



dated ~~18 October~~ ~~September~~ 2012

The Mayor and Burgesses of the London Borough of Barnet

and

Countryside Properties (UK) Limited

and

London & Quadrant Housing Trust

and

Countryside Properties plc

Agreement

for the regeneration of Dollis Valley

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Agreement

Date 1st day of October 2012

Parties

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET** of North London Business Park, Oakleigh Road South, London, N11 1NP (the **Council**);
- (2) **COUNTRYSIDE PROPERTIES (UK) LIMITED** (Company number 00614864) having its registered office at Countryside House The Drive Brentwood Essex CM13 3AT (the **Partner**);
- (3) **LONDON & QUADRANT HOUSING TRUST** (an industrial and provident society registered under the Industrial and Provident Societies Act 1965 under company registration number 30441R and a Homes and Community Agency Registered Number L4517), having its registered office at One, Kings Hall Mews, London, SE13 5JQ (**RP**); and
- (4) **COUNTRYSIDE PROPERTIES PLC** (Company number 5555391) having its registered office at Countryside House aforesaid (**Guarantor**).

IT IS AGREED AS FOLLOWS:

Introduction

- (A) The Council wishes to implement a scheme for the regeneration of Dollis Valley which amongst other things will secure the provision of quality housing and the overall improvement of the social and economic viability of the area.
- (B) On 19 December 2009, an advert was placed in the Official Journal of the European Union (OJEU) seeking a potential partner(s) with appropriate skills and track record to work in partnership with the Council to produce and implement a regeneration scheme.
- (C) Three consortia were invited to dialogue and submit detailed solutions for the regeneration of Dollis Valley. After evaluation the Partner and the RP were selected as preferred bidder.
- (D) Subject as hereinafter provided, the Partner shall procure carrying out of the Works to implement the Regeneration.
- (E) The Council shall retain nomination rights over the Affordable Homes comprised in the Regeneration subject to the terms of the Nomination Rights Deeds.

Operative clauses

1 Definitions

In this Agreement the following words and phrases shall have the following meanings:

Actual Start Date means in relation to any Regeneration Phase the date thirty (30) Working Days after the date of the grant of the Building Lease by the Council to the Partner to facilitate the demolition and development of the same Regeneration Phase;

Affiliate means in respect of a relevant company or limited liability partnership or partnership (an **Entity**), an Entity which is a subsidiary, a holding Entity or a Entity that is a subsidiary of such holding Entity and **Affiliated** shall be construed accordingly;

Affordable Home means all or any of the Social Rented Homes and the Intermediate Homes;

Affordable Housing Agreement means one or more agreements between the Partner and RP entered into on or around the date of this agreement for the sale and purchase of the Affordable Homes and Community Facilities which for the avoidance of doubt shall be made subject to clause 21 of this Agreement;

Affordable Housing Specification means the specification set out in Schedule 23;

Agreement Year means a period of 12 calendar months commencing on the first day of April in each year following the date of this Agreement provided that the first Agreement Year shall start on the date of this Agreement and end the following 31 March further provided that the last Agreement Year shall commence on 1 April and end on the date of expiry or earlier termination of this Agreement;

Anticipated Completion Date means the date specified in the Master Programme for the anticipated completion of the Works as calculated by the expiry of the period of time for the completion of the Works from the Satisfaction Date as is more particularly set out in the Master Programme;

Assured Tenancy means a tenancy which is an assured tenancy within the meaning of Section 1 of the Housing Act 1988 (save to the extent that assured shorthold tenancies within the meaning of Section 19A of the Housing Act 1988 are excluded);

Authorised Disposal means:

- (a) a Disposal of any part of the Regeneration Site in respect of which Practical Completion has been achieved;
- (b) a Disposal made pursuant to the terms of an agreement or undertaking made pursuant to Section 106 of the Town and Country Planning Act 1990;
- (c) a Disposal to a local authority or highways authority or any authority body or person authorised to supply services for electricity, water, gas, sewerage, telecommunications, television, or data transmission to the public;
- (d) a Disposal approved in writing by the Council (such approval not to be unreasonably withheld or delayed); or
- (e) a Disposal to an Additional Obligor as (defined in a Direct Agreement) approved by the Council pursuant to such Direct Agreement;
- (f) a Disposal made pursuant to the Affordable Housing Agreement;

Barnet Asset Backed Vehicle means any asset backed vehicle or similar joint venture procured by the Council and/or of which the Council is a member/shareholder;

BREEAM means the Building Research Establishment Environmental Assessment Method;

Building Contract means a construction contract or contracts (as the case may be) between the Partner and the Building Contractor or Building Contractors for the carrying out of the Works for a Regeneration Phase;

Building Contractor means COUNTRYSIDE PROPERTIES (IN PARTNERSHIP) LIMITED Company number 02771231 whose registered office is at Countryside House aforesaid or such other reputable building contractor as may be appointed subject to prior consultation with the Council;

Building Lease means any or all of the leases granted by the Council to the Partner to facilitate the demolition and development of the relevant Regeneration Phase following the service of a Works Notice in the form set out in Schedule 15;

CABE means the Commission for Architecture and the Built Environment;

CDM Regulations means the Construction (Design and Management) Regulations 2007 as may be replaced, extended, consolidated and/or amended from time to time;

Change means any or all of:

- (a) Material Change;
- (b) Minor Change;

Change of Ownership means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in (including to the extent relevant any or all of the shares) in the Partner and/or the Guarantor (as the case may be) (including the control over the exercise of voting rights conferred on such interest, control over the right to appoint or remove directors or the rights to dividends or profit); and/or
- (b) a person other than those listed in Schedule 5 (Warranted Data) becoming a Shareholder of the Partner and/or the Guarantor (as the case may be);
- (c) any other arrangements that have or may have or which result in the same effect as limbs (a) and (b) above;

Commercially Sensitive Information means the sub set of Confidential Information listed in Part 1 (Commercially Sensitive Contractual Provisions) of Schedule 22 (Commercially Sensitive Information) in each case for the period specified;

Community Facilities means the building or buildings to be constructed by the Partner for use by local people and others for community and other activities as more particularly set out in Schedule 24;

Compulsory Purchase Order means a compulsory purchase order made pursuant to section 226 of the Town and Country Planning Act 1990 in respect of the Third Party Interests;

Confidential Information means:

- (a) information that ought to be considered as confidential and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person and sensitive personal data within the meaning of the Data Protection Act 1988; and
- (b) Commercially Sensitive Information;

Consents means all consents licences permissions and approvals (other than Planning Permission and the Secretary of State's Consent) required by this Agreement to be obtained from or required by any local or public authority to enable the carrying out and completion of the Regeneration and the Works including without prejudice to the generality of the foregoing the approval of reserved matters pursuant to the Planning Permission in respect of each Regeneration Phase and the satisfaction of any requirements of any agreement or undertaking made pursuant to Section 106 of the Town and Country Planning Act 1990;

Construction Costs means payments made by the Partner to the Building Contractor and/or the Professional Team in respect of the Works or otherwise incurred by the Partner in carrying out the Works itself;

Council Authorised Officer shall have the meaning given to it in clause 36.1.1;

Council Equal Opportunities Policy means the statement of the policies adopted by the Council to provide an effective equal opportunities policy a copy of which is annexed to this Agreement as Schedule 19 or such other policy or policies which may be subsequently adopted by the Council;

Council Expenditure means costs incurred by the Council (excluding Council Operational Costs);

- (a) arising from its obligations under this Agreement; and
- (b) for which the Partner shall reimburse the Council;

Council Land Value means in relation to a Regeneration Phase the land value the Partner shall pay to the Council for a Regeneration Phase being the sum which is generated in cell L53 of the Latest Financial Model for the relevant Regeneration Phase, which for the avoidance of doubt shall be in part satisfied by the value of the Council's Shared Equity Charges in respect of such Phase, with the remainder being a cash sum payable pursuant to clause 33.1 of this Agreement;

Council Serious Default means a breach by the Council of its obligations under this Agreement which substantially frustrates or renders it impossible for the Partner to perform its obligations under this Agreement for a continuous period of two months;

Council's Land means that part of the Regeneration Site title to which is vested in the Council as at the date of this Agreement;

Council's Operational Costs means the costs:

- (a) which were incurred by or for which the Council is liable to third parties for in connection with the previous initiatives to regenerate Dollis Valley in the total sum of £850,000;
- (b) which were incurred by the Council prior to the date of this Agreement in connection with the previous initiative and this initiative to regenerate Dollis Valley in the sum of £500,000;
- (c) (whether third party or otherwise) properly incurred by the Council in connection with this Agreement (other than costs that are recoverable by the Council pursuant to the CPO Indemnity Agreement) from (and excluding) the date on which this Agreement is exchanged until (and excluding) the Satisfaction Date and any VAT charged for the same to the Council by any third party);
- (d) (whether third party or otherwise) properly incurred by the Council in connection with the rights and obligations of the Council in connection with this Agreement (other than costs that are recoverable by the Council pursuant to the CPO Indemnity Agreement) from Satisfaction Date until Practical Completion of the last Regeneration Phase constructed pursuant to the terms of this Agreement and any VAT charged for the same to the Council by any third party);
- (e) (whether third party or otherwise) properly incurred by the Council between the Practical Completion of the last Regeneration Phase constructed pursuant to the terms of this Agreement and the Overage Payment Date in connection with the calculation of the sums due to the Council pursuant to **Schedule 29** and any VAT charged for the same to the Council by any third party);

provided that Council Expenditure is not Council's Operational Costs;

Council's Shared Equity Charges means the equity share charges entered in favour of the Council pursuant to Option 2 at paragraph 3 of Schedule 25 (Offer to Existing Owner Occupiers)

CPO Indemnity Agreement means the Agreement of even date made between the Council and the Partner which provides for the compulsory purchase of Third Party Interests;

DCLG means the Department for Communities and Local Government of Eland House, Bressenden Place, London SW1E 5DU;

Decanting Plan means the plan and procedure to move residents from Existing Homes to enable the Regeneration to proceed as is more particularly set out in Schedule 18;

Delay Event means any of the following events:

- (a) any action taken by third parties to instigate Judicial Proceedings in relation to the Regeneration or Works where such proceedings may materially prejudice the same;
- (b) any material delay in the Council discharging its obligations under this Agreement to the extent that the same materially prejudices the Partner complying with its obligations under this Agreement;
- (c) the exercise by the Council of any rights granted to it by this Agreement to the extent that the same materially prejudices or delays the carrying out of the Works or any part thereof;
- (d) a Force Majeure Event;
- (e) any delay in obtaining any Consents which is not due to the failure or omission or act of the Partner;

Demolition means the demolition of the Existing Homes, buildings and structures necessary to facilitate the Regeneration;

Demolition Start Date means the date of any material commencement of Demolition by or on behalf of the Partner (as agent for the Council) on land constituting a Regeneration Phase;

Design Certificate means certificates issued by Design Certifiers under the Design Certifiers' Appointments confirming:

- (a) that the Homes and other buildings which are to be constructed in a particular Regeneration Phase comply with the Design Guidelines save for non-compliance scheduled in a schedule attached; and
- (b) where material matters are set out in the non-compliance schedule that they have been reported to the regular design team meeting together with an explanation as to why compliance is not possible;

Design Certifier means the designer or designer(s) appropriately qualified in the relevant technical area appointed by the Partner for each Regeneration Phase or part of the Regeneration who will also undertake the functions more particularly set out in the Design Certifier's Appointment;

Design Certifier's Appointment means an appointment in the form annexed at Schedule 28 to be incorporated with such changes as the Council shall approve (such approval not to be unreasonably withheld or delayed) to be entered into between the Council, the Partner and the designer appropriately qualified in the relevant technical area for each Regeneration Phase or part thereof of the Regeneration;

Design Guidelines means the document produced in accordance with clause 10;

Detailed Planning Permission means in relation to the each Regeneration Phase reserved matters approval granted pursuant to the Outline Planning Permission;

Direct Agreement means the agreement to be made between the Council, the Partner, the RP, the Guarantor and the Partner's Funder substantially in the form of the draft

annexed at Schedule 26 under which the Partner's Funder is afforded the opportunity to step into the Partner's shoes under this Agreement and/or any Building Lease and/or the Affordable Housing Agreement and/or any Building Contract placed by the Partner with the Contractor and/or the appointment of any member of the Professional Team;

Dollis Valley Partnership Board means a partnership board to be formed as set out in Schedule 17;

Education Land means the area located within the Regeneration Site shown tinted orange on the Site Plan;

Environmental Information Regulations means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or Relevant Authority in relation to such regulations;

Equal Opportunities Policies means the Council Equal Opportunities Policy together with the RP Equal Opportunities Policy;

Escrow Account means a bank account in the joint names of the Partner and the Council maintained at a London Clearing Bank, into which Overage sums are to be paid as provided for in Schedule 29;

Existing Homes means those dwellings which are situated on the Regeneration Site at the date of this Agreement;

Existing Owner Occupier means a person (excluding any body corporate) who on or before 1st November 2011 held and continues to hold:

- (a) a leasehold interest in an Existing Home (for a term of 50 or more years) which was granted or assigned to him by the Council and who continues to occupy such Existing Home as his only or principal home; or
- (b) a freehold interest in an Existing Home which was granted to him by the Council and who continues to occupy such Existing Home as his only or principal home; or

Existing Phase means a Regeneration Phase in respect of which a Building Lease has been granted;

Existing Tenant means someone who is a secure tenant of an Existing Home;

Expert means an independent expert appointed pursuant to the provisions of clause 26 and who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten years and who is a specialist in relation to the subject matter;

Expiry Date means the date falling twelve months after the date on which the School SoS Consent is obtained or such later date as the parties hereto shall agree in writing PROVIDED THAT where at such date there is a Planning Application or associated planning decision outstanding, the Expiry Date shall be extended so as to expire three calendar months and one week after such decision is issued;

Family Housing means self-contained dwellings which are suitable for occupation by families;

Family Mosaic Homes means those Existing Homes known as 75 Garrowsfield, 107 Garrowsfield, 109 Garrowsfield and 108 Millbridge, Dollis Valley Estate, London Borough of Barnet;

Financial Delay Period means in accordance with the provisions of clause 18 there is a period of delay due to Financial Non-Viability;

Financial Non-Viability means that with reference to the Latest Financial Model and the Housing Market it is not economically feasible to procure or undertake the commencement of a Regeneration Phase;

First Let means the first occasion a Social Rented Home is let to an Existing Tenant;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or Relevant Authority in relation to such Act;

Force Majeure Event means the occurrence after the date of the Agreement of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Partner and/or RP; or
- (c) pressure waves caused by devices travelling at supersonic speeds; or
- (d) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion, aircraft and other aerial devices or articles dropped therefrom; or
- (e) failure by any statutory undertaker, utility company, local authority (other than the Council) or other like body to carry out works or provide services; or
- (f) any accidental loss or damage to the Works; or
- (g) any failure or shortage of power, fuel or transport; or
- (h) any blockade or embargo; or
- (i) any official or unofficial strike, lock-out, go-slow or other dispute generally affecting the construction industries or a significant sector of it; or

- (j) delays permitted to a building contractor under JCT Design & Build Contract 2009 save any delays that have arisen as a consequence of negligence, default or breach of contract by the Partner,

which directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement;

Future Phase means a Regeneration Phase in respect of which a Building Lease has yet to be granted;

Ground 10A Consultation means written notice to and consultation with secure tenants (within the meaning of the Housing Act 1985) to be undertaken by the Council pursuant to Ground 10A and Part V of Schedule 2 of the Housing Act 1985;

Ground Rent means the periodic payments (other than a payment in the nature of Service Income) made by the lessees of Private Sale Homes and Intermediate Homes (but in relation to shared ownership properties only where the lessee has stair-cased its share to 100%) and reserved as rent under their leases (including any periodic payments made in relation to leases of car parking spaces sold separately to Private Sale Homes or Intermediate Homes (if any));

Ground Rent Receipts means the proceeds from time to time of the Ground Rents;

Home means a single self-contained dwelling;

Home Loss and Disturbance Payments means the sums payable to displaced occupiers of the dwellings on the Regeneration Site for home loss and disturbance pursuant to the Land Compensation Act 1973 (as amended);

House shall mean a dwelling which is a house as defined in Section 183 of the Housing Act 1985;

Housing Market means the condition from time to time of the market for purchase, sale and development of dwellings in Greater London;

Independent Certifier means the employer's agent or appropriate professional appointed by the RP and the Council in respect of any Regeneration Phase or part of the Regeneration who will also undertake the functions more particularly set out in Independent Certifier's Appointment;

Independent Certifier's Appointment means a deed of appointment to be entered into between the RP, the Partner, the Council and the employer's agent or appropriate professional appointed by the Partner for the Regeneration Phase or part of the Regeneration concerned in the form specified in Schedule 4 (Independent Certifier's Appointment); with such changes (if any) as the Council may approve (acting reasonably);

Independent Certifier's Certificate means the certificate issued by the Independent Certifier pursuant to clause 9 to certify that the Relevant Works for a Regeneration Phase are Practically Complete;

Infrastructure means any roads and service media to be constructed within a Regeneration Phase as part of the Works including that which will serve land not forming part of such Regeneration Phase;

Infrastructure and Community Facility Team means such of the following:

- (a) Principal Architect;
- (b) structural engineer;
- (c) mechanical and electrical engineer;
- (d) highways consultant;
- (e) landscape consultant; and
- (f) contractors with material design responsibility,

who are appointed by the Partner, and/or any Building Contractor in respect of the Community Facilities and/or the Infrastructure;

Initial Rent means the rent charged for a Social Rented Home when it is First Let to an Existing Tenant and shall be the sum as set out in the Rent Scheme;

Insolvency Event means in respect of any of the following events occurring in relation to the Partner and/or the Guarantor:

- (a) an order is made for its winding up or a petition is presented or a meeting is convened for the purpose of considering a resolution for its winding up or any such resolution is passed for its voluntary winding up;
- (b) a receiver (including any administrative receiver) or similar person is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest or encumbrance of any kind over any of its undertaking, property or assets;
- (c) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator;
- (d) any distress, execution, sequestration or other similar process is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within 14 days; or
- (e) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors generally (or any class of its creditors) and/or its members is proposed, applied for, sanctioned or approved;

- (f) it is unable to pay its debts for the purposes of the Insolvency Act 1986, as amended, or becomes insolvent under any applicable legislation; and
- (g) any event analogous to any of the above occurs in any jurisdiction outside England in which any relevant body corporate is incorporated, carries on business or has any assets;

Interest means 3% above the base rate of Co-Operative Bank plc from time to time;

Intermediate Homes means the dwellings to be constructed during the Regeneration which shall be made available for low cost home ownership in full or part ownership and part or no rent on a shared ownership basis or for rent at less than the open market value provided these are affordable as defined by government, or other delegated statutory body current at the time the Homes are identified as intermediate within a Regeneration Phase and for the avoidance of doubt this term shall (i) exclude any dwellings made available to Residents pursuant to Option 2 at paragraph 3 of Schedule 25 (Offer to Existing Owner Occupiers) or offered for sale by the Partner and (ii) include any dwellings made available to Residents pursuant to Option 3 at paragraph 4 of Schedule 25 (Offer to Existing Owner Occupiers) or offered for sale by the Partner;

Judicial Proceedings means an application to the High Court for judicial review or (as the case may be) any statutory appeal made by any third party arising from:

- (a) the Compulsory Purchase Order;
- (b) Ground 10A commenced under the Housing Act 1985;
- (c) a Stopping-Up Order;
- (d) a Planning Permission;
- (e) the Secretary of State's Consent; or
- (f) the Council having entered into this Agreement or any decisions made by the Council relating to matters anticipated by or provided for in this Agreement (or any of them);

Latest Financial Model means:

- (a) the latest Updated Financial Model to be produced pursuant to clause 14; or
- (b) (if no Updated Financial Model has ever been so produced) the Original Financial Model,

(in either case) incorporating any changes agreed in writing pursuant to clause 23 (Change);

Market Value means the market value as defined and determined in accordance with Valuation Standard 3.2 (Market Value) of the Royal Institution of Chartered Surveyors Valuation - Professional Standards: incorporating the International Valuation Standards (March 2012 – Global and UK edition) as was valid at the date of this Agreement (which for avoidance of doubt is set out in Schedule 31);

Master Plan means the Master Plan the current draft of which is set out in Schedule 9 as finalised and approved by the Council in accordance with the provisions of clause 3;

Master Programme means the master programme set out in Schedule 10 as finalised and approved by the Council in accordance with the provisions of clause 3;

Material Change means any change or variation to the provisions of this Agreement unless such change is a Minor Change;

Minimum Council Land Value means the minimum Council Land Value that the Partner has agreed to pay to the Council in respect of each Regeneration Phase being a total sum of £ [REDACTED] (which sum shall for the avoidance of doubt include the value of Council's Shared Equity Charges), apportioned (according to the current proposals for each Regeneration Phase) as follows:

- (a) Regeneration Phase 1 - [REDACTED]
- (b) Regeneration Phase 2 - [REDACTED]
- (c) Regeneration Phase 3 - [REDACTED]
- (d) Regeneration Phase 4 - [REDACTED]
- (e) Regeneration Phase 5 - [REDACTED]

Where £A is a positive sum and in each case equals $(B-C) \times (D/E)$ where

B = the s106 Sum;

C = [REDACTED]

D = the number of dwellings permitted to be constructed on the relevant Regeneration Phase; and

E = the number of dwellings permitted to be constructed pursuant to the Outline Planning Permission;

Minor Change means a change or variation:

- (a) which relates to the Works, is operational in nature, does not materially alter the Regeneration or impact on the Master Plan, the public realm, the external appearance of any building, the Community Facilities;
- (b) which does not materially adversely affect viability or financial sums due to the Council under this Agreement;
- (c) does not alter amend or vary a provision of this Agreement or any document produced in accordance with this Agreement; and
- (d) which does not materially alter concrete assurances made in writing to residents as part of the Partner's consultation process;

Minor Default means any act or omission on the part of the Partner or RP that constitutes a breach of its/their obligations under this Agreement and which is not a Serious Default;

New Tenant means a person (other than an Existing Tenant) who holds a tenancy of a Social Rented Home;

Nomination Rights Deeds means the Deeds providing for the Council to nominate persons to occupation of the Social Rented Homes and the Intermediate Homes in the respective forms set out in Schedule 11;

Non Residential Land means both the areas located within the Regeneration Site shown tinted green on the Site Plan, the Substation Site and the garages within the area hatched red and numbered 3 on the Site Plan;

Option Agreement means an agreement (materially in the form set out in Schedule 6) to give the Council the option of acquiring RTB Properties in certain circumstances;

Original Financial Model means the financial model a hard copy of which is annexed to this Agreement as Schedule 12 and a computer disk of which has been exchanged between the parties;

Outline Planning Permission means any Planning Permission granted by the Planning Authority which will enable the Regeneration to be constructed subject to the resolution and/or determination of any reserved planning matters;

Overage means the sum calculated in accordance with paragraph 3 of Schedule 29;

Overage Calculation Date means in relation to each Regeneration Phase the earlier of:

- (a) the date which is thirty (30) Working Days after the Partner has legally completed the sale of 95% of the Private Sale Homes in the Regeneration Phase; and
- (b) the date which is one hundred and twenty (120) Working Days following Practical Completion of 95% of the Private Sale Homes in the Regeneration Phase,
- (c) 12 calendar months following termination of this Agreement;

Overage Model has the meaning given to it in paragraph 1.1.3(c) of Schedule 30;

Overage Payment Date means the date twenty (20) Working Days after Overage is agreed or determined in relation to the final Regeneration Phase to be developed pursuant to this Agreement;

Partner Authorised Officer shall have the meaning given to it in clause 36.2.1;

Partner Costs means the costs properly incurred or to be incurred by the Partner in respect of the Project as set out in cells L38 L48 and L51 of the Updated Financial Model including (without limitation) planning costs, professional fees, construction costs, sales and marketing costs, sales incentives offered in relation to Private Sale Homes (and the expression sales incentives shall include the value of any Private Shared Equity Charges), sums payable to the Council and/or to Residents under both this Agreement and the CPO

Indemnity Agreement, finance costs and interest charges at 4% above LIBOR on all funds employed from time to time;

Partner Income means the income arising from the Project as set out in cell L36 of the Latest Financial Model including (without limitation) the Private Sale Homes Income, the sums payable by the RP to the Partner under the Affordable Housing Agreement and the value of any Private Shared Equity Charge(s) and/or any Council's Shared Equity Charge(s);

Partner Priority Return means [REDACTED] (%) of the Private Sale Homes Income as set out in cell G63 of the relevant Updated Financial Model;

Partner's Funder shall mean a bank or other financial institution that is advancing material funding to the Partner in respect of the Regeneration;

Permitted Obligation means a grant by the Council of an interest in a dwelling, building or land in the Regeneration Site of:

- (a) a periodic residential tenancy (that grants no security of tenure which would prevent it being terminated by the Landlord serving two months' notice or less) and which subject to limb (b) below is not a Secure Tenancy;
- (b) a Secure Tenancy granted under Section 86 (arising on termination of fixed term), Section 86A (succession), Section 92 (assignment by exchange) of the Housing Act 1985, (or as otherwise may be ordered by a court);
- (c) an interest which the Council is obliged to grant to a third party under an act of Parliament or other Statutory Instrument;
- (d) an interest which the Council is ordered to grant to a third party by a court;
- (e) an interest which the Council is contractually committed to grant pursuant to the terms of a Secure Tenancy which existed at the date of this agreement; and
- (f) a lease (contracted out of the Landlord and Tenant Act 1954) of the whole or part of the site of the Education Land to Torah Vodaas Ltd (Co No: 04311026) for a term to expire on or before 30 September 2013;

Phase Conditions means the conditions set out in clause 6.2 to be satisfied or waived (in accordance with the terms of this Agreement) in relation to a Regeneration Phase prior to the grant of the Building Lease;

Phase Viability Test means upon updating the Latest Financial Model that the Regeneration Phase generates the Partner Priority Return and a Council Land Value equal to or exceeding the Minimum Council Land Value for such Regeneration Phase in accordance with the provisions set out in Schedule 30;

Planning Application means any application submitted by or on behalf of the Partner for:

- (a) Outline Planning Permission; or
- (b) Detailed Planning Permission;

Planning Authority means the Council or any successor body as local planning authority for the area in which the Regeneration Site is situated;

Planning Permission means either the Outline Planning Permission or a Detailed Planning Permission;

Post Planning Phase Viability Test means in relation to each Regeneration Phase the Phase Viability Test carried out after the grant of Detailed Planning Permission for the Regeneration Phase in accordance with Schedule 30;

Practical Completion means in relation to the Works comprising a Regeneration Phase (or part thereof) that such Works have been completed in all material respects and shall be construed as such term is usually understood in the context of a standard form of contract issued by the Joint Contracts Tribunal together insofar as the same relates to Social Rented Homes that the Affordable Housing Specification has been complied with and satisfied and **Practically Complete** shall be construed accordingly provided that the fact that landscaping works have not been completed due to the need to wait until the relevant planting season or seasons in order to complete such landscaping works will not prevent the Works concerned from being Practically Complete;

Pre Planning Phase Viability Test means in respect of each Regeneration Phase the Phase Viability Test carried out prior to the submission of the Planning Application for Detailed Planning Permission for the Regeneration Phase in accordance with Schedule 30;

Principal Architect means:

- (a) the architect responsible for the master planning; and
- (b) for each Regeneration Phase the lead architect for that Regeneration Phase and landscape architect (where applicable) appointed to carry out the scheme of work as defined by RIBA stages A – C as set out in the publication **Standard Form of Agreement for the Appointment of an Architect (SF/99)**;

Private Sale Homes means those dwellings to be constructed during the Regeneration which shall be made available for sale on the open market to third parties;

Private Sales Homes Income means the income the Partner derives from the sale of the Private Sale Homes;

Private Shared Equity Charges means charges entered into by purchasers of Private Sales Homes in favour of the Partner, as a consequence of the Partner offering its equity share product (which for the avoidance of doubt this does not include Council's Share Equity Charges);

Professional Team means such of the following:

- (a) Principal Architect;

- (b) structural engineer;
- (c) mechanical and electrical engineer;
- (d) highways consultants;
- (e) landscape consultants,

who are appointed by the Partner, and/or any Building Contractor in respect of any of the Relevant Works;

Project means the delivery of the entire Regeneration in accordance with this agreement;

Public Resources means funding and/or any other benefit provided by the Council (and/or another Relevant Authority) which is used for or in connection with the Regeneration;

Quantity Surveyor means a quantity surveyor appointed by the Partner to perform amongst other things the duties referred to in clause 14.3;

Quarterly Period means the period between each Quarterly Review Date;

Quarterly Review Date means 1st April, 1st July, 1st October and 1st January each year (or the next Working Day if such date is not a Working Day) or such other dates as the parties hereto shall agree in writing;

Recovery Plan means a plan delivered by the Partner and the RP to the Council as more particularly set out in clause 25;

Regeneration means the proposed regeneration of the Regeneration Site by the demolition of the existing buildings and structures and the phased construction thereon of the Homes, car-parking, roads and Community Facilities with all ancillary features and facilities in accordance with the Design Guidelines, the Planning Permissions, the Consents, the Regeneration Objectives and the provisions of this Agreement;

Regeneration Documents means the following documents:

- (a) The Dollis Valley final tender submission to the London Borough of Barnet dated 24th June 2011 on behalf of Countryside Properties (UK) Limited and London & Quadrant Housing Trust with HTA and Alison Brooks Architects; and
- (b) The Planning Permission;

Regeneration Long Stop Date means eight years from the Actual Start Date for the Regeneration Phase 1 subject to extension in accordance with this Agreement;

Regeneration Objectives means the regeneration objectives specified in Schedule 1;

Regeneration Phase Long Stop Date means in respect of each Regeneration Phase the date on which that Regeneration Phase must be completed as calculated by the expiry of the period of time for the completion of that Regeneration Phase from the Actual Start

Date for that Regeneration Phase as is more particularly set out in the Master Programme subject to extension in accordance with this Agreement;

Regeneration Phases means one or more of the phases of the Regeneration indicated in the Master Plan edged in black and numbered 1-5 and the expression **Regeneration Phase** shall be construed accordingly;

Regeneration Site means Dollis Valley shown for identification purposes edged red on the Site Plan as may be amended from time to time pursuant to clauses 6.10 and 6.11;

Relevant Authority means any local, national or supra national agency, inspectorate, minister, ministry, official or statutory person of the Government of the United Kingdom or European Union;

Relevant Works means any parts of the Works relating to any or all of the Social Rented Homes, the Intermediate Homes, the Infrastructure, the Community Facilities and the landscaping of amenity areas within a Regeneration Phase;

Rent Scheme means the scheme determining the amount of rent to be paid by any of the Existing Tenants who enters into a tenancy agreement for a Social Rented Home as more particularly set out in Schedule 2 to this Agreement;

Replacement Developer means a person approved by the Council (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Partner under the Agreement;
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it and the financial standing to enable it perform the obligations of the Partner under the Agreement; and
- (c) not being an Unsuitable Third Party;

Replacement Guarantor means a person approved by the Council (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Guarantor under the Agreement;
- (b) having the resources available to it and the financial standing to enable it perform the obligations of the Guarantor under the Agreement; and
- (c) not being an Unsuitable Third Party;

RP Authorised Officer shall have the meaning given to it in clause 36.3.1;

RP Equal Opportunities Policy means the statement of policies adopted by the RP to provide an equal opportunities policy a copy of which is annexed to this Agreement at Part 2 of Schedule 19 or such other policy or policies which may be subsequently adopted by the RP;

RP Option Agreement means an agreement (materially in the form set out in Schedule 8) to give the RP the option of acquiring RTB Properties in certain circumstances;

RP Overage means the sum calculated in accordance with paragraph 5 of Schedule 29;

RP Overage Calculation Date means in relation to the Regeneration Phase the earlier of:

- (a) the date which is thirty (30) Working Days after the Partner has legally completed the sale of 95% of the Private Sale Homes in the final Regeneration Phase to be developed pursuant to this Agreement;
- (b) the date which is one hundred and twenty (120) Working Days following Practical Completion of 95% of the Private Sale Homes in the final Regeneration Phase to be developed pursuant to this Agreement ,
- (c) 12 calendar months following termination of this Agreement;

RP Overage Payment Date is the same date as the Overage Payment Date;

RTB Obligation means the grant by the Council of an interest in a dwelling in the Regeneration Site to a lawful secure tenant pursuant to the provisions of part V of the Housing Act 1985;

RTB Property means an Existing Homes in respect of which the Council has granted an interest to a lawful secure tenant pursuant to the provisions of part V of the Housing Act 1985;

S106 Sum means the cost to the Partner in financial terms of complying with the terms of any agreement entered into under section 106 Town & Country Planning Act 1990 (as amended) pursuant to any Planning Permission which for the avoidance of doubt shall:

- (a) include (i) the cost of delivering the Community Facilities (ii) the cost of both providing the apprenticeships and undertaking the skills audit referred to in Schedule 37; and
- (b) exclude any costs relating to the delivery of the Affordable Homes,

and any community infrastructure levy imposed by the Council and/or the Mayor of London pursuant to the Community Infrastructure Levy Regulations 2010 (as amended);

Satisfaction Date means the date upon which the last of the conditions set out in clauses 2.1. is satisfied PROVIDED THAT if Judicial Proceedings shall have been instituted before such date then it shall be the first date on which:

- (a) such proceedings are disposed of or exhausted in consequence of which the Planning Permission and Section 106 Agreement and Compulsory Purchase Order and the parties hereto are reasonably satisfied that the entirety of the obligations arising under this Agreement (save for any minor amendment or variation to it to which the parties may agree such agreement not to be unreasonably withheld or delayed) may be lawfully observed performed or discharged; and
- (b) all of the remaining Conditions set out in clause 2.1 are satisfied;

School SoS Consent means the Secretary of State's Consent to the disposal by the Council of the site of the former Barnet Hill Primary School pursuant to Schedule 1 to the Academies Act 2010;

SDLT means Stamp Duty Land Tax or such other similar tax which is imposed by a local, government or other Relevant Authority in the United Kingdom or elsewhere;

Secretary of State means the relevant Secretary of State or other appropriate officer or officers of Her Majesty's Government who may be authorised to give an approval or Secretary of State's Consent under any enactment or regulation and this shall include where applicable the DCLG;

Secretary of State's Consent means:

- (a) consent granted by the Secretary of State to the Council to:
 - i transfer the Regeneration Site to the Partner pursuant to section 233 Town and Country Planning Act 1990;
 - ii perform such of its obligations in accordance with this Agreement as shall comprise the giving of any gratuitous benefit for the purposes of section 24 Local Government Act 1988 pursuant to section 25 of the same Act;
 - iii dispose of land and dwellings held for housing purposes pursuant to sections 32-34 of the Housing Act 1985 or for other purposes pursuant to section 43 of the Housing Act 1985;
- (b) consent further to section 133 of the Housing Act 1988 for all future disposals;
- (c) the School SoS Consent; and
- (d) such other consents to be granted by the Secretary of State which may be required in connection with this Agreement;

Secure Tenancy shall have the meaning given to it under Section 79 of the Housing Act 1985;

Serious Default means any act or omission on the part of the Partner and/or the RP that constitutes a breach of its obligations under this Agreement which is listed below:

- (a) failure to implement a Recovery Plan;
- (b) failure to complete Works by the Regeneration Longstop Date or a Regeneration Phase by the Regeneration Phase Long Stop Date;
- (c) committing a breach of obligation under this Agreement which materially and adversely affects the delivery of the Regeneration;
- (d) failure to properly account for any item of Partner Costs and/or Partner Income and anything else used to calculate the Council Land Value;

- (e) sums in excess of £100,000 being due to the Council pursuant to the terms of this Agreement but unpaid for more than 20 Working Days following demand;
- (f) abandonment of the Regeneration or any significant part of the Regeneration;
- (g) ceasing to carry on the whole of its business or disposing of all of its assets (other than on the terms of this Agreement);
- (h) an Insolvency Event;
- (i) being the subject of any process or event similar or analogous to the events in limb (h) above in any jurisdiction;
- (j) a failure to promptly take action to remedy Public Resources being used as Unlawful State Aid as particularly set out in clause 34.5 (Public Resources and State Aid compliance);
- (k) a failure to comply with its obligations under clause 14 (Financial Provisions) and/or clause 19 (Audit and Open Book);
- (l) a Change of Ownership unless in accordance with clause 32.4 (Change of Ownership);

Serious Default Notice means a notice issued by the Council in accordance with clause 25.2.3;

Service Expenditure means the cost of the provision (in accordance with the principles of good estate management) to the occupants of the Regeneration Site of insurance, repairs, rights, services or facilities in respect of the Regeneration Site or arising exclusively from or wholly connected with the management of the Regeneration Site;

Service Income means all sums receivable by the RP or their nominees in connection with the provision (in accordance with the principles of good estate management) to the occupants of the Regeneration Site of insurance, repairs, rights, services or facilities in respect of the Regeneration Site or arising exclusively from or wholly connected with the management of the Regeneration Site;

Shortfall means in relation to each Regeneration Phase any amount by which the Surplus determined for the Regeneration Phase by the Overage Model and the formula contained in paragraph 2.1 of Schedule 29 is less than zero;

SI Date shall have the meaning given to it in clause 25.3.2(a) of this Agreement;

Site Plan means the plan set out in Schedule 13;

Social Rented Homes means those dwellings to be constructed together with their curtilages (including gardens if any) during the Regeneration which shall be made available for rent in accordance with the Rent Scheme on the basis of housing need;

Specimen Residential Lease means the form of lease set out in Schedule 32 as may be amended in accordance with clause 21.4;

Specimen Tenancy Agreement means the form of tenancy agreement set out in Part 1 of Schedule 35 as may be amended in accordance with clause 21.2;

State Aid means a benefit;

- (a) conferred by a member state of the European Union (or through that member state's resources);
- (b) favouring a particular undertaking,

which is likely to distort both competition and inter-state trade in the European Union;

Stipulated Regeneration Phase Completion Date means in respect of each Regeneration Phase the due date for completion of that Regeneration Phase as calculated by the expiry of time to the due date for completion of that Regeneration Phase from the actual Actual Start Date for that Regeneration Phase as is more particularly set out in the Master Programme;

Stopping-up Order means such highway stopping-up orders as are necessary or desirable to allow the Regeneration to proceed;

Substation Site means the area edged and numbered 6 in blue on Part 3 of the title plan to title number NGL277192, a copy of which is annexed at Schedule 16;

Substation Site Lease means the lease of the Substation dated 19th November 1969 and made between the Council (1) and Eastern Electricity Board (2);

Surplus means the sum for each Regeneration Phase calculated in accordance with paragraph 2.1 of Schedule 29;

Target Rents means rents set in accordance with the formula set out in the guidance in Housing Corporation Circular 27/01 (a copy of which is appended at Schedule 21 to this Agreement);

Tax means any kind of tax, duty or levy or other charge (other than VAT) whether or not similar to any in force at the date of this Agreement and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

Temporary Tenancy means a tenancy of an Existing Home which is granted by the Council (whether before or after the date of this Agreement) and which is a periodic residential tenancy that grants no security of tenure which would prevent it being terminated by the landlord serving two months' notice or less and which is not a Secure Tenancy,

Tenanted Market Value means the price RP will pay the Partner for the Social Rented Homes and the Intermediate Homes calculated in accordance with Schedule 33;

Tenant means any tenant of a Home whose immediate landlord is the RP or an Affiliate of the same;

Termination Notice means either a Serious Default Notice of the nature described in clause 25.2.4 or a notice terminating this Agreement issued by the Council under clause 25.2.9;

Third Party Interests means the whole of the freehold and leasehold interests in those parts of the Regeneration Site or where appropriate a Regeneration Phase unencumbered title to which is not vested in the Council and all rights easements covenants and other interests of whatsoever nature (whether over the Regeneration Site or other land) and whether public or private the acquisition or extinguishment of which is necessary or appropriate to enable the Regeneration to be carried out disposed and occupied without hindrance (including for the avoidance of doubt chancel repair liability);

Third Party Interests Acquisition Date means in relation to a Regeneration Phase or the Regeneration Site (as appropriate) the date upon which the last of the following occurs: (1) the date or (if appropriate) dates upon which all Third Party Interests are vested in the Council or the Partner or are extinguished and vacant possession is given to the Council or the Partner and (2) (as the case may be) the effective date of appropriation for planning purposes of land over which third parties may have rights or other interests as referred to in clause 7.1.2 and (3) the extinguishment of any public rights;

Unlawful State Aid means State Aid which is unlawful under the treaties, laws, directives and regulations of the European Union;

Unsuitable Third Party means either:

- (a) any person who has a material interest in the production, distribution or sale of tobacco products and/or alcoholic drinks;
- (b) any person whose activities are, in the reasonable opinion of the Council, such that would bring the Regeneration into disrepute or make it materially more difficult for the Council to achieve the Regeneration Objectives; or
- (c) any person whose activities, in the reasonable opinion of the Council, pose or would be likely to pose a threat to national security,

Updated Financial Model means the form of financial model to be prepared in accordance with the provisions of clause 14;

Value for Money Criteria means that all sums expended in payment of the costs and fees concerned are reasonable and proper and are not dissimilar to the terms that could have been obtained in the open market on an arms length basis (but having regard to reasonable procurement practice) at the time the expenditure was committed to, having regard to all relevant circumstances and are charged at reasonable rates and represent value for money;

VAT means Value Added Tax and the expression **exclusive of VAT** means in the case of any sum forming all or part of the consideration for a supply which is taxable at a positive rate of VAT such sum as after deduction therefrom of the said VAT at the proper rate shall be equal to the stated amount and references to sums exclusive of VAT shall be references to sums as so reduced;

VAT Costs means any irrecoverable VAT which is charged to the Council on the supply of the right to nominate tenants of the Social Rented Homes and/or Intermediate Homes by the RP;

VAT Election means an election to waive exemption from VAT under paragraph 2 of Schedule 10 to the Value Added Tax Act 1994 or any legislation amending, replacing or re-enacting it;

Warranty Agreement means the form of warranty (as set out in Schedule 3) to be entered into between the Council, the Partner and respectively the members of the Professional Team, the Infrastructure and Community Facility Team, and (save where the role is undertaken in-house) the Quantity Surveyor;

Working Day means a day on which clearing banks in the City of London are (or would be but for strike lock-out or other stoppage affecting particular banks or banks generally) open during banking hours and Working Days shall be interpreted accordingly;

Works means all the works and operations to be carried out and performed or procured by the Partner to effect the Regeneration as specified in this Agreement;

Works Date means 20 Working Days after the date of service of a Works Notice in respect of the Regeneration Phase concerned;

Works Notice means notice in writing given by the Partner to the Council and specifying or including:

- (a) a detailed plan showing the Regeneration Phase to which the Works Notice relates;
- (b) the anticipated/indicative date for works to commence;
- (c) a detailed plan for each Building Lease to be granted showing the boundaries of the same;
- (d) a Design Certificate for the Regeneration Phase; and
- (e) such other information as the Council may reasonably from time to time inform the Partner that a Works Notice must contain in advance of the serving of the same Works Notice.

Operative clauses

- 1.2 Any reference to a clause shall be construed to be a reference to a clause or sub-clause of this Agreement.
- 1.3 Words importing the singular number include the plural number and vice versa and words importing gender include any other gender.
- 1.4 Covenants and obligations of any individual shall be binding upon and enforceable against his personal representatives.
- 1.5 References to any statute or section of any statute include a reference to any statutory amendment modification replacement or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme and matter made in pursuance of any such statute.

- 1.6 Any obligation on either party to this Agreement to do anything shall be construed and interpreted as an obligation on that party to do or procure that any such thing is done.
- 1.7 Any obligation on a party to this Agreement not to do anything shall be deemed to include an obligation not to permit or suffer anything to be done by anyone within its control.
- 1.8 Any reference to a party or parties means a party or parties to this Agreement unless the context requires otherwise.
- 1.9 Any reference to obtaining approval in this Agreement shall be deemed to include a requirement that every such approval shall be in writing.
- 1.10 The clause headings and the headings to the Schedules hereto shall not affect the construction of this Agreement.
- 1.11 The parties to this Agreement will not raise any objection to any operative provisions of this Agreement being within the definitions and (for the purpose of construing and interpreting this Agreement and giving effect thereto) such operative provisions shall be deemed to form part of the body of this Agreement

2 Conditions

- 2.1 Save in respect of the provisions of the following clauses of this Agreement which shall take effect immediately namely clauses 1, 2, 3, 6.1 – 6.3 (inclusive), 6.10, 7.3 – 7.7 (inclusive), 7.10 – 7.11 (inclusive), 8.1 – 8.3 (inclusive), 8.11 – 8.14 (inclusive), 8.17, 10 – 12 (inclusive), 14 – 16 (inclusive), 17.1, 19, 23 – 27 (inclusive), 29, 30.1 – 30.5 (inclusive), 30.7 – 30.9 (inclusive), 31, 32, 34, 35, 36, 37.2, 39 – 42 (inclusive), and 45 this Agreement shall become unconditional and binding on the parties on the Satisfaction Date or in the event of the further agreement of the parties immediately on the happening of the last of the following events:
- 2.1.1 Outline Planning Permission which is beyond legal challenge and the completion of a section 106 agreement under the Town and Country Planning Act 1990 containing an obligation on the Partner to procure the completion of the Nomination Rights Deeds all in a form satisfactory to the parties acting reasonably being granted/completed in relation to the Regeneration;
- 2.1.2 Secretary of State's Consent being obtained in a form satisfactory to the parties acting reasonably;
- 2.1.3 The Ground 10A Consultation having taken place, consisting only of information or material consistent with the obligations of the parties under the provisions of this Agreement unless otherwise agreed between the parties;
- 2.1.4 A Works Notice has been served in respect of the Regeneration Phase 1 and the conditions detailed in clause 6.2 have been satisfied in relation to that Regeneration Phase;
- 2.1.5 The Master Plan having been finalised pursuant to clauses 3.3 to 3.6 (inclusive);

- 2.1.6 The Council providing the Partner with a certified copy of its resolution authorising it entering into this Agreement together with evidence of the signatories on its behalf to this Agreement being properly authorised to so act;
- 2.1.7 The Partner and RP having entered into the Affordable Housing Agreement which is to be entered into on the date hereof, and
- 2.1.8 The Council undertaking a full audit of the Original Financial Model;

provided always that the Satisfaction Date falls on or before the Expiry Date in accordance with the provisions of this Agreement.

- 2.2 If the conditions specified in clause 2.1 have not been satisfied or waived as hereinafter provided by 5.30 p.m. on the Expiry Date then subject to clause 2.2A with effect from 5.30 p.m. on the Expiry Date either the Council or the Partner shall have the right (save where the party in question has intentionally or wilfully breached clause 2.5) to serve 20 Working Days written notice on the other of its intention to terminate this Agreement and where one or more of the conditions remains outstanding on the expiry of such notice this Agreement shall determine and cease to have any further effect and the respective rights and obligations of the parties to this agreement shall cease to have any further effect but without prejudice to any then existing right or remedy of either party against the other.
- 2.2A Where all the conditions specified in clause 2.1 have been satisfied or waived (with the exception of clause 6.2.5 in so far as it relates to Regeneration Phase 1) the Expiry Date shall be extended by a further twelve (12) months and if clause 6.2.5 (in so far as it relates to Regeneration Phase 1) remains unsatisfied after such time clause 2.8(b) shall apply.
- 2.3 The parties shall keep each other informed of the progress in satisfying the conditions set out in clause 2.1 and the Council shall notify the Partner within five (5) Working Days in writing following the date upon which each of the conditions set out in clause 2.1 have been satisfied and vice versa as appropriate.
- 2.4 The Partner shall have the right to waive any one or more of the events detailed in clauses 2.1.6, 6.2.6 and (subject always to maintaining the Minimum Council Land Value for the relevant Regeneration Phase) 6.2.9; and appropriate written notice to the Council from the Partner shall be treated as satisfaction of that event for the purposes of this Agreement.
- 2.5 In relation to Phase Condition 6.2.5, the Partner shall be entitled to serve a Works Notice in respect of a Regeneration Phase notwithstanding that one or more Existing Owner Occupiers occupy the Regeneration Phase, provided that this is permitted by and does not affect any Secretary of State's Consent.
- 2.6 The parties shall diligently use their reasonable endeavours to co-operate with each other to achieve the Satisfaction Date before the Expiry Date, provided that nothing in this clause 2.5 shall oblige the Partner or the RP to take any steps to satisfy the conditions set out in clause 2.1 unless and until the School SoS Consent is obtained and the condition at clause 2.1.8 has been satisfied.
- 2.7 In relation to the condition at clause 2.1.8, the Partner shall co-operate with the Council in providing such further information as shall be reasonably required and the Council shall use reasonable endeavours to satisfy this condition within a period of six weeks of the date hereof.

2.8 In the event that

- (a) the School SoS Consent has not been obtained by the date twenty four (24) months from the date of this Agreement; or
- (b) following a twelve (12) month extension to the Expiry Date pursuant to clause 2.2A, clause 6.2.5 (in so far as it relates to Regeneration Phase 1) has still not been satisfied,

the parties shall in good faith (each acting reasonably) seek to agree a Change pursuant to clause 23 to enable the Regeneration to proceed provided that if the parties are unable to agree such a Change within a further six (6) months then subject to any extensions agreed by the parties in writing such date shall be deemed to be the Expiry Date and clause 2.2 shall apply accordingly.

3 Joint Endeavour and the Master Plan

3.1 The Council and the Partner acknowledge that the Regeneration is a joint co-operative endeavour between them and also the residents of Dollis Valley.

3.2 The Council and the Partner shall in complying with their respective obligations in this Agreement and in their dealings with each other concerning the Regeneration ensure:

- 3.2.1 subject to clause 30.4 (Council as a statutory authority) that they are open and transparent with each other;
- 3.2.2 that they shall co-operate with each other to enable the Regeneration to be delivered in accordance with the Master Programme;
- 3.2.3 that during the term of this Agreement that they will seek to consult and inform each other about the implementation of the Regeneration.

Master plan and master programme

Master Plan

3.3 The Council and the Partner shall work together to finalise the Master Plan and Master Programme in relation to the Regeneration, within four months of the date of this Agreement, which shall detail the delivery of each of the Regeneration Phases PROVIDED THAT the parties hereby confirm their approval to the content of the Master Plan appended to this Agreement at Schedule 9.

3.4 The Master Plan shall contain at least:

- 3.4.1 In relation to the Regeneration as a whole (without limitation):
 - (a) a principal plan at a scale of 1:500 showing the overall layout of the Regeneration, and general details of proposed vehicular and pedestrian access to egress from and circulation within the Regeneration Site during and after the Regeneration showing details of such of the roads footpaths cycleways landscaping or other areas or items as are to be adopted as maintainable at public expense (to the extent and subject always to the provisions hereinafter contained);

- (b) any proposals for new highways, highway closures / re-alignments / diversions / pedestrianisation;
- (c) a phasing plan;
- (d) a general schedule of accommodation specifying both tenure mix and the extent of housing provision for people with restricted mobility or special needs;
- (e) a design brief together with indicative specifications which shall include the proposed design and specification of materials for both hard and soft landscaping;
- (f) details of the provision of the Community Facilities and the Infrastructure relating to the Regeneration; and
- (g) materially incorporate the contents of the draft masterplan annexed to this Agreement at Schedule 9;

3.4.2 In relation to each Regeneration Phase (without limitation):

- (a) reports detailing the constraints known at the time to the Partner on the Regeneration within that Regeneration Phase including soil and contamination survey site and levels survey and depth and alignment of and capacity of such known existing underground services and all such known structures below ground;
- (b) in relation to the Regeneration Phase 1 only detailed layouts plans elevations and sections of the buildings including all levels, at a scale of 1:200 unless otherwise agreed which shall include such additional information as may be appropriate to clarify standards of provision for persons with restricted mobility or special needs;
- (c) a schedule of accommodation showing separately each of the types of accommodation to be constructed;
- (d) proposals for servicing the buildings during and after Regeneration;
- (e) detailed proposals for vehicular and pedestrian access to egress from and circulation within the Regeneration Site during and after the Regeneration;
- (f) any proposed security enhancements to perimeter fencing/hoarding (including by way of example) lighting of public access routes and vision panels;
- (g) a schedule of all easements, wayleaves and agreements required for the completion of the Regeneration Phase.

Procedure for preparing the Master Plan for the Regeneration

- 3.5 The finalised Master Plan and the Master Programme for the Regeneration shall be prepared by the Partner in accordance with the requirements of the Regeneration Documents and the Design Guidelines.
- 3.6 The parties shall agree the Master Plan and Master Programme as follows:
- 3.6.1 the Partner and the Council shall from the date of this Agreement meet as often as necessary to discuss and develop the Master Plan and Master Programme for the Regeneration;
 - 3.6.2 the Partner shall submit a draft of the Master Plan and Master Programme to the Council within two (2) months of the date of this Agreement;
 - 3.6.3 the Council shall review the draft of the Master Plan and Master Programme and shall, within 28 days of the date of the submission of the Master Plan and Master Programme by the Partner, the Council and the Partner shall meet as often as shall be necessary to review any observations, suggestions or concerns the Council may have in relation to the Master Plan and Master Programme. The Partner shall procure the attendance of the Principal Architect at such meetings;
 - 3.6.4 in the event that, following the meeting, the Council requests that a change be made to the Master Plan and/or and Master Programme the Council shall serve on the Partner a request for a change to the Master Plan and/or and Master Programme (the **Master Plan Change Request**) and such Master Plan Change Request shall include:
 - (a) a statement that it is a formal request for a change(s) to be implemented to the Master Plan and/or and Master Programme; and
 - (b) sufficient information so as to enable the Partner acting reasonably to prepare a detailed analysis of such Master Plan Change Request.
 - 3.6.5 the Partner shall within 20 Working Days of receipt of a Master Plan Change Request either:
 - (a) notify of the Council that it accepts the same; or
 - (b) prepare sufficient information to enable the Partner and the Council to decide the merits of the proposed Master Plan Change Request, (including where necessary plans, specifications the financial impact on the Regeneration and other such details required to properly demonstrate to the Council the effect and impact of such Master Plan Change Request) (the **Request Analysis**).
 - 3.6.6 the Partner may only reject a Master Plan Change Request if the same will or is likely to;
 - (a) materially delay the implementation of the Regeneration;
 - (b) materially add to the cost of the Regeneration;
 - (c) be impractical to implement;

- 3.6.7 subject to clause 3.6.6 if the Partner rejects or is of the opinion that a Master Plan Change Request (in part or in whole) could be improved it shall include with the relevant Request Analysis notice and details of its opinion concerning the same including:
- (a) whether it proposes modifications to be made to the proposed Master Plan Change Request and, if so, the details of such modifications; or
 - (b) if it rejects such Master Plan Change Request a brief written statement of its reasons;
- 3.6.8 the parties shall, within 10 Working days of the Partner having served notice on the Council in accordance with clause 3.6.5, meet to discuss and agree any modifications to the Master Plan arising from the Council's Master Plan Change Request or the Request Analysis. The parties shall use reasonable endeavours to agree any changes to be made to the Master Plan and/or and Master Programme as a result of such meeting(s);
- 3.6.9 in the event that any dispute arises between the parties as a result of a Master Plan Change Request or the parties cannot agree to the final Master Plan and/or and Master Programme, then the parties shall apply the provisions of clause 26 (Dispute resolution);
- 3.6.10 following the agreement of the parties (or otherwise determination under clause 26) to the final form of the Master Plan and Master Programme subsequent changes to the same may only be made in accordance with clause 23 (Changes) and subsequent changes to the Master Programme as provided for in this Agreement.

Master Programme Contents

- 3.7 The Master Programme shall contain at least:
- 3.7.1 In relation to the Regeneration as a whole (without limitation):
- (a) detailed timings for the undertaking of each element of Works involved in the Regeneration;
 - (b) key dates for the delivery of the Council's obligations;
 - (c) long stop dates for each Regeneration Phase and the Regeneration;
 - (d) materially incorporate the contents of Schedule 10.
- 3.7.2 In relation to each Regeneration Phase:
- (a) detailed timings for the undertaking of each element of Works involved in the relevant Regeneration Phase,
 - (b) key dates for the delivery of the Council's obligations.

and for the avoidance of doubt, the Council confirms its approval to the draft master programme appended to this Agreement at Schedule 10

3.8 Subsequent changes to the Master Programme

- 3.8.1 Prior to submitting a Works Notice in respect of a Regeneration Phase the Partner shall submit to the Council a draft amended Master Programme showing suggested changes to the Master Programme that arise from the Partner's detailed design and preparatory work in respect of such Regeneration Phase and consequent changes to the Master Programme insofar as it relates to other Regeneration Phases.
- 3.8.2 The Council shall not unreasonably withhold or delay its approval to such suggested changes.
- 3.8.3 For the avoidance of doubt (and without limitation) it shall be reasonable for the Council to withhold consent to suggested changes to the Master Programme that result from a breach of this Agreement by the Partner.

3.9 Prior to submitting such draft amended Master Programme to the Council pursuant to clause 3.8 the Partner shall consult with the Council about any amendment.

3.10 The Master Programme shall be deemed to have been varied to incorporate changes to the Master Programme suggested by the Partner pursuant to clause 3.8 that have been agreed by the Council.

4 Demolition and preparation

4.1 The Partner shall carry out Demolition for each Regeneration Phase in accordance with the Master Programme (subject to delay caused by a Delay Event which the Partner has used all reasonable endeavours to minimise).

4.2 The Partner shall achieve the Demolition Start Date in respect of a Regeneration Phase within 10 Working Days of grant of a Building Lease.

4.3 Demolition by the Partner shall be carried out on the terms set out in Schedule 27.

4.4 The Partner shall arrange and pay for the cost of all Demolition.

4.5 Subject to clause 4.6 the Council shall ensure void Homes are secured if they become vacant during the relevant period allowed for decanting in the Master Programme and until the Demolition Start Date in respect of that Regeneration Phase.

4.6 Once the Works Date in respect of a Regeneration Phase is achieved as set out in clause 6.6 the Partner shall to the extent that such costs satisfy the Value for Money Criteria refund to the Council the costs it has incurred in ensuring that such void Homes are made secure pursuant to clause 4.5 within 20 Working Days of receipt of an appropriate invoice from the Council.

5 Regeneration objectives

5.1 The Council and the Partner and the RP expressly acknowledge each to the other and agree that they are entering into this Agreement with the intention of achieving the Regeneration Objectives. The parties acknowledge and agree that in the event of a conflict between the main body of this Agreement and Schedule 1 (Regeneration Objectives), the main body of this Agreement will prevail.

5.2 The Partner shall or shall ensure that subject to the terms of this Agreement and unless prevented from doing so by the act or default of the Council (or its agents contractors or consultants) the Regeneration shall provide for the construction of no less than **523** Homes and no more than 1,000 Homes on the Regeneration Site by the Regeneration Long Stop Date of which:

5.2.1 subject to clause 6.11, a minimum of 230 homes shall be Social Rented Homes; and

5.2.2 a minimum of 50% of the homes shall be Private Sale Homes;

5.2.3 a minimum of 20 Intermediate Homes shall be constructed;

5.2.4 the Homes to be constructed in accordance with the Design Guidelines and the external façade of buildings in the Regeneration shall not differ on account of the tenure of the Homes; and

5.2.5 unless the Master Plan provides otherwise Social Rented Homes and Private Sale Homes shall form part of each Regeneration Phase.

5.3 Homes constructed as part of the Regeneration shall consist of not less 50% of Family Housing including not less than 248 Houses.

5.4 The Regeneration shall involve the construction of the Community Facilities in accordance with the Masterplan and the Master Programme.

6 Building Leases

6.1 No Works Notice may be served by the Partner unless and until this Agreement becomes unconditional (and without prejudice to the provisions of clause 2.1.4 a Works Notice served in respect of the Regeneration Phase 1 shall have no effect until the date on which this Agreement becomes unconditional).

6.2 Thereafter the Partner shall serve a Works Notice in respect of each Regeneration Phase if the following conditions are satisfied in relation to such Regeneration Phase and subject to clause 6.4 shall not serve a Works Notice in respect of a Regeneration Phase unless the following conditions are satisfied or (in so far as is permissible under this Agreement) waived in respect of such Regeneration Phase:

6.2.1 The Council has been consulted on the proposed commencement of Works on the relevant Regeneration Phase and more particularly the Partner has supplied to the Council and the Council (acting reasonably) has approved detailed layouts plans elevations and sections for the buildings in the relevant Regeneration Phase;

6.2.2 The Partner has obtained Detailed Planning Permission for the relevant Regeneration Phase and such Detailed Planning Permission is beyond legal challenge and is in a form acceptable to the parties (acting reasonably);

6.2.3 RP has entered into the Nomination Rights Deed in respect of the Regeneration Phase concerned;

- 6.2.4 A Design Certificate has been provided to the Council in respect of that Regeneration Phase;
- 6.2.5 The Third Party Interests Acquisition Date has been achieved in relation to that Regeneration Phase;
- 6.2.6 A Stopping-up Order has been obtained in relation to the Regeneration Phase in a form satisfactory to the parties acting reasonably and is beyond legal challenge;
- 6.2.7 The Secretary of State's Consents remain valid and satisfactory to the parties (acting reasonably) (or Further Secretary of State's Consents have been obtained pursuant to clause 7.6 on terms satisfactory to the parties (acting reasonably));
- 6.2.8 Confirmation of the Compulsory Purchase Order and appropriation (as referred to in clause 7.1) having occurred in relation to the Regeneration Phase both in a form satisfactory to the parties acting reasonably;
- 6.2.9 The Post Planning Phase Viability Test is satisfied in respect of the Regeneration Phase concerned;
- 6.3 The parties shall with all due diligence and expedition and otherwise use all reasonable endeavours to fulfil their respective requirements set out in clause 6.2 so as to enable Works to be undertaken on the Regeneration Phases in accordance with the Master Programme keeping one another advised as to progress at all material times.
- 6.4 Without prejudice to the generality of clause 6.3, the Partner shall not be obliged to submit a Planning Application in relation to a Regeneration Phase unless and until a Pre Planning Viability Test is satisfied in relation to such Regeneration Phase.
- 6.5 The Partner may serve a Works Notice in respect of a Regeneration Phase if the parties agree in writing that a Works Notice can be served in respect of a Regeneration Phase notwithstanding that one or more of the conditions set out in clause 6.1 has not been satisfied in relation to that Regeneration Phase.
- 6.6 Subject as hereinbefore provided on the Works Date the Council will grant to the Partner a Building Lease for the relevant Regeneration Phase and the Partner shall accept such grant and such Building Lease shall be substantially in the form set out in Schedule 15.
- 6.7 If:
 - 6.7.1 There is a subsisting Serious Default at the time that a Works Notice is served or a Serious Default arises after a Works Notice has been served but prior to the grant of a Building Lease on the Regeneration Phase concerned; and
 - 6.7.2 Within 10 Working Days of receiving such a Works Notice or the Serious Default occurring (whichever is the later) the Council serves written notice on the Partner rejecting the Works Notice on the basis that there is a subsisting Serious Default (specifying such subsisting Serious Default),

then such Works Notice shall be deemed not to have been served and shall have no effect.

- 6.8 The Building Lease shall be subject to such amendments as the Council or the Partner may reasonably propose and which it is reasonable for the other party to accept.
- 6.9 The Building Lease for each Regeneration Phase shall be prepared by the Partner and the engrossment for execution shall be executed by the Council within 21 Working Days of its receipt.
- 6.10 Subject to the Council securing all necessary consents and authorisations, the parties may agree in writing with one another to extend the Regeneration Site to include all or part of the land shaded yellow on the Site Plan.
- 6.11 The parties acknowledge that whilst the Regeneration Site currently includes all of the property known as 81 Barnet Lane, the parties may seek to vary the red line shown on the Site Plan so as to exclude the existing dwelling and part of its curtilage and in the event that the exclusion of the existing dwelling and part of its curtilage results in the loss of a Private Sale Home, the requirement for the number of Social Rented Homes shall reduce to 229.

7 Council's obligations and vires

7.1 Compulsory Purchase Order and Stopping-up Order

The Council shall:

- 7.1.1 in the event it resolves to make a compulsory purchase order in connection with the Regeneration use its reasonable endeavours to make and diligently pursue the Compulsory Purchase Order in accordance with the CPO Indemnity Agreement and it shall comply with its obligations set out in the CPO Indemnity Agreement;
- 7.1.2 use its reasonable endeavours to acquire, extinguish or otherwise render ineffective Third Party Interests over the Council's Land (and such other land on the Regeneration Site as the Council shall come to own throughout the term of this Agreement) through appropriation of such land so as to come within the provisions of section 237 of the Town and Country Planning Act 1990 in accordance with the CPO Indemnity Agreement;
- 7.1.3 use its reasonable endeavours as land owner to assist with any application for Stopping Up Orders as made by the Partner;
- 7.1.4 secure vacant possession of the Non Residential Land and the Education Land at its own cost and outside the remit of the CPO Indemnity Agreement and in a timely manner to accord with the Master Programme, keeping the Partner advised as to progress made at all material times, provided that the Council shall not be required to secure vacant possession of the Education Land before 30 September 2013 **provided that** the Partner agrees to use reasonable endeavours (at no cost to the Partner) to assist the Council in terminating the Substation Lease, by co-ordinating its discussions with the electricity provider for new facilities on the Regeneration Site.

7.2 Decanting

- 7.2.1 The Council shall co-operate with the Partner and the RP to enable the Partner and the RP to comply with their respective obligations set out in Schedule 18 (Decanting Plan).
- 7.2.2 The Partner shall promptly reimburse the Council the costs of it paying to Existing Tenants Homeloss and Disturbance Allowances and such other costs the Council properly incurs in order to facilitate the decanting of occupants from Existing Homes.

7.3 Consents

- 7.3.1 The Council shall use reasonable endeavours to obtain the Secretary of State's Consent prior to the Expiry Date and once obtained, shall comply with any requirements of the Secretary of State's Consent.
- 7.3.2 Where other Consents are required pursuant to this agreement the Council shall subject to clause 30.4 (Council as Statutory Authority) assist as reasonably required or use its reasonable endeavours to obtain such Consents (as applicable) and once obtained, shall comply fully with the terms of such Consents.

7.4 Vires

- 7.4.1 The Council has a duty to provide housing accommodation in accordance with section 9 of the Housing Act 1985 but this duty does not require the Council to provide that accommodation itself.
- 7.4.2 The Council has the power to do anything it considers is likely to promote the economic and/or social and/or environmental well-being of all or part of its area. The Council considers that the Regeneration shall promote such well-being.
- 7.4.3 The Council confirms to the Partner that it has power to enter into this Agreement and discharge the obligations on its part set out in it and that in order to arrange for the provision of affordable housing on the Regeneration Site by the Partner and to enter into and perform its obligations under this Agreement the Council has complied with the legal requirements of the Housing Act 1985, and all or any other relevant statutes and the Council's own constitution and the Partner relies upon such confirmation.
- 7.4.4 The Partner confirms to the Council that:
- (a) it is properly constituted and incorporated under the laws of England and has the corporate power to carry on its business;
 - (b) it has the power to enter into and to exercise its rights and perform its obligations under this Agreement;
 - (c) all necessary action to authorise the execution and to perform its obligations under this Agreement has been taken;

- (d) it has complied with all applicable procurement laws and regulations published by any Relevant Authority in appointing any person to deliver the Regeneration including (but not limited to), the RP, members of Infrastructure and Community Facilities Team and Members of the Professional Team and the Partner further confirms that it shall comply with such procurement laws and regulations in any future appointments which arise due to its obligations or rights under this Agreement,

and the Council relies upon such confirmation.

- 7.4.5 The Guarantor confirms to the Council and the Partner that it has power to enter into this Agreement and to discharge the obligations on its part set out in it and that it has complied with all relevant statutes and its own constitution in respect of it entering into this Agreement and accepting such obligations and the Council and the Partner rely upon such confirmation.

7.5 Co-operation

The Council acknowledges that the Regeneration is a co-operative arrangement between itself and the Partner and it will use its reasonable endeavours to support and promote the Regeneration, not to unreasonably incur costs relating to the Regeneration, to assist in (if required) raising external funding and to assist in solving problems that the Partner may incur directly relating to the Regeneration.

7.6 Further Secretary of State's Consent

If (due to a change in the law or otherwise) there is a requirement to obtain any further Secretary of State's Consents or a variation or an amendment to the terms of any existing Secretary of State's Consent (the **Further Secretary of State's Consents**) in order for the parties to comply with their obligations under this Agreement the Council shall at the Partner's reasonable request and cost make all applications for and use its reasonable endeavours to obtain the Further Secretary of State's Consents and the Master Programme shall be adjusted to reflect delays caused by the need to obtain such further Secretary of State's consents.

7.7 Equal opportunities

The Council shall comply with the Council Equal Opportunities Policy which is annexed to this Agreement at Part 1 of Schedule 19 (as amended from time to time).

7.8 Not used

7.9 Reporting

The Council shall provide the Partner with a verbal or written report within 10 Working Days of each Quarterly Review Date (unless the parties agree otherwise) providing details of progress by the Council against its obligations as set out in this Agreement including, but not limited, to information regarding decanting and the obtaining of Consents.

7.10 Demolition Notices

Following receipt of a reasonable request from the Partner the Council shall within 25 Working Days procure the commencement of service of demolition notices and/or orders pursuant to the Housing Act 1985 and shall complete such process within 50 Working Days.

7.11 Direct Agreements

7.11.1 The Council and the RP will at the request of the Partner enter into a Direct Agreement with the Partner's Funder.

7.11.2 The Partner shall ensure that there is an order of priority in respect of any funder exercising their rights under one or more Direct Agreements.

8 The Partner and the RP's obligations

The Partner and (where appropriate) the RP covenant with the Council as follows:

8.1 Costs

The Partner shall as between the Council and the Partner be responsible for all Partner Costs save to the extent that any express provision of this Agreement and/or the CPO Indemnity Agreement stipulates that the Council shall bear an item of its own costs.

8.2 Consents

8.2.1 The Partner shall at its own cost and expense (in consultation with the Council) apply for and with all due diligence and dispatch use its reasonable endeavours to obtain the Consents and once obtained, shall comply fully with the terms of such Consents in respect of each Regeneration Phase at such time or times as to allow the Master Programme to be complied with and shall give all necessary and usual notices under all applicable statutes and all orders regulations or by-laws made thereunder.

8.2.2 The Partner shall use its reasonable endeavours to reach agreement (satisfactory to itself acting reasonably) with any statutory undertaker which may be necessary to facilitate the Regeneration.

8.3 Planning applications

8.3.1 Without prejudice to the proviso in clause 2.52.6 the Partner shall in consultation with the Council apply for the Planning Permissions in a timely manner to accordance with the Master Programme and with all due diligence and dispatch shall use all reasonable endeavours to obtain those Planning Permissions and once obtained, shall comply with the terms of such Planning Permissions.

8.3.2 The Partner shall not make or procure any planning application (including any for a revision to any existing planning permission) for any development on the Regeneration Site which materially conflicts with the provisions of this Agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

8.4 Decant

The Partner and the RP shall comply with their respective obligations under Schedule 18 (the Decanting Plan).

8.5 Execution of Works

The Partner shall:

8.5.1 Subject to clause 7.6 substantially commence the Works in respect of each Regeneration Phase on the Actual Start Date (subject to delay caused by a Delay Event which the Partner has used all reasonable but commercially prudent endeavours to minimise).

8.5.2 Having commenced the Works in a Regeneration Phase pursuant to clause 8.5.1 thereafter to proceed continuously with the Works in such Regeneration Phase with all due diligence and expedition and to use reasonable endeavours to complete or procure the Practical Completion of the Works for each Regeneration Phase by the Stipulated Regeneration Phase Completion Date for such Regeneration Phase and in any event to ensure Practical Completion of such Works by the applicable Regeneration Phase Long Stop Date (subject to delay caused by a Delay Event which the Partner has used all reasonable endeavours to minimise and subject to the provisions of clause 7.6) in a good and substantial and workmanlike manner having regard to the purposes for which they are designed and intended to be used with good quality materials and in accordance with the Design Guidelines, the Master Plan and Master Programme the Regeneration Objectives the Planning Permission the Secretary of State's Consent the Consents and other provisions of this Agreement.

8.5.3 The Partner shall keep the Council advised of any Delay Events and the Master Plan, the Master Programme, the Regeneration Long Stop Date and the Regeneration Phase Long Stop Date shall be deemed to be varied to such extent necessary to take account of the effect of any such Delay Event as may be reasonably agreed between the parties or in default of agreement determined in accordance with the provisions of clause 26 (Dispute Resolution Procedure) and without either party being required to propose a variation pursuant to clause 23 (Changes) subject always to clause 8.8 of this Agreement.

8.6 The Partner shall:

8.6.1 provide the Council with a written report within 10 Working Days of each Quarterly Review Date (unless the parties agree otherwise) providing full details of the progress of the Works.

8.6.2 convene a meeting with the Council and such other parties as the Council may reasonably request within four weeks of each report during the subsistence of this Agreement to discuss the information disclosed in the progress report referred to in clause 8.6.1.

8.7 The Partner shall construct all Infrastructure in a good and workmanlike manner and to a standard that does not prejudice the Regeneration and/or use of future Regeneration Phases.

8.8 Notwithstanding the provisions of clauses 6 (Building Leases, 8.5.2 and 8.5.3 (Execution of the Works) the Regeneration Long Stop Date may not be altered or amended beyond the date which is 10 years from the Actual Start Date for the Regeneration Phase 1 provided that in respect of any Regeneration Phase where a Works Notice has been served the Regeneration Long Stop Date shall be deemed to be the Regeneration Phase Long Stop Date for such Regeneration Phase.

8.9 Disposal of the Regeneration Site

8.9.1 The Partner may not make any Disposal of the Regeneration Site or any part thereof other than an Authorised Disposal.

8.9.2 When submitting its application to HM Land Registry to register the Building Lease of a Regeneration Phase (or part thereof) made pursuant to clause 6 the Partner shall apply for a restriction in the following form to be registered on the title to the land within such Regeneration Phase (including without limitation all parts of such Regeneration Phase previously acquired by the Partner).

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed on behalf of Countryside Properties (UK) Limited (Company Number 00614864) whose registered office is at Countryside House The Drive Brentwood Essex CM13 3AT or by its conveyancer that the provisions of clause 8.9.1 of an agreement dated [•] 2012 and made between (1) The London Borough of Barnet (2) Countryside Properties (UK) Limited (3) London & Quadrant Housing Trust and (4) Countryside Properties plc have been complied with."

8.10 Insurance

8.10.1 The Partner shall procure that when it commences works on a Regeneration Phase the buildings and erections standing on such Regeneration Phase and the part of the Works on such Regeneration Phase are insured against loss or damage by fire and all other usual contractors' risks including cover against non-negligent damage being caused to any neighbouring or adjoining premises until Practical Completion of the Works on such Regeneration Phase to their full reinstatement cost (inclusive of VAT) together with surveyors' architects' and other fees including demolition site clearance and other costs and public liability cover of not less than ten million pounds (£10,000,000) in the name of the Partner (or until Practical Completion in the name of the relevant building contractor) and shall when reasonably required produce to the Council the policy or policies of insurance and the receipts for the premiums provided that for the avoidance of doubt the Partner shall have no obligation to insure parts of Regeneration Phases that have been disposed of following Practical Completion of such parts.

8.10.2 The Partner shall comply (and shall procure compliance by the Building Contractor and its architect and by all persons acting for or under the control of the Partner) with all proper requirements of the insurers in respect of such

policy and the Partner shall not do or permit or suffer to be done on the Regeneration Site or in relation to the Works anything which might render void or voidable any policy of insurance effected in accordance with the provisions of this clause 8.10 or as a result of which payment of the policy money might be withheld in whole or in part.

- 8.10.3 The Partner shall notify the Council immediately upon the occurrence of any damage to or destruction of the Works prior to Practical Completion of the Works concerned (whether or not caused by any of the risks insured against) and in any such case shall (subject to all necessary approvals being obtained) promptly reinstate the Works and in accordance with the provisions of this Agreement.

8.11 Information

The Partner and RP shall in consultation with the Council keep the residents of the Regeneration Site informed as to the progress of the Regeneration and the carrying out of the Works and in particular but without prejudice to the generality of the foregoing will initiate a programme of regular meetings at which the residents will be invited to participate.

8.12 Vires

The RP is a charitable Registered Provider of Social Housing under the Housing and Regeneration Act 2008 registered as an Industrial and Provident society with the Financial Services Authority.

8.13 Co-operation

The Partner and the RP acknowledge that the Regeneration is a co-operative arrangement between them and the Council and (accordingly) the Partner and RP will use their respective reasonable endeavours to support and promote the Regeneration, to assist in (if required) raising external funding and to assist in solving problems that the Council may incur directly relating to the Regeneration.

8.14 Equal Opportunities

- 8.14.1 The RP shall comply with the RP Equal Opportunities Policy which is annexed to this Agreement at Part 2 of Schedule 19 (as amended from time to time).

- 8.14.2 In the performance of its obligations under this Agreement or the carrying out of other activities and actions carried out in accordance with this Agreement, the Partner shall comply with the Equal Opportunities Policies which are annexed to this Agreement at Schedule 19 (as amended from time to time) to the extent that the same relates to its dealings with the Council's residents and/or employees of the Council and/or sub-contractors engaged by the Council.

8.15 The Partner and Compulsory Purchase Order and land acquisition

The Partner will comply with its obligations set out in the CPO Indemnity Agreement.

8.16 Offers to Existing Owner Occupiers

The Partner and the RP will comply with their respective obligations set out in Schedule 25 (Offer to Existing Owner Occupiers)

8.17 Grant funding

8.17.1 The Partner shall promptly provide the Council with details of any conditions on which grant funding which relates to the Regeneration is made available to the Partner and/or the RP.

8.17.2 RP shall promptly provide the Council with details of any conditions on which grant funding which relates to the Regeneration is made available to the RP.

9 Independent Certifier's Certificate

9.1 The RP and the Council shall appoint an Independent Certifier to certify that the Relevant Works for each relevant Regeneration Phase have been completed.

9.2 The RP shall procure that the Independent Certifier shall promptly inform the parties to the Independent Certifier's Appointment and the Council of all matters of concern to the Independent Certifier which are likely to prevent or delay the Independent Certifier's Certificates in accordance with this clause 9. The Independent Certifier shall have no authority to approve or accept the Partner's performance of its obligations under this Agreement as being satisfied or discharged except as provided in this clause 9. Nothing done by the Independent Certifier in accordance with this clause 9 shall relieve the Partner of its obligation to carry out the Relevant Works.

9.3 Without prejudice to the Partner's and the RP's obligations hereunder, the Partner and the RP and the Council shall for the duration of his appointment afford to the Independent Certifier, and his representatives, access free of charge to all relevant information that the Independent Certifier may reasonably require for the purpose of carrying out the Independent Certifier's duties under the Independent Certifier's Appointment including, without limitation, copies of the drawings, specifications, details, levels and setting out dimensions which the Partner or RP prepare or use or cause to be prepared or used.

9.4 If the appointment of the Independent Certifier is terminated for any reason prior to the Regeneration Long Stop Date then the RP and the Council shall appoint a replacement as soon as reasonably practicable on terms substantially the same as those set out in Schedule 4 (Independent Certifier's Appointment) save that such replacement shall have no power to open up, review or revise the decisions of the original Independent Certifier unless the parties agree otherwise.

9.5 **Not used**

Issue of Independent Certifier's Certificate

9.6 The Relevant Works are to be certified by the Independent Certifier as Practically Complete.

9.7 When the Partner considers that the Relevant Works (or part thereof) are Practically Complete or will be Practically Complete in time for inspection and so that the Independent

Certifier will be capable of issuing an Independent Certifier's Certificate in respect of that part of the Relevant Works in accordance with the Independent Certifier's Appointment, the Partner shall give notice in writing to that effect to the Independent Certifier.

9.8 The Partner shall use its reasonable endeavours to procure that the Independent Certifier shall within 10 Working Days of the date of the delivery of the notice referred to in clause 9.7:

9.8.1 Issue an Independent Certifier's Certificate for the Relevant Works concerned to the Partner and the Council in accordance with the Independent Certifier's Appointment declaring that the Relevant Works concerned have been Practically Completed; or

9.8.2 Give written notice to the Partner specifying all the matters which must be performed before the Independent Certifier's Certificate can be issued in accordance with the Independent Certifier's Appointment. If such written notice is given by the Independent Certifier, the provisions of clauses 9.7 and 9.8 shall re-apply.

9.9 Any decision of the Independent Certifier made pursuant to this clause 9 shall be final and binding on the parties and the parties agree that no such decision may be referred by either party to dispute resolution in accordance with clause 26 (Dispute Resolution) other than in the case of fraud or manifest error where the Independent Certifier has failed to issue the Independent Certifier's Certificate.

10 Design

10.1 The Partner and the Council shall from the date of this Agreement meet as often as necessary to discuss and jointly develop the Design Guidelines.

10.2 The Design Guidelines shall (subject to planning and other statutory requirements):

10.2.1 include the submission on design for the Regeneration made by the Partner to the Council in the procurement which led to this Agreement;

10.2.2 meet or exceed the requirements of the London Plan (July 2011);

10.2.3 endeavour where practicable to meet the requirements of the London Housing Design Guide Interim Edition August 2010 (Mayor of London) and in any event to comply with the Dwelling Space Standards contained therein;

10.2.4 for the Social Rented Homes and the Intermediate Homes meet (or exceed) the internal design and space standards specified by the Homes and Communities Agency in its 'Design Quality Standards' (published by the Housing Corporation);

10.2.5 meet or exceed the Lifetime Homes Standard (2010 edition – published by the Foundation for Lifetime Homes and Neighbourhoods); and

10.2.6 meet or exceed code level 4 of the Code for Sustainable Homes published by BREEAM.

- 10.3 Subject to clause 10.1 the Partner shall submit a draft of the formal Design Guidelines to the Council within two (2) months of the date of this Agreement.
- 10.4 Further to clause 10.3 the Council shall review the draft of Design Guidelines submitted by the Partner and within 21 days of such submission the Council and the Partner shall meet as often as shall be necessary to review any observations, suggestions or concerns the Council may have in relation to the draft Design Guidelines. The Partner shall procure the attendance of the Principal Architect at such meetings.
- 10.5 In the event that the Council requests that a change be made to the draft Design Guidelines the Council shall serve on the Partner a request for a change to the same (the "Design Guidelines Change Request") and such Design Change Request shall include:
- 10.5.1 A statement that it is a formal request for a change(s) to be implemented to the Design Guidelines, and
- 10.5.2 Sufficient information so as to enable the Partner acting reasonably to prepare a detailed analysis of such Design Guidelines Change Request.
- 10.6 The Partner shall within 20 Working Days of receipt of a Design Guidelines Change Request either;
- 10.6.1 Notify the Council that it accepts the same; or
- 10.6.2 prepare sufficient information to enable the Partner and the Council to decide the merits of the proposed Design Guidelines Change Request, (including where necessary plans, specifications the financial impact on the Regeneration and other such details required to properly demonstrate to the Council the effect and impact of such Design Guidelines Change Request) (the Design Request Analysis).
- 10.7 The Partner may only reject a Design Guidelines Change Request if the same will or is likely to;
- 10.7.1 materially delay the implementation of the Regeneration;
- 10.7.2 materially add to the cost of the Regeneration;
- 10.7.3 be impractical to implement;
- 10.7.4 is materially different from its submission on design made to the Council during the procurement which led to this Agreement;
- 10.7.5 fails to meet one or more of the criteria set out in clauses 10.2.2 to 10.2.6.
- 10.8 Subject to clause 10.7 if the Partner rejects or is of the opinion that a Design Guidelines Change Request (in part or in whole) could be improved it shall include with the relevant Request Analysis notice and details of its opinion concerning the same including:
- 10.8.1 Whether it proposes modifications to be made to the proposed Design Guidelines Change Request and, if so, the details of such modifications; or

10.8.2 If it rejects such Design Guidelines Change Request a brief written statement of its reasons.

10.9 The parties shall, within 10 Working Days of the Partner having served notice on the Council in accordance with clause 10.6, meet to discuss and agree any modifications to the Design Guidelines arising from the Council's Design Guidelines Change Request or the Design Request Analysis. The parties shall use reasonable endeavours to agree any changes to be made to the Design Guidelines as a result of such meeting(s).

10.10 In the event that any dispute arises between the parties as a result of a Design Guidelines Change Request or the parties cannot agree to the final Design Guidelines, then the parties shall apply the provisions of clause 26 (Dispute resolution).

10.11 Following the agreement of the parties (or otherwise determination under clause 26) to the final form of the Design Guidelines subsequent changes to the same may only be made in accordance with clause 23 (Changes).

11 Design certification

11.1 The Partner shall appoint Design Certifiers to certify by issuing Design Certificates that the Homes and any other buildings which are to be constructed in a particular Regeneration Phase comply with the Design Guidelines or to identify and schedule any non-compliance.

11.2 The Partner shall procure that the Design Certifiers shall promptly inform the Partner of all matters of concern to the Design Certifiers which are likely to prevent or delay the Design Certificates in accordance with this clause 11.

11.3 If the appointment of the Design Certifiers is terminated for any reason prior to the Regeneration Long Stop Date then the Partner shall appoint a replacement as soon as reasonably practicable on terms including the Design Certifiers' Appointment save that such replacement shall have no power to open up, review or revise the decisions of the original Design Certifiers unless the parties agree otherwise.

Issue of Design Certificate

11.4 The Partner shall procure the Homes and other buildings to be constructed are to be certified by the Design Certifiers and Design Certificates are to be issued under the Design Certifiers' Appointments

11.5 Copies of Design Certificates will be issued to the Council within 10 Working Days of receipt.

12 Title to the Regeneration Site

12.1 Title to the Council's Land shall consist of roots of the title to the unregistered land and the official copies of the title numbers detailed in Schedule 14 and subject to the acquisition or extinguishment of all Third Party Interests in such land (including but not limited to appropriation by the Council) as provided in this Agreement and the CPO Indemnity Agreement, the Partner shall take subject to any matters entered or referred to in the registers of such title as at the date specified in Schedule 14 and (subject as aforesaid) the Partner shall raise no further objection or claim in respect of nor requisition on the Council's title as at the date of this Agreement or any matter affecting the same but

(subject to aforesaid) shall take subject to the same insofar as it or they affect the Regeneration Site and to any local land charges registered before the date hereof and all other matters capable of registration and all notices demands proposals orders directions restrictions conditions requirements or agreements or matters arising under any statute by-law or instrument made pursuant to statute (including inter alia the Planning Acts) or made by any local public or competent authority before the date hereof.

- 12.2 The Council agrees that it will not after the date of this Agreement create or permit to be created any estate right interest or other encumbrance other than an RTB Obligation or Permitted Obligation.
- 12.3 Title to that part of the Regeneration Site which may be acquired pursuant to the Compulsory Purchase Order shall comprise a general vesting declaration or declarations made pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981 (or such other transfer or instrument as the Council may (subject to the Partner's prior approval) use to vest title in itself) and the Partner shall raise no objection or requisition in relation to the fact that the process of registration of title may still be ongoing at HM Land Registry and in such circumstances the Council will act expeditiously in applying for registration at Land Registry and at its own cost deal with any requisitions raised within 20 Working Days of receipt and also if applicable submit any required SDLT Return within the specified statutory period.
- 12.4 Where any information or replies to enquiries or requests for information have been given by or on behalf of the Council in relation to the Regeneration Site this has been done by the officer agent or solicitor concerned in good faith and has been done without responsibility or liability on the part of the Council's officers solicitors or agents which responsibility and liability the Partner agree are expressly excluded and from which all such persons are released and exonerated.
- 12.5 The Partner has made all necessary searches and enquiries and has carried out all necessary investigations and inspections independently of any information given to it by the Council to ensure that the Regeneration can be carried out in accordance with this Agreement (subject to the provisions of this Agreement relating to the acquisition or extinguishment by the Council of all Third Party Interests).
- 12.6 The rights granted to the Partner by this Agreement shall in no circumstances extend to or affect any land of which the Council is not as at the date hereof the proprietor or does not pursuant to the terms of this Agreement or the CPO Indemnity Agreement become the proprietor.
- 12.7 The Council will at the Partner's cost give to the Partner such assistance as it reasonably requires in dealing with any requisition which the Land Registry may raise in dealing with the first registration of any unregistered land as specified in Schedule 14.
- 12.8 Nothing in this clause 12 shall prevent the Partner from raising enquiries of the Council in relation to matters disclosed by any pre completion searches.
- 13 **Standard property conditions**
- 13.1 The Standard Conditions of Sale (4th Edition) (the **Standard Conditions**) are deemed to be incorporated in this Agreement insofar as they are applicable to a sale by private treaty

and are not inconsistent with the other conditions (including this condition) of this Agreement and are hereby varied as follows:

13.1.1 in the construction of the Standard Conditions the following expressions have the meanings described in this sub-clause 13.1.1 and not those mentioned in the Standard Conditions:

- (a) Every reference to the **buyer** shall be read to mean the Partner;
- (b) Every reference to the **seller** shall be read to mean the Council;
- (c) Every reference to the **property** shall mean a Regeneration Phase;
- (d) Every reference to **contract** shall mean this Agreement; and
- (e) Every reference to **contract rate** shall mean Interest.

13.1.2 Standard Condition 1.1.1(b), (d) and (e) shall be deleted.

13.1.3 Standard Conditions 1.3, 2.2, 2.3, 3.1.3, 3.4, 4.2-4.3, 4.5, 4.6.2, 4.6.3, 4.6.4, 5.2, 6.1.1, 6.1.2, 6.1.3, 6.8.3 and 8 – 10 shall be deleted.

13.1.4 Standard Condition 1.1.1(j) is varied by deleting the words **whether** and **or after**.

13.1.5 Standard Condition 1.5 is varied by the addition of the following at the end: **"otherwise than in the circumstances set out in and in accordance with the provisions of this contract"**.

13.1.6 Standard Condition 6.8.1 is varied by the addition of the following at the end: **under this condition but not otherwise**.

13.1.7 Standard Condition 7.1 is varied by the addition of the following as a new condition 7.1.2: The buyer will have no remedies for any such error or omission unless it was made in the written replies to written enquiries.

14 **Financial provisions and Phase Viability Test**

14.1 Subject to clause 14.2 the Partner will provide an updated version of the Latest Financial Model (such updated version being the **Updated Financial Model**) together with the latest Master Plan and Master Programme to the Council within 20 Working Days after each Quarterly Review Date (such Quarterly Financial Model to be up-to-date as at such Quarterly Review Date).

The Updated Financial Model shall be used (amongst other things) to assess if there exists a state of Financial Non-Viability.

14.2 The obligation in clause 14.1 shall cease on the Overage Payment Date.

14.3 Each Updated Financial Model shall be accompanied by a statement prepared by or on behalf of the Partner pointing out and describing the changes from the previous Latest Financial Model and reasons why such changes have been made and the updated Financial Model produced within twenty (20) Working Days of the 1st and 3rd Quarterly

Review Date in each calendar year (or produced pursuant to clause 14.1) shall be accompanied by a certificate addressed to the Council from an appropriate qualified professional stating whether the Construction Costs incurred since the previous Latest Financial Model was prepared satisfy the Value for Money Criteria and whether the Construction Costs forecast for any Regeneration Phases that have commenced and the Regeneration Phase that is to be commenced next have been reasonably forecast having regard to market conditions

14.4 Whenever the Latest Financial Model is to be updated, such updating of the Latest Financial Model shall be carried out by the Partner to reflect the impact of proposed adjustment(s) on the Latest Financial Model and the Latest Financial Model shall (subject to clause 14.5) be updated to take into account and record the following points:

14.4.1 Actual and anticipated expenditure and revenues of the Partner including the following:

- (a) replacing estimates to date with updated costs and revenues to reflect known actual expenditure incurred and revenues arising to date;
- (b) updating all estimated future construction costs and estimated revenues to the end of the Regeneration Phase that is to be commenced next;
- (c) replacing any estimated future costs and revenues with known future costs and revenues; and
- (d) updating any changes to the cost of financing,

14.4.2 Cost reductions arising from improvements in the prospective technical performance of materials and/or methods of undertaking the Regeneration;

14.4.3 Changes to the tax treatment of the Regeneration that affect the Partner;

14.4.4 That the Tenanted Market Value has been updated in accordance with Schedule 33;

14.4.5 Any required change to reflect a Change;

14.4.6 Any required change to reflect agreement reached after consideration of the contingencies pursuant to clause 18; and

14.4.7 Any required change to reflect any other change agreed in writing between the parties.

14.5 Any amendment to the Financial Model which falls within one of the following categories shall be deemed a Material Change and shall be subject to the provisions of clause 23 of this Agreement:

14.5.1 There has been an addition or deletion of a cell, row, line or column of the Financial Model.

14.5.2 There has been an addition, deletion or amendment to a formula within the Financial Model.

14.6 The Council shall (within 20 Working Days of receipt of an electronic copy in Excel or such other form as previously agreed in writing of the Updated Financial Model) be entitled to challenge the validity of the Updated Financial Model on the grounds that the Updated Financial Model:

14.6.1 Has not been updated in accordance with the provisions of this clause 14;

14.6.2 Contains actual Partner Costs which do not satisfy the Value for Money Criteria;

14.6.3 Contains estimated Partner Costs assumptions or forecasts, (any or all) or estimated revenues (any or all) which are not reasonable; and

14.6.4 Contains a manifest error or fraud,

by serving a written notice on the Partner setting out the reasons for the Council's challenge PROVIDED THAT the Council may not challenge under either clause 14.6.2 or 14.6.3 in circumstances where the Partner Costs in question in respect of a Development Phase have been accepted by the Council in the Phase Viability Test for that Development Phase and such inputs remain unchanged.

14.7 In undertaking a Phase Viability Test the parties agree to be bound by the provisions of Schedule 30 to this Agreement

14.8 Any dispute as to the validity of the Updated Financial Model which remains unresolved within 20 Working Days of the Council notifying the Partner of its position shall be resolved in accordance with the provisions of clause 26 (Dispute Resolution).

15 **Value for money criteria**

The Partner shall ensure that Partner Costs satisfy the Value for Money Criteria.

16 **Public subsidy**

To the extent necessary to ensure that no state of Financial Non-Viability exists and that no Phase Viability Test is failed the parties shall subject to clause 8.17 **Error! Reference source not found.** use all reasonable endeavours to maximise the public subsidy available to the Regeneration and shall liaise with each other in this regard.

17 **Council's operational costs, Council expenditure and Home Loss**

17.1 On or after the date of this Agreement the Partner shall pay to the Council the Council's Operational Costs referred to in paragraph (a) of the definition of Council's Operational Costs within 30 days of receiving an invoice from the Council

17.2 The Partner shall pay the Council's Operational Costs referred to in paragraph (b) of the definition of Council's Operational Costs in five equal instalments on the draw down of each Regeneration Phase.

17.3 The Partner shall pay the Council's Operational Costs (other than Council's Operational Costs referred to in paragraph (b) of the definition of Council's Operational Costs) within 30 days of receipt by it of an invoice from the Council.

- 17.4 The Council's Operational Costs shall include payments made to third parties and the cost of the Council's own staff to the extent that their time is applied to the Project.
- 17.5 The Council shall subject to the proper discharge of its obligations under this Agreement use reasonable endeavours to procure that the Council's Operational Costs referred to in paragraphs (c) (d) and (e) of the definition of Council's Operational Costs do not in total exceed £100,000 in any Agreement Year (reduced pro-rata for any period of less than a year).
- 17.6 In any event the Council's Operational Costs referred to in paragraphs (c) (d) and (e) of the definition of Council's Operational Costs may not in total exceed £200,000 in any Agreement Year (reduced pro-rata for any period of less than a year).
- 17.7 The Council agrees to provide a budget to the Partner prior to any Pre Planning Phase Viability Test against which the Partner may benchmark the Council's Operational Costs incurred by the Council and where the actual Council's Operational Costs for a Regeneration Phase exceed such budget, the Council shall be required to account for why the budget has been exceeded and to verify that such excess costs have been properly incurred.
- 17.8 The Council shall keep or cause to be kept full and proper books of account in relation to the Council's Operational Costs.
- 17.9 Such books of account and all vouchers receipts invoices and other documentation relating to the Regeneration shall be open to inspection by the Partner or any persons appointed to act on the Partner's behalf at any reasonable time having made prior appointment with the Council, and the Partner shall be entitled to ask for a copy of the same which the Council shall (subject to prior payment of the Council's reasonable copying and administrative charges) provide within 10 Working Days of the Partner's request.
- 17.10 The Partner shall pay any item of Council Expenditure within 30 days of receipt by the Partner of an invoice from the Council

Home Loss and disturbance payments

- 17.11 In the event that an Existing Tenant or other lawful occupant of an Existing Home becomes entitled after the date hereof to Home Loss and Disturbance payments due to the implementation of the Regeneration then following the Satisfaction Date:
- 17.11.1 the Council and the Partner (both acting reasonably) will work together to agree a general strategy in relation to the level of non statutory Home Loss and Disturbance Payments to be made to Existing Tenants, recognising nevertheless that each case is to be assessed on its own merit.
- 17.11.2 the Partner shall pay the Council within 30 days of receipt of an invoice from the Council for such Home Loss and Disturbance Payments;
- 17.11.3 the Council may invoice the Partner prior to it making a Home Loss and Disturbance Payment provided the Council's liability to make such a payment has arisen;

17.11.4 the Partner is not required to pay the Council more than one Home Loss and Disturbance Payment for each Existing Home.

17.12 The Partner shall indemnify the Council against non recoverable VAT subject to any such sums forming part of the Partner Costs.

18 Financial Non Viability

18.1 If there has been or exists a deterioration in the conditions of the Housing Market compared to those which existed at the date of this Agreement (through a materially significant decline in the value of new flats or houses for sale on the open market or a materially significant decline in the desire of third parties to purchase such new flats or houses for sale on the open market) such that:

18.1.1 the deterioration in the conditions of the Housing Market are such as to cause a state of Financial Non-Viability either in relation to either a Regeneration Phase or in relation to the Regeneration as a whole to exist; or

18.1.2 such deterioration in the conditions of the Housing Market is such as to cause the Partner to be unable to secure funds to enable the relevant Regeneration Phase to be constructed,

then the Partner shall be entitled to serve notice on the Council advising the Council that a state of Financial Non-Viability exists and requesting a delay to the commencement of the Works until such time as such state of Financial Non-Viability can be brought to an end or ceases to exist.

18.2 Subject to clause 18.3 during a state of Financial Non-Viability the Partner shall not be in breach of its obligations under this Agreement if it delays commencing Works on a particular Regeneration Phase and the Master Programme shall accordingly be adjusted to reflect such delay.

18.3 The provisions of clauses 18.1 and/or 18.2 shall not apply:

18.3.1 prior to the Satisfaction Date;

18.3.2 in relation to the Regeneration Phase 1;

18.3.3 in relation to any Regeneration Phase where Works have commenced;

18.3.4 to the extent that the aggregate of delay caused through Financial Non Viability is more than 3 years.

18.4 Where a State of Non-Financial Viability exists the parties shall act together in good faith to seek to bring the State of Non-Financial Viability to an end and to achieve this, the parties shall explore the options set out in paragraph 2.4 of Schedule 30.

19 Audit and open book

19.1 The Partner shall keep or cause to be kept full and proper books of account in relation to the Regeneration and the entries made therein shall be kept up-to-date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by reputable persons or companies engaged in concerns of a

similar nature so as to enable the preparation from time to time of true and fair accounts for the Regeneration.

19.2 Such books of account and all loans and contracts relating to the Regeneration as well as all vouchers receipts invoices, orders, contractual documentation and other documentation relating thereto to which the Partner or a sub-contract of the Partner is a party shall be open to inspection by the Council or any persons appointed to act on the Council's behalf at any reasonable time having made prior appointment with the Partner and the Council shall be entitled to ask for a copy of the same which (subject to the prior payment of reasonable copying and administrative charges) the Partner shall provide within 10 Working Days of the Council's written request.

19.3 If the Council reasonably considers the books of account referred to in clauses 19.1 and 19.2 do not accurately represent and detail sums relating to this Agreement, the Regeneration and the Project then, the Partner shall instruct its auditor (but no other person) to provide the Council's external auditor (but no other person) with documentary evidence that confirms whether or not in the Partner's external auditors opinion such books of account do accurately represent sums arising from this Agreement or the Regeneration.

19.4 It is agreed and declared that the purpose of clauses 19.2 and 19.3 is to allow the Council to spot-check the accuracy of information provided by the Partner or to investigate matters of concern rather than to allow the Council to inspect (or request copies) as a matter of routine and (in view of this) the Council agrees to exercise the rights set out in clauses 19.2 and 19.3 in a reasonable manner

19.5 The Partner shall make and procure that its Affiliates and/or sub-contractors maintain separate books of account relating to the Regeneration available for inspection by the Partner and/or the Council upon reasonable notice during working hours on Working Days and shall present a report of these to the Partner and/or Council as and when reasonably requested.

20 Overage

20.1 The Partner, the RP and the Council shall observe and perform their respective obligations under Schedule 29 (Overage).

21 Existing residents and affordable housing

21.1 The Partner shall sell and RP shall buy the Social Rented Homes at a price not less than the appropriate Tenanted Market Value pursuant to the Affordable Housing Agreement.

21.1A The Partner shall sell and the RP shall buy the Intermediate Homes at a price not less than the appropriate Tenanted Market Value and pursuant to the terms of a sale and purchase agreement or sale and purchase agreements to be agreed between the Partner and the RP.

21.2 The RP shall offer to the Existing Tenants a tenancy of the Social Rented Homes substantially in the form of the Specimen Tenancy Agreement or such other form as the Council may approve which shall incorporate the enhancements set out in Part 2 of Schedule 35.

21.3 The RP shall only charge Existing Tenants holding a tenancy of a Social Rented Home and New Tenants rent in accordance with the Rent Scheme.

21.4 The RP shall offer to any nominees nominated to be housed in the Intermediate Homes pursuant to the Nomination Rights Deed a lease substantially in the form of the Specimen Residential Lease or such other form as the Council may approve (acting reasonably).

Site Office

21.5 Within six months of the Satisfaction Date the RP shall hold weekly surgeries in a convenient location for Existing Tenants on the Regeneration Site (or at such other convenient location for Existing Tenants as the Council may approve (such approval not to be unreasonably withheld or delayed)) until the Overage Calculation Date for the final Regeneration Phase (as so defined in Schedule 29).

21.6 RP shall provide the following services from the surgery referred to in clause 21.5:

21.6.1 Co-ordination of RP activity on the Regeneration Site during the Regeneration including (but not limited to) liaising with Barnet Homes, the Council's housing and neighbourhood management and estate management teams as reasonably required by the Council and relating to the Regeneration;

21.6.2 A manager with overall responsibility for RP obligations under this Agreement including; its role in the Partner's rehousing obligation, management of the Dollis Valley decant team as referred to in Schedule 18, maintenance, community regeneration and administration; and

21.6.3 A Housing and neighbourhood management site based resource after Practical Completion of the Final Regeneration Phase.

Disputes arising from this clause 21 shall be resolved in accordance with the provisions of clause 26.

22 Dollis Valley partnership board and estate management

22.1 The Partner, RP and the Council shall set up the Dollis Valley Partnership Board and fulfil their respective obligations on the same as is more particularly set out in Schedule 17 (Dollis Valley Partnership Board) and Schedule 7 (Estate Management).

22.2 The RP shall comply with its obligations pursuant to Schedule 7 (Estate management principles).

23 Changes

23.1 General

23.1.1 Changes shall only be effective if they are instigated, assessed and implemented in accordance with the provisions of this clause 23 (Changes).

23.1.2 The Council agrees that it shall not be permitted to request a Change that will:

(a) if implemented, cause the Partner to infringe Legislation;

- (b) if implemented, pose a significant risk to the health and safety of the Partner's staff or staff employed by the Partner's sub-contractors or other third parties;
- (c) materially and adversely affect the Partner's ability to perform its obligations under this Agreement;
- (d) cause any Consent or Secretary of State's Consent or Further Secretary of State's Consent to be breached; or
- (e) cause any Partner Insurance to be unobtainable or void or voidable,

and any such request for a Change shall be deemed to be void provided that should the Council request such a Change the Parties agree that such a request will not be deemed to be a breach of this Agreement.

23.1.3 The Partner agrees that it shall not be permitted to request or implement a Change that will:

- (a) if implemented, cause the Council to infringe Legislation;
- (b) if implemented, would pose a significant risk to the health and safety of the residents of Dollis Valley, staff employed by the Council, or other third parties;
- (c) materially and adversely affect the Council's ability to perform its obligations under this Agreement; or
- (d) cause any Consent or Secretary of State's Consent to be breached,

and any request for such a Change shall be deemed to be void provided that should the Partner request such a Change the Parties agree that such a request will not be deemed to be a breach of this Agreement.

23.1.4 Either Party may request either a Material Change and for the purposes of this clause 23 (Changes) the Party which puts forward a Change shall in relation to that Change be referred to as the **Initiator** and the other Party shall be referred to as the **Recipient**.

23.2 **Material Changes**

The Council and the Partner may each in their absolute discretion reject any proposed Material Change.

23.3 **Procedure for proposed Material Changes**

23.3.1 The Initiator shall, in the event that it wishes a Material Change to be implemented, or the effects of a Material Change to be considered, give the Recipient as much notice as is reasonably possible of the Material Change and of the purpose and need for the proposed Material Change.

23.3.2 Each request for a Material Change (each a "Material Change Request") shall be in writing.

Where the Partner requests a Material Change

23.3.3 Where the Partner serves on the Council a Material Change Request such Material Change Request shall:

- (a) state that it is a formal request for a Material Change to be implemented or assessed;
- (b) include reasonable outline plans specifications and other detail to enable the Council acting reasonably to make an informed decision as to the proposal together with a statement as to the probable impact on the Latest Financial Model of the proposed Material Change; and
- (c) sufficient information to allow the Council acting reasonably to provide its opinion on:
 - i impacts on the Regeneration and the delivery of the Regeneration Objectives;
 - ii any amendment required to this Agreement as a result of the Material Change;
 - iii the date on which the Material Change could reasonably be implemented.

23.3.4 The Council acting as Recipient may employ its own consultants (or those engaged by the Partner to prepare information for the proposed Material Change) to assist it in considering the proposed Material Change.

23.3.5 The Council acting as Recipient shall, as soon as reasonably practicable and in any event within 30 Working Days after having received a Material Change Request provide to the Initiator its opinion on the matters referred therein, including:

- (a) whether it accepts or rejects the proposed Material Change;
- (b) whether it requires modifications to be made to the proposed Material Change; and
- (c) if it refuses such Material Change a brief written statement of its reasons.

23.3.6 In the event the Council as Recipient agrees a Material Change then the Partner shall not less than 20 Working Days prior to the implementation of the same provide the Council with reasonable documentation illustrating the preparation of detailed information, including where necessary plans, specifications the financial impact on the Regeneration.

Where the Council requests a Material Change

23.3.7 Where the Council serves on the Partner a Material Change Request such Material Change Request shall include:

- (a) a statement that it is a formal request for a Material Change to be implemented or assessed; and
- (b) sufficient information to enable the Partner acting reasonably to prepare a detailed analysis of such Material Change Request.

23.3.8 The Partner shall within 30 Working Days (or longer if the nature of the proposed Material Change warrants it) prepare or procure the preparation of sufficient information (both parties acting reasonably) to enable the Partner and the Council to decide the merits of the proposed Material Change, including where necessary plans, specifications the financial impact on the Regeneration and other such details required to properly demonstrate to the Council the affect and impact of such Material Change ('the Council Analysis').

23.3.9 The Partner acting as Recipient shall, as soon as reasonably practicable after receiving a Material Change Request and in any event no later than 20 Working Days after having provided the Council with the Council Analysis provide to the Council as Initiator its opinion on the matters referred therein, including:

- (a) whether it accepts or rejects the proposed Material Change;
- (b) whether it requires modifications to be made to the proposed Material Change; and
- (c) if it refuses such Material Change a brief written statement of its reasons.

23.3.10 In the event the Council as Recipient agrees a Material Change then the Partner shall not less than 30 Working Days prior to the implementation of the same prepare or procure the preparation of detailed information, including where necessary plans, specifications the financial impact on the Regeneration.

23.4 **Minor Changes**

The Partner may implement a Minor Change from time to time providing that prior to implementing such a Minor Changes it has used its reasonable endeavours to notify the Council.

Recording Changes

23.5 As soon as reasonably practicable after a Material Change has been agreed or otherwise determined pursuant to determination by the Expert in accordance with clause 26 or a Minor Change has been proposed by the Partner the Council and the Partner shall seek to agree how such Change should be documented to ensure that it is legally binding on both parties (and in the absence of agreement within 10 Working Days the form of such documentation shall be determined in accordance with clause 26 with the specialist acting as an Expert).

23.6 Within 10 Working Days of such documentation being agreed or determined the Initiator shall produce the same for signature.

- 23.7 The parties to this Agreement shall sign or execute (as appropriate) such documentation within 15 Working Days of it being so produced.
- 23.8 The Change shall become binding on the parties to this Agreement on the signing or execution (as appropriate) of such documentation by the parties to this Agreement Prior to such signing (or execution) the Change shall not be binding on the parties.
- 23.9 Notwithstanding the other provisions of this clause 23 the parties may without following the other provisions of this clause 23 agree any Change or variation to this Agreement providing the same is evidenced in writing in a manner that satisfies section 2 of the Law of Property (Miscellaneous Provisions) Act 1989.

24 Tax and VAT

- 24.1 Save as the context requires or as otherwise stated all references to payments made in this Agreement are references to such payments exclusive of any VAT chargeable in respect of the supply of goods or services for which the payment is or is deemed to be consideration and where such payments fall to be made under this Agreement such VAT shall be added to that amount and paid in addition to it.
- 24.2 Without prejudice to and save as mentioned earlier in this clause 24 where any supply is made or deemed to be made pursuant to this Agreement the recipient of such supply shall (subject to the receipt of a valid VAT invoice) pay to the supplier any VAT chargeable in respect of it.
- 24.3 Where any payment is required to be made pursuant to this Agreement to reimburse the payee for any expenditure which the payee may have incurred such payment shall include an amount equal to any VAT comprised in that expenditure which is not recoverable by the payee as input tax under section 25 of the Value Added Tax Act 1994.
- 24.4 Subject to clause 24.5 where the Council is required to submit a SDLT return (or equivalent form) in respect of this Agreement, or any Nomination Rights Deed then:
- 24.4.1 The Partner shall provide the Council with a duly completed SDLT return (or equivalent form) and a sum equal to all SDLT required to be paid to HM Customs and Revenue not less than 10 Working Days before such form is due to be submitted to the Inland Revenue and (unless the Council acting reasonably considers the return or form to be inaccurate in which case it shall promptly notify the Partner and request the Partner to submit a new return or form) shall sign the form and submit it with the appropriate SDLT within 10 Working Days of receipt;
- 24.4.2 The Council shall promptly provide the Partner with copies of all correspondence and forms relating to the payment of SDLT.
- 24.5 Disputes arising from clause 24.4 and clause 24.6 shall be determined in accordance with clause 26 (Dispute Resolution).
- 24.6 The Council warrants and undertakes that it has not, and will not at any time without the prior written permission of the Partner, make a VAT Election over the Regeneration Site or any part thereof and, for the avoidance of doubt, the Council shall not be entitled to receive any increased payment pursuant to clauses 24.1 or 24.2 in respect of a supply of

the Regeneration Site, or any part thereof, which is a taxable supply for VAT purposes as a consequence of a VAT Election made by the Council in breach of this clause 24.8.

25 Default and termination

25.1 Minor Default

25.1.1 In the circumstances set out in this clause 25.1 the Partner and/or RP as appropriate shall deliver to the Council a Recovery Plan where:

- (a) a Minor Default has occurred and in consultation with the Council it is agreed that remedial action is required to deal with such Minor Default; or
- (b) it is determined in accordance with clause 26 (Dispute Resolution) that a Minor Default has occurred and that remedial action is reasonably required to deal with such Minor Default or, if it is determined that it would be unreasonable to require the Partner and/or RP as appropriate to incur the cost of remedial action, that steps are reasonably required to be taken to avoid a recurrence of the Minor Default.

25.1.2 In the circumstances set out in clause 25.1.1 the Partner and/or RP as appropriate shall consult with the Council and deliver a Recovery Plan to the Council for its approval setting out the Partner and/or RP as appropriate proposals for remedying any Minor Default and/or for avoiding a recurrence of such Minor Default as may be appropriate following either agreement pursuant to clause 25.1.1(a) or determination pursuant to clause 25.1.1(b).

25.1.3 A Recovery Plan shall:

- (a) contain an analysis by the Partner and/or the RP as appropriate of the reasons why the Minor Default occurred;
- (b) set out what steps the Partner and/or the RP as appropriate propose to take to avoid a recurrence of the Minor Default; and
- (c) be delivered to the Council for its approval within 15 Working Days from the agreement reached under clause 25.1.1 (a) or the determination under clause 25.1.1(b) as appropriate.

25.1.4 The Council shall decide acting reasonably within 15 Working Days of the receipt of a Recovery Plan whether to accept or reject it. In the absence of notification from the Council in writing to the Partner and/or the RP as appropriate within 30 Working Days of the Council receiving a Recovery Plan of a decision to reject a Recovery Plan or to suggest amendments to it, such plan shall be deemed to have been accepted by the Council.

25.1.5 The Council may propose amendments to the Recovery Plan proposed by the Partner and/or RP as appropriate. The Partner and/or the RP as appropriate shall not unreasonably refuse to incorporate any amendments suggested by the Council and any dispute over the reasonableness or otherwise of a suggestion shall be resolved in accordance with clause 26 (Dispute Resolution).

- 25.1.6 If the Council rejects a Recovery Plan proposed by the Partner and/or the RP as appropriate the Council shall give its reasons in writing for doing so. In such circumstances the Partner and/or the RP as appropriate shall within a further 5 Working Days propose a revised Recovery Plan taking account of the Council's reasons for rejection and any reasonable and appropriate amendments proposed by the Council. The Council may not unreasonably reject a Recovery Plan proposed by the Partner and/or the RP as appropriate and any dispute over the reasonableness of a rejection shall be decided in accordance with clause 26 (Dispute Resolution).
- 25.1.7 The Partner and/or the RP as appropriate shall implement the Recovery Plan as agreed by the Council (or as determined in accordance with clause 26 (Dispute Resolution) within the time limits contained in it.
- 25.1.8 If the implementation of the Recovery Plan agreed between the Council and the Partner and/or the RP as appropriate in accordance with clauses 25.1.2 to 25.1.6 fails to remedy the Minor Default, the Partner and/or the RP as appropriate will re-consult with the Council following the procedure set out in clauses 25.1.2 to 25.1.6.
- 25.1.9 If the Partner and/or the RP as appropriate fail to act with reasonable diligence in seeking to implement the Recovery Plan the Minor Default will become a Serious Default and the parties will follow the procedure set out in clause 25.2 below.

25.2 Serious Default

- 25.2.1 The Partner and/or the RP as appropriate shall notify the Council of the occurrence, and details, of any Serious Default and of any event or circumstances which is likely, with the passage of time or otherwise, to constitute or give rise to a Serious Default, in either case promptly on the Partner and the RP as appropriate becoming aware of its occurrence.
- 25.2.2 The provisions of this clause 25 are subject to both the Partner's Funder's right of step in set out in clause 25.3 and any Direct Agreement and the RP's right of step in set out in clause 25.3
- 25.2.3 If a Serious Default has occurred and the Council wishes to terminate this Agreement the Council shall serve a Serious Default Notice on the Partner and the RP, copying the same to the Partner's Funder and the Guarantor. The Serious Default Notice must specify the type and nature of the Serious Default that has occurred.
- 25.2.4 In the event of Serious Default which arises due to the Partner:
- (a) Being the subject of an Insolvency Event; and/or
 - (b) being the subject of any process or event similar or analogous to an Insolvency Event,

then any Serious Default Notice served on such grounds shall specify reasonable details of such Serious Default and this Agreement shall terminate

in relation to any Future Phases (but without prejudice to any Building Leases of Existing Phases) on the date of service on the Partner of the same Serious Default Notice subject always to clause 25.2.2 above.

- 25.2.5 In the case of any Serious Default not stipulated in clause 25.2.3 the Serious Default Notice shall require the Partner and/or RP as appropriate at their option either:
- (a) to remedy the Serious Default referred to in the Serious Default Notice (if the same is continuing) within such reasonable period (being no less than 30 Working Days of the date of Serious Default Notice) as the Council specifies in the Serious Default Notice); or
 - (b) both:
 - i to notify the Council within 5 Working Days of the date of the Serious Default Notice that it wishes to propose a Recovery Plan; and
 - ii within 30 Working Days of the Serious Default Notice to put forward an acceptable Recovery Plan for remedying the Serious Default which specifies in reasonable detail the manner in, and the latest date by which such a Serious Default is proposed to be remedied.
- 25.2.6 Where the Partner and/or the RP as appropriate put forward a Recovery Plan in accordance with clause 25.2. 5(b), the Council shall have 20 Working Days from its receipt within which to notify the Partner and the RP that it does not accept the Recovery Plan, failing which the Council shall be deemed to have accepted the Recovery Plan. The Council shall act reasonably in deciding whether to accept a Recovery Plan.
- 25.2.7 Where the Council notifies the Partner and the RP that it does not accept the Recovery Plan, the parties shall endeavour within the following 20 Working Days to agree amendments to it. In the absence of agreement within 20 Working Days, either party may refer the question of whether the Recovery Plan (as amended by agreement if applicable) will remedy the Serious Default in a reasonable manner and within a reasonable time period to the Expert for determination in accordance with clause 26 (Dispute Resolution).
- 25.2.8 If the Partner and/or the RP either rectify the Serious Default within the time period specified in the Serious Default Notice, or implement the Recovery Plan in accordance with its terms, the Serious Default Notice will be deemed to be revoked and this Agreement will continue.
- 25.2.9 Subject to any Direct Agreement and clause 25.3 the Council may without prejudice to either party's accrued rights against the other terminate this Agreement in relation to any Future Phases by written notice to the Partner and/or the RP with immediate effect if:
- (a) the Partner and/or the RP fail to rectify the Serious Default specified in a Serious Default Notice (save a Serious Default Notice that is deemed to have been withdrawn) within the time period referred to in the Serious Default Notice;

- (b) the Partner and/or the RP fail to implement an approved Recovery Plan or any element of it in accordance with its terms; or
- (c) the Recovery Plan put forward by the Partner and/or the RP as appropriate pursuant to clause 25.2.4(b) is rejected by the Council under clause 25.2.4, and none of the Partner and/or the RP challenges its rejection or it is determined pursuant to clause 26 that the rejection was not unreasonable.

25.2.10 The rights of the Council (to terminate or otherwise) under this clause are in addition (and without prejudice) to any other right which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the Partner and/or the RP as appropriate (or to take any action other than termination of this Agreement).

25.2.11 Where the Council terminates this Agreement in relation to Future Phases, the Partner and the RP shall still be bound by their respective obligations under this Agreement in relation to Existing Phases unless and to the extent that the Building Lease for such Existing Phase is forfeited by the Council.

25.3 Partner's Funder's and RP's Right of Step in

25.3.1 Where a Termination Notice is served by the Council then subject to the terms of any Direct Agreement:

- (a) either the Partner's Funder or the RP shall be entitled to step into the Partner's rights and obligations under this Agreement or propose a Replacement Developer to step into the Partner's rights and obligations under this Agreement in accordance with clause 25.3.2 and Schedule 34; and
- (b) the exercise of the right to appoint a Replacement Developer granted by this clause 25.3.1 shall be subject to the Council (acting reasonably) approving the Replacement Developer.

PROVIDED ALWAYS THAT if the RP has caused the issue of the Termination Notice, the RP may not exercise its rights pursuant to this clause 25.3 or Schedule 34

25.3.2 If either the Partner's Funder or the RP steps into the Partner's rights and obligations under this Agreement or proposes a Replacement Developer to do so (in either case the "Incoming Developer") in accordance with clause 25.3.1, then Schedule 34 and the following shall apply:

- (a) subject to the provisions of any Direct Agreement and clause 25.3.2(b), the Partner and the Guarantor shall cease to have any rights interests or obligations under this Agreement from the date that the Incoming Developer exercises its right to step in pursuant to clause 25.3.1 (the "SI Date");
- (b) the exercise by the Incoming Developer of its step-in rights pursuant to clause 25.3.1 shall not affect the obligations or rights of the Partner, the

RP, the Council or the Guarantor arising or to be performed prior to the SI Date and the Incoming Developer shall have no liability or responsibility for the actions, inactions or breaches of the Partner and/or the Guarantor which occurred prior to the SI Date;

- (c) where any notice, restriction, land charge or other entry has been registered by the Partner or on its behalf against the title to any part of the Regeneration Site which has not yet been developed, the Partner shall at its own cost promptly cancel and remove the same; and
- (d) within 20 Working Days of either the Partner's Funder, the RP or the Replacement Developer (the **Step-in Party**) stepping into and/or assuming the Developer's rights under this Agreement then the same Step-in Party shall enter into an Option Agreement with the Council in respect of such RTB Properties which the Partner or the RP had acquired.

25.4 Council Serious Default

- 25.4.1 As soon as reasonably practical having become aware of the same the Partner shall notify the Council in writing of the occurrence and details of any Council Serious Default and any event or circumstances which is likely to give rise to an occurrence of a Council Serious Default (**Council Warning Notice**).
- 25.4.2 The Partner may issue a Council Warning Notice to the Council if in the Partner's reasonable opinion the Council is likely to enter into a Council Serious Default PROVIDED THAT such Council Warning Notice may not be served more than five Working Days prior to, in the Partner's reasonable opinion, the Council Serious Default occurring.
- 25.4.3 In the event that the Partner serves a Council Warning Notice on the Council, the Council shall have the later of:
 - (a) twenty (20) Working Days after service of the same notice; or
 - (b) fifteen (15) Working Days after the actual occurrence of the Council Serious Default,to remedy the Council Serious Default Specified in the Council's Warning Notice.
- 25.4.4 If the Council fails to remedy the Council's Serious Default specified in the Council's Warning Notice within the time period afforded by the Partner the Partner may serve on the Council a termination notice terminating this Agreement insofar as it relates to Future Phases only;
- 25.4.5 The Council shall not be liable to any party to this Agreement for:
 - (a) any losses suffered by another party under this Agreement if it is able to rectify the relevant Council Serious Default prior to the expiry of the Council Warning Notice;

- (b) any loss of profit, loss of business, loss of business opportunity or any consequential or indirect loss of any nature suffered by any party under this Agreement;

25.5 Any dispute or difference between the parties arising from or connected with this clause 25, including, but without limitation any dispute as to the proper construction of this clause and any dispute as to whether the performance or failure to perform any act provided for in this clause is or is not reasonable shall be referred for determination in accordance with clause 26 (Dispute Resolution)

26 **Dispute resolution**

26.1 In this Agreement, Dispute shall mean and include any difference or dispute between the parties to this Agreement arising out of or in connection with this Agreement and shall include any question as to the validity or interpretation of this Agreement and any Dispute arising before or after termination of this Agreement.

26.2 Any Dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 26.

26.3 Senior Representative shall mean any director or senior executive officer of the Council and a director or member of the Partner.

26.3.1 If a Dispute arises in relation to any aspect of this Agreement, the Partner and the Council shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

26.3.2 Either party may at any time give five days' notice in writing to the other requiring that a Dispute be referred to Senior Representatives of the parties. Any such notice shall contain brief particulars of the Dispute which is to be so referred. The Senior Representatives shall meet within five days of the expiry of the notice, or within such shorter or longer period as may be agreed between the parties, and shall at their meeting negotiate in good faith in an attempt to resolve the Dispute. The parties shall bear their own costs of referring a Dispute to Senior Representatives for resolution through negotiation.

26.3.3 The terms of resolution of any Dispute referred to and resolved by Senior Representatives shall be recorded in writing and shall be signed by the Senior Representatives between whom such Dispute was resolved.

26.4 **Adjudication**

Without prejudice to clause 26.3 above, either party may give the other notice of intention to refer the Dispute to adjudication and the President for the time being of the Chartered Institute of Arbitrators shall appoint an adjudicator to consider the Dispute (the **Adjudicator**) within five (5) Working Days of any application for such appointment by either party.

26.5 **Submission of Arguments**

Within five (5) Working Days of appointment in relation to a particular Dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The

Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.

26.6 Adjudicator's Decision

In any event, the Adjudicator shall provide to both parties his written decision on the Dispute, within twenty (20) Working Days of appointment (or such other period as the parties may agree after the reference) or thirty (30) Working Days from the date of reference if the party which referred the Dispute agrees. Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Courts of England and Wales (the **Courts**), the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

26.7 Adjudicator's Costs

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties.

26.8 Adjudicator as Expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

26.9 Adjudicator's Powers

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

26.10 Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 42 (Freedom of Information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

26.11 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

26.12 Reference to the Courts

If:

26.12.1 there is any Dispute in respect of matters referred to in clause 23;

26.12.2 either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 26.5 (Adjudicator's Decision); or

26.12.3 both parties agree,

then either party may (within twenty (20) Working Days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer the Dispute to litigation and for such purposes the parties agree that the Courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.

27 Professional team and warranties

27.1 The Partner intends to appoint those persons set out in Schedule 20 as its Professional Team and shall ensure that the same are suitably experienced and qualified.

27.2 The Partner shall not appoint any additions or substitutions of the Principal Architect and such other members of the Professional Team involved in material design related to the Regeneration without:

27.2.1 prior consultation with the Council;

27.2.2 the consent of the Council to any additional or substitution of the Principal Architect (such consent not to be unreasonably refused or delayed).

27.3 Subject to clause 27.2 any additions or substitutions of those named in the Professional Team will be promptly notified to the Council by the Partner.

27.4 Any replacement for a discharged member of the Professional Team shall be professionally qualified by the professional body usually recognised as the principal professional body appropriate for the discipline of the replacement member in question or where the replacement member in question is a firm or company then the majority of the partners or directors (as appropriate) (or where there are only two such partners or directors then at least one of them) shall be so qualified.

27.5 The Partner shall as soon as reasonably practicable and not later than 28 days from the date of their appointment unless such period is extended with the consent of the Council use all reasonable endeavours to procure that each member of the Professional Team (or in the case of a partnership all the partners of the member firm) as being required to do so enters into a warranty agreement (in substantially the same form as the Warranty Agreement with such changes as the Council shall approve, such approval not to be unreasonably withheld or delayed) with the Partner acknowledging that the person in question owes a duty of care to the Council in relation to the subject matter of that person's appointment, provided that the Council's disapproval of any changes to the Warranty Agreement which (a) would have the effect of capping the relevant warrantor's liability and/or (b) seek to reduce the limitation period for a claim to be brought for a breach by the warrantor of the relevant warranty shall not be deemed as instances where the Council is unreasonably withholding its approval.

27.6 As soon as practicable following entry into each of the said warranty agreements the Partner will supply a certified copy of that warranty agreement to the Council's Solicitors .

- 27.7 The Partner shall procure that each member of the Professional Team either prior to appointment or within 28 days of the date of this Agreement (whichever is the later) shall produce to the Council satisfactory evidence of current professional indemnity insurance cover of not less than five hundred thousand pounds (£500,000) to cover the subject matter of the appointment in question.
- 27.8 The Partner shall use all reasonable endeavours to enforce expeditiously all rights and remedies which it may have against all members of the Professional Team.
- 27.9 **Building-Contractor**
- 27.9.1 Save where the Partner itself elects to construct the Development, the Partner shall procure the appointment one or more suitably qualified and experienced Building Contractor(s) to deliver and properly complete the Regeneration Phase concerned in accordance with the Partner's obligations under this Agreement.
- 27.9.2 The Partner shall procure that prior to their appointment, any Building Contractor produces suitable evidence of public liability insurance cover to cover the subject matter of their appointment and the Partner covenant that no such appointment shall be confirmed or any Building Contract entered into with Building Contractors whose insurance has not been approved by the Partner.
- 27.9.3 The Partner shall as soon as reasonably practicable and not later than 28 days from the date of their appointment unless such period is extended with the consent of the Council, procure that the Building Contractor enters into:
- (a) a warranty agreement (in substantially the same form as the Warranty Agreement with such changes as the Council shall approve, such approval not to be unreasonably withheld or delayed) with the Partner acknowledging that the Building Contractor owes a duty of care to the Council in relation to the Building Contract, provided that the Council's disapproval of any changes to the Warranty Agreement which (a) would have the effect of capping the relevant warrantor's liability and/or (b) seek to reduce the limitation period for a claim to be brought for a breach by the warrantor of the relevant warranty and/or (c) seek to introduce net contribution provisions to the relevant warranty, shall not be deemed as instances where the Council is unreasonably withholding its approval; and
 - (b) a warranty agreement (in substantially the same form as the collateral warranty agreement set out at [Part 2 of Schedule 3] with such changes as the RP shall approve, such approval not to be unreasonably withheld or delayed) with the Partner acknowledging that the Building Contractor owes a duty of care to the RP in relation to the Building Contract.
- 27.10 The Partner shall as soon as reasonably practicable and not later than 28 days from the date of their appointment unless such period is extended with the consent of the Council shall procure that save where such party has already entered into a Warranty Agreement under clause 27.5 above, each member of the Infrastructure and Community Facility Team (or in the case of a partnership all the partners of the member firm) enters into:

- (i) a warranty agreement (in substantially the same form as the Warranty Agreement with such changes as the Council shall approve, such approval not to be unreasonably withheld or delayed) with the Partner acknowledging that the person in question owes a duty of care to the Council in relation to that person's appointment insofar as such the appointment relates to the Community Facilities and the Infrastructure, provided that the Council's disapproval of any changes to the Warranty Agreement which (a) would have the effect of capping the relevant warrantor's liability and/or (b) seek to reduce the limitation period for a claim to be brought for a breach by the warrantor of the relevant warranty shall not be deemed as instances where the Council is unreasonably withholding its approval; and
- (ii) a warranty agreement (in substantially the same form as the collateral warranty agreement as set out at Part of Schedule 3 with such changes as the RP shall approve, such approval not to be unreasonably withheld or delayed) with the Partner acknowledging that the person in question owes a duty of care to the RP in relation to the person's appointment insofar as such appointment relates to the Community Facilities and the Infrastructure.

27.11 Save where the Quantity Surveyor is an employee of the Partner, the Partner shall as soon as reasonably practicable and not later than 28 days from the date of their appointment unless such period is extended with the consent of the Council procure that the Quantity Surveyor (or in the case of a partnership all the partners of the Quantity Surveyor) as being required to do so enters into:

- (i) a warranty agreement (in substantially the same form as the Warranty Agreement with such changes as the Council shall approve, such approval not to be unreasonably withheld or delayed) with the Council acknowledging that the Quantity Surveyor owes a duty of care to the Council in relation to the role of the Quantity Surveyor as more clearly defined in clause 14, provided that the Council's disapproval of any changes to the Warranty Agreement which (a) would have the effect of capping the relevant warrantor's liability and/or (b) seek to reduce the limitation period for a claim to be brought for a breach by the warrantor of the relevant warranty shall not be deemed as instances where the Council is unreasonably withholding its approval; and
- (ii) a warranty agreement (in substantially the same form as set out in [Part 2 of Schedule 3] with such changes as the RP shall approve, such approval not to be unreasonably withheld or delayed) with the RP acknowledging that the Quantity Surveyor owes a duty of care to the RP in relation to the role of the Quantity Surveyor as more clearly defined in clause 14.

28 **Site safety and security**

28.1 In carrying out the Works the Partner shall comply or procure compliance with Schedule 36.

28.2 The Partner will not allow or tolerate in carrying out the Works or delivering the Regeneration the use of goods, materials or equipment that:

- 28.2.1 are generally prohibited in the UK, or which incorporate such prohibited substances; or

- 28.2.2 are generally known in the UK construction industry at the time of specification or use to be deleterious to health and safety or to the durability of the Homes and/or Infrastructure and/or the Community Facilities; or
 - 28.2.3 are not in accordance with British Standards (meaning such standards as are recognised by BSi British Standards or its successors or assigns from time to time), or codes of practice, or "Good Practice in the Selection of Construction Materials" as published by Arup, or good building practice or techniques at the time of specification; or
 - 28.2.4 has been declared deleterious in the Building Research Establishment publication BRE Digest 425 "Lists of excluded materials - a change in practice".
- 28.3 In addition, the Partner shall ensure that such deleterious goods, materials or equipment have not been, and will not be, specified for use or used by others in carrying out any of the Works or delivering the Regeneration.
- 29 Residents**
- 29.1 The Partner and the RP shall consult with and use reasonable endeavours to co operate with the Council to encourage residents of the Existing Homes to participate in the Regeneration which expression shall mean to encourage such residents to:
- 29.1.1 Participate in the Dollis Valley Partnership Board, or any other similar entity; and
 - 29.1.2 Participate in the consultation conducted by the Partner and RP and/or the Council and the Dollis Valley Partnership Board in connection with the detailed design of the Regeneration, other matters relating to the Social Rented Homes and any Change or variation to the Master Plan and/or Master Programme and future management arrangements.
- 30 General provisions**
- 30.1 Partnership exclusion**
- Nothing contained herein or in any document entered into or in any assignment made or course of dealings conducted under or in any way relating to this Agreement or any provision hereof shall be construed as effecting any partnership between the Council and the other parties hereto or between any of them.
- 30.2 Notices**
- 30.2.1 Any notice decision direction approval authority permission or consent to be given by the Council under this Agreement shall be valid and effectual if signed by such officer officers agent or agents as the Council may from time to time designate for the purpose and shall be deemed to have been validly served on or conveyed to the Partner, the RP or the Guarantor if sent by prepaid first class post to the Partner, the RP or the Guarantor ;
 - 30.2.2 In the case of the Partner, the RP or the Guarantor, their respective registered offices from time to time, (or such other addresses in the United Kingdom as

any such party may from time to time notify to the Council in writing) and in all cases shall be deemed to have been delivered on the second Working Day following the date of dispatch;

- 30.2.3 And any notice to be given to the Council shall be deemed to be validly served if sent as aforesaid addressed to the Head of Legal Services at The London Borough of Barnet, North London Business Park, Oakleigh Road South, London, N11 1NP or such other address in the United Kingdom or person in place thereof as may be notified to the Partner, the RP, and the Guarantor in accordance with this clause and shall be deemed to have been delivered on the second Working Day following the date of dispatch.

30.3 Anti-corruption

Without prejudice to any other provision hereof the Council shall be entitled to cancel this Agreement and recover from the Partner, the RP or the Guarantor or any Affiliate of any of them the amount of any loss resulting from any such cancellation if the Partner or the RP or the Guarantor or any Affiliate of any of them shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract with the Council or if the like acts shall have been done by any person acting on its behalf or if in relation to any contract with the Council, the Partner or the RP or the Guarantor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972. For the avoidance of doubt the obligations of the Partner, the RP, and the Guarantor under this clause 30.3 are joint and several. For the purposes of this clause 30.3 the actions of staff seconded to the Partner shall be deemed to be actions of the organisation employing such staff and the actions of an Affiliate shall be deemed to be the actions of the party or parties to which the Affiliate is so Affiliated.

30.4 Council as statutory authority

Nothing contained in this Agreement or implied shall prejudice or affect any of the statutory rights powers or duties for the time being vested in the Council as statutory authority for the area in which the Regeneration Site is located and all such rights powers and duties shall in regard to the Regeneration Site and any buildings in it or the occupiers of such buildings be enforceable and exercisable by the Council as fully and freely as if the Council were not the owner of the Regeneration Site and this Agreement had not been executed and any consent or approval given by or under this Agreement shall be deemed a consent or approval by the Council as owner of the Regeneration Site only and not as statutory authority.

30.5 Good faith

The Council and the Partner and the RP and the Guarantor undertake with each other that in respect of all matters contained or referred to in this Agreement they will at all times act in good faith with each other.

30.6 Indemnities, warranties and losses

- 30.6.1 To the extent permitted by law the Partner shall indemnify the Council against all actions, costs, claims, losses and proceedings directly arising due to any breach of this Agreement by the Partner.
- 30.6.2 To the extent permitted by law the RP shall indemnify the Council against all actions, costs, claims, losses and proceedings directly arising due to any breach of this Agreement by the RP.
- 30.6.3 To the extent permitted by law the Guarantor shall indemnify the Council against all actions, costs, claims, losses and proceedings directly arising due to any breach of this Agreement by the Guarantor
- 30.6.4 The respective parties agree with one another to mitigate their losses under this clause 30.6.

30.7 Invalidity

- 30.7.1 If at any time any one or more of the provisions of this Agreement is or becomes invalid illegal or unenforceable in any respect under any law the validity legality and enforceability of the remaining provisions of it shall not be in any way affected or impaired.

30.8 Entire agreement

- 30.8.1 This Agreement embodies the entire understanding of the parties and there are no other arrangements between the parties relating to the subject matter of this Agreement.
- 30.8.2 No amendment or modification of this Agreement shall be valid or binding on any party unless the same is made in writing refers expressly to this Agreement and is signed by its duly authorised representative.

30.9 Non-merger

- 30.9.1 Notwithstanding completion of any Regeneration Phase this Agreement shall remain in full force and effect in regard to anything remaining to be done performed or observed under this Agreement.
- 30.9.2 In the event of monies due and payable under the provisions of this Agreement are not paid on the due date the Interest shall be payable upon the amount due from the date due to the date of payment.

31 Assignment

- 31.1 The rights and obligations of the Council under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) other than in respect of the whole of this Agreement to any person other than any person (being a single entity) having the legal capacity, power and authority to become a party to and perform the obligations of the Council under this Agreement being;

- 31.1.1 A Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
 - 31.1.2 Any Relevant Authority which has sufficient standing or financial resources to perform the obligations of the Council under this Agreement; or
 - 31.1.3 The Barnet Asset Backed Vehicle;
 - 31.1.4 Any person whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Council a Relevant Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations of the Council under this Agreement.
- 31.2 Subject to the consent of the Council the Partner may assign or charge the rights and obligations of the Partner (or any part thereof) to a Partner's Funder and for the avoidance of doubt the Council hereby consents to the Partner assigning this Agreement by way of charge to Bank of Scotland plc.
- 31.3 Save as provided for in this Agreement the rights and obligations of the Partner under this Agreement shall not be assigned novated or otherwise transferred without the written consent of the Council (which may be given or withheld in the Council's absolute discretion).
- 31.4 The rights and obligations of the RP under this Agreement shall not be assigned novated or otherwise transferred without the written consent of the Council.
- 32 Change of ownership**
- 32.1 Subject to clause 32.4 no Change of Ownership may occur during the term of this Agreement.
- 32.2 The Partner represents and warrants and represents to the Council that at the date of this Agreement the legal and beneficial ownership of the Partner and the Guarantor is as set out in Schedule 5 (Warranted Data) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in the Partner and/or Guarantor.
- 32.3 The Partner and/or the Guarantor (as may be the case) shall obtain the Council's prior written consent (not to be unreasonably withheld or delayed and which may be refused or given subject to conditions) to any Change in Ownership.
- 32.4 Any Change of Ownership to which prior written consent of the Council has been given shall be permitted.
- 32.5 A Change of Ownership other than that permitted under clause 32.4 is a Serious Default.
- 33 Land Payments to the Council and Ground Rents**
- 33.1 The Partner shall pay to the Council one quarter of the relevant Council Land Value on completion of each of Regeneration Phase Building Lease, with the balance payable in three equal instalments six, twelve and eighteen months thereafter.

- 33.2 The parties agree that subject to clauses 33.3 and 33.4 the RP shall be entitled to any Ground Rent Receipts and the Partner shall ensure that an obligation to pay the Ground Rent to the RP is contained in any lease documentation entered into by the owners (and their successors in title) of the Private Sale Homes and the Intermediate Homes (to apply once that tenant has stair-cased 100%).
- 33.3 The RP shall apply any Ground Rent Receipts received by it to provide maintain and operate the Community Facilities and ancillary services thereto (acting in accordance with the principles of good estate management) and with the consent of the Council (such consent not to be unreasonably withheld or delayed) to provide maintain and operate such other facilities and/or amenities and services ancillary thereto at the Regeneration Site for the benefit of the tenants and occupiers of the Regeneration Site and the local community.
- 33.4 The RP shall as soon as reasonably practicable after the first anniversary of the date of Practical Completion of the final Regeneration Phase and annually thereafter prepare and send to the Council a statement or report which provides details of the Ground Rent Receipts received and the application of those receipts for the purpose permitted under clause 33.3 (a **Ground Rent Receipts Report**) and to the extent the RP has not expended or committed to expend any Ground Rent Receipts for such purpose within twelve (12) months following receipt by the RP, the RP shall at the written request of the Council pay such relevant amount to the Council and if the Council fails to make such request within thirty (30) Working Days the RP will be entitled to retain such relevant amount for use in connection with the purposes permitted under clause 33.3 and shall account for any remaining part of the relevant amount in the next Ground Rent Receipts Report.
- 33.5 The initial Ground Rent charged for each Private Sale Home shall fall between £200 and £500 per year subject to upwards only rent reviews.
- 34 **Public resources and State Aid compliance**
- 34.1 The Council, the Partner and the RP acknowledge that any Public Resources shall be applied to support the provision of the Social Rented Homes, the Intermediate Homes, the Community Facilities and related infrastructure.
- 34.2 The Partner from the date of this Agreement shall ensure that any Public Resources do not constitute Unlawful State Aid.
- 34.3 The Partner shall promptly notify the Council if it reasonably believes that the application of any Public Resources is or may constitute Unlawful State Aid.
- 34.4 The Council may request and the Partner shall promptly provide it with such information and evidence as may be necessary for the Council to monitor and/or assess that the application of Public Resources is not Unlawful State Aid.
- 34.5 In the event that the use and/or application of any Public Resources does constitute Unlawful State Aid then the Partner shall promptly take such action as is necessary to remedy this.
- 35 **Guarantee**

- 35.1 The Guarantor guarantees to the Council all of the obligations of the Partner in this Agreement (the **Guaranteed Obligations**) as primary obligor and shall indemnify the Council in respect of all losses, damages, costs and expenses incurred by the Council as a result of any breach by the Partner of the Guaranteed Obligations.
- 35.2 The liability of the Guarantor under this clause shall not be impaired, discharged or otherwise affected by:
- 35.2.1 the grant by the Council to the Partner of any time or indulgence;
 - 35.2.2 any change in the constitution structure or powers of the Council or the Partner or the liquidation or administration of any of them;
 - 35.2.3 any termination of this Agreement; or
 - 35.2.4 any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect the obligations of the Guarantor under this Agreement.
- 36 **Authorised officer**
- 36.1 **Council authorised officer**
- 36.1.1 The Council shall within 15 Working Days of the date of this Agreement appoint a person to be the Council's authorised officer (the **Council Authorised Officer**);
 - 36.1.2 The Council Authorised Officer may at any time notify the Partner, the RP and the Guarantor in writing of the appointment of one or more representatives to whom he has delegated the performance or exercise of any function under this Agreement and such notice shall specify the name, office address, telephone and email details of such representative and shall define the matters in respect of which he has been given authority to act on behalf of the Council Authorised Officer;
 - 36.1.3 The Council Authorised Officer shall have full authority to act on behalf of the Council for all purposes of this Agreement. The Partner, the RP, and/or the Guarantor (as the case may be) shall be entitled to treat any act of the Council Authorised Officer as being expressly authorised by the Council (save where the Council has notified the Partner, the RP, and/or the Guarantor (as the case may be) shall not be required to determine whether any express authority has in fact been given. Any notice, information, instruction or other communication given by or made to the Partner Authorised Officer and/or the RP Authorised Officer shall be deemed to have been given or made to the Council provided that it has been given, made or subsequently recorded in writing.
 - 36.1.4 The Partner and the RP shall afford to the Council Authorised Officer, and his representatives, access to all relevant information for the duration of the Council Authorised Officer's appointment. In particular, the Partner and the RP shall:
 - (a) permit the Council Authorised Officer and his duly authorised representatives to attend site meetings and design meetings relating to

the Regeneration and/or Works and shall give him reasonable notice of these;

- (b) keep the Council Authorised Officer fully apprised of the progress of the Regeneration and Works; and
- (c) promptly provide to the Council Authorised Officer copies of minutes of all site meetings and design meetings.

36.2 The Partner authorised officer

- 36.2.1 The Partner shall within 15 Working Days of the date of this Agreement appoint a person to be the Partner's authorised officer (the **Partner Authorised Officer**).
- 36.2.2 The Partner Authorised Officer shall be the duly authorised representatives of the Partner for all purposes connected with this Agreement. Any notice, information, instruction or other communication given by or made to the Partner Authorised Officer shall be deemed to have been given to or made by the Partner provided that it has been given, made or subsequently recorded in writing.
- 36.2.3 The Partner Authorised Officer may at any time notify the Council and the RP in writing of the appointment of one or more (but not more than five) representatives to whom he has delegated the performance or exercise of any function under this Agreement and such notice shall specify the name, office address, telephone and facsimile numbers of such representative and shall define the matters in respect of which he has been given authority to act on behalf of the Partner Authorised Officer.

36.3 The RP authorised officer

- 36.3.1 The RP shall within 15 Working Days of the date of this Agreement appoint a person to be the RP's authorised officer (the **RP Authorised Officer**).
- 36.3.2 The RP Authorised Officer shall be the duly authorised representative of the RP for all purposes connected with this Agreement. Any notice, information, instruction or other communication given by or made to the RP Authorised Officer shall be deemed to have been given to or made by the RP provided that it has been given, made or subsequently recorded in writing.
- 36.3.3 The RP Authorised Officer may at any time notify the Council and the Partner in writing of the appointment of one or more representatives to whom he has delegated the performance or exercise of any function under this Agreement and such notice shall specify the name, office address, telephone and facsimile numbers of such representative and shall define the matters in respect of which he has been given authority to act on behalf of the RP Authorised Officer.

36.4 Notification

36.4.1 The parties shall within 15 Working Days give the other parties written notification of their respective appointments of Authorised Officers and such notification shall include the appointees;

- (a) name;
- (b) postal address of his offices;
- (c) email address; and
- (d) telephone number(s).

36.4.2 In the event a party replaces its Authorised Officer it shall give written notice to the other parties within 15 Working Days of such replacement such notification shall include the information stipulated in clause 36.4.1.

36.5 Availability and performance

The parties shall respectively ensure that the Council Authorised Officer and the Partner Authorised Officer or a competent deputy are available at all times (during general working hours) when the Regeneration and the Works are being undertaken.

37 Community Facilities

37.1 The Partner shall provide the Community Facilities in accordance with this Agreement, the Master Plan and Master Programme.

37.2 The Community Facilities will be designed in consultation with the local community and user groups and in accordance with Schedule 24 (Community Facilities).

38 Employment and training

The Partner and the RP shall comply with their respective obligations pursuant to Schedule 37 (Employment and training initiatives).

39 Rights of access for tests and surveys

39.1 The Council shall, subject to the Partner complying with the provisions of clauses 39.2 to 39.4 below allow the Partner and its contractors and consultants with or without requisite plant and machinery such access by way of licence to that part or parts of the Council's Land as are not built upon (meaning that there are no buildings on it) at the relevant time to carry out such reasonable tests surveys and investigations as the Partner reasonably require in order to assess the suitability of the Regeneration Site for the Regeneration.

39.2 The Partner shall give the Council at least 5 Working Days prior written notice of the need to exercise the right granted in clause 39.1 specifying (by reference to a plan if necessary such part or parts of the Council's Land to be accessed and the estimated length of licence period required and the parties shall thereafter promptly agree a date for such access to commence and the length of the licence period (both parties acting reasonably).

39.3 The Partner shall:

- 39.3.1 Comply fully with the reasonable requirements of the Council in respect of health and safety, noise and nuisance at all times;
- 39.3.2 Carry out such tests, surveys and investigations with all reasonable due diligence and care and in compliance with clause 39.3.1 and cause as little disturbance and inconvenience as is reasonably practicable;
- 39.3.3 Once the tests, surveys and investigations are completed, procure the restoration of the Council's Land affected to the same state and condition as it was prior to the carrying out of such tests, surveys and investigations including the removal of any plant, machinery, materials, excavated waste and rubbish which is on such part or parts of the Council's Land; and
- 39.3.4 Forthwith make good or procure the making good of all damage caused to the Council's Land and Regeneration Site to the satisfaction of the Council (acting reasonably) including the back filling and making good of any boreholes, trial pits or other excavations.
- 39.4 The Partner hereby indemnifies the Council against all losses, damages, costs and expenses arising as a result of the exercise or purported exercise of the rights granted in this clause 39 (save where the losses, damages, costs or expenses arise from the default or negligence of the Council including the Council's failure to obtain any necessary licence or consent from the owner or occupier of the relevant land to permit such access).
- 40 **Contracts (Rights of Third Parties Act) 1999**
- No term of this Agreement shall be enforceable under the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to the Agreement.
- 41 **Charities Act**
- Any beneficial interest accruing under this Agreement to the RP will be held by or in trust for the RP charity and the charity is an exempt charity.
- 42 **Freedom of Information**
- 42.1 **Duty of Confidentiality**
- 42.1.1 The parties agree that Commercially Sensitive Information listed in Part I of Schedule 22 (Commercially Sensitive Information) shall, subject to clause 42.2 (Permitted Disclosure) below, be kept confidential.
- 42.1.2 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and the Regeneration Documents and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 42.2 **Permitted Disclosure**
- Clause 42.1.2 (Duty of Confidentiality) shall not apply to;

- 42.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;
- 42.2.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 42 (Information and Confidentiality);
- 42.2.3 any disclosure to enable a determination to be made under clause 26 (Dispute Resolution) or in connection with a dispute between the Partner and any of its sub-contractors;
- 42.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the party making the disclosure or governmental or regulatory authority or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the governmental or regulatory authority concerned;
- 42.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 42.2.6 any provision of information to the parties' own professional advisers or insurance advisers or, where it is proposed that a person should or may provide material funds (whether directly or indirectly) to the Partner to enable it to carry out its obligations under this Agreement, but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- 42.2.7 any disclosure for the purpose of:
- (a) the examination and certification of the Council's or the Partner's accounts;
 - (b) any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (d) (without prejudice to the generality of clause 42.2.4 (Permitted Disclosure) above) compliance with the FOIA and/or the Environmental Information Regulations,

42.3 Obligations Preserved

Where disclosure is permitted under clause 42.2 (Permitted Disclosure), other than clauses 42.2.2, 42.2.4, 42.2.5 and 42.2.7, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

42.4 Audit

For the purposes of the National Audit Act 1983 the District Auditor may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Partner and any sub-contractor and may require the Partner and any sub-contractor to produce such oral or written explanations as he considers necessary.

42.5 Exploitation of Information

The Partner shall not make use of this Agreement or any information issued or provided by or on behalf of the Council in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the Council.

42.6 Information about residents

Where the Partner, in carrying out its obligations under this Agreement, is provided with information relating to residents of Dollis Valley, the Partner shall not disclose or make use of any such information otherwise than for the purpose for which it was provided.

42.7 Freedom of Information

42.7.1 The Partner acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in this clause 42.

42.7.2 Where the Council receives a Request for Information in relation to Commercial Information the Council shall promptly notify the Partner of the same.

42.7.3 From the date of notification under clause 42.7.2 (Freedom of Information), and up until such time as the relevant information is disclosed the Partner may make representations to the Council as to whether or not or on what basis Information requested should be disclosed provided always that the Council shall be responsible for determining at its absolute discretion:

- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
- (b) whether the Information is to be disclosed in response to a Request for Information.

42.7.4 The Partner acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

42.7.5 The Partner acknowledges that (notwithstanding the provisions of this clause 42 (Freedom of Information)) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the Code of Practice), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Partner or the Regeneration:

- (a) in certain circumstances without consulting with the Partner; or

- (b) following consultation with the Partner and having taken their views into account.

43 Work in progress in the event of a surrender

43.1 In the event that a Surrender Notice is served and a Surrender Document completed pursuant to a Building Lease, the Council agrees to account to the Partner/the Partner's Funder for the value of the works in progress existing as at the date on which the Surrender Notice is served LESS the cost to the Council of:

- (a) securing the Surrender Document;
- (b) procuring a third party to complete the development of the Regeneration Phase; and
- (c) marketing and disposing of the Homes

The value of the work in progress shall be determined by reference to an independent valuation.

43.2 If the Council chooses not to sell the Surrender Premises undeveloped, the work in progress shall be subject to an independent valuation but any payment due to the Partner shall only be paid when the Council is in receipt of funds from the sale of the Homes on the Regeneration Phase or (where the same are not sold within a using all reasonable period of practical completion) where the Council are otherwise benefitting from the use of such Homes.

44 Considerate contractor

The Partner shall or shall procure that all Works are undertaken in accordance with the principles more particularly set out in Schedule 36 (Considerate Construction).

45 CDM Requirements

For the purposes of the CDM Regulations, the Partner elects to be the only "Client" in respect of the Works and the Council agrees to such election that the Partner shall perform in all respects the duties of the Client pursuant to the CDM Regulations and (without limitation) shall:

- 45.1 appoint as soon as is practicable and shall ensure that at all times until completion of the Regeneration there is appointed a CDM Co-ordinator and a principal contractor as such terms are defined in the CDM Regulations who are defined for the purposes of this Agreement as, respectively, the CDM Co-ordinator and the Principal Contractor;
- 45.2 provide to the CDM Co-ordinator as soon as required all reasonably obtainable information relevant to the CDM Co-ordinator's functions and/or concerning the state and condition of the Regeneration Site;
- 45.3 ensure that a construction phase plan compiled in accordance with the CDM Regulations has been prepared.

46 Option Agreements

46.1 On each occasion that the Partner acquires a RTB Property (whether pursuant to the CPO Indemnity Agreement or otherwise), the Parties shall on the same date enter into an Option Agreement in respect of such RTB Property.

46.2 The Council consents to the Partner and the RP entering into the RP Option Agreement in respect of RTB Properties. The Partner and the RP shall not materially amend the terms of the RP Option Agreement without obtaining the written consent of the Council (which shall not be unreasonably withheld or delayed).

47 **Distressed Existing Owner Occupiers**

47.1 If an Existing Owner Occupier is unable to sell his Existing Home on the open market and:

47.1.1 is suffering through ill-health;

47.1.2 lacks space for a carer;

47.1.3 is a victim of domestic violence;

47.1.4 in a relationship breakdown which necessitates the sale of his Existing Home;

47.1.5 is a victim of anti-social behaviour; or

47.1.6 is in serious financial difficulties;

then subject to the Council consulting with the Partner the Council may purchase that Existing Home at its Market Value.

47.2 The Partner shall reimburse the Council its reasonable costs and the Market Value of any Existing Home which the Council purchases under clause 47.1 no later than 31 March in the Agreement Year such Existing Home is purchased by the Council.

47.3 As soon as the Council has been reimbursed by the Partner under clause 47.2 it shall forthwith transfer its interests in the relevant Existing Home to the Partner.

47.4 Costs incurred by the Partner under this clause 49 are Partner Costs.

48 **Family Mosaic Homes**

48.1 The parties acknowledge that the Family Mosaic Homes are:

48.1.1 held by Family Mosaic Housing on long leases;

48.1.2 let on periodic tenancies to tenants (the Family Mosaic Tenants).

48.2 The parties further acknowledge that the Council is the Freehold owner of the Family Mosaic Homes.

48.3 The Council shall:

48.3.1 at its own cost acquire any long leasehold interests in the Family Mosaic Homes;

- 48.3.2 acquire such interests in order to enable the Regeneration to proceed in accordance with the Master Programme;
- 48.3.3 having acquired such interests, grant secure tenancies of the Family Mosaic Homes to the Family Mosaic Tenants.
- 48.4 Clause 7.2 (Decanting) and Schedule 18 (Decant Plan) shall apply to the Family Mosaic Tenants as if they were Existing Tenants. PROVIDED THAT for the avoidance of doubt, the Partner shall not be required to purchase the Council's interest in the Family Mosaic Homes until it completes the purchase of the Regeneration Phase within which such properties sit.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

