

Schedule 6
Option Agreement (Council)



dated

2012

Developer

and

Guarantor

and

The London Borough of Barnet

Form of Call Option Agreement (to be entered into for each purchase)

in relation to [Name/description of property]

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Option Agreement

Parties

- (1) **COUNTRYSIDE PROPERTIES (UK) LIMITED** (Company number 00614864) having its registered office at Countryside House The Drive Brentwood Essex CM13 3AT (the **Owner**);
- (2) **THE LONDON BOROUGH OF BARNET** of North London Business Park, Oakleigh Road South, London, N11 1NP (the **Council**);
- (3) **COUNTRYSIDE PROPERTIES PLC** (Company number 5555391) having its registered office at Countryside House aforesaid (the **Guarantor**).

Introduction

- (A) The Owner and the Council (and other parties) have entered into the RA for the regeneration of the Regeneration Site on a phased basis.
- (B) The Owner has acquired the Property in anticipation of the relevant Regeneration Phase concerned going ahead in accordance with the terms of the RA.
- (C) In the event of the RA being terminated prior to the relevant Regeneration Phase being developed:-
 - a. The Owner has agreed to grant a call option to the Council to allow the Council to acquire the Property; and
 - b. The Council has agreed to grant a put option to the Owner to call upon the Council to acquire the Property.

Agreed terms

1 Interpretation

- 1.1 The definitions in this clause apply in this agreement:

Call Option means the call option granted by the Owner to the Council in clause 2.1 of this Agreement;

Call Option Notice means the notice which may be served by the Council within the Option Period exercising the Call Option in the form set out in Schedule 1;

Completion means of the purchase of the Property by the Council pursuant to the Option;

Completion Date means the date determined in accordance with clause 14;

Contract Rate means [4]% per annum above the base lending rate from time to time of Lloyds Bank plc;

Council Intention Notice means the notice which may be served by the Council within the Option Period pursuant to clause 4.1 stating they intend to serve a Call Option Notice;

Council's Conveyancer means [] or such other conveyancer as may be notified by the Council (or its conveyancer) from time to time in writing to the Owner;

L&Q Option means the Call Option Agreement of even date relating to the Property and made between the Owner and London & Quadrant Housing Trust

Option Period means the period commencing on the date of termination of the RA and ending three months thereafter;

Option Sum means £1.00 (exclusive of VAT);

Owner's Conveyancer means [Insert solicitors] or such other conveyancer as may be notified from time to time in writing to the Council;

Perpetuity Period shall mean 20 years from the date hereof;

Property means the property at [] registered at the Land Registry under title number [];

Purchase Price means the amount calculated in accordance with clause 12 (exclusive of VAT);

RA means the Agreement for the regeneration of Dollis Valley dated [] 2012 and made between the Council (1) the Owner (2) London & Quadrant Housing Trust and the Guarantor;

Regeneration shall have the meaning ascribed to it in the RA;

Regeneration Phase shall have the meaning ascribed to it in the RA;

Regeneration Site shall have the meaning ascribed to it in the RA;

Standard Conditions means the Standard Conditions of Sale (4th Edition);

Transfer means the transfer of the Property to the Council;

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax;

Working Day means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

- 1.2 The rules of interpretation in this clause apply in this agreement.
- 1.3 Clause and schedule headings in this agreement are for ease of reference and are not to affect the interpretation of this agreement.
- 1.4 Except where a contrary intention appears, a reference to a clause or a schedule is a reference to a clause of, or schedule to this agreement.
- 1.5 Unless otherwise specified, a reference to a law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re- enactment and includes any subordinate legislation for the time being in force made under it.

- 1.6 A **person** includes a corporate or unincorporated body.
- 1.7 **Writing** or **written** includes faxes but not e-mail.
- 1.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done by anyone within that person's control.
- 1.9 Any reference to the **Owner** includes its successors in title.
- 1.10 Terms defined in the RA shall, where relevant, have the same meanings when used in this Agreement.

2 Option

- 2.1 In return for the Option Sum (receipt of which is acknowledged) and subject to clause 2.3, the Owner grants the Council, during the Option Period, the Call Option to buy the Property at the Purchase Price
- 2.2 Subject to clause 2.3 the Owner shall not during the term of this Agreement deal in or dispose of its interest in the Property without the consent of the Council (such consent not to be unreasonably withheld or delayed) PROVIDED THAT this clause shall not prevent the Owner from:-
- 2.2.1 charging the Property; or
- 2.2.2 granting an assured tenancy of the same; or
- 2.2.3 granting the L&Q Option over the Property.
- 2.3 This agreement shall cease to have effect (and the Option shall therefore be of no effect) on the "Expiry Date" being the earlier of:-
- 2.3.1 the Owner serving a valid Works Notice in accordance with the term of the RA in respect of the Regeneration Phase or sub-phase of which the Property (or any part thereof) forms part; and
- 2.3.2 expiry of the Option Period where, at such date, the Call Option has not been exercised.
- 2.4 Forthwith following the Expiry Date, the Council shall forthwith apply to the Land Registry for the removal of entry at the Land Registry relating to this agreement and/or the Option.

3 Access

- 3.1 The Owner grants licence for the Council, its agents and contractors, with or without plant and machinery, to enter such parts of the Property as are unbuilt upon at all reasonable times during the Option Period, after giving at least 5 Working Days notice to the Owner to carry out any soil, water or environmental tests, inspections or surveys and in the case of parts of the Property that are built upon only to carry out inspections and surveys subject to such reasonable requirements in relation to such tests, inspections or surveys as the Owner may impose.

- 3.2 The Council will cause as little disturbance and damage as reasonably practicable when entering the Property and will immediately at its own cost make good any physical damage caused to the Property when entering the Property.

4 Exercise of the option

- 4.1 The Council may at any time during the Option Period serve on the Owner a Council Intention Notice.
- 4.2 Within two weeks of service of an Intention Notice the Owner shall deduce title to the Property to the Council's Conveyancer and supply up to date official copies and title plan, copies of the documents listed in Schedule 2 and replies to the latest version of Oyez (longform) residential enquiries.
- 4.3 For the avoidance of doubt the service of an Intention Notice does not oblige the Council to serve a Call Option Notice.
- 4.4 The Council may exercise the Call Option at any time during the Option Period by serving a Call Option Notice on the Owner (save after service of a Put Option Notice by the Owner).
- 4.5 The Call Option may only be exercised in respect of the whole of the Property and not in respect of part only.
- 4.6 The Council acknowledges that the Owner has given the Council, and others authorised by the Council, permission and the opportunity to inspect, survey and carry out investigations as to the condition of the Property and that the Council has formed its own view as to the condition and suitability of the Property for the Council's purposes.
- 4.7 If the Call Option has not been exercised in accordance with this Agreement by the Expiry Date this Agreement shall cease to have effect (and the Option shall therefore be of no effect)

5 Sale and purchase

- 5.1 If the Call Option is exercised in accordance with the terms of this agreement, the Owner will sell and the Council will buy the Property for the Purchase Price on the terms of this agreement.
- 5.2 The Council cannot require the Owner to:
- 5.2.1 transfer the Property in more than one parcel or by more than one transfer; or
 - 5.2.2 apportion the Purchase Price between different parts of the Property.

6 Conditions

- 6.1 This agreement incorporates the Standard Conditions, except to the extent that they are varied by or inconsistent with the terms set out in this agreement.
- 6.2 References to contract will mean this agreement.
- 6.3 Standard Conditions 1.1.1 (b), (d) and (e) shall be deleted.

6.4 Standard Conditions 1.5, 2.2, 2.3, 3.4, 4.2 - 4.3, 4.5, 5.2, 6.1.1 and 8 - 10 shall be deleted.

7 **Deducing title**

7.1 The Owner's title to the Property has been deduced to the Council's Conveyancer pursuant to clause 4 and the Council has had an opportunity to investigate the title to the Property.

7.2 The Council is deemed to have full knowledge of the Owner's title as so deduced to the Property and is not entitled to raise any objection, enquiry, requisition or claim in relation to it.

8 **Vacant possession**

The Property will be sold with vacant possession on Completion.

9 **Title guarantee**

The Owner will transfer the Property with full title guarantee **and free from all financial charges.**

10 **Matters affecting the property**

10.1 The Owner will sell the Property free from encumbrances other than:

10.1.1 encumbrances deduced pursuant to clause 7 or created by the Transfer Deed from the Council to the Owner;

10.1.2 all local land charges (whether registered before or after the date of this agreement) and all matters capable of registration as local land charges or on any other public register whether or not actually registered;

10.1.3 all notices served and orders, demands, proposals or requirements made by any local, public or other competent authority whether before or after the date of this agreement;

10.1.4 all actual or proposed charges, notices, orders, restrictions, agreements, conditions, contraventions or other matters arising under town and country planning legislation, whether before or after the date of this agreement;

10.1.5

(a) any unregistered interest which falls within any of the paragraphs of schedule 3 of the Land Registration Act 2002 and which exist at the Completion Date;

(b) such unregistered interests as may affect the Property at the Completion Date to the extent and for so long as they are preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002.

10.2 The Council is deemed to have full knowledge of the matters referred to in clause 10.1 and will not raise any enquiry, objection, requisition or claim in respect of any of them.

11 **Transfer**

11.1 The Transfer will contain:

- 11.1.1 a declaration as to the title guarantee with which the Property is transferred as stated in this agreement;
- 11.1.2 a provision that all matters recorded at Completion in registers open to public inspection, are deemed to be within the actual knowledge of the Council for the purposes of section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994, notwithstanding section 6(3) of that Act;
- 11.1.3 (if the Owner has itself given such a covenant) a covenant by the Council by way of indemnity only, on its own behalf and on behalf of its successors in title, to observe and perform the charges, encumbrances, covenants and restrictions contained or referred to in the property and charges registers of the relevant title numbers in so far as they affect the Property and are subsisting and capable of taking effect against the Council and will keep the Owner indemnified against all proceedings, costs, claims and expenses arising from any future failure to do so;

11.2 The Transfer shall be prepared in original and counterpart by the Owner's Conveyancer and the counterpart provided to the Council at least 10 Working Days prior to completion and the Owner and the Council will execute the Transfer in duplicate.

12 **Purchase price**

12.1 The Purchase Price will be the aggregate of:

- 12.1.1 the Market Value of the Property at the date the Option Notice is served on the assumption (if not a fact) that the Property is vacant; and
- 12.1.2 a sum equal to all proper and reasonable costs properly and reasonably incurred by the Owner (other than the Owner's reasonable management and maintenance costs for the Property) in relation to the acquisition of the Property including (but without prejudice to the generality of the foregoing) compensation payments, statutory homeloss payments, statutory disturbance payments, stamp duty land tax and legal fees; and

12.2 If the Owner and the Council fail to agree on the Purchase Price within 10 Working Days of the date of exercise of the Call Option either party may refer the matter to an independent Chartered Surveyor appointed jointly by the parties with at least 10 years' experience in valuing properties similar to the Property in a similar locality who shall determine the Purchase Price or dispute (as appropriate) acting as an expert and whose determination shall be binding on both parties save in the case of manifest error.

12.3 In default of agreement on the identity of the Chartered Surveyor within 15 Working Days after the date of exercise of the Option, either party may apply to the President of the Royal Institution of Chartered Surveyors requesting that an appointment be made.

12.4 The Chartered Surveyor will act as an expert and the costs of the determination by the Chartered Surveyor will be payable in such proportions as determined by the Chartered

Surveyor, and the parties agree to pay their respective share of the costs as so determined by the Chartered Surveyor. In the absence of any determination of fees by the Chartered Surveyor, the costs shall be borne equally between the parties.

13 VAT

Each amount stated to be payable by the Council to the Owner under or pursuant to this agreement is exclusive of VAT (if any) and the paying party will pay any VAT properly payable and on receipt of any VAT the recipient party will issue the paying party a proper and valid VAT invoice.

14 Completion

14.1 Subject to the Call Option being exercised Completion will take place on the earlier of:

14.1.1 six months immediately after the later of (i) the date of service of the Call Option Notice and (ii) the date on which the Purchase Price is agreed or determined (or the next Working Day if such date is not a Working Day); or

14.1.2 (if earlier) where the Purchase Price has been agreed or determined and vacant possession can be given the date twenty working days after either party serves notice on the other requesting an earlier completion.

14.2 On Completion the Council will pay the Purchase Price to the Owner by way of direct credit to the Owner's Conveyancer's client account details of which shall be provided to the Council or the Council's Conveyancer prior to Completion.

15 Entire Agreement

15.1 This agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between them relating to the subject matter of this agreement.

15.2 The Council acknowledges and agrees that in entering into this agreement, it does not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this agreement or not) other than:

15.2.1 as expressly set out in this agreement, or

15.2.2 in any written replies which the Owner's Conveyancer has given to any enquiries raised by the Council's Conveyancer before the date of this agreement save in respect of any matter raised after the date of this agreement pursuant to the Council's right to do so in clause 8.2 of this Agreement.

15.3 Nothing in this clause will, however, operate to limit or exclude any liability for fraud.

16 Rights of third parties

A person who is not a party to this agreement will not have any rights under or in connection with it by virtue of the Contracts (Rights) of Third Parties Act 1999.

17 Governing law and jurisdiction

17.1 This agreement will be governed by and construed in accordance with the law of England and Wales.

17.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this agreement or the legal relationships established by this agreement.

18 Joint and several liability

Where there are two or more persons included in the expression the **Owner** all covenants and obligations entered into by the Owner will be deemed to be entered into by such persons jointly and severally

19 Legal and professional costs

Each party shall bear their own legal and professional costs in connection with this Agreement.

In witness of which this deed has been duly executed and is delivered on the date written at the beginning of this deed

Schedule 1
The Call Option Notice

To: [] at:

[Address]

[Fax No: [Number]]

for the attention of [Position]

[SUCH OTHER ADDRESS/ FAX NUMBER/ FOR THE ATTENTION OF SUCH OTHER PERSON,
AS WAS LAST NOTIFIED IN WRITING BY THE OWNER/ SUCCESSOR IN TITLE]

[BY HAND]

[BY PREPAID FIRST CLASS POST][BY RECORDED DELIVERY]

[BY FAX]

(A) Words and phrases defined in the Agreement bear the same meanings in this Notice.

Pursuant to an Option Agreement (**Agreement**) dated [] made between []
and [London Borough of Barnet] relating to **[Property]**:

- 1 The Council exercises the Call Option.
- 2 The Council gives the Owner notice of the exercise of the Call Option contained in the Agreement.
- 3 It is agreed that the sale and purchase of the Property will be completed on the date and terms specified in the Agreement.

Date:

Signed by [] for and
on behalf of **London Borough of Barnet**

.....

Schedule 2

Documents of Title

Date	Description	Parties
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