

3-10 p.m.
Law Society
Formula B

S40(2)

Bond Pearce

17th March

2006

Agreement

for sale, purchase and development of
property at South Yard Enclave, Plymouth

The Urban Regeneration Agency ⁽¹⁾
Redrow Homes (West Country) Ltd ⁽²⁾
Redrow Homes Limited ⁽³⁾

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THIS AGREEMENT is made on

17th March

2006

BETWEEN:-

- (1) The Urban Regeneration Agency known as English Partnerships and having its principal place of business at 110 Buckingham Palace Road, London SW1 9SA and Central Business Exchange 414-428 Midsummer Boulevard, Central Milton Keynes MK9 2EA (the **Seller**); and
- (2) Redrow Homes (West Country) Limited (No 04984069) whose registered office is at Redrow House St David's Park, Flintshire CH5 3RX (the **Buyer**).
- (3) Redrow Homes Limited (No 01990710) whose registered office is at Redrow House, St David's Park, Flintshire CH5 3RX (the **Guarantor**).

IT IS AGREED as follows:-

1 Interpretation

1.1 In this Agreement:-

Act	means the Town and Country Planning Act 1990
Affordable Housing Design Criteria	means such standards as shall be required in writing by the Seller regarding the tenure and size of the Affordable Housing Units
Affordable Housing	means housing for occupation only by Qualifying Occupiers
Affordable Housing Units	means Residential Units within the Development which have been identified for use for the purposes of Affordable Housing in accordance with the terms of this Agreement
Agreed Sum	shall have the meaning ascribed to it in clause 21.3
Approved Affordable Housing Strategy	means the affordable housing strategy prepared by the Buyer and approved by the Seller in accordance with the provisions of Schedule 4
Approved Drawings	means such drawings and specifications as may from time to time be approved by the Seller under this Agreement
Approved Housing Strategy	Means the Housing Strategy approved by the Seller in accordance with clause 23 of this Agreement
Approved Phase	means a Phase approved by the Seller pursuant to Clause 5.1 and 'Approved Phases' shall be construed accordingly
Approved RSL	means the following social landlords registered as such under the Housing Act 1996:- Devon and Cornwall Housing Association Sovereign Housing Association or such other registered social landlord as shall be approved by the Housing Corporation and by the Seller

Architect	means Terence O' Rourke Limited of Richmond Point, 43 Richmond Hill, Bournemouth BH2 6LR or such other reputable and suitably qualified person, firm or company as the Buyer and/or the Building Contractor may from time to time appoint to act as architect in connection with the Buyer's Works and who shall have been approved by the Seller (such approval not to be unreasonably withheld or delayed)
Building	means any building containing more than one Residential Unit and/or (as appropriate) Non Residential Unit and 'Building' shall include the curtilage of all and any car parking areas, roads and footpaths and conduits which are used or intended to be used in common by the occupants of the Building or part of it
Building Contract	means the contract or contracts (if any) to be approved by the Seller and to be entered into by the Buyer with a Building Contractor relating to any part of the Buyer's Works
Building Contractor	means of such reputable contractor as may from time to time as may (at the Buyer's election) be appointed by the Buyer with the approval of the Seller - (such approval not to be unreasonably withheld or delayed) - in relation to any part of the Buyer's Works and failing any such appointment means the Buyer
Building Licence	means the licence set out at Schedule 10 (see also clause 7.2)
Buyer's Condition Notice	means a notice served by the Buyer under Clause 4.3.1
Buyer's Onerous Conditions	<p>means one or more conditions or limitations attached to the Planning Permission (or one or more provisions contained in a draft Planning Agreement for the Property or any part of it) which either individually or together would deter a reasonably prudent property buyer from purchasing the Property at the Purchase Price and carrying out the development permitted by the Planning Permission including (without limitation or prejudice to the generality of the foregoing) any conditions or limitations containing obligations or restrictions of any one or more of the following kinds:-</p> <p>(a) the prevention of development without the agreement or co-operation of an independent third party which cannot be obtained on terms at a cost or within a time that in any such case is reasonable in the circumstances</p> <p>(b) a requirement for the Buyer to carry out works either upon or outside the Property (other than works in respect of which the Planning Permission was sought by the New Planning Application) involving material expense to the Buyer and/or the execution of works within a timescale commercially and economically</p>

unacceptable to the Buyer (acting reasonably)

provided that a condition reflecting provisions contained in the Masterplan ,the Outline Permission, this Agreement and the Developers Brief shall not be a Buyer's Onerous Condition

Buyer's Solicitors

means S40(2) of Redrow Group Services Limited, Redrow House St David's Park, Flintshire CH5 3RX or such other solicitors as shall be appointed by the Buyer (the name and address of whom shall have been notified in writing by the Buyer to the Seller)

Buyer's Works

means as relevant to the context and in each case in accordance with the Approved Drawings and whether or not situated on the Property:

- (a) the works required to complete the Development;
- (b) the Remediation and Demolition Works; and
- (c) the works required to comply with the DE Covenants.
- (d) The provision of a system of communal satellite dishes or aerials located in discreet locations to serve a number of occupiers as approved by the Seller, such approval not to be unreasonably withheld.
- (e) The provision of adequate cycle storage for any Building, Non-Residential Unit or Residential Unit (other than any Freehold Residential Unit) as approved by the Seller (such approval not to be unreasonably withheld).

and for the avoidance of doubt excludes the Infrastructure Works and the Scheme Enhancement

Buyer's Works' Certificate

means any of the following:-

- (a) a Phase Certificate of Practical Completion;
- (b) a Phase Certificate of Completion of Making Good of Defects;
- (c) the Final Certificate of Practical Completion; or
- (d) the Final Certificate of Completion of Making Good of Defects.

Care Home

means a building comprising 42 units of Affordable Housing that will meet the needs of frail elderly people to Housing Corporation standards

CDM Health and Safety File

means the health and safety file(s) required to be prepared and maintained pursuant to the CDM Regulations

CDM Health and Safety Plan

means the health and safety plan(s) required to be prepared and maintained pursuant to the CDM

	Regulations
CDM Regulations	means the Construction (Design and Management) Regulations 1994 and the Construction (Design and Management) (Amendment) Regulations 2000 and/or any modification or replacement thereof for the time being in force
Certificate of Practical Completion	means the certificate of practical completion issued by the Supervising Officer or the NHBC or Zurich Insurance (as appropriate) in relation to the completion of an individual unit comprised within any part of a Phase
Challenge Period	means whichever of the following apply:- (a) the period of six weeks following an order or action to which section 288 of the Act applies (b) the period of three months following any other order or action of the Secretary of State or of any other competent authority (c) the period of six weeks following any order, action or decision of any court in Judicial Proceedings
Contract Rate	means 4% (four per cent) per annum above the base lending rate from time to time of Barclays Bank PLC or if such rate shall cease to be published the Law Society's interest rate from time to time in force
Council	means Plymouth City Council
DRCP	means Devonport Regeneration Community Partnership
DE Covenants	means the covenants on the part of the Seller set out in the DE Transfer and the DE Lease more particularly referred to in Clause 13
DE Transfer	means a transfer dated 8 July 2005 made between (1) the Secretary of State for Defence and (2) the Seller referred to in the register of title number DN520111
DE Lease	means a Lease which appears as entry no.1 of the Schedule of Notices of Leases in the Charges Register of title no. DN520111.
Delay Event	means the occurrence after the date of this Agreement: (a) fire storm tempest and other extreme adverse weather conditions war hostilities rebellion revolution insurrection military or usurped power civil war labour lock-outs strikes and other disputes riot commotion disorder decree of Government or non-availability of material or equipment (save if and to the extent that non-availability could have been avoided by the exercise of reasonable foresight) (b) any delay (beyond that expressly contemplated

by this Agreement) in obtaining any Necessary Consent;

- (c) any delay in obtaining or failing to obtain any Planning Agreement or Planning Permission;
- (d) any delay resulting from inspections the carrying out of works by any competent authority statutory undertaker or utility body on or in the vicinity of the Property;
- (e) any delay resulting from the destruction of or damage to the Buyer's Works and/or the Infrastructure Works;
- (f) any delay caused by any dispute arising under this Agreement;

Design Statement

means the statement set out in Schedule 12

Determination

means in relation to any Planning Application, final determination of such application, namely the decision (or deemed decision) made thereon by the Planning Authority (or under section 77 or section 79 of the Act by the Secretary of State) and:-

- (a) 3 months have expired from the making of such decision without the Buyer having exercised any right of appeal in respect of such decision under section 78 of the Act or having applied under section 73 of the Act to carry out development without compliance with one or more conditions imposed upon such decision (and where such application is made under such section 73 a decision upon such application has been made or has been deemed to have been made by the Planning Authority and no appeal has been lodged against such further decision within 3 months of such further decision); and
- (b) where a right of appeal has been exercised under section 78 of the Act or an appeal has been made against any decision on an application made under section 73 the Secretary of State's decision letter in the matter has been received by the Buyer; and
- (c) any Challenge Period with regard to any decision upon the Planning Application (including a decision upon appeal or by a Court or pursuant to any application or appeal under section 73 of the Act) has expired without Judicial Proceedings being initiated; and
- (d) all Judicial Proceedings initiated within any Challenge Period have been finally determined (meaning the later of (i) the date a court has made a decision upon those proceedings and no further appeal to a higher court has been or can be made or (ii) the date the Judicial Proceedings have been withdrawn) without remission to the Secretary of State; and
- (e) where Judicial Proceedings have finally been

determined (as above defined) and the Planning Application the subject of those proceedings has been remitted to the Secretary of State he has made a decision with regard to such matter so remitted and within the relevant Challenge Period further Judicial Proceedings have not been initiated with regard to such decision and where they have been so initiated within the relevant Challenge Period such further proceedings as are possible before the Courts and/or involving the Secretary of State have taken place so that no further such proceedings are possible

and **determined** and **finally determined** (both in the context of a Planning Application) shall be construed accordingly

Determination Date	means the date the Planning Permission has been finally determined
Development	means the development of the Property in Phases to comprise a mixed use, high quality, mixed tenure affordable housing and private housing scheme with a minimum of 463 dwellings in accordance with the Planning Permission, the Masterplan and the Development Objectives
Developer's Brief	means the brief dated October 2005 provided by the Seller to the Buyer, receipt of which is acknowledged by the Buyer and as may be varied with the consent of the parties from time to time
Development Objectives	means the objectives set out in Clause 2
Development Programme	means the programme and timings for the Buyer's Works set out in Schedule 15
ECO Homes Certificates	means the Design Stage Certificate and the Post Construction Certificate together
Environment	means:- (a) land, including, without limitation, surface land, sub-surface strata, sea bed and river bed under water and natural and man-made structures (b) water, including, without limitation, coastal and inland waters, surface waters, ground waters and water in drains and sewers (c) air, including, without limitation, air inside buildings and in other natural and man-made structures above or below ground; and (d) any and all living organisms or systems supported by those media, including, without limitations, humans
EP Standards	means the standards specified in Paragraph 4.18 of the Developer's Brief prepared by the Seller in October 2005 as accepted by the response of the Buyer in its bid for the Property
Estate Management	means a scheme to secure the long term

Scheme	stewardship and maintenance of the public realm areas and common facilities within the Property to a high standard and to address wider community responsibilities and environmental objectives in accordance with the Scheme details of which are set out in Schedule 16.
Final Certificate of Completion of Making Good of Defects	means a certificate of notice of completion of making good of defects issued under the Building Contract in relation to the Buyer's Works
Final Certificate of Practical Completion	means a statement which the Supervising Officer shall issue that in the opinion of the Supervising Officer the entirety of the Buyer's Works have been practically completed and for the purposes of this Agreement the Buyer's Works shall have been practically completed when the Buyer's Works have been completed save for:- <ul style="list-style-type: none"> (a) any minor works of an unfinished nature or works required to make good small defects which in either case would normally be the subject of a building contractor's snagging list; and/or (b) any landscaping works the completion whereof is to be postponed either in whole or in part to the next planting season following the Final Practical Completion Date
Final Completion Date	means 10 Working Days after the Final Practical Completion Date
Final Phase	means the last of the Phases to be completed
Final Practical Completion Date	means the date of the Final Certificate of Practical Completion
Freehold Residential Unit	means a Residential Unit intended to be sold by the Buyer on a freehold basis
Freehold Non-Residential Unit	means a Non-Residential Unit intended to be sold by the Buyer on a freehold basis
Ground Investigation Consultant	means Peter Brett Associates of Caversham Bridge House, Waterman Place, Reading RG1 8DN or such other reputable and suitably qualified person, firm or company as may be appointed from time to time by the Buyer or the Building Contractor and approved by the Seller (such approval not to be unreasonably withheld or delayed), as ground investigation consultant in relation to the Development
Hazardous Substance	means any natural or artificial substance capable (whether alone or in combination with any other) of causing pollution or contamination, harm or damage to property or to the Environment, including any waste
Highway Engineer	means Peter Brett Associates or such other reputable and suitably qualified person firm or company as the Buyer shall appoint from time to time and as may be approved by the Seller (such approval not to be unreasonably withheld or delayed) as highway

engineer in relation to the Buyer's Works

Housing Corporation Requirements

means such of the following as the Seller approves or as varied by the Seller:-

- (a) all statutory and regulatory requirements relating to the Approved RSL including obligations relating to without limitation the disposal of interests in land, the provision of Affordable Housing and the application of financial receipts
- (b) obligations imposed upon the Approved RSL by virtue of any agreement or other arrangement for the provision of publicly funded grant monies; and
- (c) any other requirements of the Housing Corporation in relation to the Property

Housing Strategy

means the housing strategy to be prepared by the Buyer and approved by the Seller under Clause 23 and which shall be consistent with the principles stated in Schedule 18

Implementation

commencement of development by the carrying out of a "material operation" (as defined in section 56(4) of the Town and Country Planning Act 1990 as amended) upon the Property save that the definition shall not include works of demolition, site clearance following demolition, ground investigations, site surveys, construction of boundary fencing or hoardings or archaeological investigation works or decontamination and remediation works (and **implement** and **implemented** shall be construed accordingly)

Infrastructure Land

means any part of the Property on which the Infrastructure Works will be constructed including:-

- (a) principal access roads/spine roads and associated highway works;
- (b) strategic public footpaths, bridleways/ cycle ways;
- (c) main strategic foul and surface water drainage including pumping stations and balancing ponds (if required);
- (d) strategic service company mains; and
- (e) structural landscaping and open space and public realm.

Infrastructure Works

means the works details and timings for which are set out in Schedule 9 and the timings for which are set out in the Development Programme.

Insolvent

means:-

- (a) in relation to a company it shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a proposal is made

for a voluntary arrangement or any compromise with creditors or a receiver, administrative receiver or manager is appointed over all or any of its assets or a provisional liquidator is appointed under section 135 of the Insolvency Act 1986 or it goes into liquidation either voluntary or compulsory (other than a voluntary liquidation solely for the purpose of amalgamation or reconstruction while solvent) or a proposal is made for a scheme of arrangement under section 425 of the Companies Act 1985 or it takes steps to file for a moratorium or it puts proposals to its creditors for a moratorium; and

(b) in relation to an individual an application is made for an interim order or a proposal is made for a voluntary arrangement under Part VIII of the Insolvency Act 1986 or a bankruptcy petition is presented under Part IX of the Insolvency Act 1986 or he enters into any deed of arrangement or composition with his creditors

Issued	means when the decision notice order or letter allowing the Planning Permission (or upholding or confirming the same) has been received by the Buyer; and issue and issues shall in that context be construed accordingly
Judicial Proceedings	means any application or appeal to the High Court (including subsequent appeal to the Court of Appeal and/or House of Lords) against or in respect of any order action or decision of the Planning Authority the Secretary of State or a Court
Landscape Architect	Means Terence O'Rourke or such reputable and suitably qualified person, firm or company as the Buyer or the Building Contractor may appoint from time to time and as may be approved by the Seller (such approval not to be unreasonably withheld or delayed), to act as a landscape architect in relation to the Buyer's Works
Leading Counsel	means Counsel of the Planning Bar of not less than 10 years call experienced in the conduct of planning appeals
Lifetime Homes	means shall have the meaning ascribed to it in the Developer's Brief
Loss	means in relation to any person any liability incurred by such person, any loss, injury or damages suffered by it, any damage awarded against it, any claim, demand, action or proceeding made or brought against it or any costs, expenses or disbursements incurred by it (and Losses shall be construed accordingly)
Management Company	means a management company to be incorporated by the Seller and which company's articles and memorandum of association shall comprise the agreed form of articles and memorandum annexed to this Agreement at Appendix 1
Management Lease	means the Lease in the form attached at Schedule

Market Hall	Is the building shown marked as such on the plan on page 6 of REDROW Stage 2 Developer Response non financial submission to the Seller
Market Housing Units	means Residential Units within the Development which are not Affordable Housing Units
Masterplan	means the Matrix masterplan for the Property which complies with the Development Objectives and which has been approved by the Seller and is attached at Appendix 2
Mechanical and Electrical Engineer	means such reputable and suitably qualified person, firm or company as the Buyer or the Building Contractor shall appoint from time to time and as may be approved by the Seller (such approval not to be unreasonably withheld or delayed), as mechanical and electrical engineer in relation to the Buyer's Works
Minimum Energy Standard	means BREEAM ECO Homes Excellent or equivalent BREEAM Excellent for commercial property prevailing as at the date of the Developer's Brief
Necessary Consents	means any planning consent and all other consents, licences, permissions, authorisations and approvals issued under the Statutory Requirements which shall be necessary for the carrying out and completion of the Buyer's Works (where the expression Necessary Consents is used in the context of carrying out the Buyer's Works)
Non-Residential Units	means any buildings and structures erected on any of the Phases of the Development that are not Residential Units
Onerous Conditions	means one or more conditions or limitations attached to the Planning Permission which are either Buyer's Onerous Conditions or Seller's Onerous Conditions or both
Outline Planning Permission	means the resolution to grant outline planning permission subject to completion of a Planning Agreement referred to in the planning committee minutes dated 4 th January 2006 and any subsequent grant of outline planning permission in that form
Overage	means as set out in Schedule 5
Overriding Interests	means all unregistered interests which in accordance with the Land Registration Act 2002 will override the disposition of the Property pursuant to this Agreement
Phase	means any area of the Property within Clause 6 on which the Buyer is to carry out a designated part of the Buyer's Works and which is capable of independent use, occupation and certification as recognised in this Agreement
Phase Certificate of Completion of Making	means a certificate or notice of completion of making good of defects issued under the Building Contract in

Good of Defects	relation to any Relevant Works in respect of any Phase
Phase Certificate of Practical Completion	means any certificate or statement of practical completion issued under the Building Contract in relation to any Relevant Works in respect of any Phase
Phase Completion Date	means the date 15 Working Days after the Phase Practical Completion Date
Phase Plans	means plans in Schedule 11 showing the extent of each Phase
Phase Practical Completion Date	means the date of a Phase Certificate of Practical Completion in respect of a relevant Phase
Planning Agreement	means an Agreement in respect of or affecting the Property (whether or not also affecting other Property) pursuant to S106 of the Act and/or the Local Government (Miscellaneous Provisions) Act 1982 s.33 and/or the Local Government Act 1972 s.11 and/or The Highways Act 1980 s.38 and/or s.278 and/or The Water Industry Act 1991 s.104 or any provision to similar intent or an agreement with a water undertaker or a drainage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991) or other appropriate authority as to water supply or drainage of surface and/or foul water from the property or an agreement with any competent authority or body relating to other service and/or a planning obligation (whether entered into by agreement or otherwise) in respect of or affecting the property (whether or not also affecting other property pursuant to s.106 of the Act).
Planning Application	means an application for planning permission and/or approval of reserved matters and/or listed building consent made to the Planning Authority by the Buyer in the name of the Buyer (pursuant to, and in accordance with, the Masterplan) and in a form approved by the Seller
Planning Authority	means the local planning authority for the time being for the area in which the Property is situated
Reserved Matters Planning Permission	means the approval of reserved matters pursuant to the Outline Planning Permission
Planning Permission	any permissions granted under Town and Country Planning Act 1990 or Town and Country Planning (Listed Buildings) Act 1990
Planning Supervisor	means such reputable and suitably qualified person, firm company as may from time to time be appointed by the Buyer or the Building Contractor and as may be approved by the Seller (such approval not to be unreasonably withheld or delayed), as planning supervisor in relation to the Buyer's Works

Plans	means the plans contained in Schedule 11
Post Construction Certificate	means a final certificate to be issued by a company or assessor authorised for that purpose by the Building Research Establishment in respect of each Residential Unit confirming that the terms of the relevant Design Stage Certificate relating to that Residential Unit have been complied with
Private Purchaser	any person (whether an individual group of individuals company club association charity trust or partnership) purchasing a Residential Unit or Non-Residential Unit
Professional Team	means the Architect, the Ground Investigation Consultant, the Landscape Architect, the Mechanical and Electrical Engineer, the Planning Supervisor, the Structural Engineer the Supervising Officer Highway Engineer, Town Planner and the Urban Designer.
Property	means the property described in Schedule 1
Public Realm Strategy	means a specification for the use of agreed materials in the laying out of the public realm (including green spaces and urban squares) to include detail of their location within every Phase at the Property in a form which accords with the principles stated in Schedule 19 and is approved by the Seller
Purchase Price	means £6,676,369.00 (Six million six hundred and seventy six thousand three hundred and sixty nine pounds) exclusive of VAT
Qualifying Occupiers	means persons whose incomes are insufficient to enable them to afford adequate housing locally on the open market and in the event of there being in place any eligibility criteria for the occupation of affordable housing issued by the Council persons who at the date of their first occupation of the Affordable Housing Units satisfy such criteria or are listed on any housing list that may be issued by the Council
Relevant Works	means in relation to any Buyer's Works' Certificate either:- <ul style="list-style-type: none"> (a) the whole of the Buyer's Works where the Buyer's Works Certificate relates to the whole of the Buyer's Works or (b) that part of the Buyer's Works that relate to any Phase where that Buyer's Works Certificate relates to a Phase only of the Buyer's Works.
Remediation and Demolition Works	means that part of the Buyer's Works comprising demolishing and clearing the Property and carrying out any remediation works, details and timings which are set out in Schedule 9 and the Development Programme
Reports	Means: <ul style="list-style-type: none"> (1) HMNB Devonport combined phase one and

two Land Quality Assessment Report South Yard Enclave Area and Heritage sites Project no 12243 final LQA Report Carl Bro Group Ltd June 2004

(2) WYGE Type 3 Asbestos Survey Report at Stores Enclave Devonport Plymouth for English Partnerships White Young Green Environmental December 2005

(3) Devonport Stores Enclave Geographical Survey S40(2) June 2004

In relation to which the Seller is to procure duty of care warranties in favour of the Buyer pursuant to Clause 33.4

Residential Units

means all buildings and structures erected on any of the Phases of the Development to be used for residential purposes including (where the context permits) both Affordable Housing Units and Market Housing Units

Satisfactory Planning Permission Date

means the date there is agreed or determined or deemed to be a Satisfactory Planning Permission in accordance with the provisions of Clause 4

Satisfactory Planning Permission

means Planning Permission which is agreed or determined or deemed in accordance with the provisions of Clause 4 not to be subject to Onerous Conditions

Scheme Enhancement

means the enhanced external works and public realm or such other works as may be agreed by the parties under the provisions of clause 20.

Secretary of State

means the minister or authority for the time being having or entitled to exercise the powers of "the Secretary of State" referred to in sections 77 and 79 of the Act and where the context so requires shall include a person appointed by the said Secretary of State to determine an appeal or application instead of him

Seller's Condition Notice

means a notice served by the Seller under Clause 4.3.2

Seller's Onerous Conditions

means one or more conditions or limitations attached to the Planning Permission (or one or more provisions) containing obligations or restrictions of any one or more of the following kinds:-

- (a) a restriction which could not reasonably have been anticipated
- (b) which will or may materially adversely affect any adjoining or neighbouring land owned and/or occupied by the Seller; and
- (c) is inconsistent with the Development Objectives

Seller's Solicitors

means Bond Pearce LLP, Bristol Bridge House, Redcliff Street, Bristol BS1 6BJ (Ref: IHD1/TKB1/

347560.4)

Standard Conditions	means the Standard Commercial Property Conditions (Second Edition)
Statutory Requirements	means the requirements from time to time in force by any Act of Parliament or instrument, rule or order made thereunder or of any regulation or bye-law of any local authority or statutory undertaker or supply authority
Stakeholder Engagement Strategy	means the process of public consultation and engagement referred to in Schedule 20 required under Clauses 3.2.4 and 4.1.2 to be prepared by the Buyer for the approval of the Seller
Structural Engineer	means Peter Brett Associates or such other reputable and suitably qualified person, firm or company as the Buyer or the Building Contractor shall appoint and as may be approved by the Seller, from time to time, as structural engineer in relation to the Buyer's Works
Supervising Officer	means such reputable and suitably qualified person, firm or company as the Buyer may appoint and as may be approved by the Seller (such as reasonably withheld or delayed), from time to time, to carry out the duties of the employer's agent/contract administrator/architect (as appropriate) pursuant to the Building Contract in relation to the Buyer's Works
Sustainable Communities Plan	shall have the meaning ascribed to it in paragraph 4.17 of the Developer's Brief as supplemented by paragraph 2.5 of the Developer's Brief
Termination Notice	means a notice in writing given by the Seller under Clause 29
Transfer	means a Transfer between the Seller and the Buyer or between the Seller and a Private Purchaser substantially in the form of one of the transfers in Schedule 3
Urban Codes	means the layout highway and other design standards which will apply to this development which the Buyer will produce for the approval of English Partnerships and the local authority
Urban Designer	means Terence O'Rourke Limited of Richmond Point 43 Richmond Bournemouth BH2 6LR or such other reputable and suitably qualified person, firm or company as the Buyer or the Building Contractor shall appoint and as may be approved by the Seller from time to time as urban designer in relation to the Buyer's Works.
VAT	means Value Added Tax or any equivalent tax or duty which may be imposed in substitution therefore or in addition thereto at the rate applicable from time to time
Warranty Agreements	means such warranties that the Buyer is able to procure in favour of the Seller from any Building Contractor (if appropriate) and the Professional

Team having regard to the requirements of the professional insurers of any Building Contractor (if appropriate) and each member of the Professional Team respectively

Working Day

means any day excepting a day which is a Good Friday, Saturday, Sunday or statutory holiday in England

1.2 In interpreting this Agreement:-

1.2.1 where the context so admits, words importing the singular number include the plural number and vice versa, words importing one gender include all genders and references to a **person** are deemed to include any individual, firm, unincorporated association or body corporate;

1.2.2 any reference to any statute or order or to any provision of the same are construed as including reference to any statutory modification or re-enactment thereof and to any relevant regulations or Statutory Instruments made under any statute or in connection therewith and from time to time in force;

1.2.3 where the context so admits the expressions **Seller** and **Buyer** and **Guarantor** are deemed to include their respective successors in title and assigns and if at any time the Seller or the Buyer shall consist of more than one person any obligations which they undertake shall be enforceable against them all jointly or against each individually;

1.2.4 references to Clauses or Schedules unless otherwise specified mean the Clauses of or the Schedules to this Agreement and headings to Clauses and Schedules are disregarded in interpreting this Agreement;

1.2.5 the Schedules form part of this Agreement and are to be interpreted or construed as though they were set out in this Agreement;

1.2.6 this Agreement is deemed to incorporate the Standard Conditions with such amendments (including the use of capital letters) as are necessary to make the Standard Conditions referable to this Agreement. If there is any conflict between the Standard Conditions and the express provisions of this Agreement, this Agreement prevails.

2 Development objectives

2.1 The Buyer acknowledges that the Seller has entered into this Agreement with the object of constructing upon the Property the Development with good long term management and stewardship such as will maintain the quality of life for residents while addressing objectives in the Sustainable Communities Plan.

2.2 The Buyer will procure that in carrying out its obligations under this Agreement the following specific objectives will be met:-

2.2.1 the Development will be completed as quickly as possible in accordance with the Planning Permission the Masterplan the Urban Codes and in accordance with the Development Programme;

2.2.2 the Developers Brief and the Affordable Housing Strategy the Approved Housing Strategy and the Design Statement will be complied with;

2.3 It is the intention of the Parties that a freehold interest in each completed Building Freehold Residential Unit or Freehold Non-Residential Unit of the Property will be conveyed pursuant to this Agreement by the Seller to the Buyer or the Private Purchaser following each Certificate of Practical Completion subject to the estate management covenants and a rent charge in favour of a management company and a corresponding restriction in the register of the Buyer's title.

- 2.4 On entering into this Agreement the Seller will grant and the Buyer will accept a lease of the Property in the form set out in Schedule 14

3 Masterplan and Urban Codes and Public Realm

3.1 Commencement

- 3.1.1 From the date of this Agreement the Buyer will begin the preparation of any variation to the Masterplan in accordance with the obligations in Clause 3.2
- 3.1.2 From the date of this Agreement the Buyer will prepare the Urban Codes in accordance with the obligations in Clause 3.2
- 3.1.3 From the date of this Agreement the Buyer will draw up the Public Realm Strategy in accordance with the obligations in clause 3.2

3.2 The Buyer will prepare any variation to the Masterplan and the Urban Codes for the Seller's approval:

- 3.2.1 With all reasonable skill and care.
- 3.2.2 So as to be consistent with the Design Statement, the Development Objectives the Outline Planning Permission and the Approved Affordable Housing Strategy and the Development Programme and the Approved Housing Strategy
- 3.2.3 As soon as reasonably practicable and in any event by 1 July 2006

3.3 Subject to the Seller's prior approval pursuant to Clause 3.2. the Buyer shall as soon as reasonably practicable thereafter and in any event by 1 September 2006 consult with the Council the local community local stakeholders Devonport Regeneration Community Partnership by engaging in a process of public consultation

3.4 The Buyer will submit the varied Masterplan and Urban Codes as approved by the Seller under this clause to Plymouth City Council and use all reasonable endeavours to procure that they are adopted in any subsequent Planning Permission or Planning Agreement

4 Planning obligations

4.1 Buyer's Obligations

- 4.1.1 The Buyer will use its own endeavours at its own expense ~~but without any obligation to incur costs expenses or other liability more onerous than the costs expenses and liabilities detailed in the draft Planning Agreement annexed to this Agreement~~ ^{but without any obligation to incur costs expenses or other liability more onerous than the costs expenses and liabilities detailed in the draft Planning Agreement and Section 278 Agreement agreed as between the parties as acceptable under clause 4.2} to submit the Reserved Matters Planning Permission and complete the Planning Agreement pending at the date hereof on or before 1 September 2006.
- 4.1.2 Before submitting a Planning Application (whether within 4.1.1 or otherwise) the Buyer will undertake a process of public consultation and stakeholder engagement as approved in writing by the Seller
- 4.1.3 Following the agreed public consultation process the Buyer will submit the Planning Application in a form which conforms to the Urban Codes and the other matters referred to at clause 2.2.2 and with such supporting information as approved in writing by the Seller.
- 4.1.4 Following submission of the Planning Application the Buyer will pursue and conduct the Planning Application with all due diligence and in a good and efficient manner.
- 4.1.5 If the Planning Authority:-

- (a) properly declines to determine the Planning Application in accordance with the powers reserved to it and contained in Article 3(2) of the Town and Country Planning (General Development Procedure) Order 1995; and
- (b) serves notice on the Buyer specifying the further details to be submitted to it to enable it to arrive at a determination of the Planning Application;

then the Buyer will at its own expense prepare and supply to the Planning Authority such further details (as are also approved by the Seller before dispatch) as would normally be supplied in respect of a development of similar type to that proposed by the Planning Application by a reasonably prudent property developer taking into account all of the circumstances relating to the Property and such application and any other relevant circumstances.

4.1.6 The Buyer will not make any amendment to the Planning Application approved by the Seller pursuant to Clause 4.1.3 or agree any variation to the Planning Application during its consideration by the Planning Authority unless such amendment is approved in writing by the Seller.

4.1.7 If the Planning Application is expressly refused (as opposed to having been deemed to have been refused) the Buyer will:-

- (a) first obtain the written approval of the Seller (such approval not to be unreasonably withheld where the Buyer has used all reasonable endeavours to procure the grant of the Planning Permission without the matter proceeding to appeal) to an appeal;
- (b) then lodge notice of appeal in the Buyer's sole name against such refusal with the Secretary of State; and
- (c) submit a further Planning Application in the Buyer's sole name;

provided that the Buyer is not to be obliged to take such action where the Seller agrees in writing that such action will not be taken or Leading Counsel advises that the prospects of such appeal resulting in Planning Permission are less than 50%.

4.1.8 If the Planning Permission is issued subject to any condition and the Buyer serves a Buyer's Condition Notice or the Seller serves a Seller's Condition Notice the Buyer will lodge with the Secretary of State as soon as practicable a notice of appeal in the Buyer's sole name with regard to all conditions which the Buyer or the Seller consider to be Onerous Conditions.

4.1.9 The Buyer will pursue and conduct any appeal lodged by the Buyer with all due diligence and in a good and efficient manner and (if the Planning Application is called in for determination by the Secretary of State pursuant to section 77 of the Act) the Buyer will pursue and conduct the Planning Application as set out above in both cases using Leading Counsel and in both cases proceeding by way of public inquiry and not by way of written representations or hearing.

4.1.10 The Buyer will consult with the Seller and/or the Seller's Solicitors in the preparation presentation and running of the Planning Application and any appeal relating thereto, and keep them fully informed and have due regard to any reasonable wishes representations and requirements of the Seller and/or the Seller's Solicitors in connection therewith.

4.1.11 The Buyer will keep the Seller's Solicitors fully informed of:-

Handwritten: (X) Detailed in the draft Planning Agreement and Section 278 Agreement ~~is~~ agreed as between the parties as acceptable under clause 42

- (a) any relevant negotiations or discussions with Counsel, with the Planning Authority and the members thereof and other relevant persons relating to the Planning Application; and
- (b) any appeal relating to the Planning Application; and
- (c) all relevant information with respect to the Planning Application and any appeal in respect thereof.

4.1.12 The Buyer will:-

- (a) advise the Seller and/or the Seller's Solicitors of all meetings convened by or with the Buyer by or with Counsel or by or with the Planning Authority or the members thereof or other relevant persons in connection with or arising from the Planning Application and any appeal in respect thereof; and
- (b) permit the Seller and/or the Seller's Solicitors to participate in all such meetings and discussions where practicable and the Buyer will not unreasonably withhold or delay permission or notification of such meetings or discussions to the Seller and the Seller's Solicitors.

4.1.13 The Buyer will be responsible for and will fully indemnify the Seller against all reasonable costs incurred by the Seller (including but without limitation the reasonable and proper costs of any professionals or advisers appointed by the Seller) in connection with the obtaining of the Planning Permission PROVIDED THAT such costs shall not exceed the aggregate sum of £50,000 that the Buyer shall be obliged to indemnify the Seller in respect of any single Planning Application (calculated from and including the date of this Agreement) is £10,000

4.1.14 The Buyer will immediately upon submission of any application to the Planning Authority or any appeal to the Secretary of State or upon receipt of any decision letter, notice or order from the Planning Authority, the Secretary of State or the Court forward a copy of the same to the Seller's Solicitors.

Handwritten: but without any obligation to incur costs, expenses or other liability more onerous than the costs, expenses and liabilities (X)

4.1.15 The Buyer will use its best endeavours to negotiate any Planning Agreement (but where applicable without any obligation to negotiate or enter into a Planning Agreement more onerous than the draft Planning Agreement annexed to this Agreement) as expeditiously as possible and upon the form of a Planning Agreement being agreed (or reaching a form to which the Planning Authority will accept no amendments) will supply a copy of the draft Planning Agreement to the Seller or the Seller's Solicitors and the provisions of Clause 4.3 will then apply mutatis mutandis in relation to the draft Planning Agreement as if the receipt of the draft Planning Agreement were the issue of the Planning Permission by the Planning Authority (but not so as to imply that upon execution of a Planning Agreement the Planning Permission shall thereby be granted).

4.1.16 If the Seller enters into a Planning Agreement pursuant to this Agreement the Buyer will give to the Seller in the transfer or transfers of the Property to it or in such other document as the Seller may reasonably require an indemnity against all reasonable and proper costs, expenses, losses, demands, actions, liabilities, claims or proceedings which the Seller may incur as a result of entering into the Planning Agreement.

4.1.17 The Buyer will not withdraw the Planning Application without the consent of the Seller.

4.1.18 The Buyer will not make any fresh application for planning permission or listed building consent without first obtaining the written approval of the Seller.

4.2 Seller's Obligations

4.2.1 The Seller will give all reasonable assistance to the Buyer in seeking the grant of the Planning Permission and completion of the Planning Agreement. However, the Buyer may not require the Seller to agree that the Buyer make any appeal or any application to the Court (pursuant to this Agreement) in the joint names of the Seller and the Buyer.

4.2.2 If the Planning Authority or the Secretary of State indicate that the Planning Permission would be granted if a Planning Agreement were to be entered into or if the Planning Permission is issued subject to a condition requiring the execution of a Planning Agreement to be entered into then:-

- (a) subject to compliance in both cases by the Buyer with Clause 4.1.15, Clause 4.1.16, Clause 4.2.4 and Clause 4.3 in connection with such Planning Agreement; and
- (b) subject to the contents of the Planning Agreement not constituting Onerous Conditions under the Clause 4.3;

the Seller will enter into the Planning Agreement on the Buyer's written request and at the Buyer's cost.

4.2.3 Without prejudice to Clause 4.2.2 at the request and cost of the Buyer enter into any Planning Agreement which the Buyer shall require to procure adoption of any Infrastructure Land from time to time forming part of the Development Provided that the Buyer will indemnify and keep indemnified the Seller against all liabilities whatsoever arising out of or in relation to such Planning Agreement and the Buyer will if so required by the Seller covenant in this respect in a deed of covenant entered into prior to or contemporaneously with the execution of such Planning Agreement

4.2.4 The Seller will not be obliged to enter into any Planning Agreement unless the Seller is satisfied that the Agreement:-

- (a) will not materially adversely affect the present or future use or value to the Seller of any other land belonging to the Seller or adjoining or neighbouring land;
- (b) is consistent with the Development Objectives;
- (c) will not oblige the Seller to carry out works or make payments involving either material expenses to the Seller and/or the execution of works within a timescale commercially and economically unacceptable to the Seller unless the Buyer first undertakes in a form acceptable to the Seller (acting reasonably) to indemnify the Seller from and against all such expenses and the costs directly or indirectly resulting from the execution of the works; and
- (d) will be conditional upon the implementation of the Planning Permission to which it relates and it will be incapable of coming into effect prior to such implementation (other than in relation to the payment of costs of the local authority where they are payable by the Buyer or the Seller is satisfied that adequate security for them has been made by the Buyer).

4.3 Onerous Conditions

4.3.1 If the Planning Authority issue the Planning Permission and the Buyer considers it is subject to Buyer's Onerous Conditions:-

- (a) the Buyer will within 4 weeks of the issuing of the Planning Permission (time to be of the essence) notify the Seller in writing

(the **Buyer's Condition Notice**) and include in the Buyer's Condition Notice a statement of the reasons for such view (and the Buyer cannot thereafter add to or alter those reasons);

- (b) the service of the Buyer's Condition Notice shall be without prejudice to the Buyer's continued obligation pursuant to Clause 4.1; and
- (c) if the Buyer fails to serve the Buyer's Condition Notice upon the Seller within the specified 4 week period the Buyer will be deemed at the expiry of such period to have accepted that the Planning Permission does not contain any **Buyer's Onerous Conditions**.

4.3.2 If the Planning Authority issue the Planning Permission and the Seller considers it is subject to Seller's Onerous Conditions:-

- (a) the Seller will within 4 weeks of the issuing of the Planning Permission (time to be of the essence) notify the Buyer in writing (the **Seller's Condition Notice**) and include in the Seller's Condition Notice a statement of the reasons for such view (and the Seller cannot thereafter add to or alter those reasons); and
- (b) if the Seller fails to serve a Seller's Condition Notice upon the Buyer within the specified 4 week period the Seller will be deemed at the expiry of such period to have accepted that Planning Permission does not contain any **Seller's Onerous Conditions**.

4.3.3 The Buyer will not implement the Planning Permission if the Buyer serves a Buyer's Condition Notice or receives a Seller's Condition Notice and Clause 29.19 shall apply as if there had been a breach by the Buyer of a term of this Agreement which the Buyer has failed to remedy except that the Seller shall refund to the Buyer any payment made by the Buyer under Clause 18.2 in excess of £1,000,000.

5 Phasing of Buyer's Works

5.1 Phases for the Property

The Buyer will not develop the Property otherwise than in accordance with a Phase Plan which it shall draw up and submit to the Seller for the Seller's approval and the following provisions of this clause shall apply

5.2 Implementation of Phases

- 5.2.1 The Buyer will not implement or permit to be implemented any part of the Buyer's Works upon any part of the Property which falls within a Phase which has not been approved as such by the Seller under Clause 6.1
- 5.2.2 The Buyer shall not implement or carry out any part of the Buyer's Works on more than an aggregate of two Phases at any time Provided Always that nothing in this Agreement shall prevent the Buyer from implementing works on an additional Phase where at least 50% by surface area of one of the Approved Phases has been completed to the satisfaction of the Seller (such approval of satisfaction not to be unreasonably withheld or delayed where such works have been completed in accordance with this Agreement)
- 5.2.3 For the purposes of this Agreement (and in particular Clause 5.2.2) the Infrastructure Land and/or Infrastructure Works shall not form part of any Phase and the Buyer shall be entitled to implement any Infrastructure Works independently of any Buyer's Works in circumstances where such Infrastructure Works are firstly approved by the Seller (such approval not to be unreasonably withheld)

5.3 Approval of Phase

Insofar as the Buyer needs to seek the Seller's approval to any Phase or any variation to a Phase the Buyer will notify to the Seller details of:-

- 5.3.1 the commencement date for a Phase;
- 5.3.2 the extent of that part of the Buyer's Works that is to be carried out on the relevant Phase including (but not limited to):-
 - (a) the number of Residential Units proposed for that Phase;
 - (b) the number of Affordable Housing Units to be comprised within that Phase;
 - (c) the floor space of any non-residential units proposed for that Phase
- 5.3.3 how the Phase is to be accessed both during and after construction and how services are to be provided to it;
- 5.3.4 how any other parts of the Property that may be affected are to be accessed or serviced throughout the duration of that Phase;
- 5.3.5 how and when the DE Covenants and the Planning Agreements are to be complied with as that Phase is developed; and

5.4 Size of Phase

Each phase shall comprise no more than 75 Residential Units Provided Always that the Seller reserves the right to waive in whole or in part the restriction contained in this Clause 5.4

6 Approved Drawings

6.1 Approval Process

The Seller acknowledges the details contained in the Planning Application pending at the date hereof are approved under this Clause 6 save as set out in Schedule 13. The Buyer will comply with the provisions of this Clause in relation to details in the Planning Permission and details set out in Schedule 13.

6.2 Implementation

The Buyer shall not implement or permit to be implemented the Buyer's Works on any Phase until there have been produced to and approved by the Seller such additional detailed plans, drawings and specifications as are required to show:-

- 6.2.1 the layout extent size and make up of the Buyer's Works (including proposals as to landscaped areas) or the relevant part thereof;
- 6.2.2 the layout extent size and make up of Infrastructure Works required to properly serve such Phase
- 6.2.3 the design position and specifications for all buildings to be constructed on such Phase, (including the Affordable Housing and the Market Housing Units) and whether sales will be freehold or leasehold and the structures roads and services to be constructed;
- 6.2.4 details of all external finishes and materials for buildings and other structures to be constructed on such Phase; and
- 6.2.5 compliance with the Approved Affordable Housing Strategy.

6.2.6 details of the proposed works to the public realm on such Phase

6.3 Approval Requirements

All plans and specifications to be produced to the Seller under Clause 6 shall comply with:-

6.3.1 the Masterplan and Urban Codes;

6.3.2 the Design Statement;

6.3.3 the EP Standards and the provisions of this Agreement;

6.3.4 any matters previously notified to the Seller by reference to which the Seller has approved any Phase pursuant to Clause 5 above.

6.3.5 the Approved Housing Strategy

6.3.6 the Public Realm Strategy

6.4 The Buyer will draw up a statement of the cost of carrying out each of the matters listed as Scheme Enhancement and will submit such statement to the Seller for its approval

6.5 If there is a dispute about the issue of approval under clause 6.4 it shall be referred to the Expert within clause 31

7 Commencement of Buyer's Works

7.1 Commencement

The Buyer will commence, carry out and complete each Phase of the Buyer's Works in accordance with the Development Programme once the Phase Plan has been approved under Clause 5 all other approvals under Clause 6 have been obtained and the Planning Permission for such Phase has been finally determined.

7.2 The Buyer will commence to carry out and complete the Infrastructure Works in accordance with the Development Programme with the approval of the Seller.

7.3 Building Licence

7.3.1 From the commencement date for a relevant Phase and subject to compliance with Clause 5.3 until completion of the development on that Phase (or until this Agreement is determined, whichever is the earlier) the Seller grants to the Buyer a Building Licence to enter the relevant Phase on the terms and conditions set out in Schedule 10.

7.3.2 Subject to Clause 2.4 the Buyer has no interest under this Agreement in the Property or any Phase thereof except as bare licensee.

7.3.3 The Buyer may erect development boards or signs on any part of the Property displaying the Buyer's interest in the Property and the Development in such style and location as may be approved by the Seller (acting reasonably) and the Buyer shall display the Seller's logo and such other information in such manner as the Seller requires.

7.4 Warranty Agreements

The Buyer shall not have licence to enter until it shall have used its reasonable endeavours to procure that Warranty Agreements in respect of those parts of the Buyer's Works to be carried out on the relevant Phase have been executed and unconditionally delivered to the Seller (but such restriction on entry shall not apply where the Buyer has used its reasonable endeavours to procure the Warranty

Agreements aforesaid but where such Warranty Agreements are not executed and delivered by the relevant warrantor within a reasonable period following formal request by the Buyer).

8 Buyer's Works

8.1 Carrying out the Buyer's Works

The Buyer will at its own expense procure that the Buyer's Works and the Infrastructure Works are designed, carried out and completed:-

- 8.1.1 in a good and workmanlike manner;
- 8.1.2 with all reasonable skill and care and so as to be fit for their purpose;
- 8.1.3 using only suitable good quality materials; and
- 8.1.4 in accordance with:-
 - (a) the Developers Brief the Masterplan, the Urban Codes the Outline Planning Permission and the Approved Drawings and the Public Realm Strategy;
 - (b) the Planning Permission or the Planning Agreement;
 - (c) all Necessary Consents relating to the Buyer's Works;
 - (d) all Statutory Requirements relating to the Buyer's Works;
 - (e) EP Standards;
 - (f) all relevant British and European Standards and Codes of Practice from time to time in force;
 - (g) the DE Covenants;
 - (h) The Development Programme;
 - (i) the terms of this Agreement and all details approved by the Seller under Clause 7;
 - (j) the Stakeholder Engagement Strategy; and
 - (k) the Approved Housing Strategy
- 8.1.5 in a manner consistent with clauses 2.1.5(g) and 2.1.5(h) of the Deed of Covenant set out in Schedule 16

8.2 Building Contract

The Seller acknowledges that it is not the Buyer's usual development practice to enter into a Building Contract with a Building Contractor in relation to development works and that nothing in this Agreement shall be deemed to oblige the Buyer to enter into a Building Contract in relation to any part of the Buyer's Works the Infrastructure Works the Remediation and Demolition Works or any other works required or proposed in relation to the Development but without prejudice to the Seller's right to require the Buyer to warrant the quality of the Buyer's Works or assign the benefit of any obligation in this Agreement to any party which the Seller shall hereafter nominate

8.3 Necessary Consents

In relation to the Buyer's Works the Buyer:-

- 8.3.1 (where appropriate) will at its own cost procure that there are obtained all Necessary Consents before or as they become necessary and will procure that there are given all notices required to be given under any Statutory Requirements or Necessary Consents and will upon request provide copies to the Seller;
- 8.3.2 will as soon as reasonably practicable following the date of this Agreement and in any event prior to Implementation seek the Seller's approval to the following:-
- (a) the Housing Strategy;
 - (b) the Public Realm Strategy; and
- 8.3.3 will procure that any conduits serving any relevant Phase are laid direct thereto from the adjoining public highways or through land in respect of which the Buyer the Seller or the relevant statutory utility company has necessary rights to the intent that the same are connected to public sewers and/or the mains facilities belonging to such statutory utility companies (as appropriate) without passing through any land in respect of which the necessary rights do not exist;
- 8.3.4 will procure that there are not specified for use or used in the Buyer's Works and the Infrastructure Works any products or materials which at the time of specification or use:-
- (a) do not conform with British and European Standards and Codes of Practice; or
 - (b) are generally known within the construction industry at the time of specification or use to be capable of causing or constituting a physical defect or hazard to health and safety or to affect the durability of the Development and/or the Buyer's Works in the particular circumstances in which the products or materials are specified for use and used.

8.4 Building Contract and Professional Team Appointments

Insofar as failure so to do will materially adversely affect the rights of the Seller under the Warranty Agreements from a Building Contractor (if appropriate) and the Professional Team the Buyer will comply with its obligations to the Building Contractor (if appropriate) and the Professional Team imposed respectively by any Building Contract and the appointments of the Professional Team.

8.5 Amendments to Building Contract and Professional Team Appointments

The Buyer will not make or suffer to be made any alteration in the terms of any Building Contract (but subject at all times to the Seller's acknowledgement contained in Clause 8.2) or any of the appointments by the Buyer of any of the Professional Team nor agree any release of any Building Contractor (if appropriate) or any of the Professional Team thereunder which would in either case materially adversely affect the rights of the Seller under the Warranty Agreements from the Building Contractor or from a Professional Team. Neither this Clause 8.5 nor any other provision of this Agreement shall prevent the Buyer from determining any Building Contract or any of the appointments of any of the Professional Team or arranging for any of the appointments of the Professional Team (other than the Supervising Officer) to be novated (if appropriate) to the Building Contractor.

8.6 Administration of Building Contract and Supervising Officer's Appointment

The Buyer will procure that throughout the carrying out of the Buyer's Works the Building Contractor (if appropriate) and the Supervising Officer are continuously appointed and given prompt and adequate instructions in accordance with the terms

of any Building Contract and the relevant terms of the appointment of the Supervising Officer.

8.7 Enforcement of Building Contract and Professional Team Appointments

The Buyer will:-

- 8.7.1 In circumstances where it enters into a Building Contract with a Building Contractor (it being acknowledged that the Buyer shall not be obliged to so enter in any such Building Contract) enforce compliance by the Building Contractor;
- 8.7.2 Enforce compliance by the Professional Team with their obligations contained in the appointments of the Professional Team (unless and until in the case of each such appointment it has been or shall be novated to any Building Contractor appointed by the Buyer); and
- 8.7.3 enforce any rights which the Buyer shall have pursuant to any product guarantee or warranty in relation to any materials or plant incorporated in the Buyer's Works or any part of them.

8.8 Notwithstanding any approval or agreement or comment by the Seller and/or any of its representatives to any matter or thing, the giving or confirming of the same by the Seller shall not in any way prejudice, affect, diminish or derogate from the Buyer's obligations in connection with this Agreement

9 Programme for Buyer's Works

- 9.1 If and whenever it becomes reasonably apparent that progress of the Buyer's Works in accordance with the Development Programme is being or is likely to be materially delayed the Buyer will procure that notice in writing is given to the Seller as soon as reasonably practicable. Such notice shall state the material circumstances causing the delay including whether the circumstances are a Delay Event for the purposes of the Development Programme so far as reasonably possible at the time of the giving of such notice including the event or events causing the delay and the estimated extent of the delay.
- 9.2 If the notice within clause 9.1 states that it relates to a Delay Event then the development Programme shall be suspended for such time as the Buyer and the Seller shall (acting reasonably) agree
- 9.3 If the Buyer and the Seller cannot reach agreement within clause 9.2 within 2 weeks of the notice being served on the Seller under clause 9.1 then either party may refer the matter to the Expert within clause 31.

10 Variations to the Buyer's Works

10.1 Seller's Consents for Variation

The Buyer will not (save where permitted under this Clause 10) during the carrying out of the Buyer's Works make any material variation, alteration or addition to the Buyer's Works without the prior written consent of the Seller.

10.2 Copy Instructions

The Buyer will procure that a copy of every material instruction, variation, order, certificate and other instrument relating to the Buyer's Works and issued by the Supervising Officer (whether by the Buyer or (if applicable) pursuant to any Building Contract) is promptly supplied to the Seller with the exception of anything dealing solely with payments to the Professional Team or (if applicable) under any Building Contract Provided That the Seller will be entitled to copies of anything dealing with payment to the Professional Team or (if applicable) under any Building Contract in the event of a dispute arising under this Agreement.

10.3 Unavailability

10.3.1 If any material plant or other pre-manufactured part or item specified in the Approved Drawings cannot be obtained or if their delivery at the appropriate time or at reasonable cost cannot be guaranteed then (notwithstanding Clause 10.1 but subject to Clause 10.4) the Buyer may (subject to Clause 10.3.2) without any consent from the Seller use such suitable alternative material, plant or other pre-manufactured part or item which in the opinion of the Supervising Officer shall not be of materially lesser quality appearance or performance Provided That the Seller is informed by the Buyer of that same alternative as soon as practicable afterwards.

10.3.2 The Buyer shall require consent of the Seller notwithstanding Clause 10.3.1 for any variation or alterations to any material plant or other pre-manufactured part or item to be used as part of the external appearance of all structures and buildings, all internal materials used in Market Hall and all materials used for the open spaces and other parts of the Property which are visible to the public

10.4 Prohibited Changes

Notwithstanding the provisions of Clause 10.1, 10.2 and 10.3, the Buyer will not be permitted to make any changes whatsoever to the Buyer's Works the Remediation and Demolition Works or the Infrastructure Works that are inconsistent with the Masterplan, the Urban Codes, the Development Objectives, the Design Statement the Public Realm Strategy the Affordable Housing Strategy the EP Standards and/or the Approved Housing Strategy.

10.5 Extension of Buyer's Works

If any variation, alteration or addition shall be made to the Buyer's Works (not being a variation, alteration or addition which shall be in breach of this Clause 10) then any reference herein to Buyer's Works shall thereafter be deemed to include such variation, alteration or addition.

11 Seller's inspections, site meetings, access and occupation

11.1 Inspections

The Buyer will permit the Seller or a representative or representatives authorised by the Seller to enter onto any Phase or the Property as a whole (accompanied by a representative or representatives of the Buyer if the Buyer shall so require) to view the progress and state of the Buyer's Works and the materials used or intended for use therein such entry being only at intervals as may from time to time be reasonable.

11.2 Site Meetings

A representative or representatives of the Seller will be entitled to attend any of the Buyer's site meetings which shall be chaired by a representative of the Buyer. Such site meetings will also be attended by the Supervising Officer or a representative or representatives of the Supervising Officer and (if applicable) by a representative or representatives of any Building Contractor. The Buyer will provide copies of any minutes of site meetings to the Seller.

11.3 Due regard to Representations

The Buyer will use all reasonable endeavours to procure that due regard is had to any proper representations made to the Buyer or the Supervising Officer by or on behalf of the Seller in respect of the Buyer's Works. The Seller will not interfere with, nor attempt to instruct any persons employed in connection with, the Buyer's Works and in particular (but without limitation to the generality of the foregoing) the Seller shall address any comments in relation to the Development or the Buyer's

Works only to the Buyer or the Supervising Officer and not to any member of the Professional Team and (if applicable) any Building Contractor.

11.4 Terms of Seller's Entry on to a Phase

Until the issue of the Final Certificate of Practical Completion any entry or occupation by the Seller or its representatives pursuant to this Clause 11 shall be subject to the following terms:-

- 11.4.1 on entering a Phase the Seller and its representatives will report to the Supervising Officer;
- 11.4.2 in relation to any such entry the Seller and its representatives will comply with such requirements as the Buyer, the Supervising Officer or any Building Contractor may from time to time reasonably make as to means and/or times of access and egress (whether for persons or vehicles), hours of working, parking of vehicles, health and safety and/or security and neither the Seller nor its representatives shall cause any nuisance, inconvenience or Loss to the Buyer, any Building Contractor or any other third party; and
- 11.4.3 the Seller will indemnify the Buyer against all Losses arising from any such entry or occupation or any breach of any of the foregoing provisions of this Clause 11.4.

12 Issue of Buyer's Works' Certificates

12.1 Notice of Issue

In relation to the issue of any Buyer's Works' Certificate the Buyer will procure that:-

- 12.1.1 the Supervising Officer gives to the Seller not less than 5 Working Days written notice of the date and time at which it is proposed to carry out the inspection of the Relevant Works with a view to determining whether or not the Buyer's Works' Certificate may be issued;
- 12.1.2 the Supervising Officer permits a representative or representatives of the Seller to accompany the Supervising Officer in that inspection of the Relevant Works;
- 12.1.3 the Supervising Officer permits the Seller and those authorised by it to discuss fully with the Supervising Officer its proposal to issue the Buyer's Works' Certificate and (where the certificate is a Phase Certificate of Practical Completion or the Final Certificate of Practical Completion) the contents of any list of defects or outstanding matters which the Supervising Officer proposes to incorporate in or attach to such Buyer's Works' Certificate but such defects or matters shall not be such as would in the opinion of the Supervising Officer preclude the issue of the certificate; and
- 12.1.4 the Supervising Officer has due regard to any reasonable representations made by or on behalf of the Seller regarding the proposed issue of the relevant Buyer's Works' Certificate but not so as to fetter the proper exercise by the Supervising Officer of its professional discretion.

12.2 Postponement of Issue of Buyer's Works' Certificate

Where in relation to any Buyer's Works' Certificate the Supervising Officer has given at least 5 Working Days' notice under Clause 12.1.1 and the anticipated date of issue of the Buyer's Works' Certificate is subsequently postponed, the Supervising Officer shall not be obliged to give a further 5 Working Days' notice but the Buyer shall procure that the Supervising Officer shall nevertheless keep the Seller informed of its proposals and (unless the Seller or its authorised representative shall agree to dispense with further written notice) give not less than 3 Working Days' written

notice of any further inspection or such shorter written notice to which the Seller or its authorised representative shall agree.

12.3 Copies

Forthwith following the issue of each Buyer's Works' Certificate the Buyer will procure that a copy is supplied to the Seller.

13 Buyer's Works Infrastructure and DE Covenants

13.1 The Buyer will from the moment it takes occupation under the Building Licence by way of indemnity only observe and perform the covenants and conditions contained in or in any document referred to in the register of title no.DN250111 and indemnify the Seller against all costs claims demands losses and breaches of them or arising under them

13.2 Insofar as the Design Statement does not expressly state as much the Buyer will construct all roads to which the public have access to a standard which permits their adoption as public highways

13.3 If as a result of a breach of any of the covenants referred to in Clause 13.1 the Water Pipe defined in the Transfer dated 8 July 2005 made by (1) Secretary of State for Defence (2) the Seller is not vested in water undertaker pursuant to S51(A)(2) of Water Industry Act 1991 within five years of the date hereof the Buyer will procure that an alternative and equivalent supply to the land served by the Water Pipe is made through a pipe in respect of which an agreement under Section 51(A)(2) has been made

14 CDM Health and Safety Plan and File and As Built Specifications

14.1 The Buyer warrants:-

14.1.1 that it is and will at all times remain competent to carry out the role of a client under the CDM Regulations and the Seller appoints the Buyer to act as the only client in respect of the Buyer's Works;

14.1.2 it will forthwith make a declaration to the Health and Safety Executive in accordance with Regulation 4(4) of the CDM Regulations and deliver a copy to the Seller;

14.1.3 it will as soon as possible provide to the Seller a copy of the notice it receives from the Health and Safety Executive pursuant to Regulation 4(5) of the CDM Regulations;

14.1.4 it will not seek to withdraw, terminate or in any manner derogate from such declaration without the Seller's prior written consent, which the Seller may in its absolute discretion withhold; and

14.1.5 it will ensure that any and all parties engaged in respect of the procurement and/or undertaking of the Buyer's Works are aware of the terms of such declaration.

14.2 Buyer's Responsibility

Without prejudice to the generality of the Buyer's obligations under this Agreement and of the duties imposed upon the Buyer under the CDM Regulations by reason of his appointment as the only client under Clause 14.1.1:-

14.2.1 the Buyer will be entirely responsible for ensuring that included in the design of the Buyer's works is all information in relation to the design and materials which may reasonably affect the health and safety of persons working on the Property/Development, occupying the Property/Development or carrying out maintenance or repair on the Property/Development and further will be entirely responsible for the

safety of any design which forms part of the Buyer's Works and for the adequacy, stability and safety of all site operations and methods of construction in respect of the construction of the Buyer's Works;

- 14.2.2 the Buyer will observe, perform and discharge all obligations, requirements and duties arising under the CDM Regulations in connection with the Buyer's Works;
- 14.2.3 the Buyer will procure the observance, performance and discharge of all obligations, requirements and duties arising under the CDM Regulations by any and all parties appointed in connection with the Buyer's Works;
- 14.2.4 insofar as the Buyer will procure the observance, performance and discharge of obligations, requirements and duties arising under the CDM Regulations by any party or parties, the Buyer shall ensure at all times:-
 - (a) the competence of any such party so to observe, perform or discharge the said obligations, requirements and duties;
 - (b) that any such party is made fully aware of its obligations under the CDM Regulations; and
 - (c) that any such party allocates adequate resources to comply with the requirements and prohibitions imposed by or under the CDM Regulations;
- 14.2.5 the Buyer will ensure that before commencing the Buyer's Works a CDM Health and Safety Plan containing the information required by the CDM Regulations has been produced;
- 14.2.6 the Buyer will ensure that the design and construction of the Buyer's Works shall comply at all times with the CDM Health and Safety Plan and any amendments thereto prepared pursuant to the CDM Regulations.

14.3 Access to File and Plan

The Buyer will procure that at all reasonable times the Seller or its authorised representative is allowed access to the CDM Health and Safety File and the CDM Health and Safety Plan relating to any of the Buyer's Works.

14.4 As Built Specification

Within the period of three months after each Phase Practical Completion Date and the Final Practical Completion Date the Buyer will provide the Seller with a complete detailed "as built" specification, the ECO Homes Certificates and related drawings in respect of the relevant Phase(s).

14.5 Copy File and Plan

As soon as reasonably practicable after the issue of a Phase Certificate of Completion of Making Good of Defects or the Final Certificate of Completion of Making Good of Defects in relation to any Relevant Works the Buyer will provide the Seller with a copy of the CDM Health and Safety Plan and CDM Health and Safety File prepared by the Planning Supervisor in relation to such Relevant Works.

Health and Safety

- 14.6 The Buyer shall at all times comply with all obligations, requirements and duties arising under health and safety legislation in connection with the Buyer's Works.
- 14.7 The Buyer shall at all times procure the compliance with all obligations, requirements and duties arising under health and safety legislation by any and all parties appointed in connection with the Buyer's Works.

- 14.8 The Buyer shall maintain an accurate record of all health, safety [and environmental] incidents which occur on or in connection with the Buyer's Works, and shall provide a report to the Seller monthly in the agreed form/form set out in Schedule 6
- 14.9 The Buyer shall notify the Seller immediately on the occurrence of any of the following events which arise out of or in connection with the Buyer's Works:
- 14.9.1 a fatal accident to any employee or a member of the public;
 - 14.9.2 any injury to a member of the public requiring reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time) (**RIDDOR**);
 - 14.9.3 any dangerous occurrence, as defined by RIDDOR;
 - 14.9.4 the service of any improvement or prohibition notice;
 - 14.9.5 any incident which attracts the attention of the police and/or the media; and
 - 14.9.6 the commencement of any criminal prosecution.
- 14.10 The Buyer shall see to it that:
- 14.10.1 any and all parties appointed in connection with the Buyer's Works shall identify and report to the Buyer any health and safety concerns arising in connection with the relevant Phase or Phases of the Buyer's Works; and
 - 14.10.2 health and safety concerns reported in accordance with Clause 14.10.1 are properly investigated and appropriate steps are taken to eliminate and/or control any identified health and safety risks.

15 Insurance

- 15.1 The Buyer will from the date of this Agreement keep insured or cause to be kept insured the Buyer's Works in an amount not less than the full reinstatement cost from time to time of the Buyer's Works (including professional fees and Value Added Tax where applicable) against loss or damage by the risks against which the Building Contractor is obliged to insure under the Building Contract.
- 15.2 The Buyer will maintain employers liability insurance professional indemnity insurance and public liability insurance in an appropriate sum in respect of the Buyer's Works.
- 15.3 The Buyer will at the request of the Seller from time to time supply to the Seller a copy of the insurance policy maintained under Clause 15.1 and Clause 15.2 and satisfactory evidence of payment of premiums.

16 Copyright and licence to use documents

- 16.1 The Buyer grants and agrees to grant to the Seller an irrevocable, perpetual, royalty-free, non-exclusive licence to use and reproduce all designs, drawings, models, plans, specifications, design details, calculations, photographs, brochures, reports, notes of meetings, CAD materials and any other materials prepared by or on behalf of the Buyer in connection with the Buyer's Works and/or the Development (whether in existence or to be made) and all amendments and additions to them and any works, designs or inventions of the Buyer incorporated or referred to therein for all purposes whatsoever relating to the Buyer's Works and/or the Development including (but without limitation) the construction, re-construction, completion, maintenance, use, letting, occupation, management, sale, promotion, advertisement, alteration, modification, refurbishment, re-development, extension, re-instatement and repair of the Buyer's Works and/or the Development, such licence carrying the right to grant sub-licences and to be transferable without the prior consent of the Buyer.

- 16.2 The Buyer shall not be liable for the consequences of any use by the Seller of any of the materials referred to in Clause 16.1 for any purpose other than that for which they were prepared.
- 16.3 In respect of the materials referred to in Clause 16.1, the Buyer:
- 16.3.1 warrants that it has and, at the date when the materials may be delivered or made available to the Seller, will have full title guarantee in relation to any copyright or other intellectual property rights existing in it free from and clear of any restriction and encumbrances or is entitled, as the licensee from such owner, to use and exploit all such rights to the extent necessary to enable the Buyer to enter into and perform its obligations under this Agreement;
 - 16.3.2 acknowledges that, in respect of the materials of which the Buyer is, or may at the time of their creation be, the author (as referred to in the Copyright, Designs and Patents Act 1988) the Buyer hereby absolutely waives any moral rights which it might otherwise be deemed to possess pursuant to sections 77, 78 and 80 of such Act; and
 - 16.3.3 warrants that, to the extent that the Buyer is not the author, the author has not asserted, and has agreed to waive any such moral rights which it might otherwise be deemed to possess.
- 16.4 The Buyer agrees:
- 16.4.1 on request at any time to give the Seller or any persons authorised by the Seller full and sufficient access to the materials referred to in Clause 16.1 and, at the Seller's expense to provide copies of it (including but not limited to copies on computer readable and modifiable discs); and
 - 16.4.2 at the Buyer's expense, to provide the Seller with a set of all such materials relating to the Relevant Works upon the issue of [a Phase Certificate of Practical Completion or the Final Certificate of Practical Completion.
- 16.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with this Agreement shall be paid by the Buyer and the Buyer shall indemnify the Seller from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Seller by reason of the Buyer infringing or being held to infringe any intellectual property rights in the course of or in connection with this Agreement.
- 16.6 The Buyer shall (subject to the Seller paying the Buyer's reasonable costs so to do) if reasonably requested by the Seller at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Seller the rights referred to in this Clause 16.

17 Buyer's liability following practical completion

17.1 Making Good of Defects

The Buyer will make good any Relevant Works or (if applicable) enforce the provisions in the Building Contract in respect of any Relevant Works (relating to the making good of defects and the carrying out of outstanding works) for which a Phase Certificate of Practical Completion or the Final Certificate of Practical Completion shall have been issued:-

- 17.1.1 of which the Seller has given written notice to the Buyer prior to the expiration of 12 months from the date of the Certificate of Practical Completion of such Relevant Works;
- 17.1.2 which have been identified by the Supervising Officer at the inspection for the purpose of issuing the relevant Phase Certificate of Practical

Completion or the Final Certificate of Practical Completion in relation to any such Relevant Works; and/or

- 17.1.3 which are identified by the Supervising Officer upon or prior to the Supervising Officer's inspection of the Buyer's Works for the purpose of issuing the Phase Certificate of Completion of Making Good of Defects or the Final Certificate of Completion of Making Good Defects in relation to such Relevant Works.

17.2 Access

Both before and following any Phase Practical Completion Date or the Final Practical Completion Date, the Buyer will make good any defects and any outstanding works or otherwise to comply with the obligations of the Buyer under this Agreement. The Buyer will procure that access under this Clause 17.2 will cause as little damage to the Property as in each case is reasonably practicable and that any damage caused to the Property by such access shall be made good as soon as is reasonably practicable.

18 Sale purchase and transfers

18.1 Purchase Price

The Seller agrees to sell the Property and the Buyer agrees to buy the Property for the Purchase Price and the overage payments set out in Schedule 5 in accordance with this clause.

18.2 Payment of Purchase Price

The Purchase Price will be paid:-

- 18.2.1 as to £1,700,000 plus VAT on the date hereof
- 18.2.2 as to £1,000,000 plus VAT on 1 March 2007
- 18.2.3 as to £1,000,000 plus VAT on 1 March 2008
- 18.2.4 as to £1,000,000 plus VAT on 1 March 2009
- 18.2.5 as to £1,000,000 plus VAT on 1 March 2010
- 18.2.6 as to £976,369 plus VAT on 1 March 2011

- 18.3 The overage payments plus VAT shall be made under and in accordance with Schedule 5

18.4 Title

18.4.1 Title to the Property is registered at HM Land Registry with Absolute Title under Title Number DN520111.

18.4.2 Title having been deduced to the Buyer, the Buyer is deemed to purchase each Phase of the Property with full knowledge and acceptance of such title and neither the Buyer nor the Guarantor will raise any requisitions upon such title or the matters to which the Property is sold save in relation to:

- (a) any matter noted on the register after 27 January 2006;
- (b) any matter revealed by its pre-completion searches at the Land Registry or HM Land Charges Registry or Companies House and which are not registered at the date of this Agreement.

- 18.4.3 The following are incumbrances "specified in the contract" for the purposes of Standard Condition 3.1.2(a):-
- (a) the rights, covenants, easements and other matters contained or referred to in the Property Register and Charges Register of Title Number DN250111;
 - (b) the Planning Agreements; and
 - (c) all matters referred to in the DE Transfer and the DE Lease .
 - (d) A Deed of Covenant to be made between (1)The Urban Regeneration Agency (2) [the management company] in accordance with Schedule 16
 - (e) A Lease of evidence herewith made between (1) The Seller (2) The Buyer providing for the management of and security at the Property in its unimproved state

18.5 Matters Property sold subject to

Each and every part of the Property is sold subject to:-

- 18.5.1 the matters contained or referred to in the Transfer;
- 18.5.2 the matters mentioned in Standard Condition 3.1.2;
- 18.5.3 all matters which are Overriding Interests;
- 18.5.4 all local land charges, whether or not registered before the date of this Agreement and all matters capable of registration as local land charges, whether or not actually registered;
- 18.5.5 all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;
- 18.5.6 all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the Property; and
- 18.5.7 all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining owners affecting the Property, and all liability to repair or covenants to repair roads, pavements, paths, ways, passages, sewers, drains, gutters, fences and other like matters, without obligation on the Seller to provide evidence of the creation of, or to define or apportion, any such liability.

18.6 Title Guarantee

- 18.6.1 The Seller transfers of each part of the Property with limited title guarantee.
- 18.6.2 The covenant implied on the part of the Seller by section 3 of the Law of Property (Miscellaneous Provisions) Act 1994 shall be limited so that the Seller's liability shall not extend to any matters or categories of matters to which the disposition and/or the contract for the disposition is expressly made subject.
- 18.6.3 The covenant set out in section 2(2) (b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to including the words "at his own cost" and the words "at his own cost" in section 2(2)(b) shall be deemed to be substituted with the words "at the cost of the Transferee".

18.7 Freehold Residential Units and Freehold Non-Residential Units

- 18.7.1 The Transfer of each Freehold Residential Unit or Freehold Non-Residential Unit shall be substantially in the form set out in Part 2 of Schedule 3 with such amendments as the Buyer and Seller agree (each acting reasonably).
- 18.7.2 The Transfer will be prepared in duplicate by the Buyer's solicitor.
- 18.7.3 The Transfer will be sent (in duplicate) to the EP Legal Department by the Buyer's solicitor not earlier than the period of 20 working days prior to the Buyer anticipating the issue of a Certificate of Practical Completion for the relevant Residential Unit
- 18.7.4 At the same time as sending the Transfer to the EP Legal Department, the Buyer's solicitor will:
- (a) Confirm the anticipated completion date for the Transfer
 - (b) Certify to the EP Legal Department that the Transfer is in the form agreed pursuant to this Agreement
- 18.7.5 The Buyer hereby undertakes :
- (a) Not to complete such Transfer until a copy of the NHBC or Zurich Cover Note and a copy of the Post Construction Certificate and evidence from the independent assessor that construction of the relevant unit meets the building standard and the minimum energy standards and in relation to a Non-Residential Unit evidence from the independent assessor that the Non-Residential Unit is constructed in compliance with the building standards for BREEAM for Offices Excellent, BREEAM for Retail Excellent or bespoke BREEAM Excellent (as the case may be) in relation to the type of Non-Residential Unit to which the Transfer relates.
 - (b) Not to make anything other than minor amendments (notified to the EP Legal Department) to the forms of Transfer executed by the Seller.
 - (c) To forward to the EP Legal Department immediately upon completion of such Transfer copies of the documents required under clause 18.7.5(a) a duplicate of such Transfer and the relevant pro-forma and
 - (d) Send copies of all the above documents and Transfer to the Seller's Solicitors
 - (e) Not to sell more than 3 Market Housing Units to the same purchaser
- 18.7.6 The Transfer will be executed and returned to the Buyer's Solicitors by the EP Legal Department within 10 working days of receipt of the same by the EP Legal Department.
- 18.7.7 Completion of the Transfer of a Residential Unit or a Non-Residential Unit will take place at the offices of the Buyer's Solicitors within 60 working days of receipt of the executed Transfer by the Buyer's Solicitors.
- 18.7.8 If the Buyer wishes to Transfer an Affordable Housing Unit it will only be to an Approved RSL and will include a covenant on the part of the approved RSL to use such Affordable Housing Unit in accordance with and not to permit its occupation or disposal in contravention of Affordable Housing Strategy.

18.8 Building

In any case where the Buyer wishes to grant a Lease of a Residential Unit the Seller may require the Buyer to take a transfer of the freehold title of the building of which the Residential Unit forms part for the purposes of Part I of the Landlord and Tenant Act 1987 in which case clause 18.7.2 - 18.7.6 shall apply mutatis mutandis and the Transfer of each building shall be in substantially the form set out in Part 1 of Schedule 3 with such amendments as the Buyer and the Seller agree (each acting reasonably)

18.9 Phases

- 18.9.1 To the extent that any part of a Phase has not been transferred in accordance with Clauses 18.7 or (as the case may be) 18.8 the Seller will on the Phase Completion Date applicable to that Phase transfer the freehold title to that Phase to the Buyer or (subject to Clause 18.10) as the Buyer shall direct
- 18.9.2 To the extent that any part of the Final Phase has not been transferred in accordance with Clauses 18.7 or (as the case may be) 18.8 the Seller will on the Final Phase Completion Date transfer the freehold title to the Final Phase to the Buyer or (subject to Clause 18.11) as the Buyer shall direct
- 18.9.3 The sale of each Phase pursuant to this Clause 18.9 shall be substantially in the form of the draft set out in Part 1 of Schedule 3. The transfers will be prepared and executed in duplicate by the Seller's Solicitors after the relevant Phase Completion Date or the Final Phase Completion Date (as the case may be) and will be supplied to the Buyer's Solicitors not later than 10 Working Days prior to the relevant Phase Completion Date or the Final Completion Date (as the case may be). The relevant Transfer will be executed by the Buyer and the Guarantor and returned to the Seller's Solicitors no later than 5 Working Days before the relevant Phase Completion Date or the Final Completion Date (as appropriate)

18.10 Infrastructure

If on the Final Completion Date the Infrastructure Land remains vested in the Seller, the Seller may require (by written notice to the Buyer served within one calendar month of the Final Completion Date) the Buyer to purchase the Infrastructure Land for one pound (£1) or transfer it to the Estate Management Company. The Transfer of the Infrastructure Land shall be in substantially the form of the draft set out in Part 1 of Schedule 3 and will be prepared in duplicate by the Seller's Solicitors after the date of service of the written notice. The Transfer will be executed by the Buyer or the Estate Management Company no later than 5 Working Days before the completion date for the Transfer (which shall be 20 Working Days from and including the date of service of the written notice)

18.11 Sub-Sales

- 18.11.1 Save to the extent permitted pursuant to Clause 18.7 or 18.8 (as appropriate) or otherwise subject to Clause 18.11.2 the Seller is entitled to decline to transfer of any Phase of the Property to any person other than the person or persons named in this Agreement as the Buyer
- 18.11.2 Notwithstanding the provisions of Clause 18.11.1 the Seller will sell to a third party a Phase or part of a Phase of the Property subject to the following conditions:-
- (a) the transferee shall be a person who has been previously approved by the Seller as having sufficient skill, experience and financial resource to comply with the obligations of the Buyer to carry out the Development in accordance with the provisions of this Agreement and so as to achieve the Development Objectives;
 - (b) the transferee shall have entered into a direct deed of covenant in a form required by the Seller covenanting to carry out the

obligations of the Buyer under this Agreement in relation to the land transferred to it and has so complied with all such obligations.

18.12 Insurance

The Seller has no duty of care to protect and secure the Property which is at the risk of the Buyer from the date of this Agreement. Standard Conditions 7.1.1 and 7.1.2 will not apply.

19 Affordable Housing

The Buyer will comply with the provisions of Schedule 4.

20 Management of the site

20.1 Upon the date of this Agreement, the Seller will grant and the Buyer will take the Management Lease providing for the Buyer to assume responsibility for management and security of the Property.

20.2 The Seller as Landlord and the Buyer as Tenant confirm before they enter into this Agreement or became contractually bound to do so, the Seller as Landlord served a notice dated 14 March 2006 on the Buyer as Tenant as required by s.38 A(4)(a) of the Landlord and Tenant Act 1954 before the date of this Agreement and the Buyer as Tenant made a Statutory Declaration in respect of the grant of the Management Lease in accordance with Schedule 4 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 a copy of which Statutory Declaration is attached to this Agreement at Appendix 3.

21 Scheme Enhancement

21.1 The Buyer and the Seller have agreed to negotiate in good faith to produce a list of works and costings net of VAT for the Scheme Enhancement for the Agreed Sum in accordance with the following provisions.

21.1.1 The Buyer will produce an outline specification of works and their costings for the approval of the Seller as soon as reasonably practical after the date of this Agreement ("the Provisional Schedule")

21.1.2 The Seller may instruct the Buyer to omit or add any works to the Provisional Schedule whereupon the Buyer will produce the final detailed specification and itemised costings for the Scheme Enhancement for the approval of the Seller ("the Final Schedule")

21.1.3 In the event of any dispute as to the contents or costings in the Provisional Schedule or the Final Schedule then the matter may be referred by either party to the Independent Expert under clause 31.

21.1.4 The Seller may instruct the Buyer to omit specific items from the Final Schedule or may approve or reject it.

21.1.5 If the Seller approves the Final Schedule (with or without omissions) the final Schedule as amended shall be the Scheme Enhancement for the purposes of clause 21.2 to 21.5 and the provisions of clause 21.2. to 21.5 shall apply to the Scheme Enhancement

21.1.6 If within 6 months of the date of this Agreement the Final Schedule has not been approved by the Seller the Agreed Sum plus VAT will be payable by the Buyer within 28 days of written demand from the Seller by way of additional consideration under this Agreement

21.2 Prior to the Final Phase Completion Date the Buyer shall undertake and (subject to the remaining provisions of this Clause 21) complete the Scheme Enhancement:

21.2.1 in a good and workmanlike manner;

21.2.2 with all reasonable skill and care and so as to be fit for their purpose;

21.2.3 using only suitable good quality materials; and

21.2.4 in accordance with:-

- (a) the Developer's Brief the Masterplan, the Urban Codes the Approved Housing Strategy the Outline Planning Permission and the Approved Drawings;
- (b) the Planning Permission or the Planning Agreement;
- (c) all Necessary Consents relating to the Buyer's Works;
- (d) all Statutory Requirements relating to the Buyer's works;
- (e) EP Standards;
- (f) all relevant British and European Standards and Codes of Practice from time to time in force;
- (g) the DE Covenants;
- (h) the Development Programme;
- (i) the terms of this Agreement and all details approved by the Seller under Clause 6.
- (j) the costings prepared by the Buyer under clause 6.4

21.3 Notwithstanding Clause 21.1 the Buyer shall not be obliged to incur costs or expenses net of VAT exceeding the aggregate sum of £643,000 ("the Agreed Sum") in relation to the provision of the Scheme Enhancement

21.4 If the aggregate cost of the Scheme Enhancement net of VAT is less than the Agreed Sum then the balance shall be paid to the Seller within 28 days of completion of the Scheme Enhancement

21.5 In circumstances where the Buyer has expended the Agreed Sum but not all of the Scheme Enhancement have been undertaken the Buyer's obligation contained in Clause 21.1 shall be deemed to have been satisfied.

22 Public Realm Strategy

22.1 The Buyer will draw up the Public Realm Strategy in accordance with Schedule 20 which it shall submit to the Seller for its approval;

22.2 The Buyer will implement the Public Realm Strategy according to its tenor once it has received the Seller's approval and subject to having procured all Necessary Consents

23 Housing Strategy

23.1 The Buyer will draw up the Housing Strategy in accordance with Schedule 20 which it will submit to the Seller for its approval;

23.2 The Buyer will implement the Housing Strategy according to its tenor once it has received the Seller's approval and subject to having first procured all Necessary Consents

24 Stakeholder Engagement Strategy

24.1 The Buyer will draw up the Stakeholder Engagement Strategy in accordance with the principles expressed in Schedule 20 which it will submit to the Seller for its approval;

- 24.2 The Buyer will implement the Stakeholder Engagement Strategy according to its tenor once it has received the Seller's approval
- 24.3 The Buyer will engage in discussion with DRCP and other local stakeholders (apart from the Stakeholder Engagement Strategy) to explore potential ways and means in which
- 24.3.1 The existing Marlborough Street traders can be supported; and
- 24.3.2 Local employment and skills training can be provided as part of the Development.

25 Estate Management Scheme

- 25.1 The Seller will incorporate the Management Company as soon as reasonably and lawfully practicable after the date of this Agreement and in any event no later than 6 months beginning with the date hereof.
- 25.2 The Seller will following incorporation of the Management Company enter into a Deed of Covenant with Management Company in the form set out in Schedule 16.
- 25.3 The Buyer shall invest £50,000 in the Management Company as soon as it is incorporated for the purpose of meeting any expenditure of the Management Company to be incurred by it at any time before Final Practical Completion Date.
- 25.4 The Buyer, at its own cost will set up a Web page for the Management Company the format and content of which shall be first approved by the Seller. The Buyer and Seller will each have a representative on the board of the Management Company and will invite a representative of the Seller and any other relevant stake holder proposed by the Seller to be a member of the board.
- 25.5 The Memorandum and Articles of Association of the Estate Management Company shall be in the agreed form and the Buyer will ensure that every Private Purchaser at the Property will become a member of the Management Company.
- 25.6 On each and every transfer of the Property or part or parts thereof (as the case may be to the Buyer, the Buyer shall enter into a Deed of Covenant with the Management Company in a form reasonably required by the Management Company having regard to the covenants and obligations detailed in Schedule 16 hereto and the extent of the Property being transferred.

26 Seller's Right to Nominate Private Purchasers

- 26.1 Subject at all time to the provisions of Clause 26.2 and Clause 26.3 the Buyer will use all reasonable endeavours to negotiate with the Seller to facilitate the implementation by the Seller of its First Time Buyer initiative, including entering into discussions with the Seller as soon as possible to identify any homes that will be suitable for release under the First Time Buyer's initiative and co-operating with the Seller's reasonable request for information and timescales as to any units identified.
- 26.2 The obligation on the part of the Buyer contained in Clause 26.1 shall relate to no more than 15% of the Market Housing Units constructed (or to be constructed as the case may be on the Property and to no more than 20% of the Market Housing Units constructed (or to be constructed as the case may be) within any Phase.
- 26.3 Any breach by the Buyer of its obligation contained in Clause 26.1 shall not entitle the Seller to determine this Agreement in accordance with the provisions of Clause 29.9

27 Service of notices and certificates

- 27.1 A notice to be served under or pursuant to this Agreement shall be validly served if:-

- 27.1.1 the provisions hereinafter contained are complied with in respect of such notice; or
- 27.1.2 the party to whom such notice is addressed or its authorised agent acknowledges receipt in writing.
- 27.2 Any notice to be served under or pursuant to this Agreement may be served in any of the following ways:-
- 27.2.1 by personal delivery (in which case service will be deemed to have been effected at the time of delivery);
- 27.2.2 by prepaid first class recorded delivery post from any address in the United Kingdom (in which case service will be deemed to have been effected at the expiration of forty-eight hours from the time of posting); or
- 27.2.3 by facsimile (in which case service will be deemed to have been effected at the time of arrival at the address of the addressee of such notice).
- 27.3 In proving service of any notice to be served under or pursuant to this Agreement it will be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery or that the facsimile sending such notice was properly addressed, transmitted and received.
- 27.4 If the party to whom any notice to be served under or pursuant to this Agreement consists of more than one person the service upon one of such persons shall be service upon all of them.
- 27.5 Any notice addressed to a party by name will not be rendered invalid by reason of the party having died, become insolvent or changed name, whether or not the party serving the notice is aware of the fact.
- 27.6 Subject only to Clause 27.9 and 27.10 the address to which there will be sent or delivered any notice to be served upon any party to this Agreement under or pursuant to this Agreement shall be the address or registered office of such party as stated at the commencement of this Agreement or as otherwise notified either to the party serving the notice (or on whose behalf the notice is served) or to the solicitors of such party the notification to have been given by notice in writing served in accordance with the provisions of this Clause 27 prior to the service of the notice first referred to in this Clause 27.6.
- 27.7 Any notice served on the solicitors to a party to this Agreement will have the same effect as serving the notice upon such party provided such notice quotes the reference of such solicitors as stated in this Agreement (if any such reference is so stated) or as otherwise notified either to the party serving the notice (or on whose behalf the notice is served) or to the solicitors of such party (if such notification shall have been given) the notification to have been given by notice in writing served in accordance with the provisions of this Clause 27 prior to the service of the notice first referred to in this Clause 27.7.
- 27.8 Any notice required to be served or which may be served by a party to this Agreement may be given on that party's behalf by that party's solicitors.
- 27.9 Where any notice is to be served upon the Buyer under or pursuant to this Agreement such notice and any envelope containing such notice shall be marked "For the Urgent Attention of the Managing Director" or such other person as shall have been notified as the person to whose attention any such notice should be drawn any such notification to have been given either to the Seller or to the Seller's Solicitors and to have been given by notice in writing served in accordance with this Clause 27 prior to the service of the notice referred to in this Clause 27.9 the provisions of this Sub Clause shall not apply to a notice served upon the Buyer's Solicitors in accordance with Clause 29.2.

27.10 Where any notice is to be served in the Seller it shall be addressed to the Head of Legal Services, The Urban Regeneration Agency, 110 Buckingham Palace Road, London, SW1 9SA.

27.11 The provisions of this Clause 27 shall in addition to the service of notices also apply (mutatis mutandis) to the delivery of documents and the service of certificates.

28 Assignment

28.1 No Assignment

The Buyer shall not assign this Agreement or any interest in it.

29 Breach non-performance and non-observance

29.1 If:-

29.1.1 there shall be a breach, non-performance or non-observance of any of the terms, agreements, stipulations and conditions contained in this Agreement on the part of the Buyer (other than in relation to the provisions of Clause 26.1) and the Buyer shall have failed to remedy the same within a reasonable period from service of a written notice by the Seller to the Buyer requiring it to remedy the same; or

29.1.2 an administration order is made in relation to the Buyer; or

29.1.3 the Buyer shall enter into liquidation (whether compulsorily or voluntarily except for the purposes of amalgamation or reconstruction of a solvent company); or

29.1.4 a receiver or manager shall be appointed in respect of the Buyer

then this Agreement shall at the option of the Seller (to be expressed in a written notice by the Seller to the Buyer) cease and determine. In such case the Seller may enter upon the Property and take possession.

29.2 If there shall be a breach, non-performance or non-observance of any of the terms, agreements, stipulations and conditions contained in this Agreement on the part of the Buyer (other than in relation to the provisions of Clause 26.1) and the Buyer shall have failed to remedy the same within a reasonable period from service of a written notice by the Seller to the Buyer requiring it to remedy the same then the Seller shall be lawfully entitled to determine forthwith any Building Licence then current withhold the grant of a Building Licence to any further Phases until the Buyer has remedied the breaches notified by the Seller without the Seller being in breach of any of its obligations under this Agreement.

29.3 In addition to the Seller's remedies set out in Clauses 29.1 and 29.2 if the Buyer fails to carry out or complete any of the Buyer's Works in accordance with the terms of this Agreement the Seller its agents, employees, contractors and licensees shall be entitled to enter the Property and to carry out the Buyer's Works and the Buyer shall forthwith upon demand reimburse the costs, fees and expenses incurred by the Seller in connection therewith, together with interest at the Contract Rate. Such costs, fees, expenses and interest will be recovered by the Seller as a debt.

29.4 If the Seller terminates this Agreement under this Clause 29 all liabilities shall thereupon cease but no money paid hereunder by the Buyer to the Seller shall be refunded and termination is without prejudice to any claim for any earlier breach brought by the Seller against the Buyer

29.5 Procedure for Termination Notice

29.5.1 If the Seller shall wish to exercise all or any of the powers of re-entry and possession contained in this Agreement or to otherwise terminate this

Agreement or treat the same as having been repudiated it shall before doing so give the Termination Notice to the Guarantor

29.5.2 As from the date of receipt by the Guarantor of the Termination Notice the Guarantor shall have one calendar month in which to decide whether to:-

- (a) tender to the Seller a duly perfected covenant in a form to be approved by the Seller (such approval not to be unreasonably withheld) binding the Guarantor to the performance of this Agreement in the place of the Buyer on the terms therein contained; or
- (b) take no action.

29.6 Suspension of Termination Notice

The Seller will not take any further steps to proceed with such powers of re-entry and possession or to otherwise terminate this Agreement or treat the same as having been repudiated until the expiry of two calendar months from the date of the Termination Notice and the Seller will not terminate this Agreement in the event that the Guarantor shall proceed in the manner indicated in Clause 29.5.2(a).

29.7 Continuation Provisions

29.7.1 If the Guarantor notifies the Seller in writing of its intention to proceed as set out in Clause 29.5.2 then

- (a) the Guarantor shall be allowed an extension of time in accordance with Clause 29.10;
- (b) the Seller shall continue to be bound by the terms of the agreement; and
- (c) the Guarantor shall thereafter be deemed (as between the covenantor or the said assignee and the Seller) to have taken a novation of the rights and obligations of the Buyer under this Agreement and shall thereafter be in the place of the Buyer as if an original party to this Agreement and this Agreement shall be construed accordingly;
- (d) The Guarantor shall be entitled to carry out and complete the Buyer's Works in accordance with the terms herein contained then the Guarantor the contractors appointed by it shall be entitled to enter upon the Property in accordance with the Agreement in order to carry out and complete the Buyer's Works.

29.8 Termination Provisions

If the Guarantor notifies the Seller in writing of its intention to proceed in the manner indicated in Clause 29.5.2(b) or in the event of the Guarantor failing to notify the Seller in writing of any decision within a period of two calendar months from the date of receipt by the Guarantor of the Termination Notice (whichever shall be the earlier) then the Seller shall be free to proceed with the powers of re-entry and possession contained in this Agreement or to otherwise treat this Agreement as having been repudiated without prejudice to the Guarantor's obligations contained in Schedule 17.

29.9 No Assignment by Guarantor

The Guarantor shall not otherwise be entitled to assign this Agreement to a third party.

29.10 Extension of time limits

In any case where this clause is made applicable by this Agreement then the Guarantor or its receiver or any assignee of the Agreement (as the case may be) shall be allowed a reasonable extension of any time limit to complete the Buyer's Works and if the Seller and the Approved Guarantor shall be unable to agree as to what is a reasonable extension of the same the question shall be referred for determination by an expert in accordance with Clause 31 of this Agreement.

30 Non merger

So far as they remain to be performed or observed the provisions of this Agreement shall continue in full force and effect notwithstanding the issue of the Final Certificate of Practical Completion.

31 Disputes

31.1 Referral Expert

31.1.1 Any dispute or difference between the parties in connection with this Agreement may, if the Seller agrees, be referred to and settled by an independent expert (the **Expert**) whose decision in relation to such matters shall be final and binding upon the Parties except in the case of fraud or manifest error.

31.1.2 The Expert shall be appointed by a body relevant to the nature of the dispute, which the Parties agree that in a dispute relating to a matter of law will be an Expert appointed by the Bar Council of England, or for disputes of an alternative nature an Expert appointed by the President of the Royal Institute of Chartered Surveyors. If either the Bar Council of England or the President of the Royal Institute of Chartered Surveyors (as applicable) are unable/will not appoint an Expert in relation to the dispute referred to them, then the Parties will endeavour to arrange for the appointment of an Expert by any other body as they both consider to be appropriate.

31.2 Expert's Role

The Expert acts as an expert and not an arbitrator and the provisions of the Arbitration Act 1996 shall not apply to the Expert, his decision or the procedure by which he reaches his decision.

31.3 Notice of Appointment

Subject to the provisions of Clause 31.1 and the Seller having agreed to the referral of the dispute to the Expert, the party wishing to appoint the Expert will give notice in writing to that effect to the other party, together with details of the matter which he wishes to refer to the Expert.

31.4 Exclusion of Certain Persons

31.4.1 A person can only be appointed to act as an Expert if at the time of the appointment he is not:-

- (a) a director, office holder or employee of; or
- (b) directly or indirectly retained as a consultant or in any other professional capacity by
- (c) any Party to this Agreement or any company or person associated with any such Party.

31.5 Procedure

Within 10 Working Days from his appointment the Expert will call the Parties to a meeting at which he will give directions as to the future conduct of the matter referred and will from time to time give such further directions as he shall see fit. The Expert will allow the Parties to make written representations and written counter-representations to him but will not be in any way fettered by such representations and counter-representations and will rely on his own judgment.

31.6 Assistance

The Parties will give to the Expert such assistance as the Expert considers necessary to carry out his function.

31.7 Decision

The Expert will give notice in writing of his decision to the Parties within 4 weeks of his appointment or within such extended period as the Parties may agree in writing.

31.8 Costs

The costs of the reference to the Expert will be borne as he directs and failing any such direction will be shared equally between the Parties. If any Party pays the whole or part of the Expert's fees the other Party will upon demand repay to the paying Party the whole or part of any fees so paid, insofar as the Expert awards such fees against the non paying Party.

31.9 Original Expert

31.9.1 If the Expert (the **Original Expert**):-

- (a) fails to determine the matter referred to him;
- (b) fails to give notice of his decision within the time and in the manner provided for in this Clause 31;
- (c) relinquishes or does not accept his appointment;
- (d) dies; or
- (e) it becomes apparent for any reason that he is unable to complete the duties of his appointment;

any of the Parties may in accordance with Clause [31.1 to 31.8] apply for a substitute to be appointed (but not after the Expert has given notice of his decision to the Parties in dispute). In such event the Expert is no longer the expert, the provisions of this Clause apply as if the Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this Clause is deemed to include any substitute appointed pursuant to this Clause [31.9].

32 Registration of Agreement at HM Land Registry

Neither the Buyer nor the Guarantor shall be entitled to note this Agreement against the Seller's registered title other than by virtue of a unilateral notice and shall not without the written consent of the Seller (which may be withheld in the Seller's absolute discretion) send this Agreement or a copy thereof to HM Land Registry Provided always that this Clause shall not prevent the Buyer making an application for registration of its title following Completion.

33 Environmental matters

Buyer's Acknowledgement and Agreement

33.1 The Buyer and the Guarantor each hereby acknowledge and agree with the Seller that (in particular for the purposes of the exclusion and apportionment of liability for contaminated land (and in particular Paragraphs D57 to D61 - "Test 3 - Sold with Information" of Annex 3 of DETR Circular 2/2000)):-

33.1.1 prior to the date hereof the Buyer and the Guarantor have been given sufficient opportunity to inspect and carry out investigations of the condition of the Property to ascertain whether, and if so, the extent to which there is any actual or potential presence of Hazardous Substances in, at, on, over or under the Property;

33.1.2 the Purchase Price and the terms on which the parties have agreed the sale and purchase of the Property take into account and fairly and reasonably reflect:-

(a) the state and condition of the Property (including the presence of Hazardous Substances);

(b) the possible need to carry out remedial action;

(c) that no warranty, guarantee, indemnity or representation is given or deemed to be given by the Seller as to the state and condition of the Property, its suitability for any purpose and function or the accuracy of any information given by the Seller in respect of the past history of the Property; and

(d) both the Buyer the Guarantor and the Seller are commercial organisations.

Release of Seller's Liability

33.2 The Buyer for itself and its successors in title agrees that it hereby discharges and releases the Seller against any liability for or in relation to any Hazardous Substances present at Completion in, on, at, over or under the Property or which may have migrated to any adjacent or nearby property.

Parties' Acknowledgment

33.3 The parties hereby acknowledge and agree that the covenants and agreements contained in this Schedule constitute an agreement on liabilities for the purposes of the exclusion and apportionment of liability for contaminated land (and in particular Paragraph D38 of Annex 3 of DETR Circular 2/2000) and should any enforcement action be instituted against the Seller and/or the Buyer by any regulatory authority (including without limitation the Environment Agency or relevant local authority (as appropriate)) then the parties agree that the relevant regulatory authority should allocate costs and liabilities of any remediation action in accordance with the agreement herein contained and if that regulatory authority does not do so then the parties nevertheless agree that as between themselves this agreement should operate to transfer such liability to the Buyer.

33.4 Seller's procurement of Warranties

The Seller shall at its own cost and within 3 months of the date of this Agreement procure the assignment to the Buyer or the completion in favour of the Buyer of duty of care warranties from each of the report providers in relation to each of the Reports or at the Seller's election in relation to the second and third defined Reports a report in identical terms in favour of the Buyer and as approved by the Buyer.

34 Entire agreement and representations

Amendments

- 34.1 This Agreement contains the entire agreement between the parties and may only be varied or amended by a document signed by or on behalf of the Seller and the Buyer both Parties and making reference to this Clause.

Representations

- 34.2 The Buyer and the Guarantor each acknowledge that they are entering into this Agreement without placing any reliance upon any representation (written or oral) which may have been made by the Seller or any agent, advisor or other person acting for the Seller except such representations as may be made in this Agreement or may have been made in any written communication from the Seller's Solicitors to the Buyer's solicitors.

35 Freedom of information

Disclosure Obligations

- 35.1 The Buyer shall use all reasonable endeavours to assist the Seller in its compliance with the disclosure obligations imposed on the Seller by:-

35.1.1 the Freedom of Information Act 2000 (**FOIA**) and all subordinate legislation;

35.1.2 the Environmental Information Regulations 2004 and any other Implementing Regulations in the UK of EC directive (2003/4EC) on Public Access to Environmental Information (all of which shall together be referred to as the **EIR**);

and which may also include any binding guidance and Codes of Practice which may be published from time to time by the Department for Constitutional Affairs in accordance with any such legislation (all of which shall together be referred to as the **Rules**) to the extent that such obligations relate to information held by the Buyer on behalf of the Seller or otherwise in connection with this Agreement or the Development. For the avoidance of doubt, this includes but it not limited to the obligations on the Buyer at the Buyer's reasonable expense to:-

35.1.3 use reasonable endeavours to provide the Seller with any information held by it on behalf of the Seller (and not by the Seller itself) as is necessary in order to allow the Seller to comply with valid requests for information received from individuals pursuant to the Rules. Such assistance shall be provided as soon as reasonably practicable and in any event within seven (7) Working Days of the Seller making a written request to the Buyer to provide any necessary information; and

35.1.4 use reasonable endeavours to inform the Seller of any classes of information relating to the development in its possession which it holds on behalf of the Seller which does not appear on the seller's publication scheme provided directly to it from time to time by the Seller provided that this obligation shall not extend to provide such information more than twice in one year; and

35.1.5 use reasonable endeavours to procure that its Building Contractor (if any) and Professional Team shall assist the Seller as set out in this Clause 35.1.

Supply of Material

- 35.2 If the provisions of Clause 35.1 require the Buyer to supply material in which the Buyer is the owner or a licensee of the copyright, the Seller will not disclose such material without an accompanying notice acknowledging the owner of such copyright provided that the Buyer on supplying any such material to the Seller gives the Seller

prior written notice of its copyright, in such materials and the requirements of the Seller to acknowledge such copyright.

Buyer's Good Faith

- 35.3 In complying with the obligations of Clause 35.1, the Buyer agrees that it shall at all times act in good faith and shall not knowingly act, or omit to act, (but excluding any acts or omissions to act requested by the Seller) in such a way as to prevent the Seller from complying with its obligations under the Rules.

Requests for Information

- 35.4 Where a valid request for information under any of the Rules has been received by the Seller, the Seller shall adhere to the requirements of, and consider the availability of the exemptions under the Rules in disclosing information relating to this Agreement and the other parties.

Responding to Requests

- 35.5 Where a valid request for information under the Rules has been received by the Seller; and responding to such a request (which for the avoidance of doubt includes confirming or denying that the information is held by the Seller) would involve the disclosure of information about or in relation to the Buyer, to the Development and/or this Agreement; then the Seller shall consult with the Buyer before confirming or denying that such information is held and/or disclosing the information in order for the parties to agree (such agreement not to be unreasonably withheld or delayed) to:

35.5.1 the Seller confirming or denying holding the information or disclosing the information; and/or

35.5.2 whether any exemptions under the Rules or any other legislation may apply to prevent the confirmation or denial and/or the disclosure of such information.

- 35.6 For the avoidance of doubt the parties agree that in pursuance of Clause 35.5.1 and 35.5.2 the Buyer shall be entitled to express its views to the Seller in relation to whether disclosure can be withheld on the basis that: the cost of compliance with the request would exceed the Appropriate Limit under the FOIA; the request represents a vexatious or repeated request under the FOIA; or the public interest in withholding the relevant information outweighs the public interest in disclosing it.

Non-disclosure

- 35.7 Where the Buyer does not agree to such confirmation or denial and/or disclosure pursuant to Clause 35.5, the Buyer will provide details in writing to the Seller, within 3 working days of being notified of the details of the request, of the reasons it believes some or all of the information requested should not be disclosed. The Seller shall fully and properly consider any representations made to it by the Buyer and shall inform the Buyer what information it intends to confirm or deny and/or disclose the person making the request at least three Working Days before confirmation or denial and/or disclosure is to be made.

Appropriate Measures

- 35.8 The parties agree that nothing in this agreement will operate to prevent the Buyer from taking all measures that it considers appropriate (including, but not limited to, seeking injunctive relief) where it does not agree to and seeks to prevent the Seller's proposed confirmation or denial and/or disclosure of information pursuant to Clause 35.6.

Designation as Public Authority

- 35.9 In the event that the Buyer is designated a public authority for the purposes of the FOIA by an Order made pursuant to Section 5 of the FOIA, or where the Buyer is deemed to be a public authority for the purposes of the EIR, the parties agree that identical reciprocal arrangements to those set out in this Clause 35 shall apply as appropriate.

36 Guarantor obligations

In consideration of the Seller entering into this Agreement with the Buyer the Guarantor agrees as set out in Schedule 17

37 Contracts (Rights of Third Parties) Act

Save where expressly provided herein a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

38 VAT

- 38.1 The Buyer and the Seller shall each pay to the other Value Added Tax (at the appropriate rate) lawfully and properly chargeable by the Seller or the Buyer (as the case may be) in respect of any taxable supplies made by the Seller to the Buyer or vice versa provided that the relevant party making the taxable supply shall immediately prior to the payment to it of the Value Added Tax deliver to the other party a valid Value Added Tax invoice addressed to that other party.

39 Jurisdiction

The provisions of this Agreement shall be governed by English Law and the parties agree to submit to the jurisdictions of the English Courts.

40 Indemnity

The Buyer will indemnify the Seller against all liability on demand made or expense it incurs in connection with any planning gain supplement or other tax or duty of a similar nature which arises in connection with the Property

41 Publicity

Prior to making any press announcements or similar public statements on this Agreement and/or the Buyer's Works each party shall obtain the prior written approval of the other to the wording of the press statement or similar public announcement (such approval not to be unreasonably withheld)

SIGNED by or on behalf of the parties on the date which first appears in this Agreement

SCHEDULE 1

Property

All that freehold land at South Yard Enclave, Plymouth registered at HM Land Registry under Title Number DN250111 with title absolute.

520111

SCHEDULE 2

The Amendment to Standard Conditions

- 1 Standard Conditions 1.3, 1.4, 3.1.3, 3.3, 6.4.2, 6.6.5 and 7.1 do not apply and the Standard Conditions shall be deemed to be amended accordingly.
- 1.1 In Standard Condition 1.1.1(d) the words "(unless otherwise defined)" shall be inserted after "completion date".
- 1.2 In Standard Condition 1.1.1(e) the words "(unless otherwise defined)" shall be inserted after "contract rate".
- 1.3 Standard Condition 1.1.3(b) is amended to read:-

"in the case of the seller, even though a mortgage remains secured on the property, if the amount to be paid on completion enables the property to be transferred freed of all mortgages (except those to which the sale is expressly subject) or the seller produces reasonable evidence to demonstrate that the relevant Approved Funders will release all such mortgages when the purchase price has been paid".
- 1.4 Standard Condition 3.1.2 is amended as follows:-
 - 1.4.1 Standard Condition 3.1.2I shall read:-

"those the seller does not know about."
 - 1.4.2 Standard Condition 3.1.2(d) is amended to read:-

"entries made before the date of the contract in any public register except mortgages and monetary charges protected by such entries in registers maintained by HM Land Registry or its Land Charges Department or by the Companies Registry."
 - 1.4.3 Standard Condition 3.1.2 is extended as follows:-

"(f) any matters, other than mortgages and monetary charges, which would have been revealed to the buyer if before the date of the contract he had made all searches enquiries and inspections regarding the property which a prudent buyer would make

so far as the same are still subsisting at completion, are capable of taking effect and relate to the property."
- 1.5 Standard Condition 6.1.3 is extended as follows:-

"But the foregoing provisions of this condition 4.2.3 apply only to documents in the possession of the seller or its Approved Funder".
- 1.6 In Standard Condition 6.6.4(a) the words "(but by way of indemnity only and not further or otherwise) to observe and perform the obligations and to indemnify the seller against all costs, expenses, losses, demands, actions, liabilities, claims or proceedings whatsoever arising in respect of any future breach, non performance or non observance of such obligation" are substituted for the words "to indemnify the seller against liability for any future breach of the obligation and to perform it from then on".
- 1.7 In Standard Condition 6.6.5 there shall be inserted after the words "document of title" the following:-

"(except where the document is a matter of public record or where the seller's conveyancer has notified the buyer's conveyancer in writing (prior

to the contract being entered into) that the document cannot be produced or where this contract states that the document shall not be produced or that no requisition or objection may be made in respect of the production of such document".

1.8 In Standard Condition 6.6.2 the words "and save as otherwise specified in the contract" shall be inserted after "condition 6.6.3".

1.9 In Standard Condition 8.1.2 the time of 1.00 pm shall be substituted for 2.00 pm.

1.10 Standard Condition 8.3.2 shall be amended to read:-

"The day from which the apportionment is to be made ("apportionment day") shall be the date of actual completion unless the seller shall elect prior to completion by serving notice to such effect upon the buyer that the "apportionment day" shall be the completion date in which case the "apportionment day" shall be the completion date."

1.11 The following shall be added at the end of Standard Condition 8.8 as an additional condition 8.8.3:-

"8.8.3 On receipt of a notice to complete:-

(a) If the buyer paid no deposit it is forthwith to pay a deposit of 10 per cent plus interest upon such deposit at the contract rate in respect of the period commencing upon the completion date and expiring upon the date such deposit is paid which interest shall be received by the seller's conveyancer as agent of the seller and which shall not be deemed to comprise deposit for the purposes of condition 7.3.2;

(b) If the buyer paid a deposit of less than 10 per cent it is forthwith to pay a further deposit equal to the balance of that 10 per cent plus interest upon such balance at the contract rate in respect of the period commencing upon the completion date and expiring upon the date such balance is paid which interest shall be received by the seller's conveyancer as agent of the seller".

1.12 The following condition shall be added at the end of Standard Condition 8 as an additional Standard Condition 8.9:-

"8.9 Occupation by buyer prior to completion

8.9.1 If the buyer is not already lawfully in the property, and the seller agrees to let the buyer into occupation, the following terms apply.

8.9.2 The buyer is a licensee and not a tenant. The terms of the licence are that the buyer:-

(a) cannot transfer it;

(b) is to pay or indemnify the seller against all outgoing and other expenses in respect of the property;

(c) is to pay the seller a fee calculated at the contract rate on the purchase price (less any deposit paid) for the period of the licence;

(d) is to keep the property in as good a state of repair as it was in when the buyer went into occupation and is not to alter it and is to observe and perform all covenants and conditions affecting the property or the use thereof;

- (e) is not to infringe a statutory requirement relating to it;
- (f) is to quit the property when the licence ends.

8.9.3 The licence ends on the earliest of completion date, rescission of the contract or when five working days notice given by one party to the other takes effect.

8.9.4 If the buyer is in occupation of the property after the licence has come to an end and the contract is subsequently completed the buyer is to pay the seller compensation for its continued occupation calculated at the same rate as the fee mentioned in condition 8.9.2I.

8.9.5 The buyer's right to raise requisitions is unaffected.

1.13 Standard Condition 9.3.2 is amended to read:-

"Compensation is calculated at the contract rate on the purchase price (less any deposit paid but including any separate price payable for chattels) for the period commencing upon the completion date and expiring upon the date of actual completion, but ignoring any period during which the seller was in default".

1.14 Standard Condition 9.3.4 is amended to read:-

"The seller will be entitled both to compensation and to any income from the property in respect of any period of delay in completion which is not due to the default of the seller".

1.15 At the end of Standard Condition 9.5.2(a) there shall be added "and section 49(2) of the Law of Property Act 1925 shall not apply".

1.16 At the end of Standard Condition 10.3.3(b) there shall be added the words "where the reversioner requires an authorised guarantee agreement and the reversioner is entitled to impose such requirement".