



Homes  
England

Date: 31 January 2022

Our Ref: RFI3701

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████  
Freeths LLP  
By Email Only

Information Governance Team  
Homes England  
Windsor House – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear ██████████

**RE: Request for Information – RFI3701**

Thank you for your request for information which was processed in accordance with the Freedom of Information Act 2000 (FOIA).

You requested the following information:

*We, therefore request the information below in relation to the Developer (potentially LHL):*

- 1. The identity of the Developer that the Agency/Homes England contracted with in relation to the Fairmile Building.*
- 2. Whether the agreement with the Developer included the clause set out in our letter dated 26 August 2021, or whether the clause was amended, deleted or replaced with a provision which required the Developer to provide collateral warranties at Homes England's request;*
- 3. Whether any collateral warranties for the works were provided by the Developer to the Agency/Homes England; and*
- 4. Whether any collateral warranties for the works were provided by the Developer to any other party at the Agency's/Homes England's request, including but not limited to any party intending to take a lease of the premises and/or a party providing finance for the project.*
- 5. Further, we would be grateful if you would provide copies of the agreement between the Agency and the Developer together with any collateral warranties given by the Developer in relation to the works carried out on the Fair Mile Building.*

**Response**

We can confirm that we do hold some of the information that falls within the scope of your request. We will address each of your questions in turn.

- 1. The identity of the Developer that the Agency/Homes England contracted with in relation to the Fairmile Building.***

We can confirm that the Developer contracted was Linden Homes Limited (now Vistry Partnerships Ltd).

OFFICIAL



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2. ***Whether the agreement with the Developer included the clause set out in our letter dated 26 August 2021, or whether the clause was amended, deleted or replaced with a provision which required the Developer to provide collateral warranties at Homes England's request;***
3. ***Whether any collateral warranties for the works were provided by the Developer to the Agency/Homes England; and***
4. ***Whether any collateral warranties for the works were provided by the Developer to any other party at the Agency's/Homes England's request, including but not limited to any party intending to take a lease of the premises and/or a party providing finance for the project.***

We can confirm that Homes England does not hold the information detailed in your request.

To conclude that the information is not held, we have searched with both our CAL team and Records Management team who would have the requested information if held.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty under section 1(1) is only to provide the recorded information held.

The full text of section 1 in the legislation can be found here:

<https://www.legislation.gov.uk/ukpga/2000/36/section/1>

#### **Advice and Assistance**

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. To comply with this duty, we are able to confirm that the agreement with the developer does not contain the clause set out in your letter dated 26 August 2021. Further, we do not hold any collateral warranties provided by the Developer to Homes England or provided to any other third party at the Agency's request in relation to the Fairmile Building.

5. ***Further, we would be grateful if you would provide copies of the agreement between the Agency and the Developer together with any collateral warranties given by the Developer in relation to the works carried out on the Fair Mile Building.***

Please find enclosed as Annex A, a copy of the Sale and Development Agreement between Homes England (previously known as English Partnerships) and Linden Homes in respect of Fair Mile Hospital. However, we rely on Section 40 (2) and Section 43(2) of the FOIA to withhold some of the information from disclosure.

#### **Section 40 – Personal information**

We have redacted information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, contact details and addresses could lead to the identification of third parties and would breach one or more of the data protection principles.



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Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text in the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

#### Section 43 - Commercial interests

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

The information requested relating to Agreement between the Developer and the Agency engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice the effective operation of future development on the land.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

#### Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money.
- Homes England acknowledges that there is a public interest in the Fair Mile Hospital site.

#### Arguments in favour of withholding:

- Releasing information in relation to a third party in a competitive market would be likely to distort competition, making it a less competitive process. This would not be in the public interest as it would be likely to lead to third parties being unable to secure works for market value, or be successful in securing approvals for works and services. This would be likely to have a negative effect on future commercial activity. This would not be in the public interest as it would negatively affect Homes England's position as the government's housing accelerator and our ability to create successful and trusting relationships with partners;
- If information regarding value that has been and will be derived were in the public domain there could be expectations from the public and potential future partners about the value of the site and the value of potential future works. This would mean that prices could be inflated and negotiating positions put at risk. This would not be in the public interest as it would be likely to result in poorer value for public money;
- Releasing the information could reveal financial information between Homes England and third parties which may in turn affect their commercial interests. The consequences of releasing data that is part of a



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wider ongoing matter would likely prejudice any potential funding allocations of the third party concerned.

This would not be in the public interest as this could put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan;

- Furthermore, releasing the information would be likely to negatively impact future processes as third parties may feel unable to provide all the information requested for fear of disclosure, which would impact the ability of Government officials to make effective, informed decisions and work effectively with partners. This would be likely to negatively impact allocation of public money; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

### **Right to Appeal**

If you are not happy with the information that has been provided or the way in which your request has been handled, you may request an internal review. You can request an internal review by writing to Homes England via the details below, quoting the reference number at the top of this letter.

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

The Information Governance Team  
Homes England – 6<sup>th</sup> Floor  
Windsor House  
50 Victoria Street  
London  
SW1H 0TL

Your request for review must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response. Failure to meet this criteria may lead to your request being refused.

Upon receipt, your request for review will be passed to an independent party not involved in your original request. We aim to issue a response within 20 working days.

You may also complain to the Information Commissioner's Office (ICO) however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

The Information Commissioner's details can be found via the following link:

<https://ico.org.uk/>





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Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

**The Information Governance Team**

For Homes England

DATED

5 March

2007

**THE URBAN REGENERATION AGENCY (acting as  
ENGLISH PARTNERSHIPS)**

**LINDEN HOMES CHILTERN LIMITED**

**LINDEN LIMITED**

**SALE AND DEVELOPMENT AGREEMENT**

in respect of

**Fair Mile Hospital and  
Celsea Place**

**\*berwin leighton paisner**

Berwin Leighton Paisner LLP  
Adelaide House London Bridge London EC4R 9HA  
tel +44 (0)20 7760 1000 fax +44 (0)20 7760 1111

**Annexures**

- 1 Approved Plans
- 2 Council's Affordable Housing Strategy
- 3 Design Statement
- 4 EP's Affordable Housing Strategy
- 5 Estate Management Strategy
- 6 Plan 1
- 7 Plan 2
- 8 Plan 3
- 9 Warranty
- 10 Appointment of Employer's Representative
- 11 Transfer - the Celsea Site
- 12 Transfer - the Site
- 13 Sustainability Statement

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S' Mark

**DATED**

2007

**PARTIES**

- 1        EP                                **THE URBAN REGENERATION AGENCY** (acting as **ENGLISH PARTNERSHIPS**) whose principal office is at 2nd Floor Atrium Court The Ring Bracknell Berkshire RG12 1D
  
- 2        Developer                            **LINDEN HOMES CHILTERN LIMITED** (company no 03193571) whose registered office is at Linden House Guards Avenue Caterham Surrey CR3 5XL
  
- 3        Guarantor                                **LINDEN LIMITED** (company no 02606856) whose registered office is at Linden House Guards Avenue Caterham Surrey CR3 5XL

**1        Definitions and interpretation**

1.1       Unless the contrary intention appears, the following definitions apply to this agreement:

*Adopted Development Brief*        South Oxfordshire District Council's adopted development brief of 2003;

*Adverse Matter*                        as defined in clause 5.17.1;

*Affordable Housing*                    affordable housing to be constructed as part of the Development;

*Affordable Housing Units*            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 and/or any Planning Agreement;

*Anticipated Completion Date*        in respect of the entire Development shall be the date which is six years after the Unconditional Date, and in respect of each Phase an Anticipated Completion Date shall be agreed between EP and the Developer or determined as provided in

clause 13, such dates being referred to as the relevant Phase Anticipated Completion Date eg Phase 1 Anticipated Completion Date;

as each such date may be extended pursuant to this agreement;

*Application*

the application pursuant to the Planning Act for detailed planning permission for the Development to be made jointly by or on behalf of the Developer and EP together with all supporting and ancillary documentation required in accordance with the Planning Act, as such application and supporting documentation may be amended or substituted as permitted by this agreement;

*Approved Plans*

the plans, specifications, and programme for the Development copies of which are at annexure 1 as subsequently amplified and amended from time to time in accordance with this agreement;

*Bid Submission*

the Developer's bid submission pursuant to which it was chosen as Developer for the Development;

*BREEAM*

the Building Research Environmental Assessment Method;

*CDM Regulations*

the Construction (Design and Management) Regulations 1994;

*Celsea Completion Date*

the date 20 Working Days after the date of this agreement;

*Celsea Site*

the land on the east side of Celsea Place, Choisey, Wallingford which is more particularly described in schedule 4 part 2;

*Certificate of Making Good Defects*

each notice, certificate or statement issued by the Employer's Representative that the defects in the Works or the relevant Phase which have

appeared during the relevant Defects Liability Period have been made good in accordance with the obligations of the Developer in this agreement;

*Certificate of Practical Completion*

each certificate or statement issued by the Employer's Representative in accordance with his appointment certifying that the Works, or the relevant Phase, have achieved Practical Completion in accordance with this agreement and *practically completed* shall be construed accordingly;

*Charge*

a charge to be created over the Celsea Site which shall be a form to be agreed between the parties acting reasonably;

*Completion Date*

the date ten Working Days after the issue of EP's Certificate;

*Conditions*

collectively:

- (a) the Masterplan Condition;
- (b) the Planning Condition; and
- (c) the Listed Building Condition;

*Consents*

the Satisfactory Permission, the Listed Building Consent, all other consents, permissions, agreements, licences and approvals under the Planning Act (and all other statutes containing provisions relating to Town and Country Planning) (including the approval of any matters reserved by any such), building regulations and any other statute, bylaw or regulation of any competent authority from time to time necessary for the Developer to undertake and complete the Development in accordance with the provisions of this agreement including, if they are destroyed or damaged, the reinstatement of the Works;



<i>Consultation Groups</i>	collectively the statutory consultees to the Application and such other stakeholders as EP and the Developer shall agree (both acting reasonably) and reference to a <i>Consultation Group</i> shall be to any one or more of them as appropriate;
<i>Council</i>	the local authority in the area of the Site with responsibility for affordable housing and which enters into a nominations agreement with the RSL in respect of the Affordable Housing;
<i>Council's Affordable Housing Strategy</i>	the Council's strategy for the design and provision of Affordable Housing which is at annexure 2;
<i>Counsel</i>	s. 40(2) or such other suitably experienced planning counsel as the parties shall agree and in the absence of agreement who is appointed as provided in this agreement;
<i>Date of Practical Completion</i>	the date certified by the Employer's Representative in each Certificate of Practical Completion as being the date on which the Works or the relevant Phase achieved Practical Completion in accordance with the terms of this agreement but notwithstanding the existence of any Snagging Works;
<i>Defects Liability Period</i>	the period of 12 months calculated from the Date of Practical Completion of the relevant Phase;
<i>Deposit</i>	the sum of s. 43 pounds);
<i>Design Statement</i>	the Developer's design statement for the Development which is at annexure 3;
<i>Design Stage Certificate</i>	the certificate issued by an Independent Assessor in respect of each Residential Unit confirming that

the design of the Residential Unit to which the certificate relates will, when completed be capable of complying fully with the requirements of BREEAM ECO Homes Standard "Excellent" (subject to clause 30) prevailing as at the date of this agreement;

*Developer's Solicitors*

Pitmans of 47 Castle Street Reading RG1 7SR ref AD or such other as solicitors whose details are notified by the Developer to EP;

*Development*

the conversion of some of the existing buildings to residential use for a minimum of 182,177 square feet of Gross Developable Area, the construction of new buildings for residential use for a minimum of 233,655 square feet of Gross Developable Area together with ancillary commercial and/or community uses, and the demolition of some of the existing buildings upon the Site, site preparation works, services, access roads, car parking, gardens, landscaping and all other ancillary works;

*Development Objectives*

the objectives which have been identified by EP for the Development and which are set out in schedule 7 part 1;

*Duty of Care Deeds*

deeds addressed to the Developer from the authors of each of the Reports confirming that the Developer may rely upon the contents of the Reports, the form of such letters to be agreed between the parties;

*Employer's Representative*

the architect, quantity surveyor or employer's agent (as appropriate) who shall be a reputable and appropriately qualified representative appointed by the Developer to monitor and certify the Works or the relevant part of them and who shall be a third party and not an employee of the Developer and who shall be

	approved by EP as provided in this agreement;
<i>EP Land</i>	collectively the Site and the Celsea Site;
<i>EP Price Standards</i>	the price standards which the Development is to achieve and which are set out in schedule 7 part 3;
<i>EP's Affordable Housing Strategy</i>	EP's strategy for the design and provision of Affordable Housing which is at annexure 4;
<i>EP's Certificate</i>	the certificate issued by EP's Representative confirming that the requirements of clause 39 have been satisfied;
<i>EP's Representative</i>	EP's project manager appointed from time to time and whose details are notified to the Developer by EP;
<i>EP's Solicitors</i>	Berwin Leighton Paisner LLP of Adelaide House, London Bridge, London EC4R 9HA or such other solicitors whose details are notified to the Developer by EP;
<i>EP's Surveyor</i>	such surveyor as EP may appoint from time to time (who may be an employee of EP) and whose details are notified to the Developer by EP;
<i>EP's Valuer</i>	DTZ Debenham Tie Leung of One Curzon Street, London W1A 5PZ or such other valuer as EP may appoint from time to time and whose details are notified to the Developer by EP;
<i>Estate Management Strategy</i>	the strategy for the future management of the Site which is at annexure 5 as it may be amended in accordance with this agreement;
<i>Existing Trust Lease</i>	the lease details of which are set out at item 1 of schedule 5;
<i>Final Determination</i>	the last date by which any Proceedings are

determined and any time for appealing or further appealing has expired, except that if any Proceedings are withdrawn or any appeal is abandoned (and no other Proceedings or appeal is current and any time for making them has expired) the date shall be the date of such withdrawal or abandonment;

*First Time Buyer's Initiative*

shall have the meaning set out in schedule 10;

*Gross Developable Area*

the gross internal area (as defined in the RICS Code of Measuring Practice (Fifth Edition)) within Residential Units including conservatories and garden rooms/annexes and any Habitable Rooms above or adjacent to garages, but excluding all areas within basements and attics which do not comprise Habitable Rooms, terraces, balconies, garages and storerooms and all areas with a height of less than 1.5 metres;

*Habitable Rooms*

any room in a dwelling with the exception of the bathroom and kitchen (unless it is a kitchen/diner);

*Housing Corporation Standards*

the Scheme Development Standards issued by the Housing Corporation which set out its requirements and recommendations for all housing projects which require Social Housing Grant, being the edition current at the date of construction of the Affordable Housing;

*Independent Assessor*

such reputable and duly qualified person, firm or company accredited by the Building Research Establishment as a BREEAM assessor and approved by EP and who may be an employee of the Developer;

*Insolvent*

in relation to a company that:

- (a) it is deemed unable to pay its debts as defined in section 123 of the Insolvency

Act 1986 (referred to as "the Act" in the remainder of this definition); or

- (b) a proposal is made for a voluntary arrangement under part I of the Act; or
- (c) a petition is presented for an administration order under part II of the Act provided that if the petition is subsequently withdrawn or dismissed on the date of such withdrawal or dismissal it shall cease to be Insolvent; or
- (d) a receiver or manager is appointed whether under part III of the Act (including an administrative receiver) or otherwise; or
- (e) it goes into liquidation as defined in section 247 (2) of the Act (other than a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent); or
- (f) a provisional liquidator is appointed under section 135 of the Act; or
- (g) a proposal is made for a scheme of arrangement under section 425 of the Companies Act 1985;

*Interest Rate*

interest at the rate of **s. 43** per annum above the base rate from time to time of The Royal Bank of Scotland plc;

*Key Personnel*

the key personnel identified in clause 2 and all substitutes for them;

*Lease*

a lease of a Residential Unit or Residential Units in a form approved between the parties acting

	reasonably;
<i>Listed Building Application</i>	the application for such consents as are required for the Development and the Works under the Listed Buildings Act as provided at clause 7;
<i>Listed Building Consent</i>	permission for the Development granted pursuant to the Listed Building Application;
<i>Listed Building Condition</i>	the requirement for the grant of consent pursuant to the Listed Building Application as provided at clause 7;
<i>Listed Building Requirements</i>	the requirements of the local planning authority in accordance with the Listed Building Act in connection with the conversion of the listed building which forms part of the Development;
<i>Listed Buildings Act</i>	Planning (Listed Buildings and Conservation Areas) Act 1990;
<i>Mandatory Sustainability Standards</i>	the mandatory standards which the Development is to achieve and which are set out in schedule 7 part 2;
<i>Market Housing Units</i>	Residential Units within the Development which are not Affordable Housing Units;
<i>Masterplan</i>	the masterplan for the Development to be prepared by the Developer and agreed with EP as provided in this agreement;
<i>Masterplan Condition</i>	the requirement for the form of the masterplan for the Development to be approved by EP as provided in this agreement;
<i>Method Statement</i>	the method statement in respect of the carrying out of the Works agreed or determined in accordance with schedule 1 paragraph 2;
<i>Mortgagee</i>	a fund, bank or other reputable institution providing finance for the purposes of undertaking

	the Development which is approved by EP as provided in this agreement and in respect of which EP has received notice as provided in this agreement, provided that there shall not be more than one Mortgagee at any time;
<i>Net Asset Value</i>	tangible net asset value excluding goodwill and intellectual property determined in accordance with UK Accounting Principles;
<i>Onerous Condition</i>	one or more conditions in the nature of the conditions set out at schedule 2;
<i>Permission Date</i>	the date on which the Satisfactory Permission is granted or is determined to be granted pursuant to this agreement (as applicable);
<i>Phase</i>	a phase of part of the Development being any one or more of the Phases agreed in the Phasing Plan agreed or determined in accordance with clause 13 and <i>Phases</i> shall be construed accordingly;
<i>Phasing Plan</i>	the plan which shows the whole of the Development and how it is divided into and the extent of each Phase, which Phasing Plan shall be agreed or determined in accordance with clause 13, as amended in accordance with this agreement;
<i>Plan 1</i>	the plan at annexure 6 and marked "Plan 1";
<i>Plan 2</i>	the plan at annexure 7 and marked "Plan 2";
<i>Plan 3</i>	the plan at annexure 8 and marked "Plan 3";
<i>Planning Act</i>	the Town and Country Planning Act 1990;
<i>Planning Agreement</i>	any agreement or unilateral undertaking under section 106 of the Planning Act or section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or any statutory re-enactment or



modification of it, or any agreement under any other enactment having the same or similar effect in respect of works which may properly be required in order to facilitate the Development and/or the obtaining of the Satisfactory Permission;

*Planning Condition*

the grant of Satisfactory Permission in respect of the Development;

*Post Completion Certificate*

a final certificate or certificates issued by the Independent Assessor in respect of each Residential Unit confirming that each Residential Unit fully complies with the requirements of, and achieves, BREEAM ECO Homes Standard "Excellent" (subject to clause 42) as such requirements were applicable as at the date of this agreement;

*Practical Completion*

when the Works or the relevant Phase are complete in every respect for occupation (including common areas, entrance areas, stair cores, car parking and all external areas) subject only to Snagging Works provided that in respect of individual Residential Units bathroom and kitchen fittings do not need to have been installed, carpets and floor coverings do not need to have been fitted nor final internal decorative finishes completed and provided that it is not a requirement to have constructed the wearing course of any roads, footpaths and/or car parks nor is it a requirement to carry out landscaping which should be carried out in the next planting season;

*Price*

the sum of £s. 43 [redacted] pounds) comprising £s. 43 [redacted] s. 43 [redacted] pounds) in respect of the Site (the *Site Price*), and £s. 43 [redacted]



s. 43 [REDACTED] pounds) in respect of the Celsea Site (the *Celsea Price*), subject to increase as provided in this agreement;

*Proceedings*

any one or more of the following:

- (a) an appeal against a refusal or non-determination of the Application and/or the Listed Building Application;
- (b) an appeal against a condition of a planning permission granted pursuant to the Application and/or to the Listed Building Application;
- (c) a calling in by the Secretary of State of the Application;
- (d) an application to the court for judicial review or for leave to apply for judicial review; and
- (e) an application to the court pursuant to section 288 of the Planning Act;

*Professional Team*

all of the Employer's Representative, the Independent Assessor, and all other professional consultants (including replacements) appointed in relation to the Development by the Developer including the architect, ground investigation consultant, landscape architect, mechanical and electrical engineer, planning supervisor, sustainability consultant, structural engineer, and transportation and infrastructure engineer the identity of each of whom shall be approved by EP as provided in this agreement;

*Prohibited Materials*

any products, substances or materials, or any combination of them which at the time of use:

- (a) do not conform with British or European

Standards, or Codes of Practice, or the recommendations of the Building Research Establishment; and/or

- (b) are generally known to the building profession to be deleterious to health and safety, the performance or durability of buildings or structures, or damaging to the environment in the particular circumstances in which they are specified to be used or are used;

*Qualifying Occupiers*

persons nominated by the Council whose incomes are insufficient to enable them to afford adequate housing locally on the open market and if there is 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 an Affordable Housing Unit satisfy such criteria including persons identified in a Planning Agreement;

*Relevant Date*

three years from the date of this agreement or if on such date there are Proceedings on foot the earlier of Final Determination and four years from the date of this agreement;

*Reports*

the reports details of which are set out in schedule 8;

*Residential Unit*

an individual dwelling for residential purposes created, converted or refurbished as part of the Development and *Residential Units* means more than one of them;

*RSL*

Registered Social Landlord;

*Satisfactory Permission*

detailed planning permission for the Development which is either agreed (in accordance with clauses 5.5–5.8) or determined (in accordance with clause 5.9) to be in a form and upon

conditions which:

- (a) do not amount to an Onerous Condition; and
- (b) do not amount to an Unreasonable Condition;

unless in the case of an Onerous Condition it is waived by EP, or in the case of an Unreasonable Condition it is waived by the Developer;

*Site* the land and each and every part of it upon which the Development is being or is to be developed from time to time together with other land and which is more particularly described in schedule 4 part 1;

*Snagging Works* any minor outstanding works the non-completion of which shall not adversely affect an occupier's ability to occupy and use the buildings which have been constructed or converted;

*Sub-development Agreement* an agreement between the Developer and Thomas Homes pursuant to which Thomas Homes is appointed sub-developer to undertake some or all of the Sub-development Works and which shall be in a form which shall be in compliance with this agreement in relation to the Sub-development Works;

*Sub-development Works* those of the Works which may, pursuant to the terms of clause 12 be the subject of a Sub-development Agreement;

*Superstructure* all walls, windows and doors but excluding all internal non-structural walls and internal fit-out and including all external cladding;

*Superstructure and Roof Stage* the practical completion of the construction of the Superstructure and the roof of the buildings

	forming a Phase or the whole Development, as appropriate;
<i>Tenancies</i>	those tenancies short details of which are set out in schedule 5;
<i>Thomas Homes</i>	Thomas Homes Limited (company no 04676886) whose registered office is at 2 The Long Yard Ermin Street Shefford Woodlands Hungerford Berkshire RG17 7EH;
<i>Total Financial Indebtedness</i>	total final indebtedness including contingent liabilities determined in accordance with UK Accounting Principles;
<i>Transfer of Part</i>	a transfer of part of the freehold interest in the Site comprising the land upon which a single Residential Unit has been constructed and any additional land forming the gardens and exclusive driveway for such single Residential Unit which shall be in a form agreed as provided in this agreement;
<i>Trust</i>	the Buckinghamshire, Berkshire and Oxfordshire Wildlife Trust;
<i>Trust Land</i>	approximately that part of the Site the extent of which is shown coloured pink on Plan 3;
<i>Trust Lease</i>	a lease in a form agreed in accordance with the provisions of this agreement and which shall be granted to the Trust pursuant to the terms of this agreement;
<i>Unconditional Date</i>	the date on which each and every one of the Conditions has been satisfied or waived (where waiver is permitted under this agreement);
<i>Unreasonable Condition</i>	one or more conditions in the nature of the conditions set out at schedule 3;
<i>UK Accounting Principles</i>	UK accounting principles generally accepted from

	time to time and consistently applied;
<i>Variation</i>	any variation or addition to, clarification or amplification of, or omission from, the Approved Plans, the Works or the Consents;
<i>VAT</i>	value added tax;
<i>Warranty</i>	a warranty in the relevant approved form which is at annexure 9 subject to such amendments as the relevant warrantor requests and EP agrees, and reference to <i>Warranties</i> shall be to all of them as required pursuant to this agreement;
<i>Working Day</i>	any day other than Saturday or Sunday or public or bank holidays when clearing banks in the United Kingdom are open to the public for the transaction of business;
<i>Works</i>	all works of demolition, site preparation, remediation, construction, including services, accessways, parking facilities and landscaping, comprising the Development and each and every part of it, in accordance with the provisions of this agreement; and
<i>Works Agreements</i>	any agreement under:  (a) section 38, section 184 or section 278 of the Highways Act 1980 or similar agreement for the construction and adoption of any roads or any other highway works;  (b) section 98 or section 104 of the Water Industry Act 1991 or similar agreement under any other enactment relating to the provision and adoption of the drainage systems;  (c) any agreement with the local water

company for the supply of water to the Development;

(d) any agreement with a supply company or other competent authority for the provision of services to the Development;

(e) any other similar agreement for the carrying out of works for the Development and adoption by a competent authority; or

(f) any wayleave as required by the statutory suppliers of services to the Development.

1.2 References to clauses, parts, schedules and annexures shall be deemed to be references to clauses and parts of and schedules and annexures to this agreement unless otherwise stated.

1.3 Headings to clauses and schedules shall be disregarded.

1.4 Any references to VAT shall include any tax of a similar nature substituted for or in addition to it unless the context otherwise requires.

1.5 Any reference in this agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re-amended, re-enacted or applied by or under any other enactment and shall include all instruments, orders, plans, regulations and permissions and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.

1.6 Where in this agreement examples are given (including where the word "including" is followed by a list of items) such examples shall not limit any general description preceding such examples.

1.7 References to the "parties" shall be references to EP and the Developer, and references to a "party" shall be to either of them.

1.8 All references to EP are to the Urban Regeneration Agency acting as English Partnerships as land owner of the EP Land and shall not in any way fetter or compromise EP in any other capacity, or in the exercise of any statutory duty.

- 1.9 Any consent, approval or agreement of EP required under this agreement shall only be valid if it is in writing.
- 1.10 Any consent, approval or agreement of a party required under this agreement shall not be unreasonably withheld or delayed unless the provision specifically states otherwise.
- 1.11 References to EP shall include its statutory successors and any successors in title to the Site.

**Part A**

**2 Introduction**

- 2.1 This part A of this agreement shall together with clause 1 come into effect on the date of this agreement except to the extent specifically stated.
- 2.2 On the date of this agreement the Developer shall pay to EP the Deposit which shall be released to EP as agents for the Vendor. On the termination of this agreement the Deposit and the Celsea Price shall be released to EP unconditionally.
- 2.3 The Developer shall pay to EP amounts equal to the sums which EP is liable to pay in respect of its contract with Corporate Guarding Limited for security at the Site such payments to be made in accordance with the timetable set out in clause 2.5 below.
- 2.4 From the date of this agreement:
  - 2.4.1 the risk of damage or destruction of the Site and the Celsea Site now passes to the Developer and the Developer hereby acknowledges and accepts that EP shall no longer self-insure the Site and the Celsea Site from and including such date; and
  - 2.4.2 the Developer shall be liable for all outgoings and maintenance in respect of the Site.
- 2.5 The aggregate sums due from the Developer to EP under clauses 2.3 and 2.4 above shall be reimbursed to EP by way of staged payments in accordance with the following timetable:

- 2.5.1.1 on [ ]<sup>1</sup> 2007, the Developer shall pay to EP the sum of £s. 43
- 2.5.1.2 on [ ]<sup>2</sup> 2008, the Developer shall pay to EP the sum of £s. 43
- 2.5.1.3 on [ ]<sup>3</sup> 2008, the Developer shall pay to EP the sum of £s. 43 and
- 2.5.1.4 on [ ]<sup>4</sup> 2009, the Developer shall pay to EP the sum of £s. 43

Provided that such payments shall only become due and payable on the relevant date on which payment is scheduled to be made.

2.6 The Developer shall arrange monthly Development review meetings in consultation with EP for the purpose of updating EP and its advisers as to the progress of the Works and the sales of the Residential Units (which may be separate meetings). The Developer shall procure that:

- 2.6.1 (unless EP agrees otherwise) at least one member of the Key Personnel shall attend each such meeting;
- 2.6.2 an agenda and any relevant report are issued to EP and EP's Representative at least three Working Days prior to each such meeting;
- 2.6.3 the Employer's Representative and the Key Personnel attend each review of the progress of the Works together with such other members of the Professional Team as shall be reasonable taking account of the matters to be reviewed; and
- 2.6.4 the selling agents attend the sales review meetings.

2.7 The following are the Key Personnel of the Developer whom the Developer has identified at the date of this agreement as the senior personnel taking forward the Development: s. 40(2) (land director), s. 40(2) (project manager). The

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<sup>1</sup> 6 months from exchange  
<sup>2</sup> 12 months from exchange  
<sup>3</sup> 18 months from exchange  
<sup>4</sup> 24 months from exchange



Developer shall procure that the Key Personnel remain involved in the Development to a sufficient extent necessary to ensure compliance by the Developer with its obligations under this agreement. If any named person comprising any Key Personnel ceases to be employed by the Developer the Developer shall propose a suitable substitute, or if the Developer wishes to substitute any named such person the prior approval of EP shall be required.

**3 Conditions**

The Conditions must be satisfied or waived, where waiver is permitted under this agreement, on or before the Relevant Date for the Unconditional Date to be achieved.

**4 Masterplan**

4.1 The Developer shall work in collaboration with EP and shall prepare a draft Masterplan for the whole Development which shall comply with the requirements of this clause as quickly as reasonably practicable.

4.2 The Masterplan shall:

4.2.1 be consistent with the Approved Plans;

4.2.2 be consistent with the Development Objectives;

4.2.3 comply with the EP Price Standards;

4.2.4 be consistent with the Adopted Development Brief;

4.2.5 be consistent with the Estate Management Strategy;

4.2.6 comply with the Design Statement;

4.2.7 be consistent with the Council's Affordable Housing Strategy and EP's Affordable Housing Strategy;

4.3 Following collaboration with EP and the Developer having taken account of the reasonable representations of EP, the Developer shall require the approval of EP to the Masterplan.

**5 The Application**

5.1 Following approval of the Masterplan as provided at clause 4 the Developer shall in consultation with EP, prepare the Application, which shall be consistent with the

Masterplan, in the joint names of the Developer and EP, at its own expense in a form approved by EP prior to its submission, as expeditiously as is reasonably practicable and in any event within six months of approval of the Masterplan. It shall formally submit the proposed Application to EP for its approval once it is in what the Developer considers (acting reasonably) to be in a final form ready for submission and upon the Application being approved by EP, the Developer shall, within ten Working Days of such approval, submit the Application to the local planning authority.

5.2 The Developer shall:

- 5.2.1 diligently pursue the Application and shall use all commercially prudent endeavours to obtain, at its own expense, the Satisfactory Permission as expeditiously as reasonably possible and shall where it is necessary to do so in order to obtain such permission (subject as mentioned in this agreement) enter into any Planning Agreement required by the local planning authority or other competent authority;
- 5.2.2 where it is necessary or desirable to do so, enter into discussions and negotiations with the local planning authority and all statutory consultees under the planning process and take such steps, in the course of or following such discussions and negotiations, as are commercially prudent with a view to obtaining the Satisfactory Permission;
- 5.2.3 keep EP fully informed of such discussions and negotiations and of the progress of the Application and shall send to EP copies of all correspondence with the local planning authority and shall allow EP and its advisers to attend and participate at meetings held with the local planning authority and will take into account all reasonable representations made by EP and its advisers;
- 5.2.4 as often as it is necessary or requisite to do so seek advice from leading planning counsel in connection with the Application and the bringing or contesting of any Proceedings and shall provide to EP copies of all instructions to Counsel;
- 5.2.5 if Counsel is instructed permit EP and its advisers to attend all conferences with Counsel and to receive free of expense a copy of any written opinion or note of conference given by Counsel; and

- 5.2.6 not withdraw or amend the Application (other than in respect of immaterial amendments) nor make any further application for planning permission relating to the Development other than as required or permitted by this agreement without the previous consent of EP.
  
- 5.3 If the local planning authority fails within 26 weeks of the date of submission to give notice to the Developer of its decision in relation to the Application, or if it gives notice to the Developer that the Application has been referred to the Secretary of State, the Developer shall agree with EP whether it is in the best interests of obtaining Satisfactory Permission to submit an appeal or to agree to an extension of time and any dispute shall be referred to an expert pursuant to clause 16.
  
- 5.4 Within five Working Days of the Developer's receipt in writing of a copy of a resolution to grant planning permission with draft conditions attached, or planning permission or the grant or refusal of the Application and of the outcome of any Proceedings the Developer shall send a copy of the resolution to grant with draft conditions attached grant or refusal or decision to EP.
  
- 5.5 Within 15 Working Days of the Developer's receipt in writing of a copy of a resolution to grant planning permission with draft conditions attached pursuant to the Application the Developer shall notify EP:
  - 5.5.1 whether the resolution and draft conditions would if granted amount to a Satisfactory Permission; or
  - 5.5.2 if not, the reasons why the Developer considers that one or more of the draft or actual conditions is an Unreasonable Condition.
  
- 5.6 Within 15 Working Days of EP's receipt of a copy of a resolution to grant planning permission with draft conditions attached pursuant to the Application it shall notify the Developer:
  - 5.6.1 whether the resolution and draft conditions would if granted amount to a Satisfactory Permission; or
  - 5.6.2 if not, the reasons why EP considers that one or more of the conditions is an Onerous Condition.
  
- 5.7 If, pursuant to clauses 5.5 and 5.6, the parties agree that a resolution to grant planning permission pursuant to the Application with draft conditions attached would if granted amount to Satisfactory Permission and subsequently planning

permission is granted only subject to such conditions such planning permission shall be Satisfactory Permission.

5.8 Except where clause 5.7 applies, this clause shall apply upon the Developer's receipt of a grant of planning permission pursuant to the Application:

5.8.1 the Developer shall within 15 Working Days of receipt of a copy of the grant of planning permission pursuant to the Application (subject to clause 5.8.3) notify EP:

5.8.1.1 whether the grant is a Satisfactory Permission; and

5.8.1.2 if it is not why the Developer considers that one or more of the conditions amounts to an Unreasonable Condition;

5.8.2 EP shall, within 15 Working Days of receipt of a copy of the grant of planning permission pursuant to the Application, (subject to clause 5.8.3) notify the Developer:

5.8.2.1 whether the grant is a Satisfactory Permission; and

5.8.2.2 if it is not, why EP considers that one or more conditions amount to an Onerous Condition; and

5.8.3 if a resolution to grant planning permission with draft conditions attached was issued by the local planning authority to the Developer then in respect of any conditions to the actual grant of planning permission, which are in the same form as any of the draft conditions where such draft conditions were not considered to be Onerous Conditions or Unreasonable Conditions by EP or the Developer (as appropriate in accordance with clauses 5.5 and 5.6) no such actual conditions shall be an Onerous Condition or an Unreasonable Condition for the purposes of this clause 5.8 notwithstanding the definitions of Onerous Conditions or Unreasonable Conditions.

5.9 If either EP or the Developer does not provide the confirmation as provided at clauses 5.5, 5.6 or 5.8 (as appropriate) or if there is any dispute or disagreement between them as to whether any planning permission amounts to a Satisfactory Permission or whether a resolution and draft conditions would if granted in that form amount to a Satisfactory Permission either of them may refer the question for determination in accordance with clause 16 subject to EP and the Developer first meeting within three Working Days of any dispute arising as to whether any

condition (or draft condition) of a planning permission (or resolution, as applicable) is an Onerous Condition or an Unreasonable Condition with a view to settling such dispute.

5.10 Subject to the provisions of clauses 5.13 and 5.14 if the Application is refused or if it is agreed or determined that any planning permission is granted, or any draft conditions attached to a resolution to grant planning permission would if granted be, subject to an Unreasonable Condition, an Onerous Condition or if the dispute has been referred to determination pursuant to clause 16 but has not been determined by the last date for lodging an appeal the Developer shall lodge an appeal or appeals to the Secretary of State against such refusal or conditions.

5.11 Subject to clause 5.13 and 5.14 the Developer shall at its own expense prosecute any such appeal with all due diligence and shall:

5.11.1 keep EP and its advisers fully advised as to the progress of the appeal or appeals; and

5.11.2 allow EP and its advisers to attend all conferences with counsel provided that counsel instructed shall be Counsel and before instructing Counsel the instructions to Counsel shall first be agreed with EP.

5.12 The Developer shall vigorously contest any Proceedings subject as provided in clause 5.13 and in respect of any appeal referred to in clause 5.14.

5.13 In respect of any Proceedings the Developer shall be released from its obligation to pursue such Proceedings if it provides to EP the written opinion of Counsel that such Proceedings are:

5.13.1 in respect of an appeal within paragraphs (a) or (b) of the definition of Proceedings in clause 1.1 more likely to fail than to proceed or if there is a better chance of success of obtaining a Satisfactory Permission by submitting a revised Application;

5.13.2 in respect of a calling in by the Secretary of State more likely than not to result in a refusal;

5.13.3 in respect of applications within paragraphs (d) or (e) of the definition of Proceedings in clause 1.1 are more likely to fail than to succeed.

- 5.14 Notwithstanding any other provisions of this clause 5 the Developer shall not lodge any appeal against a refusal of the Application or a grant of permission which does not amount to a Satisfactory Permission without the prior approval of EP. If EP refuses approval to the Developer lodging an appeal the Developer shall as expeditiously as reasonably possible lodge a new planning application which (except as otherwise agreed by EP) shall be in the same form (including supporting documentation) as the Application and except that it shall be in the sole name of the Developer. The Developer shall pursue such new application and shall, in relation to it, comply with the Developer's obligations under this agreement in respect of the "Application" as if all references in this agreement to the Application were references to such new application provided that the Developer may without approval of EP lodge an appeal against such revised Application.
- 5.15 If the Developer is released from its obligations to pursue an appeal, pursuant to clause 5.13.1 having produced Counsel's opinion that a revised Application has a better chance of success, it shall as expeditiously as reasonably possible lodge a new planning application which (except as advised by Counsel and approved by EP) shall be in the same form as the Application. The Developer shall pursue such new application and shall, in relation to it, comply with the Developer's obligations under this agreement in respect of the "Application" as if all references in this agreement to the Application were references to such new application provided that the Developer may without approval of EP lodge an appeal against such revised Application.
- 5.16 Any disputes between the parties in respect of this clause 5 shall be determined by an expert pursuant to clause 16.
- 5.17 This clause 5.17 shall apply notwithstanding the terms of the Onerous Conditions and only relates to issues in relation to Listed Building Consent and variations which may be required and conditions proposed in a planning permission granted, or to be granted pursuant to the Application which are imposed, or to be imposed, as a result solely of buildings at the Site being listed under the Listed Building Act.
- 5.17.1 In its negotiations with the local planning authority as referred to at clause 5.2.2 the Developer shall use all reasonable endeavours to procure that the local planning authority does not try to impose any planning conditions or require any amendments to the Application solely on the basis of requiring compliance with the Listed Building Act which would prevent the Developer from complying with the

obligations to achieve ECO Homes Excellent rating (an "Adverse Matter").

- 5.17.2 If, during such negotiations the local planning authority proposes any conditions which, if imposed in a planning permission granted under the Listed Building Act pursuant to the Application would amount to an Adverse Matter, or proposes an amendment to the Application which would amount to an Adverse Matter, the Developer shall immediately notify EP and EP shall be entitled, but not obliged, to enter into discussions (together with the Developer) with the local planning officer to attempt to persuade him not to require any such Adverse Matter.
- 5.17.3 If, notwithstanding negotiations referred to above, the local planning officer makes it clear that before he will propose a report recommending the grant of planning permission pursuant to the Application, he will require one or more Adverse Matters the Developer shall seek the approval of EP to such amendments and/or to such condition. EP shall not unreasonably withhold its approval provided that notwithstanding such amendments or conditions the Developer will still be able to achieve an ECO Homes rating of very good in respect of that part of the Development with the listed buildings and in considering whether to give its approval EP shall have regard to the statement provided by the Developer which is at annexure 13.
- 5.17.4 If planning permission granted pursuant to the Application contains a condition being an Adverse Matter (in respect of which EP's approval was not sought pursuant to clause 5.17.3) EP shall not be entitled to claim that such condition is an Onerous Condition subject to the proviso and subsection at clause 5.17.3.
- 5.17.5 If an Adverse Matter which EP has approved, comprises an amendment to the Application the Developer shall submit such amendment as soon as reasonably practicable.
- 5.17.6 If EP has refused its approval to a proposed Adverse Matter pursuant to clause 5.17.3 and planning permission is either refused or granted subject to an Adverse Matter the provision relating to appeals at clause 5.11 shall apply.

**6 Planning Agreements and Works Agreement for the Development**

- 6.1 The parties shall, if so required by the local planning authority or other relevant body in respect of the Application, enter into such Planning Agreement as is necessary to facilitate the grant of Satisfactory Permission, except that the Developer shall not be required to enter into a Planning Agreement which contains an Unreasonable Condition and EP shall not be required to enter into a Planning Agreement which contains an Onerous Condition.
- 6.2 The form of the Planning Agreement shall first be approved by the parties but must contain a release of any obligations on the part of EP once it has transferred the Site. EP shall be entitled to refuse to enter into a Planning Agreement if it contains an Onerous Condition.
- 6.3 The parties shall enter into Works Agreements which are reasonably necessary for the purposes of the Development provided that the form of each Works Agreement shall first be approved by the parties, the Developer shall indemnify EP in respect of the obligations contained in them and EP shall only be required to enter into such Works Agreements where it is necessary that the owner of the freehold interest in the Site is party to such Works Agreement.

**7 Listed Building Consent**

- 7.1 Simultaneously with preparing the Application the Developer shall prepare an application for such consents as are necessary for the purposes of the Development and the Works pursuant to the Listed Buildings Act such application to be in a form approved by EP.
- 7.2 The Developer shall submit the Listed Building Application simultaneously with the submission of the Application, and insofar as they are relevant to an application for consent under the Listed Buildings Act, the Developer shall comply with the obligations and provisions in relation to the Application set out at clause 5.1 as if references to the Application were to the Listed Building Application.
- 7.3 Within five Working Days of the Developer's receipt of the grant of consent pursuant to the Listed Building Application, or a refusal of it and the outcome of any Proceedings the Developer shall provide a copy of the consent, refusal or decision to EP.



- 7.4 Subject as set out below and to clause 5.14, if the Listed Building Application is refused then the Developer shall lodge an appeal to the Secretary of State against such refusal and the provisions of clause 5.11 shall apply.
- 7.5 The Developer shall vigorously contest any Proceedings subject as provided below.
- 7.6 If there is also an appeal or Proceedings in relation to the grant or refusal of planning permission pursuant to the Application and the Developer is relieved of its obligation to pursue such appeal or such Proceedings as provided at clause 5.11, it shall also be relieved of its obligation to appeal or pursue Proceedings pursuant to this clause.
- 7.7 The Listed Building Condition shall be satisfied on the date three months and five Working Days after the date of the grant of consent pursuant to the Listed Building Application unless at that date there are on foot Proceedings in relation to it, when the date shall be the date of Final Determination leaving in place the Listed Building Consent.

**8 Satisfaction of the Planning Condition**

The Planning Condition shall be satisfied on the date which is three months and five Working Days after the Permission Date unless at that date there are Proceedings on foot in relation to it, in which case the date shall be the date of Final Determination leaving in place the Satisfactory Permission.

**9 Affordable Housing**

- 9.1 The Developer shall use all commercially prudent endeavours to negotiate terms with an RSL, which shall first be approved by EP, for the provision of the Affordable Housing as expeditiously as reasonably practicable after the date of this agreement and on terms which are reasonably acceptable to the Developer and EP. All documentation to be entered into with the RSL shall be in a form approved by EP. Where appropriate, and if required by the Developer, EP shall enter into each agreement with an RSL for the purpose only of the grant of a long leasehold interest/transfer of the freehold interest (as appropriate) in the land upon which the Affordable Housing is constructed.
- 9.2 Those parts of the Development which are to comprise Affordable Housing shall be developed in accordance with the Council's Affordable Housing Strategy (subject as mentioned at clause 9.3) and (to the extent that complying with EP's Affordable

Housing Strategy would not cause the Developer to be in breach of the Council's Affordable Housing Strategy) EP's Affordable Housing Strategy.

9.3 In relation to all of the Affordable Housing the Developer shall not implement any part of the Development without the approval of EP in respect of:

9.3.1 the type and location of Residential Units to be provided as Affordable Housing Units (that is to say whether the Residential Units will be houses, flats or maisonettes their approximate size and number of Habitable Rooms); and

9.3.2 the proposed tenure under which Qualifying Occupiers are to occupy the Affordable Housing Units if it is proposed to be other than 60% social housing for rent and 40% shared ownership and (unless EP shall otherwise agree) 40% of the total number of Residential Units shall be Affordable Housing Units.

9.4 Notwithstanding any other provisions of this clause EP approves Guinness Trust [*full name to be provided please*].

9.5 The Developer shall construct all Affordable Housing Units (or procure that they are constructed and completed) in accordance with the Housing Corporation Standards and the Affordable Housing Units shall be completed no later than the date on which the last of the Market Housing Units is practically completed.

9.6 Within five Working Days of the exchange of each agreement with an RSL the Developer shall provide to EP a certified copy (or where EP is a party to such agreement an original) of such agreement.

9.7 Following the exchange of each agreement with an RSL the Developer shall use all commercially prudent endeavours (including the taking of legal proceedings where there is a reasonable chance of them being successful) to procure that the RSL complies with its obligations under such agreement.

9.8 The Developer shall:

9.8.1 comply with its obligations under the agreement with an RSL;

9.8.2 keep EP advised of progress in achieving satisfaction of the conditions subject to which such agreement with an RSL is exchanged;

- 9.8.3 advise EP of any breaches by an RSL of any of its obligations under an agreement for the provision of Affordable Housing;
  - 9.8.4 not vary or determine any agreement with an RSL, nor release an RSL from any obligation under it without the prior consent of EP; and
  - 9.8.5 provide to the RSL all reasonable assistance which the RSL may reasonably request in order to satisfy any conditions subject to which the agreement with such RSL has been exchanged.
- 9.9 Notwithstanding the other provisions of this clause 9 the Developer shall procure that the RSL applies for Housing Corporation grant funding in respect of the acquisition and construction of the Affordable Housing and that it uses all reasonable endeavours to obtain such grant funding. The Developer shall provide to the RSL such assistance as it may reasonably require in complying with the obligations set out above. If such grant funding is obtained the Developer shall procure that the full amount of such grant funding is drawn down by the RSL as soon as is lawfully permitted under the terms of such grant funding and that the total amount (less any deduction pursuant to clause 9.10) is paid to EP within two Working Days of being drawdown (or following each drawdown if in more than one instalment) by way of an increase in the Price in respect of the Site.
- 9.10 If solely as a result of changes in building regulations or other legislation which comes into effect after the date of this agreement the construction costs of the Affordable Housing increases above that indicated in the Bid Submission there shall be a deduction in the amount payable to EP pursuant to clause 9.9 equal to the amount of such increase less any increased sum recoverable by the Developer from the RSL as a result of such increase.

10 **Professional Team for the Development**

- 10.1 To the extent reasonably necessary in order for the Developer to comply with its obligations under this Part A the following provisions of this clause 10 shall apply with effect from the date of this agreement, otherwise the provisions of this clause shall apply only from the Unconditional Date.
- 10.2 The identity of each member of the Professional Team shall be approved by EP and the appointment of each member of the Professional Team, to the extent not already appointed or in relation to any replacement member of the Professional Team, shall be executed as a deed in a form previously approved by EP. The

appointment of each member of the Professional Team shall include an obligation on it to enter into a form of Warranty in favour of EP.

10.3 The appointment of the Employer's Representative shall be in the form at annexure 10 with such amendments as EP may agree but EP's approval shall be in it's absolute discretion in respect of any amendments proposed to the scope of the services to be provided by the Employer's Representative.

10.4 The Developer shall provide to EP a copy of each appointment of each member of the Professional Team together with the current professional indemnity insurance of the appointee and the duly executed and completed Warranty, on or prior to the commencement of any of the Works.

10.5 The Developer shall not without the prior consent of EP:

10.5.1 dismiss any member of the Professional Team;

10.5.2 make or agree any material variation or amendments to the terms of the appointment of any member of the Professional Team; or

10.5.3 settle any material dispute with any member of the Professional Team.

10.6 Where the Developer is the employer of a member of the Professional Team it shall comply with its obligations under the terms of each such appointment and shall take such steps as are reasonably necessary in order to procure that each such member of the Professional Team complies with its obligations.

10.7 Where the appointment of any member of the Professional Team is determined the procedure in this clause 10 shall apply in respect of substitute appointments.

## 11 **Sale of the Celsea Site**

11.1 The provisions of schedule 4 part 3 shall apply in respect of the sale of the Celsea Site insofar as they are relevant to such sale.

11.2 Completion of the sale of the Celsea Site shall take place at the offices of EP's Solicitors or elsewhere as they may reasonably direct and shall take place on or before 1.00 pm on the Celsea Completion Date.

11.3 Simultaneously with completion of the sale of the Celsea Site the Developer shall enter in to the Charge and EP shall not be required to complete the transfer of the

Celsea Site unless the Developer is ready willing and able to complete the Charge immediately following completion of the transfer.

11.4 The provisions of schedule 9 shall apply in relation to the Celsea Site together with the following provisions:

11.4.1 The Developer shall register a notice on the charges register and a restriction on the proprietor register of the Developer's title to the Celsea Site relating to EP's entitlement to monies in accordance with schedule 9 in the following form:

"no disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor to the registered proprietor that all monies due to EP pursuant to schedule 9 of an agreement dated [ ] 2007 and made between [*the Developer*] and EP have been paid or without the provision of a certified copy of a direct deed of covenant in favour of EP by the disponent covenanting to comply with the Developer's obligations pursuant to such schedule 9."

11.4.2 Upon completion of the transfer of the Celsea Site EP will provide to the Developer's solicitors consent to the application of the Developer to register the restriction referred to in clause 11.4.1 by completion and signature of panel 15 of the form RX1 and immediately following completion the Developer shall procure that the Developer's Solicitors apply to the Land Registry to register such notice and restriction at the same time as registering the transfer of the Celsea Site to the Developer such applications being made within the priority period set out in the Developer's Solicitors result of the Land Registry search made prior to completion.

## 12 **Sub-development**

EP agrees that the Developer may enter into a Sub-development Agreement with Thomas Homes for them to undertake that part of the Development which comprises the conversion of existing buildings at the Site to form Residential Units and ancillary areas ("Sub-development Works") subject to the terms of this clause.

12.1 The form of Sub-development Agreement shall provide for Thomas Homes to carry out Sub-development Works on the same terms as apply to the design and construction of the Development as set out in this agreement insofar as applicable

to the Sub-development Works and in particular for Thomas Homes to comply with the terms of schedules 1 and 7.

- 12.2 The form of Sub-development Agreement shall be approved by EP.
- 12.3 Thomas Homes shall, simultaneously with entering into the Sub-development Agreement, enter into a deed of covenant with EP in a form to be approved by EP but which shall include:
  - 12.3.1 a direct covenant by Thomas Homes with EP that Thomas Homes shall comply with all of its obligations under the Sub-development Agreement; and
  - 12.3.2 an obligation on Thomas Homes to provide duly completed forms of Warranty in favour of EP from each building contractor and professional consultant engaged in the design and construction of the Sub-development Works which shall include step-in rights. Such warranties to be provided to EP upon completion of such building contract and appointments (as applicable).
- 12.4 Notwithstanding the Developer entering into a Sub-development Agreement it shall remain primarily responsible for the performance of its obligation in respect of the Sub-development Works under this agreement.
- 12.5 Within five Working Days of completion of a Sub-development Agreement, the Developer shall provide to EP a certified copy of it.
- 12.6 The Developer shall comply with its own obligations under any Sub-development Agreement and shall take all reasonable steps (including the institution of legal proceedings where reasonable) to procure compliance by Thomas Homes with its obligations under a Sub-development Agreement.
- 12.7 The Developer shall not vary the terms of any Sub-development Agreement without the consent of EP.
- 12.8 The Developer shall immediately notify EP if it determines a Sub-development Agreement with a full explanation of the reason for such determination.
- 12.9 For the protection of Thomas Homes any notice by EP to the Developer notifying EP's intention to terminate this agreement as a result of a breach of the provision of this agreement relating to the new build part of the Site shall also be served at the same time upon Thomas Homes. If this agreement is determined as a result of

such notice from EP to the Developer then on the date of determination EP shall enter into a deed of covenant with Thomas Homes by which EP covenants with Thomas Homes to comply with the provisions of the Sub-development Agreement of even date herewith made between the Developer and Thomas Homes the intention being that EP or its nominee shall take over the obligations of the Developer in such Sub-development Agreement and shall give effect to a declaration of trust of even date herewith made between the Developer and Thomas Homes as envisaged by clause 21.1 and shall also give effect to any sub-licence granted by the Developer to Thomas Homes in order to enable Thomas Homes to carry out and complete the Sub-development Works.

**13 Phasing Plan**

13.1 Following the grant of Satisfactory Permission but before the Unconditional Date the Developer shall consult with EP regarding the Developer's proposals for the division of the Development into Phases and shall have due regard to EP's reasonable representations.

13.2 Following consultation with EP as provided above the Developer shall submit its proposals to EP for its approval.

13.3 If EP and the Developer cannot agree the Phasing Plan it shall be determined by the expert in accordance with clause 16.

13.4 Once the Phasing Plan has been agreed or determined the Developer shall put to EP for its approval the Developer's reasonable and proper proposals for the Anticipated Completion Date for each Phase taking account of the Anticipated Completion Date for completion of the whole Development and that the Works are to commence as soon as reasonably practicable after the Unconditional Date. If EP and the Developer are unable to agree any one or more of such Phase Anticipated Completion Dates, the matter shall be determined by an expert pursuant to clause 16 but subject to the requirements of this clause.

**14 First Time Buyer's Initiative**

14.1 The Developer will use all reasonable endeavours to negotiate with EP to facilitate the implementation by EP of the First Time Buyer's Initiative at the Site in accordance with the requirements of this clause.

- 14.2 The Developer shall within 3 months after the grant of Satisfactory Permission:
- 14.2.1 enter into discussions with EP to identify Residential Units (being a minimum of **s. 43** of the total number of Residential Units) that would be suitable for release under the First Time Buyer's Initiative; and
  - 14.2.2 co-operate with EP's reasonable request for information and timescales as to any Residential Units so identified.
- 14.3 Once EP and the Developer have agreed the number of Residential Units which shall be available for sale under the First Time Buyer's Initiative such number shall be referred to as the "Agreed Number of FTBI Residential Units".

## 15 Notices

- 15.1 Any notice in respect of this agreement shall be in writing and shall be sufficiently served if sent by fax and confirmed by ordinary first-class post, or if sent by registered or recorded delivery post, or delivered by hand to the parties and/or the Guarantor at the addresses set out in this agreement (or such alternative address as may be notified to the other party and/or the Guarantor) or to their solicitors and service shall be deemed made on the next Working Day after transmission or delivery by hand and if sent by registered or recorded delivery post on the Working Day next but one after the date of posting.
- 15.2 Any notice which is required to be served on EP shall be served on the Area Director at 2<sup>nd</sup> Floor Atrium Court, The Ring, Bracknell, Berkshire RG12 1DF or such other address as EP may notify from time to time.
- 15.3 Any notice which is required to be served on the Developer shall be served on the Chief Executive at Linden House, Guards Avenue, Caterham, Surrey CR3 5XL.
- 15.4 Any notice which is required to be served on the Guarantor shall be served on the Chief Executive at Linden House, Guards Avenue, Caterham, Surrey CR3 5XL.

## 16 Disputes

- 16.1 Whenever there is a dispute between EP and the Developer which either party refers to resolution pursuant to this clause, simultaneously with the procedure set out in the rest of this clause the Managing Director of the Developer and the Area Director of EP shall arrange to meet within ten Working Days of the referral for determination and shall consult in good faith and use all reasonable endeavours to resolve the issue in dispute.



- 16.2 Where in this agreement there is a dispute between the parties it shall (unless specifically stated otherwise) be referred to an expert in accordance with this clause and such matter shall be determined by an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten years and who is a specialist in relation to such subject matter and such independent person shall be referred to in this clause as "the Expert".
- 16.3 For the purpose of this clause and all references for disputes to be determined pursuant to this clause the Guarantor shall not be entitled to refer any matter to determination pursuant to this clause.
- 16.4 The Expert shall be agreed between the parties or failing such agreement be nominated in the case of any dispute relating to the Works and/or the Development by the president or vice-president or other duly authorised officer of the Royal Institution of Chartered Surveyors and in the case of any dispute relating to planning issues by the president or vice-president of the Bar Counsel on the application of any party at any time:
- 16.4.1 the Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the parties save in the case of manifest error or fraud;
  - 16.4.2 the Expert shall consider (inter alia) any written representations on behalf of any party to the dispute (if made within ten Working Days of receipt of notification of the Expert) and counter-representations but shall not be bound them;
  - 16.4.3 the parties shall use all reasonable endeavours to procure that the Expert gives his decision as speedily as possible but in any event within fifteen Working Days of his appointment;
  - 16.4.4 the costs of appointing the Expert and his costs and disbursements in connection with his duties under this agreement shall be shared between the parties in dispute in such proportions as the Expert shall determine or in the absence of such determination in equal proportions between them; and
  - 16.4.5 if the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for appointment of an Expert shall be repeated as often as necessary.

17 **Guarantee**

In consideration of EP entering into this agreement at the request of the Guarantor, the Guarantor undertakes and guarantees to EP that:

- 17.1 the Developer will pay the balance of the Price in accordance with the terms of this agreement and shall otherwise perform all of its obligations in this agreement and/or any agreement supplemental to or entered into in accordance with the terms of this agreement;
- 17.2 the Guarantor will pay and make good to EP liability which EP may suffer or incur by reason of the failure of the Developer to perform its obligations in this agreement and/or any agreement supplemental to or entered into in accordance with the terms of this agreement.
- 17.3 The Guarantor is not to be exonerated from this guarantee because of:
  - 17.3.1 any forbearance or other indulgence, neglect or delay of EP in enforcing its rights against the Developer; or
  - 17.3.2 a variation of the terms of this agreement.
- 17.4 The obligations of the Guarantor in this clause commit the Guarantor to EP as if the Guarantor were a primary obligor.
- 17.5 After the expiry of a notice to complete given by EP to the Developer, or a disclaimer of this agreement as an unprofitable contract or otherwise, EP may, by notice to the Guarantor (in addition to its other rights against the Guarantor under this clause) require that the Guarantor enters into an agreement, as "Developer" with EP on the same terms as this agreement excluding the obligation for there to be a Guarantor.
- 17.6 If there is a transfer, or a declaration of trust in respect, of the majority of the shareholding in the Guarantor at any time during the period of the Guarantee given by this clause the Developer shall within 21 Working Days of such transfer or declaration of trust provide to EP written evidence (in a form reasonably acceptable to EP) and certified by the financial director of the Guarantor, that the Net Asset Value of the Guarantor is no less than a minimum of 70% of its Net Asset Value as shown in the accounts of the Guarantor for the financial year ending 31 December 2005 and if the Developer is not able to provide such evidence it shall within 28 Working Days of such transfer or declaration of trust procure a replacement for the Guarantor being a company incorporated in England and Wales or Scotland and

which is reasonably acceptable to EP and which is able to provide evidence, by way of audited accounts, which shows the Net Asset Value requirements set out in this clause 17.6. Once a suitable replacement Guarantor is approved by English Partnerships the Developer shall procure that such Guarantor enters into a separate deed of guarantee in the form of this clause with such amendments as are reasonably five Working Days of the Developer's receipt of the form of such deed.

17.7 If at any time during the period of the guarantee in this clause the audited accounts of the Guarantor show that its Net Asset Value is less than **s. 43** of its Net Asset Value as shown in the accounts of the Guarantor for the financial year ending 31 December 2005 EP may serve notice on the Developer to provide a suitable alternative Guarantor within 28 Working Days of the date of such notice and the provisions of clause 17.6 shall apply in relation to the requirements of and for such replacement Guarantor.

18 **Indemnity**

The Developer is to be responsible for any of the following matters arising directly or indirectly in relation to the Development or the Works, or any operations on the Site undertaken by or on behalf of the Developer:

- 18.1 the death of, injury to, or accident to any person;
- 18.2 the damage to or loss of any property including the existing buildings on the Site;
- 18.3 any breach of the Consents or any statutory obligations in respect of the carrying out of the Works;
- 18.4 the infringement of the rights of any third party caused by the carrying out of the Works;
- 18.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Works;
- 18.6 any other claims made against EP as a result of the Developer breaching any obligations under this agreement; any claims made against EP as a result of the breach of any provisions of any Planning Agreement whether the obligation of EP as landowner or the Developer; and

and shall indemnify EP against any (and which had not been taken into account in it) claims made against EP (and costs incurred by it) in relation to any such matters.

19 **Entire agreement, non-merger and freedom of information**

19.1 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 all of the parties. The Developer acknowledges that it is entering into this agreement without placing any reliance upon any representation (written or oral) which may have been made by EP or any agent, adviser or other person acting for EP except such representations as may be made in this agreement or may have been made in any written communication from EP's Solicitors to the Developer's Solicitors.

19.2 So far as they remain to be performed or observed the provisions of this agreement shall continue in full force and effect notwithstanding completion of the transfer by EP of the EP Land.

19.3 The remaining provisions in this clause shall apply in relation to the Freedom of Information Act and the Developer shall use all reasonable endeavours to assist in EP's compliance with the disclosure obligations imposed on it by:

19.3.1 the Freedom of Information Act 2000 ("FOIA") and all subordinate legislation; and

19.3.2 the Environmental Information Regulations 2004 and any other Implementing Regulations in the UK of EC directive (2003/4/EC) 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 Developer on behalf of EP or otherwise in connection with this agreement or the Development which includes the obligations on the Developer at the Developer's reasonable expense to:

19.3.3 use reasonable endeavours to provide EP with any information held by it on behalf of EP (and not by EP itself) as is necessary in order to allow EP 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 Working Days of EP making a written request to the Developer to provide any necessary information;

- 19.3.4 use reasonable endeavours to inform EP of any classes of information relating to the Development in its possession which it holds on behalf of EP which does not appear on EP's publication scheme provided directly to it from time to time by EP; and
- 19.3.5 use reasonable endeavours to procure that the Professional Team shall assist EP as set out in this clause 19.
- 19.4 If the provisions of this clause relating to the Rules require the Developer to supply material in which the Developer is the owner or a licensee of the copyright in such material EP will not disclose such material without an accompanying notice acknowledging the owner of such copyright provided the Developer on supplying any such material to EP gives EP prior notice of its copyright in such materials and the requirements on EP to acknowledge such copyright under this clause 19.
- 19.5 In complying with the obligations of this clause relating to the Rules, the Developer 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 EP) in such a way as to prevent EP from complying with its obligations under the Rules.
- 19.6 Where a valid request for information under any of the Rules has been received by EP, EP 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.
- 19.7 Where a valid request for information under the Rules has been received by EP; and responding to such a request (which includes confirming or denying that the information is held by EP) would involve the disclosure of information about or in relation to the Developer, to the Development and/or this agreement; then EP shall consult with the Developer before confirming or denying that such information is held and/or disclosing the information in order for the parties to agree to:
  - 19.7.1 EP confirming or denying holding the information or disclosing the information; and/or
  - 19.7.2 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.

The parties agree that in pursuance of clause 19.7.2 the Developer shall be entitled to express its views to EP 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.

19.8 Where the Developer does not agree to such confirmation or denial and/or disclosure pursuant to clause 19.3.4, will provide details in writing to EP, within three 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. EP shall fully and properly consider any representations made to it by the Developer and shall inform the Developer 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.

19.9 The parties agree that nothing in this agreement will operate to prevent the Developer 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 EP's proposed confirmation or denial and/or disclosure of information pursuant to clause 19.3.4.

19.10 If the Developer 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 Developer 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 19 shall apply as appropriate.

20 **Good faith**

EP and the Developer shall each owe to the other a duty to act with the utmost good faith in relation to their respective obligations in this agreement.

21 **Dealing with this agreement**

21.1 The Developer may assign by way of security its benefit in this agreement to any Mortgagee providing financing for the Development or any part of it with the prior approval of EP both as to the identity of the mortgagee and the assignment. On completion of any such assignment the Developer shall give notice of such assignment to EP including an address for service for the Mortgagee. The Developer may hold the agreement on trust for itself and Thomas Homes. Except as provided in this clause 21.1 the Developer may not otherwise assign or hold on trust the benefit of this agreement.

21.2 The Developer shall give EP notice of any holding on trust permitted by clause 21.1 within ten Working Days of completion of the deed of trust.

21.3 Except as specifically provided in this agreement EP shall not be required to transfer the freehold interest in the Site to anyone other than the Developer.

## 22 **Determination**

22.1 If the Unconditional Date has not occurred by the Relevant Date then EP or the Developer may determine this agreement by serving five Working Days' prior notice on the other at any time before the Unconditional Date and upon expiry of such notice this agreement shall determine. If this agreement is determined pursuant to this clause EP shall refund to the Developer those reasonable and proper costs incurred by it in compliance with its obligations pursuant to clauses 2.3 and 2.4 up to a maximum of the amount of the Deposit. Such refund to be paid within 15 Working Days of EP's receipt of a VAT invoice in respect of such sum.

22.2 If an appeal against the refusal of planning permission pursuant to the Application or the Listed Building Application, or against the conditions imposed upon the grant of any planning permission pursuant to the Application or the Listed Building Application, results in the upholding of the refusal or the conditions appealed against then (unless the Developer obtains advice from Counsel that a further application shall have a greater than 50% chance of success of obtaining a Satisfactory Permission or unless an Application on an appeal is outstanding at such date) EP or the Developer may at any time following the expiration of 20 Working Days following the date on which the decision of such an appeal is made but before the Relevant Date serve notice on the other determining this agreement with immediate effect.

22.3 If the Developer commits any material breach of this agreement or series of minor breaches and fails to remedy such breach or breaches within a reasonable period after receiving notice from EP specifying the breach, or becomes Insolvent, or the Guarantor becomes Insolvent, then in any such case EP may at any time thereafter (but in respect of a remediable breach only whilst such breach remains unremedied) by notice determine this agreement with immediate effect but subject to the terms of clause 22.5 and/or 22.7 if applicable.

22.4 Any determination of this agreement shall:

22.4.1 be without prejudice to any claim which any party may have against another arising before the date of determination; and

- 22.4.2 not affect the continuing effect of any provisions of this agreement which are expressly stated to apply, or which contain express obligations to be fulfilled, after the determination of this agreement, and such provisions shall continue in effect until such time as all the obligations of the parties' pursuant to such provisions have been complied with.
- 22.5 For the protection of any Mortgagee any notice by EP to the Developer notifying EP's intention to terminate this agreement shall also be served at the same time upon a Mortgagee. A Mortgagee shall, if EP serves notice of its intention to determine this agreement, be entitled within a period of 40 Working Days from the date of EP's notice, itself to enter into, or direct a nominee (first approved by EP, whose approval shall not be unreasonably withheld provided that such nominee is a reputable developer with good experience of undertaking projects in the nature of that contemplated by this agreement and of good financial standing) (and if EP reasonably requires a guarantor to the nominee) to enter into, a duly executed deed of covenant with EP to comply with the outstanding obligations of the Developer under this agreement and where EP's notice pursuant to clause 22.3 specified an irremediable breach, covenanting to pay to EP within ten Working Days of agreement or determination a sum by way of reasonable compensation for the irremediable breach. Any dispute as to the amount of such sum being determined pursuant to clause 16 and reference in that clause to "the parties" shall be deemed to refer to the Mortgagee and EP.
- 22.6 If a Mortgagee institutes the provisions of clause 22.5, the Mortgagee shall pay the proper costs and expenses of EP in complying with clause 22.5. Such costs to be payable within ten Working Days of written demand.
- 22.7 On the determination (howsoever) of this agreement following the Unconditional Date the Developer shall immediately return to EP the Duty of Care Deeds and they shall no longer be of any effect.
- 22.8 On the determination (howsoever) of this agreement and notwithstanding such determination the Developer shall assign to EP, within 10 Working Days of receipt of a written request from EP, the benefit of such surveys (environmental and other surveys) and reports as the Developer has by then procured. The form of such assignment to be agreed by the Parties acting reasonably and in default pursuant to clause 16, and at the same as the assignment the developer shall provide the originals of such surveys and reports to EP.



23 **Third party rights**

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 terms 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.

24 **VAT**

All supplies made under and sums payable under this agreement shall be subject to VAT where VAT is properly payable and such VAT shall be paid by the party to whom the relevant supply is made or from whom the relevant sum is due at the same time as the supply is made or the sum is due subject to the receipt of a valid VAT invoice.

25 **Interest**

All sums payable pursuant to this agreement which are not paid on the due date for payment shall bear interest at the Interest Rate from the date on which payment was due until the date of actual payment.

26 **Approvals and authorisations**

26.1 The Developer shall not be released from or relieved of any of its obligations set out in this agreement as a result of any approval, agreement or consent of EP or anyone on EP's behalf nor the issue of EP's Certificate.

26.2 Where the approval, consent, agreement, acknowledgement or authority of EP is required pursuant to this agreement such approval, consent, agreement, acknowledgement or authority shall (without limitation) be validly given if in writing and signed by or on behalf of EP.

27 **Consultation and Trust Land**

27.1 The Trust holds the Existing Trust Lease and it is the intention of EP and the Developer that a Trust Lease should be granted to the Trust to provide it with a longer lease of the Trust Land in respect of which the following provisions shall apply:

27.1.1 the Developer shall enter into active negotiations with the Trust for the grant of a new long lease of the Trust Land to the Trust as soon as reasonably practicable after the date of this agreement.

- 27.1.2 the terms to be proposed to the Trust by the Developer shall be no more onerous than are set out in the Existing Trust Lease (except that the Trust Lease shall contain a restriction on user in the terms of clause 6 of the transfer of the Site at annexure 12), there shall be no premium, and the annual rent shall be a peppercorn.
- 27.1.3 if terms are agreed with the Trust they shall be approved by EP, and subject to such approval the Developer shall use all reasonable endeavours to agree the form of Trust Lease. Subject to the form of such Trust Lease being approved by EP, EP or the Developer (as appropriate) shall grant such Trust Lease to the Trust in accordance with the terms agreed with the Trust.
- 27.1.4 if the Trust Lease is granted to the Trust prior to completion of the transfer of the Site to the Developer such transfer shall be subject to and with the benefit of the Trust Lease rather than the Existing Lease.
- 27.1.5 the Developer shall keep EP apprised of the progress in negotiations with the Trust at least monthly and shall, in undertaking such negotiations have due regard to any reasonable recommendations which EP may make.

## **Part B**

### **28 Part B and Duty of Care Deeds**

- 28.1 This Part B of this agreement shall come into effect on the Unconditional Date.
- 28.2 Within two Working Days of the Unconditional Date EP shall provide to the Developer a Duty of Care Deed from the author of each of the Reports.

### **29 Phasing and programme for the Development**

- 29.1 The parties agree that the Development shall be brought forward in accordance with the Phasing Plan subject to such variations to it as may be approved by EP.
- 29.2 Immediately following the Unconditional Date the Developer shall submit to EP for approval an updated programme for the Development which shall in all respects be consistent with the Phasing Plan and which shall take account of the relevant Anticipated Completion Dates.

29.3 The Developer shall provide updates on the programme for the Development on a regular basis and in any event not less frequently than monthly highlighting changes to the previous programme and providing explanations for those variations.

30 **Design development**

30.1 The Developer shall work in consultation with EP in developing the design and specification of the Development throughout the programme for the Development.

30.2 As soon as reasonably practicable following the Unconditional Date the Developer shall submit to EP for its approval detailed design and layout information in respect of the Development which shall include the level of detail which will be required by the local planning authority in approving detailed planning drawings and satisfying conditions under the Satisfactory Permission and shall be consistent with the Approved Plans as at the date of submission and the documents and other matters referred to at clauses 4.2.1 to 4.2.7 inclusive and taking account of the Developer's obligations in schedule 1. EP and the Developer shall use all reasonable endeavours to agree such detailed design and layout information and once agreed (or determined by the expert pursuant to clause 16) it shall form part of the Approved Plans provided that to the extent that the Developer seeks approval of the local planning authority in respect of conditions under the Satisfactory Permission or a Phase by Phase basis it may also submit the information to EP to comply with this clause on the same basis.

30.3 The Developer shall ensure that its submission to EP pursuant to clause 30.2 shall include detailed design in respect of those elements details of which are set out at schedule 11.

30.4 If the Developer and EP fail to agree such detailed design and layout information any dispute shall be referred to determination in accordance with clause 16 provided that in determining the dispute the expert must make a determination which is consistent with the Approved Plans (here meaning those documents annexed to this agreement) and the documents and other than matters referred to at clauses 4.2.1 to 4.2.7 inclusive and taking account of the Developer's obligation in schedule 1.

30.5 Once the detailed design has been agreed or determined pursuant to this clause the Developer shall provide to EP:

30.5.1 the Design Stage Certificate in respect of those elements of the Development comprising Residential Units; and

- 30.5.2 a report from the sustainability consultant (who is a member of the Professional Team) detailing with justification how the Mandatory Sustainability Standards are to be met and what results should be achieved if construction is carried out in accordance with the Approved Plans.
- 30.6 If within 15 Working Days of receipt of such report EP notifies the Developer that in its reasonable opinion the report does not comply with the requirements of clause 30.5.2 the matter may be referred to determination pursuant to clause 16. If the expert determines that the report does not comply with the provisions of clause 30.5.2 then the procedures in clauses 30.2 to 30.4 and/or 30.5.2 (as appropriate according to the determination of the expert) shall be implemented as often as is necessary to procure that the requirements of clause 30.5.2 are met.
- 30.7 Except as provided in clause 30.8 the Developer shall not start the Works (or the relevant Phase if the proviso to clause 30.2 applies) until:
  - 30.7.1 the detailed design has been agreed or determined pursuant to clauses 30.1 to 30.6 inclusive;
  - 30.7.2 the Design Stage Certificate has been issued as provided in clause 30.5; and
  - 30.7.3 the date of written confirmation from EP to the Developer that the report submitted pursuant to clause 30.5.2 satisfies the requirements of that clause (or if earlier the expiration of 15 Working Days from EP's receipt of a report pursuant to clause 30.5.2), unless there is a referral to the expert of a dispute regarding any report submitted pursuant to clause 30.5.2 when, if applicable, it shall be the date on which the expert determines that the report in dispute complies with the requirements of clause 30.5.2.
- 30.8 Subject to first obtaining all necessary licences and consents the Developer may undertake such of the Works as comprise demolition and asbestos removal from the Unconditional Date.
- 31 **Licence**
  - 31.1 EP grants licence to the Developer to enter on to the Site (except those parts subject to the Tenancies) with effect from the Unconditional Date for the purposes

of complying with its obligations under this agreement and the licence granted by this clause shall terminate on the Completion Date.

31.2 The licence granted pursuant to this clause shall not create any relationship of landlord and tenant between EP and the Developer.

## 32 **The Development**

32.1 The Developer shall comply with the obligations set out in schedule 1 and shall use all reasonable endeavours to procure that the Works are commenced within three months of the Unconditional Date and that the Date of Practical Completion of the whole of the Development is achieved on or before the Anticipated Completion Date and that practical completion of each Phase is achieved by the relevant Anticipated Completion Date, provided that the Developer shall be entitled to claim extensions of time for practical completion of the Development, or the relevant Phase, beyond the Anticipated Completion Date equal to periods which arise from any delay on the part of, or which is caused by, any proper reason beyond the reasonable control of the Developer (but excluding any such delay of time which result from some act, omission or default on the part of the Developer) and which is certified by the Employer's Representative as being a reasonable period taking account of the circumstances which caused the delay.

32.2 The Developer shall procure that the Development satisfies the Mandatory Sustainability Standards and the EP Price Standards.

## 33 **Inspection for completion of Superstructure and Roof Stage**

33.1 In respect of each Phase the Developer shall use all reasonable endeavours to achieve the Superstructure and Roof Stage no less than [ ] weeks before the Anticipated Completion Date for such Phase.

33.2 No less than ten Working Days prior to each date upon which the Employer's Representative intends to inspect the Works for a Phase to certify that the Superstructure and Roof Stage has been reached it shall notify EP and EP's Representative and EP and EP's Representative shall be entitled to accompany the Employer's Representative on such inspection and shall be entitled to make such reasonable representations as EP shall see fit and the Developer shall forthwith bring them to the attention of the Employer's Representative and shall require him to take account of such reasonable representations prior to the certification of the Superstructure and Roof Stage.

33.3 If the Superstructure and Roof Stage is not certified at any such inspection then the procedure set out in clause 33.2 shall be repeated (although the length of the notice to EP may be reduced to no less than five Working Days) until such certification is made by the Employer's Representative.

33.4 Until the Superstructure and Roof Stage has been certified the Developer shall not be entitled to proceed further with the Works for that Phase.

33.5 Any dispute between the parties as to whether the Works for the relevant Phase have achieved the Superstructure and Roof Stage shall be referred to expert determination in accordance with clause 16.

#### 34 **Developer's variations to the Development**

34.1 If any materials and/or fitments relating to, or forming part of the Development, are unavailable, or are subject to such delay in delivery or production that if awaited would impede the progress of the Works, then the Developer may at its cost (and subject to the Developer obtaining any necessary variation to any relevant Consent) substitute materials and fitments which are no less suitable, of no less quality and value to those contained in the Approved Plans (or specified in any Consent).

34.2 The Developer shall not make any Variation (other than those referred to in clause 34.1) without the approval of EP which shall be in its absolute discretion where the proposed Variation would be in breach of, or result in the Development not achieving, a Development Objective, the Mandatory Sustainability Standards or the EP Price Standards.

34.3 Notwithstanding the other provisions of this agreement EP acknowledges that in respect of immaterial or inconsequential variations to the Works for which EP cannot unreasonably withhold its approval, EP's approval shall be sufficiently given if a meeting agenda and copy plans are signed by EP at meetings held pursuant to the terms of this agreement.

#### 35 **Practical Completion of the Development**

35.1 The Developer shall procure that the Employer's Representative shall give to EP not less than ten Working Days' prior notice of the Employer's Representative's intention to inspect the Development and each Phase for the purposes of issuing each Certificate of Practical Completion and the Developer shall during the period of five Working Days following each such notice afford to EP and EP's Representative all reasonable facilities for inspecting the Works or the relevant Phase (as appropriate)

in accordance with clause 37 and if within five Working Days of the relevant inspection EP serves upon the Developer notice of any defects in the Works or the relevant Phase, the Developer shall forthwith bring them to the attention of the Employer's Representative and shall require the Employer's Representative to take account of any such written representations prior to the issue of the relevant Certificate of Practical Completion.

35.2 EP and EP's Representative shall be entitled to accompany the Employer's Representative upon each inspection of the Works for the purpose of issuing each Certificate of Practical Completion.

35.3 If any Certificate of Practical Completion is not issued by the Employer's Representative at or following an inspection meeting as referred to in clause 35.1 then the procedure set out in clause 35.1 shall be repeated (save that the required notice may be less than 10 Working Days if reasonable) as often as may be necessary until the relevant Certificate of Practical Completion is issued.

35.4 Within two Working Days of each Date of Practical Completion the Developer shall procure that a copy of the Certificate of Practical Completion is served upon EP.

35.5 The Employer's Representative shall be entitled to issue any Certificate of Practical Completion notwithstanding the existence of Snagging Works and any soft landscaping works which cannot reasonably be undertaken until the next planting season.

35.6 Notwithstanding the issue of a Certificate of Practical Completion the Developer shall procure the carrying out of any Snagging Works and any outstanding landscaping works in accordance with its obligations under this agreement as soon as reasonably practicable.

## 36 **Defects liability**

36.1 The Developer shall at its own expense procure that any defects, shrinkages or other faults, which shall appear in or about the Works or any part or parts of them within the Defects Liability Period, are made good in accordance with the Developer's obligations under this agreement as soon as reasonably practicable.

36.2 The Developer shall procure that the Employer's Representative gives EP not less than seven Working Days' notice of the date upon which the Employer's Representative proposes to make its final inspection of the Works or the relevant Phase to ascertain whether the Developer has complied with its obligations under

clause 36.1. If at such inspection the Employer's Representative determines that there remain works to be undertaken pursuant to clause 36.1 then the Developer shall procure that he prepares a list of such works and they shall be undertaken in accordance with the Developer's obligations in this agreement before the Employer's Representative shall issue the Certificate of Making Good Defects in respect of the Development or such Phase. EP shall be permitted to be represented at each such inspection if it so desires.

36.3 The Developer shall procure that a copy of each Certificate of Making Good Defects in is served on EP within two Working Days of its issue.

**37 Site visits and inspection**

37.1 The Developer shall:

37.1.1 at all times keep EP and EP's Representative informed as to the progress of the Works and shall notify EP and EP's Representative of the time date and place of all principal site meetings convened to consider the progress of the Works and EP and EP's Representative shall be entitled to attend them and the Developer shall procure that such meetings are held as often as reasonably necessary; and

37.1.2 send to EP and EP's Representative copies of the minutes of all meetings held pursuant to the provisions of this clause.

37.2 The Developer shall permit EP and EP's Representative and other consultants at all reasonable times to enter on to the Site (accompanied by a representative of the Developer if the Developer shall so reasonably require in which event the Developer shall procure that a representative is made available for such purpose) to view the progress and state of the Works, to inspect the workmanship and request the testing of materials, and to ascertain generally that the Developer is complying with its obligations under the agreement. Such entry shall be subject to:

37.2.1 reasonable prior notice being given to the Developer; and

37.2.2 EP and EP's Representative reporting to the site office before making any inspection and acting in accordance with the reasonable instructions of the Developer as regards site safety and health and safety issues.



- 37.3 EP and EP's Representative shall not interfere with the Development nor attempt to instruct or instruct any persons employed upon or in connection with the Development.
- 37.4 Any representations which EP or EP's Representative wish to make in relation to the Works shall be made to the Developer as soon as practicable and the Developer shall give due consideration to any such representations so made.
- 37.5 If as a result of inspections of the Works it is found that there is a need for rectification of defective works or correction of works carried out but not in accordance with this agreement, the Developer shall, at its sole cost and as soon as practicable, carry out such necessary works of rectification and/or correction and notify EP of their completion so that EP may inspect the relevant Works.

**38 Insurance**

- 38.1 On and from the Unconditional Date the Developer shall procure that the Works and the existing buildings on the Site are insured in the joint names of EP and the Developer in an amount not less than the full reinstatement cost of the Works and the existing buildings on the Site and all materials on the Site, against such risks as would usually covered by an insurance policy taken out by a building contractor in accordance with clause 22.c of the Joint Contracts Tribunal 198 version of contract. In the event of damage or destruction of the Works or any of the existing buildings on the Site by any of the risks against which the Developer is required to insure against the Developer shall, as soon as reasonably practicable, procure that the insurance money is laid out and used in rebuilding and making good the loss or damage in accordance with the provisions of this agreement, the Developer making good any deficiency out of its own monies.
- 38.2 All insurance monies received by the Developer shall be held in a joint interest bearing account in the names of the joint insured's and monies shall only be drawn from it by the Developer in order to repair, rebuild or reinstate the relevant Works and/or existing buildings on the Site.
- 38.3 The Developer shall before commencement of the Works insure or cause to be insured with an insurance company or office or underwriter of good repute approved by EP third party liability insurance for a specified sum of not less than **£s. 43** for any one claim arising out of any one event in respect of the carrying out of the Works or any part of them or anything preparatory, ancillary or subsequent to them or arising out of the state or repair of any of the existing buildings on the Site including (but without limitation)

appropriate public and product liability insurance and insurance against interference or disturbance to rights of owners and occupiers of adjoining property (including services plant and machinery belonging to or operated by any statutory undertaker or any third party) and caused by any negligence, omission or default of the Developer.

38.4 The Developer shall before commencement of the Works insure or cause to be insured with a reputable insurance company or underwriters of good repute approved by EP in a sum of s. 43 (£s. 43 any legal liabilities arising under the terms of the Employer's Liability (Compulsory Insurance) Act 1969 and any amendments to that Act.

38.5 If the Developer at any time fails to take out and/or maintain insurance in accordance with this agreement EP may do all things necessary to effect and maintain such insurances and any money expended by EP for that purpose shall be repayable by the Developer to EP on demand as a liquidated debt.

38.6 The Developer shall from time to time as and when reasonably requested by EP provide written evidence of all such insurance.

39 **EP's Certificate**

On the date which is the latest of:

39.1 the date on which the last Certificate of Practical Completion of the last Phase to be completed is issued such that on such date the Date of Practical Completion of each and every Phase has been certified;

39.2 the date or dates which the expert determines should have been the relevant Date of Practical Completion (if applicable);

39.3 the date on which the last Post Completion Certificate has been issued such that on such date a Post Completion Certificate has been issued in respect of each Residential Unit;

39.4 EP's receipt of a copy of written evidence that each Planning Agreement in respect of the Development has been complied with;

39.5 EP's receipt of such evidence as it shall reasonably require that all building regulation approvals necessary for the Works have been obtained and completion certificates issued; and



39.6 EP's receipt of evidence that all of the conditions in the Satisfactory Permission have been complied with;

EP shall procure that EP's Representative issues EP's Certificate in respect of the Works.

40 **First Time Buyer's Initiative - Part 2**

EP and the Developer shall use all reasonable endeavours to agree terms for and enter into a separate funding agreement for the provision of the Agreed Number of FTBI Residential Units under the First Time Buyer's Initiative at a discount of 3%. The agreement will be in a form to be agreed between EP and the Developer both acting reasonably.

41 **Price**

41.1 In respect of the Price for the Site it has been agreed upon the basis that the Application and therefore the Satisfactory Permission will provide for 182,177 square feet of Gross Developable Area in respect of conversion of existing buildings and 233,655 square feet of Gross Developable Area in respect of new buildings to be constructed on the Site.

41.2 If the Satisfactory Permission (including any variation to it or permission in substitution for it) provides for a greater density of development the Site Price shall be increased by **£s. 43** per square foot of additional Gross Developable Area in respect of conversion of existing buildings to that set out at clause 41.1 and **£s. 43** per square feet of additional Gross Developable Area in respect of new buildings to be constructed on the Site to that set out at clause 41.1.

41.3 A sum equal to **s. 43** of the Site Price shall be paid to EP ten Working Days after the Unconditional Date less any sums paid by the Developer pursuant to clauses 2.3 and 2.4 up to a maximum of the amount of the Deposit.

41.4 The balance of the Site Price shall be payable on the date 12 months after the Unconditional Date subject only to the deduction of any sum agreed by EP as provided at schedule 1 paragraph 4.6.

42 **Leases and interim grant of Leases and interim freehold transfers**

42.1 To allow the early sale of Residential Units EP has agreed to permit the grant of Leases of Residential Units which comprise part of a larger building and Transfers of

Part of Residential Units which comprise houses all in accordance with this clause provided EP has first received the whole of the Price.

42.2 The forms of the Lease and the Transfer of Part shall be prepared by the Developer and shall take into account the provisions of the Estate Management Strategy and shall be submitted to EP for its approval at least 25 Working Days prior to the Anticipated Completion Date of the first Phase to achieve practical completion.

42.3 The remaining provisions of this clause shall apply in respect of the Residential Units in a Phase on and from the latest of:

42.3.1 the Date of Practical Completion of such Phase or if it later and where applicable the date which the expert determines should have been the Date of Practical Completion of such Phase; and

42.3.2 the date when EP has received a Post Completion Certificate in respect of each Residential Unit within that Phase.

42.4 Subject as mentioned at clauses 42.6, 42.8 and 42.10 the Developer shall be entitled to nominate third parties to take the grant of Leases of Residential Units and to complete Transfers of Part.

42.5 EP agrees to grant and the Developer agrees to direct the grant (subject as mentioned at clause 42.6) of a Lease of each of the Residential Units comprised within the relevant Phase. Completion of the grant of each such Lease shall take place on the date which is at least ten Working Days after service of a notice by the Developer on EP giving details of any nominee together with an engrossment of such Lease. The premium payable pursuant to such Lease being due to the Developer.

42.6 From the date of the grant of each Lease until and including the date of completion of the transfer of the Site the Developer shall on behalf of EP and at the Developer's cost, undertake or procure the undertaking all of the obligations of the landlord in each such Lease and shall indemnify EP against all claims, demands, actions or proceedings made or brought and all losses, damages, costs, expenses and liabilities incurred, suffered or arising as a result of the Developer's breach of its obligations in this clause 42. The Developer shall be entitled to receive the ground rent payable under such Leases.

42.7 EP agrees to enter into Transfers of Part of each of the Residential Units comprising a house within the relevant Phase. Completion of each Transfer of Part shall take

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place on the date which is at least ten Working Days after service of a notice by the Developer on EP giving details of any nominee together with an engrossment of such Transfer of Part. The purchase price payable pursuant to such Transfer of Part being due to the Developer.

- 42.8 From the date of completion of each Transfer of Part until and including the date of completion of the transfer of the Site, the Developer shall on behalf of EP and at the Developer's costs, undertake or procure the undertaking of all of the obligations of the seller under the terms of each such Transfer of Part and shall indemnify EP all claims demands actions or proceedings made or brought and all losses damages costs expenses and liabilities incurred suffered or arising as a result of the Developer's breach of its obligations in this clause.
- 42.9 EP's obligation to grant Leases and execute Transfers of Part pursuant to this clause shall cease upon completion of the sale of the Site.
- 42.10 Notwithstanding the other provisions of this clause EP shall not be required to grant Leases or enter into Transfers of Part of the last 5 Residential Units to be sold until the provisions of clauses 39.1 and 39.2 have been complied with.

43 **The sale of the Site**

- 43.1 The provisions of schedule 4 part 3 shall apply in respect of the sale of the Site insofar as they are relevant to such sale.
- 43.2 The Completion of the sale of the Site shall take place at the offices of EP's Solicitors or elsewhere as they may reasonably direct and shall take place on or before 1.00 pm on the Completion Date.

44 **Profit share arrangements**

- 44.1 The provisions of schedule 6 shall apply.
- 44.2 The Developer shall register a notice on the charges register and a restriction on the proprietor register of the Developer's title to the Site relating to EP's entitlement to monies in accordance with schedule 6 in the following form:

"no disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor to the registered proprietor that all monies due to EP pursuant to schedule 6 of an agreement dated [ ] 2006 and made between Linden Homes Chiltern Limited ("the Developer") and EP have been paid or without the provision of a certified copy of a direct deed of

covenant in favour of EP by the disponee covenanting to comply with the Developer's obligations pursuant to such schedule 6."

- 44.3 Upon completion of the transfer of the Site EP will provide to the Developer's solicitors consent to the application of the Developer to register the restriction referred to in clause 44.2 by completion and signature of panel 15 of the form RX1 and immediately following completion the Developer shall procure that the Developer's Solicitors apply to the Land Registry to register such notice and restriction at the same time as registering the transfer of the Site to the Developer such applications being made within the priority period set out in the Developer's Solicitors result of Land Registry search made prior to completion.

Delivered as a deed on the date of this document.

**SCHEDULE 1**  
**Development obligations**

**1 General**

The provisions of this schedule shall apply to all Works to be undertaken pursuant to this agreement.

**Consents**

- 1.1 The Developer shall make application for and use all reasonable endeavours expeditiously to obtain the Consents or obtain lawful relaxations or waivers of them.
- 1.2 The Developer shall keep EP properly informed as to the progress of each application for the Consents and of all negotiations relating to those applications and shall provide to EP copies of all applications, material correspondence and notes of meetings relating to those application and negotiations.
- 1.3 The Developer shall use all commercially prudent endeavours to procure that all Consents obtained remain valid and unrevoked and shall renew any that become invalid or revoked before the Date of Practical Completion of the whole of the Development.

**2 Method Statement**

- 2.1 The Developer shall not commence the Works or any preparation for them until a Method Statement has been agreed or determined in accordance with this paragraph.
- 2.2 As soon as reasonably practicable after the Unconditional Date the Developer shall submit to EP for its approval a draft Method Statement which will set out the Developer's proposals for undertaking the Works.

**3 Hoardings**

- 3.1 The Developer shall ensure that the Site (excluding those parts subject to the Tenancies) is properly hoarded whilst any of the Works are being undertaken.
- 3.2 The Developer shall, at its cost, affix to such hoardings such signs, advertisements and artwork as EP may reasonably require subject to the Developer being entitled to affix all notices required to comply with statutes.

- 3.3 The Developer shall be entitled to affix such other reasonable notices, signs and flags as EP may approve giving details of the Developer (branded only as Linden Homes together with details of Thomas Homes) and the Professional Team but the Developer shall not otherwise be entitled to affix any advertisements to such hoardings.
- 3.4 The notices and signs affixed pursuant to paragraph 3.3 shall provide that the Development is being undertaken in partnership with EP.
- 3.5 The marketing name of the Development and the Site shall be agreed by EP and the Developer, both acting reasonably, prior to the Unconditional Date.

**4 The Development**

- 4.1 The Developer shall as soon as reasonably practicable carry out and diligently complete or procure the carrying out and completion of the Works in accordance with the provisions of this schedule and this agreement.
- 4.2 The Developer shall carry out or procure the carrying out of the Works in accordance with:
- 4.2.1 the Consents;
  - 4.2.2 the Phasing Plan;
  - 4.2.3 the Approved Plans;
  - 4.2.4 all statutory requirements;
  - 4.2.5 the Method Statement;
  - 4.2.6 all relevant British and European Standards and Codes of Practice;
  - 4.2.7 (in relation to the Affordable Housing), in accordance with the Council's Affordable Housing Strategy and (subject as set out previously) EP's Affordable Housing Strategy;
  - 4.2.8 the Development Objectives;
  - 4.2.9 the Mandatory Sustainability Standards;
  - 4.2.10 EP's Price Standards;
  - 4.2.11 the terms of this agreement;



in a good and workmanlike manner using suitable good quality materials of their several kinds.

4.3 The Developer shall not specify any of the Prohibited Materials in the Works and shall use all reasonable endeavours to procure that they are not used in the Works.

4.4 In respect of the CDM Regulations:

4.4.1 the Developer shall be the only client in respect of the Development and the Works in accordance with the CDM Regulations and shall be the principal contractor for the Works in accordance with them;

4.4.2 the Developer shall give notice to the Health and Safety Executive in accordance with the requirements of the CDM Regulations of its appointment and shall comply with its obligations as the only client under the CDM Regulations; and

4.4.3 the Developer shall procure that designers and contractors for the purposes of the CDM Regulations comply with their obligations under them and shall procure that full details of the Works are given to the Health and Safety Executive and that a health and safety plan is prepared and submitted to the Health and Safety Executive all in accordance with the CDM Regulations.

4.5 If the Satisfactory Permission contains an Adverse Matter the obligations of the Developer to achieve an ECO Homes rating of "excellent" in respect of those parts of the Development which comprise listed buildings shall be relaxed, in relation only to those provisions which, as a result of the imposition of an Adverse Matter, cannot be complied with and subject to the Developer achieving an Eco Homes "very good" rating in relation to listed building elements of the Development and an "excellent" rating in respect of the new build elements of the Development and where the other provisions of this agreement conflict with this provision, this provision shall prevail.

4.6 The Developer shall comply with the Control of Asbestos Regulations 2006 and the accompanying approved code of practice entitled Work with Material Containing Asbestos 0143, and supporting Health and Safety Executive Guidance Notes HSG247, HSG248 and HSG210. In addition the Developer shall ensure that all asbestos removal works are undertaken by asbestos removal contractors licensed by the Health and Safety Executive and that all works are supervised and monitored by a UKAS accredited laboratory appointed directly by the Developer, being independent of the asbestos removal contractor. The Developer shall ensure that

the UKAS accredited laboratory appointed for this purpose holds a Health and Safety Executive supervisory licence. Subject to the Developer having obtained 3 quotations for appointing such a laboratory to undertake such work and having appointed the most economically advantageous quotation the proper and reasonable costs incurred by the Developer in appointing such laboratory (as first agreed by EP acting reasonably and subject to a maximum amount of **£s. 43**) shall be deducted from that part of the Site Price payable pursuant to clause 41.4 provided that the Developer provides to EP such reasonable evidence as it shall reasonably request of such costs and first provides to EP a valid VAT invoice in respect of such costs.

## **5 Planning Agreements**

- 5.1 The Developer shall comply with all of the obligations of the landowner as well as those of the developer (if any) in each of the Planning Agreements.
- 5.2 Any works to be undertaken pursuant to the terms of each Planning Agreement shall be undertaken in accordance with the terms of such Planning Agreement and otherwise in accordance with the requirements for undertaking the Works in accordance with this schedule.
- 5.3 Following completion of the relevant works pursuant to each Planning Agreement the Developer shall remedy any defects in the original construction of such works pursuant to the terms of such Planning Agreement.
- 5.4 Where any such Planning Agreement requires the completion of works which are to be adopted by the Local Authority or Highways Authority (as applicable) the Developer shall use all reasonable endeavours to procure that such works are so adopted in accordance with the terms of such Planning Agreement.
- 5.5 The Developer shall make payment of all sums due pursuant to the terms of each Planning Agreement.

## **6 New Build - NHBC**

In respect of all Residential Units which are to be newly constructed the Developer shall:

- 6.1 throughout the Development programme be and remain on the register of the National House Building Council ("NHBC") or be and remain a member of such alternative body or scheme as may be approved from time to time by EP and

observe any conditions and rules of the NHBC body or scheme as the case may be; and

- 6.2 be responsible for obtaining the current documentation of the NHBC Scheme (or such other body or scheme approved by EP) in respect of each Residential Unit constructed as part of the Development and for supplying them to the ultimate purchaser and shall comply with the directions and requirements of the appropriate NHBC body or scheme from time to time applicable.

**7 General obligations**

The Developer shall procure that:

- 7.1 no material or equipment is brought on to the Site except that required for the Works;
- 7.2 proper provision is made for the security of the Site during the carrying out of the Works and for the protection of any materials, plant and equipment in or on it;
- 7.3 all surplus material is removed from the Site when it is no longer required for the Works;
- 7.4 the Site is maintained in a reasonably tidy condition and free from rubbish;
- 7.5 there is no excavation of the Site or extraction of soil or minerals except as required for the Works;
- 7.6 proper precautions are taken for the safety of all persons upon or in the vicinity of the Site including security patrols, safeguards and arrangements of lighting the Works as may be necessary or appropriate in the interests of public safety (but subject as otherwise provided in this agreement);
- 7.7 the Works are carried out in a manner which does not cause any legal nuisance, injury, loss or danger to or interference with the public or any owners or occupiers of adjoining or neighbouring property;
- 7.8 proper provision is made for the support of land, buildings and boundaries adjoining the Site and for the protection of all services benefiting land adjoining or near to the Site;
- 7.9 any adjoining highways, road and pavements are cleansed as often as may be necessary and are kept unobstructed;

7.10 the wheels of all construction traffic leaving the Site are washed; and

7.11 proper arrangements are made with the requisite authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Works.

**8 Archaeological works**

If any fossils, coins, relics or other articles or structures of historical, antiquarian or archaeological interest are found on the Site they shall be the property of EP.

**9 Title matters**

9.1 The Developer shall comply with the title matters relating to the Site as referred to elsewhere in this agreement.

9.2 The Developer shall not knowingly permit any encroachment or easement to be made or acquired against or over the Site and shall immediately notify EP on becoming aware of any encroachment or easement being made or attempted.

**SCHEDULE 2**  
**Onerous Conditions**

Any conditions or provisions in a Planning Agreement which would cause the Development to be inconsistent with or fail to achieve any of the Development Objectives (other than immaterial changes), the Mandatory Sustainability Standards or the EP Price Standards.

**SCHEDULE 3**  
**Unreasonable Conditions**

A condition contained in a planning permission or a Planning Agreement which:

- (a) requires the payment or expenditure of money or other consideration by way of planning gain or on works outside the Site in excess of a sum equal to **£s. 43** x the total number of Residential Units permitted by the Satisfactory Permission;
- (b) prevents development without the agreement or co-operation of an independent third party which cannot be obtained on terms, at a cost or within a timescale which in the opinion of the Developer would have a material detrimental effect on the financial viability of the proposed Development; or
- (c) specifies materials for use in the construction of the proposed Development or imposes design requirements or methods of construction which would in the opinion of the Developer have a material detrimental effect on the financial viability of the proposed Development;
- (d) creates a restriction on the start of construction or on the sale or occupation of the Residential Units to be built on the Development which in the reasonable opinion of the Developer would materially delay commencement to such construction or completion or occupation of it beyond the date on which commencement or completion would have occurred in the absence of such restriction (other than approval of matters normally reserved in a detailed permission);
- (e) an archaeological and/or ecological condition which has a material detrimental effect on the financial viability of the proposed Development; and
- (f) requires more than **s. 43** of the total number of Residential Units for affordable and/or social housing and/or housing for keyworkers and/or an equivalent contribution for affordable and/or social housing and/or housing for keyworkers with **s. 43** for rent and **s. 43** for shared ownership.



**SCHEDULE 4**

**Part 1**

**The Site**

All that freehold land and buildings known as the former Fair Mile Hospital and which is on the north and south sides of Papist Way, Cholsey, Wallingford the extent of which is shown edged red on Plan 1, and which is registered at the Land Registry under title number ON226922 with title absolute.

**Part 2**

**The Celsea Site**

All that freehold land on the east side of Celsea Place, Cholsey, Wallingford the extent of which is shown edged red on Plan 2 and which is registered under titles numbered ON227467 and ON226927.

**Part 3**

**The Sale of EP Land**

**1 Sale of the EP Land**

1.1 EP, with limited title guarantee and in consideration of the Price, sells and the Developer buys the Site and the Celsea Site on the terms of this agreement subject to and where appropriate with the benefit of the matters referred to in paragraph 5 and otherwise with vacant possession on completion.

1.2 Each transfer of EP Land to the Developer shall be executed in duplicate and shall be in the relevant form at annexures 11 and 12.

**2 Title to the EP Land**

2.1 Title to the EP Land has been deduced to the Developer and the Developer shall not raise any objection or requisitions in relation to such title save that the Developer may raise requisitions in relation to any matters affecting the titles arising after the date of this agreement.

2.2 The Developer shall not be entitled to require EP to deduce any further title to the EP Land.

**3 Standard Conditions of Sale**

The Standard Conditions of Sale (Fourth Edition) shall apply to this agreement except insofar as varied by the provisions of this agreement and in so far as there are any inconsistencies or conflicts between the Standard Conditions and this agreement the terms of this agreement shall prevail. Standard Conditions 2.2, 3.1.3, 3.4, 5.1, 5.2, 6.1, 6.7, 7.2(a), 7.4 shall not apply and the words "or in negotiations leading to it" shall be deleted from Condition 7.1.1. Standard Condition 6.3.2 shall not apply and apportionment shall be made with effect from the relevant Completion Date. Standard Condition 3.3.2(b) is varied by the omission of the words "the seller is then to act as the buyer reasonably directs, and the buyer is to indemnify him against all consequential loss and expense." Standard Condition 7.32 is varied by the deletion of the words: "... less (where the buyer is the paying party) any deposit paid".

**4 Registration at the Land Registry**

4.1 In respect of the sale of the Celsea Site (Subject to the Developer providing to EP a completed Form AN1) EP will immediately following the date of this agreement provide to the Developer evidence of the consent to the application of the Developer to register an agreed notice of this agreement on the charges register of the titles of EP to the EP Land and signature by EP of panel 14 of the Form AN1 provided and will give such assistance as may reasonably and properly be required by the Developer or EP (as appropriate) for the purpose.

4.2 In respect of the sale of the Site (Subject to the Developer providing to EP a completed Form AN1) EP will immediately following the Unconditional Date provide to the Developer evidence of the consent to the application of the Developer to register an agreed notice of this agreement on the charges register of the titles of EP to the EP Land and signature by EP of panel 14 of the Form AN1 provided and will give such assistance as may reasonably and properly be required by the Developer or EP (as appropriate) for the purpose.

**5 Matters affecting EP Land**

The EP Land shall be sold subject to and with the benefit of such of the following as may apply:

5.1.1 all local land charges (whether registered or not before the date of this agreement) and all matters capable of registration as a local land



- charge or otherwise registerable by any competent authority or pursuant to statute or like instrument;
- 5.1.2 all notices served and orders, demands, proposals or requirements made by any local or other public or competent authority whether before or after the date of this agreement;
- 5.1.3 all actual or proposed charges, notices, orders, restrictions, agreements, conditions or other matters arising under any enactment relating to town and country planning;
- 5.1.4 all existing rights and easements and quasi-easements;
- 5.1.5 any unregistered interests which override registered dispositions under schedule 3 of the Land Registration Act 2002 and such unregistered interests as may affect EP Land and/or the BRP Land (as applicable) to the extent and for so long as they are preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002;
- 5.1.6 the matters contained, mentioned or referred to in the registers of the titles to the EP Land;
- 5.1.7 all matters disclosed or reasonably and properly expected to be disclosed by searches and enquiries, either formal or informal, by or for the Developer, or which a prudent buyer ought to make; and
- 5.1.8 in respect of the Site:
  - 5.1.8.1 the Tenancies;
  - 5.1.8.2 insofar as they have been granted by EP pursuant to clause 42 of this agreement, the Leases; and
  - 5.1.8.3 if it has been granted, the Trust Lease.
- 5.2 The Developer is deemed to have full knowledge of all matters referred to in paragraph 5.1 and shall raise no objection or requisition in relation to any such matter.

**SCHEDULE 5**

**Tenancies**

- 1 Lease dated 7 August 1986 made between (1) The Secretary of State for Health and (2) Berkshire, Buckinghamshire and Oxfordshire Naturalists Trust Limited.
- 2 Lease dated 31 March 1993 made between (1) The Secretary of State for Health and (2) Vodafone.
- 3 Lease dated 14 June 2004 made between (1) The Secretary of State for Health and (2) Rehabilitation Services Trust for Oxfordshire Re-employment Limited.
- 4 Lease dated 8 September 2003 made between (1) The Secretary of State for Health and (2) Fairmile Social Club.
- 5 Licence dated 24 May 2004 made between (1) The Secretary of State for Health and (2) The Environment Agency.
- 6 Farm Business Tenancy dated 28 April 2006 and made between (1) The Urban Regeneration Agency trading as English Partnerships and (2) Mrs J Leadbetter.

**SCHEDULE 6**  
**Profit sharing arrangements**

**1 EP's entitlement to Overage**

**1.1 In this schedule:**

1.1.1 references to *Residential Units* shall exclude reference to Affordable Housing Units;

1.1.2 references to a *sale*, unless the context otherwise requires, are to:

1.1.2.1 any kind of disposition of a Residential Unit on the Site to a Purchaser, whether effected by any of the transactions referred to in paragraph 4.2 or any other disposition directly or indirectly to a Purchaser at a premium and all grants of Leases and Transfers of Part completed pursuant to clause 42 of this agreement shall be dispositions for the purposes of this schedule;

1.1.2.2 the first sale only of a Residential Unit on the Site to a Purchaser; and

1.1.2.3 the completion of a sale of the Residential Unit to a Purchaser in respect of any part or parts of the Site and *sales* and *sold* are to be construed accordingly;

1.1.3 references to *consideration* include the gross amount or value of all consideration (whether by way of money or other valuable consideration and including the amount of any deferred consideration) for the disposition given by the Purchaser but:

1.1.3.1 exclude payments made by a Purchaser as consideration for enhancements to the standard specification for the Residential Units on the Site to the extent only of the actual cost to the Developer of such enhancements;

1.1.3.2 exclude the value of any inducements given to a Purchaser of whatsoever nature to a maximum of 5% of the sale price excluding such inducements (the calculation of the value of inducements given to

Purchasers shall be aggregated as follows (i) over each separate tranche of 100 Residential Units which shall be sold from time to time, (ii) on the date on which the consideration shall equal the Target Sum, and (iii) on the disposal of the last Residential Unit);

1.1.3.3 exclude any rental or service charge receipts; and

1.1.3.4 where the Developer accepts a property in exchange for the sale of a Residential Unit there shall be deducted from the amount of the consideration a sum equal to the aggregate of the proper and reasonable cost incurred by the Developer in acquiring and selling the property acquired in part exchange (including any loss which the Developer may make as a result of selling such property at less than its acquisition price) and including estate agents' fees, stamp duty, land tax and Land Registry fees;

1.1.4 references to a *tenancy*, unless the context otherwise requires are to lettings of Residential Units at the Site without a premium but subject to a periodic rent payment;

1.1.5 Primary Calculation Date shall be the date as described in paragraph 2.1 and a "Calculation Date" shall occur at three-monthly intervals (or such other interval as the Parties shall agree in writing) calculated from the Primary Calculation Date;

1.1.6 Open Market Value: the open market value of a Residential Unit or Residential Units at the Site being the best consideration reasonably obtainable on the open market and otherwise in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards (Fifth Edition) including Practice Statement 3.2 but disregarding any obligation to pay Overage;

1.1.7 Overage: the sums payable to EP pursuant to this schedule;

1.1.8 Target Sum: the sum calculated in accordance with the following formula:

$$A \times B$$

where:

A = is the total Consented Area (in square feet); and

B = the sum of **£s. 43** per square foot.

- 1.1.9 Consented Area: the Gross Developable Area in square feet in respect of which planning permission is granted for Residential Units at the Site pursuant to the Satisfactory Permission or if Residential Units are not constructed pursuant to the Satisfactory Permission then such planning permission or planning permissions pursuant to which Residential Units are created on the Site and reference to any such permission shall include variations to any such permissions;
- 1.1.10 Purchaser: the purchaser of a Residential Unit, or Residential Units, on the Site being a third party from the Developer and any purchaser pursuant to a Lease or Transfer of Part pursuant to clause 42 of this agreement, the Developer acting in good faith and at arm's length;
- 1.1.11 references to the "Parties" shall mean only EP and the Developer and to a "Party" shall mean either of them as the context requires; and
- 1.1.12 references to Residential Units "*constructed*" on the Site shall include all Residential Units created as part of the conversion works and/or new build works undertaken on the Site.
- 1.2 The Parties shall agree the Target Sum (including any variations to it as a result of variations to any relevant planning permissions) as soon as reasonably practicable.
- 1.3 EP is entitled to Overage from time to time immediately the amount or value of the consideration for the Residential Units on the Site exceeds the Target Sum or would do so if those of the Residential Units on the Site which are the subject of a tenancy had in fact been the subject of a sale ("the Excess").
- 1.4 The Overage is to be equal to **£s. 43** of a sum equal to the Excess.
- 1.5 In any case where there is a need for valuation of the consideration for a sale, the Parties shall endeavour to agree the value but, if they cannot or do not do so, either party may submit the issue for independent expert determination pursuant to clause 16 of this agreement.

- 1.6 The consideration for sales of Residential Units at the Site is to be treated as having been received by the Developer even if it has been assigned, charged or otherwise divested by the Developer.

**2 Time for payment**

- 2.1 No later than five Working Days prior to the contractual date for completion of the sale, on completion of which, the amount or value of consideration for the Residential Units on the Site exceeds the Target Sum the Developer shall notify EP and such contractual date for completion shall be the Primary Calculation Date.

- 2.2 Payment of Overage is to be made on the occasion of each Calculation Date.

- 2.3 No later than five Working Days after each Calculation Date the Developer shall provide to EP (in addition to the information referred to at paragraphs 3 and 4 a statement detailing all consideration and sales of Residential Units which completed in the period from the day after the previous Calculation Date up to and including the Calculation Date in respect of which the statement is produced ("the Relevant Calculation Date") together with the Developer's calculation of the Overage due to the Developer for the period in respect of which the statement is calculated. In the case of the period up to the first Calculation Date (ie the date which is three months after the Primary Calculation Date) the statement shall include details of all sales and consideration from and including the first sale of a Residential Unit at the Site as well as the calculation of the amount of Overage due to the Developer. The Developer shall, at the same time as providing each such statement to EP, pay to EP an amount equal to the Overage in respect of the period covered by the statement.

- 2.4 The provisions of this paragraph 2 shall be without prejudice to paragraph 5.

**3 Information to be provided to EP**

The Developer shall promptly notify EP of progress towards sales and details of each proposed sale and actual sale on a regular basis (not less often than once every three months) and in the event of a sale, and will promptly provide EP with such other information as it reasonably requires to assess its position under the terms of this schedule.

**4 Conduct of sales of Residential Units at the Site**

- 4.1 In making a sale, the Developer is under a duty to EP:

4.1.1 to endeavour to obtain such consideration as is reasonably obtainable on the open market as at the time of exchange of contracts for a sale of the Residential Unit or Residential Units at the Site (in the case of a single sale of more than one Residential Unit at the Site or a block or blocks of Residential Units at the Site) as between a willing seller and a willing buyer acting at arm's length; and

4.1.2 freely to expose the Residential Units at the Site to the market;

but the Developer may in the exercise of its reasonable discretion determine the manner, timing and method of doing so.

4.2 The Developer may only sell Residential Units at the Site by means of the grant of leases or the sale of freehold Residential Units at the Site by the Developer; or some other disposition which secures the same benefit by way of Overage to EP as it would have derived by any of the other methods described in this paragraph.

## 5 **Residential Units subject to tenancies**

If any of the Residential Units at the Site has not been the subject of a sale but is the subject of a tenancy then the Parties shall agree the Open Market Value of each such Residential Unit as at the date of the tenancy and for the purposes of calculating Overage it shall be assumed that a sale of each such Residential Unit was completed on the date of the tenancy. Such Open Market Value shall in each case be such sum as is agreed between the Parties or failing agreement is determined by an expert as provided at clause 16 of this agreement.

## 6 **Dispositions at less than open market value**

In circumstances where EP (acting reasonably) considers that a sale has occurred at a price which, at the date on which the contract for such sale was exchanged, represented less than the Open Market Value for the Residential Unit at the Site in question then EP may, within 30 Working Days of EP being notified of the amount of the consideration in each case, require that the Open Market Value for the Residential Unit in question be determined under paragraph 1.1.6 as at the date on which contracts were exchanged for the sale in question. If the Open Market Value as so agreed or determined is more than 10% greater than the actual consideration achieved then and in such circumstances and for the purposes of the calculation of Overage the Open Market Value shall be deemed to be the consideration determined by the expert pursuant to clause 16 or as agreed between EP and the Developer (as appropriate).

7 **Disputes**

If the Parties cannot agree the calculation of the Target Sum or any other matter in this schedule then the matter shall be determined by an expert in accordance with the provisions of clause 16 of this agreement save that the Overage in dispute shall be paid into and held in an interest bearing account ("the Escrow Account") by the Developer's solicitors acting as stakeholders pending the outcome of the expert's determination in accordance with the provisions of clause 16 of this agreement. The interest that accrues on the sum held in the Escrow Account shall be paid to the Party whom the expert determines is to receive the sum being held in the Escrow Account.



## **SCHEDULE 7**

### **Part 1**

#### **Development Objectives**

- 1 The Development is to be of a high environmental quality, and the Developer will need to demonstrate that its proposals will have a low environmental impact and contribute positively to the surrounding environment. High energy efficiency, waste recycling, water recycling and environmentally friendly building material and methods are some of the measures that should be implemented into the Development.
- 2 The Development should achieve the highest standards for sustainability through measures which are deliverable, cost effective, and where possible, add value to the Development both in terms of the quality of the environment and also the cost of living.
- 3 The Development should provide a "Sustainable Community" which is:
  - 3.1 active, inclusive and safe – fair, tolerant and cohesive with a strong local culture and other shared community activities;
  - 3.2 well run – with effective and inclusive participation, representation and leadership;
  - 3.3 environmentally sensitive – providing places for people to live that are considerate of the environment;
  - 3.4 well designed and built – featuring a quality built and natural environment;
  - 3.5 well connected – with good transport services and communication linking people to jobs, schools, health and other services;
  - 3.6 thriving – with a flourishing and diverse local economy;
  - 3.7 well served – with public, private, community and voluntary services that are appropriate to people's needs and accessible to all; and
  - 3.8 fair for everyone – including those in other communities, now and in the future.

## **Part 2**

### **Mandatory Sustainability Standards**

#### **Energy**

- NHER 2006 rating of 10 across the whole Development;
- SAP 2005 Dwelling Emissions Rate <20kgCO<sub>2</sub>/m<sup>2</sup>, excluding any contribution from renewable energy across the whole Development;
- 10% reduction in total residual development CO<sub>2</sub> emissions once energy efficiency savings are applied through on-site renewable energy;
- Schemes to incorporate efficient insulation with average heat loss parameter (HLP) across the whole site <1.3
- 100% of domestic fixed internal lighting to be energy efficient
- Two EcoHomes credits for EcoLabelled Goods

#### **Water**

- Domestic internal potable water consumption to be <32m<sup>3</sup>/bedspace/year (this would secure all 5 EcoHomes credits under Wat1)

#### **Waste**

- Produce a Construction Waste Management Plan including targets for maximum landfilled construction waste per £100k of project value and 100m<sup>2</sup> built area
- Produce an Operational Waste Management Plan that enables high capture rates of materials for recycling and composting

#### **Materials**

- Demonstrate a pro-active approach to use of sustainable materials with low embodied energy e.g. A-rated building elements, and low toxicity eg no VOC emissions by reporting on embodied energy in construction (kgCO<sub>2</sub>/m<sup>2</sup>)
- 30% of materials by value to be from reclaimed or recycled sources
- 80% of non reclaimed timber for basic building and finishing elements by volume to be certified

- 40% of materials by weight to be sourced from within 30 miles.

**Part 3**  
**EP Price Standards**

- 1 Secured by Design accreditation by the local constabulary.
- 2 Achievement of Building for Life Silver standard.
- 3 Achievement of Inclusive Design to provide an environment that is acceptable and appealing to all regardless of physical ability, age, gender or circumstance.
- 4 Lifetime Homes providing housing that is flexible, adoptable and robust to changing social and demographic needs.
- 5 Construction efficiency through use of modern construction techniques to achieve significant efficiency in terms of delivery and output through English Partnerships'/Housing Corporation defined Modern Methods of Construction or other methods.
- 6 Car parking provision which is well designed and integrated to a maximum of the minimum standard acceptable to the Local Authority.
- 7 Construction without the use of materials or processes that are rated as Category C within the BRE Green Guide to Housing Specification.
- 8 Remediation of land minimising the requirement for landfill, making use of in situ remediation and modern decontamination technology and adherence to DTI/CIRIA Guide.
- 9 Introduction of measures to reduce likelihood of death by fire, in the home in support of ODPM's PSA3.
- 10 Creation of a development which integrates the tenure of housing such that social housing and other affordable and low cost home ownership housing types are not differentiated by design, quality or location within a site, timing of development or by significant differences and access to services and amenities.

**SCHEDULE 8**  
**Details of reports**

**1 WSP Development and Transportation Ltd**

Preliminary Flood Risk Assessment and Updated Services Appraisal (dated 22 September), Transport Assessment and Liaison with Highway Authority (22 September) and geotechnical work (20 September).

**2 CgMs Consulting**

Archaeological Desk-Based Assessment November 2005

**3 CBA Trees**

Tree Condition Survey dated 16 September 2005.

**4 Bioscan Environmental Consultancy**

Ecological Appraisal dated 23 September 2005.

Bat Survey (yet to be completed).

**5 Barton Willmore Environmental**

Landscape and Visual Appraisal March 2006.

**6 LBH Wembley**

Geotechnical and land Contamination Assessment December 2005.

Additional investigation and Review of Contamination Risk Assessment March 2006.

**7 Strategic Risk Management**

Type 3 survey, assessment and register of asbestos containing materials at Fair Mile, Hospital Reading Road, Wallingford, Oxfordshire OX10 9HH.

**SCHEDULE 9**  
**Planning Overage in respect of Celsea Site**

1        **Definitions**

In this schedule only the following definitions and interpretations shall apply:

- A*                                the monthly figure shown in the Index published in the month and year which corresponds to the date of this agreement;
- B*                                the monthly figure shown in the edition of the Index last published before the date for payment of Overage in accordance with paragraph 5.1;
- Developer*                    the Developer as named in this agreement and any party to which the Developer disposes of the Celsea Site prior to payment of the Overage;
- Development Value*        the amount equal to the site value of the Celsea Site in unimproved state with the benefit of the Planning Permission and otherwise in accordance with this schedule;
- Disposal*                     a disposal of any kind, by whatever means, whether directly or indirectly, and whether by one or more transactions, of the interest of the Developer on the whole or part of the Celsea Site;
- Index*                         the all items retail prices index published by the Office for National Statistics;
- Overage*                      an increment in the price paid for the Celsea Site calculated and to be paid in accordance with the provisions of this schedule;
- Planning Permission*       a planning permission for the development (as defined in section 55 of the Planning Act) of

the Celsea Site for use or purpose other than as open space;

*Proceedings*

proceedings in relation to the Planning Permission and the application therefor but otherwise as such term is defined in clause 1 of this agreement;

*Time Limit*

period of 50 years from the date of completion of the acquisition of the Celsea Site by the Developer, as extended, if appropriate, as provided in paragraph 3.

**2 Entitlement to Overage**

EP is entitled to Overage on the first occasion that Planning Permission is granted, or is treated under the provisions of this schedule as granted, within the Time Limit, subject to extension in accordance with paragraph 3.2.

**3 Planning Permission and realisation of development value**

3.1 A Planning Permission is to be treated as granted at the date on which notice of grant of the planning permission is formally issued to the applicant unless the grant is quashed by order of the court in Proceedings.

3.2 If Planning Permission is refused within the Time Limit, but is granted on appeal at a time outside the Time Limit, the Time Limit is to be extended to expire immediately after the grant of Planning Permission.

3.3 The parties acknowledge that as at the Celsea Completion Date it is unlikely that Planning Permission will be granted for the Celsea Site. The Developer agrees, however, to review from time to time the planning policy of the local planning authority for the Celsea Site and shall make representations to the local planning authority at the review of the "local plan" current at the date of this agreement and each further review of the "Development Plan" (as defined in section 38 of the Planning and Compulsory Purchase Act 2004) for the allocation of the Celsea Site within each such Development Plan for residential purposes.

If, within the Time Limit it becomes reasonably likely that planning permission may be granted for the Celsea Site the Developer shall as expeditiously as reasonably practicable prepare and submit to the local planning authority an application and supporting documentation for Planning Permission for the Celsea Site for the

maximum amount of development reasonably likely to be permitted in accordance with the then current planning policy of the local planning authority. In such circumstances the Developer shall use all reasonable endeavours to achieve the grant of Planning Permission as soon as reasonably practicable.

#### 4 Calculation of Overage

4.1 The Overage to which EP is entitled is to be calculated by the application of the following formula:  $O = (DV - P) \times 95\%$

where:

O is the Overage;

DV = the Development Value on the expiration of three months after the grant of the Planning Permission except that, if on such date there are any Proceedings on foot it shall be the date of Final Determination of such Proceedings leaving in place the Planning Permission;

$$P = \text{£s. 43} \times \frac{B}{A}$$

- 4.2 The values in the formula in paragraph 4.1 are to be assessed on the date set out in paragraph 4.1 and otherwise in accordance with the principles in Practice Statement 4 of the RICS Appraisal and Valuation Manual (amendment current at the time of that the valuation is made).
- 4.3 EP and the Developer shall endeavour to agree the calculation of the Overage but, if they cannot or do not do so, the matter shall be referred for determination to an independent expert in accordance with clause 16 of this agreement.
- 4.4 If the Index is re-based after A is published, but before B is published, then an appropriate adjustment shall be made in the calculation to ensure that both B and A are calculated on the same basis.
- 4.5 If the Index ceases to be published then there shall be substituted in the calculation in paragraph 4.1 such other index as the Developer and EP shall agree or failing agreement as shall be determined by an independent expert pursuant to clause 16 of this agreement as being a generally respected measure of the general increase in retail prices.
- 4.6 If, because of any change after the date of this agreement in the method used to compile the Index or for any other reason it becomes impossible or impracticable to

calculate fairly the fraction referred to in paragraph 4.1 by reference to the Index, or if any dispute or question arises between the parties to this agreement with respect to any such calculation pursuant to paragraph 4.1 or with respect to the construction or effect of this provision, then such dispute or question shall be referred to an independent expert pursuant to clause 16.

**5 Payment of Overage**

5.1 Overage shall be paid by the Developer to EP 15 Working Days after the later of:

5.1.1 the date set out at paragraph 4.1; and

5.1.2 the date on which the Development Value is agreed or determined in accordance with this schedule.

5.2 Interest in accordance with clause 25 shall be payable if the Overage is not paid on the due date for payment.

**6 Developer's duty to notify**

6.1 The Developer shall promptly notify EP of:

6.1.1 an application for planning permission in respect of the Celsea Site;

6.1.2 progress of the application or an appeal against refusal of planning permission or other Proceeding.

6.2 In conducting discussions or negotiations with the local planning authority, or in its conduct of an appeal, the Developer shall:

6.2.1 keep EP and its planning consultants (where notified) informed of all relevant action that it takes to progress an application for planning permission or the appeal and supply to EP the relevant material in that connection; and

6.2.2 have due regard to, but not be bound by, the reasonable representations of EP

and shall report on the progress of the application or appeal to EP regularly.

6.3 In carrying out their respective obligations in this schedule the parties are to act with due expedition and diligence.



6.4 The Developer shall within five Working Days of the grant of any planning permission for the Celsea Site provide copies to EP.

7 **Novation on a Disposal**

On completion of a Disposal of the Celsea Site the Developer, or its successor in title, making the Disposal as appropriate shall deliver to EP a deed of covenant by the party or parties to whom the Disposal has been made and who has become the Developer for the purposes of this schedule, to observe and perform the obligations of the Developer in this schedule.

8 **Discharge of charge**

Within 15 Working Days of EP's receipt of the Overage and any interest due on it by way of cleared funds it will be provide to the Developer a duly executed and dated form DS1.

## SCHEDULE 10

### The First Time Buyer's Initiative

- 1 In January 2005, the Office of the Deputy Prime Minister ("DCLG") announced the First Time Buyer's Initiative ("FTBI") as part of its plan, "Sustainable Communities: homes for all". It aims to give more people the opportunity to own their own homes by increasing the supply of affordable housing for sale. As the national regeneration agency, English Partnerships is working with DCLG to deliver the initiative. It is part of the DCLG's HomeBuy low cost home ownership initiative and is positioned to target key workers and other eligible groups that have sufficient income to sustain home ownership but are currently prevented from entering the housing market by the prevailing demand/supply conditions.
- 2 The FTBI is similar in many respects to a shared equity scheme because it enables eligible first time buyers to buy a new home that is affordable to them (at least 50% of the total market price), with English Partnerships contributing to the purchase price by way of a payment to the developer. The first time buyer then has an obligation to make a repayment to English Partnerships via a share of the future sale proceeds. English Partnerships will take a second charge over the property to secure its interest. Buyers will pay a fee to English Partnerships based on a percentage of the payment made to the developer after living in the home for more than three years. The introduction of fees means that buyers have an incentive to acquire additional equity and it is therefore expected that over time the second charge will be discharged. It is anticipated that the payment will be made to developers through a separate agreement, which will allow the sale of an affordable share in selected homes, primarily one and two bedroom homes, to qualifying first time buyers.
- 3 By effectively underwriting the sales price and targeting a pool of unmet demand, English Partnerships believes the use of the First Time Buyer's Initiative funding offers more certainty to house builders on speed and timing of sales receipts.
- 4 First Time Buyer's Initiative homes will be marketed by house builders with a network of EP funded "HomeBuy agents" assessing applicant eligibility.
- 5 It is anticipated that FTBI funding will be applied to a portion of market sale homes not any resulting from the consented S106 affordable homes. It is assumed that FTBI homes on the Site will typically be one and two bedroom units and will be identical in design and specification to the same category of home to be sold on the open market. The overall number and proportion of one and two bedroom

homes (FTBI and full market value) on the site must not exceed the limits in English Partnerships planning brief, where relevant.



## **SCHEDULE 11**

### **Detailed design requirements for the purposes of clause 30**

- Siting, design, external appearance and landscaping.
- Drawings to include plans and elevations of individual units and buildings. Cross-sections and/or axonometrics through site to illustrate street elevations and public realm.
- Car parking details, illustrative.
- Highways and access to accord with previously approved plans.
- Materials for all external finishes to buildings and landscaped areas. As well as illustrative material, samples of materials are to be presented to EP explaining where each material is to be used.
- Key materials to include: bricks, tiles, render (including colours), all external facing materials, windows, external doors, paviers and/or other hard landscape materials, kerb setts, tree grills and planters/raised beds.
- Hard and soft landscaping. Hard landscaping details to include material details and examples of how these are to be laid.
- Soft landscaping to include planting pallets for shrub beds and tree species and size to be noted and positioned on plan.
- Play equipment including siting, layout and design.
- Enabling development justification report.
- Details community facilities, written and illustrative, to include refurbished and existing buildings allocated for community facilities and the long-term management and security of these facilities.
- Screen walls, fencing and boundary treatment for site.
- Details and materials to be specified and elevational details submitted.
- Details of street furniture including lighting, seating, public art, signage, gates, fencing and bollards, illustrative.

- Siting, design and external appearance of recycling facilities, bin stores and cycle stores, illustrative.
- Tree survey retention, removal and lopping including protection of trees.
- To be issued in plan and report format.
- Erection of protective fencing for trees and landscaping – plan format.

Executed under the common seal of  
**THE URBAN REGENERATION AGENCY**  
(acting as **ENGLISH PARTNERSHIP**)  
in the pres

**s. 40(2)**

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Director

Secretary



Executed as a deed by  
**LINDEN HOMES CHILTERN LIMITED**  
acting by:

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Director

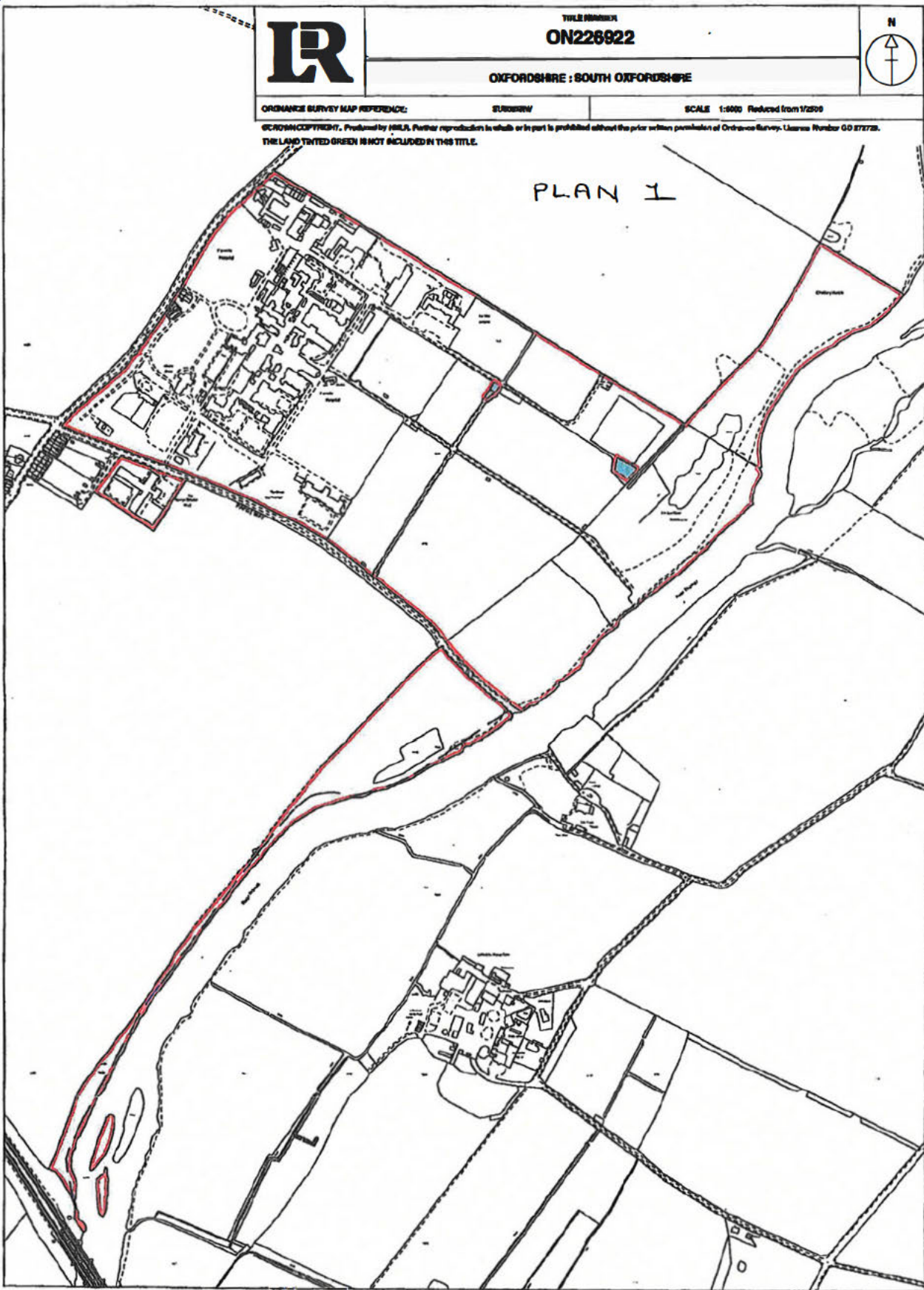
Secretary *D.A.F.C.*

**s. 40(2)**

[Executed as a deed by  
**LINDEN LIMITED**  
in the presence of:

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**s. 40(2)**



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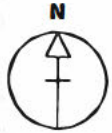
This title plan shows the general position of the boundaries; it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans.  
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# LR

TITLE NUMBER  
**ON226927**



**OXFORDSHIRE : SOUTH OXFORDSHIRE**

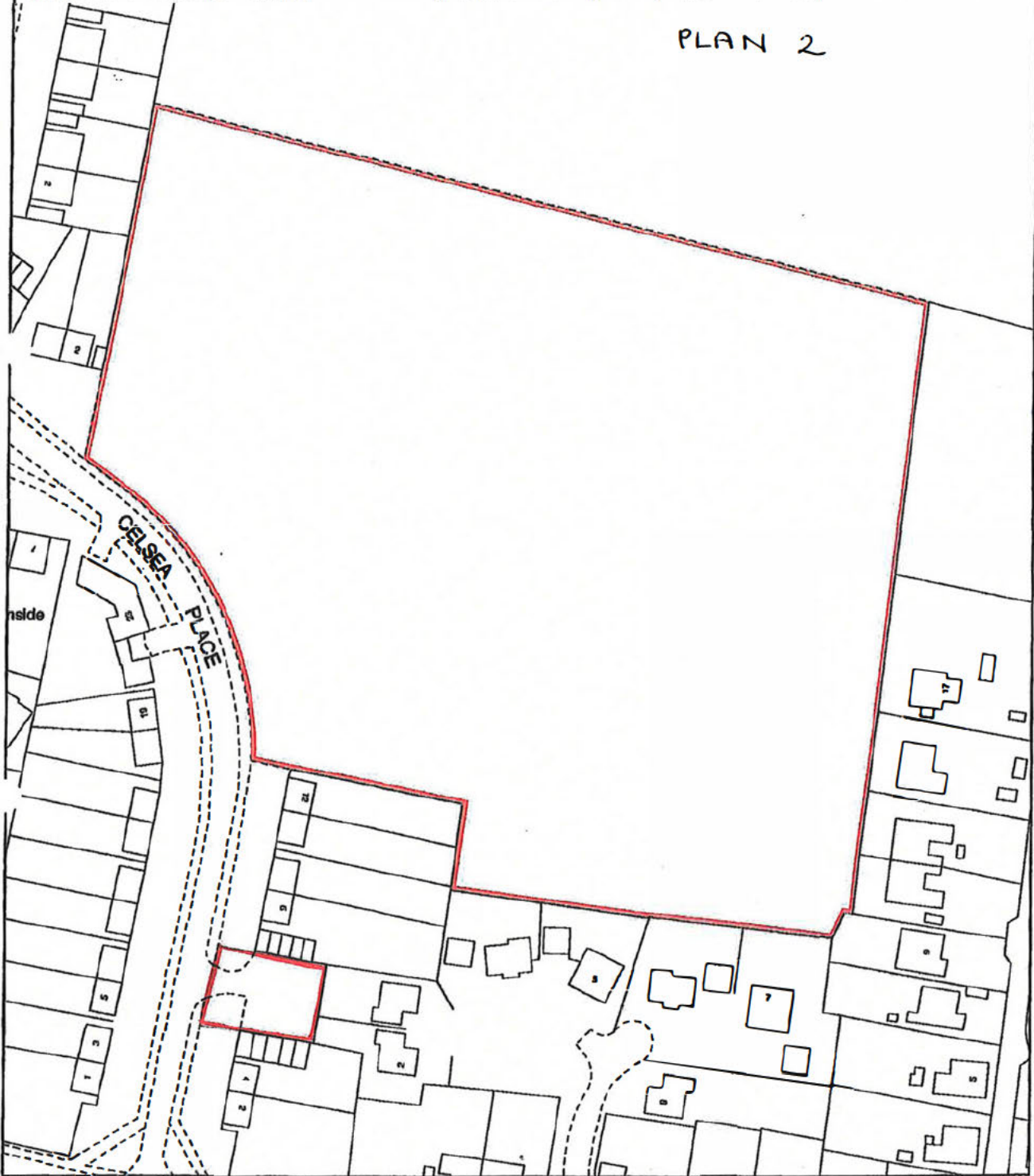
ORDNANCE SURVEY MAP REFERENCE:

SU59868W

SCALE 1:1250 Enlarged from 1/2500

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PLAN 2



This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans.

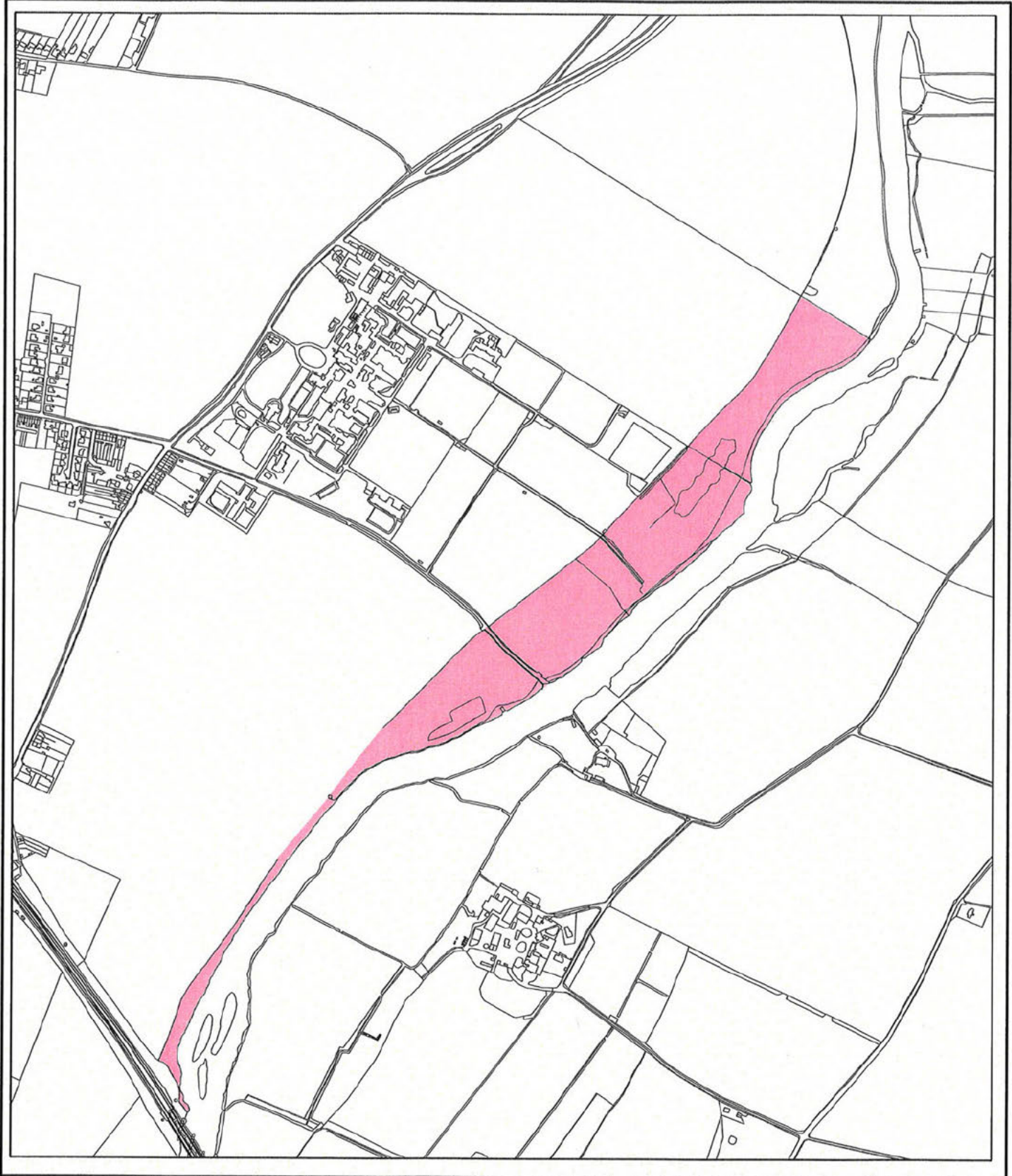
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0324019003





 <b>CHOLSEY MARSH</b>				
<b>TITLE</b> Fair Mile Hospital Cholsey Site SE29a Plan 4				
<b>DRG NO.</b> s. 40(2)	<b>REV</b>	<b>SCALE</b> 1:8500	<b>SIZE</b> A4	
<b>DATE</b> 12th October 05	<b>DRAWN BY</b> s. 40(2)		<b>PURPOSE OF ISSUE</b> AREA	
<b>OS SHEET</b>	<small>This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. English Partnerships OD 100018788</small>		<b>REV</b>	<b>DATE</b>
			<b>INITIALS</b>	
			 <b>English Partnerships</b> The National Regeneration Agency	
			Central Business Exchange II, 414-428 Midsummer Boulevard, Central Milton Keynes, MK9 2EA	
			DX31410 Milton Keynes IV25 Tel: 01908 692692 Fax: 01908 691333 www.englishpartnerships.co.uk	