…….. 2019

BRIGHTON & HOVE CITY COUNCIL

and

JTC FUND SOLUTIONS (JERSEY) LIMITED and SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED

CONDITIONAL LAND ACQUISITION AGREEMENT

of

the Brighton Centre, Brighton Centre, King's Road, Brighton, East Sussex

Herbert Smith Freehills LLP

TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS AND INTERPRETATION	1
2.	AGREEMENT TO SELL AND BUY THE BRIGHTON CENTRE	35
3.	OVERALL PROJECT OBJECTIVES AND GOOD FAITH	35
4.	CONDITIONAL FORCE	35
5.	CLAWBACK, QUALIFYING EXPENDITURE AND WATERFRONT CENTRAL COSTS	37
6.	OPTION AND PRE-EMPTION	39
7.	VO PROCUREMENT AND PROJECT PREPARATION REPORT CONDITION	40
8.	PROJECT SET UP DOCUMENTATION CONDITION	40
9.	PROJECT BASE DOCUMENTATION	41
10.	DEVELOPMENT STRATEGIES	43
11.	WATERFRONT EAST PRE-CONSTRUCTION SERVICES	45
12.	OBLIGATIONS IN RESPECT OF THE CONDITIONS PRECEDENT	48
13.	PLANNING APPLICATIONS	63
14.	LICENCE TO ENTER	66
15.	BUYER'S COVENANTS	66
16.	PROCUREMENT	72
17.	WATERFRONT EAST COST HEADINGS STATEMENT, QUALIFYING EXPENDITURE AND STATEMENT OF WATERFRONT CENTRAL COSTS	74
18.	COUNCIL'S COVENANTS	75
19.	REIMBURSEMENT OF COSTS OF COUNCIL'S PROJECT MONITOR AND COUNCIL'S PROCUREMENT OFFICER	76
20.	VAT	77
21.	LAND PRICE VALUATION	77
22.	OVERAGE	78
23.	COMPLETION OF THE TRANSFER, PAYMENT OF LAND PRICE, ASSIGNMENT OF APPOINTMENTS AND PROVISION OF INFORMATION	78
24.	STANDARD CONDITIONS	80
25.	CAPACITY	81
26.	TITLE	81
27.	PRESS NOTICES, OTHER PUBLICATIONS AND CONFIDENTIALITY	82
28.	ENTIRE AGREEMENT	83
29.	COUNCIL'S POWERS	83
30.	TERMINATION	83
31.	FUNDER AND STEP-IN RIGHTS	84

32. AMENDMENTS TO BOUNDARIES OF THE SITE AND DETERMINATION OF THE ADDITIONAL PROPERTY 85
33. ALIENATION OF AGREEMENT AND DISPOSAL OF BRIGHTON CENTRE 85
34. CHANGE OF CONTROL 89
35. NON-MERGER 89
36. NO PARTNERSHIP OR AGENCY 89
37. INTEREST 89
38. ENVIRONMENTAL MATTERS 90
39. DISPUTES 90
40. NOTICES 92
41. OVERSAILING AND OTHER RIGHTS 93
42. FREEDOM OF INFORMATION 94
43. LIMITED RECOURSE 95
44. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 95
45. JURISDICTION 95
46. GUARANTOR 95
SCHEDULE 1 (OVERAGE SCHEDULE) 99

APPENDICES

1. Valuation Brief and Waterfront Central Appraisal Template
2. Plan A (Brighton Centre and Waterfront Central Site)
3. Plan B (Black Rock Site)
4. Plan C (Buyer's Property)
5. Pre-emption Agreement
6. Option Agreement
7. Form of Transfer
8. Waterfront East Cost Headings Statement
9. Waterfront East Pre-Construction Services
10. Deed of Covenant
11. Long Form Appointment
12. Development Gateway Table
13. Deed of Novation
14. Cure Period Worked Example
15. Brighton Marina Plan

THIS AGREEMENT is made [ ] 2019

BETWEEN:

(1) **BRIGHTON & HOVE CITY COUNCIL** of King's House, Hove, East Sussex BN3 2SR (the **"Council"**); and

(2) **JTC FUND SOLUTIONS (JERSEY) LIMITED** a company incorporated in Jersey (Co. Regn. No. J32203) whose registered office is at Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT acting in its capacity as trustee (in such capacity, the **"Trustee"**) of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST** (the **"Trust"**) and **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey (Co. Regn. No. J4345) (formerly known as SG Hambros Trust Company (Channel Islands) Limited prior to its merger with Kleinwort Benson (Jersey) Trustees Limited) whose registered office is at 18 Esplanade St Helier Jersey, JE4 8RT, Channel Islands, acting in its capacity as nominee (in such capacity, the **"Nominee"**) of the Trustee (the **"Nominee Trust"**) (the **"Buyer"**).

WHEREBY IT IS AGREED between the Council and the Buyer as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including the Schedules) the following words and expressions shall unless the context otherwise requires have the meanings assigned to them below:

"1990 Act" means The Town and Country Planning Act 1990 (as amended);

"Acquire" means the purchase by way of completion of a transfer of the freehold interest (or other appropriate proprietary interest by way of the grant of a lease or easement or similar proprietary interest) or the entry into a conditional option agreement or contract whereby the Buyer or the Council (as the case may be) is entitled to acquire the relevant interest in any Additional Property and **"Acquired"**, **"Acquiring"** and **"Acquisition"** shall be construed accordingly;

"Acquisition Capital Costs" means the capital consideration or premium payment and/or associated costs of a capital nature (including any deposits) incurred or contracted to be incurred or genuinely estimated to be incurred in relation to the Acquisition of any Additional Property in accordance with the Site Assembly Strategy including all Land Registry fees and stamp duty land tax (but, for the avoidance of doubt, shall not include any Acquisition Pre-Purchase Costs) and which in the case of the Site Assembly for the Waterfront East Development are to be incurred by the Council and in the case of the Waterfront Central Development are to be incurred by the Buyer;

"Acquisition Pre-Purchase Costs" means all the costs incurred or contracted to be incurred or genuinely estimated to be incurred in relation to the Acquisition of any Additional Property in accordance with the relevant Site Assembly Strategy prior to the transfer and/or grant of any lease for any Acquisition including all legal fees, survey costs, any option fees pursuant to any conditional contract and/or option agreement (but not including any payments toward the purchase price payable under such option agreements or conditional contract which shall be treated as Acquisition Capital Costs) and any other consultant costs in respect to such Additional Property but, for the avoidance of doubt, such Pre-Purchase Acquisition Costs shall not include any Acquisition Capital Costs;

"Additional Property" means any interest or right within or outside the Waterfront Central Site or the Waterfront East Site other than the Buyer's Property and the Council's Present Land which, in accordance with the Site Assembly Strategy, it is necessary to Acquire to enable the Waterfront Central Development or the Waterfront East Development (as applicable) to be developed in accordance with the relevant Satisfactory Planning Permission and otherwise in accordance with the terms of this Agreement;

"Affordable Housing" means such element of the Waterfront Central Development or the Waterfront East Development (in either case, if any) as is designated by way of a condition

of the Satisfactory Planning Permission or any Planning Agreement for housing where the rent or price is reduced directly or indirectly by means of a subsidy from the public, private or voluntary sector and which is managed by a provider of social housing or local authority and includes (but is not limited to) shared ownership arrangements, low cost rental accommodation, submarket accommodation and accommodation for Key Workers (as defined in Chapter 1 of Part 2 of the Housing and Representation Act 2008);

"Agreed Form" means in relation to any document, the form of that document, or the draft of which, is agreed between the Parties and annexed to this Agreement;

"Anchor Store" means a retail anchor store of greater than 50,000 square feet of Gross Internal Area (or such other square footage as is agreed between the Parties) intended to be located in the Waterfront Central Development;

"Anticipated Funding Sources" means the proposed sources of funding, which the Council has the requisite authority and powers to obtain and receive from the date of this Agreement and to be put towards the Waterfront East Development Costs (including the anticipated timing of receipt of such funds) which shall include any of the following:

(a) capital receipts (or fees in kind) from the Buyer for the disposal to it of the Brighton Centre;

(b) capital receipts from the Venue Operator as provided for in the exchanged and subsisting Venue Operator Agreement and any other net capital receipts receivable by the Council from the ancillary uses of the completed Waterfront East Development (net of any amounts required to be spent on any insurance, building or estate management services);

(c) prudential borrowing available to the Council and supported by the net rent or other net income receivable by the Council from the Waterfront East Development under the exchanged and subsisting Venue Operator Agreement and any other income receivable by the Council from ancillary uses of the completed Waterfront East Development (in each case, net of any amounts required to be spent by the Council at the Waterfront East Development on any insurance, building or estate management services including any annual allowance for contributing to a reserve or sinking fund established by the Council (acting reasonably and in accordance with the principles of good estate management) and any costs to be incurred by the Council for the upkeep and ongoing good estate management of the public realm) (the **"Venue Borrowing"**) and for the purposes of calculating the Waterfront East Total Funds the amount of the Venue Borrowing shall be based upon the Public Works Loan Board Borrowing rate at the relevant time of borrowing based on the longest term readily available at such point in time but which in any event shall not be shorter than 25 years with any variation to these terms to be approved by the Buyer;

(d) TIF Borrowing (which (for the purposes of calculating the Investment Gap, but without prejudice to the Council's obligation under clause 12.11.1), shall be the amount the Council has elected to obtain from TIF Borrowing provided that such amount shall not be less than the Projected TIF Borrowing);

(e) receipts from grant funding applications (or, where the Council has not actually received such grants, where the Council has good and proper grounds to submit a claim to receive such grants), including but not limited to funds from:

(i) the 'Regional Growth Fund';

(ii) local enterprise partnerships;

(iii) 'Heritage Enterprise' schemes; and

(iv) the 'Heritage Lottery Fund',

but taking account of the Council's funding requirements for other projects within the City of Brighton;

(f) direct Council investment or grant funding taking account of any notional rate of return that the Council is entitled to receive on such monies;

(g) potential receipts from ancillary development and associated land value relating to the Waterfront East Site;

(h) the Brighton Centre Savings;

(i) the Brighton Marina Uplift; and

(j) such other sources of funding, grants or other value accretion sources as the Council is able to obtain and/or the Buyer is able to recommend and which once received the Council is able to treat as an actual receipt for the funding of the Waterfront East Development Costs and the Waterfront East Development;

"Anticipated Relevant Expenditure" means the incurred, contracted to be incurred and a genuine pre-estimate of (which the Buyer (acting reasonably) believes to be (or is) to be) the incurred expenditure of any relevant and appropriate kind incurred in relation to the preparation for, commencement, carrying out and completion of the Waterfront Central Development and for the avoidance of doubt the Anticipated Relevant Expenditure shall include (but shall not be limited to) the heads of development costs outlined in the Waterfront Central Appraisal as updated from time to time (which shall include the actual or anticipated cost to the Buyer of any election under clauses 12.12.1(A), 12.12.1(B) and/or an Investment Gap Election and a reasonable but proper estimate of any cost to the Buyer of a Buyer's Completion Date Election);

"Application" means each of the single site planning applications (or by agreement as between the Parties the additional or replacement applications) (including any application for listed building consent as required and including (without limitation) to be submitted following agreement between the Parties of any Development Strategy together with all requisite plans, drawings, supporting documents, reports, statements and any other information referred to in the applications) for a detailed or if agreed (or required by the Authority) a "hybrid" planning consent (being part detailed and part outline) for the carrying out of the Waterfront Central Development and the Waterfront East Development (as applicable) to be submitted on the same date in each instance to the Authority by the Buyer together with such further applications for planning permission (if any) as may be made pursuant to this Agreement;

"Appointment" means the terms of appointment of any Consultant to be entered into by the Buyer (from time to time) in relation to the Waterfront East Development in compliance with the terms of this Agreement with any such Appointment being either a Long Form Appointment or a Preliminary Appointment as required under the terms of this Agreement and in the case of:

(a) any Long Form Appointment, such Appointment shall be:

  (i) signed as a deed; and

  (ii) substantially in the Agreed Form as set out at Appendix 11 as amended in accordance with the Eastern Professional Team Appointment Report and as otherwise agreed by the Council pursuant to the terms of this Agreement; and

(b) any Preliminary Appointment, such Appointment shall include an obligation on the Consultant to, where requested to do so by the Buyer, enter into a Long Form Appointment;

"Appropriation" means appropriation (as part of the land assembly arrangements for the Sixth Conditions) by the Council under section 122 of the LGA with the power to override rights under Section 203 of the Housing and Planning Act 2016 for planning purposes which will if required by the Buyer (and without any liability being incurred on the part of the Council) include the Council entering into additional leases (subject to the prior completion of a suitable indemnity in favour of the Council in a similar form to the CPO Indemnity Agreement as amended to take account that such agreement relates to Appropriation but

otherwise in a form agreed with the requisite Authority) to be granted by the Buyer so that the Council has a sufficient interest in land so as to exercise the powers under such Act;

"Architect" means such firm or company or partnerships of architects as the Buyer appoints in relation to the Waterfront East Development with the prior written approval of the Council in accordance with this Agreement;

"Authority" means:

(a) the local planning authority any Secretary of State and any government department public local fire or any other authority or institution (including highway authority) having functions which extend to the Waterfront Central Site or the Waterfront East Site or their development or use and occupation and any court of law and the companies or authorities responsible for the supply of water gas and electricity or any of them or for the disposal of effluent and their duly authorised officers;

(b) for the purposes of any application or applications for Appropriation planning permission or reserved matters approval and the making and confirmation of any CPO, the authority having power to determine applications for planning permission or reserved matters approval and to make and seek confirmation of a CPO; and

(c) for the purposes of any Planning Agreement or Highway Closure Order the relevant Authority having power to enter into such Planning Agreements;

"Black Rock Site" means the land known as the Black Rock site being all of the land registered with freehold title absolute under Title Number ESX289587 shown edged thick black on Plan B which is owned by the Council;

"Brighton Centre" means the land and buildings known as the Brighton Centre being all of the land registered with freehold title absolute under Title Numbers ESX275687 (whole) ESX210861 (part) and ESX191832 being indicatively shown edged and hatched yellow on Plan A which is owned by the Council;

"Brighton Centre Licence" means the agreement for the installation of microcellular equipment at Brighton Exhibition Centre dated 23 May 2014 between (1) Brighton & Hove City Council and (2) Cornerstone Telecommunications Infrastructure Limited;

"Brighton Centre Savings" means an amount of [redacted];

"Brighton Marina" means the land and buildings known as the Brighton Marina being all of the land registered with leasehold title absolute under Title Number ESX339366 and shown edged red on the plan at Appendix 15;

"Brighton Marina Uplift" means any capital sum or revenue increase received by the Council (or, where the Council has not received such capital sum or revenue increase, where the Council has an unconditional contractual right to receive such capital sum or revenue increase) from any owner of an interest in the Brighton Marina and in the case of a capital receipt or revenue increase where such capital receipt or revenue increase is in consideration for any variation to or re-gear or surrender of or any other transaction relating to the lease under which the Brighton Marina is held resulting from any commercial agreement reached between the Council and any owner of an interest in the Brighton Marina necessitated by related to or associated with the Site Assembly for the Waterfront East Development;

"Brighton Waterfront Financial Model" means the financial model for the Waterfront East Development (which incorporates the Waterfront East Total Funds as such model is agreed between the Parties (and initialled by them as evidence of agreement)) and is incorporated in the Eastern Development Strategy;

"Brighton Waterfront Steering Group" means a steering group comprising:

(a) each Parties nominated Project Director;

(b) a minimum of two representatives from the Council, consisting of at least one of (i) the Executive Director responsible for the environment; (ii) Assistant Director responsible for regeneration; (iii) the Executive Director responsible for finance and the second person being a Head of Service within either the Council's legal team or the finance team; and

(c) two representatives from the Buyer, one of which is the Head of UK Development,

or such appropriate alternative representatives of similar standing if these roles cease to exist as shall be designated by the relevant party and approved by the other party from time to time;

"Building Contract" means a building contract (for a pre-approved fixed sum unless otherwise approved by the Council) to be entered into between the Council and a Building Contractor from time to time for the carrying out and completion of the Waterfront East Development or any part thereof and approved pursuant to the terms of this Agreement and to be procured on behalf of the Council in accordance with its procurement requirements from time to time including the Council's Procurement Obligations;

"Building Contractor" means such building contractor or contractors for the Waterfront East Development to be approved and appointed by the Council in accordance with the terms of this Agreement (and the Construction Strategy) and to be procured on behalf of the Council in accordance with its procurement requirements from time to time including the Council's Procurement Obligations;

"**Building Contractor Covenant Default Notice**" means a written notice served on the Buyer by the Council prior to the Unconditional Date in accordance with clause 15.7.2 stating that the financial security package offered by the Building Contractor under the Building Contract (in each case as approved by the Council during satisfaction of the Eastern Building Contract Condition) has materially diminished since the approval by the Council to the identity of the Building Contractor and the terms of the Building Contract in satisfaction of the Eastern Building Contract Condition and no longer meets the requirements contained within the Eastern Professional Team Appointment Report with such notice to contain sufficient information to support the Council's contention regarding the financial security of the Building Contractor having regard to its obligations under the Building Contract;

"Buyer's Completion Date" means the date that is 5 years from and including the Buyer's Completion Date Election such date to be extended only by such a period of time as is equal to the period of time taken from and including the date of a Buyer's Completion Date Election to and including the date that the Council provides vacant possession of the Brighton Centre in accordance with clause 18.4;

"Buyer's Completion Date Election" means an election (in writing) by the Buyer under clause 12.12.1(C);

"Buyer's Completion Date Election Notice" means a written notice served by the Buyer on the Council stating the Buyer's Completion Date Election;

"Buyer's Notice" means one or more binding notices to be served by the Buyer on the Authority requesting the Authority to make one or more GVDs or Notices to Treat and Notices of Entry by reference to interests in the Confirmed CPO with any of the Council's costs being recouped (on an indemnity basis) under the binding CPO Indemnity Agreement;

"Buyer's Project Director" means the project director appointed by the Buyer in relation to the Waterfront East Development for the management of the Buyer's rights and obligations under this Agreement in relation to the Waterfront East Development who shall be qualified in and shall have suitable and extensive experience of development and construction projects and the development and project management of major private public partnership regeneration schemes similar to the proposed Waterfront East Development and to be appointed in accordance with clause 12.14.3;

"Buyer's Property" means the Churchill Square Shopping Centre identified edged red on Plan C, the leasehold interest in the car park identified edged and hatched green on Plan C comprising title number ESX191658 and the property known as "the Odeon/Kings West Site" identified edged and hatched blue on Plan C comprising title number ESX210861;

"Buyer's Solicitors" means Herbert Smith Freehills LLP of Exchange House, Primrose Street, London EC2A 2EG (Ref. 2682/30964866) or such other firm of solicitors as the Buyer may notify to the Council in writing in substitution;

"Buyer's TIF Election" means an election (in writing) by the Buyer under either clause 12.12.1(A), 12.12.1(B) or 12.12.1(C);

"Buyer's TIF Payment" means the sums payable by the Buyer in accordance with clause 12.12.3, being the amount required by the Council to service that part of the actual TIF Borrowing (or other lending facility) required to meet the TIF Shortfall as detailed in the most recent Eastern Funding Statement provided to the Buyer immediately prior to a Buyer's TIF Election, with such amount to be paid by the Buyer to the Council quarterly in advance on the usual English quarter days or by such other frequency approved by the Council PROVIDED that such amount shall not be greater than that part of the Projected Total Rates Increase attributable to limb (a) of that same definition;

"Buyer's Viability Threshold" means:

(a) a return to the Buyer of a sum equal to [redacted] on Anticipated Relevant Expenditure; and

(b) an Internal Rate of Return on the Anticipated Relevant Expenditure of [redacted];

on an ungeared basis;

"BW Visioning Statement" means an aspirational vision statement prepared by the Council (and/or its appointed consultants) articulating the long term ambitions and aspirations for the city wide interconnected regeneration projects and in particular the integration of the Waterfront East Development with the longer term and wider vision for the city of Brighton & Hove having regard to the Waterfront East Development with such visioning statement to be initially proposed and developed by the Council in accordance with clause 12.17;

"Call In" means a direction by the Secretary of State that an Application be referred to him for determination under Section 77 of the 1990 Act;

"CCR 2016" means the Concession Contracts Regulations 2016 or such replacement legislation from time to time;

"Central Conditions" means the following conditions relating to the Waterfront Central Development:

(a) for the purposes of determining the Land Price of the Waterfront Central Site, the Waterfront Central Valuation being settled and agreed between the Council and the Buyer or determined in accordance with clause 21 (the **"Central Land Value Condition"**) on both a commercial basis and for the purpose of satisfaction of the s123 Condition;

(b) the Buyer confirming in writing to the Council that the Waterfront Central Development has achieved the Buyer's Viability Threshold (the **"Central Viability Condition"**);

(c) the satisfaction of the Planning Condition for the Waterfront Central Development (the **"Central Planning Condition"**);

(d) all of the Additional Property required for the Waterfront Central Development being Acquired or being (as necessary) the subject of Appropriation by the Authority in accordance with the Site Assembly Strategy or if such land cannot be Acquired then compulsorily purchased via the coming into existence of a Confirmed CPO (the **"Central Land Assembly Condition"**);

(e) the obtaining of any other consents required pursuant to an Enactment in order to commence the Waterfront Central Development including any Highways Closure Orders or other Infrastructure Agreements which are immune from Proceedings or where any challenge to such orders has been determined, withdrawn or otherwise disposed of leaving the Highway Closure Orders or Infrastructure Agreement in place and which are not subject to any Waterfront Central Onerous Condition (the **"Central Required Consents Condition"**);

(f) the Buyer entering into an Occupational Agreement for Lease with tenants in respect of the Retail Lettable Units amounting to in aggregate with the Anchor Store of at least 60% of the Projected Retail Income by estimated rental value (the **"Central Pre-letting Condition"**);

(g) the Buyer entering into an Occupational Agreement for Lease of the Anchor Store (the **"Central Anchor Store Condition"**);

(h) a mitigation strategy being prepared in relation to the ground conditions at the Waterfront Central Site (including archaeology in accordance with clause 12.5) so that the Buyer may commence and carry out the Waterfront Central Development in a manner which will not materially adversely affect the financial returns from the Waterfront Central Development (the **"Central Environmental Condition"**);

(i) the Buyer being satisfied that it has secured funding arrangements for the Waterfront Central Development either through its own resources or through a third party (the **"Central Funding Condition"**);

(j) arrangements being in place in accordance with clause 12.4 so that the Buyer is able to divert or accommodate mains utility services as described in paragraph (d) of the definition of Infrastructure necessary to commence and carry out the Waterfront Central Development in a manner which would not materially adversely affect the financial returns to the Buyer from the Waterfront Central Development (the **"Central Utilities Condition"**);

(k) the settlement and approval by the Buyer and the Council of the Central Development Strategy in accordance with clause 10 (the **"Central Development Strategy Condition"**);

(l) the appointment of the VO Consultancy Team by the Buyer in accordance with clause 12.18 (the **"VO Consultancy Team Condition"**);

(m) the Buyer confirming it is satisfied that there is good title to the Brighton Centre to enable the Waterfront Central Development in accordance with clause 12.16 ("**Central Title Condition**"); and

(n) the appointment of the Buyer's Project Director by the Buyer in accordance with clause 12.14.3 (**"Buyer's Project Director Appointment Condition"**);

"Central Development Strategy" shall have the meaning ascribed to it in clause 10;

"Change of Control" means in relation to the Buyer, a change of Control of the Buyer but which shall exclude any change of Control which arises by virtue of:

(a) any dealings in securities in listed entities, including an acquisition of shares in Standard Life Aberdeen plc or an applicable Topco, pursuant to a takeover offer or scheme of arrangement; or

(b) following any demerger or solvent reconstruction of any direct or indirect listed parent(s) of the Buyer, any sale of the direct or indirect listed demerged or reconstructed entities; or

(c) a change in the legal ownership of the Buyer provided that the entire beneficial interest remains vested in Standard Life Aberdeen plc; or

(d) a direct or indirect change in the investors in SCUT; or

(e) a change of Control of the professional trustee or the retirement of the existing trustee of SCUT,

provided that in each case Standard Life Aberdeen plc (or a member of the SL Aberdeen Group) has the right to control the management of SCUT;

"Churchill Square Shopping Centre" means the land known as Churchill Square Shopping Centre comprising title number ESX210860 and adjacent to the Brighton Centre as owned by the Buyer;

"Civil Engineers" means such firm or company of civil engineers as the Buyer may appoint in relation to the Waterfront East Development with the approval of the Council in accordance with this Agreement;

"Clawback" means the expended amount incurred by the Buyer in relation to the Waterfront East Development comprising the costs outlined in the Waterfront East Cost Headings Statement such aggregate sum to be agreed by the Parties or determined in accordance with clause 5 provided that Clawback shall not exceed the Clawback Cap;

"Clawback Cap" means the amount of [redacted] or such amended amount agreed by the parties in accordance with clause 5.2.2;

"Common Services" means sewers, drains, traps, gullies, gratings, shafts, channels, popes, watercourses, gutters, wires, cables, pillars, turrets, amplifiers, poles soakaways and any other apparatus for the supply, transmission or distribution of water, gas, electricity, or telephone, radio or television signals or for the disposal of soil, foul water, rainwater or surface water;

"Condition Date" means each of:

(a) **"First Condition Date"**: the date 8 months from and excluding the date of this Agreement;

(b) **"Second Condition Date"**: the date 5 months from and excluding the date of satisfaction or waiver of the last of the First Conditions;

(c) **"Third Condition Date"**: the date 8 months from and excluding the date of satisfaction or waiver of the Second Condition;

(d) **"Fourth Condition Date"**: the date 18 months from and excluding the date of satisfaction or waiver of the last of the Third Conditions; and

(e) "**Fifth Condition Date**": the date 46 months from and excluding the date of satisfaction or waiver of the last of the Fourth Conditions;

(f) "**Sixth Condition Date**": the date 3 months from and excluding the date of satisfaction or waiver of the last of the Fifth Conditions; and

(g) **"Seventh Condition Date"**: the Final Long Stop Date subject to extension as outlined in the definition of Final Long Stop Date in this Agreement to the Ultimate Longstop Date;

"Conditions Precedent" means all of the Central Conditions and the Eastern Conditions with reference in this Agreement to Condition Precedent meaning any single requisite Condition Precedent within the First Conditions, Second Conditions, Third Conditions, Fourth Conditions, Fifth Conditions, Sixth Conditions and Seventh Conditions and to be satisfied by the requisite Condition Date;

"Condition Satisfaction Notice" means a written notice to be served by the requisite Party (required to satisfy (or entitled to waive)) confirming that either one or more of the Central Conditions or the Eastern Conditions have been satisfied (or waived) at the appropriate time of satisfaction or waiver but with any waiver by the Council being via a written notice served and signed by itself and not by the Council's Project Director or Council's Project Monitor;

"Conditions for Assignment" means the following conditions:

(a) that the proposed assignee/novatee covenants by deed with the Council either in the form of the Deed of Covenant or Deed of Novation (as applicable) that with effect from the date of assignment/novation the proposed assignee/novatee will

observe and perform all the provisions of this Agreement to be observed and performed by the Buyer as if it was an original party to this Agreement;

(b) that if the proposed assignment/novation is not completed within three (3) months of the grant of the consent, the consent will be voidable at the Council's discretion but without any liability on the part of the Council to refund to any party any costs to the Council arising out of or incidental to such consent; and

(c) that, if the proposed assignee/novatee is relying on the provision of the Escrow Security to be a Qualifying Transferee, the assignee/novatee either enters into the required agreement with the Escrow Agent to provide the Escrow Security in accordance with the Escrow Terms and the requirements of this Agreement or, if the Escrow Security is already in place prior to such assignment or novation and the assignee/novatee is relying on the provision of the Escrow Security to be a Qualifying Transferee, the assignee/novatee satisfies the requirements of the Escrow Agent in accordance with the Escrow Terms as regards to the continued availability of the Escrow Security to the Council following such assignment or novation of this Agreement;

"Confirmed CPO" means the CPO confirmed by the Secretary of State for the Waterfront Central Development or the Waterfront East Development with or without modifications and following:

(a) the expiry of the statutory challenge period prescribed by Section 23 of the Acquisition of Land Act 1981 without a challenge having been made; or

(b) if a challenge is made to the Confirmed CPO to the High Court the final determination of any such challenge by that Court or on appeal by any higher court meaning the later of:

(i) the date a court has made a decision upon those proceedings; or

(ii) a further appeal to a higher court has been made or can be made

leaving the Confirmed CPO in place;

"Construction Strategy" means a strategy developed jointly by the Buyer and the Council in accordance with clause 15.2 with such strategy to comprise:

(a) an outline of any changes to the Eastern Professional Team Appointment Report in accordance with clause 12.21 since the satisfaction of the Project Base Documentation Condition;

(b) the Buyer's recommendations as to the most appropriate form of Building Contract procurement method for the Waterfront East Development in compliance with the Council's Procurement Obligations and specifically whether a design and build procurement method or any other procurement method is preferable in relation to the procurement of the Building Contractor for the Waterfront East Development; and

(c) the Parties agreed position on the detailed procedure including roles and responsibilities for the Buyer and the Council for the procurement of the Building Contract in compliance with the Council's Procurement Obligations, including but not limited to:

(i) using the Council's Procurement Officer; and

(ii) details of the evaluation methodology to be adopted during the procurement of the Building Contractor;

(d) details of the evaluation team (which team shall include the Council's Project Monitor and such other persons as the Council may advise to the Buyer from time to time);

(e) details of who will create and maintain a report as required pursuant to Regulation 84(1) of the PCR 2015;

(f) details of the process for obtaining the Council's approval to all communications to down selected and/or unsuccessful bidders pursuant to the Council's Procurement Obligations;

(g) details of the process for obtaining the Council's approval prior to publishing any notice in the Official Journal of the European Union in respect of the procurement of the Building Contractor in satisfaction of the Council's Procurement Obligations; and

(h) an outline of the processes the Buyer will adopt so as to ensure the Parties receive appropriate advice in relation to compliance with the Council's Procurement Obligations;

"Consultants" means, in respect of the Waterfront East Development, the Architects, M&E Consultants, Quantity Surveyors, Environmental Consultants, Transport Consultants, Structural Engineers, Civil Engineers, Planning Consultants, the Project Manager, the VO Procurement Consultant and such other commercial or specialist consultants as required for the Waterfront East Development including all matters of procurement in relation to the Venue Operator envisaged under the terms of this Agreement and to be appointed in accordance with the terms of this Agreement by way of an Appointment;

"Control" means the ability of one or more persons (in the case of more than one person where such persons are "acting in concert") to direct the activities of another (the **"Second Person"**) where:

(a) in such instance where the Second Person is a company, being a beneficial owner of more than 50% of the issued share capital of or of the voting rights in that company, or having the right to appoint or remove a majority of the directors or otherwise control a majority of the votes at board meetings of that company (including by virtue of any powers conferred by the articles of association, shareholders' agreement or any other document regulating the affairs of that company);

(b) in such instance where the Second Person is a partnership, being the beneficial owner of more than 50% of the capital of that partnership, or having the right to control the composition of the majority of the management of that partnership or a majority of the votes in the management of that partnership (including by virtue of any powers conferred by the partnership agreement or any other document regulating the affairs of that partnership);

(c) in such instance where the Second Person is a trust, being the beneficiary of more than 50% of the trust assets, or having the right to control the composition of the majority of the trustees and/or managers of the trust or having the right to control a majority of votes in the management of that trust (including by virtue of any provisions of the trust deed or any other document regulating the arrears of that trust); or

(d) in such instance where the Second Person is any other entity or fund arrangement or other form of collective investment, such analogous economic ownership and rights of control as set out in sub-paragraphs (a) to (c) of this definition;

and for these purposes "acting in concert" means active co-operation pursuant to an agreement or understanding (whether formal or informal) with a view to obtaining, exercising or consolidating Control of the relevant subject;

"Council's Consultants" means the Council's Development Advisers and the Council's Solicitors and all other consultants who are contemplated by this Agreement as being the consultants of the Council;

"Council's Development Advisers" means GVA of 65 Gresham Street London EC2V 7NQ or such other firm of development advisors as the Council may notify to the Buyer in writing in substitution who in each case shall be required to enter into a confidentiality

agreement with the Buyer and the Council the terms of which shall be agreed by the Council and the Buyer prior to the satisfaction of the last of the First Conditions;

"Council's Present Land" means the Brighton Centre and the Black Rock Site;

"Council's Procurement Obligations" means the Council's public sector procurement obligations including without limitation under Directive 2014/24/EU, Directive 2014/23/EU, Directive 2014/25/EU, Directive 2009/81/EC all applicable principles flowing from the Treaty on the Functioning of the European Union, PCR 2015, CCR 2016 and the Council's standing orders as contained from time to time in the Council's constitution and which have been notified to the Buyer;

"**Council's Procurement Officer**" means the procurement officer to be appointed by the Council under this Agreement in relation to the procurement of the Venue Operator and the Building Contract to be appointed by the Council in accordance with clause 12.14.2 and the costs of which to be contributed to by the Buyer in accordance with clause 19;

"Council's Procurement Officer Costs" means the reasonable and proper costs and disbursements (and any irrecoverable VAT) incurred or payable by the Council in connection with the Council's Procurement Officer, the amount and scope of such costs and disbursements recouped by the Council from the Buyer in accordance with clause 19;

"**Council's Procurement Team**" means the representatives of the Council relating to the procurement of the Venue Operator and/or the Building Contractor comprising:

(a) the Council's Project Monitor;

(b) any representative nominated by the Council as is reasonably appropriate for any particular meeting or task relating to the procurement of the Venue Operator and/or the Building Contractor under this Agreement; and

(c) the Council's Procurement Officer;

"Council's Project Director" means the Council's project director appointed by the Council in relation to the Waterfront East Development who shall be responsible for the management of the Council's rights and obligations under this Agreement who shall be qualified in and shall have suitable and extensive experience of development and construction projects and the development and project management of major private public partnership regeneration schemes similar to the proposed Waterfront East Development and who shall be appointed by the Council in accordance with clause 12.14.1;

"Council's Project Monitor" means a project monitor in respect of the Waterfront East Development appointed by the Council and acting as agent for the Council and with the requisite delegated authority to make specific decisions in accordance with the Council's Project Monitor Approval Rights Notice or as notified in writing to the Buyer in accordance with clause 15.10.1;

"Council's Project Monitor Costs" means the reasonable and proper costs and disbursements (and any irrecoverable VAT) incurred or payable by the Council in connection with the Council's Project Monitor from and including the date of satisfaction of the Eastern Development Strategy Condition until and including the Unconditional Date the amount and scope of such costs and disbursements recouped by the Council from the Buyer pursuant to clause 19 are to be approved by the Buyer prior to their being incurred and with the Council providing the Buyer with reasonable evidence of the incurrence of such costs;

"Council's Project Monitor Approval Rights Notice" means a notice from the Council to the Buyer outlining the scope of the Council's Project Monitor's delegated approval rights for the purposes of clause 15.10;

"Council's Solicitors" means Osborne Clarke LLP of One London Wall, London, EC2Y 5EB (Ref: RMZ) or such other firm of solicitors as the Council may notify to the Buyer in writing in substitution;

"Counsel" means such suitably experienced counsel as the Parties shall jointly agree;

"CPO" means having regard to the Site Assembly Strategy a proposed compulsory purchase order relating to the Additional Property and to be made by the Authority (if so resolved) in respect of the Waterfront Central Development or the Waterfront East Development (as applicable) in accordance with all relevant statutory provisions;

"CPO Indemnity Agreement" means an uncapped deed of indemnity in respect of the costs of the CPO relating to any Additional Property required for the Waterfront Central Development and/or Waterfront East Development (save, in respect of the Waterfront East Development only, where such CPO Indemnity Agreement shall relate to the Acquisition Pre-Purchase Costs only and shall not relate to the Acquisition Capital Costs) to be entered into between the Buyer and the Council as local planning authority in the form to be agreed by the Council in such capacity and the Buyer (each acting reasonably);

"Cure Period Worked Example" means the timeline attached at Appendix 14;

"Deed of Assignment" means the deed of assignment for the Appointments in the form appended to the relevant Appointment;

"Deed of Covenant" means the deed of covenant in the Agreed Form as set out in Appendix 10 with such amendments as shall be agreed between the Council and the Buyer (or its successor);

"Deed of Novation" means the deed of novation providing for a novation of this Agreement to a novatee in the Agreed Form as set out in Appendix 13 with such amendments as shall be agreed between the Council and the Buyer (or its successor);

"Deed of Warranty" means any deeds of collateral warranty provided or to be obtained from a Consultant or a sub-contractor in accordance with clause 15;

"Design" means the full and complete design of the Waterfront East Development and all and any design carried out by the Consultants;

"Design Team" means those Consultants involved in the Design including the Architects, the M&E Consultants, Structural Engineers, Civil Engineers, Planning Consultants, Transport Consultants and any other Consultants involved in the Design from time to time;

"Development Gateway Table" means the table outlining the proposed tasks, objectives, agreements and confirmations on the part of the Buyer and the Council at each stage of the Conditions Precedent as set out at Appendix 12;

"Development Strategy" means the development strategy as proposed by the Buyer and settled and agreed with the Council in accordance with clause 10 of this Agreement and which will comprise the matters set out in clause 10.7, 10.8 and 10.9 of this Agreement and being for the Waterfront Central Development, the Central Development Strategy and for the Waterfront East Development the Eastern Development Strategy (as defined in clause 10) and which, save as to the lawful requirements of any regulatory, governmental or official body and/or any of their policies, will have regard to the BW Visioning Statement;

"Disposal" means the disposal of the economic interest in the whole (or part) of the Brighton Centre at a premium (or the combination of a premium and rack rent) and shall include the assignment or disposal of the right to receive rental income from the Brighton Centre (or the grant of any overriding lease or tenancy which prevents the right for the Buyer (or any Qualifying Transferee) to fully receive rental income from the Brighton Centre) but excluding in all circumstances any Exempt Disposal and **"Dispose"** and **"Disposed"** shall be construed accordingly;

"Eastern Conditions" means the following conditions relating to the Waterfront East Development:

(a) the satisfaction of the s123/233 Condition;

(b) the satisfaction of the Planning Condition for the Waterfront East Development which shall include the submission of an environmental statement in satisfaction of the EIA (if, and only if, properly required by the Authority) (the **"Eastern Planning Condition"**);

(c) the settlement of the VO Procurement and Project Preparation Report in accordance with clause 7 (the "**VO Procurement and Project Preparation Condition**");

(d) the settlement of the Project Set Up Documentation in accordance with clause 8 (the "**Project Set Up Documentation Condition**");

(e) all of the Additional Property required for the Waterfront East Development being Acquired and (if necessary) the subject of Appropriation in accordance with the Site Assembly Strategy or if earlier the coming into existence of a Confirmed CPO (the **"Eastern Land Assembly Condition"**);

(f) the entering into and exchange of the Venue Operator Agreement by the Council with the Venue Operator in accordance with clause 12.8.3 (the **"Venue Operator Condition"**);

(g) the aggregate of the following funds:

(i) the Waterfront East Total Funds; and

(ii) any additional funds to be paid to the Council by the Buyer under clauses 12.12.2, and 12.13.2; and any TIF Borrowing obtainable by the Council following service by the Buyer of the Buyer's Completion Date Election Notice,

are equal to or exceed the Waterfront East Development Costs (the **"Eastern Funding Condition"**);

(h) procurement on behalf of the Council of a Building Contract and Building Contractor approved by the Council for the construction of the Venue (in accordance with the Venue Specification and the Construction Strategy) in a form approved by the Council (the **"Eastern Building Contract Condition"**);

(i) the obtaining of any other consents required pursuant to an Enactment in order to commence the Waterfront East Development including any Highways Closure Orders or other Infrastructure Agreements which are immune from Proceedings or where any challenge to such orders has been determined, withdrawn or otherwise disposed of leaving the Highway Closure Orders or Infrastructure Agreement in place and which are not subject to a Waterfront East Onerous Condition (the **"Eastern Required Consents Condition"**);

(j) a mitigation strategy being prepared in relation to the ground conditions at the Waterfront East Site (including archaeology) in accordance with clause 12.5 so that the Council may commence and carry out the Waterfront East Development in a manner which will not materially adversely affect the Brighton Waterfront Financial Model (the **"Eastern Environmental Condition"**);

(k) construction arrangements in compliance with the terms of the Infrastructure Agreements being in place in accordance with clause 12.4 so that the Council is able to divert or accommodate the movement of utility services (as described in paragraph (d) of the definition of Infrastructure) and the Council is able to manage foul and surface water drainage (as described in paragraph (c) of the definition of Infrastructure) as necessary to commence and carry out the Waterfront East Development in a manner which would not materially adversely affect the Brighton Waterfront Financial Model (the **"Eastern Utilities Condition"**);

(l) the settlement of the Eastern Development Strategy in accordance with clause 10 (the **"Eastern Development Strategy Condition"**);

(m) the settlement of the Project Base Documentation in accordance with clause 9.5 (**"Project Base Documentation Condition"**);

(n) the settlement of the BW Visioning Statement in accordance with clause 12.17 (**"BW Visioning Statement Condition"**);

(o) the appointment of the Council's Project Director by the Council in accordance with clause 12.14.1 (**"Council's Project Director Appointment Condition"**);

(p) the appointment of the Council's Procurement Officer by the Council in accordance with clause 12.14.2 (**"Council's Procurement Appointment Condition"**); and

(q) the Council and the Buyer agreeing the form of the Eastern Funding Statement which is to be provided by the Council to the Buyer on the each of the Eastern Funding Condition Reporting Dates in accordance with clause 12.19 ("**Eastern Funding Statement Condition**");

"Eastern Development Strategy" shall have the meaning ascribed to it in clause 10;

"Eastern Funding Condition Reporting Date" means each of:

(a) the date that is 8 weeks following the satisfaction (or waiver) of each of the Eastern Conditions;

(b) the date that is 3 months following the satisfaction (or waiver) of the last of the Fifth Conditions and every 3 months thereafter until such time as the Eastern Funding Condition is satisfied (or waived); and

(c) if the Eastern Funding Condition has not been satisfied by the date being one month prior to the Final Longstop Date then (i) the date that is ten Working Days prior to the Final Longstop Date and (ii) if the Eastern Funding Condition has not been satisfied by the date being one month prior to the Ultimate Longstop Date, the Date that is ten Working Days prior to the Ultimate Longstop Date;

"Eastern Funding Statement" means a written statement prepared by the Council on each Eastern Funding Condition Reporting Date, having undertaken such financial appraisals as shall be necessary, outlining:

(a) if the satisfaction (or waiver) of any Eastern Condition or any Central Condition has had a materially adverse impact on the likely satisfaction of the Eastern Funding Condition and what steps can be taken to mitigate against that risk arising;

(b) an updated Brighton Waterfront Financial Model which shall include confirmation of the then current Waterfront East Total Funds including outlining from which of the Anticipated Funding Sources funding has been confirmed at the relevant time;

(c) whether there is an anticipated TIF Shortfall and, if the Buyer was to make an election under clause 12.12 in respect of such TIF Shortfall to enable the Eastern Funding Condition to be satisfied, the:

(i) financial amounts, the profile and timing of payments to be made by the Buyer (including the dates on which such payments shall be due) should the Buyer make a Buyer's Completion Date Election; and

(ii) financial amounts, the profile and timing of the Buyer's TIF Payments (including the dates on which such payments shall be due) should the Buyer make a Buyer's TIF Election;

(d) to the extent that funds have not been obtained by the Council (or the Council does not have a legal right to obtain funds or the availability of funds is withdrawn) from any of the Anticipated Funding Sources, an assessment of the anticipated amount of funds to be obtained from the remaining Anticipated Funding Sources and the anticipated Investment Gap (if any);

(e) if the Council does anticipate an Investment Gap arising, details of the amount of the Investment Gap and details of the timing of the cashflow payments required for the purposes of providing the Buyer with sufficient information to make a full assessment of its liabilities should the Buyer make an election under clause 12.13.1; and

(f) the expenditure as Acquisition Capital Costs for undertaking a CPO in relation to the Waterfront East Development,

in the form agreed by the Buyer and the Council in satisfaction of the Eastern Funding Statement Condition;

"Eastern Professional Team Appointment Report" means a written report prepared by the Buyer (and approved by the Council in accordance with clause 8) outlining:

(a) the identity of the Consultants appointed or to be appointed on Preliminary Appointments;

(b) a proposed short list of Consultants to be appointed on Long Form Appointments and draft Appointments for such Long Form Appointments; and

(c) the initial proposed selection criteria and process for selection of the Consultants on Long Form Appointments including the basis and terms of such process, the evaluation basis and criteria for such process and the evaluation team to be used to determine the Consultants;

(d) the proposed procurement procedure for the diligent procurement of Consultants to be appointed on Long Form Appointments on an open book "arm's length" competitive basis including the draft invitation to tender, the selection and award criteria, the composition of the evaluation team which as a mandatory requirement must contain a representative from the Council and/or the Council's Project Monitor to determine the outcome of the procurement,

provided that it is agreed by the Parties:

(e) a Preliminary Appointment is only appropriate for use up to the Fourth Condition Date, and

(f) where the role of any Consultant extends beyond the Fourth Condition Date such Consultant shall be engaged pursuant to a Long Form Appointment; and

(g) the Architect shall be appointed pursuant to a competition (the precise terms of reference of which shall be agreed by the Parties), and the successful Architect shall (subject to compliance with the terms of its Appointment) be responsible for leading the design of the Waterfront East Development through the planning process and subsequently into the project delivery phase of the Waterfront East Development;

"EIA" means an environmental impact assessment (in support of an Application) governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 for the purposes of the Waterfront East Development;

"Enactment" means every Act of Parliament, directive and regulation and all subordinate legislation which has legal effect in England and Wales;

"Energy System" means a CHP plant or such other energy generation system that directly supplies the Waterfront East Development through a private wire arrangement, as shall be proposed by the Buyer and approved by the Council;

"Environment" means the natural and man-made environment and air, water and land;

"Environmental Consultant" means the environmental consultant appointed by the Buyer in relation to the Waterfront East Development;

"Environmental Reports" means the reports to be commissioned by the Buyer and, in the case of the Waterfront East Development produced by the Environmental Consultant and addressed to the Council, and in the case of the Waterfront Central Development, produced by an environmental consultant appointed by the Buyer at the Buyer's election and in each case the environmental reports shall report on the ground conditions at (as applicable) the Waterfront Central Site and the Waterfront East Site (including archaeology) and seek to identify any matters which may affect the Buyer's ability to commence the Waterfront Central Development and the Council's ability to commence the

Waterfront East Development in a manner which may adversely affect the Brighton Waterfront Financial Model;

"Escalation Meeting" shall have the meaning as provided for in clause 11.3;

"Escrow Agent" means a suitably qualified escrow agent agreed upon and engaged by the Parties to provide escrow services for the purposes of the Escrow Security;

"Escrow Release Direction" means the form of notice to be signed and served by the Buyer and the Council in accordance with the Escrow Terms to confirm to the Escrow Agent that the Buyer and the Council authorise the amount stipulated in such notice to be released from the Escrow Security;

"Escrow Security" means the deposit of an amount equal to [redacted], to be deposited in an account in the name of the Escrow Agent and to be held by the Escrow Agent on the Escrow Terms as security for the payment of amounts due by the Buyer to the Council under clause 12.12 of this Agreement;

"**Escrow Terms**" means such terms of engagement as are required by the Escrow Agent and agreed by the Parties under the terms of this Agreement with the costs of such appointment and annual fee being borne solely by the Buyer without forming part of Qualifying Expenditure and which terms will permit the withdrawal of monies from the Escrow Security by the service of an Escrow Release Direction signed by both the Buyer and the Council in all cases other than in cases where the Council has validly terminated this Agreement under clause 30.1 and serves an Escrow Release Direction signed only by the Council in accordance with clause 12.12.8;

"Exempt Disposal" means one or more of the following:

(a) a mortgage or charge of only the Brighton Centre or any part of it;

(b) a disposition of a part of the Brighton Centre to a local authority or statutory body pursuant to any planning obligation or agreement relating to the implementation of the Waterfront Central Development;

(c) a disposition of part of the Brighton Centre to a statutory body or service supply company in respect of electricity substations, gas governors or water pumping stations or other statutory services which have been or are to be constructed or installed in or upon the Brighton Centre for the Waterfront Central Development;

(d) a disposition of any part of the Brighton Centre to a highway authority for the purposes of adoption of the roads and footpaths and cycleways (if any) to be constructed on the Brighton Centre for the Waterfront Central Development;

(e) a disposal forming part of any re-structuring of the ownership of the Brighton Centre (either directly or indirectly) by way of a joint venture between the Buyer and another party which does not amount to a Change of Control to facilitate the Waterfront Central Development and, if there is a registrable Disposal to such joint venture prior to the expiry of the Financial Security Period, then any such joint venture vehicle shall provide a direct covenant in the form of the Deed of Covenant to the Council on completion of the Disposal to the joint venture vehicle to observe and perform the subsisting financial obligations of the Buyer under clauses 12.12.1 and/or 12.13 and schedule 1 of this Agreement (as applicable) in the form of the Deed of Covenant;

(f) an occupational lease of a Lettable Unit at a rack rent;

(g) a long lease of a Residential Unit;

(h) a disposition of Affordable Housing pursuant to or in accordance with the terms of the Planning Agreement; and

(i) a release of rights of light and/or air in relation to the Brighton Centre;

"Fact Book" means a collection of written information and other written material relating to the Waterfront Central Site to be agreed by the Buyer and the Council in accordance with clauses 10.5 and 10.6 which shall include:

(a) the proposed Waterfront Central Appraisal;

(b) an estimated rental value schedule together with forecast tenant incentives;

(c) a cost plan;

(d) a floor area schedule;

(e) phasing assumptions;

(f) details of the Acquisition Capital Costs and the Acquisition Pre-Purchase Costs relating to the Waterfront Central Development;

(g) summary of any heads of terms agreed with anchor tenants;

(h) details of any tenant relocation or lease surrender costs; and

(i) a statement outlining the Waterfront Central Costs incurred by the Buyer to date,

and shall be made available on an open book and transparent basis to the Valuer in accordance with clause 21.4.2;

"Fifth Conditions" means collectively satisfaction of each of the:

(a) the Eastern Planning Condition

(b) the Central Planning Condition;

(c) the Central Required Consents Condition; and

(d) the Eastern Required Consents Condition;

"Final Longstop Date" means [seven years and six months] from the date of this agreement provided that if the Eastern Funding Condition has not been satisfied by such specified date (but all of the Central Conditions have been satisfied (or waived)) then, at the written election of the Buyer at any time prior to such specified date, the specified date of seven years and six months shall be extended by an extension of time of 12 months (**"Ultimate Longstop Date"**) from and including the date that the Council provides the Buyer with an Eastern Funding Statement in accordance with sub clause (c)(i) of the definition of Eastern Funding Condition Reporting Date (or if the Council fails to provide such Eastern Funding Statement then such date that the Council was contractually obliged to provide it);

"Financial Security Period" means the period commencing on the earlier of:

(a) the date of (and including) the Buyer's TIF Election; and

(b) the Transfer Completion Date,

and expiring on the later of:

(c) the date of payment by the Buyer of the Scheme Overage Payment in accordance with paragraph 2.1 of Part 1 of Schedule 1; and

(d) if no Scheme Overage Payment is payable by the Buyer in accordance with paragraph 2.1 of Part 1 of Schedule 1, the date that the Buyer notifies the Council of the value of the Scheme Overage Payment in accordance with paragraph 2.1 of Part 1 of Schedule 1 and the Council agrees that no such scheme overage payment is due and payable or in the case of a dispute the matter is determined under clause 39; and

(e) if the Buyer has made a Buyer's TIF Election and/or an Investment Gap Election, the date the Buyer's liability to make any further payments to the Council pursuant to such election has come to an end and all payments due to the Council have been paid in cleared funds;

"First Conditions" means collectively satisfaction of the:

(a) VO Procurement and Project Preparation Report Condition;

(b) Council's Project Director Appointment Condition;

(c) the Buyer's Project Director Appointment Condition;

(d) Council's Procurement Appointment Condition;

(e) VO Consultancy Team Condition;

(f) BW Visioning Statement Condition; and

(g) Eastern Funding Statement Condition;

"Fourth Conditions" means collectively satisfaction of each of:

(a) the agreement of the Eastern Development Strategy and the Central Development Strategy in accordance with clause 10;

(b) the Central Land Value Condition;

(c) the Venue Operator Condition;

(d) the S123/233 Condition (following settlement of the Development Strategy); and

(e) the Central Title Condition,

provided that the Parties may agree prior to the Venue Operator Condition being required to be satisfied (by the Fourth Condition Date) that the Venue Operator Condition shall no longer be required to be satisfied prior to the Fourth Condition Date and in which case the relevant date for satisfaction of the Venue Operator Condition shall be extended to a date following the Fourth Condition Date as agreed by the parties (with such date to be no later than the submission of the Applications in accordance with clause 13.1.1) but, for the avoidance of doubt, if both parties do not agree to allow additional time for the satisfaction of the Venue Operator Condition in accordance with this provision, then the Venue Operator Condition will be required to be satisfied as a Fourth Condition and before the Fourth Condition Date;

"Funder" means such reputable and responsible company who is providing or guaranteeing the provision of finance for the Waterfront Central Development;

"Funding Top Up" means the provision of funds by the Buyer to the Council equal to the Investment Gap (as a separate payment to that of either (i) the TIF Shortfall pursuant to clause 12.12.2 or (ii) the Buyer's TIF Payment pursuant to clause 12.12.3) to be paid to the Council by the Buyer in the amounts and in accordance with the cashflow timing as detailed in the most recent Eastern Funding Statement provided to the Buyer by the Council prior to the Buyer's Investment Gap Election under clause 12.13.1;

"Genuine Termination" has the meaning ascribed to it in clause 5.2;

"Gross Internal Area" means the gross internal area calculated in accordance with the principles of IPMS 1 of the Measurement Standard expressed in square feet;

"Group Member" means:

(a) a company which is, at the relevant time, a subsidiary or holding company of the relevant person or a subsidiary of a holding company of the relevant person; or

(b) an undertaking (including a unit trust, partnership, fund or equivalent wheresoever established) which is, at the relevant time, a subsidiary undertaking or parent undertaking of the relevant person or a subsidiary undertaking of a parent undertaking of the relevant person; or

(c) in the case of a member of the SL Aberdeen Group, any entity of which, at the relevant time, a member of the SL Aberdeen Group has management control,

and **"Group"** and **"Group Members"** shall be construed accordingly;

"Guarantor" means such party or entity as will guarantee all of the obligations on the part of the Buyer as are contained in this Agreement and as may be required under the provisions of clause 33;

"GVD" means one or more general vesting declarations made by the Authority pursuant to the Confirmed CPO in respect of such of the Additional Property as has not already been Acquired by the Buyer or the Council;

"Hazardous Substances" means any substance or organism which alone or in combination with any other substance or organism is capable of causing harm to the health of living organism (including human health) or damage to or interference with the Environment;

"Highway Closure Orders" means any order required for the closure, stopping up, diversion or extinguishment of all public rights of way made by the relevant Authority under Sections 247 or 257 of the 1990 Act or Sections 116 or 118 of the Highways Act 1980 or other relevant Enactment so as to allow the carrying out of the Waterfront Central Development or the Waterfront East Development;

"Implement" means the carrying out of a "material operation" (as that expression is defined in section 56(4) of the 1990 Act but excluding any Preparatory Operation) and the term "Implementing" or "Implementation" shall be construed accordingly;

"Infrastructure" means the infrastructure required for the Waterfront Central Development or the Waterfront East Development including (but not limited):

(a) principal access roads, spine roads and associated highway works;

(b) strategic public footpaths and cycle ways;

(c) main strategic foul and surface water drainage including pumping stations and balancing ponds (if required);

(d) Common Services mains including gas governor stations and electricity sub-stations;

(e) structural landscaping and open spaces;

(f) dedicated car parking areas and bike scheme racks;

(g) bus stops;

(h) an Energy System independently serving them (if any);

"Infrastructure Agreement" means any agreement made pursuant to Section 38 or 278 Highways Act 1980 or Section 104 Water Industry Act 1991 or any section of any Act of Parliament having a similar purpose to such sections or any agreement or lease or licence required to provide Infrastructure which is:

(a) necessary in order to secure a Satisfactory Planning Permission;

(b) in a form approved by the Parties; and

(c) not subject to an Onerous Condition;

"Interest Rate" means a rate of interest of three per cent per annum above the base rate from time to time of National Westminster Bank PLC or such other UK clearing bank as the Buyer (acting reasonably and prudently) from time to time nominates or (in the event that base rates are no longer published and used) such other comparable rate of interest as (in default of agreement) may be certified by a member for the time being of the Institute of Chartered Accountants in England and Wales (or if the said institute shall cease to exist such comparable body of professional accountants as the Buyer and the Council may nominate) appointed jointly by the Buyer and the Council to determine the same or in default of agreement by the President of the Institute of Chartered Accountants in England and Wales;

"Internal Rate of Return" means the internalised rate of return of the Buyer, expressed as a percentage, at which all future cash flows must be discounted in order that the net present value of those cash flows equals zero and as clearly set out in the Waterfront Central Appraisal;

"Investment Gap" means the monetary difference between:

(a) the aggregate of the Waterfront East Development Costs; less

(b) the Waterfront East Total Funds,

provided that for the purposes of calculating the Investment Gap, following satisfaction of the Venue Operator Condition and provided there is no subsisting Venue Operator Potential Default Notice, it shall be assumed that the Projected TIF Borrowing as it relates to limb (b) of the definition of Projected Total Rates Increase has been obtained by the Council and shall be included in the calculation of the Waterfront East Total Funds;

"Investment Gap Election" means an election (in writing) by the Buyer under clause 12.13.1 to pay the Funding Top Up;

"JTC" means JTC Fund Solutions Jersey Limited a company incorporated in Jersey (Co. Regn. No. J32203) whose registered office is at Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT;

"Land Price" means the price to be paid by the Buyer to the Council for the acquisition of the freehold of the Brighton Centre in accordance with the Waterfront Central Valuation PROVIDED THAT the Land Price shall not be less than [redacted];

"Legal Fees" means each and every sum payable by the Buyer in respect of the Buyer's Solicitors and the Waterfront East Development Solicitors' proper and reasonable fees and disbursements incurred after the date of this Agreement in settling and completing the Building Contract, the Venue Operator Agreement the Appointments of the Consultants, and all ancillary matters arising pursuant to the Waterfront East Development;

"Lettable Unit" means any retail unit of either the Waterfront Central Development or the Waterfront East Development which is designed or is intended for separate letting or sale and occupation;

"LGA" means the Local Government Act 1972

"Long Form Appointments" means the Appointments relating to the Waterfront East Development that are not Preliminary Appointments and relate to the period from the satisfaction of the Second Condition for the remainder of the Waterfront East Development for that set of Consultants identified as such in the Project Base Documentation and as updated pursuant to clause 12.21;

"M&E Consultants" such firm or company of mechanical and electrical and services engineers as the Buyer may appoint in relation to the Waterfront East Development with the approval of the Council in accordance with this Agreement;

"**Measurement Standard**" means the RICS Property Measurement, 2nd edition;

"NAV Threshold" means the higher of:

(a) the sum of [redacted]; and

(b) an amount equal to [redacted] of this Agreement (as applicable) at the time of relevant assessment;

"Net Asset Value" means the aggregate assets less the aggregate liabilities of the Buyer and its subsidiaries, in each case as derived from the latest audited consolidated accounts or where applicable consolidated management accounts calculated in accordance with FRS102;

"Notice of Entry" means a notice of entry complying with Section 11 of the Compulsory Purchase Act 1965 to be served by the Authority following service of the Buyer's Notice on any person having an interest in respect of which compensation is or may be payable following the confirmation of the CPO by the Secretary of State;

"Notice to Treat" means a notice to treat to be served by the Authority following service of the Buyer's Notice on any person having an interest in respect of which compensation is or may be payable following the confirmation of the CPO by the Secretary of State;

"Occupational Agreement for Lease" means an agreement to grant an Occupational Lease;

"Occupational Lease" means a lease of a Lettable Unit (or any derivative or subordinate interest granted therefrom);

"Onerous Condition" means a Waterfront Central Onerous Condition and/or a Waterfront East Onerous Condition (as applicable);

"Option Agreement" means the Option Agreement to be entered into by the Council and the Buyer in accordance with clause 6.2 in the form set out in Appendix 6 under which the Buyer shall be granted an option to purchase the Brighton Centre for the prescribed option period of 5 years from but excluding the date of an event of Genuine Termination and otherwise in accordance with terms set out therein;

"Outline Planning Assessment" means an outline scoping of the requisite elements to be based on the Development Strategies that are required to be incorporated in any Application and having due regard to the BW Visioning Statement Condition save to the extent necessary to comply with any statutory obligations, legal requirements, the lawful requirements of any regulatory, governmental or official body and/or any of their policies;

"Parties" means the Parties to this Agreement being the Council and the Buyer and **"Party"** shall mean any one of them;

"PCR 2015" means the Public Contracts Regulations 2015 or such replacement legislation from time to time;

"Permitted Amendment" means, in respect to amendments the Buyer is entitled to make to the VO Procurement and Project Preparation Report, the Project Set Up Documentation, the Project Base Documentation, the Development Strategies, and the Construction Strategy under clause 12.21, any amendments which are, in the reasonable opinion of the Buyer, required due to:

(a) the requirements (on a mandatory basis) of any Authority or Enactment (including the Council's Procurement Obligations);

(b) the requirements of any Satisfactory Planning Permission and accompanying Planning Agreement;

(c) the agreed and approved terms of the Venue Operator Agreements, the Building Contract or the Appointments;

(d) the requirements of any Authority, highway authority, any statutory body or service and/or utility supply company in respect of electricity substations, gas governors, water pumping stations and/or other service and/or utilities infrastructure;

"Plan A" means the plan annexed at Appendix 2;

"Plan B" means the plan annexed at Appendix 3;

"Plan C" means the plan annexed at Appendix 4;

"Planning Agreement" means any agreement or undertaking entered into pursuant to all or any of the following:

(a) Section 106 of the 1990 Act;

(b) Section 111 of the Local Government Act 1972;

(c) Section 33 of the Local Government (Miscellaneous Provisions) Act 1982;

(d) Section 2 of the Local Government Act 2000

which is:

(i) necessary to secure a Satisfactory Planning Permission;

(ii) in a form approved by the Parties;

(iii) not subject to any Onerous Condition;

"Planning Condition" means a Satisfactory Planning Permission being obtained and:

(a) if a Satisfactory Planning Permission is granted by the Authority or the Secretary of State, the date which is 6 weeks and ten Working Days from the date of the Satisfactory Planning Permission, provided that no Proceedings shall have been instituted before that date has passed; and

(b) if Proceedings are instituted after the grant of a Satisfactory Planning Permission, the date on which a Satisfactory Planning Permission is finally granted or upheld when Proceedings have been concluded;

"Planning Consultants" means such firm or company appointed as planning consultants by the Buyer in relation to the Waterfront East Development with the approval of the Council in accordance with this Agreement;

"Planning Permission" means a resolution to grant a planning permission issued by the Authority or the Secretary of State following the Applications for the Waterfront Central Development or the Waterfront East Development (as applicable);

"**Planning Permission Expiry Date**" means in respect of the Satisfactory Planning Permission obtained in satisfaction of the Eastern Planning Condition and/or the Central Planning Condition, the date or dates by which the development authorised by the relevant Satisfactory Planning Permission must have begun, or is no longer an extant permission, such date or dates to be as specified in an express condition or deemed condition imposed under section 91(1) of the 1990 Act;

"Planning Overage Period" has the meaning given to that term in Part 2 of Schedule 1;

"PMC Approach Document" means the scoping document to be agreed and settled as between the Council's Procurement Team and the VO Consultancy Team setting out the preliminary tasks, scoping exercise to be undertaken, key performance indicators and objectives to be analysed and achieved for the purposes of embarking on the VO Preliminary Market Consultation and being a document recording the following matters:

(a) the purpose and outputs to be achieved via the VO Preliminary Market Consultation;

(b) the agreed process of collation of the feedback from the VO Preliminary Market Consultation and how such feedback is to be tabulated, measured and recorded;

(c) the proposed long list of participants that will be invited to participate in the VO Preliminary Market Consultation;

(d) the agreed list of questions that will be put to the VO Preliminary Market Consultation participants; and

(e) the anticipated programme and timetable for engaging with the proposed long list of participants as part of the detailed process of the VO Preliminary Marketing Consultation;

"PMC Pack" means the documents required for the VO Preliminary Market Consultation being the PMC Approach Document and the PMC Market Documents;

"PMC Market Documents" means the composite pack of documents to be shared with participants of the VO Preliminary Market Consultation which shall be agreed by the Council and the Buyer in accordance with clause 8 and shall form part of the PMC Pack;

"Pre-Emption Agreement" means the pre-emption agreement to be entered into by the Council and the Buyer in accordance with clause 6.2 in the form set out in Appendix 5 under which the Buyer shall be granted a pre-emption right in relation to the Brighton Centre which shall be granted for a period of 5 years from but excluding the date of Genuine Termination during which period it may be exercised on a single occasion by the Buyer from but excluding the date of an event of Genuine Termination on the terms of the Pre-Emption Agreement;

"Preliminary Appointments" means the short term Appointments relating to the Waterfront East Development to be made by the Buyer until satisfaction of the Eastern

Development Strategy Condition that relate to the period from the date of such Appointment until the satisfaction of the Second Condition for the set of Consultants identified as such in the Eastern Professional Team Appointment Report as updated pursuant to clause 12.21;

"Preparatory Operation" means an item of work or an operation connected to or ancillary to:

(a) archaeological investigations;

(b) exploratory trial holes and pits;

(c) surveys of structures; and

(d) erection of fences, hoardings and scaffolding;

"Proceedings" means all or any of the following as the case may be:

(a) an application for judicial review under Part 54 of the Civil Procedure Rules made by any third party arising from the grant of a Satisfactory Planning Permission by the Authority or an application under Section 288 of the Town and Country Planning Act 1990 arising from the grant of a Satisfactory Planning Permission by the Secretary of State, including in each case any appeal to a higher court following the judgment of a lower court;

(b) any reconsideration by the Authority of an Application following a previous Satisfactory Planning Permission being quashed pursuant to an application within the meaning of paragraph (a) of this definition and the matter being remitted to the Authority;

(c) an application within the meaning of paragraph (a) of this definition arising from the grant of a Satisfactory Planning Permission following reconsideration of a planning application by the Secretary of State following a previous Satisfactory Planning Permission granted by the Secretary of State having been quashed and the planning application remitted to the Secretary of State;

(d) any proceedings, reconsideration or application analogous to those referred to in paragraphs (a), (b) and (c) of this definition which relate to the Satisfactory Planning Permission including in each case any appeal to a higher court following the judgment of a lower court;

(e) an application to the Court (including any higher court following the judgment of a lower court) questioning the validity of the CPO or any Highway Closure Orders;

"Procurement and Technical Documents" means:

(a) the documents to be used in the procurement of the Venue Operator, the format and substance of which shall depend on the procurement process proposed by the Buyer and approved by the Council during the preparation of the VO Procurement Strategy Report which may include (amongst other documents) a contract notice, selection notice, invitation to participate in dialogue and shall, be compliant with the Council's Procurement obligations; and

(b) any required technical documents relating to the Waterfront East Development including a facilities description and a document describing the operator services requirements relating to the Waterfront East Development;

"Prohibited Entity" means an individual or entity:

(a) which (in the case of a natural person) is resident in or (in the case of a legal person) is incorporated or registered in a country outside the United Kingdom in respect of which no treaty exists for the mutual enforcement of judgments between the United Kingdom and that country unless:

(i) it has (itself or together with any guarantor) sufficient assets within the United Kingdom (or within a country outside the United Kingdom in respect of which a treaty exists for the mutual enforcement of judgments

between the United Kingdom and that country) to enable it to satisfy paragraph (a) of the definition of "Qualifying Transferee";

(ii) where paragraph (a)(i) of this definition applies, evidence of such assets is provided to the Council in such form as the Council may reasonably require; and

(iii) it agrees to be bound by the jurisdiction of the English courts;

(b) named on the "Consolidated List of Terrorists" maintained by the Bank of England pursuant to any authorising statute, regulations or guideline; and

(c) with whom the Council may not lawfully contract;

(d) which has been convicted of knowingly using funds that are directly derived from terrorism ; and/or

(e) which is, or professes to be, resident in a nation state which at the relevant time is not recognised by the UK Government; and/or

(f) to whom the grounds in Regulation 57(1)and /or 57(8) of The Public Contracts Regulations 2015 could apply;

"Project Base Documentation" means the project brief for the Waterfront East Development and certain aspects of the Waterfront Central Development which is to be settled and approved by the Council in accordance with clause 9.5 of this Agreement and which will comprise the following matters:

(a) a VO Procurement Strategy Report;

(b) a Waterfront East Development project risk register;

(c) a RIBA stage 0 report including all information specific to the design and implementation of the Waterfront East Development;

(d) scope and standard of design information to be included in the presentation of the Central Site under clause 10.7.1;

(e) an outline development programme;

(f) an updated Development Gateway Table;

(g) any necessary updates to the Waterfront East Cost Headings Statement but, for the avoidance of doubt, shall not include any update or amendment to the Qualifying Expenditure Cap;

"Projected Retail Income" means the properly anticipated amount of the aggregate retail income for the retail premises of Waterfront Central Development calculated by the Buyer by reference to the Gross Internal Area of the Retail Lettable Units and the documents settled in satisfaction of the Central Pre-Letting Condition and the Central Anchor Store Condition and the properly estimated rental values (calculated on an arm's length basis and supported by valuation advice from a reputable firm of valuers) at the time the relevant calculation is to be made;

"**Project Set Up Documentation**" means the set up documentation relating to the Waterfront East Development which is to be settled and approved by the Council in accordance with clause 8 of this Agreement and which will comprise the following matters:

(a) a PMC Pack;

(b) an Eastern Professional Team Appointment Report;

(c) a Stakeholder and Public Relations Strategy scope; and

(d) a draft planning performance agreement to be settled with the requisite Authority in support of the Application;

"Projected Total Rates Increase" means the projected aggregate increase in the net amount of Rates receivable by the Council from:

(a) the Total Central Site following practical completion of the retail and commercial components of the Waterfront Central Development and assumed to be built in accordance with the Satisfactory Planning Permission or any modification, amendment or variation to such Satisfactory Planning Permission; and

(b) the Waterfront East Site following practical completion of the Waterfront East Development and assumed to be built in accordance with the Satisfactory Planning Permission or any modification, amendment or variation to such Satisfactory Planning Permission,

as determined by a jointly instructed Expert selected by the Parties under clause 38.2 of this Agreement;

"Projected TIF Borrowing" means the anticipated and projected amount of TIF Borrowing that can be loaned to the Council calculated on the basis that the term of such borrowing is no less than 25 years and as a minimum 50% (or such higher figure as the Council elects in its discretion) of the Projected Total Rates Increase is used to support such borrowing or (at the election and discretion of the Council) such greater percentage specified by it of the Projected Total Rates Increase.

"Project Manager" means the project manager with the requisite expertise and experience to enable him/her to manage the implementation of a development with the complexity of the Waterfront East Development appointed by the Buyer but with the prior approval of the Council in accordance with this Agreement;

"Public Realm" means such parts of the Waterfront East Site which are to remain as unbuilt and open public space, for the communal benefit of the residents or tenants, and which:

(a) are not intended to be disposed of or let as part of the Venue, the Residential Units or the Retail Lettable Units comprising the Waterfront East Development;

(b) are not intended to be adopted pursuant to any Infrastructure Agreement or otherwise required to be transferred to a third party in order to comply with the provisions of a Planning Agreement;

"Qualifying Expenditure" means in respect to the Waterfront East Development only, an amount of [redacted] plus the aggregate of any expenditure reasonably and properly incurred by the Buyer comprised within the heads of cost listed in the Waterfront East Cost Headings Statement at Appendix 8 and shall, subject to clause 5.6, include interest at the Interest Rate from the date of this Agreement until the Unconditional Date or the date of Genuine Termination if earlier, but:

(a) shall exclude (i) any in-house development management fees or costs or expenses incurred by the Buyer in carrying out any role or performing any task which would normally be included in a form of development management agreement for a comparable type of development scheme as the Waterfront East Development and (ii) all of the Waterfront East Pre-Construction Services;

(b) shall exclude the costs of remedying any Waterfront East Pre-Construction Services Delivery Failure in accordance with clause 11.6;

(c) subject to clause 19.4, shall not exceed the Qualifying Expenditure Cap;

(d) shall exclude VAT other than irrecoverable VAT;

(e) shall include any Legal Fees incurred by the Buyer;

(f) shall only include the Acquisition Pre-Purchase costs (and not the Acquisition Capital Costs) relating to the Waterfront East Development incurred by the Buyer;

(g) there shall be no item of expenditure or income that is counted under one head counted under any other head so as to avoid any double counting;

"Qualifying Expenditure Cap" means the amount of [redacted] (or such amended amount agreed by the Parties in accordance with clause 17.3) which shall

include any Clawback but any Qualifying Expenditure amounts paid by the Buyer will be subject to the provisions of clause 19.4;

"Qualifying Expenditure Repayment Amount" means an amount equal to the Qualifying Expenditure less the amount (if any) to be deducted in accordance with clause 5.5 being the amount of Qualifying Expenditure deducted from the purchase price payable by the Buyer to the Council under the Pre-Emption Agreement (if any);

"Qualifying Transferee" means an entity:

(a) that is not a Prohibited Entity and which:

(i) has a Net Asset Value of not less than the NAV Threshold at the time of the relevant assessment and has provided to the satisfaction of the Council the Escrow Security in accordance with the Escrow Terms; or

(ii) which is, at the time of (i) the assignment of this Agreement; (ii) the transfer of the Brighton Centre; or (iii) the Change of Control (as applicable), the owner of the Churchill Square Shopping Centre and recipient of all the rents from the occupational tenancies or income producing interests in the Churchill Square Shopping Centre and the Churchill Square Shopping Centre is held free of any mortgage, security, lien, charge or other financial encumbrance to secure any third party debt and has not entered into any Disposal (or agreement to Dispose of its interest as owner of the Churchill Shopping Centre); and

(b) who, in the reasonable opinion of the Council, in its own right or considered in conjunction with any proposed guarantor or proposed development manager, has a proven track record and experience in the development, management and promotion of mixed use retail led schemes similar to the size and complexity of the Waterfront Central Development;

"Quantity Surveyors" means such firm or company of quantity surveyors as the Buyer may appoint in relation to the Waterfront East Development with the approval of the Council in accordance with this Agreement and who will also be appointed for the procurement of the Building Contractor and settlement of the Building Contract in accordance with clauses 15.2 and 15.3 and whose identity is first approved by the Council;

"Rates" means such amounts by way of non-domestic rates pursuant to the Local Authority Finance Act 1988 (or any replacement or substitute legislation) as are levied by the Brighton & Hove City Council or any successor in title from time to time;

"Residential Unit(s)" means any house, flat, maisonette or other single unit (together with any Affordable Housing) and including their immediate curtilage and any garages, parking spaces, private drives or forecourts relating to such buildings;

"Reserved Matters" means in relation to any outline or hybrid planning permission, matters reserved by the Authority for future determination and to be satisfied by the submission of a subsequent application for any approval of reserved matters whether granted by the Authority or the Secretary of State;

"Retail Lettable Units" means Lettable Units at the Brighton Centre or the Waterfront East Site intended for retail use;

"RICS" means the Royal Institution of Chartered Surveyors;

"S123/233 Condition" means the requirement by the Council to satisfy that:-

(a) the market value achieved in satisfaction of the Central Land Value Condition provides best consideration either under section 123 of the LGA or if the Brighton Centre has been subject to Appropriation then under section 233 of the Town and Country Planning Act 1990 ("**TCPA**") so that either the conditions (b), (c) or (d) immediately following shall apply as the case may be;

(b) where the Brighton Centre is to be disposed of pursuant to the LGA the duty under section 123 LGA must be satisfied without requiring the consent of the

Secretary of State or relying on the Local Government Act 1972: General Disposal Consent 2003 and a certified copy of the Valuer's report to that effect shall be produced; or

(c) where prior to the time of satisfying the S123/233 Condition the Buyer serves a non-revocable written notice requesting the Council to exercise its rights of Appropriation in respect to the Waterfront Central Development and/or Waterfront East Development for planning purposes and at the same time the Buyer provides a deed of indemnity to the Council in a form approved by the Council then the Council shall use reasonable endeavours to procure a decision to Appropriate for planning purposes in accordance with the terms of this Agreement;

(d) where the Brighton Centre is to be disposed of pursuant to the TCPA the duty under section 233 of the TCPA must be satisfied and a certified copy of the Valuer's report to that effect shall be produced;

"Satisfactory Planning Permission" means a detailed or hybrid Planning Permission for the Waterfront Central Development and together or separately the Waterfront East Development (as applicable), as prescribed by the individual Applications submitted at the same time (and following the approval of each Development Strategy) together with the approval of such Reserved Matters pursuant to an outline planning permission as have to be obtained before the Waterfront Central Development or the Waterfront East Development (as applicable) can commence, containing conditions which have to be satisfied before the commencement of works for the Waterfront Central Development or the Waterfront East Development (as applicable), which in any case is not subject to one or more Onerous Conditions, and which does not require any Party to enter into any Planning Agreement or Infrastructure Agreement as a condition or necessary requirement of such Planning Permission on terms which include one or more Onerous Conditions and will be treated as having been issued by the relevant Authority on the date written or printed on the relevant Planning Permission and in the case of a Planning Permission issued by the Secretary of State on the date written or printed on the letter or other document issued by or on behalf of the Secretary of State;

"SCUT" means the Standard Life Investments UK Shopping Centre Trust acting via its trustee JTC;

"**Second Condition**" means the Project Set Up Documentation Condition;

"Secretary of State" means the First Secretary of State or such other minister or authority for the time being having the right to exercise the powers now conferred on the First Secretary of State under any Enactment;

"Seventh Conditions" means each of:

(a) Central Funding Condition;

(b) Eastern Funding Condition; and

(c) Central Viability Condition;

"Site Assembly " means the Acquisition of all the freehold, leasehold or other interests in the Additional Property by the Council (in the case of the Waterfront East Development) or by the Buyer (in the case of the Waterfront Central Development) in both cases in accordance with the Site Assembly Strategy and, with vacant possession or an entitlement thereto and the Acquisition and/or the overriding of private rights and covenants reasonably capable of being Acquired and/or overridden as required for Waterfront Central Development or the Waterfront East Development (as applicable) and, in each case, in accordance with the relevant Site Assembly Strategy;

"Site Assembly Strategy" means the agreed strategy settled and approved by the Parties identifying the Additional Property and setting out the anticipated costs for the Acquisition of the Additional Property (being an estimate of the relevant Acquisition Pre-Purchase Costs and the Acquisition Capital Costs for each of the Waterfront East Development and

the Waterfront Central Development) as agreed as part of the Development Strategies in accordance with clause 10 as the same may be revised from time to time with such acquisitions first being by private treaty negotiations and then by CPO or by a combination of them as required and with or without Appropriation (if available);

"Site Plans" means Plan A and Plan B;

"Sixth Conditions" means collectively satisfaction of each of:

(a) Central Utilities Condition;

(b) Eastern Utilities Condition;

(c) Central Environmental Condition;

(d) Eastern Environmental Condition;

(e) Eastern Building Contract Condition;

(f) Eastern Land Assembly Condition;

(g) Central Land Assembly Condition;

(h) Central Pre-letting Condition; and

(i) Central Anchor Store Condition;

"SL Aberdeen Group" means**:**

(a) Standard Life Aberdeen plc and the Group Members of Standard Aberdeen Life plc; and

(b) following any merger, demerger or solvent reconstruction of Standard Life Aberdeen plc all such merged, demerged and reconstructed entities and their Group Members; and

(c) SCUT;

"SL Aberdeen plc" means Standard Life Aberdeen plc company number SC286832 whose registered office is Standard Life House, 30 Lothian Road, Edinburgh EH1 2DH;

"Stakeholder and Public Relations Strategy" means a strategy relating to the engagement of the Council's stakeholders relating to the Waterfront East Development and the Waterfront Central Development to be prepared by the Buyer (and approved by the Council) and included in the Project Base Documentation and Development Strategies as updated from time to time by the Parties to conform with the Project Base Documentation and the agreed Development Strategies;

"Standard Conditions" means the Standard Commercial Property Conditions (Second Edition);

"Structural Engineers" means such firm or company of structural engineers as the Buyer may appoint in relation to the Waterfront East Development with the approval of the Council in accordance with this Agreement;

"Termination Date" means the date of termination of this Agreement pursuant to clauses 4.9, 4.10, 12.10.3 or 12.20.3;

"Third Condition" means the Project Base Documentation Condition;

"Third Party Rights" means any third party reliance rights provided by a Consultant or a sub-contractor in accordance with Clause 15.6 by reliance on and inclusion of provisions that satisfy the third party reliance requirements under the Contracts (Rights of Third Parties) Act 1999;

"TIF Borrowing" means prudential borrowing arrangements (or other lending facilities) available at the appropriate time to the Council based on the determined Projected Total Rates Increase based on a minimum term of 25 years and being the amount stated in the most recent Eastern Funding Statement (as issued) from time to time with any variation to these terms to be approved by the Buyer provided that the TIF Borrowing shall at no time be less than the Projected TIF Borrowing;

"TIF Shortfall" means that part of the Projected TIF Borrowing relating solely to limb (a) of the definition of Projected Total Rates Increase for the Waterfront Central Site that is to be treated as a sum that is unavailable to the Council for the purposes of the Waterfront East Total Funds due solely to this Agreement not containing an obligation on the part of the Buyer to practically complete all or part of the retail and commercial components of the Waterfront Central Development (generating Rates) by a specified and fixed date (as such Projected TIF Borrowing is determined by a jointly instructed Expert selected by the parties under clause 39.2 of this Agreement);

"Topco" means:

(a) in respect of SCUT or Standard Life Aberdeen plc or following any merger, demerger or solvent reconstruction of Standard Life Aberdeen plc, such merged, demerged or reconstructed entities, or following any acquisition of the whole (or a substantial part of) Standard Life Aberdeen plc's business the entity acquiring such business; and

(b) in respect of any transferee of this Agreement or any transferee of the Brighton Centre, such entity or entities, being the ultimate parent undertaking(s) of the relevant transferee's group at the time that such transferee becomes the Buyer under this Agreement or the registered proprietor of the Brighton Centre (as applicable);

"Total Central Site" means the Waterfront Central Site and the Buyer's Property;

"Transfer" means the transfer of the Brighton Centre to the Buyer in the form set out in Appendix 7;

"Transfer Completion Date" means 30 Working Days following the Unconditional Date;

"Transport Consultants" means the firm or company of transport consultants as the Buyer may appoint but which in relation to the Waterfront East Development is to be an appointment to be made with consultation with and with the prior approval of the Council and in accordance with this Agreement;

"Ultimate Longstop Date" shall have the meaning as provided for in the definition of **"Final Longstop Date"**;

"Unconditional Date" means the date upon which all the Conditions Precedent shall have been satisfied or (where expressly permitted) waived by the relevant Party;

"Valuation Brief" means the valuation brief set out in Appendix 1;

"Valuation Date" means the date that a Party elects for the Waterfront Central Valuation to be undertaken in accordance with clause 21.1;

"Valuer" means the independent expert valuer appointed for the purposes of carrying out the Waterfront Central Valuation in accordance with clause 21.4.1;

"Valuer Appointment Criteria" means, in respect to the appointment of the Valuer:

(a) if the Parties agree on the identity of the Valuer, that Valuer shall be instructed on the basis of a specific written instruction that reflects the context of the particular circumstance provided for in this Agreement;

(b) the Valuer must have been qualified and practising in the valuation, financing and development of major, retail-led, mixed use development schemes for not less than fifteen years before his appointment with a specific instruction based on the context of the particular circumstance provided for in this Agreement; and

(c) the parties cannot agree at any time on the identity of the Valuer, either of the Parties, unless they shall have if already applied jointly, may apply at any time to the President of the Royal Institution of Chartered Surveyors for the appointment of the valuer whose determination shall be final;

"VAT" means Value Added Tax as referred to in Section 1 of the Value Added Tax Act 1994 or any tax of a similar nature which may be substituted for or levied in addition to it;

"Venue" means a multi-purpose venue for conferencing and entertainment events (including associated retail and food and beverage offerings) to be provided as part of the Waterfront East Development;

"Venue Operator" means such recognised venue operator to be procured by the Buyer on behalf of the Council in accordance with this Agreement through the completion of the Venue Operator Agreement;

"Venue Operator Agreement" means the agreement relating to the operation of the Venue to be entered into by the Council and the Venue Operator which is to be procured in accordance with clause 12.8 with any such agreement being conditional on the Unconditional Date being achieved under this Agreement and which is required to have a minimum period of forty (40) months from the Unconditional Date under this Agreement until any final long stop date under the Venue Operator Agreement (subject to normal relevant events or as otherwise agreed in writing by the Council) so as to allow for a sufficient period of time for practical completion of the construction of the Venue following the date on which the Unconditional Date under this Agreement occurs;

"Venue Operator Agreement Potential Default Notice" means a written notice served on the Buyer by the Council prior to the Unconditional Date in accordance with clause 12.8.4 stating that:

(a) the period between the date of such notice and any long stop date in the Venue Operator Agreement prior to which practical completion of the Waterfront East Development must be reached by the Council does not reasonably provide the Council with sufficient time (being a minimum period of forty (40) calendar months) to complete the Waterfront East Development; or

(b) the date of termination (upon its own terms) of the Venue Operator Agreement (by which time unconditionality of the Venue Operator Agreement must be reached) has occurred and the Venue Operator Agreement has not become unconditional;

"Venue Specification" means the indicative operator and facilities requirements for the Venue to be incorporated in the Venue Operator Agreement;

"Viability Dates" means each of the following dates:

(a) ten Working Days following satisfaction of the final Second Condition to be satisfied and ten Working Days following satisfaction of the final Condition Precedent relating to each Condition Date thereafter;

(b) the date ten Working Days following the satisfaction or waiver of the final Condition Precedent other than the Central Viability Condition;

"VO Consultancy Team" means the representatives of the Buyer relating to the procurement of the Venue Operator comprising:

(a) the Buyer's Project Director;

(b) the VO Procurement Consultant,

to be appointed by the Buyer in accordance with clause 12.18.

"VO Procurement Consultant" means such Consultant or firm or company of Consultants as the Buyer appoints (such appointment to be pursuant to a Long Form Appointment) in relation to the procurement of the Venue Operator who shall be a member of the VO Consultancy Team and who shall be suitably knowledgeable and skilled to work with the Council Procurement Officer in relation to the procurement of the Venue Operator and who shall be approved by the Council in accordance with clause 12.18;

"VO Procurement and Project Preparation Report" means a written report prepared and produced by the Buyer and approved by the Council, with such report to comprise:

(a) an agreed outline of the governance arrangements, decision making criteria and working protocol between the VO Consultancy Team and the Council's

Procurement Team during the preparation for and running of the (i) VO Pre-Market Consultation, and (ii) the procurement of the Venue Operator Agreement;

(b) the access rights to be granted to the Buyer and the VO Consultancy Team to the Council's procurement portal and the regulations of such use of the portal by such parties;

(c) which of the Council's Procurement Team (in liaison with the VO Consultancy Team) will create and maintain a report in compliance with Regulation 84(1) of the PCR 2015 and the terms of reference for such report;

(d) a protocol for compliance with the requirements of clause 42; and

(e) initial terms of reference for the Brighton Waterfront Steering Group;

"VO Procurement Strategy Report" means a report prepared and produced by the Buyer following completion of the VO Preliminary Market Consultation undertaken by the Buyer in accordance with clause 8, with such report to comprise:

(a) a summary of the findings from the VO Preliminary Market Consultation including a summary of interest from participants and any other information relevant to the procurement of the Venue Operator Agreement derived from the VO Preliminary Market Consultation;

(b) an appendix of all documents provided to participants in the VO Preliminary Market Consultation and any responses provided by participants, including notes of any meetings held with participants compiled in accordance with the terms of the PMC Approach Document ;

(c) a facilities options analysis and recommendation in relation to the Waterfront East Development outlining (amongst other matters) the proposed functionality and capacity of the Waterfront East Development;

(d) the Venue Operator Agreement structure analysis outlining which format for the Venue Operator Agreement is proposed to be offered to the market for the Waterfront East Development on the basis of the information gathered in the VO Preliminary Market Consultation;

(e) the position agreed between the Parties on the proposed procurement procedure for the Venue Operator Agreement that shall be compliant with the Council's Procurement Obligations which shall include:

(i) an agreed implementation approach in respect to the procurement of the Venue Operator including agreed governance agreements, a risk matrix and confirmation of the parties roles and responsibilities for each stage of the procurement of the Venue Operator up to the Venue Operator Agreement being signed by the Council together with an explanation of how such approach is compliant with the Council's Procurement Obligations and a description of how the appropriate advice will be obtained during the procurement of the Venue Operator for the benefit of the Council in relation to compliance with the Council's Procurement Obligations; and

(ii) the agreed Procurement and Technical Documents; and

(iii) a draft Venue Operator Agreement agreed as between the Council and the Buyer;

"VO Preliminary Market Consultation" means the preliminary market consultation to be undertaken by the Buyer in accordance with the terms of the PMC Approach Document (and otherwise in compliance with the Council's Procurement Obligations) pursuant to which the Buyer (with some or all of the Council's Procurement Team in attendance at all times) is to obtain input in relation to the options for the format and substance of the Venue Operator Agreement from national and international venue operators identified and agreed by both the Buyer and the Council as being appropriately experienced in the operation of multi-purpose venues with the size and complexity similar to the Waterfront East

Development, noting that the Council shall be represented (by some or all of the Council's Procurement Team) at any meeting with participants in the VO Preliminary Market Consultation and the Buyer or the VO Consultancy Team will maintain a full record of the VO Preliminary Market Consultation exercise including but not limited to:

(a) which participants were involved in the market engagement and why they were chosen;

(b) documents that were provided to participants;

(c) records of meetings and other communications that take place with participants; and

(d) the options appraisal and recommendations taken by the Council based on the information obtained from the VO Preliminary Market Consultation;

"Waterfront Central Appraisal" means the financial appraisal for the Waterfront Central Development as prepared by the Buyer, the form of which is indicatively shown at Appendix 1, with such appraisal to be included within the Fact Book;

"Waterfront Central Costs" means the aggregate expenditure reasonably and properly incurred by the Buyer in relation to the Waterfront Central Development on and from the date of this Agreement until and including the date of Genuine Termination (is applicable) provided that such Waterfront Central Costs may not exceed [redacted]

"Waterfront Central Development" means the retail led comprehensive redevelopment of the Waterfront Central Site and part of the Churchill Square Shopping Centre in accordance with the Central Development Strategy;

"Waterfront Central Development Plans" means the plans elevations, sections and drawings and specifications to comprise part of the Central Development Strategy which show the proposals for the Waterfront Central Development designed and incorporated as part of the Central Development Strategy;

"Waterfront Central Onerous Condition" means a condition that imposes an obligation or restriction of any one or more of the following kinds:

(f) it requires the payment or expenditure of money, or other consideration by way of planning gain or payment of a community infrastructure levy, or the carrying out of works which relates to a site other than the Waterfront Central Site or requires associated highway improvement works such that the cost of carrying out the Waterfront Central Development would, in the reasonable opinion of the Buyer mean that the Buyer's Viability Threshold is not capable of being achieved;

(g) by virtue of such condition the Waterfront Central Development is not capable of being commenced or implemented in full without the agreement or co-operation of any third party, and the agreement or co-operation of such third party cannot be obtained upon terms, within a timescale and at a cost which, in the reasonable opinion of the Buyer would mean that the Central Viability Condition is not capable of being satisfied;

(h) the condition is in the reasonable opinion of the Buyer (acting in its capacity as an institutional investor) unreasonable or an unduly restrictive condition in the circumstances;

(i) in the reasonable opinion of the Buyer, it may require the payment or expenditure of money by the Authority pursuant to any Planning Agreement which, allowing for indexation on any items of payment or expenditure, is likely to result in the Buyer's Viability Threshold not being met;

(j) in the reasonable opinion of the Buyer (acting in its capacity as institutional investor) specific requirements contained in any such agreement are not commensurate to the nature and scale of the Waterfront Central Development as comprised in the Central Development Strategy; or

(k) the condition has a materially adverse effect on the practicability or economic viability of the Waterfront Central Development;

"Waterfront Central Site" means the Brighton Centre together with the sites known as the Kings West site and the Debenhams site (including associated car parking) as shown more particularly edged [red] on Plan A;

"Waterfront Central Valuation" means the valuation described in clause 21.2;

"Waterfront East Cost Headings Statement" means the statement listing the headings and categories of costs to be incurred by the Buyer in respect of the Waterfront East Development from the date of this Agreement until the Unconditional Date identifying which of such costs are to be Clawback and which are to be Qualifying Expenditure as settled and agreed between the Parties prior to the date of this Agreement and set out in Appendix 8 with such expenditure covering the period from the date of this Agreement up to the Seventh Condition Date;

"Waterfront East Development" means the comprehensive re-development of the Waterfront East Site incorporating a multi-purpose venue for conferencing and entertainment events in accordance with the Eastern Development Strategy;

"Waterfront East Development Costs" means the forecast costs to be incurred by the Council in providing the completed Waterfront East Development as anticipated at the date of satisfaction of the Eastern Site Conditions (ignoring for these purposes only the Eastern Funding Condition);

"Waterfront East Development Plans" means the outline drawings and specifications showing the approved proposals for the Waterfront East Development agreed by the Parties and included within the Eastern Development Strategy and further developed as part of the Development Strategy;

"Waterfront East Development Solicitors" means such firm or firms of solicitors for the Waterfront East Development to be instructed by the Buyer;

"Waterfront East Onerous Condition" means such onerous conditions relating to the Planning Permission for the Waterfront East Site as shall be agreed with the Venue Operator and/or specified in the Venue Operator Agreement and approved by the Council and the Buyer;

"Waterfront East Pre-Construction Services" means all and any one of the pre-construction services in relation to the Waterfront East Development to be performed by (or procured by) the Buyer as set out in Appendix 9;

"Waterfront East Pre-Construction Services Delivery Failure" means where the Buyer:

(a) fails to deliver any part of a particular Waterfront East Pre-Construction Service; or

(b) fails in a material way to perform a particular Waterfront East Pre-Construction Service to the standard outlined in clause 11.1;

"Waterfront East Site" means the Black Rock Site and any additional land required for the Waterfront East Development as agreed or determined by the Parties in accordance with the Site Assembly Strategy in relation to the Waterfront East Development;

"Waterfront East Total Funds" means the total funds from the Anticipated Funding Sources received by the Council (or which the Council has good and proper grounds to receive the payment of) towards the funding of the Waterfront East Development Costs from time to time and reported to the Buyer by the Council in the most recent Eastern Funding Statement provided to the Buyer by the Council provided that, the Brighton Centre Savings shall be deemed to be obtained by the Council and in respect of those elements of the Anticipated Funding Sources listed at sub-paragraphs (b) and (c) of that definition:

(a) for the period from the date of this Agreement until the date of satisfaction (under the terms of this Agreement) of the Venue Operator Condition such reasonable

forecast of those amounts as determined by the Council acting reasonably based on the information available to the Council at the requisite points in time; and

(b) for the period from the date of satisfaction (under the terms of this Agreement) of the Venue Operator Condition such reasonable calculation of the amounts as determined by having regard to the specific terms of the Venue Operator Agreement,

provided further that, irrespective of any Anticipated Funding Sources being forecast to comprise the Waterfront East Total Funds in accordance with this definition, where the Venue Operator Condition has not been satisfied or the Venue Operator Condition has been satisfied but is the subject of a subsisting Venue Operator Potential Default Notice, then the Buyer shall not be entitled to make an election under clause 12.12.1 and/or 12.13.1;

"Working Day" means any day on which UK clearing banks in the City of London are open for business.

1.2 **Interpretation**

In the interpretation of this Agreement the following further provisions apply:

1.2.1 the clause headings shall not affect the construction of this Agreement;

1.2.2 words importing only one gender shall include the other genders and words importing the singular shall include the plural and vice versa;

1.2.3 every reference to any clause number, Schedule or Appendix is reference to that clause of, Schedule or Appendix to this Agreement and any such Schedule or Appendix shall form part of this Agreement;

1.2.4 every reference to approval or consent by a Party means an approval or consent in writing issued before the act or event requiring it;

1.2.5 every reference to any statute or section of a statute or other subordinate legislation shall be deemed to refer to any statutory amendment or modification or re-enactment thereof for the time being in force (except any reference in this Agreement to the Town and Country Planning (Use Classes) Order 1987 which shall be construed wholly and exclusively by reference to that Order as amended by the Town and Country Planning (Use Classes) (Amendment) Order 2005) and the provisions of Section 61 of the Law of Property Act 1925 shall be deemed to be incorporated in and form part of this Agreement;

1.2.6 every reference to irrecoverable input VAT of any person shall mean input tax as defined in Section 24 of the Value Added Tax Act 1994 for which that person cannot from time to time obtain credit in accordance with that section and Section 25 of the said Act and any regulations made thereunder; and

1.2.7 subject to clause 40.7, where this Agreement provides for the agreement or the approval of either Party to be obtained then unless otherwise expressly provided for in this Agreement that Party's agreement or approval shall not be unreasonably withheld or delayed and shall, where no response has been issued by that Party, be deemed to have been issued by that Party at 5:00pm on the 20th Working Day following the date that an application for that Party's agreement or approval is made in writing provided that the Party seeking such approval has served an interim warning notice (where a response has not already been received) after the 13th Working Day but before 5.00 pm on the 17th Working Day following the initial request for agreement or approval referring to this paragraph and reminding such Party that their response is required by no later than a date which shall be the balance of the outstanding Working Days from the date of the interim warning notice unless such longer period for a response is permitted under the terms of this Agreement;

1.2.8 every reference to the Buyer in the agreement shall include any assignee or novatee as permitted under clause 33.

2. AGREEMENT TO SELL AND BUY THE BRIGHTON CENTRE

2.1 Subject to and in accordance with the terms set out herein and subject to the Unconditional Date occurring, the Council shall sell and the Buyer shall buy the Brighton Centre.

3. OVERALL PROJECT OBJECTIVES AND GOOD FAITH

3.1 The Parties acknowledge and agree the following overall project objectives for the Waterfront Central Development and Waterfront Eastern Development:

3.1.1 to enable developments that will provide an economic stimulus for the greater Brighton area, creating new jobs and opportunities through the creation of a Venue;

3.1.2 to promote and facilitate the regeneration of the wider Brighton & Hove seafront through the:

(A) development of a leading Venue on the Waterfront East Site;

(B) regeneration of the Waterfront Central Site; and

(C) have proper regard to the BW Visioning Statement as it relates to the matters in this clause save to the extent necessary to comply with any statutory obligations, legal requirements, the lawful requirements of any regulatory, governmental or official body and/or any of their policies.

3.2 The Parties shall at all times in their capacity act reasonably diligently, with all due expedition and in the interests of utmost good faith towards the other Party so as to achieve progress with the satisfaction of the Conditions Precedent and the progress of the Waterfront Central Development and the Waterfront East Development provided that the Parties agree that there is no obligation in this Agreement on the Buyer to carry out or complete the Waterfront Central Development.

4. CONDITIONAL FORCE

4.1 The entry into force of the obligations of the Parties in Clauses 22,23, 24 and 26 of this Agreement are conditional upon the Unconditional Date occurring on or before the Final Longstop Date, or, if relevant, the Ultimate Longstop Date.

4.2 If the Conditions Precedent are satisfied (or waived in writing by the relevant party required to satisfy the Condition Precedent) then all other provisions of this Agreement shall have effect on and from the Unconditional Date to the extent that they are not at the time of satisfaction already in force and the Parties agree that there is no obligation in this Agreement on the Buyer to carry out or complete the Waterfront Central Development.

4.3 As soon as the relevant and appropriate Party is of the view that the Conditions Precedent or any of them insofar as they relate to the Waterfront East Development (for the Council) or the Waterfront Central Development (for the Buyer) has or have been fulfilled (whether by satisfaction or waiver) it shall promptly serve a Condition Satisfaction Notice on the other Party giving brief details of the Condition Precedent (satisfied or waived) and referring to the relevant Condition Precedent as defined in this Agreement. At the same time the relevant and appropriate Party shall state which of the requisite Conditions Precedent remain outstanding and, in the case of the last Condition Precedent for that Party stating that it is the final Condition Precedent (be it the Central Conditions or the Eastern Conditions).

4.4 The Unconditional Date can never occur unless the relevant and appropriate Party has served a Condition Satisfaction Notice in respect of each (and all) of their respective Conditions Precedent or in the case of the Eastern Funding Condition only it has been deemed to have been served under the terms of this Agreement PROVIDED that, save in the case of the Central Viability Condition which this clause 4.4 shall not apply to, if the other Party is of the view that a Condition Precedent has been fulfilled (by satisfaction as opposed to waiver) then it shall be entitled to serve a notice on the other Party stating the same and the other Party shall within ten Working Days of receipt of such notice either (i) serve a Condition Satisfaction Notice or (ii) respond to such notice stating that it does not

consider that the Condition Precedent has been satisfied providing its detailed reasoning as to why the Condition Precedent has not been fulfilled. Any dispute as regards satisfaction of a Condition Precedent can be referred by either party for determination and resolution by the Expert under clause 39.

4.5 For the purposes of satisfying the Conditions Precedent each of the Parties will:-

4.5.1 work together in collaboration, in a spirit of cooperation and with an open book and transparent approach in order to facilitate the satisfaction of the Conditions Precedent;

4.5.2 actively proceed and act with good faith to the other Party with a view to procuring the satisfaction of the Conditions Precedent in accordance with its obligations hereunder as soon as reasonably practicable after the date hereof; and

4.5.3 keep the other Party fully informed of its actions and the progress being made to satisfy the Conditions Precedent and shall provide all information reasonably requested by the other Party;

4.6 The Parties shall actively assist and act in good faith in assisting one another with their respective obligations pursuant to this Agreement and shall respond promptly to any request for agreement or approval and any request for information as to the views and requirements in relation to any of the Conditions Precedent or any proposals in relation thereto or other information reasonably requested by the other Party.

4.7 The Buyer shall be entitled to waive any of the Central Conditions at any time following the date of this Agreement other than (a), (c), (k),(l) and (n).

4.8 The Council shall be entitled to waive any of the Eastern Conditions at any time following the date of this Agreement other than (a), (b), (g), (l), (m), (n), (o), (p) and (q).

4.9 The Conditions Precedent as allocated to the First Conditions, the Second Condition, the Third Condition, the Fourth Conditions, the Fifth Conditions, the Sixth Conditions and the Seventh Conditions (but not unless otherwise specified the individual Conditions Precedent within each category of Condition Precedent) are to be satisfied by the relevant Party on or before the requisite Condition Date but if:

4.9.1 satisfaction or waiver of the First Conditions has not occurred by the First Condition Date; or

4.9.2 satisfaction or waiver of the Second Condition has not occurred by the Second Condition Date; or

4.9.3 satisfaction or waiver of the Third Condition has not occurred by the Third Condition Date; or

4.9.4 satisfaction or waiver of the Fourth Conditions have not occurred by the Fourth Condition Date; or

4.9.5 satisfaction or waiver of the Fifth Conditions have not occurred by the Fifth Condition Date; or

4.9.6 satisfaction or waiver of the Sixth Conditions have not occurred by the Sixth Condition Date; or

4.9.7 satisfaction or waiver of the Seventh Conditions have not occurred by the Seventh Condition Date,

(or if it is agreed or determined pursuant to clause 12.20.2 that there is no reasonable prospect of a Condition Precedent being satisfied prior to the relevant Condition Date by which such Condition Precedent must have occurred), then either the Council or the Buyer may determine this Agreement by serving not less than one month's prior written notice on the other Party (or, where a dispute has arisen under clause 12.20.2, then either Party may serve a notice immediately on the determination by the Expert (under clause 39) that there is no reasonable prospect of the Condition Precedent being satisfied prior to the relevant Condition Date). On expiry of such one month notice period this Agreement shall

immediately cease and determine unless the relevant Condition Precedent has been satisfied or waived prior to the expiry of such notice period and an applicable Condition Satisfaction Notice has been served but without prejudice to any antecedent right or entitlement of either Party in respect of any breach by the other of the terms of this Agreement or any entitlement to reimbursement or payment which has arisen.

4.10 If the Unconditional Date shall not occur on or before:

4.10.1 the Final Longstop Date or, if relevant, the Ultimate Longstop Date; or

4.10.2 such later date as may be agreed between the Buyer and the Council (in the absolute discretion of either of them).

or if it is agreed by the Parties (or determined) pursuant to clause 12.20.2 that there is no reasonable prospect of all the Conditions Precedent being satisfied prior to the Final Longstop Date or, if relevant, the Ultimate Longstop Date, then either the Council or the Buyer may determine this Agreement by serving not less than one month's prior written notice on the other. On expiry of such notice this Agreement shall immediately cease and determine unless the relevant Condition Precedent has been satisfied or waived prior to the expiry of such notice period and a Condition Satisfaction Notice has been served but without prejudice to any antecedent right or entitlement of either Party in respect of any breach by the other of the terms of this Agreement or any entitlement to reimbursement or payment which has arisen.

5. CLAWBACK, QUALIFYING EXPENDITURE AND WATERFRONT CENTRAL COSTS

5.1 On the Unconditional Date Clawback shall be deemed to form part of Qualifying Expenditure and the total Qualifying Expenditure shall be deducted from the Land Price in accordance with clause 23.3 provided that the amount of Qualifying Expenditure to be deducted from the Land Price shall not exceed the actual amount of Qualifying Expenditure incurred by the Buyer or where incurred in excess of the Qualifying Expenditure Cap shall not exceed the Qualifying Expenditure Cap.

5.2 In the event of the termination of this Agreement pursuant to clauses 4.9, 4.10, 12.10.3 or clause 12.20.3 and where the Unconditional Date has not been achieved but the Fifth Conditions have all been satisfied and each Party has served a Condition Satisfaction Notice evidencing such satisfaction (a "**Genuine Termination**"), the following shall apply in relation to Clawback:

5.2.1 the Buyer shall as soon as reasonably practicable following a Genuine Termination provide to the Council its final calculation of the Clawback and the Parties shall use all reasonable endeavours to agree the Clawback as soon as reasonably practicable thereafter and in default of agreement within four weeks after the date on which such calculation is provided to the Council, the determination of the Clawback shall be referred for determination by either Party and settled by the Expert in accordance with clause 39;

5.2.2 the Buyer shall not be entitled to recover from the Council any sums spent by the Buyer on Clawback in excess of the Clawback Cap without first seeking and obtaining the approval of the Council to a revised Clawback Cap and in which case the Buyer will produce and issue to the Council an amended and updated Waterfront East Cost Headings Statement which sets out therein the amended agreed Clawback Cap for the Council's approval, and provided that notwithstanding clause 1.2.7, such Council approval under this clause cannot be deemed under the terms of this Agreement;

5.2.3 the Council will pay the Clawback (as agreed or determined where disputed) to the Buyer within 20 Working Days of (a) the date of agreement; or (b) determination of such sums in accordance with clause 5.2.1.

5.3 If at any time prior to the later of:

5.3.1 the date five years from and including the date of an event of Genuine Termination; and

5.3.2 the Planning Permission Expiry Date in respect of the Satisfactory Planning Permission obtained in satisfaction of the Central Planning Condition,

the Council Implements (either by its own actions or the actions of those appointed or authorised by it) the Satisfactory Planning Permission obtained in satisfaction of the Central Planning Condition in relation to the Waterfront Central Site or any modification, amendment or variation to that specific Satisfactory Planning Permission or a fresh planning permission is obtained with similar dominance and scale for retail use, and with similar proportionality and dominance of uses, to the Satisfactory Planning Permission in relation to the Waterfront Central Site, such that the Satisfactory Planning Permission could be said to have clearly established the principle of the revised development for which the fresh planning permission is obtained except that this limb of the principle cannot be relied upon if the specific usage for any development of the Waterfront Central Site including the proportionality and dominance of uses is expressly prescribed by the local development framework of the Authority which was not revised or amended as a direct result of the Satisfactory Planning Permission or directly by the work of the Buyer pursuant to this Agreement then the Council shall at the election of the Buyer pay to the Buyer within 20 Working Days of the Buyer's election (provided such election can be made by the Buyer only after Implementation of such planning permission), the Waterfront Central Costs, on the later of: (i) the expiry of the period of five years; and (ii) the Planning Permission Expiry Date in respect of the Satisfactory Planning Permission obtained in satisfaction of the Central Planning Condition, the obligation to pay the Waterfront Central Costs, if not previously triggered under this clause 5.3, will automatically cease and determine and the Council will be released from any liability.

5.4 Subject to clause 5.5, if at any time prior to the later of:

5.4.1 the date five years from the date of an event of Genuine Termination; and

5.4.2 the Planning Permission Expiry Date in respect of the Satisfactory Planning Permission obtained in satisfaction of the Eastern Planning Condition,

the Council or its successors in title Implements (either by its own actions or the actions of those appointed or authorised by it) the Satisfactory Planning Permission obtained in satisfaction of the Eastern Planning Condition in relation to the Waterfront East Site or any modification, amendment or variation to that specific Satisfactory Planning Permission or a fresh planning permission is obtained similar in scale and dominance of uses, and with a similar proportionality and dominance of uses, to the Satisfactory Planning Permission in relation to the Waterfront East Site, such that the Satisfactory Planning Permission could be said to have established the principle of the development for which the fresh planning permission is obtained, except that this limb of the principle cannot be relied upon if the usage for any development of the Waterfront East Site is expressly prescribed by the local development framework of the Authority which was not revised or amended as a direct result of the Satisfactory Planning Permission or directly by the work of the Buyer pursuant to this Agreement then the Council shall at the election of the Buyer pay to the Buyer within 20 Working Days of the Buyer's election (provided such election can be made by the Buyer only after Implementation of such planning permission), the Qualifying Expenditure Repayment Amount. On the expiry of the period of five years the obligation to pay the Qualifying Expenditure Repayment Amount, if not previously triggered under this clause 5.4, will automatically cease and determine and the Council will be released from any liability.

5.5 If at any time prior to the Council paying the Qualifying Expenditure Repayment Amount in accordance with clause 5.4 where the requirements of that clause for the payment of the Qualifying Expenditure Repayment Amount have been satisfied by the Council, the Buyer exercises the pre-emption right granted to it under the Pre-Emption Agreement such that

the Buyer becomes the owner of the Brighton Centre, the Qualifying Expenditure Repayment Amount shall be reduced by an amount equal to the amount of Qualifying Expenditure deducted from the purchase price for the Brighton Centre paid by the Buyer (if any) and the Council shall only be obliged to pay the balance (if any) of any Qualifying Expenditure Repayment Amount to the Buyer under clause 5.4.

5.6 Notwithstanding the provisions contained in this clause 5, the Council shall not be liable for any interest (at the Interest Rate) on any element of the Qualifying Expenditure if:

5.6.1 the Unconditional Date occurs and completion of the sale of the Brighton Centre occurs in accordance with this Agreement; or

5.6.2 the Council enters into the Pre-Emption Agreement and the Option Agreement in accordance with clause 6 with one half of the interest charge being treated as paid and received by the Buyer under the Pre-Emption Agreement and the other half of the interest charge being treated as paid and received under the Option Agreement; or

5.6.3 where the proviso in clause 5.2 applies.

6. OPTION AND PRE-EMPTION

6.1 Within five Working Days of an event of Genuine Termination the Buyer shall deliver to the Council engrossments of the Pre-Emption Agreement and the Option Agreement.

6.2 On the date that is five Working Days following delivery of the engrossments of the Pre-Emption Agreement and the Option Agreement pursuant to clause 6.1 (but subject to the proviso in clause 5.2), the Parties shall exchange the Option Agreement and the Pre-Emption Agreement.

6.3 The Council hereby consents to the Buyer following completion of the Pre-Emption Agreement making an application to HM Land Registry to register a restriction against the title to the Brighton Centre in respect of the Pre-Emption Agreement on the following terms:

> *"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be completed by registration without a certificate signed by a conveyancer that the provisions of clause 8.1 of the Pre-Emption Agreement dated [date] and made between Brighton & Hove City Council] and JTC Fund Solutions (Jersey) Limited and SG Kleinwort Hambros Trust Company (CI) Limited have been complied with or that they do not apply to the disposition"*

provided that if the Pre-Emption Agreement has expired by effluxion of time under the terms of the Pre-Emption Agreement or otherwise been validly determined under the terms of this Agreement then the Buyer shall promptly apply to HM Land Registry for the cancellation of the restriction on title registered in accordance with this clause 6.3 and if the Buyer fails to apply to HM Land Registry for such cancellation in a timely manner the Council may apply to HM Land Registry for such a cancellation and the Buyer shall lend all reasonable assistance to the Council and HM Land Registry in relation to the removal of such restriction on title from the title to the Brighton Centre, including dealing with any requisitions as soon as reasonably practicable.

6.4 If the Council satisfies the provisions of clause 5.3 then the Option Agreement and Pre-Emption Agreement shall automatically determine and the Buyer shall promptly apply to HM Land Registry for the cancellation of any restriction registered on title to the Brighton Centre by the Buyer in accordance with clause 4.3 and the Buyer shall lend all reasonable assistance to HM Land Registry in relation to the removal of such restriction including dealing with any requisitions as soon as reasonably practicable.

6.5 The parties agree that the provisions of clause 6.3 and 6.4 will continue to apply after a Genuine Termination.

7. VO PROCUREMENT AND PROJECT PREPARATION REPORT CONDITION

7.1 The Buyer shall:

7.1.1 work in collaboration with the Council's Procurement Team and the VO Consultancy Team to prepare, produce and put in place appropriate management and consultation structures and strategies for the preparation and delivery to the Council of the VO Procurement and Project Preparation Report, and the Buyer is to have due regard to and take account of the reasonable representations and comments of the Council's Procurement Team in relation to the content and detail of the VO Procurement and Project Preparation Report; and

7.1.2 shall prepare a draft VO Procurement and Project Preparation Report as soon as reasonably practicable (and by the date provided for in clause 7.3) following the appointment of the Council's Procurement Officer and the VO Consultancy Team so as to provide the Council a reasonable opportunity to review, comment on and agree prior to the First Condition Date.

7.2 The Buyer shall provide the Council's Procurement Team with the opportunity to attend meetings (the location of which shall alternate between London and Brighton) not less regularly than fortnightly and at such meetings the Buyer shall provide the Council's Procurement Team with an update (with documentary evidence as appropriate) of the progress and current status of the preparation of the individual items contained within the VO Procurement and Project Preparation Report and will give the Council's Procurement Team the opportunity to discuss the contents of the VO Procurement and Project Preparation Report (or any individual item within it) and to make representations at such meetings and the Buyer will have regard to and take due account of such reasonable representations.

7.3 The Buyer shall submit the completed proposed VO Procurement and Project Preparation Report to the Council not later than the date that is six (6) months from the date of this agreement; and:

7.3.1 unless approved in full, the Council shall provide a written response to the Buyer (containing the consolidated comments of the Council's Procurement Team) confirming which elements of the VO Procurement and Project Preparation Report are approved and in relation to any elements which are not approved including the Council's alternative proposals; and

7.3.2 the Buyer shall accommodate the Council's alternative proposals for the settlement and agreement of the VO Procurement and Project Preparation Report to the extent that they are reasonable and will re-submit the proposed VO Procurement and Project Preparation Report as soon as reasonably practicable and the process set out in this clause 7.3 shall be repeated as many times as is necessary until the VO Procurement and Project Preparation Report is approved in its entirety by the Council.

7.4 The Buyer shall procure that at least three Working Days prior to each meeting convened under clause 7.2, a revised VO Procurement and Project Preparation Report is issued to the Council via the information sharing portal maintained by the Buyer in accordance with clause 10.2 highlighting any revisions made and noting any comments from the Council which remain outstanding together with a comprehensive set of minutes for any previous meeting convened under clause 7.2.

8. PROJECT SET UP DOCUMENTATION CONDITION

8.1 The Buyer (via the VO Consultancy Team and Project Manager) shall**:**

8.1.1 work in collaboration with the Council's Project Monitor, the Council's Procurement Team, the Council's Project Director and other suitable representatives of the Council to prepare, produce and put in place appropriate management and consultation structures and strategies for the preparation and

delivery to the Council of the Project Set Up Documentation and the Buyer is to have due regard to and to take account of the reasonable representations and comments of the Council (as expressed by its appointed team) in relation to the content and detail of the Project Set Up Documentation**;** and

8.1.2 shall prepare the draft Project Set Up Documentation as soon as reasonably practicable (and by the date provided for in clause 8.3) following the satisfaction of the VO Procurement and Project Preparation Report Condition so as to provide the Council a reasonable opportunity to review, comment on and agree prior to the Second Condition Date.

8.2 The Buyer shall provide the Council's Procurement Team with the opportunity to attend meetings (the location of which shall alternate between London and Brighton) not less regularly than fortnightly and at such meetings the Buyer shall provide the Council's Procurement Team with an update (with documentary evidence as appropriate) of the progress and current status of the preparation of the Project Set Up Documentation and will give the Council's Procurement Team the opportunity to discuss the contents of the Project Set Up Documentation (or any individual item within it) and to make representations at such meetings and the Buyer will have regard to and take due account of such reasonable representations.

8.3 In addition to the representations made by the Council at meetings in accordance with clause 8.2, prior to the Buyer submitting the completed proposed Project Set Up Documentation to the Council in accordance with clause 8.4, the Council's Project Monitor and the Council's officer team representatives may make written representations to the Buyer in relation to the Project Set Up Documentation and the Buyer shall have due regard to and shall take account of such written representations for the Project Set Up Documentation to the extent that they are reasonable and/or shall be obliged to do so to ensure any necessary compliance with the Council's Procurement Obligations and the Buyer shall (or shall procure) that requisite revisions are made to the Project Set Up Documentation for the Council's subsequent review and proposal.

8.4 The Buyer shall submit the completed draft Project Set Up Documentation to the Council not later than 30 Working Days before the Second Condition Date.

8.4.1 unless approved in full, the Council shall provide a written response to the Buyer (containing the consolidated comments of the Council's Procurement Team) confirming which elements of the Project Set Up Documentation are approved and in relation to any elements which are not approved including the Council's alternative proposals or comments; and

8.4.2 the Buyer shall accommodate the Council's alternative proposals or comments for the purposes of the Project Set Up Documentation to the extent that they are reasonable and/or necessary and will re-submit the proposed Project Set Up Documentation as soon as reasonably practicable and the process set out in this clause 8.4 shall be repeated as many times as is necessary until the Project Set Up Documentation is approved in its entirety by the Council.

8.5 The Buyer shall procure that at least three Working Days prior to each meeting convened under clause 8.2, revised draft Project Set Up Documentation is issued to the Council via the information sharing portal maintained by the Buyer in accordance with clause 10.2 highlighting any revisions made and noting any comments from the Council which remain outstanding together with a comprehensive set of minutes for any previous meeting convened under clause 8.2.

9. PROJECT BASE DOCUMENTATION

9.1 As soon as reasonably practicable following the satisfaction of the Project Set Up Documentation Condition, the Buyer shall conduct the VO Preliminary Market Consultation

in accordance with the terms and requirements of the VO Procurement and Project Preparation Report and the requirements of the PMC Pack so as to enable the Buyer to produce the VO Procurement Strategy Report as part of the Project Base Documentation in accordance with this clause 9.

9.2 The Buyer (via the Buyer's Project Director and Project Manager) shall:

9.2.1 work in collaboration with the Council's Project Monitor and the Council's Project Director and other suitable representatives of the Council to prepare, produce and put in place appropriate management and consultation structures and strategies for the preparation and delivery to the Council of the Project Base Documentation, and the Buyer is to have due regard to and take account of the reasonable representations and comments of the Council (as expressed by its appointed team) in relation to the content and detail of the Project Base Documentation; and

9.2.2 shall prepare the draft Project Base Documentation as soon as reasonably practicable following completion of the VO Preliminary Market Consultation undertaken by the Buyer in accordance with clause 9.1 so as to provide the Council a reasonable opportunity to review, comment on and agree the Project Base Documentation prior to the Third Condition Date.

9.3 The Buyer shall provide the Council's Procurement Team with the opportunity to attend meetings (the location of which shall alternate between London and Brighton) not less regularly than monthly and at such meetings the Buyer shall provide the Council with an update (with documentary evidence as appropriate) of the progress and current status of the preparation of the individual items contained within the Project Base Documentation and will give the Council's Procurement Team the opportunity to discuss the contents of the Project Base Documentation (or any individual item within it) and to make representations at such meetings and the Buyer will have regard to and take due account of such reasonable representations and the Buyer shall permit the Council's Procurement Team to review, revise and amend the Project Base Documentation to the extent such amendments are reasonable and necessary for compliance with the Council's Procurement Obligations with any revised Project Base Documentation then being treated as the updated and current version.

9.4 In addition to the representations made by the Council at meetings in accordance with clause 9.3, prior to the Buyer submitting the completed proposed Project Base Documentation to the Council in accordance with clause 9.5, the Council's Project Monitor and the Council's officer team representatives may make written representations to the Buyer in relation to the Project Base Documentation and the Buyer shall have due regard to and shall take account of such written representations for the Project Base Documentation to the extent that they are reasonable and/or necessary for compliance with the Council's Procurement Obligations and make requisite revisions to the Project Base Documentation for the Council's subsequent review and proposal.

9.5 The Buyer shall submit the completed draft Project Base Documentation to the Council as soon as reasonably practicable following the completion of the VO Preliminary Market Consultation and in any event by no later than 30 Working Days before the Third Condition Date, and:

9.5.1 unless approved in full, the Council shall provide a written response to the Buyer confirming which elements of the Project Base Documentation are approved and in relation to any elements which are not approved providing the Council's alternative proposals; and

9.5.2 the Buyer shall accommodate the Council's alternative proposals for the purposes of the Project Base Documentation to the extent that they are reasonable and/or necessary for compliance with the Council's Procurement Obligations and will re-submit the proposed Project Base Documentation as soon as reasonably practicable to the Council for its review and approval and the process set out in this clause 9.5 shall be repeated as many times as is

necessary until the Project Base Documentation is approved in its entirety by the Council.

9.6 The Buyer shall procure that at least three Working Days prior to each meeting convened under clause 9.3, a revised Project Base Documentation is issued to the Council via the information sharing portal maintained by the Buyer in accordance with clause 10.2 highlighting any revisions made and noting any comments from the Council which remain outstanding together with a comprehensive set of minutes for any previous meeting convened under clause 9.3.

10. DEVELOPMENT STRATEGIES

10.1 The Buyer shall:

10.1.1 work in collaboration with the Council to put in place appropriate management and consultation structures and strategies for the preparation of the Development Strategies, in relation to which the Buyer shall have due regard to and take account of the reasonable representations of the Council with the Buyer accepting that the Eastern Development Strategy must accord with the reasonable representations and comments of the Council; and

10.1.2 shall prepare a draft Development Strategy for each of the Waterfront Central Development (the **"Central Development Strategy"**) and the Waterfront East Development (the **"Eastern Development Strategy"**) (together the **"Development Strategies"**) in satisfaction of the requirements to settle and agree and satisfy the Central Development Strategy Condition and the Eastern Development Strategy Condition.

10.2 The Buyer shall maintain a dedicated information sharing portal for the Waterfront East Development which shall be accessible at all times from the date of satisfaction of the last of the conditions listed at paragraphs (b), (c), (d) and (e) of the First Conditions by the Council's Project Monitor and the Council's Project Director and which the Buyer shall update on a regular basis with plans, programme, information, models, minutes of meetings and briefing notes contemplated by this Agreement (together with heads of terms for any Acquisition setting out requisite commercial terms). The Buyer shall provide the Council with the opportunity to attend meetings not less regularly than monthly (the location of which shall alternate between London and Brighton) and at such meetings the Buyer shall provide the Council with an update (with documentary evidence as appropriate) of the progress and current status of the preparation of the Development Strategies (or any particular element of any such strategy) and will give the Council the opportunity to discuss the relevant on-going matters and plans, proposals and designs, and to make representations at such meetings and the Buyer will have regard to and take account of such representations to the extent that they are reasonable and do not adversely affect the value and deliverability of the Waterfront Central Development and the Buyer shall permit the Council to review, revise and amend the Eastern Development Strategy with its reasonable revisions being accommodated within its documents and plans. Any revised Development Strategies shall be treated as the updated and current version with a view to ensuring that the final set of Development Strategies are issued by no later than the Fourth Condition Date.

10.3 In addition to the representations made by the Council at meetings in accordance with clause 9.2, prior to the Buyer submitting each completed proposed Development Strategy to the Council in accordance with clause 10.5, the Council may make written representations to the Buyer in relation to each Development Strategy and the Buyer shall have due regard to and shall take account of such written representations for the Eastern Development Strategy to the extent that they are reasonable and similarly in respect of the Central Development Strategy accommodate the Council's alternative proposals to the extent that they are reasonable and do not adversely affect the value and deliverability of the Waterfront Central Development and make the requisite revisions to each Development Strategy.

10.4 The Buyer shall procure at least three Working Days prior to each meeting convened under clause 10.2, a revised Eastern Development Strategy and Central Development Strategy is issued to the Council via the information sharing portal maintained by the Buyer in accordance with clause 10.2 highlighting any revisions made and noting any comments from the Council which remain outstanding together with a comprehensive set of minutes for any previous meeting convened under clause 10.2.

10.5 The Buyer shall submit each completed proposed Development Strategy to the Council not later than the date 16 months from but excluding the date of satisfaction of the Project Base Documentation Condition and:

10.5.1 unless approved in full, the Council shall provide a written response to the Buyer within ten Working Days of the submission by the Buyer of the proposed Development Strategies pursuant to this clause 10.5 confirming which elements of the Development Strategies are approved and in relation to any elements which are not approved including reasons and the Council's alternative proposals; and

10.5.2 the Buyer shall accommodate the Council's alternative proposals for the purposes of the Eastern Development Strategy to the extent that they are reasonable to re-submit the proposed Development Strategies as soon as reasonably practicable and the process set out in this clause 10.5 shall be repeated as many times as is necessary until each Development Strategy is approved in their entirety by the Council.

10.6 In the event of a dispute regarding whether the Council is acting reasonably in withholding or delaying its approval to any element of the proposed Development Strategies or as to whether the Buyer has failed to properly reflect any reasonable comment made by the Council in any Development Strategy the matter may be referred by either party for determination by the Expert in accordance with clause 39.

10.7 The Development Strategies shall include:

10.7.1 architectural plans, plans for the Waterfront Central Development prepared in accordance with the scope agreed in the Project Base Documentation and plans prepared in accordance with clause 10.9.2 for the Waterfront East Development;

10.7.2 an updated Waterfront East Development project risk register;

10.7.3 a detailed breakdown of:

(A) the Qualifying Expenditure incurred by the Buyer to date (including a description of which of the items of expenditure incurred by the Buyer fall within Clawback and which of such expenditure fall into the category of Qualifying Expenditure which, for the avoidance of doubt, shall (unless previously agreed by the Parties) reflect the Waterfront East Cost Headings Statement; and

(B) any proposed amendment to the Waterfront East Cost Headings Statement, Clawback Cap and the Qualifying Expenditure Cap on the basis of the anticipated cost of the proposed Waterfront East Development set out in the Eastern Development Strategy;

10.7.4 an outline townscape (also identifying Public Realm) and heritage assessment in respect of the Waterfront East Site to capture archaeological risks;

10.7.5 the Project Base Documentation together with further detail and information or plans so as to assist in the settlement of each Development Strategy;

10.7.6 specify and list all off site and onsite early works requirements that may need to be undertaken prior to Implementation and provide a genuine pre estimate of the cost of items of elements of those works are required by the Council;

10.7.7 an updated version of the Development Gateway Table;

10.7.8 an environmental opportunities constraints report for the Waterfront East Development which summarises all the Environment Reports relating to the Waterfront East Development obtained by the Buyer at the date of preparation of the Waterfront East Development Strategy;

10.7.9 a Site Assembly Strategy for each of the Waterfront Central Development and the Waterfront East Development to satisfy the Central Land Assembly Condition and the Eastern Land Assembly Condition (as appropriate);

10.7.10 identify with sufficient detail and precision which mains utility services need to be diverted or accommodated within the Waterfront East Site which may have an impact on the detail required for the Eastern Planning Condition;

10.7.11 a draft access and traffic movement framework for both the Waterfront Central Development and the Waterfront East Development;

10.7.12 the Stakeholder and Public Relations Strategy; and

10.7.13 an indicative development and construction programme and indicative phasing diagrams and requirements for both the Waterfront Central Development and the Waterfront East Development.

10.8 In addition to the matters outlined in clause 10.7, the Central Development Strategy shall include:

10.8.1 the Fact Book; and

10.8.2 submission of RIBA stage 1 report in respect to the Waterfront Central Development.

10.9 In addition to the matters outlined in clause 10.7, the Eastern Development Strategy shall include:

10.9.1 the Brighton Waterfront Financial Model;

10.9.2 submission of RIBA Stage 2 report in respect of the Waterfront East Development;

10.9.3 a detailed cost plan in relation to the Waterfront East Development; and

10.9.4 a risk register in relation to the Waterfront East Development.

10.10 The Buyer and the Council shall both use all reasonable endeavours to agree the terms of the CPO Indemnity Deed as soon as reasonably practicable and in any event prior to the Third Condition Date. For the purposes of enabling the Council to satisfy the S123/233 Condition after and only once the Development Strategy has been agreed by the Parties, the Buyer agrees and accepts that there shall be no obligation on the part of the Council to serve a Condition Satisfaction Notice on the Buyer in relation to the S123/233 Condition until the Buyer has first served a written notice on the Council confirming whether or not it wishes the Council to exercise rights of Appropriation and if it does wish the Council to do so the Buyer shall at the same time deliver (on an unconditional basis) to the Council an executed and uncapped deed of indemnity (in a form substantially in accordance with the CPO Indemnity Agreement as amended to take account that such agreement relates to Appropriation and otherwise in a form agreed with the requisite Authority) from the Buyer covering all of the costs of whatsoever nature which the Council may suffer or incur from Appropriation and including its professional costs.

11. WATERFRONT EAST PRE-CONSTRUCTION SERVICES

11.1 From the date of this Agreement until the satisfaction of the last of the Conditions Precedent (or the earlier termination of this Agreement), the Buyer shall, at its own cost, perform, or procure the performance of, the Waterfront East Pre-Construction Services using the reasonable skill and care expected of a pre-construction services development manager with experience of carrying out such pre-construction services on projects of a similar complexity and size as the Waterfront East Development.

11.2 Where, in the opinion of the Council acting reasonably, the Buyer commits a Waterfront East Pre-Construction Services Delivery Failure, the Council may notify the Buyer in writing of such Waterfront East Pre-Construction Services Delivery Failure with such notice providing specific details of the Waterfront East Pre-Construction Services Delivery Failure and proposing a meeting between the Parties to enable the Parties to discuss the optimum way forward to, if possible, remedy the applicable Waterfront East Pre-Construction Services Delivery Failure and prevent its repetition in the future (being the "**Cure Steps**").

11.3 Where the Buyer disputes that it has in fact committed a Waterfront East Pre-Construction Services Failure or disputes that the severity of such failure meets the materiality threshold to be treated as a Waterfront East Pre-Construction Services Delivery Failure or disputes the Cure Steps proposed by the Council in the notification of the alleged failure by the Buyer under clause 11.2, the Buyer shall procure that in the first instance the Head of UK Development for the Buyer is available to meet with the Executive Director for Economy, Environment & Culture of the Council (the "**Escalation Meeting**") to be scheduled within five Working Days of notification by the Council of such alleged failure by the Buyer under clause 11.2 to attempt to agree whether in fact a Waterfront East Pre-Construction Services Delivery Failure has occurred and, if so, to discuss how to remedy and the cure period and Cure Steps for remedy (to include a suitable programme of steps to be taken to remedy) such Waterfront East Pre-Construction Services Delivery Failure and any other pertinent circumstances surrounding such alleged failure to prevent its repetition in the future (being the "**Escalation Meeting Cure Steps**").

11.4 The Buyer and the Council shall ensure that each of their representatives is properly briefed and informed for the purposes of any Escalation Meeting. Following the Escalation Meeting if one or other Party believes that the nature of the matter in dispute cannot be satisfactorily settled by the date that is ten Working Days from the date of the Escalation Meeting or where the Parties have reached no agreement as to the Cure Steps to be taken (and/or the period within which such Cure Steps must be taken) to remedy the Waterfront East Pre-Construction Services Delivery Failure or whether in fact a Waterfront East Pre-Construction Services Delivery Failure has occurred at the Escalation Meeting then either Party may immediately refer for determination the matter in dispute to the Expert in accordance with clause 39. Where such a Waterfront East Pre-Construction Services Delivery Failure has been determined to have occurred then the Buyer must promptly and diligently and to the reasonable satisfaction of the Council remedy the failure by (as applicable) complying with the Cure Steps, the Escalation Meeting Cure Steps or the cure steps and cure period determined by the Expert with the costs of remedy (in each case) being borne solely by the Buyer and not capable of being reclaimed under the terms of this Agreement.

11.5 Where, in respect of three separate Waterfront East Pre-Construction Service Delivery Failures, the Buyer fails to comply with:

11.5.1 the Cure Steps; or

11.5.2 the Escalation Meeting Cure Steps; or

11.5.3 the cure steps determined by the Expert pursuant to a referral under clause 11.4,

within the corresponding cure period applicable to the steps to be complied with by the Buyer under clauses 11.5.1 to 11.5.3 (inclusive) then, at any time following the third Waterfront East Pre-Construction Services Delivery Failure in which the failure to comply within the relevant cure period occurs as indicatively shown in the Cure Period Worked Example, the Buyer must on the recommendation of the Council (or the Council's Project Monitor) appoint a person or entity from a list of suitable consultants first approved of by the Council able to satisfactorily complete the proper delivery of the Waterfront East Pre-Construction Services at its own cost (not to be reclaimed under this Agreement) under an Appointment and the Buyer's obligation to perform the Waterfront East Pre-Construction Services under this clause 11 shall be terminated in full or part. For the purposes of ascertaining three separate Waterfront East Pre-Construction Services Delivery Failures

any such failure which constitutes an irremediable breach (as agreed by the Parties or in the case of a dispute determined by an Expert) shall constitute a single but permanent Waterfront East Pre-Construction Services Delivery Failure.

11.6 Subject to clause 8.7, where the Council has terminated the appointment of the Buyer in respect to the Waterfront East Pre-Construction Services in accordance with clause 11.5, the Council shall be entitled to:

11.6.1 (if there are any sums remaining to be paid by the Council to the Buyer under the terms of this Agreement), set off the proper costs incurred by it in having to procure the remedying of the applicable element or elements of the Waterfront East Pre-Construction Services requiring remedy and/or performance against any such sums due from it to the Buyer under this Agreement; or

11.6.2 if there are no remaining sums to be paid by the Council to the Buyer under the terms of this Agreement, reimbursement by the Buyer of the proper costs incurred by the Council in having to procure the remedying and/or performance of any applicable element or all of the Waterfront East Pre-Construction Services and such amounts shall be payable in full by the Buyer within 20 Working Days of the receipt of a valid invoice from the Council in accordance with clause 11.7.

11.7 The Council shall only be entitled to recover the cost of procuring the applicable element (or all) of the Waterfront East Pre-Construction Services under clause 11.6 where:

11.7.1 the Council has first followed the process outlined in clauses 11.2 to 11.5 as regards the outstanding Waterfront East Pre-Construction Services and/or the remedying of such applicable element of the Waterfront East Pre-Construction Services;

11.7.2 the Buyer (acting reasonably) has pre-approved such costs; and

11.7.3 the Council has provided the Buyer a relevant third party invoice evidencing the Council as having incurred such expenditure.

11.8 The Buyer shall have no liability to the Council, its employees, contractors, agents or sub-contractors or any other person (whether in contract or tort) relating to the delivery or non-delivery of the Waterfront East Pre-Construction Services in respect of:

11.8.1 any loss of profits;

11.8.2 any special, indirect or consequential loss of any type including but not limited to any loss arising out of any liability to any other person, even if such loss was reasonably foreseeable or the Buyer had been advised of the possibility of the Council incurring it;

11.8.3 any liability or breach which arises as a result of complying in a satisfactory manner with the totality of the written instructions given by or on behalf of the Council and/or the Council's Project Monitor in accordance with the terms of this Agreement; or

11.8.4 any act or default of or failure of performance by or matter or service to be provided by any Consultant appointed in accordance with clause 15.4 or 11.5 or appointed directly by the Council except where the Buyer's failure to perform any Waterfront East Pre-Construction Service directly led to the act or default of or failure of performance by or matter of service to be provided by the Consultant and in which case, subject to clause 11.11.1, the Buyer shall be liable to the Council under this clause 11.

11.9 Subject to clause 11.10, the maximum aggregate liability of the Buyer to the Council whether in contract, tort or otherwise howsoever for any matters arising from the delivery or otherwise of the Waterfront East Pre-Construction Services under this clause 11, shall not exceed [redacted]) (in aggregate).

11.10 Where as a result of any claims made the cap in clause 11.9 is reached either singularly or in aggregate than the Council shall be entitled, following settlement of the claim in full or the cap being reached, to rely on clause 11.5 to terminate the appointment of the Buyer to

provide all of the Waterfront East Pre-Construction Services and require the Buyer to appoint a suitable alternative consultant to provide the Waterfront East Pre-Construction Services under the terms of clause 11.5 and in addition to set off any sums in accordance with clause 11.6.2.

11.11 The Buyer shall:

11.11.1 save in respect of the Buyer's liability to pay for the delivery of any elements of the Waterfront East Pre-Construction Services under clause 11.5 which shall commence on the date of this Agreement, the Buyer only be liable under this clause 11 on and from the Unconditional Date; and

11.11.2 be released from any and all obligations in this clause 11 on the date that is the earlier of:

(A) the date of Genuine Termination; and

(B) 12 months following the Unconditional Date,

and the Buyer shall have no liability whether in contract, tort or otherwise in respect of the same following such release save to the extent of any valid and bona fide claims for a breach of the relevant obligation made on or after the Unconditional Date but prior to the date of such release.

11.12 For the avoidance of doubt, the Buyer shall be entitled to delegate performance of the Waterfront East Pre-Construction Services to a third party (previously notified in writing to and approved by the Council) provided that it shall not in any way relieve the Buyer of any liability to the Council under this clause 11 for the performance of such services.

12. OBLIGATIONS IN RESPECT OF THE CONDITIONS PRECEDENT

12.1 Central Planning Condition and Eastern Planning Condition

12.1.1 The Buyer shall use reasonable endeavours to satisfy the Central Planning Condition and the Eastern Planning Condition as soon as reasonably practicable and in accordance with clause 12.

12.1.2 In connection with the Buyer's obligations in this Agreement the Buyer shall undertake as part of the process for preparing any Application and before its submission to the Authority an appropriate form of public consultation and communication programme in accordance with the relevant Development Strategy.

12.1.3 The Buyer shall use all reasonable endeavours to ensure that all requirements of the Venue Operator Agreement are properly addressed and reflected in the Application so as to ensure that a Satisfactory Planning Permission complies with the conditions that may be contained in any Venue Operator Agreement. The Buyer shall (if reasonably required by the Council) specify in the Venue Operator Agreement a requirement that the Venue Operator is to confirm in writing its satisfaction and approval of the Application in respect of the Waterfront East Development and the Buyer will use reasonable endeavours to procure compliance with that requirement.

12.2 Central Site Assembly Condition and Eastern Land Assembly Condition

12.2.1 The Parties shall each use reasonable endeavours to satisfy the Central Land Assembly Condition and the Eastern Land Assembly Condition in a timely manner. The Buyer shall, as part of the Site Assembly Strategy, consider with the Council if it wishes to rely on Appropriation for the purposes of the Waterfront Central Development or the Waterfront East Development and whether such step will be independently pursued from or along with or instead of the CPO.

12.2.2 The Council and the Buyer shall agree (each acting reasonably) as soon as practicable what further amendments or suitable revisions having regard to the requirements of the pertinent Development Strategy (if any) are required to the

form of the CPO Indemnity Agreement and shall thereafter promptly execute and enter into the CPO Indemnity Agreement to properly satisfy the Central Land Assembly Condition and/or Eastern Land Assembly Condition to be properly satisfied.

12.2.3 The Council shall not be obliged to incur any costs in connection with Appropriation or CPO before a deed of indemnity is settled with the Buyer in respect of such Appropriation or the CPO Indemnity Agreement is entered into (as applicable) and in both instances are completed and unconditionally delivered to the Council.

12.2.4 Notwithstanding the provisions of clause 12.5 the Buyer shall use reasonable endeavours to be evidenced to the Council and the Authority to carry out Site Assembly by means of private treaty negotiations in advance of a Confirmed CPO in accordance with all legal requirements and in compliance with the requirements of the Site Assembly Strategy and shall negotiate for the Acquisition of the Additional Property in accordance with the Site Assembly Strategy (ensuring that so far as possible Additional Property required for the Waterfront East Development is transferred direct to the Council from the original proprietor). The costs incurred by the Buyer in complying with the terms of this clause shall form part of the Acquisition Pre-Purchase Costs.

12.2.5 Subject to the CPO Indemnity Agreement being entered into in accordance with clause 12.2.3 and having regard to the Site Assembly Strategy the Buyer may serve one or more Buyer's Notices upon the Authority requesting the Authority to exercise its compulsory powers arising pursuant to the Confirmed CPO and to proceed to acquire the interests referred to therein (in accordance with the provisions of the CPO Indemnity Agreement) and following service of such Buyer's Notices the Buyer shall use reasonable endeavours to procure that the Authority will use all reasonable endeavours to promote and pursue a CPO to be made. The Buyer's costs incurred shall form part of the Acquisition Pre-Purchase Costs.

12.2.6 The Council shall have an obligation to assist in the confirmation of a CPO for the benefit of the Buyer under clause 12.2.5 but this shall not fetter its discretion as the Authority to resolve whether or not to exercise CPO powers.

12.3 **Central Required Consents Condition and Eastern Required Consents Condition**

12.3.1 The Buyer shall:

(A) notify the Council of any consents and Infrastructure Agreements it believes are required to be completed and delivered to satisfy the Central Required Consents Condition and the Eastern Required Consents Condition in a timely manner and seek the approval of the Council to such proposals that relate to the Waterfront East Development to the extent that they are not contained in the Development Strategy;

(B) diligently endeavour to procure and complete/deliver any consents and Infrastructure Agreements required to satisfy the Central Required Consents Condition and the Eastern Required Consents Condition as soon as reasonably practicable and in any event on or prior to the Fourth Condition Date.

12.3.2 The Council agrees with the Buyer in its capacity as landowner that it will provide all reasonable assistance to the Buyer at the cost of the Buyer in the satisfaction of the Central Required Consents Condition and the Eastern Required Consents Condition.

12.3.3 The Buyer shall notify the Council of what Highway Closure Orders are required and commence the appropriate processes for obtaining the same in a timely manner.

12.3.4 The Buyer shall notify the Council of such Highway Closure Orders it intends to apply for having regard to the Applications.

12.3.5 The Buyer agrees with the Council:

(A) not to do anything which might reasonably be expected to prejudice the grant of any relevant Highway Closure Orders;

(B) to give reasonable assistance to the Authority in seeking to obtain the relevant Highway Closure Orders.

12.3.6 The Council agrees with the Buyer:

(A) not (in its capacity as landowner) to object or authorise or permit any objection to the Buyer's application for relevant Highway Closure Orders where such are in accordance with the relevant agreed Development Strategy;

(B) to give reasonable assistance (in its capacity as landowner) to the Buyer at the cost of the Buyer in seeking to obtain the required orders to satisfy the relevant Highway Closure Orders.

12.3.7 The Parties acknowledge that the Highway Closure Orders may be expressed to be conditional on implementation of development works.

12.4 **Central Utilities Condition and Eastern Utilities Condition**

12.4.1 The Buyer shall use reasonable endeavours to satisfy the Central Utilities Condition and the Eastern Utilities Condition as soon as reasonably practicable by entering into negotiations with the relevant statutory undertakers for the diversion of any services required to be diverted and the establishment of any new service points for the Waterfront Central Development and the Waterfront East Development together with sub-stations and grid connections by way of implementing completed Infrastructure Agreements (all completed in satisfaction of the Central Utilities Condition and Eastern Utilities Condition).

12.4.2 Where statutory undertakers object either to any Application or to any CPO because they require to retain their conducting media running across the Brighton Centre or the Waterfront East Site then:

(A) if that retention can reasonably be accommodated within the Waterfront Central Site or the Waterfront East Site without material cost increase, or the Buyer is prepared to accommodate it in relation to the Waterfront Central Development or the Council is prepared to accommodate it (having received all requisite cost information) in relation to the Waterfront East Development despite a reasonable cost increase first approved of by the Council, it shall be so accommodated and the Buyer shall make the necessary variations to the Waterfront East Development Plans and the Waterfront Central Development Plans to show the approved route;

(B) if that retention of conducting media cannot reasonably be accommodated within the Waterfront Central Site or the Waterfront East Site without material cost increase and the Buyer is not prepared to accommodate it in relation to the Waterfront Central Development or the Council is not prepared to accommodate it in relation to the Waterfront East Development, or it prejudices the substantive terms of the Venue Operator Agreement (or could reasonably be anticipated to do so) the Parties shall seek to reach agreement to relocate the services with the ultimate cost once approved of achieving that outcome to be included (where applicable) in the Anticipated Relevant Expenditure for the Waterfront Central Development or the Waterfront East Development Costs for the purposes of the Waterfront East Development and any Eastern Funding Statement;

(C) the Parties shall use reasonable endeavours to enter into such agreements or settle the grant of rights with statutory undertakers as are reasonably required to achieve the retention or relocation of mains utility services (the Council assisting at the cost of the Buyer),

in order to seek to procure the withdrawal of any objection by a statutory undertaker.

12.5 **Central Environmental Condition and Eastern Environmental Condition**

12.5.1 The Buyer shall commission and procure that the Environmental Consultant provides the final Environmental Reports (having regard to the initial EIA) with a view to satisfying the Central Environmental Condition and the Eastern Environmental Condition in a timely manner and in any event by no later than the Sixth Condition Date.

12.5.2 Following the provision of the Environmental Reports and if the Environmental Reports identify any ground conditions that may prevent the Central Environmental Condition or the Eastern Environmental Condition from being satisfied the Buyer (with the agreement of the Council) shall instruct the Environmental Consultant to prepare a mitigation strategy in respect of such ground conditions including details of any remediation works and the anticipated costs of implementing such remediation works with a view to satisfying the Central Environmental Condition and Eastern Environmental Condition and such mitigation scheme shall require the approval of the Buyer in relation to the Waterfront Central Site and the Council in relation to the Waterfront East Site.

12.5.3 The Parties agree with each other to provide reasonable assistance to satisfy the Central Environmental Condition and Eastern Environmental Condition in a timely manner and not to do anything which might reasonably be expected to prejudice the satisfaction of the Central Environmental Condition and Eastern Environmental Condition.

12.6 **Central Pre-Letting Condition**

The Buyer agrees with the Council following satisfaction of the last of the Sixth Conditions:

12.6.1 to use reasonable endeavours at its own expense to enter into and exchange Occupational Agreements for Leases in order to satisfy the Central Pre-Letting Condition in a timely manner;

12.6.2 to keep the Council informed of progress in satisfying the Central Pre-Letting Condition and forthwith after exchanging any such Occupational Agreements for Lease to notify the Council of the date and parties to any exchanged Occupational Agreement for Lease and to assist the Council in relation to any reasonable requests for information pertinent to the assessment of the Projected Total Rates Increase,

provided that the Parties agree that there is no obligation in this Agreement on the Buyer to carry out or complete the Waterfront Central Development.

12.7 **Central Anchor Store Condition**

The Buyer agrees with the Council following satisfaction of the last of the Sixth Conditions:

12.7.1 to use reasonable endeavours to exchange an Occupational Agreement for Lease with a tenant of the Anchor Store in order to satisfy the Central Anchor Store Condition in a timely manner;

12.7.2 at all times to keep the Council informed of the progress in satisfying the Central Anchor Store Condition and forthwith upon exchanging the Occupational Agreement for Lease to notify the Council of the date and parties to any exchanged Occupational Agreement for Lease and to assist the Council in

relation to any reasonable requirements for information pertinent to the assessment of the Projected Total Rates Increase,

provided that the Parties agree that there is no obligation in this Agreement on the Buyer to carry out or complete the Waterfront Central Development.

12.8 **Venue Operator Condition**

12.8.1 The Buyer shall as soon as reasonably practicable following satisfaction of the Third Condition), work in collaboration with the Council (and the Council's Procurement Team) to enable the Council to satisfy the Venue Operator Condition and to put in place appropriate management and consultation structures and strategies relating to the joint procurement of the Venue Operator (and therefore the Venue Operator Agreement) in accordance with the terms of the VO Procurement Strategy Report and the remainder of this clause 12.8.

12.8.2 Unless otherwise agreed in the VO Procurement Strategy Report the Buyer shall:

(A) regularly consult with the Council on the Venue Operator procurement process outlined in the VO Procurement Strategy Report and shall take account of the Council's reasonable representations and requirements (which will be mandatory where such request is a requirement for the purposes of the Council's Procurement Obligations in respect to the Venue Operator procurement process); and

(B) obtain the approval (in writing) of the Council in relation to the proposed successful tenderer to be awarded the Venue Operator Agreement in accordance with the process outlined in the VO Procurement Strategy Report; and

(C) negotiate the terms of the Venue Operator Agreement during the Venue Operator procurement in accordance with the agreed governance and roles and responsibilities outlined in the VO Procurement Strategy Report and regularly consult with the Council in respect to the form and terms of the Venue Operator Agreement including taking account of the Council's reasonable representations and requirements (which will be mandatory where such request is a requirement of the Council's Procurement Obligations) regarding the terms of the Venue Operator Agreement and inviting a representative of the Council to any meetings with prospective Venue Operators; and

(D) submit to the Council for comment successive iterations of the draft Venue Operator Agreement with the proposed Venue Operator for the Council to ratify provided that any terms previously approved in writing by the Council (and that remain unchanged by any subsequent revision, circumstance or amendment) by the Council (whether in the VO Procurement Strategy Report or otherwise) will be treated as approved.

12.8.3 The Council shall enter into the Venue Operator Agreement promptly following the approval of the Venue Operator Agreement by the Council (in a form settled by it) under clause 12.8.2.

12.8.4 If, at any time following the satisfaction of the Venue Operator Condition, the Council serves on the Buyer a Venue Operator Agreement Potential Default Notice:

(A) subject to clause 12.8.4(C), on and from the date of such Venue Operator Agreement Potential Default Notice the Venue Operator Condition and, if already satisfied, the Eastern Funding Condition, shall no longer be considered to have been satisfied (and any Condition Satisfaction Notice for those Conditions treated as void) and the Buyer's election rights under clause 12.12.1 and 12.13.1 shall immediately be suspended;

(B) within five Working Days of receipt of the Venue Operator Agreement Potential Default Notice the Buyer and the Council shall meet to discuss the issue outlined in the Venue Operator Agreement Potential Default Notice and how the parties intend to deal with such issue (including a renegotiation or amendment of the Venue Operator Agreement or the negotiation of an alternative Venue Operator Agreement) and to the extent the Buyer is required and able having regard to the Council's Procurement Obligations to renegotiate the Venue Operator Agreement or negotiate an alternative Venue Operator Agreement the provisions of clause 12.9.2 shall apply and any costs borne in settling terms or any financial inducement to be paid to the Venue Operator will be for the account of the Buyer (and not included in the Qualifying Expenditure) to the extent the Buyer's default under this Agreement has resulted in the service of the Venue Operator Agreement Potential Default Notice; and

(C) immediately following approval by the Venue Operator of the terms of any variation of the Venue Operator Agreement (or replacement Venue Operator Agreement) the Buyer shall provide a draft supplemental or replacement agreement or deed of variation for the Council's prior approval and once approved by the Council (in writing) the Buyer shall seek to exchange such variation to the Venue Operator Agreement or settle an alternative Venue Operator Agreement and the Council shall promptly enter into such variation or replacement agreement, immediately following which the Council shall then serve a Condition Satisfaction Notice to confirm satisfaction of the Venue Operator Agreement Condition and the Buyer's right to make an election under clause 12.12.1 and 12.13.1 shall no longer be suspended.

12.9 **Central Funding Condition**

12.9.1 The Buyer shall use reasonable endeavours to satisfy the Central Funding Condition in a timely manner and in any event by no later than the Sixth Condition Date.

12.9.2 The Buyer shall immediately notify the Council of any matter it becomes aware of which is likely to have a material impact on the satisfaction of the Central Funding Condition. The Buyer will keep the Council regularly informed as to whether or not the Buyer intends to satisfy or waive the Central Funding Condition.

12.10 **Central Viability Condition**

12.10.1 The Buyer shall use reasonable endeavours to satisfy the Central Viability Condition before the Final Longstop Date or, if relevant, the Ultimate Longstop Date.

12.10.2 The Buyer shall within 1 month after each of the Viability Dates meet with the Council’s Development Advisers to update the progress of the Buyer's satisfaction of the Central Viability Condition and provide to the Council’s Development Advisers such reasonable and pertinent information regarding the satisfaction of the Central Viability Condition that the Council’s Development Advisers shall reasonably request provided that the Buyer shall not be required to provide to the Council’s Development Advisers any information which would place the Buyer in breach of any contractual obligations of confidentiality it has to any third party under a binding confidentiality agreement and with the Council procuring that the Council's Development Advisers enter into a confidentiality agreement with the Buyer and the Council on the terms agreed by the Buyer and the Council prior to any meeting between the Council's Development Advisers and the Buyer under this clause 12.10.2 with all parties seeking to comply with this obligation prior to satisfaction of the First Conditions.

12.10.3 If, following an update on the Buyer's satisfaction of the Central Viability Condition provided by the Buyer under clause 12.10.2 or at any other time during the course of this Agreement, in the reasonable opinion of the Buyer there is or there is no reasonable prospect of the Central Viability Condition being satisfied prior to the Final Longstop Date or, if relevant, the Ultimate Longstop Date then the Buyer shall within one (1) month of the date of such update on the satisfaction of the Central Viability Condition provided by the Buyer under clause 12.10.2 or following the Buyer's determination that there is no such reasonable prospect serve notice in writing to such effect on the Council and, then either Party shall be entitled, within five Working Days of such notice being served by the Buyer, to immediately terminate this Agreement on written notice to the other Party.

12.10.4 If the Buyer fails to respond within 20 Working Days to a written request by the Council as to whether or not there is a reasonable prospect of the Central Viability Condition being satisfied (or waived) by the Final Long Stop Date, then the Council shall be entitled to send a further notice in compliance with the terms of clause 40 to the Buyer requesting confirmation as to whether or not there is a reasonable prospect of the Central Viability Condition being satisfied (or waived) by the Final Long Stop Date or, if relevant, the Ultimate Longstop Date, and if and only if the Buyer does not respond to such subsequent notice within a reasonable time in the circumstances, the Council may immediately terminate this Agreement on written notice to the Buyer but not after the Buyer responds to such notice confirming that there is a reasonable prospect of the Central Viability Condition being satisfied (or waived) by the Final Long Stop Date.

12.10.5 The Buyer shall immediately in writing notify the Council of any matter it becomes aware of which is likely to have a materially adverse impact on the satisfaction of the Central Viability Condition.

12.10.6 For the avoidance of doubt nothing in this clause 12.10 shall prevent the Buyer from achieving, or imply that it will not achieve a return equal to or in excess of the Buyer's Viability Threshold.

12.10.7 In the event that:

(A) the Buyer serves notice pursuant to clause 13.6.2 or 13.6.3 that the Planning Permission is subject to the Waterfront Central Onerous Condition (b);

(B) the Central Viability Condition has not been satisfied by the Final Longstop Date or, if relevant, the Ultimate Longstop Date;

(C) the Buyer has served a notice to terminate this Agreement pursuant to clause 12.10.3; or

(D) this Agreement is determined pursuant to clause 12.20.2 on the basis that there is no reasonable prospect of satisfying the Central Viability Condition before the Final Longstop Date or, if relevant, the Ultimate Longstop Date,

then the Buyer shall provide to the Council (on an open and transparent basis) reasonable evidence of the financial viability appraisal and an explanation of the Buyer's rationale as to why in its reasonable opinion the Central Viability Condition has no reasonable prospect of satisfaction before the Final Longstop Date or, if relevant, the Ultimate Longstop Date (but without prejudice to the foregoing termination right in such event).

12.11 **Eastern Funding Condition**

12.11.1 The Council shall use all reasonable (but commercially prudent) endeavours to satisfy the Eastern Funding Condition including, but not limited to (subject to clause 12.11.7), using all reasonable (but commercially prudent) endeavours to

achieve the optimum funding from each of the Anticipated Funding Sources including, for the avoidance of doubt, following any Buyer's TIF Election or any Investment Gap Election;

12.11.2 The Council shall provide an up-to-date and complete Eastern Funding Statement to the Buyer on each Eastern Funding Condition Reporting Date and immediately notify the Buyer of any matter it becomes aware of which is likely to have a material impact on the satisfaction of the Eastern Funding Condition and the Parties shall review the Anticipated Funding Sources and seek additional viable and committed sources of funding acceptable to the Council (acting reasonably) for the Waterfront East Development Costs with a view to satisfying the Eastern Funding Condition as soon as reasonably practicable.

12.11.3 The Council shall provide to the Buyer an Eastern Funding Statement:

(A) on each Eastern Funding Condition Reporting Date; and

(B) if, following the last of the Eastern Funding Condition Reporting Dates, there are any material changes that result in the previous Eastern Funding Statement no longer being materially accurate (including the receipt or availability to the Council of additional funding towards the Waterfront East Development), within ten Working Days of the Council becoming aware of such material change.

12.11.4 If at any time following the satisfaction (or waiver) of the last of the Sixth Conditions to be satisfied (or waived):

(A) the:

(1) Buyer makes a Buyer's TIF Election to satisfy any TIF Shortfall; and

(2) most recent Eastern Funding Statement received by the Buyer prior to such election provides that there is no Investment Gap; or

(B) the Buyer makes an Investment Gap Election and the most recent Eastern Funding Statement received by the Buyer prior to such election provides that there is no TIF Shortfall; or

(C) the Buyer:

(1) makes a Buyer's TIF Election; and

(2) makes an Investment Gap Election,

in each case, in accordance with clause 12.12.1 and/or clause 12.13.1 (as applicable), then the Eastern Funding Condition shall be deemed to be satisfied and:

(D) for the purpose of clause 4.2, the Council shall be deemed to have served a Condition Satisfaction Notice in respect of the Eastern Funding Condition on the Buyer, and

(E) subject to clause 12.11.5, the Buyer's total liability shall match the sums outlined in the most recent Eastern Funding Statement received by the Buyer from the Council prior to the Buyer's TIF Election and/or Investment Gap Election (as applicable) or such other amounts agreed by the Parties (and the Buyer shall be entitled to exercise its discretion in making any election) and recorded in a written memorandum prior to such election becoming effective.

12.11.5 If at any time following a Buyer's TIF Election and/or Investment Gap Election the Council receives or is entitled to receive further funding as Anticipated Funding Sources towards the Waterfront East Development (having been awarded it or contracted to receive it in the case of the Venue Operator Agreement and the Council having good and proper claim to demand the payment of such amounts), either:

(A) if the Buyer is yet to make all payments required under either clause 12.12.2, 12.12.3 and 12.13.2 (as applicable), the Buyer's liability under those clauses shall be reduced (on a pound for pound basis) by the amount of the additional net funding the Council has received or is entitled to receive (having been awarded it and the Council having a good and proper claim to demand the payment of such amounts) as funding since the Buyer's TIF Election and/or Investment Gap Election (as applicable);

(B) if the Buyer has made all payments required under either clause 12.12.2, 12.12.3 and 12.13.2 (as applicable) or the amount remaining to be paid by the Buyer under those clauses is less than the amount of additional funding the Council has obtained, the Council shall pay to the Buyer within ten Working Days of demand an amount equal (on a pound for pound basis) to the net amount the Council has received or is entitled to receive (having been awarded it and the Council having good and proper claim to demand the payment of such amounts) as funding since the Buyer's TIF Election and/or Investment Gap Election (as applicable) provided that the Council's liability under this clause 12.11.5(B) shall not be greater than the amount the Buyer has paid to the Council under clauses 12.12.2, 12.12.3 and 12.13.2; and

(C) in assessing whether the Council receives or is entitled to receive additional Anticipated Funding Sources and whether a reduction or repayment is to be made to the Buyer under clauses 12.11.5(A) or 12.11.5(B) the Council is entitled to take account of (i) any Anticipated Funding Sources which are withdrawn or reduced; or (ii) where a claim for payment or funding has been made by the Council and dismissed or refused by the payor/funder (the Council having used reasonable (but commercially prudent) endeavours to enforce its claim for payment or funding); or (iii) such proper costs incurred by the Council for the purposes of bringing any good and proper claim to demand payment and where this results in the Anticipated Funding Sources being lower than the sum outlined in the most recent Eastern Funding Statement provided by the Council to the Buyer prior to the Buyer's TIF Election and/or Investment Gap Election, the Parties will consider whether an Investment Gap has arisen after the Buyer's relevant election and if the amount can be set off against sums payable (or allowed) by the Council under clauses 12.11.5(A) or 12.11.5(B).

12.11.6 Subject to clause 12.11.7, in addition to the Council's obligations under clause 12.11.1 to achieve the optimum funding from each of the Anticipated Funding Sources, the Council undertakes that, where any Anticipated Funding Sources are available to the Council (including the TIF Borrowing, whether it be with or without the assistance of the Buyer in accordance with clause 12.12) to use all reasonable endeavours to ensure that such funds are allocated toward the commencement and completion of the Waterfront East Development.

12.11.7 The Council shall use the TIF Borrowing method only to the extent that the Waterfront East Total Funds (excluding the TIF Borrowing as part of Anticipated Funding Sources) are insufficient to meet the Waterfront East Development Costs so otherwise resulting in an Investment Gap.

12.11.8 If, at any time after the satisfaction of the last of the Sixth Conditions, the Council fails to provide to the Buyer the Eastern Funding Statement that the Council is required to provide under clause 12.11.2 and following service of a written notice on the Council's Project Monitor from the Buyer's Project Manager to provide it and the Council fails to do so within 15 Working Days of receipt of such written notice by the Council's Project Monitor clearly requesting the Eastern Funding Statement then (and only then will) the Eastern Funding Condition be deemed to be satisfied and for the purpose of clause 4.2, and the Council shall be deemed to

have served a Condition Satisfaction Notice in respect of the Eastern Funding Condition on the Buyer.

12.11.9 The Buyer may make a Buyer's TIF Election and/or Investment Gap Election in circumstances where there are Anticipated Funding Sources available in the future that would meet the TIF Shortfall or the Investment Gap (as applicable) but the Buyer wishes to make such election in order to immediately bring about the satisfaction of the Eastern Funding Condition and satisfy any TIF Shortfall or Investment Gap identified in the latest Eastern Funding Statement provided to the Buyer by the Council prior to such election by the Buyer.

12.11.10 The Buyer's obligation to commence payments to the Council in cleared funds under clauses 12.12.2, 12.12.3 and 12.13.2 are conditional only on:

(A) the Unconditional Date having occurred; and

(B) the Council Implementing the Waterfront East Development and at the time that the relevant payment is due continuing to progress the Waterfront East Development to completion in a timely manner.

12.11.11 Not earlier than ten Working Days prior to making a Buyer's TIF Election and/or an Investment Gap Election, the Buyer shall provide to the Council either:

(A) written confirmation that the Buyer is the owner of the Churchill Square Shopping Centre and that the Buyer is the recipient of all the rents from the occupational tenancies or income producing interests in the Churchill Square Shopping Centre and that the Churchill Square Shopping Centre is free of any mortgage, security, lien, charge or other financial encumbrance to secure any third party debt; or

(B) a dated letter addressed to the Council prepared and signed by the reputable independent auditors of the Buyer confirming that the Buyer has a Net Asset Value that meets the NAV Threshold that would apply at the time of the Buyer's TIF Election and/or Investment Gap Election and the Buyer has provided to the Council the Escrow Security in accordance with the Escrow Terms; or

(C) adequate alternative financial security which provides the Council with the long term security to cover the subsisting financial obligations of the Buyer under this Agreement during the Financial Security Period following the proposed Buyer's TIF Election and/or Investment Gap Election (as applicable) and the Buyer's obligations under Paragraph 2.1 of Part 1 of Schedule 1 in a form first approved by the Council and may include, at the election of the Buyer, a guarantor approved by the Council, the provision of a performance bond or bank guarantee from a UK listed bank on terms approved by the Council (and capable of being enforced in the UK by the Council) or such other security first approved by the Council,

and the Buyer shall not be entitled to make a Buyer's TIF Election and/or an Investment Gap Election unless and until the Buyer has satisfied the requirements of this clause 12.11.11.

12.12 **TIF Shortfall**

12.12.1 Subject to clauses 12.8.4 and 12.11.11, if the Buyer receives an Eastern Funding Statement from the Council in accordance with clause 12.11.3 that outlines that there is a TIF Shortfall and the Venue Operator Condition has been satisfied and there is no subsisting Venue Operator Potential Default Notice then, at any time prior to the Final Long Stop Date or, if relevant, the Ultimate Longstop Date, and only following the service of a Condition Satisfaction Notice in relation to all of the Central Conditions other than the Central Viability Condition, the Buyer may, at

the Buyer's absolute discretion, and by the provision of a written notice to the Council, do one of the following:

(A) elect to pay a sum equal to the aggregate amount of the TIF Shortfall by way of a lump sum on the date that the Council anticipated receiving the first instalment or tranche of funds under any TIF Borrowing as detailed in the most recent Eastern Funding Statement provided to the Buyer by the Council in accordance with clause 12.11.3; or

(B) elect to pay the TIF Shortfall to the Council by way of instalments profiled in accordance with the anticipated TIF Borrowing cashflow detailed in the most recent Eastern Funding Statement provided to the Buyer by the Council in accordance with clause 12.11.3; or

(C) elect to serve a Buyer's Completion Date Election Notice on the Council specifying the Buyer's Completion Date by which date the Buyer intends to practically complete those elements of the retail and commercial components of the Waterfront Central Development (as distinct from the Residential Units) required for the Council to secure the payment of the TIF Shortfall based on the key assumption that part of the Projected Total Rates Increase relating to the Total Central Site must be an actual receipt of Rates on and from the Buyer's Completion Date,

provided that if the relevant Eastern Funding Statement also provides that there is an Investment Gap, if the Buyer makes a Buyer's TIF Election under this clause 12.12.1, the Buyer must simultaneously with such TIF Election make an Investment Gap Election under clause 12.13.1.

12.12.2 Subject to clause 12.11.5 and 12.11.10, if the Buyer makes an election under either clause 12.12.1(A) or 12.12.1(B), it shall pay to the Council the TIF Shortfall in accordance with the profile of payments and on the specific dates detailed in the most recent Eastern Funding Statement provided to the Buyer by the Council prior to its election under either clause 12.12.1(A) or 12.12.1(B).

12.12.3 Subject to clauses 12.11.5 and 12.11.10, if the Buyer serves a Buyer's Completion Date Election Notice and does not practically complete those retail and commercial parts of the Waterfront Central Development so as to be available for occupation by the Buyer's Completion Date (and as such paying Rates) then the Buyer shall (in addition to any remaining payment obligations under clause 12.13.2) from (and including) the Buyer's Completion Date until (and including) the date of actual practical completion of the retail and commercial components of the Waterfront Central Development pay to the Council the Buyer's TIF Payment in the amount and at the times outlined in the most recent Eastern Funding Statement provided to the Buyer by the Council immediately prior to the date of service of the Buyer's Notice under clause 12.12.1(C).

12.12.4 Notwithstanding any election made by the Buyer under clause 12.12.1, the Parties agree that there is no obligation in this Agreement on the Buyer to carry out or complete the Waterfront Central Development.

12.12.5 Any non-payment of sums payable by the Buyer under this clause 12.12 to the Council on the due date as set out in the Eastern Funding Statement will attract interest at the Interest Rate on the amounts due (from and including the due date) until such amounts are received in cleared funds by the Council and the Council shall be entitled to deduct any unpaid sum from any amount due and payable by it to the Buyer and where no such sum is due and payable at such time it shall be entitled to make an on demand request for payment from the Buyer (or any guarantor, if applicable).

12.12.6 If the Buyer has provided to the Council the Escrow Security in accordance with the terms of this Agreement then, following any failure to pay the sums payable by the Buyer to the Council under this clause 12.12 on the due date as set out in

the most recent Eastern Funding Statement, the Council is entitled to serve on the Buyer a signed Escrow Release Direction for the outstanding amount due and payable to the Council.

12.12.7 Within five Working Days of receipt by the Buyer of an Escrow Release Direction from the Council in accordance with clause 12.12.7, the Buyer must sign the Escrow Release Direction and unconditionally and irrevocably deliver the fully signed Escrow Release Direction to the Council provided that if the amount outlined in the Escrow Release Direction is disputed by the Buyer, the Buyer may upon notification to the Council of the same, refer the matter to the Expert prior to the expiry of such five Working Day period and within five Working Days of determination by the Expert the Buyer shall at the determination of the Expert either:

(A) provide to the Council the fully signed Escrow Release Direction; or

(B) provide to the Council an Escrow Release Direction signed by the Buyer in the amount stipulated by the Expert,

unless the Expert determines that the Buyer shall not be required to make any payment in which case the Buyer shall not be required to provide an Escrow Release Direction to the Council. Where the Buyer does dispute an Escrow Release Direction received from the Council and part of the amount requested by the Council in the Escrow Release Direction is not in dispute then the Buyer shall, within 5 Working Days of notification to the Council that the amount outlined in the Escrow Release Direction is disputed by the Buyer, provide to the Council a signed Escrow Release Direction for the undisputed element of the amount outlined in the Escrow Release Direction received from the Council.

12.12.8 Following the valid termination of this Agreement by the Council under clause 30.1, on the dates upon which payments under this clause 12.12 would be due for payment by the Buyer had this Agreement not been terminated, the Council may serve an Escrow Release Direction signed unilaterally by the Council on the Escrow Agent requesting the payment of any valid and undisputed amounts that would be due and payable by the Buyer to the Council under this clause 10.12 if this Agreement had not been terminated by the Council and the Council shall serve a copy of such unilateral Escrow Release Direction on the Buyer on the same day as the Escrow Agent.

12.12.9 All sums remaining as Escrow Security on the date that the Buyer's liability to make any further payments under this clause 12.12 has come to an end on the expiry of the Financial Security Period (and once all outstanding sums are due and payable to the Council have been paid in cleared funds to the Council) and shall belong to the Buyer and be paid to the Buyer on such date and the Council shall provide an Escrow Release Direction signed by the Council to the Buyer in the amount of such funds within five Working Days of written request by the Buyer.

12.13 **Funding Top Up**

12.13.1 Subject to clause 12.11.11, if the Buyer receives an Eastern Funding Statement from the Council in accordance with clause 12.11.3 that provides that there is an Investment Gap and the Venue Operator Condition has been satisfied and there is no subsisting Venue Operator Potential Default Notice then at any time from the receipt of such Eastern Funding Statement until the Final Long Stop Date, the Buyer shall be entitled to elect by the provision of written notice to the Council to provide and pay the Funding Top Up, provided that, if the relevant Eastern Funding Statement from the Council also provides that there is a TIF Shortfall, if the Buyer makes an Investment Gap Election under this clause 12.13.1, the

Buyer must simultaneously with such election make a Buyer's TIF Election under clause 12.12.1.

12.13.2 Subject to clauses 12.11.5 and 12.11.10, if the Buyer makes an election under clause 12.13.1, it shall pay to the Council the Funding Top Up in accordance with the profile of payments and on the specific dates outlined in the most recent Eastern Funding Statement provided to the Buyer by the Council prior to its election under clause 12.13.1 with any non-payment of sums by the Buyer on the relevant due dates as set out in the Eastern Funding Statement attracting interest at the Interest Rate on the sums due (from and including the due date) until such amounts are received in cleared funds by the Council and the Council shall be entitled to deduct any unpaid sum from any amount due and payable by it to the Buyer and where no such sum is due and payable at such time it shall be entitled to make an on demand request for payment from the Buyer (or any guarantor, if applicable).

12.14 **Project Director Condition**

12.14.1 The Council shall, as soon as reasonably practicable and in any event prior to the First Condition Date, appoint the Council's Project Director and in doing so shall:

(A) obtain the approval of the Buyer in respect to the identity of the party to be appointed and to the job description relevant to the appointment of the Council's Project Director and shall take account of the Buyer's reasonable representations in relation thereto which shall include a representative of the Buyer's Project Director being included on the panel appointing the Council's Project Director; and

(B) appoint the Council's Project Director promptly after receiving the Buyer's approval to such appointment. Where the Buyer decides not to approve any such appointment then it must provide to the Council a detailed summary of the reasons for such decision (with sufficient detail to enable the Council to understand the basis of the Buyer's decision).

12.14.2 The Council shall as soon as reasonably practicable and in any event prior to the First Condition Date, appoint the Council's Procurement Officer and in doing so shall:

(A) obtain the approval of the Buyer in respect to the identity of the party to be appointed and to the job description relevant to the appointment of the Council's Procurement Officer and shall take account of the Buyer's reasonable representations in relation thereto; and

(B) appoint the Council's Procurement Officer promptly after receiving the Buyer's approval to such appointment. Where the Buyer decides not to approve any such appointment then it must provide to the Council a detailed summary of the reasons for such decision (with sufficient detail to enable the Council to understand the basis of the Buyer's decision).

12.14.3 The Buyer shall:

(A) as soon as reasonably practicable and in any event prior to the First Condition Date appoint the Buyer's Project Director and advise the Council in writing of the identity of the Buyer's Project Director within five Working Days of such appointment**;** and

(B) shall advise the Council in writing of the identity of the Buyer's Project Director as soon as reasonably practicable following any change in the identity of the Buyer's Project Director.

12.15 **Replacement of Officer or Director**

The Council shall promptly notify the Buyer if the party appointed as the Council's Procurement Officer or the Council's Project Director (as applicable) has vacated, or has notified the Council of their intention to vacate, their position following which the Council shall as soon as reasonably practicable appoint a replacement Council's Procurement Officer or Council's Project Director (as applicable). Similarly the Buyer shall notify the Council where the Buyer's Project Director and/or the VO Procurement Consultant has vacated, ceased to act or has notified the Buyer of its intention to vacate their respective position. The provisions of clauses 12.14.1(A) and 12.14.1(B) or 12.14.2(A) and 12.14.2(B), 12.14.3 and 12.18 (as applicable) shall apply to such replacement appointment.

12.16 **Central Title Condition**

12.16.1 The Buyer shall use reasonable endeavours to satisfy the Central Title Condition in a timely manner and in any event by no later than the Fourth Condition Date.

12.16.2 The Council shall:

(A) provide to the Buyer replies to relevant Commercial Property Standard Enquiries (CPSE) in respect of the Brighton Centre within a reasonable period of request by the Buyer (which shall in any event be no later than 20 Working Days); and

(B) reply in writing to any written requisition on the title to the Brighton Centre raised by the Buyer at any time prior to the satisfaction of the Central Title Condition and shall use reasonable endeavours to assist the Buyer in satisfaction of the Central Title Condition.

12.17 **BW Visioning Statement Condition**

The Council shall, as soon as reasonably practicable after the date of this Agreement and in any event within four (4) months of this Agreement, provide to the Buyer a first draft BW Visioning Statement and shall regularly consult with the Buyer in respect to the preparation of the BW Visioning Statement and shall take account of the Buyer's reasonable representations in respect to the BW Visioning Statement with a view to settling the BW Visioning Statement as soon as practicable following the date of this Agreement but in any event prior to the First Condition Date.

12.18 **VO Consultancy Team Condition**

The Buyer shall, as soon as reasonably practicable and in any event, in respect of the initial appointment of the VO Consultancy Team, prior to the First Condition Date, appoint the VO Consultancy Team and in doing so shall:

12.18.1 obtain the approval of the Council in respect to the identity of any party to be appointed as a member of the VO Consultancy Team and to the relevant Appointment under which such member of the VO Consultancy Team shall be appointed and shall take account of the Buyer's reasonable representations in relation thereto provided that the Buyer shall not require the Council's approval to the appointment of and the identity of the Buyer's Project Director; and

12.18.2 appoint all members of the VO Consultancy Team promptly after receiving the Council's approval to such appointment (including the terms of such Appointment) provided that the VO Procurement Consultant shall be appointed as a Long Form Appointment.

12.19 **Eastern Funding Statement Condition**

The Council shall, as soon as reasonably practicable after the date of this Agreement and in any event within three (3) months of the date of this Agreement, provide to the Buyer a first draft of the proposed form of the Eastern Funding Statement to be provided by the Council to the Buyer on each Eastern Funding Condition Reporting Date and the Buyer

and the Council shall regularly consult with each other with respect to agreeing the form of the Eastern Funding Statement as soon as practicable following the date of this Agreement but in any event prior to the First Condition Date.

12.20 **Review of Conditions**

12.20.1 At the reasonable request of either Party (which may not be made more frequently than once in any six (6) month period save in the period that is two months prior to a Condition Date where each party may make one additional request), the Parties are to each prepare a report on the current status of any or all of the Conditions Precedent as have not at the relevant time been satisfied or waived for which that Party has responsibility to satisfy, which report will confirm that either the Buyer or the Council (respectively) is not aware of any matter which is likely to have a material impact on the satisfaction of any or all of the Conditions Precedent.

12.20.2 The Parties shall update and provide such report and confirmation as soon as reasonably practicable and in any event within ten Working Days of each request and if in the reasonable opinion of the Parties there is no reasonable prospect of any Condition Precedent being satisfied in accordance with clause 4.9 prior to the relevant Condition Date by which such Condition Precedent must have occurred then the relevant Party must inform the other promptly and in any event respond where either the Council or the Buyer serves a notice in writing to such effect on the other party. The Parties shall thereafter use all reasonable endeavours to agree whether or not there is a reasonable prospect of satisfying the relevant Condition Precedent prior to the relevant Condition Date and if the Council and the Buyer shall fail to agree such matter within ten Working Days after the date of service of the notice, the matter shall be referred by either Party to be determined by the Expert in accordance with clause 39 provided that the Parties agree that the Council, and for the avoidance of doubt, the Council's Development Advisers shall have no right under this clause 12.20.2 to challenge in any way the Buyer's determination of whether there is a reasonable prospect that the Central Viability Condition will be satisfied by the relevant Condition Date and the Buyer's determination as outlined in the relevant report shall be final. The Buyer shall provide any such reports and confirmations relating to the Central Viability Condition under this clause 12.20.2:

(A) to the Council; and

(B) the Council's Development Advisers subject to the Council's Development Advisers having previously entered into a confidentiality agreement with the Council and the Buyer.

12.20.3 If it is agreed or determined (by reference to an Expert) in accordance with this clause 12.19 (or in the case of the Central Viability Condition, it is stated in a report provided by the Buyer) to the Council and copied to the Council's Development Advisers under clause 12.10.2 that there is no reasonable prospect of any Condition Precedent being satisfied prior to the specified Condition Date by which such Condition Precedent must have been satisfied then either the Council or the Buyer shall be entitled to serve not less than one (1) months' notice in writing on the other to terminate this Agreement and on the expiry of such notice this Agreement shall forthwith cease and determine unless the relevant condition precedent has been satisfied or waived prior to the expiry of such notice period but without prejudice to any antecedent right or entitlement of either party in respect of any breach by the other of the terms of this Agreement or any entitlement to reimbursement or payment which has arisen.

12.21 **Permitted Amendments**

Following the agreement and approval by the Council of each of the (i) Project Base Documentation; (ii) the Eastern Development Strategy; (iii) the Central Development Strategy; and (iv) the Construction Strategy in accordance with the relevant clause of this Agreement (each, an "**Agreed Document**") the Buyer shall not vary any part of the Agreed Documents other than by way of a Permitted Amendment without the prior written approval of the Council (or the Council's Project Monitor).

13. **PLANNING APPLICATIONS**

13.1 Without prejudice to the generality of the obligation contained in clause 12.1 the Buyer undertakes with the Council:

13.1.1 simultaneously to submit to the Authority in good time the Applications in relation to each of the Waterfront Central Development and the Waterfront East Development (having submitted the form of each Application and copies of the relevant information to the Council in advance for the Council's approval and paid due regard to the Council's reasonable representations in relation thereto and adhering to the requirements and stipulations contained in the respective Development Strategy) provided that it is agreed by the Parties that the Buyer may not submit the Applications to the Authority prior to agreement of the Venue Operator Agreement;

13.1.2 to pursue each Application with due diligence and in a co-ordinated and integrated manner with the intention of progressing the Applications as an integrated regeneration scheme in accordance with the terms of any planning performance agreement to be entered into with the Authority and to consult regularly with the Council as land owner in such regard and to take due account of its reasonable representations which may include its considered view on comments received from any prospective Venue Operator during the Buyer's VO Soft Market Testing or from the conclusions set out in the VO Procurement Strategy Report;

13.1.3 to pursue and conduct the Applications with due diligence and to consult with the Authority and highways authority fully on all aspects of the Applications (including complying with all pre application consultation policy guidance) and respond reasonably quickly in connection with requests for information plans and other supporting documentation and in consultation with the Council as land owner submit amendments and further information and applications as would normally be made by a reasonably prudent development manager taking into account all of the circumstances relevant to the Waterfront Central Site or the Waterfront East Site as applicable;

13.1.4 that the Buyer will not make any amendment to the Applications or withdraw them without having consulted with the Council (as landowner) and paid due regard to its reasonable representations in relation thereto with regards to the Application for the Waterfront Central Development and having obtained the approval of the Council in relation to the Waterfront East Development;

13.1.5 to keep the Council as landowner and the Council's Solicitors fully and regularly informed as to the preparation, presentation and progress of the Applications including any relevant negotiations or discussions with Counsel, with the Authority (and the relevant Authority) or the members thereof or other relevant persons relating thereto and provision of all correspondence, notifications, instructions to and advice of Counsel, evidence of expert and other witnesses and the date of any public inquiries and to have due regard to any comments and reasonable representations of the Council and the Council's Solicitors in connection therewith and the conduct of any Proceedings;

13.1.6 to enable the Council's Solicitors to review and comment on any instructions to Counsel and to permit the Council and the Council's Solicitors to attend where

practicable all meetings convened by or with the Buyer by or with Counsel or by or with the Authority, the members thereof or other relevant persons in connection with or arising from the Applications and not unreasonably to withhold or delay permission to the Council and the Council's Solicitors to participate in all such meetings and discussions;

13.1.7 forthwith upon submission of the Application(s) to the Authority or any appeal to the Secretary of State or upon receipt of any decision letter, notice or order from the Authority, the Secretary of State or the Court to forward a copy of the same to the Council's Solicitors;

13.2 Where an Application is refused the Buyer may but shall not be obliged to lodge notice of appeal against such refusal with the Secretary of State **PROVIDED THAT** if the Buyer does lodge any appeal the Buyer undertakes with the Council to pursue and conduct any appeal lodged by the Buyer pursuant to the foregoing provisions with all due diligence and in a good and efficient manner to its judgment or until it is dismissed and to consult with the Council (and pay regard to its comments and reasonable representations) as land owner in the preparation and presentation of any appeal and to have due regard to any reasonable representations of the Council in connection therewith;

13.3 Where there is a Call-In of an Application the Buyer may but shall not be obliged to prosecute the Applications at an inquiry into the Call-In of the Applications **PROVIDED THAT** if the Buyer does prosecute the Application at such an inquiry the Buyer undertakes with the Council to do so with all due diligence and in a good and efficient manner to its judgment or until it is dismissed and to consult with the Council (and pay regard to its comments and reasonable representations) as landowner in the preparation and presentation of documents and evidence at the said inquiry and to have due regard to any reasonable representations and comments of the Council in connection therewith.

13.4 The Buyer further undertakes with the Council (as land owner) to use reasonable endeavours to negotiate any Planning Agreement as expeditiously as reasonably practicable and to supply a copy of the draft Planning Agreements to the Council or the Council's Solicitors and to pay due regard to the reasonable representations and comments in relation thereto made by or on behalf of the Council and not agreeing any Planning Agreements with the Authority without taking into account the Councils comments or drafting.

13.5 The Council (solely in its capacity as landowner and without prejudice to its statutory obligations as Authority or highways authority or any other capacity) hereby covenants with the Buyer:

13.5.1 not to object or authorise or permit any objection to the Application(s) or do anything which might reasonably be expected to prejudice the grant of Satisfactory Planning Permission;

13.5.2 to give reasonable assistance to the Buyer in seeking to obtain the grant of Satisfactory Planning Permission;

13.5.3 in the event that the Authority resolves to grant Planning Permission or the Secretary of State indicates that Planning Permission would be granted as the case may be if a Planning Agreement were to be entered into or in the event that a resolution to grant Planning Permission is made subject to a requirement that a Planning Agreement be entered into (subject to the Buyer being satisfied or being deemed to have accepted (pursuant to clause 13.6) that the conditions to be contained in the Planning Agreement do not constitute Onerous Conditions) to enter into the Planning Agreement if required by the Buyer but at the Buyer's cost **PROVIDED THAT** the Council is not to be obliged to enter into any Planning Agreement unless the Council (acting reasonably) is satisfied that:

(A) the Planning Agreement will be conditional upon the implementation of the Planning Permission to which it relates and it will be incapable of coming into effect prior to such implementation (other than in relation to the payment of costs of the Authority where they are payable by the

Buyer or the Council is satisfied that adequate security for them has been made by the Buyer);

(B) whether through this Agreement or otherwise the Council will be indemnified (and kept indemnified) by the Buyer against all obligations and liabilities undertaken by the Council as landowner in the Planning Agreement in relation to the Waterfront Central Development;

(C) any liability on the part of the Council (as landowner) will be automatically released on a disposal of its interest in the applicable part of the Council's Present Land; and

(D) the obligations in any Planning Agreement shall not be binding on any derivative residential leasehold interests; and

13.5.4 to enter into any Infrastructure Agreements if required by the Buyer subject always to the proviso to clause 13.5.3 (mutatis mutandis).

13.6 **Onerous Conditions**

13.6.1 In the event that the Authority, Planning Inspector or any other relevant body resolves or indicates an intention to issue a Planning Permission or seeks a Planning Agreement in connection therewith and informs the Buyer of the conditions to be attached to or contained in such permission or agreement, the Buyer shall promptly provide the Council with a full list of Waterfront East Onerous Conditions to enable the Parties within 15 Working Day of the list being supplied to jointly determine whether or not any of the proposed conditions is a Waterfront East Onerous Condition and if so and once such list of Waterfront East Onerous Conditions is approved by the Parties the Buyer shall use reasonable endeavours to negotiate a solution with the Authority. The Buyer agrees and accepts that any revision to a solution or variation to a stipulation by the Council once provided to the Buyer under this clause as it relates to a Waterfront East Onerous Condition must first be approved (in writing) by the Council before being proposed and settled with the Authority.

13.6.2 Subject to clause 13.6.1 in the event that the Authority:

(A) issues a Planning Permission (or resolves to grant the same) which the Buyer considers to be or will be subject to Onerous Conditions; or

(B) the form of Planning Agreement required by the Authority contains provisions which the Buyer considers to be Onerous Conditions,

then the Buyer will as soon as reasonably possible and in any event within four weeks of the issuing of such Planning Permission (or the resolution to grant if appropriate) or the final agreement of the form of the Planning Agreement (time to be of the essence of this clause 13.6.2) so notify the Council in writing (the **"Buyer's Planning Condition Notice"**) including in the Buyer's Planning Condition Notice a statement of the reasons for such view **PROVIDED THAT** the service of the Buyer's Planning Condition Notice shall be without prejudice to the Buyer's continued obligation pursuant to clause 13.6.1 and if the Buyer fails to serve the Buyer's Planning Condition Notice upon the Council within the specified four week period the Buyer is deemed at the expiry of such period to have accepted the said permission or approval as not containing any Onerous Conditions with the provisions of clause 13.6.6 still applying in relation to any Waterfront East Onerous Conditions.

13.6.3 In the event that:

(A) the First Secretary of State grants a Planning Permission following a Call In or on an appeal against a refusal by the Authority of the Applications under Section 78 of the 1990 Act; or

(B) as a result of Proceedings a Planning Permission is upheld or confirmed,

and the Buyer considers such Planning Permission to be subject to Onerous Conditions which were not previously imposed on a previous Planning Permission decided by the Authority the same procedure as that set out in clause 13.6.2 will be followed with regard to the said Onerous Conditions.

13.6.4 If any notice is served pursuant to clause 13.6.2 or 13.6.3 in relation to a Planning Permission which relates to the Waterfront Central Development and contains Waterfront Central Onerous Conditions only then the Buyer shall provide the Council with an opportunity on ten Working Days' notice to make representations to the Buyer with regards to the respective steps to be taken and the Buyer shall pay due regard to such representations.

13.6.5 The Buyer and the Council agree that where the Development Strategy provides for any specific matter to be included in the Waterfront Central Development or Waterfront East Development respectively which the Parties have listed as being an acceptable Onerous Condition, then that specific matter shall be deemed approved by the Parties and shall not be treated as an Onerous Condition.

13.6.6 If any notice is served pursuant to clause 13.6.2 or 13.6.3 in relation to a Planning Permission which relates to the Waterfront East Development then the question of whether the Planning Permission in relation to the Waterfront East Development constitutes a Satisfactory Planning Permission and is free of Waterfront East Onerous Conditions shall be agreed between the Council and the Buyer but if after a period of 20 Working Days no agreement can be reached or the Council fails to accept that a Satisfactory Planning Permission has been issued then the matter can be referred to the Expert (for determination) in accordance with clause 39.

13.6.7 The Council shall not be deemed to have given approval (in accordance with clause 1.2.7) in relation to approval of the Satisfactory Planning Permission under clause 13.6.6 in the event of a failure to respond within 20 Working Days.

14. LICENCE TO ENTER

For the purpose of performing the obligations on the part of the Buyer contained in this Agreement the Council grants the Buyer (and those authorised by the Buyer) with effect from the date of this Agreement a licence (on a non-exclusive basis) to enter onto and upon the Brighton Centre and the Waterfront East Site in order to perform the obligations on the part of the Buyer contained in this Agreement until such time as this Agreement is determined or, in respect of the Waterfront East Site, if earlier it ceases to perform the Waterfront East Pre-Construction Services following a Waterfront East Pre-Construction Services Delivery Failure when the terms of the licence can be modified by the Council having regard to the Buyer's specific role (if any). Access by the Buyer (and those authorised by the Buyer) shall be at their sole risk and liability and the Buyer shall incept and maintain public liability insurance cover from which it will indemnify and keep the Council indemnified from any claim liability or risk suffered or incurred by the Council as a result of the Buyer exercising such rights.

15. BUYER'S COVENANTS

The Buyer hereby covenants with the Council in relation to the Waterfront East Development:

15.1 Waterfront East Solicitors

to procure that any reports prepared by the Waterfront East Development Solicitors in relation to the Waterfront East Development are addressed to the Council so that the Council may have reliance on such reports.

15.2 **Construction Strategy**

to work in collaboration with the Council (and the Council's Project Monitor) to put in place appropriate management and consultation structures and strategies in full compliance with the Council's Procurement Obligations in relation to:

15.2.1 the procurement of and entering into of the Long Form Appointments for the Waterfront East Development in accordance with the terms agreed by the Buyer and approved by the Council in the Eastern Professional Team Appointment Report and as otherwise set out in this clause 15; and

15.2.2 the procurement of the Building Contractor (and therefore Building Contract) for the Waterfront East Development as set out in this clause 15,

in relation to which the Buyer shall have due regard to the reasonable representations of the Council, and:

15.2.3 shall prepare a draft Construction Strategy and shall submit the same to the Council for approval within three (3) months of a resolution by the Authority to grant a planning permission in respect to the Waterfront East Development in satisfaction of the Eastern Planning Condition where the Council shall either approve the draft Construction Strategy or shall provide the Buyer with comments on the draft Construction Strategy, following which the Buyer shall revise the draft Construction Strategy and resubmit it to the Council for approval. This process shall be repeated until the Council approves the draft Construction Strategy and it shall then be the Construction Strategy; and

15.2.4 following approval of the Construction Strategy, shall perform the obligations under this clause 15 in accordance with it.

15.3 **Tendering**

15.3.1 to conduct (in the case of the Building Contractor jointly with and on behalf the Council) a procurement process in compliance with clause 15.2 for the engagement of the Building Contractor and the Consultants in accordance with the Eastern Professional Team Appointment Report and Construction Strategy (as applicable). Any Building Contractor or Consultant to be engaged for the Waterfront East Development shall be subject to the Council's prior approval and the terms of any Building Contract or Appointment (including the Deed of Warranty in favour of the Council) shall also be subject to the Council's prior approval provided that, subject to clause 15.7.2, where the Council has previously approved (in writing) the identity of any Building Contractor or Consultant to be appointed during the process of approval of the Eastern Professional Team Procurement Report or the Construction Strategy or approved any terms of any relevant Appointment the Buyer shall not be required to obtain the Council's further approval to such matter;

15.3.2 to provide to the Council in a prompt and timely manner such information and documents as the Council may reasonably require to satisfy itself that the provisions of clauses 15.3, 15.4 and 15.5 have been complied with in the case of the appointment of the Building Contractor and any Consultant to confirm to the Council in writing that the requirements of the Eastern Professional Team Appointment Report have been complied with and the Council shall be entitled to verify that position with the Buyer based on its collated documents;

15.3.3 to invite the Council to attend all meetings (and permit it to attend) where the tenders are opened with such meetings to be held in Brighton; and

15.3.4 to supply to the Council in a prompt and timely manner with copies of all tender reports and minutes of the meetings relating to the appointment of the Building Contractor and the Consultants.

15.4 **Appointments**

15.4.1 Once the identity of any Consultant, and the terms of its proposed Appointment, are agreed and approved by the Council, the Buyer shall as soon as reasonably practicable appoint the Consultants on those approved terms which shall in all cases expressly include the following:

(A) an acknowledgement that the Consultants shall, in the performance of their respective obligations under the Appointments ensure that the Buyer is not at any time put in breach of its obligations which are owed to the Council under this Agreement and that the Council will be relying on the proper performance by the Consultants of their respective obligations under the Appointments and is likely to suffer loss in the event of breach of such obligations;

(B) an obligation to deliver deeds of collateral warranty or third party rights in accordance with clause 15.6;

(C) in the case of the Appointments an obligation that the Consultants maintain professional indemnity insurance for so long as they have liability under the Appointments with a reputable insurer for not less than £10,000,000 or for such amount as the Buyer and Council approve and the Consultants shall provide documentary evidence on request to demonstrate that such insurances have been and are being maintained properly; and

(D) an obligation on the relevant Consultant to attend all project meetings convened by the Buyer in accordance with clause 15.8 and to meet such reporting requirements as allow the Buyer to meet its reporting obligations in clause 15.8.

(E) an obligation on the relevant Consultant to notify the Project Manager of any changes or revisions to its professional indemnity insurance which the Buyer will monitor on an annual basis.

15.4.2 Following the appointment of the VO Procurement Consultant, the Buyer will procure that the VO Procurement Consultant promptly sends a copy of all correspondence as between itself and the Buyer to the Council's Procurement Team.

15.4.3 The Buyer shall notify the Council as soon as reasonably practicable upon becoming aware of any material breach by any Consultant of the terms of the relevant Appointment notifying it of the nature of the breach and the steps to be undertaken to promptly remedy such breach.

15.4.4 The Buyer shall copy all correspondence and communications between the Buyer and the Quantity Surveyors in relation to the procurement of the Building Contractor to the Council.

15.5 **Compliance and retainer**

The Buyer:

15.5.1 shall not without the Council's prior approval:

(A) vary or agree to any variation of any Appointment;

(B) waive, vary or allow any estoppel against enforcing the terms of any Appointment;

(C) do anything which would entitle any Consultant to treat any Appointment as terminated;

(D) terminate any Appointment except for good and proportionate cause but as first approved or proposed by the Council and immediately upon any

termination appoint or procure the appointment of a replacement in accordance with this clause 15; or

(E) assign, novate or otherwise transfer any Appointment (save to the extent any novation of an Appointment is required pursuant to the terms of this Agreement) or the benefit thereof; and

15.5.2 shall give effect to any reasonable direction given by the Council to the Buyer for remedying any breach of obligations under any Appointment, including the termination of any Appointments.

15.6 **Third Party Rights and Deeds of Warranty**

15.6.1 (Subject at all times to clause 15.6.2) the Buyer shall procure Third Party Rights or (as the case may be) the execution and delivery to the Council of Deeds of Warranty from each Consultant as soon as reasonably practicable following any Appointment.

15.6.2 The form and content of the Third Party Rights or (as the case may be) the Deeds of Warranty shall be subject to the prior approval of the Council.

15.7 **Building Contract**

15.7.1 In relation to the Building Contract to obtain the Council's approval to the proposed identity of the Building Contractor and the form and content of the Building Contract together with any revisions or amendments to it with any such arrangement being in full compliance with clause 15.3.

15.7.2 Subject to clause 15.7.3, if at any time following the date that is three months following the satisfaction of the Eastern Building Contract Condition but prior to and excluding the Unconditional Date, the Council serves on the Buyer a Building Contractor Covenant Default Notice:

(A) subject to clause 15.7.2(B), on and from the date of such Building Contractor Covenant Default Notice the Eastern Building Contract Condition shall no longer be considered to have been satisfied (and any Condition Satisfaction Notice for that Condition treated as void) and the Parties agree that:

(1) the Eastern Building Contract Condition shall immediately become a Seventh Condition provided that the Eastern Building Contractor Condition must be satisfied or waived prior to or at the same time as the satisfaction by the Buyer of the Central Funding Condition and the Central Viability Condition and any Investment Gap Election by the Buyer or any election by the Buyer under clauses 12.12.1(A), 12.12.1(B) or 12.12.1(C); and

(2) in respect to the subsequent satisfaction of the Eastern Building Contract Condition, the terms of clause 15.3 shall again apply to the procurement of the Building Contractor and the terms of the Building Contract; and

(B) within five Working Days of receipt of the Building Contractor Covenant Default Notice the Buyer and the Council shall meet to discuss the issue outlined in the Building Contractor Covenant Default Notice and how the parties intend to deal with such an issue (including whether the Council requires additional security under the Building Contract or the Building Contractor to be replaced) provided that the Parties agree that the Buyer shall be under no more onerous obligations in respect to the procurement of the Building Contractor and the terms of the Building Contract than the obligations contained within the Eastern Professional Team Appointment Report**.**

15.7.3 The Parties agree that:

(A) the Council shall not be entitled to serve a Building Contractor Covenant Default Notice within the period of three months' from and including any date of satisfaction of the Eastern Building Contract Condition including any subsequent satisfaction of the Eastern Building Contract Condition under clause 15.7.2(A)(1); and

(B) nothing in this clause 15.7 shall prevent the Council from waiving the Eastern Building Contractor Condition whereupon the provisions contained in clauses 15.7.1 and 15.7.2 shall no longer apply.

15.8 **Brighton Waterfront Steering Group, Project Meetings, Design Team Meetings and Reporting**

15.8.1 **Brighton Waterfront Steering Group**

(A) In accordance with the Brighton Waterfront Steering Group terms of reference agreed under the Project Base Documentation the Buyer shall arrange and the Council and the Buyer shall hold meetings of the Brighton Waterfront Steering Group at intervals of not less frequently than once every two months (the location of which shall alternate between London and Brighton and to which the parties shall invite others as may be reasonably necessary), to review all matters relating to the Waterfront East Development and the Waterfront Central Development including (and without limitation) progress on satisfaction of the Conditions Precedent, strategic issues, the programmes for both the Waterfront Central Development and the Waterfront East Development, the Brighton Waterfront Financial Model, viability and the progress of the Buyer's satisfaction of the Central Viability Condition, procurement compliance, dealings with third parties and phasing.

(B) The terms of reference for the Brighton Waterfront Steering Group shall be reviewed and agreed by the Parties annually (or such longer period as the Parties may from time to time agree).

15.8.2 **Project Meetings, Design Team Meetings and Reporting**

The Buyer shall:

(A) at intervals of not less than fortnightly, hold and chair meetings of the Design Team (with the Buyer ensuring the Council's Project Monitor and representatives of the Council (who shall be nominated by the Council) are invited to attend) at which meeting Design-related matters together with any other issues listed on a pre-approved agenda shall be covered and the Buyer shall ensure that the Council's Project Monitor and Council's representative are provided not less than five working days' notice of such meetings (including the venue thereof);

(B) at intervals of not less than monthly, hold and chair a project meeting to discuss the progress of the satisfaction of the Conditions Precedent which shall be attended by any Consultants (that have been appointed at the date of the relevant meeting) and are, in the reasonable opinion of the Buyer, required to attend such meeting based on the matters to be covered in the relevant meeting, the Council's Project Monitor and representatives of the Council (who shall be nominated by the Council) and the Buyer shall ensure that the Council and the Council's representative are provided not less than five working days' notice of such meetings (including the venue thereof);

(C) supply full minutes of any meetings held in accordance with clause 15.8.2(A) and 15.8.2(B) to the Council's Project Monitor and the Council's

representative within ten Working Days of the relevant meeting and shall provide the Council's Project Monitor and the Council's representative with such further information on such specific aspects of the satisfaction of the Conditions Precedent as the Council shall from time to time reasonably require and to ensure that such minutes contain details of any actions taken;

(D) in such instances where the minutes prepared in accordance with clause 15.8.2(C) do not properly reflect the outcome of decisions or discussions at the relevant meeting then the Council shall be entitled to annotate those minutes with its comments and provide them to the Buyer and the Buyer shall re-issue revised minutes following due consideration of the points noted by the Council.

(E) within 15 Working Days of the end of each calendar quarter, provide to the Brighton Waterfront Project Steering Group a development report summarising: (i) the progress made toward the satisfaction of the Conditions Precedent over the preceding quarter; (ii) the anticipated actions for the quarter which commenced shortly before the date of such report; (iii) a financial breakdown detailing the invoices paid during the preceding quarter and identifying which sums are Clawback and which are Qualifying Expenditure; and (iv) any other information relevant to the Brighton Waterfront Project Steering Group in the reasonable opinion of the Buyer so as to ensure compliance with the terms and requirements of this Agreement and the proper management and implementation of the Waterfront East Development.

15.9 **Waterfront Central Development**

The Buyer agrees and accepts that the part of the Projected Total Rates Increase relating to the Waterfront Central Site is dependent on the completion of the retail and commercial elements of the Waterfront Central Development in accordance with the Satisfactory Planning Permission relating to the Waterfront Central Development and the Buyer shall not seek to vary or amend that Satisfactory Planning Permission relating to the Waterfront Central Development in a way that reduces that part of the Projected Total Rates Increase relating to the retail and commercial elements of the Waterfront Central Development upon which the Council has based its Projected TIF Borrowing without first seeking the prior agreement and approval of the Council which cannot be unreasonably withheld but, notwithstanding clause 1.2.7, such Council approval cannot be deemed under the terms of this Agreement. In considering whether to approve such variation or amendment to the Planning Permission the Council shall be entitled to have regard to the effect such variation or amendment to the Satisfactory Planning Permission could have on the Anticipated Funding Sources set out in the most recent Eastern Funding Statement.

15.10 **Approval process**

Where the approval of the Council is required for any matter or decision referred to within this clause 15, and where the Council's Project Monitor is empowered (by delegated authority as identified in the Council's Project Monitor Approval Rights Notice) to make a requisite decision then the following procedure shall be followed:

15.10.1 the Council's Project Monitor shall have the authority to issue a written approval on behalf of the Council in those circumstances where the Council expressly permits it and notifies the Buyer of that fact in a Council's Project Monitor Approval Rights Notice served on the Buyer by the Council;

15.10.2 the Buyer shall provide to the Council's Project Monitor (or the Council) all necessary documents and information (as a comprehensive pack) in relation to the matter requiring the Council's approval in a timely fashion to enable the Council's Project Monitor (or the Council) to make a decision as to whether or not to give the Council's approval for the relevant matter. The Council's Project

Monitor may, within five Working Days of receipt of the relevant documents and information, request any such additional documents and information as the Council is entitled to request under the terms of this clause 15 and the Buyer shall provide such additional documents or information as soon as reasonably practicable. Such complete set of documents and information shall be termed the "Full Document Pack".

15.10.3 On receiving a request for approval and subject to receiving the Full Document Pack in accordance with clause 15.10.2, the timing provisions of clause 1.2.7 shall only then apply to such approval or decision from the Council's Project Monitor in the same way such provisions relate to the Parties.

16. PROCUREMENT

16.1 If the Council determines (acting reasonably) that an opinion should be obtained from Counsel in respect of any part of the Construction Strategy, the Eastern Professional Team Appointment Report, VO Procurement and Project Preparation Report or the VO Procurement Strategy Report approved by the Council in accordance with this Agreement, the:

16.1.1 costs of such opinion are to be borne by the Buyer and the Council equally; and

16.1.2 the identity of the Counsel instructed must be approved by the Parties,

and the Counsel shall be instructed to provide such advice on the following terms:

16.1.3 the instructions to Counsel shall be joint instructions by the Council and the Buyer and the Council must allow the Buyer's Solicitors to review and comment on any instructions and to permit the Buyer and the Buyer's Solicitors to attend all conferences convened by or with Counsel; and

16.1.4 as soon as reasonably practicable following receipt of any written opinion from Counsel, the Council shall provide a copy of such opinion to the Buyer for review and comment and where the Buyer notifies the Council in writing that it requires additional clarification or further advice on any matter in such opinion, the Council shall submit such request for clarification or further opinion to Counsel as soon as reasonably practicable after receiving such request from the Buyer.

16.2 The Buyer may at its own cost seek further advice from an alternative Counsel on any matter contained in any opinion provided to the Buyer by the Council in accordance with clause 16.1.4.

16.3 Subject to clause 16.4, if Counsel's opinion received in accordance with clause 16.1 states that the Construction Strategy or the strategy outlined in the Eastern Professional Team Procurement Report or the VO Procurement Strategy Report does not meet the Council's Procurement Obligations, the Buyer shall promptly revise or amend the Construction Strategy, Eastern Professional Team Procurement Report, VO Procurement and Project Preparation Report or the VO Procurement Strategy Report (where applicable) in accordance with Counsel's recommendations so that such strategy is compliant with the Council's Procurement Obligations and the Council may, in accordance with clause 16.1, obtain Counsel's opinion on any aspect of such revised or amended strategy as Council reasonably requires.

16.4 If any opinion from an alternative Counsel received by the Buyer in accordance with clause 16.3 concludes that the Construction Strategy or the strategy outlined in the Eastern Professional Team Procurement Report, VO Procurement and Project Preparation Report or the VO Procurement Strategy Report (where applicable) is compliant with the Council's Procurement Obligations, the Buyer shall provide a copy of such opinion to the Council and if the Parties fail to agree whether the relevant strategy is compliant with the Council's Procurement Obligations within ten Working Days of the Buyer providing the alternative Counsel opinion, the matter shall be referred to or determined by the Expert in accordance with clause 39 with the Buyer accepting that the Council shall not be prepared to adopt any

approach or take any step which breaches the terms of the Council's Procurement Obligations.

16.5 In the event that any Venue Operator Agreement and/or Building Contract procurement is the subject of a challenge or threatened challenge for alleged breach of the Council's Procurement Obligations, the Council shall, subject to clauses 16.6 to 16.10, have conduct of any response to the challenge or threatened challenge ("**Procurement Challenge**").

16.6 Following any reasonable request from the Council the Buyer shall, as soon as reasonably practicable having regard to:

16.6.1 the nature of such request; and

16.6.2 any pending time periods required to be observed and in which a response has to be provided,

provide reasonable assistance to the Council in the conduct of any Procurement Challenge.

16.7 The Council agrees and acknowledges that it shall bear all costs incurred in respect of any Procurement Challenge (including, for the avoidance of doubt, any legal and administrative costs).

16.8 The Council and the Buyer agree that they have a joint interest in the conduct of a response to any Procurement Challenge and all communications between them in relation to any Procurement Challenge shall remain privileged unless waived in writing by both Parties.

16.9 The Council shall consult with the Buyer in relation to the strategy to be adopted in responding to any Procurement Challenge and the Council shall take account of any reasonable representations made by the Buyer during such consultation.

16.10 If the Buyer acting reasonably notifies the Council that the Council's proposed strategy in relation to a Procurement Challenge has the potential to extend any Condition Date in accordance with this clause 16.10 or for any other reasonable reason], at the request of the Buyer an opinion shall be obtained from Counsel on the merits of such Procurement Challenge and the proposed strategy to be adopted by the Council and the Council acting reasonably shall take account of the opinion but shall not be bound to act in accordance with any recommendations contained therein, provided always that:

16.10.1 the costs of such opinion are to be jointly borne by the Parties; and

16.10.2 the identity of the Counsel instructed, who shall be a Queen's Counsel ranked in Chambers and Partners as a Star Individual or Band 1 advisor in relation to public procurement, shall be agreed by the Parties, or if the parties are unable to agree then, on the application of either party, by the Expert (in this case being the President of the Law Society) under the terms of clause 39.2.6;

16.10.3 Counsel shall be instructed to provide such advice on the following terms:

(A) the instructions to Counsel shall be joint instructions by the Parties and the Council must allow the Buyer's Solicitors to review and comment on any instructions and to permit the Buyer and the Buyer's Solicitors to attend all conferences convened by or with Counsel and to review and comment on any opinion provided by Counsel; and

(B) Counsel's opinion shall cover, where relevant to the Procurement Challenge:

(1) the prospects of success of an application to lift any automatic suspension;

(2) the prospects of success of any claim in damages; and

(3) the effect of the Council's proposed conduct strategy on the achievement of any Condition Date;

(4) any other matters that appear to either Party to be relevant; and

16.10.4 if there is a delay under this Agreement caused by a Procurement Challenge for any reason, including any of the following:

(A) the time taken to consult and/or settle the challenge or threatened challenge;

(B) an automatic suspension under the PCR 2015 or CCR 2016; or

(C) the Parties determining that some part of the Venue Operator Agreement and/or Building Contract procurement process needs to be amended to reflect the procurement challenge,

then any Condition Date (including, for the avoidance of doubt, the Final Long Stop Date and the Ultimate Long Stop Date) that was to occur after the commencement of such delay shall be extended by a period equal to the length of such delay.

17. WATERFRONT EAST COST HEADINGS STATEMENT, QUALIFYING EXPENDITURE AND STATEMENT OF WATERFRONT CENTRAL COSTS

17.1 The Waterfront East Cost Headings Statement including the Clawback Cap and the Qualifying Expenditure Cap set out therein (as annexed hereto at Appendix 8) has been approved by the Parties in relation to the costs to be expended by the Buyer up to and including satisfaction of the Seventh Condition pursuant to clause 7.

17.2 Within five Working Days of each of:

17.2.1 the satisfaction of the Eastern Planning Condition; and

17.2.2 an event of Genuine Termination,

the Buyer shall provide to the Council a statement outlining the Clawback and Qualifying Expenditure incurred by the Buyer to the date of such event.

17.3 On the application of the Buyer, following consultation with the Council and subject to the Buyer providing to the Council reasonable evidence and an explanation of the reasons for requiring such variation, the Qualifying Expenditure Cap shall be capable of increase or variation with the approval of the Council (acting reasonably but clause 1.2.7 does not apply to this clause 17.3).

17.4 Within five Working Days of each of:

17.4.1 the satisfaction of the Central Planning Condition; and

17.4.2 an event of Genuine Termination,

the Buyer shall provide to the Council a statement outlining the Waterfront Central Costs, and Qualifying Expenditure incurred by the Buyer to the date of such event.

17.5 Within 10 Working Days of each of the:

17.5.1 satisfaction or waiver of the last of the First Conditions;

17.5.2 satisfaction or waiver of the Second Condition; and

17.5.3 satisfaction of the Third Condition,

the Buyer shall provide to the Council a proper estimate prepared in good faith of the Qualifying Expenditure anticipated to be incurred by the Buyer in satisfying the condition or conditions in the next condition phase as set out in clauses 17.5.1 to 17.5.3 (inclusive).

18. COUNCIL'S COVENANTS

The Council hereby covenants with the Buyer:

18.1 to dedicate an appropriate level of personnel within the Council (or by way of approved external appointments) to the Waterfront Central Development and the Waterfront East Development for a project of such scale and significance having regard to the role to be performed by the Council in relation to the specific matter in hand from time to time;

18.2 following the Unconditional Date to be solely responsible for the funding and carrying out of the Waterfront East Development subject to the provisions of clause 12.12 and/or 12.13;

18.3 to manage the process for the closure of the Brighton Centre and the transfer of events and conferences to the Venue so as to ensure a seamless transfer of such events and conferences and the Council acknowledges that the Buyer shall have no liability whatsoever in relation to such transfer and any losses that may arise in relation to it and to keep the Buyer regularly and fully informed in relation to such process (the Buyer providing such assistance as is reasonably required by the Council to facilitate such transfer);

18.4 to procure vacant possession of the Brighton Centre by the Transfer Completion Date;

18.5 at the time of providing the first Eastern Funding Statement to the Buyer in accordance with clause 12.11.2, provide to the Buyer a written outline of the Council's strategy to obtain vacant possession of the Brighton Centre including a programme for the determination of the Brighton Centre Licence ("**Vacant Possession Brief**") and, with each subsequent Eastern Funding Statement provided by the Council to the Buyer, the Council shall provide to the Buyer an updated Vacant Possession Brief containing any amendments to such strategy since the previous Vacant Possession Brief and an outline of progress towards the implementation of such strategy against the programme;

18.6 following the date of this Agreement to manage the Brighton Centre in accordance with the principles of good estate management and not to grant any interests in or permit any occupation of the Brighton Centre or grant any licence, consent or approval under the Brighton Centre Licence (or any other occupational document approved by the Buyer under this clause 18.6) or vary or modify the Brighton Centre Licence (or any other occupational document approved under this clause 18.6) without the approval of the Buyer (such approval not to be unreasonably withheld or delayed) subject to the Council being able to grant any occupational interests pursuant to any existing contractual arrangement provided that no such arrangements create any relationship of landlord and tenant, do not enjoy any security of tenure pursuant to the Landlord and Tenant Act 1954 and provided that any such arrangement is determined prior to the Transfer Completion Date and provided further that the Buyer shall not withhold its approval to any such grant, consent, approval, variation or modification where to do so would place the Council in breach of any statutory requirement or in breach of the Brighton Centre Licence;

18.7 subject to the Council's reasonable and proper costs being covered by the Buyer (such costs to form part of the Qualifying Expenditure where the relevant document relates to the Waterfront East Development), and without the Council being obliged to assume either the payment of any expenditure or any actual or contingent liability (unless first pre-approved by it) to execute and enter into all contracts, agreements, deeds or other documents in a timely manner which are reasonably necessary for the Council to enter into in order to

enable and assist the Buyer to comply with its obligations under this Agreement and/or are required or desirable for the satisfaction of any of the Conditions Precedent;

18.8 following the date of this Agreement to manage the Black Rock Site in accordance with the principles of good estate management and not to grant any interests in or permit any occupation of the Black Rock Site whatsoever that would in any way prevent the satisfaction of the Conditions Precedent or the achievement of the project objectives outlined in clause 2.

19. REIMBURSEMENT OF COSTS OF COUNCIL'S PROJECT MONITOR AND COUNCIL'S PROCUREMENT OFFICER

19.1 Subject at all times to clause 19.2:

19.1.1 from the date of satisfaction of the Eastern Development Strategy Condition to and including the Unconditional Date, the Buyer shall pay the Council's Project Monitor Costs within ten Working Days of a written demand by the Council with such written demand to be accompanied by reasonable evidence of the Council having incurred such costs including where applicable copies of relevant invoices (but the Council shall not submit a demand in respect to such costs more than once a month); and

19.1.2 within ten Working Days following the Unconditional Date, the Council shall provide the Buyer with a statement of the Council's Project Monitor Costs (net of any such sums already paid by the Buyer on account of such costs prior to the Unconditional Date under clause 19.1.1) ("**Council's Outstanding Project Monitor's Costs**") and, provided the Council's Project Monitor Costs paid by the Buyer under this clause 19.1 shall not exceed the cap in clause 19.2.2 or the annual cap in clause 19.2.1, the Buyer shall pay the Council's Outstanding Project Monitor's Costs on the Transfer Completion Date.

19.2 The Buyer's liability to pay the Council's Project Monitor Costs in accordance with clause 19.1 shall not exceed:

19.2.1 [redacted] in any 12 month period (or a pro rata apportionment for any part year); and

19.2.2 [redacted] in total.

19.3 The Buyer shall pay each of the following amounts to the Council in relation to the Council's Procurement Officer Costs:

19.3.1 an amount of [redacted] in respect of the cost of the procurement of the Venue Operator within five Working Days of written demand by the Council with such written demand to be accompanied by reasonable evidence of the Council having incurred such costs provided that the Council shall not submit a demand to the Buyer in respect to such costs prior to the date of satisfaction of the Venue Operator Condition; and

19.3.2 an amount of [redacted] in respect of the cost of the procurement of the Building Contract within five Working Days written demand by the Council with such written demand to be accompanied by reasonable evidence of the Council having incurred such costs provided that the Council shall not submit a demand to the Buyer in respect to such costs prior to the date of satisfaction of the Building Contract Condition.

19.4 The Council and the Buyer acknowledge and agree that any amounts paid by the Buyer in respect of the Council's Project Monitor Costs and Council's Procurement Officer Costs in accordance with this clause 19 shall form part of the Qualifying Expenditure but such amounts shall be ignored for the purposes of calculating whether the Qualifying Expenditure Cap has been reached such that any Qualifying Expenditure amounts incurred

by the Buyer under this clause 19 shall be recoverable by the Buyer from the Council as Qualifying Expenditure in excess of the Qualifying Expenditure Cap.

20. VAT

20.1 The Buyer and the Council shall each pay to the other Value Added Tax (at the appropriate rates lawfully and properly chargeable by the Council or the Buyer (as the case may be in respect of any taxable supplies made by the Council to the Buyer (as the case may be) in respect of any taxable supplies made by the Council to the Buyer or vice versa.

20.2 The following provisions apply for the purpose of determining the respective rights and obligations of the Parties to this Agreement in relation to VAT applicable to the Brighton Centre and the Waterfront East Site and payments hereunder:

20.2.1 each party shall make an election in relation to the Brighton Centre and the Waterfront East Site or parts thereof for the purposes of paragraph 2 of Schedule 10 to the Value Added Tax Act 1994 as soon as practicable and having done so shall give written confirmation to such effect to the other;

20.2.2 following the making of such election the Buyer shall be entitled to call for all reasonable co-operation from the Council to enable the Buyer to reclaim input VAT in respect of the Waterfront Central Development and the Waterfront East Development and the Council covenants and undertakes that it will take all reasonable steps to assist in that regard;

20.2.3 the Council and the Buyer shall each use all reasonable endeavours promptly to reclaim any input VAT payable on any supplies to them in connection with the Waterfront Central Development and the Waterfront East Development but neither shall be obliged to accelerate any reclaim by altering its VAT accounting reference dates.

21. LAND PRICE VALUATION

21.1 The Valuation Date

At any time following the agreement or determination of the Development Strategy as part of the Fourth Conditions and in accordance with clause 10, either Party may elect in writing for the Waterfront Central Valuation to be undertaken by serving a written election notice on the other party and the Valuation Date shall be the date when such written election is dated and issued to the other party.

21.2 The Valuation

The Waterfront Central Valuation shall be a valuation in accordance with the Valuation Brief, as at the Valuation Date, of the Waterfront Central Site and in accordance with clauses 21.3 and 21.4 as applicable and the Council confirms that the Waterfront Central Valuation is satisfactory for the purpose of determining that the sale of the Brighton Centre falls within the provision of the Local Government Act 1972: General Disposal Consent 2003.

21.3 Matters to be agreed in order to avoid a reference to the Valuer in accordance with Clause 21.4

In the context that the Waterfront Central Valuation needs to be agreed by the Parties or determined on their behalf, a reference to the Valuer may be avoided only if the Parties agree the Waterfront Central Valuation and, otherwise, the Valuer shall be appointed pursuant to this clause 21 to determine the Waterfront Central Valuation. In ascertaining the Waterfront Central Valuation the Parties will be mindful of allowing the Council to satisfy the S123/233 Condition. Once the Waterfront Central Valuation is either agreed or determined and the requirements of 21.4.4 have been satisfied then the Council will promptly satisfy the requirements of the s123/233 Condition and serve a Condition Satisfaction Notice once it is satisfied.

21.4 **Determination of the Valuation**

The Waterfront Central Valuation shall be determined, if it is not agreed between the Parties in the context of clause 21.3, as follows:

21.4.1 the independent expert valuer will be appointed in accordance with the Valuer Appointment Criteria and shall be instructed jointly by the Buyer and the Council;

21.4.2 the Buyer shall provide the Valuer with a copy of the Fact Book within five Working Days of the Valuer's appointment;

21.4.3 the Valuer will be appointed on the basis that the Valuer:

(A) shall consider and take into account the information contained in the Fact Book and the Valuation Brief;

(B) shall consider and take into account each Party's own representations and submissions on the other Party's representations (all of which shall be copied by each Party to the other but none of which shall extend to any provision of this Agreement except to the extent that the provision is already referred to in the Fact Book) but only to the extent such representations and submissions are made to the Valuer, within four weeks in the case of representations and a further five Working Days in the case of submissions, after the date on which the Fact Book is supplied to the Valuer;

(C) shall be entitled to take specialist advice concerning any aspect of the Waterfront Central Site and the Waterfront Central Development in order to supplement the information contained in the Fact Book;

(D) shall circulate his valuation in draft to each Party on the same date, within eight weeks after the date on which the Fact Book is supplied to the Valuer;

(E) shall consider and take into account each Party's representations and submissions on the other's representations (all of which shall be copied by each Party to the other but none of which shall extend to any provision of this Agreement except to the extent that the provision is already referred to in the Fact Book) concerning his respective draft valuation but only to the extent such representations and submissions are made within ten Working Days in the case of representations and 15 Working Days in the case of submissions after the date on which the draft valuation has been circulated under sub-paragraph 21.4.3(D); and

(F) will produce his valuation (accompanied separately by particulars of the valuation model), to each Party and on the same date, in its final form within ten Working Days after receipt of the representations and submissions made to him within the timescale permitted under sub-paragraph 21.4.3(E) and such valuation shall be expressed as one amount, as opposed to a range of amounts;

21.4.4 Once the Waterfront Central Valuation has been determined under this paragraph 21.4, it shall be recorded between the Parties and a memorandum of it shall be exchanged between them.

22. **OVERAGE**

The Buyer and the Council shall observe and perform their respective obligations in Schedule 1.

23. **COMPLETION OF THE TRANSFER, PAYMENT OF LAND PRICE, ASSIGNMENT OF APPOINTMENTS AND PROVISION OF INFORMATION**

23.1 The transfer of the Brighton Centre to the Buyer shall be in the form of the Transfer.

23.2 The Council shall execute the Transfer in duplicate and deliver the duplicate to the Buyer on the Transfer Completion Date.

23.3 On the Transfer Completion Date the Buyer shall pay to the Council the sum equal to the Land Price less a sum equivalent to the Qualifying Expenditure (but excluding any interest element as outlined in clause 5.6).

23.4

23.4.1 At any time prior to but excluding the date five Working Days prior to the Transfer Completion Date and in compliance with the Eastern Professional Team Procurement Report and the Council's Procurement Obligations the Buyer may by written notice to the Council require the Council to take an assignment of the Appointments provided that in taking such assignment the Council will not be in breach of the Council's Procurement Obligations;

23.4.2 If the Buyer does not serve notice on the Council pursuant to Clause 23.4.1 prior to but excluding the date five Working Days prior to the Transfer Completion Date then the Council may on or after the date five Working Days prior to the Transfer Completion Date (but excluding the Transfer Completion Date) by written notice to the Buyer require the Buyer to procure the assignment of the Appointments to the Council;

23.4.3 If the Buyer or the Council shall serve notice pursuant to Clause 23.4.1 or 23.4.2 then the Buyer and the Council shall execute the Deed of Assignment on the Transfer Completion Date and enter into the respective Deeds of Assignment;

23.4.4 The Council shall not be required to complete and deliver the Transfer until the Deeds of Assignment for each Appointment have been released to it for completion with the Transfer on the same date.

23.5 The Buyer shall:

23.5.1 as soon as practicable after completion, apply to HM Land Registry for registration of the Transfer;

23.5.2 ensure that any Land Registry requisitions are dealt with promptly and properly; and

23.5.3 within five working days after the issue of the title information document evidencing completion of the registration, cause a copy of it to be sent to the Council's Solicitors.

23.6 The Transfer will be made subject to any of the following:

23.6.1 all local land charges whether registered or not before or after the date hereof and all matters capable of registration as local land charges whether or not actually so registered;

23.6.2 the rights, covenants and other matters contained or referred to in the Property and Charges Register for the title numbers of the Brighton Centre as at [ ] at [ ].

23.6.3 all notices orders resolutions restrictions agreements directions and proposals therefore made by any local or other competent authority before or after the date hereof;

23.6.4 any matters which are unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002;

23.6.5 such unregistered interests as may affect the Premises to the extent and so long as they are preserved by the transitional provisions of Schedule 12 of the Land Registration Act 2002;

23.6.6 all rights of way, drainage, watercourses, light or other easements, or quasi or reputed easements, and rights of adjoining owners affecting the Brighton Centre, and all liability to repair or covenants to repair highways, pavements, paths,

ways, passages, sewers, drains, gutters, fences and other like matters of which the Buyer has notice; and

23.6.7 the Satisfactory Planning Permission and any Planning Agreement relating to the Brighton Centre

23.7 On the Transfer Completion Date the Buyer shall provide to the Council or the Council's Project Monitor (as applicable) all information held by the Buyer that is relevant to the Waterfront East Development and following completion the Buyer shall, within a reasonable time of such request from the Council or the Council's Project Monitor, provide to the Council or the Council's Project Monitor (as applicable) any information held by the Buyer that is relevant to the Waterfront East Development and has not already been provided to the Council or the Council's Project Monitor by the Buyer.

24. STANDARD CONDITIONS

24.1 The Part 1 Standard Conditions are incorporated in this Agreement insofar as they are not inconsistent with its other conditions and as amended in accordance with this clause 24.

24.2 The Standard Conditions shall be varied as follows:

24.2.1 condition 1.1.4 (a) shall not apply to this Agreement and the conditions in Part 2 of the Standard Conditions are not incorporated into this Agreement;

24.2.2 condition 1.1.1(d) shall not apply and in Condition 1.1.1(o) the words "or the days from and including 27th December to 31st January inclusive and such working day shall expire at 5.30pm" shall be added;

24.2.3 condition 1.3.3 shall be deleted and the following substituted: "Any notice required or authorised by this contract must be given by delivering it personally or sending it by, prepaid post or document exchange";

24.2.4 condition 1.3.5(c) shall not apply and Condition 1.3.5(a) shall be deleted and the following substituted: "A notice or document sent through a document exchange is received at the time when the addressee collects it from the document exchange, or if earlier, 8.00am on the first Working Day on which it is available for collection";

24.2.5 in conditions 1.3.7(a) and 1.3.7(b) the words "unless returned undelivered" shall be added after the word "posting" and conditions 1.3.7(d) and 1.3.7(e) shall not apply;

24.2.6 condition 1.4 shall not apply;

24.2.7 condition 2.2 shall not apply;

24.2.8 condition 3.1.3 shall not apply;

24.2.9 condition 3.3(b) shall not apply;

24.2.10 Conditions 4.2, 8.3.7 and 8.3.8 shall not apply and Condition 5 does not apply in so far as it relates to a review of rent under the Occupational Lease;

24.2.11 condition 6.1 shall not apply and in condition 6.2.1(a) the words "taking the steps described in condition 6.1.1" shall be deleted. Conditions 6.2.2, 6.2.3 and 6.3.1 shall not apply;

24.2.12 in condition 6.4.2 the words "pay for" shall be deleted and substituted with the words "at the buyer's expense";

24.2.13 condition 6.6.2 shall not apply;

24.2.14 in condition 6.6.5, after the word "completion", the words "and which is not a matter of public record" shall be added;

24.2.15 conditions 7.1.1, 7.1.2 and 7.1.4(b) shall not apply;

24.2.16 in condition 8.1.1 the words "completion date is 20 working days after the date of this contract but" shall be deleted;

24.2.17 in conditions 8.1.2 and 8.1.3 "2.00pm" shall be deleted and substituted with "12 noon";

24.2.18 in condition 8.4(a) the words "condition 8.3" shall be deleted and the following substituted "the contract";

24.2.19 in Condition 9.1.1 the words "in the negotiations leading to it" shall be deleted and the following substituted "any written representation given by the seller's solicitors on behalf of the seller in reply to any written enquiries made by the buyer's solicitors before the date of the contract" and in Condition 9.1.2 the words "or value" shall be deleted;

24.2.20 add new condition 9.7 "if any petition for the winding up of the buyer is issued at court or any bankruptcy petition is issued in respect of the buyer; any resolution is passed by the buyer requiring it to be wound up voluntarily (except with regard to a solvent liquidation); any administrator is appointed in respect of the buyer or any application for an administration order is made; any person is appointed as administrative receiver in respect of the buyer or the buyer enters into a voluntary arrangement or compromise or scheme of arrangement with the creditors, the seller may serve notice withdrawing from the contract and condition 9.5.2 then applies";

24.2.21 Condition 10.3 shall not apply.

25. **CAPACITY**

The Council:

25.1 covenants with the Buyer that it has taken professional advice from the Council's Development Advisers upon the terms of this Agreement and the ancillary documents;

25.2 confirms and undertakes that in selecting the Buyer to proceed with this transaction it:

25.2.1 has (to the best of its knowledge and belief) used (and will use) all reasonable (but commercially prudent) endeavours to comply with and satisfy as soon as reasonably practicable the S123/233 Condition and the Council shall seek to satisfy the S123/233 Condition pursuant to limb (a) of the definition of "S123 Condition";

25.2.2 does not (to the best of its knowledge and belief in reliance upon the advice referred to in clause 25.1) require a consent from the Secretary of State pursuant to Section 128(1) of the said Act or pursuant to Section 233 of the 1990 Act if the Buyer elects under the terms of this Agreement to require the Council to Appropriate.

26. **TITLE**

26.1 The Council having deduced its title to the Brighton Centre to the Buyer prior to the date of satisfaction of the Central Title Condition the Buyer shall raise no further requisition or enquiry on the title so deduced or objection thereto save (in the case of registered land) any requisitions on entries appearing on the Council's registered title on or after the satisfaction of the Central Title Condition or (in the case of unregistered land) any requisitions on entries appearing on the registered title in due course which could not reasonably have been expected from a proper investigation by the Buyer of the Council's pre-registration title deeds and documents at the date of the satisfaction of the Central Title Condition.

26.2 Title to the Additional Property acquired by the Council through the use of compulsory purchase powers shall be deduced in accordance with Section 110 of the Land Registration Act 1925 save to the extent that the Buyer has approved the title thereto before its transfer to the Council or title is acquired by the CPO, and the Buyer shall raise no requisition or enquiry on that title, or objection to it.

27. PRESS NOTICES, OTHER PUBLICATIONS AND CONFIDENTIALITY

27.1 The Buyer shall not permit suffer or allow any press notice or other publication in relation to this Agreement or the transactions contemplated by it or any part of it or them to be made without the Council's consent (such consent not to be unreasonably withheld or delayed) to the proposal in principle and (if that consent is forthcoming) to its form and content and to the context in which it will appear.

27.2 Subject to any statutory obligations the Council may have and to clause 42 the Council shall not permit suffer or allow any press notice or other publication in relation to this Agreement or the transactions contemplated by it or any part of it or them without obtaining the approval of the Buyer (such approval not to be unreasonably withheld or delayed) to the proposal in principle and (if that consent is forthcoming) to its form and content and to the context in which it will appear.

27.3 Subject to clause 42 prior to the Unconditional Date neither the Buyer nor the Council (including their agents, employees or representatives) shall disclose or permit or suffer to be disclosed any of the contents of this Agreement except and to the extent that disclosure may be required by law or by the requirements of the London Stock Exchange PLC and the UK Listing Authority or to the Consultants or to the Council's Consultants or to the Buyer's Solicitors or to the Council's Solicitors save that the Buyer may register a unilateral notice in respect of the Agreement against the title to the Brighton Centre.

27.4 Subject to clause 42 the financial terms of this Agreement (including to the figures or financial expectations in or derived from the various appendices) shall be confidential and no party hereto shall make any press release or announcement in respect thereof without the approval of the other nor shall any Party disclose such terms to any third party save:

27.4.1 for the purpose of complying with the requirements of this Agreement; or

27.4.2 where the information is already in the public domain; or

27.4.3 where legally requisite; or

27.4.4 in the case of disclosure by the Buyer, where commercially normal or sensible so to do.

27.5 Either Party shall be entitled to disclose any confidential information received from the other party without the prior written consent of such other party if such disclosure is made in utmost good faith:

27.5.1 to its employee's or advisers provided they are first made aware of the confidentiality arrangements of this clause 27;

27.5.2 subject to clause 27.6 to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity;

27.5.3 subject to clause 27.6, to the lenders, any agent, security trustee any bank or other financial institution and their respective advisers;

27.5.4 subject to clause 27.6 to any contractors and sub-contractors engaged by the Buyer for the purposes of this Agreement (but then only to the extent necessary for the purpose of their obligations in connection with this Agreement) and to any successor body to the Council's functions;

27.5.5 subject to clause 27.6 to any person or persons for the purposes of any audit or compliance with any tax obligations or to the extent necessary to recover any tax allowances; and

27.5.6 subject to clause 27.6, to any person or persons for the purposes of any alienation of the Agreement and/or Disposal of the Brighton Centre under clause 33.

27.6 Any disclosure of confidential information pursuant to clause 27.5 which is stated to be subject to this clause 27.6 shall be subject to the first disclosing party having used all reasonable endeavours to have first obtained the party to whom the confidential information is to be disclosed an undertaking in terms equivalent to clause 27.4.

28. **ENTIRE AGREEMENT**

The Council and the Buyer respectively acknowledge that this Agreement shall constitute and form the entire agreement between the Council and the Buyer to the exclusion of any antecedent statement or representation whether oral written or implied or contained in any correspondence entered into by the Council or its servants or agents and the Buyer hereby acknowledges that it has not entered into this Agreement in reliance upon any such statement or representation other than those which have been given in correspondence from the Council or the Council's Solicitors or the Council's Development Advisers in a written reply to an enquiry made by the Buyer or the Buyer's Solicitors prior to the date of this Agreement.

29. **COUNCIL'S POWERS**

29.1 Every power and discretion (as distinct from every obligation) of the Council under this Agreement is a power or discretion wholly and exclusively for the Council's benefit alone and accordingly every such power or discretion may be waived by the Council either wholly or in part in its own absolute discretion and any such waiver in relation to any particular act matter or thing will not prevent or otherwise prejudice the full exercise of the same or any other power or discretion of the Council in relation to any similar or other act matter or thing. For the avoidance of doubt, the Council's Project Monitor shall not have the delegated authority to waive any such power or discretion as agent of the Council without a specific written consent from the Council.

29.2 The Council enters into this Agreement in its capacity as landowner of the Council's Present Land (save where expressly stated otherwise) and nothing herein contained shall prejudice or affect any of the statutory rights powers obligations and duties for the time being vested in the Council.

29.3 Any approval consent direction permission or authority given by the Council as Authority or other statutory authority shall not be or be deemed to be an approval consent direction permission or authority given under this Agreement and vice versa.

29.4 The Buyer shall be entitled to rely upon any approval in writing given to it by the Council's Project Monitor (that is issued in accordance with the most recent Council's Project Monitor Approval Rights Notice) or the Council's Project Director in response to an application or request for approval made by the Buyer to the Council under the terms of this Agreement as approval from the Council.

30. **TERMINATION**

30.1 If any one or more of the following events shall occur:

30.1.1 in relation to the Buyer prior to the Unconditional Date:

(A) entry into liquidation whether voluntarily (except for reconstruction or amalgamation of a solvent company) or compulsorily;

(B) the appointment of a receiver or an administrative receiver to the whole or part of any undertaking or assets;

(C) the making of an administration order or a voluntary arrangement or a proposal for one under Part I of the Insolvency Act 1986;

(D) entry into any arrangement or composition for the benefit of creditors;

(E) being a company incorporated outside the United Kingdom is the subject of any proceedings or events analogous to those referred to above in the country of its incorporation;

30.1.2 there shall be any material breach of the warranties covenants and other obligations of the Buyer under this Agreement (other than in respect to the Buyer's obligations under clause 11 where the Council's remedy will be as specified in that clause) which the Buyer fails to commence and thereafter

diligently proceed to remedy within a reasonable period following written notice of the breach from the Council to the Buyer which period:

(A) unless a period of 60 Working Days is satisfactorily demonstrated as being unreasonable by the Buyer to the Council in the circumstances given the nature of the breach, shall be 60 Working Days; or

(B) in the case of any obligation to pay monies due to the Council, shall be 30 Working Days; or

(C) in respect to material breach of the terms of clause 33.2, shall be 15 Working Days,

then the Council may notwithstanding any other provision of this Agreement (each of which are subject to the overriding provisions of this clause 30) but subject to any step in rights exercisable by the Funder under its direct agreement with the Council referred to in clause 31 by notice in writing to the Buyer forthwith terminate this Agreement and thereupon:

30.1.3 the licence conferred by clause 14 shall automatically without further action forthwith terminate; and

30.1.4 the Buyer shall as soon as is reasonably practicable provide the Council with all documents and information in relation to the Waterfront East Development which is then available and which the Council reasonably requires in order to step in;

30.1.5 this Agreement shall forthwith cease and determine on the date of such notice but without prejudice to any antecedent right or entitlement of either party; and

30.1.6 subject to 30.1.5, the Council shall be released (in full) from all obligations under this Agreement to the Buyer save in respect of the obligations in clauses 5 and 12.12.8 which shall survive termination of this Agreement.

30.2 Such termination will not prejudice any rights or remedies which either party may have against the other in respect of any antecedent breach of this Agreement.

31. FUNDER AND STEP-IN RIGHTS

31.1 The Council will within a reasonable period at the cost of the Buyer enter into a direct agreement with a Funder in a form approved by the Council (and the Buyer shall procure that the Funder will enter into such agreement) which will contain (inter alia) the following provisions:

31.1.1 the Council will be obliged to deliver to the Funder at the same time as to the Buyer any notice of termination of this Agreement given pursuant to clause 30 or otherwise and on such delivery the Funder will be allowed a reasonable period but not less than 60 Working Days (subject always to the Condition Dates relevant to any Condition Precedent) from such notice to exercise a step in right in respect of the Buyer's rights and obligations under this Agreement prior to termination by the Council;

31.1.2 the Funder will be obliged to deliver to the Council notice of any demand made for, or of any acceleration of, amounts due under the loan facility or any enforcement procedure commenced under the provisions of the Funder's security, such notice to specify the reason for the demand, acceleration or enforcement;

31.1.3 the Council and the Buyer undertakes to copy to the Funder any notice served on each of them by the other under this Agreement;

31.1.4 if the Funder steps in pursuant to this clause 31 it will either within ten Working Days of having notified the Council and the Buyer of its intention to step in undertake to the Council by deed (or by way of a deed of novation) in such form as the Council shall reasonably require to perform all outstanding obligations of the Buyer under this Agreement or procure a similar undertaking from a nominee

which the Council, acting reasonably, considers has the technical competence and financial resources (being no less than the NAV Threshold applicable at such time) and expertise to perform the Buyer's obligations under this Agreement and to step in to the rights of the Buyer under the appointments of the Consultants;

31.1.5 if the Funder so requires, the Council will permit the assignment or novation (if required by the Council) of the Buyer's rights under this Agreement to the nominee referred to in clause 31.1.4 provided the undertaking referred to in clause 31.1.4 has been given by the nominee approved by the Council under clause 31.1.4.

32. AMENDMENTS TO BOUNDARIES OF THE SITE AND DETERMINATION OF THE ADDITIONAL PROPERTY

32.1 The Site Plans show the extent of the land which the Buyer and the Council currently envisage is required for the Waterfront Central Development and the Waterfront East Development. However the Council agrees (without fettering the discretion of the Authority) that the Buyer may serve notice on the Council at any time (but not once the Site Assembly Strategy is agreed by the Parties) not less than 20 Working Days before the last date for submission of papers to the Committee resolving the CPO (provided that the Council has received from the Authority not less than 40 Working Days written notice of such date) requiring revisions to the boundaries of the Waterfront Central Site and the Waterfront East Site along with the reasons as to why this is required to facilitate or benefit the Waterfront Central Development and the Waterfront East Development. The Council shall consider the Buyer's proposal for the extension of the Site without adverse consequences to the Council or the CPO and if reasonable to do so in all circumstances approve such revisions.

32.2 The Council agrees (without fettering the discretion of the Authority) that the Buyer may serve on the Council at any time prior to the last date for submission of papers for the Committee who will resolve to make the CPO details of rights to be acquired or extinguished along with the reasons as to why this is required to facilitate or benefit the Waterfront Central Development and the Waterfront East Development. The Council will consider the provisions and, if reasonable to do so, in all the circumstances approve such revisions.

33. ALIENATION OF AGREEMENT AND DISPOSAL OF BRIGHTON CENTRE

33.1 Subject to the terms of clause 33.2, from the date of this Agreement until the completion of the Transfer in accordance with clause 23, the Buyer (or any assignee/novatee) may not assign or novate this Agreement or the Appointments without the approval (in writing) of the Council PROVIDED THAT the Council shall only be entitled to withhold consent to a proposed assignment or novation of this Agreement or the Appointments where the proposed assignee or novatee is not a Qualifying Transferee and the Council shall be entitled to grant its consent to a proposed assignment or novation subject to the satisfaction of the Conditions for Assignment and if the Buyer fails to satisfy the Conditions for Assignment prior to completion of such purported assignment or novation such purported assignment or novation (as applicable) shall be void.

33.2 From the date of this Agreement until the completion of the Transfer in accordance with clause 23, the Buyer may assign or novate this Agreement and assign or novate the Appointments without the consent of the Council to a Group Member of the Buyer or a Group Member of the SL Aberdeen Group **PROVIDED THAT** the proposed assignee or novatee meets at the time of such proposed assignment or novation, the requirements of paragraph (a)(ii) of the definition of Qualifying Transferee and the proposed assignee or novatee covenants by deed with the Council in the form of the Deed of Covenant that with effect from the date of assignment or novation the proposed assignee or novatee will observe and perform all the provisions of this Agreement to be observed and performed by the Buyer and for the avoidance of doubt the Buyer shall remain liable under this Agreement until completion of such proposed assignment or novation and the Buyer shall satisfy the requirements of the Escrow Agent as regards the continued availability of the Escrow Security in accordance with the Escrow Terms following such Disposal and for the

avoidance of doubt, a breach of this clause 33.2 shall be a material breach for the purposes of clause 30.1.2.

33.3 From the date of this Agreement until (but excluding) the commencement of the Financial Security Period, the Buyer shall retain a Net Asset Value of not less than [redacted] and shall, unless otherwise required by the Council, on a six monthly basis, provide to the Council such evidence issued as a letter (dated and addressed to the Council) from a reputable firm of accountants appointed by the Buyer to audit its financial accounts to substantiate that the Net Asset Value satisfies the requirements of this clause 33.3 provided that the Parties agree that whilst the Buyer is the owner of the Churchill Square Shopping Centre (and entitled to receipt of the occupational rents from the Churchill Square Shopping Centre) and the Churchill Square Shopping Centre is free of any mortgage, security, lien, charge or other financial encumbrance to secure any third party debt, the Buyer shall be deemed to have a Net Asset Value equal to or greater than the requirements of this clause 33.3 and shall not be required to provide any further security and for the avoidance of doubt, a breach of this clause 33.3 shall be a material breach for the purposes of clause 30.1.2.

33.4 Where, during the period prior to the commencement of the Financial Security Period it cannot be demonstrated that the Buyer has a:

33.4.1 Net Asset Value that is equal to or greater than the requirement in clause 33.3; or

33.4.2 ceases to be the owner of the Churchill Square Shopping Centre (and entitled to receipt of the occupational rents from the Churchill Square Shopping Centre) and the Churchill Square Shopping Centre is no longer free of any mortgage, security, lien, charge or other financial encumbrance to secure any third party debt,

the Buyer must within 60 Working Days provide to the Council such adequate alternative financial security which provides the Council with adequate security to cover the financial obligations of the Buyer under this Agreement for the period prior to the commencement of the Financial Security Period in a form approved by the Council, which may include at the election of the Buyer, a guarantor approved by the Council, the provision of a performance bond or bank guarantee on terms approved by the Council.

33.5 On and from the Transfer Completion Date until (but excluding) the expiry of the Financial Security Period, the Buyer shall not Dispose of the whole or part of its interest in the Brighton Centre other than an Exempt Disposal without the approval in writing of the Council PROVIDED THAT approval of the Council shall not be required to a Disposal to a Qualifying Transferee who as the proposed transferee/disponee shall covenant with the Council by Deed of Covenant that with effect from the date of such transfer the proposed transferee/disponee will be bound by the terms of this Agreement and observe and perform the subsisting financial obligations of the Buyer under clauses 12.12 and/or 12.13 and paragraph 2.1 of Part 1 of Schedule 1 of this Agreement (as applicable) and such covenant is to be in the form of the Deed of Covenant and the Buyer shall satisfy the requirements of the Escrow Agent as regards the continued availability of the Escrow Security in accordance with the Escrow Terms following such Disposal.

33.6 During the Financial Security Period the Buyer shall retain a Net Asset Value not less than the NAV Threshold applicable at such time and shall comply with the Escrow Terms and shall, unless otherwise required by the Council, on a six monthly basis, provide to the Council such evidence issued as a letter (dated and addressed to the Council) from a reputable firm of accountants appointed by the Buyer to audit its financial accounts to substantiate the Net Asset Value satisfies the NAV Threshold provided that the Parties agree that:

33.6.1 whilst the Buyer is the owner of the Churchill Square Shopping Centre (and entitled to receipt of the occupational rents from the Churchill Square Shopping Centre which are in excess of the Escrow Security) and the Churchill Square

Shopping Centre is free of any mortgage, security, lien, charge or other financial encumbrance to secure any third party debt; and

33.6.2 where alternative security has been provided under clause 12.11.11(C) which has been approved by the Council, such security remains in place,

the Buyer shall be deemed to have a Net Asset Value equal to or greater than the NAV Threshold applicable at such time and shall not be required to provide any further security including not being required to provide the Escrow Security.

33.7 Where, during the Financial Security Period:

33.7.1 it cannot be demonstrated that the Buyer has a Net Asset Value that is equal to or greater than the NAV Threshold or ceases to comply with clauses 33.6.1 and 33.6.2 applicable at such time in accordance with clause 33.6 and/or the Buyer is in material breach of the Escrow Terms which the Buyer fails to commence and thereafter diligently proceed to remedy within a reasonable period (which shall not be less than 60 Working Days) following written notice of the breach from the Council to the Buyer; and

33.7.2 the Buyer cannot comply with clause 33.6.1 and 33.6.2; and

33.7.3 the Council having approved the Buyer or transferee providing alternative security under clause 12.11.11(C), such alternative security is no longer in place or the financial strength of such security has materially diminished in the reasonable opinion of the Council having regard to the underlying liabilities it is intended to secure,

the Buyer must within 60 Working Days provide to the Council such adequate alternative financial security which provides the Council with the long term security to cover the subsisting financial obligations of the Buyer under this Agreement during the Financial Security Period following the Buyer's TIF Election and/or the Buyer's Investment Gap Election (as applicable) and the Buyer's obligations under Paragraph 2.1 of Part 1 of Schedule 1 in a form approved by the Council, which may include at the election of the Buyer, a guarantor approved by the Council, the provision of a performance bond or bank guarantee on terms approved by the Council.

33.8 The Buyer consents from the Transfer Completion Date to the registration of a restriction on the title to the Brighton Centre in the following terms:

"*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by Brighton & Hove City Council or their solicitor or a solicitor acting on behalf of the proprietor of the registered estate that the provisions of clause [33.5] of the Conditional Land Acquisition Agreement dated [ ] 2018 between Brighton & Hove City Council and [insert developer] has been complied with or that they do not apply to the disposition*"

33.9 Following receipt of:

33.9.1 a Deed of Covenant signed by the Buyer and the transferee in satisfaction of sub-paragraph (a) of the definition of Conditions for Assignment; and

33.9.2 if applicable, satisfactory evidence of the satisfaction of any requirements under sub-paragraph (c) of the definition of Conditions for Assignment,

in each case in accordance with clause 33.5, the Council shall within five(5) Working Days of such receipt (accompanied by any requisite Land Registry Certificate) respond to the Buyer, or provide or procure the provision by its solicitors to the Buyer, of the certificate which is required under the restriction referred to at clause 33.8, failing which the parties

agree that the Buyer may procure the provision by its solicitors of such certificate (with a copy certificate provided to the Council).

33.10 The parties agree that the Buyer may, following any Exempt Disposal, procure the provision by its solicitors of the certificate which is required under the restriction referred to at clause 33.8 provided that the Buyer shall within three (3) Working Days of the Exempt Disposal and preferably prior to it occurring provide a copy of any such certificate to the Council.

33.11 Within five Working Days of the expiry of the Financial Security Period the Council shall apply to HM Land Registry for removal of any restriction registered on the title to the Brighton Centre by the Council in accordance with clause 33.8 and the Council shall lend all reasonable assistance to HM Land Registry in relation to the removal of such restriction including dealing with any requisitions as soon as reasonably practicably.

33.12 From the expiry of the Financial Security Period until the expiry of the Planning Overage Period, the Buyer shall not Dispose of its interest in the Brighton Centre other than an Exempt Disposal without the approval in writing of the Council PROVIDED THAT approval of the Council shall not be required to a Disposal to an entity which is not a Prohibited Entity and the proposed transferee shall covenant with the Council that with effect from the date of such transfer the proposed transferee will observe and perform the subsisting financial obligations under paragraph 2.1 of Part 2 of Schedule 1 of this Agreement such covenant to be in the form of the Deed of Covenant.

33.13 The Buyer consents to the registration of a restriction on the title to the Brighton Centre in the following terms:

> *"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by Brighton & Hove City Council or their solicitor or a solicitor acting on behalf of the proprietor of the registered estate that the provisions of clause [33.12] of the Conditional Land Acquisition Agreement dated [ ] 2018 between Brighton & Hove City Council and JTC Fund Solutions (Jersey) Limited and SG Kleinwort Hambros Trust Company (CI) Limited has been complied with or that they do not apply to the disposition".*

33.14 Following receipt of a Deed of Covenant signed by the Buyer and the transferee in accordance with clause 33.12, the Council shall within five (5) Working Days of such receipt (accompanied by the requisite Land Registry Certificate) respond or provide, or procure the provision by its solicitors of the certificate which is required under the restriction referred to at 33.13 to the Buyer, failing which the parties agree that the Buyer may procure the provision by its solicitors of such certificate (with a copy certificate provided to the Council).

33.15 The parties agree that the Buyer may, following any Exempt Disposal, procure the provision by its solicitors of the certificate which is required under the restriction referred to at clause 33.13 provided that the Buyer shall within three (3) Working Days of the Exempt Disposal and preferably prior to it occurring provide a copy of any such certificate to the Council.

33.16 Within five Working Days of the expiry of the Planning Overage Period the Council shall apply to HM Land Registry for removal of any restriction registered on the title to the Brighton Centre by the Council in accordance with clause 33.13 and the Council shall lend all reasonable assistance to HM Land Registry in relation to the removal of such restriction including dealing with any requisitions as soon as reasonably practicably.

33.17 The Council shall not sell its reversionary freehold interest in the Brighton Centre on or before the Termination Date save in compliance with the terms of the Pre-emption Agreement as if it had been entered into.

33.18 Subject to clause 33.19, the Council may not assign or novate this Agreement without the approval (in writing) of the Buyer.

33.19 The Council shall be entitled to freely novate its interest under this Agreement to any person or entity who is appointed as a statutory successor to the Brighton & Hove City Council and the Council and the transferee shall enter a deed of novation with the Buyer on terms reasonably required by the Buyer.

33.20 The Council shall procure that, as soon as practicable following such appointment, any statutory successor referred to in clause 33.18 enters into a deed of novation with the Buyer in such reasonable form with effect from the date of novation, covenanting in favour of the Buyer to observe and perform on the same terms all the provision of this Agreement to be observed and performed by the Council.

33.21 As soon as reasonably practicable following a request from the Buyer, the Council shall execute a Deed of Novation or Deed of Covenant for the purposes of novating or assigning this Agreement to:

33.21.1 an Acceptable Transferee; or

33.21.2 any transferee that meets the requirements of clause 33.12; or

33.21.3 any joint venture vehicle that meets the requirements of sub-paragraph (e) of the definition of "Exempt Disposal".

34. CHANGE OF CONTROL

34.1 During the Financial Security Period the Buyer shall not permit a Change of Control without the approval in writing of the Council PROVIDED THAT approval of the Council shall not be required where immediately following such Change of Control the Buyer shall continue to meet the requirements of a Qualifying Transferee provided that written notification of such Change of Control is provided to the Council.

34.2 The Buyer has provided the Council with an explanation of its ownership and corporate structure in a note dated 23 October 2017 ("Structure Note"). In reliance on the Structure Note (the content of which as at the date of this Agreement remains unchanged) the Council and the Buyer have agreed to certain Change of Control provisions in this Agreement.

35. NON-MERGER

Notwithstanding the completion of the Transfer or the exercise of any right remedy or other power contained in this Agreement or any other matter or thing referred to herein this Agreement shall (subject to clause 30) remain in full force and effect so far as it relates to anything remaining to be performed or observed by all or any of the Parties hereto.

36. NO PARTNERSHIP OR AGENCY

The Buyer and the Council hereby agree and declare that:

36.1 this Agreement shall not constitute a partnership between the Parties and shall not be construed or deemed to constitute a partnership; and

36.2 the Buyer is not an agent express or implied of the Council for any purpose and shall not at any time either expressly or impliedly hold itself out or permit itself to be held out to be so; and

36.3 save as expressly provided herein all contracts and agreements entered into by the Buyer pursuant to this Agreement shall be contracts and agreements between the Buyer as a principal and the respective third parties.

37. INTEREST

If the Buyer shall fail to pay any sums due under this Agreement on any of the dates specified or referred to then (without prejudice to any other right or remedy of the Council) the Buyer shall pay to the Council interest thereon at the Interest Rate from the due date until actual payment.

38. **ENVIRONMENTAL MATTERS**

The following provisions shall apply:

38.1 The Buyer hereby acknowledges and agrees with the Council that:

38.1.1 prior to the Unconditional Date the Buyer will be given sufficient opportunity to inspect and carry out investigations of the condition of the Brighton Centre to ascertain whether, and if so, the extent to which there is any actual or potential presence of Hazardous Substances in, at, on, over or under the Brighton Centre and on that basis the Council shall have no liability of whatsoever nature to the Buyer in relation to any such risks or matters;

38.1.2 the terms on which the Parties have agreed the transfer of the Brighton Centre take into account and fairly and reasonably reflect:

(A) the state and condition of the Brighton Centre (including the presence of Hazardous Substances);

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

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

(D) both the Buyer and the Council are large commercial organisations.

38.2 The Parties hereby acknowledge and agree that the covenants and agreements contained in this clause 5 constitute an agreement on liabilities for the purposes of the exclusion and apportionment of liability for contaminated land and should any enforcement action be instituted against the Council or the Buyer by any regulatory authority (including without limitation the Environment Agency or relevant local authority (as appropriate)) then the Parties agree that the relevant regulatory authority should allocate costs and liabilities of any remediation action in accordance with the agreement herein contained and if that regulatory authority does not do so then the Parties nevertheless agree that as between themselves this Agreement should operate to transfer such liability to the Buyer.

39. **DISPUTES**

39.1 Other than whether the Central Viability Condition has been satisfied and the Waterfront Central Valuation, if there is any dispute or difference between the Parties under any provision of this Agreement including the Schedules which the Council and the Buyer shall fail to resolve within four weeks after the date on which such dispute arises, it shall be referred to and settled by an impartial expert (the **"Expert"**) whose decision in relation to such matter shall be final and binding upon the Parties.

39.2 The identity of the Expert shall be decided in accordance with the following provisions:

39.2.1 so far as such difference or question relates to the Design or the Work Plans normally falling within the scope of competence of an architect the Expert shall be an architect of at least 15 years' qualification experienced in the subject matter of the referral agreed upon by the Buyer and the Council or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Royal Institute of British Architects;

39.2.2 so far as any such difference or question relates to the determination of the Clawback or the Qualifying Expenditure, building or construction work (not falling within the matters provided for in clause 39.2.1) or measurement or otherwise to matters normally falling within the scope of competence of a surveyor the Expert shall be a chartered surveyor of at least 15 years' qualification experienced in the subject matter of the referral agreed upon by the Buyer and the Council or in default of such agreement defaulted on the application of either of them by or on behalf of the President of the Royal Institution of Chartered Surveyors;

39.2.3 save in relation to the determination of the Clawback or the Qualifying Expenditure (which shall be determined by a surveyor in accordance with clause 39.2.2) so far as any such difference or question relates to methods of accounting or otherwise to matters usually and properly within the knowledge of a qualified accountant the Expert shall be a chartered accountant of at least 15 years' qualification experienced in the subject matter of the referral and agreed upon by the Buyer and the Council or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Institute of Chartered Accountants in England and Wales;

39.2.4 so far as any such difference or question relates to planning issues or the satisfaction of planning or CPO related conditions precedent (including the existence of a Waterfront East Onerous Condition) the Expert shall be Leading Counsel being a member of the Planning and Environment Bar Association agreed upon by the Buyer and the Council or in default of such agreement appointed on the application of either of them by or on behalf of the Chairman of the Planning and Environment Bar Association;

39.2.5 so far as any such difference or question relates to the rights and liabilities of Parties hereto or to the terms and conditions to be embodied in any deed or document to be entered into pursuant to this Agreement the Expert shall be an impartial solicitor of at least 15 years' qualification experienced in the subject matter of the referral agreed upon by the Buyer and the Council, or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Law Society;

39.2.6 so far as any such difference or question relates the Council's Procurement Obligations as they relate to the VO Procurement Strategy Report, the Eastern Professional Team Procurement Report and the Construction Strategy the Expert shall be a Leading Counsel of at least 15 years' qualification experienced in procurement matters agreed upon by the Buyer and the Council, or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Law Society;

39.2.7 so far as any such difference or question relates to the determination of Rates (including the assimilation and projection of Rates) the Expert shall be an expert valuer whose core area of expertise is assimilating and projecting Rates for projects and schemes on a comparable basis to the Churchill Square Shopping Centre who may or may not be assisted by an actuary or financial consultant agreed upon by the Buyer and the Council or in default of such agreement on the application of either of them by or on behalf of the President of the Royal Institution of Chartered Surveyors; and

39.2.8 so far as any such difference or question relates to the determination of the Scheme Overage pursuant to Schedule 1 the Expert shall be an expert valuer qualified and practising in the valuation, financing and development of major, retail-led, mixed use development schemes for not less than fifteen years before his appointment agreed upon by the Buyer and the Council or in default of such agreement on the application of either of them by or on behalf of the President of the Royal Institution of Chartered Surveyors

39.2.9 for any other matters not specifically covered in clauses 39.2.1 to 39.2.6 such other appropriate expert agreed by the parties who shall have specific experience in the development of major, retail led, mixed use development schemes and have been practising in the relevant area of expertise for not less than 15 years prior to the applicable appointment or in default of such agreement on the application of either of them by or on behalf of the President of the Royal Institution of Chartered Surveyors.

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

39.4 The party wishing to appoint the Expert will give notice in writing to that effect to the other party, together with details of the matter which he wishes to refer to the Expert.

39.5 A person can only be appointed to act as an Expert if at the time of the appointment he is not a director, office holder or employee of any party to this Agreement or any company or person associated with any such party.

39.6 The Expert is to be appointed on terms requiring him within 14 Working Days from his appointment to call the Parties to a meeting at which he will give directions as to the future conduct of the matter and will from time to time give such further directions as he shall see fit. The Expert will allow the Parties to make written representations and written counter representations to him but will not be in any way fettered by such representations and counter representations and will rely on his own judgment.

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

39.8 The Expert is to be appointed on terms requiring him to give notice in writing of his decision to the Parties within four weeks of his appointment or within such extended period as the Parties may agree in writing.

39.9 The fees and expenses of the Expert (including the cost of his appointment) will be in his award, or in default of making an award as to costs, will be borne equally between the Buyer and the Council and if either party pays the whole of the Expert's fees and expenses in default of payment by the other, it will be entitled to recover either the proportions specified by the Expert for payment by the non-paying party or one half of the Expert's fees from the other.

39.10 If the Expert (the **"Original Expert"**):

39.10.1 fails to determine the matter referred to him;

39.10.2 fails to give notice of his decision within the time and in the manner provided for in this clause 39;

39.10.3 relinquishes or does not accept his appointment;

39.10.4 dies; or

39.10.5 it becomes apparent for any reason that he is unable or unwilling to complete the duties of his appointment

any of the Parties may apply to the President of the relevant body referred to in clauses 39.2.1 to 39.2.5 for a substitute to be appointed (but not after the Original Expert has given notice of his decision to the Parties in dispute). In such event the Original Expert is no longer the Expert, the provisions of this clause 39 apply as if the Original Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this clause 396 is deemed to include any substitute appointed pursuant to this clause 39.10.

39.11 If any dispute falling to be dealt with under this clause 39 is in respect of the same or substantially the same issue as a dispute under the CPO Indemnity Agreement the Parties shall use reasonable endeavours to procure that the two disputes are combined and dealt with by the same Expert at the same time, so that conflicting decisions are not made under the two agreements.

40. NOTICES

40.1 A notice to be served under or pursuant to this Agreement shall be validly served if (and only if) the provisions hereinafter contained are complied with in respect of such notice or alternatively the party to whom such notice is addressed or its authorised agent acknowledges receipt in writing.

40.2 Any notice to be served under or pursuant to this Agreement may be served in any of the following manners:

40.2.1 by personal delivery (in which case service shall be deemed to have been effected at the time of delivery); or

40.2.2 by prepaid first class special delivery post from any address in the United Kingdom (in which case service shall be deemed to have been effected at the expiration of forty eight hours from the time of posting).

40.3 In proving service of any notice to be served under or pursuant to this Agreement it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery or registered delivery.

40.4 If the party to whom any notice to be served under or pursuant to this Agreement shall consist of more than one person the service upon one of such persons shall be service upon all of them.

40.5 The address to which there shall be sent or delivered any notice to be served upon any party to this Agreement under or pursuant to this Agreement shall be the address or registered office of such party as stated at the commencement of this Agreement or as otherwise notified either to the party serving the notice (or on whose behalf the notice is served) or to the solicitors of such party the notification to have been given by notice in writing served in accordance with the provisions of this clause 40 prior to the service of the notice first referred to in this clause 40.

40.6 Any notice required to be served or which may be served by a party to this Agreement may be given on that party's behalf by that party's solicitors.

40.7 Any application or request for a Party's agreement, confirmation or approval (or interim warning notice in accordance with clause 1.2.7) served by either Party under this Agreement where the provisions of clause 1.2.7 and or clause 12.10.4 are to apply must be sent in accordance with this clause 40 and:

40.7.1 in the case of a notice to:

(A) the Council, be marked for the attention of the Project Director; and

(B) the Buyer, shall also be sent by copy to:

Standard Life Aberdeen Investments PLC
[address to be inserted]
Marked for the attention of: Head of UK Developments;

40.7.2 include a statement that clearly notifies the recipient that such application for approval, confirmation or agreement (or interim warning notice) is sent under the terms of clause 1.2.7 and/or clause 12.10.4 of this Agreement.

40.8 The foregoing provisions of this clause 40 shall in addition to the service of notices also apply (mutatis mutandis) to the delivery of documents.

41. OVERSAILING AND OTHER RIGHTS

41.1 The Council as land owner will assist in any reasonable application that the Buyer may make to the relevant department of the Council (so as to properly implement the Waterfront Central Development) for any necessary wayleave licence or other contract relating to the passage of any crane through the air space over any adjoining property to the Brighton Centre dedicated as highway which shall only be granted on such standard commercial terms as are granted to any other third party.

41.2 The Council as land owner will not unreasonably object to any application the Buyer may make to the relevant department of the Council in respect of any projection or overhang licence or easement, scaffolding licence or other necessary wayleave licence or other contract required to implement the Waterfront Central Development as may reasonably be

required by the Buyer to facilitate the Waterfront Central Development which shall only be granted on such standard commercial terms as are granted to any other third party.

42. FREEDOM OF INFORMATION

42.1 The Buyer shall assist the Council in its compliance with obligations imposed on the Council by the Freedom of Information Act 2000 (**"FOIA"**) and all subordinate legislation the Environmental Information Regulations 2004 and which may also include any binding Guidance and codes of practice which may be published from time to time by the Department for Constitutional Affairs in accordance with any such legislation (all of which shall together be referred to as the **"Rules"**) to the extent that such obligations relate to information held by the Buyer on behalf of the Council or otherwise in connection with this Agreement or the Waterfront Central Development or the Waterfront East Development. For the avoidance of doubt, this includes but is not limited to the obligations on the Buyer at the Buyer's reasonable expense to:

42.1.1 provide the Council with any information held by it (and not by the Council itself) as is necessary in order to allow the Council to comply with valid requests for information received from any person or body pursuant to the Rules. Such assistance shall be provided promptly and in any event within seven Working Days of the Council making a written request to the Buyer to provide any necessary information; and

42.1.2 use reasonable endeavours to inform the Council of any classes of information relating to the Waterfront Central Development or the Waterfront East Development in its possession which it holds on behalf of the Council which does not appear on the Councils' publication scheme;

42.1.3 procure that its Building Contractor and Professional Team shall assist the Council as set out in this clause 42; and

42.1.4 establish a secure and reliable portal via the Buyer's Solicitors to which encrypted access will be granted to the Council for the regular storage of plans, surveys, contracts, reports, financial appraisals, advice notes, minutes of meetings, strategies and such other information pertaining to the contents of this Agreement and which the Buyer shall procure is kept up to date and available to the Council.

42.2 The Buyer shall not knowingly act/omit to act (but excluding any acts/omissions to act requested by the Council) in such a way as to prevent the Council from complying with its obligations under the Rules.

42.3 Where:

42.3.1 a valid request for information under the Rules has been received by the Council; and

42.3.2 responding to such a request (which for the avoidance of doubt includes confirming or denying that the information is held by the Council) would involve the disclosure of information about or relating to the Buyer, the Waterfront Central Development or the Waterfront East Development or this Agreement,

then the Council shall consult with the Buyer before confirming or denying that such information is held or disclosing the information in order for the Parties to agree (each acting reasonably) whether any exemptions under the Rules or any other applicable Enactment may apply to prevent the confirmation or denial or the disclosure of such information.

42.4 Where the Buyer does not agree to such confirmation or denial or disclosure pursuant to clause 42.3 the Council shall consider any representations made to it by the Buyer and shall inform the Buyer what information it intends to confirm or deny or disclose to the person making the request at least five Working Days before the confirmation or denial or disclosure is to be made.

42.5 The Parties agree that nothing in this Agreement will operate to prevent the Buyer from taking all measures it considers appropriate (including, but not limited to, seeking injunctive

relief) where it does not agree to, and wishes to prevent the Councils' proposed confirmation or denial or disclosure of information pursuant to this clause 42.

43. LIMITED RECOURSE

Notwithstanding any other provisions of this Agreement:

43.1 for the avoidance of doubt the Trustee has executed this Agreement solely as trustee and with the intention of binding the net assets of the Trust (which at the date of this Agreement includes the Churchill Square Shopping Centre) held by the Trustee from time to time on trust for the Trust (the **"Trust Assets"**);

43.2 the aggregate of all liabilities of the Trustee under this Agreement shall at all times and for all purposes extend only to the Trust Assets;

43.3 in no circumstances shall any liability attach to or be enforced or enforceable against the assets of the Trustee (held in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever) other than the assets which comprise the Trust Assets;

43.4 all representations, warranties, undertakings, obligations and covenants in this Agreement are made, given, owed or agreed by or in relation to the Trust Assets and in the Trustee's capacity as trustee of the Trust and for the avoidance of doubt shall not be construed to be made, given, owed or agreed by or in relation to the Trustee in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever;

43.5 for the avoidance of doubt the Nominee has executed this Agreement solely as trustee of the Nominee Trust and with the intention of binding the net assets of the Nominee Trust held by the Nominee from time to time on trust for the Trustee (the **"Nominee Assets"**);

43.6 the aggregate of all liabilities of the Nominee under this Agreement shall at all times and for all purposes extend only to the Nominee Assets;

43.7 in no circumstances shall any liability attach to or be enforced or enforceable against the assets of the Nominee (held in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever) other than the assets which comprise the Nominee Assets; and

43.8 all representations, warranties, undertakings, obligations and covenants in this Agreement are made, given, owed or agreed by or in relation to the Nominee Assets and in the Nominee's capacity as trustee of the Nominee Trust and for the avoidance of doubt shall not be construed to be made, given, owed or agreed by or in relation to the Nominee in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever.

44. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Each party confirms that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

45. JURISDICTION

Subject to clause 39 this Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and within the exclusive jurisdiction of the English courts, to which the parties irrevocably submit.

46. GUARANTOR

Where required under clause 33 any guarantor to be provided ("**Guarantor**") shall covenant in a separate deed of covenant with the Council as a primary obligation that the Guarantor shall at all times duly perform and observe all the covenants on the part of the Buyer contained in this deed including (without limitation) the payment of all sums payable under this deed in the manner and at the times specified in this deed and the Guarantor

shall indemnify and keep indemnified the Council as against all claims demands losses damages liability costs fees and expenses whatsoever sustained by the Council by reason of or arising directly or indirectly out of the default by the Buyer in the performance and observance of any of its obligations or the payment of any sums due under this deed.

46.1 **Guarantor jointly and severally liable with the Buyer**

The Guarantor is to covenant with the Council that the Guarantor is jointly and severally liable with the Buyer (whether before or after any disclaimer by a liquidator or trustee in bankruptcy) for the fulfilment of all of the obligations of the Buyer under this deed and agrees that the Council in the enforcement of its rights hereunder may proceed against the Guarantor as if the Guarantor was named as the Buyer in this deed.

46.2 **Postponement of claims by Guarantor against the Council**

The Guarantor is to further covenant with the Council that the Guarantor shall not claim in any liquidation bankruptcy composition or arrangement of the Buyer in competition with the Council and shall remit to the Council the proceeds of all judgements and all distributions it may receive from any liquidator trustee in bankruptcy or supervisor of the Buyer and shall hold for the benefit of the Council all security and rights the Guarantor may have over the assets of the Buyer whilst any liabilities of the Buyer or the Guarantor to the Council remain outstanding under this schedule.

46.3 **Waiver by Guarantor**

The Guarantor in the deed is to waive any right to require the Council to proceed against the Buyer or to pursue any other remedy whatsoever which may be available to the Council before proceeding against the Guarantor.

46.4 **No release of Guarantor**

None of the following or any combination thereof shall release discharge or in any way lessen or affect the liability of the Guarantor:

46.4.1 any neglect delay or forbearance of the Council in endeavouring to obtain payment of the rents or other amounts required to be paid by the Buyer and/or in enforcing the performance or observance of any of the obligations of the Buyer under this deed;

46.4.2 any variation of the terms of this Agreement or the assignment of this Agreement with or without the consent of the Guarantor and/or any variation of this Agreement to which the Guarantor is not a party;

46.4.3 any extension of time or any indulgence given by the Council to the Buyer;

46.4.4 any change in the identity constitution structure or powers of any of the Buyer, the Guarantor or the Council or the liquidation administration insolvency or bankruptcy (as the case may be) of the Guarantor or the Buyer or any other arrangement with creditors (of whatsoever nature and whether voluntary or otherwise) made by the Buyer by or on its behalf;

46.4.5 any legal limitation or any immunity disability or incapacity of the Buyer or the Guarantor (whether or not known to the Council) or the fact that any dealings with the Council by the Buyer or the Guarantor may be outside or in excess of the powers of the Buyer;

46.4.6 any other act omission matter or thing except an express release of the Guarantor or variation of the Guarantor's liability in both cases to be given in writing by the Council; and/or

46.4.7 any Disposal to a Group Member of the Buyer.

46.5 **Benefit of Guarantee**

This guarantee and indemnity shall enure for the benefit of the successors and assigns of the Council under this Agreement without the necessity for any assignment thereof.

46.6 **Replacement Guarantor**

The Buyer may by written notice to the Council seek to substitute the Guarantor with an alternative guarantor acceptable to the Council (acting reasonably). If the Council (acting reasonably) accepts the substitute guarantor, such guarantor will enter into a deed of guarantee in favour of the Council on the same terms as set out in this clause prior to any substitution (and release) of the original Guarantor.

IN WITNESS whereof the Parties hereto have executed this Agreement as a deed the day and year first hereinbefore written.

SCHEDULE 1

(OVERAGE SCHEDULE)

THE COMMON SEAL of **BRIGHTON & HOVE CITY COUNCIL** was hereunto affixed and authenticated by:)

Authorised Signatory

EXECUTED AS A DEED by [ ] as the attorney of **JTC FUND SOLUTIONS (JERSEY) LIMITED**, a company incorporated in Jersey, acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**, a Jersey unit trust, (in exercise of a power of attorney dated [ ]) in the presence of:

……..

Acting as attorney for **JTC FUND SOLUTIONS (JERSEY) LIMITED**

Signature of witness:
Name (in BLOCK CAPITALS):
Address:

EXECUTED AS A DEED by **[ ]** as the attorney of **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey, acting in its capacity as nominee of **JTC FUND SOLUTIONS (JERSEY) LIMITED**, a company incorporated in Jersey, acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**, a Jersey unit trust, (in exercise of a power of attorney dated [ ]) in the presence of:

…….

Acting as attorney for **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**

Signature of witness:
Name (in BLOCK CAPITALS):
Address:

APPENDIX 1

VALUATION BRIEF AND WATERFRONT CENTRAL APPRAISAL TEMPLATE

Valuation Brief related to the Conditional Land Acquisition Agreement between (1) Brighton & Hove City Council and (2) JTC Fund Solutions (Jersey) Limited acting in its capacity as trustee of The Standard Life Investments UK Shopping Centre Trust and SG Kleinwort Hambros Trust Company (CI) Limited

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Context

Brighton & Hove City Council (BHCC) and JTC Fund Solutions (Jersey) Limited acting in its capacity as trustee of The Standard Life Investments UK Shopping Centre Trust and SG Kleinwort Hambros Trust Company (CI) Limited (ASI), (the "Parties"), are working in partnership to explore the progression of two linked development projects in Brighton known as the Waterfront Central Site (WCS) and the Waterfront East Site (WES). The legal & commercial framework setting out the obligations upon each party in connection with these developments has been formalised by way of a Conditional Land Acquisition Agreement (CLAA) within which this document is included at Appendix 1.

BHCC and ASI wish to establish a method for undertaking a Residual Land Value based on an agreed scheme that ASI will pursue through planning, incorporating the land owned exclusively by the Parties (and potentially 3rd Parties) and situated within the WCS.

This Valuation Brief establishes a framework by which the value of the Parties' respective land interests can be assessed.

Notwithstanding the relationship between the Parties over the delivery of the Project, the principles of Market Value in accordance with the RICS Valuation, Global Standards 2017 and its interpretative commentary, or any subsequent revision thereof (the Red Book), should apply.

Agreed assumptions between ASI and BHCC

1. The Site

The site that is to be the subject of the valuation comprises the WCS – as outlined in red on the attached plan (Appendix A). Based on this plan of the WCS, BHCC own the Brighton Centre and ASI own the Debenhams and Odeon/Kings West Site, all as indicated on this attached plan.

It is acknowledged that if prior to the date of the valuation, the Parties agree to reduce or extend the red line boundary of the WCS, the valuation will be of the subsequently revised and agreed development site.

2 The Valuation Date

The Valuation Date is defined within the CLAA at Clause 19.1 as follows:-

> *"At any time following the agreement or determination of the **Development Strategy** in accordance with Clause 8, either Party may elect for the Waterfront Central Valuation to be undertaken and the Valuation Date shall be the date when such election is made"*

3 The Scheme

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The development of a retail led scheme (as defined within the agreed Development Strategy) on the WCS as at the Valuation Date.

Planning

The Valuation is to be based on the adopted planning policy and agreed Development Strategy for the WCS as at the Valuation Date.

5 Wider property interests in the City

All other land interests owned by the Parties in the City of Brighton are to be ignored save for the fact that this assumption should not preclude the Valuation from taking account of any potential marriage value (or divorce value) that derives from combining the WCS with ASI's interest held in the remainder of the Churchill Square Shopping Centre immediately adjoining the north of the site *(defined by reference to a plan agreed at the time this Valuation Brief is used)* or that which may derive to the Council related to their own adjoining land interests *(defined by reference to a plan agreed at the time this Valuation Brief is used)*.

Any potential marriage value (or divorce value) in respect of these adjoining land ownerships is to be considered at the Valuation Date.

6 Residual Development Appraisal (for the Valuation Brief only)

6.1 Appraisal Assumptions

A residual development appraisal (the Appraisal) will be undertaken assuming a 'market' approach. This appraisal will be used to create the Base Residual Land Value Surplus (BRLVS).

Following calculation of the BRLV, the sum (if positive) will be apportioned between ASI and BHCC as outlined in 6.2.

For the specific purpose of the Appraisal only, it is agreed that the following assumptions will be adopted in the Appraisal in order to establish the Base Residual Land Value:

The Base Residual Land Value Surplus is to be established using a Priority Profit to ASI of [redacted] **Profit on Cost &** [redacted] **Internal Rate of Return (ungeared).**

For the purposes of establishing the Base Residual Land Value Surplus based on the above Priority Profit hurdles, the agreed minimum value of [redacted] for the Council's land interest in the Brighton Centre and the Market Value of ASI's interests in the WCS will be included as "development costs" in the Appraisal.

The [redacted] minimum value attributed to the Brighton Centre will be profiled into the appraisal cash flow at the assumed Unconditional Date.

The market value of ASI's interests in the WCS will be profiled into the appraisal cash flow 12 months after the assumed Unconditional Date in the appraisal.

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The market values of any other Council owned land interests which the Parties agree to include within the agreed WCS will also be included as "development costs" within the Appraisal and profiled into the cash flow at the assumed Unconditional Date.

The Market Value of ASI's interests within the WCS will be based on the value reported in ASI's monthly 'Red Book Valuation' immediately prior to the Valuation Date.

Sufficient detail, including making available historic monthly, quarterly or annual Valuations, will be provided to allow appropriate analysis by both Parties of the value applied to their respective existing interests in the WCS.

The start date for the Appraisal is to be the date of exchange of the CLAA.

The development Appraisal will include all forecast and anticipated costs associated with the development of the WCS. This list will include but is not limited to the following headings of forecast expenditure:

- Planning application fees
- Professional team fees
- Section 106, CIL & Section 278 costs
- Approved or required third party acquisition and compensation costs (including CPO costs)
- Demolition & construction costs
- Legal costs (e.g. leasing, development, construction, planning)
- ASI Development Management (DM) fees, agreed at [redacted] of Permitted Development Expenditure as defined in Part 1 of Schedule 2 of the CLAA(PDE) **
- Leasing and marketing costs
- Construction and development contingencies
- Site surveys
- Statutory Costs

** For the purposes of calculating ASI's DM fee, the parties have agreed to exclude the Land Price and the notional value ascribed to the Buyer's Properties in the Cashflow Model listed at sub-paragraph (g) of the definition of Permitted Development Expenditure in Part 1 of Schedule 2 of the CLAA but, for the avoidance of doubt, the calculation of ASI's DM fee shall not exclude the price paid (as set out in HM Land Registry records) by the Buyer for the Additional Land also listed in sub-paragraph (g) of the definition of Permitted Development Expenditure in Part 1 of Schedule 2 of the CLAA.

The Parties have agreed that at the date of exchange of the CLAA a gross figure of [redacted] (to include any interest) will be included within the Appraisal, reflecting costs incurred by ASI progressing studies and negotiations associated with the future development of the WCS. These costs plus interest from exchange will be accounted for in the Appraisal at the Valuation Date.

The reasonable and properly incurred costs incurred by ASI from the date of exchange of the CLAA up to the Valuation Date will be included in the Appraisal (subject to the agreed cap below).

ASI's WCS work up costs between exchange of the CLAA and the Valuation Date will be capped (for the purposes of inclusion in the development appraisal) at the higher of [redacted] or [redacted] of total design team fees (including the pre-exchange cost sum above) based on the estimated construction costs for the agreed scheme on the WCS. This cap excludes any third party land acquisition costs incurred by ASI, surrender premiums, option

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premiums and associated purchasers costs/fees as well as any legal/development agreement fees and site surveys.

ASI agrees to work on an open book basis in providing evidence of the costs incurred up to the Valuation Date.

Prior to the Valuation Date, ASI will provide details of any relevant third party acquisition costs and/or agreed HOTs.

The exit yield applied to the gross development value/exit value of the Scheme as a component of the residual development appraisal of the Site will reflect the reasonable prospects of delivering the Scheme and assumes an appropriate level of pre-letting (and pre-sales in the case of any residential units) to tenants, and on lease terms, commensurate with undertaking a market residual development appraisal of a scheme of this nature in this location adopting market assumptions at the Valuation Date.

The assumed tenant rent free periods will be treated as deferred income and not cost. Capital tenant incentives will be treated as development costs.

The finance rate to be adopted in the Appraisal is to be based on prevailing market rates as at the Valuation Date acknowledging the level of pre-lettings/pre-sales assumed in the residual development appraisal and the nature and location of the Scheme.

Without prejudice to the market rates prevailing at the Valuation Date the Parties have agreed that an appropriate market rate at the date of exchange of the CLAA is in the range of 4.50pc – 5.50pc.

Any impact of ASI's Pre-emption & Option rights over BHCC's interests in the WCS shall be disregarded for the purposes of assessing the Base Residual Land Value Surplus at the Valuation Date.

The Appraisal will create a single Base Residual Land Value Surplus for the WCS.

The Valuation will acknowledge the existence of the Overage Provisions (to be agreed separately to this Valuation Brief) which are set out in full within Schedule 2 of the CLAA.

6.2 Base Residual Land Value Surplus Apportionment

Any positive base residual land value resulting from the Appraisal will be apportioned between ASI and BHCC on the basis of [redacted] BHCC, [redacted] ASI.

It is acknowledged that the Base Residual Land Value Surplus may be negative.

6.3 Red Line Boundary Extension – valuation approach

Should the Red Line Boundary of the WCS be extended to include additional BHCC owned land*, for instance the NCP Car Park,* the book values of the additional BHCC & ASI interests prior to the Valuation Date will be included in the development appraisal as a development cost.

Any resultant residual surplus will be split on the same basis [redacted] BHCC, [redacted] ASI.

7 BHCC Land Payment

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The price paid to BHCC's for their interest in the WCS will therefore be:

a) A minimum payment of [redacted] (excl. VAT) for the Council's interest in the Brighton Centre

Plus

b) the apportionment of any positive Base Residual Site Value Surplus , based on a [redacted] (BHCC): [redacted] (ASI) split.

8 "Working" Example

A development appraisal template for the WCS together with its cash flow is attached to this Valuation Brief. This is to provide an example of the format and presentation of the appraisal when submitted at the Valuation Date. It is not comprehensive list of inputs and the values referred to within the appraisal are for illustrative purposes only and are not to be relied upon for the future valuation.

An example of how the base residual land value surplus is split is set out below. The numbers are for illustrative purposes only.

This example assumes:-

The Base Residual Land Value Surplus calculated by the attached Appraisal is [redacted]

ASI & BHCC Base Residual Land Value Surplus to be apportioned	[redacted]
BHCC agreed apportionment ([redacted]) – additional payment	[redacted]
ASI agreed apportionment ([redacted])	[redacted]
Total Payment to BHCC (including Land Price)	[redacted] (**[redacted] BHCC - Base Consideration plus £m residual land value surplus apportionment)**

9 Third Party Resolution

If the Parties are unable to agree on the Base Residual Land Value Surplus within two months of the Valuation Date, the Valuation will be referred to an Independent Expert agreed between the Parties or in the absence of agreement, appointed by the President of the Royal Institution of Chartered Surveyors.

The mechanics of the appointment of a third party valuer are set out within Clause 19 of the CLAA.

10 Potential Future Value to the Parties

This will be dealt with through the Overage Provision Agreement which will be agreed separately to this Valuation Brief and will be a part of the CLAA.

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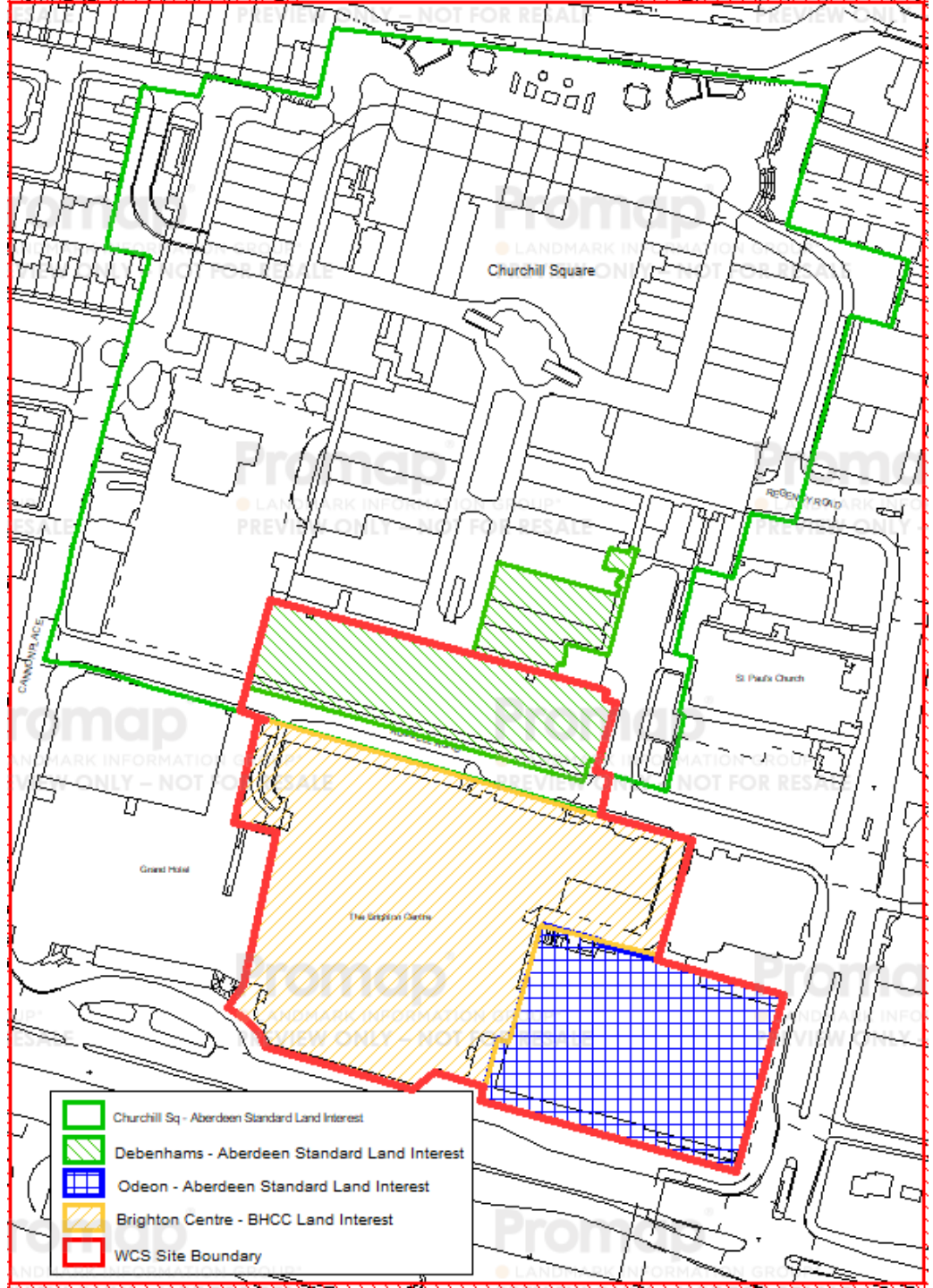
APPENDIX 2

PLAN A (BRIGHTON CENTRE AND WATERFRONT CENTRAL SITE)

Appendix 2 Plan A

WCS Site Boundary and Ownerships



APPENDIX 3
PLAN B (BLACK ROCK SITE)

TITLE NUMBER

ESX289857

BRIGHTON AND HOVE

N

ORDNANCE SURVEY MAP REFERENCE: TQ3303SW

SCALE 1:1250

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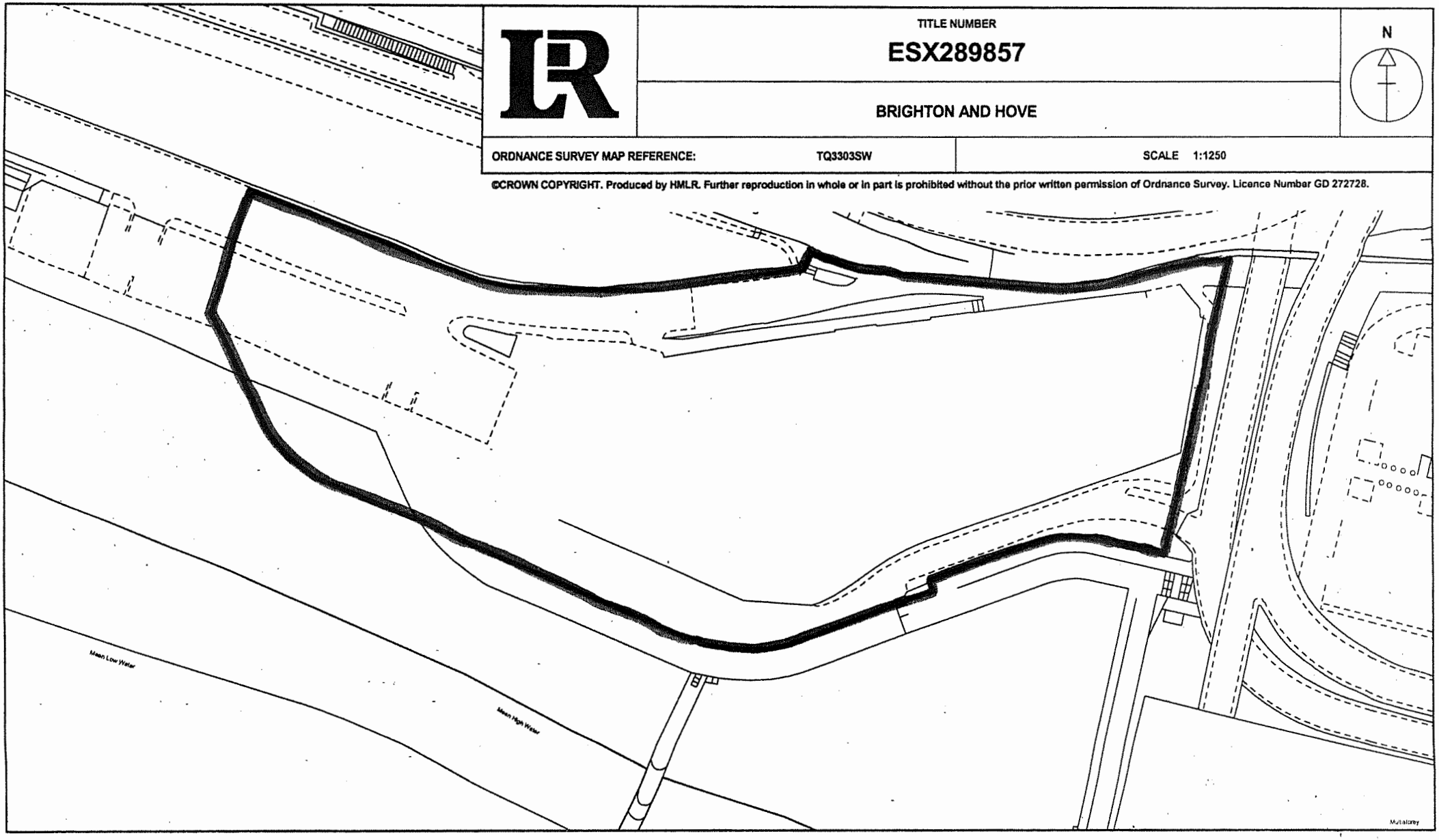


This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - *Title Plans*.

This official copy shows the state of the title plan on **2 March 2006 at 9:21:06.** It may be subject to distortions in scale.

Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.

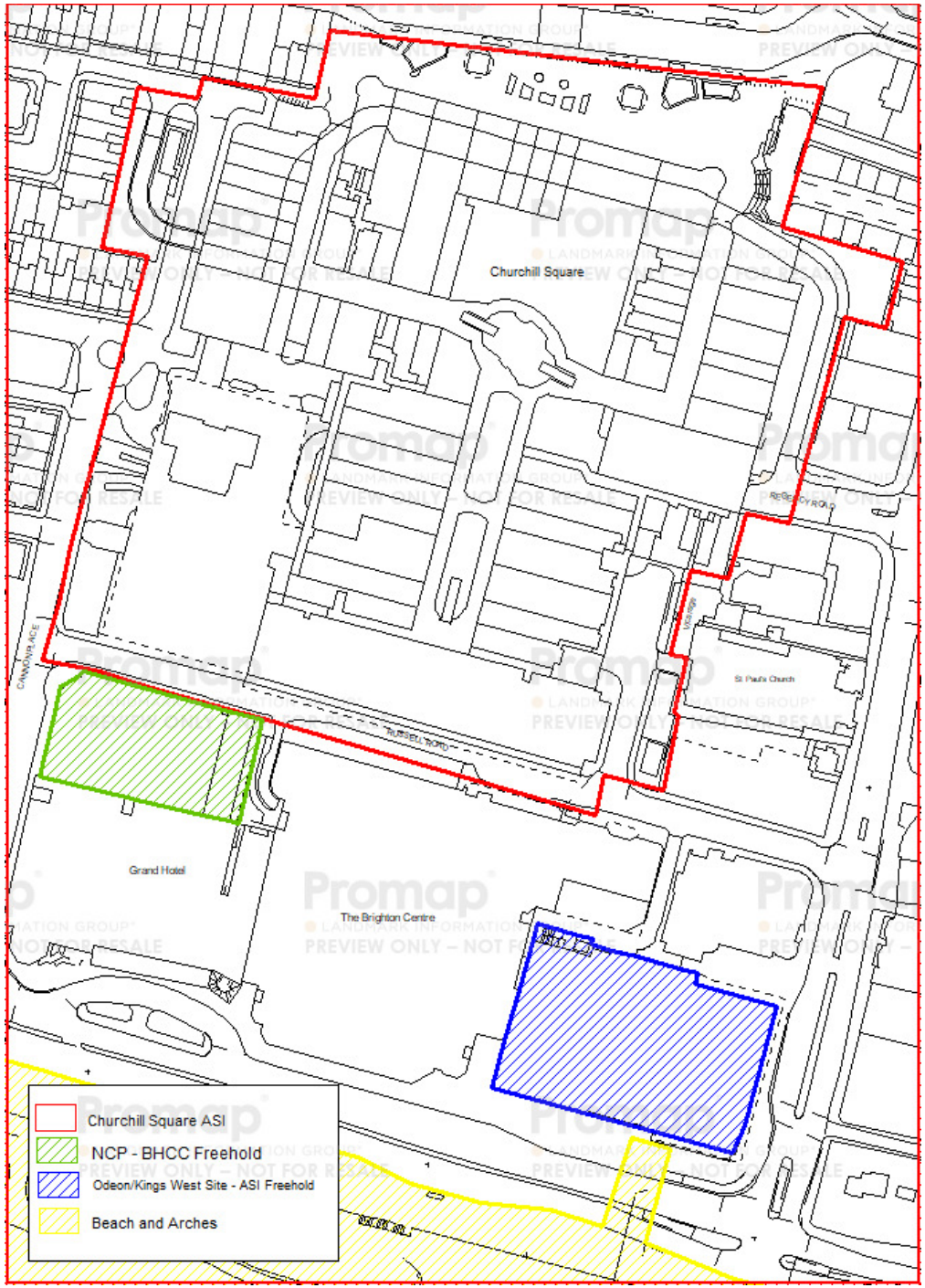
Issued on 2 March 2006.

The title is dealt with by the **Portsmouth District Land Registry.**

H.M. LAND REGISTRY JG 03/2006

APPENDIX 4
PLAN C (BUYER'S PROPERTY)

Buyer’s Property



APPENDIX 5
PRE-EMPTION AGREEMENT

HERBERT SMITH FREEHILLS

HSF Draft: 17.01.2019

…….. 20**

BRIGHTON & HOVE CITY COUNCIL

and

JTC FUND SOLUTIONS (JERSEY) LIMITED and SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED

PRE-EMPTION AGREEMENT

relating to

The Brighton Centre, King's Road, Brighton, East Sussex

Herbert Smith Freehills LLP

TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS	1
2.	INTERPRETATION	4
3.	GRANT OF RIGHT OF PRE-EMPTION	4
4.	NOTICE OF WISH TO DISPOSE OF THE DISPOSAL INTEREST AND SERVICE OF A VALUATION NOTICE	4
5.	NOTICE AND VALUATION	4
6.	EXERCISE OF RIGHT OF PRE-EMPTION	5
7.	FAILURE BY GRANTEE TO EXERCISE RIGHT OF PRE-EMPTION OR TO COMPLETE	5
8.	PROTECTION OF THE GRANTEE'S INTEREST	6
9.	NOTICES	6
10.	DISPUTES	7
11.	SEVERABILITY	8
12.	EXCLUSION OF THIRD PARTY RIGHTS	9
SCHEDULE 1 (PROPERTY)		10
SCHEDULE 2 (SALE TERMS)		11
SCHEDULE 3 (NOTICE)		13

THIS DEED is made 20**

BETWEEN:

(1) **BRIGHTON & HOVE CITY COUNCIL** of Hove Town Hall, Hove BN3 3BQ. (the **"Grantor"**); and

(2) **JTC FUND SOLUTIONS (JERSEY) LIMITED** a company incorporated in Jersey (Co. Regn. No. J32203) whose registered office is at Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT acting in its capacity as trustee (in such capacity, the "**Trustee**") of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST** (the "**Trust**") and **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey (Co. Regn. No. J4345) (formerly known as SG Hambros Trust Company (Channel Islands) Limited prior to its merger with Kleinwort Benson (Jersey) Trustees Limited) whose registered office is at 18 Esplanade St Helier Jersey, JE4 8RT, Channel Islands, acting in its capacity as nominee (in such capacity, the "**Nominee**") of the Trustee (the "**Nominee Trust**") (the **"Grantee"**).

NOW THIS DEED WITNESSES as follows:

1. **DEFINITIONS**

In this Agreement unless the context otherwise indicates (and subject to any particular interpretation required by clause 2):

"**1990 Act**" means the Town and Country Planning Act 1990 (as amended);

"**1994 Act**" means the Law of Property (Miscellaneous Provisions) Act 1994;

"**Acceptance Notice**" means a duplicate Notice completed by the Grantee and served on the Grantor in accordance with clause 6.1;

"**Acceptance Period**" means the period of 20 Working Days (time being of the essence) following the date of receipt by the Grantor and the Grantee of the Valuation;

"**Alternative Conferencing Facility**" means a new conferencing facility in the Brighton & Hove Area owned and/or managed by the Grantor or the refurbishment of an Existing Facility which, in either case, is or is proposed to be:

(a) the conference facility with the largest capacity in the Brighton & Hove Area; or

(b) the principal conferencing facility in the Brighton & Hove Area,

provided that the use of any Existing Facility without refurbishment or the use of any Existing Facility following decorative refurbishment or modernisation where the floor area and/or conferencing capacity and/or seating capacity of such Existing Facility is not increased by such refurbishment by a tolerance of more than ten (10) per cent of the original floor area or conferencing capacity or seating capacity of the Existing Facility immediately before any refurbishment and/or modernisation shall not be considered an Alternative Conferencing Facility for the purposes of this definition;

"**Brighton & Hove Area**" means the administrative area as unitary authority of the Brighton & Hove City Council;

"**Conditional Land Acquisition Agreement**" means the Conditional Land Acquisition Agreement relating to the Property dated [ ] between (1) Brighton & Hove City Council and (2) JCT Fund Solutions (Jersey) Limited;

"Council" means Brighton & Hove City Council of Hove Town Hall, Hove BN3 3BQ;

"**Disposal**" means a sale of the Disposal Interest for valuable consideration or the grant of a lease in return for a premium or any other disposal or assignment of the Grantor's economic interest in the Property or the right to receive the income in relation to the Property and "**Dispose**" shall be construed accordingly;

"**Disposal Interest**" means the Grantor's freehold interest in the Property;

"**Exercise Date**" means the date (if any) on which the duplicate of the Notice (as the case may be) is served on the Grantor pursuant to clause 7;

"**Existing Facility**" means a conferencing facility located in the Brighton & Hove Area that is owned and/or managed by the Grantor at the date of any Notice served by the Grantor on the Grantee in accordance with clause 4.2;

"Expert" has the meaning attributed to that expression in clause 10;

"**Genuine Termination**" has the meaning given to that term in clause 3.2 of the Conditional Land Acquisition Agreement;

"Grantor's Solicitors" means Osborne Clarke LLP of 1 London Wall, London EC2Y 5EB (reference RMZ) or such other person or firm as may be notified in writing by the Grantor to the Grantee;

"Grantee's Solicitors" means Herbert Smith Freehills LLP of Exchange House, Primrose Street, London EC2A 2EG (reference 2682/30852957) or such other person or firm as may be notified in writing by the Grantee to the Grantor;

"**Group Member**" has the meaning given to that term in the Conditional Land Acquisition Agreement;

"Implementation" means the carrying out of a "material operation" (as that expression is defined in section 56(4) of the 1990 Act) and "Implemented" shall have a corresponding meaning;

"**Market Value**" means Market Value (as defined in the RICS Valuation – Professional Standards (Red Book 2014) or any update or replacement thereof issued by the Royal Institute of Chartered Surveyors) provided that in any event the Market Value shall be determined on the assumption that no account is taken of any:

(a) additional bid by a prospective purchaser of the Property; and

(b) marriage values with other freehold or leasehold property owned by the Grantee or in which the Grantee has an interest in Brighton on the Valuation Date;

"**Notice**" means a notice in writing from the Grantor to the Grantee stating that the Grantor wishes to make a Disposal of the Disposal Interest subject to the determination of the Purchase Price by reference to Market Value as hereinafter provided such notice to be in the form set out in Schedule 3 and signed by the Grantor with such notice to be accompanied by a copy of the minuted resolution from the committee of the Council responsible for approving the sale of the Property by the Grantor evidencing the Grantor's Settled Intention at the time of the service of the Notice on the Grantee;

"**Planning Permission Expiry Date**" means the date by which Implementation of the development authorised by the Waterfront East Planning Permission must be begun for it to remain an extant planning permission, such date to be as specified in an express condition or deemed condition imposed under section 91(1) of the 1990 Act;

"**Pre-emption Period**" means the period commencing on the date of this Agreement and expiring on the later of the following dates:

(a) the fifth anniversary of the date of Genuine Termination under the Conditional Land Acquisition Agreement; and

(b) the Planning Permission Expiry Date;

"**Pre-Emption Qualifying Expenditure Amount**" means, if at the date of the service of the Notice the Grantor has:

(a) (either by its own actions or the actions of those appointed or authorised by it) Implemented:

(i) the Waterfront East Planning Permission; or

(ii) any modification, amendment or variation to the Waterfront East Planning Permission or a fresh planning permission is obtained similar in scale and dominance of uses, and with a similar proportionality and dominance of uses, to the Waterfront East Planning Permission, such that the Waterfront East Planning Permission could be said to have established

the principle of the development for which the fresh planning permission is obtained, but this provision shall not be triggered if the usage for any development of the Waterfront East Site is expressly prescribed by the local development framework of the Authority (as defined in the Conditional Land Acquisition Agreement) and which was not revised or amended as a direct result of the Waterfront East Planning Permission or directly by the work of the Grantor,

then an amount equal to the totality of the Qualifying Expenditure; or

(b) a Settled Intention to provide Alternative Conferencing Facilities then an amount equal to sixty per cent (60%) of the Qualifying Expenditure; or

(c) a Settled Intention not to provide either:

(i) conferencing facilities at the Waterfront East Site; nor

(ii) Alternative Conferencing Facilities,

or the Grantor has re-paid the Qualifying Expenditure to the Grantee prior to the date of the Notice served by the Grantor in accordance with clause 4.2, then the Pre-Emption Qualifying Expenditure Amount shall be zero (£0);

"**Pre-Emption Sum**" means the amount that is equal to one half of the interest accrued on the Qualifying Expenditure from the date of the Conditional Land Acquisition Agreement until the date of this Agreement which is payable by the Grantor under the Conditional Land Acquisition Agreement and waived in accordance with clause 3;

"Preparatory Operation" means an item of work or an operation connected to or ancillary to:

(a) archaeological investigations;

(b) exploratory trial holes and pits;

(c) surveys of structures; and

(d) erection of fences, hoardings and scaffolding

"**Property**" means the property described in Schedule 1;

"**Purchase Price**" means the Valuation less (if any) the Pre-Emption Qualifying Expenditure Amount;

"**Qualifying Expenditure**" has the meaning given to that term in the Conditional Land Acquisition Agreement;

"Right of Pre-emption" means the right to purchase the Disposal Interest free from encumbrances which is exercisable by the Grantee in the circumstances set out in this Agreement;

"**Sale Terms**" means the terms (other than the Purchase Price) agreed by the Grantor and the Grantee (each acting reasonably) or in the event of their failure to agree determined by the Expert;

"**Settled Intention**" means the final settled intention of the Grantor in relation to the provision of conferencing facilities in the Brighton & Hove Area as at the date of the decision to offer to sell the Property in respect of which the Grantor will provide to the Grantee documentary evidence in the form of a final minuted resolution of the Council's committee responsible for approving the sale of the Property;

"**Standard Conditions**" means the Standard Commercial Property Conditions (First Edition) as amended by paragraph 3 of Schedule 2 and **"Standard Condition"** shall be construed accordingly;

"**Valuation**" means the sum that is determined by an independent Valuer acting as an expert as representing the Market Value of the Disposal Interest on the date of service of the Notice (the **"Valuation Date"**) as between a willing seller and a willing buyer;

"**Valuer**" means an independent chartered surveyor with at least 15 years' experience of valuing interests of the same or similar type as the Disposal Interest (such surveyor to be a partner in a firm of chartered surveyors having a principal or head office in London) to be appointed to act as an expert in accordance with the terms of the Agreement for the purpose of providing the Valuation;

"**VAT**" means Value Added Tax as referred to in the Value Added Tax Act 1994 ("**VATA 1994**") or any tax of a similar nature which may be substituted for or levied in addition to it;

"Waterfront East Site" has the meaning given to that term in the Conditional Land Acquisition Agreement;

"**Working Day**" means any day from Monday to Friday inclusive which is not Christmas Day Good Friday or a statutory Bank Holiday or any other day on which clearing banks in the City of London are not generally open for the conduct of banking business during normal banking hours; and

"**Waterfront East Planning Permission**" means the planning permission obtained by the Grantee in satisfaction of the Eastern Planning Condition (as that term is defined in the Conditional Land Acquisition Agreement) under the Conditional Land Acquisition Agreement and which was the subject of a Condition Satisfaction Notice under the Conditional Land Acquisition Agreement.

2. **INTERPRETATION**

In this Agreement or in the Standard Conditions:

2.1 words importing the singular include the plural and vice versa and words importing one gender include both other genders;

2.2 where a party comprises more than one person covenants and obligations of that party take effect as joint and several covenants and obligations;

2.3 reference to any clause sub-clause Schedule or paragraph is a reference to the relevant clause sub-clause Schedule or paragraph of this deed and clause and schedule headings shall not affect the construction of this Agreement;

2.4 reference to a specific enactment includes every statutory modification consolidation and re-enactment and statutory extension for the time being in force.

3. **GRANT OF RIGHT OF PRE-EMPTION**

In consideration of the waiver of the Pre-Emption Sum by the Grantee in favour of the Grantor (which is hereby acknowledged), the Grantor grants to the Grantee the Right of Pre-emption.

4. **NOTICE OF WISH TO DISPOSE OF THE DISPOSAL INTEREST AND SERVICE OF A VALUATION NOTICE**

4.1 The Grantor shall not Dispose of the Disposal Interest during the Pre-emption Period or agree to do so without first complying with its obligations in this Agreement.

4.2 If the Grantor wishes to Dispose of the Disposal Interest during the Pre-emption Period it shall forthwith serve the Notice (as the case may be) in duplicate on the Grantee.

5. **NOTICE AND VALUATION**

5.1 In the event of service of a Notice the Grantor and the Grantee shall agree the identity of the Valuer within 10 Working Days following service of the Notice and if they are unable to agree the identity of the Valuer within such period, the Valuer shall be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party.

5.2 Following agreement or determination of the identity of the Valuer as provided in clause 5.1 such Valuer shall be jointly appointed by the Grantor and the Grantee with their instructions conforming with the terms of this Agreement on terms that the Valuer shall carry out and

provide to both the Grantor and the Grantee a Valuation within two months of his/her appointment.

5.3 The Valuer shall be required to give written notice to the Grantor and the Grantee inviting each of them to submit to him within 20 Working Days of his appointment a proposal for the Valuation supported by any or all of:

5.3.1 a statement of reasons;

5.3.2 information in respect of any other matters they consider relevant; and (separately and later)

5.3.3 submissions in respect of each other's statement of reasons and other matters

but the Valuer shall not be bound thereby and shall each make the assessment in accordance with his own judgment.

5.4 If the Valuer refuses to act or is or becomes incapable of acting or dies the Grantor and the Grantee shall agree a substitute Valuer or if they are unable so to agree either of them may apply to the President of the Royal Institution of Chartered Surveyors for the appointment of a substitute Valuer.

5.5 The Grantee may within the Acceptance Period serve an Acceptance Notice on the Grantor but if it fails to do so within the Acceptance Period then the Grantee shall be deemed not to have exercised the Right of Pre-emption and this right of Pre-emption shall be treated to have automatically determined and the Grantor will be required to comply with clause 7.2.

5.6 If the Grantee fails to exercise its Right of Pre-emption pursuant to clause 5.5 the Grantor shall be free to effect a Disposal at a price which is not lower than the Purchase Price.

6. EXERCISE OF RIGHT OF PRE-EMPTION

6.1 If the Grantee wishes to exercise the Right of Pre-emption it shall within the Acceptance Period (time being of the essence) countersign and date the duplicate Acceptance Notice and serve the same upon the Grantor but inserting therein the Purchase Price and the name of any Group Member who the Grantee has nominated to buy the Disposal Interest.

6.2 Subject to the receipt of an Acceptance Notice within the Acceptance Period the Grantor shall sell and the Grantee (or any Group Member nominated by the Grantee in the Acceptance Notice) shall buy the Disposal Interest in consideration of the Purchase Price upon the relevant Sale Terms and the completion date shall be the twentieth Working Day following the later of:

6.2.1 the expiry of the Acceptance Period; and

6.2.2 the date on which the Sale Terms have been agreed or determined.

6.3 The Property shall be at the risk of the Grantee (or the applicable Group Member nominated in the Acceptance Notice) from the Exercise Date.

7. FAILURE BY GRANTEE TO EXERCISE RIGHT OF PRE-EMPTION OR TO COMPLETE

7.1 If the Grantee does not within the Acceptance Period serve on the Grantor the Acceptance Notice, the Grantor shall be at liberty to Dispose of the Disposal Interest in accordance with clause 5.6.

7.2 On completion of any Disposal pursuant to clause 7.1 or in the event of the Grantee having exercised the Right of Pre-Emption and the Grantee (or the applicable Group Member nominated in the Acceptance Notice) having failed to complete in accordance with this Agreement (unless the failure is as a result of the Grantor's breach of contract) the Grantee shall take such steps as are necessary to procure the removal of any restriction registered on the titles to the Property in accordance with clause 8.2 with such steps being made:

7.2.1 where the Grantee has failed to serve an Acceptance Notice in accordance with clause 6.1 prior to the expiry of the Acceptance Period, within five (5) Working Days of the expiry of the Acceptance Period; or

7.2.2 where the Grantee has served an Acceptance Notice in accordance with clause 6.1 prior to the expiry of the Acceptance Period but has due to default of the Grantee (or the applicable Group Member nominated in the Acceptance Notice) failed to complete on the completion date for the sale and purchase as set out in clause 6.2, within five Working Days of the date for completion of the sale and purchase set out in clause 6.2.

8. PROTECTION OF THE GRANTEE'S INTEREST

8.1 The Grantor hereby agrees with the Grantee that it will not during the Pre-emption Period Dispose of the whole or substantially the whole of the Property by way of a transfer or the grant of a lease at a premium without complying with the terms of this Agreement.

8.2 The Grantor hereby agrees that the Grantee may apply to the Land Registry on Form RX1 for a restriction to be entered on the register of the titles to the Property in the following terms:

"*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be completed by registration without a certificate signed by a conveyancer that the provisions of clause 8.1 of the Pre-Emption Agreement dated [date] and made between [Grantor] and [Grantee] have been complied with or that they do not apply to the disposition.*"

9. NOTICES

9.1 A notice to be served under or pursuant to this Agreement shall be validly served if (and only if) the provisions hereinafter contained are complied with in respect of such notice or alternatively the party to whom such notice is addressed or its authorised agent acknowledges receipt in writing.

9.2 Any notice to be served under or pursuant to this Agreement may be served in any of the following manners:

9.2.1 by personal delivery (in which case service shall be deemed to have been effected at the time of delivery); or

9.2.2 by prepaid first class special delivery post from any address in the United Kingdom (in which case service shall be deemed to have been effected at the expiration of forty eight hours from the time of posting).

9.3 In proving service of any notice to be served under or pursuant to this Agreement it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery or registered delivery.

9.4 If the party to whom any notice to be served under or pursuant to this Agreement shall consist of more than one person the service upon one of such persons shall be service upon all of them.

9.5 The address to which there shall be sent or delivered any notice to be served upon any party to this Agreement under or pursuant to this Agreement shall be the address or registered office of such party as stated at the commencement of this Agreement or as otherwise notified either to the party serving the notice (or on whose behalf the notice is served) or to the solicitors of such party the notification to have been given by notice in writing served in accordance with the provisions of this clause 8.2 prior to the service of the notice first referred to in this clause 8.2.

9.6 Any notice required to be served or which may be served by a party to this Agreement may be given on that party's behalf by that party's solicitors.

9.7 Where any notice is to be served upon the Grantor under or pursuant to this Agreement such notice shall be marked "For the Urgent Attention of the Head of Legal and Electoral Services" with a copy to the Head of Property Services, or in each case such other person as shall have been notified as the person to whose attention any such notice should be drawn.

9.8 The foregoing provisions of this clause 8.2 shall in addition to the service of notices also apply (mutatis mutandis) to the delivery of documents.

10. **DISPUTES**

10.1 If there is any dispute or difference between the parties under any provision of this Agreement which the Grantor and the Grantee shall fail to resolve within two weeks after the date on which such dispute arises, it shall be referred to and settled by an impartial expert (the **"Expert"**) whose decision in relation to such matter shall be final and binding upon the parties.

10.2 The identity of the Expert shall be decided in accordance with the following provisions:

10.2.1 so far as such difference or question relates to valuation or other matters a surveyor the Expert shall be a chartered surveyor of at least 15 years' qualification experienced in the subject matter of the referral agreed upon by the Grantee and the Grantor or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Royal Institution of Chartered Surveyors;

10.2.2 so far as any such difference or question relates to the determination of the Sale Terms or the rights and liabilities of parties hereto the Expert shall be an impartial solicitor of at least 15 years' qualification experienced in the subject matter of the referral agreed upon by the Grantee and the Grantor, or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Law Society.

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

10.4 The party wishing to appoint the Expert will give notice in writing to that effect to the other party, together with details of the matter which he wishes to refer to the Expert.

10.5 A person can only be appointed to act as an Expert if at the time of the appointment he is not a director, office holder or employee of any party to this Agreement or any company or person associated with any such party.

10.6 The Expert is to be appointed on terms requiring him within 14 Working Days from his appointment to call the parties to a meeting at which he will give directions as to the future conduct of the matter and will from time to time give such further directions as he shall see fit. The Expert will allow the parties to make written representations and written counter representations to him but will not be in any way fettered by such representations and counter representations and will rely on his own judgment.

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

10.8 The Expert is to be appointed on terms requiring him to give notice in writing of his decision to the parties within four weeks of his appointment or within such extended period as the parties may agree in writing.

10.9 The fees and expenses of the Expert (including the cost of his appointment) will be in his award, or in default of making an award as to costs, will be borne equally between the Grantee and the Grantor and if either party pays the whole of the Expert's fees and expenses in default of payment by the other, it will be entitled to recover either the proportions specified by the Expert for payment by the non-paying party or one half of the Expert's fees from the other.

10.10 If the Expert (the **"Original Expert"**):

10.10.1 fails to determine the matter referred to him;

10.10.2 fails to give notice of his decision within the time and in the manner provided for in this clause 10;

10.10.3 relinquishes or does not accept his appointment;

10.10.4 dies; or

10.10.5 it becomes apparent for any reason that he is unable or unwilling to complete the duties of his appointment

any of the parties may apply to the President of the relevant body referred to in clauses 10.2.1 to 10.2.2 for a substitute to be appointed (but not after the Original Expert has given notice of his decision to the parties in dispute). In such event the Original Expert is no longer the Expert, the provisions of this clause 10 apply as if the Original Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this clause 10 is deemed to include any substitute appointed pursuant to this clause 10.

11. LIMITED RECOURSE

Notwithstanding any other provisions of this Agreement:

11.1.1 for the avoidance of doubt the Trustee has executed this Agreement solely as trustee and with the intention of binding the net assets of the Trust held by the Trustee from time to time on trust for the Trust (the **"Trust Assets"**);

11.1.2 the aggregate of all liabilities of the Trustee under this Agreement shall at all times and for all purposes extend only to the Trust Assets;

11.1.3 in no circumstances shall any liability attach to or be enforced or enforceable against the assets of the Trustee (held in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever) other than the assets which comprise the Trust Assets;

11.1.4 all representations, warranties, undertakings, obligations and covenants in this Agreement are made, given, owed or agreed by or in relation to the Trust Assets and in the Trustee's capacity as trustee of the Trust and for the avoidance of doubt shall not be construed to be made, given, owed or agreed by or in relation to the Trustee in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever;

11.1.5 for the avoidance of doubt the Nominee has executed this Agreement solely as trustee of the Nominee Trust and with the intention of binding the net assets of the Nominee Trust held by the Nominee from time to time on trust for the Trustee (the **"Nominee Assets"**);

11.1.6 the aggregate of all liabilities of the Nominee under this Agreement shall at all times and for all purposes extend only to the Nominee Assets;

11.1.7 in no circumstances shall any liability attach to or be enforced or enforceable against the assets of the Nominee (held in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever) other than the assets which comprise the Nominee Assets; and

11.1.8 all representations, warranties, undertakings, obligations and covenants in this Agreement are made, given, owed or agreed by or in relation to the Nominee Assets and in the Nominee's capacity as trustee of the Nominee Trust and for the avoidance of doubt shall not be construed to be made, given, owed or agreed by or in relation to the Nominee in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever.

12. **SEVERABILITY**

If any provision or provisions of this Agreement (or any document referred to herein) is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement (or such document) shall not in any way be affected or impaired thereby.

13. **EXCLUSION OF THIRD PARTY RIGHTS**

Each party confirms that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

14. **ALIENATION**

The Grantee shall not assign charge or otherwise deal with the benefit of this Agreement in whole or in part provided that this clause 14 shall in no way prevent the Grantee nominating a Group Member in the Acceptance Notice in accordance with clause 6.1.

IN WITNESS whereof this Agreement has been executed by the parties as a deed and is intended to be and is hereby delivered the day and year first above written.

SCHEDULE 1

(PROPERTY)

The land and buildings known as the Brighton Centre, King's Road, Brighton, East Sussex shown edged red on the plan annexed hereto registered with freehold title absolute under Title Numbers ESX275687 (whole) ESX210861 (part) and ESX191832.

SCHEDULE 2

(SALE TERMS)

1. **GRANTEE**

All references to "Grantee" in this Schedule 2 shall, if applicable, be read and interpreted to include reference to any Group Member nominated by the Grantee in the Acceptance Notice in accordance with clause 6.1.

2. **STANDARD CONDITIONS**

The Standard Conditions are incorporated in this deed insofar as they are not inconsistent with the other conditions of this deed (including this condition) and are amended as follows:

2.1 In the construction of the Standard Conditions:

2.1.1 "seller" means "Grantor" and "buyer" means either "Grantee" or, if applicable, any Group Member nominated by the Grantee in the Acceptance Notice;

2.1.2 "property" means "Property";

2.1.3 "purchase price" means "Purchase Price";

2.1.4 "working day" means Working Day.

2.2 In Standard Condition 1.1:

2.2.1 in the definition of "accrued interest" the words "(i) if money has been placed on deposit or in a building society share account, the interest actually earned (ii) otherwise," shall be deleted;

2.2.2 "contract rate" means a yearly rate equivalent to four per centum above the base rate of National Westminster Bank PLC (or such other clearing bank as the seller may stipulate in a written notice to the buyer) for the time being in force calculated on a daily basis.

2.2.3 Standard Condition 1.1.2 is amended so as to read "when used in these conditions the terms "absolute title" and "official copies" have the meanings given to them by the Land Registration Act 2002"

2.3 Standard Conditions 1.3, 1.5, 2.2, 5.1, 5.2.2(e), 5.2.2(g) and 5.2.3 shall not apply.

2.4 **Standard Conditions 3.1 and 4 - Title**

2.4.1 In Standard Condition 3.1.2 the following provision shall be added:

"(f) (i) any matters which are unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002

(ii) such unregistered interests as may affect the Property to the extent and for so long as they are preserved by the transitional provisions of Schedule 12 of the Land Registration Act 2002."

2.4.2 Standard Condition 4.1 shall not apply nor shall any reference to it in any other Standard Condition.

2.5 **Standard Condition 7 Remedies**

2.5.1 In Standard Condition 7.1.1 the words "in the negotiations leading to it" shall be deleted and there shall be substituted therefor the words "a written reply by the seller's Solicitors to a written enquiry by the buyer's Solicitors".

2.5.2 In Standard Condition 7.1.2 the words "or value" shall be deleted.

3. **TRANSFER OF THE PROPERTY**

The Grantor shall sell the freehold estate in the Property full title guarantee provided always that Section 2(1)(b) of the 1994 Act shall apply as if the words "will at the cost of the person to whom the disposition is made" were substituted for the words "will at its own cost" and the transfer shall expressly provide.

4. **USER**

The Grantee shall be deemed to buy with full knowledge in all respects of the authorised use of the Property for the purposes of the Planning Acts.

5. **MATTERS SUBJECT TO WHICH THE PROPERTY IS SOLD**

The Property is sold and will be transferred subject to and where appropriate with the benefit of:

5.1 all local land charges and other matters whensoever registered or registrable (whether registered or not) by any local or other authority and to every charge notice direction order restriction agreement resolution proposal condition and other matter of whatsoever nature affecting the Property capable of discovery by search or enquiry of any local or other authority or statutory undertaker and the Grantee shall be deemed to purchase with full knowledge thereof whether or not any search or enquiry has been made;

5.2 all matters affecting the Property which are capable of discovery by an inspection of the Property and/or by any search or enquiry which a prudent Grantee would make on the acquisition of the Property or which would be made on its behalf; and

5.3 the entries and the matters referred to on the register of the titles of the Property; and

5.4 any matters referred to in the Notice

PROVIDED THAT the Property shall be transferred with vacant possession.

6. **DISCLOSURE**

Title having been deduced the Grantee shall be deemed to purchase with full knowledge of the contents thereof and shall raise no requisition thereon or objection thereto.

7. **COMPLETION ARRANGEMENTS**

7.1 Completion shall take place before 2.00 p.m. on the completion date and for the purposes of calculating any interest due from the Grantee to the Grantor where completion takes place later than 2.00 p.m. on any day it shall be treated as having taken place on the next Working Day.

7.2 Notwithstanding completion of the sale and purchase anything herein contained to which effect has not been given by the transfer to the Grantee shall remain in full force and effect.

7.3 Any sum remitted by or on behalf of the Grantee in order to discharge the Grantee's obligation to pay money due on completion shall be paid by a direct credit to the Grantor's Solicitors' client account and the Grantee's obligation to make that payment shall be discharged when it is received in the said specified account.

8. **TRANSFER AND OTHER DOCUMENTS**

The Grantee shall prepare and execute the transfer of the Property in duplicate and deliver the duplicate thereof to the Grantor on completion and all other documents (if any) to be entered into between the Grantor and the Grantee (with or without other parties) and in which the Grantee is to enter into covenants or obligations with the Grantor shall be executed in duplicate and the duplicate delivered to the Grantor.

SCHEDULE 3

(NOTICE)

1. By a deed (the **"Agreement"**) dated [ ] 20** made between (1) Brighton & Hove City Council and (2) JTC Fund Solutions (Jersey) Limited acting in its capacity as trustee (the "**Trustee**") of the Standard Life Investments UK Shopping Centre Trust and SG Kleinwort Hambros Trust Company (CI) Limited, acting in its capacity as nominee of the Trustee (the "**Grantee**") you were granted a right of pre-emption (the **"Right of Pre-emption"**) to require Brighton & Hove City Council to sell the Disposal Interest (as defined and more particularly described in the Agreement) on the terms and conditions specified in the Agreement.

2. Brighton & Hove City Council hereby notifies you that it offers to sell the Property (subject to the terms of this Agreement) to you at a price to be determined pursuant to clause 5 of the Agreement.

Date:

Signed by:

For and on behalf of the Grantor

[On duplicate]

We hereby exercise the Right of Pre-Emption:

(i) nominating the following Group Member (as defined in the Agreement) as the buyer:

……

name of Group Member (if applicable)

(ii) at the Purchase Price of [£].

Date:

Signed by:

For and on behalf of the Grantee

THE COMMON SEAL of **BRIGHTON & HOVE CITY COUNCIL** was hereunto affixed and authenticated by:)

Authorised Signatory

Signed by and
on behalf of **JTC FUND SOLUTIONS (JERSEY) LIMITED** acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**

……
Director/Authorised A Signatory

……
Director/Authorised A Signatory

Signed by and
on behalf of **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**
acting in its capacity as
nominee of **JTC FUND SOLUTIONS (JERSEY) LIMITED** acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**

……
Director/Authorised A Signatory

……
Director/Authorised A Signatory

APPENDIX 6
OPTION AGREEMENT

HERBERT SMITH FREEHILLS

…….. 20**

GRANTOR: **BRIGHTON & HOVE CITY COUNCIL**

GRANTEE: **JTC FUND SOLUTIONS (JERSEY) LIMITED and SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**

CALL OPTION AGREEMENT

relating to

The Brighton Centre, King's Road, Brighton, East Sussex

Herbert Smith Freehills LLP

TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS AND INTERPRETATION	2
2.	CALL OPTION	4
3.	NOTICE OF IMPLEMENTATION AND SERVICE OF A VALUATION NOTICE	4
4.	NOTICE AND VALUATION	4
5.	EXERCISE OF CALL OPTION	4
6.	TITLE	5
7.	ALIENATION	5
8.	VAT	5
9.	NOTICES	5
10.	DISPUTES	6
11.	NOTIFICATION OF INTEREST	7
12.	LIMITED RECOURSE	7
13.	ENTIRE AGREEMENT AND REPRESENTATIONS	8
14.	GOVERNING LAW AND JURISDICTION	8
15.	EXCLUSION OF THIRD PARTY RIGHTS	8
SCHEDULE 1 (AGREED CONDITIONS OF SALE)		10
SCHEDULE 2 [(THE FORM OF IMPLEMENTATION NOTICE)]		11
SCHEDULE 3 [(THE FORM OF EXERCISE NOTICE)]		13

PARTICULARS

DATE	20[ ]
GRANTOR	**BRIGHTON & HOVE CITY COUNCIL** of King's House, Hove, East Sussex, BN3 2SR. (the "Grantor")
GRANTEE	**JTC FUND SOLUTIONS (JERSEY) LIMITED** a company incorporated in Jersey (Co. Regn. No. J32203) whose registered office is at Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT acting in its capacity as trustee (in such capacity, the "**Trustee**") of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST** (the "**Trust**") and **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey (Co. Regn. No. J4345) (formerly known as SG Hambros Trust Company (Channel Islands) Limited prior to its merger with Kleinwort Benson (Jersey) Trustees Limited) whose registered office is at 18 Esplanade St Helier Jersey, JE4 8RT, Channel Islands, acting in its capacity as nominee (in such capacity, the "**Nominee**") of the Trustee (the "**Nominee Trust**") (the **"Grantee"**)
OPTION PERIOD	The period commencing on the date of this Agreement and expiring on the earlier to occur of the following dates: (a) the later of: (i) [*insert the 5th anniversary of the date of Genuine Termination under the CLAA*]; and (ii) the Planning Permission Expiry Date; (b) if an Implementation Notice is served by the Grantor, the date of expiry of the Option Exercise Period; and (c) the date of expiry of the Acceptance Period (as that term is defined in the Pre-Emption Agreement) under the Pre-Emption Agreement.
OPTION PRICE	an amount equal to the Qualifying Expenditure Interest
PROPERTY	the land and buildings known as the Brighton Centre, King's Road, Brighton, East Sussex shown edged red on the plan annexed hereto registered with freehold title absolute under Title Numbers ESX275687 (whole) ESX210861 (part) and ESX191832
PURCHASE PRICE	the Valuation
COMPLETION DATE	the date determined in accordance with clause 5.3
GRANTOR'S SOLICITORS	Herbert Smith Freehills LLP of Exchange House, Primrose Street, London EC2A 2EG Ref: 30964866/2682 (which shall be quoted on all correspondence) or such other firm as the Grantor may notify to the Grantee
GRANTEE'S SOLICITORS	Osborne Clarke LLP of 1 London Wall, London EC2Y 5EB (reference RMZ) (which shall be quoted on all correspondence) or such other firm as the Grantee may notify to the Grantor
STANDARD CONDITIONS	the Standard Commercial Property Conditions (Second Edition)

BY THIS AGREEMENT made on the date and between the parties specified in the Particulars
IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 The following expressions and those defined in the Agreed Conditions of Sale and in the Particulars have the respective specified meanings:-

"1990 Act" means The Town and Country Planning Act 1990 (as amended);

"Agreed Conditions of Sale" mean the conditions of sale set out in schedule 1;

"**Churchill Square Shopping Centre**" means the land known as Churchill Square Shopping Centre comprising title number ESX210860;

"Conditional Land Acquisition Agreement" means the Conditional Land Acquisition Agreement relating to the Property dated [ ] between (1) Brighton & Hove City Council and (2) JTC Fund Solutions (Jersey) Limited acting in its capacity as trustee of The Standard Life Investments UK Shopping Centre Trust and SG Kleinwort Hambros Trust Company (CI) Limited, acting in its capacity as nominee of the Trustee;

"Eastern Planning Condition" has the meaning given to that term in the Conditional Land Acquisition Agreement;

"Exempt Disposal" means one or more of the following:

(a) a mortgage or charge of the Property or any part of it;

(b) a disposition of part of the Property to a statutory body or service supply company in respect of electricity substations, gas governors or water pumping stations or other statutory services which have been or are to be constructed or installed in or upon the Property; and

(c) an occupational lease of the whole or part of the property at a rack rent;

"Exercise Date" means the date (if any) during the Option Exercise Period when the Option is validly exercised pursuant to clause 5.1;

"Exercise Notice" means a signed notice in the form or substantially in the form set out in schedule 3 given at any time during the Option Exercise Period by or on behalf of the Grantee to the Grantor pursuant to this Agreement;

"Expert" has the meaning attributed to that expression in clause 10;

"**Genuine Termination**" has the meaning given to that term in clause 3.2 of the Conditional Land Acquisition Agreement;

"**Implement**" means the date that a "material operation" (as that expression is defined in section 56(4) of the 1990 Act) is carried out in relation to the development authorised by the Waterfront East Planning Permission and the term "Implementing" or "Implementation" shall be construed accordingly;

"**Implementation Date**" means the date of the Implementation Notice served by the Grantor on the Grantee in accordance with clause 3.2;

"**Implementation Notice**" means notice in writing from the Grantor to the Grantee confirming the Grantor has Implemented the Waterfront East Planning Permission;

"**Market Value**" means Market Value (as defined in the RICS Valuation – Professional Standards (Red Book 2014) or any update or replacement thereof issued by the Royal Institute of Chartered Surveyors) provided that in any event the Market Value shall be determined on the assumption that no account is taken of any:

(a) additional bid by a prospective purchaser of the Property; and

(b) marriage values with other freehold or leasehold property owned by the Grantee or in which the Grantee has an interest in Brighton on the Valuation Date;

"Option" means the option to purchase the Property granted pursuant to clause 2.1;

"Option Date" means the date of this Agreement;

"**Option Exercise Period**" means the period from and including the date of determination of the Purchase Price in accordance with clause 4 and expiring on and including the date that is 3 months following the determination of the Purchase Price in accordance with clause 4;

"Particulars" means the particulars set out at the beginning of this Agreement;

"**Planning Permission Expiry Date**" means the date by which Implementation of the development authorised by the Waterfront East Planning Permission must be begun for it to remain an extant planning permission, such date to be as specified in an express condition or deemed condition imposed under section 91(1) of the 1990 Act;

"Plan(s)" means the plan(s) annexed to this Agreement;

"**Pre-Emption Agreement**" means the pre-emption agreement dated the date of this Agreement entered into between (1) the Grantor and (2) the Grantee;

"**Qualifying Expenditure**" has the meaning given to that term in the Conditional Land Acquisition Agreement;

"**Qualifying Expenditure Interest**" means the amount that is equal to one half of the interest accrued on the Qualifying Expenditure from the date of the Conditional Land Acquisition Agreement until the Option Date which is payable by the Grantor under the Conditional Land Acquisition Agreement;

"Transfer" means the transfer of the Property in the form annexed to this Agreement; and

"**Valuation**" means the sum that is determined by an independent Valuer acting as an expert as representing the Market Value of the Property on the date of service of the Implementation Notice (the **"Valuation Date"**) as between a willing seller and a willing buyer;

"Valuer" means an independent chartered surveyor with at least 15 years' experience of valuing interests of the same or similar type as the Property (such surveyor to be a partner in a firm of chartered surveyors having a principal or head office in London) to be appointed to act as an expert in accordance with the terms of this Agreement for the purpose of providing the Valuation;

"VAT" means Value Added Tax as referred to in the Value Added Tax Act 1994 ("VATA 1994") or any tax of a similar nature which may be substituted for or levied in addition to it.

"Waterfront East Planning Permission" means Planning Permission obtained by the Grantee pursuant to which the Eastern Planning Condition was satisfied under the Conditional Land Acquisition Agreement.

1.2 **Interpretation:**

In this Agreement:

1.2.1 the Particulars form part of it:

1.2.2 reference to a clause schedule or paragraph is a reference to the relevant clause schedule or paragraph of this agreement and their headings do not affect its construction; and

1.2.3 reference to a specific enactment includes every statutory modification consolidation and re-enactment and any regulation, direction or order made under it;

1.2.4 words and expressions defined in clause 1.1 of the Conditional Land Acquisition Agreement shall have the same meaning where used in this Agreement.

2. CALL OPTION

2.1 In consideration of the waiver of the Qualifying Expenditure Interest by the Grantee in favour of the Grantor (which is hereby acknowledged), the Grantor grants to the Grantee an option during the Option Period to buy the Property for the Purchase Price on the terms of this Agreement and the Agreed Conditions of Sale.

3. NOTICE OF IMPLEMENTATION AND SERVICE OF A VALUATION NOTICE

3.1 The Grantor shall not Implement the Waterfront East Planning Permission during the Option Period without first complying with its obligation in this clause 3.2.

3.2 Prior to Implementing the Waterfront East Planning Permission during the Option Period the Grantor shall serve the Implementation Notice in duplicate on the Grantee.

4. NOTICE AND VALUATION

4.1 In the event of service of an Implementation Notice the Grantor and the Grantee shall agree the identity of the Valuer within 10 Working Days following service of the Implementation Notice and if they are unable to agree the identity of the Valuer within such period, the Valuer shall be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party.

4.2 Following agreement or determination of the identity of the Valuer as provided in clause 4.1, such Valuer shall be jointly appointed by the Grantor and the Grantee with their instructions conforming with the terms of this Agreement on terms that the Valuer shall carry out and provide to both the Grantor and the Grantee a Valuation within two months of his/her appointment.

4.3 The Valuer shall be required to give written notice to the Grantor and the Grantee inviting each of them to submit to him within 20 Working Days of his appointment a proposal for the Valuation supported by any or all of:

4.3.1 a statement of reasons;

4.3.2 information in respect of any other matters they consider relevant; and (separately and later)

4.3.3 submissions in respect of each other's statement of reasons and other matters

but the Valuer shall not be bound thereby and shall make the assessment in accordance with his own judgment.

4.4 If the Valuer refuses to act or is or becomes incapable of acting or dies the Grantor and the Grantee shall agree a substitute Valuer or if they are unable so to agree either of them may apply to the President of the Royal Institution of Chartered Surveyors for the appointment of a substitute Valuer.

5. EXERCISE OF CALL OPTION

5.1 The Option may be exercised by the Grantee at any time during the Option Exercise Period, and may only be exercised by the Grantee serving the Exercise Notice on the Grantor.

5.2 With effect from the Exercise Date the Grantor shall sell and the Grantee shall buy the Property for the Purchase Price on the terms of this Agreement and the Agreed Condition for Sale.

5.3 The Completion Date is the date which is twenty (20) Working Days from and including the Exercise Date.

5.4 If the Grantee fails to exercise the Option during the Option Exercise Period pursuant to clause 5.1 the Option Period shall end.

6. **TITLE**

Title having been deduced to the Grantee, the Grantee shall be deemed to have entered into the agreement with full knowledge of the title and may not raise any requisition or objection to the title which has been deduced.

7. **ALIENATION**

7.1 Subject to clause 7.2, the Grantee shall not assign charge or otherwise deal with the benefit of this Agreement in whole or in part.

7.2 If the Grantee disposes of any part of the Churchill Square Shopping Centre by way of a joint venture between the Grantee and another party pursuant to which the Grantee retains an economic interest in the Churchill Square Shopping Centre, the Grantee shall be entitled to assign the benefit of this Agreement to the vehicle or vehicles that are the registered proprietors of the Churchill Square Shopping Centre following such disposition.

8. **VAT**

8.1 All sums payable under this Agreement shall be exclusive of VAT, and where a party to this Agreement makes a supply to the other party and the supplier has to account for VAT in respect of that supply then the recipient of the supply shall, in addition to the consideration payable for such supply, pay an amount equal to the VAT (if any) arising in respect of such supply against the production of a valid VAT invoice.

8.2 Where either party is required by the terms of this agreement to reimburse or indemnify the other party for any cost, expense or other liability, the relevant party shall reimburse or indemnify the other party for the full amount of such cost, expense or liability, including such part thereof as represents VAT, save to the extent that the other party is entitled to credit or repayment in respect of such VAT from HM Revenue & Customs.

8.3 [The Grantor, or the representative member of its VAT group, is registered for VAT purposes and on the date of this Agreement the Grantor shall provide the Grantee with a VAT invoice showing the amount of VAT payable in respect of any supply chargeable to VAT made under this agreement.]

8.4 [The Grantor [, or a [relevant associate as defined by paragraph 3 of Schedule 10 of VATA 1994,] [relevant group member for the purposes of paragraph 21 of Schedule 10 of VATA 1994,]] has [exercised an option to tax the Property] [has made an election such that an option to tax the Property is deemed to have been made] for the purposes of Part 1 of Schedule 10 of VATA 1994 and, in so far as it relates to the Property, the option to tax has not been revoked under paragraphs 23 or 25 of Schedule 10 of VATA 1994 and has not been deemed to have been revoked under paragraph 24 of Schedule 10 of VATA 1994 and the Grantor shall not revoke, nor allow any other person to revoke, nor allow anything to be done which could result in HM Revenue & Customs revoking the option to tax in so far as it applies to the Property, prior to the Option Date.][1]

9. **NOTICES**

9.1 A notice to be served under or pursuant to this Agreement shall be validly served if (and only if) the provisions hereinafter contained are complied with in respect of such notice or alternatively the party to whom such notice is addressed or its authorised agent acknowledges receipt in writing.

9.2 Any notice to be served under or pursuant to this Agreement may be served in any of the following manners:

9.2.1 by personal delivery (in which case service shall be deemed to have been effected at the time of delivery); or

[1] **HSF Note** Osborne Clark to confirm the VAT status of the Property

9.2.2 by prepaid first class special delivery post from any address in the United Kingdom (in which case service shall be deemed to have been effected at the expiration of forty eight hours from the time of posting).

9.3 In proving service of any notice to be served under or pursuant to this Agreement it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery or registered delivery.

9.4 If the party to whom any notice to be served under or pursuant to this Agreement shall consist of more than one person the service upon one of such persons shall be service upon all of them.

9.5 The address to which there shall be sent or delivered any notice to be served upon any party to this Agreement under or pursuant to this Agreement shall be the address or registered office of such party as stated at the commencement of this Agreement or as otherwise notified either to the party serving the notice (or on whose behalf the notice is served) or to the solicitors of such party the notification to have been given by notice in writing served in accordance with the provisions of this clause 9 prior to the service of the notice first referred to in this clause 9

9.6 Any notice required to be served or which may be served by a party to this Agreement may be given on that party's behalf by that party's solicitors.

9.7 Where any notice is to be served upon the Grantor under or pursuant to this Agreement such notice shall be marked "For the Urgent Attention of the Head of Legal and Electoral Services" with a copy to the Head of Property Services, or in each case such other person as shall have been notified as the person to whose attention any such notice should be drawn.

9.8 The foregoing provisions of this clause 9, shall in addition to the service of notices also apply (mutatis mutandis) to the delivery of documents.

10. DISPUTES

10.1 If there is any dispute or difference between the parties under any provision of this Agreement (other than with respect to the Valuation) which the Grantor and the Grantee shall fail to resolve within two weeks after the date on which such dispute arises, it shall be referred to and settled by an impartial expert (the **"Expert"**) whose decision in relation to such matter shall be final and binding upon the parties.

10.2 The identity of the Expert shall be decided in accordance with the following provisions:

10.2.1 so far as such difference or question relates to valuation or other matters a surveyor the Expert shall be a chartered surveyor of at least 15 years' qualification experienced in the subject matter of the referral agreed upon by the Grantee and the Grantor or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Royal Institution of Chartered Surveyors;

10.2.2 so far as any such difference or question relates to the determination of the Sale Terms or the rights and liabilities of parties hereto the Expert shall be an impartial solicitor of at least 15 years' qualification experienced in the subject matter of the referral agreed upon by the Grantee and the Grantor, or in default of such agreement appointed on the application of either of them by or on behalf of the President of the Law Society.

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

10.4 The party wishing to appoint the Expert will give notice in writing to that effect to the other party, together with details of the matter which he wishes to refer to the Expert.

10.5 A person can only be appointed to act as an Expert if at the time of the appointment he is not a director, office holder or employee of any party to this Agreement or any company or person associated with any such party.

10.6 The Expert is to be appointed on terms requiring him within 14 Working Days from his appointment to call the parties to a meeting at which he will give directions as to the future conduct of the matter and will from time to time give such further directions as he shall see fit. The Expert will allow the parties to make written representations and written counter representations to him but will not be in any way fettered by such representations and counter representations and will rely on his own judgment.

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

10.8 The Expert is to be appointed on terms requiring him to give notice in writing of his decision to the parties within four weeks of his appointment or within such extended period as the parties may agree in writing.

10.9 The fees and expenses of the Expert (including the cost of his appointment) will be in his award, or in default of making an award as to costs, will be borne equally between the Grantee and the Grantor and if either party pays the whole of the Expert's fees and expenses in default of payment by the other, it will be entitled to recover either the proportions specified by the Expert for payment by the non-paying party or one half of the Expert's fees from the other.

10.10 If the Expert (the **"Original Expert"**):

10.10.1 fails to determine the matter referred to him;

10.10.2 fails to give notice of his decision within the time and in the manner provided for in this clause 10;

10.10.3 relinquishes or does not accept his appointment;

10.10.4 dies; or

10.10.5 it becomes apparent for any reason that he is unable or unwilling to complete the duties of his appointment

any of the parties may apply to the President of the relevant body referred to in clauses 10.2.1 to 10.2.2 for a substitute to be appointed (but not after the Original Expert has given notice of his decision to the parties in dispute). In such event the Original Expert is no longer the Expert, the provisions of this clause 10 apply as if the Original Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this clause 10 is deemed to include any substitute appointed pursuant to this clause 10.

11. NOTIFICATION OF INTEREST

The Grantor hereby consents to the Grantee making an application to the Land Registry to register a unilateral notice in respect of this Agreement against the title to the Property in the Grantee's name provided that the Grantee shall as soon as reasonably practicable following the expiry of the Option Period apply to HM Land Registry for the cancellation of any such unilateral notice.

12. LIMITED RECOURSE

Notwithstanding any other provisions of this Agreement:

12.1.1 for the avoidance of doubt the Trustee has executed this Agreement solely as trustee and with the intention of binding the net assets of the Trust held by the Trustee from time to time on trust for the Trust (the **"Trust Assets"**);

12.1.2 the aggregate of all liabilities of the Trustee under this Agreement shall at all times and for all purposes extend only to the Trust Assets;

12.1.3 in no circumstances shall any liability attach to or be enforced or enforceable against the assets of the Trustee (held in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever) other than the assets which comprise the Trust Assets;

12.1.4 all representations, warranties, undertakings, obligations and covenants in this Agreement are made, given, owed or agreed by or in relation to the Trust Assets and in the Trustee's capacity as trustee of the Trust and for the avoidance of doubt shall not be construed to be made, given, owed or agreed by or in relation to the Trustee in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever;

12.1.5 for the avoidance of doubt the Nominee has executed this Agreement solely as trustee of the Nominee Trust and with the intention of binding the net assets of the Nominee Trust held by the Nominee from time to time on trust for the Trustee (the **"Nominee Assets"**);

12.1.6 the aggregate of all liabilities of the Nominee under this Agreement shall at all times and for all purposes extend only to the Nominee Assets;

12.1.7 in no circumstances shall any liability attach to or be enforced or enforceable against the assets of the Nominee (held in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever) other than the assets which comprise the Nominee Assets; and

12.1.8 all representations, warranties, undertakings, obligations and covenants in this Agreement are made, given, owed or agreed by or in relation to the Nominee Assets and in the Nominee's capacity as trustee of the Nominee Trust and for the avoidance of doubt shall not be construed to be made, given, owed or agreed by or in relation to the Nominee in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever.

13. ENTIRE AGREEMENT AND REPRESENTATIONS

13.1 This Agreement constitutes the entire agreement between the parties to the exclusion of every other antecedent statement and agreement.

13.2 The Grantee acknowledges that it has not entered into this Agreement in reliance upon any statement or other agreement (other than those which have been given by the Grantor's Solicitors in a written reply to enquiries made by, or provided to, the Grantee's Solicitors before the exchange of this agreement).

14. GOVERNING LAW AND JURISDICTION

14.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and within the exclusive jurisdiction of the English Court to which the parties irrevocably submit.

14.2 Each party agrees that any claim form or other document to be served under the Civil Procedure Rules may be served on it by being delivered to or left at a correct address for the purposes of clause 9.

15. EXCLUSION OF THIRD PARTY RIGHTS

Each party confirms that no term of this Agreement other than paragraph 4.2 of schedule 1 is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.

IN WITNESS whereof this deed has been executed by the parties and is intended to be and is hereby delivered the day and year first above written

SCHEDULE 1

(AGREED CONDITIONS OF SALE)

1. **DEFINITIONS**

In this schedule the following expressions shall have the respective specified meanings:-

[*insert any that may be required here*]

2. **STANDARD CONDITIONS**

2.1 The Part 1 Standard Conditions are incorporated in this schedule insofar as they are not inconsistent with its other conditions.

2.2 In the construction of the Standard Conditions:

2.2.1 "seller" and "buyer" mean "Grantor" and "Grantee" respectively;

2.2.2 "property" means "Property";

2.2.3 "purchase price" means "Purchase Price";

2.2.4 "contract" means the contract constituted by the agreement granting the Option;

2.2.5 the date of the contract shall be the Option Date so that references to "before the contract" mean before the Option Date and references to "after the contract" mean after the Option Date; and

2.2.6 for the purposes of Standard Condition 3.1.2(a) the incumbrances referred to are those specified in paragraph 4 to the extent subsisting on the Exercise Date.

2.3 Standard Conditions 2.2 and 2.3 shall not apply.

3. **AGREEMENT TO SELL AND BUY**

3.1 With effect from the Exercise Date the Grantor shall sell and the Grantee shall buy the Property for the Purchase Price.

4. **MATTERS AFFECTING THE PROPERTY**

The Property will be transferred subject to the following incumbrances which are specified for the purposes of Standard Condition 3.1.2(a) and being those which are:

4.1 contained or referred to in the entries or records made in the registers of the Property's title number(s) maintained by the Land Registry as at [Insert the date of the CLAA;

4.2 unregistered interests which will override registration of the Transfer under the Land Registration Act 2002;

5. **TRANSFER**

5.1 **Proof of title**

Standard Conditions 6.1 and 6.2 do not apply.

5.2 **Timetable**

Standard Condition 6.3 does not apply.

5.3 **Defining the property**

Standard Condition 6.4 does not apply.

5.4 **Transfer**

5.4.1 The transfer of the Property to the Grantee shall be in the form of the Transfer.

5.4.2 The Grantee shall execute the Transfer in duplicate and deliver the duplicate to the Grantor on completion.

5.4.3 The Grantee shall:

(A) as soon as practicable after the date of actual completion, apply to the Land Registry for registration of the Transfer;

(B) ensure that any Land Registry requisitions are dealt with promptly and properly; and

(C) within five working days after the issue of the title information document evidencing completion of registration, cause a copy of it to be sent to the Grantor's Solicitors.

5.4.4 The Grantee shall on completion of the Transfer procure the delivery to the Grantor of a legal opinion letter in respect of the Grantee from lawyers qualified in the country of incorporation to give such an opinion in the terms reasonably required by the Grantor.

6. **PENDING COMPLETION**

The Property is at the risk of the Grantee from and including the Exercise Date and, save to the extent that the same is directly attributable to the Grantor's wilful acts or omissions after the Exercise Date, no loss or damage occasioned to the Property nor any deterioration in its state of repair or condition shall be the responsibility of the Grantor nor annul the sale or give rise to any claim to compensation or damages or entitle the Grantee to rescind.

7. **COMPLETION ARRANGEMENTS**

7.1 Completion shall take place on the Completion Date.

7.2 Subject as otherwise specified in this agreement the Property is sold with vacant possession on the date of actual completion.

8. **REMEDIES**

8.1 Errors and omissions

8.1.1 In Standard Condition 9.1.1, "a written reply by the Grantor's Solicitors to enquiries made by, or provided to, the Grantee's Solicitors" is substituted for "in the negotiations leading to it".

8.1.2 In Standard Condition 9.1.2 "or value" is deleted.

8.2 **Grantee's failure to comply with notice to complete**

In Standard Condition 9.5.2 the remedies are not mutually exclusive.

SCHEDULE 2

[(THE FORM OF IMPLEMENTATION NOTICE)]

To: [*GRANTEE*]
[*ADDRESS*]

[*SPECIFY MEANS OF SERVICE IN ACCORDANCE WITH CLAUSE 9****Error! Reference source not found.***]

Pursuant to an Option Agreement ("**Agreement**") dated [*DATE*] made between Brighton & Hove City Council (the "**Grantor**") and **JTC FUND SOLUTIONS (JERSEY) LIMITED** acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST** and **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED,** acting in its capacity as nominee of the Trustee (the "**Grantee**") relating to the Brighton Centre, King's Road, Brighton, East Sussex:

The Grantor gives the Grantee notice of the Implementation of the Waterfront East Planning Permission by the Grantor.

DATE:

…….

SIGNED BY [ ]for and on behalf of [GRANTOR]

SCHEDULE 3

[(THE FORM OF EXERCISE NOTICE)]

To: [*GRANTOR*]
[*ADDRESS*]

[*SPECIFY MEANS OF SERVICE IN ACCORDANCE WITH CLAUSE 9]*

Pursuant to an Option Agreement ("**Agreement**") dated [*DATE*] made between Brighton & Hove City Council (the "**Grantor**"), and **JTC FUND SOLUTIONS (JERSEY) LIMITED** acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST** and **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED,** acting in its capacity as nominee of the Trustee (the "**Grantee**") relating to the Brighton Centre, King's Road, Brighton, East Sussex:

The Grantee gives the Grantor notice of the exercise of the Option contained in the Agreement to buy the Property on the terms set out in the Agreement.

DATE:

…….

SIGNED BY [ ]for and on behalf of [*GRANTEE*]

THE COMMON SEAL of **BRIGHTON & HOVE CITY COUNCIL** was hereunto affixed and authenticated by:)

Authorised Signatory

Signed by and on behalf of **JTC FUND SOLUTIONS (JERSEY) LIMITED** acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**

……
Director/Authorised A Signatory

……
Director/Authorised A Signatory

Signed by and on behalf of **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED** acting in its capacity as nominee of **JTC FUND SOLUTIONS (JERSEY) LIMITED** acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**

……
Director/Authorised A Signatory

……
Director/Authorised A Signatory

APPENDIX 7
FORM OF TRANSFER

Land Registry
Transfer of whole of registered title(s)

TR1

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.	1 Title number(s) of the property:
Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.	2 Property:
Remember to date this deed with the day of completion, but not before it has been signed and witnessed.	3 Date:
Give full name(s) of **all** the persons transferring the property. Complete as appropriate where the transferor is a company.	4 Transferor: For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: For overseas companies (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
Give full name(s) of **all** the persons to be shown as registered proprietors. Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.	5 Transferee for entry in the register: For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: For overseas companies (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.	6 Transferee's intended address(es) for service for entry in the register:
	7 The transferor transfers the property to the transferee

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

8 Consideration

☐ The transferor has received from the transferee for the property the following sum (in words and figures):

☐ The transfer is not for money or anything that has a monetary value

☐ Insert other receipt as appropriate:

Place 'X' in any box that applies.

Add any modifications.

9 The transferor transfers with

☐ full title guarantee

☐ limited title guarantee

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
  - in the first box, or
  - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, *or*
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to *Joint property ownership* and practice guide *24: private trusts of land* for further guidance. These are both available on the GOV.UK website.

10 Declaration of trust. The transferee is more than one person and

☐ they are to hold the property on trust for themselves as joint tenants

☐ they are to hold the property on trust for themselves as tenants in common in equal shares

☐ they are to hold the property on trust:

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

11 Additional provisions

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 10 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to *Joint property ownership* and practice guide *24: private trusts of land* for further guidance.

Remember to date this deed in panel 3.

12 Execution

WARNING
If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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APPENDIX 8
WATERFRONT EAST COST HEADINGS STATEMENT

Brighton Waterfront Qualifying Expenditure Headings

Qualifying Expenditure Headings - suggested total Cap

Eastern Site Expenditure Headings of Expenditure

to include associated survey and assessment costs unless otherwise listed under CLAWBACK	£	£
Architect		
Transport Consultant *(and associated surveys and assessments incl. pedestrian flow)*		
Quantity Surveyor		
Structural and Civil Engineer		
M & E Consultant		
Project Management		
Planning Consultant		
Heritage Consultant *(and associated reports)*		
Landscape Architect		
Venue & Conferencing Consultant		
Procurement Consultants		
Sustainability Consultant *(incl. associated surveys)*		
Marketing Costs		
Leasing (venue & commercial uses), land acquisition fees		
Development Consultants (including CPO advice)		
Legal Fees *(including real estate, FOI, planning, procurement, CPO, construction)*		
Principal Designer		
Counsel - (including planning, CPO, (procurement?))		
Stakeholder Comms Consultant		
PR Consultant		
Public Consultation		
Hospitality Consultants		
Environmental Consultants		
Maritime / Coastal Engineering		
Acoustic Consultants		
Environmental Impact Assessment (EIA) - associated surveys/consultants		
Sustainability Consultant		
Rights of Light incl sunlight Consultant *(together with associated surveys)*		
Air quality Consultant		
Fire Consultant *(and any associated surveys)*		
3D model and CGI's and Public exhibition		
BHCC Project Monitor costs		)Subject to a cap as
BHCC Procurement Administrator		)as set out under the CLAA
Operator pre-contract (legal/technical) costs		

Note 1: pre - exchange of CLAA the parties have agreed QE is £[redacted]

£[redacted] (Waterfront East Budget)

Clawback Headings

	-
Topo Surveys, Utility Searches, Utility Diversions, Utility Upgrades	
Transport surveys associated with current activities .	-
Title Reports/Searches	
Heritage Reports	-
Flood Risk Assessments	-
Z Mapping	
Archaeological Reports	
WE Economic Impact Studies	-
WE Outline & Full Business Case Studies	
Option fees for site assembly (SLI to check with HSF)	
Phase 1 & 2 Contamination Reports	

Note 2: when the CLAA goes unconditional Clawback becomes QE

£[redacted] (Will form part of QE - "Waterfront East Budget" when CLAA goes unconditional)

APPENDIX 9

WATERFRONT EAST PRE-CONSTRUCTION SERVICES

1. GENERAL PRE-CONSTRUCTION ACTIVITIES

The Buyer shall on and from the date of this Agreement until and including the Unconditional Date or the earlier termination of this Agreement:

1.1 direct, coordinate and manage the Consultants (including, for the avoidance of doubt, the VO Consultancy Team excluding the Buyer's Project Director) in accordance with the VO Procurement and Project Preparation Report, the Project Set Up Documentation, the Project Base Documentation, the Eastern Development Strategy, and otherwise in accordance with this Agreement.

1.2 instruct the Consultants to undertake feasibility studies, testing the size/location and configuration of the Venue materials and appearance, and undertake development appraisals and cash-flow projections. These studies will also include testing the feasibility of developing any enabling (residential, hotel, commercial) uses on the site to include an assessment of the planning/heritage/transport impact and risk.

1.3 coordinate activities to ensure that the development appraisals and cash-flow projections referred to in this Agreement are revised and updated at regular intervals during the life cycle of the Waterfront East Development.

1.4 coordinate, together with the Council, the public consultation strategy prior to submission of planning application and or any pre concept studies (feasibility work etc.). Revise and resubmit as necessary for approval. Manage responses/input in connection with appeals and public enquiries.

1.5 instruct the relevant Consultant to develop the design so that general arrangements for all elements are completed to enable production information to commence.

1.6 co-ordinate the preparation of programmes by the relevant Consultant for all phases of the Waterfront East Development covering design, construction, planning, legal, tenant and fund activities from inception to the CLAA becoming unconditional;

1.7 review, with specialist consultants where appropriate, and advise on matters that have a commercial impact on the viability of the Waterfront East Development including but not limited to car parking, service charge, naming rights, business rates, subvention, TUPE; where appropriate, to coordinate and integrate the involvement of the Venue Operator (once appointed) with the Council, the Consultants, stakeholders and others as necessary including (without limitation) in connection with all Design and procurement related matters; and

1.8 Prepare the Development Gateway Table and update the Development Gateway Table from time to time when reasonably necessary.

2. FINANCIAL MANAGEMENT

The Buyer shall, on and from the date of this Agreement until and including the Unconditional Date or the earlier termination of this Agreement:

2.1 coordinate activities required to prepare cost plans and building studies as agreed with the Council or as deemed necessary;

2.2 instruct the appointed Project Manager to create and regularly update a risks and opportunities register and "Actions" tracker in respect of the Waterfront East Development;

2.3 inform the Council on the status of project cost of the Waterfront East Development;

2.4 instruct the Project Manager to confirm fees for statutory approvals;

2.5 ensure that all other invoices related to the Waterfront East Development are checked and recommended for payment accordingly, keeping detailed, accurate and "auditable" records (providing such information to the Council) and are subsequently paid.

APPENDIX 10

DEED OF COVENANT

…….. 20[ ]

BRIGHTON & HOVE CITY COUNCIL

and

JTC FUND SOLUTIONS (JERSEY) LIMITED and SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED

and

[ ]

DEED OF COVENANT

relating to the conditional land acquisition agreement of the Brighton Centre, Brighton Centre, King's Road, Brighton, East Sussex

Herbert Smith Freehills LLP

THIS DEED OF COVENANT is made the day of 20[ ]

BETWEEN:

(1) **BRIGHTON & HOVE CITY COUNCIL** of King's House, Hove, East Sussex BN3 2SR (the **"Covenantee"**);

(2) **JTC FUND SOLUTIONS (JERSEY) LIMITED** a company incorporated in Jersey (Co. Regn. No. J32203) whose registered office is at Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT acting in its capacity as trustee (in such capacity, the **"Trustee"**) of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST** and **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey (Co. Regn. No. J4345) (formerly known as SG Hambros Trust Company (Channel Islands) Limited prior to its merger with Kleinwort Benson (Jersey) Trustees Limited) whose registered office is at 18 Esplanade St Helier Jersey, JE4 8RT, Channel Islands, acting in its capacity as nominee of the Trustee (**"SLI"**); and

(3) [ ] whose registered office is at [ ] (Co. Regn. No. [ ]) (the **"Covenantor"**).

WHEREBY IT IS AGREED AND DECLARED as follows:

1. RECITALS

1.1 SIL is assigning the Agreement to the Covenantor. On and from the date hereof the Covenantor covenants with the Covenantee on the terms set out in Clause 3. This deed is given pursuant to clause 33 of the Agreement.

1.2 From the date hereof, the Covenantee releases and discharges SLI from all future obligations under the Agreement.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

"Agreement" means the conditional land acquisition agreement of the Brighton Centre, Brighton Centre, King's Road, Brighton, East Sussex made between (1) Brighton & Hove City Council and (2) JTC Fund Solutions (Jersey) Limited and SG Kleinwort Hambros Trust Company (CI) Limited dated [ ] 2019.

2.2 Interpretation

2.2.1 Where a party comprises more than one person covenants and obligations of that party take effect as joint and several covenants and obligations.

2.2.2 Words importing singular include the plural and vice versa and words importing gender include all other genders.

2.2.3 References in this deed to any clause sub-clause schedule or paragraph or any headings shall not affect the construction or interpretation of this deed.

3. COVENANT

The Covenantor covenants with the Covenantee to observe and perform all outstanding [financial][1] obligations on the part of SLI contained in Option 1: [clauses 12.12] and/or [12.13] and~~/or~~ [paragraph 2.1 of Part 1 of Schedule 1] of the Agreement (delete as applicable)][2] Option 2: [the Agreement][3] as at the date of this deed as if they were set out in full in this deed (mutatis mutandis).

---

1 **Drafting Note:** Use this option if the deed of covenant is being provided pursuant to clause 33.5.

2 **Drafting Note:** Use this option if the deed of covenant is being provided pursuant to clause 33.5.

4. **RELEASE**

From the date hereof, the Covenantee agrees that SLI is released and discharged from all future obligations and liabilities under the Agreement.

5. **EXCLUSION OF THIRD PARTY RIGHTS**

Each party confirms that no term of this deed is enforceable under the Contracts (Rights of Third Parties Act) 1999 by a person who is not a party to it.

6. **GOVERNING LAW AND JURISDICTION**

6.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputed or claims) shall be governed by and construed in accordance with English law and within the exclusive jurisdiction of the English courts, to which the parties irrevocably submit.

6.2 Each party irrevocably agrees that any claim form or other document to be served under the Civil Procedure Rules may be served on it by being delivered to or left at its address in the United Kingdom as stated in this document or as otherwise notified to each other party and each party undertakes to notify the other in advance of any change from time to time of such address for service and to maintain an appropriate address at all times.

IN WITNESS whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

[3] **Drafting Note**: Use this option if the deed of covenant is being provided pursuant to clauses 33.1 or 33.2.

THE COMMON SEAL of **BRIGHTON & HOVE CITY COUNCIL** was hereunto affixed and authenticated by:)

Authorised Signatory

EXECUTED AS A DEED by [ ] as the attorney of **JTC FUND SOLUTIONS (JERSEY) LIMITED**, a company incorporated in Jersey, acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**, a Jersey unit trust, (in exercise of a power of attorney dated [ ]) in the presence of:

……..

Acting as attorney for **JTC FUND SOLUTIONS (JERSEY) LIMITED**

Signature of witness:
Name (in BLOCK CAPITALS):
Address:

EXECUTED AS A DEED by [ ] as the attorney of **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey, acting in its capacity as nominee of **JTC FUND SOLUTIONS (JERSEY) LIMITED**, a company incorporated in Jersey, acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**, a Jersey unit trust, (in exercise of a power of attorney dated [ ]) in the presence of:

……

Acting as attorney for **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**

Signature of witness:
Name (in BLOCK CAPITALS):
Address:

EXECUTED as a **DEED** by [ ] acting by [*insert name of director*] in the presence of

……
(Signature of director)

……
(Name of witness)

……

……

……
(Address of witness)

……
(Signature of witness)

APPENDIX 11

LONG FORM APPOINTMENT

ADDLESHAW GODDARD

CLIENT-SPECIFIC PRECEDENT: STANDARD LIFE

GENERIC APPOINTMENT OF DESIGN CONSULTANT (DESIGN & BUILD) – DEVELOPER CLIENT

(Collateral Warranties version)

Error! Unknown document property name.
Responsibility: Nancy McGuire

This precedent was written or revised as of **OCTOBER 2015**.

Drafting assumptions

1

Guidance notes to this precedent

2

Useful know-how

3

Notes about precedents generally

4 Always generate and check the accuracy of the automatic table of contents and cross-referencing. To insert a new sub-clause ensure your cursor is at the end of the preceding sub-clause and press the return key (↵) otherwise any cross-references to subsequent sub-clauses will not update correctly. See the Word Training Manual for further guidance.

5 Always remove all comment boxes before sending out a document. Use the comments button on the toolbar to delete comments.

Please pass comments on this precedent to Nancy McGuire on extension 6562 or nancy.mcguire@addleshawgoddard.com

ADDLESHAW GODDARD

Dated **201♦**

LETTER OF APPOINTMENT

OF

[ARCHITECTS]

[CIVIL & STRUCTURAL ENGINEERS]

[MECHANICAL & ELECTRICAL SERVICES ENGINEERS]

[♦]

design & build – developer client

---

relating to a development at ♦

Contents

	Clause	Page
1	Scope of Appointment	1
2	Services	1
3	Duty of care	2
4	Design changes	2
5	Budget and programme	2
6	Prohibited materials	3
7	Project staff	3
8	Project manager	3
9	Remuneration	4
10	Professional indemnity insurance	5
11	Collateral warranties	5
12	Documents	5
13	Assignment and sub-letting	6
14	Suspension	6
15	Termination and remedies	6
16	Confidentiality	7
17	Bribery Act 2010	7
18	Construction Act 1996	7
19	Third Party Agreements	7
20	Contracts (Rights of Third Parties) Act 1999	8
21	Service of notice	8
22	Governing law and interpretation	8
1	Services	12
2	Project Data	13
3	Construction Act 1996	15
	Part 1 - Payment	15
	Part 2 - Adjudication	17
4	Third Party Agreements	18

The Appendix

Draft deed of warranty

Letter of Appointment

From: ♦ (No. ♦) whose registered office is at ♦ (**Developer**).

To: ♦ [of] [(No. ♦) whose registered office is at] ♦ (**Consultant**).

Date: ♦ 201♦.

Dear Sirs

Development of ♦ at ♦

This letter sets out the terms of your appointment (**Appointment**) to provide [the services of a principal designer and] the [architectural] [civil & structural engineering] [mechanical & electrical engineering consultancy] [♦] services required in advance of the award of a design and build contract (**Building Contract**) for the construction of the above development (**Development**), and to act as monitoring consultant once the Building Contract has been awarded.

This letter constitutes the entire agreement between us and replaces any previous agreement between us in respect of the Development.

Any services already provided by you relating to the Development are to be treated as having been provided under the terms of this Appointment.

1 Scope of Appointment

Your Appointment relates to the proposed site (**Site**) of the works (**Works**) required to construct the Development [and to any roadworks, services installations and other enabling works adjacent to the Site which are required for the purposes of the Development][1]. We intend to enter into a building contract (**Building Contract**) with a contractor (**Contractor**) to carry out the Works.

2 Services

2.1 [You are to provide the services specified in schedule 1 (Services).] [You are to provide the services specified in part 1 and part 2 of schedule 1 (Services) and, until the appointment of the Contractor as principal designer under the Building Contract, the services specified in part 3 of schedule 1 (Services).][2]

2.2 You are to provide such additional services relating to the Development which are within your discipline and competence as we may reasonably instruct in writing (**Additional Services**). The services specified in [part 1 and part 2] [parts 1 to 3] of schedule 1 (Services) together with the Additional Services make up the **Services** to be performed under this Appointment.

2.3 We may give you instructions to omit any of the Services and we may instruct others to undertake any services so omitted.

2.4 You are to obtain our written authority before initiating any work stage specified in schedule 1 (Services). Without prejudice to clause 14 (Suspension) or clause 15.1 (Termination and

[1] Include wording in brackets where appropriate.

[2] Include second option where the consultant is undertaking the role of principal designer prior to the building contract being placed. Amend the wording where the consultant is to undertake the role of principal designer through-out the life of the project.

remedies), we may elect not to proceed with any subsequent work stage and may suspend the performance of the Services or terminate your employment under this Appointment upon completion of any given work stage.

2.5 You are to comply with all reasonable instructions given by us in writing in connection with this Appointment.

2.6 In performing the Services you are to take into account at all stages the requirements of the Standard Life Group Sustainable Real Estate Investment Policy and associated Management Systems (**SRIP**) details of which can be found at http://www.standardlifeinvestments.com/CO_Sustainable_RE_Investment_Report/getLatest.pdf. In conjunction with ourselves and the Other Consultants, at all relevant stages you are to consider and make recommendations as to the options available for promoting the objectives of the SRIP and the cost effectiveness and practicability of the available options.

3 Duty of care

3.1 You are to use Skill and Care in the performance of the Services.

3.2 You are to perform the Services and your other duties under this Appointment in compliance with all applicable statutory and regulatory requirements and you are to use Skill and Care to see that the design of all elements of the Development for which you are responsible complies with the Building Regulations and other applicable statutory and regulatory requirements.

3.3 Without prejudice to clause 3.2, you are to comply with your statutory duties under the CDM Regulations.

3.4 No inspection or approval or review on our part or on our behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty, obligation or liability on your part under or in connection with this Appointment.

4 Design changes

4.1 You may not without our written consent make or permit any material change in the designs or specifications for the Development after they have been settled or approved.

4.2 You are to keep us and the Other Consultants fully informed on a day to day basis of all changes in design or specification made or authorised by you.

5 Budget and programme

5.1 You are to have due regard in the performance of the Services to our budget requirements and any cost plan or contract sum for the Development. You are to comply with any design, procurement or construction programme produced for the Development. If you become aware of circumstances which may prevent us from carrying out the Development in accordance with our budget (or any cost plan or contract sum) or programme, you are to inform us without delay.

5.2 [You are to carry out the Services so that once a contract sum has been agreed with the Contractor there will be no material risk (so far as concerns matters for which you are responsible) that such contract sum will be materially exceeded, taking account of any agreed contingencies or provisional sums (save by reason of any variations to the Works instructed by us (other than as a result of any errors or omissions on your part) or any circumstances or

risks which would not be reasonably foreseeable by an experienced and diligent consultant of your profession in light of all the circumstances prevailing at that time).]

5.3 You are to inform us immediately before a contract sum is agreed with the Contractor and before the Building Contract is entered into of any matters of which you are aware (or have reasonable grounds to suspect may occur) which might cause the contract sum to be exceeded.

5.4 Decisions and instructions as to the expenditure of any contingencies and provisional sums in our cost plan are to be subject to our prior approval.

5.5 Without prejudice to your obligations set out in clause 5.1, you are to collaborate with us and the Other Consultants to establish a co-ordinated programme for the production of the design and you are to comply with and monitor progress against such design programme.

6 Prohibited materials

You are to use Skill and Care not to specify for use, and not to approve the use in the Development of any materials:

(a) which by their nature or application contravene any British Standard or EU equivalent;

(b) which contravene the recommendations of the British Council for Offices publication *Good Practice in the Selection of Construction Materials* (2011); or

(c) which are generally considered to be deleterious within the building design professions in the UK,

and, if you become aware that any such materials have been so specified or used, you shall immediately inform us.

7 Project staff

7.1 You agree to appoint the staff named in the Project Data to be Project Partner/Project Director and Project Leader for the Development. The Project Partner/Project Director shall have overall responsibility for the management of the Services and the Project Leader shall be responsible for the day to day supervision and co-ordination of the Services. If we reasonably request, you shall replace any such member of staff with another person of suitable qualifications and experience approved by us, but such appointees are not otherwise to be replaced save with our consent or save for unavoidable necessity, and any replacement is to be subject to our prior approval.

7.2 In providing the Services you are to allocate appropriate resources to enable you to meet your obligations under this Appointment and to enable you to comply with your statutory duties under the CDM Regulations.

7.3 You warrant that you have and shall continue to have the skills, knowledge, experience and organisational capacity required by the CDM Regulations to fulfil your duties and obligations under this Appointment in a manner that secures the health and safety of any person affected by the Development.

8 Project manager

We may appoint or may have appointed consultants to act as our project manager and/or employer's agent and/or design team co-ordinator and/or contract administrator in relation to

the Development. We may give you written notice of the extent to which any such person has authority to give any instructions or agree any matter on our behalf in connection with the Development. No such externally appointed person shall have any such authority save as we may so notify you in writing.

9 Remuneration

9.1 Your remuneration under this Appointment:

(a) shall be as provided in this clause 9 and the Project Data; and

(b) shall be payable in accordance with schedule 3 (Construction Act 1996).

9.2 If for any reason we do not proceed with the Development at any stage, or if your employment is terminated or the Services suspended other than for your breach or Insolvency, you will be entitled (in addition to any fee instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which the Services are part-performed at the date of termination or suspension, but not to fees for any of the Services not performed. You shall not be entitled to compensation for loss of profit or other losses incurred by you as a result of the termination of your employment under this Appointment or any suspension of the Services. Save as provided for in this clause 9.2, you shall not be entitled to any payment on any termination of your employment under this Appointment or on any suspension of the Services.

9.3 If at our request you undertake any Additional Services, or if by reason of any material design changes requested by us or any other circumstances beyond your control you are required to undertake significant extra work, then an additional fee will be payable provided:

(a) you notify us in writing before undertaking such Additional Services or additional work that you may require an additional fee, and provide such details as we reasonably request of the Additional Services or the additional work required and the relevant additional fee;

(b) we confirm to you the agreed amount of the additional fee; and

(c) the need to carry out the Additional Services or additional work does not result from a breach of your obligations under this Appointment.

9.4 Any additional fee shall be such lump sum as is fair and reasonable and as we may agree between us (and as we may confirm to you in writing) prior to you commencing any Additional Services or additional work or, if we so specify in writing, shall be calculated at the applicable hourly rates specified in the Project Data.

9.5 If we give instructions for you to omit any of the Services we shall be entitled to make a fair and reasonable reduction in your remuneration.

9.6 The specified fee in the Project Data is exclusive of VAT and inclusive of all your office, staff, travel, reproduction and incidental costs and inclusive of disbursements. However, you will be reimbursed any third party charges incurred at our request, such as survey fees or statutory fees or the cost of any models or any specialist presentational artwork, provided the amount of such charges is agreed with us before they are incurred.

9.7 If the amount of any fees or disbursements is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 5% over Bank of England base rate for the time being, from the final date for payment to and including the date on

which such amount is paid or discharged. You acknowledge that the provisions of this clause 9.7 amount to a "substantial remedy" for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

9.8 We shall be entitled to set-off, withhold or deduct from any money otherwise due to you under or pursuant to this Appointment any sums for which you may be liable to us.

10 Professional indemnity insurance

10.1 You hereby warrant that there is in force a policy of professional indemnity insurance covering your liabilities under this Appointment conforming to the relevant requirements specified in the Project Data. You are to maintain such insurance at all times until 12 years after the practical completion of the Works under the Building Contract (or, if sooner, until 12 years after the completion or termination of the Services), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable.

10.2 If for any period such insurance is not obtainable on commercially reasonable terms, you are to inform us forthwith and are to obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for you to obtain.

10.3 When reasonably requested by us you are to provide documentary evidence that the insurance required under this Appointment is being maintained.

11 Collateral warranties

11.1 You are to provide, within 7 days of our written request made at any time or times, a deed or deeds of warranty respecting your duties hereunder in favour of Mortgagees and/or Purchasers and/or Tenants, in terms of the draft contained in the appendix (Draft deed of warranty).[3]

11.2 If you fail to execute and deliver any such deed pursuant to clause 11.1 within 7 days of our written request, we may execute such deed on your behalf, and you hereby appoint us as your attorney for the purposes of executing any such deed. You are to ratify and confirm any act done by us pursuant to this power of attorney, and agree that this power is irrevocable, pursuant to section 4, Powers of Attorney Act 1971.

11.3 If you fail to comply with clause 11.1, we shall be entitled to give you notice specifying the breach. If the breach is not rectified within 14 days after service of such notice (or by us executing at our option the relevant deed pursuant to clause 11.2) then we shall not be liable to pay any further sums due to you under this Appointment while the breach remains to be rectified.

12 Documents

12.1 You grant and agree to grant to us an irrevocable, non-exclusive, royalty free, assignable licence to use and reproduce all drawings, calculations, specifications and/or other documents produced by you pursuant to this Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the

[3] Categories of beneficiary to be reviewed on a case by case basis. Please ensure the list is correct for each scheme. For residential schemes, consider whether warranties for Purchasers/Tenants of individual units should be excluded or limited to parties taking a number of residential units. Consider the need for warranties in favour of group companies or management companies.

reproduction of any such designs in any extension to the Development), and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in yourselves. You shall not be liable for the use of any of the Documents for any purpose other than those for which you produced them.

12.2 You agree to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against us or any licensee or assignee of ours.

12.3 You agree to supply any additional copies of the Documents we may request after the completion or termination of the Services, in return for payment of your reasonable reproduction costs. If we cannot agree your proposed reproduction costs, you agree to afford us a reasonable opportunity to arrange for reproductions to be produced by ourselves or by others.

12.4 You warrant that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.

13 Assignment and sub-letting

13.1 Our rights under this Appointment may be:

(a) charged to any Mortgagee;

(b) assigned as security to any Mortgagee (and such rights may be re-assigned on redemption);

(c) assigned by absolute assignment to any Group Company;

(d) assigned by absolute assignment on two other occasions only.

13.2 You shall not be entitled to assign or charge this Appointment.

13.3 You may not arrange for or authorise the sub-letting of any design for which you are responsible under this Appointment to any sub-consultant, sub-contractor or specialist supplier, nor may you sub-let the whole or any part of the Services, without our prior written consent. Our consent to any sub-letting may be conditional upon our approval of the terms of appointment of your sub-consultant, sub-contractor or specialist supplier and a requirement that he enters into deeds of warranty respecting his duties in a form approved by us in favour of ourselves and relevant third parties. Notwithstanding the sub-letting of any such design or any of the Services, you shall remain fully responsible for all of the Services and your other obligations under this Appointment as if they had been undertaken by you.

14 Suspension

We may suspend the performance of the Services at any time by written notice. If a suspension lasts more than 6 months, you may make a written request for the Services to be resumed, and if no instructions to resume are given within 28 days after your request, your employment shall then terminate.

15 Termination and remedies

15.1 We may at any time by service of written notice terminate your employment under this Appointment.

15.2 If we terminate your employment on account of your Insolvency or on account of your breach of any term of this Appointment, we shall be entitled to recover from you the costs and losses we reasonably or necessarily incur by reason of the termination.

15.3 If you fail to comply with any requirement of clause 10 (Professional indemnity insurance) or fail to comply with clause 11 (Collateral warranties) or if you become Insolvent, we shall be entitled to recover from you any premiums we reasonably incur to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection, but this clause 15.3 does not exclude any other remedy we might have for breach of clause 10 (Professional indemnity insurance) or clause 11 (Collateral warranties).

15.4 If we are materially in breach of our obligations under this Appointment in any respect that would reasonably justify your terminating your employment, you may serve 28 days' written notice of your intention to terminate, stating the grounds for termination, and if in such 28 day period we fail to rectify our breach, you may at the expiry of that period serve further written notice terminating your employment with immediate effect.

15.5 Termination does not determine the operation of any provisions of this Appointment that are capable of operation after termination.

16 Confidentiality

Save as may be necessary for the performance of the Services, or as required by law, or as we may allow in writing, you are to treat as confidential all information relating to this Appointment and to the Development, and are to take all reasonable steps to see that your employees are bound by and adhere to the same duty of confidentiality.

17 Bribery Act 2010

17.1 You warrant that no offence under the Bribery Act 2010 (**Act**) has been or will be committed by you or any person associated with you, in connection with the procurement or implementation of this Appointment.

17.2 For the purposes of and without derogation from clause 17.1, an offence is committed under any provision of the Act before such provision is in force, if such offence would have been committed, had such provision then been in force.

17.3 For the purposes of clause 17.1, the definition of associated person in section 8 of the Act applies.

17.4 If at any time you have knowledge of, or have reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 17.1, you shall promptly notify us in writing of such matters within your knowledge, or of such grounds for suspicion, and shall co-operate with us in the investigation of such breach or suspected breach of warranty.

18 Construction Act 1996

Schedule 3 (Construction Act 1996) has effect.

19 Third Party Agreements

Schedule 4 (Third Party Agreements) has effect.

20 Contracts (Rights of Third Parties) Act 1999

This Appointment is not intended to confer and does not confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

21 Service of notice

21.1 Any notice to be given under this Appointment:

(a) if given for the purposes of schedule 3 (Construction Act 1996), must be:

(i) delivered by hand; or

(ii) sent by e-mail and on the same day, sent by pre-paid first class post,

to the relevant addressee, addressed in accordance with the applicable details in the Project Data, or such other details as the relevant party (or specified person as defined in schedule 3 (Construction Act 1996)) notifies to the other in writing from time to time; or

(b) if given for any other purpose, may be given by any effective means.

21.2 Any notice delivered or sent in accordance with clause 21.1(a) takes effect as being given and served:

(a) if delivered by hand by 4.00 p.m. on a Working Day, on the day of delivery; but otherwise

(b) on the first Working Day after it is delivered or sent.

22 Governing law and interpretation

22.1 This Appointment and any matters arising under or in connection with it shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to this Appointment and all matters arising under or in connection with it.

22.2 In this Appointment:

(a) **person** includes any firm and any entity having legal capacity;

(b) any term importing gender includes any gender;

(c) any term importing the singular includes the plural and vice versa;

(d) unless the context requires otherwise, any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Appointment;

(e) any reference to any enactment includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

(f) **Bank Holiday** means a Christmas Day, Good Friday or day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales;

(g) **Building Regulations** means the Building Act 1984 and all relevant subordinate legislation made under the Act;

(h) **CDM Regulations** means the Construction (Design and Management) Regulations 2015 together with any guidance issued in connection therewith;

(i) **Construction Act 1996** means Part II, Housing Grants, Construction and Regeneration Act 1996;

(j) **Group Company** means any subsidiary or holding company of ours or of another subsidiary or holding company of ours, as **subsidiary** and **holding company** are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

(k) **Insolvent** and related terms derive their meaning from section 113, Construction Act 1996;

(l) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it and/or providing finance in connection with the Development or any part of it;

(m) **Other Consultants** means the consultants listed in the Project Data and such other consultants as may be appointed by us in relation to the Development;

(n) **Project Data** means the project data in schedule 2 (Project Data);

(o) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;

(p) **Skill and Care** means the professional skill and care and diligence reasonably to be expected of duly qualified and experienced consultants undertaking services and other duties similar to those to be performed under this Appointment in relation to projects similar in scale and character to the Development;

(q) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);

(r) **Third Party Agreements** means the Building Contract and any other contracts entered into by us with any consultant, contractor and/or sub-contractor and any title documents, funding agreements, agreements for lease, development agreements, sale contracts, statutory agreements, licences and/or any other agreements that we may enter into with any third party or have rights under or must comply with in respect of the Development and the term **Third Party Agreement** shall mean any such contract, agreement, licence or other document;

(s) **Working Day** means any day other than a Bank Holiday;

(t) in this Appointment references to **we**, **us** and **our** shall include where the context admits permitted assignees, but not so as to permit more than two assignments under clause 13.1(d) (Assignment and sub-letting).

22.3 For the purposes of clause 22.2, **Development** means the Site and/or the Works.

22.4 Clause headings do not form part of or affect the interpretation of this Appointment.

Signed as a deed and delivered by ♦)
as the Attorney of [**Standard Life**])
(in exercise of a Power of Attorney)
under its seal dated ♦) in the presence)
of:)

Signature of witness:

Name (in block capitals):

Address:

[OR]

Executed as a deed and delivered by) ……
[the Developer] acting by a director) Director
in the presence of:)
) ……...
) Name

.....
Witness

……
Name

We, ♦ [a partnership between the individuals named in the Project Data] confirm our acceptance of this Appointment on the terms and conditions set out in this letter.

Executed as a deed and delivered by	)	……
[Full name of Partner]	)	Partner
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

.....
Name

(In the case of a partnership all partners to execute in the above form)

[OR in the case of a company]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a director	)	Director
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

[OR in the case of an LLP]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a member	)	Member
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

Schedule 1

Services

[Insert relevant Schedule of Services.]

[Note: please remember to include principal designer services where relevant.]

Schedule 2

Project Data[4]

Clause 7: (Project staff**)**

(a) Project Partner/Project Director: ♦

(b) Project Leader: ♦

Clause 9: (Remuneration**)**

(a) [A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of £♦.]

[OR]

(a) [A fee (exclusive of VAT) of ♦ per cent of [the total construction cost shown in the final approved version of the cost plan produced by the quantity surveyor in respect of the Work Stage D design (**Detailed Proposals**)] [the total construction costs in the approved tender of the Contractor] [the contract sum in the Building Contract], at which point the fee will be converted into a fixed lump sum plus VAT.]

(b) The fee may be invoiced in the following instalments:

♦

(c) The hourly rates applicable to any Additional Services attracting payment at hourly rates are as follows:

♦

Clause 10: (Professional indemnity insurance**)**

Limit of indemnity: not less than £♦,000,000.00 for any claim or claims arising out of each originating cause, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition.

Clause 21.1(a) (Service of notice**)**

(a) Notices to the Developer are to be addressed to ♦ at ♦; e-mail address ♦.

(b) Notices to the Consultant are to be addressed to ♦ at ♦; e-mail address ♦.

Clause 22.2(m) (Other Consultants)

- [Architect: ♦]
- [Civil and structural engineer: ♦]
- [Mechanical and electrical engineer: ♦]
- [Employer's agent: ♦]
- [[Other(s)]: ♦]

[4] Add details of specified person for the purposes of schd 3, if required, including postal and e-mail addresses for service.

[Partners of the Consultant] ♦

Schedule 3

Construction Act 1996

Part 1 - Payment

1 General

1.1 In this schedule:

instalment means any instalment, stage payment or other periodic payment to be made under this Appointment

notified sum means, in respect of an instalment, the sum notified in:

(a) the payment notice given in accordance with paragraph 5, but if no such notice is given

(b) the payment application given in accordance with paragraph 4

payer and **payee** mean respectively the person from whom and the person to whom an instalment is due

1.2 Where an act is required under this schedule to be done within a specified period after or from a specified date, the period begins immediately after that date.

1.3 Where a period specified in this schedule would include a Bank Holiday, that day is excluded.

2 Specified person

The payer may give notice to the payee from time to time nominating a person (**specified person**) to give and receive any other notice to be given by or to the payer under this part of this schedule, supplying with such notice postal and e-mail addresses for service upon the specified person, or revoking any such nomination, and in that case any such notices under this part of this schedule must be served accordingly.

3 Due and final dates for payment

3.1 Payments are to be made in instalments, each calculated to the end of the period (**relevant period**) in which the instalment becomes eligible for payment, as such instalments and relevant periods are specified in, or may be ascertained in accordance with, the Project Data.

3.2 The instalments and the relevant periods specified in the Project Data are to be subject to such revisions as may from time to time be fair and reasonable in the event that the Services and/or the Development progress more slowly than was envisaged by our programme for the Development as at the date of this Appointment, or because the Development is suspended or does not proceed. For the avoidance of doubt, no amount shall become eligible for inclusion in a payment by virtue of this paragraph 3.2 any earlier than is specified in the Project Data.

3.3 The **payment due date** of each payment is the 30th day after the date of service of the relevant payment application under paragraph 4.

3.4 The **final date for payment** of each instalment is the 10th day after the payment due date of that payment.

4 Payment applications

4.1 In relation to each instalment, the payee must give the payer (or the specified person, if any) a notice (**payment application**) of:

(a) the sum that the payee considers will become due on the payment due date; and

(b) the basis on which that sum is calculated.

4.2 A payment application in respect of an instalment may not be given until after the end of the relevant period.

4.3 The payer shall not be obliged to make payment against payment applications and/or invoices submitted prematurely or which are not in the form prescribed by paragraph 4.2.

4.4 The payer shall pay Value Added Tax where applicable on any payment under this Appointment, subject to the receipt by the payer of a valid Value Added Tax invoice.

5 Payment notices

In relation to each instalment, the payer (or specified person, if any) must give a notice (**payment notice**) to the payee not later than five days after the payment due date, specifying:

(a) the sum that, in the opinion of the payer (or specified person), is (or was) due at the payment due date; and

(b) the basis on which that sum is calculated,

it being immaterial that such sum may be zero.

6 Payments

Subject to paragraphs 7.4 and 8, the payer must pay the payee the notified sum (to the extent not already paid) no later than the final date for payment of that sum.

7 Payment reduction notice

7.1 The payer (or specified person, if any) may give the payee notice of the payer's intention to pay less than the notified sum (**payment reduction notice**) and such notice must specify:

(a) the sum (**adjusted sum**) the payer considers to be due on the date the payment reduction notice is served; and

(b) the basis on which that sum is calculated.

7.2 A payment reduction notice may not be given:

(a) before the notice by reference to which the notified sum is determined; nor

(b) any later than five days before the final date for payment.

7.3 It is immaterial that the sum referred to in paragraph 7.1 may be zero.

7.4 If the payer (or a specified person) serves a payment reduction notice in accordance with this paragraph 7, the amount the payer must pay under paragraph 6 is the adjusted sum.

8 Insolvency

8.1 Paragraph 8.2 applies if:

(a) the payee is or becomes insolvent; and

(b) the payee's employment is therefore terminated.

8.2 Where this paragraph 8.2 applies:

(a) the payer need not pay any sum that he would otherwise have to pay in accordance with this schedule, provided:

(i) he (or the specified person, if any) gives a payment reduction notice in respect of that sum in accordance with paragraph 7, invoking this paragraph 8; or

(ii) the insolvency post-dates the latest date for service of a payment reduction notice in respect of that sum; and

(b) in such case, no further payment need be made by the payer until he has been able to ascertain the costs and losses he will incur by reason of the termination.

9 VAT

Following issue of any payment notice under paragraph 5 or payment reduction notice under paragraph 7, the payee will forthwith issue such credit note as may be required to address the difference between the amount claimed by the payee in the relevant payment application and VAT invoice issued pursuant to paragraph 4.4 and the notified sum confirmed in the payer's payment notice issued under paragraph 5 or the adjusted sum confirmed in the payment reduction notice issued under paragraph 7.

Part 2 - Adjudication

10 Adjudication

Either party may give notice at any time of his intention to refer any dispute under this Appointment to adjudication under and in accordance with the Scheme for Construction Contracts for the time being under the Construction Act 1996, subject as follows:

(a) the adjudicator nominating body is the Royal Institution of Chartered Surveyors;

(b) the adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him; and

(c) at the same time as he gives a decision, the adjudicator must give written reasons.

Schedule 4

Third Party Agreements

1 You shall have regard to any obligations on our part contained in the Third Party Agreements of which relevant extracts setting out such obligations have been provided to you before the date of this Appointment. You warrant that:

(a) you have performed and will continue to perform the Services and your other duties and obligations under this Appointment in such a manner and at such times so that no act, omission or default on your part in relation thereto shall constitute, cause or contribute to any breach by us of any of our obligations in the Third Party Agreements;

(b) you shall comply with any procedures laid down in the Third Party Agreements for the drawdown of funding and for (or for approval of) designs, changes in design, specification or materials and for the inspection of the Development prior to the practical completion or completion of making good of defects under the Building Contract and for similar matters;

(c) you shall comply with any procedures laid down in the Third Party Agreements for the approval by any third party of any designs, specifications and other design documents prepared in respect of Development and for (or for approval of) changes in design, specification or materials;

(d) where you are undertaking contract administration services in respect of the Building Contract you will be responsible for the issue of certificates as to the state of completion or readiness of the Development for completion or for the start of fitting out works or as to similar matters required in the Third Party Agreements;

(e) exercising Skill and Care and to the extent the Services include duties in relation to the procurement of the Development, the Development will be procured in accordance with our obligations under the Third Party Agreements;

(f) exercising Skill and Care, the design of all elements of the Development for which you are responsible will comply with our obligations in respect of such design under the Third Party Agreements;

(g) you will provide such copy plans, drawings, specifications, reports, programmes and other documents prepared by you or on your behalf and such information and assistance as may be required by us to fulfil our obligations under such Third Party Agreements within such time periods as may be provided for in the Third Party Agreements;

(h) you shall attend such meetings as may be required with such third parties as may be provided for in such Third Party Agreements; and

(i) without prejudice to clause 16 (Confidentiality), you shall not and shall procure that your employees and sub-consultants shall not, save as required by law or as we may approve in writing, disclose the terms of such Third Party Agreements to any third party.

2 Where extracts of any Third Party Agreement are provided to you after the date of this Appointment, you shall in respect of such Third Party Agreement comply with the obligations

and warranties imposed in paragraph 1 above, save that you shall not be required to comply with such obligations and warranties where you have within 7 days from receipt of such extracts notified us in writing of the reasons why and to the extent to which you are unable to comply with the provisions of paragraph 1 in respect of such Third Party Agreement disclosed after the date of this Appointment and we have not instructed Additional Services under clause 2.2 (Services) to address the concerns raised by you in such notice.

3 You will be liable for and will indemnify us against any expense, liability, loss, claim and/or proceeding reasonably incurred by us arising out of any breach by you of your obligations in this schedule 4 and you hereby acknowledge that all such expenses, liabilities, losses, claims and/or proceedings are within your contemplation as being an anticipated consequence of any breach by you of your obligations under this schedule 4.

The Appendix

Draft deed of warranty

ADDLESHAW GODDARD

CLIENT-SPECIFIC PRECEDENT: STANDARD LIFE

GENERIC APPOINTMENT OF DESIGN CONSULTANT (DESIGN & BUILD) – WITH NOVATION

(Collateral Warranties version)

PREC-8413-1
Responsibility: Nancy McGuire

This precedent was written or revised as of **OCTOBER 2015**.

Drafting assumptions

1

Guidance notes to this precedent

2

Useful know-how

3

Notes about precedents generally

4 Always generate and check the accuracy of the automatic table of contents and cross-referencing. To insert a new sub-clause ensure your cursor is at the end of the preceding sub-clause and press the return key (↵) otherwise any cross-references to subsequent sub-clauses will not update correctly. See the Word Training Manual for further guidance.

5 Always remove all comment boxes before sending out a document. Use the comments button on the toolbar to delete comments.

Please pass comments on this precedent to Nancy McGuire on extension 6562 or nancy.mcguire@addleshawgoddard.com

ADDLESHAW GODDARD

Dated **201♦**

LETTER OF APPOINTMENT

OF

[ARCHITECTS]

[CIVIL & STRUCTURAL ENGINEERS]

[MECHANICAL & ELECTRICAL SERVICES ENGINEERS]

[♦]

design & build – with novation

---

relating to a development at ♦

Contents

	Clause	Page
1	Scope of Appointment	1
2	Services	1
3	Duty of care	2
4	Design changes	2
5	Budget and programme	2
6	Prohibited materials	3
7	Project staff	3
8	Project manager	4
9	Remuneration	4
10	Professional indemnity insurance	5
11	Collateral warranties	5
12	Documents	6
13	Assignment and sub-letting	6
14	Novation to the Contractor	7
15	Suspension	7
16	Termination and remedies	7
17	Confidentiality	7
18	Bribery Act 2010	7
19	Construction Act 1996	8
20	Third Party Agreements	8
21	Contracts (Rights of Third Parties) Act 1999	8
22	Service of notice	8
23	Governing law and interpretation	8
1	Services	13
2	Project Data	14
3	Construction Act 1996	16
	Part 1 - Payment	16
	Part 2 - Adjudication	18
4	Third Party Agreements	19
1	Draft deed of warranty	
2	Draft deed of novation	

Letter of Appointment

From: ♦ (No. ♦) whose registered office is at ♦ (**Developer**).

To: ♦ [of] [(No. ♦) whose registered office is at] ♦ (**Consultant**).

Date: ♦ 201♦.

Dear Sirs

Development of ♦ at ♦

This letter sets out the terms of your appointment (**Appointment**) to provide [the services of a principal designer and] the [architectural] [civil & structural engineering] [mechanical & electrical engineering consultancy] [♦] services required in advance of the award of a design and build contract (**Building Contact**) for the construction of the above development (**Development**).

This letter also sets out the terms on which you will act as consultant to our contractor (**Contractor**), if this Appointment is novated to the Contractor in accordance with clause 14 (Novation to the Contractor).

This letter constitutes the entire agreement between us and replaces any previous agreement between us in respect of the Development.

Any services already provided by you relating to the Development are to be treated as having been provided under the terms of this Appointment.

1 Scope of Appointment

Your Appointment relates to the proposed site (**Site**) of the works (**Works**) required to construct the Development [and to any roadworks, services installations and other enabling works adjacent to the Site which are required for the purposes of the Development][1].

2 Services

2.1 The services you are to provide to us prior to any novation under clause 14 (Novation to the Contractor) are set out in part 1 [and part 2] of schedule 1 (Services). [If required to do so by the Contractor you will continue to provide the services set out in part 2 of schedule 1 (Services) after novation.] The [further] services you are to provide to the Contractor after novation are set out in part [2][3] of schedule 1 (Services). You are to provide the general services in part [3][4] of schedule 1 (Services) before and/or after novation as circumstances require[2].

2.2 You are to provide such additional services relating to the Development which are within your discipline and competence as we may reasonably instruct in writing (**Additional Services**). The services specified in schedule 1 (Services) together with the Additional Services make up the **Services** to be performed under this Appointment.

2.3 The Developer may give you instructions to omit any of the Services and may instruct others to undertake any services so omitted.

[1] Include wording in brackets where appropriate.

[2] References to the different parts of schedule 1 will depend on whether the consultant is principal designer.

2.4 You are to obtain our written authority before initiating any work stage specified in schedule 1 (Services). Without prejudice to clause 15 (Suspension) or clause 16.1 (Termination and remedies), we may elect not to proceed with any subsequent work stage and may suspend the performance of the Services or terminate your employment under this Appointment upon completion of any given work stage.

2.5 You are to comply with all reasonable instructions given by us in writing in connection with this Appointment.

2.6 In performing the Services you are to take into account at all stages the requirements of the Standard Life Group Sustainable Real Estate Investment Policy and associated Management Systems (**SRIP**) details of which can be found at http://www.standardlifeinvestments.com/CO_Sustainable_RE_Investment_Report/getLatest.pdf. In conjunction with ourselves and the Other Consultants, at all relevant stages you are to consider and make recommendations as to the options available for promoting the objectives of the SRIP and the cost effectiveness and practicability of the available options.

3 Duty of care

3.1 You are to use Skill and Care in the performance of the Services.

3.2 You are to perform the Services and your other duties under this Appointment in compliance with all applicable statutory and regulatory requirements and you are to use Skill and Care to see that the design of all elements of the Development for which you are responsible complies with the Building Regulations and other applicable statutory and regulatory requirements.

3.3 Without prejudice to clause 3.2, you are to comply with your statutory duties under the CDM Regulations.

3.4 No inspection or approval or review on our part or on our behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty, obligation or liability on your part under or in connection with this Appointment.

4 Design changes

4.1 You may not without our written consent make or permit any material change in the designs or specifications for the Development after they have been settled or approved.

4.2 You are to keep us and the Other Consultants fully informed on a day to day basis of all changes in design or specification made or authorised by you.

5 Budget and programme

5.1 You are to have due regard in the performance of the Services to our budget requirements and any cost plan or contract sum for the Development. You are to comply with any design, procurement or construction programme produced for the Development. If you become aware of circumstances which may prevent us from carrying out the Development in accordance with our budget (or any cost plan or contract sum) or programme, you are to inform us without delay.

5.2 You are to carry out the Services so that once a contract sum has been agreed with the Contractor there will be no material risk (so far as concerns matters for which you are responsible) that such contract sum will be materially exceeded, taking account of any agreed contingencies or provisional sums (save by reason of any variations to the Works instructed

by the Developer (other than as a result of any errors or omissions on your part) or any circumstances or risks which would not be reasonably foreseeable by an experienced and diligent consultant of your profession in light of all the circumstances prevailing at that time).

5.3 You are to inform us immediately before a contract sum is agreed with the Contractor and before the Building Contract is entered into of any matters of which you are aware (or have reasonable grounds to suspect may occur) which might cause the contract sum to be exceeded.

5.4 Decisions and instructions as to the expenditure of any contingencies and provisional sums in our cost plan are to be subject to our prior approval.

5.5 Without prejudice to your obligations set out in clause 5.1, you are to collaborate with us and the Other Consultants to establish a co-ordinated programme for the production of the design and you are to comply with and monitor progress against such design programme.

5.6 A schedule setting out dates by when the Contractor is to be provided with drawings, details and other design information (**Information Release Schedule**) may be included in or produced pursuant to the Building Contract. As required, you are to collaborate with the Contractor and the Other Consultants to produce such an Information Release Schedule and you are to supply all such information to be supplied by you as required by (and by the dates specified in) the Information Release Schedule, unless you are prevented from doing so by circumstances beyond your responsibility and control.

6 Prohibited materials

You are to use Skill and Care not to specify for use, and not to approve the use in the Development of any materials:

(a) which by their nature or application contravene any British Standard or EU equivalent;

(b) which contravene the recommendations of the British Council for Offices publication *Good Practice in the Selection of Construction Materials* (2011); or

(c) which are generally considered to be deleterious within the building design professions in the UK,

and, if you become aware that any such materials have been so specified or used, you shall immediately inform us.

7 Project staff

7.1 You agree to appoint the staff named in the Project Data to be Project Partner/Project Director and Project Leader for the Development. The Project Partner/Project Director shall have overall responsibility for the management of the Services and the Project Leader shall be responsible for the day to day supervision and co-ordination of the Services. If we reasonably request, you shall replace any such member of staff with another person of suitable qualifications and experience approved by us, but such appointees are not otherwise to be replaced save with our consent or save for unavoidable necessity, and any replacement is to be subject to our prior approval.

7.2 In providing the Services you are to allocate appropriate resources to enable you to meet your obligations under this Appointment and to enable you to comply with your statutory duties under the CDM Regulations.

7.3 You warrant that you have and shall continue to have the skills, knowledge, experience and organisational capacity required by the CDM Regulations to fulfil your duties and obligations under this Appointment in a manner that secures the health and safety of any person affected by the Development.

8 Project manager

The Developer may appoint or may have appointed consultants to act as its project manager and/or employer's agent and/or design team co-ordinator and/or contract administrator in relation to the Development. The Developer may give you written notice of the extent to which any such person has authority to give any instructions or agree any matter on its behalf in connection with the Development. No such externally appointed person shall have any such authority save as the Developer may so notify you in writing.

9 Remuneration

9.1 Your remuneration under this Appointment:

(a) shall be as provided in this clause 9 and the Project Data; and

(b) shall be payable in accordance with schedule 3 (Construction Act 1996).

9.2 If for any reason we do not proceed with the Development at any stage, or if your employment is terminated or the Services suspended other than for your breach or Insolvency, you will be entitled (in addition to any fee instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which the Services are part-performed at the date of termination or suspension, but not to fees for any of the Services not performed. You shall not be entitled to compensation for loss of profit or other losses incurred by you as a result of the termination of your employment under this Appointment or any suspension of the Services. Save as provided for in this clause 9.2, you shall not be entitled to any payment on any termination of your employment under this Appointment or on any suspension of the Services.

9.3 If at our request you undertake any Additional Services, or if by reason of any material design changes requested by us or any other circumstances beyond your control you are required to undertake significant extra work, then an additional fee will be payable provided:

(a) you notify us in writing before undertaking such Additional Services or additional work that you may require an additional fee, and provide such details as we reasonably request of the Additional Services or the additional work required and the relevant additional fee;

(b) we confirm to you the agreed amount of the additional fee; and

(c) the need to carry out the Additional Services or additional work does not result from a breach of your obligations under this Appointment.

9.4 Any additional fee shall be such lump sum as is fair and reasonable and as we may agree between us (and as we may confirm to you in writing) prior to you commencing any Additional Services or additional work or, if we so specify in writing, shall be calculated at the applicable hourly rates specified in the Project Data.

9.5 If we give instructions for you to omit any of the Services we shall be entitled to make a fair and reasonable reduction in your remuneration.

9.6 The specified fee in the Project Data is exclusive of VAT and inclusive of all your office, staff, travel, reproduction and incidental costs and inclusive of disbursements. However, you will be reimbursed any third party charges incurred at our request, such as survey fees or statutory fees or the cost of any models or any specialist presentational artwork, provided the amount of such charges is agreed with us before they are incurred.

9.7 If the amount of any fees or disbursements is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 5% over Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged. You acknowledge that the provisions of this clause 9.7 amount to a "substantial remedy" for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

9.8 We shall be entitled to set-off, withhold or deduct from any money otherwise due to you under or pursuant to this Appointment any sums for which you may be liable to us.

10 Professional indemnity insurance

10.1 You hereby warrant that there is in force a policy of professional indemnity insurance covering your liabilities under this Appointment conforming to the relevant requirements specified in the Project Data. You are to maintain such insurance at all times until 12 years after the practical completion of the Works under the Building Contract (or, if sooner, until 12 years after the completion or termination of the Services), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable.

10.2 If for any period such insurance is not obtainable on commercially reasonable terms, you are to inform us forthwith and are to obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for you to obtain.

10.3 When reasonably requested by us you are to provide documentary evidence that the insurance required under this Appointment is being maintained.

11 Collateral warranties

11.1 You are to provide, within 7 days of our written request made at any time or times, a deed or deeds of warranty respecting your duties hereunder in favour of Mortgagees and/or Purchasers and/or Tenants, in terms of the draft contained in appendix 1 (Draft deed of warranty).[3]

11.2 If you fail to execute and deliver any such deed pursuant to clause 11.1 within 7 days of our written request, we may execute such deed on your behalf, and you hereby appoint us as your attorney for the purposes of executing any such deed. You are to ratify and confirm any act done by us pursuant to this power of attorney, and agree that this power is irrevocable, pursuant to section 4, Powers of Attorney Act 1971.

11.3 If you fail to comply with clause 11.1, we shall be entitled to give you notice specifying the breach. If the breach is not rectified within 14 days after service of such notice (or by us executing at our option the relevant deed pursuant to clause 11.2) then we shall not be liable

[3] Categories of beneficiary to be reviewed on a case by case basis. Please ensure the list is correct for each scheme. For residential schemes, consider whether warranties for Purchasers/Tenants of individual units should be excluded or limited to parties taking a number of residential units. Consider the need for warranties in favour of group companies or management companies.

to pay any further sums due to you under this Appointment while the breach remains to be rectified.

12 Documents

12.1 You grant and agree to grant to us an irrevocable, non-exclusive, royalty free, assignable licence to use and reproduce all drawings, calculations, specifications and/or other documents produced by you pursuant to this Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development), and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in yourselves. You shall not be liable for the use of any of the Documents for any purpose other than those for which you produced them.

12.2 You agree to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against us or any licensee or assignee of ours.

12.3 You agree to supply any additional copies of the Documents we may request after the completion or termination of the Services, in return for payment of your reasonable reproduction costs. If we cannot agree your proposed reproduction costs, you agree to afford us a reasonable opportunity to arrange for reproductions to be produced by ourselves or by others.

12.4 You warrant that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.

13 Assignment and sub-letting

13.1 The rights of the Developer under this Appointment may be:

(a) charged to any Mortgagee;

(b) assigned as security to any Mortgagee (and such rights may be re-assigned on redemption);

(c) assigned by absolute assignment to any Group Company;

(d) assigned by absolute assignment on two other occasions only.

13.2 Neither you nor the Contractor shall be entitled to assign or charge this Appointment.

13.3 You may not arrange for or authorise the sub-letting of any design for which you are responsible under this Appointment to any sub-consultant, sub-contractor or specialist supplier, nor may you sub-let the whole or any part of the Services, without our prior written consent. Our consent to any sub-letting may be conditional upon our approval of the terms of appointment of your sub-consultant, sub-contractor or specialist supplier and a requirement that he enters into deeds of warranty respecting his duties in a form approved by us in favour of ourselves and relevant third parties. Notwithstanding the sub-letting of any such design or any of the Services, you shall remain fully responsible for all of the Services and your other obligations under this Appointment as if they had been undertaken by you.

14 Novation to the Contractor

14.1 We may require you to enter with us and the Contractor into a novation of this Appointment in terms of the draft deed of novation contained in appendix 2 (Draft deed of novation), and you are to execute and deliver such deed of novation within 14 days of our request to do so.

14.2 If requested to do so upon or at any time after novation, you are to provide a deed of warranty in favour of the Developer in terms of the draft contained in appendix 1 (Draft deed of warranty), mutatis mutandis, and for this purpose Developer means the person named as such in the deed of novation.

15 Suspension

We may suspend the performance of the Services at any time by written notice. If a suspension lasts more than 6 months, you may make a written request for the Services to be resumed, and if no instructions to resume are given within 28 days after your request, your employment shall then terminate.

16 Termination and remedies

16.1 We may at any time by service of written notice terminate your employment under this Appointment.

16.2 If we terminate your employment on account of your Insolvency or on account of your breach of any term of this Appointment, we shall be entitled to recover from you the costs and losses we reasonably or necessarily incur by reason of the termination.

16.3 If you fail to comply with any requirement of clause 10 (Professional indemnity insurance) or fail to comply with clause 11 (Collateral warranties) or if you become Insolvent, we shall be entitled to recover from you any premiums we reasonably incur to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection, but this clause 16.3 does not exclude any other remedy we might have for breach of clause 10 (Professional indemnity insurance) or clause 11 (Collateral warranties).

16.4 If we are materially in breach of our obligations under this Appointment in any respect that would reasonably justify your terminating your employment, you may serve 28 days' written notice of your intention to terminate, stating the grounds for termination, and if in such 28 day period we fail to rectify our breach, you may at the expiry of that period serve further written notice terminating your employment with immediate effect.

16.5 Termination does not determine the operation of any provisions of this Appointment that are capable of operation after termination.

17 Confidentiality

Save as may be necessary for the performance of the Services, or as required by law, or as we may allow in writing, you are to treat as confidential all information relating to this Appointment and to the Development, and are to take all reasonable steps to see that your employees are bound by and adhere to the same duty of confidentiality.

18 Bribery Act 2010

18.1 You warrant that no offence under the Bribery Act 2010 (**Act**) has been or will be committed by you or any person associated with you, in connection with the procurement or implementation of this Appointment.

18.2 For the purposes of and without derogation from clause 18.1, an offence is committed under any provision of the Act before such provision is in force, if such offence would have been committed, had such provision then been in force.

18.3 For the purposes of clause 18.1, the definition of associated person in section 8 of the Act applies.

18.4 If at any time you have knowledge of, or have reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 18.1, you shall promptly notify us in writing of such matters within your knowledge, or of such grounds for suspicion, and shall co-operate with us in the investigation of such breach or suspected breach of warranty.

19 Construction Act 1996

Schedule 3 (Construction Act 1996) has effect.

20 Third Party Agreements

Schedule 4 (Third Party Agreements) has effect.

21 Contracts (Rights of Third Parties) Act 1999

This Appointment is not intended to confer and does not confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

22 Service of notice

22.1 Any notice to be given under this Appointment:

(a) if given for the purposes of schedule 3 (Construction Act 1996), must be:

(i) delivered by hand; or

(ii) sent by e-mail and on the same day, sent by pre-paid first class post,

to the relevant addressee, addressed in accordance with the applicable details in the Project Data, or such other details as the relevant party (or specified person as defined in schedule 3 (Construction Act 1996)) notifies to the other in writing from time to time; or

(b) if given for any other purpose, may be given by any effective means.

22.2 Any notice delivered or sent in accordance with clause 22.1(a) takes effect as being given and served:

(a) if delivered by hand by 4.00 pm on a Working Day, on the day of delivery; but otherwise

(b) on the first Working Day after it is delivered or sent.

23 Governing law and interpretation

23.1 This Appointment and any matters arising under or in connection with it shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to this Appointment and all matters arising under or in connection with it.

23.2 In this Appointment:

(a) **person** includes any firm and any entity having legal capacity;

(b) any term importing gender includes any gender;

(c) any term importing the singular includes the plural and vice versa;

(d) unless the context requires otherwise, any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Appointment;

(e) any reference to any enactment includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

(f) **Bank Holiday** means a Christmas Day, Good Friday or day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales;

(g) **Building Regulations** means the Building Act 1984 and all relevant subordinate legislation made under the Act;

(h) **CDM Regulations** means the Construction (Design and Management) Regulations 2015 together with any guidance issued in connection therewith;

(i) **Construction Act 1996** means Part II, Housing Grants, Construction and Regeneration Act 1996;

(j) **Group Company** means any subsidiary or holding company of ours or of another subsidiary or holding company of ours, as **subsidiary** and **holding company** are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

(k) **Insolvent** and related terms derive their meaning from section 113, Construction Act 1996;

(l) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it and/or providing finance in connection with the Development or any part of it;

(m) **Other Consultants** means the consultants listed in the Project Data and such other consultants as may be appointed by us in relation to the Development (and any Employer's Agent listed in the Project Data shall be regarded as one of the Other Consultants until such time as this Appointment may be novated to the Contractor pursuant to clause 14 (Novation to the Contractor);

(n) **Project Data** means the project data in schedule 2 (Project Data);

(o) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;

(p) **Skill and Care** means the professional skill and care and diligence reasonably to be expected of duly qualified and experienced consultants undertaking services and

other duties similar to those to be performed under this Appointment in relation to projects similar in scale and character to the Development;

(q) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);

(r) **Third Party Agreements** means the Building Contract and any other contracts entered into by the Developer and/or the Contractor with any consultant, contractor and/or sub-contractor and any title documents, funding agreements, agreements for lease, development agreements, sale contracts, statutory agreements, licences and/or any other agreements that the Developer and/or the Contractor may enter into with any third party or have rights under or must comply with in respect of the Development and the term **Third Party Agreement** shall mean any such contract, agreement, licence or other document;

(s) **Working Day** means any day other than a Bank Holiday;

(t) in this Appointment references to **we**, **us** and **our** shall:

(i) with respect to the period commencing on the date of any novation to the Contractor under clause 14 (Novation to the Contractor) expressions such as **we**, **us** and **our** shall be construed as referring to the Contractor; and

(ii) include where the context admits permitted assignees, but not so as to permit more than two assignments under clause 13.1(d) (Assignment and sub-letting).

23.3 For the purposes of clause 23.2, **Development** means the Site and/or the Works.

23.4 Clause headings do not form part of or affect the interpretation of this Appointment.

Signed as a deed and delivered by ♦)
as the Attorney of [**Standard Life**])
(in exercise of a Power of Attorney)
under its seal dated ♦) in the presence)
of:)

Signature of witness:

Name (in block capitals):

Address:

[OR]

Executed as a deed and delivered by) ……
[the Developer] acting by a director) Director
in the presence of:)
) ……...
) Name

.....
Witness

……
Name

We, ♦ [a partnership between the individuals named in the Project Data] confirm our acceptance of this Appointment on the terms and conditions set out in this letter.

Executed as a deed and delivered by	)	……
[Full name of Partner]	)	Partner
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

.....
Name

(In the case of a partnership all partners to execute in the above form)

[OR in the case of a company]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a director	)	Director
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

[OR in the case of an LLP]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a member	)	Member
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

Schedule 1

Services

[Insert relevant Schedule of Services.]

[Note: please remember to include principal designer services where relevant.]

Schedule 2

Project Data[4]

Clause 7: (Project staff**)**	(a)	Project Partner/Project Director: ♦
	(b)	Project Leader: ♦
Clause 9: (Remuneration**)**	(a)	[A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of £♦.]
	[OR]	
	(a)	[A fee (exclusive of VAT) of ♦ per cent of [the total construction cost shown in the final approved version of the cost plan produced by the quantity surveyor in respect of the Work Stage D design (**Detailed Proposals**)] [the total construction costs in the approved tender of the Contractor] [the contract sum in the Building Contract], at which point the fee will be converted into a fixed lump sum plus VAT.[5]]
	(b)	The fee may be invoiced in the following instalments: ♦
	(c)	The hourly rates applicable to any Additional Services attracting payment at hourly rates are as follows: ♦
Clause 10: (Professional indemnity insurance**)**	Limit of indemnity: not less than £♦,000,000.00 for any claim or claims arising out of each originating cause, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition.	
Clause 22.1(a) (Service of notice**)**	(a)	Notices to the Developer are to be addressed to ♦ at ♦; e-mail address ♦.
	(b)	Notices to the Consultant are to be addressed to ♦ at ♦; e-mail address ♦.
Clause 23.2(m) (Other Consultants)	•	[Architect: ♦]
	•	[Civil and structural engineer: ♦]

[4] Add details of specified person for the purposes of sch. 3, if required, including postal and e-mail addresses for service.

[5] Please show as identified items fees for undertaking principal design services pre and post novation. That way where the Contractor does not want to continue with the consultant providing the part 2 services post building contract award, the Contractor can identify the fee reduction to apply.

- [Mechanical and electrical engineer: ♦]
- [Employer's agent: ♦]
- [[Other(s)]:♦]

[Partners of the Consultant] ♦

Schedule 3

Construction Act 1996

Part 1 - Payment

1 General

1.1 In this schedule:

instalment means any instalment, stage payment or other periodic payment to be made under this Appointment

notified sum means, in respect of an instalment, the sum notified in:

(a) the payment notice given in accordance with paragraph 5, but if no such notice is given

(b) the payment application given in accordance with paragraph 4

payer and **payee** mean respectively the person from whom and the person to whom an instalment is due

1.2 Where an act is required under this schedule to be done within a specified period after or from a specified date, the period begins immediately after that date.

1.3 Where a period specified in this schedule would include a Bank Holiday, that day is excluded.

2 Specified person

The payer may give notice to the payee from time to time nominating a person (**specified person**) to give and receive any other notice to be given by or to the payer under this part of this schedule, supplying with such notice postal and e-mail addresses for service upon the specified person, or revoking any such nomination, and in that case any such notices under this part of this schedule must be served accordingly.

3 Due and final dates for payment

3.1 Payments are to be made in instalments, each calculated to the end of the period (**relevant period**) in which the instalment becomes eligible for payment, as such instalments and relevant periods are specified in, or may be ascertained in accordance with, the Project Data.

3.2 The instalments and the relevant periods specified in the Project Data are to be subject to such revisions as may from time to time be fair and reasonable in the event that the Services and/or the Development progress more slowly than was envisaged by our programme for the Development as at the date of this Appointment, or because the Development is suspended or does not proceed. For the avoidance of doubt, no amount shall become eligible for inclusion in a payment by virtue of this paragraph 3.2 any earlier than is specified in the Project Data.

3.3 The **payment due date** of each payment is the 30th day after the date of service of the relevant payment application under paragraph 4.

3.4 The **final date for payment** of each instalment is the 10th day after the payment due date of that payment.

4 Payment applications

4.1 In relation to each instalment, the payee must give the payer (or the specified person, if any) a notice (**payment application**) of:

(a) the sum that the payee considers will become due on the payment due date; and

(b) the basis on which that sum is calculated.

4.2 A payment application in respect of an instalment may not be given until after the end of the relevant period.

4.3 The payer shall not be obliged to make payment against payment applications and/or invoices submitted prematurely or which are not in the form prescribed by paragraph 4.2.

4.4 The payer shall pay Value Added Tax where applicable on any payment under this Appointment, subject to the receipt by the payer of a valid Value Added Tax invoice.

5 Payment notices

In relation to each instalment, the payer (or specified person, if any) must give a notice (**payment notice**) to the payee not later than five days after the payment due date, specifying:

(a) the sum that, in the opinion of the payer (or specified person), is (or was) due at the payment due date; and

(b) the basis on which that sum is calculated,

it being immaterial that such sum may be zero.

6 Payments

Subject to paragraphs 7.4 and 8, the payer must pay the payee the notified sum (to the extent not already paid) no later than the final date for payment of that sum.

7 Payment reduction notice

7.1 The payer (or specified person, if any) may give the payee notice of the payer's intention to pay less than the notified sum (**payment reduction notice**) and such notice must specify:

(a) the sum (**adjusted sum**) the payer considers to be due on the date the payment reduction notice is served; and

(b) the basis on which that sum is calculated.

7.2 A payment reduction notice may not be given:

(a) before the notice by reference to which the notified sum is determined; nor

(b) any later than five days before the final date for payment.

7.3 It is immaterial that the sum referred to in paragraph 7.1 may be zero.

7.4 If the payer (or a specified person) serves a payment reduction notice in accordance with this paragraph 7, the amount the payer must pay under paragraph 6 is the adjusted sum.

8 Insolvency

8.1 Paragraph 8.2 applies if:

(a) the payee is or becomes insolvent; and

(b) the payee's employment is therefore terminated.

8.2 Where this paragraph 8.2 applies:

(a) the payer need not pay any sum that he would otherwise have to pay in accordance with this schedule, provided:

(i) he (or the specified person, if any) gives a payment reduction notice in respect of that sum in accordance with paragraph 7, invoking this paragraph 8; or

(ii) the insolvency post-dates the latest date for service of a payment reduction notice in respect of that sum; and

(b) in such case, no further payment need be made by the payer until he has been able to ascertain the costs and losses he will incur by reason of the termination.

9 VAT

Following issue of any payment notice under paragraph 5 or payment reduction notice under paragraph 7, the payee will forthwith issue such credit note as may be required to address the difference between the amount claimed by the payee in the relevant payment application and VAT invoice issued pursuant to paragraph 4.4 and the notified sum confirmed in the payer's payment notice issued under paragraph 5 or the adjusted sum confirmed in the payment reduction notice issued under paragraph 7.

Part 2 - Adjudication

10 Adjudication

Either party may give notice at any time of his intention to refer any dispute under this Appointment to adjudication under and in accordance with the Scheme for Construction Contracts for the time being under the Construction Act 1996, subject as follows:

(a) the adjudicator nominating body is the Royal Institution of Chartered Surveyors;

(b) the adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him; and

(c) at the same time as he gives a decision, the adjudicator must give written reasons.

Schedule 4

Third Party Agreements

1 You shall have regard to any obligations on the part of the Developer and/or the Contractor contained in the Third Party Agreements of which relevant extracts setting out such obligations have been provided to you before the date of this Appointment. You warrant that:

(a) you have performed and will continue to perform the Services and your other duties and obligations under this Appointment in such a manner and at such times so that no act, omission or default on your part in relation thereto shall constitute, cause or contribute to any breach by the Developer or Contractor of any of their respective obligations in the Third Party Agreements;

(b) you shall comply with any procedures laid down in the Third Party Agreements for the drawdown of funding and for (or for approval of) designs, changes in design, specification or materials and for the inspection of the Development prior to the practical completion or completion of making good of defects under the Building Contract and for similar matters;

(c) you shall comply with any procedures laid down in the Third Party Agreements for the approval by any third party of any designs, specifications and other design documents prepared in respect of Development and for (or for approval of) changes in design, specification or materials;

(d) exercising Skill and Care and to the extent the Services include duties in relation to the procurement of the Development, the Development will be procured in accordance with the obligations of the Developer under the Third Party Agreements;

(e) exercising Skill and Care, the design of all elements of the Development for which you are responsible will comply with the obligations of the Developer and the Contractor in respect of such design under the Third Party Agreements;

(f) you will provide such copy plans, drawings, specifications, reports, programmes and other documents prepared by you or on your behalf and such information and assistance as may be required by the Developer and/or the Contractor to fulfil their respective obligations under such Third Party Agreements within such time periods as may be provided for in the Third Party Agreements;

(g) you shall attend such meetings as may be required with such third parties as may be provided for in such Third Party Agreements; and

(h) without prejudice to clause 17 (Confidentiality), you shall not and shall procure that your employees and sub-consultants shall not, save as required by law or as we may approve in writing, disclose the terms of such Third Party Agreements to any third party.

2 Where extracts of any Third Party Agreement are provided to you after the date of this Appointment, you shall in respect of such Third Party Agreement comply with the obligations and warranties imposed in paragraph 1 above, save that you shall not be required to comply with such obligations and warranties where you have within 7 days from receipt of such extracts notified us in writing of the reasons why and to the extent to which you are unable to comply with the provisions of paragraph 1 in respect of such Third Party Agreement disclosed

after the date of this Appointment and we have not instructed Additional Services under clause 2.2 (Services) to address the concerns raised by you in such notice.

3 You will be liable for and will indemnify us against any expense, liability, loss, claim and/or proceeding reasonably incurred by us arising out of any breach by you of your obligations in this schedule 4 and you hereby acknowledge that all such expenses, liabilities, losses, claims and/or proceedings are within your contemplation as being an anticipated consequence of any breach by you of your obligations under this schedule 4.

Appendix 1

Draft deed of warranty

Appendix 2

Draft deed of novation

ADDLESHAW GODDARD

CLIENT-SPECIFIC PRECEDENT: STANDARD LIFE

GENERIC APPOINTMENT OF DESIGN CONSULTANT (TRADITIONAL)

(Collateral Warranties version)

PREC-4484-6
Responsibility: Nancy McGuire

This precedent was written or revised as of **OCTOBER 2015**.

Drafting assumptions

1

Guidance notes to this precedent

2

Useful know-how

3

Notes about precedents generally

4 Always generate and check the accuracy of the automatic table of contents and cross-referencing. To insert a new sub-clause ensure your cursor is at the end of the preceding sub-clause and press the return key (↵) otherwise any cross-references to subsequent sub-clauses will not update correctly. See the Word Training Manual for further guidance.

5 Always remove all comment boxes before sending out a document. Use the comments button on the toolbar to delete comments.

Please pass comments on this precedent to Nancy McGuire on extension 6562 or nancy.mcguire@addleshawgoddard.com

ADDLESHAW GODDARD

Dated **201♦**

LETTER OF APPOINTMENT

OF

[ARCHITECTS]

[CIVIL & STRUCTURAL ENGINEERS]

[MECHANICAL & ELECTRICAL SERVICES ENGINEERS]

[LANDSCAPE ARCHITECTS]

[♦]

---

relating to a development at ♦

Contents

Clause		Page
1	Scope of Appointment	1
2	Services	1
3	Duty of care	2
4	Design changes	2
5	Budget and programme	2
6	Prohibited materials	3
7	Project staff	3
8	Project manager	3
9	Remuneration	4
10	Professional indemnity insurance	5
11	Collateral warranties	5
12	Documents	5
13	Assignment and sub-letting	6
14	Suspension	6
15	Termination and remedies	6
16	Design and build option	7
17	Confidentiality	7
18	Bribery Act 2010	7
19	Construction Act 1996	8
20	Third Party Agreements	8
21	Contracts (Rights of Third Parties) Act 1999	8
22	Service of notice	8
23	Governing law and interpretation	8
1	Services	13
2	Project Data	14
3	Construction Act 1996	16
	Part 1 - Payment	16
	Part 2 - Adjudication	18
4	Third Party Agreements	19
1	Draft deed of warranty	
2	Draft deed of novation	

Letter of Appointment

From: ♦ (No. ♦) whose registered office is at ♦ (**Developer**).

To: ♦ [of] [(No. ♦) whose registered office is at] ♦ (**Consultant**).

Date: ♦ 201♦.

Dear Sirs

Development of ♦ at ♦

This letter sets out the terms of your appointment (**Appointment**) as our [architects] [civil & structural engineers] [mechanical & electrical services engineers] [landscape architects] [♦] [and principal designer] in connection with the above development (**Development**).

This letter constitutes the entire agreement between us and replaces any previous agreement between us in respect of the Development.

Any services already provided by you relating to the Development are to be treated as having been provided under the terms of this Appointment.

1 Scope of Appointment

Your Appointment relates to the proposed site (**Site**) of the works (**Works**) required to construct the Development [and to any roadworks, services installations and other enabling works adjacent to the Site which are required for the purposes of the Development][1]. We intend to enter into a building contract (**Building Contract**) with a contractor (**Contractor**) to carry out the Works.

2 Services

2.1 You are to provide the services specified in schedule 1 (Services).

2.2 You are to provide such additional services relating to the Development which are within your discipline and competence as we may reasonably instruct in writing (**Additional Services**). The services specified in schedule 1 (Services) together with the Additional Services make up the **Services** to be performed under this Appointment.

2.3 We may give you instructions to omit any of the Services and we may instruct others to undertake any services so omitted.

2.4 You are to obtain our written authority before initiating any work stage specified in schedule 1. Without prejudice to clause 14 (Suspension) or clause 15.1 (Termination and remedies), we may elect not to proceed with any subsequent work stage and may suspend the performance of the Services or terminate your employment under this Appointment upon completion of any given work stage.

2.5 You are to comply with all reasonable instructions given by us in writing in connection with this Appointment.

[1] Include wording in brackets where appropriate.

2.6 In performing the Services you are to take into account at all stages the requirements of the Standard Life Group Sustainable Real Estate Investment Policy and associated Management Systems (**SRIP**) details of which can be found at http://www.standardlifeinvestments.com/CO_Sustainable_RE_Investment_Report/getLatest.pdf. In conjunction with ourselves and the Other Consultants, at all relevant stages you are to consider and make recommendations as to the options available for promoting the objectives of the SRIP and the cost effectiveness and practicability of the available options.

3 Duty of care

3.1 You are to use Skill and Care in the performance of the Services.

3.2 You are to perform the Services and your other duties under this Appointment in compliance with all applicable statutory and regulatory requirements and you are to use Skill and Care to see that the design of all elements of the Development for which you are responsible complies with the Building Regulations and other applicable statutory and regulatory requirements.

3.3 Without prejudice to clause 3.2, you are to comply with your statutory duties under the CDM Regulations.

3.4 No inspection or approval or review on our part or on our behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty, obligation or liability on your part under or in connection with this Appointment.

4 Design changes

4.1 You may not without our written consent make or permit any material change in the designs or specifications for the Development after they have been settled or approved.

4.2 You are to keep us and the Other Consultants fully informed on a day to day basis of all changes in design or specification made or authorised by you.

5 Budget and programme

5.1 You are to have due regard in the performance of the Services to our budget requirements and any cost plan or contract sum for the Development. You are to comply with any design, procurement or construction programme produced for the Development. If you become aware of circumstances which may prevent us from carrying out the Development in accordance with our budget (or any cost plan or contract sum) or programme, you are to inform us without delay.

5.2 You are to carry out the Services so that once a contract sum has been agreed with the Contractor there will be no material risk (so far as concerns matters for which you are responsible) that such contract sum will be materially exceeded, taking account of any agreed contingencies or provisional sums (save by reason of any variations to the Works instructed by us (other than as a result of any errors or omissions on your part) or any circumstances or risks which would not be reasonably foreseeable by an experienced and diligent consultant of your profession in light of all the circumstances prevailing at that time).

5.3 You are to inform us immediately before a contract sum is agreed with the Contractor and before the Building Contract is entered into of any matters of which you are aware (or have reasonable grounds to suspect may occur) which might cause the contract sum to be exceeded.

5.4 Decisions and instructions as to the expenditure of any contingencies and provisional sums in our cost plan are to be subject to our prior approval.

5.5 Without prejudice to your obligations set out in clause 5.1, you are to collaborate with us and the Other Consultants to establish a co-ordinated programme for the production of the design and you are to comply with and monitor progress against such design programme.

5.6 A schedule setting out dates by when the Contractor is to be provided with drawings, details and other design information (**Information Release Schedule**) may be included in or produced pursuant to the Building Contract. As required, you are to collaborate with the Contractor and the Other Consultants to produce such an Information Release Schedule and you are to supply all such information to be supplied by you as required by (and by the dates specified in) the Information Release Schedule, unless you are prevented from doing so by circumstances beyond your responsibility and control.

6 Prohibited materials

You are to use Skill and Care not to specify for use, and not to approve the use in the Development of any materials:

(a) which by their nature or application contravene any British Standard or EU equivalent;

(b) which contravene the recommendations of the British Council for Offices publication *Good Practice in the Selection of Construction Materials* (2011); or

(c) which are generally considered to be deleterious within the building design professions in the UK,

and, if you become aware that any such materials have been so specified or used, you shall immediately inform us.

7 Project staff

7.1 You agree to appoint the staff named in the Project Data to be Project Partner/Project Director and Project Leader for the Development. The Project Partner/Project Director shall have overall responsibility for the management of the Services and the Project Leader shall be responsible for the day to day supervision and co-ordination of the Services. If we reasonably request, you shall replace any such member of staff with another person of suitable qualifications and experience approved by us, but such appointees are not otherwise to be replaced save with our consent or save for unavoidable necessity, and any replacement is to be subject to our prior approval.

7.2 In providing the Services you are to allocate appropriate resources to enable you to meet your obligations under this Appointment and to enable you to comply with your statutory duties under the CDM Regulations.

7.3 You warrant that you have and shall continue to have the skills, knowledge, experience and organisational capacity required by the CDM Regulations to fulfil your duties and obligations under this Appointment in a manner that secures the health and safety of any person affected by the Development.

8 Project manager

We may appoint or may have appointed consultants to act as our project manager and/or employer's agent and/or design team co-ordinator and/or contract administrator in relation to

the Development. We may give you written notice of the extent to which any such person has authority to give any instructions or agree any matter on our behalf in connection with the Development. No such externally appointed person shall have any such authority save as we may so notify you in writing.

9 Remuneration

9.1 Your remuneration under this Appointment:

(a) shall be as provided in this clause 9 and the Project Data; and

(b) shall be payable in accordance with schedule 3 (Construction Act 1996).

9.2 If for any reason we do not proceed with the Development at any stage, or if your employment is terminated or the Services suspended other than for your breach or Insolvency, you will be entitled (in addition to any fee instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which the Services are part-performed at the date of termination or suspension, but not to fees for any of the Services not performed. You shall not be entitled to compensation for loss of profit or other losses incurred by you as a result of the termination of your employment under this Appointment or any suspension of the Services. Save as provided for in this clause 9.2, you shall not be entitled to any payment on any termination of your employment under this Appointment or on any suspension of the Services.

9.3 If at our request you undertake any Additional Services, or if by reason of any material design changes requested by us or any other circumstances beyond your control you are required to undertake significant extra work, then an additional fee will be payable provided:

(a) you notify us in writing before undertaking such Additional Services or additional work that you may require an additional fee, and provide such details as we reasonably request of the Additional Services or the additional work required and the relevant additional fee;

(b) we confirm to you the agreed amount of the additional fee; and

(c) the need to carry out the Additional Services or additional work does not result from a breach of your obligations under this Appointment.

9.4 Any additional fee shall be such lump sum as is fair and reasonable and as we may agree between us (and as we may confirm to you in writing) prior to you commencing any Additional Services or additional work or, if we so specify in writing, shall be calculated at the applicable hourly rates specified in the Project Data.

9.5 If we give instructions for you to omit any of the Services we shall be entitled to make a fair and reasonable reduction in your remuneration.

9.6 The specified fee in the Project Data is exclusive of VAT and inclusive of all your office, staff, travel, reproduction and incidental costs and inclusive of disbursements. However, you will be reimbursed any third party charges incurred at our request, such as survey fees or statutory fees or the cost of any models or any specialist presentational artwork, provided the amount of such charges is agreed with us before they are incurred.

9.7 If the amount of any fees or disbursements is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 5% over Bank of England base rate for the time being, from the final date for payment to and including the date on

which such amount is paid or discharged. You acknowledge that the provisions of this clause 9.7 amount to a "substantial remedy" for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

9.8 We shall be entitled to set-off, withhold or deduct from any money otherwise due to you under or pursuant to this Appointment any sums for which you may be liable to us.

10 Professional indemnity insurance

10.1 You hereby warrant that there is in force a policy of professional indemnity insurance covering your liabilities under this Appointment conforming to the relevant requirements specified in the Project Data. You are to maintain such insurance at all times until 12 years after the practical completion of the Works under the Building Contract (or, if sooner, until 12 years after the completion or termination of the Services), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable.

10.2 If for any period such insurance is not obtainable on commercially reasonable terms, you are to inform us forthwith and are to obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for you to obtain.

10.3 When reasonably requested by us you are to provide documentary evidence that the insurance required under this Appointment is being maintained.

11 Collateral warranties

11.1 You are to provide, within 7 days of our written request made at any time or times, a deed or deeds of warranty respecting your duties hereunder in favour of Mortgagees and/or Purchasers and/or Tenants, in terms of the draft contained in appendix 1 (Draft deed of warranty).[2]

11.2 If you fail to execute and deliver any such deed pursuant to clause 11.1 within 7 days of our written request, we may execute such deed on your behalf, and you hereby appoint us as your attorney for the purposes of executing any such deed. You are to ratify and confirm any act done by us pursuant to this power of attorney, and agree that this power is irrevocable, pursuant to section 4, Powers of Attorney Act 1971.

11.3 If you fail to comply with clause 11.1, we shall be entitled to give you notice specifying the breach. If the breach is not rectified within 14 days after service of such notice (or by us executing at our option the relevant deed pursuant to clause 11.2) then we shall not be liable to pay any further sums due to you under this Appointment while the breach remains to be rectified.

12 Documents

12.1 You grant and agree to grant to us an irrevocable, non-exclusive, royalty free, assignable licence to use and reproduce all drawings, calculations, specifications and/or other documents produced by you pursuant to this Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the

[2] Categories of beneficiary to be reviewed on a case by case basis. Please ensure the list is correct for each scheme. For residential schemes, consider whether warranties for Purchasers/Tenants of individual units should be excluded or limited to parties taking a number of residential units. Consider the need for warranties in favour of group companies or management companies.

reproduction of any such designs in any extension to the Development), and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in yourselves. You shall not be liable for the use of any of the Documents for any purpose other than those for which you produced them.

12.2 You agree to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against us or any licensee or assignee of ours.

12.3 You agree to supply any additional copies of the Documents we may request after the completion or termination of the Services, in return for payment of your reasonable reproduction costs. If we cannot agree your proposed reproduction costs, you agree to afford us a reasonable opportunity to arrange for reproductions to be produced by ourselves or by others.

12.4 You warrant that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.

13 Assignment and sub-letting

13.1 Our rights under this Appointment may be:

(a) charged to any Mortgagee;

(b) assigned as security to any Mortgagee (and such rights may be re-assigned on redemption);

(c) assigned by absolute assignment to any Group Company;

(d) assigned by absolute assignment on two other occasions only.

13.2 You shall not be entitled to assign or charge this Appointment.

13.3 You may not arrange for or authorise the sub-letting of any design for which you are responsible under this Appointment to any sub-consultant, sub-contractor or specialist supplier, nor may you sub-let the whole or any part of the Services, without our prior written consent. Our consent to any sub-letting may be conditional upon our approval of the terms of appointment of your sub-consultant, sub-contractor or specialist supplier and a requirement that he enters into deeds of warranty respecting his duties in a form approved by us in favour of ourselves and relevant third parties. Notwithstanding the sub-letting of any such design or any of the Services, you shall remain fully responsible for all of the Services and your other obligations under this Appointment as if they had been undertaken by you.

14 Suspension

We may suspend the performance of the Services at any time by written notice. If a suspension lasts more than 6 months, you may make a written request for the Services to be resumed, and if no instructions to resume are given within 28 days after your request, your employment shall then terminate.

15 Termination and remedies

15.1 We may at any time by service of written notice terminate your employment under this Appointment.

15.2 If we terminate your employment on account of your Insolvency or on account of your breach of any term of this Appointment, we shall be entitled to recover from you the costs and losses we reasonably or necessarily incur by reason of the termination.

15.3 If you fail to comply with any requirement of clause 10 (Professional indemnity insurance) or fail to comply with clause 11 (Collateral warranties) or if you become Insolvent, we shall be entitled to recover from you any premiums we reasonably incur to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection, but this clause 15.3 does not exclude any other remedy we might have for breach of clause 10 (Professional indemnity insurance) or clause 11 (Collateral warranties).

15.4 If we are materially in breach of our obligations under this Appointment in any respect that would reasonably justify your terminating your employment, you may serve 28 days' written notice of your intention to terminate, stating the grounds for termination, and if in such 28 day period we fail to rectify our breach, you may at the expiry of that period serve further written notice terminating your employment with immediate effect.

15.5 Termination does not determine the operation of any provisions of this Appointment that are capable of operation after termination.

16 Design and build option

16.1 You agree that should we elect to procure the Development under a design and build contract, we may require you to enter into a novation of this Appointment with us and the Contractor in terms of the draft deed of novation contained in appendix 2 (Draft deed of novation) and you are to execute and deliver such deed of novation within 14 days of our request to do so.

16.2 If requested to do so upon or at any time after novation, you are to provide a deed of warranty in favour of the Developer in terms of the draft contained in appendix 1 (Draft deed of warranty), mutatis mutandis, and for this purpose **Developer** means the person named as such in the deed of novation.

17 Confidentiality

Save as may be necessary for the performance of the Services, or as required by law, or as we may allow in writing, you are to treat as confidential all information relating to this Appointment and to the Development, and are to take all reasonable steps to see that your employees are bound by and adhere to the same duty of confidentiality.

18 Bribery Act 2010

18.1 You warrant that no offence under the Bribery Act 2010 (**Act**) has been or will be committed by you or any person associated with you, in connection with the procurement or implementation of this Appointment.

18.2 For the purposes of and without derogation from clause 18.1, an offence is committed under any provision of the Act before such provision is in force, if such offence would have been committed, had such provision then been in force.

18.3 For the purposes of clause 18.1, the definition of associated person in section 8 of the Act applies.

18.4 If at any time you have knowledge of, or have reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 18.1, you shall promptly notify us in writing of such

matters within your knowledge, or of such grounds for suspicion, and shall co-operate with us in the investigation of such breach or suspected breach of warranty.

19 Construction Act 1996

Schedule 3 (Construction Act 1996) has effect.

20 Third Party Agreements

Schedule 4 (Third Party Agreements) has effect.

21 Contracts (Rights of Third Parties) Act 1999

This Appointment is not intended to confer and does not confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

22 Service of notice

22.1 Any notice to be given under this Appointment:

(a) if given for the purposes of schedule 3 (Construction Act 1996), must be:

(i) delivered by hand; or

(ii) sent by e-mail and on the same day, sent by pre-paid first class post,

to the relevant addressee, addressed in accordance with the applicable details in the Project Data, or such other details as the relevant party (or specified person as defined in schedule 3 (Construction Act 1996)) notifies to the other in writing from time to time; or

(b) if given for any other purpose, may be given by any effective means.

22.2 Any notice delivered or sent in accordance with clause 22.1(a) takes effect as being given and served:

(a) if delivered by hand by 4.00 p.m. on a Working Day, on the day of delivery; but otherwise

(b) on the first Working Day after it is delivered or sent.

23 Governing law and interpretation

23.1 This Appointment and any matters arising under or in connection with it shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to this Appointment and all matters arising under or in connection with it.

23.2 In this Appointment:

(a) **person** includes any firm and any entity having legal capacity;

(b) any term importing gender includes any gender;

(c) any term importing the singular includes the plural and vice versa;

(d) unless the context requires otherwise, any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Appointment;

(e) any reference to any enactment includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

(f) **Bank Holiday** means a Christmas Day, Good Friday or day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales;

(g) **Building Regulations** means the Building Act 1984 and all relevant subordinate legislation made under the Act;

(h) **CDM Regulations** means the Construction (Design and Management) Regulations 2015 together with any guidance issued in connection therewith;

(i) **Construction Act 1996** means Part II, Housing Grants, Construction and Regeneration Act 1996;

(j) **Group Company** means any subsidiary or holding company of ours or of another subsidiary or holding company of ours, as **subsidiary** and **holding company** are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

(k) **Insolvent** and related terms derive their meaning from section 113, Construction Act 1996;

(l) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it and/or providing finance in connection with the Development or any part of it;

(m) **Other Consultants** means the consultants listed in the Project Data and such other consultants as may be appointed by us in relation to the Development;

(n) **Project Data** means the project data in schedule 2 (Project Data);

(o) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;

(p) **Skill and Care** means the professional skill and care and diligence reasonably to be expected of duly qualified and experienced consultants undertaking services and other duties similar to those to be performed under this Appointment in relation to projects similar in scale and character to the Development;

(q) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);

(r) **Third Party Agreements** means the Building Contract and any other contracts entered into by us with any consultant, contractor and/or sub-contractor and any title documents, funding agreements, agreements for lease, development agreements, sale contracts, statutory agreements, licences and/or any other agreements that we may enter into with any third party or have rights under or must comply with in respect

of the Development and the term **Third Party Agreement** shall mean any such contract, agreement, licence or other document;

(s) **Working Day** means any day other than a Bank Holiday;

(t) in this Appointment references to **we**, **us** and **our** shall:

(i) with respect to the period commencing on the date of any novation to the Contractor under clause 16 (Design and build option), be construed as referring to the Contractor; and

(ii) include where the context admits permitted assignees, but not so as to permit more than two assignments under clause 13.1(d) (Assignment and sub-letting).

23.3 For the purposes of clause 23.2, **Development** means the Site and/or the Works.

23.4 Clause headings do not form part of or affect the interpretation of this Appointment.

Signed as a deed and delivered by ♦)
as the Attorney of [**Standard Life**])
(in exercise of a Power of Attorney)
under its seal dated ♦) in the presence)
of:)

Signature of witness:

Name (in block capitals):

Address:

[OR]

Executed as a deed and delivered by) ……
[the Developer] acting by a director) Director
in the presence of:)
) ……...
) Name

.....
Witness

……
Name

We, ♦ [a partnership between the individuals named in the Project Data] confirm our acceptance of this Appointment on the terms and conditions set out in this letter.

Executed as a deed and delivered by	)	……
[Full name of Partner]	)	Partner
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

.....
Name

(In the case of a partnership all partners to execute in the above form)

[OR in the case of a company]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a director	)	Director
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

[OR in the case of an LLP]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a member	)	Member
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

Schedule 1

Services

[Insert relevant Schedule of Services.]

[Note: please remember to include principal designer services where relevant.]

Schedule 2

Project Data[3]

Clause 7: (Project staff**)**	(a)	Project Partner/Project Director: ♦
	(b)	Project Leader: ♦
Clause 9: (Remuneration**)**	(a)	[A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of £♦.]
	[OR]	
	(a)	[A fee (exclusive of VAT) of ♦ per cent of [the total construction cost shown in the final approved version of the cost plan produced by the quantity surveyor in respect of the Work Stage D design (**Detailed Proposals**)] [the total construction costs in the approved tender of the Contractor] [the contract sum in the Building Contract], at which point the fee will be converted into a fixed lump sum plus VAT.]
	(b)	The fee may be invoiced in the following instalments: ♦
	(c)	The hourly rates applicable to any Additional Services attracting payment at hourly rates are as follows: ♦
Clause 10: (Professional indemnity insurance**)**	Limit of indemnity: not less than £♦,000,000.00 for any claim or series of claims arising out of each originating cause, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition.	
Clause 22.1(a) (Service of notice**)**	(a)	Notices to the Developer are to be addressed to ♦ at ♦; e-mail address ♦.
	(b)	Notices to the Consultant are to be addressed to ♦ at ♦; e-mail address ♦.
Clause 23.2(m) (Other Consultants)	•	[Architect: ♦]
	•	[Civil and structural engineer: ♦]
	•	[Mechanical and electrical engineer: ♦]
	•	[Employer's agent: ♦]

[3] Add details of specified person for the purposes of schd 3, if required, including postal and e-mail addresses for service.

- [[Other(s)]: ♦]

[Partners of the Consultant] ♦

Schedule 3

Construction Act 1996

Part 1 - Payment

1 General

1.1 In this schedule:

instalment means any instalment, stage payment or other periodic payment to be made under this Appointment

notified sum means, in respect of an instalment, the sum notified in:

(a) the payment notice given in accordance with paragraph 5, but if no such notice is given

(b) the payment application given in accordance with paragraph 4

payer and **payee** mean respectively the person from whom and the person to whom an instalment is due

1.2 Where an act is required under this schedule to be done within a specified period after or from a specified date, the period begins immediately after that date.

1.3 Where a period specified in this schedule would include a Bank Holiday, that day is excluded.

2 Specified person

The payer may give notice to the payee from time to time nominating a person (**specified person**) to give and receive any other notice to be given by or to the payer under this part of this schedule, supplying with such notice postal and e-mail addresses for service upon the specified person, or revoking any such nomination, and in that case any such notices under this part of this schedule must be served accordingly.

3 Due and final dates for payment

3.1 Payments are to be made in instalments, each calculated to the end of the period (**relevant period**) in which the instalment becomes eligible for payment, as such instalments and relevant periods are specified in, or may be ascertained in accordance with, the Project Data.

3.2 The instalments and the relevant periods specified in the Project Data are to be subject to such revisions as may from time to time be fair and reasonable in the event that the Services and/or the Development progress more slowly than was envisaged by our programme for the Development as at the date of this Appointment, or because the Development is suspended or does not proceed. For the avoidance of doubt, no amount shall become eligible for inclusion in a payment by virtue of this paragraph 3.2 any earlier than is specified in the Project Data.

3.3 The **payment due date** of each payment is the 30th day after the date of service of the relevant payment application under paragraph 4.

3.4 The **final date for payment** of each instalment is the 10th day after the payment due date of that payment.

4 Payment applications

4.1 In relation to each instalment, the payee must give the payer (or the specified person, if any) a notice (**payment application**) of:

(a) the sum that the payee considers will become due on the payment due date; and

(b) the basis on which that sum is calculated.

4.2 A payment application in respect of an instalment may not be given until after the end of the relevant period.

4.3 The payer shall not be obliged to make payment against payment applications and/or invoices submitted prematurely or which are not in the form prescribed by paragraph 4.2.

4.4 The payer shall pay Value Added Tax where applicable on any payment under this Appointment, subject to the receipt by the payer of a valid Value Added Tax invoice.

5 Payment notices

In relation to each instalment, the payer (or specified person, if any) must give a notice (**payment notice**) to the payee not later than five days after the payment due date, specifying:

(a) the sum that, in the opinion of the payer (or specified person), is (or was) due at the payment due date; and

(b) the basis on which that sum is calculated,

it being immaterial that such sum may be zero.

6 Payments

Subject to paragraphs 7.4 and 8, the payer must pay the payee the notified sum (to the extent not already paid) no later than the final date for payment of that sum.

7 Payment reduction notice

7.1 The payer (or specified person, if any) may give the payee notice of the payer's intention to pay less than the notified sum (**payment reduction notice**) and such notice must specify:

(a) the sum (**adjusted sum**) the payer considers to be due on the date the payment reduction notice is served; and

(b) the basis on which that sum is calculated.

7.2 A payment reduction notice may not be given:

(a) before the notice by reference to which the notified sum is determined; nor

(b) any later than five days before the final date for payment.

7.3 It is immaterial that the sum referred to in paragraph 7.1 may be zero.

7.4 If the payer (or a specified person) serves a payment reduction notice in accordance with this paragraph 7, the amount the payer must pay under paragraph 6 is the adjusted sum.

8 Insolvency

8.1 Paragraph 8.2 applies if:

(a) the payee is or becomes insolvent; and

(b) the payee's employment is therefore terminated.

8.2 Where this paragraph 8.2 applies:

(a) the payer need not pay any sum that he would otherwise have to pay in accordance with this schedule, provided:

(i) he (or the specified person, if any) gives a payment reduction notice in respect of that sum in accordance with paragraph 7, invoking this paragraph 8; or

(ii) the insolvency post-dates the latest date for service of a payment reduction notice in respect of that sum; and

(b) in such case, no further payment need be made by the payer until he has been able to ascertain the costs and losses he will incur by reason of the termination.

9 VAT

Following issue of any payment notice under paragraph 5 or payment reduction notice under paragraph 7, the payee will forthwith issue such credit note as may be required to address the difference between the amount claimed by the payee in the relevant payment application and VAT invoice issued pursuant to paragraph 4.4 and the notified sum confirmed in the payer's payment notice issued under paragraph 5 or the adjusted sum confirmed in the payment reduction notice issued under paragraph 7.

Part 2 - Adjudication

10 Adjudication

Either party may give notice at any time of his intention to refer any dispute under this Appointment to adjudication under and in accordance with the Scheme for Construction Contracts for the time being under the Construction Act 1996, subject as follows:

(a) the adjudicator nominating body is the Royal Institution of Chartered Surveyors;

(b) the adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him; and

(c) at the same time as he gives a decision, the adjudicator must give written reasons.

Schedule 4

Third Party Agreements

1 You shall have regard to any obligations on our part contained in the Third Party Agreements of which relevant extracts setting out such obligations have been provided to you before the date of this Appointment. You warrant that:

(a) you have performed and will continue to perform the Services and your other duties and obligations under this Appointment in such a manner and at such times so that no act, omission or default on your part in relation thereto shall constitute, cause or contribute to any breach by us of any of our obligations in the Third Party Agreements;

(b) you shall comply with any procedures laid down in the Third Party Agreements for the drawdown of funding and for (or for approval of) designs, changes in design, specification or materials and for the inspection of the Development prior to the practical completion or completion of making good of defects under the Building Contract and for similar matters;

(c) you shall comply with any procedures laid down in the Third Party Agreements for the approval by any third party of any designs, specifications and other design documents prepared in respect of Development and for (or for approval of) changes in design, specification or materials;

(d) where you are undertaking contract administration services in respect of the Building Contract you will be responsible for the issue of certificates as to the state of completion or readiness of the Development for completion or for the start of fitting out works or as to similar matters required in the Third Party Agreements;

(e) exercising Skill and Care and to the extent the Services include duties in relation to the procurement of the Development, the Development will be procured in accordance with our obligations under the Third Party Agreements;

(f) exercising Skill and Care, the design of all elements of the Development for which you are responsible will comply with our obligations in respect of such design under the Third Party Agreements;

(g) you will provide such copy plans, drawings, specifications, reports, programmes and other documents prepared by you or on your behalf and such information and assistance as may be required by us to fulfil our obligations under such Third Party Agreements within such time periods as may be provided for in the Third Party Agreements;

(h) you shall attend such meetings as may be required with such third parties as may be provided for in such Third Party Agreements; and

(i) without prejudice to clause 17 (Confidentiality), you shall not and shall procure that your employees and sub-consultants shall not, save as required by law or as we may approve in writing, disclose the terms of such Third Party Agreements to any third party.

2 Where extracts of any Third Party Agreement are provided to you after the date of this Appointment, you shall in respect of such Third Party Agreement comply with the obligations

and warranties imposed in paragraph 1 above, save that you shall not be required to comply with such obligations and warranties where you have within 7 days from receipt of such extracts notified us in writing of the reasons why and to the extent to which you are unable to comply with the provisions of paragraph 1 in respect of such Third Party Agreement disclosed after the date of this Appointment and we have not instructed Additional Services under clause 2.2 (Services) to address the concerns raised by you in such notice.

3 You will be liable for and will indemnify us against any expense, liability, loss, claim and/or proceeding reasonably incurred by us arising out of any breach by you of your obligations in this schedule 4 and you hereby acknowledge that all such expenses, liabilities, losses, claims and/or proceedings are within your contemplation as being an anticipated consequence of any breach by you of your obligations under this schedule 4.

Appendix 1

Draft deed of warranty

Appendix 2

Draft deed of novation

ADDLESHAW GODDARD

CLIENT-SPECIFIC PRECEDENT: STANDARD LIFE

GENERIC APPOINTMENT OF NON-DESIGN CONSULTANT (TRADITIONAL)

(Collateral Warranties version)

PREC-4486-5
Responsibility: Nancy McGuire

This precedent was written or revised as of **OCTOBER 2015**.

Drafting assumptions

1

Guidance notes to this precedent

2 Whilst this document acknowledges the possibility that this draft could be used to appoint a principal designer (where the principal designer has no wider role in the project), the approach Standard Life is taking is that in line with the Regulations this role should be allocated to one of the design team pre-contract award and then the contractor where a design and build contract is placed.

Useful know-how

3

Notes about precedents generally

4 Always generate and check the accuracy of the automatic table of contents and cross-referencing. To insert a new sub-clause ensure your cursor is at the end of the preceding sub-clause and press the return key (↵) otherwise any cross-references to subsequent sub-clauses will not update correctly. See the Word Training Manual for further guidance.

5 Always remove all comment boxes before sending out a document. Use the comments button on the toolbar to delete comments.

Please pass comments on this precedent to Nancy McGuire on extension 6562 or nancy.mcguire@addleshawgoddard.com

ADDLESHAW GODDARD

Dated **201♦**

LETTER OF APPOINTMENT

OF

[QUANTITY SURVEYORS]

[PROJECT MANAGERS]

[PRINCIPAL DESIGNER]

[EMPLOYER'S AGENT]

[♦]

---

relating to a development at ♦

Contents

	Clause	Page
1	Scope of Appointment	1
2	Services	1
3	Duty of care	2
4	Design changes	2
5	Budget and programme	2
6	Project staff	3
7	Authority of Other Consultants	3
8	Remuneration	3
9	Professional indemnity insurance	4
10	Collateral warranties	4
11	Documents	5
12	Assignment and sub-letting	5
13	Suspension	6
14	Termination and remedies	6
15	Confidentiality	6
16	Bribery Act 2010	6
17	Construction Act 1996	7
18	Third Party Agreements	7
19	Contracts (Rights of Third Parties) Act 1999	7
20	Service of notice	7
21	Governing law and interpretation	7
1	Services	12
2	Project Data	13
3	Construction Act 1996	15
	Part 1 - Payment	15
	Part 2 - Adjudication	17
4	Third Party Agreements	18

The Appendix

Draft deed of warranty

Letter of Appointment

From: ♦ (No. ♦) whose registered office is at ♦ (**Developer**).

To: ♦ [of] [(No. ♦) whose registered office is at] ♦ (**Consultant**).

Date: ♦ 201♦.

Dear Sirs

Development of ♦ at ♦

This letter sets out the terms of your appointment (**Appointment**) as our [quantity surveyors] [project managers] [principal designer] [employer's agent] [♦] in connection with the above development (**Development**).

This letter constitutes the entire agreement between us and replaces any previous agreement between us in respect of the Development.

Any services already provided by you relating to the Development are to be treated as having been provided under the terms of this Appointment.

1 Scope of Appointment

Your Appointment relates to the proposed site (**Site**) of the works (**Works**) required to construct the Development [and to any roadworks, services installations and other enabling works adjacent to the Site which are required for the purposes of the Development][1]. We intend to enter into a building contract (**Building Contract**) with a contractor (**Contractor**) to carry out the Works.

2 Services

2.1 You are to provide the services specified in schedule 1 (Services).

2.2 You are to provide such additional services relating to the Development which are within your discipline and competence as we may reasonably instruct in writing (**Additional Services**). The services specified in schedule 1 (Services) together with the Additional Services make up the **Services** to be performed under this Appointment.

2.3 We may give you instructions to omit any of the Services and we may instruct others to undertake any services so omitted.

2.4 You are to obtain our written authority before initiating any work stage specified in schedule 1. Without prejudice to clause 13 (Suspension) or clause 14.1 (Termination and remedies), we may elect not to proceed with any subsequent work stage and may suspend the performance of the Services or terminate your employment under this Appointment upon completion of any given work stage.

2.5 You are to comply with all reasonable instructions given by us in writing in connection with this Appointment.

[1] Include wording in brackets where appropriate.

2.6 In performing the Services you are to take into account at all stages the requirements of the Standard Life Group Sustainable Real Estate Investment Policy and associated Management Systems (**SRIP**) details of which can be found at http://www.standardlifeinvestments.com/CO_Sustainable_RE_Investment_Report/getLatest.pdf. [In conjunction with ourselves and the Other Consultants, at all relevant stages you are to consider and make recommendations as to the options available for promoting the objectives of the SRIP and the cost effectiveness and practicability of the available options.]

3 Duty of care

3.1 You are to use Skill and Care in the performance of the Services.

3.2 You are to perform the Services and your other duties under this Appointment in compliance with all applicable statutory and regulatory requirements.

3.3 Without prejudice to clause 3.2, you are to comply with any statutory duties to which you may be subject under the CDM Regulations.

3.4 No inspection or approval or review on our part or on our behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty, obligation or liability on your part under or in connection with this Appointment.

4 Design changes

4.1 You may not without our written consent permit any material change in the designs or specifications for the Development after they have been settled or approved.

4.2 You are to keep us and the Other Consultants fully informed on a day to day basis of all changes in design or specification authorised by you.

5 Budget and programme

5.1 You are to have due regard in the performance of the Services to our budget requirements and any cost plan or contract sum for the Development. You are to comply with any design, procurement or construction programme produced for the Development. If you become aware of circumstances which may prevent us from carrying out the Development in accordance with our budget (or any cost plan or contract sum) or programme, you are to inform us without delay.

5.2 You are to carry out the Services so that once a contract sum has been agreed with the Contractor there will be no material risk (so far as concerns matters for which you are responsible) that such contract sum will be materially exceeded, taking account of any agreed contingencies or provisional sums (save by reason of any variations to the Works instructed by us (other than as a result of any errors or omissions on your part) or any circumstances or risks which would not be reasonably foreseeable by an experienced and diligent consultant of your profession in light of all the circumstances prevailing at that time).

5.3 You are to inform us immediately before a contract sum is agreed with the Contractor and before the Building Contract is entered into of any matters of which you are aware (or have reasonable grounds to suspect may occur) which might cause the contract sum to be exceeded.

5.4 Decisions and instructions as to the expenditure of any contingencies and provisional sums in our cost plan are to be subject to our prior approval.

5.5 Without prejudice to your obligations set out in clause 5.1, you are to collaborate with us and the Other Consultants to establish a co-ordinated programme for the carrying out of the Development and you are to comply with and monitor progress against such programme.

6 Project staff

6.1 You agree to appoint the staff named in the Project Data to be Project Partner/Project Director and Project Leader for the Development. The Project Partner/Project Director shall have overall responsibility for the management of the Services and the Project Leader shall be responsible for the day to day supervision and co-ordination of the Services. If we reasonably request, you shall replace any such member of staff with another person of suitable qualifications and experience approved by us, but such appointees are not otherwise to be replaced save with our consent or save for unavoidable necessity, and any replacement is to be subject to our prior approval.

6.2 In providing the Services you are to allocate appropriate resources to enable you to meet your obligations under this Appointment and to enable you to comply with any statutory duties to which you may be subject under the CDM Regulations.

6.3 You warrant that you have and shall continue to have the skills, knowledge, experience and organisational capacity required by the CDM Regulations to fulfil your duties and obligations under this Appointment in a manner that secures the health and safety of any person affected by the Development.

7 Authority of Other Consultants

We may give any Other Consultant appointed by us in relation to the Development authority to give any instructions or agree any matter on our behalf in connection with the Development. Where we do so, we may give you written notice of the extent to which any such person has such authority. No such externally appointed person shall have any such authority save as we may so notify you in writing.

8 Remuneration

8.1 Your remuneration under this Appointment:

(a) shall be as provided in this clause 8 and the Project Data; and

(b) shall be payable in accordance with schedule 3 (Construction Act 1996).

8.2 If for any reason we do not proceed with the Development at any stage, or if your employment is terminated or the Services suspended other than for your breach or Insolvency, you will be entitled (in addition to any fee instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which the Services are part-performed at the date of termination or suspension, but not to fees for any of the Services not performed. You shall not be entitled to compensation for loss of profit or other losses incurred by you as a result of the termination of your employment under this Appointment or any suspension of the Services. Save as provided for in this clause 8.2, you shall not be entitled to any payment on any termination of your employment under this Appointment or on any suspension of the Services.

8.3 If at our request you undertake any Additional Services, or if by reason of any material design changes requested by us or any other circumstances beyond your control you are required to undertake significant extra work, then an additional fee will be payable provided:

(a) you notify us in writing before undertaking such Additional Services or additional work that you may require an additional fee, and provide such details as we reasonably request of the Additional Services or the additional work required and the relevant additional fee;

(b) we confirm to you the agreed amount of the additional fee; and

(c) the need to carry out the Additional Services or additional work does not result from a breach of your obligations under this Appointment.

8.4 Any additional fee shall be such lump sum as is fair and reasonable and as we may agree between us (and as we may confirm to you in writing) prior to you commencing any Additional Services or additional work or, if we so specify in writing, shall be calculated at the applicable hourly rates specified in the Project Data.

8.5 If we give instructions for you to omit any of the Services we shall be entitled to make a fair and reasonable reduction in your remuneration.

8.6 The specified fee in the Project Data is exclusive of VAT and inclusive of all your office, staff, travel, reproduction and incidental costs and inclusive of disbursements.

8.7 If the amount of any fees or disbursements is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 5% over Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged. You acknowledge that the provisions of this clause 8.7 amount to a "substantial remedy" for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

8.8 We shall be entitled to set-off, withhold or deduct from any money otherwise due to you under or pursuant to this Appointment any sums for which you may be liable to us.

9 Professional indemnity insurance

9.1 You hereby warrant that there is in force a policy of professional indemnity insurance covering your liabilities under this Appointment conforming to the relevant requirements specified in the Project Data. You are to maintain such insurance at all times until 12 years after the practical completion of the Works under the Building Contract (or, if sooner, until 12 years after the completion or termination of the Services), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable.

9.2 If for any period such insurance is not obtainable on commercially reasonable terms, you are to inform us forthwith and are to obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for you to obtain.

9.3 When reasonably requested by us you are to provide documentary evidence that the insurance required under this Appointment is being maintained.

10 Collateral warranties

10.1 You are to provide, within 7 days of our written request made at any time or times, a deed or deeds of warranty respecting your duties hereunder in favour of Mortgagees and/or

Purchasers and/or Tenants, in terms of the draft contained in the appendix (Draft deed of warranty).[2]

10.2 If you fail to execute and deliver any such deed pursuant to clause 10.1 within 7 days of our written request, we may execute such deed on your behalf, and you hereby appoint us as your attorney for the purposes of executing any such deed. You are to ratify and confirm any act done by us pursuant to this power of attorney, and agree that this power is irrevocable, pursuant to section 4, Powers of Attorney Act 1971.

10.3 If you fail to comply with clause 10.1, we shall be entitled to give you notice specifying the breach. If the breach is not rectified within 14 days after service of such notice (or by us executing at our option the relevant deed pursuant to clause 10.2) then we shall not be liable to pay any further sums due to you under this Appointment while the breach remains to be rectified.

11 Documents

11.1 You grant and agree to grant to us an irrevocable, non-exclusive, royalty free, assignable licence to use and reproduce all documents produced by you pursuant to this Appointment (**Documents**) for any purpose connected with the Development, and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in yourselves. You shall not be liable for the use of any of the Documents for any purpose other than those for which you produced them.

11.2 You agree to supply any additional copies of the Documents we may request after the completion or termination of the Services, in return for payment of your reasonable reproduction costs. If we cannot agree your proposed reproduction costs, you agree to afford us a reasonable opportunity to arrange for reproductions to be produced by ourselves or by others.

11.3 You warrant that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.

12 Assignment and sub-letting

12.1 Our rights under this Appointment may be:

(a) charged to any Mortgagee;

(b) assigned as security to any Mortgagee (and such rights may be re-assigned on redemption);

(c) assigned by absolute assignment to any Group Company;

(d) assigned by absolute assignment on two other occasions only.

12.2 You shall not be entitled to assign or charge this Appointment.

12.3 You may not sub-let the whole or any part of the Services, without our prior written consent. Our consent to any sub-letting may be conditional upon our approval of the terms of

[2] Categories of beneficiary to be reviewed on a case by case basis. Please ensure the list is correct for each scheme. For residential schemes, consider whether warranties for Purchasers/Tenants of individual units should be excluded or limited to parties taking a number of residential units. Consider the need for warranties in favour of group companies or management companies.

appointment of your sub-consultant and a requirement that he enters into deeds of warranty respecting his duties in a form approved by us in favour of ourselves and relevant third parties. Notwithstanding the sub-letting of any of the Services, you shall remain fully responsible for all of the Services and your other obligations under this Appointment as if they had been undertaken by you.

13 Suspension

We may suspend the performance of the Services at any time by written notice. If a suspension lasts more than 6 months, you may make a written request for the Services to be resumed, and if no instructions to resume are given within 28 days after your request, your employment shall then terminate.

14 Termination and remedies

14.1 We may at any time by service of written notice terminate your employment under this Appointment.

14.2 If we terminate your employment on account of your Insolvency or on account of your breach of any term of this Appointment, we shall be entitled to recover from you the costs and losses we reasonably or necessarily incur by reason of the termination.

14.3 If you fail to comply with any requirement of clause 9 (Professional indemnity insurance) or fail to comply with clause 10 (Collateral warranties) or if you become Insolvent, we shall be entitled to recover from you any premiums we reasonably incur to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection, but this clause 14.3 does not exclude any other remedy we might have for breach of clause 9 (Professional indemnity insurance) or clause 10 (Collateral warranties).

14.4 If we are materially in breach of our obligations under this Appointment in any respect that would reasonably justify your terminating your employment, you may serve 28 days' written notice of your intention to terminate, stating the grounds for termination, and if in such 28 day period we fail to rectify our breach, you may at the expiry of that period serve further written notice terminating your employment with immediate effect.

14.5 Termination does not determine the operation of any provisions of this Appointment that are capable of operation after termination.

15 Confidentiality

Save as may be necessary for the performance of the Services, or as required by law, or as we may allow in writing, you are to treat as confidential all information relating to this Appointment and to the Development, and are to take all reasonable steps to see that your employees are bound by and adhere to the same duty of confidentiality.

16 Bribery Act 2010

16.1 You warrant that no offence under the Bribery Act 2010 (**Act**) has been or will be committed by you or any person associated with you, in connection with the procurement or implementation of this Appointment.

16.2 For the purposes of and without derogation from clause 16.1, an offence is committed under any provision of the Act before such provision is in force, if such offence would have been committed, had such provision then been in force.

16.3 For the purposes of clause 16.1, the definition of associated person in section 8 of the Act applies.

16.4 If at any time you have knowledge of, or have reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 16.1, you shall promptly notify us in writing of such matters within your knowledge, or of such grounds for suspicion, and shall co-operate with us in the investigation of such breach or suspected breach of warranty.

17 Construction Act 1996

Schedule 3 (Construction Act 1996) has effect.

18 Third Party Agreements

Schedule 4 (Third Party Agreements) has effect.

19 Contracts (Rights of Third Parties) Act 1999

This Appointment is not intended to confer and does not confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

20 Service of notice

20.1 Any notice to be given under this Appointment:

(a) if given for the purposes of schedule 3 (Construction Act 1996), must be:

(i) delivered by hand; or

(ii) sent by e-mail and on the same day, sent by pre-paid first class post,

to the relevant addressee, addressed in accordance with the applicable details in the Project Data, or such other details as the relevant party (or specified person as defined in schedule 3 (Construction Act 1996)) notifies to the other in writing from time to time; or

(b) if given for any other purpose, may be given by any effective means.

20.2 Any notice delivered or sent in accordance with clause 20.1(a) takes effect as being given and served:

(a) if delivered by hand by 4.00 p.m. on a Working Day, on the day of delivery; but otherwise

(b) on the first Working Day after it is delivered or sent.

21 Governing law and interpretation

21.1 This Appointment and any matters arising under or in connection with it shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to this Appointment and all matters arising under or in connection with it.

21.2 In this Appointment:

(a) **person** includes any firm and any entity having legal capacity;

(b) any term importing gender includes any gender;

(c) any term importing the singular includes the plural and vice versa;

(d) unless the context requires otherwise, any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Appointment;

(e) any reference to any enactment includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

(f) **Bank Holiday** means a Christmas Day, Good Friday or day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales;

(g) **CDM Regulations** means the Construction (Design and Management) Regulations 2015 together with any guidance issued in connection therewith;

(h) **Construction Act 1996** means Part II, Housing Grants, Construction and Regeneration Act 1996;

(i) **Group Company** means any subsidiary or holding company of ours or of another subsidiary or holding company of ours, as **subsidiary** and **holding company** are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

(j) **Insolvent** and related terms derive their meaning from section 113, Construction Act 1996;

(k) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it and/or providing finance in connection with the Development or any part of it;

(l) **Other Consultants** means the consultants listed in the Project Data and such other consultants as may be appointed by us in relation to the Development;

(m) **Project Data** means the project data in schedule 2 (Project Data);

(n) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;

(o) **Skill and Care** means the professional skill and care and diligence reasonably to be expected of duly qualified and experienced consultants undertaking services and other duties similar to those to be performed under this Appointment in relation to projects similar in scale and character to the Development;

(p) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);

(q) **Third Party Agreements** means the Building Contract and any other contracts entered into by us with any consultant, contractor and/or sub-contractor and any title documents, funding agreements, agreements for lease, development agreements, sale contracts, statutory agreements, licences and/or any other agreements that we may enter into with any third party or have rights under or must comply with in respect

of the Development and the term **Third Party Agreement** shall mean any such contract, agreement, licence or other document;

(r) **Working Day** means any day other than a Bank Holiday;

(s) in this Appointment references to **we**, **us** and **our** shall include where the context admits permitted assignees, but not so as to permit more than two assignments under clause 12.1(d) (Assignment and sub-letting).

21.3 For the purposes of clause 21.2, **Development** means the Site and/or the Works.

21.4 Clause headings do not form part of or affect the interpretation of this Appointment.

Signed as a deed and delivered by ♦)
as the Attorney of [**Standard Life**])
(in exercise of a Power of Attorney)
under its seal dated ♦) in the presence)
of:)

Signature of witness:

Name (in block capitals):

Address:

[OR]

Executed as a deed and delivered by) ……
[the Developer] acting by a director) Director
in the presence of:)
) ……...
) Name

.....
Witness

……
Name

We, ♦ [a partnership between the individuals named in the Project Data] confirm our acceptance of this Appointment on the terms and conditions set out in this letter.

Executed as a deed and delivered by	)	……
[Full name of Partner]	)	Partner
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

.....
Name

(In the case of a partnership all partners to execute in the above form)

[OR in the case of a company]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a director	)	Director
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

[OR in the case of an LLP]

Executed as a deed and delivered by	)	……
[the Consultant] acting by a member	)	Member
in the presence of:	)	
	)	……...
	)	Name

.....
Witness

…….
Name

Schedule 1

Services

[Insert relevant Schedule of Services.]

Schedule 2

Project Data[3]

Clause 7: (Project staff**)**	(a)	Project Partner/Project Director: ♦
	(b)	Project Leader: ♦
Clause 8: (Remuneration**)**	(a)	[A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of £♦.]
	[OR]	
	(a)	[A fee (exclusive of VAT) of ♦ per cent of [the total construction cost shown in the final approved version of the cost plan produced by the quantity surveyor in respect of the Work Stage D design (**Detailed Proposals**)] [the total construction costs in the approved tender of the Contractor] [the contract sum in the Building Contract], at which point the fee will be converted into a fixed lump sum plus VAT.]
	(b)	The fee may be invoiced in the following instalments: ♦
	(c)	The hourly rates applicable to any Additional Services attracting payment at hourly rates are as follows: ♦
Clause 9: (Professional indemnity insurance**)**	Limit of indemnity: not less than £♦,000,000.00 for any claim or claims arising out of each originating cause, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition.	
Clause 20.1(a) (Service of notice**)**	(a)	Notices to the Developer are to be addressed to ♦ at ♦; e-mail address ♦.
	(b)	Notices to the Consultant are to be addressed to ♦ at ♦; e-mail address ♦.
Clause 21.2(l) (Other Consultants)	•	[Architect: ♦]
	•	[Civil and structural engineer: ♦]
	•	[Mechanical and electrical engineer: ♦]
	•	[Employer's agent: ♦]

[3] Add details of specified person for the purposes of schd 3, if required, including postal and e-mail addresses for service.

- [[Other(s)]: ♦]

[Partners of the Consultant] ♦

Schedule 3

Construction Act 1996

Part 1 - Payment

1 General

1.1 In this schedule:

instalment means any instalment, stage payment or other periodic payment to be made under this Appointment

notified sum means, in respect of an instalment, the sum notified in:

(a) the payment notice given in accordance with paragraph 5, but if no such notice is given

(b) the payment application given in accordance with paragraph 4

payer and **payee** mean respectively the person from whom and the person to whom an instalment is due

1.2 Where an act is required under this schedule to be done within a specified period after or from a specified date, the period begins immediately after that date.

1.3 Where a period specified in this schedule would include a Bank Holiday, that day is excluded.

2 Specified person

The payer may give notice to the payee from time to time nominating a person (**specified person**) to give and receive any other notice to be given by or to the payer under this part of this schedule, supplying with such notice postal and e-mail addresses for service upon the specified person, or revoking any such nomination, and in that case any such notices under this part of this schedule must be served accordingly.

3 Due and final dates for payment

3.1 Payments are to be made in instalments, each calculated to the end of the period (**relevant period**) in which the instalment becomes eligible for payment, as such instalments and relevant periods are specified in, or may be ascertained in accordance with, the Project Data.

3.2 The instalments and the relevant periods specified in the Project Data are to be subject to such revisions as may from time to time be fair and reasonable in the event that the Services and/or the Development progress more slowly than was envisaged by our programme for the Development as at the date of this Appointment, or because the Development is suspended or does not proceed. For the avoidance of doubt, no amount shall become eligible for inclusion in a payment by virtue of this paragraph 3.2 any earlier than is specified in the Project Data.

3.3 The **payment due date** of each payment is the 30th day after the date of service of the relevant payment application under paragraph 4.

3.4 The **final date for payment** of each instalment is the 10th day after the payment due date of that payment.

4 Payment applications

4.1 In relation to each instalment, the payee must give the payer (or the specified person, if any) a notice (**payment application**) of:

(a) the sum that the payee considers will become due on the payment due date; and

(b) the basis on which that sum is calculated.

4.2 A payment application in respect of an instalment may not be given until after the end of the relevant period.

4.3 The payer shall not be obliged to make payment against payment applications and/or invoices submitted prematurely or which are not in the form prescribed by paragraph 4.2.

4.4 The payer shall pay Value Added Tax where applicable on any payment under this Appointment, subject to the receipt by the payer of a valid Value Added Tax invoice.

5 Payment notices

In relation to each instalment, the payer (or specified person, if any) must give a notice (**payment notice**) to the payee not later than five days after the payment due date, specifying:

(a) the sum that, in the opinion of the payer (or specified person), is (or was) due at the payment due date; and

(b) the basis on which that sum is calculated,

it being immaterial that such sum may be zero.

6 Payments

Subject to paragraphs 7.4 and 8, the payer must pay the payee the notified sum (to the extent not already paid) no later than the final date for payment of that sum.

7 Payment reduction notice

7.1 The payer (or specified person, if any) may give the payee notice of the payer's intention to pay less than the notified sum (**payment reduction notice**) and such notice must specify:

(a) the sum (**adjusted sum**) the payer considers to be due on the date the payment reduction notice is served; and

(b) the basis on which that sum is calculated.

7.2 A payment reduction notice may not be given:

(a) before the notice by reference to which the notified sum is determined; nor

(b) any later than five days before the final date for payment.

7.3 It is immaterial that the sum referred to in paragraph 7.1 may be zero.

7.4 If the payer (or a specified person) serves a payment reduction notice in accordance with this paragraph 7, the amount the payer must pay under paragraph 6 is the adjusted sum.

8 Insolvency

8.1 Paragraph 8.2 applies if:

(a) the payee is or becomes insolvent; and

(b) the payee's employment is therefore terminated.

8.2 Where this paragraph 8.2 applies:

(a) the payer need not pay any sum that he would otherwise have to pay in accordance with this schedule, provided:

(i) he (or the specified person, if any) gives a payment reduction notice in respect of that sum in accordance with paragraph 7, invoking this paragraph 8; or

(ii) the insolvency post-dates the latest date for service of a payment reduction notice in respect of that sum; and

(b) in such case, no further payment need be made by the payer until he has been able to ascertain the costs and losses he will incur by reason of the termination.

9 VAT

Following issue of any payment notice under paragraph 5 or payment reduction notice under paragraph 7, the payee will forthwith issue such credit note as may be required to address the difference between the amount claimed by the payee in the relevant payment application and VAT invoice issued pursuant to paragraph 4.4 and the notified sum confirmed in the payer's payment notice issued under paragraph 5 or the adjusted sum confirmed in the payment reduction notice issued under paragraph 7.

Part 2 - Adjudication

10 Adjudication

Either party may give notice at any time of his intention to refer any dispute under this Appointment to adjudication under and in accordance with the Scheme for Construction Contracts for the time being under the Construction Act 1996, subject as follows:

(a) the adjudicator nominating body is the Royal Institution of Chartered Surveyors;

(b) the adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him; and

(c) at the same time as he gives a decision, the adjudicator must give written reasons.

Schedule 4

Third Party Agreements

1 You shall have regard to any obligations on our part contained in the Third Party Agreements of which relevant extracts setting out such obligations have been provided to you before the date of this Appointment. You warrant that:

(a) you have performed and will continue to perform the Services and your other duties and obligations under this Appointment in such a manner and at such times so that no act, omission or default on your part in relation thereto shall constitute, cause or contribute to any breach by us of any of our obligations in the Third Party Agreements;

(b) you shall comply with any procedures laid down in the Third Party Agreements for the drawdown of funding and for (or for approval of) designs, changes in design, specification or materials and for the inspection of the Development prior to the practical completion or completion of making good of defects under the Building Contract and for similar matters;

(c) you shall comply with any procedures laid down in the Third Party Agreements for the approval by any third party of any designs, specifications and other design documents prepared in respect of Development and for (or for approval of) changes in design, specification or materials;

(d) where you are undertaking contract administration services in respect of the Building Contract you will be responsible for the issue of certificates as to the state of completion or readiness of the Development for completion or for the start of fitting out works or as to similar matters required in the Third Party Agreements;

(e) exercising Skill and Care and to the extent the Services include duties in relation to the procurement of the Development, the Development will be procured in accordance with our obligations under the Third Party Agreements;

(f) you will provide such copy documents prepared by you or on your behalf and such information and assistance as may be required by us to fulfil our obligations under such Third Party Agreements within such time periods as may be provided for in the Third Party Agreements;

(g) you shall attend such meetings as may be required with such third parties as may be provided for in such Third Party Agreements; and

(h) without prejudice to clause 15 (Confidentiality), you shall not and shall procure that your employees and sub-consultants shall not, save as required by law or as we may approve in writing, disclose the terms of such Third Party Agreements to any third party.

2 Where extracts of any Third Party Agreement are provided to you after the date of this Appointment, you shall in respect of such Third Party Agreement comply with the obligations and warranties imposed in paragraph 1 above, save that you shall not be required to comply with such obligations and warranties where you have within 7 days from receipt of such extracts notified us in writing of the reasons why and to the extent to which you are unable to comply with the provisions of paragraph 1 in respect of such Third Party Agreement disclosed

after the date of this Appointment and we have not instructed Additional Services under clause 2.2 (Services) to address the concerns raised by you in such notice.

3 You will be liable for and will indemnify us against any expense, liability, loss, claim and/or proceeding reasonably incurred by us arising out of any breach by you of your obligations in this schedule 4 and you hereby acknowledge that all such expenses, liabilities, losses, claims and/or proceedings are within your contemplation as being an anticipated consequence of any breach by you of your obligations under this schedule 4.

The Appendix

Draft deed of warranty

APPENDIX 12

DEVELOPMENT GATEWAY TABLE

Brighton Waterfront Gateway Table (Rev E)

Based on CLAA indicative activities appropriate to the particular site

Rose

KEY

- BHCC
- ASI
- Jointly Owned
- Contractor Task/Operator Task
- Central Site Activities
- Denotes stages NOT undertaken by ASI

1 Strategic Definition and Project Inception

PRE-CONSTRUCTION — RIBA Stage A

1.1	Confirm Partners
1.2	Outline business case for LEP
1.3	Agree all Commercial issues
1.4	Agree Valuation Brief
1.5	Agree estimates for to proceed to Development Strategy
1.6	Agree Eastern Site Budget
1.7	Agree the CLAA
1.8	Get Sign off of structure by QC
1.9	SDB/P&R Sign-off
1.10	Agree Estimate to 1st Condition.

GATEWAY DECISION 1
Action: Sign CLAA

Stage 1

2 Strategic Brief

PRE-CONSTRUCTION — RIBA Stage 0

2.1	Partners agree outline brief
2.2	Develop and agree Strategic Brief in accordance with the principles set out in the CLAA
2.3	Agree Project Governance Procedures in accordance with the CLAA
2.4	Agree Eastern Funding Statement
2.5	Buyer to appoint Project Director
2.6	Prepare Visioning Statement
2.7	BHCC to appoint Project Director
2.8	Appoint VO Consultants
2.9	BHCC to identify Procurement Officer
2.10	Agree estimate to 2nd, 3rd & 4th Condition

GATEWAY DECISION 2
Action: 1st Condition
Sign-off Brief and Project Governance

Stage 2

3 Feasibility

PRE-CONSTRUCTION — RIBA Stage 1 - B

3.1	Production of outline business case for the venue
3.2	Agree competitive selection procedure for Consultant Team
3.3	Community Benefits - agreed by ELT (required for FBC/LEP)
3.4	Agree Venue Operator Procurement Strategy
3.5	Agree BIM or not BIM
3.6	Competitive process to select full professional design team for the Eastern site.
3.7	Procure Professional Team stage Appointment
3.8	Commitment to agreed professional team fees and budget to proceed to final pre-planning stage.
3.9	Early meeting with newly established Design Review Panel in relation to both key seafront sites.
3.10	Complete Draft PPA
3.11	Shortlist Venue Operators including Pre-Market Consultation
3.12	Select Venue Operator, Feasibility, Design Stage and HoT's (including FM)
3.13	Confirm Transport Strategy
	- Overall
	- Central
	- Eastern
3.14	Prepare Eastern Feasibility report incl. design to RIBA Stage 1/2
3.15	Engage Workshops with BHCC and stakeholders
3.16	Develop Site assembly strategy (Eastern and Central)
3.17	Confirm Programme for enabling works contract
3.18	Enabling Works definition for LGF3
3.19	Agree Public Consultation Strategy
3.20	Prepare development programme
3.21	Agree detailed cost plan for Eastern Site
3.22	Submission of RIBA Stage 1 report Central Site
3.23	Submission of RIBA Stage 2 report Eastern Site
3.24	Agree Construction Strategy - Central Site
3.25	Agree Construction Strategy - Eastern Site
3.26	Construction Strategy agreed for both sites.
3.27	Prepare Risk Register for Eastern site
3.28	Business Continuity Plans for BHCC
3.29	Agree Land Value/S123 protocol
3.30	Present and agree Eastern Appraisal
3.31	Production of Full Business Case for combined project including dialogue with C2C
3.32	Confirm project interfaces
3.33	Agree Schedule of Design Team Meetings
3.34	Waterfront Project Board set-up for Gateway sign-off
3.35	Complete outline Economic Impact Report (required for FBC)
3.36	Submit Fact Book

GATEWAY DECISION 3
Action 2nd/3rd/4th Condition
Sign-Off Development Strategies by

Stage 3

4 Pre-Construction Concept & Develop Design

PRE-CONSTRUCTION — RIBA Stages 2-3 - C/D

4.1	Procure contract for enabling works (LEP)
4.2	Formalise Team Appointments
4.3	Formalise Venue Operators contract including SLA
4.4	Final Output Spec - agreed with Venue Operator
4.5	Agree Pre application process and programme
4.6	Stakeholder Meetings / presentations
4.7	BIM Execution Plan if adopted
4.8	VM and Risk Workshop as appropriate
4.9	Agree and endorse Procurement Strategy
4.10	Agree strategy for land assembly including CPO
4.11	Agree Change Control Strategy
4.12	Engage with LEP re grant funding/agree comms
4.13	Prepare detailed Economic Impact Report
4.14	Design Freeze
4.15	Update Cost Plan
4.16	Develop Health & Safety Plan
4.17	Agree Tenant Manual including SLA
4.18	Confirm Development Programme
4.19	Project Board Gateway Sign-off
4.20	Submit Planning application for Central and Eastern
4.21	Agree Eastern Clawback recovery
4.22	Complete Land Assembly
4.23	Finalise and commence Business Continuity Strategy
4.24	Exhibition and Stakeholder feedback
4.25	Planning Consent Obtained
4.26	Agree cost to 6th/7th Condition

GATEWAY DECISION 4
Action: 5th Condition

Stage 4

5 Pre-Construction Detailed Technical Design

PRE-CONSTRUCTION — RIBA Stage s 4-5 - E/H

5.1	Comply with Central Letting Conditions
5.2	Complete Utilities design and negotiation
5.3	Complete Environmental recommendations
5.4	Engage and complete any advance works (LEP funding)
5.5	Confirm Target cost/Pre Tender Estimate
5.6	Ongoing VE and Pre-Construction VM Review
5.7	Continue Liaison with Planning/discharge conditions
5.8	Detail Design Completed
5.9	Sign-off of detail design by all parties
5.10	Prepare Tender Documents
5.11	Building Regulations Submission
5.12	Agree Contract Risk Register
5.13	Finalise Development Programme
5.14	Prepare Project Specific Information
5.15	Agree all Documents and Costs
5.16	Complete tender process
5.17	Interviews and Contractor Selection
5.18	Submit Cost Evaluation and reconciliation for approval
5.19	Finalise Assignment of Consultants
5.20	Final Confirmation that ASI has procured the Eastern Building Contract
5.21	Complete & sign-off Business Plan for the Eastern Site
5.22	Confirm Viability for Central Site
5.23	Confirmation of Land sale to ASI (unconditional date)
5.24	Close and vacate Brighton Centre

GATEWAY DECISION 5
Action: 6th/7th Condition
Enter into Contract
Commit to Construct

Stage 5

6 Mobilisation Construction and Handover

CONSTRUCTION — RIBA Stages 5-6 - J/K

6.1	Finalise H&S Plan/Site Waste Management Plan
6.2	Mobilisation
6.3	Soft Opening/Handover Plan
6.4	Construction Design Information
6.5	Ongoing Review of Risk/H&S/Programme/Quality/Cost
6.6	BIM/Change Control Meeting
6.7	Confirm incoming tenant arrangements
6.8	Testing and Commissioning/O & M Manuals
6.9	Handover/Building Use Training
6.10	Issue PC/Take Over Certificate

GATEWAY DECISION 6
Action
Issue Completion
Issue Take-Over Certificate

Stage 6

7 Close-out Project and Soft Openings

POST-CONSTRUCTION — RIBA Stages 6-7 - L

7.1	Post Project KPI Review/Feedback
7.2	Post Project Review
7.3	Issue Project Performance Report
7.4	Agree Final Contract Sum
7.5	Lessons Learnt
7.6	PROJECT CLOSE

GATEWAY DECISION 7
Action - Soft Openings

Stage 7

8 In Use Evaluation

POST-CONSTRUCTION — RIBA Stage 7

8.1	Aftercare

GATEWAY DECISION 8
Action: Issue Final Certificate

Stage 8

5th February 2019 V.10 Rev D

APPENDIX 13

DEED OF NOVATION

Draft 04.02.2019

…….. 20[ ]

BRIGHTON & HOVE CITY COUNCIL

and

JTC FUND SOLUTIONS (JERSEY) LIMITED and SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED

and

[ ]

DEED OF NOVATION

in relation to the conditional land acquisition agreement of the Brighton Centre, Brighton Centre, King's Road, Brighton, East Sussex

Herbert Smith Freehills LLP

TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS AND INTERPRETATION	1
2.	NOVATION	2
3.	TERMS OF THE NEW AGREEMENT	2
4.	RELEASE AND DISCHARGE	2
5.	OBLIGATIONS, LIABILITIES AND BENEFITS	2
6.	MATTERS ANCILLARY TO NOVATION	3
7.	REPRESENTATIONS AND WARRANTIES	3
8.	CONFIDENTIALITY	3
9.	FURTHER ASSURANCE	4
10.	COSTS	4
11.	SEVERABILITY	4
12.	ENTIRE AGREEMENT AND VARIATION	4
13.	THIRD PARTY RIGHTS	4
14.	COUNTERPARTS	4
15.	GOVERNING LAW AND JURISDICTION	4

THIS DEED is made the day of 20[ ]

BETWEEN:

(1) **BRIGHTON & HOVE CITY COUNCIL** of King's House, Hove, East Sussex BN3 2SR (the **"Continuing Party"**); and

(2) **JTC FUND SOLUTIONS (JERSEY) LIMITED** a company incorporated in Jersey (Co. Regn. No. J32203) whose registered office is at Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT acting in its capacity as trustee (in such capacity, the **"Trustee"**) of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST** and **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey (Co. Regn. No. J4345) (formerly known as SG Hambros Trust Company (Channel Islands) Limited prior to its merger with Kleinwort Benson (Jersey) Trustees Limited) whose registered office is at 18 Esplanade St Helier Jersey, JE4 8RT, Channel Islands, acting in its capacity as nominee of the Trustee (the **"Outgoing Party"**); and

(3) [ ] a company incorporated in [England and Wales] (Co. Regn. No. [ ]) having its registered office at [ ] (the **"Incoming Party"**).

WHEREAS

(A) On [ ], the Continuing Party and the Outgoing Party entered into a conditional land acquisition agreement of the Brighton Centre, Brighton Centre, King's Road, Brighton, East Sussex (the **"Original Agreement"**).

(B) The parties to this Deed now wish to novate the Original Agreement, so that from the Effective Time (as defined below), the Outgoing Party shall be released and discharged from obligations under the Original Agreement, and the Incoming Party shall assume obligations and liabilities under the New Agreement (as defined below), on and subject to the terms of this Deed.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context requires otherwise, the following expressions shall have the following meanings:

"Effective Time" means the date and time of this Deed;

"New Agreement" has the meaning given in Clause 2.1;

"**Original Agreement"** has the meaning given in Recital (A); and

"Parties" means the parties to this Deed.

Save as stipulated above, capitalised terms in this Deed refer to the equivalent capitalised terms of the Original Agreement.

1.2 In this Deed, including its schedules, unless the context requires otherwise:

1.2.1 the contents page and headings and bold type face inserted in this Deed are inserted for convenience only and do not affect the interpretation of this Deed;

1.2.2 the schedules form part of this Deed and have the same force and effect as if expressly set out in the body of this Deed and any reference to this Deed shall include the schedules;

1.2.3 references to recitals, clauses, sub-clauses, paragraphs and schedules (other than to a schedule to a statutory provision) are to recitals, clauses, sub clauses and paragraphs of and schedules to this Deed;

1.2.4 references to the singular include the plural, and vice versa;

1.2.5 references to any gender include a reference to all genders;

1.2.6 references to persons include a reference to bodies corporate, unincorporated associations and partnerships;

1.2.7 references to statute or statutory provision include a reference:

(A) to that statute or provision as from time to time modified, extended, replaced or re-enacted;

(B) to any repealed statute or statutory provision which it re-enacts (with or without modification); and

(C) to any subordinate legislation made under the relevant statute or statutory provision.

2. NOVATION

2.1 As from the Effective Time the Original Agreement shall be novated, so that the Original Agreement shall be replaced by a new agreement between the Continuing Party and the Incoming Party (the **"New Agreement"**), on and subject to the terms of this Deed.

2.2 The consideration for the novation referred to in Clause 2.1 shall be the assumption by the Incoming Party of obligations and liabilities of the Outgoing Party and the release of obligations and liabilities of the Outgoing Party, on and subject to the terms of this Deed.

3. TERMS OF THE NEW AGREEMENT

The terms of the New Agreement shall be the same as the terms of the Original Agreement.

4. RELEASE AND DISCHARGE

4.1 From the Effective Time, subject to the express provision of Clauses 5 *(Obligations, Liabilities and Benefits),* 8 (*Confidentiality*) and 4.2, neither the Continuing Party nor the Outgoing Party shall have any further obligation to the other to perform or comply with the Original Agreement, and the Original Agreement, as between them, shall be discharged.

4.2 Clause 4.1 shall not operate to discharge, affect, prejudice or diminish any liability owed by either the Continuing Party or the Outgoing Party to the other under, or in connection with, the Original Agreement which was outstanding immediately prior to the Effective Time, including without limitation for:

(A) payment of money;

(B) failure to perform or comply with the Original Agreement;

(C) breach of contract; and

(D) negligence or fraud,

irrespective of whether the existence or extent of any such liability was, or could have been, known to any Party on or prior to the date hereof.

5. OBLIGATIONS, LIABILITIES AND BENEFITS

5.1 From the Effective Time, the Continuing Party and the Incoming Party shall perform and comply with their respective obligations under the New Agreement.

5.2 The Incoming Party shall not assume and shall not be obliged to discharge any liabilities which immediately prior to the Effective Time had been outstanding liabilities of the

Outgoing Party under, or in connection with, the Original Agreement, including without limitation for:

(A) payment of money;

(B) failure to perform or comply with the Original Agreement;

(C) breach of contract; and

(D) negligence or fraud.

5.3 The Continuing Party shall not assume and shall not be obliged to discharge in favour of the Incoming Party any liabilities which immediately prior to the Effective Time had been outstanding liabilities owed to the Outgoing Party under, or in connection with, the Original Agreement, including without limitation for:

(A) payment of money;

(B) failure to perform or comply with the Original Agreement;

(C) breach of contract; and

(D) negligence or fraud.

5.4 Subject to the express provisions of this Deed, the Incoming Party shall, under the New Agreement, enjoy the same rights and benefits that the Outgoing Party had enjoyed under the Original Agreement immediately prior to the Effective Time.

6. MATTERS ANCILLARY TO NOVATION

6.1 For the purposes of this Deed only, the Parties acknowledge that any and all provisions of the Original Agreement expressed to take effect on termination shall not apply by reason of this novation.

6.2 The Continuing Party and the Outgoing Party confirm and acknowledge to the Incoming Party that the Incoming Party shall not be required to pay any greater amount nor assume any greater liability under, or in connection with, the New Agreement by reason of this novation than the Outgoing Party would have been required to pay or assume under the Original Agreement had no such novation been effected.

7. REPRESENTATIONS AND WARRANTIES

7.1 At the Effective Time:

7.1.1 the Outgoing Party makes no representation or warranty as to, and assumes no responsibility for, the condition (financial or otherwise) of the Continuing Party, the Incoming Party, or any other person for the performance and discharge of any of the same of obligations under the New Agreement, and any and all such representations, warranties or terms, whether express or implied by law, are excluded; and

7.1.2 the Continuing Party and the Incoming Party represent and warrant to each other that they are not insolvent and that there are no pending or threatened legal or administrative proceedings to which they are subject or a party which, to the best of their knowledge and belief, would materially adversely affect their ability to perform the New Agreement;

8. CONFIDENTIALITY

The Continuing Party and the Outgoing Party will continue to be bound to each other by clause 27 of the Original Agreement.

9. **FURTHER ASSURANCE**

Each Party agrees, subject to it being indemnified to its reasonable satisfaction, that at any time and from time to time upon the written request and at the cost of another Party (the **"Requesting Party"**), it will promptly and duly execute and deliver to the Requesting Party any and all such further instruments and documents and promptly take all such further action as the Requesting Party may consider desirable, acting reasonably, for it to obtain the full benefit of the assignment contained in this Deed.

10. **COSTS**

Each Party to this Deed shall pay its own costs, charges and expenses incurred in the preparation, completion and implementation of this Deed, and the documents referred to in this Deed.

11. **SEVERABILITY**

If any provision or provisions of this Deed (or any document referred to herein) is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Deed (or such document) shall not in any way be affected or impaired thereby.

12. **ENTIRE AGREEMENT AND VARIATION**

12.1 Each Party represents and warrants to the other Parties that this Deed and the New Agreement set out and contain all of the legally binding agreements and arrangements between the Parties in relation to their subject matter, and each Party confirms that this Deed and the New Agreement together represent the entire understanding, constitute the whole agreement, and (save where this Deed expressly provides otherwise) supersede any previous agreement in relation to their subject matter between the Parties, and exclude any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing. Each party confirms that in entering into this Deed it has not relied on any representation, warranty or undertaking which is not expressly set out in this Deed;

12.2 No variation of this Deed will be effective unless it is in writing and signed by or on behalf of the Parties. The expression "variation" shall include any variation, supplement, deletion or replacement howsoever effected.

13. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable by a person who is not a Party to this Deed under the Contracts (Rights of Third Parties) Act 1999.

14. **COUNTERPARTS**

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

15. **GOVERNING LAW AND JURISDICTION**

This Deed (together with all documents referred to herein) and any dispute or claim arising out of, or in connection with, it (whether contractual or non-contractual in nature) shall be governed by and construed in accordance with English law. Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Deed and any matter arising from it (whether contractual or non-contractual in nature).

This Agreement has been executed and delivered as a deed on the date shown above.

THE COMMON SEAL of **BRIGHTON & HOVE CITY COUNCIL** was hereunto affixed and authenticated by:)

Authorised Signatory

EXECUTED AS A DEED by [ ] as the attorney of **JTC FUND SOLUTIONS (JERSEY) LIMITED**, a company incorporated in Jersey, acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**, a Jersey unit trust, (in exercise of a power of attorney dated [ ]) in the presence of:

……..

Acting as attorney for **JTC FUND SOLUTIONS (JERSEY) LIMITED**

Signature of witness:
Name (in BLOCK CAPITALS):
Address:

EXECUTED AS A DEED by [ ] as the attorney of **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**, a company incorporated in Jersey, acting in its capacity as nominee of **JTC FUND SOLUTIONS (JERSEY) LIMITED**, a company incorporated in Jersey, acting in its capacity as trustee of **THE STANDARD LIFE INVESTMENTS UK SHOPPING CENTRE TRUST**, a Jersey unit trust, (in exercise of a power of attorney dated [ ]) in the presence of:

……

Acting as attorney for **SG KLEINWORT HAMBROS TRUST COMPANY (CI) LIMITED**

Signature of witness:
Name (in BLOCK CAPITALS):
Address:

EXECUTED AS A DEED by ……

[ ] acting by **(Signature of director)**

[ ]

in the presence of:

……

(Name of witness)

……

……

……

(Address of witness)

……

(Signature of witness)

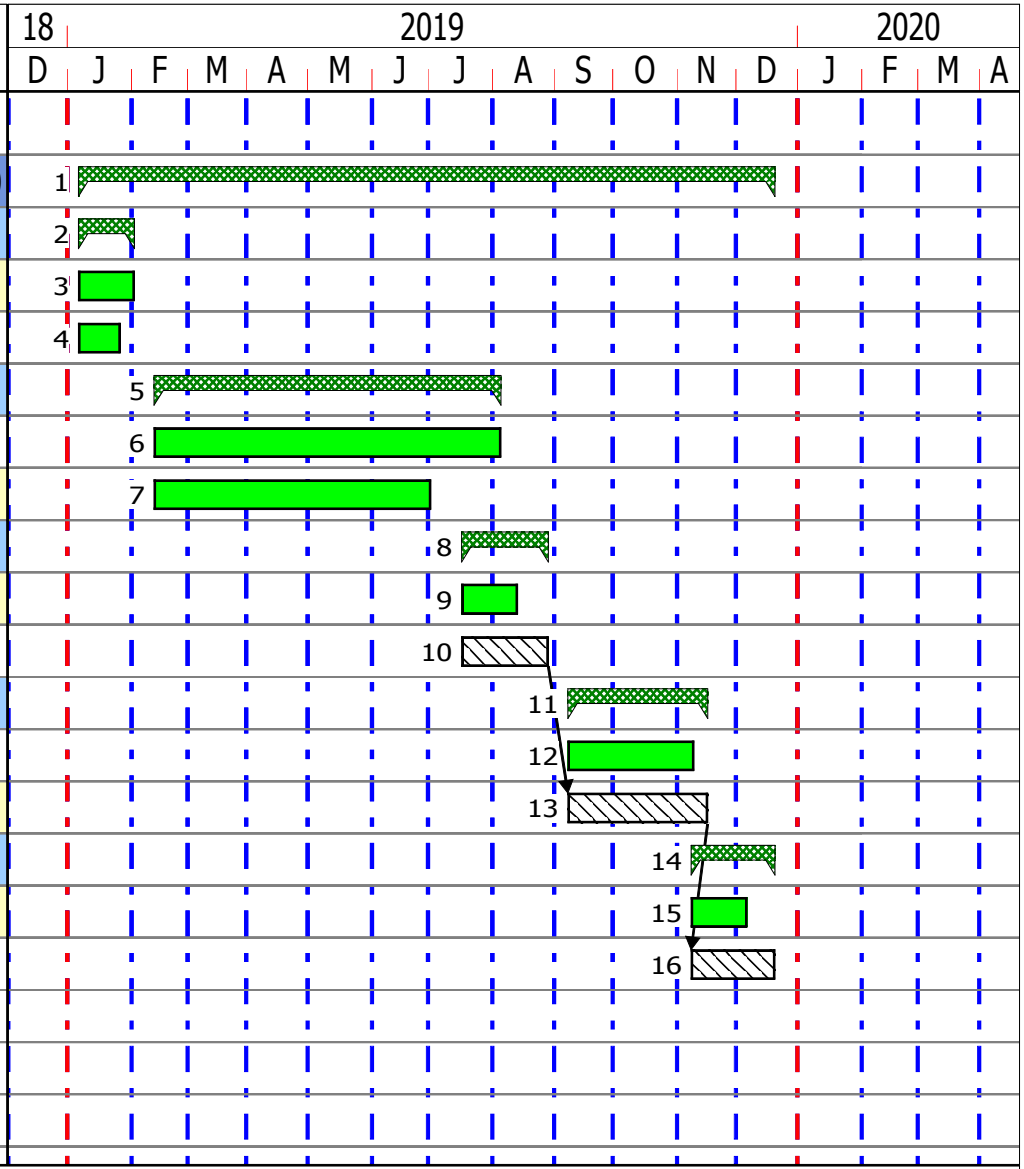
APPENDIX 14

CURE PERIOD WORKED EXAMPLE

BHCC Cure Period Worked Example

Rose

Line	Name	Duration	Start	Finish
1	**Total Period**	**48w 4d**	**07/01/2019**	**19/12/2019**
2	**Service Delivery Failure 1**	**4w**	**07/01/2019**	**01/02/2019**
3	F1 Cure Period	4w	07/01/2019	01/02/2019
4	F1 Remedy Period - cured	3w	07/01/2019	25/01/2019
5	**Service Delivery Failure 2**	**24w**	**13/02/2019**	**05/08/2019**
6	F2 Cure Period	24w	13/02/2019	05/08/2019
7	F2 Remedy Period - cured	19w	13/02/2019	01/07/2019
8	**Service Delivery Failure 3**	**6w**	**17/07/2019**	**28/08/2019**
9	F3 Cure Period	4w	17/07/2019	13/08/2019
10	F3 Remedy Period - failed	6w	17/07/2019	28/08/2019
11	**Service Delivery Failure 4**	**10w**	**09/09/2019**	**15/11/2019**
12	F4 Cure Period	9w	09/09/2019	08/11/2019
13	F4 Remedy Period - failed	10w	09/09/2019	15/11/2019
14	**Service Delivery Failure 5**	**6w**	**08/11/2019**	**19/12/2019**
15	F5 Cure Period	4w	08/11/2019	05/12/2019
16	F5 Remedy Period - failed	6w	08/11/2019	19/12/2019



Key

Activity Ongoing

Notes:

Programme Nr: 001
Drawn By: RH

C:\Users\rhoyle\Documents\BHCC Cure Period.pp

Right to re appoint activated at end of Failure 5 cure period as three failures would have failed to be cured by the end of the relevant three cure periods.

APPENDIX 15

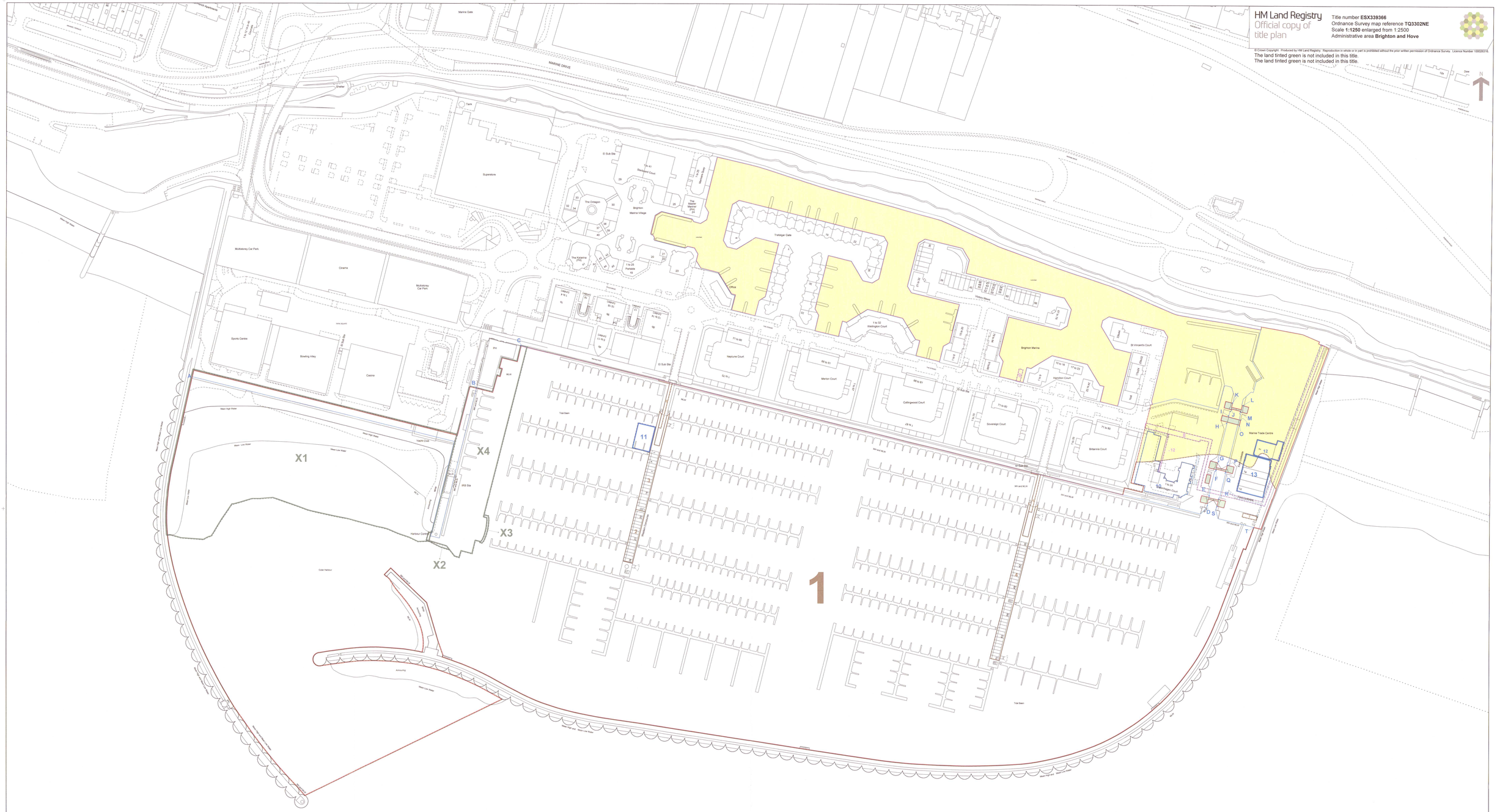
BRIGHTON MARINA PLAN

HM Land Registry
Official copy of title plan

Title number **ESX339366**
Ordnance Survey map reference **TQ3302NE**
Scale **1:1250** enlarged from 1:2500
Administrative area **Brighton and Hove**

© Crown Copyright. Produced by HM Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.

The land tinted green is not included in this title.
The land tinted green is not included in this title.



This official copy issued on 28 January 2019 shows the state of this title plan on 28 January 2019 at 12:04:07.
It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Durham Office.