

Dated 28 November 2008

- (1) **CCURV LLP**
- (2) **JOHN LAING PROJECTS & DEVELOPMENTS LIMITED**
- (3) **JOHN LAING PLC**

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**PROPERTY AND DEVELOPMENT MANAGEMENT AGREEMENT**  
relating to a portfolio of properties in Croydon

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**THIS AGREEMENT** is made on 28 November 2008

**BETWEEN**

- (1) **CCURV LLP**, a limited liability partnership registered in England Wales under registration number OC 341025 whose registered office is at Allington House, 150 Victoria Street, London, SW1E 5LB ("CCURV");
- (2) **JOHN LAING PROJECTS & DEVELOPMENTS LIMITED**, a company registered in England Wales under company registration number 04420886 whose registered office is at Allington House 150 Victoria Street London SW1E 5LB (the "Manager"); and
- (3) **JOHN LAING PLC** a company registered in England and Wales under company number 01345670 whose registered office is at Allington House 150 Victoria Street London SW1E 5LB (the "Guarantor").

**BACKGROUND**

- (A) CCURV has been established with the Objectives.
- (B) The Manager is to be appointed by CCURV to carry out the Services on behalf of CCURV and the CCURV Subsidiaries on the terms and conditions set out in this Agreement in return for the payment of the Fees subject to the provisions of this Agreement.
- (C) The Guarantor has agreed to guarantee the obligations of the Manager under this Agreement on the terms set out in this Agreement.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement (including in the Background and Schedules), the following words, expressions and meanings shall, unless the context otherwise requires and/or save where expressed otherwise, have the meanings set opposite them and words and expressions which are not defined in this Agreement but are capitalised shall have the meanings ascribed to them in the Members' Agreement and the parties hereby each acknowledge receipt of a copy of the Members' Agreement:

**"Approved Consultants"**

those consultants listed in Schedule 4;

**"Associate"**

(i) in respect of the Manager means:

(a) John Laing Plc and/or any Associate of John Laing Plc;

(b) 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 paragraph (i)(a) of this definition is the general partner, trustee,

principal or manager (either directly or indirectly); and

- (c) any nominee or trustee of any entity falling within paragraphs (i)(a) of this definition acting in such capacity (whether on a change of nominee or trustee or otherwise);
- (ii) in respect of John Laing plc or any other person means:
  - (a) any company which in relation to the person concerned (being a company) is a Holding Company of the company concerned or a subsidiary of the company concerned or of any such Holding Company; or
  - (b) any company or a subsidiary of a company at least one fifth of the issued equity share capital of which is beneficially owned by the person concerned (whether or not a company) or an Associate of a person under part (ii)(a) of this definition; or
  - (c) where the person concerned is an individual or a firm, trust or other unincorporated body the expressions "Associate" means and includes any company controlled by or controlling such person and means and includes any trust, fund or partnership (whether limited or otherwise) controlled by any of the foregoing;

<b>"Authority Matter"</b>	any Partnership Board Authority Matter and/or Member Authority Matter;
<b>"Business Day"</b>	any day (other than a Saturday or Sunday or a bank holiday) on which clearing banks are open for business in the City of London;
<b>"Business Plan Criteria"</b>	the criteria for each Business Plan as set out in Schedule 2, as such criteria may be amended by CCURV from time to time;
<b>"Commencement Date"</b>	the date of this Agreement;

**"Confidential Information"**

means all information (not in the public domain otherwise than as a consequence of a breach by the Manager of its obligations under this Agreement) which may be imparted in confidence or be of a confidential nature relating to the Business or plans or internal affairs of CCURV and/or the CCURV Subsidiaries including, but without limitation, all information of a confidential nature relating to the Property Portfolio (or any part of it), marketing information, unpublished information relating to the Business, CCURV and/or the CCURV Subsidiaries or to any actual or potential customer, tenant or landlord or supplier or officer or employee of CCURV and/or the CCURV Subsidiaries;

**"Council Client Team"**

such team as notified by the Council to the Manager from time to time, the single point of contact for which is the Council Client Team Representative;

**"Council Client Team Representative"**

the single point of contact for the Council Client Team the details of whom shall be as notified by the Council to the Manager from time to time;

**"Council Policies"**

shall have the meaning ascribed to it in the Members' Agreement;

**"Devco"**

John Laing (Croydon Development Company) LLP (registered number: OC341594);

**"Development Costs"**

means all expenditure reasonably and properly incurred by CCURV, the CCURV Subsidiaries and/or Devco (as applicable) in carrying out the development of any of the Properties at all times in accordance with the Business Plans and, in the case of the New Council Property, the New Council Property Direct Agreement and the Conditional Sale and Development Agreement, including without limitation: -

(a) all costs of acquiring the relevant Property;

(b) consultancy or professional fees;

(c) guarantee fees, commitment fees and, pursuant to the provisions of any loan agreement entered into with an arm's length lender, the relevant financial charges relating thereto and any interest payable in respect of them at reasonable market rates;

(d) all costs in relation to any building contract entered into in respect of any Property;

(e) any irrecoverable VAT and all stamp duty land

tax relating to the relevant Properties; and

Provided that: -

(i) no item of Development Costs counted under one of the heads detailed above shall be counted under any other head;

(ii) Fees payable under this Agreement shall not be a Development Cost;

(iii) the internal costs of Devco in carrying out its obligations in relation to the New Council Property under the New Council Property Direct Agreement and the Conditional Sale and Development Agreement shall not be a Development Cost; and

(iv) the internal costs of the Manager in carrying out its obligations under this Agreement shall not be a Development Cost.

**“Development Property Fee”**

the fee payable by CCURV or the CCURV Subsidiaries to the Manager in respect of Services undertaken in relation to the Properties (excluding the New Council Property), such fee to be payable in accordance with clause 9 and Schedule 5;

**“Duty of Care Deed”**

a duty of care deed substantially in the form attached at Schedule 7 to be entered into by the Manager in favour of each CCURV Subsidiary in accordance with this Agreement;

**“Fees”**

the New Council Property Fee and the Development Property Fee payable to the Manager pursuant to clause 9 and Schedule 5;

**“Good Industry Practice”**

such practice as may be expected of a properly qualified, competent and experienced development and property manager accustomed to carrying out services of the same or a similar nature, scope and complexity to the Services in relation to properties of a similar nature, scope, complexity and size as the properties comprised in the Property Portfolio and the delivery of the New Council Property in accordance with the Conditional Sale and Development Agreement and the New Council Property Direct Agreement from time to time, such practice to be carried out in a proper, prompt and business like manner using all the skill, expertise and attention as is to be expected of such a development and property manager;

**“Group”**

(i) in respect of the Manager 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 it;

(c) JLPDC and/or any subsidiary of it;

(d) Devco and/or any subsidiary or other entity controlled by it;

(e) the Manager and/or any subsidiary of the Manager;

(f) 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 paragraph (i)(a) to (i) (e) of this definition is the general partner, trustee, principal or manager (either directly or indirectly); and

(g) any nominee or trustee of any entity falling within paragraphs (i)(a) to (i)(e) of this definition acting in such capacity (whether on a change of nominee or trustee or otherwise);

(ii) in respect of any other party, means that party together with any company or entity which is a Holding Company of that party or a Subsidiary of that party or of such Holding Company;

**“Guidance”**

any applicable guidance or directions with which the Manager is bound to comply;

**“Insurance Cover”**

shall have the meaning ascribed to it in clause 14.3;

**“JLPDC”**

John Laing Projects & Developments (Croydon) Limited (company registration number: 06710472) whose registered office is One Fleet Place, London, EC4M 7WS;

**“KPIs”**

the key performance indicators relating to the provision of the Services as such key performance indicators are set out against each Service in Schedule 1;

<b>"Losses"</b>	means all costs, claims and/or proceedings, demands, actions, fines, penalties, liabilities and/or expenses (including legal and other professional fees and expenses) whenever arising or howsoever arising;
<b>"Members' Agreement"</b>	the members' agreement dated on or around the date of this Agreement between (1) the Council, (2) JLPDC, (3) the Guarantor and (4) CCURV relating to CCURV as such agreement may be varied or supplemented from time to time in accordance with its terms;
<b>"New Council Property Fee"</b>	the fee payable by CCURV or the CCURV Subsidiaries to the Manager in respect of the Services to be undertaken in relation to the New Council Property, such fee to be payable in accordance with clause 9 and Schedule 5;
<b>"Property Portfolio"</b>	the properties (or any of them) owned by CCURV (or any CCURV Subsidiary as the case may be) or in which CCURV (or any CCURV Subsidiary as the case may be) has an interest (including, for the avoidance of doubt, pursuant to the Conditional Sale and Development Agreement) from time to time and references to "Properties" and "Property" shall be construed accordingly and shall include the Initial Development Properties and the New Council Property;
<b>"Quarter"</b>	each period of 3 months ending on 31 March, 30 June, 30 September and 31 December;
<b>"Relationship Manager"</b>	a person employed or engaged by the Manager and/or Devco to be the single point of contact for the Manager and Devco and who will liaise with CCURV and/or the Council Client Team Representative (as applicable), at the date of this Agreement being Paul Kirby, such Relationship Manager as may be replaced from time to time with the prior written consent of CCURV (such consent not to be unreasonably withheld or delayed);
<b>"Resource Plan"</b>	the resource plan of the Manager setting out how the Manager shall resource the provision of the Services as such plan is set out at Schedule 3 to this Agreement;
<b>"Services"</b>	the services set out in Schedule 1 together with (in respect of the Initial Development Properties and the New Council Property) such other development and management services as would reasonably be expected of a skilled and appropriately experienced development manager in enabling CCURV to comply with the duties and obligations on CCURV



set out in the Conditional Sale and Development Agreement and to enable CCURV and the CCURV Subsidiaries to comply with the Business Plans and any other services as may be agreed between CCURV and/or any of the CCURV Subsidiaries (as applicable) and the Manager from time to time; and

**“Statutory Requirements”**

insofar as they relate to or affect the Services the requirements of any statute or subordinate legislation.

1.2 Clauses 1.2 to 1.13 of the Members’ Agreement shall apply *mutatis mutandis* to this Agreement.

1.3 The parties acknowledge that CCURV will form CCURV Subsidiaries to hold all or any of the Property Portfolio in accordance with the Members’ Agreement and that the Manager shall continue to provide the Services to CCURV and shall provide such Services to the CCURV Subsidiaries and fulfil all of its duties and obligations under this Agreement notwithstanding that all or any of the Property Portfolio may be held by such CCURV Subsidiaries.

**2. APPOINTMENT OF THE MANAGER**

2.1 CCURV appoints the Manager on an exclusive basis as development and property manager for the Property Portfolio to provide the Services to CCURV and the CCURV Subsidiaries upon the terms and conditions set out in this Agreement and the Manager hereby accepts such appointment and agrees to provide the Services to CCURV and the CCURV Subsidiaries from the date of this Agreement upon the terms and conditions set out in this Agreement and for the avoidance of doubt notwithstanding the provisions of clause 9, the Manager shall be bound to provide the Services to CCURV and each CCURV Subsidiary from the Commencement Date.

2.2 The Manager shall be an independent contractor with respect to the Services to be performed hereunder. Neither the Manager nor its employees shall be deemed to be the servants, agents or employees of CCURV or any of the CCURV Subsidiaries.

2.3 The Manager shall devote such of its time and attention as may be necessary for the proper performance of the Services and perform its obligations under this Agreement in accordance with Good Industry Practice.

2.4 In all matters the Manager shall act in good faith towards CCURV and the CCURV Subsidiaries with due regard to the provisions of the Members’ Agreement and the Business Plans and shall comply with the proper and lawful instructions of and implement the proper and lawful decisions of CCURV and the CCURV Subsidiaries in relation to the management of the Property Portfolio. The Manager shall not make any undisclosed profit or commission out of its duties hereunder.

2.5 To the extent that the Manager sub-contracts any of its duties under this Agreement the Manager shall remain fully responsible for the acts or omissions of any such sub-contractor and/or delegatee.

- 2.6 Subject to clause 4 the parties agree that nothing in this Agreement shall prevent the Manager from providing any services whatsoever to any other person.
- 2.7 Notwithstanding the assignment by CCURV of its obligations in relation to the New Council Property to Devco and its entering into the New Council Property Direct Agreement (as defined in the Members' Agreement) with Devco the parties acknowledge and agree that:
- 2.7.1 the Services of the Manager shall continue to extend to the development of the New Council Property and the Manager shall not be released from any of its obligations under this Agreement in relation to the New Council Property, including (but not limited to) pursuant to clauses 4 and 5;
- 2.7.2 as part of the Services, the Manager shall supervise the development by Devco of the New Council Property to ensure that Devco complies with its obligations under the New Council Property Direct Agreement and that the Manager fulfils its obligations under this Agreement in relation to the New Council Property.
- 2.8 The Manager agrees and undertakes to CCURV that it shall enter into a Duty of Care Deed in favour of each CCURV Subsidiary as soon as reasonably practicable following the establishment of each such CCURV Subsidiary.
3. **GUARANTEE**
- 3.1 In consideration of CCURV and the Manager entering into this Agreement the Guarantor irrevocably and unconditionally:
- 3.1.1 guarantees to CCURV, the due and punctual payment, observance and performance by the Manager of all of the Manager's liabilities and obligations, whether present or future, express or implied, actual or contingent, under or arising out of this Agreement;
- 3.1.2 agrees to indemnify CCURV (as applicable) on demand against any liability, cost, claim or expense which CCURV may suffer or incur as a result of:
- 3.1.2.1 the Manager's failure to perform in full and on time its obligations under or arising out of this Agreement; and/or
- 3.1.2.2 any of the obligations (or purported obligations) of the Manager under this Agreement being or becoming void, voidable or unenforceable; and/or
- and CCURV shall use reasonable endeavours to mitigate any claim made pursuant to the indemnity set out in this clause.
- 3.2 CCURV will not be obliged, before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor under this clause or by law:
- 3.2.1 to make any demand of the Manager; or

- 3.2.2 to enforce or seek to enforce any claim, right or remedy against the Manager or any other person; or
  - 3.2.3 to make or file any claim or proof in connection with the insolvency of the Manager or any other person; or
  - 3.2.4 to take any action or obtain judgement in any court against the Manager or any other person.
- 3.3 Neither the liability of the Guarantor under this clause 3 nor the rights, powers and remedies conferred on CCURV under this clause 3 or by law will in any way be released, prejudiced, diminished or affected by any of the following:
- 3.3.1 time or other indulgence being granted to the Manager in respect of its obligations under this Agreement; or
  - 3.3.2 any amendment to, or any variation, waiver or release of, any obligation of the Manager under this Agreement; or
  - 3.3.3 any failure to take, or fully to take, any security contemplated by this Agreement or otherwise agreed to be taken in respect of the Manager's obligations under this Agreement; or
  - 3.3.4 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution, of any such security taken in respect of the Manager's obligations under this Agreement; or
  - 3.3.5 the insolvency or any change in the constitution, name, control or style of CCURV, the Manager and/or the Guarantor (as applicable) or any other person; or
  - 3.3.6 any invalidity, illegality, unenforceability, irregularity or frustration in any respect of any of the liabilities or obligations referred to in clause 3.1.1; and
  - 3.3.7 any other act, omission event or circumstances which, but for this provision, might operate to prejudice, affect or otherwise affect the liability of the Guarantor under this clause or any of the rights, powers or remedies conferred upon CCURV under this clause or by law.
- 3.4 The obligations of the Guarantor will constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and in particular will not be considered satisfied by any intermediate payment or satisfaction of all or any of the obligations of the Manager under this Agreement and will continue in full force and effect until final payment in full of all amounts owing by the Manager in total satisfaction of all the Manager's actual and contingent obligations under this Agreement.
- 3.5 The Guarantor agrees that whilst any amounts are or may be owed by the Manager under this Agreement or the Manager is under any actual or contingent obligation under this Agreement, the Guarantor will not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under this clause:
- 3.5.1 to be indemnified by the Manager; and/or

- 3.5.2 to claim any contribution from any other guarantor of the Manager's obligations contained in this Agreement; and/or
  - 3.5.3 to take the benefit (in whole or in part) and whether by way of subrogation or otherwise of any rights of CCURV under this Agreement or of any other security taken in connection with this Agreement by CCURV.
- 3.6 Each obligation of the Guarantor under this clause 3 is independent of each other obligation under that clause.
4. **OBLIGATIONS AND DUTIES OF THE MANAGER**
- 4.1 Notwithstanding the obligations of the Manager in relation to any other property within the Property Portfolio, in respect of the New Council Property and the Initial Development Properties:
- 4.1.1 the Manager acknowledges and agrees that CCURV has appointed the Manager to, and the Manager hereby agrees and undertakes to, exercise all the skill and care to be expected of a properly qualified competent and experienced property and development manager in ensuring CCURV (and, in the case of the New Council Property, Devco) meets its responsibilities to procure the development of the New Council Property and the Initial Development Properties in accordance with the Conditional Sale and Development Agreement, the relevant Business Plans and the New Council Property Direct Agreement (as applicable) on the terms set out in this Agreement; and
  - 4.1.2 the Manager hereby undertakes to CCURV and each of the CCURV Subsidiaries to exercise such skill and care in carrying out the Services in respect of the New Council Property and Initial Development Properties and its duties and obligations so as to procure compliance by CCURV (and, in the case of the New Council Property, Devco) with the Conditional Sale and Development Agreement (and, in the case of Devco, the New Council Property Direct Agreement).
- 4.2 Without prejudice to clause 4.1 and the scope of the Services as set out in Schedule 1 the Manager shall exercise all the reasonable skill and care to be expected of a properly qualified competent and experienced property and development manager so as to:
- 4.2.1 undertake its obligations in this Agreement in a manner consistent with the Business Plans;
  - 4.2.2 in respect of:
    - 4.2.2.1 the New Council Property, enable CCURV and Devco to achieve the outputs and the milestones set out in the relevant Business Plan and the Conditional Sale and Development Agreement relating to such New Council Property from time to time, including, without limitation, the achievement of the New Council Property Readiness for Development Criteria by the relevant Long Stop Date; and

- 4.2.2.2 each Initial Development Property, enable CCURV to achieve the outputs and the milestones set out in the relevant Business Plan and the Conditional Sale and Development Agreement relating to each such Initial Development Property from time to time, including, without limitation, the achievement of the relevant Initial Development Property Readiness for Development Criteria by the relevant Long Stop Date;

and, for the avoidance of doubt, the Manager acknowledges and agrees that in the event that it does not by reason of its failure to exercise all the skill and care to be expected of an experienced development manager in accordance with the terms of this Agreement achieve or procure the achievement of any of the Readiness for Development Criteria (or any part of them) in accordance with this Agreement and the relevant Business Plans that shall constitute a breach by the Manager of a material obligation for the purposes of clause 11.3.1.1 save where any failure or delay in achieving the Readiness for Development Criteria (or any part of them) by the relevant Long Stop Date is due to any event beyond the reasonable control and contemplation of the Manager. Where the Manager is so delayed the Manager will be entitled to a reasonable extension of time for the performance of such obligations (such time extension to be determined by CCURV);

- 4.2.3 undertake to perform the Services so as to achieve the KPIs for each Service undertaken and the Manager acknowledges that any failure to achieve any KPI shall constitute a breach of a material obligation for the purpose of clause 11.3.1.1.

4.3 Notwithstanding any other provision in this Agreement, the Manager shall:

- 4.3.1 act in accordance with the Delegation Policy and comply with any CCURV Policies;
- 4.3.2 without prejudice to clauses 4.2.1 and 4.2.2, use all reasonable endeavours to procure that the outputs set out in the Business Plans are achieved in accordance with the milestones set out in such plans;
- 4.3.3 keep CCURV and the CCURV Subsidiaries regularly informed of progress on all Services in which the Manager is engaged under this Agreement and shall provide all such information in relation to the Services as CCURV and/or the CCURV Subsidiaries shall reasonably request from time to time;
- 4.3.4 inform CCURV and the relevant CCURV Subsidiary immediately upon becoming aware of any matter of a material nature which affects any of the Properties or affects CCURV's and/or the relevant CCURV Subsidiary's liability in respect of any of the Properties;
- 4.3.5 check (on appointment and on each subsequent anniversary of each appointment thereafter) that any adviser, sub-contractor, agent or other person appointed by the Manager pursuant to clause 5 (the "Appointee") has adequate insurance cover in accordance with this clause 4.3. The insurance shall be at such reasonable and commercial level as may be reasonably specified by CCURV from time to time and

with an insurer of repute, such indicative levels of insurance being as set out in Schedule 6. Without prejudice to the foregoing, the Manager shall exercise all the reasonable skill and care to be expected of an experienced property and development manager in seeking to negotiate terms which procure that any Appointee will upon its appointment be bound by (and will not without the consent of CCURV conclude any appointment unless) so that clauses 14.1 to 14.10 shall apply mutatis mutandis as between the Manager and the Appointee and so that references to "CCURV" in those clauses were to "the Manager" and references to "the Manager" in those clauses were to "the Appointee" (where required). Upon request by CCURV, or any Member of CCURV (the "Requesting Body"), the Manager shall deliver the evidence of such policies provided to it in accordance with this clause to the Requesting Body. Notwithstanding any other provision of this Agreement, CCURV shall be entitled to withhold consent to any appointment pursuant to clause 5 unless the Manager produces to CCURV prior to such appointment evidence of such insurance in accordance with this clause 4 and CCURV agrees (acting reasonably) to the level of insurance;

- 4.3.6 set up and maintain (and procure that any persons to whom it sub-contracts any of the Services pursuant to and in accordance with clause 5 set up and maintain) personnel procedures covering all relevant matters (including, without limitation, discipline, grievance, equal opportunities, diversity, disability, equality and health and safety policies), ensuring that the terms and implementation of such procedures comply with all Statutory Requirements, Guidance and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to CCURV;
- 4.3.7 comply with the principles of the Council Policies and take such steps (to the extent within its control) as are necessary to ensure that the Manager implements the principles of any changes to such Council Policies as may be notified to it by the Council during the term of this Agreement;
- 4.3.8 procure that any persons with whom the Manager may contract in connection with the provision of the Services or any person with whom CCURV and/or any of the CCURV Subsidiaries may contract (on the advice of the Manager) in connection with the provision of the Services shall comply with the CCURV Policies and with the principles of the Council Policies and shall as soon as reasonably practicable take such steps as are necessary (and within its power) to ensure that the Manager implements the principles of any changes made to such Council Policies as may be notified to it by the Council during the term of this Agreement;
- 4.3.9 make full and timely disclosure to CCURV (in advance) of any conflicts of interest that may arise with it or any of its directors in the performance of its duties and obligations under this Agreement;
- 4.3.10 notwithstanding any other provision of this Agreement, not undertake any Authority Matter without first having the consent of CCURV, except to the extent permitted by the Delegation Policy;

- 4.3.11 co-operate with any consultants or professionals appointed by CCURV and/or the CCURV Subsidiaries in so far as is required to fulfil its obligations under this Agreement;
- 4.3.12 liaise directly with CCURV and/or the CCURV Subsidiaries;
- 4.3.13 notify CCURV and the CCURV Subsidiaries immediately on becoming aware in the event that any one or more of the following events occurs:
  - 4.3.13.1 a petition for an administration order is presented in respect of the Manager and/or the Guarantor;
  - 4.3.13.2 any of the insolvency events specified in clause 11.2 arises in relation to the Manager and/or the Guarantor; or
  - 4.3.13.3 a matter arises (or is likely to arise) which would have an adverse effect on the ability of the Manager and/or the Guarantor to perform the Services and/or any other obligations in accordance with this Agreement.
- 4.3.14 ensure, at all times during the continuance of this Agreement, that the Manager shall employ and/or engage a sufficient number of suitably skilled and qualified persons to provide the Services in accordance with the Resource Plan and to enable the Manager to comply with the terms of this Agreement;
- 4.3.15 use all reasonable endeavours to comply with such reasonable timescales as may be agreed with CCURV and/or the CCURV Subsidiaries (as applicable) in relation to the provision of the Services from time to time;
- 4.3.16 act in a competent and efficient manner and in the best interests of CCURV and the CCURV Subsidiaries so as to give to CCURV and the CCURV Subsidiaries the full and complete benefit of the Manager's experience and expertise in relation to the Property Portfolio;
- 4.3.17 give such general advice and assistance to CCURV and each of the CCURV Subsidiary/ies (as applicable) in connection with the Property Portfolio as may lie within the field of the Manager's qualifications, competence and experience and as CCURV and/or the CCURV Subsidiaries (as applicable) may from time to time reasonably require;
- 4.3.18 exercise the reasonable skill and care to be expected of an experienced development and property manager so as to take such action (or if appropriate assist CCURV and/or each CCURV Subsidiary to take such action) at the cost of CCURV and/or the relevant CCURV Subsidiary (as applicable) (where such action is beyond the scope of the Services provided always that such costs are reasonable and proper having regard to the nature of the Services and are authorised in accordance with the Delegation Policy) as would be undertaken by a prudent and reasonable owner of the Property Portfolio with the objective of maximising returns in terms of rental yield and capital growth of the Property Portfolio without exposing CCURV and/or the relevant CCURV Subsidiary to undue speculative risk provided further that such actions are in accordance with the Business Plans and that

the Manager shall not by reason of this clause be required to incur substantive cost without obtaining the prior approval of CCURV and/or the CCURV Subsidiary to such costs (such approval not to be unreasonably withheld or delayed);

- 4.3.19 have regard to the principles of good estate management and professional codes of conduct and/or guidelines laid down from time to time by the Royal Institution of Chartered Surveyors (or its successor body from time to time);
- 4.3.20 in performing its obligations under this Agreement to comply with all Statutory Requirements;
- 4.3.21 allow CCURV and/or any of the CCURV Subsidiaries (and their employees, agents and advisers), any Member of CCURV or member of the CCURV Subsidiaries and the Audit Commission, on reasonable prior notice, access to inspect and/or take copies of any such documents or records as may be necessary or appropriate for the purpose of or in connection with the Business and for the purpose of monitoring the Manager's performance of the Services in accordance with this Agreement;
- 4.3.22 keep CCURV and the CCURV Subsidiaries regularly informed of progress on all Services in which the Manager is engaged under this Agreement and shall provide all such information in relation to the Services as CCURV and/or any of the CCURV Subsidiaries shall reasonably request from the Manager with regard to the Property Portfolio (or part of it) and/or any of the Services;
- 4.3.23 when reasonably required by CCURV (giving details of time, location and agenda), attend Partnership Board meetings of CCURV to support its actions and to answer either at, or as soon as is reasonably practicable after such meeting, all reasonable enquiries made at such meetings;
- 4.3.24 where CCURV and/or the CCURV Subsidiaries provide funds to the Manager to enable the Manager to fulfil its duties and obligations under this Agreement, to use such funds in a prudent manner in order to carry out the Services only, having due regard to the nature of the Services, the requirement to provide the Services as a whole and the Objectives;
- 4.3.25 perform the Services in such manner and at such time so that no act, omission or default of the Manager in relation to the performance of the Services shall knowingly cause CCURV and/or any of the CCURV Subsidiaries to be in breach of any law or of any regulation or condition imposed by any local or municipal authority or statutory undertakers or other authority having jurisdiction or authority;
- 4.3.26 to act in accordance with all reasonable and proper instructions of CCURV and/or any of the CCURV Subsidiaries (as applicable) given in respect to the obligation of the Manager under this Agreement and at all times to exercise discretion and business judgment fairly and properly;



- 4.3.27 to file any notice on behalf of CCURV and/or the CCURV Subsidiaries required to be delivered to the Registrar of Companies in England and Wales in connection with CCURV and/or the CCURV Subsidiaries;
- 4.3.28 to liaise, consult and actively seek the views of the Council Client Team (through the Council Client Team Representative) in carrying out the Services as appropriate and (if applicable) as required by any of the Business Plans from time to time and, in particular, when reasonably required:
  - 4.3.28.1 support the Council Client Team in its user and stakeholder consultation process for the provision of the New Council Property, including (but not limited to) design development and the preparation for the transfer to the New Council Property and decant from existing office accommodation;
  - 4.3.28.2 work with the Council Client Team to land assemble property to support the delivery of the Business Plans (or any of them);
  - 4.3.28.3 support the Council Client Team in the promotion of CCURV's and the CCURV Subsidiaries activities and with progress reporting and other activities to (including but not limited to) committees and/or management boards of the Council, stakeholders and the public;
  - 4.3.28.4 co-operate with the Council (through the Council Client Team) in carrying out its statutory obligations in so far as these relate to its membership of CCURV; and
  - 4.3.28.5 work with the Council Client Team in the identification of new opportunities for CCURV and/or the CCURV Subsidiaries, including (but not limited to) the preparation of feasibility studies and (where necessary) draft Business Plans; and
  - 4.3.28.6 to copy any reports provided to CCURV and/or any of the CCURV Subsidiaries to the Council Client Team Representative;
- 4.3.29 at all times carry out its duties with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, probity, courtesy, consideration and hygiene.
- 4.4 The Manager shall not be obliged to fulfil a duty and obligation under this Agreement if at any time, the Manager is prevented from fulfilling such duty by any acts or omissions of CCURV and/or the CCURV Subsidiaries (as applicable) or (where CCURV and/or the CCURV Subsidiaries (as applicable) is responsible for the provision of funds, cash or disbursements pursuant to this Agreement) has not been provided with sufficient funds by CCURV and/or the CCURV Subsidiaries (as applicable) to enable it to carry out such duty. For the avoidance of doubt this clause shall not operate such that the Manager shall not be obliged to fulfil such duties and obligations not affected by any such act or omission of CCURV and/or the CCURV Subsidiaries (as applicable).

- 4.5 The Manager acknowledges and agrees to exercise the reasonable skill and care to be expected of an experienced property and development manager so as to enable CCURV to adhere to the obligations of CCURV under the Members' Agreement insofar as they are capable of applying to Services to be provided by the Manager (including (without limitation) clause 3.6 of the Members' Agreement).

5. **ASSIGNMENT AND APPOINTMENT OF ADVISERS AND AGENTS**

- 5.1 The Manager shall not assign, sub-contract, delegate, transfer or charge any of its rights, obligations or duties under this Agreement other than pursuant to this clause 5 provided that the Manager shall be entitled to delegate such of its obligations or duties under this Agreement to Gladedale Group Limited (registered in England under company number 41137073) or a member of the same Group as Gladedale Group Limited provided further that for the avoidance of doubt the Manager shall remain primarily liable to CCURV and each of the CCURV Subsidiaries under the terms of this Agreement and any Duty of Care Deed in relation to the performance of such obligations or duties. The Manager shall be entitled to enter into a duty of care agreement in favour of any Funder of CCURV, any CCURV Subsidiary or Devco.

- 5.2 Subject always to the provisions of clause 4.3.7, clause 5 and the Delegation Policy:

5.2.1 the Manager shall be entitled to negotiate the appointment of consultants, advisors and/or contractors on behalf of CCURV and/or the relevant CCURV Subsidiaries (as applicable);

5.2.2 for the avoidance of doubt it is hereby acknowledged and agreed that CCURV approves the appointment of the Approved Consultants (in relation to Services relating to the New Council Property and Initial Development Properties only) as at the date of this Agreement. Any change in the identity of any Approved Consultants in relation to services to be provided to any of the New Council Property or Initial Development Properties shall require the prior written consent of CCURV and/or the relevant CCURV Subsidiary (as applicable) such approval not to be unreasonably withheld or delayed; and

5.2.3 the Manager shall supervise, monitor and review the work of all consultants, advisors and/or contractors appointed on behalf of CCURV and/or any of the relevant CCURV Subsidiaries (as applicable) pursuant to this clause 5.

- 5.3 All appointments made pursuant to clause 5.2 shall:

5.3.1 either be entered into in the name of CCURV and/or the relevant CCURV Subsidiary (as applicable), or, if CCURV and/or the relevant CCURV Subsidiary (as applicable) agrees otherwise, any appointment not entered into in the name of CCURV and/or the relevant CCURV Subsidiary (as applicable) shall include an express acknowledgement of a duty of care from the relevant contracting party to CCURV and/or the relevant CCURV Subsidiary (as applicable);

5.3.2 contain provisions enabling the appointment to be continued at the option of CCURV and/or the relevant CCURV Subsidiary (as applicable) in the event that this Agreement shall be determined;

- 5.3.3 be notified by the Manager to CCURV and/or the relevant CCURV Subsidiary (as applicable); and
- 5.3.4 be at the cost of CCURV and/or the relevant CCURV Subsidiary (as applicable), such costs to be subject to the approval of CCURV and/or the relevant CCURV Subsidiary (as applicable), such approval not to be unreasonably withheld or delayed.
- 5.4 The Manager, shall prior to making any appointment pursuant to clause 5.2, act in good faith in its choice of such appointee to ensure that such appointee is appropriately qualified to undertake the task for which it has been appointed and exercise reasonable supervision of the performance of such appointee.
- 5.5 The Manager shall ensure that all consultants, advisors and/or contractors appointed in accordance with this clause 5 have adequate insurance as required by clause 4.3.5 in relation to the Services provided by them to CCURV and/or the CCURV Subsidiaries (as applicable).

## **6. OBLIGATIONS OF CCURV**

- 6.1 Subject always to clause 7 CCURV shall and shall procure that each CCURV Subsidiary shall:
  - 6.1.1 supply or arrange for others to supply to the Manager, without charge, and in such reasonable time so as not to prevent, delay or disrupt the performance of the Services all data, information and records relating to the Property Portfolio (or part thereof) CCURV and the CCURV Subsidiaries (or copies thereof) which are in its possession or under its control and which are reasonably requested from time to time by the Manager and shall not unreasonably interfere with the provision of the Services by the Manager;
  - 6.1.2 ensure that the Manager has access to each of the Properties comprising the Property Portfolio as may be necessary for the proper performance of its duties under this Agreement;
  - 6.1.3 pay the Fees to the Manager in accordance with the provisions of clause 9.

## **7. LIMITATIONS**

- 7.1 The Manager shall not when carrying out and performing its obligations and duties under this Agreement expend on behalf of CCURV and/or any CCURV Subsidiary or commit CCURV and/or any CCURV Subsidiary to expend in any way whatsoever, any sum of money to any third party save:
  - 7.1.1 with the prior written consent of CCURV and/or the relevant CCURV Subsidiary (as applicable) (which consent shall not be unreasonably withheld) or upon the written direction of CCURV and/or the relevant CCURV Subsidiary (as applicable); or
  - 7.1.2 where such expenditure is contained in a budget prepared and approved in accordance with Schedule 1 and approved in accordance with the Delegation Policy; or

7.1.3 where such expenditure is incurred in accordance with the authorisations set out in the Delegation Policy.

## **8. COSTS AND DISBURSEMENTS OF CCURV AND THE CCURV SUBSIDIARIES**

8.1 Where CCURV and/or a CCURV Subsidiary is responsible for paying costs or disbursements pursuant to this Agreement, CCURV shall ensure that the Manager is provided by CCURV or the relevant CCURV Subsidiary (as applicable) within 5 Business Days of CCURV and/or the relevant CCURV Subsidiary receiving notice of demand with sufficient funds to meet or reimburse proper costs and disbursements due to third parties (including any Value Added Tax element of the same) properly incurred by the Manager on behalf of CCURV and/or any of the CCURV Subsidiaries in compliance with its obligations under this Agreement including, without prejudice to the generality of the foregoing the proper costs and fees of any professional consultants, advisors or agents or other person employed or engaged by the Manager in each case in connection with the provision of the Services, to the extent authorised as a CCURV and/or CCURV Subsidiary (as applicable) cost (and where such cost is not already provided for within the Fees for the provision of the Services pursuant to Schedule 1) and authorised in accordance with or pursuant to clause 5.

8.2 CCURV shall afford and shall procure that each CCURV Subsidiary shall afford the Manager all reasonable co-operation in carrying out its duties and instruct CCURV's and the CCURV Subsidiaries' employees, solicitors, accountants and/or other agents to co-operate with the Manager and its reasonable requests.

## **9. REMUNERATION**

9.1 The Fees shall be payable in accordance with this clause 9 and Schedule 5.

9.2 In consideration of the provision of the Services by the Manager to CCURV, and the CCURV Subsidiaries, CCURV shall or shall procure that the CCURV Subsidiaries shall pay to the Manager the Fees.

9.3 The Fees shall become due and payable in accordance with this clause 9.3:

9.3.1 the New Council Property Fee shall become due and payable upon the achievement of the New Council Property Readiness for Development Criteria by the relevant Long Stop Date;

9.3.2 the Development Property Fee shall become due and payable from the date hereof.

9.4 In the event that the New Council Property Readiness for Development Criteria have not been met by the relevant Long Stop Date or CCURV shall have been terminated in accordance with the terms of the Members' Agreement such that the New Council Property Fee shall not become payable pursuant to this Agreement, CCURV shall pay to the Manager a sum equal to 60% of the time costs incurred by employees of the Manager or its Associates in carrying out Services in relation to the progression of the New Council Property (the "Internal Costs") subject to the provisions of this clause 9.4:

9.4.1 the rates to be applied to determine the Internal Costs shall be those rates which are charged internally between members of the Manager's Group in accordance at all times in accordance with Good Industry Practice, such rates not exceeding the open market rate for equivalent

tasks that would be charged by an independent property development manager undertaking services of a similar nature and scope to the Services;

- 9.4.2 the Manager shall provide to CCURV a monthly report detailing:
  - 9.4.2.1 the rates referred to at clause 9.4.1;
  - 9.4.2.2 a monthly capped figure for such Internal Costs (such cap to be for the forthcoming month) (the "Monthly Cap");
- 9.4.3 the Manager shall provide to CCURV the timesheets for those employees of the Manager or its Associates in carrying out Services in relation to the progression of the New Council Property and whose time the Manager seeks to recover as Internal Costs pursuant to this clause 9.4, such timesheets to be annexed to the monthly report referred to in clause 9.4.2 and to be in relation to the preceding month;
- 9.4.4 CCURV shall be under no obligation to pay any Internal Costs where such costs in a particular month have exceeded the Monthly Cap for the relevant month,

and, in the event that there is a dispute between the Manager and CCURV pursuant to this clause 9.4 (including, without limitation, as to the rates to be applied pursuant to clause 9.4.1 and the capped amount referred to in clause 9.4.2.2) such dispute shall be determined in accordance with clause 13 of this Agreement.

- 9.5 All payments of the Fees should be made by bank transfer to such account as the Manager shall nominate from time to time in writing to CCURV and/or the CCURV Subsidiaries.

## 10. **CONFIDENTIALITY**

- 10.1 Subject to clause 10.2, the parties hereto shall be bound by the provisions of clause 29 of the Members' Agreement (Confidentiality) as if they were parties thereto.
- 10.2 The Manager may disclose information to any Associate of the Manager or member of the Manager's Group and its employees or advisers where the Manager deems disclosure to be necessary for providing the Services in accordance with the terms and conditions of this Agreement provided that, prior to any such disclosure, the Manager shall procure that the persons to whom the Manager is disclosing such information shall undertake to be bound by the provisions of clause 29 of the Members' Agreement as if they were parties thereto.

## 11. **DURATION AND TERMINATION**

- 11.1 This Agreement shall commence on the Commencement Date and shall continue until the termination of CCURV in accordance with the Members' Agreement, unless otherwise agreed between the parties, or otherwise terminated under this clause 11.

- 11.2 The appointment of the Manager (and its authority to act) shall terminate immediately upon the occurrence of any one or more of the following events, save that CCURV may determine to continue the appointment of the Manager in relation to individual CCURV Subsidiaries (to be determined by CCURV) and may give written notice to the Manager to that effect whereupon the terms of this Agreement shall continue in respect of the relevant CCURV Subsidiary/ies:
- 11.2.1 upon the dissolution of CCURV; and/or
  - 11.2.2 upon CCURV ceasing to hold any CCURV Assets and the CCURV Subsidiaries ceasing to hold any assets; and/or
  - 11.2.3 if the Manager and/or the Guarantor:
    - 11.2.3.1 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or is deemed for the purposes of any law to be unable to pay its debts as they fall due or admits its inability to pay its debts as they fall due; and/or
    - 11.2.3.2 suffers the value of its assets being less than its liabilities (taking into account contingent and prospective liabilities); and/or
    - 11.2.3.3 shall cease or threaten to cease or stop payment on all or any class of its debts or a moratorium is agreed or declared in respect of its indebtedness; and/or
    - 11.2.3.4 by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; and/or
    - 11.2.3.5 shall enter into a voluntary arrangement with any of its creditors as is described in the relevant insolvency legislation or any step (including any corporate action, legal proceedings or other procedure or step) is taken with a view to a composition, assignment, reconstruction or arrangement with any of its creditors, or it enters into such composition, assignment or arrangement; and/or
    - 11.2.3.6 ceases or threatens to cease to carry on its business or its function or a material part of its business or function as a project, development and property manager (except for the purposes of a bona fide solvent commercial reorganisation); and/or
  - 11.2.4 in respect of the Manager and/or the Guarantor if:
    - 11.2.4.1 a petition shall be presented for the winding up, administration (whether out of court or otherwise) or dissolution (except for the purposes of a *bona fide* reconstruction or amalgamation) of the relevant entity; and/or

- 11.2.4.2 a liquidator, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise) shall be appointed in respect of the relevant entity's assets; and/or
  - 11.2.4.3 any security over the relevant entity's assets is enforced; other than immaterial assets (such as minor office machinery or hire purchaser or lease terms where security is taken over the item) and/or
  - 11.2.4.4 any litigation, arbitration or administrative proceedings are commenced in respect of it which would, if adversely determined, have a material adverse affect on the business of CCURV and/or any of its Members and/or any of the CCURV Subsidiaries and/or their respective members (as the case may be) unless there is no reasonable prospect of such adverse determination; and/or
  - 11.2.5 if anything analogous to any of the events set out in clauses 11.2.3 and/or 11.2.4 shall occur in respect of the Manager and/or the Guarantor.
- 11.3 Without prejudice to any other rights or remedies of the parties hereto, this Agreement may be terminated by notice in writing by CCURV such termination to take effect immediately upon service of such notice or on such date specified in such notice (if any) in the event of any of the following events occurring save that CCURV may determine to continue the appointment of the Manager in relation to individual CCURV Subsidiaries (to be determined by CCURV) and may give written notice to the Manager to that effect whereupon the terms of this Agreement shall continue in respect of the relevant CCURV Subsidiary/ies:
- 11.3.1 the Manager being:
    - 11.3.1.1 in breach of any of its obligations under this Agreement (including for the avoidance of doubt any of the KPIs) which are material; and/or (as the case may be)
    - 11.3.1.2 in persistent breach of any of its obligations under this Agreement (including for the avoidance of doubt any of the KPIs) which breach by reason of the persistence of such breach becomes material;

and fails to remedy such breach after receipt of written notice from CCURV or the relevant CCURV Subsidiary setting out details of such breach within such period for the remedy of such breach as is set out in such notice alleging such breach (acting reasonably) provided that clause 11.3.1 shall not apply where such breach on the part of the Manager is a direct result of any act or omission of CCURV; and/or
  - 11.3.2 a change in the identity of the Relationship Manager (save where such change occurs by reason of a matter beyond the reasonable control of the Manager such as the illness or resignation of an individual in which event the Manager shall nominate a replacement for approval as soon as reasonably practicable) without the Manager first obtaining the

prior written consent of CCURV to such change and the identity of the replacement Relationship Manager (such consent not to be unreasonably withheld or delayed); and/or

- 11.3.3 an Event of Default arising pursuant to clause 20.1.2 of the Members' Agreement; and/or
- 11.3.4 JLPDC and/or any member of its Group (as Group is defined in clause 16.4 of the Members' Agreement) ceasing to be a Member of CCURV; and/or
- 11.3.5 the Manager being subject of a Change in Control (as defined in the Members' Agreement) without the Manager first obtaining the prior written consent of CCURV to the Change in Control; and/or
- 11.3.6 the Manager committing or knowingly permitting any act to be committed which is illegal, fraudulent or dishonest; and/or
- 11.3.7 due to any actions in relation to CCURV's Business and/or the business of the CCURV Subsidiaries (or any of them), the Manager (or any member of its Group or any Associate of it):
  - 11.3.7.1 brings the standing of the Members (or either of them) and/or CCURV and/or any of the CCURV Subsidiaries (or any of them) or their respective members (or any of them) as the case may be into serious disrepute; or
  - 11.3.7.2 brings about material adverse publicity (other than through the proper performance of its obligations under this Agreement) in relation to the Members (or either of them) and/or CCURV and/or any of the CCURV Subsidiaries (of any of them) or their respective members (or any of them) as the case may be

and, following the service upon it of written notice from the Members (or either of them) and/or CCURV and/or any of the CCURV Subsidiaries (of any of them) or their respective members (of any of them) as the case may be informing it that this is the case, it fails to remedy or change the matter, event or circumstance which has caused such serious disrepute or material adverse publicity (as the case may be) within 20 Business Days of the date of service of such notice; and/or

- 11.3.8 the Manager failing to maintain any part of the Insurance Cover to the level, scope and term set out in clause 14.3 so long as available from reputable insurers in the UK insurance market or in the case of an interruption, failing to reinstate such insurance within 20 Business Days of the date of service of such notice.
- 11.4 On a termination of this Agreement pursuant to this clause 11 CCURV shall be entitled to engage a third party development and property manager for the Property Portfolio.
- 11.5 Upon any termination of this Agreement the Manager shall take immediate action to wind-up the Services or, on the reasonable instruction of CCURV, to hand over the Services and any relevant information (including any Confidential



Information) to any third party development and property manager engaged by CCURV in an orderly and timely manner when CCURV has appointed a third party development and property manager and with all reasonable speed and economy and the Manager shall cause to be delivered to CCURV all Confidential Information, relevant documents, records, information, data, drawings, specifications, calculations, and other materials under its control and relating to the Property Portfolio (whether in the course of preparation or completed) including all copies thereof (whether electronic or otherwise).

11.6 Termination of this Agreement for any reason whatsoever shall be without prejudice to the accrued rights or claims of either party hereto in relation to any act or omission of the other prior to such termination.

11.7 Notwithstanding the termination of this Agreement, the provisions of this Agreement shall continue to bind each party insofar as and so long as may be necessary to give effect to their respective rights and obligations hereunder.

## 12. **CORPORATE POWERS AND OTHER UNDERTAKINGS AND WARRANTIES**

12.1 Each of the parties hereby represents and warrants to the other as follows:

12.1.1 that it has full corporate power and has taken all necessary corporate action to enable it effectively to enter into and perform its obligations under this Agreement;

12.1.2 that this Agreement, when executed by all parties, will create obligations which are valid and binding on it, and enforceable in accordance with their terms; and

12.1.3 it does not require the consent, approval or authority of any other persons to enter into or perform its obligations under this Agreement and its entry into and performance of this Agreement will not constitute any breach of or default under any contractual, governmental or public obligation binding upon it as at the date of this Agreement.

12.2 The Manager hereby represents and warrants to CCURV that it shall not, and shall use all reasonable endeavours to procure that any party appointed pursuant to clause 5 shall not, knowingly do or omit to do, anything in relation to the provision of the Services or in the course of its or their activities, which may bring the standing of CCURV or any of the Members and/or any of the CCURV Subsidiaries or their respective members into serious disrepute or attract material adverse publicity (other than through the proper performance of its obligations under this Agreement) to CCURV or any of the Members and/or any of the CCURV Subsidiaries or their respective members.

## 13. **DISPUTES**

13.1 If any dispute or difference arises in relation to this Agreement which is not resolved by the parties concerned within 20 Business Days of the dispute or difference first arising, it shall (where capable of determination by an expert) be determined by an expert agreed to be appointed by the parties, or, in default of agreement within 5 Business Days of a request to agree, appointed on the application of any party by the president or other appointing officer for the time being of:

- 13.1.1 in case of a dispute or difference relating to the calculation of any amounts requiring calculation under this Agreement or the manner of application of any sums payable pursuant to this Agreement, the Institute of Chartered Accountants in England and Wales;
- 13.1.2 in the case of a dispute or difference relating to a point of law or legal drafting, the Law Society in England and Wales; and
- 13.1.3 in any other case, the Royal Institute of Chartered Surveyors in England and Wales;

in each case, being a person of not less than 10 years' standing and with appropriate professional qualifications and so far as is reasonably practicable, recent experience relevant to the matter in dispute.

- 13.2 The expert shall act as an expert and not as an arbitrator and shall allow both parties to make representations and counter-representations within a reasonable period and shall give his decision (with or without reasons as the expert in his absolute discretion shall think fit) as soon as reasonably practicable.
- 13.3 The decision of the expert shall be notified to both parties and shall be final and binding upon them in the absence of manifest error or fraud and the costs of the determination shall be borne as the expert shall determine is fair and reasonable in all the circumstances.

#### 14. **INDEMNITY AND PROFESSIONAL INDEMNITY INSURANCE**

- 14.1 The Manager shall indemnify and keep indemnified CCURV and each CCURV Subsidiary against all and any Losses arising as a consequence of its fraud, negligence, reckless disregard, misconduct, bad faith and/or any breach by it of any of its obligations under this Agreement (or any fraud, negligence, reckless disregard, misconduct, bad faith and/or breach by any person to whom it delegates the performance of any of the Services and/or any of its obligations under this Agreement).
- 14.2 CCURV shall and shall procure that the CCURV Subsidiaries shall use reasonable endeavours to mitigate any claim made under this indemnity.
- 14.3 The Manager warrants that it has in force:
  - 14.3.1 [REDACTED]
  - 14.3.2 [REDACTED]
  - 14.3.3 [REDACTED]

[REDACTED]
- 14.4 Where the Insurance Cover is not available with reputable insurers in the UK market, the Manager shall maintain such similar insurance cover as it shall agree with CCURV to be acceptable to reflect Good Industry Practice at such time. In the event of a disagreement between the Manager and CCURV as to whether such available insurance cover is acceptable the dispute (and agreement as to appropriate action) shall be referred to be determined under clause 13.

- 14.5 The Manager shall notify CCURV immediately upon:
- 14.5.1 becoming or believing it may become unable to effect all or any part of the Insurance Cover and shall immediately explain the reasons for such inability;
  - 14.5.2 becoming aware of its Insurance Cover becoming void or voidable by reason of an act or omission of the Manager; or
  - 14.5.3 becoming aware that, as a result of an act or omission of the Manager, monies that would otherwise have been recoverable under such Insurance Cover are irrecoverable,

and, in such circumstances where the Manager fails to implement reasonable alternative cover, CCURV shall be entitled to determine this Agreement by notice in writing served on the Manager in accordance with clause 11.3.8 and the Manager shall be liable for any Losses arising out of any act or omission of the Manager which results in the Insurance Cover becoming void or voidable.

- 14.6 The Manager shall ensure that, prior to appointing any consultants pursuant to this Agreement, such consultants have insurance cover to a level and scope acceptable to CCURV and/or the relevant CCURV Subsidiary (as applicable) (acting reasonably).
- 14.7 The Manager shall produce for inspection by CCURV and/or each of the CCURV Subsidiaries upon request copies of all policies of insurance relating to the Insurance Cover together with evidence that the Insurance Cover is in full force and effect and all premiums have been paid.
- 14.8 The Manager shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay a claim under the Insurance Cover.
- 14.9 If the Manager is in breach of clause 14.2 above, CCURV or any of the CCURV Subsidiaries may pay any premiums required to keep such Insurance cover in force or itself procure such insurance and may in either case recover such amounts from the Manager upon written demand.
- 14.10 The Manager shall give CCURV notification within 30 days after any claim in excess of £100,000 on any of the insurance policies referred to in this clause accompanied by full details of the incident giving rise to the claim.
- 14.11 For the avoidance of doubt, the rights of CCURV and/or the CCURV Subsidiaries (or any of them) in respect of claims for any Losses pursuant to this clause shall survive the termination of this Agreement.

## 15. **INTELLECTUAL PROPERTY**

- 15.1 For the purpose of this Agreement, "Intellectual Property" shall mean all inventions (whether patentable or not) patents, utility models, designs (both registered or unregistered), copyright, trade and service marks (both registered and unregistered) together with all rights to the grant of and applications for the same and including all similar or analogous rights throughout the world and all future rights of such nature.

- 15.2 In consideration of the payment of one pound (£1.00) receipt of which the Manager hereby acknowledges:
- 15.2.1 if the Manager makes or participates in making any invention or any design (whether registerable or not) or any copyright work in connection with the provision of the Services the Manager shall disclose such invention, design or work to CCURV immediately. In the case of such an invention the Manager shall give CCURV full particulars of the invention together with all information, data, drawings and models relating to the invention and, in the case of designs and copyright works, a copy of all such designs and works;
  - 15.2.2 all rights in Intellectual Property which may be created by the Manager in the course of the provision of the Services to CCURV shall be the sole and exclusive property of CCURV and the Manager hereby assigns all such Intellectual Property to CCURV by way of present and future assignment with full title guarantee;
  - 15.2.3 in the case of registerable rights the Manager shall, if requested by CCURV, execute all documents and do all things which may be necessary or desirable for obtaining the best possible registerable position in territories specified by CCURV, and in respect of all Intellectual Property the Manager shall execute all documents and do all such things as may be necessary or desirable for perfecting assignment of Intellectual Property under clause 15.2.2 above; and
  - 15.2.4 the Manager hereby irrevocably appoints CCURV to be its attorney in its name and on its behalf to sign and execute any instrument or do anything and generally to use its name for the purpose of giving to CCURV the full benefit of the provisions of this clause 15 and in favour of any third party a certificate in writing signed by any director or the secretary of CCURV that any instrument or act falls within the authority conferred by this clause 15 shall be conclusive evidence that such is the case.
- 15.3 The Manager shall procure that the provisions of clauses 15.2.1 to 15.2.4 are replicated mutatis mutandis in its contracts with its sub-contractors and sub-consultants so that references to "CCURV" are to the Manager and references to "the Manager" are to the relevant sub-contractor/sub-consultant.
- 15.4 In consideration of the payment of one pound (£1.00) by CCURV to the Manager receipt of which the Manager hereby acknowledges, all rights of the Manager in Intellectual Property which is and/or may be created by such sub-contractor/sub-consultant and assigned to the Manager pursuant to its sub-contracts in accordance with clause 15.3 shall be in turn assigned by the Manager to CCURV by way of present and future assignment with full title guarantee and the Manager will execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of CCURV be necessary or desirable to vest the Intellectual Property rights in, and to register them in, the name of CCURV.

## 16. **DATA PROTECTION**

- 16.1 The Manager shall ensure that:

- 16.1.1 it has all appropriate regulations licences and authorities required under the Data Protection Act 1984 or the Data Protection Act 1998, as applicable (each the "Relevant DP Act") to enable it to perform its obligations under this Agreement; and
- 16.1.2 it obtains and processes personal data (within the meaning of the Relevant DP Act) in accordance with the data protection principles under the Relevant DP Act and generally in accordance with such Act.

## **17. NOTICES**

- 17.1 Any notice to a party under this Agreement shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post or prepaid recorded delivery to the address of the party set out on page 1 of this Agreement or as otherwise notified in writing from time to time copies of all notices shall be sent by e-mail to each party (to such e-mail address as shall be notified from time to time by the parties to each other).
- 17.2 A notice shall be deemed to have been served:
  - 17.2.1 at the time of delivery if delivered personally;
  - 17.2.2 48 hours after posting in the case of an address in the United Kingdom and 96 hours after posting for any other address.
- 17.3 In proving service it will be sufficient to prove:
  - 17.3.1 in the case of personal service, that it was handed to the party or delivered to or left in an appropriate place for receipt of letters at its address;
  - 17.3.2 in the case of a letter sent by post, that the letter was properly addressed, stamped and posted.
- 17.4 A party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.
- 17.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

## **18. VALUE ADDED TAX**

- 18.1 Any payment under this Agreement is exclusive of Value Added Tax and where any consideration is payable for any supply under this Agreement the party paying such consideration shall, in addition, pay valid Value Added Tax on such consideration
- 18.2 Where Value Added Tax is payable on any supply under this Agreement the party making such supply shall provide to the party providing the consideration a valid Value Added Tax invoice.

**19. GENERAL PROVISIONS**

- 19.1 The Manager shall not be deemed to be in breach of any provision of this Agreement and shall not be otherwise liable to CCURV for any failure or delay in the performance of this Agreement if such failure to delay is due to an act of God, war, fire, flood, tempest and/or national emergencies.
- 19.2 Nothing in this Agreement constitutes a partnership or a joint venture between CCURV and the Manager.
- 19.3 The rights, powers and remedies conferred on any party by this Agreement and remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.
- 19.4 Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- 19.5 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.
- 19.6 Any additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representatives of CCURV and the Manager. This Agreement supersedes any previous agreements or arrangements between the parties in respect of the Services and represents the entire understanding between the parties in relation thereto.
- 19.7 This Agreement may be executed in the form of two or more counterparts, each executed by one or more of the parties but, taken together, executed by all and, provided that all parties shall so enter the Agreement, each of the executed counterparts shall be deemed to be an original but, taken together, they shall constitute one document.
- 19.8 Each CCURV Subsidiary shall have the right to enforce the provisions of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Third Parties Act"). Except as stated in this clause a person who is not party to this Agreement shall have no right under the Third Parties Act to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Third Parties Act.
- 19.9 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 19.10 The Parties agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and submit to the jurisdiction of those courts.

**IN WITNESS** hereof the parties hereto have executed this Agreement as a deed on the day and year first written above.

## **SCHEDULE 1**

### **Services and Key Performance Indicators**

The Manager shall perform the following services for CCURV on the terms and conditions set out in this Agreement, including, for the avoidance of doubt, this Schedule but subject always to the provisions of Clause 19.1.

Where a KPI or timescale for delivery of a Service is not specified the KPI or timescale shall be deemed to be such KPI or timescale as would be in accordance with Good Industry Practice having regard to any matter outside the reasonable control of the Manager.

In the event that the provisions of this Schedule and the Delegation Policy conflict, the provisions of the Delegation Policy shall prevail.

References in this Schedule to the Manager providing the Services and/or information with respect to "CCURV" also includes providing such Services to CCURV Subsidiaries (as the context may permit) such that the Manager is required to provide such Services and information to CCURV and the CCURV Subsidiaries.

For the avoidance of doubt, fees and costs in relation to the project management of the New Council Property shall form part of the Fees.

### **SERVICES IN RESPECT OF THE WHOLE PROPERTY PORTFOLIO**

#### **1. Strategy and General**

- 1.1 Providing progress reports on the Manager's activities to CCURV. *(KPI - Progress reports to be provided in an agreed format and contents to be provided to CCURV no later than 5 Business Days prior to the relevant Partnership Board meeting and within 5 Business Days of a request from CCURV)*
- 1.2 Providing presentations regarding CCURV activity at Partnership Board meetings of CCURV.
- 1.3 Maintaining the CCURV cashflow model. *(KPI - The currency of the CCURV cashflow model must be maintained at all times and be available for inspection at 24 hours' notice from CCURV)*
- 1.4 Preparing quarterly (or otherwise with such frequency as may be agreed with CCURV from time to time) update reports comprising the Quarterly Report Contents (in accordance with paragraph 3.2) and attending Partnership Board meetings of CCURV. *(KPI - Quarterly reports to be completed no later than 10 Business Days of the end of each Quarter and available to CCURV to discharge its obligations in clause 15 of the Members' Agreement and available for Representatives on the Partnership Board at least 5 Business Days in advance of the relevant Partnership Board meeting.)*
- 1.5 Providing operational management accounting services and providing accounting detail to CCURV and the Members. *(KPI - The currency of the operational management accounting services must be maintained at all times and available for inspection at 24 hours notice on request from CCURV)*

- 1.6 Undertaking day-to-day operational management of CCURV, with authority for operational expenditure as agreed with CCURV.
  - 1.7 Filing any notice on behalf of CCURV required to be delivered to the Registrar of Companies in England and Wales in connection with CCURV.
  - 1.8 Liaising regarding capital allowance claims, if required (provided that the fees and costs of any tax consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8).
  - 1.9 Recommending partnership strategy to CCURV. *(KPI - The partnership strategy will be reviewed as part of the quarterly reports to CCURV in accordance with paragraph 1.4, including at least one full strategic review annually.)*
  - 1.10 Referring Authority Matters to CCURV.
  - 1.11 Complying with any policies adopted by CCURV from time to time. *(KPI - Compliance with CCURV Policies will be maintained at all times)*
  - 1.12 Providing such information as may be required to enable the Council to report outputs as required from time to time by statutory requirements or similar governmental requirements placed upon it. *(KPI - All reasonable requests from CCURV should be completed within 5 Business days of request. In cases where more time is required due to the information not being readily available then a target of not more than 10 Business Days should be assumed.)*
  - 1.13 Providing any necessary legal and tax advice required by CCURV (provided that the fees and costs of external tax consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8).
2. **Sales**
- 2.1 Agreeing with CCURV disposals of any property owned by CCURV or over which CCURV has an interest.
  - 2.2 Appointing sales and letting agents (Sales and Letting Agents) to handle negotiations with potential purchasers and tenants on behalf of CCURV and to ensure the best price for CCURV in accordance with parameters agreed with CCURV. *(KPI - The deployment of the necessary resources to undertake an effective sales strategy in accordance with the parameters agreed with CCURV and set out in the Business Plans.)*
  - 2.3 Monitoring of successful bids through to completion.
  - 2.4 Advising throughout the sale process on the most effective methods to achieve the best price reasonably obtainable having regard to the Sales and Letting Agents' advice to CCURV.
  - 2.5 Monitoring and assisting solicitors in the preparation of any pre-contract sale enquiries and the negotiation of contracts and completion documents.



- 2.6 Monitoring and assisting the appointed Sales and Letting Agents in answering all property questions raised by prospective purchasers and tenants.
- 2.7 Liaising with and assisting the appointed Sales and Letting Agents in the preparation of sales particulars, sales brochures and information necessary for the same.

Provided that the fees and costs of Sales and Letting Agents fees appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

### 3. Reporting

- 3.1 For each month, as soon as possible after the end of such month and no later than 5 Business Days prior to the date upon which CCURV shall be required to make available such information to the Members in accordance with the Members' Agreement, providing:
  - 3.1.1 management accounts for CCURV in such form as may be agreed between CCURV and the Manager from time to time, together with a commentary explaining any material variances; and
  - 3.1.2 a statement of the Properties and other property and assets of CCURV, together with a brief commentary on the progress of each Property Business Plan for the relevant month.
- 3.2 For each Quarter, as soon as possible after the end of such Quarter and no later than 5 Business Days prior to the date upon which CCURV shall be required to make available such information to the Members in accordance with the Members' Agreement, providing reports to CCURV comprising the Quarterly Report Contents for the relevant Quarter in a timely manner.
- 3.3 For each Accounting Period, as soon as possible after the end of each Accounting Period, arranging a Valuer's valuation of each of the Properties as at the end of the relevant Accounting Period and sending such valuation report to CCURV provided that the fees and costs of the Valuer appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8. *(KPI - Valuer's report to be available no later than 10 Business Days after the end of each Accounting Period)*
- 3.4 Preparing and sending to the Members in a timely fashion all such other information and details as shall reasonably be required to satisfy any statutory requirements or other Government requirements or similar bodies as shall be notified to CCURV by the Council and/or JLPDC from time to time or to satisfy any requirement of a third party lender. *(KPI - All reasonable requests should be completed within 5 Business Days of a request by CCURV. In cases where more time is required due to the information not being readily available then a target of not more than 10 Business Days should be assumed.)*
- 3.5 Assisting CCURV to prepare reports, by providing information which will include but not be limited to:

- 3.5.1 contributing as reasonably required by CCURV in respect of the annual report and accounts for CCURV; and
- 3.5.2 providing such information and reporting as CCURV shall reasonably require to allow them to fulfil their obligations and make informed decisions *(KPI - All reasonable requests should be completed within 5 Business Days of a request by CCURV. In cases where more time is required due to the information not being readily available then a target of not more than 10 Business Days should be assumed)*
- 3.6 Subject to the Authority Matters, checking and signing off all invoices payable by CCURV, and if correct sending them to CCURV for payment.
- 3.7 Procuring the preparation, maintenance and audit of accounting books and records for CCURV, each CCURV Subsidiary and the Nominee and in accordance with clauses 4.5.3.4, 4.5.3.5, 15.1.1 and 15.1.2 and the principles set out in clause 4.5.3.6 of the Members' Agreement so as to enable CCURV to comply with its obligations under the Members' Agreement *(KPI - to be available in sufficient time to enable CCURV to comply with its obligations under the Members' Agreement)*.
- 3.8 Procuring on behalf of CCURV that all filing and reporting obligations of CCURV set out in the Members' Agreement are undertaken and complied with. *(KPI - to be available in sufficient time to enable CCURV to comply with its obligations under the Members' Agreement)*
- 4. **Business Plan**
- 4.1 Producing the Business Plans in accordance with the Business Plan Criteria on an annual basis with a half yearly review/update and providing such Business Plan to CCURV for its approval. *(KPI - Any annual or half yearly reviews of the Business Plans should be completed within 15 Business Days of the relevant period end and be available for CCURV upon request and at least 5 Business Days prior to the next Partnership Board meeting)*
- 4.2 Procuring the provision to CCURV of a financial model and updating it in line with the Business Plan on a half yearly basis and for actual expenditure on a quarterly basis *(KPI - The currency of the financial model must be maintained at all times with updating in line with the Business Plan on a half yearly basis and for actual expenditure on a quarterly basis)*

## **SERVICES IN RESPECT OF THE DEVELOPMENT PROPERTIES ONLY**

### **5. Development Opportunities**

- 5.1 The Manager will undertake the following stages in relation to development opportunities. These include not only the Initial Development Properties but also future opportunities whether supplied by the Council or other sources. The proposals for the Initial Development Properties, will be aligned to the proposals set out in the relevant Business Plans and will reflect the work already completed.
- 5.2 Stage 1 – Project Appraisal (“Stage 1 Project Appraisal”)
  - 5.2.1 Identifying development and trading opportunities with a reasonable prospect of enabling CCURV to achieve the outputs and milestones set

out in the relevant Business Plan through discussion with property agents, master planners and architects, consultants, developers, land owners, investors, government bodies, and other property consultants.

- 5.2.2 Preparing a Stage 1 Project Appraisal report including: location plan and outline scheme drawings, review of existing site and/or building survey reports (if any and if available), undertaking initial development appraisal, outlining heads of terms proposed with any joint venture partner (as relevant), including an estimation of the site acquisition price and assessing risks of achieving funding commitment (i.e. abortive costs risks).
- 5.2.3 Creating a strategy plan relating to the development comprising a planning and environmental strategy programme, proposals on phasing and a letting and sales strategy prepared by the appointed Sales and Letting Agents and submitting such strategy plan to CCURV in the form of a brief report.
- 5.2.4 Undertaking the initial appointment, and co-ordination, on behalf of CCURV of architects, compulsory purchase order consultants (CPO Consultants), planning consultants and such other specialist consultants and contractors reasonably required to finalise design or specifications (in accordance with parameters agreed with CCURV) including agreeing the outline terms of appointment by way of letter of appointment Provided That the Manager shall be responsible for the provision to CCURV of all residential consultancy and development services (which shall be included within the Fees) and provided further that the fees and costs of any consultants or contractors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 5.2.5 To prepare the design brief for master planner (instructing the detailed design architect and or securing detailed planning advice on behalf of CCURV where appropriate), and in doing so seeking to adhere to the principles of high quality design as set out in the Final Report of the Urban Task Force: "Towards An Urban Renaissance" or such other guidance as may be agreed with CCURV from time to time.
- 5.2.6 Without prejudice to clause 4.2.2, exercising all the skill and care to be expected of a properly qualified competent and experienced property and development manager so as to enable CCURV to meet the Readiness for Development Criteria for the New Council Property and each Initial Development Property by the relevant Long Stop Date.
- 5.2.7 Before proceeding to undertake the services of the Stage 2 Project Appraisal, obtaining written confirmation from CCURV that it approves the Stage 1 Project Appraisal (the "Stage 1 Project Appraisal Sign Off").

*(KPI - The achievement of "Stage 1 Project Appraisal Sign-off" within the timeframe and parameters as set out in the Business Plans and in doing so meeting the criteria as set out in paragraphs 5.2.1 to 5.2.7)*

5.3 Stage 2 – Project Appraisal of development opportunity & non-binding funding / development proposal (“Stage 2 Project Appraisal”)

- 5.3.1 Using reasonable endeavours to facilitate CCURV to become appointed as the “chosen partner” for a property acquisition or development.
- 5.3.2 Local authority/stakeholder co-ordination, including: co-ordinating and (if appropriate in the reasonable opinion of the Manager) leading all discussions with public sector bodies whose support is considered necessary for a project to proceed, including liaising with the Council, GLA and central or other government bodies.
- 5.3.3 Instructing the CPO Consultants to submit applications and liaise with public sector bodies on behalf of CCURV where compulsory purchase orders are to be utilised to assemble land ownership for a proposed development.
- 5.3.4 Making grant applications, including leading all discussions with public sector bodies and using reasonable endeavours to negotiate detailed terms to secure financial assistance which the Manager believes is available for the relevant property, including applications, whether solely or jointly with public sector bodies, for: Single Regeneration Budget, European Regional Development Funding or English Partnerships and National Lottery funding.
- 5.3.5 Instructing on behalf of CCURV planning consultants to co-ordinate and (where appropriate) lead all discussions with local planners, GLA, GOL, English Heritage and other relevant bodies; submit applications (after a development site has been legally secured whether by an “exclusive option” or through entering an un/conditional contract for land acquisition) for outline planning permission, detailed planning permission and listed building consent (where appropriate); and use reasonable endeavours to negotiate and agree terms (after prior approval from CCURV) of section 106 agreements (where appropriate) Provided that the fees and costs of planning consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 5.3.6 Submitting a formal recommendation to CCURV on which CCURV will base its decision as to whether to grant consent in principle for the Manager to proceed to a binding commitment, assuming terms are in accordance with the Stage 2 Project Appraisal. Such recommendation should include, where appropriate, a request for approval of the Stage 2 Project Appraisal in the form of a short report that includes consultants’ advice (where appropriate) covering the following matters:
  - 5.3.6.1 project description;
  - 5.3.6.2 recommendations as to the identity of the contractor and the professional team (or means of appointing the same);
  - 5.3.6.3 the proposed method of procurement to be adopted in connection with the relevant property;

- 5.3.6.4 assessment (and where possible, market evidence) of market supply and demand for all uses of the completed development;
  - 5.3.6.5 open market rental value (and where possible, market evidence) or sales price (and where possible, market evidence) for all uses of the completed development; and
  - 5.3.6.6 a cashflow assessment of anticipated internal rate of return for each key element of the development.
- 5.3.7 Where a tender is required, providing to CCURV:
- 5.3.7.1 proposals as to objectives, priorities and a document for selection criteria with particular reference to programme, specification, financial status, ability to perform the function of contractor and past record;
  - 5.3.7.2 procedures for interviews, valuation and taking up references;
  - 5.3.7.3 information as to the desirability of obtaining decennial liability insurance;
  - 5.3.7.4 information regarding professional indemnity insurance and works insurance levels, including amount insured, identity of insurers and relevant conditions;
  - 5.3.7.5 details of proposed building programme, including critical decision and milestone dates;
  - 5.3.7.6 details of proposed net internal areas;
  - 5.3.7.7 recommendations concerning suitable parties to be appointed to provide services in connection with the monitoring of the development;
  - 5.3.7.8 assessments/estimates of development costs, capital commitment required by CCURV and likely timing of capital expenditure;
  - 5.3.7.9 details of profitability of the project, including estimates of:
    - (a) profit on cost;
    - (b) profit erosion period;
    - (c) void rent cover;
    - (d) development yield;
    - (e) key project risks perceived by the Manager and scenario testing of the key variables; and
    - (f) estimated costs of progressing to Stage 3.

- 5.3.8 Providing details of such other matters as in the opinion of the Manager are relevant to consideration of the proposal or as CCURV may reasonably require.
- 5.3.9 Before proceeding to undertake Stage 3 the Manager will obtain written confirmation from CCURV that they approve the Stage 2 Project Appraisal (the "Stage 2 Project Appraisal Sign Off").

*(KPI - achievement of "Stage 2 Project Appraisal Sign-off" within the timeframe and parameters as set out in the Business Plans and in doing so meeting the criteria as set out in paragraphs 5.3.1 to 5.3.9)*

#### 5.4 Stage 3 – Purchase of land and appointment of development team

- 5.4.1 Providing information regarding such other matters as in the opinion of the Manager are relevant to consideration of the proposal or as CCURV may reasonably require.
- 5.4.2 Identifying material changes to the Stage 2 Project Appraisal and seeking CCURV's approval to recommended changes where they increase project costs or risk.
- 5.4.3 Instructing building surveyors to carry out a survey of the relevant property on behalf of CCURV provided that the fees and costs of building surveyors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 5.4.4 Instituting such soil tests and environmental surveys as the Manager shall be advised may be appropriate or as CCURV may reasonably direct provided that any fees and costs of third party consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 5.4.5 Instituting a phase 1 environmental survey, being a desktop survey detailing the historical and existing land uses of the property and adjoining and neighbouring land and a geological and hydro-geological report on the geological and hydro-geological conditions from available materials and a report of a site visit by an appropriately qualified environmental specialist together with commentary given the historical, geological and hydro-geological information available provided that the fees and costs of any third party consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 5.4.6 Instructing solicitors to investigate title and negotiate draft documentation on behalf of CCURV provided that any fees and costs of third party consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

- 5.4.7 Obtaining such further reports as CCURV may reasonably specify or which the Manager may recommend provided that any fees and costs of third party consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 5.4.8 Instructing letting agents to implement the letting strategy on behalf of CCURV provided that any fees and costs of third party consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 5.4.9 Co-ordinating/appointing relevant consultants on behalf of CCURV, including agreeing detailed terms of appointment, to be documented in a legally binding document prepared by CCURV's solicitors (appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service and whose fees and costs shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8).
- 5.4.10 Seeking to secure vacant possession of land after acquisition including, where appropriate, service of notices under the Landlord and Tenant Act 1954 Part II.
- 5.4.11 Purchasing land and entering into a development agreement as approved by CCURV.
- 5.4.12 Before proceeding to undertake the services of Stage 4, the Manager will obtain written confirmation from CCURV that it is satisfied that all services under Stage 3 have been satisfactorily completed (the "Stage 3 Project Appraisal Sign Off").

*(KPI - The achievement of "Stage 3 Project Appraisal Sign-off" within the timeframe and parameters as set out in the individual Business Plans and in doing so meeting the criteria as set out in paragraphs 5.4.1 to 5.4.12)*

## 5.5 Stage 4 – Submission of planning applications followed by development construction

- 5.5.1 Agreeing final detailed development appraisal with CCURV set out in a summary report, outlining: final agreed construction price(s) (to be a maximum guaranteed price contract unless agreed between the Manager and CCURV to be otherwise), final agreed project team costs, final gross and net building areas, other costs (e.g. planning gain, section 106 agreements, clawback by grant providers, etc.), and any amendments to the Stage 2 Project Appraisal that may significantly affect the development profit or overall internal rate of return.
- 5.5.2 Having responsibility for the management of all project consultants during the construction phase, including attending project team meetings at least monthly or more frequently, whether the project consultants are managed directly by the Manager or through the appointment of a project manager provided that any fees and costs of third party consultants appointed pursuant to this paragraph and

clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

- 5.5.3 Exercising its status as a property and development manager in assisting CCURV to lead and co-ordinate design control throughout master planning and detailed planning stages and also during construction where revisions are made to original designs.
- 5.5.4 Devising, co-ordinating and implementing marketing strategy following consultation with CCURV.

(the "Stage 4 Project Appraisal Sign Off")

*(KPI - The achievement of "Stage 4 Project Appraisal Sign-off" within the timeframe and parameters as set out in the individual Business Plans and in doing so meeting the criteria as set out in paragraphs 5.5.1 to 5.5.4.)*

## **SERVICES IN RESPECT OF THE INVESTMENT/TRADING PROPERTIES ONLY**

### **6. Property Management Services**

To undertake and where reasonably required engage letting agents and procure valuation advice on behalf of CCURV to undertake the following services:

#### **6.1 New Lettings**

- 6.1.1 The preparation and analysis of market information.
- 6.1.2 The preparation of recommendations for strategy on new lettings, submission and discussion of the same with CCURV or reviewing and making recommendations in relation to any such information prepared by agents.
- 6.1.3 The preparation of draft material for brochures and advertisements.
- 6.1.4 The preparation of a marketing plan timetable and budget for approval by CCURV.
- 6.1.5 Implementation of marketing plan in accordance with timetable and budget subject to approval by CCURV.
- 6.1.6 Setting up and maintaining a database for monitoring and progressing enquiries.
- 6.1.7 Prompt response to enquiries and requests for viewings.
- 6.1.8 Prompt dispatch of Heads of Terms/offer letters to potential tenants.
- 6.1.9 Negotiation with potential tenants.
- 6.1.10 The vetting of potential tenants.
- 6.1.11 Supervising, monitoring and assisting solicitors in the preparation of draft Occupational Lease and pre-lease enquiries.



- 6.1.12 The in house preparation of standard tenancy agreements and associated documents.
- 6.1.13 The answering of all questions relating to the management of the property raised by prospective tenants.
- 6.1.14 Reporting on and recommending any terms for lettings negotiated with prospective tenants.
- 6.1.15 Monitoring successful applications through to completion.
- 6.1.16 Advise throughout the letting programme on the most effective methods to obtain the best tenant reasonably possible at the best rent reasonably possible

Provided that the fees and costs of such letting agents and valuation advice appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

*(KPI - The deployment of the necessary resources to undertake the effective management of new lettings in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.1.1 to 6.1.16)*

## 6.2 Lease Renewals

- 6.2.1 The preparation and analysis of market information.
- 6.2.2 The preparation, submission and discussion of the strategy with CCURV before tenant approaches.
- 6.2.3 Arranging for the timely service of notices (by solicitors if appropriate).
- 6.2.4 Conducting negotiations in accordance with the Delegation Policy.
- 6.2.5 Arranging for application by solicitors to Court for interim rent awards if necessary provided that the fees and costs of such solicitors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 6.2.6 The provision of information to and negotiations with third parties as instructed.
- 6.2.7 The preparation of all necessary evidence and submission of the lease renewal to Court for determination where necessary.
- 6.2.8 Instructions to solicitors to prepare the appropriate lease upon the terms agreed by CCURV and monitoring the Occupational Lease through to completion provided that the fees and costs of such solicitors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

6.2.9 The in house preparation of tenancy agreements and associated documents.

6.2.10 Reporting on and recommending the terms of any lease renewals which are proposed.

*(KPI - The deployment of the necessary resources to undertake the effective management of lease renewals in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.2.1 to 6.2.10)*

### 6.3 Rent Reviews

6.3.1 Preparation and analysis of market evidence.

6.3.2 Preparation, submission and discussion of strategy with CCURV before tenant approaches.

6.3.3 Arranging for the timely service of notices.

6.3.4 Conducting negotiations in accordance with the Delegation Policy.

6.3.5 Arranging for applications to the Royal Institution of Chartered Surveyors or other third parties for the appointment of an expert/arbitrator if necessary.

6.3.6 The provision of information to and negotiations with third parties as instructed by CCURV.

6.3.7 The instruction of solicitors to prepare memoranda (or preparation in house where appropriate) when rent agreed and monitoring the signature and exchange of such memoranda.

6.3.8 The recovery of back rent from the tenant.

Provided that the fees and costs of solicitors and rent review surveyors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

*(KPI - The deployment of the necessary resources to undertake the effective management of rent reviews in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.3.1 to 6.3.8)*

### 6.4 Rent Review Referrals to Expert/Arbitrator

6.4.1 The preparation of all necessary evidence and submissions to the expert/arbitrator.

6.4.2 The consideration of tenants' submissions.

6.4.3 The preparation, agreement and submission of counter submissions to the expert/arbitrator.

- 6.4.4 The preparation of memoranda when the rent is agreed or determined and monitoring the signature and exchange of such memoranda.
- 6.4.5 The recovery of back rent from the tenant.

Provided that the fees and costs of solicitors and rent review surveyors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

*(KPI - The deployment of the necessary resources to undertake the effective management of rent review referrals to expert/arbitrator in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.4.1 to 6.4.5.)*

## 6.5 Surrenders/Terminations

- 6.5.1 Reporting on and making recommendations to CCURV on proposals for surrender or termination of Occupational Lease.
- 6.5.2 Arranging for service by solicitors of all statutory and other notices necessary or desirable in relation to the termination or surrender of Occupational Lease provided that the fees and costs of such solicitors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 6.5.3 Negotiating and recommending to CCURV terms for surrender or termination of Occupational Lease.
- 6.5.4 Supervising the surrender or termination of Occupational Lease including liaising with solicitors provided that the fees and costs of such solicitors appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

*(KPI - The deployment of the necessary resources to undertake the effective management of surrenders and terminations in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.5.1 to 6.5.4.)*

## 6.6 Refurbishment

- 6.6.1 Formulating proposals for the refurbishment of the Properties or estates including financial appraisals, cashflow forecasts and design specifications.
- 6.6.2 Submitting proposals for approval to CCURV (subject to the Delegation Policy).
- 6.6.3 Making recommendations on the selection and appointment of architects, surveyors and other members of the professional team.

- 6.6.4 Establishing a programme and budget for the refurbishment of the Properties.
- 6.6.5 Implementing approved refurbishment scheme.
- 6.6.6 Monitoring and reporting on variations in design timetable or cost of any refurbishment throughout the period of refurbishment.
- 6.6.7 Co-ordinating and managing the professional team throughout any refurbishment provided that the costs and fees of members of the professional team appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Services in this paragraph 6.6.7 shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 6.6.8 Arranging for all necessary planning permissions, building warrants and other authorisations in relation to any refurbishment of the Properties.
- 6.6.9 Making recommendations on negotiating and agreeing the main contract for any refurbishment.
- 6.6.10 Monitoring and reporting on any necessary sub-contracts.
- 6.6.11 Overseeing, reporting on and taking any appropriate action in connection with the carrying out of any refurbishment works in accordance with the specifications, appraisals, cashflows and contracts.
- 6.6.12 Arranging for the certification by architects or surveyors of the completion of the refurbishment works and monitoring and arranging for any necessary remedial works.

*(KPI - deployment of the necessary resources to undertake the effective management of refurbishment in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.6.1 to 6.6.12.)*

## 6.7 Financial Services

### 6.7.1 *Billing and Collection*

- (a) Setting up effective procedures for the timely collection of rents by various methods including direct debit and standing order.
- (b) Efficient and timely demand of rent due to CCURV.
- (c) Setting up and maintenance of full accounting system.
- (d) Delivery of receipts for rent paid when required.
- (e) Reconciliation of payments and account queries.
- (f) Monitoring payment performance

### 6.7.2 *Credit Control*

- (g) Setting up and implementing procedures for credit control.
- (h) Instructing and supervising any action necessary in connection with non-payment.
- (i) Dealing with liquidators, administrators and receivers as necessary.
- (j) Implementing all write offs of irrecoverable debts.

#### 6.7.3 *Service Charges*

- (k) Efficient and timely demand of all various service charges due under the Occupational Lease and Tenancy Agreements.
- (l) Timely preparation of annual budgets for CCURV approval.
- (m) Setting up and maintenance of full service charge accounting system.
- (n) Annual reconciliation of service charge accounts.
- (o) Reconciliation of payments and account queries.
- (p) Monitoring payment performance.
- (q) Chasing arrears of service charges.
- (r) Instructing and supervising any action necessary in connection with non-payment.
- (s) Provision of information and all necessary papers to enable auditors to certify the end of year service charge accounts in accordance with the terms of the Occupational Lease.

Provided that the fees and costs of any managing agents or other third parties appointed pursuant to this paragraph and clause 5 of this Agreement involved in providing the Services set out in paragraphs 6.7.1 – 6.7.3 shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

#### 6.7.4 *Insurance*

- (t) Ensure all policies relating to the portfolio generally and individual properties are in place.
- (u) Provision of information to brokers.
- (v) Receipt of premium breakdown from brokers.
- (w) Setting up and maintenance of full insurance accounting system.
- (x) Preparation and dispatch of demands based upon broker information.
- (y) Maintenance of insurance records and reporting to insurers as appropriate.
- (z) Reconciliation of payments and account queries.

- (aa) Monitoring payment performance.
- (bb) Chasing arrears of insurance rent or contributions due.
- (cc) Instructing and supervising any action necessary in connection with non-payment. Where such action requires legal action this shall be approved by CCURV.
- (dd) Receiving and processing insurance claims.
- (ee) Co-ordination and/or implementation of reinstatement work and professionals in the provision of necessary services.
- (ff) Receive, report upon (as appropriate) and when instructed process all complaints and disputes on insurances.
- (gg) Fully and promptly implement any requirements of the insurers/brokers including regular inspections of the Properties.
- (hh) Promptly advise tenants of any requirements of the insurers/brokers and monitor compliance.
- (ii) Advising the brokers of the correct sum insured for any new cases.
- (jj) Carry out annual uplift on sums insured (based on an appropriate index).
- (kk) Instruct and oversee three yearly external valuation of the sums insured.

Provided that the fees and costs of any insurance brokers, managing agents and other third parties appointed pursuant to this paragraph and clause 5 of this Agreement and involved in providing the Services set out in paragraph 6.7.4 shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

#### 6.7.5 *General Financial Services*

- (ll) To set up and maintain bank accounts for the portfolio in accordance with the requirements of the Royal Institution of Chartered Surveyors.
- (mm) To set up and maintain full and accurate books and records in relation to financial matters relating to the portfolio.
- (nn) To submit financial reports as required by CCURV.
- (oo) The administering of service charges to provide for prompt payment to all suppliers.

Provided that the fees and costs of any managing agents or other third parties appointed pursuant to this paragraph and clause 5 of this Agreement involved in providing the Services set out in paragraph 6.7.5 shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

*(KPI - The deployment of the necessary resources to undertake the effective management of financial services in accordance with the parameters agreed*

*with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.7.1 to 6.7.5. In doing so will:*

- *Ensure the robustness, completeness and currency of the accounting systems operated.*
- *Use Good Industry Practice in the management of cash flows.*
- *Use Good Industry Practice in the management of financial services.*
- *Use Good Industry Practice in the timing production of accounting reports for the Partnership Board, statutory bodies, auditors and other reasonable requests.*
- *Operate a robust internal control system.)*

## 6.8 Repair and Maintenance

- 6.8.1 Procure and monitor all necessary planned preventative maintenance contracts (PPM).
- 6.8.2 Fully maintain all common areas of premises in multiple occupation by implementing the service charge and using PPM and reactive maintenance as necessary.
- 6.8.3 Fully maintain all parts of properties which are not responsibility of tenants under their leases.
- 6.8.4 Fully maintain the common areas of estates.
- 6.8.5 Fully maintain and keep secure the vacant premises.
- 6.8.6 Preparation and monitoring of property maintenance schedules.
- 6.8.7 Monitoring and taking appropriate action to ensure that tenant's covenants in respect of repair and maintenance are observed.
- 6.8.8 Ensuring that CCURV's obligations in respect of repair and maintenance are observed.
- 6.8.9 Preparing specification for and obtaining tenders for repair and maintenance works to be carried out by CCURV.
- 6.8.10 Placing contracts for repair and maintenance.
- 6.8.11 Co-ordinating contracts for repair and maintenance.
- 6.8.12 Preparation of and implementation of property inspection timetable.
- 6.8.13 The preparation of Schedules of Condition/works to achieve lettings and monitoring observance by tenants where necessary.
- 6.8.14 The carrying out of all necessary statutory tests and inspections, including (but not limited to) fire drills, fire certificates, lift inspections, Legionella testing etc.

- 6.8.15 Ensure, insofar as is reasonably possible, CCURV's liability in respect of health and safety matters for the portfolio is either discharged or observed (as appropriate).
- 6.8.16 Promptly action any works necessary arising out of Notices served on CCURV in respect of the portfolio.
- 6.8.17 Set up and implement a procedure for reinstatement of units following occupation by tenants. This will include inspecting the premises, preparing or procuring a Schedule of Dilapidations, where necessary, service of the Schedule on the tenant, monitoring the tenant carrying out the works or negotiating a cash settlement and carrying out the works deemed necessary. Where necessary, to include taking legal action to recover monies, which will comprise the preparation of the case for submission to the Court and instructing and overseeing solicitors.

Provided that the fees and costs of any managing agents building surveyors, solicitors or other third parties appointed pursuant to this paragraph and clause 5 of this Agreement and involved in providing the Services set out in paragraph 6.8 shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

*(KPI - The deployment of the necessary resources to undertake the effective management of repair and maintenance services in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in paragraphs 6.8.1 to 6.8.17.)*

## 6.9 VAT

- 6.9.1 Where CCURV has elected to waive exemption from VAT submitting applications and tax receipts to the tenants, or tax invoices if CCURV so requires.

Provided that the fees and costs of any managing agents accountants, tax consultants or other third parties involved in providing this Service appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

## 6.10 Head Lease

- 6.10.1 Where CCURV interest in any Property is leasehold:

- 6.10.1.1 Advise CCURV generally from time to time of CCURV's responsibilities under the head Lease in consultation with CCURV's solicitors if appropriate and act accordingly.
- 6.10.1.2 Calculate and, subject to CCURV first providing the funds, arrange payments for any rents or other monies payable pursuant to the terms of the head Lease and advise on any breaches of covenant thereunder of which the Manager has actual knowledge and, subject to the necessary instructions, to take all steps to procure compliance with all such obligations. *(KPI - The robustness, completeness and currency of the accounting*



*systems for any rents or other monies payable pursuant to the terms of the head Occupational Lease will be maintained at all times.)*

Provided that the costs and fees of solicitors appointed pursuant to this paragraph and clause 5 of this Agreement and involved in providing this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

#### 6.11 General Management

- 6.11.1 Set up and maintain a comprehensive property and tenancy database.
- 6.11.2 Maintain a lease event diary and ensure timely service of all notices.
- 6.11.3 Retain copies of legal documents as provided by CCURV's appointed solicitors.
- 6.11.4 Organise provision of and (subject to receipt of sufficient monies) payment for building services including insurance rates, utility charges etc.
- 6.11.5 Ensure that all such building services are provided in compliance with CCURV's obligations under the Occupational Lease of the Properties.
- 6.11.6 Arrange for brief and supervise all technical and other staff including contractors, cleaners and engineers.
- 6.11.7 Receive and process all complaints, disputes and communications on all Occupational Leases and deal with general landlord and tenant matters.
- 6.11.8 Receive, report upon and process all applications for consents including consents to assign, sub-let and alter.
- 6.11.9 Report on and follow up (as required by CCURV) breaches of covenant by tenants or occupiers of the Properties.
- 6.11.10 Implement and supervise any necessary action in connection with such breaches of covenant (including legal action) when approved by CCURV.
- 6.11.11 Collect monies due from the tenants or occupiers of the Properties.
- 6.11.12 Deal with all rating matters in relation to the Properties including (as required by CCURV) making proposals or objections to the rating authorities and conducting appeals.
- 6.11.13 Ensure compliance with all statutory requirements and use reasonable endeavours to comply with all requirements of local or other competent authorities.
- 6.11.14 (Subject to receipt of sufficient monies) pay rent and other sums due to any superior landlord.

- 6.11.15 Endeavour to ensure compliance by CCURV with terms of any superior lease.
- 6.11.16 Liaise with and assist solicitors as appropriate.
- 6.11.17 Arrange and supervise security for the Properties as required in writing by CCURV.
- 6.11.18 Monitoring and assistance to solicitors in the preparation of any CPSE sale/acquisition enquiries.
- 6.11.19 Assistance in the answering of all property questions raised by prospective purchasers.
- 6.11.20 Liaise with and assist selling agents in the preparation of sales particulars, sales brochures and information necessary for the same.

Provided that the fees and costs of any managing agents or other third parties appointed pursuant to this paragraph and clause 5 of this Agreement and involved in providing the Services set out in paragraph 6.11 shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.

*(KPI - A general management system will be maintained in accordance with paragraphs 6.11.1 to 6.11.20 and in doing it will ensure:*

- *Robustness, completeness and currency of all records.*
- *Produce reports in a timely manner.*
- *Statutory compliance where applicable.)*

## **7. Asset Management Services**

### **7.1 Fund Strategy and Business Plan**

- 7.1.1 Recommending strategy to CCURV.
- 7.1.2 Preparing and submitting to CCURV the Business Plans once in each year for the following Accounting Period in accordance with paragraph 4. *(KPI - An updated Business Plan for the forthcoming Accounting Period shall be presented to CCURV upon request and to the Partnership Board in advance of their last meeting of the current Accounting Period.)*
- 7.1.3 In preparing the Business Plan each year the Manager shall consult with CCURV and have proper regard to its reasonable recommendations and requirements.

### **7.2 Disposals**

- 7.2.1 Identify prospective sales by way of preparation and analysis of market information.
- 7.2.2 Implementing disposal activity approved in the Business Plans and dealing with other disposal cases reactively that fall within the limits of the Delegation Policy.

- 7.2.3 The preparation of draft material for sales brochures.
- 7.2.4 Preparation of a marketing timetable and marketing budgets for approval.
- 7.2.5 Preparation of advertisements.
- 7.2.6 Negotiating and agreeing disposal terms with purchasers.  
  
Instructing lawyers and other consultants on behalf of CCURV as necessary provided that the fees and costs of such lawyers and other consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 7.2.7 Overseeing legal documentation and completing the transaction.
- 7.2.8 Handling of negotiations with potential purchasers to ensure the best price for CCURV is reasonably obtained.
- 7.2.9 Monitoring of successful bids through to completion.
- 7.2.10 Advising throughout the sales programme on the most effective methods to achieve the best price reasonably obtainable.

*(KPI - The deployment of the necessary resources to undertake the effective management of disposals in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in Paragraphs 7.2.1 to 7.2.10.)*

### 7.3 Investment Management

- 7.3.1 Identifying improvement and value enhancement opportunities.
- 7.3.2 Formulating proposals for the refurbishments including financial appraisals, cashflows, forecasts and design specifications.
- 7.3.3 Establishing a programme and budget and obtaining CCURV approval to all capital expenditure.
- 7.3.4 Instructing all consultants provided that the fees and costs of such consultants appointed pursuant to this paragraph and clause 5 of this Agreement in connection with this Service shall not form part of the Fees and shall be at the cost of CCURV or the relevant CCURV Subsidiary in accordance with clause 8.
- 7.3.5 Where building works are required:
  - 7.3.5.1 Tendering any works to be carried out;
  - 7.3.5.2 Instructing a building contractor and appointing a project manager to monitor the work;
  - 7.3.5.3 Arranging for all necessary planning permissions, warrants and other relevant authorisations;

7.3.5.4 Obtaining superior landlord's consents.

*(KPI - The deployment of the necessary resources to undertake an effective Investment Management in accordance with the parameters agreed with CCURV and set out in the Business Plans, and the criteria as set out in Paragraphs 7.3.1 to 7.3.5)*

## **SCHEDULE 2**

### **Business Plan Criteria**

#### **CCURV Business Plan**

##### **1. Operational Strategy:**

- corporate structure and governance
- asset management policy
- investment policy for the purchase of further development sites
- sustainability policy
- return on equity requirements and raising additional capital
- resourcing and management activities (including decision making)
- risk management and funding structure
- financial assumptions
- distribution policy and summary of distributions
- exit strategies

##### **2. Partnership statistics:**

- current gross asset value
- net asset value
- property yield (gross and net)
- Partnership level yields

##### **3. Funding strategy:**

- equity expenditure / drawdown profile
- debt requirement profile
- gearing strategy of the Partnership (including debt to asset ratio)
- debt strategy
- hedging strategy

##### **4. Performance forecasts:**

For the forthcoming accounting period, three accounting periods and five accounting periods and over the life of the Partnership, including forecasts:

- property level returns
- partnership level returns
- property level income returns
- partnership level income returns

##### **5. Financial information:**

- annual budgets
- expected 5-year profit and loss account
- expected 5-year balance sheet
- quarterly cash flow statements

##### **5. Consultation:**

Provide a schedule of information including, but not limited to:

- name of companies and groups involved in consultation
- lead individual contact details
- development site the consultation is in connection with
- comments and feedback
- details of further meetings planned

### **New Council Property Business Plan**

#### **1. Property details:**

- description of property
- site plan

#### **2. Scheme details:**

Probably provided in the form of a masterplan, including, without limitation:

- specification details
- acquisition strategy (if applicable)
- multiple tenants update (if applicable)
- flexible space options
- de-canting/temporary accommodation solutions
- utilities future proofing methodology
- town planning
- integration of facilities management proposals

#### **3. Development Plan:**

- property strategy for delivering scheme and achieving target returns
- target completion dates (set out in project plan format), including:
  - lead in time (including planning)
  - key milestones
  - construction start date
  - practical completion
- terms and conditions under which the Partnership will commit to delivery
- readiness for development criteria (including long stop dates by which such criteria must be met)
- exit strategy
- any other issues considered relevant to achieving the development objectives

#### **4. Financial Appraisal/Budget:**

- funding strategy
- target returns and gearing
- outline development appraisals, including:
  - total capex
  - total expected revenue (split by use)
  - third party land costs
  - construction costs
  - expected profit
- sensitivity analysis for each site

#### **5. Risk appraisal:**

- risk appraisal
- management and mitigation strategy

## **Property Business Plans**

### **1. Property details:**

- description of property
- site plan
- lease details (where applicable)
- lease expiry profile (where applicable)
- location summary (where applicable)
- occupier profile (where applicable)

### **2. Scheme details:**

Probably provided in the form of a masterplan, including, without limitation:

- split of uses
- quantum of development split by use
- phasing
- market synopsis
- town planning
- third party land issues

### **3. Development Plan:**

- property strategy for delivering scheme and achieving target returns
- target completion dates (set out in project plan format), including:
  - lead in time
  - key milestones
  - construction start date
  - practical completion
- terms and conditions under which the Partnership will commit to delivery and exit from the relevant development
- readiness for development criteria (including long stop dates by which such criteria must be met)
- exit strategy
- any other issues considered relevant to achieving the development objectives

### **4. Financial Appraisal/Budget:**

- target returns
- outline development appraisals, including:
  - total capex
  - total expected revenue (split by use)
  - third party land costs
  - construction costs
  - expected profit
- sensitivity analysis for each site
- gearing ratio

### **5. Risk appraisal:**

- risk appraisal
- management and mitigation strategy



## **SCHEDULE 3**

### **Resource Plan**

## **SCHEDULE 4**

### **Professional Services**

### **Professional Services**

### **Approved Consultants**

<b>Area</b>	<b>Consultant</b>
Legal	Denton Wilde Sapte
Housing partner	Gladedale Holdings Ltd (and members of the same group of companies)
Planning and CPO consultant	Indigo
Architects	EPR Architects
M&E and Structures	Faber Maunsell
Landscape	Chris Blandford Associates
Transport Analysis	WSP
Financial	Grant Thornton
Cost	AYH
Property / Commercial (including sales and letting agents, valuation advice, building surveyors, managing agents and rent review advice)	Knight Frank
Environment	BRE
Financial / Tax	BDO / Grant Thornton

## **SCHEDULE 5**

### **Fees**

The Fees payable in accordance with Clause 9 are as follows: -

1. The Development Property Fee for each Quarter during the subsistence of this Agreement [REDACTED];
2. The New Council Property Fee [REDACTED]:
  - 2.1 in the definition of Development Costs references to Property and Properties shall be deemed to refer to the New Council Property but paragraph (a) of the definition shall not apply;
  - 2.2 Devco shall have provided to CCURV a detailed breakdown of the Development Costs it has incurred in relation to and in accordance with its obligations under the New Council Property Direct Agreement; and
  - 2.3 any dispute as to the Development Costs which have been incurred by Devco shall be determined in accordance with clause 13.
3. The Development Property Fee is payable quarterly in arrears on the 10th Business Day following the end of each Quarter after the date of this Agreement.
4. In accordance with clause 9.3, the New Council Property Fee shall not become payable until the achievement of the New Council Property Readiness for Development Criteria by the relevant Long Stop Date (the "Trigger Date") and the first instalment of the New Council Property Fee shall be payable on the 10th Business Day following the end of the Quarter in which the Trigger Date occurs.

## SCHEDULE 6

### Indicative Insurance Cover

Advisor/Agent	Level of Professional Indemnity Insurance	of	Level of Public Liability Insurance	Level of Employers Liability Insurance
<b>Building Contractor</b>	<b>£20m Aggregate</b>		<b>N/A – will be provided by proposed project policy (which it is suggested should have a £50m limit)</b>	<b>£10m</b>
<b>Surveyor</b>	<b>£10m</b>		<b>£5m</b>	<b>£10m</b>
<b>Architect</b>	<b>£10m</b>		<b>£5m</b>	<b>£10m</b>
<b>Landscape Architect</b>	<b>£5m</b>		<b>£5m</b>	<b>£10m</b>
<b>Planner</b>	<b>£3m</b>		<b>£5m</b>	<b>£10m</b>
<b>Urban Designer/Town Planning</b>	<b>£5m</b>		<b>£5m</b>	<b>£10m</b>
<b>Development Advisor</b>	<b>£5m</b>		<b>£5m</b>	<b>£10m</b>
<b>Financial/tax Advisor</b>	<b>£10m</b>		<b>£5m</b>	<b>£10m</b>
<b>Legal Advisor</b>	<b>£10m</b>		<b>£5m</b>	<b>£10m</b>
<b>Cost Consultant</b>	<b>£5m</b>		<b>£5m</b>	<b>£10m</b>
<b>Project Manager</b>	<b>£10m</b>		<b>£5m</b>	<b>£10m</b>
<b>M &amp; E</b>	<b>£5m</b>		<b>£5m</b>	<b>£10m</b>
<b>Structural Engineer</b>	<b>£5m</b>		<b>£5m</b>	<b>£10m</b>
<b>Master Planner</b>	<b>£5m</b>		<b>£5m</b>	<b>£10m</b>
<b>Highways/Transport Engineers</b>	<b>£1m</b>		<b>£5m</b>	<b>£10m</b>
<b>Health &amp; Safety Advisor</b>	<b>£5m</b>		<b>£5m</b>	<b>£5m</b>

Entities that are subcontracted to the Building Contractor will normally be covered by the proposed project public liability insurance (proposed limit £50m) for their site activities their professional services should normally fall within the scope of the Building Contractor's vicarious liability (and therefore be covered by its professional indemnity insurance).

## **SCHEDULE 7**

### **Duty of Care Deed**

**DATED**

**200[ ]**

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- (1) JOHN LAING PROJECTS & DEVELOPMENTS LIMITED
- (2) [CCURV SUBSIDIARY LLP]
- (3) CCURV LLP
- (4) JOHN LAING PLC

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## **DUTY OF CARE DEED**

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Eversheds LLP  
Eversheds House  
70 Great Bridgewater Street  
Manchester M1 5ES  
Tel +44 (0) 845 497 8000  
Fax +44 (0) 845 497 8888

**THIS DEED** is made on

200[ ]

**BETWEEN:**

- (1) **JOHN LAING PROJECTS & DEVELOPMENTS LIMITED**, a company registered in England and Wales under company registration number 04420886 whose registered office is at Allington House, 150 Victoria Street, London, SW1E 5LB ("the Manager");
- (2) **[CCURV SUBSIDIARY LLP]**, a limited liability partnership registered in England and Wales under registration number [ ] whose registered office is [ADDRESS] ("the Beneficiary" which expression includes its permitted successors in title and assigns);
- (3) **CCURV LLP**, a limited liability partnership incorporated in England and Wales under registration number OC 341025 whose registered office is Allington House, 150 Victoria Street, London, SW1E 5LB ("the Employer"); and
- (4) **JOHN LAING PLC**, a company registered in England and Wales under company number 01345670 whose registered office is at Allington House 150 Victoria Street London SW1E 5LB (the "Guarantor").

**BACKGROUND:**

- (A) The Manager has been appointed by the Employer under a Property and Development Management Agreement deed dated [ ] ("the Appointment") to provide Services to the Employer and the Beneficiary in relation to the Property Portfolio.
- (B) The Manager is obliged under the Appointment to give a warranty in this form including step-in rights in favour of the Beneficiary.
- (C) The Guarantor has agreed to guarantee the obligations of the Manager under this Agreement.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS**

Capitalised terms in this Deed (including in the Background) shall bear the same meaning as the definitions set out in the Appointment, unless expressed otherwise.

**2. CONSIDERATION**

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Manager receipt of which the Manager acknowledges.

**3. MANAGER'S WARRANTIES**

- 3.1 The Manager warrants and undertakes (such warranties to be repeated each day during the term of this Deed) to the Beneficiary that it:

- 3.1.1 will comply with all of its obligations under the Appointment, including (without limitation) to provide such of the Services under the Appointment as are relevant to the Beneficiary and owes the same

duty of care to the Beneficiary as it owes to the Employer under the Appointment as if the Beneficiary had been a party to the Appointment;

3.1.2 has performed and will continue to perform its duties under the Appointment in accordance with the Appointment and that it has the necessary skill and experience in all disciplines relevant to the performance of the Services and that it has exercised and shall continue to exercise in the performance of its duties under the Appointment all the skill and care as is to be expected of a properly qualified, competent and experienced development and property manager accustomed to carrying out services of the same or similar nature, scope, complexity and size as the properties comprised in the Property Portfolio from time to time, such skill and care to be carried out in a proper, prompt and business like manner using all the skill, expertise and attention as is to be expected of such a development and property manager.

3.2 The Manager will comply with the instructions of the Beneficiary from time to time in relation to the performance by it of its obligations pursuant to this Deed and the Appointment.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 Pursuant to the terms of the Appointment and in consideration of the payment of one pound (£1.00) by the Employer to the Manager, the Manager has agreed:

4.1.1 if the Manager makes or participates in making any invention or any design (whether registerable or not) or any copyright work in connection with the provision of the Services the Manager shall disclose such invention, design or work to the Employer immediately. In the case of such an invention the Manager shall give the Employer full particulars of the invention together with all information, data, drawings and models relating to the invention and, in the case of designs and copyright works, a copy of all such designs and works;

4.1.2 all rights in Intellectual Property which may be created by the Manager in the course of the provision of the Services to the Employer shall be the sole and exclusive property of the Employer and the Manager assigns all such Intellectual Property to the Employer by way of present and future assignment with full title guarantee;

4.1.3 in the case of registerable rights the Manager shall, if requested by the Employer, execute all documents and do all things which may be necessary or desirable for obtaining the best possible registerable position in territories specified by the Employer, and in respect of all Intellectual Property the Manager shall execute all documents and do all such things as may be necessary or desirable for perfecting assignment of Intellectual Property under clause 4.1.2 above;

4.1.4 to appoint the Employer to be its attorney in its name and on its behalf to sign and execute any instrument or do anything and generally to use its name for the purpose of giving to the Employer the full benefit of the provisions of this clause 4 and in favour of any third party a certificate in writing signed by any director or the secretary of the Employer that any instrument or act falls within the authority

conferred by this clause 4 shall be conclusive evidence that such is the case;

- 4.1.5 the Manager shall procure that the provisions of clauses 4.1.1 to 4.1.4 are replicated mutatis mutandis in its contracts with its sub-contractors and sub-consultants; and
  - 4.1.6 in consideration of a further payment of one pound (£1.00) by the Employer to the Manager, all rights of the Manager in Intellectual Property which is and/or may be created by such sub-contractor/sub-consultant and assigned to the Manager pursuant to its sub-contracts in accordance with clause 4.1.5 shall be in turn assigned by the Manager to the Employer by way of present and future assignment with full title guarantee and the Manager will execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Employer be necessary or desirable to vest the Intellectual Property rights in, and to register them in, the name of the Employer.
- 4.2 In consideration of the payment of one pound (£1.00) by the Beneficiary to the Employer receipt of which the Employer acknowledges, the Employer grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Manager's obligations or the termination of the Appointment or this Deed or the determination of the Manager's engagement under the Appointment or any dispute under the Appointment or this Deed) to use and to reproduce all Intellectual Property which may be created by the Manager in the course of the provision of the Services to the Beneficiary under the terms of the Appointment or which may be created by such sub-contractor/sub-consultant and assigned to the Manager pursuant to its sub-contracts in accordance with clause 4.1.6 above in the course of the provision by the Manager of the Services to the Beneficiary for any purpose whatsoever. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

## 5. **INSURANCE**

- 5.1 The Manager by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain the following insurances: -
- 5.1.1 [REDACTED]
  - 5.1.2 [REDACTED]
  - 5.1.3 [REDACTED]
  - [REDACTED]
- 5.2 The Manager will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 5 are in full force and effect together with a summary of the policy terms and conditions and further undertakes to ensure that any consultant, contractor, adviser or agent appointed by it pursuant to clause 5 of the Appointment has adequate insurance cover in accordance with clause 4.3 of the Appointment and the provisions of clause 4.3 shall apply in



respect of such insurance cover.

## **6. GUARANTEE**

6.1 In consideration of the parties entering into this Agreement the Guarantor irrevocably and unconditionally:

6.1.1 guarantees to the Beneficiary, the due and punctual payment, observance and performance by the Manager of all of the Manager's liabilities and obligations, whether present or future, express or implied, actual or contingent, under or arising out of this Agreement and/or the Appointment;

6.1.2 agrees to indemnify the Beneficiary (as applicable) on demand against any liability, cost, claim or expense which the Beneficiary may suffer or incur as a result of:

6.1.2.1 the Manager's failure to perform in full and on time its obligations under or arising out of this Agreement and/or the Appointment; and/or

6.1.2.2 any of the obligations (or purported obligations) of the Manager under this Agreement and/or the Appointment being or becoming void, voidable or unenforceable; and/or

and the Beneficiary shall use reasonable endeavours to mitigate any claim made pursuant to the indemnity set out in this clause.

6.2 The Beneficiary will not be obliged, before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor under this clause or by law:

6.2.1 to make any demand of the Manager; or

6.2.2 to enforce or seek to enforce any claim, right or remedy against the Manager or any other person; or

6.2.3 to make or file any claim or proof in connection with the insolvency of the Manager or any other person; or

6.2.4 to take any action or obtain judgement in any court against the Manager or any other person.

6.3 Neither the liability of the Guarantor under this clause 6 nor the rights, powers and remedies conferred on the Beneficiary under this clause 6 or by law will in any way be released, prejudiced, diminished or affected by any of the following:

6.3.1 time or other indulgence being granted to the Manager in respect of its obligations under this Agreement and/or the Appointment; or

6.3.2 any amendment to, or any variation, waiver or release of, any obligation of the Manager under this Agreement and/or the Appointment; or

- 6.3.3 any failure to take, or fully to take, any security contemplated by this Agreement and/or the Appointment or otherwise agreed to be taken in respect of the Manager's obligations under this Agreement and/or the Appointment; or
  - 6.3.4 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution, of any such security taken in respect of the Manager's obligations under this Agreement and/or the Appointment; or
  - 6.3.5 the insolvency or any change in the constitution, name, control or style of the Beneficiary, the Manager and/or the Guarantor (as applicable) or any other person; or
  - 6.3.6 any invalidity, illegality, unenforceability, irregularity or frustration in any respect of any of the liabilities or obligations referred to in clause 6.1.1; and
  - 6.3.7 any other act, omission event or circumstances which, but for this provision, might operate to prejudice, affect or otherwise affect the liability of the Guarantor under this clause or any of the rights, powers or remedies conferred upon the Beneficiary under this clause or by law.
- 6.4 The obligations of the Guarantor will constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and in particular will not be considered satisfied by any intermediate payment or satisfaction of all or any of the obligations of the Manager under this Agreement and/or the Appointment and will continue in full force and effect until final payment in full of all amounts owing by the Manager in total satisfaction of all the Manager's actual and contingent obligations under this Agreement and/or the Appointment.
- 6.5 The Guarantor agrees that whilst any amounts are or may be owed by the Manager under this Agreement and/or the Appointment or the Manager is under any actual or contingent obligation under this Agreement and/or the Appointment, the Guarantor will not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under this clause:
- 6.5.1 to be indemnified by the Manager; and/or
  - 6.5.2 to claim any contribution from any other guarantor of the Manager's obligations contained in this Agreement and/or the Appointment; and/or
  - 6.5.3 to take the benefit (in whole or in part) and whether by way of subrogation or otherwise of any rights of the Beneficiary under this Agreement and/or the Appointment or of any other security taken in connection with this Agreement and/or the Appointment by the Beneficiary.
- 6.6 Each obligation of the Guarantor under this clause 6 is independent of each other obligation under that clause.

## 7. **NOTICES**

7.1 Any notice, demand or communication in connection with this Deed will be in writing and may be delivered by hand, post or facsimile (but not by e-mail), addressed to the recipient at its registered office or any other address notified to the other party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

7.1.1 if delivered by hand, at the time of delivery;

7.1.2 if delivered by post, 48 hours after being posted or on the case of Airmail 14 days (excluding Saturdays, Sundays and public holidays) after being posted; or

7.1.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

## 8. **ASSIGNMENT**

Without prejudice to the provisions of clause 11, the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Manager on two occasions only. The Beneficiary will give the Manager written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Manager will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

## 9. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Manager including, without limitation, any remedies in negligence.

## 10. **NO APPROVAL**

The Manager's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Services or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

## 11. **STEP-IN RIGHTS**

11.1 The Manager will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Appointment or its engagement under it or discontinue or suspend the performance of any duties or obligations under the Appointment, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Manager's grounds for terminating or treating as terminated or repudiated the Appointment or its engagement under it or discontinuing or suspending its performance of the Appointment and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:

- 11.1.1 the Beneficiary may give written notice to the Manager that the Beneficiary shall become the client under the Appointment to the exclusion of the Employer and, upon giving such notice, that will be the case and the Appointment will be and remain in full force and effect notwithstanding any of the grounds in the Manager's notice under clause 11.1; and
- 11.1.2 if the Beneficiary has given such notice under clause 11.1.1 or under clause 11.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Employer (provided that where the notice is given under clause 11.1.1 rather than under clause 11.3 such breach has properly been included in the Manager's specified grounds under clause 11.1); and
- 11.1.3 if:
  - 11.1.3.1 the Beneficiary has given such notice under clause 11.1.1 then from the date of the Manager's notice; or
  - 11.1.3.2 the Beneficiary has given notice under clause 11.3 then from the date of the Beneficiary's notice

the Beneficiary will, by clause 11.1.1, become responsible for all sums properly payable to the Manager under the Appointment and for the observance and performance of all of the other duties and obligations on the part of the client to be observed and performed under the Appointment accruing due after the service of such Manager's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the client under the Appointment.
- 11.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Manager the Beneficiary will not be under any obligation to the Manager nor will the Manager have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Manager under either clause 11.1.1 or clause 11.3.
- 11.3 The Manager further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 11.1.3 and subject to clause 11.1.2 and clause 11.1.3, will accept the instructions of the Beneficiary to the exclusion of the Employer in respect of the Services upon the terms and conditions of the Appointment. The Beneficiary shall then become the client under the Appointment to the exclusion of the Employer and the Manager will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Employer under the Appointment.
- 11.4 Where the Manager has given rights in relation to the Appointment similar to those contained in this clause 11 to any other person then if both the Beneficiary and any such other person serve notice under clause 11.1 or clause 11.3 or its equivalent the notice served by the Beneficiary shall prevail.
- 11.5 The Employer acknowledges that the Manager will be entitled to rely on a notice given to the Manager by the Beneficiary under clause 11.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.

- 11.6 The Beneficiary may by written notice to the Manager appoint another person to exercise its rights under this clause 11 subject to the Beneficiary remaining liable to the Manager as guarantor for its appointee in respect of its obligations under this Deed.
- 11.7 Where the Manager is seeking to exercise a right to suspend the performance of any duties or obligations under the Appointment as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Manager will give to the Beneficiary written notice of its intention to do so not less than seven days before it serves notice on the Employer.
- 11.8 Notwithstanding the other provisions of this clause 11, if the Appointment has for any reason been terminated prior to receipt by the Manager of a notice from the Beneficiary served under clause 11.1.1 or clause 11.1.3, the Manager shall on receipt of any such notice from the Beneficiary enter into a new appointment with the Beneficiary on the same terms as the Appointment to continue the services in all respects as if the Appointment had been transferred to the Beneficiary in accordance with the provisions of this clause 11.

## **12. REPORT**

The Manager shall, during the course of the Appointment address any reports prepared by it in the provision of the Services in pursuant to the terms of the Appointment to the Beneficiary, such that the Beneficiary may rely on such report as if it had been joint employer to the Manager.

## **13. LIMITATION**

- 13.1 The Manager has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer provided that the Manager shall not be entitled to set off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Manager from its Employer.
- 13.2 The Manager shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.
- 13.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the expiry of 12 years after the completion of the Services under the Appointment or, if earlier, more than 12 years after the appointment of the Manager under the Appointment is terminated.

## **14. PARTNERSHIP**

Where the Manager is a partnership references in this Deed to "the Manager" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

## **15. GOVERNING LAW AND JURISDICTION**

This Deed will be construed in accordance with English law and be in all respects

subject to the exclusive jurisdiction of the English courts.

16. **THIRD PARTY RIGHTS**

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.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

**EXECUTED AS A DEED** by  
**JOHN LAING PROJECTS &  
DEVELOPMENTS LIMITED**  
acting by:

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)  
)  
)

**Director**

**Director/Secretary**

**EXECUTED AS A DEED** by  
**[CCURV SUBSIDIARY LLP]**  
acting by:

)  
)  
)  
)

**Member**

**Member**

**EXECUTED AS A DEED** by  
**CCURV LLP**  
acting by:

)  
)  
)  
)

**Member**

**Member**

**EXECUTED AS A DEED** by  
**JOHN LAING PLC**  
acting by:

)  
)  
)

**Director**

**Director/Secretary**

**EXECUTED** as a Deed  
for and on behalf of  
**CCURV LLP**  
acting by two members :

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)  
)

Member

Member

**EXECUTED** as a Deed  
for and on behalf of  
**JOHN LAING PROJECTS &  
DEVELOPMENTS LIMITED**  
acting by :

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Director

Director/Secretary

**EXECUTED** as a Deed  
for and on behalf of  
**JOHN LAING PLC**  
acting by :

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Director

Director/Secretary