

## **COMPLETED ACQUISITION BY CALA 1 LIMITED OF BANNER HOMES GROUP PLC**

### **UNDERTAKINGS GIVEN BY CALA GROUP (HOLDINGS) LIMITED AND CALA 1 LIMITED TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 71 OF THE ENTERPRISE ACT 2002**

Pursuant to section 71 of the Enterprise Act 2002, for the purpose of preventing pre-emptive action, CALA Group (Holdings) Limited and CALA 1 Limited ("CALA") hereby give to the OFT the following undertakings (the "undertakings") in respect of the acquisition by CALA of Banner Homes Group Plc ("Banner").

#### **Management of the parties' respective businesses until determination of proceedings**

1. Except with the prior written consent of the OFT, CALA Group (Holdings) Limited and CALA undertake that they will not during the specified period take any action which might:
  - (a) lead to the integration of the CALA business with all or any part of the Banner business;
  - (b) transfer the ownership or control of the CALA business or the Banner business;
  - (c) otherwise impair the ability of the CALA business or the Banner business to compete independently in any markets affected by the acquisition; or
  - (d) otherwise prejudice any reference to the CC or impede the taking of any action under the Act which may be justified by the CC's decisions on any such reference.
  
2. Without prejudice to the generality of paragraph 1, except with the prior written consent of the OFT, CALA Group (Holdings) Limited and CALA will at all times during the specified period, procure that:
  - (a) the Banner business is carried on separately and under a separate brand identity from the CALA business and separate sales of the Banner business are maintained;
  - (b) the Banner business and the CALA business are each maintained as a going concern and sufficient resources are

made available for the development of the Banner business and the CALA business on the basis of their respective pre-merger plans;

- (c) no substantive changes are made to key staff or to the organisational structure of, or the management responsibilities within the Banner business or the CALA business;
- (d) in relation to the assets of each of the Banner business and the CALA business, and otherwise than in the ordinary course of business:
  - (i) the assets are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets is disposed of; and
  - (iii) no interest in the assets is created or disposed of;
- (e) the nature, description, range and standard of goods and/or services supplied in the United Kingdom by the Banner business and the CALA business at the date of these undertakings are in all material respects maintained and preserved;
- (f) there is no integration of the information technology of the Banner business with the information technology of the CALA business and the respective software and hardware platforms of the Banner business and the CALA business shall remain unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of each of the Banner business and the CALA business shall be operated and updated separately and any negotiations with the customers and suppliers in relation to the Banner business will be carried out by the CALA business alone and for the avoidance of doubt CALA will not negotiate on behalf of Banner or enter into any joint agreements with Banner;
- (h) all existing contracts continue to be serviced by the business to which they were awarded;
- (i) all reasonable steps are taken to encourage all key staff of the Banner business and the CALA business to remain with the business in relation to which they were employed prior to the merger;
- (j) no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the Banner business or the CALA business (“Confidential Information”) shall pass,

directly or indirectly from the Banner business (or any of its employees, directors, agents or affiliates) to the CALA business (or any of its employees, directors, agents or affiliates) or vice versa, except:

- (i) where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law; and
- (ii) the flow of Confidential Information from the Banner business (or any of its employees, directors, agents or affiliates) to the CALA business (or any of its employees, directors, agents or affiliates) is permitted to the extent that such disclosure of information is strictly necessary for compliance with external regulatory and/or accounting obligations.

## Compliance

3. CALA Group (Holdings) Limited and CALA shall procure that each of their subsidiaries complies with these undertakings as if it had given them.
4. CALA Group (Holdings) Limited and CALA shall forthwith provide to the OFT such information as the OFT may from time to time require for the purposes of monitoring compliance by CALA Group (Holdings) Limited and CALA and their subsidiaries with these undertakings. In particular, on **9 April 2014** and subsequently every 10 working days thereafter (save where the obligation does not fall on a working day, in which case the first working day thereafter), the Chief Executive Officer of CALA Group (Holdings) Limited shall provide a statement to the OFT on behalf of CALA Group (Holdings) Limited confirming compliance with these undertakings in the form set out in the Appendix to these undertakings.
5. At all times, CALA Group (Holdings) Limited and CALA will actively keep the OFT informed of any material developments relating to the Banner business, which includes, but is not limited to:
  - (a) details of key staff who leave or join the Banner business or the CALA business;
  - (b) any Banner business or CALA business plant breakdowns which have halted production for more than 24 hours or changes in the Banner business' or CALA business' production arrangements

which have affected the working pattern of more than five Banner business or CALA business employees;

- (c) all substantial customer volumes won or lost by the Banner business or the CALA business including any substantial changes in customers' demand; and
  - (d) substantial changes in the Banner business' or CALA business' contractual arrangements or relationships with key suppliers.
6. CALA Group (Holdings) Limited and CALA shall comply with such written directions as the OFT may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

### Interpretation

7. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
8. For the purposes of these undertakings:

**“the Act”** means the Enterprise Act 2002;

**“an affiliate”** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

**“business”** has the meaning given by section 129(1) and (3) of the Act;

**“the CC”** means the Competition Commission;

**“control”** shall be construed in accordance with section 26 of the Act and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“the decisions”** means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

**“key staff”** means staff in positions of executive or managerial responsibility and/or whose performance could materially affect the viability of the business;

**“the merger”** means the creation of the relevant merger situation between the CALA business and the Banner business;

**“the OFT”** means the Office of Fair Trading, provided that, should the CC adopt these undertakings pursuant to section 80(3) of the Act, references to “the OFT” in paragraphs 1 and 2 of these undertakings shall be taken as references to the CC, and references to “the OFT” in paragraphs 4, 5 and 6 of these undertakings shall be taken to include both the Office of Fair Trading and the CC;

**“the ordinary course of business”** means matters connected to the day to day supply of goods and/or services by Banner or CALA and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Banner or CALA;

**“the specified period”** means the period beginning on the date of these undertakings and terminating either at the end of the period specified in section 71(5) or (6) of the Act or, should the CC adopt these undertakings pursuant to section 80(3) of the Act, the end of the period specified in section 80(7) or (8) of the Act;

**“subsidiary”**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**“CALA”** means CALA 1 Limited;

**“the CALA business”** means the business of CALA and its subsidiaries carried on as from 21 March 2014;

**“working day”** mean any day of the week other than a Saturday, Sunday or any other day that is a public holiday in England;

**“Banner”** means Banner Homes Group Plc;

**“the Banner business”** means the business of Banner and its subsidiaries carried on as from 21 March 2014.

In these undertakings unless the context requires otherwise, the singular shall include the plural and vice versa.



## APPENDIX

### COMPLIANCE STATEMENT FOR CALA GROUP (HOLDINGS) LIMITED

I Alan Brown confirm on behalf of CALA Group (Holdings) Limited that:

- (a) CALA Group (Holdings) Limited has complied with the undertakings given by it and accepted by the OFT on *[insert date]* (“the undertakings”) in the period from *[insert date]* to *[insert date]*.
- (b) CALA Group (Holdings) Limited’s subsidiaries have also complied with the undertakings in the period from *[insert date]* to *[insert date]*.
- (c) No action has been taken by CALA Group (Holdings) Limited or its subsidiaries in the period from *[insert date]* to *[insert date]* that would prejudice any reference to the CC or impede the taking of any action under the Act which may be justified by the CC’s decision on any such reference.
- (d) CALA Group (Holdings) Limited and its subsidiaries remain in full compliance with the undertakings and will continue actively to keep the OFT informed of any material developments relating to the Banner business in accordance with paragraph 5 of the undertakings.
- (e) The Banner business and the CALA business have each been maintained as a going concern and sufficient resources have been made available for the development of the Banner business and the CALA business on the basis of their respective pre-merger business plans.
- (f) The Banner business’s customer and supplier lists have been operated and updated by the Banner business alone.
- (g) All customer and supplier negotiations for the Banner business have been carried out independently of CALA.
- (h) There have been no material changes to the nature, description, range and standard of goods and/or services currently supplied in the United Kingdom by the Banner business and the CALA business.

#### **Assets—including facilities and goodwill**

- (i) Except in the ordinary course of business, none of the assets of the Banner business or the CALA business have been disposed of.
- (j) Except in the ordinary course of business, no interest in the assets of the Banner business or the CALA business has been created or disposed of.

- (k) Except in the ordinary course of business, all of the assets of the Banner business and the CALA business have been maintained and preserved as they were before the merger.

### **Contracts**

- (l) All existing contracts continue to be serviced by the business to which they were awarded.

### **Information technology systems**

- (m) There have been no changes to the software and hardware platforms of the Banner business or the CALA business, except for routine changes and maintenance.

### **Staff**

- (n) No substantive changes have been made to or to the key staff or the organisational structure or to the management responsibilities within the Banner business or the CALA business.

### **Material developments**

- (o) Except as listed in paragraph (p) below there have been no:
  - (i) plant breakdowns at the Banner business or the CALA business which have halted production for more than 24 hours or changes in the Banner business' or CALA business' production arrangements which have affected the working pattern of more than five Banner business or CALA business employees;
  - (ii) substantial customer volumes won or lost for the Banner business or the CALA business and no substantial changes to the Banner business' or CALA business' customer contracts; or
  - (iii) substantial changes in the Banner business' or CALA business' contractual arrangements with key suppliers.
- (p) [List of material developments]

### **Confidential information**

- (q) No business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the Banner business or the CALA business has passed, directly or indirectly, from the Banner business (or any of its employees, directors, agents or affiliates) to the CALA business (or any of its employees, directors, agents or affiliates), or vice versa, except to the extent permitted by paragraph 2(j) of the undertakings.

FOR AND ON BEHALF OF CALA GROUP (HOLDINGS) LIMITED

Signature .....

Name .....

Title .....

Date .....