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(1) WIRRAL BOROUGH COUNCIL

(2) NICKLAUS JOINT VENTURE GROUP LIMITED

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DEVELOPMENT AGREEMENT  
relating to  
Hoylake International Golf Resort, Wirral

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Pinsent Masons

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THIS AGREEMENT is made on

2016

BETWEEN:-

- (1) WIRRAL BOROUGH COUNCIL of Town Hall, Brighton Street, Wallasey, Wirral, CH44 8EO (the "Council"); and
- (2) NICKLAUS JOINT VENTURE GROUP LIMITED (Company No 09210487) whose registered office is at 21 Fronhau, Llanelli, Dyfed SA14 8LF (the "Developer").

**BACKGROUND:-**

The Council and the Developer have entered into this Agreement to procure the comprehensive redevelopment and construction of the Hoylake International Golf Resort as described in this Agreement.

**IT IS AGREED:-**

**1. INTERPRETATION**

**1.1 In this Agreement:-**

"1990 Act" means the Town and Country Planning Act 1990

"Actual Completion Date" means the date upon which Completion of the sale of the Council's Land and the sale of the New Municipal Golf Course Land and the sale of a Residential Phase(s) (as applicable) actually takes place save where such Completion takes place after 2.00 pm then the "Actual Completion Date" will be the next Working Day after the date on which Completion took place

"Appeal" means an appeal to the Secretary of State under section 73 or 78 (as the case may be) of the 1990 Act against:-

(a) a Planning Refusal or

(b) a Call-in

"Approved Documents" means the Developer's Bid and such documents contained in it as are developed and approved in accordance with this Agreement including those approved under the review procedure pursuant to Clause 16

"Approved Drawings" means the drawings, elevations, sections, specifications, plans and other documents for the Works as may from time to time be approved by the Council under this Agreement including those approved under the Review Procedure pursuant to Clause 17

"Approved Funder" means such Funder or Funders that is approved by the Council as part of a Funding Strategy pursuant to Clause 6

**"Architect"**

means Nicklaus Design, LLC of 17780 US Hwy 1Ste 500 North Palm Beach, Florida 33408 United States and Powell Dobson Architects of Building 1 The Eastern Business Park, Wern Faw Lane, St Mellows Cardiff CF3 5EA United Kingdom or such other reputable and suitably qualified person as the Developer and/or a Building Contractor may appoint with the approval of the Council (such approval not to be unreasonably withheld) as to the identity and terms of appointment to act as Architect in relation to the Works

**"Assumption of Liability Notice"**

has the meaning given in the CIL Regulations

**"Build Completion Date"**

means the date stated as such in the Development Programme in relation to the Works or a Phase or such other date as is established under Clause 23

**"Building Contract"**

means the contract or contracts to be made between the Developer and the Building Contractor(s) for the carrying out of the Works in accordance with Clause 18.4

**"Building Contractor"**

means such reputable and suitably qualified person(s) as the Developer may appoint to act as building contractor in relation to the Works in accordance with Clause 18.4

**"Building Long Stop Date"**

means in relation to each Phase the date(s) specified in the Funding Strategy for Practical Completion of the Works calculated from the relevant Phase Commencement Date

**"Call-in"**

means the reference of the Planning Application to the Secretary of State under section 77 of the 1990 Act

**"CDM Health and Safety File"**

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

**"CDM Construction Phase Plan"**

means in respect of each Phase the health and safety plan(s) required to be prepared and maintained pursuant to the CDM Regulations

**"CDM Regulations"**

means the Construction (Design and Management) Regulations 2015 and/or any modification or replacement thereof for the time being in force

**"Championship Golf Course"**

means the signature Jack Nicklaus International 18-hole championship golf course which is to be constructed as part of the Works more particularly described in the Specification and which is to be an 18 hole par 72, 7,300 yard golf course

**"Change of Control"**

means a person who Controls any body corporate ceases to do so or another person acquires Control of it

**"Chargeable Development"**

has the meaning set out in Regulation 9 of the CIL Regulations

**"Charging Schedule"**

has the meaning given in the CIL Regulations

"CIL Regulations"	means The Community Infrastructure Levy Regulations 2010 as amended by The Community Infrastructure Levy (Amendment) Regulations 2011 and as further amended from time to time
"Club House"	<p>means the club house to be constructed as part of the Works as more particularly described in the Developer's Bid which is to be a minimum of a 24,000 square feet golf club house which is to be located so as to be overlooking the finishing holes of the Championship Golf Course and which is to include:-</p> <ul style="list-style-type: none"> <li>(a) a bar</li> <li>(b) a restaurant</li> <li>(c) meeting rooms</li> <li>(d) a 40 station fitness gym</li> <li>(e) a spa facility with 6-8 treatment rooms</li> <li>(f) a steam room and sauna</li> <li>(g) a Jacuzzi pool and</li> <li>(h) a club pro shop</li> </ul>
"Collecting Authority"	has the meaning given in the CIL Regulations
"Community Infrastructure Levy"	has the meaning given in the Planning Act 2008 (and as further defined in the CIL Regulations) and shall also include any sums, expenses, costs, surcharges, debts (including amounts payable by reason of the application of Chapter 3 of Part 9 of the CIL Regulations), interest or other payment arising out of or in connection with the Community Infrastructure Levy and payable in respect of the Site but which for the avoidance of doubt shall exclude any payments or obligations made pursuant to s.106 of the 1990 Act, and shall hereinafter be referred to as "CIL"
"Competent Authority"	means any court, tribunal, national or local government, agency, authority or body having judicial, regulatory authority including any matters concerning the Environment and the law relating to it
"Completion"	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) completion of the sale of the Council's Land to the Developer in accordance with the terms and conditions of this Agreement and</li> <li>(b) the sale of the New Municipal Golf Course Land to the Council in accordance with the terms and conditions of this Agreement and</li> <li>(c) the sale of the Residential Phases (or any one of them) to a Housebuilder in accordance with the terms and conditions of this Agreement</li> </ul>

**"Completion Date"**

means in respect of the sale of the Council's Land and the sale of the New Municipal Golf Course Land 20 Working Days after the date of the last Practical Completion Statement in respect of the Works subject to Clause 15.2.

**"Condition Date"**

means the date which is 72 months after the date of this Agreement

**"Conditions Precedent"**

means:-

- (a) the Planning Condition
- (b) the Site Assembly Condition
- (c) the R&A Condition
- (d) the Funding and Viability Condition
- (e) the Pylon Works Condition
- (f) the Highways Condition
- (g) the Footpath Order Condition and
- (h) the Environmental Report Condition
- (i) the Environmental Insurance Condition

**"Consultant Appointments"**

means the form of appointment of the Consultants in a form consistent with Clause 18.5 and "Appointment" and "Consultant Appointment" shall be construed accordingly

**"Consultants"**

means the Architect, Highway Engineers, Mechanical and Electrical Engineers, Site Investigation Consultant, Structural Engineers, Quantity Surveyor, Principal Contractor and Principal Designer and Contract Administrator and any other consultants which the Developer and the Council agree are necessary for the Works employed from time to time by the Developer in addition to or in substitution for any of them in accordance with this Agreement and the term "Consultant" shall be construed accordingly

**"Contract Administrator"**

means in relation to each Building Contract such third party of suitable repute and qualification appointed by the Developer with the approval of the Council (such approval not to be unreasonably withheld as to identity and terms of appointment) as contract administrator such party to be responsible for issuing the following:

- (a) a Practical Completion Statement;
- (b) a certificate for the Phase 2 Trigger Date;
- (c) any certificate to be issued confirming an extension of time pursuant to a Delay Event offered to the Developer in accordance with Clause 23.2; and

	(d) Notice of Completion of Making Good Defects
"Contract Price"	means the relevant value of consideration in pounds sterling paid under any contract for purchase (conditional or otherwise) entered into by the Developer and the owners of the Additional Land in accordance with Clause 4.2
"Control"	means in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person: <ul style="list-style-type: none"> <li>(a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate or</li> <li>(b) as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate</li> </ul>
"Core Requirements"	means:- <ul style="list-style-type: none"> <li>(a) the Championship Golf Course</li> <li>(b) the Club House</li> <li>(c) the Hotel</li> <li>(d) the Hoylake Bypass</li> <li>(e) the Links Golf Academy and Practice Range</li> <li>(f) the Electricity Pylon Works and</li> <li>(g) the New Municipal Golf Course</li> </ul> more particularly described in the Developer's Bid
"Core Requirements Land"	means the part of the Site indicatively shown edged red on Plan 2 forming part of the Council's Land as at the date of this Agreement and part of the Additional Land as may be varied as part of the Funding and Viability Condition
"Council Fees"	means the fees referred to in Clause 16.2
"Council's Land"	means the freehold land within the Site owned by the Council (which includes the Municipal Golf Course) shown indicatively edged red on Plan 3 as may be varied as part of the Funding and Viability Condition title to which is deduced by the Title Documents
"Council's Onerous Conditions"	means as set out in Part 2 of Schedule 2



**"Council's Representative"**

means such representative of the Council as the Council nominates from time to time for the relevant purpose and notifies the Developer

**"Council's Solicitors"**

means Pinsent Masons LLP, 9 Hardman Street, Manchester M3 3AU (Ref: PB07.WI0026.07001) or such other firm of solicitors as the Council notifies to the Developer

**"Council's Surveyors"**

means such suitably qualified firm of surveyors as the Council notifies to the Developer from time to time

**"Council's Land Transfer"**

means the transfer to be made of the Council's Land from the Council to the Developer in such form as the Council and the Developer shall agree (acting reasonably and properly) and subject to the provisions of Part 1 of Schedule 4

**"Council Title Condition"**

has the meaning afforded in Clause 4.1

**"Counsel"**

means counsel of not less than 10 years experience in planning law appointed at the Developer's cost to act for the Developer and the Council jointly or in the case of dispute appointed by the President for the time being of the Law Society

**"Date of Practical Completion"**

means in relation to any Phase the date stated in any Practical Completion Statement for the Works (or the relevant part thereof) as the date the Works (or the relevant part thereof) reached Practical Completion (or such later date as is determined by the Expert and "relevant Date of Practical Completion" shall be construed accordingly)

**"Defects Certificate"**

means a certificate or notice of completion of making good of defects issued under the relevant Building Contract

**"Defects Liability Period"**

means a period expiring 12 months after the relevant Date of Practical Completion

**"Delay Event"**

means any event which would under the relevant Building Contract result in the relevant Building Contractor properly being granted an extension of time but for the avoidance of doubt shall exclude any matters caused or contributed to by the default of the Developer, the Building Contractor, the Consultants or the Sub-Contractors or any of their employees or agents (as applicable)

**"Design Data"**

means:-

- (a) the Specification;
- (b) any other drawings, reports, documents, plans, software, formulae, calculations and other data relating to the carrying out of the Works.

**"Developer's Bid"**

means the document dated December 2014 submitted in response to the Council's tender for the Wider Development in the form attached hereto at Appendix 2

**"Developer's Onerous Condition"**

means as set out in Part 1 of Schedule 2

**"Developer's Representative"**

means such reputable and suitably qualified person as the Developer may appoint and notify to the Council

**"Developer's Solicitors"**

means Brabners LLP of Horton House Exchange Flags, Liverpool Merseyside L2 3YL (Ref: [REDACTED]) or such other firm of solicitors as the Developer notifies to the Council

**"Development"**

means the Works

**"Development Account"**

means a separate interest bearing account in the joint names of the Developer and the Council requiring signatures of both

**"Development Costs"**

means the reasonable and proper costs incurred by the Developer and evidenced to the Council on an open book basis in implementing the Development

**"Development Programme"**

means the programme for carrying out the Development set out in the Developer's Bid in the form attached at Appendix 4 as developed and/or varied by the Funding and Viability Condition and as may be varied and agreed by the parties from time to time acting reasonably and in good faith through the Project Delivery Group

**"Early Commencement Notice"**

means a notice served by the Developer on the Council requesting to commence on a Phase earlier than the relevant Phase Commencement Date which the Council may accept in its absolute discretion

**"Electricity Pylon Works"**

means the diversion and undergrounding of the Scottish Power overhead electricity pylons as shown on Plan 4 to the approximate position shown red on Plan 5 or in such other location as the Developer and the Council may agree (acting reasonably)

**"Electricity Pylon Works Agreement"**

means an agreement between (1) the Developer and (2) Scottish Power (and any other party lawfully required to be a party to such agreement) permitting the Developer (or Scottish Power as the case may be) to carry out or procure the carrying out of the Electricity Pylon Works

**"Environment"**

means:-

- (a) land, including surface land, sub-surface strata, sea bed and river bed under water and natural and man-made structures
- (b) water, including coastal and inland waters, surface waters, ground waters and water in drains and sewers
- (c) air, including air inside buildings and in other natural and man-made structures above or below ground and
- (d) any and all living organisms or systems supported by those media, including humans

**"Environmental Insurance Condition"**

means the obtaining of a Satisfactory Environmental Insurance Policy in accordance with Clause 12

**"Environmental Report"**

means the reporting of an intrusive ground investigation to be prepared by the Site Investigation Consultant pursuant to Clause 11 in respect of the Council's Land, comprising the following investigations: (1) preliminary investigation comprising desk study and site reconnaissance (walkover / inspection); (2) exploratory investigation comprising limited non-intrusive and intrusive elements designed to reduce significant uncertainties in knowledge of the Site and to provide information to help design any subsequent main investigation; and (3) main investigation comprising the detailed collection of intrusive data to test the accuracy of the conceptual site model, to assess all of the relevant risks and to provide information for selection and design of remedial works / reclamation works as appropriate, which may include but are not limited to cleaning up, remediating, removing, remedying, abating, containing, monitoring controlling or ameliorating any Hazardous Substances present at the Site

**"Environmental Report Condition"**

means the obtaining of a Satisfactory Environmental Report in accordance with Clause 11

**"Environmental Works"**

means any works identified by the Environmental Report and/or identified during the carrying out of the works which are necessary to enable the Development to be constructed, having particular regard (but not limited) to the presence of the former landfill site as identified in the Capita Symonds Technical Assessment Hoylake Golf Resort Project dated August 2007 and /or any other landfill site or Hazardous Substances revealed by the Environmental Report and/or during the carrying out of the works.

**"EU State aid Rules"**

means the rules embodied in Articles 107-109 of the Treaty on the Functioning of the European Union, the corresponding interpretive case law of the national and European courts and as further defined within guidance issued by the European Commission

"Event of Default"	means as set out in Clause 38
"Expert"	means as set out in Clause 36
"Financial Appraisal"	means the appraisal to be provided by the Developer containing the information set out in Clause 6.2, as the same is updated from time to time in accordance with this Agreement
"Footpath Diversion Order"	means the granting by the Local Planning Authority of an order(s) diverting and/or stopping up the Footpath(s) made pursuant to section 247 or section 257 of the 1990 Act or section 116 or 119 of the Highways Act 1980 pursuant to the Footpath Diversion Order Application
"Footpath(s)"	means such public footpath(s) across the Site as the Council and the Developer agree require to be diverted pursuant to the 1990 Act for the Development pursuant to Clause 9.1
"Footpath Diversion Order Application"	means an application for the Footpath Diversion Order(s) to be submitted by the Developer in a form previously approved by the Council for the diversion of the Footpath(s)
"Footpath Order Condition"	means the grant of a Satisfactory Footpath Diversion Order in accordance with Clause 9
"Funder"	means any mortgagee, chargee or investment purchaser or other person providing finance to the Developer for the Works which may include the ultimate holding company of a Housebuilder and being a funding source of repute in the provision of funding of the type required for the carrying out of the Works by the Developer as approved by the Council
"Funding Agreement"	means such loan or funding agreement(s) as the Approved Funder (or the Council if it is acting as Funder) requires
"Funding Strategy"	means the strategy to be provided by the Developer containing the information set out in Clause 6.5 as the same is updated from time to time in accordance with this Agreement
"Funding and Viability Condition"	means the condition set out in Clause 6 and satisfied in accordance with Clause 6.7
"Ground Works Contract"	means the ground works contract between the Developer and the Ground Works Contractor for the carrying out of the Ground Works in a form to be approved by the Council in accordance with Clause 11.7.6 and where this forms part of a Building Contract the term 'Ground Works Contract' relates to the part of the Building Contract dealing with the Ground Works only
"Ground Works Contractor"	means such reputable engineering contractor with experience in land ground works and the remediation of environmental contamination appointed in accordance with Clause 11.7.6

"Ground Works"	means any works that are on or under the ground or above the ground and likely to affect in any way the ground including the Environmental Works
"Ground Works Specification"	means the specification for the Ground Works to be prepared in accordance with Clause 11.7
"Hazardous Substances"	means any natural or artificial substance or combination of substances (whether in solid or liquid form or in the form of a gas or vapour) capable of causing harm to the Environment or human health including any hazardous, toxic or dangerous substance or article
"Highway Works"	means the construction of the Hoylake Bypass more particularly described in the Specification
"Highways Condition"	means the completion of the Highways Agreement in accordance with Clause 8
"Historic Contamination"	means any (a) Hazardous Substance which was present in the Environment in, at, on or under the Council's Land on or prior to the date of this Agreement; or (b) any such Hazardous Substance as described in (a) which emanates from the Council's Land at any time
"Hotel"	means an internationally branded upscale hotel to be constructed as part of the Works more particularly described in the Specification being of no less than an internationally branded 4 star hotel with minimum of 90 bedrooms (with associated brasserie restaurant, health spa and leisure facilities which may be located within the Club House)
"Housebuilder"	means a residential housebuilder proposed by the Developer and approved by the Council (such approval not to be unreasonably withheld) having sufficient skill, experience and financial resources to undertake the Residential Development
"Hoylake Bypass"	means the proposed 7.5 metre, two-way undivided main carriageway with a 1 metre wide service/buffer strip and a shared 2.5 metre wide gateway/cycleway (providing for a 11 metre minimum total highway width) which is to be constructed on the Site pursuant to the Highways Agreement the approximate route of which is shown marked in pink on Plan 6 or along such other route as the Developer and the Council may agree (acting reasonably)
"Implementation"	means commencement of development by the carrying out of a "material operation" (as defined in section 56(4) of the Town and Country Planning Act 1990 as amended) upon the Site (and "Implement" and "Implemented" shall be construed accordingly)
"Inquiry"	means such public inquiry that may be called by the Secretary of State to hear evidence and determine the Planning Application or the Footpath Diversion Order
"Insolvent"	means:-

(a) in relation to a company, a receiver, administrative receiver or manager is appointed over all or any of its assets or a liquidator is appointed under section 135 of the Insolvency Act 1986 or it goes into liquidation either voluntarily or compulsorily (other than a voluntary liquidation solely for the purpose of amalgamation or reconstruction while solvent)

(b) in relation to a partnership or limited partnership:

(i) it shall be unable to pay its debts whether within the meaning of sections 222 to 224 of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994, Sch 3, Pt 1 or otherwise or

(ii) a voluntary arrangement or any compromise is made with all or any of its creditors or

(iii) a receiver, administrative receiver (to the extent applicable), or manager is appointed over all or any of its assets or

(iv) it goes into liquidation either voluntary or compulsorily (other than a voluntary liquidation solely for the purpose of amalgamation or reconstruction while solvent) or

(v) the partnership or limited partnership is placed into administration or

(vi) any steps are taken in any jurisdiction which are of similar effect to any of the above or any of the events in paragraphs (a) and/or (c) of this definition happen to any one or more of the partners and

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

**"Insured Risks"**

means fire, lightning, explosion, earthquake, storm, tempest, flood, impact, terrorism, bursting or overflowing of water tanks and pipes, earthquake, damage by aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, labour, disturbance and malicious damage.

**"Likely to Succeed"**

means that Counsel advises that the prospects of the relevant Appeal or Proceedings having a successful outcome are good, meaning that if such likelihood could be expressed as a percentage, the relevant percentage would be at least 66%

**"Links Golf Academy and Practice Range"**

means... a 300-350 yard tournament practice area including a specialist links tuition area which is to incorporate a "short game" area specifically designed for links golf practice including between 3-5 target green areas and links driving range with an area of hardstanding to accommodate grand stand facilities and grass teeing areas are available at both ends of the driving range together with a teaching academy including a junior golf academy to attract local schools and players to golf. the capacity requirements and specification of which are to comply with the requirements of the R&A and which is to be constructed as part of the Works more particularly described in the Specification

**"Local Planning Authority"**

means Wirral Borough Council or its statutory successor

**"Masterplan"**

means the masterplan for the design layout and planning requirements for the Development as provided for in the Developer's Bid and in the form attached hereto at Appendix 3 with such variations subsequently agreed between the parties in accordance with the provisions of this Agreement

**"Material Change"**

means any one or more of the following:-

- (a) the reduction of the quality of materials and/or workmanship to be used in the Works below the quality identified in the Approved Documents
- (b) the diminution or reconfiguration of, or removal of any component of, the Works subject to Clause 24.3.4
- (c) any change, variation or other matter materially affecting the Development Programme (and for these purposes any delay of more than 2 months whether arising as a result of a single variation or as a series of connected or associated variations shall also be deemed to be material)
- (d) any change, variation or other matter reducing the anticipated Development Receipts whether arising as a result of a single variation or as a series of connected or associated variations
- (e) any change which materially alters or adds to or diminishes the appearance structure or external elevations of the Development
- (f) any change which materially alters an area of the Development for which the Council is liable or will become liable for maintenance and repair
- (g) any change which would result in the cost of the

Works Materially Increasing

- (h) any change which would increase the number of Residential Units

"Material or Materially"	means a factor that either increases or reduces either the cost or end value of the Works (whichever is relevant) by more than 15%
"Mechanical and Electrical Engineer"	means such reputable and suitably qualified person as the Developer and/or a Building Contractor may appoint with the approval of the Council (such approval not to be unreasonably withheld) as to identity and terms of appointment to act as the mechanical and electrical engineer in relation to each Phase of the Works
"Municipal Golf Course"	means the existing municipal 18-hole golf course at Hoylake the approximate position of which is shown edged red on Plan 7 forming part of the Council's Land
"Necessary Consents"	means all building regulations and other approvals, certificates, consents, licences and permits from any competent authorities or third parties whether statutory or otherwise which are necessary to authorise the commencement and carrying out of the Development and/or the Works
"New Municipal Golf Course"	means the new "Nicklaus" designed 18-hole municipal golf course which is to be constructed on the New Municipal Golf Course Land forming part of the Works more particularly described in the Developer's Bid and the Specification which is to be a minimum of an 18-hole, 6,253 yard par 70 golf course
"New Municipal Golf Course Land"	means the part of the Site shown indicatively edged red on Plan 8
[REDACTED]	[REDACTED]
"New Municipal Golf Course Land Transfer"	means the transfer to be made of New Municipal Golf Course Land from the Developer to the Council in such form as the Council and the Developer shall agree (acting reasonably and properly)
"Non-Material Change"	means a change which is not a Material Change
"Non-Payment"	means failure by the Developer or an Approved Funder as the case may be to pay any sum due under this Agreement after:-
	(a) the Council has served on the Developer or an Approved Funder (as the case may be) the demand (the "First Demand") for that sum
	(b) not earlier than 10 Working Days after the date of the First Demand the Council has served on the Developer or an Approved Funder (as the case may be) a further demand (the "Second Demand") notifying the Developer or the Approved Funder (as the case may be) of the



Council's intention to treat non-payment of it as an Event of Default and

- (c) the Developer or the Approved Funder (as the case may be) has failed to make the relevant payment within 10 Working Days after the Second Demand

"Notice of Completion of Making Good Defects"

means a notice issued under the Building Contract(s) that any defects notified during the defects liability period have been rectified (excluding any items of snagging works)

"Notification Date"

means the date on which the Notification is issued by the Local Planning Authority or the Secretary of State

"Notification"

means the written notification of the grant or refusal of a Planning Application by the Local Planning Authority or the Secretary of State

"Onerous Condition"

means a condition which is imposed either in a Planning Permission or reserved matters approval or other approval or contained in a Planning Agreement which the Local Planning Authority and/or the Secretary of State requires to be entered into prior to the grant of such Planning Permission and which is either a Council's Onerous Condition as set out in Part 2 of Schedule 2 or Developer's Onerous Condition as set out in Part 1 of Schedule 2

"Outline Financial Package"

has the meaning given to it in Clause 6.6

"Overage"

means the overage further details of which are set out in Clauses 13.1 and 13.2

"Overage Agreement"

means the agreement to be entered into by the Council and the Developer pursuant to Clause 13

"Phase"

means Phase 1 and Phase 2 and "Phases" means any one or more of them

"Phase 1"

means the Phase marked "Phase 1" on the Phase Plan

"Phase 2"

means the Phase marked "Phase 2" on the Phase Plan

"Phase Commencement Date"

means the Phase 1 Commencement Date and the Phase 2 Commencement Date, and "Phase Commencement Date" means any one or more of them

"Phase 1 Commencement Date"

means the Unconditional Date

"Phase 2 Commencement Date"

means the date of the Phase 2 Trigger Date or such earlier date as accepted by the Council following the service of an Early Commencement Notice by the Council

"Phase 2 Trigger Date"

means the date of issue by the Contract Administrator of a certificate certifying that nine holes of the New Municipal Golf Course are practically complete and greening

"Phase 1 and Phase 2 Works"

means the Works

"Phase of Works"	means the Phase 1 and Phase 2 Works and "Phase of Works" means any one or more of them
"Phase Plan"	means a phasing plan to be prepared by the Developer for the delivery of the Development and submitted to the Council as part of the Funding Strategy and (once approved by the Council) as may be updated by the Developer in accordance with the terms and conditions of this Agreement
"Plan"	means a Plan at Annexure 1 and numbered accordingly
"Planning Agreement"	means an agreement or agreements which the local planning authority or Secretary of State require to be entered into as a pre-condition of the issue of or as a condition attaching to a Planning Permission under section 106 of the 1990 Act
"Planning Application"	means the hybrid application for planning permission made in the name of the Developer for the Wider Development pursuant to the Masterplan and subject to the approval of the Council (not to be unreasonably withheld), to include outline permission for the Residential Development and full (i.e. not reserving matters for approval) permission for the Development
"Planning Condition"	means the obtaining of a Satisfactory Planning Permission in accordance with Clause 7
"Planning Condition Date"	means the date 24 months after the date the Planning Application has been submitted in accordance with Clause 7.3
"Planning Condition Satisfaction Date"	<p>means the date on which the first of the following occurs:-</p> <ul style="list-style-type: none"> <li>(a) If a Satisfactory Planning Permission is granted the date which is six weeks from (but excluding) the date of the Satisfactory Planning Permission provided that no Proceedings have been instituted before this date or</li> <li>(b) If Proceedings are instituted the date on which the Satisfactory Planning Permission is finally granted or upheld whether after a reference back to the Secretary of State or the local planning authority (as the case may be) and so that such Planning Permission remains intact and unmodified (or modified but still constituting a Satisfactory Planning Permission) and such Planning Permission is no longer open to challenge in any way by the issue of further Proceedings or</li> <li>(c) the date of execution of any Planning Agreement that is required by the local planning authority or Secretary of State to be entered into as a pre-condition to the issue of the Satisfactory Planning Permission</li> </ul>

**"Planning Permission"**

means the planning permission granted pursuant to the Planning Application

**"Planning Refusal"**

means a refusal of a Planning Application including a deemed refusal arising under section 78(2) of the 1990 Act or the grant of Planning Permission that does not discharge the Planning Condition or imposes Onerous Conditions whether in a Planning Permission or in any associated Planning Agreement

**"Post Planning Package"**

means a refresh of the Outline Financial Package to be carried out by the Developer following receipt of a Satisfactory Planning Permission in accordance with Clause 6.13

**"Practical Completion"**

means a state in which the Works are fit for beneficial use and occupation and complete in all respects and free from all apparent defects in or omissions from the Works; and provided that the following conditions have been satisfied:-

- (a) the Works are weather and water tight
- (b) the Works have been practically completed and are in accordance with the Specification, the Planning Permission, all Statutory Requirements and Necessary Consents
- (c) all drainage is available and fully functional and is connected ultimately to public services either directly or through a private system
- (d) all electricity, gas, heating, cooling and hot and cold tested water services are supplied and connected to the mains
- (e) any works, payments and actions which are required under any planning permission in so far as the Building Contractor is responsible for discharging the same under the terms of the relevant Building Contract, before the Works can be lawfully occupied and opened for trade and used, have been carried out or paid and all Necessary Consents have been obtained and fully complied with and satisfied
- (f) any tests for plant and machinery in or serving the Works (including the mechanical and electrical services systems for the Works), have been fully balanced, tested, commissioned, certified, explained and demonstrated
- (g) where appropriate an energy performance certificate and a recommendation report for the Works, in conformity with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (as amended) (or any equivalent regulations replacing them) is available and has been provided by the Building Contractor to the Contract Administrator and

- (h) confirmation has been provided, by all relevant bodies and authorities that all matters relating to building regulation approval have been addressed and that the relevant part of the Works has been "signed off" by the relevant inspecting authority)


save for any minor omissions or snagging which can be remedied without significant interference with or interruption to the normal reasonable and beneficial occupation and use and enjoyment (or the fitting out for use) of the Works provided that where it is expressly stated in the Specification that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed, or any other thing is to be done, before the Practical Completion of the Works, the Works shall not be considered to be practically completed until the same is completed or done as the Specification requires

<b>"Practical Completion Statement"</b>	means a statement issued under the Building Contract(s) that the Works or the relevant section of the Works have achieved Practical Completion
<b>"Prescribed Rate"</b>	means 4% per annum above the base rate from time to time of Barclays Bank Plc or (if such base rate shall cease to be published) 4% per annum above such alternative equivalent base rate for the time being by reference to which clearing banks in the City of London make commercial loans within the United Kingdom domestic market as the Council elects
<b>"Principal Contractor"</b>	means the principal or sole contractor(s) for the purposes of the CDM Regulations in relation to each Phase of the Works
<b>"Principal Designer"</b>	means any person(s) who is appointed to the role of principal designer for the purposes of the CDM Regulations by the Developer and/or a Building Contractor with the approval of the Council (such approval not to be unreasonably withheld) as to the identity and terms of appointment to act as principal designer in relation to each Phase of the Works
<b>"Proceedings"</b>	means any form of judicial proceedings or legal challenge including:- <ul style="list-style-type: none"> <li>(a) an application for judicial review under Civil Procedure Rule 54 including in each case any appeals to a higher court following a judgment of a lower court ("Judicial Review Claim") or</li> <li>(b) an application pursuant to section 288 of the 1990 Act arising from the grant of a Satisfactory Planning Permission or a Planning Refusal by the Secretary of State including in each case any appeals to a higher court following a judgment of a lower court or</li> <li>(c) an application to the High Court pursuant to</li> </ul>

section 23 of the Acquisition of Land Act 1981 or

- (d) an application (within the meaning of paragraphs (a) or (b) above) arising from the grant of a Satisfactory Planning Permission or a Planning Refusal following a reconsideration of a Planning Application by the Local Planning Authority or the Secretary of State or an Appeal to the Secretary of State following a previous Satisfactory Planning Permission or Planning Refusal being quashed pursuant to an application within the meaning of paragraphs (a) or (b) above and the matter being remitted to the Local Planning Authority or the Secretary of State (as the case may be)

"Project"	means the carrying out of the Development by the Developer in accordance with this Agreement.
"Project Delivery Group"	means the project delivery group appointed in accordance with and undertaking the role set out in Clause 33
"Pylon Works Condition"	means the completion of the Electricity Pylon Works Agreement in accordance with Clause 5
"Quantity Surveyor"	means such reputable and suitably qualified person as the Developer and/or a Building Contractor may appoint with the approval of the Council (such approval not to be unreasonably withheld) as to the identity and terms of appointment to act as quantity surveyor in relation to each Phase of the Works
"R&A"	means the Royal and Ancient Golf Club of St Andrews
"R&A Agreement"	means the agreement dated 25 January 2001 made between (1) Wirral Borough Council and (2) The Royal Liverpool Golf Club and (3) R&A
"R&A Agreement Criteria"	means the terms and conditions and requirements as specified in the first, second and third schedules of the R&A Agreement as may be varied by agreement between (1) the Council (2) the Developer (3) the R&A and (4) the Royal Liverpool Golf Club from time to time
"R&A Condition"	means the completion of the R&A Replacement Agreement in accordance with Clause 10
"R&A Replacement Agreement"	means an agreement to be entered into by (1) the Council (2) the Royal Liverpool Golf Club and (3) the R&A in a form approved by the Developer and the Council pursuant to Clause 10 which satisfies the R&A Agreement Criteria for the hosting of future Open Golf Championships at the Royal Liverpool Golf Course after the next Open Golf Championship is hosted at the Royal Liverpool Golf Club in accordance with the R&A Agreement
"R&A Transport Agreement"	means the agreement dated 26 March 2002 made between (1) Wirral Borough Council and (2) Merseyside Passenger Transport Executive

"Residential Development"	means the works required to construct the Residential Units together with ancillary infrastructure
"Residential Phase"	means the land comprised within a phase of Residential Development as identified in the Phase Plan
"Residential Phase Transfer"	means the transfer to be made of the Residential Phase(s) from the Council to the Housebuilder in such form as the Council and the Developer shall agree (acting reasonably and properly) and subject to the provisions of Part 1 of Schedule 4
"Residential Units"	means the number and specification of residential units contained in the approved Outline Financial Package
	
"Review Procedure"	means the procedure set out in Schedule 5 (Review Procedure)
"Reviewable Documents"	means:- <ul style="list-style-type: none"> <li>(a) any Design Data</li> <li>(b) the Phase Plan (and any variations or amendments thereto)</li> <li>(c) the Development Programme and</li> <li>(d) any other documents that are designated as Reviewable Documents as part of the satisfaction of the Funding and Viability Condition</li> </ul>
"Royal Liverpool Golf Club"	means the Royal Liverpool Golf Club of Meols Drive, Hoylake, Wirral, Merseyside
"S106 Costs"	means the aggregate of any financial contributions required to be paid by the Developer under the Planning Agreement and the reasonable and proper costs likely to be incurred by the Developer in carrying out any works or complying with any obligations contained within the Planning Agreement
"Satisfactory Environmental Insurance Policy"	means a policy (as further detailed in Clause 12.2) which is satisfactory to the Council
"Satisfactory Environmental Report"	means the results of the Environmental Report which are satisfactory to the Developer
"Satisfactory Footpath Diversion Order"	means a Footpath Diversion Order that is satisfactory to each party acting reasonably

**"Satisfactory Planning Permission"** means Planning Permission granted either by the Local Planning Authority or the Secretary of State which is free from any Onerous Condition

**"Satisfactory Title"** means freehold title which is either registered with absolute title at the Land Registry or where unregistered is subject to a good root of title and in each case which is free of any right, restriction, covenant or other matter which would in the view of the Council (acting in its reasonable discretion as a landowner):-

- (a) materially adversely affect the implementation of or subsequent use of the Development or the value of the Site and/or the ability to let or effect a disposal of the completed Development
- (b) and/or materially adversely affect the value of the Site and
- (c) and/or materially adversely affect the ability to let or effect a disposal of the completed Development

(save to the extent that insurance in respect of such matter is reasonably likely to be available on normal commercial terms)

**"Secretary of State"** means the Secretary of State or other minister, person or body for the time being having or entitled to exercise the powers now conferred on the Secretary of State by sections 77 and 79 and section 247 and 257 of the Town and Country Planning Act 1990

**"Service Media"** means apparatus and conducting media for the passage of foul and surface water, drainage, electricity, gas, water and telecommunications and any other services and supplies of whatsoever nature

"Site Investigation Consultant"	means such reputable and suitably qualified person as the Developer and the Council may jointly appoint (acting reasonably and properly) to act as a site investigation consultant in accordance with Clause 11.2
"Site"	means the land shown edged red on Plan 9
"Specification"	means the plans, drawings, elevation and specification for the Works to be agreed between the Council and the Developer in accordance with Clause 17.2.1
"Statutory Agreements"	means an agreement or agreements to be entered into with a third party relating to the provision, construction and thereafter adoption of roads and services under section 38 or section 278 of the Highways Act 1980 or under section 8 of the Public Health Act 1936 or section 104 of the Water Industry Act 1991 or under section 111 of the Local Government Act 1972 or any other similar legislation
"Statutory Requirements"	means the requirements from time to time in force by any Act of Parliament or instrument, rule or order made thereunder or of any regulation or bye-law of any local authority or statutory undertaker or supply authority including any European directives or regulations legally enforceable in England and Wales
"Step in Agreement"	means any agreement(s) to be made between (1) the Council (2) the Developer (3) Approved Funder (and such other party(s) as the Council may properly require) providing for the remedying of any Event of Default or complying with the terms of this Agreement in a form acceptable to the Council
"Structural Engineer"	means such reputable and suitably qualified person as the Developer and/or a Building Contractor may appoint with the approval of the Council (such approval not to be unreasonably withheld) as to the identity and terms of appointment to act as structural engineer in relation to each Phase of the Works
"Sub-Contract"	means any sub-contract or trade contract which the Building Contractor or the Developer enters into in relation to the Development where such Sub-Contractor has a material design responsibility
"Sub-Contractor"	means any sub-contractor or supplier under a Sub-Contract
"Title Documents"	means the title documents which deduce title to the Council's Land and to which the Site is subject as set out in Schedule 1
"Unconditional Date"	means the date upon which the last of the Conditions Precedent is fulfilled (or waived where permitted)
	means the land shown edged red on Plan 10



**"Value for Money Criteria"**

means that all sums expended in payment of the costs and fees concerned are reasonable and proper and are comparable to the most favourable terms that could reasonably have been obtained in the open market on an arms length basis (but having regards to reasonable procurement practice) at the time the expenditure was committed to, having regard to all relevant circumstances and are charged at reasonable rates and represent value for money

**"Viable"**

means the Development is viable because the Financial Appraisal shows (taking into account the Residential Development) that there is sufficient funding and return (here meaning the difference between income and costs as calculated in accordance with Financial Appraisal) for the successful delivery and thereafter operation and running of the Project

**"VAT"**

means Value Added Tax chargeable under the Value Added Tax Act 1994 or any equivalent tax or duty which may be imposed in substitution therefore or in addition thereto at the rate applicable from time to time.

**"Warranty"**

means a warranty from the Building Contractor, Consultants and Sub-Contractors in a form consistent with Clause 18.7 and previously approved by the Council and "Warranties" shall be construed accordingly

**"Wider Development"**

means both the Development and the Residential Development

**"Working Day"**

means any day other than Saturday, Sunday or a public holiday in England and Wales and "Working Days" shall be construed accordingly

**"Works"**

means all works required to deliver the Core Requirements in accordance with the Specification including the demolition of existing buildings and structures on the Site, site clearance, site preparation, and the diversion of any Service Media

**1.2 In this Agreement:-**

- 1.2.1 where the context so admits, words importing the singular number include the plural number and vice versa, words importing one gender include all genders and references to a "person" are deemed to include any individual, firm, unincorporated association or body corporate;
- 1.2.2 references to Clauses or Schedules unless otherwise specified mean the Clauses or the Schedules to this Agreement;
- 1.2.3 reference to paragraphs in any Schedule unless otherwise specified means the paragraphs of that Schedule;
- 1.2.4 headings to Clauses and Schedules are disregarded in interpreting this Agreement;
- 1.2.5 the parties will comply with their obligations contained in the Schedules (subject to Clause 3.1);
- 1.2.6 this Agreement is deemed to incorporate the Standard Conditions with such amendments (including the use of capital letters) as are necessary to make the Standard Conditions

referable to this Agreement. If there is any conflict between the Standard Conditions and the express provisions of this Agreement, this Agreement prevails;

- 1.2.7 any references to the consent or approval of any party to this Agreement not to be unreasonably withheld shall also include an obligation not to unreasonably delay such consent or approval;
- 1.2.8 it is acknowledged that (without prejudice to any of the other provisions of this Agreement) in assessing whether or not the Council has complied with any obligation to act reasonably it may have regard to all circumstances, aims and interests that are relevant to it as local authority;
- 1.2.9 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done, and words placing a party under a restriction include an obligation not to permit infringement of the restriction;
- 1.2.10 any reference to a month is a reference to a calendar month;
- 1.2.11 reference to a "party" means a party to this Agreement and "parties" shall be construed accordingly;
- 1.2.12 any reference to satisfied or satisfaction shall include circumstances where such arises by deeming or waiver;
- 1.2.13 the word or words "include", "including" or "in particular" shall not have effect so as to limit in any way the words to which such word or words relate;
- 1.2.14 any consent or approval of either party required under this Agreement save in circumstances in which it is unreasonably withheld or delayed in breach of this Agreement shall be required to be obtained before the actual event to which it applies is carried out or done and shall be effective only when the consent or approval is given in writing or is deemed to have been given;
- 1.2.15 where two or more people form a party to this Agreement the obligations they undertake may be enforced against them all jointly or against each individually;
- 1.2.16 in this Agreement references to any statute or statutory provision include references to:-
- (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
  - (b) any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute (save that in the case of the Town and Country Planning (Use Classes) Order 1987 it shall refer to that Order in the form in force at the date of this Agreement including for the avoidance of doubt the changes incorporated by SI 2006/84 (The Town and Country Planning (Use Classes) (Amendment) Order 2005));
- 1.2.17 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Council and all costs, damages, expenses, liabilities and losses incurred by the Council;
- 1.2.18 where reference is made to an Expert it means to the Expert and in accordance with the procedures set out in Clause 36;
- 1.2.19 reference to the Works, the Core Requirements, the Project, the Additional Land, the Council's Land, the Core Requirements Land, the Development, a Phase and the Site include reference to any part of them unless expressly stated otherwise in this Agreement;

1.2.20 reference to "all reasonable endeavours" shall be construed as an obligation to use all reasonable but commercially prudent endeavours and will not require a party to act contrary to its commercial interests; and

1.2.21 where any confirmation, demand notice or information is to be given under this Agreement, it must be given in writing.

## **2. OBJECTIVES**

The parties confirm that it is their intention to deliver the Project.

## **3. AGREEMENT FOR SALE SUBJECT TO CONDITIONS**

### **3.1 Operative Clauses**

Other than Clauses 1-11, 16.2, 31-33 and 35-42 the provisions of this Agreement are conditional on the Unconditional Date occurring on or before the determination of this Agreement.

### **3.2 General Obligation to satisfy Conditions Precedent**

Without limiting or prejudice to any other provisions of this Agreement:-

3.2.1 The Developer and the Council (where appropriate) shall comply with their respective obligations in this Agreement to procure the satisfaction of the Conditions Precedent:-

- (a) the Funding and Viability Condition in accordance with Clause 6
- (b) the Site Assembly Condition in accordance with Clause 4;
- (c) the Pylon Works Condition in accordance with Clause 5;
- (d) the Environmental Report Condition in accordance with Clause 11;
- (e) the Planning Condition the Footpath Order Condition and the Highways Condition in accordance with Clauses 7, 8 and 9 respectively;
- (f) the R&A Condition in accordance with Clause 10; and
- (g) the Environmental Insurance Condition in accordance with Clause 12.

3.2.2 The sequencing of the Works shall be as per the Development Programme;

3.2.3 Each party shall assist each other with the performance of its obligations pursuant to Clause 3.2.1 by responding promptly to any written request as to the other party's views and requirements in relation to any of the relevant Conditions Precedent;

3.2.4 The Developer and the Council shall keep each other fully informed of the actions each is taking and the progress that is being made by each to satisfy their respective Conditions Precedent, including inviting the other to attend all meetings with third parties and providing minutes of such meetings, and regular reporting on the progress of any third party negotiations;

### **3.3 Planning Condition Date**

3.3.1 If the Planning Condition Satisfaction Date has not occurred by the Planning Condition Date the Council may determine this Agreement at any time after the Planning Condition Date by serving notice on the Developer. On the date 10 Working Days after service of such notice this Agreement will determine.

3.3.2 If on the Planning Condition Date:-

- (a) there has been the issue of a Planning Permission or the Local Planning Authority or the Secretary of State has indicated that he is minded to grant a Planning Permission which in each case is a Satisfactory Planning Permission and the grant of which is subject only to completion of a Planning Agreement; or
- (b) a decision regarding an Appeal Call-in or referral to the Government Office made prior to such date has not been given; or
- (c) Proceedings have been instituted and final determination is awaited; or
- (d) the result of the determination of the Expert (following the reference to the Expert prior to such date of any dispute between the parties as to whether or not any of the Conditions Precedent have been satisfied) is awaited;

then the Planning Condition Date will be extended until 15 Working Days after all such matters have been finally disposed of or determined (including any hearing, inquiry, Appeal or further Proceedings in relation thereto).

3.4 Condition Date

If the Unconditional Date has not occurred on or before the Condition Date either party may determine this Agreement at any time after the Condition Date by serving notice to that effect on the other. On the date 56 days after service of such notice this Agreement will determine.

3.5 Failure to Submit Planning Application

If the Developer fails to submit the Planning Application to the Local Planning Authority by the date set out in Clause 7.3 (unless the Planning Application is submitted prior to the service of the notice in this Clause) the Council may give notice to the Developer terminating this Agreement with immediate effect.

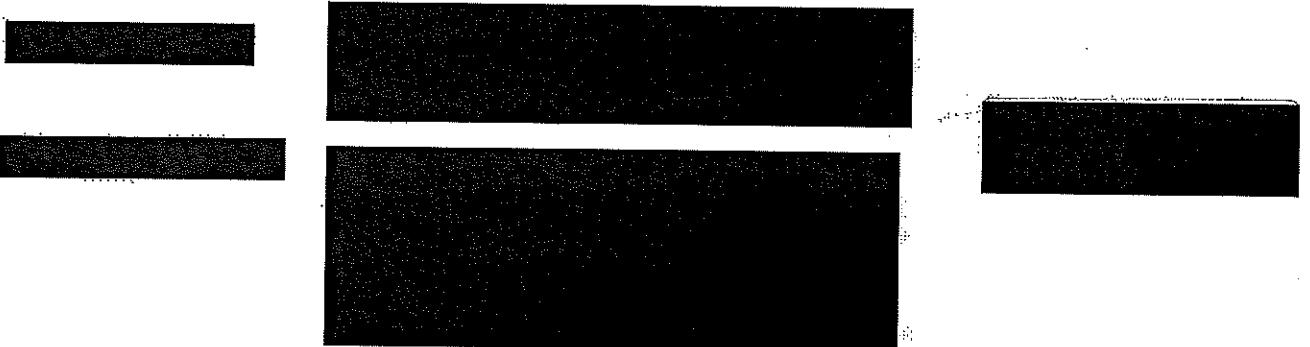
3.6 Obligations on Termination

If this Agreement is terminated:-

- 3.6.1 the Developer will immediately return any documents received from the Council to the Council and will cancel any registrations previously effected in relation to this Agreement;
- 3.6.2 such termination is without prejudice to any rights of either party against the other in respect of or arising out of any antecedent breach of any of the provisions of this Agreement.

4. SITE ASSEMBLY CONDITION

4.1 For the purposes of this Clause 4 the following definitions shall have the following meanings:-



[REDACTED]

"Development Rights"

means all matters referred to in limb (b) of the definition of Site Assembly Condition

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### 4.2 Developer's Obligations

The Developer shall use all reasonable endeavours to enter into conditional sale and purchase agreements for the Additional Land and to secure the Development Rights as soon as reasonably possible after the date of this Agreement and in any event by the Condition Date provided that the Developer shall not be obliged in so doing to incur expense in excess of what it believes to be reasonable or incur land premiums in excess of

[REDACTED] per acre in respect of any conditional sale and purchase agreements for the Additional Land before it is satisfied (acting reasonably) that the other Conditions Precedent will be capable of being met.

[REDACTED]

#### 4.3 Negotiations

Negotiations with any third party in respect of the Additional Land will be dealt with by the Developer at the Developer's cost. All contracts negotiated will be concluded in the name of the Developer as buyer of the third party interest in such form as the Council shall have approved previously (such approval not to be unreasonably withheld), and shall include provision for the land to be transferred to the Council at the direction of the Developer following an Event of Default.

#### 4.4 Council's Assistance

- 4.4.1 The Council will offer such reasonable assistance in support of the Developer as the Developer may reasonably require at the Developer's cost.
- 4.4.2 The Developer shall be responsible for the costs of fulfilling the obligations at Clauses 4.2 and 4.3 and 4.4.

#### 4.5 Step in Rights

- 4.5.1 The Developer will immediately upon completion of the acquisition of the freehold title in any part of the Additional Land grant the Council an option to purchase the relevant Additional Land at the Contract Price together with any such legal deeds easements and agreements as the Council shall reasonably and properly request and which are necessary to grant to the Council (as owner of the Council's Land) all step-in rights and access rights as are reasonably necessary to and over the Additional Land to enable the

Council as owner of the Council's Land to step-in to procure the completion of the Project following an Event of Default.

4.5.2 In the event of Council exercising its rights under Clause 4.5.1 no administrative fees or costs shall be payable to the Developer.

4.6 The Council Title Condition shall be satisfied on the latest date on which all of the elements of Council Title Condition have been satisfied to the reasonable satisfaction of the Developer.

4.7 The Developer may (at its absolute discretion) waive part or all of the Council Title Condition by sending notice of such waiver to the Council.

4.8

4.9

#### 5. PYLON WORKS CONDITION

5.1 The Developer shall as soon as reasonably practicable after the date hereof use all reasonable endeavours to negotiate and agree with Scottish Power the Electricity Pylon Works Agreement and will enter into such Agreement as soon reasonably practicable. The Developer will negotiate in good faith with Scottish Power.

5.2 The Council's approval will not be required to the form of Electricity Pylon Works Agreement if such agreement satisfies all of the following criteria:-

5.2.1 It provides for the Electricity Pylon Works to be undertaken by an approved building contractor and professional team appointed by Scottish Power and collateral warranties are to be procured from the contractor and the professional team by Scottish Power for the benefit of the Developer and the Council in a form acceptable to the Developer (acting reasonably);

5.2.2 It is materially consistent with the terms of this Agreement; and

5.2.3 (if the Council is a party to it) it does not impose any additional liability on the Council beyond that of bare landlord.

- 5.3 If the Electricity Pylon Works Agreement does not satisfy the criteria set out in Clause 5.3, the Council's approval to its terms will be required, which will not be unreasonably withheld.
- 5.4 If required, and subject to Clauses 5.2 and 5.3, the Council will enter into the Electricity Pylon Works Agreement.
- 5.5 If the Council is not a party to the Electricity Pylon Works Agreement, the Developer will provide it with a certified copy of the completed agreement within 10 Working Days of the date of the agreement.
- 5.6 The Council and the Developer shall (having regard to the parties' respective ownership in the Site at the relevant time) enter into any necessary wayleave agreements and deeds of easements with Scottish Power (in a form previously approved by the Council and the Developer both acting reasonably) which are required in order to carry out the Electricity Pylon Works.

## 6. FUNDING AND VIABILITY CONDITION

- 6.1 The Developer shall use all reasonable endeavours to satisfy the Funding and Viability Condition and shall prepare and submit to the Council (together with all such supporting evidence as the Council may reasonably require to properly consider the same) the Developer's proposed Funding Strategy and Financial Appraisal within twelve months of the date of this Agreement or such longer date as the Council and the Developer may agree. The Funding Strategy and Financial Appraisal are to be consistent with the Approved Documents.
- 6.2 The Financial Appraisal is to contain:-
- 6.2.1 a residual appraisal for the Wider Development assuming no developer return;
  - 6.2.2 a detailed operating profit and loss forecast for the first five years of operation of the completed Development providing an income and expenditure breakdown;
  - 6.2.3 a cash flow statement for the Wider Development;
  - 6.2.4 a detailed breakdown of any funding gap and any request for prudential borrowing from the Council (subject to Clause 6.10) and intended repayment profile for such funding;
  - 6.2.5 a reasoned assessment as to whether the Developer (acting reasonably and properly) considers that the Development is Viable and if it is not, what measures could be taken to make it Viable; and
  - 6.2.6 any other relevant information in relation to the proposed financial appraisal.
- 6.3 The Funding Strategy is to contain:-
- 6.3.1 a phasing plan detailing the proposed phases of the Wider Development which will take account of, inter alia, the terms of the R&A Agreement including the timing of the Open Golf Championship;
  - 6.3.2 details of the intended number of Residential Units (which are currently based on 160 houses plus 40 apartments) and the intended draw down dates of the land required for Residential Development;
  - 6.3.3 a construction programme with target dates and long stop dates for the delivery of the Works;
  - 6.3.4 details of the extent of the Core Requirements Land required for the Core Requirements Works and the applicable Council's Premium;
  - 6.3.5 details of the extent of the Core Requirements Land required for Wider Development and the applicable premium to be paid to the Council (the "Residential Phase Premium");

- 6.3.6 details of the proposed construction packages (including the identity of contractors and professional teams) and key terms proposed;
  - 6.3.7 details of the proposed quantum and source(s) of funding to be provided for the Wider Développement (by reference to the Financial Appraisal) including any request for prudential borrowing from the Council (subject to Clause 6.10);
  - 6.3.8 the proposed interest rate(s) for the funding referred to in Clause 6.3.7;
  - 6.3.9 full details of all proposed guarantor(s) to enable a proper assessment to be made of their financial standing, including details of the obligations and agreements that they will guarantee;
  - 6.3.10 full details of the security package being offered in respect of any funding;
  - 6.3.11 the identity of any proposed Funder(s) and term sheet (or equivalent) of the proposed funding which must take account of the requirements of Clause 6.8;
  - 6.3.12 full details of the Overage;
  - 6.3.13 revised scheme layout;
  - 6.3.14 detailed capital costs of the Wider Development;
  - 6.3.15 details of any estimated costs relating to the Ground Works and Electricity Pylon Works;
  - 6.3.16 details of the proposed operation and mechanics of the Development Account to be set up by the Developer in connection with the Project and which is to be documented in the Funding Agreement; and
  - 6.3.17 any other relevant information in relation to the proposed funding strategy.
- 6.4 The Council shall as soon as is reasonably practicable following receipt of the Funding Strategy and the Financial Appraisal confirm to the Developer whether it requires (acting reasonably and properly) any further information to properly consider the Funding Strategy and Financial Appraisal and if so requested, the Developer shall provide such further information to the Council as soon as reasonably practicable.
- 6.5 The Council shall as soon as reasonably practicable following the later of the date of receipt of the Funding Strategy and the Financial Appraisal and (if any) such additional supporting information which the Council may have requested pursuant to Clause 6.4 confirm to the Developer whether the Council approves (at its absolute discretion) the Funding Strategy and Financial Appraisal, the Funder and that the Development is Viable.
- 6.6 If the Council does not approve all of the items referred to in Clause 6.5, the Council will provide reasons to the Developer for any such non-approval and the Developer will re-submit the relevant item for approval as soon as reasonably practicable, taking into account the Council's comments. This process will be followed as many times as necessary until such time as the Council has approved each of the Funding Strategy, the Financial Appraisal, the Funder and that the Development is Viable (the "Outline Financial Package"). The Council and the Developer agree that any approval by the Council of the Outline Financial Package may be granted conditional upon such conditions as the Council may specify at its absolute discretion.
- 6.7 The Funding and Viability Condition will be satisfied on the Council approving the Outline Financial Package.
- 6.8 The Developer and the Council agree that any Funding Strategy is to afford to the Council the right (if the Council so requires) to step-in (or procure a nominated party to step-in as the case may be) to procure the completion of the Project following an Event of Default and the Developer will in good faith seek to negotiate and agree with the Council (and any third parties who are required to be a party to the same) all relevant legal agreements and Step-In Agreements necessary to give



legal effect to the same and which the Council requires as part of its approval of the relevant Funding Strategy including standard and institutionally acceptable appointments and construction documentation in accordance with the terms and conditions of this Agreement.

- 6.9. Once the Outline Financial Package has been approved, the Developer will use all reasonable endeavours to obtain in principle approval from a Funder (and/or from the Council) subject to Clause 6.10) for the funding required pursuant to and in accordance with the Outline Financial Package.
- 6.10. The Developer and the Council acknowledge that the Council may receive a Funding Strategy from the Developer to be assessed pursuant to this Clause 6 which may include a request by the Developer for the Council to consider applying for prudential borrowing and subject to such Funding Strategy complying with the terms and requirements of this Clause 6 and being within reasonable parameters the Council hereby acknowledges that it will take/submit the Funding Strategy through to the Council's decision making process for a decision to be reached. If the Developer requests that the Council considers applying for and procuring prudential borrowing for the Project the Council may impose such conditions as the Council may choose. The Developer agrees that if the Council agrees to apply for prudential (or other) borrowing in connection with the Project, the Developer will pay to the Council an arrangement fee in respect of such borrowing.
- 6.11. Subject to the Council's obligations under Clause 6.10 the Developer and Council agree that the Council will be under no obligation to procure prudential borrowing or borrowing of any kind as part of any Funding Strategy proposed by the Developer.
- 6.12. Once the in principle approval(s) have been obtained pursuant to Clause 6.9, (and where the Council is a party the Council will provide a draft Funding Agreement to the Developer for negotiation) the Developer will use all reasonable endeavours to enter into the Funding Agreement. The Developer will provide a certified copy of any such Funding Agreement to the Council (unless the Council is a party). The Developer will use all reasonable endeavours to satisfy any conditions in the Funding Agreement as soon as reasonably practicable.
- 6.13. Within 20 Working Days of the grant of a Satisfactory Planning Permission, the Developer will re-submit to the Council the Post Planning Package, which will highlight any material differences from the Outline Financial Package as a result of the content of the Satisfactory Planning Permission and arising from final costings being obtained by the Developer for the Ground Works and the Electricity Pylon Works. The Post Planning Package will be accompanied by a written commentary from the Developer as to its progress in satisfying all of the conditions attached to the funding for the Project.

## 7. PLANNING CONDITION

### 7.1 Consultations

Within 1 month of the date of this Agreement and before submitting the Planning Application to the Local Planning Authority the Developer will commence consultations on the form of Planning Application with the Council in its capacity as landowner as to the form and content of the Planning Application.

### 7.2 Final Draft Planning Application

- 7.2.1 The Developer shall acting in consultation with the Council (acting in its capacity as landowner) prepare the Planning Application as soon as reasonably practicable after the date of this Agreement and shall have due regard to all comments made by the Council in relation thereto and shall incorporate all requests of the Council (as landowner) in relation to the Works where such requests have been reasonably made.
- 7.2.2 As soon as the Developer believes it has the final draft Planning Application (together with all supporting documents) the Developer will submit the draft Planning Application to the Council for the Council's approval (as landowner). The Council will not unreasonably

withhold its approval to the draft Planning Application provided that (amongst other things):-

- (a) the Developer has undertaken the consultation set out in Clauses 7.1 and 7.2.1;
- (b) it complies with the Approved Documents; and
- (c) the Developer includes with the final draft Planning Application a copy of the Masterplan illustrating the proposals for the development of the Site.

### 7.3 Submission of Planning Application

The Developer will submit to the Local Planning Authority in a form conforming in all respects with the requirements of the 1990 Act and as previously approved by the Council under Clause 7.2 the requisite number of copies of any Planning Application and the requisite fees by no later than the date 18 months after the date of the satisfaction of the last of the Site Assembly Condition, the Pylon Works Condition, the Environmental Report Condition and the Funding and Viability Condition.

### 7.4 Steps to Obtain a Satisfactory Planning Permission

7.4.1 The Developer will at its own cost use its reasonable endeavours to obtain a Satisfactory Planning Permission pursuant to the Planning Application by the Planning Condition Date and will:-

- (a) after full consultation with and approval of the Council submit to the Local Planning Authority amendments to the Planning Application as reasonably required; and
- (b) enter into consultations and negotiations with the Local Planning Authority, all statutory and relevant consultees and the local community with a view to avoiding objections to the Planning Application (or obtaining the removal thereof).

7.4.2 The Developer will consult with the Council on all steps taken by the Developer to pursue the Planning Application and (with as much notice as reasonably possible) of the dates of any committee meetings, public inquiries or hearings and supply the Council with copies of any Planning Application and all relevant and all material documents.

7.4.3 The Developer will:-

- (a) obtain the approval of the Council (such approval not to be unreasonably withheld) to any engagement by the Developer of Counsel or other consultants; and
- (b) give the Council as much reasonable advance notice as possible of all consultations or conferences with any Counsel instructed in connection with the Planning Application and all other substantive project or planning review meetings with consultants and permit the Council's attendance at the same; and
- (c) supply to the Council a draft of all instructions to any Counsel and copies of all documents referred to therein; and
- (d) permit the Council an opportunity to comment thereon and to supply a copy of all actual instructions to Counsel to the Council as soon as practicable.

### 7.5 Planning Agreement

The Developer will negotiate at its own cost and enter into any Planning Agreement reasonably required by the Local Planning Authority or other competent authority in accordance with Clause 7.14.

## **7.6 Variation to or Withdrawal of Planning Application**

7.6.1 The Developer will not make any variation to the Planning Application without the consent of the Council (not to be unreasonably withheld) which the Council will be entitled in its absolute discretion to withhold in relation to a Material Change.

7.6.2 The Developer will not withdraw the Planning Application without the consent of the Council (not to be unreasonably withheld).

## **7.7 Notification of Decision**

The Developer will provide the Council with a copy of any Notification within 5 Working Days of the Notification Date.

## **7.8 Extension of Time for Determination**

If:-

7.8.1 the Planning Application is not determined by the Local Planning Authority within the period prescribed by the 1990 Act; or

7.8.2 the Local Planning Authority requests agreement to extend the time for determination of the Planning Application;

the Developer will consult with the Council and obtain the approval of the Council to any extension of time for determination of the Planning Application.

## **7.9 Planning Refusal**

If there is a Planning Refusal then:-

7.9.1 the Developer and the Council will as soon as reasonably practicable consult with one another to agree whether an Appeal to the Planning Refusal should be made and if agreed the Developer will pursue such Appeal; and

7.9.2 If the parties cannot agree under Clause 7.9.1 then the Developer shall take advice from Counsel upon the chances of a successful Appeal and provided Counsel's advice is that the Appeal is Likely to Succeed it shall at its own cost pursue the Appeal including if applicable instructing Counsel, preparing evidence and dealing with all procedural issues and the Developer will consult fully with the Council throughout and shall seek approval of all material Appeal documentation and invite the Council to conferences with Counsel and any meetings to discuss the Appeal with the expert witnesses.

## **7.10 Planning Refusal of an Appeal**

If there is a Planning Refusal of an Appeal then:-

7.10.1 the Developer and the Council will as soon as reasonably practicable consult with one another to agree whether to institute and prosecute an Appeal against such refusal and if agreed the Developer will pursue such Appeal; and

7.10.2 If the parties cannot agree under Clause 7.10.1 then the Developer shall as soon as possible and upon request from the Council take advice from Counsel upon the chances of a successful Appeal and provided Counsel's advice is that the Appeal is Likely to Succeed, the Developer shall pursue the Appeal including if applicable instructing Counsel, preparing evidence and dealing with all procedural issues and the Developer will consult fully with the Council throughout.

#### 7.11 Conduct of Appeals or Proceedings

If there is an Appeal or Proceedings the Developer will:-

- 7.11.1 pursue and conduct any Appeal with all due diligence and in a good and effective manner;
- 7.11.2 if Proceedings are commenced with regard to any order, action or decision of the Local Planning Authority the Secretary of State, any court or other competent authority made in connection with the Planning Application or any Appeal, use its reasonable endeavours to procure the grant of a Satisfactory Planning Permission through those Proceedings; and
- 7.11.3 reimburse to the Council such reasonable costs incurred with the prior knowledge and consent of the Developer (such consent not to be unreasonably withheld) by the Council in connection with the obtaining of Satisfactory Planning Permission.

#### 7.12 Deemed Satisfactory Planning Permission

If Planning Permission is granted it will be deemed to be a Satisfactory Planning Permission unless within 15 Working Days of the receipt by the Council of the Notification pursuant to Clause 7.7 either the Council or the Developer serves notice (including reasons) on the other party that it believes the Planning Permission is not a Satisfactory Planning Permission because of the existence of an Onerous Condition.

#### 7.13 Planning Condition Satisfied

The Planning Condition will be satisfied upon the occurrence of the Planning Condition Satisfaction Date.

#### 7.14 Planning Agreements

- 7.14.1 In conjunction with pursuing the Planning Application the Developer will at its own cost negotiate the terms of and enter into any necessary Planning Agreement.
- 7.14.2 If so requested by the Developer, the Council will (as landowner of the Council's Land) and in so far as it is legally permissible to do so, enter into all Planning Agreements necessary to enable the issue of the Satisfactory Planning Permission provided that:-
  - (a) the Developer has first exhausted all other options to securing planning requirements through means other than a Planning Agreement such as planning conditions;
  - (b) such Planning Agreements do not contain Onerous Conditions;
  - (c) the Council shall have no liability in respect of the relevant Phase so affected by the Planning Agreements after it has disposed of its interests in such land;
  - (d) the provisions of the same shall be conditional upon the transfer of the relevant Phase to the Developer and implementation of the Satisfactory Planning Permission in respect of that Phase;
  - (e) the Planning Agreement shall provide that the Council shall be released from the obligations entered into by it following the sale of the relevant Phase; and
  - (f) the Council shall not be required to enter into any Planning Agreement which affects or restricts in any way the development or use of any land of the Council other than the Council's Land.

## 7.15 CIL

In the event that CIL is applicable in respect of the Site, unless otherwise agreed in writing between the parties:-

7.15.1 the Developer shall be liable to pay any and all CIL;

7.15.2 where a Charging Schedule is in effect or comes into effect in the area in which the Site or any Phase thereof is located:-

- (a) before commencement of any Chargeable Development the Developer will submit a valid Assumption of Liability Notice to the Collecting Authority;
- (b) the Developer:-
  - (i) will not withdraw the Assumption of Liability Notice;
  - (ii) may transfer the Assumption of Liability Notice to another person with the consent of the Council (such consent not to be unreasonably withheld and provided that the Council may grant consent subject to the Developer first complying with such reasonable conditions as the Council may impose);
  - (iii) will notify all persons holding a material interest (as defined under the Regulations) in the Site or any Phase thereof of the date on which it intends to commence development at the Site or any Phase thereof;
  - (iv) will, on payment of all outstanding amounts of CIL due in respect of a Chargeable Development at the Site or any Phase thereof, apply to the Collecting Authority to remove the local land charge registered in respect of CIL from its register of local land charges;

7.15.3 the Developer shall take all steps to ensure:-

- (a) CIL is paid in accordance with the Regulations (and/or such other regulations or requirements from time to time in force) relating to the calculation and/or payment and/or collection of any CIL;
- (b) it has fully complied with all requirements of the Regulations (and/or such other regulations or requirements from time to time in force) relating to the serving of notices and the claiming of relief or exemptions from CIL;

7.15.4 the parties agree that the above agreement may be disclosed to any regulatory and/or administrative authority, agency, body or person in respect of any CIL.

## 8. HIGHWAYS CONDITION

### 8.1 Obligation to Fulfil

The Developer will at its own cost and expense use all reasonable endeavours to fulfil the Highways Condition as soon as reasonably practicable after satisfaction of the last of the Site Assembly Condition, the Pylon Works Condition, the Environmental Report Condition, the Planning Condition, the Footpath Order Condition and the Funding and Viability Condition.

### 8.2 Highways Agreement

8.2.1 The Developer shall use all reasonable endeavours to negotiate and agree with the Highways Authority the Highways Agreement.

8.2.2 The Developer will consult in good faith with the Council and will supply to the Council copies of the form of the proposed Highways Agreement so as to enable the Council to

make representations to the Developer in relation thereto and the Developer shall have due regard to all such representations but shall not be bound to take the same into account.

8.2.3 The Developer shall provide to the Council a copy of the proposed final form of the Highways Agreement for approval and the Council shall as soon as reasonably practicable after the date of receipt of the same confirm whether or not the Highways Agreement is acceptable.

8.2.4 In the event that the Council does not approve the form of the Highways Agreement pursuant to Clause 8.2.3 the Council shall give reasons for such refusal to the Developer and the Developer shall have due regard to such proper representations and the procedures in Clause 8.2 shall be repeated until such time as the Council approves the form of the Highways Agreement pursuant to Clause 8.2.3 provided that if the parties agree that there is a point of principle which means that approval of the Highways Agreement is unlikely then either party may refer the matter to the Expert for determination.

8.3 The Council having approved the form of the Highways Agreement pursuant to Clause 8.2 or the Expert having determined the same is approved (as the case may be) the Developer will at its own cost enter into and comply with the terms and conditions of the Highways Agreement.

8.4 The Council (as landowner of the Council's Land) will enter into the Highways Agreement (if so required by the Developer) provided that:-

8.4.1 the Council shall have no liability in respect of the relevant Phase so affected by the Highways Agreement after it has disposed of its interest in such land;

8.4.2 the provisions of the same shall be conditional upon implementation of the Highway Works;

8.4.3 the Highways Agreement shall provide that the Council shall be released from the obligations entered into by it following the sale of the relevant Phase; and

8.4.4 the Council shall not be required to enter into any Planning Agreement which affects or restricts in any way the development or use of any land of the Council other than the Council's Land.

## 9. FOOTPATH ORDER CONDITION

9.1 As soon as reasonably practicable after satisfaction of the last of the Site Assembly Condition, the Pylon Works Condition, the Environmental Report Condition, the Planning Condition, the Highways Condition and the Funding and Viability Condition the Developer shall prepare a plan for submission to the Council such plan to identify the Footpath(s) and also the proposed alternative route of such Footpaths for which a Footpath Diversion Order Application is to be submitted by the Developer (the "Footpath Diversion Plan").

9.2 The Council shall as soon as reasonably practicable following receipt of the Footpath Diversion Plan notify the Developer as to whether the Council approves the same (acting reasonably) or if not such changes as the Council requires to the Footpath Diversion Plan together with reasons for such changes.

9.3 In the event that the Council does not approve the Footpath Diversion Plan pursuant to Clause 9.2 the Developer shall as soon as reasonably practicable provide such additional information and/or changes as the Council has requested and shall resubmit such revised Footpath Diversion Plan to the Council for approval. In the event that the Developer does not agree with the requested information or changes (acting reasonably) it may refer the matter for determination by an Expert.

9.4 The provisions of Clauses 9.2 and 9.3 shall continue to be repeated and complied with by the Developer until such time as the Council has confirmed its approval of the Footpath Diversion Plan

in accordance with Clause 9.2 or until the Developer has referred the matter to the Expert for determination (the Council acting reasonably and properly at all times).

#### **9.5 Submission of Footpath Diversion Order Application**

9.5.1 The Developer shall as soon as reasonably practicable following the receipt of approval from the Council of the Footpath Diversion Plan prepare and submit to the Local Planning Authority at its own cost the Footpath Diversion Order Application in a form previously approved by the Council (such approval not to be unreasonably withheld where the Footpath Order Diversion Application is in accordance with the Footpath Diversion Plan approved by the Council pursuant to Clause 9.1).

9.5.2 The Developer may with the approval of the Council (acting reasonably where such variations or amendments are in accordance with the Footpath Diversion Plan approved by the Council pursuant to Clause 9.1) amend a Footpath Diversion Order Application as often as may be necessary to procure a Satisfactory Footpath Diversion Order.

#### **9.6 Costs**

The satisfaction of the Footpath Diversion Condition pursuant to Clause 9 shall be at the Developer's cost.

#### **9.7 Conduct of an Inquiry or Proceedings**

In the event that the Footpath Diversion Order Application is submitted to the Secretary of State and an Inquiry is called then the Developer shall:-

9.7.1 pursue and conduct any Inquiry with all due diligence and in a good and effective manner; and

9.7.2 if Proceedings are commenced with regard to any order, action or decision of the Local Planning Authority the Secretary of State, any court or other competent authority made in connection with the Footpath Diversion Order Application or any Inquiry use its reasonable endeavours to procure the confirmation of the Footpath Diversion Order through those Proceedings.

#### **9.8 Co-operation of the Parties**

9.8.1 The parties shall co-operate with each other and the Council will use its reasonable endeavours to assist the Developer to satisfy the Footpath Order Condition.

9.8.2 Without prejudice to the generality of Clause 9.8.1 the Developer and the Council shall enter into such documents as are reasonably required to consent to the diversion of the Footpath(s) onto land in which they each may have an interest, including dedication agreements, on such terms as the Developer or the Council (as contracting party) reasonably approves.

#### **9.9 Notification of Decisions**

9.9.1 The Developer shall notify the Council within 5 Working Days of the receipt of any decision resulting from the Footpath Diversion Order Application or the notification of any new conditions and shall provide a copy of the same to the Council within such 5 Working Day period.

9.9.2 If the Footpath Diversion Order is not confirmed then Clause 9.11 shall apply.

9.9.3 If a Footpath Diversion Order is confirmed the parties shall (acting reasonably and in good faith) each notify the other whether or not the Footpath Diversion Order is a Satisfactory Footpath Diversion Order within 10 Working Days of receipt by the Council of a copy of the Footpath Diversion Order pursuant to Clause 9.9.1 and in the absence of

such notice within such 10 Working Day period the parties shall be deemed to consider that the Footpath Diversion Order is a Satisfactory Footpath Diversion Order.

9.9.4 If either party considers (acting reasonably) that the Footpath Diversion Order is not a Satisfactory Footpath Diversion Order it shall provide, within the notice referred to in Clause 9.9.3, details (with reasons) of which conditions within the Footpath Diversion Order are not satisfactory.

9.9.5 If either party disagrees with the way that the other has characterised or determined whether a Footpath Diversion Order is a Satisfactory Footpath Diversion Order, it shall notify the other party within 5 Working Days of receiving notification under Clause 9.9.4 and the parties shall attempt to resolve the dispute.

9.9.6 If 5 Working Days have passed since the last notification pursuant to Clause 9.9.5 and there is still a dispute as to whether a Footpath Diversion Order is a Satisfactory Footpath Diversion Order either party may refer the matter to the Expert for determination.

#### 9.10 Satisfaction of the Footpath Closure Order Condition

The Footpath Diversion Order Condition shall be satisfied on the later of:-

9.10.1 the date that is 6 weeks and 10 Working Days after the confirmation of the Satisfactory Footpath Diversion Order; and

9.10.2 the date that is 10 Working Days after any Proceedings pursuant to Clause 9.12 have been finally disposed of with no further right to challenge leaving in place a Satisfactory Footpath Diversion Order.

#### 9.11 Extension of Condition Date

If on the Condition Date the 6 week and 10 Working Day period after the making of a Footpath Diversion Order has not expired as referred to in Clause 9.10.1 or Proceedings have been instituted and final determination is awaited then the Condition Date will be extended until 16 Working Days after any such matters have been finally disposed of or determined (including any hearing inquiry Appeal or further Proceedings in relation thereto).

#### 9.12 Refusal

9.12.1 Following any decision of the Local Planning Authority not to confirm the Satisfactory Footpath Diversion Order, the Developer and the Council (both acting reasonably) shall consult with each other and take such advice as shall in all the circumstances be reasonable as to the best course of action to secure the Satisfactory Footpath Diversion Order, including referral to Counsel.

9.12.2 If a referral is made to Counsel, and Counsel opines that either:-

(a) Proceedings; or

(b) an amended application for a Footpath Diversion Order,

would be likely to succeed as the most appropriate means to securing confirmation of a Footpath Diversion Order, the Developer shall as soon as reasonably practicable bring Proceedings or an amended application to the Local Planning Authority (as appropriate) as soon as reasonably practicable following the decision not to confirm the Footpath Diversion Order, such application to be approved by the Council.

#### 9.13 Proceedings

9.13.1 The Developer shall have conduct of any Proceedings to be made in accordance with Clause 9.12 and shall, subject to approval of the Council (acting reasonably), be responsible for the engagement of the professional advisers to be involved.



9.13.2 If the Developer commences Proceedings it shall prosecute the Proceedings in a good and efficient manner.

9.14 The Developer shall (unless Counsel opines that an appeal is not Likely to Succeed) appeal against any adverse decision made on any Proceedings provided that there is a higher court to which such a challenge may be made and the Council agrees to the decision regarding pursuing an appeal. If no agreement can be reached, the procedure in Clause 9.12 may be followed.

9.15 Neither Party shall pursue or support any Proceedings challenging a Satisfactory Footpath Diversion Order.

9.16 The Developer shall reimburse to the Council such reasonable costs incurred with the prior knowledge and consent of the Developer (such consent not to be unreasonably withheld) by the Council in connection with the obtaining of Satisfactory Footpath Diversion Order.

#### 10. R&A CONDITION

10.1 The Developer shall use all reasonable endeavours to agree the form of the R&A Replacement Agreement with the Royal Liverpool Golf Club and the R&A and complete the form of the R&A Replacement Agreement as soon as reasonably practicable after satisfaction of the last of the Site Assembly Condition, the Pylon Works Condition, the Environmental Report Condition, the Planning Condition, the Footpath Order Condition, the Highways Condition and the Funding and Viability Condition.

10.2 The negotiation of and completion of the R&A Replacement Agreement is to be at the Developer's sole cost.

10.3 The Developer shall procure that the Developer's Solicitors shall provide the Council and the Council's Solicitors with:-

10.3.1 copies of all correspondence, enquiries and other information exchanged with the Royal Liverpool Golf Club and the R&A; and

10.3.2 copies of all versions of the draft R&A Replacement Agreement.

10.4 The Council shall be permitted with or without its advisors to attend and make representations at any and all meetings with the Royal Liverpool Golf Club and/or the R&A and the Developer shall provide to the Council at least 5 Working Days notice of such meetings and the Developer shall have due and proper regard to all reasonable representations and amendments made by the Council to the latest version of the R&A Replacement Agreement provided that any amendments must be submitted to the Developer's Solicitors within 5 Working Days of receipt of draft documents sent by the Developer's Solicitors.

10.5 The Developer shall provide to the Council a copy of the proposed final form of the R&A Replacement Agreement for approval and the Council shall within 10 Working Days of receipt of the same confirm as to whether or not the R&A Replacement Agreement is in an agreed form.

10.6 In the event that the Council does not approve the form of the R&A Replacement Agreement pursuant to Clause 10.5 the Council shall give reasons for such refusal to the Developer and the Developer may refer the matter to the Expert for determination.

10.7 The Council having approved the proposed final form R&A Replacement Agreement pursuant to Clause 10.5 the Council will at its own cost enter into and comply with the terms and conditions of the R&A Replacement Agreement subject to the provisions of Clause 13.3.

#### 11. ENVIRONMENTAL REPORT CONDITION

11.1 The Developer and the Council will at the cost of the Council (with a contribution from the Developer) jointly appoint the Site Investigation Consultant as soon as reasonably practicable following the date of this Agreement.

- 11.2 The Developer and the Council shall agree:-
- 11.2.1 the identity of the Site Investigation Consultant including the terms of its appointment (which is to include a Warranty in respect of the Environmental Report); and
  - 11.2.2 the scope and methodology for the site investigation.
- 11.3 The Developer and Council agree that the Environmental Works will:-
- 11.3.1 be subject to the Building Licence terms set out in Schedule 3;
  - 11.3.2 be carried out in accordance with current best practice;
  - 11.3.3 be based on the findings of the Environmental Report;
  - 11.3.4 specify the presence of any Hazardous Substances at, in, on, under and/or migrating from the Site;
  - 11.3.5 include a specific risk assessment for the Site; and
  - 11.3.6 include the geo-environmental design and performance criteria needed to address the presence of contamination at, in, on, under and/or migrating from the Site in order to discharge any relevant planning condition relating to either (i) the condition of the Environment at the Site and/or (ii) the remediation of any Hazardous Substances present at the Site; and
  - 11.3.7 include a remediation strategy in order to discharge any relevant planning condition relating to either (i) the condition of the Environment at the Site and/or (ii) the remediation of any Hazardous Substances present at the Site in consultation with the Competent Authority taking into account their lawful requirements to be approved by the parties both acting reasonably ("Environmental Works Strategy").
- 11.4 The Developer and Council will use their reasonable endeavours to procure that the Site Investigation Consultant issues the Environmental Report as soon as reasonably practicable following approval of the methodology referred to in Clause 11.2.2 and 11.3.
- 11.5 The Developer will within 10 Working Days of receipt of the Environmental Report from the Site Investigation Consultant confirm to the Council whether or not the Developer considers such report is a Satisfactory Environmental Report.
- 11.6 If the Developer fails to notify the Council of any objection within the further 10 Working Day period referred to in Clause 11.5, it will be deemed that there is a Satisfactory Environmental Report.
- 11.7 Environmental Works
- 11.7.1 Following the grant of a Satisfactory Planning Permission the Developer shall prepare:-
    - (a) a draft environmental works specification in accordance with the Environmental Works Strategy to facilitate the Development ("Environmental Works Specification");
    - (b) the form of the Ground Works Contract (including a deed of collateral warranty in favour of the Council) and details of the required level of professional indemnity insurance, such cover (if any) to be at a suitable level for the design of the Environmental Works in question;
 all for the Council's approval (such approval not to be unreasonably withheld or delayed).
  - 11.7.2 Notwithstanding any other provision in this Agreement, the Developer shall be at liberty to select whichever Ground Works Contractor it requires to carry out the Environmental

Works and shall be responsible for the cost of the same and any and all other costs involved in carrying out and completing the Environmental Works.

- 11.7.3 In so far as it is required, the Developer shall procure that the Environmental Works Specification (without details of the contract terms) is provided to the appropriate Competent Authority prior to the commencement of the Environmental Works for their approval.
- 11.7.4 The Developer shall procure that all Necessary Consents as may be required for the Ground Works from time to time are obtained.
- 11.7.5 The Developer shall use reasonable endeavours to enter into the Ground Works Contract with the Ground Works Contractor using the approved Environmental Works Specification for the carrying out of the Environmental Works.
- 11.7.6 The Council shall have the right to approve (such approval not to be unreasonably withheld or delayed) the Ground Works Contract and it shall have the right to approve (such approval not to be unreasonably withheld or delayed) any amendments made to the Ground Works Contract after it has been entered into.
- 11.7.7 The Developer shall use all reasonable endeavours to enforce the terms of the Ground Works Contract in order to commence and complete the Environmental Works as soon as reasonably practicable.
- 11.7.8 The Developer shall keep the Council informed of progress of the Environmental Works, and the Council shall be permitted to monitor and inspect the progress of the Environmental Works (including taking samples), to attend site meetings, contract meetings, and meetings with any Competent Authority in relation to the Environmental Works but may not issue instructions to the Site Investigation Consultant and/or Ground Works Contractor or interfere with the Environmental Works (provided that the Council shall act reasonably in respect of such monitoring, inspection and attendance), and shall be provided with all relevant information to enable the Council to fully participate in such meetings. The Developer agrees to take account of comments made by the Council with respect to the conduct and progress of the Environmental Works.
- 11.7.9 The Developer shall use reasonable endeavours to procure that the Ground Works Contractor shall provide a validation certificate confirming that the Environmental Works have been completed to the satisfaction of the Competent Authority and the Council (for approval, such approval not to be unreasonably withheld or delayed) confirming that the Environmental Works Strategy has been implemented, that the Environmental Works have been completed and it shall use reasonable endeavours to procure that the Competent Authority discharges any relevant planning condition relating to either (i) the condition of the Environment at the Site and/or (ii) the remediation of any Hazardous Substances present at the Site.
- 11.7.10 The Developer shall procure (as soon as reasonably practicable) and deliver to the Council the deed of collateral warranty relating to the Environmental Works in favour of the Council from the Ground Works Contractor. The Developer shall also provide the Council with complete certified copies of the Ground Works Contract together with evidence of the Ground Works Contractor's professional indemnity insurance cover.
- 11.7.11 The Council and the Developer hereby agree that any dispute under this Clause 11 shall be determined by the Expert in accordance with Clause 36.

## 12. ENVIRONMENTAL INSURANCE CONDITION

- 12.1 The Council will use reasonable endeavours to put in place an environmental impairment insurance policy in respect of the Site, as soon as reasonably practicable having regard to the timing and progress of satisfying the other Conditions Precedent.

12.2 The policy is to cover:-

12.2.1 any liability of the Council that could arise pursuant to Clause 37.1.2; and

12.2.2 such other risks and/or liability in relation to the Environment at the Site as the Council requires (acting reasonably).

12.3 The policy is to be on such terms (including the amount of any premium) as the Council agrees acting reasonably with the underwriter.

12.4 The Council will notify the Developer within 5 Working Days of a Satisfactory Environmental Insurance Policy having been put on risk.

13. OVERAGE AGREEMENT

13.1 The Council and the Developer agree that the Developer will pay Overage to the Council in respect of both:-

13.1.1 land value - a percentage to be agreed by Council and the Developer as part of the Funding and Viability Condition - being the premium paid when the relevant land is transferred in accordance with this Agreement; and

13.2 In relation to the land value overage, the intention is to ensure the fair and equitable share of any super profits created by increases in land values in future years. The final formula and calculation of these increases will be based upon the following principles, subject to approval in the Outline Financial Package:-

13.2.1 open book accounting;

13.2.2 residential house prices for the assumed developed plots with planning permission;

13.2.3 delivered value on a phase by phase basis (currently assuming three phases of Residential Development);

13.2.4 fitting with the agreed Housebuilder phasing plans and development agreements but still reflecting the requirement for overage arrangements set out above.

13.3 As soon as reasonably practicable following approval of the Outline Financial Package, the Developer and the Council will negotiate in good faith to agree the terms of, and enter into, the Overage Agreement, which will document the Overage that has been agreed and approved as part of the Outline Financial Package.

14. R&A AGREEMENT

14.1 The Developer will comply with the terms of the R&A Agreement in so far as they are applicable to and affect the Development and its ongoing use and operation, and will indemnify the Council against any breach caused or knowingly permitted by the Developer.

14.2 If some or all of the Core Requirements Land has been transferred to the Developer before the hosting of the next Open Golf Championship, the Council and the Developer will use all their reasonable endeavours to procure that the R&A Agreement is novated (or assigned) from the Council to the Developer.

14.3 Upon Completion of the Council's Land Transfer the Council and the Developer hereby agree that the R&A Replacement Agreement is to be novated from the Council to the Developer as soon as reasonably practicable after such date such deed of novation to be in such form as the Council and the Developer shall agree acting reasonably.

14.4 The Council will comply with the terms of the R&A Transport Agreement.

**15. COMPLETION OF THE SALE OF THE COUNCIL'S LAND AND THE NEW MUNICIPAL GOLF COURSE LAND AND THE RESIDENTIAL LAND**

**15.1 Sale Completion**

15.1.1 The Council will sell the Council's Land on the relevant Completion Date on the terms set out in Schedule 4.

15.1.2 The Developer will sell the New Municipal Golf Course Land on the relevant Completion Date on the terms set out in Schedule 4.

15.1.3 The Council will sell the Residential Phase(s) to a Housebuilder at the direction of the Developer on such dates as are agreed between the Council and the Developer to reflect the Post Planning Package for the Residential Phase Premium (or the relevant part thereof) in the form of the Residential Phase Transfer(s) and on the terms set out in Schedule 4 Part 1.

**15.2 Completion Date**

15.2.1 If an Event of Default has occurred the Council will not be required to sell the Council's Land until 20 Working Days after the Event of Default is remedied in accordance with this Agreement.

15.2.2 The Council will not be required to sell the Council's Land and/or any Residential Phase(s) until such time as the Overage Agreement has been entered into.

**16. PREMIUM AND COUNCIL'S COSTS**

**16.1 Premiums**

16.1.1 The Developer will pay the Council's Premium to the Council on Completion in relation to the Council's Land.

16.1.2 The Council will pay the New Municipal Golf Course Land Premium to the Developer on Completion in relation to the New Municipal Golf Course Land.]

**16.2 Council's fees**

16.2.1 "Costs" in this Clause 16.2 means reasonable and proper costs properly incurred by the Council (and as approved by the Developer pursuant to Clause 16.2.2) with appropriate and relevant external consultants employed in monitoring the Developer's performance of its obligations pursuant to this Agreement only up to the date of Satisfactory Planning Permission.

16.2.2 The Council will submit to the Developer at the beginning of each calendar month a schedule of Costs (with appropriate and proper supporting evidence) incurred by it in the previous calendar month which the Developer is required to pay as Development Costs together with a forecast of all future Costs contemplated by the Council, for approval by the Developer. The Developer will not unreasonably withhold or delay its approval.

16.2.3 The Developer will pay from the Development Account to the Council the amount of the invoice rendered under Clause 16.2.2 within 15 Working Days of receipt.

16.2.4 If the Developer disputes any invoice submitted under Clause 16.2.2 it will notify the Council within 10 Working Days of receipt and if the parties cannot agree the disputed invoice, it will be submitted to the Expert for determination.

16.2.5 The Developer shall pay to the Council on the date 3 months after the date of this Agreement the sum of £85,000 in respect of the fees incurred by the Council's professional team in relation to the Project

PROVIDED THAT it is agreed and accepted by the Developer and the Council that the aggregate Costs payable by the Developer to the Council pursuant to this Clause 16.2 only shall not exceed £200,000 and that this Clause 16.2 is not intended to deal with any other claims between the Council and the Developer during the course of the Works including any claims as may be referred to in Clauses 17 to 30.

## **17. AFTER UNCONDITIONAL DATE.**

### **17.1 Approved Documents**

17.1.1 The Council acknowledges the details contained in the Approved Documents are approved under this Clause 17.1.

17.1.2 The Developer will comply with the provisions of this Clause in relation to details of the Works not dealt with in the Approved Documents (only in relation to the delivery of the Works and not the Residential Development).

### **17.2 Reviewable Documents**

17.2.1 The Developer will develop and finalise the design and specification of the Works and the Council will review the Reviewable Documents in accordance with the Review Procedure and the provisions of this Clause 17.

17.2.2 The Developer will submit the Reviewable Documents and the design of any Material Changes developed in accordance with the procedure in Clause 24 to the Council for review under the Review Procedure. The Developer shall not commence or permit the commencement of construction of the part of the Works to which such Reviewable Documents relates until it has submitted the Reviewable Documents and it is confirmed by the Council that the Developer is entitled to proceed with construction in accordance with the Review Procedure.

17.2.3 The Developer will allow the Council at any time a reasonable opportunity to view any items of Design Data which shall be made available to the Council as soon as practicable following receipt of any written request from the Council.

### **17.3 Approval Requirements**

All plans and specifications to be produced to the Council under Clause 17 shall comply so far as shall be applicable with the terms of this Agreement with the Approved Documents, any previously Approved Drawings and the provisions of this Agreement.

### **17.4 Further Information**

Without limiting the foregoing provisions of this Clause the Developer shall consult with the Council and provide such further information as the Council may reasonably require in relation to matters affecting the Works.

### **17.5 Approval Constitutes Approved Drawings**

Where the Council approves any plans and specifications submitted to it pursuant to the Review Procedure it shall notify the Developer and the plans and specifications so approved will constitute Approved Drawings.

### **17.6 No Variation Except in Accordance with this Agreement**

No variation will be made to the Approved Drawings save in accordance with the provisions of this Agreement.

#### 17.7 Approval Not to Lessen Obligations

No inspection or approval by the Council of the Approved Documents, Reviewable Documents or any other specification and development plans or other materials will lessen the obligation of the Developer, a Building Contractor, the Consultants or any Sub-Contractor in relation to the Works whether under this Agreement or otherwise.

#### 17.8 Variations to Phase Plan

17.8.1 If the Developer wishes to vary the extent of any Phase as shown on the Phase Plan the Developer will seek the approval of the Council. The Council will not be deemed to be unreasonably withholding or delaying its approval under the Review Procedure where the variation sought:-

- (a) alters the number of Residential Units or in any other way affects the Residential Development;
- (b) is a Material Change to the Core Requirements;
- (c) extends the Development Programme;
- (d) increases the Development Costs except where there will be a commensurate increase in Development Income; and
- (e) does not at all times provide for at least 9 holes on either the Municipal Golf Course or the New Municipal Golf Course (or a combination of the same) to be open and available for play to the public together with all necessary pedestrian and vehicular rights of access and egress.

17.8.2 The Developer shall not commence any part of the Works until it has produced to and had approved by the Council the Phase Plan.

#### 18. START ON-SITE AND GRANT OF PHASE BUILDING LICENCES

##### 18.1 Phase 1 Building Licence

From the Phase 1 Commencement Date (but subject to Clause 18.3) the Council grants to the Developer a building licence of Phase 1 on the terms set out in Schedule 3.

##### 18.2 Phase 2 Building Licence

From the Phase 2 Commencement Date (but subject to Clause 18.3) the Council grants to the Developer a building licence of Phase 2 on the terms set out in Schedule 3.

##### 18.3 Contracts, Appointments and Warranties

18.3.1 As a condition of the grant of any building licence under this Clause 18 in relation to the relevant Phase:-

- (a) the Developer will enter into all relevant Building Contracts for the Phase and will provide the Council with certified copies of the same;
- (b) the Developer will use its reasonable endeavours to procure that the relevant Building Contractors have completed and delivered to the Council the relevant Warranties;
- (c) the Developer (or the relevant Building Contractor) will enter into all relevant Consultant Appointments for the Phase and will provide the Council with certified copies of the same;

- (d) the Developer will use its reasonable endeavours to procure that the relevant Consultants have completed and delivered to the Council the Warranties;
- (e) the Developer (or the relevant Building Contractor) will enter into all relevant Sub-Contracts for the Phase and will provide the Council with certified copies of the same; and
- (f) the Developer will use its reasonable endeavours to procure that the relevant Sub-Contractors have completed and delivered to the Council the relevant Warranties.

18.3.2 Where the Building Contracts, Consultant Appointments and Warranties referred to in Clause 18.3.1 relate to parts of the Works which are to be carried out more than 6 months after the relevant Phase Commencement Date and the relevant Contractors, Consultants and/or Sub-Contractors have not yet been appointed by the Developer or in relation to the Works, the work covered by such Warranties cannot be commenced until the relevant copy contracts and appointments are supplied and the Warranties delivered and the relevant Contractor, Consultant or Sub-Contractor may not enter the Site until the relevant Warranty has been unconditionally delivered.

#### 18.4 Building Contractor

- 18.4.1 The Developer will use all reasonable endeavours to enter into the Building Contract(s) with the Building Contractor(s) as soon as reasonably practicable after the Unconditional Date. The Building Contract will be based upon the Joint Contracts Tribunal Standard form of building contract or such other form(s) of building contract as is appropriate having due regard to the nature, scope and complexity of the Works to be procured.
- 18.4.2 Prior to going out to market to appoint a Building Contractor, the Developer will provide to the Council, for the Council's approval, a copy of the invitation to tender and the proposed form of Building Contract that it is intending to offer to the market (which must comply with Clause 18.4.9). The Council will not unreasonably withhold its approval to the form of Building Contract. If the Council does not approve the Building Contract, it will notify the Developer of its objections as soon as reasonably practicable and in any event within 20 Working Days of receipt of a full copy of the ITT and draft Building Contract.
- 18.4.3 The Developer will take account of the Council's comments on the draft Building Contract and will resubmit the Building Contract for approval to the Council (showing any changes made to the Building Contract from the previous draft submitted). The Council will have 5 Working Days to approve any amendments to the Building Contract.
- 18.4.4 If the Council does not respond or object to the proposed Building Contract (with reasons for its objection(s)) within the 20 Working Day or 5 Working Day timescales (as applicable) in Clauses 18.4.2 and 18.4.3, the Council will be deemed to have approved the Building Contract. Provided that the Council cannot be deemed to have approved any terms of the Building Contract which conflict with those set out in Clause 18.4.9.
- 18.4.5 The Developer will keep the Council informed at reasonable intervals of the progress of the negotiations of any Building Contract and details of all material discussions and negotiations with the relevant Building Contractor, including when it intends to submit the final contract for approval.
- 18.4.6 The Developer will submit the final draft of Building Contract to the Council for approval (in a form that shows the amendments made to the previous version the Council has approved). The Council will not unreasonably withhold its approval to the final form of Building Contract. Subject to the Developer having complied with Clause 18.4.5, the Council will confirm its approval (or specify reasons for rejection) within 5 Working Days of receipt of a full copy of the final draft Building Contract.



- 18.4.7 If the Council does not respond or object to the final draft Building Contract (with reasons for its objection(s)) within the 5 Working Day timescale in Clause 18.4.6, the Council will be deemed to have approved the Building Contract.
- 18.4.8 The Developer shall not enter into any Building Contract without the Council's approval which shall not be unreasonably withheld (or deemed approval) as to both:-
- (a) the identity of the proposed Building Contractor; and
  - (b) the form of Building Contract as set out above.
- 18.4.9 The Building Contract(s) will be on terms that:-
- (a) in relation to the relevant part of the Works the Building Contractor shall enter into a Warranty in favour of the Council that is in accordance with Clause 18.7 and in a form approved by the Council (such approval not to be unreasonably withheld) provided that the Council shall not be acting unreasonably in withholding its approval to a provision which seeks to limit the Building Contractor's liability;
  - (b) the relevant Building Contractor will maintain both during the completion of the relevant Works and for a period of 12 years from the relevant Date of Practical Completion of the relevant Works with a minimum level of professional indemnity insurance cover of £10,000,000 for each and every claim; and
  - (c) the period within which the Building Contractor is obliged to make good any defects in the Works is not less than 12 months from the issue of the relevant Practical Completion Statement under the Building Contract;
  - (d) contain step-in provisions in such form as the Council shall require;
  - (e) contain a licence to copy and use any intellectual property created or used by the Building Contractor in carrying out the Works;
  - (f) are consistent with the Necessary Consents, Statutory Requirements, Planning Permission, Approved Documents (so far as shall be applicable with the terms of this Agreement), Approved Drawings, Specification and the terms of this Agreement;
  - (g) contain an express right for the Council to attend project meetings and inspect the Works;
  - (h) do not contain an overall cap on liability that is less than the agreed level of professional indemnity insurance and/or the agreed contract sum (whichever is greater) and provided the following fall outside of any agreed cap:-
    - (i) willful default;
    - (ii) gross negligence;
    - (iii) fraud or criminal acts;
    - (iv) fines and/or penalties for infringement of laws;
    - (v) infringement of intellectual property rights;
    - (vi) third party claims; and
    - (vii) death or personal injury resulting from the Building Contractor's negligence;

- (i) do not contain a net contribution clause;

18.4.10 The Developer shall supply to the Council:-

- (a) one complete, certified copy of any Building Contract;
- (b) evidence of the insurances being maintained by the Building Contractor in accordance with the Building Contract; and
- (c) an executed form of Warranty from the relevant Building Contractor in favour of the Council

within 15 Working Days of the Building Contract being entered into.

## 18.5 Consultants

18.5.1 The Developer will use all reasonable endeavours to enter into the Consultant Appointments (or procure that the Consultant Appointments are entered into) with the Consultants as soon as reasonably practicable after the Unconditional Date.

18.5.2 Prior to the Developer (or the Building Contractor, as appropriate) going out to market to appoint a Consultant, the Developer will provide to the Council, for the Council's approval, a copy of the invitation to tender and the proposed form of Consultant's Appointment that it is intending to offer to the market (which must comply with Clause 18.5.3). The Council will not unreasonably withhold its approval to the form of Consultant's Appointment.

18.5.3 The approval process set out in Clauses 18.4.2 - 18.4.7 in relation to the Building Contractor shall apply mutatis mutandis to the appointment of each Consultant, subject to Clause 11.2.

18.5.4 The Consultant Appointment will be on terms that:-

- (a) the Consultant shall enter into a Warranty in favour of the Council that is in accordance with Clause 18.7 and in a form approved by the Council (such approval not to be unreasonably withheld) provided that the Council shall not be acting unreasonably in withholding its approval to a provision which seeks to limit the Consultant's liability;
- (b) the relevant Consultant will maintain both during the completion of the relevant Works and for a period of 12 years from the relevant Date of Practical Completion of the relevant Works professional indemnity insurance at such level as the Developer and the Council shall agree acting reasonably having due regard to the scope and extent of the services being provided by the relevant Consultant for each and every claim;
- (c) contain a licence to copy and use any intellectual property created or used by the Consultant in carrying out the Works;
- (d) are consistent with any relevant Building Contract, Necessary Consents, Statutory Requirements, Planning Permission, Approved Documents (so far as shall be applicable with the terms of this Agreement), Approved Drawings, Specification and the terms of this Agreement;
- (e) contain an express right for the Council to attend project meetings and inspect the services;
- (f) do not contain an overall cap on liability that is less than the agreed level of professional indemnity insurance and/or the agreed contract sum (whichever is greater) and provided the following fall outside of any agreed cap:-
  - (i) wilful default;

- (ii) gross negligence;
- (iii) fraud or criminal acts;
- (iv) fines and/or penalties for infringement of laws;
- (v) infringement of intellectual property rights;
- (vi) third party claims; and
- (vii) death or personal injury resulting from the Consultant's negligence;  
and
- (g) do not contain a net contribution clause.

**18.5.5 The Developer shall supply to the Council:-**

- (a) one complete, certified copy of any Consultant Appointment;
- (b) evidence of the insurances being maintained by the Consultant in accordance with the Consultant Appointment; and
- (c) an executed form of Warranty from the relevant Consultant in favour of the Council

within 15 Working Days of the Consultant Appointment being entered into.

**18.6 Sub-Contractors**

**18.6.1** The Developer will use its reasonable endeavours to enter or procure that the Building Contractor enters into each Sub-Contract with the Sub-Contractor as soon as reasonably practicable after the Unconditional Date.

**18.6.2** The Sub-Contracts will be on terms that:-

- (a) in relation to the relevant part of the Works the Sub-Contractor shall enter into a Warranty in favour of the Council that is in accordance with Clause 18.7 and in a form approved by the Council (such approval not to be unreasonably withheld) provided that the Council shall not be acting unreasonably in withholding its approval to a provision which seeks to limit the Sub-Contractor's liability;
- (b) the relevant Sub-Contractor will maintain both during the completion of the relevant Works and for a period of 12 years from the Date of Practical Completion of the Works professional indemnity insurance at such level as the Developer and the Council shall agree acting reasonably having due regard to the scope value and extent of the works pursuant to the relevant Sub-Contractor for each and every claim;
- (c) the period within which the Sub-Contractor is obliged to make good any defects in the Works is not less than 12 months from the issue of the relevant Practical Completion Statement under the Sub-Contract;
- (d) contain a licence to copy and use any intellectual property created or used by the Sub-Contractor in carrying out the Works;
- (e) are consistent with the relevant Building Contract, Necessary Consents, Statutory Requirements, Planning Permission, Approved Documents (so far as shall be applicable with the terms of this Agreement), Approved Drawings, Specification and the terms of this Agreement;

- (f) contain an express right for the Council to attend project meetings and inspect the Works;
- (g) do not contain an overall cap on liability that is less than the agreed level of professional indemnity insurance and/or the agreed contract sum (whichever is greater) and provided the following fall outside of any agreed cap:-
  - (i) wilful default;
  - (ii) gross negligence;
  - (iii) fraud or criminal acts;
  - (iv) fines and/or penalties for infringement of laws;
  - (v) infringement of intellectual property rights;
  - (vi) third party claims; and
  - (vii) death or personal injury resulting from the Sub-Contractor's negligence; and
- (h) do not contain a net contribution clause.

18.6.3 The Developer will obtain or procure that the Council's approval is obtained as to the selection of the proposed Sub-Contractor (such approval not to be unreasonably withheld) and will not award any Sub-Contract without the Council's approval.

18.6.4 The Developer shall supply to the Council:-

- (a) one copy of the relevant Sub-Contract (and any specifications and other documentation referred to in it);
- (b) evidence of the insurances being maintained by the Sub-Contractor in accordance with the Sub-Contract; and
- (c) an executed form of Warranty from the relevant Sub-Contractor in favour of the Council

within 5 Working Days of the Sub-Contract being entered into.

## 18.7 Warranties

18.7.1 The Warranties from the Building Contract, Consultants and Sub-Contractors in favour of the Council will be on terms that:-

- (a) the Building Contractor, Consultant and Sub-Contractor will perform its obligations under the relevant Building Contract, Consultant Appointment or Sub-Contract (as the case may be);
- (b) professional indemnity insurance cover will be maintained to the level agreed in the relevant Building Contract, Consultant Appointment or Sub-Contract as the case may be;
- (c) the Council is granted a licence to copy and use any intellectual property created or used in carrying out the Works;
- (d) prior to any termination or suspension the Council will have a minimum 28 day period to decide whether it wishes to step in to the Building Contract, Consultant Appointment or Sub-Contract (as the case may be);

- (e) the Warranty is capable of being assigned by the Council (together with its assignee) on at least two occasions; and
- (f) other than a statement that there will be no greater liability under the Warranty than there would have been if the Council had been the joint employer under the relevant Building Contract, Consultant Appointment or Sub-Contract (as the case may be) no other limit on liability will be permitted.

## 19. STATUTORY AGREEMENTS

- 19.1 The Developer shall at all appropriate times negotiate all necessary Statutory Agreements for the construction and adoption of roads and Service Media to serve the Development and where necessary for the diversion of any existing Service Media passing over under or through the Site.
- 19.2 The Developer will consult in good faith with the Council and will supply the Council (if it does not already have such) with a copy of the form of any such proposed Statutory Agreement to enable the Council to make representations to the Developer in relation thereto and the Developer will consider all such representations in good faith and take these into account.
- 19.3 The Developer shall pay all costs, charges, expenses and fees pursuant to each Statutory Agreement entered into under this Clause 19 and shall keep the Council indemnified against all costs, claims, demands, liability losses or proceedings arising thereunder or made or incurred as a result of any non-observance or non-performance of the Developer's obligations thereunder.
- 19.4 The Council shall enter into all such Statutory Agreements prepared by the Developer where required as landowner of the Council's Land and in so far as it is legally permissible to do so (in such form as may be approved by the Council such approval not to be unreasonably withheld) as and when necessary in order to enable the Developer to carry out the Works in accordance with the Development Programme, and subject to the requirements set out in Clause 7.14.2.
- 19.5 The Council shall if requisite and in so far as it is legally permissible to do so enter into any Statutory Agreements for the construction and installation of Service Media (or any diversion thereof) in its capacity as landowner at the request and cost of the Developer subject to the Council approving the terms of such Statutory Agreements.
- 19.6 The Developer shall supply to the Council a copy of each Statutory Agreement entered into pursuant to this Clause 19 (and any bills of quantity, drawings and specifications to be annexed thereto or other documentation referred to therein) save where the Council itself is a party to such Agreement within 10 Working Days of the same being entered into and will thereafter supply a copy to the Council of any variation thereto.

## 20. INSURANCE

### 20.1 Insurance of the Works

From the Unconditional Date the Developer will insure the Works in an amount not less than the full reinstatement cost from time to time of the Works (including professional fees and VAT where applicable) against the Insured Risks under an "all Risks" policy.

### 20.2 Employer's Liability, Professional Indemnity and Public Liability

From the Unconditional Date the Developer will maintain or procure the maintaining of employers' liability insurance, professional indemnity insurance and public liability insurance in an appropriate sum (from time to time) as agreed with the Council (acting reasonably) in respect of the Site and the Works. The Developer will use its reasonable endeavours to ensure that the Council is identified as co-insured in respect of the policy of public liability insurance.

### 20.3 Copy Policies

The Developer will at the request of the Council supply to the Council a copy of the insurance policies maintained under Clause 20.1 and Clause 20.2 and satisfactory evidence of payment of premiums.

### 20.4 Payments under Insurance Policies

All monies paid out in relation to claims received will be paid into the Development Account and applied by the Developer as soon as reasonably practicable to the matters in respect of which they are paid out. If the monies received are insufficient to make good the loss or damage caused or claimed the Developer will make up any deficiency from its own monies.

## 21. THE WORKS

### 21.1 Commencement

The Developer will commence the Works in relation to each Phase upon the relevant Phase Commencement Date and will achieve Practical Completion in respect of each Phase on or before the relevant Build Completion Date.

### 21.2 Development Programme

Once the Developer has commenced any Works the Developer will diligently and continuously carry out the Works in accordance with the Development Programme.

### 21.3 Building Long Stop Date

The Developer will complete all the Works in each Phase before the relevant Building Long Stop Date.

### 21.4 Carrying out the Works

The Developer will design, carry out and complete the Works:-

- 21.4.1 in a good and workmanlike manner;
- 21.4.2 with all reasonable skill and care (and in the case of design, the standard of skill and care will be that to be expected of a duly qualified and experienced designer understanding the design of works similar in scope, value, complexity, character and size to the Works);
- 21.4.3 using only suitable good quality materials reasonably suitable for their purpose;
- 21.4.4 by engaging only Consultants Building Contractor and/or Sub-Contractors of repute in accordance with Clause 18;
- 21.4.5 in accordance with:-
  - (a) the Approved Documents (so far as shall be applicable with the terms of this Agreement);
  - (b) the Approved Drawings;
  - (c) the Specification;
  - (d) all Necessary Consents and the Planning Permission;
  - (e) all Statutory Requirements and Statutory Agreements;
  - (f) all relevant British Standards and Codes of Practice from time to time in force;

- (g) the Développement Programme; and
- (h) the terms of this Agreement.

## 21.5 Necessary Consents

In relation to the Works the Developer will:-

- 21.5.1 (where appropriate) use all reasonable endeavours to procure that there are obtained as soon as requisite all Necessary Consents and that there are given all notices required to be given under any Statutory Requirements or Necessary Consents and will upon request provide copies to the Council;
- 21.5.2 procure that there are not specified for use or used in the Works any products or materials which at the time of specification or use:-
  - (a) do not conform with British Standards and Codes of Practice; or
  - (b) are generally known within the construction industry at the time of specification to be capable of causing or constituting a physical defect or hazard to health and safety in the particular circumstances in which the products or materials are specified for use and used.

## 21.6 Relationship with Building Contractor(s)

21.6.1 The Developer will:-

- (a) comply with its obligations under each Building Contract in all material relevant respects and will not knowingly do any act or thing which would entitle the Building Contractor to treat the Building Contract as terminated by breach or adversely affect the rights of the Council under the Warranties or cause delays;
  - (b) take all steps reasonably necessary to procure the due observance and performance of the duties and obligations of the Building Contractor under each Building Contract (including the defects liability provisions);
  - (c) take all reasonable steps to enforce any rights the Developer has pursuant to any product guarantee or warranty in relation to any materials or plant and machinery incorporated in the Works;
  - (d) not without the consent of the Council (such consent not to be unreasonably withheld) knowingly release, vary or waive the terms of the Building Contract nor knowingly stop itself from enforcing or seeking redress for any duty or obligation on the part of the Building Contractor under the Building Contract if as a result any right or remedy of the Council will be materially adversely affected; and
  - (e) use all reasonable endeavours to procure that throughout the carrying out of the Works the Building Contractor is continuously appointed and given prompt and adequate instructions in accordance with the terms of the Building Contract.
- 21.6.2 The Developer shall notify the Council as soon as reasonably practicable of any material dispute arising pursuant to the Building Contract and shall promptly give the Council such details thereof as the Council may reasonably require.
- 21.6.3 The Developer shall deal with any such disputes in a manner that is consistent with its obligations hereunder and shall consider in good faith any representations made by or on behalf of the Council in relation thereto.
- 21.6.4 If the Developer shall determine the employment of a Building Contractor it shall forthwith give notice thereof to the Council and shall appoint a new Building Contractor approved

by the Council (acting reasonably) who shall have the competence, experience, resources and suitability to discharge its obligations under the Building Contract as soon as practically possible provided always that the obligations on the part of the Developer and the conditions contained in this Agreement shall remain in force and apply to the new building contract as to the Building Contract and to the new contractor as to the Building Contractor.

## 21.7 Relationship with Consultants

### 21.7.1 The Developer will:-

- (a) comply with its obligations (or use its reasonable endeavours to procure that the Building Contractor will comply with its obligations) under the terms of the Appointment in all material respects with each Consultant;
- (b) take all steps reasonably necessary to procure the due observance and performance of the duties and obligations of each Consultant and will not (and use its reasonable endeavours to procure that the relevant Building Contractor will not) without the consent of the Council (such consent not to be unreasonably withheld) release, vary or waive nor negligently stop itself from enforcing or seeking redress for any such duty or obligation if as a result any right or remedy of the Council will be adversely affected.

21.7.2 If any Consultant Appointment is terminated prior to the completion of such Consultant's duties in respect of the Development the Developer shall forthwith engage (or use its reasonable endeavours to procure that the Building Contractor shall engage) a replacement firm or person approved by the Council (approval not to be unreasonably withheld) to perform such duties in his place and all the relevant provisions of this Agreement will apply thereto.

## 21.8 Relationship with Sub-Contractor(s)

### 21.8.1 The Developer will:-

- (a) comply with its obligations (or use its reasonable endeavours to procure that the Building Contractor shall comply with its obligations) under a Sub-Contract in all relevant respects and will not (and will use its reasonable endeavours to procure that the Building Contractor will not) do any act or thing which would entitle the Sub-Contractor to treat the Sub-Contract as terminated by breach or adversely affect the rights of the Council under the Warranties or cause delays;
- (b) take all steps reasonably necessary to procure the due observance and performance of the duties and obligations of the Sub-Contractor under the Sub-Contract (including the defects liability provisions);
- (c) take all reasonable steps to enforce any rights the Developer and/or the Building Contractor has pursuant to any product guarantee or warranty in relation to any materials or plant and machinery incorporated in the Works;
- (d) not (and will use its reasonable endeavours to procure that the relevant Building Contractor will not) without the consent of the Council (such consent not to be unreasonably withheld) release, vary or waive the terms of the Sub-Contract nor negligently stop itself from enforcing or seeking redress for any duty or obligation on the part of the Sub-Contractor under the Sub-Contract if as a result any right or remedy of the Council will be materially adversely affected; and
- (e) use all reasonable endeavours to procure that throughout the carrying out of the relevant Works the Sub-Contractor is continuously appointed and given prompt and adequate instructions in accordance with the terms of the Sub-Contract.



21.8.2 The Developer shall notify the Council as soon as reasonably practicable of any material dispute arising pursuant to any Sub-Contract and shall promptly give the Council such details thereof as the Council may reasonably require.

21.8.3 The Developer shall deal with any such disputes in a manner that is consistent with its obligations hereunder and will consider (and use its reasonable endeavours to procure that the Building Contractor will consider) in good faith any representations made by or on behalf of the Council in relation thereto.

21.8.4 If the Developer or a Building Contractor determines the employment of a Sub-Contractor the Developer shall forthwith give notice thereof to the Council and shall appoint a new Sub-Contractor approved by the Council (acting reasonably) who shall have the competence, experience, resources and suitability to discharge its obligations under the Sub-Contract as soon as practically possible provided always that the obligations on the part of the Developer and the conditions contained in this Agreement shall remain in force and apply to the new sub-contract as to the Sub-Contract and to the new sub-contractor as to the Sub-Contractor.

#### 21.9 Precautions Regarding Adjoining Land

The Developer will take, so far as is practicable, and will use its reasonable endeavours to procure that the Building Contractor takes all reasonable precautions to prevent any danger or undue disturbance or inconvenience to the general public (having regard to the carrying on of the Works in accordance with this Agreement) or any Housebuilder in relation to the Residential Development.

#### 21.10 Conduct of Persons and Works

The Developer will:-

21.10.1 at all times during the carrying out of the Works act and require that the Building Contractor, the Consultants, Sub-Contractors and the Developer's agents and representatives shall not act in such manner as to cause an actionable nuisance to any persons living in or occupying adjoining property or any Housebuilder in relation to the Residential Development; and

21.10.2 at all times ensure that the Works are managed in accordance with the criteria of good site management and good building practice from time to time both by reference to standards reasonably applicable to the Works.

#### 21.11 Securing the Site

Without prejudice to any other provision of this Agreement the Developer will procure that during the carrying out of the Works:-

21.11.1 those parts of the Site where the Clubhouse and Hotel are situated where any part of the Works has commenced will be at all times secured as fully as may reasonably be practicable against unauthorised entry; and

21.11.2 the Site is kept tidy and properly cleared of surplus materials, rubble, rubbish or waste and no goods or materials be deposited or stored on the Site which are not required within a reasonable time for the carrying out the Works.

#### 21.12 Considerate Contractor's Scheme

The Developer shall comply with the Considerate Contractors' Scheme and the Code of Considerate Practice.

#### 21.13 Periodic Payments

From the Unconditional Date the Developer will pay all charges, expenses, fees and other sums payable in respect of the Site and all rates, taxes and assessments whatsoever whether

parliamentary, parochial or otherwise which are at any time after the Unconditional Date and during the continuance of this Agreement (or if earlier until the Actual Completion Date) assessed upon or payable in respect of the Phase the Developer has a building licence of and any buildings or structures for the time being thereon.

## **22. ACCESS, INSPECTIONS, SITE MEETINGS AND INFORMATION**

### **22.1 Agreed Access**

The Developer will permit the Council's Representative and any person authorised by him to have access to the Site where the Works are being carried out at all reasonable times subject to prior reasonable notice to the Developer's Representative and subject to complying with all relevant and appropriate health and safety requirements.

### **22.2 Inspections**

The Developer will permit the Council's Representative and any person authorised by him to enter onto the relevant part of the Site where the Works are being carried out subject to a building licence and any workshops or premises of the relevant Building Contractor:

22.2.1 to view the progress and state of the Works and the materials used or intended for use therein; and

22.2.2 to check for compliance with the Approved Drawings, Approved Documents (so far as shall be applicable with the terms of this Agreement) and/or the terms of this Agreement

such entry being only at such intervals and times as may from time to time be reasonable and only after having given reasonable notice to the Developer's Representative and subject to complying with all relevant and appropriate health and safety requirements.

### **22.3 Site Meetings and Progress Reports**

22.3.1 Within 20 Working Days after the relevant Phase Commencement Date the Council and the Developer will agree a calendar of project and/or site meetings which the Council's Representative and the Developer's Representative will attend.

22.3.2 The Council or the Developer may at any time on reasonable notice call a project and/or site meeting between the Council's Representative and the Developer's Representative to consider the progress of the Works.

22.3.3 In addition to the meetings under Clause 22.3.1 and Clause 22.3.2 the Council's Representative will be entitled to attend any meetings held at the Site which the Developer may attend the purpose of which is to discuss the Works. The Developer will provide copies of any minutes of any such site meetings requested by the Council's Representative.

22.3.4 The Council's Representative and Developer's Representative will meet at least once each 2 weeks (by telephone if the parties agree) to discuss the progress of the Works.

### **22.4 Information on Key Stages and Problems**

The Developer will keep the Council informed of:-

22.4.1 the stages reached by the Developer in performing the obligations on its part contained in this Agreement; and

22.4.2 any material problems or delays affecting the Works and how the Developer and the relevant Building Contractor intends to resolve the same.

## **22.5 Due regard to Representations**

22.5.1 The Developer will use its reasonable endeavours to procure that due regard is had to any reasonable representations made to the Developer's Representative by the Council's Representative in respect of the Works. The Council's Representative will not interfere with the Works nor attempt to instruct any persons employed upon the Works and in particular the Council's Representative shall only address any comments in relation to the Works to the Developer or the Developer's Representative.

22.5.2 Notwithstanding the exercise of such rights and any inspections carried out by or on behalf of the Council or the Council's Representative pursuant to the provisions of this Clause 22 the Developer will not be excused from or relieved of any liability or responsibility for the Works.

## **23. DEVELOPMENT PROGRAMME**

### **23.1 Delays in Development Programme**

The Developer will use its reasonable endeavours to mitigate or reduce the effect of any delays on the Works. If it becomes apparent that progress of the Works is being or is likely to be materially delayed the Developer will procure that notice is given to the Council as soon as reasonably practicable. The Developer's notice given under this Clause 23.1 will state the material circumstances causing the delay, whether the delay is due to a Delay Event, the estimated extent of the delay and its impact on the Development Programme, any Phase Completion Date and any relevant Build Completion Date. If the delay is due to a Delay Event the Developer may in its notice submit an amendment to the Development Programme in accordance with the Review Procedure and a reasonable extension of time to the relevant Phase Completion Date.

### **23.2 Agreement of Extension of Time**

Any extension of time stated under Clause 23.1 pursuant to a Delay Event will be determined by the Contract Administrator.

### **23.3 Dispute on Extension of Time**

If one party disagrees with the determination under Clause 23.2, any amendment to the Development Programme and the length of the extension of time to the relevant Phase Completion Date will be determined by the Expert in accordance with Clause 36.

## **24. CHANGES TO THE WORKS**

### **24.1 Allowed Changes**

The Works will be constructed in accordance with the Approved Drawings, Approved Documents (so far as shall be applicable with the terms of this Agreement) and Planning Permission subject to any Non-Material Changes and Material Changes allowed pursuant to this Clause 24.

### **24.2 Non-Material Changes**

The Developer may make any Non-Material Change to the Works provided that the Developer shall give notice to the Council of any Non-Material Change it has made and provide full details thereof. The Developer will notify the Council at least quarterly of all new Non-Material Changes it has made that quarter and any such variations may (at the Council's election), be discussed at Project Delivery Group meetings.

### **24.3 Material Changes**

24.3.1 The Developer may only make a Material Change to the Works with the approval of the Council to be given in accordance with the provisions of this Clause 24.3.

- 24.3.2 If the Developer wishes to make any Material Change it will submit a request with full details of the Material Change to the Council. In the request the Developer will specify whether it considers the Material Change to fall within Clause 24.4 or Clause 24.5.
- 24.3.3 The Council may in its absolute discretion refuse approval to any Material Change other than one falling within Clause 24.4 or Clause 24.5.
- 24.3.4 The parties agree that any variation that changes the basic details of the Core Requirements as set out in this Agreement (including, for example, the nature of the Championship Golf Course, the details in clauses (a) – (h) of the Club House definition or the details of the Links Golf Academy and Practice Range) will be a Material Variation.

#### 24.4 Changes Required by Statute

- 24.4.1 Notwithstanding the provisions of this Clause 24, a Material Change shall not require approval of the Council under this Clause 24 where such Material Change is required by any statute or by any local or other competent authority or the fire authority.
- 24.4.2 If the Developer is required to make a Material Change which falls within this Clause 24, it will give prior notice to the Council of the Material Change and provide full details thereof.

#### 24.5 Unavailability

If any material, plant or other pre-manufactured part or item specified in the Approved Drawings cannot be obtained or if their delivery at the appropriate time or at reasonable cost cannot be guaranteed then the Developer may without any consent from the Council use such suitable alternative material, plant or other pre-manufactured part or item which shall not be of materially lesser quality appearance or performance and shall be consistent with the Specification. If the Developer makes such change it will give immediate notice to the Council of the change and provide full details thereof.

#### 24.6 Changes to Comprise Part of the Works

- 24.6.1 Any Non-Material Change will form part of the Works and any varied or supplemental drawings showing such Non-Material Change shall form part of the Approved Drawings in each case from the date the Non-Material Change is made.
- 24.6.2 Any Material Change which the Council has approved or which falls within Clause 24.4 or 24.5 or which has been determined in accordance with Clause 24.7 to be a Material Change to which the Council should have approved will form part of the Works and any varied or supplemental drawings showing such approved Material Change shall form part of the Approved Drawings from the following dates:-
- (a) in the case of a Material Change which the Council has approved from the date of the approval;
  - (b) in the case of a Material Change under Clause 24.4 from the date the Material Change is made;
  - (c) in the case of a Material Change under Clause 24.5 from the date the Developer notifies the Council of the change;
  - (d) in the case of a Material Change determined in accordance with Clause 24.7 from the date the Expert notifies the Developer and the Council of his decision.

#### 24.7 Dispute on Changes

If the parties are in dispute on any matter relating to Non-Material Changes or a Material Change then (other than in relation to the Council's absolute discretion to refuse a Material Change under

Clause 24.3.3 which shall not be the subject of referral to the Expert) the dispute will be referred to an Expert for determination.

## **25. CHANGES TO WORKS**

### **25.1 Council's Request**

The Council may request that the Developer makes alterations, additions or omissions to the Works.

### **25.2 Developer's Response**

On receipt of the Council's request under Clause 25.1 the Developer will (acting reasonably and properly and providing full details to support such estimate) promptly notify the Council of:-

25.2.1 the estimated cost of carrying out any such alterations, additions or omissions including professional and design fees and the Building Contractor's, Consultants and Sub-Contractor's proper claims and costs (including full allowance for any works thereby omitted);

25.2.2 a proposed schedule of payments (to reflect reimbursement of costs incurred); and

25.2.3 any anticipated delay to the Development Programme.

### **25.3 Council's Acceptance**

If the Council confirms that it accepts such estimated cost and delay and that it wishes the Developer to implement the requested alterations the Developer will promptly carry out such alterations, additions or omissions which will on confirmation form part of the Works as applicable.

### **25.4 Consequences of Agreed Changes**

25.4.1 The cost reasonably and properly anticipated to be incurred by the Developer in carrying out such requested alterations shall be paid by the Council to the Developer within 10 Working Days of demand in accordance with the schedule provided in Clause 25.2.2 and prior to the commencement of such alterations.

Any change to the Development Programme shall be made in accordance with the Review Procedure. The Developer will promptly submit to the Council a copy of any version of the Development Programme varied in accordance with this Clause 25.4 and the Review Procedure.

25.4.2

## **26. PRACTICAL COMPLETION OF THE WORKS**

26.1 The Developer will use its reasonable endeavours to procure that:-

26.1.1 the Contract Administrator gives the Council's Representative not less than 10 Working Days prior notice of each date upon which it intends to inspect the Works for the purpose of issuing a Practical Completion Statement of any part of the Works;

26.1.2 the Council's Representative or any persons authorised by him may accompany the Contract Administrator on each such inspection;

26.1.3 the Developer shall take account of any representations made by the Council or the Council's Representative as to whether or not a Practical Completion Statement should be issued or as to what qualifications should be made to such certificate when it is issued.

26.2 If the Contract Administrator shall not consider it appropriate to issue a Practical Completion Statement the Developer will:-

26.2.1 procure that such further works as are necessary to enable the Practical Completion Statement to be issued are carried out with all reasonable speed; and

26.2.2 give the Council not less than 5 Working Days prior notice to the effect that the Contract Administrator intends to re-inspect with a view to issuing a Practical Completion Statement

and thereupon all the foregoing provisions of this Clause 26 shall apply (*mutatis mutandis*).

26.3 In deciding whether to issue a Practical Completion Statement for any part of the Works the Contract Administrator shall exercise the standard of reasonable skill and care to be expected of a contract administrator experienced in dealing with works similar in scope, value, complexity, character and size to the Works. The Developer agrees that nothing herein contained shall prevent or fetter the Contract Administrator from issuing a Practical Completion Statement when it is reasonable and proper to do so and the Contract Administrator shall not be influenced by any bias as between the Developer and the Council nor shall the Contract Administrator be obliged to delay the issue of the Practical Completion Statement if any items found outstanding at an inspection are properly the subject of a snagging list and do not prevent the beneficial occupation of those parts of the Works in respect of which a Practical Completion Statement is to be issued.

26.4 The Developer shall provide a copy of the Practical Completion Statement to the Council forthwith following the date of its issue.

26.5 Last Practical Completion Statement

The parties acknowledge and agree that there will be more than one Practical Completion Statement for the Works and that the Completion Date may only occur after the last Practical Completion Statement is issued.

26.6 As Built Specification

No later than 3 months after each Practical Completion Statement the Developer will provide the Council with a complete detailed "as-built" specification and related drawings in respect of the Works to which the Practical Completion Statement relates.

27. DEFECTS LIABILITY PERIOD

27.1 Schedule of Defects

In relation to each Building Contract the Developer will inspect the Works (or relevant part thereof) and prepare a schedule of defects itemising defects, shrinkages and other faults due to materials or workmanship not in accordance with the relevant Building Contract or to frost occurring before Practical Completion and will:-

27.1.1 deliver a copy to the Council in time for the Council to consider it and notify additions to the Developer; and

27.1.2 then deliver the schedule (with any additions notified to the Developer by the Council) to the Building Contractor within the appropriate time limits for doing so under the Building Contract.

27.2 Council's Notification:

The Council is not obliged to prepare any such schedule of defects, but the Developer will include in its schedule any defects notified to it by the Council within the appropriate time limits.

### 27.3 Dealing with Schedules

The Developer will deal as promptly as reasonably practicable with the items referred to in any schedule of defects prepared in accordance with this Clause 27.

### 27.4 Retention

The Developer will consult in good time with and take into account the reasonable representations of the Council before releasing any retention relating to the making good of defects to the Building Contractor and will not release any retention in relation to any Building Contract until the relevant Defects Certificate has been issued.

## 28. WORKS UNDER STATUTORY AGREEMENTS TO BE ADOPTED

### 28.1 Statutory Agreements

In relation to the Works under Statutory Agreements which following their completion the Council and Developer agree will be adopted the Developer will use all reasonable endeavours to enter into as soon as reasonably practicable and comply with the provisions of any Statutory Agreements.

### 28.2 Following Completion of Works

The Developer will on completion of Works under Statutory Agreements:-

28.2.1 notify the relevant authority as soon as practicable after the relevant Works have been carried out;

28.2.2 request the relevant authority to issue the provisional certificate of completion under the relevant Statutory Agreement so as to enable the maintenance period thereunder to commence;

28.2.3 carry out any further works as shall be necessary during the relevant maintenance period; and

28.2.4 on expiry of the maintenance period request the relevant authority to issue the final completion certificate under the Statutory Agreement and to confirm that the relevant facility is adopted.

## 29. CDM REGULATIONS

### 29.1 Client under CDM

The Developer accepts that it is a client as defined by the Construction (Design and Management) Regulations 2015 ("CDM") and warrants that it is and will at all times remain competent to carry out the role of a client under CDM.

### 29.2 Only Client Declaration

The Developer accepts that it will act as the only client in respect of the Works and the Developer shall forthwith make a declaration to the Health and Safety Executive ("HSE") in accordance with Regulation 4(4) of CDM and deliver a copy to the Council.

### 29.3 HSE Notice

The Developer shall as soon as possible provide to the Council a copy of the notice that it receives from the HSE pursuant to Regulation 4(5) of CDM.

### 29.4 Not to Withdraw Declaration

The Developer shall not seek to withdraw, terminate or in any manner derogate from such declaration without the Council's consent, which the Council may in its absolute discretion withhold.

#### 29.5 Notice to Other Parties

The Developer shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the Works are aware of the terms of such declaration.

#### 29.6 Developer's Responsibility

Without prejudice to the generality of the Developer's obligations under this Agreement and of the duties imposed upon the Developer under the CDM Regulations by reason of his appointment as the only client under Clause 29.2:-

- 29.6.1 The Developer will, where required, appoint or procure the appointment of a Principal Designer;
- 29.6.2 the Developer will procure that the relevant Building Contractor assumes the role of Principal Contractor for the relevant part of the Works;
- 29.6.3 the Developer assumes the role as the client and will comply with its duties as client and take reasonable steps to procure the compliance by the Principal Contractor and by the Principal Designer with the CDM Regulations;
- 29.6.4 the Developer will ensure that before commencing the Works a CDM Construction Phase Plan containing the information required by the CDM Regulations has been produced;
- 29.6.5 the Developer will ensure that the design and construction of the Works shall comply at all times with the CDM Construction Phase Plan and any amendments thereto prepared pursuant to the CDM Regulations.

#### 29.7 Access to File and Plan

The Developer will procure that at all reasonable times the Council or its authorised representative is allowed access to the CDM Health and Safety File and the CDM Construction Phase Plan relating to any of the Works.

#### 29.8 Developer's Indemnity

The Developer will indemnify the Council in respect of any of the following matters arising directly or indirectly in relation to the Works, the Site or any operations carried out by or on behalf of the Developer on the Site (except where the same is due to the fault or omission of the Council or as a result of Historic Contamination of or caused by the Council's Land):-

- 29.8.1 the death or injury to or accident to any persons;
- 29.8.2 the damage to or loss of any property;
- 29.8.3 any breach of the statutory consents or Statutory Requirements; and
- 29.8.4 (subject to the provisions of Clause 36) any fine or penalty.

#### 30. COPYRIGHT AND LICENCE TO USE DOCUMENTS

##### 30.1 Licence

The Developer grants and agrees to grant to the Council an irrevocable, perpetual, royalty-free, non-exclusive licence to use and reproduce all designs, drawings, models, plans, specifications, design details, calculations, photographs, brochures, reports, notes of meetings, CAD materials and any other materials prepared by or on behalf of the Developer in connection with the Works and/or the Development (whether in existence or to be made) and all amendments and additions to them and any works, designs or inventions of the Developer incorporated or referred to therein for all purposes whatsoever relating to the Works and/or the Development including the construction, re-construction, completion, maintenance, use, letting, occupation, management, sale, promotion,



advertisement, alteration, modification, refurbishment, re-development, extension, re-instatement and repair of the Works and/or the Development, such licence carrying the right to grant sub-licences and to be transferable without the consent of the Developer.

### 30.2 Developer's Rights

In respect of the materials referred to in Clause 30, the Developer:-

- 30.2.1 warrants that it has and, at the date when the materials may be delivered or made available to the Council, will have full title guarantee in relation to any copyright or other intellectual property rights existing in it free from and clear of any restriction and encumbrances or is entitled, as the licensee from such owner, to use and exploit all such rights to the extent necessary to enable it to enter into and perform its obligations under this Agreement;
- 30.2.2 acknowledges that, in respect of the materials of which the Developer is, or may at the time of their creation be, the author (as referred to in the Copyright, Designs and Patents Act 1988) the Developer hereby absolutely waives any moral rights which it might otherwise be deemed to possess pursuant to sections 77, 78 and 80 of such Act; and
- 30.2.3 warrants that, to the extent that the Developer is not the author, the author has not asserted, and has agreed to waive any such moral rights which it might otherwise be deemed to possess.

### 30.3 Access and Copies

The Developer agrees:-

- 30.3.1 on request at any reasonable time to give the Council or any persons authorised by the Council full and sufficient access to the materials referred to in Clause 30.2 and, to provide copies of it (including but not limited to copies on computer readable and modifiable discs); and
- 30.3.2 at the Developer's expense, to provide the Council with a set of all such materials relating to the relevant Works upon Practical Completion of each Phase.

### 30.4 Sums Payable

All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with this Agreement shall be borne by the Developer.

### 30.5 Assurance

- 30.5.1 The Developer shall if reasonably requested by the Council at any time execute such documents and perform such acts in terms agreed by the Developer (such agreement not to be unreasonably withheld) as may be required fully and effectively to assure to the Council the rights referred to in this Clause 30.
- 30.5.2 The Developer shall use its reasonable endeavours to procure freely assignable rights for the Council to use all information plans and specifications supplied by the Developer to the Council including all site and soil surveys, planning drawings and submissions free of charge.

### 31. NOTICES

- 31.1 A notice to be served under or pursuant to this Agreement shall be validly served if the following provisions are complied with or if the party to whom such notice is addressed or its authorised agent acknowledges receipt.

- 31.2 Any notice to be served under or pursuant to this Agreement may be served in any of the following manners:-
- 31.2.1 by personal delivery (in which case service shall be deemed to have been effected at the time of delivery); or
- 31.2.2 by prepaid first class special delivery post from any address in the United Kingdom (in which case service shall be deemed to have been effected at the expiration of forty-eight hours from the time of posting).
- 31.3 In proving service of any notice it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery or registered delivery.
- 31.4 If the party to whom any notice to be served under or pursuant to this Agreement shall consist of more than one person the service upon one of such persons shall be service upon all of them.
- 31.5 Any notice addressed to a party by name shall not be rendered invalid by reason of the party having died, become insolvent or changed name, whether or not the party serving the notice is aware of the fact.
- 31.6 The address to which there shall be sent or delivered any notice to be served upon any party to this Agreement under or pursuant to this Agreement shall be the address or registered office of such party as stated at the commencement of this Agreement or as otherwise notified either to the party serving the notice (or on whose behalf the notice is served) the notification to have been given by notice served in accordance with the provisions of this Clause 31 prior to the service of the notice first referred to in this Clause.
- 31.7 Any notice required to be served or which may be served by a party to this Agreement may be given on that party's behalf by that party's solicitors.
- 31.8 Where any notice is to be served upon the Developer under or pursuant to this Agreement such notice and any envelope containing such notice shall be marked "For the Urgent Attention of James Anderson" or such other person as shall have been notified as the person to whose attention any such notice should be drawn. Any such notification of another person shall be required to have been given either to the Council or to the Council's Solicitors and to have been given by notice served in accordance with this Clause prior to the service of the notice first referred to in this Clause.
- 31.9 Where any notice is to be served upon the Council under or pursuant to this Agreement such notice and any envelope containing such notice shall be marked "For the Urgent Attention of the Head of Legal Services" with a copy to David Ball, Head of Regeneration, or in each case such other person as shall have been notified as the person to whose attention any such notice should be drawn. Any such notification of another person shall be required to have been given to the Developer and to have been given by notice served in accordance with this Clause 31 prior to the service of the notice first referred to in this Clause.
- 31.10 The foregoing provisions of this Clause shall in addition to the service of notices also apply (mutatis mutandis) to the delivery of documents, unless otherwise agreed in writing.
32. **VALUE ADDED TAX**
- 32.1 All sums payable under this Agreement shall be exclusive of VAT.
- 32.2 Where pursuant to the terms of this Agreement the Council makes a supply to the Developer and VAT is chargeable in respect of such supply the Developer shall (on production by the Council of a valid VAT invoice addressed to the Developer) pay to the Council (in addition to the relevant consideration set out in this Agreement) a sum equal to such VAT.
- 32.3 Where pursuant to the terms of this Agreement the Developer makes a supply to the Council and VAT is charged in respect of such supply the Council shall (on production by the Developer of a

valid VAT invoices addressed to the Council) pay to the Developer (in addition to the relevant consideration set out in this Agreement) a sum equal to such VAT.

- 32.4 Where the Developer is required by the terms of this Agreement to reimburse the Council for the costs or expenses of any supplies made to the Council the Developer will at the same time pay to the Council all VAT input tax incurred by the Council in respect of those supplies save to the extent that the Council is entitled to repayment or credit in respect of such VAT input tax from HM Revenue and Customs.

### 33. PROJECT DELIVERY GROUP

- 33.1 No later than one month following the date of this Agreement the Council and the Developer will establish the Project Delivery Group.

- 33.2 The Project Delivery Group will consist of 3 representatives of each of the Council (being Council officers with due authority to make decisions in relation to the Project Delivery Group's business on behalf of the Council) and the Developer (being personnel with due authority to make decisions in relation to the Project Delivery Group's business on behalf of the Developer). Notwithstanding the number of members of the Developer's consortium and/or its supply chain the Developer shall only be entitled to three representatives. The Council and the Developer will:-

33.2.1 ensure that the group meets at least once every quarter and with such parties and at such times and frequency as shall be appropriate from time to time;

33.2.2 notify each other of the names of their respective representatives (and any changes);

33.2.3 ensure that their named representatives attend meetings of the Project Delivery Group (or that substitutes, named in advance and properly briefed, attend in their place);

33.2.4 furnish the Project Delivery Group with such information in relation to the Project as that group may reasonably request; and

33.2.5 each bear their own costs in attending the Project Delivery Group (but the Developer will provide any secretariat needed for the Project Delivery Group).

- 33.3 Either party may call a Project Delivery Group meeting on no less than ten Working Days notice. A minimum of two representatives of each of the Council and the Developer shall be required to be present in order for a meeting to be quorate. Minutes of meetings of the Project Delivery Group shall be prepared by the Developer and submitted to the Council for approval as soon as reasonably practicable after the relevant meeting.

- 33.4 Matters on which the Project Delivery Group, or any sub-group formed by the parties, will advise or assist, include:-

33.4.1 all aspects of the operation of this Agreement;

33.4.2 reviewing the discharge of the Conditions Precedent and generally reviewing progress of the Development;

33.4.3 reviewing progress towards achieving the objectives of this Agreement;

33.4.4 liaison and engagement with local stakeholders during the scheme;

33.4.5 reviewing any updated Financial Appraisal and Development Programme (as envisaged by this Agreement);

33.4.6 considering the Development Account;

33.4.7 considering Non-Material Variations to the Development (as envisaged in Clause 24.3);

and the Council and the Developer may agree in writing additional roles or functions for the Project Delivery Group.

- 33.5 The Project Delivery Group will be entitled, where it has been agreed by the Project Delivery Group beforehand, to invite non-members (including third parties) to its meetings.

#### 34. HIGHWAY WORKS FUNDING

- 34.1 Prior to entering into this Agreement, the Council has applied for central government funding in respect of the Highway Works. If the Council's application is successful, it will apply the funding that it receives towards the Highway Works and/or (at its discretion) carry out the Highway Works (subject to any terms and conditions attaching to that funding).

- 34.2 If the Council receives no, or insufficient central government funding for the Highway Works, then subject to receiving the Council's Premium from the Developer, it will apply such amount of that premium as is reasonably required to fund the Highway Works.

- 34.3 The parties acknowledge that:-

34.3.1 The Council's obligations contained in this clause are subject always to the Council being satisfied that any funding that it provides for the Highway Works or works it undertakes directly (whether on its own or in conjunction with any other element of the Wider Development) is provided in accordance with the EU State aid Rules;

34.3.2 The Council shall not be obliged to contribute to the Highway Works beyond any monies it actually receives pursuant to Clause 34.1 or Clause 34.2; and

34.3.3 The Council may impose such terms and conditions in respect of any funding it provides for the Highway Works as it deems reasonable and appropriate in the circumstances.

#### 35. INTEREST AND PAYMENTS

If any party fails to pay any monies due to the other within 5 Working Days after the date upon which the same shall fall due under this Agreement then whether before or after any Court judgment the paying party shall pay the payee interest thereon at the Prescribed Rate calculated on a daily basis from the date such monies became due until the date upon which the payee shall receive the same.

#### 36. DISPUTES

##### 36.1 Pre-Expert Dispute Resolution

36.1.1 Notwithstanding any other provision of this Agreement, upon any dispute or difference arising between the parties in relation to this Agreement or the performance of the parties' obligations hereunder the Council and the Developer will, prior to referring the matter to an Expert or seeking any other remedy, operate the Dispute Resolution Mechanism set out in Clause 36.1.2.

36.1.2 The Dispute Resolution Mechanism will comprise as follows:-

- (a) where either party (acting reasonably) considers that the other has failed to perform any of its obligations contained in this Agreement or considers any dispute or difference between the parties to have arisen between the parties it shall give notice of the same to the other party;
- (b) forthwith upon receipt of a notice under Clause 36.1.2(a) the First Tier Officers of each party (as hereafter defined) shall use reasonable endeavours to resolve such difference or dispute in a mutually acceptable manner;
- (c) If the First Tier Officers are unable to resolve such difference or dispute within 5 Working Days the matter shall be referred by each party to their respective

Second Tier Officers (as hereafter defined) who shall use reasonable endeavours to resolve such difference or dispute in a mutually acceptable manner;

(d) if the Second Tier Officers are unable to resolve such difference or dispute within 5 Working Days then either party shall be at liberty thereafter to refer the matter (where this Agreement so provides) to the Expert or seek such other remedy as may be appropriate;

(e) for the purposes of this Clause 36.1.2 the First Tier officers will be:-

(i) for the Developer: James Anderson;

(ii) for the Council: David Ball

and the Second Tier Officers shall be:-

(iii)

(iv) for the Council: Mark Smith;

provided that either party may nominate a replacement officer of equivalent standing by giving notice of the same to the other party;

### 36.2 Referral to Expert

Any dispute or difference between the parties in connection with this Agreement will, where so provided in this Agreement, or may, if the Council and the Developer otherwise agree, be referred to and settled by an independent expert (the "Expert") whose decision in relation to such matters shall be final and binding upon the parties except in the case of fraud or manifest error.

### 36.3 Selection of Expert

36.3.1 If the dispute relates to the rights and liabilities of either party it will be referred to leading counsel agreed upon by the parties but in default of agreement appointed at the request of either of the parties by or on behalf of the chairman for the time being of the General Council of the Bar.

36.3.2 If the dispute relates to demolition, building or construction works (subject to Clauses 36.3.3-36.3.5) it will be referred to a Member of the Royal Institute of British Architects agreed upon by the parties but in default of agreement appointed at the request of either of the parties by or on behalf of the President for the time being of the Royal Institute of British Architects.

36.3.3 If the dispute relates to methods of accounting or otherwise to matters usually and properly within the knowledge of a chartered accountant it will be referred to a chartered accountant agreed upon by the parties but in default of agreement appointed at the request of any of the parties by or on behalf of the President for the time being of the Institute of Chartered Accountants in England and Wales.

36.3.4 If the dispute relates to matters usually and properly within the knowledge of a chartered surveyor it will be referred to an independent chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of the parties by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors.

36.3.5 If the dispute relates to engineering design or otherwise to matters usually and properly within the knowledge of a chartered civil engineer it shall be referred to a chartered civil engineer agreed upon by the parties but in default of agreement appointed at the request of either of the parties by or on behalf of the President for the time being of the Institution of Civil Engineers.

36.3.6 If the dispute relates to environmental matters (subject to Clauses 11 and 37) and the parties cannot agree an Expert it will be referred to the President for the time being of the Institute of Environmental Management and Assessment or in the absence of a President, the Chief Executive and the President or Chief Executive shall choose the Expert as soon as possible and appointed at the request of either of the parties by or on behalf of the President or Chief Executive

36.3.7 If the parties fail to agree as to the nature of the dispute then it shall be referred to leading counsel agreed upon by them but in default of agreement appointed at the request of either of the parties by or on behalf of the Chairman for the time being of the General Council of the Bar to decide the nature of the Expert.

#### 36.4 Expert's Role

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

#### 36.5 Notice of Appointment

Subject to the provisions of Clause 36.1, the party wishing to appoint the Expert will give notice to that effect to the other party, together with details of the proposed Expert and the matter which is to be referred to the Expert.

#### 36.6 Exclusion of Certain Persons

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

36.6.1 a director, office holder or employee of; or

36.6.2 directly or indirectly retained as a consultant or in any other professional capacity by any party to this Agreement or any company or person associated with any such party.

#### 36.7 Procedure

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

#### 36.8 Assistance

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

#### 36.9 Decision

The Expert will give notice of his decision to the parties within 8 weeks of his appointment or within such extended period as the parties may agree in writing.

#### 36.10 Costs

The costs of the reference to the Expert will be borne as he directs and failing any such direction will be shared equally between the parties.

### 36.11 Original Expert

If the Expert (the "Original Expert"):-

- 36.11.1 fails to determine the matter referred to him;
- 36.11.2 fails to give notice of his decision within the time and in the manner provided for in this Clause 36;
- 36.11.3 relinquishes or does not accept his appointment;
- 36.11.4 dies; or
- 36.11.5 it becomes apparent for any reason that he is unable to complete the duties of his appointment

either of the parties may in accordance with Clause 36.1.1 to 36.10 apply for a substitute to be appointed (but not after the original Expert has given notice of his decision to the parties in dispute). In such event the original Expert is no longer the expert, the provisions of this Clause apply as if the original Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this Clause 36 is deemed to include any substitute appointed pursuant to this Clause 36.11.

## 37. ENVIRONMENTAL MATTERS

### 37.1 Agreement on Liability

The Developer and the Council agree:-

- 37.1.1 The Developer shall carry out the Environmental Works in accordance with Clause 11.7, to enable the Development, including but not limited to commencing and completing the Environmental Works as soon as reasonably practicable and being responsible for any and all other costs involved in carrying out and completing the Environmental Works.
- 37.1.2 Following completion of the Environmental Works and the Developer having provided a copy of the validation certificate to the Council confirming that the Environmental Works have been completed in accordance with Clause 11.7.9, notwithstanding Clause 36.1.1, any liability under Part 2A of the Environmental Protection Act 1990 (as amended) ("Part 2A") arising in respect of Historic Contamination shall be the sole responsibility of the Council.
- 37.1.3 To the extent that it has been established that the Ground Works Contractor has been negligent in completing the Environmental Works (as are more particularly referred to in Clause 11.7.2) where such negligence was caused by the Ground Works Contractor not performing its duties with all reasonable skill, care and diligence as to be expected of a competent Ground Works Contractor, then the Council shall not be responsible for any interference or exacerbation of such Historic Contamination arising as a direct consequence of such negligence;
- 37.1.4 That this Clause 37 (together with Clause 11) constitutes an agreement on liabilities in respect of Historic Contamination under paragraphs 7.29 and 7.30 of section 7 of the Defra statutory guidance entitled "Contaminated Land Statutory Guidance, dated April 2012";
- 37.1.5 If the relevant regulatory authority serves a notice under Part 2A on either party, either party may produce a copy of this Agreement to the relevant regulatory authority or court for the purposes of determining liability for Historic Contamination under Part 2A, regardless of any confidentiality agreement that may exist between the parties relating to this Agreement or any of its provisions; and

- 37.1.6 Neither party shall challenge the application of the agreement on liabilities set out in this Agreement.

## 38. DEFAULT AND TERMINATION

### 38.1 Event of Default

Notwithstanding and without prejudice to any other powers and remedies herein contained or otherwise available to the Council, if any one or more of the following events (each an "Event of Default") occurs:-

- 38.1.1 the Developer commits a material breach of any obligation on the part of the Developer contained in this Agreement and fails to remedy such breach:-

(a) in the case of a material breach involving Non-Payment within 10 Working Days; or

(b) for other breaches within 2 months

after notice by the Council to the Developer specifying both the breach complained of and the period of time (in accordance with Clauses 38.1.1(a) and 38.1.1(b) above) within which the breach is required to be remedied; or

- 38.1.2 the Developer or an Approved Funder becomes insolvent;

- 38.1.3 there is a Non-Payment by an Approved Funder which is not remedied within 10 Working Days;

- 38.1.4 the Developer does not commence a Phase of the Works by the relevant Phase Commencement Date;

- 38.1.5 the Developer does not complete a Phase of the Works by the relevant Phase Completion Date; or

- 38.1.6 there is an assignment of this Agreement or Change of Control by the Developer to which the Council has not previously approved

then the Council shall have the right to terminate this Agreement by not less than 20 Working Days notice served on the Developer and to enter upon and take possession of the Site.

### 38.2 Re-entry or Partial Entry onto Site

- 38.2.1 If this Agreement is terminated under Clause 38 it will be without prejudice to any of the rights and remedies of any party in respect of any antecedent breach of any of the provisions of this Agreement.

- 38.2.2 If this Agreement is determined under the provisions of this Clause:-

(a) the Developer will immediately vacate the Site and at the request of the Council procure that the Building Contractor and all contractors and Sub-contractors vacate the Site and remove all equipment, goods, materials, plant, machinery, tools and temporary structures belonging to them and shall promptly make good any damage caused by such removal to the Council's reasonable satisfaction;

(b) the Developer will immediately return all documents plans and papers provided to it by or on behalf of the Council and shall cancel any entry it may have made at the Land Registry or the Land Charges Registry in respect of this Agreement;



- (c) if the Council requires, the Developer shall assign or novate the Building Contract or other construction documentation relating to the Development or procure that the Consultant Appointments and/or Sub-Contracts are novated or assigned provided the Developer shall be entitled (acting reasonably) to retain documents that may be required for any claim previously notified by the Developer to the Council.

### 39. ALIENATION

#### 39.1 No Dealings Other than the Permitted Dealings

This Agreement is personal to the Developer and the Developer shall not assign, charge, deposit by way of security, dispose, mortgage, underlet or otherwise deal with transfer or part with its interest under this Agreement or any part thereof, or undergo a Change of Control save in accordance with Clause 39.2.

#### 39.2 Permitted Dealing

The Developer may mortgage or charge or assign the benefit of this Agreement to an Approved Funder details of whom have been notified to the Council subject to:-

- 39.2.1 the Approved Funder(s) entering into a Step-in Agreement;
- 39.2.2 prior to exercising any of the rights under the Step-in Agreement the Approved Funder entering into direct covenants with the Council:-
  - (a) to carry out or procure that the Works are carried out in accordance with the terms of this Agreement in the event of the Developer failing to do so; and
  - (b) not to knowingly permit any Phase to be used before the Date of Practical Completion of the relevant Works for any purpose other than the carrying out of the Works in accordance with the terms of this Agreement;
- 39.2.3 the Approved Funder entering into a direct covenant with the Council to comply with the provisions of this Clause 39 before any further assignment or charging of the benefit of this Agreement or the sale, transfer or charging of the Phases;
- 39.2.4 the Developer covenanting with the Approved Funder and the Council to comply with its obligations in this Agreement.

#### 39.3 Change of Control

The Developer shall not undergo a Change of Control without the approval of the Council.

#### 39.4 Notice of Dealing

The Developer shall forthwith give notice to the Council of any dealing permitted under Clause 39.2.

#### 39.5 Obligations to Remain in Full Force

The Developer's obligations shall remain in full force and effect notwithstanding any such assignment, mortgage or charge of this Agreement or Change of Control referred to in this Clause 39.

#### 40. FREEDOM OF INFORMATION

##### 40.1 Disclosure Obligations

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

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

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

and which may also include any binding guidance and Codes of Practice which may be published from time to time by the relevant government department or other authority in accordance with any such legislation (all of which shall together be referred to as the "Rules") to the extent that such obligations relate to information held by the Developer on behalf of the Council or otherwise in connection with this Agreement or the Development. For the avoidance of doubt, this includes the obligations on the Developer to use reasonable endeavours to:-

40.1.3 provide the Council with any information held by it on behalf of the Council (and not by the Council itself) as is necessary in order to allow the Council to comply with valid requests for information received from individuals pursuant to the Rules. Such assistance shall be provided as soon as reasonably practicable of the Council making a written request to the Developer to provide any necessary information; and

40.1.4 inform the Council of any classes of information relating to the Development in its possession which it holds on behalf of the Council which does not appear on the publication scheme provided directly to it from time to time by the Council provided that this obligation shall not extend to provide such information more than twice in 1 year; and the Developer shall not be obliged to provide assistance or information insofar as the Developer may consider the same to constitute or contain commercially sensitive information.

##### 40.2 Supply of Material

If the provisions of Clause 40.1 require the Developer to supply material in which the Developer is the owner or a licensee of the copyright, the Council will not disclose such material without an accompanying notice acknowledging the owner of such copyright provided that the Developer on supplying any such material to the Council gives the Council prior notice of its copyright, in such materials and the requirements of the Council to acknowledge such copyright.

##### 40.3 Developer's Good Faith

In complying with the obligations in Clause 40.1, the Developer agrees that it shall at all times act in good faith and shall not knowingly act or omit to act (but excluding any acts or omissions to act requested by the Council) in such a way as to prevent the Council from complying with its obligations under the Rules.

##### 40.4 Requests for Information

Where a valid request for information under any of the Rules has been received by the Council, the Council will adhere to the requirements of, and consider the availability of, the exemptions under the Rules in disclosing information relating to this Agreement and the other parties and will not disclose any commercially sensitive information.

##### 40.5 Responding to Requests

Where a valid request for information under the Rules has been received by the Council, and responding to such a request (which includes confirming or denying that the information is held by the Council) would involve the disclosure of information about or in relation to the Developer, to the

Development and/or this Agreement; then the Council shall consult with the Developer before confirming or denying that such information is held and/or disclosing the information in order for the parties to agree (such agreement not to be unreasonably withheld) to:-

40.5.1 the Developer confirming or denying holding the information or disclosing the information; and/or

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

#### 40.6 Developer's Views

For the avoidance of doubt the parties agree that in pursuance of Clauses 40.5.1 and 40.5.2 the Developer shall be entitled to express its views to the Council in relation to whether disclosure can be withheld on the basis that:-

40.6.1 the cost of compliance with the request would exceed the appropriate limit under the FOIA;

40.6.2 the request represents a vexatious or repeated request under the FOIA; or

40.6.3 the public interest in withholding the relevant information outweighs the public interest in disclosing it.

#### 40.7 Non-Disclosure

Where the Developer does not agree to such confirmation or denial and/or disclosure pursuant to Clause 40.5, the Developer will provide details to the Council, within 3 Working Days of being notified of the details of the request, of the reasons it believes some or all of the information requested should not be disclosed. The Council shall fully and properly consider any representations made to it by the Developer and shall inform the Developer what information it intends to confirm or deny and/or disclose the person making the request at least 3 Working Days before confirmation or denial and/or disclosure is to be made.

#### 40.8 Appropriate Measures

The parties agree that nothing in this Agreement will operate to prevent the Developer from taking all measures that it considers appropriate (including, seeking injunctive relief) where it does not agree to and seeks to prevent the Council's proposed confirmation or denial and/or disclosure of information pursuant to Clause 40.6.

#### 40.9 Designation as Public Authority

In the event that the Developer is designated a public authority for the purposes of the FOIA by an Order made pursuant to section 5 of the FOIA, or where the Developer is deemed to be a public authority for the purposes of the EIR, the parties agree that identical reciprocal arrangements to those set out in this Clause 40 shall apply as appropriate.

#### 40.10 Press Announcements

Prior to making any press announcements or similar public statements on this Agreement and/or any document referred to in it each party shall obtain the approval of the other to the wording of the press statement or similar public announcement (such approval not to be unreasonably withheld).

#### 41. CONFIDENTIALITY

41.1 Subject to Clause 40 the parties acknowledge that the terms of this Agreement (including the figures or financial expectations in or derived from the various appendices) are commercially sensitive and that disclosure of the same would prejudice the parties' commercial interests and shall be kept confidential and neither party shall make any press release or announcement in

respect thereof without the approval of the other nor shall any party disclose the terms of this Agreement to any third party save:-

- 41.1.1 for the purpose of complying with the requirements of this Agreement; or
- 41.1.2 where the information is already in the public domain; or
- 41.1.3 where legally requisite; or
- 41.1.4 in the case of disclosure by the Developer where commercially normal or sensible to do so; or
- 41.1.5 to financial advisors funding partners and financial institutions; or
- 41.1.6 to the extent necessary in order to comply with the requirements of the Stock Exchange; or
- 41.1.7 to HM Revenue and Customs or the Rating Authority; or
- 41.1.8 to respective auditors; or
- 41.1.9 to the extent necessary to obtain professional advice in relation to the determination of any dispute

Provided that where reasonable and appropriate an undertaking shall be obtained from the party to whom the confidential information is disclosed to keep such information confidential mutatis mutandis.

## 42. MISCELLANEOUS

### 42.1 Consent and Approval by the Council

- 42.1.1 Wherever in this Agreement any action or obligation is authorised or required or agreed to be taken and performed by the Council it shall be sufficient if such action or obligation is taken or performed by the Chief Executive of the Council or such other officer having ostensible authority.
- 42.1.2 Where any application for the consent or approval of the Council is made by the Developer, the Developer will, at the request of the Council, attend such meetings as the Council may reasonably require so as to enable the Council to give due and proper consideration to the subject matter of such application.
- 42.1.3 The Developer will, unless prevented by circumstances beyond its control, provide to the Council such information relating to the Development and other matters the subject of the Agreement within 10 Working Days of request from the Council or such longer period as may be reasonable in the circumstances.

### 42.2 Council's Statutory Powers

Nothing contained or implied in this Agreement will restrict prejudice or otherwise affect the duties, powers, rights and obligations of the Council granted to, or imposed on it, including the exercise of its functions as the Local Planning Authority, highway authority, statutory authority or as agent for any other competent authority and under any public or private bye-law, code of conduct, consent, direction, instrument, notice, order, permission, plan, regulation, rule, statute or statutory instrument all which duties, powers, rights and obligations will be as fully and freely exercisable as if this Agreement had not been executed.

### 42.3 Representations and Fitness of the Site

- 42.3.1 The Developer acknowledges that it has not entered into this Agreement in reliance wholly or partly on any representation or statement made by or on behalf of the Council

or any its officers employees or advisers save for any representation or statement which is expressly set out in this Agreement or which is contained in written replies given by the Council's Solicitors to written enquiries raised by the Developer's Solicitors prior to the date hereof.

- 42.3.2 No condition representation or warranty howsoever arising whether collaterally or directly or indirectly shall be made or implied either as to the state or condition of the Site or as to its fitness for the purposes of the Development or as to the location of any Service Media or cellarage and it shall be the sole responsibility of the Developer to satisfy itself in respect thereof.

#### 42.4 Developer's Release

- 42.4.1 The Developer shall be released from all obligations on the part of the Developer contained or referred to within this Agreement upon the expiry of the last Defects Liability Period under the last Building Contract to be let whereupon all liability shall cease save to the extent that any claim asserting that the Developer has failed to discharge its liability to perform any outstanding obligation under this Agreement has been properly notified to the Developer during the relevant Defects Liability Period and all liability thereafter shall ultimately cease after any such notified claim has been dealt with satisfactorily.
- 42.4.2 The Council and the Developer agree that the release contained in Clause 42.4.1 will not affect or in any way release the liability of any guarantor approved as part of the Funding and Viability Condition in relation to the Wider Development save where the terms of any such guarantee expressly provide otherwise.

#### 42.5 Severability

The illegality invalidity or unenforceability of any Clause or part of this Agreement will not affect the legality validity or enforceability of the remainder. If any Clause or part is found by any competent court of authority to be illegal in valid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without rendering them illegal invalid or unenforceable.

#### 42.6 Contracts (Rights of Third Parties) Act

- 42.6.1 This Agreement does not create any rights enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party of this Agreement.
- 42.6.2 Save where expressly required by the provisions of this Agreement this Agreement may be rescinded or varied by the parties hereto without the consent of or the need to give notice to any person not a party to it.

#### 42.7 Good Faith

The parties will at all times act towards each other with the utmost good faith in the performance of their respective obligations under this Agreement).

#### 42.8 Corrupt Gifts and Payments of Commission

- 42.8.1 The Developer shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Agreement or any other contract with the Council.
- 42.8.2 The Developer shall not conspire with any person to do any of the acts mentioned in this Clause.

42.8.3 Any:-

- (a) breach by the Developer of Clause 42.8; or
- (b) commission of any offence by the Developer under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other Agreement with the Council; or
- (c) the giving of any fee (the receipt of which) is an offence under section 117(2) of the Local Government Act 1972

shall entitle the Council to terminate this Agreement and recover from the Developer the amount of any loss resulting from such termination and recover from the Developer the amount of value of any such gift, consideration or commission.

42.8.4 The Developer shall ensure that all persons engaged in the Development by the Developer are aware of the terms of this Clause.

42.9 No Restrictions on Adjoining property

Nothing herein contained or implied shall be deemed to restrict in any way the rights of the Council to lease, occupy, use, build on, develop or otherwise dispose of any adjoining property (outside of the Site) belonging to the Council upon such conditions and terms as the Council may reasonably think fit nor shall impose or be deemed to impose any restrictions on the use of any land or buildings now or hereafter belonging to the Council and not comprised in the Site provided that the exercise of rights or the application of this Clause by the Council shall not prevent or interfere with or restrict or make more onerous and/or costly the Development.

42.10 Entire Agreement

This Agreement contains the entire agreement between the Council and the Developer relating to the transactions hereby contemplated.

42.11 No Partnership

42.11.1 Nothing in this Agreement will:-

- (a) constitute or be deemed to constitute a partnership between the Council and the Developer; or
- (b) constitute or be deemed to constitute either the Council or the Developer acting as agent of the other for any purpose whatsoever.

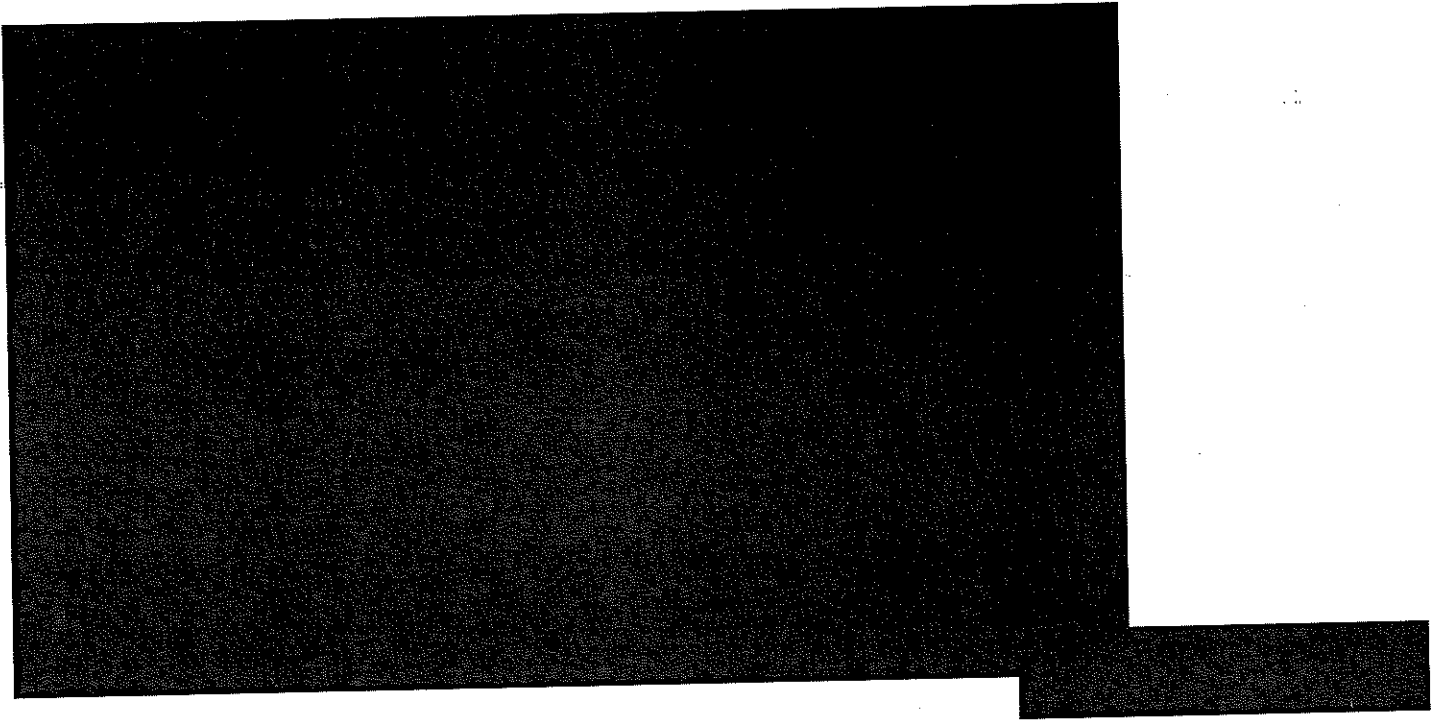
42.11.2 Neither the Council nor the Developer shall hold itself out as agent of or have authority or power to procure the acceptance of any liabilities whatsoever on behalf of the other.

42.12 Registration of Agreement at the Land Registry

The Developer shall not be entitled to note this Agreement against the Council's registered title other than by virtue of a unilateral notice and shall not without the consent of the Council send this Agreement or a copy thereof to the Land Registry.

EXECUTED AS A DEED by the parties on the date which first appears in this Agreement.

SCHEDULE 1



SCHEDULE 2  
ONEROUS CONDITIONS

PART 1

DEVELOPER'S ONEROUS CONDITIONS

1. A condition that will or is likely to increase Materially the cost of carrying out the Development.
2. A condition that will or is likely to reduce Materially the profitability of the Development.
3. A condition that will or is likely to reduce Materially the capital value or the rack rental value of the Development.
4. A condition that will or is likely to reduce Materially the quantum or potential value of the Residential Development.

PART 2

COUNCIL'S ONEROUS CONDITIONS

1. A condition which reduces the size configuration or quality of the Works or the number of Residential Units.
2. A condition which constitutes a Material Change.
3. A condition which adversely affects the Council's entitlement to Overage.
4. A condition which is otherwise materially detrimental to the use operation or economic viability of the Council's adjoining land.
5. A condition which prevents development without the agreement or co-operation of a third party which cannot be obtained on terms at a cost or within a time that in any such case is reasonable in the circumstances.
6. A condition which limits the occupation and/or use of all or any material part of the Development to any designated occupier or class of occupier (whether by imposing a geographical qualification upon proposed occupiers or otherwise).
7. A condition which limits the car parking spaces to be constructed in the Development to less than that specified in the Planning Application.
8. A condition which prevents the carrying out and completion of the Development substantially in accordance with the Approved Drawings.
9. A condition which limits the planning permission to any set period of time save for a provision requiring implementation within a time limit which can be achieved pursuant to this Agreement.
10. A condition which limits the life of the planning permission after development has begun within the meaning of section 56 of the Town and Country Planning Act 1990.
11. A condition which restricts the use of the Development in respect of the number and type of goods or services to be sold or supplied (ignoring for these purposes restrictions relating to the sale of food as opposed to non-food items and vice versa) and which condition was not contemplated by the Planning Application.
12. A condition which restricts by reference to area or volume the goods or services which may be sold or supplied within the Development.



13. A condition which imposes limits on the generation of noise from the Development which will either materially adversely affect or materially restrict the occupation or operation of the Development or will unreasonably add to the costs of construction or maintenance or will otherwise impose an unreasonable burden on the ownership use or occupation of the Development.
14. A condition which materially adversely affects the present or future value of the Development or the use to which the Development may be put.
15. A condition which will either materially adversely affect or restrict the intended use, occupation or operation of the Development or will unreasonably add to the costs of construction or will otherwise impose an unreasonable burden on the ownership use or occupation of the Development.

### SCHEDULE 3

#### BUILDING CONDITIONS

##### PART 1

##### BUILDING LICENCE

1. This Building Licence is exercisable by the Developer its contractors, consultants, sub-contractors and all those expressly authorised by the Developer (the "Authorised Licensees").
2. The Developer and the Authorised Licensees may enter onto a Phase forming part of the Council's Land with or without vehicles, workmen, plant, machinery and equipment for the purpose of carrying out and completing any investigations or site surveys and/or the Works in accordance with this Agreement.
3. The Developer acknowledges that all materials goods, plant, machinery, equipment and other items belonging to the Developer or the Authorised Licensees will be at the sole risk and responsibility of the Developer and that the Council has no responsibility for them or for the Authorised Licensees.
4. The Developer and the Authorised Licensees will only access a Phase which forms part of the Council's Land from the times envisaged in Clause 11.
5. In carrying out the relevant Works the Developer will comply with and procure that those exercising this Building Licence will comply with the conditions set out in Part 2 of this Schedule 3.
6. This Building Licence does not create any demise.

##### PART 2

##### THE CONDITIONS

1. That from the commencement of any investigations or site surveys on the relevant Phase, or (as applicable) the commencement of the Works on the relevant Phase up until Practical Completion hoardings are erected around the Phase to secure the relevant Phase and prevent any unauthorised entry.
2. No advertisements, posters, banners, placards or signs will be affixed to or displayed from or on the boundaries of a Phase except those identifying the Developer, its contractors and consultants and all those appointed by the Developer or as required by Health and Safety Regulations. All revenue from advertisements, posters, placards and signs will belong to the Council absolutely.
3. No earth, clay, gravel, sand or other minerals will be removed from any Phase otherwise than as may be necessary to enable either the relevant investigations or site surveys to be carried out or the Works to be carried out.
4. Proper provision will be made for the support and use of any land, walls, roads, footpaths upon, adjacent or near to a Phase which are affected by the relevant investigations or site surveys and/or the Works.
5. Proper arrangements will be made with the supply authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the relevant investigations or site surveys and/or the Works.
6. All necessary skip permits and scaffold licences will be obtained and complied with by the Developer.

7. All noise, vibration, dust, mud and disturbance will be kept as low a level as practicable and a Phase will be kept in good order and in a clean tidy and safe condition and all refuse will be regularly removed from a Phase.
8. Where appropriate there will be installed within a Phase and maintained in good working order proper and effective wheel washing facilities and (if appropriate) they will be used on all vehicles before they leave a Phase.
9. All mud, refuse and other debris emanating from a Phase which is deposited on any roads footpaths or other land or premises outside the Phase will be removed as often as Council reasonably requires.
10. All further reasonable precautions will be taken to prevent unauthorised access to the Phase and to ensure that a Phase remains secure.
11. The investigations and site surveys and/or the Works will be carried out in such a way that as little damage as possible is caused to any roads, footpaths, service media, street furniture, land buildings or other structures adjoining or neighbouring a Phase or the Site and to forthwith make good any damage caused to the Council's reasonable satisfaction.
12. There will be put in place and observed appropriate health and safety measures and arrangements to protect the health and safety of (and use its reasonable endeavours to avoid or mitigate any nuisance disturbance or danger to) the Council its tenants or licensees or to the owners or occupiers of any land or buildings adjoining or neighbouring a Phase or the Site or to members of the public.
13. There will not be polluted or contaminated any sewer drain river or watercourse and all proper directions recommendations and guidance given by the Environment Agency or the Council or any other Competent Authority will be complied with.
14. Access for third parties will be maintained by the Developer as properly and reasonably required by the Council but not so as to interfere with the Development.
15. To divert all identified Service Media passing over under or through the Site necessitated by the carrying out of the investigations and site surveys and for the protection of any Service Media which are to be retained and to comply with the requirements of all competent authorities in respect thereof.
16. To procure that the Council is notified forthwith of the discovery of any fossils coins articles of value or antiquity and any other remains structures or things of archaeological geological or historical interest discovered on the Council's Land (which shall belong to the Council) and that shall provide reasonable facilities to a reasonable number of appropriately qualified or experienced persons nominated by the Council to examine and monitor the same and all reasonable precautions are taken to prevent such articles or things from being damaged or removed (other than for delivery to the Council).
17. To ensure that the Site is left clear of all unused goods, materials and rubbish on completion or earlier termination of the site investigations and site surveys (if applicable) and on Practical Completion that all plant and equipment and any temporary structures used in connection with the Works or the investigations and site surveys are removed therefrom and any damage caused by such removal made good to the Council's reasonable satisfaction.
18. To take all reasonable precautions to prevent damage to the existing services and any boundary walls and fences and to take similar precautions to prevent any interruption or disturbance to the free and uninterrupted passage and running of foul and surface water, gas, electricity and other services through the existing Service Media and shall keep any period of interruption to a reasonable minimum.
19. To make good any damage to roads and footways public or private caused by or attributable in any way to the cartage of plant and materials for or by either the Developer or the Building Contractor or any Sub-Contractor.

#### SCHEDULE 4

#### SALE COMPLETION MECHANICS

#### PART 1

#### COUNCIL'S LAND

##### 1. COMPLETION

Completion of the sale of the Council's Land will take place at the offices of the Council's Solicitor.

##### 2. DRAFT TRANSFER

The Council and the Developer shall act in good faith to agree the wording and form of the Council's Land Transfer (including the rights and reservations which follow from the actual property and rights acquired) and plans and will be updated or inserted where applicable to reflect the design of the Development at the time the Council's Land Transfer is completed. Any dispute shall be determined by the Expert.

##### 3. TITLE

3.1 Title to the Council's Land has been deduced to the Developer at the date hereof and the Developer is deemed to possess full knowledge and acceptance to such title and will not raise any requisitions to such title save in relation to matters arising after the date of this Agreement.

3.2 The following are "encumbrances mentioned in the Agreement" for the purposes of the Standard Conditions:-

3.2.1 the rights, covenants, easements and other matters contained or referred to in the Property Register and Charges Register of the title number(s) for the Council's Land being [to be confirmed at point of transfer] other than financial charges;

3.2.2 the matters contained or referred to in or arising under the Title Documents; and

3.2.3 the subjections contained or referred to in paragraph 4.

##### 4. SUBJECTION

The Council's Land Transfer will be subject to:-

4.1 all matters contained in the Council's Land Transfer;

4.2 all local land charges; whether or not registered before the date of this Agreement and all matters capable of registration as local land charges, whether or not actually registered;

4.3 all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;

4.4 all actual or proposed orders, directions, notices, charges, restrictions, conditions, Agreements and other matters arising under any statute affecting the relevant Phase;

4.5 all matters in the nature of overriding interests as set out in section 2 of the Land Registration Act 2002 (as amended);

4.6 all rights of way, drainage, watercourses; light or other easements, or quasi or reputed easements; and rights of adjoining owners affecting the Council's Land, and all liability to repair or covenants to repair highways, pavements, paths, ways, passages, sewers, drains, gullers, fences and other like matters, without obligation on the Developer or the Council as appropriate to provide evidence of the creation of, or to define or apportion, any such liability;

- 4.7 any other matters if they are such as would or might reasonably be expected to have been revealed to the Developer if before the date of this Agreement had it made all searches enquiries and inspections regarding the Council's Land which a prudent developer or purchaser ought to make whether such searches enquiries or inspections have been made or not by or on behalf of the Developer.

## 5. CAPACITY

- 5.1 The covenant implied on the part of the Council by section 2 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to any matters or categories of matters to which the disposition and/or the contract for the disposition is expressly made subject.
- 5.2 The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to any obligation on the part of the Council to do anything to enable the Developer to be registered as proprietor of any title at the Land Registry.
- 5.3 The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to any obligation on the part of the Council to incur any cost in doing anything under that section.
- 5.4 The covenant set out in section 3 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to (a) any matters or categories of matters to which the Council's Land Transfer is expressly made subject, and (b) any charges, incumbrances and other third party rights created granted or imposed after the date of the Council's Land Transfer, other than by the Council.
- 5.5 For the purposes of section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994, all matters now recorded in registers open to public inspection are to be considered within the actual knowledge of the Developer, notwithstanding section 6(3) of that Act.

## 6. DEPOSIT

No deposit is payable pursuant to this Agreement.

## 7. SUB-SALES

The Council is entitled to decline to complete the Council's Land Transfer to any person other than the Developer.

## PART 2

### NEW MUNICIPAL GOLF COURSE LAND

#### 1. COMPLETION

Completion of the sale of the New Municipal Golf Course Land will take place at the offices of the Council's Solicitor.

#### 2. DRAFT TRANSFER

The Council and the Developer shall act in good faith to agree the wording and form of the New Municipal Golf Course Land Transfer (including the rights and reservations which follow from the actual property and rights acquired) and plans and will be updated or inserted where applicable to reflect the design of the Development at the time the New Municipal Golf Course Land Transfer is completed. Any dispute shall be determined by the Expert.

#### 3. TITLE

3.1 Title to the New Municipal Golf Course Land has been deduced to the Council at the date hereof and the Council is deemed to possess full knowledge and acceptance to such title and will not raise any requisitions to such title save in relation to matters arising after the date of this Agreement.

3.2 The following are "encumbrances mentioned in the Agreement" for the purposes of the Standard Conditions:-

3.2.1 the rights, covenants, easements and other matters contained or referred to in the Property Register and Charges Register of the title number(s) for the New Municipal Golf Course Land being [ to be confirmed at point of transfer] other than financial charges;

3.2.2 the matters contained or referred to in or arising under the Title Documents; and

3.2.3 the subjections contained or referred to in paragraph 4.

#### 4. SUBJECTION

The New Municipal Golf Course Land Transfer will be subject to:-

4.1 all matters contained in the New Municipal Golf Course Land Transfer;

4.2 all local land charges, whether or not registered before the date of this Agreement and all matters capable of registration as local land charges, whether or not actually registered;

4.3 all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement;

4.4 all actual or proposed orders, directions, notices, charges, restrictions, conditions, Agreements and other matters arising under any statute affecting the relevant Phase;

4.5 all matters in the nature of overriding interests as set out in section 2 of the Land Registration Act 2002 (as amended);

4.6 all rights of way, drainage, watercourses; light or other easements, or quasi or reputed easements, and rights of adjoining owners affecting the New Municipal Golf Course Land, and all liability to repair or covenants to repair highways, pavements, paths, ways, passages, sewers, drains, gutters, fences and other like matters, without obligation on the Developer or the Council as appropriate to provide evidence of the creation of, or to define or apportion, any such liability;

4.7 any other matters if they are such as would or might reasonably be expected to have been revealed to the Council if, before the date of this Agreement had it made all

searches enquiries and inspections regarding the New Municipal Golf Course Land which a prudent developer or purchaser ought to make whether such searches enquiries or inspections have been made or not by or on behalf of the Council.

5. CAPACITY

- 5.1 The covenant implied on the part of the Council by section 2 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to any matters or categories of matters to which the disposition and/or the contract for the disposition is expressly made subject.
- 5.2 The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to any obligation on the part of the Council to do anything to enable the Developer to be registered as proprietor of any title at the Land Registry.
- 5.3 The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to any obligation on the part of the Council to incur any cost in doing anything under that section.
- 5.4 The covenant set out in section 3 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to (a) any matters or categories of matters to which the Council's Land Transfer is expressly made subject, and (b) any charges, incumbrances and other third party rights created granted or imposed after the date of the Council's Land Transfer, other than by the Council.
- 5.5 For the purposes of section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994, all matters now recorded in registers open to public inspection are to be considered within the actual knowledge of the Developer, notwithstanding section 6(3) of that Act.

6. DEPOSIT

No deposit is payable pursuant to this Agreement.

7. SUB-SALES

The Developer is entitled to decline to complete the New Municipal Golf Course Land Transfer to any person other than the Council.

**SCHEDULE 5**  
**REVIEW PROCEDURE**

1. The Developer will submit the information to be reviewed (the "Review Submission") to the Council for review, in such form (electronic and/or hard copy) as the Council reasonably and properly requires. The Council may also require the Developer to send copies of the Review Submission to one or more of its consultants, if appropriate.
2. The Council shall as soon as reasonably practicable but in any event within 5 Working Days following receipt of the Review Submission confirm to the Developer whether it requires (acting reasonably and properly) any further information to properly consider the Review Submission. The Developer will provide such further information to the Council as soon as reasonably practicable.
3. The Council shall as soon as reasonably practicable but in any event within 10 Working Days following the later of (a) the date of receipt of the Review Submission and (b) such further information as has been requested pursuant to paragraph 2 confirm to the Developer whether the Council approves the Review Submission. The Council shall not unreasonably withhold or delay its approval.
4. If the Council does not approve the Review Submission, the Council will provide reasons to the Developer for any such non-approval and the Developer will re-submit the Review Submission for approval as soon as reasonably practicable, taking into account the Council's comments. This process will be followed as many times as necessary until such time as the Council has approved the Review Submission.
5. The Developer and the Council may agree (both parties acting reasonably) to vary the timescales in this Schedule to reflect the nature and scope of the item to be submitted for approval.
6. The Developer will use all reasonable endeavours to give the Council appropriate advance notice of any significant items that are likely to be submitted through the Review Procedure, particularly where the Council will require external consultant support to review the Review Submission.
7. The parties agree that any approval (or non approval) by the Council of any Review Submission will not result in the Council taking on any liability whether directly or indirectly for design or otherwise, in relation to the Review Submission.



## APPENDIX 1

### PLANS

Plan 1 - Additional Land

Plan 2 - Core Requirements Land

Plan 3 - Council's Land

Plan 4 - Existing Electricity Pylon Works

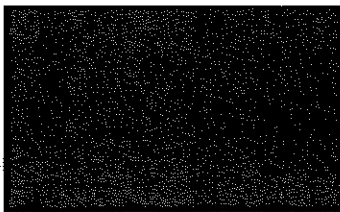
Plan 5 - Proposed Electricity Pylon Works

Plan 6 - Hoylake By-Pass

Plan 7 - Municipal Golf Course

Plan 8 - New Municipal Golf Course Land

Plan 9 - Site









APPENDIX 2



**APPENDIX 3**  
**MASTERPLAN**

APPENDIX 4

[REDACTED]

[REDACTED]

THE COMMON SEAL of  
WIRRAL BOROUGH COUNCIL  
was hereunto affixed  
under the authentication of:-

)  
)  
)  
)

Authorised by the Council to sign in that behalf

EXECUTED as a deed  
(but not delivered until dated) by  
NICKLAUS JOINT VENTURE GROUP LIMITED  
acting by two Directors or a  
Director and the Secretary:-

)  
)  
)  
)  
)

Director

Director/Secretary