

dated

2012

Homes and Communities Agency

and

[Developer]

Loan Agreement

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Annexures

- 1. Plan**
- 2. Initial Cashflow**

Loan Agreement

dated 2012

Parties

- (1) **Homes and Communities Agency** of Central Business Exchange II, 406-412 Midsummer Boulevard, Central Milton Keynes MK9 2EA (the **Agency**); and
- (2) [] of [Address and company registration details to be inserted] (the **Developer**).

Introduction

- (A) The Agency has the power to make funding available under the Act.
- (B) The Developer has submitted proposals to the Agency in respect of the proposed construction of certain dwellings.
- (C) The Agency has agreed to make the Funding available to the Developer on the terms of this Agreement.
- (D) It is a condition precedent to the Agency providing the Funding that the Developer enters into the Legal Charge which secures, amongst other things, the obligations under this Agreement.

Agreed terms

1 Definitions

- 1.1 In this Agreement (including in the Introduction and Schedules) the following words and expressions have the following meanings:

Act means the Housing and Regeneration Act 2008;

Adoptable Highways means Highways intended to be adopted and maintained by the highway authority being those Highways shown coloured [] on the Plan;

Agency Health and Safety Manager means the employee of the Agency having responsibility for health and safety from time to time;

Agency IT Security Officer means the employee of the Agency having responsibility for IT security from time to time;

Agency Personal Data means Personal Data to be Processed in connection with the Scheme for which the Agency is the Data Controller;

Agency Senior Officer means the person notified as such by the Agency to the Developer;

Agency Tendering and Procurement Manager means the employee of the Agency having responsibility for tendering and procurement from time to time;

Associated Person means in relation to a company, a person who performs or has performed services for or on that company's behalf;

Availability Period means the period commencing on the date of this Agreement and ending on 31 March 2015;

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, or any other similar permission;

Best Practice has the meaning ascribed to it in clause 17.7.

Bid means the submission by the Developer of the "Due Diligence Pack" and any supporting information;

Business Day means any day other than a Saturday, Sunday or statutory bank holiday in England;

Cashflow means the Initial Cashflow as updated from time to time with the approval of the Agency and provided to the Agency in accordance with clause 10.3;

CDM Coordinator means the individual defined as such under the CDM Regulations;

CDM Regulations means the Construction (Design and Management) Regulations 2007;

Certificate of Title means a certificate of title in relation to the Site in the form approved by the Agency;

Change in Control means a change in control, which means the power of a person (or persons acting together) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting together) whether by means of:

- (a) in the case of a company or industrial and provident society:
 - i being the beneficial owner of more than 50% of the issued share capital of or of the voting rights in that company or society; or
 - ii having the right to appoint or remove a majority of the directors; or
 - iii otherwise controlling the votes at board meetings of that company by virtue of any powers conferred by:
 - A the articles of association or rules (as applicable);
 - B any shareholders' agreement; or
 - C any other document regulating the affairs of that company or society;
- (b) in the case of a partnership:
 - i being the beneficial owner of more than fifty per centum (50%) of the capital of that partnership; or

- ii having the right to control the composition of or the votes to the majority of the management of that partnership by virtue of any powers conferred by:
 - A the partnership agreement; or
 - B any other document regulating the affairs of that partnership;
- (c) in the case of a limited liability partnership (LLP):
 - i being the beneficial owner of more than fifty per centum (50%) of the capital of that LLP; or
 - ii having the right to control the composition of or the votes to the majority of the management of that LLP by virtue of any powers conferred by:
 - A the members' agreement; or
 - B any other document regulating the affairs of that LLP; or

in the case of an individual being a connected person (as defined in section 839 of the Income and Corporation Taxes Act 1988 (as amended)) to that individual;

Claim means an application for draw down of Funding;

Claim Form means a claim form substantially in the form of Schedule 2 or such other form as the Agency will notify the Developer from time to time;

Confidential Information means in respect of the Agency all information relating to the Agency or the existence or terms of this Agreement or any Finance Document in respect of which the Developer becomes aware in its capacity as a party to the Finance Documents or which is received by the Developer in relation to this Agreement or any Finance Document from either the Agency or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the Agency or any of its advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Developer means such specific information as the Developer shall have identified to the Agency prior to the date hereof as confidential information for the purposes of this Agreement;

Consents means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by, of or from any governmental or other authority, the local planning authority, landlord, funder, adjoining land owner or any other person required to undertake the Works or deliver the Scheme;

Considerate Constructors Scheme means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website;

Constitutive Documents means, at the relevant time, the Developer's then current [Memorandum and Articles of Association] [Rules];

Contractor means all contractors or other parties (however described) engaged by the Developer (or on behalf of the Developer) for the delivery of Works;

Controller means the individual or body which controls the Developer;

Dangerous Substance means any natural or artificial substance (whether in the form of a solid, liquid, gas or vapour) the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to man or any other living organism or causing damage to the Environment or public health and includes, but is not limited to, any controlled, special, hazardous, toxic, radioactive or dangerous waste or substance;

Data Controller has the meaning given to that expression under the DPA;

Data Processor has the meaning given to that expression under the DPA;

Data Subjects has the meaning given to that expression under the DPA;

Designer means the individual defined as such under the CDM Regulations;

Detailed Design Plans means the detailed drawings, specifications, layout plans, landscaping layout and scheme constraints plans, the house types programme of works, highways drainage and other infrastructure works submitted by the Developer as part of its Bid and any other plans and specifications or other documents as may be required by the Agency comprising or describing the Scheme and all matters relating or ancillary to it;

Developer Senior Officer means the employee of the Developer holding the title of 'Finance Director' or any such other person with equivalent seniority notified to each other party by the Developer;

Development Costs means the costs set out in the Scheme Budget which the Agency is satisfied either have been or will be reasonably and properly incurred by the Developer in carrying out the Works;

Direct Cost of Materials means the amount in respect of which the Agency is satisfied represents the direct cost to the Developer or to any other person of materials used or to be used in carrying out the construction operations in relation to the Scheme as provided in regulation 4 of the 2005 Regulations;

Disposal means a disposal of the whole or any part of the Site by the Developer in accordance with clause 3.5.2;

DPA means the Data Protection Act 1998 as amended or updated from time to time;

Dwelling means each of those residential units listed in Schedule 4, the construction of which is intended to be partially funded under this Agreement;

EC Reference Rate means the EC Reference Rate for the UK as published by the European Commission from time to time;

EIR means the Environmental Information Regulations 2004, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

EIR Exception means any applicable exemption to EIR;

[Employer's Agent means [] appointed by the Developer pursuant to a letter of appointment dated [] and who owes a duty of care to the Agency pursuant to [];

Encumbrance means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

Environment means the environment as defined in section 1(2) of the Environmental Protection Act 1990;

Environmental Consents means all licences, authorisations, consents or permits of any kind under or relating to Environmental Laws;

Environmental Claim means any claim by any person:

- (a) in respect of losses or liabilities suffered or incurred by that person as a result of or in connection with any violation of Environmental Laws; or
- (b) that arises as a result of or in connection with Environmental Contamination and that could give rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private or public legal action or administrative order or proceedings;

Environmental Contamination means the following and the consequences thereof:

- (a) any release, emission, leakage or spillage at or from any site owned or occupied by any person into any part of the Environment of any Dangerous Substance; or
- (b) any accident, fire, explosion or sudden event which adversely affects the Environment and which is attributable to the operations, management or control of any site owned or occupied by any person including (without limitation) the storage, handling, labelling or disposal of Dangerous Substances;

Environmental Law means any common or statutory law, regulation, publicly available code of practice, circular or guidance note (if not having the force of law being of a kind that is customary for the relevant person (or persons of its status or type carrying on a similar business) to comply with) issued by any official body, concerning the protection of human health, the workplace or the Environment;

EU Procurement Requirements means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2004/18/EC and 2007/66/EC, United Kingdom Statutory Instruments 2006/5, 2007/3542 and 2009/2992 insofar as the same are applicable;

Event of Default means any of the events set out at clause 12;

Evidence of Incorporation means the Developer's certificate of registration issued by the relevant authority (and where relevant any certificates issued on change of name);

Exempted Information means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions;

FA means the Finance Act 2004;

FA Legislation means Chapter 3 of Part 3 of the FA and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. No. 2005/2045) each as amended from time to time;

Facility means the facility made available under this Agreement as described in clause 2;

Final Cashflow means the Cashflow as at the earlier of:

- (a) the date of the disposal of the last Dwelling by way of a Disposal; and
- (b) [] [2015];

Final Certificate means in relation to the Works a certificate given by the Developer certifying that:

- (a) the Plots and/or the Dwellings (as relevant) have been constructed in accordance with the Detailed Design Plans;
- (b) a cover note from the New Homes Warranty provider has been issued confirming that the Dwellings (where applicable) have (in accordance with the New Homes Warranty) received a satisfactory final inspection;
- (c) the Highways, sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Plots and/or Dwellings (as relevant) have been completed commissioned and are ready for use by the Dwellings occupiers thereof; and
- (d) [other matters to be certified];

Final Repayment Date means the earlier of:

- (a) [20] Business Days from the date the last Dwelling is disposed of by way of a Disposal; or
- (b) [] [2015];

or as otherwise agreed by the Agency;

Finance Document means:

- (a) this Agreement;
- (b) the Legal Charge;

- (c) [the Intercreditor Deed;]
- (d) any other document designated as such by the Developer and the Agency; and
- (e) any document entered into, pursuant to, or which amends or varies any document referred to in paragraphs (a) to (d) (inclusive) above;

Financial Indebtedness means any indebtedness (whether incurred as principal or surety) in respect of:

- (a) monies borrowed and debit balances at any financial institution;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) receivables sold or discounted otherwise than to the extent sold on a non-recourse basis;
- (e) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP or other relevant account principles, be treated as a finance lease or capital lease;
- (f) amounts raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing or raising of money;
- (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any derivative transaction entered into in connection with protection or benefit from fluctuation in any rate or price (and when calculation the value of any derivative transaction only the marked to market value shall be taken into account); and
- (i) any guarantee, indemnity or similar assurance against financial loss in respect of Financial Indebtedness of any person falling within paragraphs (a) to (h) above (inclusive);

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

FOIA Authority/Authorities means a public authority as defined by FOIA and/or EIR;

FOIA Exemption means any applicable exemption to the FOIA;

Funding means funding made or to be made under the Facility or the principal amount of each advance of funding made by the Agency under the Facility or the aggregate amount

of all advances of funding which have been made by the Agency and which remain outstanding from time to time;

GAAP means the generally accepted accounting principles then applicable in the United Kingdom;

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the same type of undertaking as that of the Developer or any Contractors) under the same or similar circumstances;

Gross Development Value means at any given time the figure set out alongside that heading in the then current Cashflow;

Highways means roads, cycleways, footpaths, pavements, accessways, squares, courtyards, driveways, forecourts, entranceways and ancillary verges, landscaped areas, lighting, street furniture, drains, other utilities and associated works;

HMRC means Her Majesty's Revenue & Customs;

HS Act means the Health and Safety at Work etc. Act 1974;

Individual means one or more individuals (not being a partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association) who intends or intend to occupy the relevant Dwelling for his, her or their sole or main residence;

Information means:

- (a) in relation to the FOIA has the meaning given under section 84 of the FOIA and which is held by the Agency at the time of receipt of an RFI; and
- (b) in relation to the EIR has the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by the Agency at the time of receipt of an RFI;

Information Commissioner has the meaning set out in section 6 of the DPA;

Initial Cashflow means the cashflow annexed to this Agreement as annexure 2;

Insolvency Event means the occurrence of any of the following in relation to the Developer:

- (a) it is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness;

- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by the Agency;
 - ii a composition, compromise, assignment or arrangement with any creditor;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Agency, receiver, administrative receiver, administrator, compulsory manager or other similar officer);
 - iv enforcement of any Security over any assets of the Developer;
 - v any analogous procedure or step is taken in any jurisdiction; or
- (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Developer;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, Schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;

[Intercreditor Deed means the intercreditor deed dated on or about the date of this Agreement between the Developer and the Agency and [insert name of Senior Lender];]

Interest Period means each period for which interest is calculated and payable in accordance with clause 6 of this Agreement;

Legal Charge means the legal charge granted by the Developer to the Agency over the Site on or about the date of this Agreement;

Legislation means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

in each case in the United Kingdom;

Long Lease means a lease with a term of at least 99 years or more which:

- (a) is sold for a premium;
- (b) reserves no rent, a nominal rent or one which is no greater than £250 per annum; and
- (c) complies with the requirements of the Council of Mortgage Lenders;

Margin means [];

Market Value means in relation to a Dwelling, the Site or any part thereof (including in each case the Works (or the relevant part thereof) thereon) means the Market Value as defined in the Practice Statement Number PS 3.2 of the RICS Appraisal and Valuation Standards 7th Edition as varied from time to time BUT (in addition to the assumptions mentioned in that definition) on the following further assumptions:

- (a) the Site or the relevant part of it is sold (where applicable) subject to and with the benefit of any subsisting leases granted as Permitted Disposals or agreements therefor but otherwise sold with vacant possession free from all charges and other encumbrances;
- (b) the Developer has a good and marketable title to the Site or relevant part thereof;
- (c) all necessary Consents for any Dwellings or other works on the Site have been obtained and the same can be lawfully used;
- (d) any damage to the Site or buildings on it caused by fire or any other insurable risk has been made good; and
- (e) the Site or the relevant part of it has the benefit of all easements and rights necessary for the beneficial use and occupation of it;

Material Adverse Effect means:

- (a) any present or future event or circumstances which could, in the opinion of the Agency materially impair the ability of the Developer to perform and comply with its obligations under any Finance Document or Scheme Project Document;
- (b) any present or future event or circumstances which could, in the opinion of the Agency have a material adverse effect on the business, assets or financial condition of the Developer;
- (c) any present or future event or circumstances which could, in the opinion of the Agency have a material adverse effect on the validity or enforceability of, or the effectiveness or ranking of the Legal Charge or any other security granted or purporting to be granted pursuant to any Finance Document or the rights or remedies of the Agency under any Finance Document; or

- (d) a Cashflow shows an increase in the Total Scheme Costs in an amount equal to or more than 5% of the Total Scheme Costs identified in the Initial Cashflow;

Milestones means each Milestone set out in the Scheme Details;

Milestone Date means the date set out in the Scheme Details by which the relevant Milestone must have been achieved (as the same may be revised by the Agency in accordance with clause 3.6) otherwise an Event of Default will occur;

Milestone Extension Events means any of the following:

- (a) exceptionally adverse weather conditions PROVIDED THAT any extension permitted on this ground will be restricted to the number of days for which the adverse weather continued;
- (b) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the Works by restricting the availability or use of labour which is essential to the proper carrying out of the Works or preventing the Developer from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Works;
- (c) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (d) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (e) failure by any statutory undertaker, utility company or other like body to carry out works or provide services which the Developer has taken all steps open to it to procure and expedite;
- (f) any failure or major shortage of power, fuel or transport;
- (g) any blockade or embargo;
- (h) any:
 - i official or unofficial strike;
 - ii lockout;
 - iii go-slow; or
 - iv other dispute;

generally affecting the house building industry or a significant sector of it to a material extent

unless any of the events arises (directly or indirectly) as a result of any wilful default or wilful act or negligent act of the Developer or any Contractor;

Milestone Failure means a failure by the Developer to achieve any Milestone, other than the Final Repayment Date, by the relevant Milestone Date;

Monthly Progress Report means a report required pursuant to clause 10.3, substantially in the form of Schedule 3 submitted by such means as the Agency shall notify the Developer from time to time;

New Homes Warranty means the new homes warranty provided by NHBC or Zurich or such other provider as is approved by the Agency, which complies with the requirements of the Council for Mortgage Lenders from time to time;

Notification means a notification by HMRC to the Agency under Regulation 6(6) of the 2005 Regulations;

Open Book means the declaration of all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

[Open Space Land means that part of the Site [being the open spaces, play areas, amenity areas and landscaping areas] [identified as such in the Scheme Details] for general public use;]

Permitted Disposal means the transfer of the freehold or the grant of a Long Lease as applicable:

- (a) of a single Plot or Dwelling to an Individual and in an arms length transaction; and/or
- (b) of any freehold reversionary interests at the Site (but only where in respect of the particular disposal all other Permitted Disposals at that part of the Site have been effected); and/or
- (c) of disposals of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (d) of disposals made pursuant to a planning obligation pursuant to section 106 of the Town & Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 or section 33 and/or the Local Government Act 1972 section 111 and the Highways Act 1980 section (s) 38 and/or 278; and/or
- (e) any other Disposal which the Agency agrees from time to time will become a Permitted Disposal;

Permitted Encumbrance means:

- (a) *[insert details of Senior Lender security documents]*;
- (b) any lien arising solely by operation of law in the ordinary course of the Developer's business in respect of any obligation which is not more than 30 days overdue for settlement;
- (c) any Encumbrance arising out of title retention provisions in a supplier's standard conditions of supply in respect of goods supplied to the Developer in the ordinary course of its business;
- (d) any Encumbrance created pursuant to this Agreement; and
- (e) any Encumbrance granted with the prior written consent of the Agency;

Permitted Indebtedness means (without any double counting):

- (a) any Financial Indebtedness incurred as at the date of this Agreement pursuant to the Senior Finance Documents;
- (b) any Financial Indebtedness identified in the Scheme Budget as at the date of this Agreement; and
- (c) any Financial Indebtedness incurred with the prior written consent of the Agency;

Personal Data has the meaning ascribed to it in the DPA;

Plan means the plan for the Scheme annexed to this Agreement as Annexure 1;

Plot means an individual serviced residential plot prepared by the Developer forming part of the Scheme and which is intended to be partially funded under this Agreement;

Practical Completion means completion of Works in accordance with the definition of practical completion (or equivalent) in the relevant Works Contract(s);

Principal Contractor means the individual defined as such under the CDM Regulations;

Process has the meaning given to that expression under the DPA and Processed and Processing will be construed accordingly;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of the Agency any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of a Finance Document; or
 - ii for showing or not showing favour or disfavour to any person in relation to a Finance Document;

- (b) entering into a Finance Document in connection with which commission has been paid or has been agreed to be paid by the Developer or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed to the Agency;
- (c) committing any offence:
 - i under legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement; or
 - iii under the Bribery Act 2010 or the Prevention of Corruption Acts 1889-1916; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Agency;

Quarter Date means 31 March, 30 June, 30 September and 31 December;

Receipt means the amount of:

- (a) the proceeds (net of reasonable conveyancing costs which have been agreed by the Agency in advance) received or the amount or value of all consideration received from time to time from a Disposal;
- (b) all rents, licence fees and other income or sums received or receivable in respect of the use or occupation of the Site or the enjoyment of rights in relation to it or any part of it or otherwise derived from the exploitation of the Site or any part of it in any manner in relation to any period before the relevant calculation date; and
- (c) interest accruing on any Receipts;

[Relevant Council] means [insert name of council to adopt open space land];

Request for Information/RFI shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Scheme, any Finance Document or any activities or business of the Agency;

Required Standards means the requirements of this Agreement, Good Industry Practice, [Guidance], all Consents and Legislation;

RIDDOR means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time);

Scheme means the scheme for the development of the Dwellings, associated infrastructure and any other construction on the Site in respect of which the Agency has agreed to provide the Funding in accordance with this Agreement (as such Scheme may be varied from time to time with the prior written consent of the Agency);

Scheme Budget means the financial budget for the Scheme, including the Initial Cashflow as agreed by the Agency and as amended only in accordance with this Agreement;

Scheme Details means information provided by the Developer in relation to the Scheme, which shall include:

- (a) the descriptive and other details in respect of the Scheme as set out in Schedule 1;
- (b) the Works required to complete the Scheme;
- (c) the Scheme Budget;
- (d) the timing of all financial draw downs under each Facility, [the Senior Lender Debt Funding] and all other funding sources, including any equity injections;
- (e) evidence satisfactory to the Agency that the Scheme meets with local building regulations; and
- (f) [ANY OTHERS (for example remediation plan)]

all in accordance with the Bid and each as varied from time to time in accordance with the terms of this Agreement;

Scheme Project Documents means [insert description of relevant construction documents entered into by the Developer in relation to the Scheme];

Scheme Specific Conditions means any conditions listed against the heading 'Additional Conditions' in Schedule 1;

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (such as sale or lease and leaseback, a blocked account, set-off or similar “flawed asset” arrangement);

[**Senior Finance Documents** means [*insert details of the senior finance documents*];

Senior Lender means [];

[**Senior Lender Debt Funding** means the provision of any financial accommodation by the Senior Lender pursuant to the Senior Finance Documents];

Significant Event means an event which might prejudice the reputation of the Agency or the programme pursuant to which the Facility is made available to the Developer;

Site means the land identified in the Plan;

Solicitors means a firm of solicitors with relevant experience and professional indemnity cover acting for the Developer;

Start Date means the date on which the Works are to commence, such date not to be later than [] 2012;

Statutory Deduction means the deduction referred to in section 61(1) FA or such other deduction as may be in force at the relevant time;

SWMP Regulations means the Site Waste Management Plans Regulations 2008;

Tax means any tax, levy, impost, duty or other charge or withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and Taxation or taxation and Taxes or taxes shall be construed accordingly;

Total Commitment means [] being an amount not exceeding 75% of Total Scheme Costs;

Total Scheme Costs means, if all costs in relation to the Scheme:

- (a) have been incurred, the aggregate of such costs; or
- (b) have not yet been incurred, the actual and forecasted value (as relevant) of the aggregate of such costs

each as such costs are identified in the latest Cashflow (and in the case of (i) in the Final Cashflow) provided by the Developer to the Agency in accordance with clause 10.3 and in the case of paragraph (ii) where such estimated costs as shown in that Cashflow have been verified by an independent RICS valuer approved by the Agency;

VAT means Value Added Tax as presently charged under the Value Added Tax Act 1994 or any tax of similar nature;

Verification means a verification from HMRC under Regulation 6 of the 2005 Regulations;

Waiver Condition means provision of satisfactory evidence by the Developer to the Agency that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Developer and such employee's employment is terminated within twenty (20) Business Days of the Agency serving notice on the Developer of such Prohibited Act; or
- (b) a subcontractor (or any employee of a subcontractor not acting independently of the subcontractor) and the relevant subcontract is terminated within twenty (20) Business Days of the Agency serving notice on the Developer of such Prohibited Act; or
- (c) an employee of a subcontractor acting independently of such subcontractor and such employee's employment is terminated within twenty (20) Business Days of the Agency serving notice on the Developer of such Prohibited Act; or
- (d) any person not specified in paragraphs (a), (b) or (c) and the Developer (or any subcontractor) has severed links with such person (whether his employment, appointment or any other link) within twenty (20) Business Days of the Agency serving notice on the Developer of such Prohibited Act

where acting independently means not acting with the authority or knowledge of any one or more of the directors of the Developer or relevant subcontractor;

Works means all the works (including design, infrastructure works and all other works necessary for obtaining access to the Dwellings or Site) to be undertaken in order to ensure that the Dwellings meet the Required Standards and that all aspects of the Scheme are constructed in accordance with the Scheme Details; and

Works Target Date means the date on which the Works are to be completed, such date not to be later than [*insert relevant date*].

1.2 Interpretation

1.2.1 The masculine includes the feminine and vice versa.

1.2.2 The singular includes the plural and vice versa.

1.2.3 Any reference in this Agreement to any condition, sub-condition, paragraph, Schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, Schedule, appendix or section heading of this Agreement.

1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.

1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.

1.2.6 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1.2.7 Headings are for convenience of reference only.

1.2.8 A time of day shall be a reference to London time.

1.2.9 A party means a party to this Agreement.

1.2.10 The words includes or including are to be construed without limitation.

1.2.11 A document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule to this Agreement.

1.2.12 A paragraph in a Schedule shall be construed as references to a paragraph in that particular Schedule.

- 1.2.13 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.14 In any case where the consent or approval of the Agency (or any officer of the Agency) is required or a notice is to be given by or to the Agency, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified to the other parties from time to time.
- 1.2.15 An obligation to do anything includes an obligation to procure its being done.
- 1.2.16 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.17 The term Site includes each and every part of it and any estate or interest in it.
- 1.2.18 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 No review comment or approval by the Agency under the provisions of this Agreement shall operate to exclude or limit the Developer's obligations or liabilities under this Agreement save where the Agency have confirmed the said review comment or approval in writing.
- 1.2.21 The Developer shall be responsible as against the Agency for the acts or omissions of any Contractor as if they were the acts or omissions of the Developer.
- 1.2.22 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Agency shall, unless otherwise expressly stated in this Agreement or agreed in writing by the Agency, relieve the Developer of any of its obligations under any Finance Document or any of the Scheme Project Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Agency in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.3 Save where a contrary intention is shown or where an express discretion is given by this Agreement, the Agency will act reasonably in deciding whether to give any consent, agreement, determination or approval or express its satisfaction and whether to give any such consent, agreement, determination or approval or express its satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter its statutory powers, rights or obligations.

2 **Provision of Funding**

The Agency (in exercise of its powers under the Act) agrees to make available to the Developer during the Availability Period a loan facility in an aggregate principal amount equal to the Total Commitment.

3 **Representations, warranties and covenants**

As at the date of this Agreement, on the date of each Claim and the date of delivery of each Monthly Progress Report (by reference to the facts and circumstances then existing) the Developer makes the representations and warranties set out in clauses 3.1 to 3.4 (inclusive) to the Agency.

3.1 **Powers, vires and consents**

3.1.1 It is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct.

3.1.2 It:

(a) has the power to enter into and to exercise its rights and perform its obligations under the Finance Documents and the Scheme Project Documents (to which it is a party); and

(b) has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under the Finance Documents and Scheme Project Documents (to which it is a party) (or, in the case of any other Finance Document or Scheme Project Document to be executed by it after the date hereof, such action will be taken before such execution).

3.1.3 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to have a Material Adverse Effect.

3.1.4 Its obligations under the Finance Documents and Scheme Project Documents (to which it is a party) constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

3.1.5 The execution, delivery and performance by it of the Finance Documents and the Scheme Project Documents (to which it is a party) do not:

(a) insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;

(b) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or

(c) contravene or conflict with its Constitutive Documents.

- 3.1.6 All consents, required by it in connection with the execution, delivery, issue, validity or enforceability of the Finance Documents and Scheme Project Documents (to which it is a party) have been obtained and have not been withdrawn.
- 3.1.7 It is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 3.1.8 No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect.
- 3.1.9 No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no Insolvency Event has occurred in relation to it.
- 3.1.10 It has undertaken and will undertake the Works or where relevant procure that all Works have been and will be undertaken:
- (a) in a way to ensure that the Dwellings meet the Required Standards and are constructed in accordance with the Scheme Details; and
 - (b) in accordance with the terms of the Bid.
- 3.1.11 It has not committed any Prohibited Act.

3.2 **Scheme success**

- 3.2.1 No person having any Security over the Site or any part of it or any other assets of the Developer has enforced or given notice of its intention to enforce such Security.
- 3.2.2 All Consents have been obtained and have not been withdrawn.
- 3.2.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 3.2.4 It has or will before the date of the first Claim Form have the full legal control of the Site to enable Practical Completion of all Works and has all such further rights as are necessary to comply with its obligations in this Agreement.
- 3.2.5 The Site is free from any conditions, restrictions or covenants which do or might affect the right to carry out the Works or achieve Practical Completion of all Works.
- 3.2.6 It is not under any statutory obligation to undertake the Works or any part of them.

- 3.2.7 It has entered or will by Practical Completion have entered into all requisite agreements with the highways authority pursuant to section 38 Highways Act 1980 in respect of the construction and adoption of the Adoptable Highways comprising or relating to the Scheme and all requisite agreements with the highways authority pursuant to section 278 of the Highways Act 1980 (as appropriate) in respect of the construction of any Highways comprising or relating to the Scheme and procured any bond or guarantee required by the highways authority in connection with any such agreement.
- 3.2.8 It has entered or will by Practical Completion have entered into an agreement with the relevant water authority pursuant to section 104 of the Water Industry Act 1991 in respect of the construction and adoption of the sewers serving the Scheme and procured any bond or guarantee required by such water authority in connection with such agreement.
- 3.2.9 [It has entered or will by Practical Completion have entered into any requisite agreement with the Relevant Council for the adoption by that Council of the Open Space Land required as a result of the Practical Completion of such Dwelling.]
- 3.2.10 It shall take all reasonable steps to satisfy the Agency that its employees and any contractors employed in connection with the Works are suitable and competent in all respects to allow the proper performance of all necessary work or tasks in relation to the Works.
- 3.2.11 It shall in carrying out the Works comply with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail.
- 3.2.12 It has:
- (a) good title to the Site and all other assets (including, but not limited to, intellectual property rights) necessary to implement the Scheme in accordance with the Scheme Project Documents, free from Encumbrances other than a Permitted Encumbrance or freedom to use those assets for that purpose under all applicable laws; and
 - (b) access to and freedom to use under all applicable laws:
 - i the Site;
 - ii any buildings or fixtures on the Site;
 - iii any easement, wayleaves or other rights necessary in order to implement the Scheme in accordance with the Scheme Project Documents.
- 3.2.13
- (a) It is in compliance with all applicable Environmental Laws.

- (b) It is in compliance with the terms of all Environmental Consents necessary for the ownership and operation of the Site, facilities and businesses as presently owned and operated and as presently proposed to be owned and operated.
- (c) Save as disclosed in the Certificate of Title, there is no Environmental Claim which is current, pending or threatened against it and there are no past or present acts, omissions, events or circumstances that could form the basis of any Environmental Claim against it.
- (d) Save as disclosed in the Certificate of Title, there are no circumstances that may prevent or interfere with it obtaining or being in compliance with any Environmental Consent in the future and no action is pending or threatened by any authority against it which would result in any Environmental Consent being revoked, suspended or varied.
- (e) To the best of its knowledge and belief (having made all reasonable and proper enquiries) and save as disclosed in the Certificate of Title, no Dangerous Substance has been used, disposed of, generated, stored, transported, dumped, released, deposited, buried or emitted at, on, from or under any premises owned, leased, occupied, controlled or used by the Developer in circumstances where this results or could be expected to result in a liability on the Developer.

3.3 **Operational issues**

- 3.3.1 No Event of Default has occurred and is continuing or would result from the making of any Funding.
- 3.3.2 No other event or circumstance is continuing which constitutes (or with the giving of notice, the lapse of time, the determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing), would or could be expected to constitute a default by it under any other document or arrangement which is binding on it or on any of its assets in any case to an extent or in a manner which has or could be expected to have a Material Adverse Effect.
- 3.3.3 The Developer is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.
- 3.3.4 It has filed all necessary Tax returns with the relevant authorities and is not in default in the payment of any Tax taking into account any grace period and all claims for payment of Tax which might have a Material Adverse Effect have been disclosed to the Agency.
- 3.3.5 Other than the registration of the Legal Charge [and the Intercreditor Deed] at Companies House, the Land Registry, the Land Charges Registry and/or the Financial Services Authority (as appropriate), it is not necessary that any Finance Document to which it is a party be filed, recorded or enrolled with any court or other authority in England or that any stamp, registration or similar tax be paid on or in relation to any Finance Document to which it is a party or the transactions contemplated by the Finance Documents.

- 3.3.6 The Developer has appointed a CDM Co-ordinator and has provided the Agency with a copy of the CDM Co-ordinator's notification to the Health and Safety Executive of the Particulars specified in Schedule 1 of the CDM Regulations.

3.4 Information

- 3.4.1 All information supplied by or on behalf of it to the Agency or its agents or employees in connection with the Developer's initial application for funding or in the course of the subsequent negotiations was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 3.4.2 It has informed the Agency of any material change that has occurred since the date of submission of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect.
- 3.4.3 It is not aware of any material fact or circumstance that has not been disclosed to the Agency and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.

3.4.4

- (a) There has been no material adverse change in its assets, business or financial condition since the date of its last annual accounts.
- (b) Its most recent accounts delivered pursuant to clause 10.3.5(b):
 - i have been prepared in accordance with the GAAP as applied to the original accounts delivered to the Agency pursuant to this Agreement; and
 - ii give a true and fair view of (if audited) or fairly present (if unaudited) its financial condition as at the end of, and results of operations for, the period to which they relate.
- (c) The Bid and each Cashflow supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

3.5 Covenants

3.5.1 Negative pledge

The Developer shall not, except with the prior written consent of the Agency:

- (a) create or permit to subsist any Encumbrance (other than a Permitted Encumbrance) on the whole or any part of its present or future assets;

- (b) incur any Financial Indebtedness (other than the Funding and any Permitted Indebtedness); or
- (c) pay any dividend or make any equity payments.

3.5.2 **Asset disposal**

- (a) The Developer shall not, without the prior written consent of the Agency, dispose of the whole or any part of the Site unless, in respect of a disposal involving a Dwelling, an independent chartered surveyor has addressed a written report to the Agency (which report has been received by the Agency) that the disposal is on the best terms reasonably obtainable at the time and the disposal is in accordance with the Scheme Details.

Clause 3.5.2 (a) does not apply to:

- i a Permitted Disposal; or
- ii the grant of a legal charge to a Senior Lender in connection with the delivery of the Works.

3.5.3 **Priority**

[Subject to the Intercreditor Deed,] the Developer shall ensure that its payment obligations under this Agreement rank and will always rank:

- (a) to the extent that they are secured, in all respects in priority to all its other indebtedness other than indebtedness preferred by operation of law in the event of its winding up or any Permitted Encumbrance; and
- (b) to the extent that they are not so secured, at least equally and rateably in all respects with all its other unsecured and unsubordinated indebtedness other than indebtedness preferred by operation of law in the event of its winding up.

3.5.4 **Works**

The Developer shall ensure that the Works are:

- (a) conducted and completed in accordance with the Scheme Details, all Consents and the technical specifications and to the Required Standards; and
- (b) carried out in a good and workmanlike manner.

3.5.5 **Amendments**

Other than an amendment in accordance with paragraph 3.5.6 below, the Developer may not make any amendment to the Scheme or the Scheme Details without the prior written consent of the Agency.

3.5.6 Notwithstanding paragraph 3.5.5 above, the Developer may make amendments to the Scheme or the Scheme Details without Agency consent where such amendment would not:

- (a) impact (in any respect) on any specific item in the Scheme Budget in an amount of more than 5 per cent. (whether positive or negative); and
- (b) reduce the number of Dwellings to less than 5; and
- (c) reduce the standards to which the Dwellings are to be constructed from those set out in the Scheme Details as at the date of this Agreement.

3.6 **Milestone Date Amendments**

3.6.1 If a Milestone Failure occurs or is in the opinion of the Agency likely to occur (having regard to the information supplied in each Monthly Progress Report) and such Milestone Failure is not the result of a Milestone Extension Event the Agency shall be entitled (but not obliged) and in its absolute discretion to:

- (a) exercise the rights described under clause 12; or
- (b) agree a revised Milestone Date with the Developer in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Milestone Date.

3.6.2 Where any Milestone Failure occurs or is in the opinion of the Agency likely to occur (having regard to the information supplied in each Monthly Progress Report) and the Agency determines that such failure is the result of a Milestone Extension Event the Agency shall extend the relevant Milestone Date by such reasonable period as it considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.

4 **Other**

4.1 The Developer will maintain full and proper insurance sufficient to ensure compliance with clause 9.4.

4.2 The Developer will act at all times with the utmost good faith.

4.3 For so long as any amount remains outstanding under the Facility, the Developer will ensure that the Agency has the right to be represented at each project meeting and that such representative (the details of which to be advised by the Agency to the Developer) is provided with reasonable notice of all such meetings and all relevant meeting materials.

4.4 The covenants given by the Developer in this Agreement shall remain in force from the date of this Agreement for so long as any amount remains outstanding under any Finance Document.

5 **Payment of Funding**

5.1 **Initial Conditions Precedent**

5.1.1 The Agency's obligations under this Agreement are subject to the condition precedent that it has confirmed to the Developer that it has received all of the following in form and substance satisfactory to the Agency:

- (a) a certified copy of the Constitutive Documents of the Developer;
- (b) a certified copy of the Evidence of Incorporation of the Developer;
- (c) a certified copy of a resolution of the board of the Developer:
 - i approving the terms of, and the transactions contemplated by, the relevant Finance Documents and Scheme Project Documents and resolving that it executes the relevant Finance Documents and Scheme Project Documents to which it is a party;
 - ii authorising the Developer Senior Officer or other specified person or persons to execute each relevant Finance Document and Scheme Project Document to which it is a party on its behalf;
 - iii authorising its seal to be affixed to those relevant Finance Documents and Scheme Project Documents to be executed by it under seal; and
 - iv authorising the Developer Senior Officer or other specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under, or in connection with, the relevant Finance Documents to which it is a party;
- (d) the Agency being satisfied that the Developer has (and continues to have) sufficient funding (whether from its own resources or otherwise) to complete the Scheme by the Works Target Date;
- (e) a copy of the Scheme Details;
- (f) counterparts of each Finance Document (other than this Agreement) and each Scheme Project Document executed by the Developer and each other party to each such document;
- (g) certified copies of any deeds of release relating to all outstanding security interests granted by the Developer other than a Permitted Encumbrance;
- (h)
 - i a Certificate of Title in a form acceptable to the Agency in respect of the ownership of the Site and the Developer's estate or interest in it (being either the freehold estate or a lease for a term of 99 years or more on terms acceptable to the Agency) issued to the Agency by the Solicitors certifying among other things that: (a) the Site is free from any conditions, restrictions, covenants or third party interests which do or

might affect the right to carry out and maintain the Works; and (b) the Developer has sufficient rights appurtenant to its estate or interest in the Site to enable the Scheme and the Works to be fully carried out and fully serviced without the need to acquire further land or obtain any rights from any other party;

- ii a letter of undertaking relating to the title and other deeds to the Site and the registration of the Legal Charge [and notification of the Intercreditor Deed] duly signed by the Solicitors in favour of the Agency;
- (i) copies of policies, certificates or cover notes relating to each contract or policy of insurance taken out by or on behalf of the Developer sufficient in the opinion of the Agency to confirm compliance with clause 9.4;
- (j) evidence that all Consents and all other Authorisations the Agency considers necessary have been obtained to ensure that each Milestone is met by the relevant Milestone Date;
- (k) the grant of planning permission including approval of siting, design, access and use, landscaping and materials for [the whole of the Scheme] [each Dwelling] [each Plot];
- (l) the Scheme Specific Conditions (if any); and
- (m) [copies of the Senior Finance Documents][Evidence satisfactory to the Agency] demonstrating that the arrangements relating to all funding for the Scheme in addition to the Funding accord with the Initial Cashflow.

5.2 Conditions Precedent to each Claim for Funding

The obligation of the Agency to make available any Funding is subject to the further conditions precedent that, at the time the Developer delivers a Claim Form and at the time of making such Funding:

- 5.2.1 a valid Claim has been made in accordance with clause 5.3.1;
- 5.2.2 the Agency is satisfied in its absolute discretion that the amount of the Claim is in accordance with the Scheme Budget;
- 5.2.3 no Event of Default has occurred and is continuing or would result from the proposed Funding;
- 5.2.4 each amount of funding identified in the Scheme Budget as due to be contributed by the Developer prior to the date of the Claim has in fact been contributed in full by the Developer;
- 5.2.5 the Agency has received such evidence as the Agency may require that all matters represented and warranted by the Developer under clause 3 are true and correct as if made at each such delivery of a Claim Form and would be true and correct immediately after the making of any such Funding.; and

- 5.2.6 the Claim does not exceed an amount which is 75% of that part of the Total Scheme Costs for which the Claim is being made in accordance with the Scheme Budget.

5.3 **Mechanics and payment of Funding**

- 5.3.1 A Claim will not be regarded as having been validly made by the Developer unless:

- (a) it is submitted on a Claim Form which must be signed by the Developer Senior Officer and:
 - i it is received by the Agency no later than twenty (20) Business Days prior to the proposed date the Funding will be made available to the Developer;
 - ii it is delivered during the Availability Period and such that the latest possible date for a Claim being received by the Agency is twenty (20) Business Days before the end of the Availability Period;
 - iii it is submitted to the Agency no later than [●] in the case of the first Claim for Funding and within the Availability Period in the case of the each subsequent Claim for Funding;
 - iv it is for not more than 75% of that part of the Total Scheme Costs for which the Claim is being made in accordance with the Scheme Budget [as certified by the Employer's Agent]; and
- (b) It relates to Development Costs [as certified by the Employer's Agent] for which the Developer has not submitted any other Claim or received any other funding;
- (c) It accords with the Scheme Budget or is accompanied by evidence satisfactory to the Agency (in its absolute discretion) to justify any deviation;
- (d) It is for an amount which (if paid) would not cause the Total Commitment to be exceeded; and
- (e) the conditions at clauses 5.1 and 5.2 have been satisfied.

- 5.3.2 Subject to the terms of this Agreement, the Agency will pay Funding to the Developer within twenty (20) Business Days of receipt of a valid Claim.

- 5.3.3 Any amount not drawn by the Developer under a Facility during the Availability Period will be automatically cancelled.

- 5.3.4 The Developer may not make more than [X] Claims.

5.4 **Use of Funding**

- 5.4.1 The Funding will be the sole property of the Developer and will be used by the Developer for Development Costs only.

5.4.2 Without affecting the obligations of the Developer in any way, the Agency is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

6 Interest

6.1 Interest on any Funding outstanding from time to time to the Agency under this Agreement shall accrue at the sum of:

6.1.1 the EC Reference Rate from time to time; plus

6.1.2 the Margin.

6.2 All interest shall accrue from day to day and be calculated on the basis of a 365 day year and for the actual number of days elapsed.

6.3 Interest on the Funding will capitalise and be added to the Funding on the last day of each Interest Period.

6.4 Capitalised interest shall be paid in accordance with the provisions of clause 7 and paid in full no later than the Final Repayment Date.

6.5 Each Interest Period shall be a period of three months ending on a Quarter Date save that the first Interest Period in relation to each advance of Funding shall be the period commencing on the date when that advance of Funding is paid to the Developer and ending on the next Quarter Date. Each subsequent Interest Period shall start on the day following the last date of the previous Interest Period.

7 Repayment

7.1 The Developer shall repay the Funding together with any outstanding interest, the amount of which is calculated in accordance with clause 6 above:

7.1.1 in an amount equal to the proportion of Receipts from each Disposal as shown in latest Cashflow including for the avoidance of doubt each Permitted Disposal;

(a) where such Disposal is by way of sale, on the date of completion of that sale; and

(b) in respect of any other payment, within 2 Business Days of its due date;

7.1.2 to the extent that any amounts remain outstanding on the Final Repayment Date, on the Final Repayment Date; and

7.1.3 at any time if it becomes illegal for the Agency to continue to perform its obligations or enjoy its rights under this Agreement; and

7.1.4 if an Event of Default occurs and is continuing.

7.2 The Developer may, on giving not less than fifteen (15) Business Days' prior written notice to the Agency, repay all or any part of the Funding at any time. Any partial reduction to the Facility shall be in a minimum amount of £100,000.

- 7.3 No amount prepaid or repaid may be redrawn.
- 7.4 All payments to be made by the Developer under this Agreement shall be paid in Sterling in immediately available cleared funds to the Agency into such bank account as the Agency shall notify to the Developer from time to time.
- 7.5 If the Developer does not pay any amount it is obliged to pay under this Agreement when it is due, the Developer shall pay default interest on such outstanding amount from the due date until the date of actual payment (both before and after judgment) at a rate per annum equal to 2% above the rate of interest which would have been payable under clause 6.1.
- 7.6 All payments by the Developer under or in connection with this Agreement shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.
- 7.7 If the Developer is required by law to make any deduction or withholding the Developer shall:
- 7.7.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;
 - 7.7.2 pay to the Agency such additional amount as may be determined by the Agency to be necessary to ensure that after making any required deduction or withholding the Agency receives and retains a net amount equal to the full amount which would have been received had no deduction or withholding been required;
 - 7.7.3 pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding; and
 - 7.7.4 supply to the Agency, within the period for the payment permitted by law, an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld.
- 7.8 Without prejudice to any other provisions of this Agreement, if:
- 7.8.1 the Agency is required by law to make any payment on account of taxes (other than taxes on its overall net income) on or in relation to any sum received or receivable by the Agency under or pursuant to this Agreement; or
 - 7.8.2 any liability in respect of any such payment is imposed, levied or assessed against the Agency
- the Developer shall on demand by the Agency indemnify the Agency against such payment or liability together with any interest, penalties and expenses payable or incurred in connection with it.

8 **Developer delivery obligations**

8.1 **Scheme commencement and completion**

The Developer will procure that the Scheme commences by the Start Date and is carried out and completed in accordance with the Scheme Details by the Works Target Date.

8.2 Developer's contractors and employees

8.2.1 The Developer will procure that each Contractor complies with each and all of its contracts which relate to the Scheme and the Developer will enforce the terms of the Scheme Project Documents at all times.

8.2.2 The Developer will take all necessary steps to satisfy the Agency that its procurement policies and procedures in relation to employees, suppliers and Contractors are suitable and competent in all respects to allow the proper performance of all work or tasks in relation to the Scheme.

9 **Developer regulatory obligations**

9.1 **Consents**

The Developer will procure that no Works are commenced and/or continued without all necessary Consents being received and in particular will procure that no work constituting development for which planning permission is required under the Town and Country Planning Act 1990 is carried out without having obtained detailed planning consent and will provide such documents as the Agency requires to demonstrate compliance with this clause 9.1.

9.2 **Public procurement**

9.2.1 The Developer shall comply with all applicable EU Procurement Requirements in connection with the procurement of the Works or any services relating to the Scheme.

9.2.2 Subject to clause 9.2.1, all procurement of works, equipment, goods and services by the Developer relating to the Works shall be based on value for money.

9.3 **Legislation (including Health & Safety and Equality & Diversity)**

9.3.1 The Developer will comply in all material respects with all relevant Legislation, including but not limited to legislation relating to health and safety, welfare at work and equality and diversity, and will use reasonable endeavours to enforce the terms of the Scheme Project Documents to ensure compliance with this clause 9.3.

9.3.2 The Developer confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that unfair discrimination on the grounds of colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the Works is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by the Agency.

- 9.3.3 The Developer accepts that:
- (a) it is a "client" as defined by the CDM Regulations and SWMP Regulations and warrants that it is and will at all times remain competent to carry out the role of a client under the CDM Regulations and SWMP Regulations; and
 - (b) it will act as the only client in respect of the Scheme and the Developer hereby elects to be the only client under the CDM Regulations and SWMP Regulations for the Scheme.
- 9.3.4 The Agency agrees to the election of the Developer as the only client for the Scheme for the purposes of CDM Regulations and SWMP Regulations.
- 9.3.5 The Developer shall comply fully with all the obligations of the client under the CDM Regulations and SWMP Regulations.
- 9.3.6 The Developer shall not seek to withdraw, terminate or in any manner derogate from such election without the Agency's prior written consent, which the Agency may in its absolute discretion withhold.
- 9.3.7 The Developer shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the Works are aware of the terms of the Developer's election as the only client for the purposes of the CDM Regulations and SWMP Regulations.
- 9.3.8 The Developer shall at all times comply with all obligations, requirements and duties arising under the HS Act in connection with the Works.
- 9.3.9 The Developer shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Works or allowed on the Site.
- 9.3.10 The Developer shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with the Scheme, and shall provide a report to the Agency Health & Safety Manager quarterly in the form set out in Schedule 5 of this Agreement.
- 9.3.11 Without in any way limiting its obligations in Schedule 5 or clause 9.3.10, the Developer shall notify the Agency Health & Safety Manager immediately on the occurrence of any of the following events which arise out of or in connection with the Scheme:
- (a) a fatal accident to any worker or a member of the public;
 - (b) any injury to a member of the public requiring reporting under RIDDOR;
 - (c) any dangerous occurrence, as defined by RIDDOR;
 - (d) the service of any improvement or prohibition notice under the HS Act;
 - (e) any incident having health & safety implications which attracts the attention of the police and/or the media;

(f) the commencement of any criminal prosecution under the HS Act.

9.3.12 The Developer will procure that all Contractors comply at all times with the HS Act, the CDM Regulations and the SWMP Regulations and will procure that:

- (a) where for the purposes of the Works a Contractor is a Designer or CDM Coordinator, the Contractor will comply with the obligations imposed on such role(s) under the CDM Regulations;
- (b) each Contractor co-operates fully with the CDM Coordinator and the Principal Contractor appointed under the CDM Regulations (whether or not either of these roles are carried out by the relevant Contractor);
- (c) each Contractor allocates adequate resources to enable it to comply with its obligations under the relevant Works Contract and the CDM Regulations;
- (d) each Contractor co-operates with all other persons involved in the Works to consider the prevention of risks and protection of persons who may be exposed to risks;
- (e) no Contractor will by any act or omission do anything that would cause the Developer to breach or be prosecuted under the HS Act and/or the CDM Regulations;
- (f) the Developer and each Contractor at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works;
- (g) the Contractor carries out its obligations as a "principal contractor" under the SWMP Regulations.

9.4 Insurance

9.4.1 The Developer shall ensure that at all times during the carrying out of the Scheme there shall be maintained full and proper insurance policies including policies in respect of all buildings upon the Site and all works undertaken in carrying out the Works and all unfixed goods and materials in connection with such works for, in every case, the full reinstatement or replacement costs of them from time to time including professional fees.

9.4.2 The Developer shall supply evidence of such insurance policies (satisfactory to the Agency) within five (5) Business Days of written request from the Agency.

9.4.3 If any building upon the Site or any works forming part of the Works or the Scheme or any materials or goods required to undertake such works are destroyed or damaged (other than as necessary as part of the carrying out of

the Works), the Developer shall procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable. If the insurance proceeds shall be insufficient the Developer shall make up any deficiency out of its own monies.

9.4.4 The Developer shall not do or permit or suffer to be done anything which may render any policy or policies of insurance void or voidable.

10 **Notifications, reporting and audit**

10.1 **The Developer shall notify the Agency:**

10.1.1 immediately upon any change (whether actual or estimated) required to the Scheme Details other than any change permitted under this Agreement;

10.1.2 immediately upon becoming aware of any event which might have a Material Adverse Effect on:

(a) the Developer; or

(b) any aspect of the Scheme including, but not limited to, any Milestone Failure;

10.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Developer arising out of or relating to the Funding [or pursuant to the Senior Finance Documents] which might have a Material Adverse Effect;

10.1.4 immediately upon there being a proposed material change to the Scheme Project Documents;

10.1.5 within such periods as may be required under clause 11, of the occurrence of a Change in Control in respect of the Developer;

10.1.6 immediately upon the occurrence of an Event of Default;

10.1.7 immediately upon becoming aware of any breach of any health and safety law or regulation (including under the HS Act and/or the CDM Regulations) by the Developer and/or any Contractor directly or indirectly related to the Works which might have a Material Adverse Effect (such notification to be addressed to the Agency Health and Safety Manager);

10.1.8 immediately upon becoming aware of any challenge to any procurement or claims under EU Procurement Requirements in relation to the Works or any part of them (whether relating to the Developer or a third party) or any audit in relation to the foregoing and the outcome of any such audit (such notice to be addressed to the Agency Tendering and Procurement Manager);

10.1.9 immediately upon becoming aware of any investigations undertaken or sanctions imposed by the Environmental Agency or any local authority relating to environmental incidents and/or any environmental incident occurring directly or indirectly relating to the Works (or any part of them) which may be a breach of any environmental law or regulation in force at the time of the incident which

might have a Material Adverse Effect whether the Developer and/or any Contractor and/or any other third party is responsible for the incident or is the subject of such investigations and/or sanctions (as appropriate) (such notification to be addressed to the Agency Health and Safety Manager and on such notification form as the Agency may provide from time to time);

- 10.1.10 immediately upon becoming aware of any requirement for the Scheme to become part of a wider publically funded regeneration scheme;
- 10.1.11 immediately upon becoming aware of investigations into or findings of any breach of any equality or anti-discrimination legislation or regulations directly or indirectly related to the Works (or any part of them) which might have a Material Adverse Effect whether the Developer and/or any Contractor and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to the Agency Senior Officer); and/or
- 10.1.12 immediately upon becoming aware of investigations into or findings of any breach of the DPA which might have a Material Adverse Effect whether the Developer and/or any Contractor and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to the Agency IT Security Officer);
- 10.1.13 immediately upon becoming aware that the Total Scheme Costs are 5% or more higher or lower than the Total Scheme Costs as shown in the Initial Cashflow; and/or
- 10.1.14 immediately upon becoming aware that the actual Gross Development Value is 5% or more higher or lower than as shown in the Initial Cashflow.

10.2 **Resolution**

In the event of notification by the Developer under this clause 10, if applicable and if requested by the Agency, the Developer will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all representations of the Agency on such proposals.

10.3 **Reporting**

- 10.3.1 From the date of this Agreement until the Final Repayment Date the Developer will, no later than ten (10) Business Days following the end of each calendar month and on the Final Repayment Date, provide the Agency with the Monthly Progress Report.
- 10.3.2 The Monthly Progress Report shall provide such information as is reasonably required by the Agency including the following information, as appropriate to the Scheme for that month:
 - (a) progress against any Milestone Dates including any anticipated delays in achieving any Milestone Date;
 - (b) reasons for, and actions to mitigate, any delays;

- (c) details of all Dwelling Disposals (including sales income and costs), and the progress of Disposals to date against the anticipated Disposals set out in the relevant Scheme Details with full disclosure in relation to variances;
- (d) any health and safety issues;
- (e) any Significant Event;
- (f) any breach of any term or warranty of this Agreement or any agreement referred to herein;
- (g) any matter or event which would entitle the Agency to terminate this Agreement in whole or in part;
- (h) in the case of the first and every following third month only (but always including the month of the final Monthly Report), a Cashflow for the Scheme showing actual income and expenses to date and forecasted income and expenses until the Final Repayment Date;
- (i) any other issue requested on reasonable notice by the Agency (including without limitation at a previous meeting); and
- (j) in the case of the final Monthly Progress Report, full details of any estate or interest in the Scheme which has not been disposed of by the Developer.

10.3.3 Each Monthly Progress Report shall:

- (a) certify that the information set out therein is true and correct;
- (b) demonstrate to the satisfaction of the Agency compliance with the Finance Documents and Scheme Project Documents

and be signed by the Developer Senior Officer and, in the case of the final Monthly Progress Report (including the Final Cashflow), be approved by the Agency in writing and signed by the Developer's auditor.

10.3.4 The Developer shall promptly provide the Agency with copies of all reports, documents and information about its business at the same time as they are provided to the Senior Lender pursuant to the Senior Finance Documents.

10.3.5 The Developer shall supply to the Agency and certified on behalf of the Developer as fairly representing the Developer's financial condition as at the end of the period to which they relate and of the results of its operations for such period:

- (a) as soon as the same are available (and in any event within 90 days of the end of each financial year) the annual report and accounts of the Developer for that financial year;
- (b) as soon as the same are available (and in any event within 30 days of the end of each of its financial quarters) its quarterly management

accounts (in a form previously agreed with the Agency and containing a statement of income and expenditure, a balance sheet and a cashflow statement) together with a comparison of the Developer's performance against its then current annual budget;

- (c) [promptly a copy of each valuation report provided to its Senior Lender where such valuation report includes a valuation of the Site or any part thereof].

10.3.6 The Developer shall provide to the Agency a copy of each Final Certificate promptly upon receiving it.

10.3.7 The Agency may call a meeting with the Developer at any time provided that the Agency:

- (a) gives reasonable prior written notice of such meeting; and
- (b) includes with the notice (or circulates within 10 Business Days of the notice) an agenda for such meeting.

10.3.8 The Agency and the Developer shall use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this clause 10 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.

10.3.9 Subject to the prior approval of the other party (such approval not be unreasonably withheld) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.

10.3.10 Save as otherwise agreed between the parties, any meeting under this clause 10 shall be minuted by the Developer and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.

10.3.11 Nothing in this clause 10.3 shall prevent the Agency from requesting (whether on behalf of itself or any Government office) at any other time information from the Developer in respect of any of the items listed in this clause 10.3 and the Developer shall promptly respond to any such request.

10.4 **Inspection and audit facilities**

10.4.1 The Developer shall, as and when requested by the Agency, make available on an Open Book basis and in a timely manner to the Agency where required in connection with this Agreement or the Scheme a copy of each of:

- (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Developer for the purposes of this Agreement; and
- (b) all such data, materials, documents and accounts created, acquired or brought into existence by the Developer's officers, employees, agents or

consultants relating to the Scheme and which have been supplied to the Developer for the purposes of this Agreement.

10.4.2 The Developer shall at all times:

- (a) maintain a full record of particulars of all the income received and expenditure incurred by the Developer in respect of the Scheme;
- (b) when required to do so by the Agency, provide a summary of any of the income and expenditure referred to in clause 10.4.2(a) as the Agency may require to enable it to monitor the performance by the Developer of its obligations under this Agreement; and
- (c) provide such facilities as the Agency may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 10.4.

10.4.3 Compliance with the above shall require the Developer to keep (and where appropriate shall procure that Contractors shall keep) separate books of account (from those relating to any business, activity or operation carried on by the Developer and/or any Contractor and which do not directly relate to the Scheme) in accordance with good accountancy practice with respect to the Scheme showing in detail:

- (a) income (including Receipts);
- (b) administrative overheads where directly attributed or where apportioned on a pro rata basis;
- (c) payments made to Contractors;
- (d) capital and revenue expenditure;
- (e) VAT incurred on all items of expenditure where the Developer has received funding under this Agreement in respect of such VAT, including the rate of such VAT and full details of the recovery (or not) by the Developer of such VAT as input tax from HM Revenue & Customs or other competent authority;
- (f) any balances in any account or fund held for the purpose of servicing any debts relating to the Scheme; and
- (g) such other items as the Agency may require in order to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement

and the Developer shall have (and procure that, to the extent expressly agreed, each Contractor shall have) the books of account evidencing the items listed in this clause 10.4 available for inspection by the Agency upon reasonable notice, and shall submit a report of these to the Agency as and when requested.

- 10.4.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Developer shall, if requested to do so, deliver up to the Agency all the data, materials, documents and accounts referred to in this clause 10.4 which it has in its possession, custody or control and shall procure the handing over to the Agency such data, materials, documents and accounts referred to in clause 10 or as otherwise directed by the Agency.
- 10.4.5 The Developer must for a period of 10 (ten) years from the Final Repayment Date retain all of the data, documents, materials and accounts referred to in this clause 10.4 and the Developer may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to the Agency pursuant to this clause 10.

11 Change in control or financial circumstances

11.1 Change in Control

- 11.1.1 During the term of this Agreement, where there is any Change in Control (or any proposed Change in Control) in the Developer the provisions of clauses 11.1.2- 11.1.6 (inclusive) shall apply.
- 11.1.2 Save in the event that (i) the Developer is a public limited company and is prohibited by listing rules from doing so or (ii) a Change in Control occurs automatically by operation of law and accordingly without the Developer being able to notify in advance, the Developer shall notify the Agency prior to any Change in Control and in accordance with clause 11.1.3 seek the Agency's consent to such Change in Control provided that:
- (a) this clause shall not be interpreted as creating a legal fetter on the right of the Developer from undertaking a Change in Control; and/or
 - (b) where the circumstances identified in (i) or (ii) above occur, the Developer shall notify the Agency as soon as is practicable after the Change in Control has occurred and seek the Agency's consent to the Change in Control and where the Agency does not consent, such application for consent shall be determined in accordance with clauses 11.1.3 and 11.1.3.
- 11.1.3 The consent of the Agency under clause 11.1.2 will not be unreasonably withheld or delayed provided that the Agency is notified about any proposed Change in Control and receives all the information required under clause 11.1.5 at least 25 Business Days prior to the Change in Control being effected or, as appropriate, in accordance with clause 11.1.2 and the Agency hereby records its intention (but without fettering its rights hereunder) to look favourably on applications for consent to Change in Control which are either received from a company whose shares are listed on a recognised investment exchange as such expression is defined in the Financial Services and Markets Act 2000 or which will not materially and adversely affect the delivery of the Scheme.
- 11.1.4 Without prejudice to the generality of clause 11.1.3, it shall be reasonable for the Agency to withhold its consent either at the date when application for

consent to Change in Control is made to the Agency or after that date but before the Agency's consent is given if the proposed Controller does not have sufficient:

- (a) financial standing;
- (b) organisational standing and capacity; or
- (c) reputation

for it to be reasonable for the Agency to assume that it will ensure that the Developer complies with this Agreement.

11.1.5 The application for consent to Change in Control must be accompanied by:

- (a) full written details setting out all the terms and conditions of the Change in Control reasonably necessary for the Agency to assess whether the delivery of the Scheme might be affected and/or whether the proposed Controller has sufficient financial standing, organisational standing and capacity and reputation for it to be reasonable for the Agency to assume the proposed Controller will be able to comply with this Agreement;
- (b) where the proposed Controller is an incorporated body certified copies of the proposed Controller's audited accounts for each of the two (2) financial years immediately preceding the date of the application for consent to the Change in Control, the latest audited accounts being to a date not more than ten (10) months before the date of the application insofar as available for recently incorporated bodies;
- (c) references from the proposed Controller's bankers confirming that the proposed Controller is considered good for the obligations of the Developer under this Agreement;
- (d) an undertaking from the Developer's solicitors requesting consent to Change in Control or for the proposed Controller to pay the reasonable costs, disbursements and any VAT on them which may properly be incurred by the Agency in:
 - i considering the application (whether or not consent is granted); and
 - ii granting consent (if it is granted).

11.1.6 If at any time before the proposed Change in Control has been effected any of the reasons for withholding consent specified in clause 11.1.3 apply the Agency may revoke its consent to such proposed Change in Control by written notice to the Developer.

11.2 **Change in financial circumstances**

11.2.1 The Developer shall notify the Agency immediately where there is or has been any change in its financial circumstances which has or might have a Material Adverse Effect, including for the avoidance of doubt access to any other funding

for the scheme [and/or any withdrawal or reduction of any Senior Lender Debt Funding];

- 11.2.2 In the event that the Agency believes that any change notified to it pursuant to clause 11.2.1 or which it otherwise becomes aware of has or might have a Material Adverse Effect, the Agency shall be entitled to exercise any of the rights and remedies set out in clause 12.

12 Events of Default

12.1 An Event of Default occurs where:

- 12.1.1 a Milestone Failure occurs or is in the opinion of the Agency likely to occur (having regard to the information supplied pursuant to clause 10.3.2) and such Milestone Failure is not the direct result of a Milestone Extension Event;
- 12.1.2 the Developer fails to perform and/or observe any obligation or restriction on it under any Finance Document or Scheme Project Document;
- 12.1.3 any representation or warranty or covenant made by the Developer pursuant to clause 3 is incorrect in any material respect when made or repeated;
- 12.1.4 the Developer:
- (a) fails to comply with any undertaking or covenant set out in this Agreement; or
 - (b) is subject to any Insolvency Event and/or ceases trading;
- 12.1.5 an event or circumstance occurs in relation to the Developer that might in the opinion of the Agency have a Material Adverse Effect;
- 12.1.6 the Legal Charge is not or ceases to be effective or to have the priority expressed in it or is alleged by any person (other than the Agency) to be ineffective or not to have such priority for any reason;
- 12.1.7 any Consent is withdrawn or revoked, where such withdrawal or revocation is likely to have a Material Adverse Effect;
- 12.1.8 the Developer or where applicable any subcontractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- 12.1.9 cross defaults:
- (a) any Financial Indebtedness of the Developer is not paid when due nor within any originally applicable grace period;
 - (b) any Financial Indebtedness of the Developer is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described);

- (c) any commitment for any Financial Indebtedness of the Developer is cancelled or suspended by a creditor of the Developer as a result of an event of default (however described); or
 - (d) any creditor of the Developer becomes entitled to declare any Financial Indebtedness of the Developer due and payable prior to its specified maturity as a result of an event of default (however described)
 - (e) there is a default under any of the Finance Documents such that delivery of the Scheme in the opinion of the Agency is unlikely to be achieved;
- 12.1.10 there is any Change in Control of the Developer without the prior consent of the Agency given in accordance with clause 11;
- 12.1.11 the Developer fails to pay any sum due under a Finance Document on the due date for payment thereof provided that if the Agency is satisfied that such failure to pay any amount due hereunder is due solely to technical delays in the transmission of funds and such amount is paid within two (2) Business Days, this paragraph shall not apply;
- 12.1.12 the Agency in its absolute discretion considers that the Developer or any Contractor does not have sufficient funds or resources available to them to complete the Works and Scheme in accordance with the Scheme Details;
- 12.1.13 the Developer is convicted of dishonesty;
- 12.1.14 any adverse finding arises from any audit conducted to assess compliance with the EU Procurement Requirements; or
- 12.1.15 any Scheme Project Document is terminated without the prior consent of the Agency;
- 12.2 Where an Event of Default has occurred the Agency may by notice to the Developer:
- 12.2.1 require the Developer to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to the Agency within five (5) Business Days of such request for approval; and/or
 - 12.2.2 suspend or alter the timing of the payment of Funding for such period as the Agency will determine in its sole discretion; and/or
 - 12.2.3 reduce the Total Commitment; and/or
 - 12.2.4 require the Developer to immediately repay the Funding; and/or
 - 12.2.5 enforce the Legal Charge in its sole discretion; and/or
 - 12.2.6 terminate this Agreement in which case the Agency will have no obligation to provide any further Funding and will be entitled to require the Developer to immediately repay Funding (together with accrued interest and any other amounts outstanding under this Agreement).

- 12.3 In relation to the exercise by the Agency of its rights under clause 12.2:
- 12.3.1 the exercise by the Agency of its rights under clause 12.2.1 will be without prejudice to any other right of action or remedy of the Agency (including any claim for damage) in respect of the Event of Default;
- 12.3.2 [such action will be subject to the Intercreditor Deed]; and
- 12.3.3 if in the sole opinion of the Agency, the Event of Default capable of remedy, the Developer will, after notice from the Agency, remedy the Event of Default to the Agency's satisfaction within such period as the Agency will determine and following such remedy to the Agency's satisfaction the Agency will not continue such suspension.

13 Public relations and publicity

13.1 Save as otherwise set out in this clause 13, the Developer shall not and shall procure that no Contractor, officer, employee or agent shall communicate with any representative of any press, television, radio or other communications media on any matter concerning this Agreement without the Agency's prior written consent (not to be unreasonably delayed).

13.2 The Developer shall:

- 13.2.1 notify the Agency's Press Office and Communications Team (from time to time) in advance of any publicity plan, event or communication which it proposes to implement, hold or issue;
- 13.2.2 ensure that pro-active positive press releases issued in respect of the Scheme acknowledge in the body of their text the fact and amount of the Agency's contribution to the Scheme;
- 13.2.3 ensure that the following wording (or such other wording as the Agency may require from time to time) is included within all press releases in respect of the Scheme in the section entitled "Notes to Editors":

[The Agency's role is to create opportunities for people to live in high quality, sustainable places. The Agency provides funding for affordable housing, bringing land back into productive use and improving quality of life by raising standards for the physical and social environment.]

- 13.2.4 not produce any publication touching or concerning the Works, the Agreement (or the performance of it by either party) without the prior written approval of the Agency save where such publication is in the overwhelming public interest (and in any event without first consulting the Agency and allowing the Agency to make representations on such proposed disclosure);
- 13.2.5 comply with such requirements as to Site signage as the Agency may notify to it from time to time; and
- 13.2.6 ensure that any publicity material prepared in relation to the Scheme includes the logo of the Agency and/or the logo of any other organisation advised from time to time by the Agency.

- 13.3 The Developer grants to the Agency a non-exclusive, royalty free licence to use any photographs, records, images, articles or illustrations relating to the Scheme undertaken by or for the Developer for use in any publicity or advertising, whether published alone or in conjunction with any other person.
- 13.4 During the term of this Agreement, the Agency grants the Developer a non-exclusive licence to use the Agency's logo only for the purposes of the Scheme. The Developer will not grant sub licences of this licence or any part of it or use such logo for any other purposes save where approved in advance by the Agency.
- 13.5 The Developer acknowledges that the Agency's logo is owned by and will remain the property of the Agency.

14 **Reputation of the parties**

- 14.1 The Developer will not, and will use all reasonable endeavours to procure that its suppliers and Contractors will not, knowingly do or omit to anything in relation to the Finance Documents, the Scheme or in the course of their other activities that may bring the standing of the Agency into disrepute or attract adverse publicity for the Agency.
- 14.2 No party will publish any statement, orally or in writing, relating to the other party which might damage that other party's reputation or that of any of its officers or employees.
- 14.3 The Developer is not, nor has at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.4 No Associated Person of the Developer has bribed another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business of the Developer, and the Developer has in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent its Associated Persons from undertaking any such conduct.
- 14.5 The Developer has not been the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, enquiry or proceedings are pending or to the best of the Developer's knowledge and belief having made all due enquiry have been threatened which, if adversely determined, might be expected to have a Material Adverse Effect and there are no circumstances likely to give rise to any such investigation, enquiry or proceedings.
- 14.6 The Developer is not ineligible to be awarded any contract or business under section 23 of the Public Contracts Regulations 2006 (SI 2006/5) or section 26 of the Utilities Contracts Regulations 2006 (SI 2006/6) (each as amended).
- 14.7 The Developer will not engage (directly or indirectly) in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.8 The Developer will maintain in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent any Associated Person of the Developer from bribing another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an

advantage in the conduct of the business for the Developer. The Developer shall supply to the Agency, promptly on request of the Agency, copies of such documentation or other evidence as is reasonably requested by the Agency to enable the Agency to satisfy itself that such procedures are in place.

14.9 The Developer shall supply to the Agency, promptly on becoming aware of them, details of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence or alleged offence under the Bribery Act 2010 against it or the Developer.

15 **Confidentiality and freedom of information**

15.1 **Confidentiality**

15.1.1 Each party recognises that under the Finance Documents it may receive Confidential Information belonging to the other.

15.1.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under the relevant Finance Document.

15.1.3 The obligations of confidence referred to in clause 15.1 will not apply to any Confidential Information which:

- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of a Finance Document or of any other duty of confidentiality relating to that information; or
- (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
- (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
- (d) is independently developed without access to the Confidential Information of the other party.

15.1.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:

- (a) to enable the disclosing party to perform its obligations under any Finance Document or Scheme Project Document; or
- (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIR and the Developer acknowledges that any lists or Schedules provided by it

outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such confidential information; or

- (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
- (d) in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential; or
- (e) to meet reasonable information requests from the Senior Lender (or the Senior Lender's professional advisers or insurance advisers) to the extent that such disclosure is necessary to the performance of this Agreement.

15.1.5 The Developer will ensure that all Confidential Information obtained from the Agency under or in connection with any Finance Document:

- (a) is given only to such of its employees, professional advisors, Contractors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of the Finance Document and only to the extent necessary for the performance of that Finance Document;
- (b) is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors, Contractors or consultants otherwise than for the purposes of that Finance Document;
- (c) where it is considered necessary in the opinion of the Agency the Developer will ensure that such staff, professional advisors, Contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

15.1.6 Nothing in this clause 15.1 shall prevent the Agency:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of the Agency's accounts; or
 - ii any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or
- (b) disclosing any Confidential Information obtained from the Developer:
 - i to any other department, office or agency of the Crown; or
 - ii to any person engaged in providing any services to the Agency for any purpose relating to or ancillary to a Finance Document or any person conducting an Office of Government Commerce gateway review;

- (c) provided that in disclosing information under clauses 15.1.6(b)i or 14.1.6(b)ii the Agency discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15.1.7 Nothing in this clause 15.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of the Finance Documents in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

15.2 Freedom of information

15.2.1 The Developer acknowledges that the Agency is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.

15.2.2 The Agency shall be responsible for determining in its absolute discretion whether:

- (a) any Information is Exempted Information or remains Exempted Information; or
- (b) any Information is to be disclosed in response to a Request for Information

and in no event shall the Developer respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency unless otherwise expressly authorised to do so by the Agency.

15.2.3 Subject to clause 15.2.4 below, the Developer acknowledges that the Agency may be obliged under the FOIA or the EIR to disclose Information:

- (a) without consulting the Developer ; or
- (b) following consultation with the Developer and having taken (or not taken, as the case may be) its views into account.

15.2.4 Without in any way limiting clauses 15.2.2 and 15.2.3, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Developer .

15.2.5 The Developer will assist and co-operate with the Agency as requested by the Agency to enable the Agency to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, Contractors and sub-contractors will), at their own cost:

- (a) transfer any Request for Information received by the Developer to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
- (b) provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;
- (c) provide the Agency with any data or information in its possession or power in the form that the Agency requires within five (5) Business Days (or such other period as the Agency may specify) of the Agency requesting that Information; and
- (d) permit the Agency to inspect any records as requested from time to time.

15.2.6 Nothing in this Agreement will prevent the Agency from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and / or the EIR in relation to any Exempted Information.

15.2.7 To the extent that the Developer becomes a FOIA Authority subject to the FOIA and the EIR during the course of this Agreement this clause will apply mutatis mutandis to both parties.

15.2.8 The obligations in this clause 15.2 will survive the expiry or termination of the Finance Documents for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of a Finance Document or of any other duty of confidentiality relating to that information.

15.3 **Publication of information before Parliament**

The Developer acknowledges that the National Audit Office has the right to publish details of the Finance Documents in its relevant reports to Parliament.

16 **Data protection**

16.1 **Cooperation**

The parties will co-operate with one another in order to enable each party to fulfil its statutory obligations under the DPA.

16.2 **Registrations, notifications and consents**

Without prejudice to the generality of clause 15.1, the Developer warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the DPA to Process Personal Data for the purposes of performing its obligations under this Agreement. The Developer undertakes at all times during the term of this Agreement to comply with the DPA in processing all Personal Data in connection

with this Agreement and shall not perform its obligations under this Agreement in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.

16.3 **Security of Agency Personal Data**

16.3.1 To the extent that it and/or any of its employees or agents receives, has access to and/or is required to Process Agency Personal Data, the Developer will (and will procure that any recipient of Agency Personal Data disclosed by it will) act as a Data Processor and will comply with the DPA including the Data Protection Principles set out in Schedule 1 of the DPA.

16.3.2 The Developer will at all times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to Agency Personal Data and any person it authorises to have access to any Agency Personal Data will respect and maintain the confidentiality and security of Agency Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Agency, when procuring delivery of the Works and/or accessing the Agency's manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected.

16.4 **Processing of Agency Personal Data**

16.4.1 The Developer will only Process Agency Personal Data for and on behalf of the Agency for the purpose of procuring delivery of the Works in accordance with this Agreement and only on written instructions from the Agency to ensure compliance with the DPA.

16.4.2 The Developer will not disclose or transfer any Agency Personal Data to any third party without the prior written consent of the Agency save that the Developer will be entitled to disclose Agency Personal Data to employees and third parties where such disclosure is necessary for the Developer to deliver the Works or required under a court order.

16.4.3 The Developer shall:

- (a) take reasonable steps to ensure the reliability of any Developer personnel who have access to the Personal Data;
- (b) ensure that all Developer personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 16;
- (c) ensure that none of Developer personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Agency;

- (d) provide a written description of the technical and organisational methods employed by the Developer for processing Personal Data (within the timescales required by the Agency); and
- (e) not Process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:
 - i the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - ii any reasonable instructions notified to it by the Agency.

16.5 Access requests

16.5.1 The Developer will use all reasonable efforts to assist the Agency to comply with the DPA and subject access requests from Data Subjects under section 7 of the DPA and will:

- (a) provide the Agency with such assistance and access to all Personal Data stored or Processed in relation to the Works and/or this Agreement as may be reasonably required;
- (b) promptly inform the Agency (within five working days) on the receipt of any access request received by the Developer under section 7 of the DPA or complaint or request relating to the Agency's obligations under the DPA and not disclose or release any information (including the Agency's Personal Data) in response to the access request or complaint without first consulting with the Agency where the request relates to Agency Personal Data or the Agency's employees, agents or Contractors; and
- (c) provide the Agency with full co-operation and assistance in relation the any complaint made, including by:
 - i providing the Agency with full details of the complaint;
 - ii providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and
 - iii providing the Agency with any information requested by the Agency.

16.5.2 The Developer will appoint an individual within its organisation authorised to respond to enquiries from the Agency concerning the Developer's Processing of Agency Personal Data and who will deal with all enquiries relating to Agency Personal Data promptly, including those from the Agency and the Information Commissioner and who will assist in ensuring compliance with the rights of Data Subjects under the DPA relating to Agency Personal Data and in the defence or management of any enforcement action or assessment by the

Information Commissioner or any other competent authority in relation to Agency Personal Data.

16.6 **Agency Personal Data – general obligations**

- 16.6.1 The Developer undertakes to procure that any Contractor appointed by it having access to Agency Personal Data complies with equivalent obligations which are no less onerous than those contained in clauses 15.1 to 15.7 inclusive.
- 16.6.2 The Developer will allow the Agency to audit the Developer's compliance with this clause on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Developer's compliance with this clause 16.
- 16.6.3 The Developer agrees to indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection with any claims and proceedings by the Agency as a result of its Processing of Agency Personal Data or any breach of or other failure to comply with the obligations of the DPA and/or this clause by the Developer, its employees, agents or Contractors.

16.7 **Personal Data**

- 16.7.1 The Developer acknowledges that the Agency will use the Developer's Personal Data in connection with exercising its rights and performing its obligations under the Finance Documents and for all purposes connected with exercising its rights and discharging its obligations as the national housing and regeneration agency. The Developer acknowledges that such use may include disclosing such Personal Data to government departments and other public authorities both within the UK and within the European Economic Area.
- 16.7.2 The Developer warrants and undertakes that in relation to its Personal Data it has the explicit consent of every Data Subject (or other lawful authorisation) to disclose such data to the Agency for the Agency to use such Personal Data in accordance with clause 16.7.1.

17 **Intellectual property**

- 17.1 Subject to the provisions of this clause 17 the Developer hereby grants to the Agency a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy, use (from computer disk or otherwise) and to make publicly available all and any Intellectual Property Rights, drawings, reports, specifications, calculations and other documents and information provided by the Developer or which are or become owned by the Developer and which relate to the Scheme, for any purpose either relating to this Agreement or to the dissemination by the Agency of Best Practice.
- 17.2 To the extent that any of the data, materials and documents referred to in clause 17.1 are generated by or maintained on a computer or in any other machine readable format, the Developer shall if requested by the Agency procure for the benefit of the Agency at the cost of the Developer the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to enable the Agency making such request to access and otherwise use such data for the purposes referred to in clause 17.1.

- 17.3 No party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 17.4 The Developer shall fully indemnify the Agency within five (5) Business Days of demand under this clause 16.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this clause 17, any breach by the Developer of this clause 16 and against all costs and damages of any kind which the Agency may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 17.5 The Developer shall only be entitled to revoke the licence granted to the Agency under clause 17.1 on the termination of the whole of this Agreement.
- 17.6 The Developer shall provide whatever assistance and explanation is required by the Agency to enable it to disseminate Best Practice (including the methods by which the Works were conducted).
- 17.7 The Agency's decision as to what constitutes Best Practice shall be final (and the Agency acknowledges that it does not intend to use this clause 17.7 to make commercially sensitive information publicly available).
- 17.8 The Agency shall be entitled to amend any of the Intellectual Property Rights or information provided under clause 17.1 or to combine them with any other information or know how as it thinks fit when compiling and publishing Best Practice in exercise of the right conferred under clause 17.1.

18 **Further assurance**

At any time upon the written request of the Agency the Developer will promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Agency the full benefit of this Agreement or any other Finance Document and of the rights and powers therein granted and the Developer hereby appoints the Agency as its attorney solely for that purpose.

19 **Indemnity**

The Developer shall:

- 19.1 be liable for and will indemnify the Agency in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Agency or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Developer and/or the performance or non performance or delay in performance by the Developer of its obligations under any of the Finance Documents except to the extent that the same is due to any act or neglect of the Agency; and
- 19.2 be liable for and shall indemnify the Agency against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connect with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Developer.

20 **Senior Officers**

20.1 **Authority of the Developer Senior Officer**

The Developer represents to the Agency that the Developer Senior Officer has full authority to act on its behalf for all purposes under the Finance Documents. The Agency and the Agency Senior Officer are entitled to treat any act of the Developer Senior Officer in connection with the Finance Documents as being expressly authorised by the Developer (save where the Developer has notified the Agency that such authority has been revoked) and the Agency will not be required to determine whether any express authority has in fact been given.

20.2 **Developer Senior Officer's power to delegate**

The Developer Senior Officer may authorise any of its subordinates to exercise its powers under the Finance Documents by notice to the Agency.

20.3 **Authority of Agency Senior Officer**

The Agency represents to the Developer that the Agency Senior Officer has full authority to act on its behalf for all purposes under the Finance Documents. The Developer is entitled to treat any act of the Agency Senior Officer in connection with the Finance Documents as being expressly authorised by the Agency (save where the Agency has notified the Developer that such authority has been revoked) and the Developer will not be required to determine whether any express authority has in fact been given.

20.4 **Agency Senior Officer's power to delegate**

The Agency Senior Officer may authorise any of its subordinates to exercise any of its powers under any Finance Document by notice to the Developer.

20.5 **Notices**

Subject to clause 29, any notice, information, instructions or public communication given in writing to the Agency Senior Officer or the Developer Senior Officer will be deemed to have been given to their respective appointing party.

21 **No agency, partnership or employment**

21.1 Nothing in this Agreement or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties for any purpose whatsoever.

21.2 The Developer shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Agency and the Developer. Neither the Developer nor any of its respective employees shall at any time hold itself or themselves out to be an employee of the Agency.

21.3 The Developer will not say or do anything which may pledge the credit of or otherwise bind the Agency or that may lead any other person to believe that the Developer is acting as the Agency.

22 **Assignment and sub contracting**

22.1 Save in the case of statutory transfers and subject to clause 22.2, the Agency may not assign, transfer or novate its rights and/or obligations under this Agreement to any other party without the Developer's consent (such consent not to be unreasonably withheld).

22.2 Notwithstanding clause 22.1, the Agency may assign, transfer or novate its rights and/or obligations under this Agreement to any financial institution without the consent of the Developer if such assignment, transfer or novation would not cause the Developer to incur additional costs or expenses in connection with the Facilities.

22.3 The Agency acknowledges and agrees that the Developer is entitled to assign all or any rights or remedies under this Agreement but only:

22.3.1 [to any bank or building society providing finance pursuant to the Senior Finance Documents]; or

22.3.2 as otherwise agreed by the Agency;

provided that in exercising or declining to exercise its power under clause 22.3.2 the Agency will be entitled to act in its absolute discretion including with regard to any requirement that the proposed assignee provide as a precondition of such proposed assignment such form of performance bond or guarantee as the Agency may require having regard to the nature of the obligations to be undertaken by the proposed assignee and the general duty of the Agency to safeguard the application of public monies.

23 **Value Added Tax**

23.1 The parties understand and agree that the Funding by the Agency under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Developer or otherwise.

23.2 If, notwithstanding the agreement and understanding of the parties as set out in clause 23.1 above, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

23.3 All sums or other consideration payable to or provided by the Developer to the Agency at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Developer will pay to the Agency all the VAT payable upon the receipt of a valid VAT invoice.

24 **Construction industry scheme**

24.1 Not later than 21 Business Days before:

24.1.1 the date on which the first payment of Funding is due; or

24.1.2 where Regulation 6(4) of the Income Tax (Construction Industry Scheme) Regulations 2005 does not apply, the date on which any further payment of Funding is due

the Developer will provide the Agency with its unique taxpayer reference and any other information which the Agency may be required to give to HMRC in order to verify the Developer's tax status.

24.2 The Agency will verify the Developer's tax status with HMRC in accordance with the FA Legislation and shall notify the Developer in writing at least 10 Business Days before the date on which the first payment of Funding is due to be made if it intends to make any Statutory Deduction and at what rate.

24.3 The Agency shall be entitled to make such Statutory Deductions from any payment of Funding as it is required to make in accordance with the FA Legislation, at such rate as may be in force from time to time.

24.4 Where any error or omission has occurred in calculating or making the Statutory Deduction then:

24.4.1 in the case of an over-deduction, the Agency will correct that error by repayment of the sum over deducted to the Developer; and

24.4.2 in the case of an under-deduction, the Developer shall correct that error or omission by repayment of the sum under deducted to the Agency.

24.5 If compliance with the provisions of this clause 24 involves either the Agency or the Developer in not complying with any other term of this Agreement then the provisions of this clause 24 will take precedence.

25 **No fettering of discretion/statutory powers**

Nothing contained in or carried out pursuant to any Finance Document and no consents given by the Agency or the Developer will unlawfully prejudice the Agency's or the Developer's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

26 **Fees and Expenses**

26.1 **Costs**

Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Agreement, and all documents ancillary to it.

26.2 **Variations and Enforcement Costs**

The Developer shall, forthwith on demand, pay to the Agency the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

26.2.1 in connection with the variation or amendment of, or enforcement or preservation of any rights under, any Finance Document; or

26.2.2 in investigating any Event of Default which has occurred.

27 **Agency undertakings**

The Agency undertakes to take all reasonable steps, including execution of any required documents, to release a Dwelling from the Legal Charge:

- 27.1 if it is being disposed of by way of a Permitted Disposal; and/or
- 27.2 if a voluntary prepayment has been made pursuant to clause 7.2; and in each case
- 27.3 no Event of Default has occurred or is continuing

in a timely manner, and in any event within 21 days upon receipt of a written request from the Developer (annexing all information required to enable confirmation that the disposal is a Permitted Disposal or otherwise connected with a prepayment and including a confirmation that no event of default has occurred or is continuing).

28 **Co-operation**

28.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Scheme and in particular will (subject to clause 28.2):

28.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other party;

28.1.2 not interfere with the rights of any other party (nor its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent any other party (nor its employees, agents, representatives, contractors or subcontractors) from performing those obligations provided that this provision shall not prevent any party from exercising its express rights under this Agreement.

28.2 Nothing in clause 28.1 shall:

28.2.1 interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in connection with the Scheme in the manner in which it considers to be the most effective and efficient; or

28.2.2 relieve a party from any obligation contained in this Agreement.

28.3 The Developer shall co-operate fully and in a timely manner with any reasonable request from time to time:

28.3.1 of any auditor (whether internal or external) of the Agency to provide documents, or to procure the provision of documents, relating to the Scheme, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or

28.3.2 of the Agency where the Agency is required under any legislation to provide any document relating to the Scheme to any person.

29 **Notices**

29.1 Any notice to be given hereunder shall be in writing addressed to the Agency Senior Officer and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of any party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

29.2 Any notice shall be deemed to be given by the sender and received by the recipient:

29.2.1 if delivered by hand, when delivered to the recipient;

29.2.2 if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage;

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

30 **Rights of third parties**

Except as otherwise expressly provided no person who is not a party shall be entitled to enforce any terms of this Agreement solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

31 **Entire agreement**

31.1 This Agreement and the conditions herein contained together with the Schedules constitute the entire agreement between the parties and may only be varied or modified in accordance with clause 38.

31.2 The Developer hereby acknowledges that save as set out or referred to in the Agreement there are and have been no representations made by or on behalf of the Agency of whatsoever nature on the faith of which the Developer is entering into this Agreement.

32 **Counterparts**

This Agreement may be executed in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

33 **Severance**

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

34 **Cumulative rights and enforcement**

Any rights and remedies provided for in this Agreement whether in favour of the Agency or the Developer are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

35 **Waiver**

35.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

35.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.

35.3 Any waiver or release of any right or remedy of a party must be specifically granted in writing signed by that party and shall:

35.3.1 be confined to the specific circumstances in which it is given;

35.3.2 not affect any other enforcement of the same or any other right; and

35.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

36 **Disclaimer**

The Agency will not be liable to the other party for any advice given by a representative of the Agency. In addition, the Agency gives no assurance as to the suitability or viability of the Scheme and no endorsement of the same.

37 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

38 **Amendment**

The parties agree that this Agreement may be amended by agreement between the Agency and the Developer.

39 **No fetter on statutory functions**

Notwithstanding anything apparently or impliedly to the contrary in this Agreement or any of the deeds and documents referred to herein, in carrying out its statutory duties or functions the discretion of the Agency shall not be fettered, constrained or otherwise unlawfully affected by the terms of this Agreement or any such other deed or document.

40 **Survival of this agreement**

40.1 Insofar as any of the rights and powers of the Agency provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

40.2 Insofar as any of the obligations of the Developer provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this

Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

41 **Miscellaneous**

- 41.1 Any approval by the Agency or any person on behalf of the Agency pursuant to this Agreement of any matter submitted by the Developer for approval will not be deemed to be an acceptance by the Agency of the correctness or suitability of the contents of the subject of the approval or consent.
- 41.2 The parties will and will ensure that their respective officers and employees will act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.
- 41.3 A certificate by the Agency as to any sum payable hereunder by the Developer will be conclusive save in the case of manifest error.

In witness of which this Agreement has been duly executed as a deed and is delivered and takes effect on the date written at the beginning of this Agreement.

Schedule 1

Scheme Details

Scheme Name and Scheme Code

[to be inserted by Agency]

Scheme Information

Site Description

[Title details]

Scheme Description

[Number of Plot and/or Dwellings and unit mix etc]

Milestones and Milestone Dates:

Start Date

[]

Works Target Date

[]

[OTHER]

[]

[OTHER]

[]

Final Repayment Date

[]

Dwelling/Plot completions (number by date)

[]

Additional conditions (if any)

[]

Schedule 2

Claim Form

To: Homes and Communities Agency

From: *[insert full name of Developer]*

Date: []

Loan Agreement dated [] 2012 (the Loan Agreement)

1 We refer to the Loan Agreement. This is a Claim Form. Terms defined in the Loan Agreement have the same meaning in this Claim Form.

2 We wish to borrow Funding as follows:

2.1 Amount: [].

2.2 Date of drawdown: []

3 Payment Instructions

3.1.1 Bank name: [];

3.1.2 Bank branch/address: [];

3.1.3 Bank sort code: [];

3.1.4 Bank account number: []; and

3.1.5 Bank account name: [].

4 We confirm that each condition specified in clause 5 of the Loan Agreement required to be satisfied on the date of this Claim Form is so satisfied and we know of no reason why any condition specified in clause 5 to be satisfied on or before the date of drawdown will not be so satisfied.

5 We confirm compliance with each representation, warranty and covenant specified in the Loan Agreement.

6 We confirm that the Funding to be provided pursuant to this Claim Form will be used to meet Development Costs [as set out in the Employer's Agent certification attached].

By:

Developer Senior Officer
for and on behalf of
[insert full name of Developer]

Schedule 3
Monthly Progress Report
TO BE INSERTED

Schedule 4

Dwellings

No	Address	Other identifier
1	[•]	[•]
2	[•]	[•]
3	[•]	[•]
4	[•]	[•]
5	[•]	[•]
6	[•]	[•]

Schedule 5

Health and Safety Report

The Developer shall provide to the Agency on a quarterly basis a Health and Safety Report containing all relevant information relating to health and safety performance. As a minimum the Health and Safety Report will contain the following information:

- 1 Accident incidence rates per 100,000 workers (AIR) involved in the Works, listing by month and rolling annual frequency rate for the lifetime of the Works:
 - 1.1 accidents resulting in greater than three days lost time;
 - 1.2 major injuries;
 - 1.3 fatalities;
 - 1.4 reportable diseases;

all as defined by RIDDOR, in accordance with the formula:

$$\text{AIR} = (A/N) \times 100,000$$

where:

A = the number of accidents or incidents of the defined type during the period

N = the average number of workers on the Site during the period; and

- 1.5 reportable injuries to members of the public
- 2 A listing in respect of the Works by month, and the rolling annual rate, showing the number of:
 - 2.1 days lost due to accidents occurring on the Site or ill-health incurred by workers directly from the said works on the Site;
 - 2.2 dangerous occurrences as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time); and
 - 2.3 enforcement notices served by the regulatory authorities served by the Health & Safety Executive.
- 3 A summary in respect of the Works of:
 - 3.1 all accident investigations carried out in the relevant quarterly period;
 - 3.2 all actions taken to rectify any identified health and safety deficiencies;
 - 3.3 all initiatives to improve health and safety undertaken in the period (e.g. site inspections, tool box talks etc); and
 - 3.4 all visits by the Health & Safety Executive, the Police or the Environment Agency to the Site undertaken in the relevant quarterly period.

Signatory page

[Attestation clauses to be confirmed]

the common seal of)

HOMES AND COMMUNITIES AGENCY)

is hereunto affixed in the presence of:)

Authorised Signatory

executed as a deed by)

[DEVELOPER])

in the presence of:)

witness signature

name

address

occupation

signed by