the Developer to register an agreed notice or unilateral notice (in the Developer's absolute choice) to note this agreement on the charges register of the titles to the Council Land.
- 26.2** Immediately following the Council's acquisition of land or other Third Party Interests pursuant to private treaty negotiations or CPO pursuant to this agreement and/or the CPO Deed, the Council shall provide to the Developer sufficient written consent (including any necessary completed Land Registry forms) to enable the Developer to register an agreed notice or unilateral notice (in the Developer's absolute choice) to note this agreement on the charges register of the titles to such land.
- 26.3** The Council will give such assistance to the Developer as may reasonably and properly be required for the purposes of Clauses 26.1 and 26.2 including agreeing a redacted version of this agreement which excludes confidential information entering the public domain.
- 26.4** If this agreement is terminated in respect of any Phase for any reason whatsoever the Developer will within 10 Working Days of the later of (1) the date of termination of this agreement and (2) the date on which the Council pays the Developer all monies due to it under this agreement, apply for the cancellation or withdrawal of any notice of this agreement registered against the titles to the Council Land at the Land Registry in respect of that Phase.
- 26.5** Upon the expiry of the Option Period (as defined in the Option) or earlier lapse of the Option, the Council shall promptly apply for the cancellation or withdrawal of any registration of the Option.

27 Termination

- 27.1** Subject to Clause 27.9 if the Unconditional Date in respect of:
- 27.1.1** Rodney Road Phase has not occurred by 1 July 2015; or
 - 27.1.2** Heygate Phase has not occurred by 1 June 2016; or
 - 27.1.3** Shopping Centre Phase has not occurred by 1 June 2018;

then the Council or the Developer may terminate this agreement in relation to the relevant Phase(s) only by serving 10 Working Days notice on the other expiring at any time before the Unconditional Date is achieved in respect of such Phase(s) and upon expiry of such notice this agreement shall determine in relation to the affected Phase(s) only PROVIDED ALWAYS that:

- (i) where in relation to a Phase:
 - (a) an Application has been made but there has been neither the grant of a Planning Permission nor a Refusal; or
 - (b) there has been a Refusal but either the time for an Appeal against such Refusal has not expired or an Appeal has been made but has not yet been determined; or
 - (c) a Planning Permission has been granted which is free from any Onerous Condition but is not then immune from challenge; or
 - (d) a CPO has been confirmed but the statutory challenge period under the Acquisition of Land Act 1981 has not yet expired;
- then
- (aa) the relevant deadline above shall be extended until 28 days after (I) where a Planning Permission is granted, the first date upon which it becomes a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) or (II) where no Planning Permission is granted, the first date by which any Appeal has been determined and/or the time for the submission of any Appeal (or further Appeal) has expired;
 - (bb) in the case of the CPO the relevant deadline shall be extended until 70 days after the date of publication of the notice of confirmation of a Satisfactory CPO with no statutory challenge having been lodged, or in the event that a statutory challenge has been lodged the deadline shall be extended to 28 days after the final disposal of that challenge (and of any associated appeals) leaving in place a Satisfactory CPO;
- (ii) if the only unsatisfied Primary Condition in respect of a Phase is the Primary Viability Condition (together with, in such circumstances only, the Board Approval Condition), then the relevant deadline above shall be extended to the date which is one year after the date on which each of the Planning Condition, the Site Assembly Condition and the Highways Condition have all been satisfied and remain satisfied in respect of that Phase. During that period, the Primary Viability Condition will be re-tested as often as the Developer considers prudent but no less frequently than every six months;
 - (iii) the relevant deadline above shall be extended in the circumstances set out in Clause 10.3.3.

Such termination shall not affect the continued operation of this agreement in relation to such Phase(s) in respect of which the Unconditional Date has either been achieved or not yet been achieved and this agreement shall continue in full force and effect in relation to such Phase(s).

- 27.2** If prior to the Unconditional Date for any Phase the Developer commits any material breach of this agreement or the CPO Deed or series of minor breaches which taken together amount to a material breach, and fails to remedy such material breach or series of breaches within a reasonable period after receiving notice from the Council specifying the breach or series of breaches, or the Developer or the Guarantor becomes Insolvent, then in any such case the Council may at any time thereafter (but in respect of a remediable breach only whilst such breach remains unremedied) by notice terminate this agreement in respect of such Phase, but subject to the terms of Clause 27.5 and/or Clause 27.6.
- 27.3** If prior to the Unconditional Date for any Phase the Council commits any material breach of this agreement or the CPO Deed or series of minor breaches which when taken together amount to a material breach, and fails to remedy such material breach, or series of breaches, within a reasonable period after receiving notice from the Developer specifying the breach, or series of breaches, then in any such case, the Developer may at any time thereafter (but in respect of a remediable breach only whilst such breach remains unremedied) by notice terminate this agreement with immediate effect) either in respect of the whole of this agreement or the relevant Phase(s) only (as the case may be in light of the relevant breach, or series of breaches committed by the Council).
- 27.4** Any termination of this agreement shall:
- 27.4.1** be without prejudice to any claim which any party may have against another arising before the date of determination; and
 - 27.4.2** not affect the continuing effect of any provisions of this agreement which are expressly stated to apply after the determination of this agreement, and such provisions shall continue in effect until such time as all the obligations of the parties pursuant to such provisions have been complied with.
- 27.5** For the protection of any Funder, any notice by the Council to the Developer notifying the Council's intention to terminate this agreement (either as a whole or in relation to any Phase, but only where the Funder is providing finance or funding in relation to that element of the Development) shall also be served at the same time upon a Funder. A Funder shall, if the Council serves notice of its intention to terminate this agreement, be entitled, within a period of 40 Working Days from the date of the Council's notice, itself to enter into, or direct a nominee (subject to the financial standing of such nominee (together with any guarantor of such nominee) first being approved by the Council, whose approval shall not be unreasonably withheld) to enter into, a deed of covenant with the Council to comply with the outstanding obligations of the Developer under this agreement. Such deed of covenant shall be in such form as the Council may reasonably require.

- 27.6** If a Funder (or its nominee) fails to enter such deed of covenant, the Council may after terminating this agreement (either as a whole or in relation to any Phase, as the case may be) exercise its step-in rights under the Building Contract and Professional Team appointments with a view to completing that element of the Works. The Council and all persons properly authorised by the Council and their agents, servants and workmen shall be entitled to enter and remain on the Site as the Developer's licensee for the purpose of exercising such rights and carrying out and completing the relevant works. The Developer shall enter into such reasonable deeds of assignment, deeds of novation or other arrangements in respect of the construction documentation entered into by the Developer in respect of that element of the Works to which the termination relates as the Council may properly require in order to enable the Council to carry out and complete the Works.
- 27.7** If the Council serves notice of a breach pursuant to Clause 27.2 and that breach of obligation does not directly relate to any other Phase then any termination of this agreement as a result of such breach:
- 27.7.1** shall only terminate this agreement insofar as it relates to the relevant Phase; and
 - 27.7.2** shall not terminate this agreement insofar as it relates to any other Phases or any other obligations of the parties.
- 27.8** If the Council terminates this agreement in respect of Rodney Road Phase and/or Heygate Phase, the Developer shall transfer to the Council all intellectual property rights vested in it which are relevant to the element terminated (including but not limited to the drawings and design detail relating to the Masterplan).
- 27.9** In the event that there is a court challenge regarding the validity of this agreement then:
- 27.9.1** the dates in Clause 27.1 shall be extended by the period such proceedings remain on foot; and
 - 27.9.2** the Developer may (in its absolute discretion) suspend performance of its obligations under this agreement pending the successful resolution of such proceedings.
- 27.10** If this agreement is terminated in respect of the Shopping Centre Phase and any land or any interest within the Shopping Centre Phase is held by the Council which was funded by the Developer pursuant to the CPO Deed then such land or interest shall be (at the Developer's option) either:
- 27.10.1** transferred by the Council at nil consideration to the Developer within 10 Working Days of the date of the termination of this agreement in respect of the Shopping Centre Phase, such transfer to be free of any obligations under this agreement; or
 - 27.10.2** retained by the Council but the Council shall within 20 Working Days of the date of the

termination reimburse the Developer the sums paid under the CPO Deed in respect of the acquisition of the relevant land and/or interest.

27.11 The Council shall be entitled by serving 10 Working Days written notice on the Developer to terminate this agreement in respect of the relevant Phase so long as such notice is served within 30 Working Days of becoming aware of:

27.11.1 any Investment Vehicle to which this agreement has been assigned or novated in respect of a Plot or Phase, ceasing to satisfy the requirements of an Investment Vehicle; or

27.11.2 a sale of share capital or voting rights in the Developer in breach of Clause 24.9.1;

but only if the Developer has by the expiry of such notice failed to remedy such breach and subject to the terms of Clause 27.5 and/or Clause 27.6.

28 Contracts (Rights of Third Parties) Act 1999

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

29 Value Added Tax

29.1 References in this agreement to any payment or other consideration, sum or amount shall be construed as being expressed exclusive of VAT. If any payment under this agreement constitutes the consideration for a taxable supply for VAT purposes, then in addition to that payment the payer shall pay any VAT due, upon receipt of a valid VAT invoice.

29.2 Where under the terms of this agreement one party is liable to indemnify or reimburse another party in respect of any fees, costs, charges or expenses, the payment shall include an amount equal to any VAT thereon not otherwise recoverable by the other party, subject to that party using all reasonable endeavours to recover such amount of VAT as may be practicable, whether by way of credit or repayment under sections 25 and 26 or section 33 of the Value Added Tax Act 1994, including by exercising an option to tax in respect of all or any part of the Site, or otherwise.

29.3 In respect of the Council Land and the Third Party Interests acquired by it, the Council shall exercise its option to tax in respect such property prior to the Council making any supply in respect of such property after the date of this agreement and the Council shall within five Working Days of exercising each such option notify the Developer.

30 Interest

All sums payable pursuant to this agreement which are not paid on the due date for payment shall bear interest at the Interest Rate from the date on which payment was due until the date of actual payment.

31 Approvals and Authorisations

31.1 The Council shall from time to time notify to the Developer in writing of the names of the duly authorised officers and employees of the Council who are from time to time authorised to discharge the functions, rights, powers and duties of the Council under this agreement (including giving any approvals, consents, agreements, acknowledgements or authorisations) and the Developer shall be entitled to rely upon such notification as constituting sufficient authority for all or any of such officers and employees of the Council for all purposes of this agreement and of the authority of all or any of such officers and employees to exercise all or any of the said functions, rights powers and duties provided for in this agreement.

31.2 As at the date of this agreement, the officers and employees of the Council notified for the purposes of this Clause are:

31.2.1 Deputy Chief Executive;

31.2.2 Strategic Director of Regeneration & Neighbourhoods;

31.2.3 Head of Property.

32 Meetings and Consultation

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

32.2 In respect of the Scheme, the Developer shall organise and the parties shall hold a project progress meeting as often as shall be required (each party acting reasonably) to review all matters relating to the Scheme including the satisfaction of the Conditions, strategic issues, programme and costs matters.

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

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

32.5 The Developer shall on reasonable request from the Council and from time to time during the Development make presentations to the Liaison Groups and the local community.

33 Confidentiality

- 33.1** Each party undertakes with the other to keep secret and confidential any discussions or negotiations with regard to this agreement.
- 33.2** In consideration of either party agreeing to make Confidential Information available to the other party, the recipient party shall:
- 33.2.1** keep the Confidential Information secret and confidential and not disclose any of it to any person other than individuals who are directors or employees of it or (if applicable) of its Group Companies or directors, partners or employees of its advisers;
 - 33.2.2** only use the Confidential Information for the sole purpose of considering, evaluating, advising on or furthering this agreement and not for any other purpose;
 - 33.2.3** keep the Confidential Information and any copies of it secure and in such a way as to prevent unauthorised access by any third party;
 - 33.2.4** not make any copies of the Confidential Information or reproduce it in any form except for the purpose of supplying the same to those to whom disclosure is permitted in accordance with this agreement; and
 - 33.2.5** inform the other party immediately if it becomes aware that Confidential Information has been disclosed to or come to the knowledge of an unauthorised third party.
- 33.3** Either party shall, at its expense, within seven days of termination of this agreement:
- 33.3.1** return all written Confidential Information provided to it or its advisers pursuant to this agreement without keeping any copies;
 - 33.3.2** so far as it is practicable to do so (but, in any event, without prejudice to the obligations of confidentiality contained in this agreement), expunge any Confidential Information from any computer, word processor or other device in its possession or under its custody and control.
- 33.4** Clauses 33.1 and 33.2 shall not prevent disclosure:
- 33.4.1** to the extent necessary to comply with any legal obligation or legal requirement (including in the case of the Council pursuant to the FOI Act or the EIR Regulations);

- 33.4.2** to the extent necessary to comply with any requirements of any relevant stock exchange or other regulatory, governmental or official body;
 - 33.4.3** to HM Revenue & Customs or any other governmental, public or official body for taxation, rating or registration purposes;
 - 33.4.4** by way of a joint press announcement previously agreed by the parties.
- 33.5** In the event that the Council receives a request to disclose any Confidential Information to a third party under the FOI Act or the EIR Regulations, the Council shall:
 - 33.5.1** inform the Developer about the request and the nature of the information being sought as soon as reasonably possible;
 - 33.5.2** consult with the Developer prior to the disclosure of any such information; and
 - 33.5.3** consider and apply all lawful exemptions provided under the FOI Act and the EIR Regulations to withhold information sought in terms of the request for information consistent with the exercise of its discretion and duties under the FOI Act and the EIR Regulations.
- 33.6** The provisions of this Clause 33 shall continue to apply notwithstanding any termination of this agreement.

Part B

34 Part B and the Secondary Conditions

- 34.1** This Part B of this agreement and Schedule 5 to this agreement (except paragraphs 2, 3 and 7 thereof) shall only come into effect in respect of any Phase on the Unconditional Date for that Phase.
- 34.2** In relation to each Building within a Phase in respect of which the Unconditional Date has been achieved, the parties shall use all reasonable endeavours to satisfy each of the Secondary Conditions as soon as reasonably practicable having regard to the Programme, and shall enter into discussions with all relevant third parties including but not limited to building contractors, funders, RSLs and potential occupiers required for the Development of any Building to be commenced PROVIDED ALWAYS that the Developer shall not be obliged to incur any cost in satisfying the Secondary Conditions in respect of any Building unless the Developer believes that the relevant Phase is viable and remains viable at that point in time.

- 34.3** Notwithstanding the provisions of Clause 34.2 above, the Developer shall test the Building Viability Model for the potential development of the first Building on any Phase in accordance with the Programme as soon as practicable after the relevant Completion Date and shall repeat the test on a quarterly basis in relation to that first Building.
- 34.4** The Developer may in its absolute discretion at any time in relation to any Building within a Phase in respect of which the Unconditional Date has been achieved, waive any of the Secondary Conditions in respect of that Building, by serving notice on the Council to that effect, whereupon the relevant Secondary Condition(s) shall be deemed satisfied. Even after waiver, the provisions of Clauses 36.3 and 36.6 shall continue to apply.

35 Secondary Viability Condition

- 35.1** The Project Cash Flow and Building Viability Model for the relevant Building shall take into account and budget for (inter alia) any issues which might adversely prejudice or prevent the cost-effective delivery of the development of that Building including (without limitation):
- 35.1.1** the availability and cost of Acceptable Funding which the Developer (acting reasonably) believes would apply to the delivery of such Building;
 - 35.1.2** the cost of any properly anticipated or demanded works or financial contributions required in respect of the Building (either in whole or part) towards rail or tube infrastructure (whether paid to Network Rail, TfL, London Underground or any other entity) (for the sake of the inputs in the Building Viability Model, so far as practically possible, such costs to be apportioned on a floor area basis or other such fair basis as may be appropriate in the circumstances between the Buildings);
 - 35.1.3** subject to Clause 10.2, the infrastructure, infrastructure services and other utilities properly required in respect of the Building and the cost, timetable and certainty of delivery of such items including, in the case of the provision of the MUSCO Services by the Council, costs in respect of fall-back or standby services required or alternative expenditure in order to ensure the Building achieves its required carbon efficiency requirements, should MUSCO Services fail to be provided on time or to the standard required (for the sake of the inputs in the Building Viability Model, so far as practically

possible, such costs to be apportioned on a floor area basis or other such fair basis as may be appropriate in the circumstances between the Buildings)

- 35.1.4 the environmental and ground conditions;
- 35.1.5 the Annual Business Plan;
- 35.1.6 reasonable contingencies including up to 10 per cent. on Construction Costs and 10 per cent. on total Development Costs (as those terms are defined in Schedule 5) as well as reasonable allowances for inflation;
- 35.1.7 the mix of Affordable Housing and private housing PROVIDED THAT for the sake of inputs in the Building Viability Model so far as is practically possible the mix of Affordable Housing and private housing is to be allocated across the Buildings in the relevant Phase in accordance with the required amount of Affordable Housing in the relevant Planning Permission or Planning Obligation (the “**Required Amount**”) PROVIDED FURTHER THAT:

- (i) a Building in a Plot may contain more or less than the Required Amount but in that event the mix of Affordable Housing and private housing in subsequent Buildings within that Plot shall be adjusted accordingly; and
- (ii) no individual Plot shall contain less than the Required Amount save that if a Plot contains more than the Required Amount, the mix of Affordable Housing and private housing in subsequent Plots shall be adjusted downwards accordingly; and

- 35.1.8 any condition imposed by a Planning Permission or required in any Planning Obligation which might adversely prejudice or prevent the practical or financial viability of the Scheme.

35.2 In order to satisfy the Secondary Viability Condition in relation to any Building, the Developer must be satisfied that having considered (a) the matters set out in Clause 35.1 and (b) (without limitation) all other matters which might adversely prejudice or prevent the practical or financial viability of the development of the Building the Developer (in its absolute discretion) believes the development of the Building is viable.

35.3 Upon being satisfied of such viability, the Developer shall notify the Council accordingly.

35.4 This Secondary Viability Condition must continue to be satisfied at the date on which all of the other Secondary Conditions have been satisfied, so that the Secondary Viability Condition is always the last Secondary Condition to be satisfied.

36 Funding Condition

- 36.1** The Funding Condition in respect of any Building shall be satisfied when the Developer has secured Acceptable Funding for the development of that Building.
- 36.2** The Developer shall use reasonable endeavours to agree terms for and enter into necessary documents to secure Acceptable Funding for the development of a Building as soon as reasonably practicable having regard to the Programme.
- 36.3** When the Developer decides to seek funding for the development of a Building, it shall notify the Council of:
- 36.3.1** the nature and structure of the proposed funding;
 - 36.3.2** the terms and amount of the funding being sought; and
 - 36.3.3** the identities of potential Funders being approached.
- 36.4** The Developer shall keep the Council updated with material progress in securing funding.
- 36.5** Promptly upon securing Acceptable Funding for the development of a Building, the Developer shall notify the Council setting out the nature and structure of the Acceptable Funding, the terms and amount of Acceptable Funding and the identities of Funders providing such Acceptable Funding.
- 36.6** For the purposes of this Clause 36, the Developer shall provide evidence to the Council, acting reasonably, that the Acceptable Funding is adequate to enable the construction of the Building to be practically completed once the construction has commenced.
- 36.7** The Developer shall keep the Council fully apprised of its progress in obtaining Acceptable Funding and shall notify the Council immediately if it becomes aware of any difficulty in obtaining Acceptable Funding. If the Developer has difficulty obtaining Acceptable Funding it agrees to take due regard of any proposals for Acceptable Funding notified to it by the Council.

37 Building Contract

- 37.1** The Developer shall consult with the Council in respect of the appointment of the Building Contractor and the Developer shall make available all material documentation it receives in respect of such proposed appointment. The Developer shall not be required to obtain the Council's approval to the terms of appointment of any Building Contractor unless those terms are not on an arm's length open market basis for developments of a similar nature in which case the Council's approval shall be required but it shall not be unreasonably withheld.
- 37.2** The Council acknowledges that the Developer may enter into separate Building Contracts for discrete elements of the Scheme or separate Buildings or Plots or Phases in the Developer's absolute discretion and that such Building Contracts will not all be entered into at the same time.

- 37.3** The Developer shall appoint the Building Contractor for any Building or Plot or Phase as soon as reasonably practicable in the context of the Programme.
- 37.4** The Developer shall not without the prior written consent of the Council, which shall not be unreasonably withheld:
- 37.4.1** vary the terms of or waive its rights under any Building Contract or the appointment of any member of the Professional Team in a way which adversely affects (other than to a minimal degree) the Council's rights under its Warranty or Third Party Rights; or
 - 37.4.2** release or discharge any Building Contractor or member of the Professional Team from their respective obligations under the relevant Building Contract or appointment in a way which adversely affects (other than to a minimal degree) the Council's rights under its Warranty or Third Party Rights.
- 37.5** The Developer shall not terminate any Building Contract or the appointment of any member of the Professional Team (other than for material breach or Insolvency of the Building Contractor or relevant consultant, when the Council's consent shall not be required but notice of termination shall be given to the Council as soon as reasonably possible) but if any Building Contract or appointment shall be terminated, the Developer shall as soon as reasonably practicable appoint a substitute Building Contractor or consultant (as applicable) in accordance with the provisions of this agreement and shall procure a fresh Warranty or Third Party Rights from the substitute Building Contractor or consultant (as applicable).
- 37.6** Upon the Building Contract being entered into the Developer shall within 10 Working Days provide to the Council's Surveyor a certified true copy of it including any material drawings and specifications and financial information attached to it.
- 37.7** The Developer shall procure that each Building Contract and appointment for the Professional Team contains provisions requiring the Building Contractor or member of the Professional Team (as the case maybe) to novate the relevant Building Contract or appointment (as applicable) to the Council (or to an alternative developer nominated by the Council if the Council so requires) where the Council is entitled to step in and take over the Building Contract and appointments under this agreement, subject always to a priority step-in right for any Funder (or its nominee).

38 Warranties/Third Party Rights

- 38.1** Prior to the commencement of each part of the Works on a Phase the Developer shall procure that there is provided to the Council a Warranty from the Employer's Representative in respect of such part of the Works.
- 38.2** The Developer shall procure that a duly executed form of Warranty is provided to the Council in respect of the appointment of each member of the Professional Team and each Building Contractor within 21 days of the relevant appointment or Building Contract being entered into.

- 38.3** The Developer shall use all reasonable endeavours to procure that a duly executed form of Warranty is provided to the Council in respect of the appointment of each Design Sub-Contractor of a material part of the Works within 21 days of the relevant sub-contract being entered into.
- 38.4** Wherever it is provided in this agreement that the Developer shall procure a Warranty in favour of the Council, the Developer may as an alternative to procuring such Warranty instead procure that the terms of the relevant sub-contract with a Design Sub-Contractor and/or the relevant Professional Team appointment and/or the Building Contract, shall contain Third Party Rights giving the Council the right as a third party to enforce the terms of the relevant sub-contract and/or Professional Team appointment and/or Building Contract under the Contracts (Right of Third Parties) Act 1999.
- 38.5** The Developer shall procure that where Third Party Rights are being utilised pursuant to Clause 38.4 in respect of a Building Contract or Professional Team appointment, notice is given to the relevant members of the Professional Team and/or Building Contractor of the Council's interest within 21 days of the relevant Building Contract or Professional Team appointment being entered into. The Developer shall use reasonable endeavours to procure the same in relation to Design Sub-Contractors.

39 The Development of the Scheme

39.1 The Developer is not obliged to commence development of any Building except the first Building on Heygate Phase in accordance with Clause 39.2. The Council acknowledges that the Development of each Phase is currently intended to progress on a Building by Building basis as set out in the Programme, but in any event no development can commence until both the Unconditional Date has been achieved in respect of the relevant Phase and the Secondary Conditions have been achieved or waived in accordance with this agreement in respect of the relevant Building on such Phase. Where the Developer undertakes any Works, the Developer shall comply with the obligations set out in Schedule 2 and in respect of any Residential Units also Schedule 3.

39.2 Once:

39.2.1 the Primary Conditions have been satisfied in respect of Heygate Phase; and

39.2.2 the First Building Conditions and Secondary Conditions have been satisfied (or waived in accordance with this agreement) in respect of the first Building within Heygate Phase

(the "**First Building Trigger Date**"), the Developer shall use all reasonable endeavours to procure that (subject to the Heygate Headlease being granted and the First Building Conditions and the Secondary Conditions for such Building remaining satisfied (or waived in accordance with this agreement) at the date of commencement of such first Building) the development of such first Building on Heygate Phase commences by not later than the date 9 months after the First Building Trigger Date and that practical completion of such first Building is achieved by no later than the date 3 years after the First Building Trigger Date.

39.3 The Developer shall be entitled to claim extensions of time for the commencement and/or practical completion of the first Building on Heygate Phase equal to:

39.3.1 periods which arise from any delay which may be allowed to the Building Contractor for such Building pursuant to the provisions of the Building Contract and certified by the Employer's Representative (but excluding any such extensions of time which result from some wrongful act or omission or default on the part of the Developer);

39.3.2 such other reasonable periods as are certified by the Employer's Representative, acting properly, and result from any delay on the part of, or which is caused by, any other reason beyond the reasonable control of the Developer;

39.3.3 such other reasonable periods which result from:

- (i) any delay on the part of, or which is caused by, a delay in the Council providing information or an approval or consent required of it pursuant to and in the timescale set out in this agreement where all necessary information for the providing of such information or giving of such approval or consent has been provided to the Council; or
- (ii) any breach by the Council of any of its obligations in this agreement which would have the effect of delaying the carrying out of any part of the Works; or
- (iii) the Insolvency of a Buyer and/or its building contractor, or the Insolvency of a Building Contractor or any member of the Professional Team; or
- (iv) any referral to an Expert for determination pursuant to Clause 20 which would have the effect of delaying the carrying out of any part of the Works but only where the Expert has made a determination in favour of the Developer in respect of such dispute;

any extensions granted pursuant to this Clause shall be such period as shall be agreed between the parties acting reasonably or if they cannot agree then determined by the Expert.

39.4 The Developer shall not be permitted to commence development on a further Plot within Heygate Phase where construction works have already started on three earlier Plots within Heygate Phase and the development of any such Plot has not yet reached the Date of Practical Completion in relation to the whole of the Works on such Plot (but ignoring for these purposes any parts of such Plots which have been sold to a Buyer in accordance with Clause 15). The parties' intention is that no more than three Plots within Heygate Phase in respect of which construction has started, are incomplete at any one time (but ignoring any parts sold to a Buyer in accordance

with Clause 15). The Council acknowledges that the Developer may nonetheless construct infrastructure between or servicing Plots without restriction.

40 Practical Completion of the Scheme

- 40.1** Within 5 Working Days of each Date of Practical Completion the Developer shall procure that a certified copy of the Certificate of Practical Completion is served upon the Council.
- 40.2** Notwithstanding the issue of any Certificate of Practical Completion the Developer shall procure the carrying out of any Snagging Works in accordance with its obligations under this agreement as soon as reasonably practicable.

41 Defects Liability

- 41.1** The Developer shall procure that any defects, omissions, shrinkages or other faults, which shall appear in the Works or any part or parts of them during performance of any Works, at practical completion or within the relevant Defects Liability Period, are made good in accordance with the relevant Building Contract and the provisions of this agreement as soon as reasonably practicable.
- 41.2** The Developer shall procure that the Employer's Representative issues each Certificate of Making Good Defects in accordance with the relevant Building Contract and that within 5 Working Days of the issue of each one a certified copy is served on the Council.

42 Site Visits and Inspection

- 42.1** The Developer shall keep the Council and the Council's Surveyor informed as to the progress of the Works on any Phase.
- 42.2** The Developer shall permit the Council and the Council's Surveyor and other consultants at all reasonable times to enter on to the Site to view the progress of the Works. Such entry shall be subject to the provisions of Clause 42.3.
- 42.3** Any entry onto the Site in accordance with this Clause 42 shall be subject to:
- 42.3.1** reasonable prior notice being given to the Developer;
 - 42.3.2** the persons so entering being accompanied by a representative of the Developer if the Developer shall so reasonably require in which event the Developer shall procure that a representative is made available for such purpose;
 - 42.3.3** the persons entering onto the Site reporting to the site office before making any inspection and acting in accordance with the reasonable instructions of the Developer and the Building Contractor; and

42.3.4 the Council indemnifying the Developer for the proper cost of remedying any damage caused by the Council during such entry.

42.4 The Council and the Council's Surveyor shall not interfere with the Development nor attempt to instruct or instruct any persons employed upon or in connection with the Development.

42.5 Any representations which the Council or the Council's Surveyor wish to make in relation to the Works shall be made to the Developer as soon as practicable and the Developer shall give due consideration to any such representations so made.

42.6 Notwithstanding any viewing of the progress of the Works or non-exercise of such right by the Council, the Council shall not be liable to the Developer in contract or in tort (including without limitation negligence) in respect of any defect in the Works and the Developer shall not be relieved or excused from any liability or responsibility hereunder purely by virtue of such viewing or right to view by the Council.

43 Construction Industry Scheme

This Clause 43 relates to the Construction Industry Scheme, provided for by Chapter 3 Part 3 FA 2004:

43.1 in this Clause 43 (but not otherwise):

43.1.1 "FA 2004" means the Finance Act 2004; and

43.1.2 "Regulations" means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

43.2 the Developer shall comply with chapter 3 Part 3 FA 2004 and the Regulations (in so far as Chapter 3 Part 3 FA 2004 and the Regulations apply to any rights or obligations of the parties under this agreement);

43.3 in the event of any conflict between this Clause 43 and any other term of this agreement, the provisions of this Clause 43 shall prevail.

44 Insurance

44.1 From the date on which Works commence on any Phase until the relevant Date of Practical Completion, the Developer shall procure that the Works are insured in accordance with the relevant Building Contract in an amount not less than their full reinstatement cost plus an appropriate allowance for demolition and the removal of debris and for professional fees against such risks as may from time to time be usually covered by a contractor's all risks policy. In the event of damage or destruction of the Works by any of the risks insured against the Developer shall use all reasonable endeavours to procure that the insurance money is laid out and used in rebuilding and making good the loss or damage in accordance with the provisions of this agreement.

44.2 The Developer shall from time to time as and when reasonably requested by the Council provide written evidence of all such insurance.

45 Miscellaneous

45.1 The Council and the Developer hereby agree and declare that:

45.1.1 this agreement does not constitute a partnership between them;

45.1.2 neither party is an agent (express implied) of the other for any purpose and no party shall have authority to execute any deed or complete any agreement on behalf of the parties and shall have no authority to bind the parties nor shall it hold itself out to a third party as having such authority.

45.2 This agreement incorporates the Standard Commercial Property Conditions (Second Edition) (the "**SCP Conditions**"). In case of conflict between this agreement and the SCP Conditions, this agreement prevails. The following SCP Conditions shall not apply: 1.3.3, 1.3.5(a), 1.3.5(c), 1.3.7(d), 1.3.7(e), 2.2, 2.3, 3.1.2, 3.3, 6.2.1, 6.3.2 and 6.3.3.

45.3 SCP Condition 1.1.1(c) shall be amended to read: "clearing bank' means a corporate member of CHAPS Clearing Company Limited". SCP Condition 6.2.2 shall be amended by the omission of the reference to SCP Condition 6.2.1. SCP Condition 6.3.4 shall be amended by the omission in line 2 of the reference to SCP Condition 6.3.2. SCP Condition 8.1.1 shall be amended such that the initial words "Completion date is twenty working days after the date of the contract" are replaced by "The completion date is the date defined in the contract". The remainder of SCP Condition 8.1.1 shall remain unchanged. SCP Condition 4.1.5 shall be amended such that the word "future" shall be inserted after the words "against all" in this condition.

45.4 The Developer shall take the Site and each and every part thereof in its present condition and acknowledges that the Council does not give any warranty in relation to the suitability of the Site for the Development (in particular in relation to its physical suitability, the presence of any archaeological items or unexploded ordnance) or in relation to whether or not a Satisfactory Planning Permission will be granted for each Phase of the Development. Without prejudice to the foregoing, the Council does not warrant that any existing walls, structures, buildings, basements, voids, cellars, drainage or foundations or any other conditions at the Site of which the Developer makes use in connection with the Works are fit for the purpose for which the Developer intends to use them or for any practical purpose. Any such usage will be at the Developer's own risk.

46 Matters Affecting the Headleases

46.1 Each Headlease shall be granted subject to and with the benefit of such of the following as may apply:

46.1.1 all local land charges (whether registered or not before the date of this agreement) and all matters capable of registration as a local land charge or otherwise registrable by any

competent authority or pursuant to statute or like instrument;

- 46.1.2 all notices served and orders, demands, proposals or requirements made by any local or other public or competent authority whether before or after the date of this agreement;
- 46.1.3 all actual or proposed charges, notices, orders, restrictions, agreements, conditions or other matters arising under any enactment relating to town and country planning;
- 46.1.4 all existing rights and easements and quasi-easements;
- 46.1.5 any unregistered interests which override registered dispositions under Schedule 1 of the Land Registration Act 2002 (the “**2002 Act**”) and any interests which fall within Section 12(4)(d) of the 2002 Act and any unregistered interests which override registered dispositions under Schedule 3 of the 2002 Act;
- 46.1.6 such unregistered interests as may affect the Council Land to the extent and for so long as they are preserved by the transitional provisions of Schedule 12 of the 2002 Act;
- 46.1.7 subject to Appropriation or compulsory purchase pursuant to Clause 5 of this agreement and/or the CPO Deed, the matters contained, mentioned or referred to in the documents referred to in the Land Registry property and charges registers for the Council Land as at the dates of the official entries and the title plans set out in Schedule 4; and
- 46.1.8 all matters disclosed or reasonably and properly expected to be disclosed by searches and enquiries, either formal or informal, by or for the Developer or which a prudent buyer ought to make.

47 Headleases

- 47.1 Each Headlease shall be in the relevant form at annexure 10 together with such amendments as the parties shall agree, acting reasonably, and which shall take account of the design development of the Scheme as proposed to be built.
- 47.2 At least 30 Working Days before the anticipated date of grant of each Headlease:

47.2.1 the parties shall consult and shall use all reasonable endeavours to agree as soon as reasonably practicable thereafter any necessary amendments to the form of Headlease; and

47.2.2 the Developer shall prepare and shall submit to the Council for its approval, which shall not be unreasonably withheld, an up-to-date demise plan (which complies with the requirements of the Land Registry) for use as the demise plan for relevant the Headlease together with up-to-date versions of such other plans as are necessary for the purposes of such Headlease and the parties shall at their own cost (and for the Developer this shall be a Development Cost) use all reasonable endeavours to agree such plans as soon as reasonably practicable.

47.3 The term of each Headlease shall be 999 years from and including the Unconditional Date for the relevant Phase triggering the grant of such Headlease (save for Heygate Phase where it shall be the date ascertained under Clause 48.1.2).

47.4 The principal rent of each Headlease shall be one peppercorn per annum (if demanded) and the tenant of each Headlease shall be obliged to pay to the Council 50% of the amount of any ground rents received (net of costs) as set out in the relevant Headlease.

47.5 If the parties are unable to agree the terms of any amendments required in respect of any Headlease or the plans for them, the matter shall be referred for determination pursuant to Clause 20.

47.6 Subject to determination of the terms of the Headlease, and the relevant plans the Council shall procure that the Council's Solicitors produce engrossments of the Headlease in original and counterpart format and provide the counterparts to the Developer's Solicitors at least 15 Working Days prior to the anticipated Completion Date.

47.7 Notwithstanding any other provisions of this agreement the Developer shall be entitled to nominate to the Council in writing at least 20 Working Days before the anticipated date of grant of each Headlease a Group Company or Investment Vehicle or Funder or the relevant Buyer of land comprised within that Headlease, to accept the grant of the relevant Headlease in place of the Developer on the Completion Date.

48 Completion of the Headleases, Subleases and Legal Charges

48.1 On the date 5 Working Days after:

48.1.1 the Unconditional Date being achieved in respect of:

- (i) Rodney Road Phase, the Rodney Road Headlease shall be granted; and/or

- (ii) Shopping Centre Phase, the Shopping Centre Headlease shall be granted; and/or

48.1.2 the Unconditional Date for Heygate Phase being achieved and the satisfaction (or waiver by the Developer in accordance with this agreement) of the First Building Conditions and Secondary Conditions for the first Building on Heygate Phase, the Heygate Headlease shall be granted;

and in each case the Council shall grant and the Developer (or the party nominated by it pursuant to Clause 47.7) shall accept the grant of the relevant Headlease.

48.2 At the same time as the relevant Headlease is completed:

48.2.1 in respect of Rodney Road Headlease, the Developer shall pay to the Council the Rodney Road Headlease Premium on completion of Rodney Road Headlease;

48.2.2 in respect of Heygate Headlease, the Developer shall pay the Heygate Headlease Premium as follows:

- (i) on the later of (a) 31 March 2013 and (b) the date on which Heygate Headlease is completed, the sum of FIVE MILLION POUNDS (£5,000,000) plus VAT (if any);
- (ii) on the first anniversary of the date on which payment is made pursuant to paragraph (i) above, the sum of TEN MILLION POUNDS (£10,000,000) plus VAT (if any);
- (iii) on the first anniversary of the date on which payment is made pursuant to paragraph (ii) above, the sum of TEN MILLION POUNDS (£10,000,000) plus VAT (if any);
- (iv) on the later of (a) 31 March 2018 and (b) the Date of Construction Commencement on the sixth Plot to be constructed within Heygate Phase, the sum of TEN MILLION POUNDS (£10,000,000) plus VAT (if any);
- (v) on the later of (a) 31 March 2019 and (b) the Date of Construction Commencement on the seventh Plot to be constructed within Heygate Phase, the sum of FIVE MILLION POUNDS (£5,000,000) plus VAT (if any);
- (vi) on the later of (a) 31 March 2020 and (b) the Date of Construction Commencement on the eighth Plot to be constructed within Heygate Phase, the sum of SIX MILLION POUNDS (£6,000,000) plus VAT (if any).

48.3 The parties acknowledge that there will be no premium for the grant of the Shopping Centre Headlease.

- 48.4** Vacant possession of all the land comprised within a Headlease will be given at completion of the grant of that Headlease.
- 48.5** All completions of the Headleases pursuant to this agreement shall take place at the offices of the Council's Solicitors or elsewhere as they may reasonably direct and all completions shall take place on or before 2.00 pm on the relevant date.
- 48.6** Immediately after Heygate Headlease is granted, the Developer shall grant to:
- 48.6.1** a wholly-owned Group Company or Group Companies a separate Sublease of each of Plots 6, 7 and 8 (with such amendments as the Developer may reasonably require to take account of the design development of the Scheme as proposed to be built) and the Developer shall procure that those Group Companies shall immediately after the grant of such Subleases complete a Legal Charge in order to secure the Developer's obligations in Clause 48.2.2 (iv), (v) and (vi) above; and
 - 48.6.2** the Council, and the Council shall enter into and accept, the Option. With a view to no other matter being registered against the Heygate Headlease in priority to the Option, the Developer shall apply to the Land Registry to register the Option against the title to the Heygate Headlease at the same time it applies for first registration of the Heygate Headlease.
- 48.7** The Council hereby confirms that it shall promptly release its Legal Charges over any or all of the Subleases of Plots 6, 7 and 8 (as the case may be or any other Subleases of Plots substituted for them in accordance with this Clause) if:
- 48.7.1** the Developer proposes to grant a Legal Charge over the Sublease of a substitute Plot of no lesser value approved by the Council (such approval not to be unreasonably withheld) provided that such substitute Legal Charge is completed at the same time as the Council's release; or
 - 48.7.2** the Developer pays to the Council the relevant sum due under Clause 48.2.2(iv), (v) or (vi) above (each such payment releasing one Plot Sublease chosen by the Developer); or
 - 48.7.3** Lend Lease Corporation Limited enters into a deed of guarantee in favour of the Council which guarantees payment of the relevant sum due under Clause 48.2.2(iv), (v) or (vi) above (a guarantee of each payment

releasing one Plot Sublease chosen by the Developer), such guarantee being in substantially the same form as the Second Deed of Guarantee (mutatis mutandis).

49 Shopping Centre

- 49.1** At an appropriate time, having regard to the Programme, the Developer shall use reasonable endeavours to agree open market terms with the owner of the Shopping Centre in respect of either:
- 49.1.1** the acquisition and subsequent development of the Shopping Centre as part of the Shopping Centre Phase of the Scheme; or
 - 49.1.2** such other arrangement, agreement or joint venture as may be desirable to enable the development of the Shopping Centre Phase as a viable part of the Scheme.
- 49.2** The Developer shall on a quarterly basis keep the Council and the Management Board informed as to its progress in any such discussions pursuant to Clause 49.1 and provide the Council with copies of all material correspondence or documentation recording such discussions on reasonable request.
- 49.3** In reaching any such agreement under Clause 49.1 the parties shall work together to agree a plan in line with the Masterplan which shall govern the development of the Shopping Centre as part of the Shopping Centre Phase.

50 Guarantee

- 50.1** The Developer shall procure that:
- 50.1.1** immediately after the exchange of this agreement, Lend Lease Corporation Limited shall enter into the First Deed of Guarantee and promptly thereafter a legal opinion is given in respect of such First Deed of Guarantee;
 - 50.1.2** immediately after the completion of Heygate Headlease, Lend Lease Corporation Limited shall enter into the Second Deed of Guarantee and promptly thereafter a legal opinion is given in respect of such Second Deed of Guarantee;
 - 50.1.3** immediately after the expiry of 20 Working Days from the date of the Developer's notice to the Council pursuant to Clause 3.1 of the CPO Deed, Lend Lease Corporation Limited shall enter into the Third Deed of Guarantee and promptly thereafter a legal opinion is

given in respect of such Third Deed of Guarantee; and

50.1.4 immediately after the date of submission by the Developer of an Application pursuant to Schedule 1 for a scheme which is capable of triggering the payment of Planning Overage pursuant to paragraph 5 of Schedule 5, Lend Lease Corporation Limited shall enter into the Fourth Deed of Guarantee and promptly thereafter a legal opinion is given in respect of such Fourth Deed of Guarantee.

50.2 The legal opinions to be given pursuant to Clause 50.1 shall be in the form attached at annexure 14 subject to such amendments as the opining lawyers or Lend Lease Corporation Limited request to reflect changes in practice, law or fact subject always to the Council's approval not to be unreasonably withheld unless the amendments would materially prejudice the Council's protection under such legal opinion.

Delivered as a deed on the date of this document.

Schedule 1 Planning Permission

1 General

The provisions of this Schedule shall apply to all applications for planning permission in relation to any Phase(s) pursuant to this agreement.

2 Definitions

In this Schedule, unless the context otherwise requires:

“**Appeal**” means all or any of the following in relation to the Application:

- (i) an appeal to the Secretary of State under section 78 of the Planning Act;
- (ii) an application under Section 73 of the Planning Act for planning permission without complying with one or more conditions subject to which a Planning Permission has previously been granted;
- (iii) a Call-In;

and the expression “**to Appeal**” shall be construed accordingly;

“**Appeal Test**” means the percentage possibility of an Appeal resulting in the grant of a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) being 65 per cent or greater;

“**Application**” means any one or more application for planning permission for the Development (in whole or part) to be made by or on behalf of the Developer pursuant to this Schedule, and includes any subsequent, modified or substituted application made in accordance with this Schedule;

“**Call-In**” means a direction by the Secretary of State that the Application be referred to him for determination under Section 77 of the Planning Act;

“**Council’s Onerous Condition**” means any Onerous Condition which falls within any sub-paragraph of paragraph 4.2;

“**Deemed Refusal**” means failure by the Local Planning Authority to give notice in response to the Application within the prescribed time period or any extended period agreed by the Developer, thereby entitling the Developer to Appeal under section 78(2) of the Planning Act;

“**Department**” means the Department for Communities and Local Government and includes any successor department having responsibility for town and country planning matters;

“**Developer’s Onerous Condition**” means any Onerous Condition which falls within any of the sub-paragraphs of paragraph 4.1;

“**Local Planning Authority**” means the competent planning authority for the area in which the site is situated;

“Onerous Condition” means any condition imposed by a Planning Permission or required in any Planning Obligation which falls within any of the sub-paragraphs of paragraph 4;

“Planning Act” means the Town and Country Planning Act 1990;

“Planning Counsel” means such suitably experienced leading counsel of not less than 10 years standing specialising in planning law as shall be agreed between the parties or, in default of agreement, be appointed on the application of either party by the Chairman (or next senior available officer) of the Bar Council;

“Planning Obligation” means an agreement or enforceable obligation in respect of or affecting the Property (whether or not affecting other property) made pursuant to Section 106 of the Planning Act;

“Planning Permission” means a written notice either by the Local Planning Authority or by the Secretary of State granting in respect of the Application, an outline planning permission in respect of (as the case may be):

- (i) Rodney Road Phase; or
- (ii) Heygate Phase; or
- (iii) the Shopping Centre Phase;

“Proceedings” means all or any of the following:

- (i) any reconsideration by the Local Planning Authority or the Secretary of State of any matter remitted following the quashing of any Planning Permission or Refusal pursuant to any application within the subsequent paragraphs of this definition;
- (ii) any application for judicial review arising from a resolution by the Local Planning Authority to grant a Planning Permission, the grant of a Planning Permission or a Refusal;
- (iii) any application under section 288 of the Planning Act arising from the grant of a Planning Permission or a Refusal;
- (iv) any other application or appeal to a court, tribunal, duly authorised party or other appropriate forum in respect of any decision relating to or consequent upon the Application;
- (v) an appeal or legal challenge against any Planning Obligation and/or Road Closure Order;

any includes in each case any appeal to a higher court following the judgement of a lower court;

“Refusal” means in relation to the Application:

- (i) refusal by the Local Planning Authority, or by the Secretary of State on Appeal, to grant a Planning Permission; or
- (ii) a Deemed Refusal; or
- (iii) grant of a Planning Permission which is or is determined to be subject to any Onerous Condition;

“Satisfactory Outline Permission” means a Planning Permission which, together with any related Statutory Agreement, is not subject to any Onerous Condition and which has become immune from challenge in accordance with paragraph 3;

“Satisfactory Planning Permission” means a Planning Permission which, together with any related Statutory Agreement, is not subject to any Onerous Condition and which has become immune from challenge in accordance with paragraph 3;

“Statutory Agreement” means a Planning Obligation or Highways Agreement or any other agreement or enforceable obligation in respect of or affecting the Development (either in whole or part, whether or not affecting other property) pursuant to Section 98 and/or 104 of the Water Industry Act 1991 or any statutory provision to similar intent or any agreement with a water authority or other appropriate authority as to water supply or drainage of surface and/or foul water from the Development (in whole or part) or any agreement with any competent authority or body relating to other services or works which may properly be required in order to facilitate the Development.

3 Permission immune from challenge

A Planning Permission shall be deemed to have become immune from challenge for the purposes of this agreement when:

- 3.1** in every case, the period of three months since its grant shall have expired without any Proceedings being commenced in respect of it; or
- 3.2** in a case where any such Proceedings are commenced, the Proceedings shall have been finally disposed of leaving a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) in place.

4 Onerous Conditions

4.1 A Developer’s Onerous Condition is one which contains an obligation or restriction of any one or more of the following kinds:

4.1.1 it fails to satisfy:

- (i) in the case of an Onerous Condition which is a planning condition, the tests for appropriateness of planning conditions set out in Department of Environment Circular 11/95 (or any successor circular, policy or guidance document issued by the Secretary of State); or
- (ii) in the case of an Onerous Condition which is a planning obligation, the tests for appropriateness of planning obligations set out in ODPM Circular 05/05 (or any successor circular, policy or guidance document issued by the Secretary of State) or the tests referred to in regulation 122(2) of the Community Infrastructure Regulations 2010;

4.1.2 it makes any aspect of the planning permission personal to the Developer or a specific third party (other than the owners and occupiers of Affordable Housing);

4.1.3 it would be (in the reasonable opinion of a prudent developer experienced in development schemes of similar size and scope) sufficiently restrictive or onerous so as to be materially detrimental to the Scheme;

- 4.1.4 it requires the carrying out of works (other than those works set out in the Application) which (in the reasonable opinion of a prudent developer experienced in development schemes of similar size and scope) are unreasonable or excessive in all the circumstances;
 - 4.1.5 it imposes a requirement which cannot be observed or fulfilled without the agreement of a public authority, services provider or landowner which agreement cannot be obtained on reasonable terms or at a reasonable cost or within a reasonable timescale having regard to the Programme;
 - 4.1.6 it would prevent the Development Requirements being achieved.
- 4.2 A Council's Onerous Condition is one which would prevent the Development Requirements being achieved.

5 Application for Planning Permission

- 5.1 Subject to paragraph 5.3 the Developer shall, at its own expense, submit the Application and use its reasonable endeavours to obtain a Satisfactory Outline Permission in respect of each of Rodney Road Phase, Heygate Phase and the Shopping Centre Phase as soon as reasonably practicable having regard to the Programme. The initial Applications shall comprise:
- 5.1.1 in respect of Rodney Road Phase, an application for outline planning permission;
 - 5.1.2 in respect of Heygate Phase, an application for outline planning permission; and
 - 5.1.3 in respect of the Shopping Centre Phase, an application for outline planning permission;
- but the Council acknowledges each such application may not be submitted at the same time. Each application shall include the Affordable Housing Requirement insofar as any Affordable Housing is comprised within that application. The Developer shall in respect of the application which includes the Plot on the Site which is intended to be developed first, submit with the application for outline planning permission full details to enable full planning permission to be granted in respect the Buildings on such first Plot. The Management Board will review from time to time the strategy for obtaining such planning permissions.
- 5.2 The Developer shall enter into such discussions and negotiations with the Local Planning Authority, all statutory and other relevant consultees and the local community, both before and after submission of the Application, as may be reasonably required in order to obtain a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) in respect of each Phase.
- 5.3 The Developer shall use all reasonable endeavours to negotiate any Statutory Agreement which is required in order for a Satisfactory Planning Permission to be granted.
- 5.4 The Developer shall:
- 5.4.1 not submit the Application without first obtaining the written approval of the Council (not to be unreasonably withheld but the Council must act in the best

interests of the Development) to the Application and all material associated drawings, specifications and other supporting material;

- 5.4.2 submit the Application to the Local Planning Authority as soon as reasonably practicable having regard to the Programme;
- 5.4.3 not amend, withdraw or resubmit the Application or submit a substitute Application or submit any further drawings, specifications or other information or materials in respect of the Application without the prior approval of the Council which shall not be unreasonably withheld but the Council must act in the best interests of the Development;
- 5.4.4 supply the Council with a copy of the Application and of any amended, re-submitted or substitute Application, together with all material associated drawings, specifications and other supporting material,

PROVIDED ALWAYS that in making submission to the Council for approval pursuant to this paragraph 5 if the Developer has provided all information reasonably necessary to enable the Council to consider such submission and the Council fails to give a reasoned response to the Developer's submission within a reasonable time following receipt of such submission which shall be not less than 20 Working Days after receipt, then the Developer shall be entitled to serve notice on the Deputy Chief Executive of the Council stating that the Council has failed to respond to such submission and requiring a reasoned response within a further period of 10 Working Days, following which such approval shall be deemed to have been given if no further reasoned response is received by the Developer.

- 5.5 At the same time as submitting the Application to the Council the Developer shall submit to the Council the latest Appraisal and Project Cash Flow in respect of the Phase comprised within the Application, together with material assumptions, inputs and costs together with reasonable supporting evidence.

6 Mutual obligations

- 6.1 Until a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) has been obtained (or the earlier termination of this agreement) in respect of a Phase the Council shall:
 - 6.1.1 at the reasonable request of the Developer do all acts and things reasonably necessary in its capacity as landowner to support the Developer in making and pursuing the Application and/or any Appeal and/or taking or defending any Proceedings (such costs being part of the Council Costs Contribution);
 - 6.1.2 at the reasonable request of the Developer (and the Developer shall) enter into any Statutory Agreement which is reasonably necessary to ensure that a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) is granted in respect of such Phase(s) and on such reasonable terms as the Developer may require but so that:
 - (i) any such Statutory Agreement must contain provisions to the effect that any obligations of the Council as landowner under it shall be conditional on or shall not fall to be complied with until the Planning Permission is granted and the development authorised by the

Planning permission is commenced in accordance with section 56(1) of the Planning Act; and

- (ii) any such Statutory Agreement does not contain a Developer's Onerous Condition or a Council's Onerous Condition.

6.2 The Council in its capacity as landowner shall not, except as may be required under paragraph 6.1:

- 6.2.1** submit any application to the Local Planning Authority for planning permission in respect of the Site or any part of it with or without other property;
- 6.2.2** object to the Local Planning Authority, the local highway authority, the Secretary of State or any court in respect of, or otherwise challenge or oppose, the Application or any Appeal or any Planning Permission;
- 6.2.3** do anything which might reasonably be considered likely to prejudice the chances of obtaining a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) in respect of any Phase;
- 6.2.4** enter into any Statutory Agreement in respect of the Site or any part of it with or without any other property;
- 6.2.5** following the grant of a Planning Permission in respect of any Phase(s) implement such Planning Permission or submit any details for approval pursuant to any condition of such Planning Permission;
- 6.2.6** assist, encourage or promote any third party to do anything which the Council as landowner is itself prohibited from doing under this paragraph.

6.3 The Council (in its capacity as landowner) shall at the Developer's request make representations to the Local Planning Authority upon any local development framework document or planning policy document (whether in draft or not) for the area in which the Site is located in each case acting in the best interests of the Development.

6.4 It is acknowledged by the parties that in the event that the Local Planning Authority introduces a Community Infrastructure Levy (being a tax tariff or charge pursuant to regulations enabled by the Planning Act 2008 or any subsequent associated or relevant legislation to fund the delivery of infrastructure) which may apply to the Development then (if necessary) the parties will consider the appropriateness of varying any Planning Obligation (and in so doing shall have regard to the impact on the viability of the Development of any potential changes in the level of contributions sought by the Local Planning Authority).

7 Approval of Reserved Matters

Once an outline planning permission has been granted in respect of a Phase which, together with any related Statutory Agreement is not subject to any Onerous Condition and which has become immune from challenge in accordance with paragraph 4, the Developer shall submit applications for approval of reserved matters in accordance with the timeline set out in the Programme and otherwise in accordance with Clause 4.4 and this Schedule PROVIDED ALWAYS that the Developer shall not be obliged to incur any cost in obtaining approval of such reserved matters in respect of any

Building unless the Developer believes that the relevant Phase is viable and remains viable at that point.

8 Notification of Planning Decisions and of Onerous Conditions

8.1 The Developer shall:

8.1.1 provide to the Council within 10 Working Days of receipt a copy of any notice constituting a Planning Permission, Refusal, Call-In or other decision in relation to the Application or any other Appeal or Proceedings in respect of any Phase;

8.1.2 give notice to the Council within 10 Working Days of receipt of a Planning Permission specifying any condition it considers to be a Developer's Onerous Condition.

8.2 The Developer shall be deemed to accept that the Planning Permission is free from any Developer's Onerous Condition, if it has not served notice in accordance with paragraph 8.1.2.

8.3 Within 10 Working Days of receipt of a copy of any Planning Permission the Council shall give notice to the Developer specifying any condition it considers to be a Council's Onerous Condition, and the Council shall be deemed to accept that the Planning Permission is free from any Council's Onerous Condition if it has not served notice in accordance with this paragraph.

8.4 Each party shall be deemed to accept that any condition notified to it as an Onerous Condition under paragraph 8.1.2 or 8.3 as the case may be is an Onerous Condition unless such party gives written counter-notice to the other within 10 Working Days of receipt of such notification requiring the question of whether or not such condition is an Onerous Condition to be determined under Clause 20.

9 Information and Consultation

The Developer shall, in relation to the Application, any Appeal and any Proceedings in respect of any Phase:

9.1 keep the Council fully informed of progress and of any relevant meetings, discussions or negotiations with the Local Planning Authority and any other relevant person;

9.2 give reasonable prior notice to the Council of the dates of any hearings or inquiries or for the submission of any documents or information;

9.3 provide the Council with copies of all material correspondence, notifications, drawings, proofs of evidence, statistical material, instructions to Counsel, Counsel's Opinions and other material documents and information as the Council may reasonably require; and

9.4 allow the Council and its professional advisers to attend at all relevant meetings and conferences with Counsel.

10 Appeal

- 10.1** If the Application is subject to a Refusal or Call-In the Developer shall institute and prosecute an Appeal if the Appeal Test is satisfied subject always to the limit on Developer's expenditure set out in Clause 3.3.
- 10.2** Should the Developer prosecute an Appeal under the provisions of this paragraph the Developer shall, subject to paragraph 10.3:
- 10.2.1** act expeditiously, taking all requisite steps within the time prescribed by law;
 - 10.2.2** conduct its part in the Appeal proceedings in a good and efficient manner;
 - 10.2.3** use its reasonable endeavours to secure that the appeal results in the grant of a Satisfactory Planning Permission or Satisfactory Outline Permission (as the case may be) for the relevant Phase.
- 10.3** The Developer shall not be obliged to institute or prosecute an Appeal if the Appeal Test is not satisfied, and for this purpose:
- 10.3.1** either party may require that the question of whether or not the Appeal Test is satisfied be determined by Planning Counsel;
 - 10.3.2** the party so requiring the determination shall instruct Planning Counsel at the expense of the Developer (such costs and expenses being Development Costs) but shall obtain the prior written approval (not to be unreasonably withheld or delayed) of the other party to the form of such instructions and any supplementary instructions and shall require Planning Counsel to give his written opinion on whether the Appeal satisfies the Appeal Test within 10 Working Days following receipt of instructions;
 - 10.3.3** the other party and its solicitor and any retained planning consultants shall be entitled to attend any conference with Planning Counsel and will be provided with a copy of Planning Counsel's written opinion promptly following receipt;
 - 10.3.4** if in the written opinion of Planning Counsel the Appeal Test is satisfied the Developer shall institute and prosecute the Appeal.
- 10.4** Notwithstanding anything else in this agreement, the Developer shall not be obliged to Appeal (or to seek Planning Counsel's opinion as to an Appeal) if the Developer does not believe the relevant Phase is viable in accordance with the Phase Viability Condition. If the Council seeks Planning Counsel's opinion or prosecutes an Appeal itself in such circumstances, such costs and expenses will not be borne by the Developer.

11 Dispute Resolution

Any disputes arising under this Schedule shall be determined by an Expert pursuant to Clause 20.

Schedule 2

Development Obligations

1 General

Without prejudice to Clause 39, where the Developer carries out any element of the Works, the provisions of this Schedule shall apply to such Works.

2 Consents

- 2.1** The Developer shall make application for and use all reasonable endeavours to obtain the Consents or obtain lawful relaxations or waivers of them in each case having regard to the Programme.
- 2.2** The Developer shall keep the Council properly informed as to the progress of each application for the Consents and of all negotiations relating to those applications and shall provide to the Council copies of all applications, material correspondence and notes of meetings relating to those applications and negotiations.
- 2.3** The Developer shall use all commercially prudent endeavours to procure that all necessary Consents remain valid and unrevoked and shall renew any that expire.

3 The Development

- 3.1** Subject to Clause 39, the Developer shall having regard to the Programme carry out and complete or procure the carrying out and completion of the relevant Works in accordance with the provisions of this schedule and, in relation to residential elements of the Scheme, the provisions of Schedule 3.
- 3.2** The Developer shall carry out or procure the carrying out of the Works with due diligence and in accordance with:
- 3.2.1** the Consents;
 - 3.2.2** the Programme and the Construction Phasing Plan;
 - 3.2.3** the Masterplan;
 - 3.2.4** all statutory requirements;
 - 3.2.5** all relevant British Standards;
 - 3.2.6** the Considerate Constructors Scheme; and
 - 3.2.7** the terms of this agreement,
- in accordance with good building and design practice and in a good and workmanlike manner using suitable good quality materials.
- 3.3** The Developer shall not specify any of the Prohibited Materials in the Works and shall use all reasonable endeavours to procure that they are not used in the Works.
- 3.4** The Developer shall use all reasonable endeavours to procure that all Units for retail use achieve BREEAM "Excellent" rating (as such rating is defined at the date Satisfactory Outline Permission is obtained).

- 3.5** The Developer shall not permit the Building Contractor or any sub-contractor to utilise in the carrying out of the Works any goods materials substances or products not in accordance with relevant British Standards and Codes of Practice or otherwise generally known within the construction or engineering industries at the time of specification to be deleterious to health and safety or the durability of the Works and not in accordance with good building practices current at the time.
- 3.6** In respect of the CDM Regulations:
- 3.6.1** the Developer shall be the only “client” in respect of the Development and the Works in accordance with the CDM Regulations and shall appoint each Building Contractor as the principal contractor for the relevant part of the Works in accordance with the CDM Regulations;
- 3.6.2** the Developer shall give notice to the Health and Safety Executive in accordance with the requirements of the CDM Regulations of its appointment referred to at paragraph 3.6.1 and shall comply with its obligations as the only client under the CDM Regulations; and
- 3.6.3** the Developer shall use all reasonable endeavours to procure that designers and contractors for the purposes of the CDM Regulations comply with their obligations under them and shall procure that full details of the Works are given to the Health and Safety Executive and that a construction phase plan is prepared and submitted to the Health and Safety Executive all in accordance with the CDM Regulations.
- 3.7** During the carrying out of the Development the Developer shall procure that:
- 3.7.1** proper precautions are taken for the safety of all persons upon or in the vicinity of the Site and for arrangements of lighting the Works as may be necessary or appropriate in the interests of public safety;
- 3.7.2** the Works are carried out in a manner which does not cause any legal nuisance, injury, loss, contamination or danger to and which minimises the interference with the public or any owner or occupier of adjoining or neighbouring property;
- 3.7.3** proper provision is made for the support of land buildings and boundaries adjoining the Site and for the protection of all services benefitting land adjoining or near to the Site; and
- 3.7.4** no part of the Site is occupied by trespassers.
- 3.8** At all times during the carrying out of the Works the Developer shall use reasonable endeavours to procure that all Building Contractors and sub-contractors and the Professional Team shall commensurate with the carrying out of a major construction project, act in such manner as shall reasonably take account of the rights and comfort of all persons living or occupying or using premises adjoining or near to the Site.
- 3.9** The Developer shall use all reasonable endeavours not permit or omit anything to be done at the Site which may result in the release or deposit of any Hazardous Substance into the Environment or contaminate the Site (including any groundwater under the Site).

4 Planning Agreements

- 4.1** The Developer shall comply with all of its obligations in each of the Planning Obligations except insofar as they relate to the use and occupation of any part of the Development following practical completion.
- 4.2** The Council shall not do anything which may put the Developer in breach of its obligations in any Planning Obligation.
- 4.3** Any works to be undertaken pursuant to the terms of each Planning Obligation shall be undertaken in accordance with the terms of such Planning Obligation and otherwise in accordance with the requirements for undertaking the Works in accordance with this schedule.
- 4.4** Where any such Planning Obligation requires the completion of works by any party which are to be adopted by the Local Authority or Highways Authority (as applicable) the Developer shall use all reasonable endeavours to procure that such works are so adopted in accordance with the terms of such Planning Obligation.

5 Archaeological works

If any fossils, coins, relics or other articles or structures of historical, antiquarian or archaeological interest are found on the Site they shall be the property of the Council.

6 Hoardings

The Developer shall ensure that the Site is properly hoarded whilst any of the Works are being undertaken and shall supply the Management Board with any proposals for the graphics or design on such hoardings for its review.

7 Environmental Law

- 7.1** The Developer shall comply with all requirements of Environmental Law affecting the carrying out of the relevant Works on the Site and obtain all necessary permits, licences, consents, registrations, authorisations or exemptions from any relevant statutory authority which are required for such Works including for the production, storage, use, handling or disposal of any Hazardous Substances;
- 7.2** In carrying out the Works, the Developer shall take all necessary actions or precautions required by any notices or directions from any relevant statutory authority concerning any contamination of the Site or any migration or other escape of Hazardous Substances which may result in proceedings being taken or threatened under Environmental Law.

Schedule 3

Elements of Scheme which include Residential Units

1 General

Without prejudice to Clause 39, where the Developer carries out any element of the Works which comprise or include Residential Units, the provisions of this part of this Schedule shall apply (in addition to the obligations contained in Schedule 2).

2 NHBC

Throughout the development programme in respect of all Residential Units the Developer shall (or shall procure that the Buyer or the Building Contractor as the case may be shall):

- 2.1** be and remain on the register of the National House Building Council (“**NHBC**”) or be and remain a member of such alternative body or scheme and observe any conditions and rules of the NHBC or such other body or scheme as the case may be; and
- 2.2** be responsible for obtaining the current documentation of the NHBC scheme (or such other body or scheme) in respect of each Residential Unit constructed as part of the Scheme and for supplying them to the ultimate purchaser and shall comply with the directions and requirements of the NHBC or such other body or scheme from time to time applicable.

3 The Code for Sustainable Homes

The Developer shall use all reasonable endeavours to procure that each Residential Unit achieves a Design Stage Certificate and a Post Completion Certificate.

Schedule 4 Council Land

Property	Registered title Number	Tenure	Date of official entries and title plans
Land being Ashenden, Chearsley Claydon, Cuddington Marston and Risborough Deacon Way, London	TGL316673	Freehold	15.04.2010
Land being 1 to 87 Wingrave and 43 to 53 (odd) Rodney Road, London	SGL384379	Freehold	08.01.2010
Land being 137-149 (odd) Walworth Road, 1-228 Kings Hill and 1-110 Swanbourne Heygate Street, London	SGL384380	Freehold	16.03.2010
Land being 1,3 and 5 Ethel Street, 8-68 (even numbers) Wansey Street, London and land and buildings adjoining	SGL427098 (part of)	Freehold	12.02.2010
Land at Brandon Street, London	TGL242198	Freehold	18.01.2010
Land on the north west side of 43 Rodney Road, London	TGL314649	Freehold	03.02.2010
Land on the east side of 55 Wingrave, Balfour Street, London	TGL314876	Freehold	03.02.2010

Schedule 5 Development Account and Development Costs

1 Definitions

In this Schedule, the following words and expressions shall bear the following meanings:

“Accrued Development Costs” means Development Costs of Two Million Two Hundred Thousand Pounds (£2,200,000);

“Actual Development Costs” means all Development Costs actually incurred prior to any relevant date;

“Auditors” means KPMG or such other firm of accountants/auditors as may be appointed by the Developer on an independent basis from time to time the identity of which shall be approved by the Council (such approval not to be unreasonably withheld) and the terms of appointment for which shall include a duty of care to the Council;

“Construction Costs” means the total construction cost of the Works including (without limitation) associated professional team fees and expenses paid or incurred by the Developer calculated from day to day from the date of each payment (whether before or after the date of this agreement);

“Council Costs Contribution” means the sum of up to £225,000 exclusive of VAT per annum towards the Council’s costs incurred in the implementation of this agreement as referred to in Clause 3.1;

“Council Project Management Fee” means the Council’s costs incurred in the project management of Heygate Phase and/or the Shopping Centre Phase up to a maximum aggregate of £450,000 exclusive of VAT per annum as referred to in Clause 3.2;

“Developer’s Priority Return” means a 20 per cent priority return for the Developer on all Development Costs (except the Pre-Development Costs and Planning Overage and for the avoidance of doubt, no priority return shall be payable in respect of any costs incurred as a result of gross negligence on the part of the Developer in carrying out its obligations under this agreement);

“Development Account” means a full and proper accounting record of all Actual Development Costs and all Interim Development Income, to be maintained on an open book basis by the Developer in accordance with the terms of this Schedule;

“Development Costs” has the meaning set out in paragraph 8;

“Development Management Fee” means a development management fee as set out in the Project Cash Flow but which over the course of the Development the average fee shall not exceed a sum equivalent to 2.6 per cent of total Development Costs, such fee being due to the Developer quarterly in arrears for so long as Development Costs are incurred;

“First Participation Date” means in respect of Rodney Road Phase and Heygate Phase the date which is 12 calendar months after the date on which the Date of Practical Completion has been achieved in respect of both of those Phases as a whole (excluding any parts disposed of to Buyers in accordance with Clause 15) or, if

earlier, the date on which the parties, acting reasonably agree that Rodney Road Phase and Heygate Phase in aggregate produces a Profit Overage in excess of the Developer's Priority Return taking due account of the anticipated costs and expenditure as required in this Schedule;

"Gross Capital Value" means "Market Value" as defined by the RICS Appraisal and Valuation Standards Sixth Edition or such later version as may replace the same from time to time;

"Ground Rents" means the ground rents (which for the avoidance of doubt shall not include any premia or rack rent) from any leases of private residential units as such rents are defined in the relevant Headlease;

"Income Rents" means in any year, the sum of all reserved rents and licence fees (other than Ground Rents and any amounts in respect of or properly attributable to service charge, insurance payments or other outgoings) received in respect of all Units or other parts of the Site subject to a lease, tenancy or licence and all other income derived from the Site including car park income and advertising hoarding revenues;

"Interim Development Income" means:

- (a) all Income Rents;
- (b) all Permitted Part Sale Premiums and residential sales income (both private housing and Affordable Housing);
- (c) all other premiums, sale proceeds, claim proceeds and other receipts of a similar nature (including overage receipts) (but excluding, for the avoidance of doubt, forward funding, debt finance or equity receipts (including receipts from a sale of shares in the Developer) or borrowings used by the Developer to fund Development Costs);
- (d) any third party grants which are not repayable;

in each case derived from the Site and received by the Developer from the last day of the calendar month preceding the date of this agreement until the relevant Participation Date;

"Net Profit" has the meaning set out in paragraph 6.1;

"Net Realisation Value" means the sum of the Gross Capital Value less the Purchaser's Costs;

"Participation Date" means, in respect of Rodney Road Phase and Heygate Phase, the First Participation Date and, in respect of the Shopping Centre Phase, the Second Participation Date;

"Permitted Part Sale Premium" means the premium paid by a Buyer as consideration for the disposal by the Developer of a Permitted Part;

"Planning Overage" means the amount calculated in accordance with paragraph 5.1;

"Pre-Development Costs" means the element of Development Costs potentially reimbursed by the Council pursuant to Clause 3.3 in respect of those costs and expenses and liabilities set out in Clause 3.3(a) up to a maximum of £9,150,000 and

in respect of those costs expenses and liabilities set out in Clause 3.3(b) up to a maximum of £1,200,000;

“Profit Overage” means the amount payable to the Council and calculated in accordance with paragraph 6.2;

“Project Cash Flow” means a quarter by quarter record of Actual Development Costs (and, as at the relevant Participation Date, anticipated Development Costs (if any)) and Interim Development Income (and, as at the relevant Participation Date, anticipated capital receipts from the Site (if any)), as extracted from the Development Account, in each case in respect of the period from and including the last day of the calendar month preceding the date of this agreement to and including the relevant Participation Date, prepared on the following basis:

- (a) Accrued Development Costs will be accounted for on the last day of the calendar month preceding the date of this agreement;
- (b) Actual Development Costs and Interim Development Income will be assumed to have been incurred or received on the first day of the calendar month in which they are incurred or received;
- (c) any outstanding or anticipated Development Costs as at the relevant Participation Date will be assumed to have been incurred on the relevant Participation Date;
- (d) any outstanding or anticipated capital receipts from the Site will be assumed to have been received on the relevant Participation Date (which where relevant shall be calculated in accordance with the provisions of paragraph 3.6 of this Schedule);
- (e) the Net Realisation Value will be credited to the Project Cash Flow as at the relevant Participation Date; and
- (f) interest costs will be included;

provided always that notwithstanding that it may fall within one or more of the above categories, no receipt or payment shall be counted more than once;

“Project Cash Flow Aggregate” means the aggregate of the sums in the Project Cash Flow;

“Project Management Fee” means a project management fee as set out in the Project Cash Flow but which over the course of the Development the average fee shall not exceed a sum equivalent to 2.6 per cent of the total Construction Costs, such fee being due to the Developer quarterly in arrears for so long as Construction Costs are incurred;

“Purchaser’s Costs” means the normal valuation practice deductions from Gross Capital Value applicable at the relevant time reflecting a purchaser’s costs of acquisition;

“Rack Rental Value” the clear yearly open market rent at which the relevant Unit might reasonably be expected to be let by willing parties without a fine or premium for a term of 15 years (or such other term as may be appropriate in the market at the relevant time) on the assumption that:

- (a) the lessee pays, by way of a service charge, a fair proportion of the costs of managing and repairing the Scheme;
- (b) such rent is subject to review on such terms and at such frequency as is then reasonably obtainable in the then prevailing letting market;
- (c) the lessor has agreed to such fitting-out contributions, rent free period and other tenant inducements as are reasonably appropriate in the then prevailing letting market to obtain the best rent reasonably obtainable in that market; and
- (d) all rent free periods and reduced rent periods have expired;

“**SDLT**” means stamp duty land tax and any similar tax substituted for it or levied in addition to it;

“**Second Participation Date**” means in respect of the Shopping Centre Phase the date which is 12 calendar months after the Date of Practical Completion of the Shopping Centre Phase (excluding any parts disposed of to Buyers in accordance with Clause 15);

“**Site Assembly Costs**” means the aggregate costs, expenses, liabilities and other sums properly incurred by or on behalf of the Developer in connection with the assembly of the Site including (without limitation to the foregoing):

- (a) CPO Costs, CPO Compensation, CPO Third Party Payments (as those terms are defined in the CPO Deed) and all sums paid under the CPO Deed;
- (b) the price paid for acquiring an interest in or rights over or securing vacant possession of the Site and/or any other land relevant to the Development including (without limitation) relocation costs;
- (c) any overage or other additional consideration payable including for the avoidance of doubt any share of development profit (howsoever calculated) payable to third parties;
- (d) all costs and expenses incidental to the assembly of the Site or the acquisition of an interest in land including professional charges, fees and disbursements, SDLT and Land Registry fees.

2 Development Account

The Developer will:

- 2.1** as at the date of this agreement, open a separate Development Account in respect of each Phase together with a separate composite Development Account in respect of the whole Development, and debit to the accounts for Rodney Road Phase and Heygate Phase, the relevant amount of Accrued Development Costs (fairly apportioned between those two Phases);
- 2.2** from the date of this agreement, maintain the Development Accounts in a proper manner on an open book basis in accordance with current accounting standards and practices on the basis that Interim Development Income offsets Development Costs, and provide a copy of the current Development Account to the Council on reasonable prior written notice but in any event not more frequently than quarterly;
- 2.3** where Interim Development Income and/or Development Costs accrue in relation to:

- 2.3.1 more than one Phase, apportion such income and/or costs between such Phases in a fair and reasonable manner; and
 - 2.3.2 more than one Building within a Phase, apportion such income and/or costs between such Buildings in a fair and reasonable manner; and
- 2.4 procure that the Development Account is annually audited by the Auditors (acting on an independent basis) and the resulting audit report supplied to the Council.
- 2.5 The Developer shall make available for inspection by or for the Council and, following such inspection, promptly supply to the Council copies of all accounts (including without limitation the Development Accounts) invoices, bank statements, vouchers and other financial information reasonably requested by the Council relating to the calculation of the Development Costs and the Interim Development Income, copies of title or incoming producing documents, and any other information which the Council may reasonably require, including certified copies of all relevant deeds and documents relating to the Development.

3 Project Cash Flow and Appraisal and Escrow Undertaking

- 3.1 The Developer and the Council agree that the Project Cash Flow as at the date of this agreement forms part of Phase Viability Model annexed to this agreement.
- 3.2 It is agreed and acknowledged by the parties that the forms of Appraisal which are annexed to this agreement reflect the parties' best estimate and projections of expenditure and receipts anticipated in respect of the Development as at the date of this agreement.
- 3.3 The Developer will review the Appraisal as circumstances arise and will update the Appraisal to reflect:
 - 3.3.1 proposed changes to the Works if and to the extent that the proposed changes are permitted or required to be made under the terms of this agreement; and
 - 3.3.2 changes in circumstances other than those referred to in paragraph 3.3.1 if there are bona fide reasons for doing so.
- 3.4 Any changes to the Appraisal pursuant to paragraph 3.3.1 shall be notified to the Council quarterly. Each updated Appraisal shall highlight changes from the previously circulated Appraisal.
- 3.5 The Developer shall provide a copy of the Project Cash Flow to the Council quarterly, together with such calculations relating to the calculation of the Planning Overage and the Profit Overage as the Council may reasonably require.
- 3.6 Where the Developer has not, as at the relevant Participation Date, disposed of or let any one or more of the Buildings (whether or not actually built), then the following provisions shall apply:
 - 3.6.1 the parties will seek to agree the appropriate basis (whether disposal at a premium (either of individual completed Units or Residential Units or otherwise), or letting at Rack Rental Value, or other basis current and appropriate in the market at the time for such element of the Scheme) on which to determine the value at which the relevant proposed disposal or letting ought to be accounted for in the Project Cash Flow such value to be on a net

basis after deduction of any outstanding or anticipated Development Costs associated with such proposed disposal or letting including (without limitation) any infrastructure costs relevant to such Building (all such costs to be apportioned in accordance with paragraph 2.3 of this Schedule);

- 3.6.2 any dispute between the parties as to such treatment may be referred by either party for expert determination in accordance with the provisions of Clause 20 of this agreement;
- 3.6.3 the relevant treatment and value (as either agreed by the parties or determined by the Expert) shall, once determined, be reflected in the Project Cash Flow.

3.7 Notwithstanding anything else in this agreement:

- 3.7.1 any receipts or deemed receipts from a disposal of any interest in land to a wholly-owned Group Company of the Developer or the Guarantor in accordance with Clause 15;
- 3.7.2 the proceeds of any disposal of share capital and/or voting rights in the Developer in accordance with this agreement;

shall not form part of Interim Development Income and shall be disregarded for the purposes of calculating Profit Overage.

- 3.8 In the event of any inconsistency between the terms of this agreement and the worked example cashflow and financial appraisal annexed to this agreement, the terms of this agreement shall prevail.
- 3.9 On the date of this agreement the Developer and the Council shall (and the Council shall procure that the Council's Solicitors) duly execute the Escrow Undertaking Instruction Letter in sufficient counterparts to allow each signatory to retain an original counterpart signed by each of the other signatories.

4 Obligations of the Parties following the relevant Participation Date

- 4.1 As soon as reasonably practicable following the relevant Participation Date (but in any event within three months after the relevant Participation Date), the Developer will procure that:

- 4.1.1 the final Development Account; and
- 4.1.2 the final Project Cash Flow;

in each case as at the relevant Participation Date are prepared and submitted to the Council.

- 4.2 The Council and the Developer shall each use their respective reasonable endeavours to agree as soon as reasonably practicable:

- 4.2.1 any disputed matter in relation to the information and/or documents supplied by the Developer to the Council pursuant to paragraph 4.1; and
- 4.2.2 the Profit Overage;

and in the event of any dispute arising between the parties in relation to any such matter, the provisions of Clause 20 of this agreement shall apply.

5 Planning Overage

- 5.1 The Planning Overage for each Phase shall be calculated as follows:
- 5.1.1 in respect of Rodney Road Phase, £350 for each square metre of Gross External Area by which the aggregate permitted private residential development, retail development and office development described in the relevant Satisfactory Outline Permission exceeds 36,389 square metres;
 - 5.1.2 in respect of Heygate Phase, £317 for each square metre of Gross External Area by which the aggregate permitted private residential development, retail development and office development described in the relevant Satisfactory Outline Permission exceeds 296,761 square metres;
 - 5.1.3 in respect of the Shopping Centre Phase, £237 for each square metre of Gross External Area by which the aggregate permitted private residential development, retail development and office development described in the relevant Satisfactory Outline Permission exceeds 92,088 square metres.
- 5.2 The Developer shall pay the Planning Overage to the Council within 10 Working Days of the relevant Participation Date (but not any interest on such sum from the date of the grant of the relevant Satisfactory Outline Permission to the relevant Participation Date).

6 Profit Overage

- 6.1 The Net Profit for:
- 6.1.1 Rodney Road Phase and Heygate Phase in aggregate shall be calculated at the First Participation Date; and
 - 6.1.2 Shopping Centre Phase shall be calculated at the Second Participation Date, in each case as the result of the deduction of the relevant Development Costs from the relevant Interim Development Income after allowing for the Developer's Priority Return and the parties shall comply with paragraph 4 of this Schedule in respect of such calculations.
- 6.2 The Council shall be entitled to Profit Overage equal to 50 per cent of the Net Profit.
- 6.3 The Developer shall pay:
- 6.3.1 75 per cent. of the Profit Overage to the Council within 10 Working Days of the agreement or determination of the Profit Overage pursuant to paragraph 4.2 of this Schedule; and
 - 6.3.2 25 per cent. of the Profit Overage to the Council within 10 Working Days of the date 12 calendar months after the relevant Participation Date (the "**Retention Payment Date**") and in respect of such retention under this paragraph 6.3.2, subject to the Developer having received:
 - (i) the duly executed Escrow Undertaking Instruction Letter in accordance with paragraph 3.9;

(ii) an up to date notification from the Council's Solicitors that the escrow account (the "**Escrow Account**") has been opened in accordance with the terms of the Escrow Undertaking Instruction Letter; and

(iii) details of the Escrow Account to enable it to transfer the funds,

the Developer shall pay the same into the Escrow Account within 10 Working Days of the agreement or determination of the Profit Overage pursuant to paragraph 4.2 of this Schedule. At the Retention Payment Date the Developer shall if relevant, send the Council any revisions to the final Development Account and the final Project Cash Flow as at the relevant Participation Date and the provisions of paragraph 4.2 of this Schedule shall apply in respect of such revised calculation. Following the agreement or determination of the revised Profit Overage pursuant to paragraph 4.2 of this Schedule the Developer shall be entitled to reclaim from the Escrow Account a sum equal to the reduction of the Profit Overage arising from additional Development Costs which arise as a result of miscalculation or were otherwise unknown at the original calculation date (but having also allowed for any additional Interim Development Income which was received). Any withdrawals shall be in accordance with paragraph 6 of the Escrow Undertaking Instruction Letter. The balance (if any) shall be paid out of the Escrow Account to the Council on the Retention Payment Date.

6.4 Notwithstanding anything else in this agreement, the parties acknowledge that any subsequent recalculation of Profit Overage shall take into account any earlier payments of Profit Overage, such that there be no double-payment to the Council.

7 Disputes

Any dispute under this Schedule shall be settled further to the provisions of Clause 20 of this agreement.

8 Development Costs

"**Development Costs**" means the aggregate costs, expenses, liabilities and other sums properly and reasonably paid or payable or incurred (or anticipated to be incurred) by or on behalf of the Developer (including amounts anticipated to be incurred under this agreement after the relevant Participation Date) in connection with the preparation for, acquisition, holding, design, financing, development, marketing, letting or disposal of the Development both on-Site and off-Site and the carrying out and completion of the Works exclusive of any VAT (other than irrecoverable VAT as set out below) including (without limitation to the foregoing):

8.1 Accrued Development Costs including the Developer's legal fees in the negotiation and entry into this agreement;

8.2 the Council Costs Contribution and the Council Project Management Fee;

8.3 Site Assembly Costs;

8.4 the Rodney Road Headlease Premium, the Heygate Headlease Premium and the Planning Overage;

- 8.5** SDLT payable in respect of this agreement and the grant of the Headleases and Subleases and Land Registry fees in respect of the registration of the same;
- 8.6** the Project Management Fee;
- 8.7** the Development Management Fee;
- 8.8** the cost of all site preparation works, soil, site, archaeological and any other surveys, tests or investigations in connection with the Development including service diversion costs, local and other authority fees, environmental survey and remediation costs;
- 8.9** all costs in relation to the obtaining of any Consents (including the costs of any Proceedings or any Appeal, the fees of the relevant authority and entering into any agreement required to enable any Consent to be effectually granted) as may be necessary or desirable to commence, carry out, maintain and complete the Works and the cost of complying with the same;
- 8.10** the construction cost (including the costs of carrying out demolition, stripping out and site clearance works and the work of construction and refurbishment) and the costs of carrying out the Works including all costs paid to contractors, sub-contractors and suppliers;
- 8.11** sums paid or payable pursuant to any Planning Obligation, Highways Agreement or any other Statutory Agreement;
- 8.12** the fees of the Professional Team and any other consultant or professional appointed in connection with the preparation for, acquisition, holding, design, financing, development, marketing, letting or disposal of the Development;
- 8.13** the cost of letting and attempting to let Units, which shall include irrecoverable payments to and the cost of works for tenants (where not recoverable from the Tenants) including advertising, marketing and promotional costs and the proper and reasonable legal fees, agents' fees and commission in connection therewith and the external costs of abortive attempts to let Units;
- 8.14** surveyors' fees in connection with the matters referred to in this definition;
- 8.15** legal fees and agents' fees in connection with the matters referred to in this definition, including fees for abortive transactions, and in connection with the implementation of this agreement;
- 8.16** the cost of management, repair and maintenance of the Site or any other land required for the Development and any buildings on it including the purchase or leasing of equipment for the repair, maintenance, cleaning or security of the Development;
- 8.17** all costs under or in connection with any utility or other supply agreements (including without limitation any connection charges);
- 8.18** subject to Clause 10.2, all costs of providing MUSCO Services or alternative services or facilities or additional expenditure as a consequence of MUSCO Services not being available (whether to obtain required carbon efficiency requirements or to satisfy the Local Planning Authority or otherwise);
- 8.19** annual, recurring and capital outgoings, rates and taxes whether parliamentary, parochial or otherwise in respect of the Development and/or the Site or any part of it

(including any planning gain supplement or equivalent tax or liability) and any consultant or professional adviser's fees or costs in relation to such liabilities;

- 8.20** the cost of insurance of the Works and the Site and against public, third party and employer's liability and all other insurances effected by the Developer, as required or permitted under this agreement, including loss of rent insurance;
- 8.21** all costs in connection with the obtaining of warranty cover or defects insurance in respect of any part of the Development including (without limitation) any costs payable to the National House Building Council;
- 8.22** the costs relating to the conduct of negotiations with insurers in relation to any claims under the insurance of the Works and/or the Site;
- 8.23** any irrecoverable costs in or in connection with any proceedings, arbitration, expert determination, mediation or other disputes resolution undertaken or defended by the Developer in relation to a planning permission, the Site, the Works and the Development and otherwise of enforcing rights and remedies against the Building Contractors, the Professional Team and other professional advisers, the Buyer(s), tenants, licensees and other occupiers and any other third parties provided that this paragraph does not include any costs associated with any dispute between the Council and the Developer in respect of this agreement, the costs for which shall be borne as directed;
- 8.24** the cost of any contributions to fitting out costs or other incentive payments or allowances including lease take-backs, surrender fees, dilapidation payments and associated professional fees ("**Tenant Incentives**") for the letting of any Unit and the cost of reasonably anticipated Tenant Incentives for unlet Units;
- 8.25** the void costs properly attributable to any Unit in respect of outgoing, service charges, insurance premiums and the cost of maintaining such Units from their respective completion during the period prior to any such Unit becoming let;
- 8.26** the costs of audits and valuations pursuant to this agreement;
- 8.27** the cost of indemnifying the Council under this agreement save in so far as the indemnity arises as a result of breach or default by the Developer under the terms of this agreement;
- 8.28** the cost of promoting, marketing and advertising the Development;
- 8.29** all sums payable to any contractor or service provider whether on site or offsite in connection with the provision of mock ups, sample works, testing or any other like works related to the design and carrying out of the Development;
- 8.30** all costs in connection with the entering into and compliance with any sale agreements or forward funding agreements but not including the development costs incurred by any Buyer (save for any contribution or other inducement made by the Developer to the Buyer);
- 8.31** all sums paid to any third party in connection with the infringement by the carrying out of the Development of any rights or covenants which the Developer, the Council or any third party have the benefit of or are subject to, or the release or modification of such rights or covenants including costs of any agreement required to be completed

by any third party and the costs of negotiating, preparing and completing such agreements;

- 8.32** the costs payable to any third party of any party wall agreements, easements, rights of way, crane oversailing licences, archaeological surveys and investigations, facade oversailing, rights of light, accommodation works and improvement works required to carry out the Works;
- 8.33** the cost of rectifying any damage caused by an insured risk;
- 8.34** all fees costs and expenses (including interest) in connection with obtaining and the service of finance for the Development and the carrying out and completion of the Works including fees, costs and expenses of any adviser to any party providing such finance which are payable by the Developer;
- 8.35** all fees costs and expenses in connection with obtaining and keeping in place any financial security (including without limitation any guarantees or bonds or letters of credit) relating to the Development provided always that any fees charged to the Developer by Lend Lease Corporation Limited in respect of the First, Second, Third or Fourth Deeds of Guarantee shall not be Development Costs;
- 8.36** the Developer's cost of equity is to be charged at the finance rate at which the Developer can fund the Development (rolled up at the blended cost of senior and mezzanine debt available to the Developer at the relevant time, acting reasonably);
- 8.37** any other item of expenditure (or consideration in kind) in relation to the discharge by the Developer of its obligations under this agreement and/or the Works and/or the Development and/or the Site not specifically mentioned in the foregoing paragraphs;
- 8.38** any irrecoverable VAT in relation to any of the above items;

Provided that the following do not form Development Costs:

- (i) any capital repayment of equity funds, loans or other form of financing, any dividend or similar payments to holders of equity (ordinary or preferential) but any fees or charges incurred in relation to such financing or payment shall be Development Costs including commitment fees, arrangement fees, hedging and fixing costs;
- (ii) other than the Council Costs Contribution, the Council Project Management Fee and costs paid by the Developer pursuant to the CPO Deed, the internal overheads, expenses and salary charges expended by the Council on the Development;
- (iii) any element of Project Management Fee and/or Development Management Fee which accrues on any items of expenditure which are incurred as a result of:
 - (a) gross negligence on the part of the Developer in carrying out its obligations under this agreement; and
 - (b) Construction Costs incurred beyond those included in the relevant Building Viability Model at the point at which the Secondary Viability Condition is satisfied in relation to that Building unless such increase in costs is due to circumstances unforeseen at such time or which are otherwise incurred with a view to improving marketability or revenue or

which relate to a reasonable contingency (of not more than 10% of Construction Costs or 10% of total Development Costs) or reflect allowances for inflation (but all of such items of expenditure themselves shall be Development Costs);

And Further Provided that, notwithstanding that it may fall within one or more of the above categories, no item or cost shall be counted more than once.

**Schedule 6
Development Requirements**

Minimum Floorspace Targets	Rodney Road Phase	Heygate Phase	Shopping Centre Phase
Residential Floorspace GEA (sqm)	21,000	132,500	27,500
Retail Floorspace GEA (sqm)	0	15,000	9,000
Affordable Retail Floorspace GEA including potential health facility (sqm)	0	1,850	0
New Open Space created (sqm)	0	7,000	1,300

Affordable Housing

A minimum of 25 per cent Affordable Housing provision in aggregate on Rodney Road Phase and Heygate Phase together and 25 per cent Affordable Housing provision on the Shopping Centre Phase.

The COMMON SEAL of
**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF SOUTHWARK**



was hereunto affixed in the presence of:

Authorised Signatory [signature of
 Authorised
 Signatory]

[COMMON SEAL of THE
MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF
SOUTHWARK affixed here]

EXECUTED as a DEED by
**LEND LEASE (ELEPHANT & CASTLE)
LIMITED**
acting by a director and its secretary or two
directors:



Director

Director/Secretary

[signature of Dan Labbad]

[signature of Richard Cable]

Annexures

- 1** Masterplan
- 2** Phase Plan
- 3** Plot Plan
- 4** Construction Phasing Plan
- 5** Programme
- 6** Master Regeneration Plan
- 7** Form of Appraisal in respect of:
 - 7.1** Phase (CD Format) (Phase Viability Model and Project Cash Flow)
 - 7.2** Individual Building (CD Format) (Building Viability Model)
- 8** Plans
 - 8.1** Council Land
 - 8.2** Security Land
 - 8.3** Shopping Centre
- 9** Warranties or Third Party Rights for Council from:
 - 9.1** Building Contractor
 - 9.2** Professional Team
 - 9.3** Design Sub-Contractor
- 10** Headlease pro forma for each Phase
- 11** Sublease pro forma for Plots 6, 7 and 8
- 12** CPO Deed
- 13** Guarantees:
 - 13.1** First Deed of Guarantee
 - 13.2** Second Deed of Guarantee
 - 13.3** Third Deed of Guarantee
 - 13.4** Fourth Deed of Guarantee
- 14** Opinion Letter
- 15** Legal Charge pro forma for the Developer's Subtenant of Plots 6, 7 and 8
- 16** Option
- 17** Escrow Undertaking Instruction Letter