

Dated 28 November 2008

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON
- (2) CCURV LLP

Conditional Sale and Development Agreement

relating to a portfolio of properties in Croydon

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Annexures to this Agreement

1. Plans numbered 1 to 5
2. Enabling Deed
3. Financial Model for Development Works
4. Price Change Matrix

PARTICULARS

Date

B Loan

in respect of each Initial Development Property the sum set out in **Sections 1 to 5 of Schedule 1** as the B Loan amount attributable to each Initial Development Property (as such B Loan amount may be varied in accordance with the terms of this Agreement) and the term "**B Loan amount**" shall be construed accordingly

B Loan Interest

such interest as is payable by CCURV or any CCURV Subsidiary to the Council from time to time pursuant to **clause 4.1.4** of this Agreement, the Members' Agreement and pursuant to each relevant the B Loan Note Instrument (for the avoidance of doubt, from such time as B Loan Notes are issued to the Council)

B Loan Interest Rate

4.75%

B Loan Note Instrument

shall have the meaning ascribed to it in the Members' Agreement

B Loan Notes

shall have the meaning ascribed to it in the Members' Agreement

CCURV

CCURV LLP registration number OC341025 whose registered office is at Allington House 150 Allington Street Victoria London SW1E 5LB

CCURV's Solicitors

Such solicitors as CCURV notifies in writing from time to time to the Council.

Completion Date

the later of (i) twenty working days after the Unconditional Date and (ii) ten working days after the date of agreement or determination of the Relevant Transfer Value (pursuant to **Schedule 12**) in relation to the Relevant Initial Development Property (subject to the provisions of **paragraph 5 Schedule 2**) or such earlier or later date as the parties shall agree in writing

Conditional Period	the period for each Initial Development Property from and including the date of this Agreement to and including the earlier of the Long Stop Date and the Unconditional Date for the Relevant Initial Development Property and "Relevant Conditional Period" shall be construed accordingly.
Council	THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON whose address is Town Hall, Katharine Street, Croydon CR9 1XY which term shall include statutory successors thereof
Council A Loan	£[REDACTED] ([REDACTED] Pounds) being, in respect of each Initial Development Property, the aggregate of sums set out in Sections 1 to 5 of Schedule 1 as the Council A Loan amount attributable to each Initial Development Property and the term " Council A Loan amount " shall be construed accordingly
Council A Loan Interest	means the interest payable at the Council A Loan Interest Rate on the Council A Loan Interest Amount in accordance with this Agreement, the Members' Agreement and the Council A Loan Note Instrument
Council A Loan Interest Amount	Means $A \times B/C$ (B divided by C) Where: A is the Council A Loan; B is the Council A Loan less such sum as the JLPDC has advanced (disregarding for this purpose any repayment) in respect of its JLPDC A Loan Commitment from time to time, C is the aggregate JLPDC A Loan Commitment.
Council A Loan Interest Rate	such rate as payable on the Council A Loan Interest Amount in accordance with the Members' Agreement
Council A Loan Note Instrument	shall have the meaning ascribed to it in the Members' Agreement

Council A Loan Notes	shall have the meaning ascribed to this expression in the Members' Agreement
CCURV Subsidiary	shall have the meaning ascribed to this expression in the Members' Agreement
Davis House	shall have the meaning ascribed to it in the Members' Agreement
Davis House LLP	shall have the meaning ascribed to it in the Members' Agreement
Devco	John Laing (Croydon Development Company) LLP registered under registration number OC 341594 whose registered office is at Allington House 150 Allington Street Victoria London SW1E 5LB
Devco Guarantor	John Laing PLC (company number 01345670) whose registered office is at Allington House 150 Victoria Street London SW1E 5LB
Development	<p>the construction on the New Council Property of:</p> <ul style="list-style-type: none"> (a) a new head offices for the Council having an Internal Area of not less than 22,000 square metres; and (b) all ancillary service areas, access road, landscaping works and other facilities <p>more particularly described in the Outline Specification.</p>
Development Longstop Date	3 calendar years from the date of this Agreement (ie for satisfaction of the New Council Property Readiness for Development Criteria).
Initial Development Properties	the properties described in Sections 1 to 5 of Schedule 1 but not the New Council Property and "Relevant Section" and "Relevant Initial Development Property" shall be construed accordingly
Long Stop Date	the date specified in relation to the Relevant Initial Development Property and set out in Part 5 of the relevant Section of Schedule 1 or such later date as the Council may specify in writing

to CCURV (being a date not more than 10 years from the date of this Agreement)

New Council Property

The freehold property described in **Section 6** of **Schedule 1**.

JLPDC A Loan Commitment

£[REDACTED] ([REDACTED] Pounds) committed by JLPDC to CCURV pursuant to the terms of the Members' Agreement

JLPDC A Loan Notes

shall have the meaning ascribed to it in the Members' Agreement

Security Agreement (B Loan Notes) has the meaning ascribed to this expression in the Members' Agreement

THIS AGREEMENT is made on the date set out in the Particulars

BETWEEN

(1) the Council; and

(2) CCURV.

OPERATIVE PROVISIONS

1. INTERPRETATION

In this Agreement, the following words and expressions have the following meanings:

“Acceptable Planning Permission”

a planning permission for the development proposed by CCURV in accordance with the relevant Business Plan in a form approved by the members of CCURV acting reasonably

“Actual Completion”

actual completion of the sale and purchase of the Relevant Initial Development Property and **“Date of Actual Completion”** is to be interpreted accordingly

“Adverse Matters”

any change in the Development Works or any terms contained in a New Council Property Planning Permission, Planning Agreement or a Statutory Consent or any other agreement with a third party which would or may:

- (a) materially increase the cost of the Development by more than 10%; or
- (b) materially restrict the development prospects of adjoining Property; or
- (c) materially delay the Date of Practical Completion

“Appointment”

each of the deeds of appointment of the Professional Team to be entered into in accordance with **Part 1 of Schedule 4**

“Appointment Default”

the rescission of the Building Contract or any Appointment without the express written consent of the Council which shall not be unreasonably withheld or delayed or their

	determination due to the act or default of CCURV
"Architect"	such architect as CCURV or the Building Contractor appoints as the Architect for the Development Works in accordance with Part 1 of Schedule 4
"Building Contract"	the building contract or contracts for the carrying out of the Development Works to be entered into in accordance with Part 1 of Schedule 4 to be executed as a deed or deeds
"Building Contractor"	such building contractor as CCURV appoints as the building contractor for the purposes of the Development Works in accordance with Part 1 of Schedule 4 with the prior written consent of the Council such consent not to be unreasonably withheld or delayed
"Business Plan"	in relation to each Initial Development Property the business plan of CCURV and, as applicable, each relevant CCURV Subsidiary from time to time in relation to such Initial Development Property
"CCURV's Representative"	the person appointed by CCURV as the Employer's Agent
"CDM Co-ordinator"	such reputable and suitably qualified person appointed by CCURV as the CDM Co-ordinator for the Development Works in accordance with regulation 14(1) of the CDM Regulations
"CDM Regulations"	The Construction (Design and Management) Regulations 2007
"Certificate of Practical Completion"	the certificate or statement to be issued in accordance with the Building Contract certifying that Practical Completion has taken place
"Certificates of Title"	the Certificates of Title for each Initial Development Property prepared by the Council's solicitors for the purposes of this Agreement and dated no more than five

	working days before the date of this Agreement
"Commercial Conditions"	the Standard Commercial Property Conditions (Second Edition)
"Construction Phase Plan"	the construction phase plan to be prepared in respect of the Development Works under regulation 23 of the CDM Regulations
"Contract Rate"	3% per annum above the base lending rate from time to time of National Westminster Bank PLC
"Council's Representative"	Anthony Middleton, the Council's director of Regeneration and Infrastructure or such other suitably qualified person as the Council may appoint and notify in writing to CCURV
"Council's Solicitors"	Eversheds LLP of 1 Wood Street, London EC2V 7WS (Ref: NewstoD) or such other solicitors as the Council notifies in writing to CCURV
"Cost Indemnity Agreement"	the agreement entered into on 19 September 2008 between (1) the Council and (2) John Laing Projects & Developments (Holdings) Limited
"Date of Practical Completion"	the date certified in the Certificate of Practical Completion as the date of Practical Completion or otherwise determined as the date of Practical Completion in accordance with the terms of this Agreement
"Davis House Completion"	shall have the meaning ascribed to it in cause 23.1.2
"Davis House Completion Date"	shall have the meaning ascribed to "Completion Date" in the Davis House SPA
"Davis House Deposit"	shall have the meaning ascribed to it in cause 23.1.2
"Davis House SPA"	the agreement entered into on 19 September 2008 between (1) HXRUK (Davis House) Limited and (2) the Council for the acquisition

of Davis House

“Deemed Amount”

shall have the meaning ascribed to it in the Members’ Agreement;

“Development Plans”

the detailed plans, drawings, sections, elevations, specifications, priced bills of quantities, engineer’s drawings and calculations and other design and building details for the Development Works to be produced in accordance with **paragraph 1 of Schedule 5**

“Development Works”

the demolition of the existing buildings on the New Council Property and construction on the New Council Property of the Development and includes any works required pursuant to any Planning Agreement

“Employer’s Agent”

such person as CCURV appoints as the Employer’s Agent for the purposes of the Building Contract in accordance with **Part 1 of Schedule 4**

“Enabling Deed”

means a deed and Transfer in the form of the draft annexed as Annexure 2

“Event of Default”

the occurrence of one or more of the following events:

- (a) CCURV commits a material breach of this Agreement which cannot be remedied;
- (b) CCURV commits a material breach of this Agreement which is capable of being remedied and:
 - (i) does not begin diligently to remedy that breach within ten working days of written notice from the Council; and
 - (ii) does not remedy the breach within a reasonable period of time, to be specified in the

notice, to the reasonable satisfaction of the Council

“Force Majeure”

any one or more of the following:

- (a) fire
- (b) storm or other exceptionally adverse weather conditions;
- (c) war, hostilities, rebellion, insurrection, military or usurped power or civil war;
- (d) labour lockouts, strikes or other industrial disputes;
- (e) riot, terrorist action, commotion, disorder;
- (f) decree of government;
- (g) non-availability of labour, materials or equipment; or
- (h) any other causes or circumstances beyond the reasonable control of CCURV or the Building Contractor

“Funder”

any person who, from time to time, has entered into an arrangement with CCURV or with Devco or with a CCURV Subsidiary to provide funding for the Development Works and/or otherwise the development of an Initial Development Property

“Health and Safety Executive”

the Health and Safety Executive or any successor department or organisation having responsibility for the administration of the CDM Regulations

“Insolvency”

has the meaning given to it in **Schedule 9**

“Insured Risks”

the risks of:

- (a) fire, subterranean fire, lightning, storm, tempest, flood and explosion;

- (b) bursting or overflowing of water tanks, apparatus or pipes or the escape of water from any of them;
- (c) aircraft or other aerial devices or articles dropped or falling from any of them;
- (d) riot, terrorist action, civil commotion and malicious damage;
- (e) impact, earthquake, heave, landslip, subsidence

“Internal Area”

the net lettable area of the buildings to be constructed on the New Council Property pursuant to the Development Works measured in square metres in accordance with the Code of Measuring Practice (Sixth Edition RICS/ISVA 2007)

“JLPDC”

shall bear the meaning ascribed to it in the Member's Agreement

“Mechanical and Electrical Services Engineer”

such mechanical and electrical services engineer as CCURV or the Building Contractor appoints as the Mechanical and Electrical Services Engineer for the purposes of the Development Works in accordance with **Part 1 of Schedule 4**

“Members’ Agreement”

an agreement dated on or around the date of this Agreement and made between (1) the Council (2) JLPDC (3) Devco Guarantor and (4) CCURV

Mint Walk

the property at Mint Walk, Croydon, the subject of the Mint Walk Certificate

Mint Walk Certificate

the certificate of title in respect of Mint Walk prepared by Denton Wilde Sapte

“New Council Property Direct Agreement”

Means a deed dated today and made between (1) CCURV (2) Devco (3) the Council and (4) Devco Guarantor

“New Council Property

means the date on which the last of the New

Readiness for Development Criteria Satisfaction Date"	Council Property Readiness for Development Criteria is satisfied
"New Council Property Readiness for Development Criteria"	has the meaning given to it in clause 11.2
"New Council Property Satisfactory Planning Permission"	has the meaning given to it in paragraph 1 of Part 1 of Schedule 10
"Occupation Date"	the date the Council re-occupies the New Council Property being not more than 12 weeks after the Date of Practical Completion which date shall (where the Council has not taken up occupation prior to such date) be the Occupation Date irrespective of any delay by the Council in taking up occupation
"Onerous Conditions"	has the meaning given to it in paragraph 1 of Part 1 of Schedule 10
"Outline Specification"	the outline specification for the Development Works described in Schedule 6
"Payment"	the payment to be made by the Council to CCURV in respect of the provision of the New Council Property payable pursuant to the Payment Deed
"Payment Deed"	the agreement dated today and made between (1) Devco and (2) the Council relating to the Payment subject to variations as agreed or determined pursuant to paragraph 5 of Schedule 7 and Schedule 11
"Particulars"	the Particulars set out at the front of this Agreement
"Plan"	the plan or plans attached to this Agreement annexed at Annexure 1
"Planning Act"	the Town and Country Planning Act 1990

“Planning Agreement”

an agreement or undertaking in respect of and affecting the New Council Property or the Development Works, whether or not also affecting other property, pursuant to:

- (a) section 106 of the Planning Act;
- (b) section 111 Local Government Act 1972;
- (c) sections 38 or 278 Highways Act 1980;
- (d) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act 1989, with an appropriate authority for the supply of water or the drainage of surface or foul water from the New Council Property; or
- (e) any agreement with an appropriate authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them

“Practical Completion”

completion of the whole of the Development Works in accordance with the terms of the Building Contract

“Purchase Price”

shall have the meaning ascribed to it in the Davis House SPA

“Payment Change Mechanism”

shall mean the mechanism set out in schedule 11 to this Agreement

“Principal Sub-Contractors”

such sub-contractors appointed or to be appointed by the Building Contractor with a material design responsibility for the Development Works

“Professional Team”

each of the following:

- (a) the Architect;
- (b) the Mechanical and Electrical Services

Engineer;

(c) the CDM Co-ordinator;

(d) the Structural Engineer.

“Profile of Payments”

shall bear the meaning ascribed to it in the Member's Agreement

“Programme of Works”

the Programme of Works to be produced by CCURV and approved by the Council in accordance with **paragraph 2 of Schedule 5**

“Prohibited Materials”

any products or materials which are generally known to be deleterious at the time of specification or use, in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:

(a) the report entitled “Good Practice in the Selection of Construction Materials” (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report;

(b) relevant British Standards or Codes of Practice; or

(c) any publications of the Building Research Establishment related to the specification of products or materials.

“Properties”

shall bear the meaning ascribed to it in the Members' Agreement

“Readiness for Development Criteria”

the conditions which must be fulfilled in relation to the Relevant Initial Development Property before the sale and purchase in relation to the Relevant Initial Development Property shall complete as set out for the Relevant Initial Development Property in **Schedule 1** and “Relevant Readiness for

	Development Criteria" shall be construed accordingly
"Reinstatement Cost"	<p>the costs, allowing for inflation during the period of reinstatement, of:</p> <ul style="list-style-type: none"> (a) debris removal, demolition, site clearance and complete reinstatement of the Development Works, assuming their total destruction; and (b) all the Professional Team's, design, legal and other professional fees
"Relevant Assignment/Novation"	shall have the meaning ascribed to it in clause 23.1.3.2 ;
"Relevant Transfer Value"	<p>the aggregate Council A and B Loan of each Relevant Initial Development Property as set out in Sections 1 to 5 of Schedule 1</p> <p>For the avoidance of doubt only the B Loan sum is capable of changing pursuant to Schedule 12</p>
"Seller"	shall have the meaning ascribed to it in the Davis House SPA
"Services Works"	<p>those parts of the Development Works comprising the installation and connection of:</p> <ul style="list-style-type: none"> (a) electricity, foul and surface water drainage, gas, water, and public telephone services within the New Council Property to the public mains; (b) internet, cable and other computer or telecommunications media; and (c) all pipes, wires, ducts and other conduits for the passage of such services
"Specialist"	has the meaning given to it in clause 17
"Statutory Consents"	any statutory approvals, consents, licences or permissions required from any local or other

competent authority to enable the Development Works to be lawfully to carried out and completed or to reinstate them following their damage or destruction and includes the approval of reserved matters under the New Council Property Planning Permission

“Statutory Requirements”

all or any of the following:

- (a) any Acts of Parliament and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws and permissions for the time being made under or deriving validity from any Act of Parliament;
- (b) any European directive or regulations and rules having the force of law in the United Kingdom; and
- (c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Development Works

“Step in Agreement”

shall mean in relation to this Agreement an agreement to be made between (1) CCURV and (2) a Funder and in the case of the New Council Property Direct Agreement any agreement to be made between (1) the Council (2) CCURV (3) Devco and (4) the Funder provided in each case that the Funder is to be given notice of any Event of Default or otherwise any event giving rise to an entitlement upon the Council or CCURV as applicable to determine this Agreement or (as applicable) the New Council Property Direct Agreement giving a period (being not less than 6 months from such notification in which the Funder shall be entitled to step in or procure a nominee step-in to remedy the breach or where such breach is incapable of remedy to covenant to henceforth comply with the obligations contained within this Agreement or

	the New Council Property Direct Agreement (as applicable)
"Structural Engineer"	such structural engineer as CCURV or the Building Contractor appoints as the Structural Engineer for the purposes of the Development Works in accordance with Part 1 of Schedule 4
"Subsisting Interests"	the leases, underleases, tenancy agreement and licences (if any) affecting the Properties revealed by the Certificates of Title together with any tenancies or licences granted after the date of this Agreement with the approval in writing of CCURV
"Title Matters"	the agreements, covenants, declarations, easements, exceptions, provisions, reservations, stipulations and other matters (if any) affecting the Properties revealed by the Certificate of Title in each case so far as they are subsisting, capable of taking effect and affect the Relevant Initial Development Property
"Transfer"	the transfer from the Council to CCURV or a CCURV Subsidiary in a form to be agreed by the parties in accordance with this Agreement
"Unconditional Date"	the date determined in accordance with clause 3.4
"VAT"	Value Added Tax
"VATA"	Value Added Tax Act 1994
"Warranties"	collateral warranties to be given by each member of the Professional Team, the Building Contractor and each Principal Sub-Contractor in accordance with Part 1 of Schedule 4

1.1 In this Agreement:

1.1.1 the clause headings do not affect its interpretation;

1.1.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a

Schedule to a Part or paragraph or section are to a Part or paragraph of that Schedule;

1.1.3 references to any statute or statutory provision include references to:

1.1.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and

1.1.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;

1.1.4 references to the Initial Development Property and the New Council Property include any part of it;

1.1.5 "including" means "including, without limitation";

1.1.6 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Council or CCURV and all costs, damages and expenses, incurred by the Council or CCURV subject to the indemnified party taking all reasonable steps to mitigate its liability and to assist the indemnifying party;

1.1.7 "working day" has the meaning given to it in the Commercial Conditions; and

1.1.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

1.2 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

1.3 The Particulars form part of this Agreement and words and expressions set out in the Particulars are to be treated as defined terms in this Agreement.

PART A - THE INITIAL DEVELOPMENT PROPERTIES

2. AGREEMENT FOR SALE

Clause 5 and **Schedule 2** of this Agreement are conditional in each case upon satisfaction of the Relevant Readiness for Development Criteria in respect of the Relevant Initial Development Property within the Relevant Conditional Period.

3. **SATISFACTION OF CONDITIONS**

3.1 CCURV is to:

3.1.1 Use all reasonable endeavours to procure that the Relevant Readiness for Development Criteria for each of the Initial Development Properties is satisfied within the Relevant Conditional Period for the Relevant Initial Development Property (any dispute by the parties as to whether CCURV has used such endeavours may be referred by either party for determination in accordance with **clause 17**); and

3.1.2 consult with the Council in relation to the satisfaction of the Relevant Readiness for Development Criteria and keep the Council fully informed and provide to the Council and the Council's Solicitors within five working days of receipt a copy of any and all relevant consents and any other documentation or correspondence relevant to the satisfaction of the Relevant Readiness for Development Criteria

3.2 The Council shall consult and keep CCURV fully informed of the Council's continuing occupation of the Relevant Properties with a view to ensuring that the Council vacates the Relevant Initial Development Property within 4 weeks of all other Relevant Readiness for Development Criteria being satisfied.

3.3 The Council and CCURV are not to knowingly do anything or omit to do something they reasonably should do so as to reduce the prospects of the Relevant Readiness for Development Criteria being fulfilled.

3.4 Within 5 days of satisfaction of each and all of the Relevant Readiness for Development Criteria in respect of a Relevant Initial Development Property, CCURV is to provide to the Council such written evidence as the Council reasonably requires that the Relevant Readiness for Development Criteria have been satisfied on the terms of this Agreement and the Unconditional Date for the Relevant Initial Development Property is that on which the last relevant Readiness for Development Criteria is satisfied or waived by both the Council and CCURV.

3.5 If CCURV does not comply with its obligations in **clause 3.1** then the Council may serve notice on CCURV setting out the alleged default and where CCURV fails to commence to remedy such breach as soon as reasonably practicable after receipt of notice in writing setting out details of the breach or fails to have remedied such breach within the remedy period as set out in the notice by the party alleging such breach (acting reasonably) the Council may terminate the Agreement in respect of each of the Initial Development Properties in respect of which CCURV has not complied with its obligations. Termination will be effected on service of a notice in writing by the Council or the Council's solicitors.

- 3.6 In relation to the Initial Development Property referred to in **Part 1** of **Schedule 1** (Taberner House) the Council shall not be required to provide vacant possession until the occurrence of the Occupation Date
- 3.7 In respect of the Initial Development Property at **Section 2** of **Schedule 1** (College Green) and a lease dated 4 April 2005 made between (1) the Council and (2) Eagle Fairfield and Dingwall Limited (2), CCURV shall (in accordance with the relevant Business Plan) subject to the satisfaction of the Relevant Readiness for Development Criteria excluding that relating to vacant possession, pay the requisite option fee to require the tenant to surrender its leasehold interest to the Council pursuant to an option agreement also dated 4 April 2005 and made between the same parties.
4. **A LOAN NOTES, A LOAN INTEREST AND B LOAN INTEREST AND C LOAN INTEREST**
- 4.1 In consideration of the entry into of this Agreement by the Council:
- 4.1.1 the Council commits to advance the Council A Loan to CCURV and CCURV shall be deemed to have drawn down such proportion of the Council A Loan from time to time as is set out in the Profile of Payments in accordance with the following terms but, notwithstanding any other provision in this Agreement, at no time shall the Council be required to pay any sums to CCURV save as expressly provided in the Members' Agreement:
- 4.1.2 CCURV shall issue such number of Council A Loan Notes as are equivalent to the Drawdown Amount (or part thereof, as applicable) immediately upon receipt of such equivalent amounts in cleared funds from JLPDC;
- 4.2 Council A Loan Interest will accrue and be payable in respect of the Council A Loan Interest Amount at the Council A Loan Interest Rate in accordance with the Council A Loan Note Instrument and **clauses 6.2.3** and **6.2.4** of the Members' Agreement.
- 4.3 The parties acknowledge that each Initial Development Property shall transfer to a CCURV Subsidiary unless otherwise determined by CCURV. With effect from the date of the Transfer of an Initial Development Property to a CCURV Subsidiary CCURV shall procure that:
- 4.3.1 the Council shall have issued to it by the relevant CCURV Subsidiary such number of B Loan Notes as are equivalent to the B Loan Amount attributable to such Property in **Sections 1, 2, 3, 4 and 5** of **Schedule 1** (as such amounts may be varied in accordance with the terms of this Agreement);

- 4.3.2 B Loan Interest shall accrue on such B Loan Amount at the B Loan Interest Rate in accordance with the B Loan Note Instrument and **clause 6.13** of the Members' Agreement; and
- 4.3.3 the relevant CCURV Subsidiary shall enter into a Security Agreement (B Loan Notes) in favour of the Council and in respect of the B Loan Notes issued pursuant to **clause 4.3.1**, such B Loan Notes and any interest payable thereon being secured against the assets of the relevant CCURV Subsidiary.
- 4.4 The provisions of this **clause 4** shall survive termination of this Agreement.
5. **SALE AND PURCHASE**
- 5.1 Twenty working days after the Unconditional Date in respect of the Relevant Initial Development Property the Council shall sell and CCURV or, at the election of CCURV, a CCURV Subsidiary shall buy the Relevant Initial Development Property at the such Relevant Transfer Value to be paid in accordance with **clause 5.2**. The sale of each Initial Development Property shall be subject to the provisions of Schedule 2.
- 5.2 The Relevant Transfer Value will be satisfied on completion of the Relevant Initial Development Property by the issue by CCURV or the relevant CCURV Subsidiary of such number B Loan Notes as are set out in **Schedule 1** (subject to adjustment in accordance with **Schedule 12**) as being the B Loan amount attributable to the Relevant Initial Development Property and CCURV shall, where applicable, procure that the relevant CCURV Subsidiary shall issue such number of B Loan Notes to the Council and, upon the completion of the transfer of the such Initial Development Property, shall further procure that the relevant CCURV Subsidiary shall execute and complete:
- 5.2.1 a Security Agreement (B Loan Notes) as security for such relevant B Loan Notes as are outstanding and unpaid from time to time;
- 5.2.2 where required by the Council, deed of subordination and priority (or equivalent agreement) which shall set out the order of priorities of such security (and any other security granted by the relevant CCURV Subsidiary), provided at all times the security attaching to the B Loan Notes shall rank in priority to any other debt and/or security granted by the relevant CCURV Subsidiary.
6. **REGISTRATION OF THE AGREEMENT**
- 6.1 Within ten working days of the date of this Agreement, CCURV shall:

- 6.1.1 make an application to the Land Registry to register a unilateral notice in respect of this Agreement against the title to the Relevant Initial Development Property; and
 - 6.1.2 provide a copy of that application to the Council.
- 6.2 The Council agrees not to object to the registration of a unilateral notice and shall do all things necessary to enable the notice referred to in **clauses 6.1** to be registered.
- 6.3 CCURV will not (and shall procure that any CCURV Subsidiary will not) send this Agreement or any copy of it to the Land Registry.

7. TERMINATION

- 7.1 This Agreement in respect of each of the Initial Development Properties will terminate if the Unconditional Date for the Relevant Initial Development Property has not occurred before the Relevant Longstop Date and the following provisions of this **clause 7** shall apply.
 - 7.1.1 Where the Unconditional Date for the relevant Initial Development Property has not occurred and this has not been caused by reason of default by the Council the Council shall not be required to repay any Council A Loan Interest which has accrued and rolled up in its favour (in accordance with this Agreement and the Council A Loan Note Instrument) and/or which it has received at such time and such accrued amounts shall still be payable to the Council but with effect from the relevant Long Stop Date the Council A Loan Interest applicable to the A Loan which was to have been drawn down on the transfer of that Property shall cease to accrue. For the avoidance of doubt, the Council A Loan Interest and, if applicable, B Loan Interest shall continue to accrue and be payable to the Council in respect of all other Initial Development Properties and the Council shall be entitled to such interest which has accrued up to the relevant date in respect of the relevant Initial Development Property; and
 - 7.1.2 Where the Unconditional Date for an Initial Development Property has not occurred by reason of a default by the Council (save where any failure or delay is due to any event beyond the reasonable control and contemplation of the Council) the Council shall be required to repay to CCURV, within 20 working days of the date upon which the Unconditional Date would have occurred but for the default of the Council, any Council A Loan Interest attributable to that Initial Development Property which has, up to such date, accrued in its favour and which it has received from CCURV and, with effect from the Relevant Long Stop Date, Council A Loan Interest shall cease to

accrue in respect to the relevant Initial Development Property only and, for the avoidance of doubt, nothing in this clause shall require the Council to repay:

7.1.2.1 the entire Council A Loan Interest accrued in its favour and receipt by it other than that attributable to that Relevant Initial Development Property;

7.1.2.2 (if applicable) B Loan Interest it has received in respect of the B Loan Notes issued to it by any CCURV Subsidiary

and B Loan Note Interest and Council A Loan Interest shall continue to accrue and be payable to the Council in respect of all other Initial Development Properties in accordance with the B Loan Note Instrument and Council A Loan Note Instrument respectively and the Members' Agreement.

7.1.3 Where the Unconditional Date for an Initial Development Property has not occurred (irrespective of the reason) that element of the B Loan attributable in the Relevant Transfer Value to that Property which would have been drawn down at the date of the transfer of the relevant Initial Development Property will no longer be capable of being drawn down and that element of the Council A Loan and the JLPDC A Loan identified in the Profile of Payments as remaining and available to be drawn down and or payable (as applicable) on the transfer of the relevant Initial Development Property will no longer be capable of being drawn down or paid and the Council A Loan and JLPDC A Loan amounts shall be adjusted accordingly.

7.2 If this Agreement ends without the parties completing the sale of any one or more of the Initial Development Properties, CCURV is at its own expense to remove any notice or restriction made against a Initial Development Property in respect of this Agreement. CCURV appoints the Council as its agent on and from the date on which this Agreement ends for the sole purpose of removing any entry made in respect of this Agreement.

7.3 The ending of this Agreement will be without prejudice to any claims, liabilities or rights of the Council or CCURV existing at the date on which this Agreement ends.

8. **RIGHT OF ENTRY**

8.1 Subject to **clauses 8.2 and 8.3**, the Council is to allow CCURV and its duly appointed agents to enter and remain on the Initial Development Properties as often as reasonably necessary with all necessary plant, machinery and

equipment at all reasonable times during any period before the Date of Actual Completion in respect of the Relevant Initial Development Property

- 8.1.1 to carry out surveys, environmental, soil and other tests, investigations and inspections and measurements;
- 8.1.2 for the preparation of an environmental impact or other studies; and
- 8.1.3 for all purposes in connection with satisfaction of the Relevant Readiness for Development Criteria.

8.2 Before exercising the rights in **clause 8.1**, CCURV is to:

- 8.2.1 give reasonable prior written notice to the Council of the date on which it wishes to exercise the rights; and
- 8.2.2 give notice to the Council of any works to be carried out on the Initial Development Properties in the exercise of the rights and obtain the Council's prior written approval to them, such approval not to be unreasonably withheld or delayed

8.3 CCURV is to procure that its agents comply with the provisions of **clause 8.2** before exercising the rights in **clause 8.1**.

8.4 CCURV agrees with the Council:

- 8.4.1 to make good any damage to the Properties caused in the exercise of the rights in **clause 8.1**; and
- 8.4.2 to take all proper and sufficient precautions during the exercise of the rights:
 - 8.4.2.1 not permanently to infringe, interrupt or destroy any rights, easements, privileges or services enjoyed by the Initial Development Properties or any neighbouring or adjoining premises; and
 - 8.4.2.2 to cause as little inconvenience as reasonably practicable to the Council and any tenants or other occupiers of the Initial Development Properties or any neighbouring or adjoining premises;
- 8.4.3 to use reasonable endeavours to ensure that no contamination is spread laterally or down into any aquifer beneath the Properties; and
- 8.4.4 to indemnify the Council in respect of personal injury to or the death of any person and any injury or damage whatsoever to any property, real

or personal, arising from the exercise of the rights and any subsequent reinstatement of the work.

- 8.5 CCURV entering and remaining on the Properties pursuant to this **clause 8** will not constitute CCURV being treated as being let into occupation for the purposes of Commercial Condition 5.2.

9. **ENCUMBRANCES**

- 9.1 Unless and until this Agreement has come to an end in relation to the Relevant Initial Development Property without the Unconditional Date for the Relevant Initial Development Property occurring, the Council is not to create any encumbrance over the Initial Development Properties without the prior written consent of CCURV.

- 9.2 An encumbrance includes any easement, restrictive covenant, lease or other right of occupation use or enjoyment of the whole or any part of the Properties.

- 9.3 The Council covenants with CCURV not to transfer or otherwise dispose of the Properties or enter into any agreement to do so before the Relevant Conditional Period has come to an end without being exercised.

10. **ADDITIONAL PROVISIONS**

- 10.1 CCURV acknowledges that this Agreement has not been entered into wholly or partly in reliance on any statement or representation made by or on behalf of the Council, other than the statements and representations given in the Certificates of Title.

- 10.2 Any payment due from one party to another under this Agreement which is not made within five working days of the due date for payment is to bear interest at the Contract Rate from and including the due date of payment to and including the date on which the payment is actually made and that interest is to be paid at the same time as the payment.

- 10.3 This Agreement constitutes the entire contract between the parties and may be varied or modified only in writing by the parties or their authorised representatives specifically referring to this clause and stating that this Agreement is varied in the manner specified.

- 10.4 Notwithstanding completion of the sale and purchase of a Relevant Initial Development Property all the provisions of this Agreement shall continue in full force and effect to the extent that any of them remain to be implemented

PART B - New Council Property

11. DEVELOPMENT

11.1 **Schedule 8** of this Agreement is conditional on all of the New Council Property Readiness for Development Criteria being satisfied on the terms of this Agreement. CCURV is to carry out or procure that the Development Works are carried out in accordance with **Schedule 8**.

11.2 The New Council Property Readiness for Development Criteria are:

11.2.1 the grant of New Council Property Satisfactory Planning Permission in accordance with **Schedule 10**

11.2.2 all Statutory Consents that are required before beginning the Development Works being obtained in accordance with **paragraph 1 of Schedule 7**;

11.2.3 compliance with the CDM Regulations in accordance with **paragraph 2 of Schedule 7**;

11.2.4 the Building Contracts and Appointments are in an agreed form ready to be entered into with (or where already entered into with CCURV novated to) Devco or the Building Contractor (as applicable) and Warranties (save in relation to any Principal Sub-Contractors who have yet to be appointed) are in an agreed form ready to be entered into with the Council, all such documents to be entered into prior to or simultaneously with the completion of the New Council Property Direct Agreement;

11.2.5 the approval of the Specification and Development Plans in accordance with **paragraph 1 of Schedule 5** (and defined therein);

11.2.6 the schedule of liquidated damages being agreed or determined pursuant to **paragraph 4 of Schedule 7**;

11.2.7 funding in relation to the Development Works being agreed or determined in accordance with **paragraph 5 of Schedule 7**;

11.2.8 the approval of the Programme of Works in accordance with **paragraph 2 of Schedule 5**; and

11.2.9 the Council having given vacant possession of the New Council Property in accordance with **paragraph 3 of Schedule 7**;

11.2.10 the Council has acquired Mint Walk pursuant to **clause 24**

- 11.3 The Council and CCURV are to comply with their respective obligations in this Agreement to enable all of the New Council Property Readiness for Development Criteria to be satisfied.
- 11.4 Once each New Council Property Readiness for Development Criteria has been satisfied, CCURV is to provide to the Council such written evidence as the Council reasonably requires that the relevant criterium has been satisfied on the terms of this Agreement (save in respect of the criterium relating to the provision of vacant possession by the Council in which case the Council shall notify in writing CCURV as soon as the Council has vacated the New Council Property and the satisfaction of the criteria shall take place on the later of the date of such notice and actual vacant possession having been given).
- 11.5 If any of the New Council Property Readiness for Development Criteria have not been satisfied by the Development Longstop Date, the Council or CCURV may end this Agreement to the extent that it relates to the New Council Property by serving written notice on the other Party without prejudice to the rights and remedies of any party against the other. Notwithstanding the terms of this **clause 11.5** it is agreed that the Council shall not be entitled to terminate on the grounds that the condition set out in 11.2.9 has not been met.
- 11.6 In relation to all drawings, details, plans, reports, models, specifications, bills of quantities, calculations, and other similar documents of any nature whatsoever connected with the Development Works (the Documents) CCURV will use reasonable endeavours to procure that the Council receive a royalty-free non-exclusive, non-terminable licence to use and to reproduce the Documents including, but without limitation, the carrying out, completion, testing maintenance, lettings, advertisement, modification, extension, reinstatement, reconstruction and repair of the Development Works, and the management or provision of any services connected to the Development Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties. The Council will not hold CCURV liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.
- 11.7 To the extent that any of the data, materials and documents referred to in clause 11.6 are generated by or maintained on a computer or in any other machine readable format, CCURV shall procure the grant to the Council at the lowest possible cost (to be paid by the Council) a licence for any supply of any relevant software or database (in a format which is compatible with the hardware and software system used by the Council) to enable the Council to access and otherwise use such data for the purposes set out in clause 11.6

12. **LICENCE TO OCCUPY**

- 12.1 The Council grants a licence to the persons listed in **clause 12.2** to enter and remain on such part of the New Council Property as owned by the Council (it

being acknowledged that following completion of the Enabling Deed and the acquisition of Mint Walk the Council will own the entirety of the New Council Property) from and including the date of this Agreement to and including the New Council Property Readiness for Development Criteria Satisfaction Date for the purposes set out in **clause 12.4.1 - 12.4.3** and from the New Council Property Readiness for Development Satisfaction Date to the Occupation Date for the purposes set out in **clause 12.4.4**.

12.2 The licence in **clause 12.1** is granted to:

12.2.1 CCURV (and as applicable Devco);

12.2.2 the Building Contractor, its sub-contractors, including Principal Sub-Contractors, and their respective agents and employees;

12.2.3 the Professional Team; and

12.2.4 such other persons nominated by CCURV and/or Devco (for the purposes of facilitating the Development Works) and approved by the Council such approval not to be unreasonably withheld or delayed.

12.3 The licence in **clause 12.1** permits those exercising the rights to bring upon the Property vehicles, plant, equipment and materials required for purposes set out in **clause 12.4**.

12.4 The licence granted in **clause 12.1** is granted for the purposes of:

12.4.1 satisfying any New Council Property Readiness for Development Criteria;

12.4.2 carrying out surveys, environmental, soil and other tests, investigations and inspections and measurements;

12.4.3 preparing an environmental impact or other studies;

12.4.4 carrying out and completing the Development in accordance with this Agreement.

12.5 Before exercising the rights in **clause 12.1** (for the purposes set out in clause 12.4.1-12.4.3), CCURV is to:

12.5.1 give reasonable prior written notice to the Council of the date on which it wishes to exercise the rights; and

12.5.2 give notice to the Council of any works to be carried out on the New Council Property in the exercise of the rights and obtain the Council's

prior written approval to them, such approval not to be unreasonably withheld or delayed

- 12.6 CCURV is to procure that its agents comply with the provisions of **clause 12.5** before exercising the rights in **clause 12.1**.
- 12.7 CCURV agrees with the Council when exercising the rights in **clause 12.1** for the purposes set out in clause **12.4.1-12.4.3**:
 - 12.7.1 to make good any damage to the New Council Property; and
 - 12.7.2 to take all proper and sufficient precautions during the exercise of the rights:
 - 12.7.2.1 not permanently to infringe, interrupt or destroy any rights, easements, privileges or services enjoyed by the New Council Property or any neighbouring or adjoining premises; and
 - 12.7.2.2 to cause as little inconvenience as reasonably practicable to the Council and any tenants or other occupiers of the New Council Property or any neighbouring or adjoining premises;
 - 12.7.3 to use reasonable endeavours to ensure that no contamination is spread laterally or down into any aquifer beneath the New Council Property; and
 - 12.7.4 to indemnify the Council in respect of personal injury to or the death of any person and any injury or damage whatsoever to any property, real or personal, arising from the exercise of the rights and any subsequent reinstatement of the work.
- 12.8 The licence granted in **clause 12.1** does not confer on CCURV or Devco or any other person any legal or equitable right, title, interest or estate in the New Council Property.
- 12.9 The Licence granted in **clause 12.1** ends on the earlier of the following dates:
 - 12.9.1 the date on which this Agreement ends to the extent it relates to the New Council Property; and
 - 12.9.2 the Occupation Date Provided that access shall continue to be given at reasonable times for making good defects and to comply with the provisions of paragraph 7 of **Schedule 8**.

- 12.10 When the licence in **clause 12.1** ends then, CCURV is to procure that the New Council Property is vacated by the persons listed in **clause 12.2** and that all vehicles, plant, equipment and materials belonging to them are removed from the New Council Property.

13. **INSURANCE**

- 13.1 It is agreed that the risk of damage to or loss or destruction of the New Council Property, including all buildings, fixtures, fittings, plant and equipment, stays with the Council until the date of completion and coming into effect of the Building Contract.

- 13.2 With effect from the date of completion and coming into effect of the Building Contract CCURV is to procure that the Building Contractor or CCURV or Devco keeps the Development Works and all unfixed goods and materials insured under the terms of the Building Contract:

13.2.1 in their Reinstatement Cost;

13.2.2 against the Insured Risks;

13.2.3 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and

13.2.4 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.

- 13.3 CCURV is to use all reasonable endeavours to procure that any exclusion in respect of terrorist activity is removed from the insurance maintained under **clauses 13.1 and 13.2**.

- 13.4 CCURV is to provide the Council with:

13.4.1 a copy of the insurance policy maintained under **clause 13.2** and evidence for the payment of the premium for the insurance;

13.4.2 evidence of its renewal when reasonably requested by the Council; and

13.4.3 any endorsements or other amendments to the relevant policies of insurance or of any notification or other correspondence received from the insurers.

- 13.5 If the New Council Property or the Development Works are damaged or destroyed by any of the Insured Risks:

13.5.1 CCURV is to use all reasonable endeavours promptly to obtain the maximum payment of insurance moneys;

- 13.5.2 CCURV is to procure that the Building Contractor rebuilds, repairs or otherwise reinstates the Development Works and the New Council Property in a good and substantial manner in accordance with the terms of this Agreement and the Building Contract;
 - 13.5.3 if the moneys received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Development Works and the New Council Property, CCURV is to make good any deficiency out of its own moneys; and
 - 13.5.4 Practical Completion is not to take place unless and until the rebuilding, repairing and reinstating of the Development Works and the New Council Property has been completed.
- 13.6 During the carrying out of the Development Works, CCURV is to maintain or procure the maintenance of:
- 13.6.1 [REDACTED]
 - 13.6.2 [REDACTED]
- 13.7 If the CCURV does not insure or procure all or any of the insurances required by this **clause 13** or fails to produce reasonable evidence that such insurances are in force, the Council may itself effect such insurance cover as it may consider prudent and the cost of so doing together with the Council's management and administrative costs for so doing will be payable by CCURV to the Council on written demand.
14. **CCURV'S INDEMNITY**
- 14.1 CCURV is to indemnify the Council in respect of any of the following matters arising directly or indirectly in relation to the Development Works, the New Council Property or any operations on the New Council Property:
- 14.1.1 the death of, injury to or accident to any person;
 - 14.1.2 the damage to or loss of any property;
 - 14.1.3 any breach of the Statutory Consents or Statutory Requirements;
 - 14.1.4 the infringement of the rights of any third party caused by the carrying out of the Development Works;
 - 14.1.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Development Works;

- 14.1.6 any fine or penalty; and
 - 14.1.7 any other claims.
- 14.2 The Council will use reasonable endeavours to mitigate any claim made under this clause 14.
- 15. **STEP-IN RIGHTS**
- 15.1 Subject to the term of any Step-in Agreement following an Event of Default and subsequent rescission or determination of this Agreement:
 - 15.1.1 CCURV is at the request of the Council and for no consideration to assign to the Council or as the Council otherwise directs the benefit of all or any of the following:
 - 15.1.1.1 the Building Contract and any performance bond;
 - 15.1.1.2 the Appointments;
 - 15.1.1.3 any other contracts or agreements entered into by CCURV in relation to the Development;
 - 15.1.1.4 all CCURV's rights against the Building Contractor, Principal Sub-Contractors and the members of the Professional Team;
 - 15.1.1.5 all warranties whether as to design, materials or otherwise in relation to the Development and any other guarantees and warranties given by the Building Contractor, Professional Team and suppliers and manufacturers in respect of all plant, machinery and apparatus installed as part of the Development; and
 - 15.1.1.6 all rights of copyright vested in CCURV.
- 15.2 CCURV irrevocably appoints the Council by way of security to be the attorney of CCURV with full power and authority to do all acts and things and execute and deliver in the name of CCURV all deeds and documents which may be necessary to give effect to the terms of this **clause 15**.
- 15.3 This **clause 15** will continue to apply after any rescission or determination of this Agreement.
- 15.4 The termination of this Agreement will not prejudice any rights or remedies which either party may have against the other in respect of any outstanding breaches of this Agreement.

15.5 Where at the point of such assignment referred to at **clause 15.1.1** above CCURV remains liable in respect to any matter or responsibility delegated or otherwise imposed upon the counter party to any of the above agreements such assignment shall be made on such terms as to preserve the rights and remedies of CCURV in respect to any such liability against such counter party.

16. **PAYMENT**

16.1 The Payment in respect of the period from 22 December 2012 until June 2013 shall be £183,509, the Payment calculated per annum from June 2013 until June 2014 shall be £7,432,110 and thereafter the Payment shall be the monies as detailed in **Schedule 13**.

16.2 The monies payable as the Payment in **clause 16.1** are as provided in the financial model attached at Annexure 3 (which is based, in part, on the Outline Specification) provided to the Council prior to the date of this agreement and subject to adjustment in accordance with the terms of **Schedule 11**.

16.3 It is agreed and acknowledged that the level of the Payment and the definition of "Revised Payment" in the Payment Deed is capable of changing between the date hereof and the Date of Practical Completion pursuant to **paragraph 5 of Schedule 7** and **Schedule 11**. Should there be such a change or changes then the Council shall enter into and CCURV shall procure that Devco shall enter into a deed or deeds of variation to the Payment Deed in order to record the revised level of Payment and/or the definition of "Revised Payment". Such deed or deeds of variation shall be in such form as the parties agree acting reasonably and in the absence of agreement to be determined by a Specialist pursuant to **clause 17**.

PART C - General

17. **DETERMINATION OF DISPUTES**

17.1 If any dispute arises between CCURV and the Council relating to or arising out of the terms of this Agreement, the Council or CCURV may give to the other written notice requiring the dispute to be determined under this **clause 17**. The notice is to:

17.1.1 propose an appropriate Specialist;

17.1.2 state whether the Specialist is to act as an independent expert or an arbitrator, having regard to the terms of this **clause 17**; and

17.1.3 specify the nature and substance of the dispute and the relief sought in relation to the dispute.

17.2 For the purposes of this **clause 17** a "Specialist" is a person:

- 17.2.1 qualified to act as an expert or an arbitrator in relation to the dispute;
 - 17.2.2 having not less than ten years' professional experience; and
 - 17.2.3 having practical experience in relation to developments in the nature of the Development and property in the same locality as the Relevant Initial Development Property or New Council Property (as appropriate).
- 17.3 The recipient of a notice under **clause 17.1** will be deemed to accept the identity of the Specialist and the capacity in which he is to act unless it gives notice in writing to the party serving the notice rejecting one or more of the proposals within five working days of receipt of the notice and on the service of a notice rejecting one or more of the proposals, **clause 17.4** will apply.
- 17.4 Unless CCURV and the Council agree or are deemed to agree the terms for resolving the dispute set out in the notice served under **clause 17.1**:
- 17.4.1 any dispute over the type of Specialist appropriate to resolve the dispute or the capacity in which a Specialist is to act may be referred at the request of CCURV or the Council to the President or next most senior available officer of the Royal Institution of Chartered Surveyors who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination and to determine the capacity in which the Specialist is to act; and
 - 17.4.2 any dispute over the identity of the Specialist is to be referred at the request of CCURV or the Council to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Royal Institution of Chartered Surveyors.
- 17.5 The reference to a Specialist is to be made to him as an arbitrator under the Arbitration Act 1996 unless:
- 17.5.1 the dispute is of such a nature that it is not capable of being determined by an arbitrator;
 - 17.5.2 both CCURV and the Council agree, or are deemed to agree, that the Specialist should act as an expert;
 - 17.5.3 this Agreement specifies that the dispute is to be determined by an expert; or
 - 17.5.4 **clause 17.6** applies.

- 17.6 If any dispute raises or relates to the same or similar issues as those which have been or are being submitted to independent determination under the Building Contract, the Council and CCURV will endeavour to appoint the same person acting in the same capacity as may be appointed to resolve the dispute under the Building Contract and to have the dispute proceedings under this Agreement and the Building Contract consolidated.
- 17.7 Where a Specialist is to act as an independent expert:
- 17.7.1 CCURV and the Council may make written representations within ten working days of his appointment and will copy the written representations to the other party;
 - 17.7.2 CCURV and the Council are to have a further ten working days to make written comments on each other's representations and will copy the written comments to the other party;
 - 17.7.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 17.7.4 the Specialist is not to take oral representations from CCURV or the Council without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 17.7.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 17.7.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 17.8 Where a Specialist is to act as an arbitrator:
- 17.8.1 all submissions made or evidence supplied to him are to be in writing unless the parties agree within ten working days of his appointment that this requirement does not apply;
 - 17.8.2 the date of his award will be deemed to be the date on which he serves a copy of the award on CCURV and the Council;
 - 17.8.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;
 - 17.8.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and

17.8.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.

17.9 Responsibility for the costs of referring a dispute to a Specialist under this **clause 17**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

18. **DEALINGS**

The parties are not entitled to assign, charge, hold in trust or otherwise deal with this Agreement provided that this clause shall not prevent CCURV entering into security documentation with the Funder and/or the Step-In Agreement.

19. **EFFECT OF THIS AGREEMENT**

19.1 The parties acknowledge that this Agreement forms the entire agreement between them relating to its subject matter.

19.2 No modification, variation or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by the parties to this Agreement.

19.3 All contracts and agreements entered into by CCURV pursuant to this Agreement will be contracts or agreements between CCURV as principal and the respective third parties and the Council will have no obligation or liability under them save in respect to the Step-In Agreement and the New Council Property Direct Agreement.

20. **ENFORCEMENT**

20.1 This Agreement is to be governed by and interpreted in accordance with English law.

20.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

21. **VALUE ADDED TAX**

21.1 Sums payable under this Agreement are exclusive of VAT. An obligation to pay money includes an obligation to pay any VAT chargeable on that payment. When a taxable supply is made for the purposes of VAT under this Agreement, a valid VAT invoice is to be issued in respect of that supply.

22. **SERVICE OF NOTICES**

22.1 Any notice served by CCURV under this Agreement is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the address of the

Council set out above or to the address of the Council's Solicitors set out above or to such other address as the Council may notify to CCURV in writing at any time as its address for service with a copy sent on the same day by e-mail to [REDACTED] or such other person as the Council may notify to CCURV.

22.2 Any notice served by the Council under this Agreement is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the address of CCURV set out above or to such other address as CCURV may notify to the Council in writing at any time as its address for service with a copy sent on the same day by e-mail to such person as CURV nominates in writing to the Council from time to time.

22.3 Unless the time of actual receipt is proved, a notice sent by the following means is to be treated as having been served:

22.3.1 if delivered by hand, at the time of delivery; or

22.3.2 if sent by post, on the second working day after posting.

22.4 If a notice is served after 4.00 pm on a working day, or on a day which is not a working day, it is to be treated as having been served on the next working day.

22.5 Service by fax or e-mail is not a permitted form of service under this Agreement.

23. **PART D DAVIS HOUSE**

23.1 The parties acknowledge that prior to the date of this Agreement the Council entered into the Davis House SPA with the Seller pursuant to which the Council paid a deposit (as set out in the Davis House SPA) to the Seller equating to 5% of the Purchase Price (the "Davis House Deposit") and which provides (inter alia) that:

23.1.1 the Davis House SPA is assignable by the Council to any third party in accordance with clause 18.1 of the Davis House SPA;

23.1.2 the Council (or any nominee of the Council) shall complete the purchase of Davis House by the Davis House Completion Date either by:

23.1.2.1 paying the Purchase Price (less the amount of the Davis House Deposit already paid to the Seller); or

23.1.2.2 as applicable, through the acquisition of the entire issued share capital of the Seller (or otherwise on such terms as are agreed pursuant to clause 23 of the Davis House SPA)

(the "Davis House Completion").

- 23.1.3 The parties agree that the Council shall (at its election and sole discretion) have the option at any time prior to the Davis House Completion Date to assign or novate:
- 23.1.3.1 the Davis House SPA to either CCURV or Davis House LLP such that CCURV or Davis House LLP (as the case may be) shall be legally obliged to complete the Davis House Completion in accordance with the Davis House SPA; or
- 23.1.3.2 (in the case of an acquisition of Davis House through the acquisition of the entire issued share capital of the Seller or otherwise on such terms as are agreed pursuant to clause 23 of the Davis House SPA) any such arrangements to either CCURV or Davis House LLP as are agreed between the Council and the Seller and/or its shareholders with regard to the acquisition of such shares (or such similar transaction as may be agreed) and such arrangements also to be approved by CCURV (such approval not to be unreasonably withheld or delayed);
- and CCURV shall (or shall procure that Davis House LLP shall) do or procure the doing of all such acts and things and execute and deliver or procure the execution and delivery of all such deeds and documents as shall be necessary or as the Council may reasonably request to give effect to the assignment or novations referred to herein (referred to hereafter as the "Relevant Assignment/Novation").
- 23.2 Immediately following the completion of this Agreement, CCURV shall or shall procure that Davis House LLP shall pay to the Council within 5 working days from the date of this Agreement all costs incurred by the Council in connection with the negotiation and entry by the Council into the Davis House SPA, including but not limited to;
- 23.2.1 the Davis House Deposit together with all interest costs thereon; and
- 23.2.2 any consultants' and professionals' fees.
- 23.3 Within 5 working days following the Relevant Assignment/Novation, CCURV shall or shall procure that Davis House LLP shall (as the case may be) pay to the Council all consultants' and professionals' fees incurred by the Council in connection with the completion of the documentation required to give effect to the Relevant Assignment/Novation.
- 23.4 Should CCURV and/or the Davis House LLP not be established on or prior to the Davis House Completion Date, such that the Council completes the Davis House Completion for any reason whatsoever, CCURV shall or shall procure that Davis

House LLP shall (as the case may be) pay to the Council all stamp duty land tax, stamp duty or stamp duty reserve tax (as the case may be) and any associated costs which the Council has paid in relation to the Davis House Completion within 5 working days of the date that CCURV or Davis House LLP (as the case may be) is established.

- 23.5 The parties agree that any costs payable by CCURV or the Davis House LLP pursuant to **clauses 23.2, 23.3 and 23.4** shall not increase the Payment.
- 23.6 Should the Council complete the Davis House Completion and acquire Davis House and/or any shares in the Seller (the "Shares"), the parties agree that the Council shall (at its election and sole discretion) be entitled to transfer Davis House and/or the Shares to CCURV or Davis House LLP immediately upon the establishment of CCURV or Davis House LLP at a price (in the case of the acquisition of Davis House) no less than the Purchase Price or (in the case of the Shares) the price agreed between the shareholder(s) of the Seller and the Council for the purchase of such Shares and CCURV shall and shall procure that Davis House LLP shall do or procure the doing of all such acts and things and execute and deliver or procure the execution and delivery of all such deeds and documents as shall be necessary or as the Council may reasonably request to give effect to the transfers referred to in this **clause 23.6**.
- 23.7 The acquisition of Davis House and/or the Shares (as the case may be) by CCURV or Davis House LLP shall be funded in accordance with the principles set out in clauses **6.14 and 6.15** of the Members' Agreement.
- 23.8 Following the satisfaction of the New Council Property Readiness for Development Criteria, CCURV will or will procure that Davis House LLP will enter into the Enabling Deed. The property the subject of the Enabling deed shall be transferred free of any financial charges and with vacant possession.
24. **Mint Walk**
- 24.1 Mint Walk Croydon Limited has today entered into an agreement for the purchase of Mint Walk for the price of £1,475,000 and this agreement allows for the assignment of the benefit of it to a third party and also for Mint Walk Croydon Limited to direct the seller of Mint Walk to transfer Mint Walk to a third party nominated by Mint Walk Croydon Limited.
- 24.2 Mint Walk Croydon Limited will procure that the seller of Mint Walk transfers Mint Walk directly to the Council.
- 24.3 On CURV's request and direction the Council shall execute and complete the transfer of Mint Walk free of any financial charges in accordance with the terms of the contract to acquire the same.

24.4 CCURV will procure payment of the purchase price for Mint Walk of £1,475,000 plus any VAT and Stamp Duty Land Tax due thereon.

25. **SIGNING**

This Agreement has been signed as a Deed by or on behalf of the Council and CCURV and is exchanged on the date set out in the Particulars.

The **COMMON SEAL** of **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** was hereunto affixed in the presence of: -

Authorised officer

Seal Register no.

SIGNED as a deed by
CCURV LLP
acting by its: -

)
)
)

Authorised Signatory

Authorised Signatory

SCHEDULE 1

The Properties

SECTION 1

Part 1 – The Initial Development Property

All that property being land and buildings known as Taberner House, Park Lane, Croydon forming part of the land registered at the Land Registry with absolute freehold title under title number SGL15791 as shown edged red on Plan 1 annexed at Annexure 1.

Full title guarantee

Part 2 - The deeds and documents referred to in paragraph 2 of Part 4 of Schedule 2

None

Part 3 – Council A Loan amount/B Loan amount/Relevant Transfer Value

Council A Loan amount £[REDACTED]/ B Loan amount £[REDACTED]/ Relevant Transfer Value £[REDACTED] ([REDACTED] Pounds) provided that the B Loan amount and Relevant Transfer Value (but not the Council A Loan amount) may change pursuant to the provisions in **Schedule 12**

Part 4 – Readiness for Development Criteria

(1) The obtaining of Acceptable Planning Permission for a use or mixture of uses identified in CCURV's Business Plan for the Initial Development Property from time to time and the expiry of the Challenge Period (as defined in **Schedule 10**)

(2) Obtaining vacant possession of the Initial Development Property.

(3) CCURV obtaining funding from a Funder on terms satisfactory to CCURV (acting reasonably) to fund the development the subject of the Acceptable Planning Permission and provision to the Council of reasonable evidence of such funding Provided it is acknowledged such funding will be subject to outstanding conditions precedent Provided CCURV acting reasonably is satisfied such conditions can be satisfied and provided for the avoidance of doubt that the terms set out in CCURV's Business Plan will be deemed to be reasonable and satisfactory to the parties

Part 5 – Long Stop Date

8 calendar years from the date of this Agreement or if earlier the Development Long Stop Date in the circumstances where the New Council Property Readiness for Development Criteria are not achieved prior to the Development Long Stop Date Provided That it is acknowledged that the target date for the satisfaction of the relevant Readiness for Development Criteria shall be January 2013.

Part 6 - Occupational Leases

None save as set out in the Certificate of Title

SECTION 2

Part 1 – The Initial Development Property

All that property being land and buildings at College Green (Fairfield car park), Park Lane, Croydon forming part of the land registered at Land Registry with absolute freehold under title number SY7901 as shown edged red on Plan 2 annexed at Annexure 1.

Full title guarantee

Part 2 - The deeds and documents referred to in paragraph 2 of Part 4 of Schedule 2

None.

Part 3 – Council A Loan amount/B Loan amount/Relevant Transfer Value

Council A Loan amount £[REDACTED]/ B Loan amount £[REDACTED]/ Relevant Transfer Value £[REDACTED] ([REDACTED] Pounds) provided that the B Loan amount and Relevant Transfer Value (but not the Council A Loan amount) may change pursuant to the provisions in **Schedule 12**

Part 4 – Readiness for Development Criteria

(1) The obtaining of Acceptable Planning Permission for a use or mixture of uses identified in CCURV's Business Plan for the Initial Development Property from time to time and the expiry of the Challenge Period (as defined in **Schedule 10**)

(2) Obtaining vacant possession of the Initial Development Property.

(3) CCURV obtaining funding from a Funder on terms satisfactory to CCURV (acting reasonably) to fund the development the subject of the Acceptable Planning Permission and provision to the Council of reasonable evidence of such funding Provided it is acknowledged such funding will be subject to outstanding conditions precedent Provided CCURV acting reasonably is satisfied such conditions can be satisfied and provided for the avoidance of doubt that the terms set out in CCURV's Business Plan will be deemed to be reasonable and satisfactory to the parties

Part 5 – Long Stop Date

10 years from the date of this Agreement Provided That the target date for satisfaction of the Relevant Readiness for Development Criteria is June 2010

Part 6 - Occupational Leases

None save as set out in the Certificate of Title

SECTION 3

Part 1 – The Initial Development Property

All that property being land and buildings at College Green, Park Lane, Croydon forming part of the land registered at Land Registry with absolute freehold under title number SY7901 as shown edged red on Plan 3 annexed at Annexure 1.

Full title guarantee

Part 2 - The deeds and documents referred to in paragraph 2 of Part 4 of Schedule 2

None.

Part 3 – Council A Loan amount/B Loan amount/Relevant Transfer Value

Council A Loan amount £[REDACTED]/ B Loan amount £[REDACTED]/ Relevant Transfer Value £[REDACTED] ([REDACTED] Pounds) provided that the B Loan amount and Relevant Transfer Value (but not the Council A Loan amount) may change pursuant to the provisions in **Schedule 12**

Part 4 – Readiness for Development Criteria

(1) The obtaining of Acceptable Planning Permission for a use or mixture of uses identified in CCURV's Business Plan for the Initial Development Property from time to time and the expiry of the Challenge Period (as defined in **Schedule 10**)

(2) Obtaining vacant possession of the Initial Development Property.

(3) CCURV obtaining funding from a Funder on terms satisfactory to CCURV (acting reasonably) to fund the development the subject of the Acceptable Planning Permission and provision to the Council of reasonable evidence of such funding Provided it is acknowledged such funding will be subject to outstanding conditions precedent Provided CCURV acting reasonably is satisfied such conditions can be satisfied and provided for the avoidance of doubt that the terms set out in CCURV's Business Plan will be deemed to be reasonable and satisfactory to the parties

(4) The Unconditional Date has occurred in respect of the Initial Development Property referred to **Section 2** of this **Schedule 1** (being College Green (Fairfield Car Park)).

Part 5 – Long Stop Date

10 years from the date of this Agreement Provided That the target date for satisfaction of the Relevant Readiness for Development Criteria is March 2012.

Part 6 - Occupational Leases

None save as set out in the Certificate of Title

SECTION 4

Part 1 – The Initial Development Property

All that property being land and buildings at College Green (Barclay Road Annex), Park Lane, Croydon forming part of the land registered at Land Registry with absolute freehold under title number SY7901 as shown edged red on Plan 4 annexed at Annexure 1.

Full title guarantee

Part 2 - The deeds and documents referred to in paragraph 2 of Part 4 of Schedule 2

None.

Part 3 – Council A Loan amount/B Loan amount/Relevant Transfer Value

Council A Loan amount £[REDACTED]/ B Loan amount £[REDACTED]/ Relevant Transfer Value £[REDACTED] ([REDACTED] Pounds) provided that the B Loan amount and Relevant Transfer Value (but not the Council A Loan amount) may change pursuant to the provisions in **Schedule 12**

Part 4 – Readiness for Development Criteria

(1) The obtaining of Acceptable Planning Permission for a use or mixture of uses identified in CCURV's Business Plan for the Initial Development Property from time to time and the expiry of the Challenge Period (as defined in **Schedule 10**)

(2) Obtaining vacant possession of the Initial Development Property.

(3) CCURV obtaining funding from a Funder on terms satisfactory to CCURV (acting reasonably) to fund the development the subject of the Acceptable Planning Permission and provision to the Council of reasonable evidence of such funding Provided it is acknowledged such funding will be subject to outstanding conditions precedent Provided CCURV acting reasonably is satisfied such conditions can be satisfied and provided for the avoidance of doubt that the terms set out in CCURV's Business Plan will be deemed to be reasonable and satisfactory to the parties

(4) The Unconditional Date has occurred in respect of the Initial Development Property referred to **Section 2** of this **Schedule 1** (being College Green (Fairfield Car Park)).

Part 5 – Long Stop Date

10 years from the date of this Agreement Provided That the target date for satisfaction of the Relevant Readiness for Development Criteria is June 2014.

Part 6 - Occupational Leases

None save as set out in the Certificate of Title

SECTION 5

Part 1 – The Initial Development Property

All that property being 37 Tamworth Road Croydon CR0 1XV registered at the Land Registry with absolute freehold title under title number SGL687621.

Part 2 - The deeds and documents referred to in paragraph 2 of Part 4 of Schedule 2

None.

Part 3 – Council A Loan amount/B Loan amount/Relevant Transfer Value

Council A Loan amount £[REDACTED]/ B Loan amount £[REDACTED]/ Relevant Transfer Value £[REDACTED] ([REDACTED] Pounds) provided that the B Loan amount and Relevant Transfer Value (but not the Council A Loan amount) may change pursuant to the provisions in **Schedule 12**

Part 4 – Readiness for Development Criteria

(1) The obtaining of Acceptable Planning Permission for a use or mixture of uses identified in CCURV's Business Plan for the Initial Development Property from time to time and the expiry of the Challenge Period (as defined in **Schedule 10**)

(2) Obtaining vacant possession of the Initial Development Property.

(3) CCURV obtaining funding from a Funder on terms satisfactory to CCURV (acting reasonably) to fund the development the subject of the Acceptable Planning Permission and provision to the Council of reasonable evidence of such funding Provided it is acknowledged such funding will be subject to outstanding conditions precedent Provided CCURV acting reasonably is satisfied such conditions can be satisfied and provided for the avoidance of doubt that the terms set out in CCURV's Business Plan will be deemed to be reasonable and satisfactory to the parties

Part 5 – Long Stop Date

3 calendar years from the date of this Agreement Provided That the target date for satisfaction of the Relevant Readiness for Development Criteria is April 2010.

Part 6 - Occupational Leases

None save as set out in the Certificate of Title

SECTION 6

The New Council Property

All that property being land and buildings at Fell Road, part of Davis House and Mint Walk, Croydon shown edged red on Plan 5 annexed at Annexure 1

SCHEDULE 2

Sale conditions

Part 1: GENERAL

1. Commercial conditions

The Commercial Conditions, as varied by **Part 2** of this Schedule, form part of this Schedule so far as they are applicable to the sale of the Initial Development Properties and are consistent with the express terms of this Agreement.

2. Completion

2.1 Completion of the sale of the Relevant Initial Development Property will take place on the Completion Date.

2.2 The Relevant Initial Development Property is sold with vacant possession on completion subject only to such Subsisting Interests as are still subsisting at that date.

3. Title

3.1 The Council has provided the Certificates of Title in respect of the title to the Initial Development Properties for the benefit of CCURV and CCURV is not entitled to raise any requisition or objection to the title except in respect of any matters registered against the title number of the Relevant Initial Development Property after the relevant official copy date in the Certificates of Title

3.2 The Council sells with the title guarantee shown in **Schedule 1** as varied by **Part 3** of this Schedule.

4. Title matters

4.1 The Relevant Initial Development Property is sold subject to and, to the extent that the Council is able to transfer them, with the benefit of the Title Matters.

4.2 The Relevant Initial Development Property is sold subject to and with the benefit of any unregistered interest the Council may have in the subsoil of adopted roads crossing the Initial Development Properties.

4.3 The Relevant Initial Development Property is sold subject to:

4.3.1 the matters contained or referred to in Commercial Condition 3.1.2;

4.3.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Date of Actual Completion;

- 4.3.3 any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;
 - 4.3.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Relevant Initial Development Property and to any orders or regulations made under that or any other legislation;
 - 4.3.5 all rates, charges and other outgoings which affect or are charged on the Relevant Initial Development Property except for any mortgage or legal charge relating to money secured on the Relevant Initial Development Property;
 - 4.3.6 any unregistered interest that overrides the disposition of the Initial Development Property under section 11(4)(c) or Schedules 1, 3 or 12 Land Registration Act 2002;
 - 4.3.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Relevant Initial Development Property, but without any liability on the Council to define them beyond the information which is given in the Certificates of Title; and
 - 4.3.8 all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance, but without any liability on the Council to provide evidence of or to apportion liability beyond the information which is given in the Certificates of Title .
- 4.4 Section 6(2)(a) Law of Property (Miscellaneous Provisions) Act 1994 is to be construed as if all entries made in any public register which would be revealed by searches made in public registers detailed in the Certificates of Title are within the actual knowledge of CCURV, but not otherwise

5. **The Transfer**

- 5.1 The Transfer of each Relevant Initial Development Property is to be in a form to be agreed by the parties, acting reasonably, each Transfer to;
 - 5.1.1 reflect the fact that the Transfer may be a transfer of part of a registered title;
 - 5.1.2 include such grant and reservation of rights for the benefit of the Council's retained land and the Relevant Initial Development Property

to ensure that each can be used beneficially following completion of the appropriate Transfer;

5.1.3 state the price as the Relevant Transfer Value;

5.1.4 impose indemnity covenant(s) on the transferee in respect of positive covenants in respect of the Relevant Initial Development Property.

If the form of such Transfer of the Relevant Initial Development Property cannot be agreed within ten working days from the relevant Unconditional Date then the matter may be referred by either party for determination pursuant to **clause 17**. If Completion is delayed beyond the Completion Date due to a dispute concerning the form of Transfer in respect of a Relevant Initial Development Property, the Completion Date in respect thereof shall be 5 working days after agreement or determination of the form of the relevant Transfer.

5.2 The Council's Solicitors are to prepare the engrossment of the Transfer in duplicate and CCURV is to ensure that the duplicate is returned to the Council's solicitors as soon as possible after completion.

5.3 CCURV is to use all reasonable endeavours to register the transfer at the Land Registry as soon as reasonably practicable after the Date of Actual Completion and, on completion of that registration, is to provide the Council with official copies of the titles to each of the Relevant Initial Development Properties showing CCURV (or the CCURV Subsidiary as applicable) registered as proprietor.

5.4 Any party that executes the transfer or any other document required by this Agreement pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Power of Attorney Act 1971, to the other parties on the Date of Actual Completion.

Part 2: VARIATIONS TO THE COMMERCIAL CONDITIONS

6. Exclusion of Commercial Conditions

Commercial Conditions 1.4.1, 2.2, 4.1.6, 4.2, 5, 6.2, 6.4.2, 7.1.2(b), 8.3.6, 8.3.7, 8.3.8, 10.2.4, 10.3 and 11 are excluded.

7. Variation of Commercial Conditions

7.1 In Commercial Condition 1.3, all references to service by e-mail are deleted.

7.2 Commercial Condition 1.4.1 reads "An obligation to pay money includes an obligation to pay any value added tax chargeable in respect of that payment".

- 7.3 In Commercial Condition 6.1.3, the Council's obligations extend only to documents in the possession of the Council or its mortgagees.
- 7.4 In Commercial Condition 7.1.2(c), the words "at any time" are replaced by the words "on reasonable prior notice during normal business hours".
- 7.5 In Commercial Condition 7.1.2(d), the words "obtain or" are deleted.
- 7.6 In Commercial Condition 8.3.1, the words "Subject to Condition 8.3.6" are deleted.
- 7.7 Commercial Condition 8.3.2 reads "Apportionment is to be made with effect from the date of actual completion".
- 7.8 In Commercial Condition 8.3.3 the word "CCURV" is replaced by the word "seller" and the words "from the beginning" are replaced by the words "until the end".
- 7.9 In Commercial Condition 9.3.2, the words "between completion date and actual completion" are replaced by "from and including the completion date to and including actual completion".
- 7.10 Commercial Condition 9.3.4 reads "the Council will take the net income from the property until completion as well as compensation under condition 9.3.1".

Part 3: TITLE GUARANTEE

Full

Part 4: TITLE MATTERS

8. Register entries

The matters contained or referred to in the Property and Charges Registers of the title number of the Relevant Initial Development Property referred to in **Part 1 of Schedule 1**.

9. Other deeds and documents

The matters contained or referred to in any the deeds and documents set out in **Part 2 of Schedule 1**

10. Possession

The Initial Development Properties are sold subject to any adverse occupation identified in the Certificates of Title but otherwise with vacant possession.

Part 5: INSURANCE

11. Maintenance of the insurance

- 11.1 The Council is to insure the Relevant Initial Development Property until the Date of Actual Completion but the Council is not to be liable to CCURV if the insurance policy or policies become void due to the act or default of any person other than the Council.
- 11.2 the Council is not responsible to CCURV for any deficiency in the amount insured or any inadequacy of the risks covered .
- 11.3 If the Relevant Initial Development Property is damaged or destroyed between the Unconditional Date in respect of the Relevant Initial Development Property and the Date of Actual Completion by any of the risks covered by the Council's policies of insurance in respect of the Initial Development Property:
 - 11.3.1 the Council is to pay to CCURV on Actual Completion the amount of the policy moneys which the Council has received to the extent that they have not been applied in making good the damage or destruction; and
 - 11.3.2 if no final payment has been received by the Date of Actual Completion the Council is to assign to CCURV, at CCURV's expense, all rights to claim under the Council's insurance policy in such form as CCURV reasonably requires.
- 11.4 The provisions of **Paragraph 1.3** are subject to CCURV completing the purchase of the Relevant Initial Development Property.
- 11.5 CCURV is not entitled to request any increase in the amount insured or to request any change in the risks covered by the Council's insurance.
- 11.6 The Council is to cancel its insurance cover for the Relevant Initial Development Property on or as soon as practicable after the Date of Actual Completion.

SCHEDULE 3

Not used.

SCHEDULE 4

Appointments of Building Contractor and Professional Team

1. Basis of Appointments

References in this clause to CCURV procuring an action or entering into documentation shall include it procuring such act or the execution of such documentation by Devco:

1.1 If it has not already done so, CCURV is to:

1.1.1 appoint the Building Contractor;

1.1.2 appoint each member of the Professional Team; and

1.1.3 procure that each Principal Sub-Contractor and each member of the Professional Team (save where it is appropriate they be appointed by CCURV) is appointed by the Building Contractor.

1.2 Before appointing any Building Contractor, Principal Sub-Contractor or member of the Professional Team, CCURV is to make due enquiry as to their repute, competence and suitability with respect to the Development Works.

2. Terms of Appointments

2.1 The Building Contract and the Appointments must permit the Council (subject to the terms of the Step In Agreement) to exercise step-in rights and become the employer of the contracting party following an Event of Default under this Agreement.

2.2 CCURV is to procure that professional indemnity insurance is maintained throughout the period of the Development and for twelve years after the Date of Practical Completion with reputable insurers:

2.2.1 by each member of the Professional Team for at least £10,000,000 in respect of each claim that may be made;

2.2.2 the Building Contractor for at least £20,000,000 in aggregate plus one reinstatement; and

2.2.3 by each Principal Sub-Contractor in a sum to be agreed between the parties acting reasonably (or in the absence of agreement to be determined pursuant to **clause 17**) prior to the relevant Principal Sub-contractor being appointed.

- 2.3 The obligations in **paragraph 2.2** will apply in respect of each member of the Professional Team, the Building Contractor and each Principal Sub-Contractor for so long as professional indemnity insurance is generally available in the insurance market to those persons at a reasonable cost. Payment of any increased or additional premiums required by insurers by reason of those persons' own claim records or other acts or omissions or things peculiar to those persons are to be disregarded in determining whether such insurance is available at a reasonable cost.
- 2.4 CCURV is to provide the Council with a copy of each Appointment, Building Contract and Principal Sub-Contract certified as a true copy within five working days of it being entered into; and
- 2.5 CCURV shall use reasonable endeavours to provide to the Council a copy of the approvals by the professional indemnity insurers of the person appointed of the forms of Building Contract, Appointments, Principal Sub-Contracts and Warranties.
- 2.6 Notwithstanding any of the provisions of this **Schedule 4**, CCURV or Devco shall not enter into any Building Contract or Appointment without the Council's written consent as to its form such consent not to be unreasonably withheld or delayed.

3. **Warranties**

- 3.1 CCURV is to procure that each Building Contractor, Principal Sub-Contractor, each member of the Professional Team and CCURV's Representative:
- 3.1.1 unconditionally delivers Warranties to the Council on the date of their appointment; and
 - 3.1.2 is under an obligation to provide Warranties to up to 3 tenants of the Building the subject of a first letting within 12 months of Practical Completion of the Building.
- 3.2 The Warranties are to be in such form as the Council may approve, such approval not to be unreasonably withheld or delayed subject to the provisions of **paragraph 3.3**.
- 3.3 The Council will not be obliged to approve any amendments to the terms of the Warranties that:
- 3.3.1 include a net contribution clause; or
 - 3.3.2 include a limitation on liability so that only the costs of making good defects in the Development Works are recoverable

Save where having regard to the nature of the services provided it is reasonable such provisions are incorporated or where it is no longer open market practice to be able to procure warranties without such provisions.

4. **CCURV's obligations**

4.1 CCURV is to procure that:

4.1.1 each member of the Professional Team complies with the terms of its Appointment;

4.1.2 the Building Contractor complies with the terms of the Building Contract; and

4.1.3 the Building Contractor and each Principal Sub-Contractor comply with the terms of their Principal Sub-Contracts.

4.2 CCURV is not without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed to dismiss any member of the Professional Team, or the Building Contractor, or permit a Principal Sub-Contractor to be dismissed.

4.3 CCURV is not to:

Without the consent of the Council which is not to be unreasonably withheld or delayed

4.3.1 to waive, release nor estop itself from enforcing or seeking redress for any breach of the Appointments, the Building Contract or the Principal Sub-Contracts; or

4.3.2 do or omit to do any act or thing which would entitle:

4.3.2.1 any member of the Professional Team to treat its Appointment as terminated by breach;

4.3.2.2 the Building Contractor to treat the Building Contract as terminated by breach;

4.3.2.3 a Principal Sub-Contractor to treat a Principal Sub-Contract as terminated by breach; or

4.3.3 receive any commissions, inducements, or pecuniary or other advantages at any time arising from the appointment of the members of the Professional Team, the Building Contractor or any Principal Sub-Contractor.

5. **Appointment Default**

5.1 If there is an Appointment Default, CCURV is immediately to notify the Council in writing of the Appointment Default and the reasons for it.

5.2 Following an Appointment Default:

5.2.1 where CCURV was responsible for the original appointment, CCURV is to use reasonable endeavours to appoint another person on the terms of this Schedule in substitution for the person whose appointment was terminated; and

5.2.2 where the Building Contractor was responsible for the original appointment, CCURV is to use reasonable endeavours to procure that the Building Contractor appoints another person on the terms of this Schedule in substitution for the person whose appointment was terminated.

6. **Proceedings**

6.1 If the Building Contractor, any Principal Sub Contractor or any member of the Professional Team is in default or has committed a breach of their obligations in relation to the Development or any part of it, CCURV will enforce its rights and remedies in respect of that breach.

SCHEDULE 5

Development Plans and Programme of Works

1. Preparation and approval of Development Plans

- 1.1 As soon as reasonably practicable after the date of this Agreement CCURV is to prepare the detailed specification and development plans (the “**Specification and Development Plans**”) and provide them to the Council for the Council's approval. It is acknowledged that the Council have the ability to input into the production of the Specification and Development Plans and CCURV will work with the Council to take into account the Council's reasonable representations in this regard.
- 1.2 The Council is not unreasonably to withhold or delay its approval of the Specification and Development Plans where they have been produced in accordance with the Outline Specification and do not contain any Adverse Matters.
- 1.3 Where the Development Works are to be carried out pursuant to a design and build contract references to the Specification and Development Plans will include:
 - 1.3.1 all employer's requirements submitted to the Building Contractor under the Building Contract, and CCURV will not submit the employer's requirements unless and until they have been approved by the Council under **paragraph 1.1**; and
 - 1.3.2 all contractor's proposals produced by the Building Contractor under the Building Contract, and CCURV will not approve the contractor's proposals under the Building Contract unless and until they have been approved by the Council under **paragraph 1.1**.
- 1.4 Once approved by the Council, no changes to the Specification and Development Plans may be made except in accordance with **paragraph 3 of Schedule 8**.
- 1.5 For the avoidance of doubt CCURV is not to start the Development Works until the Specification and Development Plans have been approved under this Schedule.
- 1.6 No inspection or approval by the Council of the Specification and Development Plans is to lessen the obligations of CCURV, the Building Contractor, any member of the Professional Team or any Principal Sub-Contractor in relation to the design and construction of the Development, whether under this Agreement or otherwise.

2. **Programme of Works**

2.1 CCURV is to produce and provide the Council with a Programme of Works for its approval giving details of:

2.1.1 the date on which the Development Works will begin; and

2.1.2 the timetable for the carrying out of the Development Works showing the estimated duration of each stage of the Development Works and the date on which it is intended that Practical Completion will be achieved

2.2 Once approved by the Council, CCURV is not to vary the Programme of Works except in accordance with **paragraph 3 of Schedule 8**.

2.3 For the avoidance of doubt CCURV is not to start the Development Works until the Programme of Works has been approved by the Council, such approval not to be unreasonably withheld or delayed.

SCHEDULE 6

Outline Specification

The Outline Specification is contained on the CD attached and the documents detailed in this schedule

SCHEDULE 7

Pre-Development Obligations

1. Statutory Consents

- 1.1 As soon as reasonably practicable after all relevant approvals have been given by the Council under this Agreement CCURV is to make applications for and use all reasonable endeavours to obtain the Statutory Consents or obtain lawful relaxations or waivers of them.
- 1.2 CCURV is to keep the Council properly informed as to the progress of each application for the Statutory Consents and of all negotiations relating to those applications.
- 1.3 If any of the Statutory Consents (but excluding for this purpose any planning application) are refused, CCURV is to appeal against the refusal and use all reasonable endeavours to obtain the relevant Statutory Consents.
- 1.4 CCURV is to provide copies of the Statutory Consents obtained to the Council.
- 1.5 CCURV is to procure that all Statutory Consents obtained remain valid and unrevoked and use all reasonable endeavours to renew any that become invalid or revoked.

2. CDM Regulations

- 2.1 By entering into this Agreement, CCURV elects, for the purposes of regulation 8 of the CDM Regulations, to be treated as the only client in respect of the Development and the Development Works. the Council agrees to CCURV's election to be treated as the only client.
- 2.2 CCURV is to appoint the CDM Co-ordinator as the CDM Co-ordinator in accordance with regulation 14(1) of the CDM Regulations and the Building Contractor as the principal contractor for the Development Works in accordance with regulation 14(2) of the CDM Regulations.
- 2.3 CCURV is:
 - 2.3.1 to comply with its obligations as the client under the CDM Regulations;
 - 2.3.2 to procure that the persons appointed under **paragraph 2.2** comply with their obligations under the CDM Regulations;
 - 2.3.3 to procure that designers and contractors for the purposes of the CDM Regulations comply with their obligations in the CDM Regulations; and

2.3.4 in conjunction with the CDM Co-ordinator to procure that:

2.3.4.1 full details of the Development Works are given to the Health and Safety Executive in accordance with regulation 21 of the CDM Regulations; and

2.3.4.2 a Construction Phase Plan is prepared in accordance with regulation 23 of the CDM Regulations.

2.3.5 not to start the Development Works until the provisions of this **paragraph 2** have been complied with.

3. **Provision of Vacant Possession**

Once all other New Council Property Readiness for Development Criteria are satisfied the Council shall vacate the New Council Property within 4 weeks (i.e. Fell Road).

4. **Liquidated Damages**

4.1 As soon as reasonably practicable the Council and CCURV shall agree a schedule of liquidated and ascertained damages which shall apply in the event that CCURV fails to achieve Practical Completion of the whole of the Development Works by the date referred to in **paragraph 1.2** of **Schedule 8**. Such liquidated and ascertained damages to the Council shall represent the estimated cost of delayed Practical Completion to the Council of:

rental for decanting;

abortive move costs;

professional fees;

maintenance costs in respect of Taberner House.

4.2 If the schedule of liquidated and ascertained damages cannot be agreed between the parties then either party may refer the matter for determination by a Specialist in accordance with **clause 17**.

5. **Satisfactory Funding**

5.1 CCURV (acting reasonably) shall use all reasonable endeavours to obtain sufficient funding for the Development Works, on terms which are reasonably acceptable to the Council and CCURV each acting reasonably and which are competitive in the market in order to complete the Development Works Provided that it is agreed that funding terms consistent with the Business Plan will be deemed to be satisfactory.

- 5.2 CCURV shall, within 4 weeks of satisfaction of all New Council Property Readiness For Development Criteria (other than the funding criterium referred to in **clause 11.2.6**) confirm in writing to the Council whether it has secured funding on the same terms as set out in **paragraph 5.1** above or whether any changes to the terms have been made. If any changes have been made to the funding terms offered to CCURV then CCURV shall provide to the Council full details of such changes sufficient to enable the Council to decide whether, acting reasonably, it approves such funding Provided that funding terms consistent with the Business Plan will be deemed to be satisfactory. In conjunction with considering if the change to the funding terms is acceptable, the parties shall agree as soon as reasonably practicable whether the definition of the "Revised Payment" in the Payment Deed is to be based on annual RPI uplifts (as currently set out in the Payment Deed) or is to be based on fixed annual uplifts of 2.5%. The Payment Deed is to be amended accordingly.
- 5.3 Any dispute between the parties in respect of this paragraph shall be referred to determination pursuant to **clause 17**.

SCHEDULE 8

Development Obligations

1. Carrying out the Development Works

1.1 CCURV is to proceed diligently with and carry out and complete the Development Works:

1.1.1 in a good, proper and workmanlike manner, free from defects and using good quality and suitable materials; and

1.1.2 in accordance with:

1.1.2.1 the Specification and Development Plans;

1.1.2.2 the Programme of Works;

1.1.2.3 the terms of the Building Contract;

1.1.2.4 the New Council Property Planning Permission;

1.1.2.5 the Statutory Consents;

1.1.2.6 all Statutory Requirements, including the CDM Regulations;

1.1.2.7 the Construction Phase Plan;

1.1.2.8 the requirements, if any, of the insurers of the New Council Property; and

1.1.2.9 British standards and any applicable codes of practice; and

1.1.3 without using or specifying the use of any Prohibited Materials.

1.2 Without prejudice to **paragraph 1.1**, CCURV is to procure that Practical Completion of the whole of the Development Works occurs by a date 3 calendar years following the date of satisfaction of the New Council Property Readiness for Development Criteria or such other date to be agreed by the parties hereto pursuant to **paragraph 2 of Schedule 5** and/or **paragraph 3 of Schedule 8**.

1.3 In the event that CCURV fails to achieve Practical Completion of the whole of the Development Works by the date referred to in **paragraph 1.2** above (as may be amended) then CCURV shall pay liquidated and ascertained damages to the Council in such sum as agreed or determined pursuant to **paragraph 4 of Schedule 7**.

- 1.4 In the event that CCURV fails to achieve Practical Completion of the whole of the Development Works by a date 6 years from the date of satisfaction of the New Council Property Readiness for Development Criteria then the Council may terminate this Agreement immediately on written notice to CCURV. The termination of this Agreement will be without prejudice to any claims, liabilities or rights of the Council or CCURV existing at the date on which this Agreement terminates.
- 1.5 CCURV is to procure that:
- 1.5.1 proper provision is made for the security of the New Council Property during the carrying out of the Development Works and for the protection of any materials, plant and equipment in or on it;
 - 1.5.2 proper precautions are taken for the safety of all persons upon or in the vicinity of the New Council Property including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Development Works as may be necessary or desirable in the interest of public safety;
 - 1.5.3 the Development Works are carried out in a manner which does not cause any material nuisance, or any injury, loss or danger to or actionable interference with the public or any occupiers of adjoining or neighbouring property; and
 - 1.5.4 proper provision is made for the support of land, buildings and boundaries adjoining the New Council Property and for the protection of all services benefiting land adjoining or near to the New Council Property.
- 1.6 CCURV is to:
- 1.6.1 procure that the rights and interests of third parties are not infringed by the carrying out of the Development Works;
 - 1.6.2 comply with any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting the New Council Property or the title to it;
 - 1.6.3 not permit any encroachment or easement to be made or acquired against or over the New Council Property;
 - 1.6.4 negotiate the terms of agreements with owner's and occupiers of neighbouring property for the release of rights of way, light and air or any other legal or equitable rights over the New Council Property which

would be infringed by the Development or prevent or impede the carrying out of the Development Works;

- 1.6.5 apply for and use all reasonable endeavours to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Development Works to be carried out.

1.7 Where any works are to be carried out pursuant to a Planning Agreement CCURV is to:

- 1.7.1 carry out the works in accordance with the Planning Agreement and is to indemnify the Council against any breach of its terms where the Council is a party to the Planning Agreement;
- 1.7.2 complete the works on or before the Date of Practical Completion;
- 1.7.3 following completion of the relevant works, repair, maintain and remedy any defects in them pursuant to the terms of the Planning Agreement;
- 1.7.4 use all reasonable endeavours to procure that where the works or any part of them are to be adopted by the local authority, the works are so adopted on the terms of the Planning Agreement.

1.8 In carrying out the Services Works CCURV is to:

- 1.8.1 take such steps as are necessary to divert all pipes, wires, cables or other conduits in, under or over the New Council Property or any adjoining or neighbouring property which need to be diverted as a result of the Development;
- 1.8.2 install the Services Works and procure that they connect to the public mains without crossing land not within the ownership of the Council (unless CCURV is able to procure any necessary rights in favour of the Council); and
- 1.8.3 negotiate such agreements with statutory undertakers, utilities companies and others as may be required to secure for the Development all services required and the diversion in a satisfactory manner of all services which are located in a position which would interfere with the Development Works.

2. Extensions of time

2.1 If any extension of time is granted under the Building Contract that does not result from the act, omission or default of CCURV or any party for whom CURV is responsible, the period or periods of time for carrying out and completing the Development Works is to be extended by the extension of time granted to the Building Contractor under the Building Contract.

2.2 If there is any delay in completing the Development Works arising from:

2.2.1 any default of the Building Contractor under the terms of the Building Contract;

2.2.2 the Insolvency of the Building Contractor;

2.2.3 Force Majeure, to the extent not covered under **paragraph 2.1**; or

2.2.4 any loss or damage caused by any of the Insured Risks

2.2.5 any changes to the Development Works requested by the Council pursuant to **paragraph 3** of **Schedule 8**

the period or periods of time for carrying out and completing the Development Works is to be extended by such period as is reasonable and proper in the light of the reasons for the delay and any dispute in this respect shall be referred for determination under clause 17.

2.3 Where CCURV is entitled to claim an extension of time under both **paragraph 2.1** and **paragraph 2.2**, **paragraph 2.1** will take priority and CCURV will not be entitled to any additional extension of time under **paragraph 2.2** (save to the extent that the period of time under 2.2 exceeds that under 2.1).

3. Variations

3.1 CCURV is to notify the Council in writing of any changes in the Programme of Works which CCURV reasonably believes are required. No variations in the Programme of Works that involve time-critical changes or that have material cost implications will be permitted without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

3.2 If any of the materials, plant or equipment required for the Development Works cannot be obtained within a reasonable time or at a reasonable cost, CCURV will be entitled to use alternative materials, plant or equipment in their place so long as the alternative materials, plant or equipment are of no lesser quality than the materials, plant or equipment which they replace.

- 3.3 CCURV may make changes to the Specification and Development Plans without consent of the Council where:
- 3.3.1 the changes are required to comply with Statutory Requirements or are minor changes of a non-structural nature; and
- 3.3.2 the changes do not include or result in any Adverse Matters arising.
- 3.4 All other changes to the Specification and Development Plans will require the prior written consent of the Council, such consent not to be unreasonably withheld or delayed where the changes do not include or result in Adverse Matters arising.
- 3.5 The Council shall be permitted to propose a Council's Change (as defined in **Schedule 11**) in which case the provisions of **paragraph 5** of **Schedule 11** shall apply.

4. **Inspection by the Council**

- 4.1 During the carrying out of the Development Works, the Council and the Council's Representative may enter the New Council Property to view the state and progress of the Development Works.
- 4.2 The Council and the Council's Representative will:
- 4.2.1 give reasonable prior notice to CCURV before exercising these rights unless prior arrangements have been made with CCURV for regular visits;
- 4.2.2 exercise the rights at reasonable times and at reasonable intervals;
- 4.2.3 be accompanied by CCURV's Representative if CCURV so requires;
- 4.2.4 comply with the reasonable requirements of the Building Contractor;
- 4.2.5 comply with any health and safety requirements in the Construction Phase Plan; and
- 4.2.6 refer all matters arising to CCURV and not to the Building Contractor or its agents, workmen or sub-contractors.

5. **Site Meetings**

- 5.1 CCURV is to hold site meetings not less than once every month and procure that the Building Contractor, CCURV's Representative, members of the Professional Team and any relevant Principal Sub-Contractors attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Development Works.

- 5.2 CCURV is to:
- 5.2.1 give the Council not less than five working days' written notice of any site meetings called under **paragraph 5.1** unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;
 - 5.2.2 permit the Council and the Council's Representative, if they so desire, to attend and participate in those site meetings;
 - 5.2.3 permit the Council and the Council's Representative to make representations to CCURV in connection with the Development Works;
 - 5.2.4 supply the Council and the Council's Representative with copies of full minutes of the site meetings, whether or not they attend.
- 5.3 In respect of any representations made by the Council or the Council's Representative under **paragraph 5.2**:
- 5.3.1 CCURV is to take proper account of them;
 - 5.3.2 CCURV is to procure that the members of the Professional Team, the Building Contractor and any Principal Sub-Contractors take proper account of those representations; and
 - 5.3.3 CCURV is to notify the Council and the Council's Representative of any observations made by the members of the Professional Team, the Building Contractor or the Principal Sub-Contractors on representations made by the Council or the Council's Representative.
6. **Certificate of Practical Completion**
- 6.1 CCURV is to procure that CCURV's Representative inspects the Development Works with a view to the issue of the Certificate of Practical Completion in accordance with the terms of the Building Contract. CCURV is to give the Council's Representative not less than ten working days' prior written notice of the date and time, being a working day during the hours of daylight, when CCURV's Representative will carry out this inspection.
 - 6.2 The Council and the Council's Representative will be entitled to accompany CCURV's Representative on the inspection of the Development Works and to make representations on the proposal to issue the Certificate of Practical Completion and CCURV is to procure that CCURV's Representative takes proper account of any representations made by them.
 - 6.3 If there are any defects in the Development Works, other than defects in the nature of minor snagging items which would not be an impediment to the issue

of the Certificate of Practical Completion in accordance with the terms of the Building Contract, CCURV is to procure that CCURV's Representative does not issue the Certificate of Practical Completion until those defects have been made good.

- 6.4 Subject to **paragraph 6.3**, CCURV is to serve a copy of the Certificate of Practical Completion on the Council and the Council's Representative as soon as reasonably practicable after the date of the inspection of the Development Works.

7. **Following Practical Completion**

- 7.1 As soon as reasonably practicable following Practical Completion, CCURV is to:

- 7.1.1 procure that the Building Contractor carries out any further works that are required to make good any defects, omissions and snagging items identified in the Certificate of Practical Completion;
- 7.1.2 carry out and complete in the next planting season any landscaping works which it was not possible to complete by the Date of Practical Completion because of the planting season in which the Date of Practical Completion fell; and
- 7.1.3 procure that all defects in the Development Works for which the Building Contractor is responsible under the Building Contract that arise within the defects liability period or its equivalent under the Building Contract (being not less than 12 months) are made good in accordance with the terms of the Building Contract;
- 7.1.4 prepare and provide the Council with copies of:
 - 7.1.4.1 the commissioning reports, test certificates and operating manuals for all plant and machinery installed as part of the Development Works;
 - 7.1.4.2 a copy of the Health and Safety File maintained under the CDM Regulations;
 - 7.1.4.3 a complete set of the as-built plans, drawings and specifications of the Development Works; and
 - 7.1.4.4 all product guarantees relating to the Development Works.

- 7.2 The Council is to allow a right of access to the New Council Property at all reasonable times to enable a schedule of any further works (referred to in paragraph 7.1.1 above) to be prepared and works required under this paragraph

7 to be completed. Such access is on condition that CCURV agrees with the Council:

- 7.2.1 to make good any damage to the New Council Property caused in the exercise of the rights in paragraph 7.2; and
- 7.2.2 to take all proper and sufficient precautions during the exercise of the rights:
 - 7.2.2.1 not permanently to infringe, interrupt or destroy any rights, easements, privileges or services enjoyed by the New Council Property; and
 - 7.2.2.2 to cause as little inconvenience as reasonably practicable to the Council and any tenants or other occupiers of the New Council Property;
- 7.2.3 to use all reasonable endeavours to ensure that no contamination is spread laterally or down into any aquifer beneath the New Council Property; and
- 7.2.4 to indemnify the Council in respect of personal injury to or the death of any person and any injury or damage whatsoever to any property, real or personal, arising from the exercise of the rights and any subsequent reinstatement of the work.

SCHEDULE 9

Insolvency Defaults

1. Defined terms

- 1.1 In this Schedule, the following words and expressions have the following meanings:

"1986 Act" Insolvency Act 1986

"1994 Order" Insolvent Partnerships Order 1994

"LPA" Law of Property Act 1925

2. Insolvency Default

- 2.1 Insolvency occurs if:

2.1.1 a person is a company and:

2.1.1.1 it enters into a voluntary arrangement under Part I of the 1986 Act or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debt;

2.1.1.2 an administrator is appointed under Part II of the 1986 Act;

2.1.1.3 a receiver or manager, including an administrative receiver, is appointed whether under Part III of the 1986 Act, under the LPA or otherwise;

2.1.1.4 a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part IV of the 1986 Act unless for the purpose of a solvent amalgamation or reconstruction of the company;

2.1.1.5 a scheme of arrangement is made under section 425 Companies Act 1985;

2.1.1.6 it changes its status from unlimited to limited; or

2.1.1.7 it is struck off the register of companies or otherwise ceases to exist;

2.1.2 two or more people are in partnership and:

- 2.1.2.1 they enter into a voluntary arrangement under Part II of the 1994 Order;
 - 2.1.2.2 an administration order is made under Part III of the 1994 Order; or
 - 2.1.2.3 a winding up order is made under Parts IV or V of the 1994 Order; or
- 2.1.3 a person is incorporated or resident in a jurisdiction outside England and Wales and any event or circumstance occurs which under the laws of that jurisdiction has an analogous or equivalent effect to any of the events in this **paragraph 2.1**.

SCHEDULE 10

Planning Conditions

PART 1: NEW COUNCIL PROPERTY PLANNING PERMISSION

1. Defined terms

1.1 In this Schedule, the following words and expressions have the following meanings:

“Appeal”

all or any of the following:

- (a) an application to the local planning authority under section 73 of the Planning Act against the presence of an Onerous Condition in a New Council Property Planning Permission;
- (b) an application to the Secretary of State under sections 78 and 79 of the Planning Act following a Planning Refusal by the local planning authority; or
- (c) a Calling-In

“Calling-In”

a direction by the Secretary of State that a Planning Application be referred to him for determination under section 77 of the Planning Act

“Challenge Period”

the following periods, each calculated from and including the Permission Date:

- (a) following the grant of the New Council Property Satisfactory Planning Permission by the local planning authority (including after the determination of an application under section 73 of the Planning Act), the period of three months and two weeks; or
- (b) following the grant of New Council Property Satisfactory Planning

Permission by or on behalf of the Secretary of State, the period of six weeks

"CCURV's Onerous Condition"

has the meaning given to it in **paragraph 1 of Part 2** of this Schedule

"Inspector"

any person appointed by the Secretary of State under the Planning Act to determine appeals made under section 78 of the Planning Act or to determine a Calling-In.

"New Council Property Planning Permission"

planning permission for the Development including approval of siting, design, access and use whether or not reserving approval for landscaping and materials, granted:

- (a) pursuant to a Planning Application; or
- (b) by the local planning authority or by the Secretary of State or an Inspector.

"New Council Property Satisfactory Planning Permission"

a New Council Property Planning Permission that does not contain:

- (a) any Onerous Conditions; or
- (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Condition

"Council's Onerous Conditions"

has the meaning given to it in **paragraph 2 of Part 2** of this Schedule

"Onerous Conditions"

means either the Council's Onerous Conditions or CCURV's Onerous Conditions

"Permission Date"

the date of the New Council Property Satisfactory Planning Permission which means the date written, printed or stamped on the New Council Property Planning Permission issued by the local planning authority or the letter or other document issued by the Secretary of State or the Inspector following an Appeal or a Calling-In

"Planning Application"	the initial application made by or on behalf of CCURV for New Council Property Planning Permission for the Development and any listed building consent and includes any further applications or variations made in accordance with this Schedule
"Planning Counsel"	the planning counsel listed in Part 3 of this Schedule 10
"Planning Decision"	a Planning Refusal or the grant of New Council Property Planning Permission whether by the local planning authority, the Secretary of State or an Inspector
"Planning Proceedings"	all of any of the following: <ul style="list-style-type: none"> (a) an application made for judicial review by a third party following the grant of a New Council Property Planning Permission by the local planning authority; (b) an application for judicial review by CCURV following a Planning Refusal by the local planning authority; (c) an application made under section 288 of the Planning Act by a third party following the grant of New Council Property Planning Permission by the Secretary of State or an Inspector; or (d) an application made under section 288 of the Planning Act by CCURV following a Planning Refusal by the Secretary of State or an Inspector; and (e) includes any appeal to a higher court made against a judgement given in a lower court.
"Planning Refusal"	any of the following: <ul style="list-style-type: none"> (a) a refusal by the local planning authority to grant New Council

Property Planning Permission pursuant to a Planning Application;

- (b) a refusal by the local planning authority to vary or remove an Onerous Condition pursuant to an application made by CCURV under section 73 of the Planning Act;
- (c) a refusal by or on behalf of the Secretary of State to grant New Council Property Planning Permission following a Planning Appeal or a Calling-In;
- (d) a failure by the local planning authority to determine the Planning Application within the period required under section 78(2) of the Planning Act; or
- (e) the grant of a New Council Property Planning Permission which is subject to any Onerous Condition or requires a Planning Agreement to be entered into on terms which contain an Onerous Condition

“Secretary of State”

the Secretary of State or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Planning Act

2. Obtaining New Council Property Satisfactory Planning Permission

- 2.1 CCURV is to use all reasonable endeavours to obtain a New Council Property Satisfactory Planning Permission as soon as reasonably practicable after the date of this Agreement.
- 2.2 Neither CCURV nor the Council is to commence Planning Proceedings following the grant of a New Council Property Satisfactory Planning Permission.
- 2.3 Following the grant of New Council Property Satisfactory Planning Permission, the New Council Property Readiness for Development Criteria will not be satisfied until:

- 2.3.1 the relevant Challenge Period has expired without Planning Proceedings being commenced; or
- 2.3.2 if Planning Proceedings are commenced during the Challenge Period, those proceedings are finally disposed of leaving in place a Satisfactory New Council Property Planning Permission; and
- 2.3.3 in each case, any Planning Agreement required to implement the terms of a New Council Property Satisfactory Planning Permission has been completed.
- 2.3.4 if Planning Proceedings are begun by a third party during a Challenge Period, to the date ten working days after all Planning Proceedings have been determined or discontinued; and
- 2.3.5 if an application is made to Planning Counsel or a Specialist under this Schedule, to the date eight weeks after CCURV receives written notice of his determination.

3. The Planning Application

- 3.1 The Planning Application is to be submitted in the sole name of CCURV.
- 3.2 CCURV may submit the Planning Application in duplicate.
- 3.3 CCURV:
 - 3.3.1 is to submit a Planning Application to the local planning authority within 20 weeks of the date of this Agreement;
 - 3.3.2 may, with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed:
 - 3.3.2.1 amend any Planning Application made to the local planning authority; or
 - 3.3.2.2 withdraw a Planning Application and immediately submit a fresh Planning Application

in each case where it is reasonable to do so in order to obtain Satisfactory New Council Property Planning Permission; and
 - 3.3.3 may agree with the local planning authority any extension to the statutory period not exceeding six months for determining the Planning Application under section 78(2) of the Planning Act.
- 3.4 CCURV may enter into negotiations or discussions with the local planning authority to facilitate the grant of New Council Property Planning Permission but

will not enter into any agreement with the local planning authority without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

3.5 CCURV is to:

- 3.5.1 provide to the Council a copy of each Planning Application made to the local planning authority;
- 3.5.2 keep the Council informed at reasonable intervals, but not more than once in each calendar month, of the progress of each Planning Application, amendments made to each Planning Application, each withdrawal of a Planning Application and details of all discussions and negotiations with the local planning authority;
- 3.5.3 give the Council reasonable prior notice of any meetings with the local planning authority and allow the Council and its planning consultants to attend those meetings; and
- 3.5.4 provide the Council with copies of all notes, correspondence, documents and minutes of meetings concerning the Planning Application.

3.6 The Council is to co-operate with CCURV and use all reasonable endeavours to assist CCURV to obtain Satisfactory New Council Property Planning Permission.

4. **Planning Decisions**

- 4.1 CCURV is to notify the Council of each Planning Decision and provide a copy of the Planning Decision to the Council not later than ten working days after notice of the Planning Decision has been given to CCURV.
- 4.2 If there is a Planning Refusal, CCURV is to notify the Council in writing within four weeks after the date of the Planning Refusal whether it wishes to make an Appeal or commence Planning Proceedings in respect of that Planning Refusal.
- 4.3 Within ten working days of receipt of the New Council Property Planning Permission and any Planning Agreement CCURV is to notify the Council in writing whether it considers that they contain CCURV's Onerous Conditions which are unacceptable to CCURV and:
 - 4.3.1 if CCURV does not do so, the Council may serve written notice on CCURV requiring CCURV to comply with this **paragraph 4.3**; and
 - 4.3.2 if CCURV does not respond within two weeks of a notice served under **paragraph 4.3.1**, the New Council Property Planning Permission and

any Planning Agreement, as the case may be, are to be treated as not containing CCURV's Onerous Conditions.

- 4.4 Within ten working days of receipt of the New Council Property Planning Permission and any Planning Agreement from the Landlord under **paragraph 4.1**, the Council is to notify CCURV in writing whether it considers that they contain the Council's Onerous Conditions which are unacceptable to the Council and:
- 4.4.1 if the Council does not do so, CCURV may serve written notice on the Council requiring the Council to comply with this **paragraph 4.4**; and
- 4.4.2 if the Council does not respond within two weeks of a notice served under **paragraph 4.4.1**, the New Council Property Planning Permission and any Planning Agreement, as the case may be, are to be treated as not containing the Council's Onerous Conditions.
- 4.5 If CCURV serves notice under **paragraph 4.3** that the New Council Property Planning Permission or any Planning Agreement contains one or more CCURV's Onerous Conditions the Council may serve notice on CCURV within ten working days of the date of CCURV's notice, time being of the essence, requiring the question of whether the New Council Property Planning Permission or the Planning Agreement, as the case may be, contains CCURV's Onerous Conditions to be determined by a Specialist in accordance with **clause 18**.
- 4.6 If the Council serves notice under **paragraph 4.4** that the New Council Property Planning Permission or any Planning Agreement contains one or more the Council's Onerous Conditions CCURV may serve notice on the Council within ten working days of the date of Tenant's notice, time being of the essence, requiring the question of whether the New Council Property Planning Permission contains the Council's Onerous Conditions to be determined by a Specialist in accordance with **clause 18**.
- 4.7 CCURV may waive its right to object to the terms of the New Council Property Planning Permission or any Planning Agreement because of the presence of a CCURV's Onerous Condition by serving written notice to this effect on the Council and on the service of notice under this **paragraph 4.7**, CCURV will lose any right to object to the presence of CCURV's Onerous Conditions in that New Council Property Planning Permission or Planning Agreement, as the case may be.
- 4.8 The Council may waive its right to object to the terms of the New Council Property Planning Permission or any Planning Agreement because of the presence of a the Council's Onerous Condition by serving written notice to this effect on CCURV and on the service of notice under this **paragraph 4.8**, the Council will lose any right to object to the presence of the Council's Onerous

Conditions in that New Council Property Planning Permission or Planning Agreement, as the case may be.

- 4.9 CCURV and the Council agree that CCURV may object only to conditions which are CCURV's Onerous Conditions and the Council may object only to conditions which are the Council's Onerous Conditions.

5. **Appeals and Planning Proceedings**

5.1 Following a Planning Refusal:

- 5.1.1 CCURV is not to Appeal or commence Planning Proceedings except in accordance with this **paragraph 5**;

- 5.1.2 If the Council so requests following a Planning Refusal by the local planning authority:

5.1.2.1 if the Planning Refusal arose because of the failure by the local planning authority to determine the Planning Application within the period required under section 78(2) of the Planning Act (taking into account any extensions permitted by CCURV in accordance with this Schedule), CCURV is to make an Appeal; and

5.1.2.2 if the Planning Refusal arose for any other reason CCURV may (by service of the notice referred to in paragraph 4.2 of this Schedule) elect to make an Appeal but if it does not do so:

(a) CCURV and the Council are to instruct Planning Counsel to advise on whether an Appeal or Planning Proceedings would stand a greater than 50% chance of resulting in the grant of a New Council Property Satisfactory Planning Permission prior to the expiry of the Development Long Stop Date; and

(b) if Planning Counsel advises that there would be a very good chance of obtaining New Council Property Satisfactory Planning Permission on an Appeal or following Planning Proceedings, CCURV is to Appeal or commence Planning Proceedings depending upon Planning Counsel's advice as to which option maximises the chances of obtaining New Council Property Satisfactory Planning Permission prior to the expiry of the Development Long Stop Date.

- 5.2 If CCURV makes an Appeal or commences Planning Proceedings it is to:
- 5.2.1 prosecute the Appeal or Planning Proceedings with all due diligence and in a good and efficient manner;
 - 5.2.2 continue the Appeal or Planning Proceedings to their conclusion unless the Council otherwise agrees;
 - 5.2.3 keep the Council and its planning consultants informed on the progress of the Appeal or Planning Proceedings including all correspondence, notifications, instructions to and advice of counsel, evidence of expert and other witnesses and the dates of any inquiry, hearing or for the submission of written representations; and
 - 5.2.4 allow the Council and its planning consultants to attend at conferences with counsel and other relevant meetings.

6. **References to Planning Counsel**

- 6.1 Where any matter is to be referred to Planning Counsel in accordance with this Schedule, the provisions of this **paragraph 6** are to apply.
- 6.2 Planning Counsel is to be appointed by agreement between CCURV and the Council from the list of Planning Counsel set out in **Part 3**. If none of them are willing or able to be instructed, Planning Counsel is to be such other Queen's Counsel of not less than ten years' calling experienced in town and country planning matters as CCURV and the Council agree to instruct.
- 6.3 If there is any dispute about the appointment of Planning Counsel, either CCURV or the Council may ask the Chairman for the time being of the Bar Council to nominate Planning Counsel who satisfies the criteria set out in **paragraph 6.2** and if he is unable or unwilling to do so, the next senior officer of the Bar Council may make the nomination.
- 6.4 CCURV and the Council are to co-operate with each other by instructing Planning Counsel jointly. Instructions to Planning Counsel are to be prepared by CCURV and approved by the Council, such approval not to be unreasonably withheld or delayed. If there are any points of dispute between CCURV and the Council, the instructions to Planning Counsel are to set out the nature of the dispute and include both CCURV's and the Council's comments on the nature of the dispute.
- 6.5 The decision of Planning Counsel on the matter or matters referred to him is to be final and binding on CCURV and the Council and he is to determine how the costs of the referral and any costs incurred by CCURV and the Council in relation to the matter are to be borne between them.

- 6.6 If a matter is referred to Planning Counsel for determination and Planning Counsel is of the opinion that the matter, or any part of the matter, is not one which Planning Counsel would reasonably be able to determine, Planning Counsel may direct that the matter, or the part of it in question, be referred by CCURV and the Council for determination by a Specialist in accordance with **clause 17**.

7. Council as Planning Authority

For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the statutory rights, powers, duties and obligations of the Council in the exercise of its statutory functions nor relieve CCURV from the necessity to obtain all approvals or consents which may from time to time be required from the Council in the exercise of its statutory functions as aforesaid and the rights, powers, duties and obligations of the Council under all public and local statutes byelaws, orders and regulations may be as fully and effectually exercised in relation to this Agreement as if the Council was not a party to this Agreement.

PART 2: ONEROUS CONDITIONS

8. CCURV's Onerous Conditions

- 8.1 A CCURV's Onerous Condition is a condition which, in the reasonable opinion of CCURV:

- 8.1.1 imposes time limits within which the Development must be commenced or applications for approval of reserved matters must be made which are more restrictive than those set out in Sections 91 and 92 of the Planning Act; or
- 8.1.2 prevents the commencement of works before the satisfaction of any condition outside the control of CCURV (unless the same is within the control of the Council and the Council undertakes to procure compliance); or
- 8.1.3 contains an Adverse Matter.

9. The Council's Onerous Conditions

- 9.1 A Council's Onerous Condition is a condition which, in the reasonable opinion of the Council:

- 9.1.1 contains Adverse Matters; and
- 9.1.2 is otherwise materially detrimental to the use or operation of the Development for its proposed use as head offices for the Council.

PART 3: LIST OF PLANNING COUNSEL

Michael Humphries QC

Bill Hicks QC

Martin Kingston QC

SCHEDULE 11

Changes in Circumstances to affect the Payment

1. Defined terms

- 1.1 In this Schedule, the following words and expressions have the following meanings:

Change in Circumstances any one of the matters set out in paragraph 3 of this Schedule

Council's Changes a change proposed by the Council as provided in paragraph 5 of this Schedule

Funding Cost the aggregate cost properly incurred of funding any Change in Circumstances including without limitation:

- (a) the cost of funding any capital cost; and
- (b) all bank charges including the costs of the bank and its advisors in relation to such funding;
- (c) all additional costs including additional interest and funding costs of any extension to the Programme of Works and any delay to the commencement of payment of the Payment.

Qualifying Changes in Law means the coming into effect of any Statutory Requirements specifically affecting the building industry or otherwise specifically applicable to the delivery of the New Council Property or buildings of similar nature which were not in force at the date of this Agreement.

Qualifying Market Movement means all financing costs of the best available third party funding for the Development Works which have had the prior written approval of the Council in accordance with **Schedule 7 paragraph 5**

Qualifying Unforeseen Circumstance means any of the following:

- (a) any part of the 2.78% contingency sum as set out in the financial model attached at Annexure 3 is unutilised
- (b) the benefit of grants for the incorporation of technologies for low or zero carbon technologies (which would decrease the Payment);
- (c) Decant costs of the Council above or below the assumed £2m for Taberner House and £4m for Fell Road;

- (c) any obligation or cost imposed in any Planning Agreement or any change to the Outline Specification (and once approved the Specification and Development Plans) required in order to comply with any condition or requirement of a New Council Property Satisfactory Planning Permission including any cost in relation to any Section 106 Agreement or Section 278 Agreement or otherwise any infrastructure levy or tariff.

In each case to the extent to which:

- (a) the same have not been taken into account in the appraisal undertaken on behalf of CCURV and disclosed to CCURV prior to the date of this Agreement and which comprise the assumptions on which the proposed Payment has been calculated;
- (b) the same are not shown as being undertaken in the Outline Specification;

2. Introduction

2.1 Classification

In this Schedule there are identified the categories of Change in Circumstances which may give rise to a variation to the Payment. No change in Circumstance other than a Council's Change occurring after the New Council Property Readiness for Development Criteria Satisfaction Date can be capable of varying the Payment.

2.2 Paragraph 2 Events

The occurrence of a Change in Circumstances appearing in paragraph 2.1 may give rise to one or more of the following results:

- 2.2.1 The carrying out of additional Development Works different from those contemplated by CCURV in entering into this agreement or an increased or decreased cost in undertaking such works in each case above that upon which the level of the proposed Payment has been based;
- 2.2.2 an extension or reduction of time for completion of the Development Works including any consequential changes to the Programme of Works;
- 2.2.3 a change to the Outline Specification for the Development Works;

2.3 **Dispute Resolution**

If the parties cannot agree on any aspect of this **Schedule 11** then the dispute will be determined in accordance with **clause 17** of this Agreement.

2.4 **Consequences**

The results listed in paragraphs 2.2.1 to 2.2.3 may give rise to a requirement for additional or reduced expenditure which shall be calculated in accordance with paragraph 3.

3. **Change in Circumstances**

The following are Changes in Circumstances which (save in the case of Council's Changes must occur prior to the New Council Property Readiness for Development Criteria Satisfaction Date) may give rise to a variation (upwards or downwards) to the Payment:

- 3.1 Qualifying Changes in Law;
- 3.2 Qualifying Market Movement;
- 3.3 Council's Changes;
- 3.4 Qualifying Unforeseen Circumstance.

4. **Notification of Event**

4.1 **Notification**

CCURV shall give written notice (a "**CCURV Notice of Change**") to the Council as soon as reasonably practicable after it becomes aware of an event either constituting, or which CCURV claims constitutes, a Change in Circumstances provided that such CCURV Notice of Change shall not be required in respect of a Council's Change. For the avoidance of doubt this obligation includes a Change in Circumstance which may ultimately result in a reduction in the Payment.

4.2 **Contents of Notice**

Any notice given under paragraph 4.1 must:

- 4.2.1 identify the Change in Circumstances in sufficient detail to allow the Council to consider it in full;
- 4.2.2 indicate any implications of the Change in circumstances;
- 4.2.3 indicate, the anticipated total cost (including the cost of additional funding and delayed programme if applicable) together with any

consequential impact on the Programme of Works and whether (if funded by a change to the Payment) a variation to the Payment Deed is required in consequence (and, if so, give a break down of how such change is calculated);

- 4.2.4 indicate if there are any dates by which a decision by the Council is critical provided that in any event the Council shall be required to respond with its decision within 20 working days.

4.3 **Agreement of Notice**

As soon as practicable after receiving CCURV's Notice of Change, the parties shall meet and discuss the matter referred to in it. During their discussions the Council may acting reasonably propose modifications to or accept or reject CCURV's Notice of Change. The Council may elect to fund the cost of the changes set out in the notice rather than agreeing to a variation to the Payment to fund them.

4.4 **Implementation of Changes**

If the Council accepts CCURV's Notice of Change (with or without modification), the change shall be implemented as set out in the agreed CCURV Notice of Change. The parties shall consult and agree the remaining details as soon as practicable and as applicable, the Payment to be payable under Payment Deed when entered into under the terms of this Agreement shall be varied.

4.5 **Change resulting from a Change in Circumstances**

The Council cannot reject a CCURV Notice of Change which is required in order to conform to or otherwise cater for:

- 4.5.1 a Qualifying Change in Law;
- 4.5.2 a Qualifying Market Movement;
- 4.5.3 a Qualifying Unforeseen Circumstance.

Where the Council disputes the either the cost, the calculation of the resulting increase to the Payment or the variation to the Program of Works or the Outline Specification or whether the Change of Circumstances set out in the CCURV Notice of Change is a Qualifying Change of Law or a Qualifying Market Movement or a Qualifying Unforeseen Circumstance it may refer such dispute to be determined pursuant to **clause 17** of the main body of this Agreement.

5. **Council's Change**

5.1 **Council's Change**

The Council has the right to propose Council's Changes in accordance with this paragraph 5. The Council shall not propose a Council's Change which would, if implemented:

- 5.1.1 infringe any Statutory Requirement; or
- 5.1.2 result in a material change in the nature of the Development Works or adversely alter the risk profile of the Development; or
- 5.1.3 materially and adversely affect CCURV's ability to carry out Works; or
- 5.1.4 be Adverse Matters,

and CCURV shall be entitled to refuse any such Council's Change.

If the Council requires a Council's Change, it must serve a notice (a **"Council's Notice of Change"**) on CCURV.

5.2 Council's Notice of Change and Outline Proposal

5.2.1 The Council's Notice of Change shall:

- (a) set out the Council's Change required in sufficient detail to enable CCURV to calculate and provide the Estimated Cost Effect in accordance with paragraph 5.3 (the **"Estimate"**);
- (b) in the event that the change will require capital expenditure, state whether the Council intends to pay to CCURV the costs involved in implementing the Council's Change or whether the Council requires CCURV to use its reasonable efforts to obtain funding in accordance with paragraph 5.9 and to increase the Payment to pay for such costs;

5.2.2 Within 10 working days of receiving a Council's Notice of Change CCURV shall either confirm in writing to the Council that it will prepare an Outline Proposal (as defined below) for the Council or issue a notice (a **"Council's Change Objection Notice"**) setting out in detail the ground or grounds (which must be one or more of those listed in paragraph 5.1) on which CCURV objects to the proposed Council's Change.

5.2.3 If CCURV issues a Council's Change Objection Notice under **paragraph 5.2.2** then within 10 working days of receipt by the Council, the Council may serve notice on CCURV informing them that they disagree that the Council's Change Objection Notice should have been issued

and thereafter if the parties cannot come to an agreement regarding the validity of the Council's Change Objection Notice the matter shall be referred to a Specialist for determination pursuant to **clause 17**.

5.2.4 If (i) CCURV does not issue an Council's Change Objection Notice under **paragraph 5.2.2** within 10 working days of receiving a Council's Notice of Change or (ii) it is agreed or determined pursuant to **paragraph 5.2.3** that the objections set out in an Council's Change Objection Notice are not valid then CCURV shall as soon as reasonably practicable issue a proposal (an "**Outline Proposal**") to the Council in accordance with **paragraph 5.2.5**.

5.2.5 The Outline Proposal shall specify an estimate of the price, a provisional timetable and a summary of method of implementation of the Council's Change and shall be accompanied by a suggested budget (which shall be for a reasonable sum in the circumstances) for CCURV to develop the Estimate. The suggested budget will set out reasons for CCURV wishing to (i) incur third party costs and /or (ii) charge for the use of resources of CCURV or its sub-contractors (including as applicable the property and development manager appointed by CCURV) (or Devco).

5.2.6 If having considered the Outline Proposal the Council wishes to proceed with the Council's Change it shall notify CCURV and confirm whether the suggested budget (to work up the Estimate) is agreed by the Council. If the Council does not agree with the suggested budget then in the absence of further agreement either party may refer the matter to a Specialist for determination pursuant to **clause 17**. The agreed or determined suggested budget shall be the "**Proposed Budget**".

5.3 **Estimate**

5.3.1 Following the notification referred to in **paragraph 5.2.6**, CCURV shall deliver to the Council the Estimate. The Estimate shall include the opinion of CCURV on:

- (a) whether any change to the Programme of Works is required.
- (b) any capital expenditure that is required or no longer required as a result of the Council's Change;
- (c) any regulatory approvals which are required.

5.3.2 CCURV shall keep the Council informed as to the costs incurred (which shall be reasonable and proper) in preparing the Estimate and also when those costs exceed the Proposed Budget. If the costs incurred by CCURV in preparing the Estimate exceed the Proposed Budget the Council shall either:

(a) Inform CCURV that it is increasing the amount of the Proposed Budget; or

(b) withdraw the request for the Council's Change.

5.4 **Agreement of Estimate**

As soon as practicable after the Council receives the Estimate, the Parties shall discuss and use reasonable endeavours to agree the Estimate.

5.5 **Dispute Resolution**

If the Parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with **clause 17** of this Agreement.

5.6 **Confirmation of Estimate**

As soon as practicable after the contents of the Estimate have been agreed or otherwise determined, the Council shall:

5.6.1 confirm in writing the Estimate (as modified); or

5.6.2 withdraw the Council's Notice of Change and where such notice has been withdrawn the Council shall reimburse to CCURV reasonable third party costs provided that such costs were reasonably and properly incurred.

5.7 **Withdrawal of Notice**

If the Council does not confirm in writing the Estimate (as modified) within 10 working days of the contents of the Estimate having been agreed in accordance with **paragraph 5.4** or determined pursuant to **paragraph 5.5**, then the Council's Notice of Change shall be deemed to have been withdrawn and the Council shall reimburse to CCURV reasonable third party costs provided that such costs were reasonably incurred

5.8 **Funding**

In the event that the Estimate (as modified) involves estimated capital expenditure then (unless the Council has elected to fund such costs in accordance paragraph 5.2.1 (b) which, for the avoidance of doubt, it shall have

the unfettered right to so elect) CCURV shall use its reasonable endeavours to obtain funding for the whole of the estimated capital expenditure (secured by any increase in the Payment which under the terms of this Schedule will result from such capital expenditure) on terms reasonably satisfactory to it and the Funder.

5.9 Funding not available

If CCURV has used its reasonable endeavours to obtain funding for the whole of the estimated capital expenditure, but has been unable to do so within 60 days of the date that the Council confirmed the Estimate, then CCURV shall have no obligation to carry out the Council's Change, unless the Council agrees within 20 days of the end of such period to pay the costs for which funding is not available.

5.10 Council Funding

The Council may at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent CCURV has obtained funding for part of the capital expenditure, the remaining part of the estimated capital expenditure.

5.11 Adjustment to Payment

In the event that the Estimate has been confirmed by the Council then (unless any additional capital expenditure has been met by the Council as permitted in this **Schedule 11**) the adjustment to the Payment shall be calculated as follows:

5.11.1 the cost to be recovered shall be calculated by adding the Estimate to the Funding Cost;

5.11.2 the cost to be recovered shall be added to the aggregate sum funded by the Payment as set in **clause 16**.

5.12 Agreement of payment schedule

Where the Council agrees to pay the costs for which funding is not available pursuant to paragraph 5.9:

5.12.1 the Council and CCURV shall agree a payment schedule in respect of the payment of such sum reflecting the amount and timing of the costs to be incurred by CCURV in carrying out the Council's Change to the extent borne by the Council (such payment schedule and evidence to be determined in accordance with **clause 17** in the event of the Council and CCURV failing to agree as to its terms); and

- 5.12.2 the Council shall make a payment to CCURV within 30 days of receipt by the Council of invoices presented to the Council (in all material respects) in accordance with the agreed payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Council's Change has been carried out.

SCHEDULE 12

Transfer Value Changes

1. Defined Terms

- 1.1 In this Schedule, the following words and expressions have the following meanings:

Assumptions	one or more of the assumptions referred to in column 1 of the Price Change Matrix
Price Change Matrix	the document attached hereto as Annexure 4 headed "Price Change Mechanism - Initial Development Sites Risk Matrix" setting out the methodology for determining adjustments to the Relevant Transfer Value
Qualifying Change in Assumptions	a change in the Assumptions pursuant to paragraph 2.2
Section A Assumptions	those Assumptions within Section A of the Price Change Matrix
Section B Assumptions	those Assumptions within Section B of the Price Change Matrix
Transfer Value Notice	a written notice to be served by CCURV on the Council pursuant to paragraph 3.1 of this Schedule.
Transfer Value Counter Notice	a written notice to be served by the Council on CCURV pursuant to paragraph 3.3 of this Schedule.
Transfer Value Change	a change in the Relevant Transfer Value as a result of a Qualifying Change in Assumptions.

2. Transfer Value Change

- 2.1 Subject to **paragraph 2.2** where the Assumptions change the Relevant Transfer Value shall be capable of changing. The change to the Relevant Transfer Value shall be adjusted by the method set out in column 6 of the Price Change Matrix. Column 4 of the Price Change Matrix sets out the impact such change has on other Assumptions. The change to the Relevant Transfer Value shall be a calculation based on the difference between the residual value of the Relevant Initial Development Property calculated by reference to the base appraisal and

the residual value of the Relevant Initial Development Property calculated by reference to the revised appraisal.

2.2 In order for any such change in Assumptions to be considered a Qualifying Change in Assumptions: -

2.2.1 Section A Assumptions must have changed on or prior to the date an Acceptable Planning Permission has been received in respect of the Relevant Initial Development Property; and

2.2.2 Section B Assumptions must have changed on or prior to the Unconditional Date for the Relevant Initial Development Property.

and for avoidance of doubt, if any Section A Assumptions or Section B Assumptions change after the latest date by which they can be considered a Qualifying Change in Assumptions they cannot be capable of changing the Relevant Transfer Value.

3. **Notification of Transfer Value Change**

3.1 No less than 20 working days prior to the proposed date of an Acceptable Planning Permission CCURV shall serve a Transfer Value Notice upon the Council stating whether or not CCURV considers that in respect of the Relevant Initial Development Property there has been a Transfer Value Change (being any change in the Section A Assumptions).

3.2 If the Transfer Value Notice states that CCURV considers that there has been a Transfer Value Change then such notice must:

3.2.1 refer to the Qualifying Change in Assumptions upon which CCURV has based its view that there has been a Transfer Value Change;

3.2.2 specify a revised figure that it considers the Relevant Transfer Value has become as a result of the Transfer Value Change; and

3.2.3 indicate with sufficient detail to allow the Council to consider both the validity of the Qualifying Change in Assumptions together with the actual calculation of the proposed Transfer Value Change.

3.3 Within 20 working days of receiving the Transfer Value Notice the Council shall serve a Transfer Value Counter Notice stating whether or not it agrees with CCURV's proposed Transfer Value Change (if the Transfer Value Notice is proposing a Transfer Value Change) or whether or not it considers that there ought to be a Transfer Value Change (if the Transfer Value Notice does not propose a Transfer Value Change). If the latter occurs, the Transfer Value Counter Notice must:

- 3.3.1 refer to the Qualifying Change in Assumptions upon which the Council has based its view that there has been a Transfer Value Change;
 - 3.3.2 specify a revised figure that it considers the Relevant Transfer Value has become as a result of the Transfer Value Change; and
 - 3.3.3 indicate with sufficient detail to allow CCURV to consider both the validity of the Qualifying Change in Assumptions together with the actual calculation of the proposed Transfer Value Change.
- 3.4 If the Council states in the Transfer Value Counter Notice that it agrees with the Transfer Value Notice then the Relevant Transfer Value for the purposes of this agreement shall either be the revised Relevant Transfer Value as set out in the Transfer Value Notice or, if no Transfer Value Change has been proposed, the Relevant Transfer Value as set out in **Schedule 1**.
- 3.5 If the Transfer Value Counter Notice states that it does not agree with the Transfer Value Notice either in relation to whether there has actually been a Qualifying Change in Assumptions or (accepting that there have been a Qualifying Change in Assumptions) the proposed level of change to the Relevant Transfer Value then the parties shall as soon as reasonably practicable thereafter meet and discuss the differences as set out in the respective notices. If the parties are unable to agree within 15 working days of the matter first being discussed between the parties then either party may refer the matter to a Specialist for determination in accordance with **Clause 17** of this agreement.
- 3.6 No less than 20 working days prior to the proposed Unconditional Date CCURV shall serve a Transfer Value Notice upon the Council stating whether or not CCURV considers that in respect of the Relevant Initial Development Property there has been a Transfer Value Change (being any change in the Section B Assumptions).
- 3.7 The procedure as set out in **paragraphs 3.2 - 3.5** shall be repeated mutatis mutandis in relation to the Transfer Value Notice served pursuant to **paragraph 3.6**.
- 3.8 For the avoidance of doubt once a Transfer Value Change has been implemented, the Relevant Transfer Value cannot be further changed as a result of any change in the same Assumption.

4. **A Loan/B Loan**

Any Transfer Value Change as agreed or determined pursuant to this Schedule shall in respect of the Relevant Initial Development Property result in an equivalent change in the value of the B Loan amount but for the avoidance of doubt the Council A Loan amount shall not be capable of changing.

5. **Dispute Resolution**

If the parties can not agree on any aspect of this **Schedule 12** then the dispute will be determined in accordance with **Clause 17** of this Agreement.

SCHEDULE 13

Payment

Annexure 1

Plans numbered 1 - 5

Annexure 2
Enabling Deed

Annexure 3

Financial model for Development Works

Annexure 4

Price Change Matrix