

16 April 2014

**Consent to certain actions for the purposes of the initial undertakings accepted by the Office of Fair Trading ('OFT') on 31 March 2014**

**Completed acquisition by CALA 1 Limited ('CALA') of Banner Homes Group Plc (Banner)**

I refer to your e-mail of 1 April 2014, sent to my colleague Peter Swan, requesting that the Competition and Markets Authority (CMA) consents to derogations to the Initial Undertakings of 31 March 2014 (the 'Initial Undertakings') given to the OFT.

Under the Initial Undertakings, save for written consent by the OFT/CMA, provision was made that CALA will hold separate the CALA business (as defined in the Initial Undertakings) from the Target (Banner). After due consideration of your request for derogations to the Initial Undertakings, CALA may carry out the following actions, in respect of the specific paragraphs:

**Paragraph 2(a) and 2(c) of the Initial Undertakings**

Richard Werth

The CMA acknowledges the departure of the Banner CEO, Richard Werth, on 19 March 2014. The CMA recognises that the departure of Richard Werth is an integral aspect of the transaction.

Graham Cunningham

During the specified period (as defined in the Initial Undertakings), in order to ensure that Banner is effectively managed as a going concern pending the review of the transaction by the CMA, Graham Cunningham will be seconded to Banner to act as interim CEO. Graham Cunningham is currently Regional Chairman of CALA's businesses in England.

During the specified period, Graham Cunningham has given commitments to the CMA that he **will not**, other than in accordance with paragraph 2(j) of the Initial Undertakings, or as approved by the CMA in this consent letter, or in a future consent letter:

- a) Disclose to any employees or directors of CALA, CALA Group (Holdings) Limited or any of their subsidiaries (except Banner) Confidential Information<sup>1</sup> relating to the Banner business;

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<sup>1</sup> As defined in paragraph 2(j) of the Initial Undertakings

- b) Disclose to any employees or directors of Banner any Confidential Information<sup>2</sup> relating to CALA, CALA Group (Holdings) Limited or any of their subsidiaries (except Banner);
- c) Receive or be granted access by CALA to any Confidential Information<sup>3</sup> relating to CALA, CALA Group (Holdings) Limited or any of their subsidiaries (except Banner);

During the specified period, Graham Cunningham has given commitments that he **will**, other than in accordance with paragraph 2(j) of the Initial Undertakings, or as approved by the CMA in this consent letter, or in a future consent letter:

- a) Operate on a basis which requires him to use all Banner information only as strictly necessary:
  - i. To protect the value of Banner as a stand-alone business; and
  - ii. For legitimate integration planning (such integration to take effect following termination of the Initial Undertakings);
- b) Ensure that any Confidential Information<sup>4</sup> related to Banner and CALA respectively, and which is received or held by him in electronic format, is maintained in separate IT files and directories and will not be merged – pending completion of the CMA's review of the transaction.
- c) Dispose of any records or copies of Confidential Information in his possession,<sup>5</sup> in the event that the transaction is prohibited, by either returning them to Banner or destroying them, other than as may be required for the purposes of regulatory compliance under applicable law.

## **Paragraph 2(a) and 2(j) of the Initial Undertaking**

### Financial and accounting Information

#### ***Monthly management accounts:***

During the specified period (as defined in the Initial Undertakings), in order to meet its information obligations under its Investor Agreement and Facility documentation, specified senior CALA directors/executives will receive the following information from Banner, restricted to information and analysis carried out at Regional level or above.

- a) Monthly Management Accounts: restricted to the following documents:
  - i. Executive summary including KPIs;
  - ii. P&L with comparison to budget;
  - iii. Balance Sheet;
  - iv. Part exchange stock analysis by unit;
  - v. Consented landbank analysis;
  - vi. Overheads analysis;
  - vii. Sales reservations against budget, and
  - viii. Cash flow statement.
- b) Monthly year-end profit projections
- c) Monthly six-months-ahead cash forecasts
- d) Monthly Group and Operations Board Papers

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<sup>2</sup> As defined in paragraph 2(j) of the Initial Undertakings

<sup>3</sup> As defined in paragraph 2(j) of the Initial Undertakings

<sup>4</sup> As defined in paragraph 2(j) of the Initial Undertakings

<sup>5</sup> Whether electronically, hard copy or any other format

Access to the above Reports will be limited to the members of the CALA Operations Board, composed of the following individuals:

- a) Alan Brown, Chief Executive, CALA Group Limited;
- b) Graham Reid, Finance Director, CALA Group Limited;
- c) Neil Stoddart, Finance Director, Cala Homes;
- d) Kevin Whitaker, Regional Chairman, Scotland, CALA Group Limited
- e) Moira Sibbald, General Counsel;
- f) Catherine Turnbull, HR Director, and
- g) Sue Parry, Marketing Director.

***Work in Progress Analysis:***

During the specified period (as defined in the Initial Undertakings), in order to meet its information obligations under its Investor Agreement and Facility documentation, specified senior CALA directors/executives will receive the following information from Banner.

- a) Monthly Management Accounts: restricted to the following documents:
  - i. Site trading account;
  - ii. WIP analysis;

Access to the above Reports will be limited to the members of the CALA Finance team, specifically, the following individuals:

- a) Graham Reid, Finance Director, CALA Group Limited;
- b) Neil Stoddart, Finance Director, Cala Homes;

***P+L with comparison to budget at site level:***

During the specified period (as defined in the Initial Undertakings), in order to meet its obligations under its Investor Agreement and Facility documentation to prepare an Annual Budget, specified senior CALA directors/executives will receive the following information from Banner.

- a) Monthly Management Accounts: restricted to the following documents:
  - i. P+L with comparison to budget at site level;

Access to the above Reports will be limited to the members of the CALA Finance team, specifically, the following individuals:

- a) Graham Reid, Finance Director, CALA Group Limited;
- b) Neil Stoddart, Finance Director, Cala Homes;

***General:***

The members of the CALA Operations Board have agreed that they:

- a) Will not share any of the information provided by Banner in relation to this section with any person outside of the CALA Operations Board, or, more specifically, outside of the Finance team for those more restricted Reports.

- b) Will ensure, should the transaction be prohibited, that any records or copies of such information are returned to Banner or destroyed other than as may be required for the purposes of regulatory compliance under applicable law.

**HR Information:**

During the specified period (as defined in the Initial Undertakings), in order to prepare for integration of the business, the HR manager of CALA, Louise Poole will, receive the following information from Banner:

- a) Salary and Remuneration package information;
- b) Structure charts;
- c) Details of staffing policies/procedures relating to Banner.

Louise has agreed that she:

- a) Will not share any of the information provided by Banner in relation to this section with any person outside of the CALA Operations Board.<sup>6</sup>
- b) Will ensure that any personal information relating to Banner employees and directors which she receives in electronic format, is maintained in separate IT files and directories and will not be merged with information relating to CALA employees – pending completion of the CMA's review of the transaction.
- c) Will ensure, should the transaction be prohibited, that any records or copies of such information are returned to Banner or destroyed other than as may be required for the purposes of regulatory compliance under applicable law.

**Paragraphs 2(a) and 2(j) of the Initial Undertaking:**

During the specified period (as defined in the Initial Undertakings), in order to ensure that the value of the Banner business is maintained throughout the review period, specified senior CALA directors/executives will approve the following transactions:

- a) Acquisitions of land by Banner which exceed £[10,000 – 50,000] in value
- b) Disposals of assets by Banner:
  - i. Which exceed £[1 – 5]m in value, or
  - ii. At a value exceeding £[10,000 – 50,000] below Banners budgeted sale price.

The specified individuals who would grant the approvals are as follows:

- a) Alan Brown, Chief Executive, CALA Group Limited;
- b) Graham Reid, Finance Director, CALA Group Limited;
- c) Moira Sibbald, General Counsel;
- d) Robert Millar, Group Land Director, CALA Management Limited
- e) Eric Strachan, Group Commercial Director, CALA Group Limited, and
- f) Michaela Sullivan, Group Land Manager, CALA Group Limited.

Each individual has agreed that they:

- a) Will not share any of the information provided by Banner in relation to this section with any person outside of the above Group.

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<sup>6</sup> The CALA Operations Board is composed of the following individuals - Alan Brown; Graham Reid; Neil Stoddart; Kevin Whitaker; Moira Sibbald; Catherine Turnbull and Sue Parry.

- b) Will ensure, should the transaction be prohibited, that any records or copies of such information are returned to Banner or destroyed other than as may be required for the purposes of regulatory compliance under applicable law.