



dated

2019

The London Borough of Waltham Forest

and

Sixty Bricks Limited

Development Agreement

relating to a development of 23 affordable residential homes at Lena
Kennedy Road, Walthamstow

Trowers & Hamlin LLP
3 Bunhill Row
London
EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

trowers & hamlin

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Development Agreement

dated 2019

Parties

- (1) **The London Borough of Waltham Forest** of Forest Road Walthamstow, E17 4JF (the **Council**); and
- (2) **Sixty Bricks Limited** (company number 10593957) whose registered office address is at Room 209, Finance, Waltham Forest Town Hall, Forest Road, London, England, E17 4JF (the **Developer**).

Agreed terms

1 Interpretation and Definitions

1.1 The definitions in this clause apply in this contract.

Agreement for Lease means the agreement for lease between the Council and the Developer dated on or around the date hereof together with any other deed, document or agreement at any time amending, supplemental or collateral to it;

Appointments means the appointments of the Professional Team by the Developer further to the provisions of clause 6.2;

Building Contract means the building contract entered into or to be entered into between the Developer and the Contractor (or the Council and the Contractor and subsequently novated from the Council to the Developer) in relation to the Works;

Business Days means any day (other than Saturday or Sunday) upon which clearing banks in the City of London are open to the public for the transaction of business;

CDM Regulations means the Construction (Design and Management) Regulations 2015;

Certificate of Making Good Defects means the certificate or notice issued by the Council in accordance with clause 15.5;

Contractor means a duly experienced and properly qualified firm or individual as may from time to time be appointed in that capacity in relation to the Works;

Council's Variation means a variation to the Specification and/or the Works requested or made by the Council;

Defects means any defects, shrinkages, omissions or faults in the design or construction of the Works;

Defects Liability Period means the period of twelve (12) months after Practical Completion of the Works;

Defects Notice means a notice of actual breaches by the Developer of this contract issued by the Council which may (without limitation) require the removal of any work executed or materials which are not in accordance with this contract;

Defects Response Times means the response times set out in Schedule 3;

Developer's Variation means a variation to the Specification and/or the Works requested by the Developer;

Development means the development works being carried out at the Property in accordance with the Planning Permission and in accordance with the Specification;

Development Fee means five percent (5%) of the Works Price;

Documents means all drawings plans models specifications reports calculations charts diagrams sketches surveys and investigations (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed after the date hereof by or on behalf of the Developer and/or any member of the Professional Team and/or the Contractor in the course of or as result of carrying out the Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them;

Emergency Defects has the meaning given to it in Schedule 3;

Employer's Agent means Arcadis LLP (company number OC368843) whose registered office is at Arcadis House, 34 York Way, London, N1 9AB;

Environment means all and any of the following media (wherever situate) being land, water and air as well as humans and their property, plants, animals, habitats and eco-systems;

Environmental Laws means all statutes and codes of practice, circulars, guidance notes and the like concerning the protection of human health and the Environment or the generation, storage, use, treatment or disposal of Hazardous Substances in force at the time of undertaking the Works;

Estimate means an estimate setting out the estimated cost (including VAT where applicable) of a Developer's Variation and any consequent change to the Target Date;

Event of Default means in respect of any person which is a body corporate, any of the following events occurs in relation to that person:

- (a) the making of an order or the passing of a resolution for winding-up;
- (b) the appointment of a provisional liquidator;
- (c) being unable to pay or having no reasonable prospect of being able to pay its debts within the meaning given to that expression by section 123 of the Insolvency Act 1986;
- (d) the calling of a meeting of creditors or any of them under Part I of the Insolvency Act 1986 or the proposal of any voluntary arrangement pursuant to section 1 of the Insolvency Act 1986;
- (e) an order being made for the appointment of an administrator to manage the affairs, business and property of the person or documents are filed with a court of competent jurisdiction for the appointment of an

administrator or notice of intention to appoint an administrator being given or by a qualifying floating charge holder (as defined in paragraph 14 schedule B1 of the Insolvency Act 1986);

- (f) the appointment of a receiver (including an administrative receiver) of the person or any of its assets; or
- (g) being struck off the Register of Companies or being dissolved or ceasing for any reason to retain its corporate existence;

Funder means a person (whether acting for himself and/or where leading for a syndicate of persons as agent and trustee for such persons) who is providing or shall provide interim or other finance for the carrying out of the Works;

Handover Items means the documents set out in Schedule 5;

Hazardous Substance means waste (as defined in the Environmental Protection Act 1990) and any substance whatsoever in any form (whether alone or in combination with any other substance) which is capable of causing harm to man or to any living organism supported by the Environment or of damaging the Environment or public health or welfare or the presence of which would be a breach of any Environmental Law;

Interim Valuation Date means 29 March 2019 and thereafter the same date in each month or the nearest Business Day in that month, or as otherwise agreed between the parties;

LADs Rate means four thousand and four pounds and forty three pence (£4,004.43) per week or part thereof;

Latent Defects Insurance means latent defects insurance cover as required by the Council in the form of the NHBC Buildmark Choice (with options 1 to 3 inclusive);

Longstop Date means 31 March 2021;

Planning Permission means the planning permission for the Property or any variation or replacement;

Practical Completion means:

- (a) the Works are complete so that they are fit for beneficial occupation as a housing accommodation development subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good without materially interfering with the beneficial use and/or enjoyment and/or occupation and would reasonably be included in a schedule of minor snagging items; and
- (b) the Latent Defects Insurance for the units has been effected; and
- (c) the documentation referred to in clause 16 has been provided; and
- (d) the Works are left in a good and clean condition, cleared of all plant, temporary structures, equipment and unused building material,

and the term **Practically Complete** shall be construed accordingly;

Principal Contractor means the Contractor or any other such replacement principal contractor appointed under regulation 5(1)(b) of the CDM Regulations;

Principal Designer means the Contractor or any other such replacement principal designer appointed under regulation 5(1)(a) of the CDM Regulations;

Professional Team means any professional consultant (including, without limitation, the Employer's Agent) appointed by the Developer (or the Council and subsequently novated to the Developer) or the Contractor in connection with the Works;

Property means the property at Lena Kennedy Road, Walthamstow shown coloured in yellow on the plan at Schedule 6;

Purchaser means a person having or acquiring a freehold interest in the Property or any part of it, or a purchaser for capital consideration of a leasehold interest;

Relevant Event means:

- (a) where the Contractor becomes properly entitled to an extension of time in accordance with the terms of the Building Contract save to the extent such entitlement is as a result of any breach, impediment, prevention or other default of the Developer; and/or
- (b) any breach, impediment, prevention or default (whether by act or omission) by the Council or any persons engaged or employed by the Council (excluding the Developer and its employees, contractors, sub-contractors and agents);

Requisite Consents means:

- (a) all consents, licences, permissions, requirements, whether statutory or otherwise;
- (b) approvals of the development control authority and the building control authority;
- (c) consents required under the Latent Defects Insurance;
- (d) consents of all parties having an interest or right in or over the Property who by the lawful exercise of their powers in the absence of such consent could prevent or impede the carrying out of the progress of the Works and/or their use and/or enjoyment (except where there is an insurance policy with respect to the absence of such consent),

necessary for the Works;

Specification means the Council's requirements for the (and in so far as it relates to the) Development being the plans, drawings and other documents appended at Schedule 2 to construct the Development as varied or amended from time to time in accordance with the provisions of this contract (whether pursuant to clause 2 or otherwise);

Target Date means, subject to extension pursuant to clause 5, 12 February 2021;

Tenant means a person having or acquiring a leasehold interest in the Property or any part of it, other than a Purchaser;

Underlease means the Underlease over the Property between the Council and the Developer dated on or around the date hereof further to the terms of the Agreement for Lease together with any other deed, document or agreement at any time amending, supplemental or collateral to it;

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax;

Works means the carrying out and completion including design and construction of the works set out in the Specification and in accordance with this contract;

Works Price means the sum of four million eight hundred and fifty three thousand and two hundred and eighty pounds (£4,853,280) plus any applicable VAT (as may be amended in accordance with clause 9.5 and/or clause **Error! Reference source not found.** of this contract);

Works Programme means the programme for the (and in so far as it relates to the) Works appended at Schedule 1 and updated by the Developer from time to time (and no less than monthly) as required by, and with the approval of, the Council;

1.2 The rules of interpretation in this clause apply in this contract:

1.2.1 a person includes a corporate or unincorporated body;

1.2.2 unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it;

1.2.3 a reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any sub-ordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them;

1.2.4 writing or written excludes faxes and email;

1.2.5 except where a contrary intention appears, a reference to a clause or Schedule is a reference to a clause of or Schedule to this contract; and

1.2.6 clause and schedule headings do not affect the interpretation of this contract.

2 **The Works**

2.1 The Developer shall:

2.1.1 procure that the Works are carried out with all due diligence and use its reasonable endeavours to procure that the Works are completed by the relevant Target Date provided that the Developer shall not commence the Works in

relation to a new RIBA Plan of Work 2013 project stage unless and until it has received a written instruction to do so from the Council; and

2.1.2 use its reasonable endeavours to procure that the Works are completed by the Longstop Date.

2.2 In procuring the design of the Works, the Developer shall use the reasonable skill, care and diligence expected of a competent consultant of the relevant discipline in carrying out work of a similar size, scope and complexity to the Works.

2.3 The Developer shall procure the carrying out and completion of the Works:

2.3.1 in a good and workmanlike manner and in accordance with good building practice;

2.3.2 with good quality and suitable materials and plant;

2.3.3 in accordance with:

- (a) the Works Programme;
- (b) the Planning Permission and all Requisite Consents;
- (c) the Specification;
- (d) all statutory requirements, building regulations, relevant codes of practice and British Standards as updated from time to time;
- (e) Environmental Laws;
- (f) all requirements of the local authority and the Latent Defects Insurance;
- (g) Building Contract; and
- (h) the terms of this contract.

2.4 The Developer shall, where required by the Specification, the Planning Permission and/or the Requisite Consents, remediate or, as necessary, remove all or any contamination in accordance with Environmental Laws and any requirements of the appropriate authority.

2.5 The Developer shall ensure that no materials generally regarded in the construction industry as deleterious to health and safety have been or will be issued or incorporated into the Works and shall ensure that the good practice set out in the "Good practice in the selection of construction materials" published by the British Council for Offices is and has been complied with.

3 Licence to enter the Property

3.1 The Council grants a non-exclusive licence to the persons listed in clause 3.2 to enter and remain on the Property from and including the date of this Agreement or the date that the Underlease is granted under the Agreement for Lease whichever is the later, up to and including Practical Completion or, if earlier, the date of termination of this Agreement.

- 3.2 The licence is granted to:
- 3.2.1 the Developer, its respective agents and employees;
 - 3.2.2 the Contractor, the sub-contractors and their respective agents and employees; and
 - 3.2.3 the Professional Team, their respective agents and employees.
- 3.3 The licence is granted for the purposes of carrying out the Works only. The licence does not confer on the Developer or any other person any legal or equitable right, title, interest or estate in the Property. When the licence ends, the Developer is to procure that the Property is vacated by the persons listed in clause 3.2 and that all vehicles, plant, equipment and materials belonging to them are removed from the Property.
- 4 **Design development and Requisite Consents**
- 4.1 To the extent that the design of the Works or any part(s) of the Works is not described in full in the Specification such designs shall be submitted to the Council for approval, by email to Samuel.Aligbe@walthamforest.gov.uk and Dale.Walker@walthamforest.gov.uk and in hard copy in accordance with clause 19.1.1, (such approval not to be unreasonably withheld) within the time limits set out in the Specification or if there are none within 10 (ten) Business Days of receipt of such designs by the Council.
- 4.2 If following expiry of the period set out at clause 4.1 the Council has not confirmed to the Developer whether it has approved or has not approved the designs the Developer shall serve a notice on the Council requiring it to confirm whether the designs are approved or not approved within a further three (3) Business Day period by email to Samuel.Aligbe@walthamforest.gov.uk and Dale.Walker@walthamforest.gov.uk and in hard copy in accordance with clause 19.1.1 (the **Design Confirmation Notice**).
- 4.3 If the Council has not confirmed to the Developer whether it has approved or has not approved the designs following expiry of the Design Confirmation Notice then the designs shall be deemed to be approved by the Council.
- 4.4 No approval or any condition attaching to any such approval shall in any way affect the Developer's liabilities under this contract.
- 4.5 The Developer shall apply for and obtain the Requisite Consents and the Developer shall keep the Council informed as to progress in obtaining the Requisite Consents and shall promptly supply copies of any that are obtained.
- 5 **Extensions of time**
- 5.1 If it becomes apparent that the Works will not be completed by the relevant Target Date as a result of a Relevant Event, the Developer may apply to the Council for a postponement of the relevant Target Date and/or the Longstop Date.
- 5.2 The application under clause 5.1 must include full particulars of the postponement of the Target Date and/or Longstop Date to which the Developer considers himself entitled.
- 5.3 Upon receipt of such particulars the Council shall consider all the circumstances known to him at that time and shall impartially determine whether the Developer is entitled to a fair

and reasonable extension of time and corresponding postponement of the relevant Target Date and/or the Longstop Date.

- 5.4 If the Developer makes an application for a postponement of the Target Date and/or Longstop Date but the Council considers that the Developer is not entitled thereto the Council shall so inform the Developer and the relevant Target Date and/or Longstop Date shall remain unchanged.

6 The Contractor, the Professional Team and collateral warranties

- 6.1 If not already appointed by the Council the Developer shall appoint the Contractor for the Works in substantially the form set out at Schedule 4 with such amendments approved by the Council (such approval not to be unreasonably withheld or delayed) and supply a certified copy of the completed Building Contract to the Council at the Developer's cost with five (5) Business Days of the same together with a copy broker's letter confirming the insurance details of the Contractor.

- 6.2 If not already appointed by the Council the Developer shall procure that the Contractor shall appoint the Professional Team for the Works in such form as may be reasonably required by the Council and shall supply certified copies of the completed Appointments to the Council at the Developer's cost within five (5) Business Days of the completion of the same together with a copy broker's letter confirming the insurance details of each member of the Professional Team.

- 6.3 The Developer shall not:

- 6.3.1 vary, waive or release any of the terms of the Building Contract or any Appointment without the Council's prior written consent, such consent not to be unreasonably withheld or delayed;
- 6.3.2 do or omit to do anything that would entitle the Contractor or any member of the Professional Team to suspend the works or services and/or regard its employment as terminated;
- 6.3.3 terminate the employment of the Contractor or any member of the Professional Team which it has appointed or treat it as repudiated without notifying the Council first and discussing the appointment of a suitable alternative, such suitable alternative to be approved by the Council (such approval not to be unreasonably withheld or delayed).

- 6.4 The Developer shall, within fifteen (15) Business Days of each request to do so, obtain duly executed deeds of collateral warranty from:

- 6.4.1 the Contractor in favour of any:

- (a) Purchaser or Tenant in the form CWa/P&T; or
- (b) Funder in the form CWa/F;

- 6.4.2 each member of the Professional Team in favour of any:

- (a) Purchaser or Tenant in such form as may be reasonably required by the Council; or

(b) Funder in in such form as may be reasonably required by the Council,

with such amendments as may be approved in writing by the Council (such approval not to be unreasonably withheld or delayed).

6.5 The Developer shall, within fifteen (15) Business Days of each request to do so, obtain duly executed deeds of collateral warranty from each sub-contractor engaged or to be engaged (including any replacement sub-contractors) in relation to the Works and identified in the contract particulars of the Building Contract in favour of:

6.5.1 any Purchaser or Tenant in the form SCWa/P&T;

6.5.2 any Funder in the form SCWa/F; or

6.5.3 the Council in the form SCWa/E,

together with a copy of such sub-contractor's sub-contract.

6.6 Where the Council has appointed the Contractor or a member of the Professional Team, the Council shall have the option to procure, at any time, the transfer of its rights and obligations under the Building Contract or any Appointment of the Professional Team to the Developer by entering into a deed of novation (in such form as may be reasonably required by the Council). As from the date of any such novation the novated contractor or consultant (as the case may be) shall be deemed to be the Building Contractor or a member of the Professional Team (as applicable) for the purposes of this contract.

6.7 If the Council chooses to exercise such option then the Developer shall execute:

6.7.1 the requisite deed of novation and deliver it to the Council; and

6.7.2 a post-novation collateral warranty in favour of the Council (in such form as may be reasonably required by the Council),

within ten (10) Business Days of the Council's request to do so.

7 Health and safety

7.1 At all times the Developer shall comply with all current health and safety legislation relating to the Works.

7.2 For the purposes of the CDM Regulations the Developer elects to be the only "client" and the Council agrees to such election.

7.3 The Developer shall:

7.3.1 appoint a Principal Contractor and a Principal Designer;

7.3.2 co-operate with and provide the Principal Contractor and the Principal Designer with all information relevant to their roles under the CDM Regulations;

7.3.3 carry out all the duties of client in accordance with the CDM Regulations;

- 7.3.4 not to appoint the Principal Contractor or Principal Designer other than on terms that the Principal Contractor and the Principal Designer exercise all the reasonable skill, care and diligence as is to be expected of a properly qualified and competent Principal Contractor and/or Principal Designer (as the case may be) experienced in carrying out works and/or services of a similar value, scope, size, nature and complexity to the Works;
- 7.3.5 procure from each of the Principal Contractor and the Principal Designer, a warranty that they have the skills, knowledge, experience and where they are an organisation, organisational capability to carry out the work in a way that secure health and safety; and
- 7.3.6 ensure that Works do not begin until the Principal Contractor and Principal Designer have been appointed and a construction phase plan complying with the CDM Regulations has been prepared.

8 **Developer's Variation**

- 8.1 The Developer shall not make a Developer's Variation without the Council's prior written approval (such approval not to be unreasonably withheld or delayed) **provided that** (without prejudice to the generality of the foregoing) the Council shall not be deemed to have unreasonably withheld approval if it does not approve a Developer's Variation which:
 - 8.1.1 adversely affects the market value of the Property; and/or
 - 8.1.2 increases the long term maintenance costs of the Property.
- 8.2 The Council irrevocably approves those Developer's Variations that:
 - 8.2.1 are immaterial, insubstantial or of routine nature and do not lower the quality of the Works; or
 - 8.2.2 are required to comply with any Requisite Consent, the Planning Permission or any statutory requirements; or
 - 8.2.3 are a substitution of materials if the replacements are of no lesser standard than those originally specified.

Any such variations shall be notified to the Council within ten (10) Business Days of the implementation of such variation.

9 **Council's Variation**

- 9.1 Within ten (10) Business Days (or such other time period as may be agreed between the parties, both acting reasonably) of receipt of a request for a Council's Variation, the Developer shall give the Council an Estimate.
- 9.2 Within ten (10) Business Days (or such other time period as may be agreed between the parties, both acting reasonably) of receipt of any Estimate, the Council may require that the Developer attend a meeting to discuss the calculation of any cost and time.
- 9.3 If the Council wishes to proceed with an Council's Variation it shall issue written confirmation of the same to the Developer within ten (10) Business Days (or such other time period as

may be agreed between the parties, both acting reasonably) of receipt of the Estimate as referred to in clause 9.2 and the Developer shall undertake the confirmed Council's Variation in accordance with the provisions of this contract.

9.4 If the Council's Variation is implemented the cost of the Council's Variation shall be either as:

9.4.1 specified in the Estimate; or

9.4.2 agreed between the Council and the Developer.

9.5 Such costs (as referred to in clause 9.4) shall be added to the Works Price and savings resulting from any Council's Variations shall be deducted from the Works Price.

9.6 The Target Date shall be adjusted either as:

9.6.1 specified in the Estimate; or

9.6.2 agreed between the Council and the Developer in writing.

10 **Insurance**

10.1 The Developer shall (or shall procure that the Contractor shall) take out and maintain until Practical Completion of the whole of the Works insurance in respect of:

10.1.1 claims arising out of its (or the Contractors' as the case may be) liability for the personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Works; and

10.1.2 damage to any real or personal property arising out of or in the course of or by reason of the carrying out of the Works due to its (or the Contractors' as the case may be) negligence, breach of statutory duty, omission or default.

10.2 The Developer shall take out and maintain until Practical Completion of the whole of the Works:

10.2.1 insurance for the Works for no less than the full reinstatement value of the Works (plus professional fees, if any) in the joint names, inter alia, of the Developer and the Council; and

10.2.2 all risks insurance on plant, tools, equipment and other things for use in connection with the Works including hired and/or owned property.

10.3 The Developer shall procure that:

10.3.1 each member of the Professional Team; and

10.3.2 the Contractor;

shall maintain in full force and effect throughout the period of performance of the Works and for a period of twelve (12) years from Practical Completion of the whole of the Works professional indemnity insurance in an amount to be approved by the Council in writing.

10.4 In the event of any loss or damage to the Works prior to Practical Completion of the whole of the Works the Developer shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The Developer shall apply the proceeds of the insurance towards the reinstatement.

10.5 The Developer shall maintain the insurances referred to in clauses 10.1 and 10.2 with reputable insurance companies based in the UK and will send the Council within five (5) Business Days of a request to do so evidence confirming that the insurances referred to at clauses 10.1, 10.2 and 10.3 are being maintained.

11 **Copyright**

The Developer grants and/or shall procure the grant to the Council of an irrevocable royalty-free non-exclusive licence to use and reproduce the Documents for any purpose connected with the Works, namely, the execution completion maintenance letting management sale advertisement alteration extension reinstatement and repair of the Works and the Property or any part of the Works **provided that** the licence shall not include a licence to reproduce the design contained in the Documents for any extension of the Works. Such licence shall carry the right to grant sub licences and shall be transferrable to third parties. The Developer shall not be liable for any use of the Documents for the purposes other than for which they were prepared and provided by the Developer.

12 **Payment**

12.1 The Works Price and the Development Fee shall be paid by the Council to the Developer in accordance with the provisions of this clause 12.

12.2 The due dates for payment of the:

12.2.1 Works Price shall be seven (7) days after each Interim Valuation Date; and

12.2.2 Development Fee shall be the date of issue of the Certificate of Making Good Defects under clause 15.5,

(each a **Due Date**).

12.3 On each Due Date the Council shall give notice of the sum which the Council considers to be due on the relevant Due Date and the basis on which that sum was calculated (the **Payment Notice**).

12.4 The final date for payment of any sum payable pursuant to this contract shall be seventeen (17) days after the Due Date (the **Final Date for Payment**).

12.5 If the Council wishes to pay less than the amount stated in the Payment Notice the Council shall issue a notice specifying the sum the Council considers to be due on the date the notice is served and the basis on which that sum is calculated (the **Pay Less Notice**). Any Pay Less Notice(s) shall be served no later than one (1) day before the Final Date for Payment.

12.6 The Council shall pay the amount stated in any Payment Notice or, if issued, the Pay Less Notice (or if more than one Pay Less Notice is issued, the amount stated in the last Pay Less Notice issued) by the Final Date for Payment.

- 12.7 The Developer shall be entitled to interest on any late payment at the rate of 3% (three percent) above the bank rate of the Bank of England from time to time in force.
- 12.8 In the event that the Works Price is adjusted in accordance with clause **Error! Reference source not found.**, the instalments in respect of the Works Price made from the Council to the Developer shall be adjusted accordingly.
- 13 **Liquidated and ascertained damages**
- 13.1 If the certificate of Practical Completion is not issued on or before the Target Date the Developer shall be liable to the Council to pay liquidated and ascertained damages at the LADs Rate for the period between the Target Date and the date of issue of such certificate.
- 13.2 Any liquidated and ascertained damages which the Developer is liable to pay pursuant to paragraph 13.1 shall, at the Council's sole discretion, be paid by the Developer to the Council within five (5) Business Days of any demand to do so or deducted from any sums otherwise due to the Developer pursuant to the terms of this contract.
- 14 **Practical Completion of the Works**
- 14.1 The Developer shall:
- 14.1.1 give to the Council, eight (8) weeks and four (4) weeks prior written notice of the estimated date of Practical Completion of the Works; and
- 14.1.2 agree a date for inspection of the Works.
- 14.2 The Council or its authorised representatives shall attend the Property on the agreed date and inspect the Works with the Developer;
- 14.3 The Council, acting reasonably, shall within five (5) Business Days of the inspection in accordance with clause 14.2 either:
- 14.3.1 if it is satisfied that the Works are Practically Complete, issue a certificate of Practical Completion; or
- 14.3.2 if it is not satisfied that the Works are Practically Complete give a report to the Developer;
- 14.4 In the event that the Council gives a report to the Developer pursuant to clause 14.3.2 the Developer shall forthwith proceed to remedy and/or rectify any work specified in such report and shall as soon as reasonably practicable thereafter serve a further notice stating that the outstanding part of the Works have been carried out and clauses 14.3.1 and 14.3.2 shall apply as often as is necessary until the Council is satisfied acting reasonably that the Works are Practically Complete.
- 15 **Defects in the Works post Practical Completion**
- 15.1 The Council may at any time during the Defects Liability Period serve notice on the Developer of any Defects.
- 15.2 The Developer shall procure that the Contractor makes good to the reasonable satisfaction of the Council all Defects of which it is notified under clause 15.1 within the Defects

Response Times or in the event of no specified Defects Response Time for such category of Defects within a reasonable time following such notification.

15.3 On or immediately before the expiry of the Defects Liability Period, the Council shall:

15.3.1 inspect the Works; and

15.3.2 notify the Developer of any such Defects that must be attended to.

15.4 The Developer shall within the Defects Response Times or in the event of no specified Defects Response Time for such category within a maximum of twenty eight (28) days, of any notification (or within such other reasonable period as may be agreed between the parties) pursuant to clause 15.3 procure that the Contractor makes good such Defects as have been notified pursuant to clause 15.3 at no cost to the Council.

15.5 When in the opinion of Council the Defects notified pursuant to clause 15.3 have been made good the Council shall issue a Certificate of Making Good Defects.

15.6 The Council shall procure, at reasonable times, an appointment or appointments for the Developer (and all they authorise) to access and remedy any Defects referred to in a notice served pursuant to clauses 15.1 and/or 15.3.

15.7 In rectifying Defects the Developer shall procure:

15.7.1 the minimum amount of interference and disruption as is reasonably practicable to the use and/or occupation of the Property;

15.7.2 compliance with any reasonable directions and security precautions as long as such shall not prevent delay or increase the cost of the carrying out of the rectification works and/or inspection;

15.7.3 accompaniment of its contractors, if the Council so requires (acting reasonably), by the Council or its authorised representatives provided the Council or its authorised representatives makes themselves available at the relevant time;

15.7.4 the making good, as soon as reasonably practicable, of any damage caused to any part of the Property by the Developer.

15.8 If the Developer does not comply with clauses 15.2 and/or 15.4 then seven (7) days following receipt of a further notice from the Developer (save in respect of Emergency Defects where such further notice shall not be required):

15.8.1 the Council may instruct others to rectify the Defects in relation to which the Developer is in default; and/or

15.8.2 the Developer shall reimburse the Council the reasonable and proper costs of such rectification.

16 **Documentation**

On the date of Practical Completion of the Works the Developer shall at its own expense supply to the Council the Handover Items in respect of the Works.

17 Assignment and novation

- 17.1 The Developer shall not assign its interest in this contract or any part of this contract nor any right arising under this contract to any other person without the prior consent of the Council (such consent not to be unreasonably withheld or delayed).
- 17.2 The Council may at any time assign, charge or transfer all or any of its rights arising under this contract to any third party acquiring its interest in the Works and/or the Property without the consent of the Developer being required.
- 17.3 The Developer undertakes with the Council not to contend that any person to whom this contract may be assigned will be precluded from recovering under this contract any loss resulting from any breach of this contract either by reason that the person is an assignee and not the original party to this contract or by reason that the Council named in this contract or any intermediate owner of the Council's interest in the Works and/or Property shall escape loss resulting from such breach by reason of the disposal of the interest in the Works and/or Property.

18 Termination

18.1 If the Developer:

18.1.1 suffers an Event of Default;

18.1.2 is in material breach of its obligations under this contract and such breach is either:

- (a) not capable of being remedied;
- (b) is capable of being remedied but the Developer has not remedied the breach within thirty (30) Business Days (or such other reasonable period specified by the Council) after receipt of written notice to the Developer specifying the breach;
- (c) does not achieve Practical Completion of the whole of the Works by the Longstop Date;
- (d) wholly suspends execution of the Works without good cause for twenty eight (28) days or more,

then the Council may, by notice in writing to the Developer, terminate this contract with immediate effect.

18.2 If the Council:

18.2.1 suffers an Event of Default;

18.2.2 is in material breach of its obligations under this contract and such breach is either:

- (a) not capable of being remedied;

- (b) is capable of being remedied but the Council has not remedied the breach within thirty (30) Business Days (or such other reasonable period specified by the Developer) after receipt of written notice to the Council specifying the breach,

then the Developer may, by notice in writing to the Council terminate this contract with immediate effect.

18.3 Subject to clause 18.4, if the Developer's engagement is terminated in whole or part pursuant to clause 18.1 or 18.2:

18.3.1 the Developer shall:

- (a) take immediate steps to bring to an end the Works or the relevant part or parts of the Works in an orderly manner but with all reasonable speed and economy; and
- (b) within ten (10) Business Days deliver to the Council originals of all the Documents relating to the relevant part or parts of the Works terminated (whether in the course of preparation or completed) **provided that** the Developer shall be entitled to retain copies of the same.

18.3.2 The Council may employ and pay other people to carry out and complete the Works.

18.4 If this contract is so determined in accordance with clause 18.1 the Council shall not be bound to pay any sum or further sum to the Developer until the time reasonably necessary for completing the Works has elapsed and upon the expiry of such time an account shall be taken in which the Developer shall be credited with the value calculated in accordance with this contract of the Work done by it and shall be debited with the amount of any interim payments made by the Council and with any loss or additional expense incurred by the Council as a consequence of the determination and the balance shall be paid to the party in whose favour it lies.

18.5 If this contract is so determined in accordance with clause 18.2 then:

18.5.1 the Council shall, subject to any Pay Less Notice, pay to the Developer that part of the Works Price which is due (but unpaid) as at the date of such termination; and

18.5.2 the Developer shall be entitled to a fair and reasonable proportion of that part of the Works Price which has not become due such proportion to be commensurate with the Works completed during the period from the last application for payment and the date of termination.

18.6 Upon any termination of the Developer's engagement howsoever arising the Council shall not be liable to the Developer for any loss of profit, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination.

19 Notices

19.1 Notices shall be validly served if served upon the following:

- 19.1.1 in respect of the Council: FAO Samuel Aligbe/Dale Walker, The London Borough of Waltham Forest, Waltham Forest Council, Cedar Wood House, 2D Fulbourne Road, London, E17 4GG; and
 - 19.1.2 in respect of the Developer: FAO Darren Peters, Sixty Bricks Limited, 60B Room 209, Finance, Waltham Forest Town Hall, Forest Road, London, E17 4JF.
- 19.2 Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:
- 19.2.1 if delivered personally, on delivery; and
 - 19.2.2 if sent by first class inland post, two (2) clear Business Days after the date of posting.

20 **Contracts (Rights of Third Parties) Act 1999**

Nothing in this contract confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

21 **Adjudication**

- 21.1 In relation to any dispute or difference arising between the following provisions shall apply:
- 21.1.1 any dispute or difference arising between the parties in relation to the provisions of this contract which they are unable to resolve by agreement may be referred to adjudication;
 - 21.1.2 the parties may agree who will act as an adjudicator or in the absence of such agreement, the adjudicator shall be appointed by the president of the Royal Institution of Chartered Surveyors such institution acting as the nominating body under the Scheme referred to in clause 20.1.3;
 - 21.1.3 the adjudication provisions contained in the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 shall apply to any dispute or difference arising between the parties that are referred to adjudication pursuant to clause 20.1.1; and
 - 21.1.4 where any dispute or difference between the parties which is also the subject of a dispute between the Developer and the Contractor shall be resolved in the same manner and so far as possible in the same proceedings as the dispute between the Developer and the Contractor. The parties shall procure that the same adjudicator who dealt with the adjudication between the Developer and the Contractor be appointed as adjudicator for relevant disputes or differences under this contract.

22 **Governing law and jurisdiction**

- 22.1 This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 22.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims).
- 22.3 Each party irrevocably consents to any process in any proceedings under clause 22.2 being served on it in accordance with the provisions of this contract relating to service of notices. Nothing contained in this contract will affect the right to serve process in any other manner permitted by law.

This contract has been executed as a deed and is delivered on the date stated at the beginning of it.

Executed as a deed by)
The London Borough)
of Waltham Forest by affixing)
hereto its Common Seal)
in the presence of)

Authorised signatory

Authorised signatory
Executed as a deed by)
Sixty Bricks Limited)
acting by:)

Director

Director/Company Secretary

Schedule 1
Works Programme

Schedule 2
Specification

Schedule 3

Defects Response Times

Specified Categories of Defects and time periods for response are as follows:

Priority	Title	Target	Definition
A	Emergency	4 hours	Serious leak or burst pipe Dangerous structural fault Dangerous services (gas, water and electric) Defective communal heating/hot water supply

As a minimum within the target stated, make safe, ensure no further damage can ensue and rectify within a reasonable timescale agreed with the Council.

Priority	Title	Target	Definition
B	Emergency	24 hours	Total loss of electricity supply* Total loss of water supply* Total loss of gas supply Total loss of heating/hot water supply (individual dwelling)* Blocked or leaking foul drain or soil stack Faulty window or door lock Minor leaks to pipework or appliances Loose or detached banister or stair handrail <i>*Other than losses due to the utility authority</i>

Priority	Title	Target	Definition
C	Imperative	3 days	Partial loss of electrical power Partial loss of heating Toilet not flushing Taps which cannot be turned or drip Faulty entry phone system

Priority	Title	Target	Definition
D	Routine	7 days	Faulty extractor fans Power socket, lighting point or electrical fitting not working.

Schedule 4
Form of Building Contract

Schedule 5

Handover Items

1.1 Practical completion (handover)

1.1.1 Generally

The Contractor shall give the Employer at least eight weeks' notice of the anticipated date for practical completion of the Works, individual phases and individual units using the Handover Procedures Checklist within Appendix K.

During the finishing work and inspection provide temporary lighting, the intensity and direction of which closely resembles that provided by the permanent installation.

Approximately two weeks before the handover date, the Employer, subject to being satisfied that the Works are substantially complete, shall inspect the Works and compile a list of omitted and/or defective work. The list shall be issued to the Contractor one week after completion and upon receipt of such list the Contractor shall complete or remedy the work. At formal handover a responsible Contractor's representative shall accompany the Employer on an inspection of the Works and if the inspection shows the Works have been completed to the Employer's satisfaction they shall be taken over. Ensure that meter readings are taken as appropriate at Practical Completion.

Where the Contractor wishes to invite the Employer or his representatives to carry out pre-handover inspection, the Employer shall require two weeks' notice. The Contractor shall ensure that the Works are substantially complete before inviting the Employer or his representative to carry out the inspection. If the works are not complete, the cost of any abortive site visits made by them in this connection, shall be charged to the Contractor in an appropriate manner.

The Contractor shall note that the Employer will not take over any dwelling, unless the following minimum conditions are met to Employer's satisfaction. This being referred to as meeting standard required for 'Practical Completion':

- (a) the dwelling is fit for occupation, building works complete;
- (b) all access routes to and within dwellings are complete and safe to use;
- (c) all building services are fully functional;
- (d) external works and fencing are completed;
- (e) roads and footpaths are completed up to and including base course;
- (f) street and/or the site lighting is fully functional;
- (g) the dwelling and its surrounding have been thoroughly cleaned;
- (h) Building Control and NHBC certificates are available, and relevant planning conditions discharged;
- (i) statement confirming required sustainability level has been met;
- (j) all relevant services Installation Commissioning Certificates are provided;

- (k) a relevant EPC is provided;
- (l) all other handover documentation is available; and
- (m) Employer has been provided with the appropriate training on the services and systems detailed within the Handover Procedure Checklist.

Practical Completion of the Works shall be subject to all adoptable Works having been completed by the Contractor to the satisfaction of the relevant adopting Authority before being certified as complete by the Employer.

The Contractor should note that dwellings will not be accepted the Employer on Public Holidays, National Building Industry holidays or for two weeks prior to Christmas or the first week of January.

Should the Contractor fail to achieve Practical Completion on the date provided with the eight weeks' notice of handover, the Employer shall require the Contractor to be responsible for all reasonable costs and expenses incurred and the prospective tenants in having to find alternative accommodation or the Employer shall require the Contractor to be responsible for the management and all associated reasonable costs and expenses of providing hotel accommodation for the prospective tenants until such a date that practical completion is achieved.

1.1.2 Home User Guide

Prepare and hand to the Employer at Practical Completion, and in a format agreed with the Employer, a Home User Guide for each dwelling. These documents are to provide full details of the operating procedures for all elements of the dwelling including windows, extract fans, heating systems, hot water controls, electrical systems and all other items requiring operation by the tenant. (Please also refer to Section D - Data and Samples to be provided by the Contractor).

1.1.3 Employer's Information Pack

The Contractor shall prepare and hand to the Employer at each Practical Completion, in a format agreed with the Employer, two copies of a comprehensive Employer's Information Pack comprising the following:

- (a) a copy of the Home User Guide for each dwelling type (if appropriate);
- (b) maintenance procedures for any element of the scheme requiring regular maintenance, including heating systems and controls, electrical systems, etc.;
- (c) a schedule of all contractors, sub-contractors and suppliers together with their addresses and telephone numbers;
- (d) Sub-Contract/Supplier guarantees;
- (e) Secured by Design certificates;
- (f) NHBC Buildmark Certificate(s);
- (g) test certificates for Electrical/Gas (where relevant) and all other services Installations;
- (h) Building Control completion certificates; and

(i) as built drawings illustrating all of the works completed, together with specification notes sufficient to describe the construction, in both electronic and hard copy form.

1.1.4 Training of Employer's staff

Before completion, explain and demonstrate to the Employer's maintenance and housing management staff the purpose, function and operation of the installations including all items and procedures listed in the Building Manual.

1.1.5 Key requirements

The Employer will be provided with a full set of labelled keys for the properties at Practical Completion, including:

Front door	3 no. keys
Rear door	3 no. keys
Patio door (where applicable)	3 no. keys
Meter cupboard	1 no. key
Radiator	1 no. key
Window	1 no. key per window
Bathroom cabinet	1 no. key
Kitchen cabinet	1 no. key
External store	3 no. keys
Communal doors (where applicable)	2 no. key for each dwelling plus 2 for

On handover from the Contractor to the Employer, a key sheet will be signed by both parties, detailing the number of keys and any other equipment provided to protect the Contractor from claims of loss after this date.

Schedule 6

The Plan