

Dated 28 November 2008

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON
- (2) JOHN LAING (CROYDON DEVELOPMENT COMPANY) LLP

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Payment Deed

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relating to the provision of premises known as Council Offices, Croydon

## PARTICULARS

**Date**

28 November 2008

**Break Dates**

The date being the 15th and 20th anniversary of the Payment Commencement Date and “**relevant Break Date**” shall be construed accordingly

**Break Payment**

Break payments from the Council

$$X = A + B + C + D + E$$

Where X = the Breakage payment and :

Break payment components	Description	Approach to calculating the break payment
A	Outstanding senior loan principal payable to the Bank in year 15 and 20 as appropriate	Based on actual loan principal outstanding at the time of the break.
B	All breakage costs (including swap (RPI and interest rate)) and connected legal and administrative costs charged by the Bank in year 15 and 20 as appropriate	Interest rate and RPI swap breakage costs / income – can only be determined at the time of the break, depending on market conditions.  Legal and administrative costs charged by the Bank for the early loan prepayment to be determined at the time of termination.
C	Payment to Devco of the sums to provide its base case equity return notwithstanding the break.	This will be a sum equal to the loss of return to be achieved by Devco calculated by comparing the return enjoyed by Devco in the base case financial model with the return enjoyed by Devco in the revised model financial model where:  The base case model shall be the agreed financial model at financial close re run to take account of all intervening changes to the Payment Deed (agreed in accordance with the terms of the Membership Agreement, the Direct

		<p>Deed or the terms of the Payment Deed itself) but ignoring changes arising by reason of any re-financing.</p> <p>The revised financial model shall be the base case model re run on the assumption that the Payment will cease to be payable on the relevant break date, that the elements of the breakage payment (referred to in A, B, D and E of this table have been paid and used as directed rather than to provide any return to Devco) but not that element of the payment defined under this heading C, have been paid. As with the base case model any change in the Payment arising from refinancing is to be disregarded.</p> <p>For the avoidance of doubt it is the intention of the parties to preserve the returns to Devco (measured as an internal rate of return to the shareholders of Devco) at the level they would have been had the break not been exercised (so that having regard to the date of the receipt of such returns Devco neither benefits or suffers by reason of the exercise of the Break)</p>
D	Connected closure costs of Devco.	<p>The reasonable and proper consequential costs of Devco incurred in order to facilitate and in consequence of the proposed breakage ( eg. to include: advisors, final external audit, final tax audit, redundancy costs). These are to be those incurred (or reasonably anticipated to be required to be incurred) as ascertained at the time of the exercise of the break.</p>

E	All outstanding payments due by the Council to Devco under this Deed unpaid at the date of termination.	For example, any outstanding payments due from the Council at the time of the termination.

**Devco** John Laing (Croydon Development Company) LLP registered in England and Wales under number [ ] with a registered office at Allington House 150 Victoria Street London SW1E 5LB.

**Payment** £[ ] [AMOUNT IN FIGURES] per quarter and a daily proportion of this amount for any part of a quarter and thereafter to be increased in accordance with **clause 3**

**Payment Commencement Date** The Occupation Date as defined in a Conditional Sale and Development Agreement dated today and made between the Council (1) and CCURV LLP (2) (the "**CSDA**").

**Payment Deed Period** the period of twenty five (25) years from and including the Payment Commencement Date subject to earlier termination in accordance with **clause 4**.

**THIS DEED** is made on the date set out in the Particulars

**BETWEEN**

(1) the Council; and

(2) Devco.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.1 In this deed, the following words and expressions have the following meanings:

<b>"Base Case"</b>	Means that portion of the financial model (agreed by the parties as representing the model from which the Payment has been calculated) which sets out the finance provided by the senior lenders and the cost of such finance (excluding all costs relating to the raising and contribution of equity or subordinated debt by John Laing Projects & Developments (Holdings) Limited).
<b>"Base Index Value"</b>	the Index figure published for the calendar month preceding the Payment Commencement Date
<b>"Date of Practical Completion"</b>	has the meaning ascribed to it in the CSDA
<b>"Exempt Refinancing"</b>	<p>(a) any Refinancing that was fully taken into account in the calculation of the Payment;</p> <p>(b) a change in taxation or change in accounting treatment;</p> <p>(c) the exercise of rights, waivers, consents and similar actions which relate to day today administrative and supervisory matters, and which are in respect of breach of representations and warranties or undertakings</p> <p>(d) the syndication by the lender, in the ordinary course of its business, of any of its rights or interests in the Financing Agreement;</p> <p>(e) the grant by the lender of any rights of participation, or the disposition by the lender of any of its rights in or in respect of the Financing Agreement;</p> <p>(f) the grant by the lender of any other form of benefit or interest in the Financing Agreement whether by way of security or otherwise.</p>

**"Financing Agreement"**

Means the senior debt to be incurred by Devco for the purposes of discharging its obligations pursuant to an agreements dated today and made between (3) the Council and (4) John Laing Plc and separately between (1) CCURV LLP (2) and Devco

**"Group Company"**

means:

- (a) John Laing Plc and/or any subsidiary of John Laing Plc;
- (b) John Laing Projects & Developments (Holdings) Limited and/or any subsidiary of John Laing Projects & Developments (Holdings) Limited;
- (c) John Laing Projects & Developments Limited and/or any subsidiary of John Laing Projects & Developments Limited;
- (d) John Laing Projects & Developments (Croydon) Limited and/or any subsidiary of John Laing Projects & Developments (Croydon) Limited;
- (e) any unit trust, investment fund, partnership (whether a limited partnership, limited liability partnership or other form of legally recognised partnership) or other fund or other entity of which any entity referred to in paragraphs (a) to (d) (inclusive) of this definition is the general partner, trustee, principal or manager (either directly or indirectly); and
- (f) any nominee or trustee of any entity falling within paragraphs (a) to (d) (inclusive) of this definition acting in such capacity (whether on a change of nominee or trustee or otherwise)

**"Index"**

the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry or department of government

<b>"Initial Period"</b>	the date expiring three years from the Date of Practical Completion
<b>Interest Rate</b>	3% per annum above the base rate from time to time of Royal Bank of Scotland Bank plc.
<b>Payment Days</b>	the usual quarter days during the Payment Deed Period.
<b>Qualifying Refinancing</b>	means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.
<b>Refinancing"</b>	means: (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement; (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement; (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreement or the creation or granting of any other form of benefit or interest in either the Financing Agreements; or (d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of (a)-(c) above.
<b>Refinancing Gain</b>	Shall be a gain enjoyed by Devco arising as described in clause 4.8.
<b>Review Dates</b>	Each anniversary of the Payment Commencement Date
<b>"Revised Payment"</b>	the figure, rounded up to the nearest ten pounds, calculated by multiplying the Payment by the fraction $A/B$ where $A$ = Review Index Value and $B$ = Base Index Value Provided That at no time shall the Revised Payment be less than the Payment payable immediately prior to the relevant Review Date
<b>"Review Index Value"</b>	the Index figure published for the calendar month preceding the relevant Review Date
<b>"working days"</b>	means any day from Monday to Friday (inclusive) which is not a Christmas Day, Good Friday or a Statutory Bank Holiday

- 1.2 In the Deed:
- 1.2.1 Words and expressions set out in the Particulars are defined terms in this Deed.
  - 1.2.2 The clause headings do not affect its interpretation and references to clauses are to clauses of this Deed.
  - 1.2.3 Where two or more persons form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against one or more of them individually.
- 1.3 Any notice under this Deed is to be given in accordance with section 196 Law of Property Act 1925.
- 1.4 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
2. **PAYMENT**
- 2.1 The Council is to pay without deduction or set off the Payment to Devco on the Payment Days. The first payment is to be made on the Payment Commencement Date for the period from and including the Payment Commencement Date to but excluding the next Payment Day.
  - 2.2 The Council is to pay to Devco any value added tax properly charged on the Payment on receipt of a valid value added tax invoice properly addressed to the Council.
  - 2.3 If the Payment or any value added tax payable under this Deed is not paid within fourteen days of the due date for payment, the Council is to pay interest on those moneys at the Interest Rate calculated from the due date of payment to the actual date of payment, both dates inclusive.
3. **PAYMENT REVIEW**
- 3.1 On each Review Date, the Payment is to be reviewed to the Revised Payment. The Revised Payment will be payable from and including the relevant Review Date.
  - 3.2 As soon as reasonably practicable after the publication of the Index for the month preceding the relevant Review Date, Devco is to notify the Council in writing of the Revised Payment payable from and including the relevant Review Date.



- 3.3 Devco may give written notice to the Council specifying a Revised Index to be used for the calculation of the Revised Payment if:
- 3.3.1 the reference base used to compile the Index changes after the date of this Deed or there is some other substantial change in the method used to compile the Index;
  - 3.3.2 the Index is published at less frequent intervals than as at the date of this Deed;
  - 3.3.3 publication of the Index is suspended or ceases completely; or
  - 3.3.4 it becomes impossible or impracticable to calculate the Revised Payment Deed for any other reason.
- 3.4 Either Devco or the Council may refer any dispute about this **clause 3** to an independent chartered surveyor (being a member of the Royal Institution of Chartered Surveyors) of not less than 10 years' standing who will act as an arbitrator in accordance with the Arbitration Act 1996
- 3.5 If the Revised Payment has been agreed or determined on or before the relevant Review Date but the relevant Review Date is not a Payment Day, then the Council is to pay to Devco on the relevant Review Date any uplift in the Payment for the period from and including the relevant Review Date to but excluding the Payment Day following the relevant Review Date.
- 3.6 If the Revised Payment has not been agreed or determined on or before the relevant Review Date the Council is to continue to pay the Payment at the rate payable immediately before the relevant Review Date until the Revised Payment Deed has been agreed or determined.
- 3.7 Within fourteen days of the Revised Payment being agreed in writing or determined and notified to the Council, the Council is to pay to Devco any uplift in the Payment for the period from and including the relevant Review Date to but excluding the Payment Day following the date on which the Revised Payment was agreed or determined.
- 3.8 If the Council does not pay the amount due under **clause 3.7** to Devco within fourteen days of the Revised Payment being agreed in writing or determined and notified to the Council, the Council is to pay interest on the total amount due under **clause 3.7**, at 3% per annum above the Interest Rate for the period from and including the date on which the Revised Payment was agreed in writing or determined and notified to the Council to and including the date of actual payment.
- 3.9 Following the agreement or determination of the Revised Payment, Devco and the Council will sign a memorandum in duplicate recording the amount of the Payment

from and including the relevant Review Date and the parties will each pay their own costs in respect of this.

#### 4. **REFINANCING**

- 4.1 The Council shall be entitled to receive a 50 per cent share of any Refinancing Gain arising from a Qualifying Refinancing.
- 4.2 Devco shall promptly provide the Council with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Council shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).
- 4.3 The Council shall have the right to elect to receive its share of any Refinancing Gain as:
  - 4.3.1 a single payment in an amount less than or equal to 50% of any benefit in cash or kind (other than the reduction of future borrowing or other costs which the Council shall be entitled to benefit from as provided in 4.3.2 below) enjoyed by Devco which is made on or about the date of the Refinancing;
  - 4.3.2 a reduction in the Payment over the remaining term of this Deed; or
  - 4.3.3 a combination of any of the above.
- 4.4 The Council and Devco will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Council's share of the Refinancing Gain (taking into account how the Council has elected to receive its share of the Refinancing Gain under paragraph 4.3). If the Parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Council's share, the dispute shall be determined in accordance with **Clause 6**.
- 4.5 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Council will be paid to the Council by Devco within 28 days of any Qualifying Refinancing.
- 4.6 Without prejudice to the other provisions of this clause 4 (Refinancing), Devco shall:
  - 4.6.1 notify the Council of any proposed Qualifying Refinancing (which is a realistic prospect) as soon as reasonably practicable after becoming

aware of the same and again when they are entered into and provide full details of the same; and

4.6.2 include a provision in the Financing Agreement whereby it is entitled to be informed of any proposals which the senior lenders may have to refinance the Financing Agreement.

4.7 Within 14 days after the Refinancing Date Devco shall procure that a revised financial model is prepared taking account the effect of the Qualifying Refinancing.

4.8 Where the effect of the Qualifying Refinancing (having regard to any lump sum or other benefit in cash or kind enjoyed by Devco) is to reduce the overall cost of finance by comparison to the Base Case, a Refinancing Gain shall be deemed to have occurred.

## **5. COUNCIL ONLY BREAK RIGHT**

5.1 The Council may terminate this Deed on either of the Break Dates by serving written notice on Devco not more than twelve and not less than six months before the relevant Break Date. This Deed will end only if:

5.1.1 the Council has paid the Payment under this Deed in full on or before the relevant Break Date; and

5.1.2 the Council pays the relevant Break Payment to Devco on or before the relevant Break Date in cleared funds.

## **6. DETERMINATION OF DISPUTES**

6.1 If any dispute arises between the Council and Devco as to the provision of clause 4 of this Deed the dispute may be referred on the application of either party to an independent specialist experienced in the financial modelling of private finance initiative projects whose identity shall be agreed by the parties and in the absence of agreement nominated by the President of the Institute of Chartered Accountants on the application of either party.

6.2 The reference to a specialist is to be made to him as an arbitrator under the Arbitration Act 1996

6.2.1 all submissions made or evidence supplied to him are to be in writing unless the parties agree within ten working days of his appointment that this requirement does not apply;

6.2.2 the date of his award will be deemed to be the date on which he serves a copy of the award on Devco and the Council;

- 6.2.3 he will not be entitled to order the rectification, setting aside or cancellation of this Deed or any other deed or document;
- 6.2.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and
- 6.2.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.

Responsibility for the costs of referring a dispute to a specialist under this **clause 6**, including costs connected with the appointment of the specialist and the specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the specialist.

## 7. **ENFORCEMENT**

- 7.1 This Deed is to be governed by and interpreted in accordance with English law.
- 7.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

## 8. **ASSIGNMENT AND PRE-EMPTION**

- 8.1 The Council shall not be entitled to transfer or assign its obligations under this Deed.
- 8.2 Devco shall:

- 8.2.1 not be entitled to transfer or assign the benefit of this Deed or any interest in it within the Initial Period save where such transfer is to a Group Company;
- 8.2.2 only be entitled to transfer or assign the benefit of this Deed or any interest within it where it transfers the whole of the benefit and all such interests

and the provisions of this **clause 8** shall apply equally to any successors or assigns of DevCo and any subsequent successors or assigns taking the benefit of this Deed.

- 8.3 Devco shall not be entitled to transfer or assign the benefit of this Deed to one or more of the following:
  - 8.3.1 Any sovereign fund or entity owned or controlled by or any governmental body of, a country in respect to which the United Kingdom has withdrawn or suspended diplomatic relations (for so long as such withdrawal or suspension lasts);

- 8.3.2 Any sovereign fund or entity owned or controlled by or any governmental body of a country in respect to which, the United Kingdom has imposed punitive sanctions;
- 8.3.3 Any sovereign fund or entity owned or controlled by or any governmental body of, a country in respect to which the United Nations has imposed punitive sanctions;
- 8.3.4 Any senior governmental or military officer or political leader of any of the countries referred to in **clauses 8.3.1 to 8.3.3** above or any companies or other investment or trading vehicles beneficially owned by such individuals or their immediate family.
- 8.3.5 Any body or organisation which it would be illegal for a British Citizen to be a member of or which is otherwise classed as a banned organisation in the United Kingdom.
- 8.3.6 Any entity engaged openly or covertly in activities directed towards the overthrowing or influencing by force or violence of Her Majesty's Government in the United Kingdom.
- 8.3.7 Any organisation the primary activity of which comprises the manufacture or sale of tobacco products, gaming or pornography.

without obtaining the prior written consent of the Council such consent not to be unreasonably withheld or delayed.

- 8.4 After the expiry of the Initial Period, except in the case of a transfer or disposal to a Group Company, the right to transfer this Deed or any interest in it shall be subject to the following restrictions and provisions:

- 8.4.1 If at any time Devco (a "**Proposed Transferor**") wishes to transfer its interest ("**Interest**") under this Deed it shall give notice in writing to the Council (a "**Transfer Notice**") of such wish which notice shall state the identity of the proposed transferee and the price ("**Price**") which Devco would accept for the Interest.
- 8.4.2 Within three months of receiving a Transfer Notice the Council shall be entitled to serve a notice (a "**Purchase Notice**") on Devco confirming its intention to buy the Interest (or its intention to nominate a nominee to buy the Interest) at the Price which notice shall comprise a binding acceptance of the offer set out in the Transfer Notice and the Proposed Transferor shall be obliged to sell and the Council shall be obliged to buy or procure that a nominee of the Council buys and the Proposed Transferor shall be obliged to sell the Interest at the Price within 20

working days which transfer shall be in such form as approved by the Council, such approval not to be unreasonably withheld or delayed.

8.4.3 Insofar as the Council shall not have served a Purchase Notice within three months of receiving a Transfer Notice (or where the Council shall have confirmed in writing that it has no intention to acquire the Interest) the Proposed Transferor shall be entitled to dispose of the Interest at the Price or any price which is greater than the Price subject to **clauses 8.4.4 and 8.4.5**.

8.4.4 If the Proposed Transferor has not completed a disposal of the Interest or entered into a binding commitment to do so within 9 calendar months of the Transfer Notice it shall be prohibited from completing such disposal without serving a further Transfer Notice and the provisions of this **clause 8.4** shall apply.

8.4.5 Devco shall procure that on or prior to acquiring the Interest pursuant to this **clause 8.4** the proposed transferee enters into a deed in favour of the Council (in such form as the Council reasonably requires) in which the proposed assignee agrees that for as long as it has the benefit of this Deed it shall comply with the obligations in this **clause 8** (including this **clause 8.4.5**).

8.5 Notwithstanding any other provision in this **clause 8**, the benefit of this Deed shall not be capable of being assigned or transferred more than once in any three year period.

## 9. **VARIATION**

The parties hereto shall enter into such deed or deeds of variation of this Deed pursuant to the provisions of clause 16.2 of the CSDA.

## 10. **SIGNING**

The parties to this Deed have executed it as a deed on the date set out in the Particulars

The **COMMON SEAL** of **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** was hereunto affixed in the presence of: -

**Authorised officer**

**Seal Register no.**

**SIGNED** as a deed by )  
**JOHN LAING (CROYDON DEVELOPMENT** )  
**COMPANY) LLP** )  
acting by its: - )

**Authorised Signatory**

**Authorised Signatory**