Dated 30th JANONEY 2019

(1) WOKING BOROUGH COUNCIL

(2) GOLDEV WOKING LIMITED

# AGREEMENT FOR LEASE

RELATING TO

WOKING FOOTBALL CLUB AND OTHER LAND IN WOKING

Katten

Katten Muchin Rosenman UK LLP

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#### **PARTIES**

- (1) WOKING BOROUGH COUNCIL of Civic Offices Gloucester Square, Woking, GU21 6YL (the "Council");
- (2) GOLDEV WOKING LIMITED a company incorporated in England and Wales with company registration number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ (the "Tenant").

### BACKGROUND

- (A) The Tenant is minded to undertake the Development and has approached the Council with a view to obtaining the Council's assistance in this regard.
- (B) The Council has a general power of competence under Section 1(1) of the Localism Act 2011, and considers that the carrying out of the Development will be in the public interest and will (amongst other things) contribute to the environmental, social and economic well-being of the Borough of Woking.
- (C) The Tenant has submitted the Viability Assessment to the Council.
- (D) For the purposes of identifying the process and framework under which the Council will provide assistance to the Tenant, the parties have agreed to enter into this Agreement.
- (E) It may be necessary for the Third Party Interests to be acquired by the Tenant in order for the Development to be carried out.
- (F) The Third Party Interests will be acquired, so far as practicable, by private treaty by the Tenant and (in part) by the Council and the Tenant and the Council have agreed to endeavour to acquire the relevant Third Party Interests by private treaty in accordance with this Agreement.
- (G) If the Third Party Interests cannot be acquired by private treaty, the Council will consider the use of its powers pursuant to Section 226 of the Planning Act to acquire Third Party Interests by compulsory purchase and, if it so resolves, will make and promote the CPO which the Tenant supports.

### 1. **DEFINITIONS**

"Acceptable Title" means in the opinion (each acting reasonably) of:

- (a) the Council in respect of each Required Interest; and
- (b) the Tenant in respect of each Required Interest and in respect of the Council's Property

that in relation to each such interest in land:

- (i) there is good and marketable title;
- (ii) the current registered proprietors are solely legally and beneficially entitled to the interest owned;

- (iii) no consents are required from any third parties before the interest owned can be effectively conveyed pursuant to the relevant Site Assembly Agreement or any consents needed have or can be obtained without being subject to onerous or unusual conditions;
- (iv) if the title to the relevant interest is registered at the Land Registry, the quality of the title is title absolute;
- (v) if the title to the relevant interest is not registered at the Land Registry then it commences with a good root of title of at least 15 years old or for leasehold interests for terms of less than 15 years a good root of title from the grant of the lease; and
- (vi) it is free from encumbrances of any sort (save charges which are capable of being discharged at completion and restrictive covenants which are capable of being insured against at reasonable costs) which would prevent the Tenant from completing the Project without materially increased cost.

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

"Act of God" means the happening of some event which could not be caused by the action or intervention of man and the loss from which could not have been avoided or prevented by any reasonable amount of foresight pains or care.

"Act of Terrorism" means an act (including the use of force or violence and or the threat thereof) of any person or group of persons whether acting alone or on behalf of or in connection with any organisation or government committed for political, religious, ideological or similar purposes including the intention to influence any government and or to put the public or any section of the public in fear and such other acts or things as may be included within the wording adopted in the London insurance market from time to time for the exclusion of cover in respect of acts of terrorism.

"Actual Completion" means (as the context so admits) completion of the sale and purchase, grant or surrender of a lease or other tenancy or grant or surrender of any other right, easement, covenant or other interest in land of whatever nature (including for the avoidance of doubt Third Party Interests) whether or not it takes place on the relevant Completion Date (referred to in the Standard Conditions as "the date of actual completion") and "Date of Actual Completion" shall be interpreted accordingly.

"Adoption Agreement" means any agreement in respect of the Development and the Development Works for their adoption, dedication or otherwise (in whole or part) including sections 4, 38 or 278 of the Highways Act 1980 and/or Sections 98 to 104 of the Water Industry Act 1991 or any provision to similar intent or an agreement with a water authority or sewerage undertaker or other appropriate authority as to water supply or drainage of surface and/or foul water or an agreement with any competent authority or body relating to other utilities and services.

### "Affiliate" means in respect of any person:

- (a) any person connected with such person (and "connected with" bears the meaning set out in section 839 of the Income and Corporation Taxes Act 1988);
- (b) any company under the control of such person (and "control" bears the meaning set out in section 840 of the Income and Corporation Taxes Act 1988);

- (c) any associated company of such person (and "associated" bears the meaning set out in section 416 of the Income and Corporation Taxes Act 1988);
- (d) any Connected Party; and
- (e) any Group Company of any such person referenced to in paragraphs (a) to (d).
- "Affordable Housing" has the meaning given to it in Annex 2 to the National Planning Policy Framework (July 2018) issued by the Ministry of Housing, Communities and Local Government or the relevant planning policy document at the date of grant of a Satisfactory Planning Permission.

### "Agreed Purchase Costs" means total of:

- (a) the cost of purchasing the Leigh Place Land up to a maximum sum of £11,000,000;
- (b) the cost of purchasing the Park View Property up to
- (c) the cost of purchasing the Hoe View Property up to
- (d) the cost of purchasing the KCS Property up to a maximum of £2,000,000;
- (e) all SDLT costs payable in respect of the above purchase sums; and
- (f) all Land Registry and third-party search fees incurred by the Council in respect of such purchases

less all CPO Costs relating to any of the above items and/or to the extent any of the above items have been (in either case) paid by or on behalf of the Tenant.

"Approved Assignee" means a third party to whom the Tenant wishes to assign the benefit of this Agreement who is approved by the Council, such approval not to be unreasonably withheld or delayed.

"Asquith Nurseries" means Asquith Nurseries Limited (Co. No. 05133988).

"Balancing Payment" means a payment pursuant to clause 11 (Financial Provisions).

"Blight Notice" means any blight notice served on the Council under the provisions of section 150 of the Planning Act in respect of a Non-Contracted Interest.

"Bribery Laws" means the Bribery Act 2010 and all other applicable UK legislation, regulations and codes in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction.

"Building" means each building forming part of the Development and the curtilage or amenity land of such building and the reference to Buildings shall include a Building or part of a Building.

"Building Contract" means any building contract entered into in respect of the Development Works.

"Call-In" means a Planning Application which is called in by the Secretary of State for his own determination under s77 of the Planning Act.

"Call-In Determination Date" means the date of receipt of the Secretary of State's decision letter.

## "Call Option" means:

- (a) in the case of the Ground Leases the call option agreement in the form of the draft option in *Appendix 11* (*Leasehold Call Option*); and
- (b) in the case of the Egley Road Freehold Residential Element the call option agreement in the form of the draft option in *Appendix 9* (Freehold Call Option).
- "CDM Regulations" means the Construction (Design and Management) Regulations 2015.
- "Certificate of Making Good Defects" means each notice or certificate issued by the contract administrator under the building contract to confirm that any defects notified to the building contractor have been made good.
- "Certificate of Practical Completion" means each certificate or statement issued by the contract administrator under the building contract to the effect that, in his opinion, practical completion of the Development Works or any part of the Development Works has been achieved.
- "Certificates" means each Certificate of Practical Completion and each Certificate of Making Good Defects.
- "Challenge Period" means the period of 6 weeks plus 10 Working Days following the date of issue of the Satisfactory Planning Permission.
- "CIL" means the Community Infrastructure Levy introduced by sections 205–225 of the Planning Act 2008 and governed by the Community Infrastructure Levy Regulations 2010 SI 2010/948 (and/or any equivalent form of taxation or levy introduced by HM Government).
- "Clean Up Costs" means all liabilities incurred or likely to be incurred by a landlord, owner, tenant or occupier in connection with any actions or works taken to prevent remedy or clean up pollution or contamination of the Environment with Hazardous Substances and/or Waste insofar as works are required to comply with this Agreement.
- "Commercial Units" means any commercial units forming part of the Development on the Main Site.
- "Communication" means any notice (save a notice pursuant to clause 16 (*Insolvency and Termination*) application, approval, certificate or other communication from or on behalf of one party to another pursuant to the terms of this Agreement.

## "Completion Date" means:

- (a) in the case of the grant of the Ground Leases the date which is 20 Working Days after the Final Unconditional Date; or
- (b) in respect of the sale of the Third Party Interests which comprise the whole or part of the Egley Road Freehold Residential Element, the date specified in paragraph 5.1 of Schedule 10 (Egley Road Condition); or

- (c) where applicable the Residential Completion Date (as defined in Schedule 16 (Residential Unit Transfer);
- (d) in relation to each Ground Lease Transfer the date which is 10 Working Days after the Relevant Final Disposal Date; and
- (e) "Relevant Completion Date" means the relevant date as the context so admits.

"Compliant Plan" means a plan which complies with the Land Registry Regulations 2003 and in particular Paragraph 6.7 of the Land Registry Guide 40 (dated October 2005) or any subscribed regulations and/or practice guide in relation to plans.

"Compulsory Purchase Order" means a compulsory purchase order made pursuant to CPO powers.

"Concept Design Document" means the indicative concept design documents produced by Leach Rhodes Walker dated July 2018 a copy of which is contained in *Appendix 3* (Concept Design Document).

### "Conditions" means the:

- (a) Planning Condition:
- (b) WFC Condition;
- (c) KCS Condition;
- (d) David Lloyd Condition;
- (e) Snooker Club Condition;
- (f) Gym Club Condition;
- (g) Telecoms Lease Condition;
- (h) Rosewood Condition;
- (i) Egley Road Condition;
- (j) Hoe View Condition;
- (k) Park View Condition;
- (l) Third Party Rights Condition; and
- (m) Title Due Diligence Condition;

or any one or more of these as the context so admits.

### "Conditions Longstop Dates" means:

- (a) Planning Satisfaction Longstop date;
- (b) Site Assembly Conditions Longstop Date; and

## (c) CPO Longstop Date

or any one or more of them as the context so admits.

"Confirmation" means confirmation of a CPO by the Secretary of State either in whole or in part and "Confirm" and "Confirmed" shall be construed accordingly.

"Connected Party" means any person or company connected with a party or a Group Company or any director of a party and connected as the same meaning as in Sections 252, 254 and 255 of the Companies Act 2006 or Section 1122 of the Corporation Tax Act 2010.

"Consequential Completion Conditions" means completion of any transfer, assignment, surrender, release and/or other assurance required pursuant to a Site Assembly Agreement.

"Contract Rate" means 2% per annum above the base rate from time to time of Lloyds Bank plc.

"Council Event of Default" means the Council committing a Council Material Default of this Agreement and failing within 30 Working Days of written notice being received from the Tenant (or sooner in case of emergency) to

- in the case of a remediable breach to commence appropriate action to investigate such breach and thereafter failing diligently to remedy such breach as soon as reasonably practicable; and
- (b) in the case of an irremediable breach to proffer an alternative remedy acceptable to the Tenant (acting reasonably).

"Council Material Default" means any material substantial breach of the obligations of the Council or any material default or omission or misstatement of the Council provided that the same have not been caused directly or indirectly by any breach of the Tenant's obligations under this Agreement but excluding any such that the Tenant has acknowledged in writing have been remedied to the Tenant's satisfaction.

"Council Nominee" means such entity as the Council shall specify in writing to accept the transfer of the Reversionary Interests.

"Council's Egley Road Land" means the freehold property known as land on the west side of Egley Road, Woking registered at the Land Registry under title number SY831090 as at the date of this Agreement in the name of the Council.

## "Council's Property" means:

- (a) the freehold properties forming part of the Stadium Site currently owned by the Council details of which are set out in **Schedule 1** (Council's Property at Stadium Site); and
- (b) the Council's Egley Road Land

together with all additional freehold, leasehold or other rights or interests in land of any nature in relation to the Sites acquired by the Council after the date of this Agreement.

- "Council's Solicitors" means Woking Borough Council, Legal Services Department of Civic Offices, Gloucester Square, Woking GU21 6YL (Ref: Peter Bryant), or such other solicitors as the Council may from time to time appoint and notify in writing to the Tenant.
- "Council's Unreasonable Conditions" means a condition subject to which a Planning Permission or Planning Agreement is issued which has the effect of:
- (a) materially amending the form of Development from that set out in the Planning Application (which for the avoidance of doubt includes any revised, varied, supplemental or additional Planning Application approved by the Council pursuant to this Agreement); or
- (b) not meeting the Minimum Requirements.
- "Counsel" means any independent and qualified member of the Bar Association who is appointed by letters patent to be Queen's Counsel and suitably experienced in planning, compulsory purchase, property and/or residential development matters as appropriate to the nature of the Dispute and who is nominated by a party and approved by the other party.
- "CPO" means any proposed compulsory purchase order or orders to be made pursuant to section 226 of the Planning Act in respect of any Third Party Interests to facilitate the Development.
- "CPO Account" means a bank account to be set up and held by the Tenant's Solicitors in relation to the CPO indemnity in accordance with Schedule 13 (CPO Provisions).
- "CPO Account Agreement" means an agreement between the parties and the Tenant's Solicitors in the form at Appendix 4 (CPO Account Agreement).
- "CPO Appeal" means an appeal against a CPO pursuant to paragraph 9.5 of Part 1 Schedule 13 (CPO Provisions).
- "CPO Appeal Determination Date" means the date any CPO Appeal is Finally Determined.
- "CPO Budget" means the total of the CPO Third Party Budget and the CPO Costs.
- "CPO Challenge" has the meaning set out in paragraph 5 of Part 1 of Schedule 13 (CPO Provisions).
- "CPO Challenge Period" means the period during which a CPO Challenge may be brought.
- "CPO Compensation" means the compensation paid by the Council or ordered or awarded by the court or the Upper Tribunal (Lands Chamber) in respect of the acquisition of any Third Party Interests or as a result of the service of any Notice as provided for in Schedule 13 (CPO Provisions) and in paragraph 6 to paragraph 13 (inclusive) of Part 1 of Schedule 13 (CPO Provisions).
- "CPO Costs" means the costs and expenses incurred or to be incurred by the Council in respect of and/or relating to the CPO as more particularly described in Part 2 Schedule 13 (CPO Costs) subject to and as stated in paragraph 5.1 Part 1 of Schedule 13 (CPO Provisions) and CPO Cost shall be a reference to any item of CPO Costs but excluding any sums in respect of the Leigh Place Land, Park View or Hoe View.
- "CPO Judicial Review" means a challenge in respect of a failure by the Secretary of State to confirm a Compulsory Purchase Order.

- "CPO Judicial Review Period" means the period of 6 weeks following the grant of a CPO.
- "CPO Longstop Date" means 36 months after commencement of the last required CPO Process.
- "CPO Processes" means the implementation of the CPO pursuant to Schedule 13 (CPO Provisions).
- "CPO Third Party Budget" means the budget agreed between the parties in accordance with Paragraph 1.1 of Part 1 of Schedule 13 (CPO Provisions).
- "CPO Third Party Payment" means the payment made to acquire any Third Party Interests by private treaty and not by exercise of the CPO but excluding any sums in respect of the Leigh Place Land, the Park View Property or the Hoe View Property.
- "CPO Unconditional Date" means the date upon which any CPO Process instigated is Finally Determined.
- "Date of Practical Completion" means the date of practical completion as specified in a Certificate of Practical Completion.

## "David Lloyd" means:

- (a) David Lloyd Leisure GR Limited (Co. No: 09751882);
- (b) David Lloyd Leisure Nominee No 1 Limited (Co. No: 06589485);
- (c) David Lloyd Leisure Nominee No 2 Limited (Co. No: 06589483);

or either one or more of such entities as the context so admits.

"David Lloyd Condition" has the meaning contained in Schedule 5 (David Lloyd Condition).

"David Lloyd Leases" means each of the following leases in respect of the said David Lloyd Property:

- (a) lease dated 8 August 2001 between (1) Woking Borough Council and (2) Grasspost Limited and registered at the Land Registry under title number SY706821;
- (b) lease dated 4 January 2016 between (1) David Lloyd Leisure Property No 2 Limited (2) David Lloyd Leisure GR Limited and (3) David Lloyd Leisure Limited and registered at the Land Registry under title number SY832718;
- (c) lease dated 29 September 2008 between (1) Grasspost Limited and (2) David Lloyd Leisure Nominee No 1 Limited and David Lloyd Leisure Nominee No 2 Limited and registered at the Land Registry under title number SY777700.

"David Lloyd Property" means the three leasehold properties known as David Lloyd Leisure Centre Limited, Westfield Avenue, Woking registered at the Land Registry under title numbers SY706821, SY832718 and SY777700 as at the date of this Agreement variously in the name of David Lloyd.

"David Lloyd Works" means all works relating to the construction of the New David Lloyd Facility.

"Deed of Novation" means the deed substantially in the form appended to this Agreement at Appendix 7 (Novation Deed).

"Defaulting Counterparty" means any counterparty to a Site Assembly Agreement which has suffered an Event of Insolvency or is otherwise in default of its obligations to assure its land interest pursuant to the relevant Site Assembly Agreement.

"Design Data" means all drawings, reports, documents, models, plans, software, formulae, calculations, and other data whatsoever in any medium prepared by or on behalf of the Tenant relating to the design and construction of the Development Works.

"Development" means the development to be permitted by the Satisfactory Planning Permission and as currently envisaged shown in the indicative Concept Design Document and currently including:

- (a) the demolition of the Existing Football Stadium and the construction of the New Stadium;
- (b) the construction of circa 1,000 (or more) Dwellings on the Main Site Residential Land and the Egley Road Site;
- (c) the demolition of the Existing David Lloyd Facility and the construction of the New David Lloyd Facility;
- (d) the construction of Commercial Units (currently anticipated to be in the region of 10,080 square feet net internal area); and
- (e) the construction of all necessary Infrastructure and ancillary facilities in connection with the foregoing

together with all other works of demolition and construction in connection therewith.

"Development Works" means the works to be carried out on the Sites comprising the Development and more particularly shown or described in the Planning Application and all detailed design plans and specifications but excluding for the avoidance of doubt David Lloyd Works.

"Disposal" means either of the following:

- (a) a sale or exchange of the freehold interest in the whole or any part of the Sites; or
- (b) the grant of a lease (or the entering into of an agreement for lease) of the whole or any part of the Sites at a premium and reserving less than the open market rent of the Property;

and in either case with the intention of realising capital value from the Sites.

"Dispute" means a dispute, issue, difference, question or claim as between the Council and the Tenant relating to or arising at any time out of this Agreement and which is specified in this Agreement as to be referred to an Expert pursuant to clause 15 (Disputes).

"Dwelling" means a house, flat, maisonette, studio or other self-contained residential unit (together with any garden designated parking space or other area intended to be used exclusively by such Dwelling) whether or not any such house, flat, maisonette, studio or other self-contained residential unit has at any relevant time been completed or constructed and comprised in the Development.

"Egley Road Condition" has the meaning contained in Schedule 10 (Egley Road Condition).

"Egley Road Freehold Residential Element" means those parts of the Egley Road Site where the Dwellings will comprise homes to be sold freehold together with all associated common areas.

"Egley Road Ground Lease" means a lease of the Egley Road Residential Elements (excluding for the avoidance of doubt the Egley Road Freehold Residential Element) in the form of the Ground Lease contained in *Appendix 5* (Form of Ground Lease) with such amendments as shall be reasonably required and approved by the parties (acting reasonably) to reflect the details of the title, extent of the demise and additional rights and reservations needed consequential on the final design of the Development in accordance with the Satisfactory Planning Permission and this Agreement and if not agreed to be determined by an Expert in accordance with clause 15 (Disputes).

"Egley Road Purchase Agreement" means the agreement to be entered into by the Council with the proprietor of the Leigh Place Land ("the Leigh Place Seller") in accordance with Schedule 10 (Egley Road Condition) of this Agreement.

"Egley Road Residential Elements" means those parts of the Egley Road Site not intended to be let to David Lloyd shown for identification hatched blue on the plan in *Appendix 2* (*Egley Road Site Plan*).

"Egley Road Site" means the land shown for identification edged red and part hatched blue on the plan contained in *Appendix 2* (*Egley Road Site Plan*) and currently comprising the Leigh Place Land.

"End Date" means five (5) years from and including the date of this Agreement.

"Escrow Agent" means an independent third party trust company, trust bank or other similar entity proposed by the Tenant and approved by the Council.

"Escrow Agreement" means the agreement entered into between (1) the Council (2) the Tenant and (3) the Escrow Agent in relation to the CPO Account in such form as the Council shall require (acting reasonably) and shall be approved by the Escrow Agent and by the Tenant (both acting reasonably).

### "Event of Delay" means

- (a) an Act of God;
- (b) an Act of Terrorism;
- (c) any events of extension or delay set out in a Building Contract;
- (d) delay to the Development Works caused by impediment, prevention or default by act or omission, by the Council or any person employed by the Council or for whom the Council is responsible;

- (e) force majeure;
- (f) an Event of Insolvency in respect of any entity (excluding the Tenant);
- (g) any other event outside the reasonable control of the Tenant

and "Relevant Event of Delay" means any one or more of such events as the context so admits.

"Event of Insolvency" means in relation to a body corporate or unincorporate company:

- (a) it being deemed unable to pay its debts as defined in s 123 of IA 1986;
- (b) a proposal being made for a voluntary arrangement under Part I of IA 1986;
- (c) an administration order being made under Part II of IA 1986;
- (d) a receiver or manager (including an administrative receiver) being appointed over any property of that party;
- (e) an order being made or resolution being passed for its winding-up or an order being made for the winding-up of the company under Part IV of IA 1986 or for voluntary winding-up (other than a members' voluntary winding-up which is for the sole purpose of amalgamation and reconstruction while solvent);
- (f) a provisional liquidator being appointed under s 135 of IA 1986;
- (g) a proposal being made for a scheme of arrangement under s 1 of IA 1986;
- (h) an administrative receiver being appointed over the whole or any part of the property or assets of that party or any mortgagee taking possession of such property or assets;
- (i) it being removed from the Register of Companies;

OR

in relation to an individual:

- (j) an application being made for an interim order or a proposal being made for a voluntary arrangement under Part VIII of IA 1986;
- (k) making a bankruptcy application to an adjudicator pursuant to s 263H of the IA 1986;
- a bankruptcy petition being presented to Court or his circumstances being such that a bankruptcy petition could be presented under Part IX of the IA 1986;
- (m) entering into a deed of arrangement;
- (n) suffering a receiver or manager to be appointed over the whole or any part of his property;
- (o) summoning a meeting of his creditors under s 98 of IA 1986;

and in the case of any body corporate, unincorporate or individual resident in a jurisdiction other than England or Wales, the various references in this definition shall be deemed to relate to analogous proceedings or events applying in such jurisdiction.

"Existing Council Property Value" means the sum representing the value of the Council's Property listed in Schedule 1 (Council's Property at Stadium Site) and being £7,125,000.

"Existing David Lloyd Facility" means the sports centre currently operated at the David Lloyd Property.

"Existing Football Stadium" means the current football stadium let to WFC pursuant to the WFC Lease.

"Expert" means an independent person with at least ten years' post-qualification experience including significant relevant experience in the subject matter of the dispute or difference who is a specialist in relation to such subject matter.

# "Final CPO Determination" means either:

- (a) a Compulsory Purchase Order being made in the Required CPO Terms without a CPO Challenge being brought;
- (b) a Compulsory Purchase Order being made in the Required CPO Terms following a CPO Judicial Review.

# "Final Disposal Date" means:

- (a) the date of transfer of the last Dwelling to be constructed on the Stadium Site; or
- (b) the date of transfer of the last Dwelling to be constructed on the Egley Road Site; and
- (c) in each case the date of transfer of any common parts of any Building to a Residential Management Company; and
- (d) the letting and sale of all Commercial Units or other interests to be sold or let

and "Relevant Final Disposal Date" means either such date as the context so admits.

"Finally Determined" means (in relation to a Satisfactory Planning Permission):

- (a) the Challenge Period has expired without Planning Review Proceedings being instituted; or
- (b) Planning Review Proceedings have resulted in the validation or grant of a Satisfactory Planning Permission which is incapable of challenge by further Planning Review Proceedings.

and

(in relation to CPO) Final CPO Determination.

"Final Unconditional Date" means, subject to the provisions of clause 8.3 (Grant of Underlease) the later of the:

(a) Planning Unconditional Date;

- (b) Title Satisfaction Date;
- (c) Site Assembly Unconditional Date; and
- (d) CPO Unconditional Date

Provided that where clause 8.3 (*Grant of Underlease*) would apply, the Tenant shall be entitled in its discretion in respect of those titles to which clause 8.3 (*Grant of Underlease*) relates to deem that the Final Unconditional Date has been reached.

"Funder's Nominee" means a third party nominated by a Tenant's Funder for the purposes of clause 16.3 (Funder Step In).

"Ground Lease Consideration" means a sum equivalent to the:

- (a) Agreed Purchase Costs; and
- (b) Gym Club Construction Sum.

"Ground Leases" means the Main Site Ground Lease and the Egley Road Ground Lease.

"Ground Lease Transfer" means a transfer of each Ground Lease in such form as the Tenant shall propose and the Council shall approve.

"Group Company" means any subsidiary or holding company of a party and subsidiary and holding company hall have the respective meanings ascribed to such expressions by the Companies Act 2006 Section 159 and for these purposes:

- (a) a company (A) is to be treated as a member of another company (B) if any of A's subsidiary companies is a member of B or if any shares in B are held by a person acting on behalf of A or any of its subsidiary companies; and
- (b) the words 'Rights attached to' in the heading of the main body of the Companies Act 2006 Schedule 6 paragraph 7 shall be omitted and the words 'attached to those shares' shall be inserted between the word 'rights' and the words 'are exercisable' in each of the sub-paragraphs (a) and (b) of that paragraph.

"Gym Club" means Woking Gymnastics Club (a charity registered under no: 1152822).

"Gym Club Condition" has the meaning contained in Schedule 7 (Gym Club Condition).

"Gym Club Construction Sum" means a sum of representing part of the costs of construction of a new gym club.

"Gym Club Property" means the leasehold property known as Woking Gymnastic Club, Kingfield Road, Woking registered at the Land Registry under title number SY821240 as at the date of this Agreement in the name of Gym Club.

"Hazardous Substances" means any natural or artificial substance (whether solid, liquid or gas) which alone or in combination with any other substance is capable of causing harm to man or is damaging to the Environment.

"Health and Safety File" means the record in relation to the Development Works required under Regulations 12 (5), (7) and (9) of the CDM Regulations.

"Hoe View" means the freehold property known as Hoe View, Kingfield Road, Woking GU22 9AA registered at the Land Registry under title number SY262001 as at the date of this Agreement in the name of

"Hoe View Condition" has the meaning contained in Schedule 11 (Hoe View Condition).

"IA 1986" means the Insolvency Act 1986.

"Infrastructure" means all infrastructure works reasonably necessary for the proper and lawful implementation of the Development and whether within or outside the boundaries of the Sites including without limitation the following items:

- new and improvements to existing highways, roads, carriageways, footways, cycleways, junctions, roundabouts, verge and splay areas, road islands, street lighting, traffic signs, road markings, and surface water drains and sewers;
- new and improvements to existing Services, surface water management facilities and sewage facilities to serve the Development;
- (c) construction and/or laying out of walls, ditches, fences, bunds and/or other earthworks or boundary features within the Sites;
- (d) construction and/or laying out of landscaping, tree belts, open space, amenity land, and/or play areas;
- (e) construction of buildings or other facilities for public or community use;
- (f) all other works required to comply with any Statutory Agreement or otherwise needed to provide infrastructure to the Development generally or required before construction of the Development or some part of it can be begun.

"Injunctable Rights of Light" means rights of light enjoyed by any third party which would entitle the beneficiary to obtain any injunction preventing the Development or any part of it being carried out.

"Inquiry" means a public inquiry or public inquiries conducted by a person appointed for that purpose by the Secretary of State to report to him on the objections made to the CPO.

"Intellectual Property" means all intellectual and industrial property and all rights therein in any part of the world including any patent, petty patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement technique, copyright, unregistered design right, technical information or drawing created by or procured by the Tenant in connection with the Development Works.

"KCS" means Kingfield Community Sports Limited (Company No: 3425394).

"KCS Condition" has the meaning contained in Schedule 4 (KCS Condition).

"KCS Property" means the leasehold property known as Kingfield Sports Ground, Kingfield Road, Woking registered at the Land Registry under title number SY680229 as at the date of this Agreement in the name of KCS.

"Land Referencing Agents" means such suitably experienced land referencing agent as the Tenant shall nominate and the Council shall approve, such approval not to be unreasonably withheld.

"Latest Planning Submission Date" means 30 September 2019 or such later date as the Council shall approve.

"Leasehold Residential Elements" means the Dwellings disposed of by the grant of long leases and associated common areas and excluding the Egley Road Freehold Residential Element.

"Leigh Place Land" means the properties known as:

- (a) freehold land on the west side of Egley Road, Woking registered at the Land Registry under title number SY335668; and
- (b) that part of the freehold land on the north east side of Hook Hill Lane, Mayford registered under title number SY339912 currently registered in the name of Leigh Place Properties which forms part of the Egley Road Site.

"Leigh Place Properties" means Leigh Place Properties Limited (Co No: 01815896).

"Local Planning Authority" means Woking Borough Council.

"Loop Road Land" means the freehold land known as land on the west side of Loop Road registered at the Land Registry under title number SY522016.

"Main Site" means the land shown edged red and blue on the plan in Appendix 1 (Main Site Plan).

"Main Site Ground Lease" means a lease of the Main Site Residential Elements in the form of the Ground Lease contained in *Appendix 5* (Form of Ground Lease) with such amendments as shall be reasonably required and approved by the parties (acting reasonably):

- (a) to reflect the details of the title, extent of the demise and additional rights and reservations needed consequential on the final design of the Development in accordance with the Satisfactory Planning Permission and this Agreement; and
- (b) as a consequence of clause 8.3 (*Grant of Underlease*) applying (if that be the case) and if not agreed to be determined by an Expert in accordance with clause 15 (*Disputes*).

"Main Site Residential Elements" means the land shown edged red on the plan in *Appendix I (Main Site Plan)*.

"Management Leases" means any lease of common residential areas granted to a Residential Management Company.

"Minimum Requirements" means the inclusion within the Development of the following elements:

(a) a minimum 10,000 person capacity (of which, a minimum of 70% shall be seats for general public use) New Stadium complying with the specification in *Appendix 13* (*New Stadium Specification*);

(b) the New David Lloyd Facility.

"New David Lloyd Facility" means the new sports centre to be constructed by David Lloyd on the Egley Road Site and let to David Lloyd by the Council.

"New Stadium" means the new football stadium to be constructed as part of the Development Works and let to WFC or any successor entity.

"New Stadium Lease" means the lease of the New Stadium intended to be granted by the Council to WFC (or any successor entity) following Practical Completion of the construction of the New Stadium.

"Non-Contracted Interests" means any of the Required Interests where a binding agreement or option to purchase or surrender (as the case may be) has not been entered into prior to the Planning Satisfaction Date on the terms anticipated by this Agreement (where relevant) and otherwise satisfactory to the Tenant.

"Nursery Premises" means the premises known as Nursery, David Lloyd Club, Westfield Avenue, Woking demised pursuant to the Nursery Sub-Lease.

"Nursery Sub-Lease" means the sub lease dated 7 August 2012 made between (1) David Lloyd Leisure Nominee No 1 Limited and David Lloyd Leisure Nominee No 2 Limited and (2) Asquith Nurseries Limited in relation to the Nursery Premises for a term of 15 years from 1 January 2010.

## "Objectives" means:

- (a) completing the Project;
- (b) including carrying out the Development Works;
- (c) so as to achieve the level of profitability anticipated by the Tenant;
- (d) in satisfaction of the Tenant's Funding Arrangement,
- (e) and in compliance with the Council's statutory obligations and duties; and
- (f) within the timelines provided for in this Agreement or otherwise agreed by the by the Tenant and the Council (both acting reasonably).

"Off Site Access" means the area shown edged red on the plan in Appendix 6 (Off Site Access Plan) which is in the freehold ownership of the Council and forms part of the Loop Road Land.

"Open Market Value" means the price (exclusive of VAT) at which a Dwelling might reasonably be expected to be sold between a willing seller and a willing buyer on the Valuation Date determined in accordance with the RICS Valuation Professional Standards latest edition then current at the relevant times.

"Park View" means the freehold property known as Park View, 2 Elm Bridges, Kingfield Road, Woking GU22 9AA registered at the Land Registry under title number SY659918 as at the date of this Agreement in the name of

"Park View Condition" has the meaning contained in Schedule 12 (Park View Condition).

"Permitted Commercial Lease" means a lease of any part or parts of the Development granted to any operator of retirement, sheltered, convalescent and/or healthcare accommodation or other residential accommodation providing care to people in need of care and including all facilities which are ancillary and/or incidental to any such use.

"Peter Jordan Agreement" means an agreement dated 3 December 2018 entered into between the Tenant (1) and Peter Jordan (2) for the purchase of the Peter Jordan Shares.

"Peter Jordan Shares" means those shares currently owned by Peter Jordan in WFC.

"Phase" means each phase of the Development Works as shown on the Phasing Plan.

"Phasing Plan" means a plan produced by the Tenant and updated from time to time showing the phasing of the Development Works.

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

"Planning Agreement" means an agreement with the Local Planning Authority or other authority (whether or not under the Town and Country Planning Act 1990, s 106) regulating the use or development of the Property or providing for contributions towards infrastructure, educational provision or other social amenity or benefit.

"Planning Appeal" means an appeal against a Planning Refusal made by or on behalf of the Tenant.

"Planning Appeal Determination Date" means the date a Planning Appeal is Finally Determined.

"Planning Application" means an application or application for Planning Permission together with any revised varied supplemental or replacement applications in the form agreed or determined in accordance with this Agreement.

"Planning Condition" means the Tenant obtaining Satisfactory Planning Permissions which have been Finally Determined.

"Planning Counsel" means an independent specialist planning counsel instructed by the Tenant, who has been working continuously as a planning barrister for at least ten years since call.

"Planning Permission" means detailed planning permission or planning permissions for the Development in accordance with the Planning Application, whether granted by the Local Planning Authority or the Secretary of State.

"Planning Refusal" means a refusal (or deemed refusal under s 78(2) of the Town and Country Planning Act 1990) of Planning Permission or the grant of a Planning Permission subject to a Tenant's Unreasonable Condition or a Council's Unreasonable Condition.

"Planning Review Period" means in the case of:

- (a) judicial review 6 weeks from the grant of Planning Permission; and
- (b) a recommendation by the Local Planning Authority or the Secretary of State 6 weeks from the grant of a Planning Permission.

# "Planning Review Proceedings" means:

- (a) an application for judicial review or an application pursuant to s 288 of the Town and Country Planning Act 1990, including in each case any appeals to a higher court following a judgment of a lower court; or
- (b) (following a previous Satisfactory Planning Permission being quashed pursuant to an application within the meaning of paragraph (a) of this definition and the matter being remitted to the Local Planning Authority or the Secretary of State) any reconsideration of a Planning Application by the Local Planning Authority or the Secretary of State.

"Planning Satisfaction Date" means the date on which a Satisfactory Planning Permission has been Finally Determined.

# "Planning Satisfaction Longstop Date" means the later of:

- (a) 12 months after submission of the Planning Application; and
- (b) 3 years after the date of this Agreement

as extended pursuant to clause 5.2 (Planning Extensions).

"Practical Completion" has the same meaning as in any Building Contract.

# "Programme" means:

- (a) a written programme for the carrying out of the Development Works to include (inter alia):
- (b) an anticipated date for the grant of Planning Permissions;
- (c) dates for production of further plans and specifications as required;
- (d) the date for completion of all show homes and marketing suites;
- (e) the dates on which the drainage water electricity gas and telephone services will be connected and made live;
- (f) inspection dates following completion of each part of the Development Works;
- (g) the Target Dates for each Phase;
- (h) each current "Completion Date" (as defined in the Building Contract) as adjusted from time to time in accordance with the terms of the Building Contract.

## "Project" means the:

- (a) satisfaction of the Conditions;
- (b) implementing CPO Powers (if implemented);
- (c) undertaking the Development;
- (d) the Disposal of the Dwellings and the Commercial Units; and

(e) all other matters contemplated by this Agreement.

"Purchase Notice" means any purchase notice served on the Council in respect of land or premises within the Site or any part of it pursuant to section 137 of the Planning Act.

"Recipient" means the party to whom a Communication is sent.

"Releases" means agreements or deeds effecting release of rights or covenants enjoyed by Third Parties or any others which could restrict, impede or otherwise adversely affect the Development.

"Required CPO Terms" means a Compulsory Purchase Order in terms which meet the Required Objectives.

"Required Interests" means the land, property and other real estate interests comprising:

- (a) the WFC Property;
- (b) the KCS Property;
- (c) the David Lloyd Property;
- (d) the Snooker Club;
- (e) the Gym Club;
- (f) the Telecoms Lease;
- (g) the Rosewood Properties;
- (h) the Egley Road Site;
- (i) Hoe View;
- (i) Park View;
- (k) the Nursery Premises; and
- (1) any other Third Party Interest.

### "Required Objectives" means:

- (a) to secure a Satisfactory Planning Permission;
- (b) to acquire the Required Interests to enable the Ground Leases to be granted;
- (c) to enable the Residential Elements and the Commercial Units to be built; and
- (d) which will provide the funding for the construction of the New Stadium.

"Residential Elements" means the Dwellings and associated common areas, infrastructure and other works intended to form part of the Development.

<sup>&</sup>quot;Residential Land" means the:

- (a) Main Site Residential Elements; and
- (b) Egley Road Residential Elements.

"Residential Management Company" means any corporate entity set up by the Tenant which is intended to provide services pursuant to service charge arrangements in respect of any Dwelling and/or in respect of the common areas and/or exterior of any Building and to be owned and controlled by owners of the relevant Dwellings.

"Retained Property" means that part of the Main Site which will form part of the land to be demised by the New Stadium Lease as currently shown for identification purposes only on the plan attached at *Appendix 1* (*Main Site Plan*) edged blue subject to variation from time to time pursuant to clause 25 (*Plans*).

"Reversionary Interests" means the common areas and reversionary interests to Unit Leases of the Leasehold Residential Elements and the Commercial Units.

"RICS President" means the president or vice-president or other duly authorised officer for the time being of the Royal Institution of Chartered Surveyors.

"Rosewood Condition" has the meaning contained in Schedule 9 (Rosewood Condition).

## "Rosewood Owners" means:



or any one or more of them as the context so admits.

### "Rosewood Properties" means:

- the freehold property known as Rosewood, Kingfield Road, Woking registered at the Land Registry under title number SY47372 and SY427275;
- (b) the leasehold property known as Apartment 1, Rosewood, Kingfield Road, Woking registered at the Land Registry under title number SY815938;
- (c) the leasehold property known as Apartment 2, Rosewood, Kingfield Road, Woking registered at the Land Registry under title number SY815942;
- (d) the leasehold property known as Apartment 3, Rosewood, Kingfield Road, Woking registered at the Land Registry under title number SY818939;
- (e) the leasehold property known as Apartment 4, Rosewood, Kingfield Road, Woking registered at the Land Registry under title number SY815940;
- (f) the leasehold property known as Flat 5, Rosewood, Kingfield Road, Woking registered at the Land Registry under title number SY819178;

(g) the leasehold property known as Apartment 6, Rosewood, Kingfield Road, Woking registered at the Land Registry under title number SY819154

which are currently owned variously by Rosewood Owners.

"Satisfactory CPO" means a CPO which is satisfactory to the Tenant.

"Satisfactory Planning Permission" means a Planning Permission or Planning Permissions (if separate permissions are granted) which:

- (a) the Tenant regards as free from any Tenant's Unreasonable Condition; and
- (b) the Council regards as free from any Council's Unreasonable Condition; or
- (c) which the Expert deems to be free from any Tenant's Unreasonable Condition or Council's Unreasonable Condition in accordance with the provisions of this Agreement.

"Secretary of State" means the Secretary of State for Housing, Communities and Local Government or other ministry or authority for the time being having or entitled to exercise the powers now conferred upon that Secretary of State by Parts IX and X of the Acquisition of Land Act 1981 and any other relevant legislation and where the context requires shall include a person appointed by the said Secretary of State to make a determination on his behalf.

"Selected Agent" means such suitably experienced agent as the Tenant may nominate and the Council approve, such approval not to be unreasonably withheld or delayed.

"Sender" means the party sending a Communication.

"Services" means pipes, wires, troughs, cables, drains, channels, flues, conduits, ducts, watercourses, gutters, culverts, soakaways and other transmission media and installations and all fixings, louvres, cowls, covers and grilles and other ancillary apparatus, sewers and other conducting media for the transmission of water, gas, electricity, storm and foul drainage, telephone and other telecommunications (analogue, digital, laser or otherwise) electrical and radio impulses and signalling which are to be carried out as part of the Development Works and intended to be in or pass through, over or under the Sites.

"Site Assembly Agreements" means each agreement required to acquire a legal interest in or in relation to the Sites including without limitation each Site Assembly Agreement entered into pursuant to satisfaction of the Site Assembly Conditions.

"Site Assembly Conditions" means each Condition except the Planning Satisfaction Condition.

"Site Assembly Conditions Longstop Date" means the Planning Satisfaction Date.

"Site Assembly Unconditional Date" means the date upon which each Site Assembly Condition is satisfied.

"Sites" means the:

- (a) Stadium Site; and
- (b) Egley Road Site

or either or any part of them as the context so admits.

"Snooker Club" means

"Snooker Club Condition" has the meaning contained in Schedule 6 (Snooker Club Condition).

"Snooker Club Property" means the leasehold property known as land and buildings at Kingfield Road Sports Ground, Kingfield Road, Woking registered at the Land Registry under title number SY594307 as at the date of this Agreement in the name of Snooker Club.

"Specified Dwelling" has the meaning set out in Clause 11.3 (Process of Transfer)

"Specific Performance Proceedings" means proceedings in the Court to compel specific performance of an agreement.

"Stadium Site" means the land shown for identification edged red and blue on the plan contained in Appendix 1 (Main Site Plan) and currently comprising the:

- (a) Council's Property;
- (b) KCS Property;
- (c) WFC Property;
- (d) David Lloyd Property;
- (e) Snooker Club Property;
- (f) Gym Club Property;
- (g) Telecoms Property;
- (h) Rosewood Property;
- (i) Hoe View; and
- (i) Park View.

"Standard Conditions" means the Standard Commercial Property Conditions (3<sup>rd</sup> edition) and Standard Condition means any one of them.

"Statutory Agreement" means any Planning Agreement or Adoption Agreement.

"Statutory Requirements" means requirements deriving from any Acts of Parliament and any instruments, rules, orders, regulations, notices, directions, byelaws, permissions and plans for the time being made under them or deriving validity from them and any rules, regulations, orders, byelaws or code of practice of any local authority or of any statutory undertaker having jurisdiction with regard to any matter.

"Target Dates" means the relevant target dates for Practical Completion of each Phase as shown on the Programme.

"Telecoms Company" means Cornerstone Telecommunication Infrastructure Limited (Co No: 08087551).

"Telecoms Lease" means a sub-lease dated 16 August 2016 made between (1) WFC and (2) the Telecom Operator.

"Telecoms Lease Condition" has the meaning contained in Schedule 8 (Telecoms Lease Condition).

"Telecoms Property" means the leasehold property known as Communications Site, Kingfield Sports Ground, Kingfield Road, Woking registered at the Land Registry under title number SY838763 as at the date of this Agreement in the name of Telecoms Company.

"Tenant" means the first party to this Agreement and includes its successors in title and assigns.

"Tenant Event of Default" means the Tenant committing a Tenant Material Default of this Agreement and failing within 30 Working Days of written notice being received from the Council (or sooner in case of emergency) to:

- (a) in the case of a remediable breach to commence appropriate action to investigate such breach and thereafter failing diligently to remedy such breach as soon as reasonably practicable; and
- in the case of an irremediable breach to proffer an alternative remedy acceptable to the Council (acting reasonably)

"Tenant Material Default" means any material substantial breach of the obligations of the Tenant or any material default or omission or misstatement of the Tenant provided that the same have not been caused directly or indirectly by any breach of the Council's obligations under this Agreement but excluding any such that the Council has acknowledged in writing have been remedied to the Council's satisfaction.

"Tenant's Funding Arrangement" means any arrangements entered into by the Tenant and/or any Affiliate with a Tenant's Funder to obtain financial assistance for the Project.

"Tenant's Funder" means any bank, fund, insurance company, institution or other third party providing funding by way of debt, equity or otherwise to the Tenant or any Affiliate for the purpose of, inter alia, the Project, the details of which have been notified to the Council in writing.

"Tenant's Solicitors" means Katten Muchin Rosenman UK LLP of Paternoster House, 65 St Paul's Churchyard, London EC4M 8AB (Ref: Peter Sugden) or such other solicitors as the Tenant may from time to time appoint and notify in writing to the Council.

"Tenant's Unreasonable Condition" means a condition subject to which a Planning Permission is issued (including a condition imposed in a Planning Agreement required by the Local Planning Authority or other authority to be entered into by the Tenant in order to obtain Planning Permission) which has the effect of:

- (a) making the Planning Permission limited to a set time period (other than the usual condition that the planning permission must be implemented within a specified period); or
- (b) granting a temporary planning permission; or

- (c) materially increasing any Clean Up Costs or other costs of carrying out the Development; or
- (d) materially increasing the timescales in which the Development or any part of it can be commenced or completed; or
- (e) materially reducing the profitability of the Development; or
- (f) materially adversely affecting the financial viability of the Development; or
- requiring the development of land or carrying out of works on land other than the Sites which is not obtainable within a reasonable time and at a cost acceptable to the Tenant; or
- (h) preventing any conditions contained within any Site Assembly Agreements being complied with or being complied with within a reasonable time and at a cost acceptable to the Tenant; or
- (i) preventing the Tenant from complying with or obtaining any Tenant's Funding Arrangements; or
- (i) making the Planning Permission personal to the Tenant; or
- (k) preventing the Development and/or the use of the occupation of the Sites without the agreement or co-operation of an independent third party which cannot be obtained on terms, at a cost or within a period of time that is reasonably acceptable to the Tenant provided that this shall not apply in relation to any condition which requires Affordable Housing or requires Affordable Housing to be managed by a registered provider; or
- (l) delaying (likely to delay) commencement of the Development beyond the date anticipated by the Tenant and/or completion of the Development beyond the date anticipated by the Tenant; or
- (m) limiting the occupation and/or use of the whole or any part of the Residential Land (excluding Affordable Housing) to any designated occupier or class of occupier (by imposing a geographical qualification on proposed occupiers or otherwise); or
- (n) making commencement, completion, occupation or dealing of any part of the Development conditional on commencement, completion, occupation or dealing of any other part of the Development; or
- (o) imposing any liability (other than those relating to payments (if any) due at completion of any Planning Agreement) or restriction on the Property prior to the date development permitted by the Planning Permission shall begin; or
- imposing any liability or restriction on land outside of the Sites otherwise than on any publicly adopted highway; or
- (q) specifying the noise level permitted to be restricted to a level which in the reasonable opinion of the Tenant is impracticable to achieve at a reasonable cost; or
- (r) requiring more than 20% of any Dwellings to be constructed on the Sites to be Affordable Housing; or

- (s) imposing restrictions or obligations in relation to Affordable Housing which would be unacceptable to a reasonably prudent registered provider or its mortgagee or the Homes and Communities Agency; or
- (t) requiring a financial contribution towards housing on any location outside the Sites; or
- (u) requiring development of all or any part of the Development for Affordable Housing in excess of local planning policy or government guidance or it requires a financial contribution in excess of such policy or guidance towards such housing; or
- (v) infringing the principles and guidance given by the Secretary of State in Circular 11/95 or as the case may be in the national planning policy framework; or
- (w) requires the payment or expenditure by way of CIL and/or planning gain (whether under a Planning Agreement or an Adoption Agreement) which exceeds £4,262,909; or
- (x) any other condition which by an objective standard is unreasonable or onerous;

"Third Parties" means the owners of Non-Contracted Interests and Third Party shall be construed accordingly.

### "Third Party Interests" means:

- (a) Required Interests;
- (b) any Injunctable Rights of Light;
- (c) other rights, reservations, covenants or restrictions enjoyed by a Third Party over the Sites and which would prevent, impede, restrict or adversely impact on the value of (in any such case) the Development of any part; and
- (d) any other interests in and annexed to all land which is required by the Tenant in order to undertake the Development

and reference to Third Party Interests shall be construed accordingly.

"Third Party Rights Condition" means the acquisition or determination by purchase, release, surrender or otherwise of any Third Party Interests necessary to be able to undertake the Development.

## "Title Due Diligence Condition" means the parties having:

- (a) examined and considered the documents of title and other necessary documents and papers relating to the Required Interest and (in the case of the Tenant) the Council's Property; and
- (b) undertaken those of the searches and enquiries reasonably considered appropriate or necessary in the circumstances of the Project and having regard to the location and nature of the Sites and considered the results of the searches and replies to the enquiries

and acting reasonably decided that a Required Interest or (in the case of the Tenant) the Council's Property has an Acceptable Title. Where a party has entered into a contract to purchase a Required Interest it shall, save to the extent the contract provides otherwise, be deemed to have confirmed that, subject to completion of the relevant assurance, such Relevant Interest is an Acceptable Title.

"Title Satisfaction Date" means the date each party confirms that the Title Due Diligence Condition has been satisfied from its perspective.

"TPO" means a tree protection order made by the Local Planning Authority pursuant to Part VIII of the Planning Act.

"Uncompleted Interests" means any required Interest where an agreement to purchase or surrender (has been entered into) as anticipated by this Agreement but where the relevant counterparty to the Tenant and/or the Council has in default failed to complete the relevant assurance to the Tenant or the Council (as the case may be).

"Unconditional Date" means, subject to the provisions of clause 8.3 (Grant of Underlease), each of:

- (a) Planning Unconditional Date;
- (b) Site Assembly Unconditional Date; and
- (c) CPO Unconditional Date.

"Valuation Date" means (in relation to any Dwelling) the Date of Practical Completion of each Dwelling to be valued.

"Viability Assessment" means the "Initial Economic Viability Assessment" dated August 2018 produced by BNP Paribas Real Estate for Goldev Limited concluding that the Development is viable.

"VAT" means value added tax payable by virtue of the Value Added Tax Act 1994 or any similar tax levied in addition to or by way of replacement for VAT.

"Waste" means any directive as to waste as defined in Regulation 1(3) Waste Management Licensing Regulations 1994 and/or waste as defined in s75(2) Environmental Protection Act 1990.

"WFC" means Woking Football Club Limited (Company No: 03329172).

"WFC Condition" has the meaning contained in Schedule 3 (WFC Condition).

"WFC Lease" means a lease dated 19 August 2013 made between (1) KCS and (2) WFC in respect of the Existing Football Stadium.

"WFC Property" means the leasehold property known as Kingfield Stadium, Kingfield Road, Woking registered at the Land Registry under title number SY814644 as at the date of this Agreement in the name of WFC.

"Working Day" means any day on which the UK clearing banks are open except Saturdays, Sundays and public and bank holidays.

### 2. INTERPRETATION

In this Agreement, unless otherwise specified:

- 2.1 the clause headings are for reference only and do not affect its construction;
- 2.2 the words 'include', 'includes' and 'including' are deemed to be followed by the words 'without limitation';
- 2.3 general words introduced by the word 'other' do not have a restrictive meaning by reason of being preceded by words indicating a particular class of acts, things or matters;
- 2.4 an obligation not to do something includes an obligation not to cause or allow that thing to be done;
- 2.5 obligations owed by or to more than one person are owed by or to them jointly and severally;
- a reference to legislation is a reference to all legislation having effect in the United Kingdom at any time during the currency of this Agreement, including directives, decisions and regulations of the Council or Commission of the European Union, Acts of Parliament, orders, regulations, consents, licences, notices and byelaws made or granted under any Act of Parliament or directive, decision or regulation of the Council or Commission of the European Union, or made or granted by a local authority or by a court of competent jurisdiction and any approved codes of practice issued by a statutory body;
- 2.7 reference to particular legislation is a reference to that legislation as amended, consolidated or re-enacted from time to time and all subordinate legislation made under it from time to time.
- 2.8 any references to VAT shall include any tax of a similar nature substituted for or in addition to it unless the context requires otherwise.
- 2.9 any references to stamp duty land tax shall include any tax of a similar nature substituted for or in addition to it unless the context requires otherwise.
- 2.10 where in this Agreement examples are given (including where the word 'including' is followed by a list of items) such examples shall not limit any general description preceding such examples.
- 2.11 references to the 'parties' shall be references to the Council and the Tenant, and references to a 'party' shall be to either of them.
- 2.12 references to the Council shall not in any way fetter or compromise Woking Borough Council as local planning authority or in any other statutory capacity, or in the exercise of any statutory duty.
- 2.13 where in this Agreement the acceptance, consent, approval or agreement of a party is not to be unreasonably withheld it shall not be unreasonably delayed. Any refusal of such a matter must include the notification of a properly reasoned basis for such refusal.
- 2.14 words and phrases defined in the Standard Conditions have the same meaning in this Agreement, unless they have been defined in clause 1 (*Definitions*) or elsewhere in this Agreement.
- all references in the Standard Conditions to the 'seller' and the 'buyer' shall be deemed to be references to the Council and the Tenant respectively and shall be construed accordingly.

- 2.16 the words 'include', 'includes' and 'including' are deemed to be followed by the words 'without limitation'.
- 2.17 the word 'today' refers to the date of this Agreement.
- 2.18 general words introduced by the word 'other' do not have restrictive meaning even where preceded by words indicating a particular class of acts, things or matters.
- 2.19 an obligation not to do something includes an obligation not to cause or allow that thing to be done.
- 2.20 references to the end of the Agreement are to its expiry or sooner determination.

# 3. CONDITIONAL AGREEMENT

# 3.1 Satisfaction of Conditions

This Agreement is conditional upon the satisfaction of the Conditions.

# 3.2 Effect of Clauses

Save for clauses:

- (a) 8 (Grant of Ground Leases);
- (b) 9 (Off Site Access);
- (c) 10 (Egley Road Right of Way) and;
- (d) 11 (Financial Provisions);

which shall not come into effect until the Conditions have been satisfied, all provisions of this Agreement shall be of immediate effect.

# 4. SATISFACTION OF THE CONDITIONS

# 4.1 Sequence to reach the Final Unconditional Date

The parties have agreed that:

- 4.1.1 with effect from the date of this Agreement, the Council and the Tenant will each comply with their respective obligations in **Schedule 3** (*WFC Condition*) to **Schedule 12** (*Park View Condition*) inclusive to satisfy the Site Assembly Conditions; and
- 4.1.2 whether or not the Site Assembly Unconditional Date has been reached by the Latest Planning Submission Date the Tenant will submit the Planning Application and the Council and the Tenant will each comply with their respective obligations in Schedule 2 (Planning Conditions) and will continue to comply with their respective obligations in Schedule 3 (WFC Condition) to Schedule 12 (Park View Condition) to the extent the Site Assembly Condition has not been satisfied; and
- 4.1.3 if by the Planning Satisfaction Date:
  - (a) any Site Assembly Condition remains unsatisfied; and/or

(b) the Tenant has not been able to obtain Releases and/or enter into other satisfactory contractual arrangements to acquire, determine or release any other Third Party Interests (in addition to the Required Interests) to the extent necessary to complete the Project (and including any matters identified in satisfying clause 4.3 (*Title Due Diligence Condition*) which would prevent, impede or increase the costs of the Project)

then the Council will consider implementing CPO Processes in relation to the relevant Properties the subject of the Site Assembly Conditions which have not been satisfied and/or the Third Party Rights which have not been acquired, determined or released and the parties will each comply with their respective obligations in **Schedule 13** (CPO Provisions).

## 4.2 General Obligations to Satisfy Conditions

Without prejudice to the provisions of clause 4.1 (Sequence to reach the Final Unconditional Date) (each party will use their respective reasonable endeavours to satisfy the Conditions in accordance with their obligations contained in Schedule 2 (Planning Conditions) to Schedule 13 (CPO Provisions) and in doing so will:

- 4.2.1 at all times keep each other fully informed as to progress and supply copy documentation on request;
- 4.2.2 fully co-operate with and assist each other in satisfying the Conditions devoting adequate resources to doing so and applying all reasonable commercial expedition as required.

## 4.3 Title Due Diligence Condition

- 4.3.1 Each party shall use its reasonable endeavours to satisfy the Title Due Diligence Condition as soon as possible after the date of this Agreement and will provide each other with copies of all documents and searches received by the other on request to assist in satisfying the Title Due Diligence Condition and will notify the other party in writing as soon as it considers any relevant title to have satisfied the Condition or that it has waived satisfaction in respect of that interest.
- 4.3.2 For the purposes of satisfying clause 4.3.1 the Council will procure for the Tenant local searches, including such Part II enquiries as the Tenant shall reasonably require, over each Required Interest at its own cost (save for costs payable to third parties) and will supply copies to the Tenant, such local searches to be supplied initially as soon as possible after the date hereof and thereafter shall be updated upon reasonable request by the Tenant (but not more frequently than every 3 months after the last local search).
- 4.3.3 For the avoidance of doubt, if the Title Due Diligence Condition cannot be fully satisfied by either party then any such title issue that cannot be resolved will be treated as a Third Party Interest for the purposes of this Agreement.

## 4.4 Dispute of Condition

In the event of any dispute as to whether the same has been satisfied the dispute shall be referred for determination by an Expert pursuant to clause 15 (Disputes).

# 5. EXTENSIONS OF CONDITIONAL PERIOD

### 5.1 Extensions

- 5.1.1 The Conditions Longstop Dates shall be extended in the circumstances described in this clause 5 (*Extensions of Conditional Period*) to the later of the following dates set out in this clause 5 (*Extensions of Conditional Period*).
- 5.1.2 The Conditions Longstop Date may be extended on more than one occasion.
- 5.1.3 Each of the following sub-clauses may be applied on more than one occasion.

# 5.2 Planning Extensions

- 5.2.1 If at the Planning Satisfaction Longstop Date a Satisfactory Planning Permission has been granted (whether by the Local Planning Authority or by the Secretary of State or pursuant to a Planning Appeal) then the Planning Satisfaction Longstop Date shall be extended to the date which is one week after the later of:
  - (a) the expiry of the Planning Review Period; or
  - (b) where Planning Review Proceedings are issued within the Planning Review Period the date on which such Planning Review Proceedings is Finally Determined (including any further decision of the Local Planning Authority or the Secretary of State on any matter referred back to them) and all rights of appeal or further Planning Review Proceedings have been exercised and exhausted or have lapsed.
- 5.2.2 If at the Planning Satisfaction Longstop Date an indication has been given by the Local Planning Authority or the Secretary of State that a Planning Permission will be granted subject to completion of one or more Statutory Agreements then the Planning Satisfaction Longstop Date shall be extended to the date which is one week after the expiry of the Planning Review Period in respect of the issued Planning Permission following completion of the Statutory Agreement(s).
- 5.2.3 If at the Planning Satisfaction Longstop Date a Call-In has not been determined then the Planning Satisfaction Longstop Date shall be extended to the date which is one week after the Call-In Determination Date.
- 5.2.4 If at the Planning Satisfaction Longstop Date there is in force a direction by the Secretary of State under Article 25 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 prohibiting the local planning authority from granting Planning Permission then the Planning Satisfaction Longstop Date shall be extended until the date which is 16 weeks after the lifting of such prohibition.
- 5.2.5 If at the Planning Satisfaction Longstop Date a Planning Appeal has been lodged or issued but not determined then the Planning Satisfaction Longstop Date shall be extended to the date which is one week after the Planning Appeal Determination Date.

### 5.3 Other Extensions

### 5.3.1 Site Assembly Extensions

If by the Planning Satisfaction Longstop Date any Site Assembly Condition has been satisfied but a Consequential Completion Condition has not been satisfied other than due to the default of the Tenant then subject to clause 8.3 (*Grant of Underlease*) having effect the Final Unconditional Date shall be extended until the earlier of:

- (a) conclusion of any Specific Performance Proceedings where the relevant land interest item has not been assured in accordance with the relevant Site Assembly Agreement; and
- (b) the land interest in question has been acquired pursuant to CPO Powers.

### 5.3.2 CPO Extensions

- (a) If at the CPO Longstop Date a Satisfactory CPO in respect of any Third Party Interest has been granted then the CPO Longstop Date shall be extended to the date which is one week after the later of:
  - (i) the expiry of the CPO Judicial Review Period; or
  - (ii) where proceedings for CPO Judicial Review are issued within the CPO Judicial Review Period the date on which such CPO Judicial Review are Finally Determined and all rights of appeal or further proceedings for CPO Judicial Review have been exercised and exhausted or have lapsed.
- (b) If at the CPO Longstop Date a CPO Appeal has been lodged or issued but not determined then the CPO Longstop Date shall be extended to the date which is one week after the CPO Appeal Determination Date.

### 5.3.3 General Extensions

Without prejudice to clauses 5.1 (Extensions) to 5.3 (*Other Extensions*) (inclusive) each Condition Longstop Date shall also be extended by an amount of time equivalent to any delay caused by an Event of Delay.

### 6. FURTHER COMPULSORY PURCHASE PROVISIONS

### 6.1 Further CPO

- 6.2 If following the Planning Satisfaction Date occurring:
  - 6.2.1 by reason of a Defaulting Counterparty under a Site Assembly Condition; or
  - 6.2.2 because a completion condition in relation to a Site Assembly Agreement cannot be satisfied; or
  - 6.2.3 because a Third Party Interest cannot be acquired by the Tenant; or
  - 6.2.4 because the Title Due Diligence Condition in respect of any Required Interests cannot be satisfied

then the Tenant shall within 90 Working Days be entitled to serve written notice on the Council either:

- (a) requesting the Council to exercise its CPO Powers in respect of such interests in accordance with **Schedule 13** (CPO Provisions); or
- (b) terminating this Agreement in accordance with clause 7 (Termination where Conditions are not Satisfied).

# 6.3 Compliance with Schedule 13 (CPO Provisions)

If the Tenant serves notice on the Council pursuant to clause 6.2.4(a) then the Council and the Tenant shall each comply with their respective obligations in **Schedule 13** (*CPO Provisions*).

# 7. TERMINATION WHERE CONDITIONS ARE NOT SATISFIED

# 7.1 Planning Satisfaction

If by the Planning Satisfaction Longstop Date the Planning Condition has not been satisfied then either the Tenant or the Council shall be entitled (subject always to the provisions of clause 7.5 (*Performance of Obligations*)) to determine this Agreement in accordance with clause 7.3 (*Notice to Terminate*).

### 7.2 End Date

If by the End Date any of the Conditions have not been satisfied or (where a party is entitled to do so) waived then either the Tenant or the Council shall be entitled (subject always to the provision of clause 7.5 (*Performance of Obligations*)) to determine this Agreement in accordance with clause 7.3 (*Notice to Terminate*).

### 7.3 Notice to Terminate

In the event of a circumstance arising pursuant to clause 7.1 (*Planning Satisfaction*) or clause 7.2 (*End Date*) the relevant party entitled to do so may serve immediate written notice on the other party to determine this Agreement.

### 7.4 Effect of Notice

Subject to the following provisions of clause 7 (Termination where Conditions are not Satisfied), on the giving of the notice referred to in 7.4 (Effect of Notice) this Agreement shall terminate.

## 7.5 Performance of Obligations

A party seeking to terminate this Agreement under this clause 7 (*Termination where Conditions are not Satisfied*) may only do so if it has performed it obligations set out in this Agreement in all material respects.

### 7.6 Effect of termination

- 7.6.1 Any termination of this Agreement pursuant to clause 7 (*Termination where Conditions are not Satisfied*) shall be without prejudice to the rights of one party in relation to antecedent breaches by another party.
- 7.6.2 The Tenant shall, within 20 Working Days of the termination of this Agreement apply for the cancellation of all cautions, notices and other entries and

registrations made by or on behalf of the Tenant to protect this Agreement and the interest of the Tenant in the Property including those made at the Land Registry or the Land Charges Department of the Land Registry.

7.6.3 This clause 7.6 (*Effect of Termination*) shall continue to apply after any rescission or termination of this Agreement.

### 8. GRANT OF GROUND LEASES

#### 8.1 Grant of Leases

On the Final Unconditional Date:

- (a) the Council will in consideration of the Ground Lease Consideration grant the Ground Leases to the Tenant and the provisions of **Schedule 14** (*Lease Grant Provisions*) shall have effect and the parties will comply with their obligations thereunder; and
- (b) the parties will enter into the relevant Call Option.

### 8.2 Apportionment of Ground Lease Consideration

The Ground Lease Consideration shall be apportioned as between each Ground Lease and the Egley Road Freehold Residential Element in such proportion as the Tenant shall reasonably specify.

### 8.3 Grant of Underlease

- 8.3.1 If the Final Unconditional Date has occurred (or would have otherwise have occurred but for the circumstances described below in this clause 8.3 (*Grant of Underlease*)), but:
  - (a) vacant possession of the David Lloyd Property and/or the Nursery Sub-Lease has not been obtained whether or not as a consequence of the vacant possession and/or surrender date under the relevant agreements entered into with David Lloyd not having been reached (as envisaged in Schedule 5 (David Lloyd Condition); or
  - (b) WFC has not yet vacated the WFC Property and/or surrendered the WFC Lease whether or not as a consequence of the vacant possession and/or surrender dated under the relevant agreements entered into with WFC not having been reached (as envisaged in **Schedule 3** (WFC Condition).

then subject to the Tenant having complied with its obligations in, and used its reasonable endeavours to enforce, the relevant agreements entered into with David Lloyd and/or WFC (as the case may be) the provisions of the remainder of this clause 8.3 (*Grant of Underlease*) shall have effect.

### 8.3.2 Where clause 8.3.1 applies then:

- (a) the Ground Leases will nevertheless be granted; and
- (b) in relation to:

- (i) the Existing David Lloyd Facility and/or the Nursery Sub-Lease; and
- (ii) the WFC Lease

the Main Site Ground Lease will be granted subject to an overriding leaseback or leasebacks to the Council ("Council Leasebacks") of the David Lloyd Leases and/or the Nursery Sub-Lease (if the latter is still subsisting) and/or a leaseback of the WFC Lease (as necessary in either such case).

## 8.3.3 The form of Council Leasebacks shall:

- (a) follow so far as applicable the form of the Main Site Ground Lease with such amendments as shall be appropriate to reflect the terms of the David Lloyd Leases and/or the Nursery Sub-Lease and/or the WFC Lease;
- (b) be made subject to and with the benefit of the David Lloyd Leases and/or Nursery Sub-Lease and/or the WFC Lease (as appropriate) and all relevant deeds, agreements and other documents supplemental thereto;
- (c) not require the payment of rent or other monies to the Tenant;
- include an obligation on the Council to comply with the terms of the David Lloyd Leases and/or Nursery Sub-Lease and/or the WFC Lease to the extent that the Council will be the direct lessor under the same following the grant of the Council Leaseback and to otherwise enforce the tenant's obligations;
- (e) contain a landlord's termination right in each such Council Leaseback permitting the Tenant to terminate each Council Leaseback co-terminus with the surrender and/or giving of vacant possession by David Lloyd, the tenant under the Nursery Sub-Lease or WFC pursuant to the relevant contractual arrangements with them (or any CPO Processes) as the case may be;
- (f) grant leaseback contemporaneously.

and, if the forms of Council Leaseback cannot be agreed, determination of the same shall be referred to an Expert pursuant to Clause 15 (Disputes).

- The Tenant shall following the grant of the Main Site Ground Lease continue to comply with its obligations in, and use its reasonable endeavours to enforce, the relevant agreements entered into with David Lloyd and/or WFC (as the case may be).
- In exercising its rights under the Main Site Ground Lease the Tenant shall not materially interfere with David Lloyd's and/or Asquith Nurseries' and/or WFC's use and enjoyment of the land leased to them respectively by the David Lloyd Lease and/or the Nursery Sub-Lease and/or the WFC Lease (as the case may be).

## 8.4 Registration

The Council will deal promptly with any requisitions raised by Land Registry in connection with the registration of all assurance to it pursuant to this Agreement and/or (to the extent they relate to the Council's title) the Ground Leases and will keep the Tenant informed as to the progress of the application the extent and nature of any such requisitions and of the Council's response;

### 9. OFF SITE ACCESS

- (a) With effect from the Final Unconditional Date the Council will (subject to the title to the Off-Site Access not preventing such use) procure that the Tenant and any other party authorised by them in connection with the Project is permitted to pass and repass with or without workmen, equipment and materials over such route on the Off Site Access as the parties shall agree (each acting reasonably) is suitable for the purpose of complying with the other obligations in this Agreement and which if not agreed shall be referred to an Expert for determination pursuant to clause 15 (Disputes).
- (b) For the purposes of clause 9(a) such access may include temporary alternative access to the David Lloyd Property pending David Lloyd vacating.

### 10. EGLEY ROAD RIGHT OF WAY

### 10.1 Grant of Easement and Licence

The Council shall, contemporaneously with the transfer of the Egley Road Residential Elements to the Tenant, grant to the Tenant (for the benefit of the Egley Road Freehold Elements) over the Council's Egley Road Land:

- (a) an easement (in perpetuity) that is sufficient and satisfactory to the Tenant in all respects (including, without limitation, capable of being used at all times and for all purposes with or without vehicles and with suitable provisions for repair and maintenance) so as to enable access from the Egley Road Residential Elements to the adopted highway known at the date of this Agreement as "Egley Road" (such easement to include all usual ancillary rights of repair and maintenance) "Egley Road Easement"; and
- (b) a licence to the Tenant for so long as is required to access as much of the Council's Egley Road Land as is necessary to enable the construction of a roadway upon the land subject to the Egley Road Easement.

## 10.2 Drafting of Easement

- The easement to be granted by the Council shall be in such form and on such terms in accordance with clause 10.1(a) as the Tenant shall reasonably require and the Council shall (acting reasonably) approve.
- If there is any dispute as to the terms of the easement such dispute shall be referred for determination by an Expert pursuant to clause 15 (*Disputes*).

## 11. FINANCIAL PROVISIONS

## 11.1 Transfer of Specified Dwellings to the Council

- Subject to clause 11.1.2 and in consideration of and subject to the Council paying the:
  - (a) Agreed Purchase Costs; and
  - (b) Gym Club Construction Sum

the Tenant will procure that there are transferred to the Council a sufficient number of Dwellings in accordance with this clause 11 (*Financial Provisions*) which, together with the Balancing Payment shall equate to the total of the:

- (i) Agreed Purchase Costs
- (ii) the Gym Club Construction Sum; and
- (iii) the Existing Council Property Value

## 11.2 Identification of Dwellings and Values

- (a) As soon as practicable after the date hereof the Tenant shall deliver to the Council indicative plans of the Development together with an accommodation schedule and anticipated pricing schedule which identifies the:
  - intended layout of the residential accommodation including each residential flat block;
  - (ii) intended layout of the homes on the Egley Road site;
  - (iii) intended phasing of the Development;
  - (iv) intended floor area and room composition of each residential unit including in each residential flat block; and
  - (v) currently anticipated sales price for each type of unit,
- (b) Within 30 Working Days the parties will use their reasonable endeavours to agree
  - (i) which Dwellings will be transferred to the Council pursuant to Clause 11.3
     ("Specified Dwellings") based upon the following principles:
    - (A) the Dwellings will be part of phase 2 or phase 3 (referred to as Block 2 or Block 3 on the current plans) or at the Egley Road site;
    - (B) all Specified Dwelling will be built to the same standard as all of the equivalent Dwellings;
    - (C) the Tenant may require the Specified Dwellings to be "pepper potted" within a block (i.e. randomly located) or to be aggregated together;
    - (D) both parties may require that there is an even distribution of sizes of unit across the available options in each block.

- (ii) the:
  - (A) Open Market Value at which the Specified Dwellings will be transferred (which for the avoidance of doubt shall take no account of the marketing and sales costs that the Tenant would otherwise have incurred in respect of selling the Specified Dwellings); and
  - (B) amount of the required Balancing Payment.
- (c) If the parties cannot agree the identification of the Specified Dwellings and/or the Open Market Value of transfer and/or the Balancing Payment the determination of any of the same will be referred to an Expert for determination pursuant to Clause 15 (Disputes).

#### 11.3 Process of Transfer

Subject to the amount of the transfer values of each such Unit being agreed or determined the provisions of **Schedule 16** (*Residential Unit Transfer*) shall apply and the parties will comply with their respective obligations thereunder.

#### 11.4 Adjustments

In the event that:

- (a) the Agreed Costs have not been fully ascertained in whole or part by the date of agreement or determination pursuant to clause 11.2 (*Identification of Dwellings and Values*) agreement or determination will be made pursuant to clause 11.2 (*Identification of Dwellings and Values*) based on the maximum specified values in the definition of Agreed Purchase Costs provided that once the actual costs have been fully identified to the extent that they are less than the maximum sums there shall be an adjustment by a reduction in the number of Specified Dwellings and/or an adjustment to the Balancing Payment to reflect the same;
- (b) grant of the Satisfactory Planning Consent means that the Specified Dwellings are not capable of being fully delivered in accordance with this clause 11 (Financial Provisions) then the parties will as soon as possible agree such adjustments to the choice of Specified Dwellings, values and/or the Balancing Payment as shall be appropriate

and in the event of a failure to agree pursuant to clauses 11.4(a) or (b) determination of the same shall be referred to an Expert pursuant to clause 15 (Disputes)

#### 12. CONSENTS

#### 12.1 Consent in writing

Any consent, approval, authorisation, agreement or waiver required to be given by a party shall unless specified to the contrary be required to be given in writing and subject to clauses 12.2 (Council Consent) and 12.3 (Tenant Consent) (as applicable) shall not be unreasonably withheld or delayed save where it is provided in this Agreement that the relevant consent, approval, authorisation or waiver is in a party's absolute discretion;

## 12.2 Council Consent

Notwithstanding any other provisions in this Agreement the Council will be entitled to withhold or delay consent approval, authorisation, agreement or waiver where the Council, acting reasonably, considers that to grant any consent, approval or waiver would:

- 12.2.1 fetter its statutory obligations and duties as a Council;
- materially increase any financial liability on the Council beyond those anticipated in or by this Agreement.

## 12.3 Tenant Consent

Notwithstanding any other provision in this Agreement the Tenant will be entitled to withhold or delay consent, approval, authorisation or waiver where the Tenant reasonably considers that to grant any consent, approval or waiver would materially:

- 12.3.1 adversely in the opinion of the Tenant (acting reasonably) alter the density, massing, height or appearance of the Development; or
- 12.3.2 adversely restrict the user of any part of the Development for the purposes intended by the Tenant; or
- 12.3.3 adversely affect the operation and/or beneficial enjoyment of the Development; or
- reduce the number of Dwellings to a number below which is uneconomical; or
- 12.3.5 reduce the saleability, lettability, investment and/or rental value of the Development or any part of it; or
- 12.3.6 adversely impact on timings pursuant to this Agreement; or
- increase any cost liability of the Tenant or any Affiliate who will undertake the Development.
- 12.3.8 not be acceptable to any Tenant's Funder and/or breach the Tenant's Funding Arrangements.

## 12.4 Deemed Consent

If a party receives a written request for consent, approval, authorisation, agreement or waiver from the other party in respect of any matter relating to the Development Works where this Agreement expressly provides that a party's consent, approval, authorisation or waiver is required then save where it is provided that such consent, approval, authorisation or waiver may be given in the absolute discretion of the Tenant the relevant party shall be obliged to deliver either:

- 12.4.1 written confirmation of consent, approval, authorisation or waiver; or
- written confirmation of a refusal of consent, approval, authorisation or waiver with reasons for such refusal

in either such case within 10 Working Days of receipt of the written request from the other party and if the relevant party shall not give either of such confirmations within such

timescale then consent, approval, authorisation or waiver (as the case may be) shall be deemed to have been given.

### 13. INTEREST ON PAYMENTS

Where any sum payable under this Agreement is not paid when required the party due to pay shall pay interest on the outstanding sum at the Contract Rate for the period beginning with that date and ending with the date the sum is paid.

### 14. RESTRICTIONS ON ASSIGNMENT

## 14.1 Assignment by Tenant

- 14.2 The benefit of this Agreement may not prior to the final Date of Practical Completion be assigned in whole or in part by the Tenant or held in trust by the Tenant for any other person except by way of:
  - 14.2.1 a holding on trust of the benefit of this Agreement for an Affiliate of the Tenant;
  - an assignment by way of security of the benefit of this Agreement to any Tenant's Funder in connection with any Tenant's Funding Arrangements including any assignment to a Funder or Tenant's Funder's Nominee (as described in clause 16.3 (Funder Step In)) pursuant to any enforcement of such Tenant's Funding Arrangements; or
  - 14.2.3 an assignment of the benefit of this Agreement to an Approved Assignee; or
  - 14.2.4 a novation to an Approved Assignee in accordance with clause 14.6 (Assignment by the Council).

#### 14.3 Novation by Tenant

- 14.4 The Tenant may novate its rights and obligations under this Agreement to an Approved Assignee by notifying the Council of its intention in writing and within 10 Working Days of the later of:
  - 14.4.1 the date of such notice, the parties shall enter into a Deed of Novation; and
  - 14.4.2 approval of the Approved Assignee by the Council in accordance with this Agreement
- 14.5 the parties shall enter into a Deed of Novation

## 14.6 Assignment by the Council

- 14.6.1 The benefit of this Agreement is not capable of being assigned in whole or part by the Council or being held in trust by the Council for any person:
- The Council will not charge, transfer, assign or otherwise convey any Council Property to any third party during the subsistence of this Agreement.

#### 15. DISPUTES

## 15.1 Meeting Between Senior Representatives

Whenever there is a dispute between the Council and the Tenant which either party refers to resolution pursuant to this clause 15 (*Disputes*), simultaneously with the procedure set out in the rest of this clause 15 (*Disputes*) the Managing Director of the Tenant and the Chief Executive of the Council shall arrange to meet within 5 Working Days of the referral for determination and shall consult in good faith and use all reasonable endeavours to resolve the issue in dispute.

## 15.2 Referral to Expert

Any Dispute under this Agreement (other than a dispute relating to the legal interpretation of this Agreement) may be referred at any time by either the Council or Tenant for determination by an Expert.

## 15.4 Appointment of Expert

- Unless the parties agree or are deemed to agree the type of Expert appropriate to the dispute having due regard to the subject matter of the dispute then:
  - if the parties do not agree which type of Expert is appropriate to resolve the dispute either Party may refer that question to the president or next most senior available officer of the Royal Institution of Chartered Surveyors who will (with the right to take such further advice as he may require) determine that question and nominate or arrange to have nominated the appropriate Expert;
  - if the parties do agree the appropriate type of Expert but do not agree the identity of the Expert he will be nominated on the application of either Party by the president or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Expert but if no such organisation exists then by the president or next most senior available officer of the Royal Institution of Chartered Surveyors.

### 15.6 Decision of Expert

15.7 The Expert shall act as an expert and not as an arbitrator and the parties shall use reasonable endeavours to procure that the Expert shall within 15 Working Days of appointment prepare a written decision and provide a copy to the Council and Tenant.

## 15.8 Parties' Representations

The Expert must give each party the opportunity within reasonable time limits to make representations to him, inform each party of the representations of the other and allow each party to make submissions to him on the representations of the other. The Expert may call for such written evidence from the parties, and seek such legal or other technical assistance as the Expert reasonably requires.

## 15.10 Binding Decision of Expert

15.11 The Expert's decision is conclusive and binding on the parties save in the case of manifest error or fraud.

## 15.12 Copies of Advice etc

The Expert shall supply to the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within 10 Working Days of the parties' respective receipt of such copies.

#### 15.13 Take Account of Agreement

The Expert shall be required to take into account the provisions of this Agreement.

## 15.14 Expert's Costs

The costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination in equal proportions between them;

### 15.15 Expert's Incapacity

If the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for an appointment of an Expert shall be repeated as often as necessary.

## 15.16 Disputes as to Legal Construction or Interpretation

Notwithstanding any other provisions of this Agreement any dispute as to legal construction or interpretation of this Agreement shall not be referred to the Expert but instead the parties shall submit to the jurisdiction of the courts of England and Wales.

## 16. INSOLVENCY AND TERMINATION

#### 16.1 Default and insolvency

- Where a Tenant Event of Default occurs the Council shall be entitled to serve written notice on the Tenant to determine this Agreement.
- Where a Council Event of Default occurs the Tenant shall be entitled to serve written notice on the Council to determine this Agreement.
- 16.1.3 Where there is an Event of Insolvency in relation to either the Tenant or the Council the other party shall be entitled to serve written notice on the other party to determine this Agreement.

#### 16.2 Effect of termination

- 16.2.1 Any termination of this Agreement shall be without prejudice to the rights of one party in relation to antecedent breaches by another party.
- The Tenant shall, within 20 Working Days of the later of the valid termination or rescission of this Agreement, apply for the cancellation of all cautions, notices and other entries and registrations made by or on behalf of the Tenant to protect this Agreement and the interest of the Tenant in the Property including those made at the Land Registry or the Land Charges Department of the Land Registry.
- 16.2.3 This clause 16.2 (*Effect of Termination*) shall continue to apply after any rescission or termination of this Agreement.

## 16.3 Funder Step In

- 16.3.1 The Council agrees that it shall not without first giving each Tenant's Funder not less than 30 Working Days written notice exercise any right the Council may have to:
  - (a) terminate or rescind this Agreement; or
  - (b) treat this Agreement as having been repudiated by the Tenant; or
  - (c) discontinue the performance of any obligations to be performed by the Council under this Agreement.
- The Council's right to terminate this Agreement or treat this Agreement as being repudiated or discontinue performance of any obligations to be performed by the Tenant under this Agreement shall cease if within the period of notice described in clause 16.3.1 (subject to clause 16.3.3) the Tenant's Funder shall give written notice to the Council requiring the Council not to terminate this Agreement or treat this Agreement as having been repudiated by the Tenant or discontinue the performance of any obligations to be performed by the Council under this Agreement.
- It shall be a condition of any notice given by the Tenant's Funder under clause 16.3.2 that the Tenant's Funder or the Funder's Nominee accepts liability for payment of any amounts payable to the Council under this Agreement and for performance of the Tenant's obligations under this Agreement, including payment of any amounts properly due but paid at the date of such notice subject to the Tenant's right to any abatement, set-off or counterclaim.
- Upon the issue of any notice by the Tenant's Funder under clause 16.3.2 this Agreement shall continue in full force and effect and the Tenant's Funder or the Funder's Nominee shall be liable to the Council under this Agreement in place of the Tenant.
- If any notice given by the Tenant's Funder under clause 16.3.2 provides that the Funder's Nominee is to assume the Tenant's obligations under this Agreement, the Tenant's Funder shall (if the Council so requires (acting reasonably) where the Funder's Nominee is not able to demonstrate sufficient financial resource to enable it to complete the Development) be liable to the Council as guarantor for the payment of all sums from time to time due to the Council from the Funder's Nominee.
- Notwithstanding clause 16.3.2 any notice served by the Tenant's Funder on the Council under clause 16.3.1 shall be invalid and of no effect unless a similar notice has been simultaneously served by the Tenant's Funder on the Tenant;

## 17. RIGHTS AND CONTROLS BETWEEN EXCHANGE AND COMPLETION

#### 17.1 Grant of Interests

The Council shall not, save as anticipated by or otherwise in accordance with this Agreement, unless it must under a statutory duty or contractual obligation:

grant or agree to grant a lease tenancy or licence to occupy in respect of the Sites or vary any such or agree to do so the same;

- 17.1.2 grant or agree to grant any easement, wayleave or restriction in respect of the Sites;
- 17.1.3 enter into or agree to enter into any other deed, agreement or other contractual obligation in respect of the Sites which will remain binding on the Tenant following Actual Completion of the Ground Leases other than as provided for in this Agreement.

#### 17.2 Notifications

If the Council is required pursuant to any statutory or contractual obligations to do any of the things referred to in clause 17.1 (*Grant of Interests*) it shall notify the Tenant in writing with full details of such matters as soon as possible upon becoming aware of the same and in any event a reasonable period (to allow the Tenant to consider such matter) prior to entering into an agreement, deed or other contractual obligation.

#### 18. RELATIONSHIP OF PARTIES

#### 18.1 No Partnership or Joint Venture

This Agreement does not create nor shall it in any circumstances be taken as having created a partnership or joint venture between the parties.

### 18.2 No Agency Appointment

Neither party shall at any time hold itself out as the agent of the other party for any purposes and under no circumstances shall a party have the authority to bind the other party or hold itself out to the public or other third party as having such authority.

## 19. WAIVER

No failure or delay by any party to exercise any right, power or remedy shall operate as a waiver of it nor shall any partial exercise preclude any further exercise of the same or some other right, power or remedy.

#### 20. COSTS

## 20.1 Each Party to Bear own Costs

Each party shall bear its own costs in relation to entering into this Agreement.

### 21. COUNCIL'S REPRESENTATIONS

The Council warrants and represents to the Tenant that:

- (a) it has full power and authority to enter into this Agreement;
- (b) entering into and complying with its obligations in this Agreement will not be ultra vires its powers;
- (c) it is not required pursuant to any Statutory Requirement to seek any third party consents or approvals or to adopt any statutory process which it has not adopted prior to entering into this Agreement in either such case to enable it to lawfully enter into this Agreement without challenge of any sort.

## 22. TRANSFER OF REVERSIONARY INTERESTS

Following the later of:

- (a) issue of the last Certificate of Practical Completion; and
- (b) grant of any Management Leases

the Tenant will transfer to the Council or the Council's Nominee (as directed by the Council) the Reversionary Interests and the parties will comply with their respective obligations in **Schedule 17** (*Transfer of Property* Reversions) in that respect.

## 23. INTELLECTUAL PROPERTY

## 23.1 Copyright Licence

The Tenant hereby grants to the extent it is lawfully able and/or lawfully entitled to do so to the Council prior to the last Date of Practical Completion an irrevocable, royalty-free, non-exclusive licence to use all the Intellectual Property for any purpose in connection with the Reversionary Interests other than the reproduction of any design for an extension of Reversionary Interests. The Tenant shall not be liable for any use of the Intellectual Property by the Council or its assignee or sub-licensee for any purpose other than that for which the same were prepared by or on behalf of the Tenant.

#### 23.2 Sub-Licences

Such licence shall include the right to grant sub-licences and shall be freely assignable by the Council and no copyright in respect of or lien upon any Design Data shall be claimed by the Council against the Tenant.

## 24. ACCESS FOR SURVEYS

The Council shall permit the Tenant and/or its agents on not less than 48 hours' prior written notice at all reasonable times to have access onto any of the Council's Property with vehicles and all necessary plant, machinery and apparatus for the purposes of carrying out:

- surveys, tests and investigations (including drilling boreholes, digging trial pits, and any other intrusive investigations and taking soil samples); and
- (b) environmental assessments and similar studies including (without limitation) geological, archaeological and ecological surveys and landscape assessment;
- (c) cutting, lopping, felling or pruning any trees on or at the Council's Property which are not the subject of a TPO;
- (d) without prejudice to the foregoing anything reasonably necessary in connection with the Planning Application and the obtaining of planning permission pursuant to the Planning Application;
- (e) any works which do not constitute commencement of the Development for the purposes of Section 56 of the Planning Act

subject to the Tenant observing the right of any third party occupying the Council's Property causing as little damage as possible to the Council's Property and forthwith making good any damage caused.

### 25. PLANS

#### 25.1 Status of Plans

The location plans attached to this Agreement are of identification only and subject to adjustment by the Tenant to reflect:

- (a) completion of title due diligence in respect of the Required Interests and the Council's Property (including in relation to the extent of ownership and boundaries;
- (b) the layout of the Development in accordance with the Satisfactory Planning Permission (and any variations thereto); and
- (c) the final design plans for the Development and any variations thereto.

## 25.2 Adjustment of Plans

The Tenant will as and when required produce Compliant Plans reflecting the provisions of clause 25.1 (Status of Plans) for the purposes of:

- (a) the Ground Leases;
- (b) each Unit Lease;
- (c) any Management Lease; and
- (d) entering into any other agreement or deed anticipated by this Agreement.

### 25.3 Replacement of any Plans

Subject to having given its prior written approval to material changes, the Council agrees to the substitution of any plans in any documents to which it is a party which are produced in accordance with this clause 25 (*Plans*) and shall if required execute any necessary deed of variation.

#### 25.4 Plans Dispute

Any dispute between the Tenant and the Council with regard to any plan produced in accordance with this clause 25 (*Plans*) shall be referred to an Expert for determination pursuant to clause 15 (*Disputes*).

### 26. COMMUNICATIONS

### 26.1 Communications in Writing

All Communications shall be in writing.

### 26.2 Delivery of Communications

A Communication from the Sender to the Recipient shall be duly made if in writing and addressed to the Recipient and delivered to the Recipient at its address as stated in this Agreement or as the Recipient may from time to time notify in writing to the Sender.

#### 26.3 Timing of Delivery

A Communication may be delivered by registered or recorded delivery post and delivery shall be deemed to have been made on the second Working Day following the day of posting and for the avoidance of doubt does not include email.

#### 27. NOTICES

#### 27.1 Notices in Writing

Any notice required to be given under this Agreement pursuant to clause 16 (*Insolvency and Termination*) must be in writing and will be valid only if:

- 27.1.1 it is given by hand or sent by special or recorded delivery; and
- 27.1.2 it is served on the recipient at the address of that party shown in this Agreement in the United Kingdom or such other address for service in the United Kingdom specified in a notice given by the recipient to the other party.

#### 27.2 Time of Service

Unless it is returned through the postal service undelivered, a notice sent by special delivery or recorded delivery is treated as served on the second Working Day after posting whenever (and whether or not) it is received.

## 27.3 No Service by Email

A notice or document given or delivered under this Agreement pursuant to clause 16 (Insolvency and Termination) by email shall not be validly given or delivered.

#### 28. VAT AND INTEREST

- Each amount stated to be payable by either party to the other under this Agreement is exclusive of VAT (if any) and where validly chargeable by a party the other party will pay such VAT subject to receiving a valid VAT invoice in respect of the supply in question.
- All sums payable pursuant to this Agreement which are not paid on the due date for payment shall bear interest at the Contract Rate from the date on which payment was due until the date of actual payment.

#### 29. PARTIAL INVALIDITY

If any provision of this Agreement is or is held to be invalid or unenforceable, then so far as it is invalid or unenforceable it has no effect and is deemed not to be included in this Agreement. This shall not invalidate any of the remaining provisions of this Agreement. The parties shall use all reasonable endeavours to replace any invalid or unenforceable provision by a valid provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

## 30. ENTIRE AGREEMENT

The parties acknowledge that this Agreement and any document annexed to or incorporated into it contains all the express terms of the agreement between them.

#### 31. CONFIDENTIALITY

#### 31.1 Confidential Nature

Subject to clause 32 (Freedom of Information and Transparency) this Agreement and its terms shall at all times be confidential to the parties.

#### 31.2 Disclosure

Neither party shall disclose the terms of this Agreement or make or permit any announcement or publication to be made concerning this Agreement or its terms either in whole or in part or any comment or statement relating to this Agreement except:

- 31.2.1 with the prior written consent of the other as to the form and content of any such announcement, publication, statement or comment;
- 31.2.2 as far as may be necessary for the proper performance of its obligations under this Agreement;
- 31.2.3 in connection with any dealing or proposed dealing with its interest;
- for the obtaining of any United Kingdom or foreign regulatory or government authorisation, approval or consent for the acquisition, financing, letting or occupation of the Sites;
- 31.2.5 as required by law or any relevant stock exchange or if ordered to do so by a Court or HM Revenue and Customs;
- 31.2.6 to its professional advisors;
- 31.2.7 to the extent that such information may already be in the public domain; or
- 31.2.8 to its shareholders, members or other beneficial owners;
- 31.2.9 in the case of the Tenant to any Tenant's Funder;
- 31.2.10 in the case of the Council, to any regulatory body to which it is subject.

### 32. FREEDOM OF INFORMATION AND TRANSPARENCY

#### 32.1 Freedom of Information Act

Notwithstanding the provisions of clause 33 (Anti-Bribery) the Tenant acknowledges that the Council is subject to the requirements of the Code of Practice on Access to Government Information, the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") (all as may be amended from time to time).

#### 32.2 Tenant Assistance

The Tenant shall provide reasonable assistance to the Council in meeting any reasonable requests for information in relation to the Development Works of this Agreement which are made to the Council.

## 32.3 Disclosure of Information

The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIR, the content of this Agreement is not confidential information for the purposes of clause 31.2 (*Disclosure*) and the Tenant consents to the Council publishing this Agreement in its entirety if obligated to do so under FOIA or EIR (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR redacted) to the general public.

## 33. ANTI-BRIBERY

Each party shall comply with all Bribery Laws and shall in particular have and maintain in place throughout the term of this Agreement adequate policies and procedures to help ensure that parties and any person who performs or has performed services for or on behalf of that party in connection with this Agreement (including all employees, officers, agents, consultants and sub-contractors of that party) comply with such Bribery Laws and enforce such policies and procedures where appropriate.

# 34. NOT TO OBJECT, CO-OPERATION, INFORMATION AND ENFORCEMENT

## 34.1 General Good Faith

Each party undertakes to co-operate in good faith with the others to facilitate the proper performance of this Agreement and the transactions contemplated under it and in particular will:

- 34.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the others;
- not interfere with the rights of the other party and its servants, agents, representatives, contractors or sub-contractors (of any tier) on its behalf in performing its obligations under this Agreement or in any other way hinder or prevent such other party or its servants, agents, representatives or sub-contractors on its behalf from performing those obligations; and
- offer reasonable assistance to the other party (and their servants, agents, representatives or sub-contractors) to enable them to perform those obligations so far as is reasonably practicable and subject to the party providing such assistance being reimbursed any costs properly incurred.

## 34.2 Mutual Co-operation

Without prejudice to any other provision in this Agreement, the parties acknowledge that the size, scope and complexity of the Project and the general nature of the Development such as the Development means that unforeseen matters material to the joint aims of the parties to achieve the Objectives may arise which will require the co-operation of the parties to satisfactorily resolve and in such event the parties agree that they shall with all due expedition apply reasonable endeavours to work together to resolve such matters on a reasonable basis which is mutually satisfactory and in accordance with the Objectives but if a satisfactory resolution cannot be found then determination of what shall be satisfactory in the circumstances shall be referred to determination by an Expert pursuant to clause 15 (Disputes).

#### 34.3 Minimising Costs

Without prejudice to Clause 34.2 (*Mutual Co-operation*) the parties agree that they shall cooperate together in relation to any arrangements anticipated by this agreement (including without limitation Site Assembly Agreements, CPO Processes and the transfer or other assurance of any interest in or rights over land) to minimise costs and expenditure incurred by either party and including:

- 34.3.1 SDLT costs and where the Tenant and the Council will to the extent possible ensure that additional SDLT is avoided where direct transfers or assurances and/or sub-sale arrangements or other lawful structures can be implemented and/or reliefs obtained to avoid unnecessary additional or duplicated SDLT; and
- 34.3.2 minimising or avoiding irrecoverable VAT

## 34.4 Keeping each other Informed

- 34.4.1 Each party will keep the other fully informed as to progress in satisfaction of the Conditions.
- 34.4.2 Without prejudice to clause 34.4.1:
  - (a) Each party will notify the other of on-going negotiations for each Non-Contracted Interest at least monthly and shall provide to the other party within 10 Working Days of the exchange and/or completion of any agreement or option for the acquisition of each and every Non-Contracted Interest by that party and each transfer a certified copy of the contract and/or completed transfer.
  - (b) Until the Final Unconditional Date is reached the parties will if reasonably required by either party (acting reasonably) meet at least once a month at the Council's offices in Woking to run through progress of the Project.

#### 34.5 Enforcement of Contracts

The parties agree that in relation to any Site Assembly Agreement to which it is a party it will at all times enforce the obligations on the other parties as necessary to ensure compliance including issuing proceedings for specific performance or otherwise if necessary.

#### 35. UNILATERAL NOTICE

If the Tenant shall make an application or enter a unilateral notice (as defined in LRA 2002) in respect of this Agreement the Tenant shall not submit to the Land Registry either the original or a copy of this Agreement.

### 36. COUNCIL AS LOCAL AUTHORITY

Nothing herein contained or implied shall prejudice or affect any of the statutory rights, powers or duties for the time being vested in the Council as local authority for the area in which the Sites are located (including without limitation its rights, powers or duties as a local planning authority) and all such rights, powers and duties shall in regard to the Sites and any buildings thereon or the occupiers thereof be enforceable and exercisable by the Council as fully and freely as if this Agreement had not been executed and any consent or approval given

by or under this Agreement shall be deemed a consent or approval by the Council as owner of the Council's Property only and not as local authority.

#### 37. INDEMNITY

- 37.1 The Tenant shall indemnify and keep indemnified the Council against all actions, damages, costs, claims, demands and liability whatsoever arising directly or indirectly in relation to the Development in consequence of:
  - (a) the Tenant exercising any rights pursuant to clause 9 (Off Site Access);
  - (b) a breach by the Tenant of its obligations contained herein;
  - the death of or personal injury to any person whether engaged in the carrying out of the Development or otherwise unless the same shall arise from any wilful or negligent act or omission of the Council or of any person acting for or under the control of the Council provided that:
    - (i) the Council shall take all reasonable steps (insofar as the Council is properly able so to do) to mitigate any loss or liability in respect of which it may seek an indemnity under this clause;
    - (ii) the Council shall not admit any liability nor take any steps to compromise or settle any claim in respect of which it would seek to be indemnified under this clause without the prior written consent of the Tenant (such consent not to be unreasonably withheld or delayed)
    - (iii) with the Council's written agreement the Council shall permit the Tenant to take over and conduct in the name of the Council the defence or settlement of any such claim; and
    - (iv) upon becoming aware of any occurrence giving rise to a claim under this clause the Council shall as soon as reasonably practicable give to the Tenant all due and proper information and assistance (insofar as the Council is properly required to do so) in connection with any such claim subject to the costs of any such claim being borne and payable by the Tenant.

## 38. THIRD PARTIES

Unless expressly stated, nothing in this Agreement will create any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999.

## 39. GOVERNING LAW AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its formation shall be governed by and in accordance with the law of England and Wales.

In witness whereof this Agreement has been duly executed as a deed

## Council's Property at Stadium Site

NO	TITLE NO	ADDRESS	TENURE
1.	SY757671	Kingfield Road	Freehold
2.	SY416009	65a Westfield Avenue	Freehold
3.	SY99554	65 Westfield Avenue	Freehold
4.	SY662559	67 Westfield Avenue	Freehold
5.	SY160980	69 Westfield Avenue	Freehold
6.	SY283501	71 Westfield Avenue	Freehold
7.	SY664919	73 Westfield Avenue	Freehold
8.	SY158808	75 Westfield Avenue	Freehold
9.	SY507435	77 Westfield Avenue	Freehold
10.	SY461205	79 Westfield Avenue	Freehold
11.	SY65736	81 Westfield Avenue	Freehold
12.	SY694987	Westfield Avenue	Freehold
13.	SY550550	Land at rear of garages in Westfield Avenue	Freehold

### **Planning Provisions**

## 1. Planning Permission and Statutory Agreements

## 1.1 Submission of Planning Application to Council

The Tenant will at its own expense as soon as practicable after the date of this Agreement and in any event not less than 30 Working Days prior to the Latest Planning Submission Date submit to the Council the draft Planning Application (or Planning Applications if one each is submitted for the Main Site and the Egley Road Site) for approval.

## 1.2 Approval of Planning Application by Council

Within 20 Working Days after receipt of the Planning Application the Council shall notify the Tenant in writing whether the contents of the draft Planning Application is approved and, if the draft Planning Application is not approved, such notice shall set out the Council's objections. If the Council does not either approve the Planning Application or give details of the Council's objections the same shall be deemed approved.

## 1.3 Repeat of Procedure

If the Council does not approve the Planning Application then:

- (a) the Tenant must amend and submit a revised draft Planning Application for approval and the Tenant shall continue to submit revised drafts of the Planning Application to the Council until the Planning Application is approved in writing by the Council; or
- (b) the Tenant may refer the issue (either in relation to the initial or any subsequent draft) to an Expert to be determined pursuant to Clause 15 (*Disputes*).

## 1.4 Submission of approved Planning Application to Local Planning Authority

The Tenant shall submit the Planning Application to the Local Planning Authority no later than the latest of:

- (a) within 10 Working Days of the date on which the Council approves the draft Planning Application or it is determined by an Expert as satisfactory; and
- (b) the Latest Planning Submission Date.

## 1.5 Revised Planning Applications

The Tenant may at any time (with the Council's approval in writing) withdraw, amend or submit a revised or refreshed Planning Application or varied or supplemental Planning Application if the Tenant considers it reasonable to do so in order to obtain a Satisfactory Planning Permission.

## 1.6 Pursuit of Planning Application

The Tenant shall pursue the Planning Application and any related Statutory Agreement expeditiously and diligently.

## 1.7 Extension of Statutory Period

The Tenant may not without the approval of the Council agree to an extension of the statutory period for determination of the Planning Application.

## 2. Grant of Planning Permission—Tenant's Obligations

### 2.1 Notice of Receipt of Decision

The Tenant must notify the Council within 3 Working Days of the receipt of any planning decision in relation to the Planning Application (whether issued by the Local Planning Authority the Secretary of State or a court) or the making of a Planning Appeal.

## 2.2 Decision to Appeal

In the event of a Planning Refusal, unless Planning Counsel advises in writing that a Planning Appeal would have less than a 50% chance of securing a Satisfactory Planning Permission, the Tenant may at its own expense lodge a Planning Appeal.

#### 2.3 Conduct of Appeal

The Tenant shall prosecute any Planning Appeal lodged with all due diligence and shall conduct its part in the Planning Appeal proceedings in a good and efficient manner save where at any time Planning Counsel advises in writing that the Planning Appeal has less than a 50% chance of securing a Satisfactory Planning Permission.

## 3. Grant of Planning Permission—Council's obligations

## 3.1 Notification of Unreasonable Conditions

A Planning Permission shall be treated as a Satisfactory Planning Permission, unless:

- (a) the Tenant notifies the Council within 20 Working Days of its receipt of the Planning Permission that the Tenant regards the Planning Permission as being subject to a Tenant's Unreasonable Condition and such notice shall specify any condition attached to the Planning Permission that the Tenant views as a Tenant's Unreasonable Condition; or
- (b) the Council notifies the Tenant within 20 Working Days of its receipt of the Planning Permission that the Council regards the Planning Permission as being subject to a Council's Unreasonable Condition and such notice shall specify any condition attached to the Planning Permission that the Council views as a Council's Condition.

### 3.2 Reference to Expert

- 3.3 If a notice is served pursuant to paragraph 3.1 of this Schedule and:
  - (i) the period of 20 Working Days referred to in paragraph 3 of this Schedule has expired without the recipient disputing the other party's assessment that the Planning Permission is subject to a Tenant's Unreasonable Condition or a Council's Unreasonable Condition (as relevant); or
  - (ii) determination has been referred to an Expert for resolution and the Expert has upheld the relevant party's assessment that the Planning Permission is subject to a Tenant's Unreasonable Condition or a Council's Unreasonable Condition (as the case may be)

the Tenant may give notice to the Council terminating this Agreement, following which this Agreement shall terminate in accordance with clause 7 (*Termination where Conditions are not Satisfied*).

## 4. Disputes regarding Satisfactory Planning Permission

Any dispute between the Council and the Tenant as to whether a Planning Permission is a Satisfactory Planning Permission may be referred by either the Council or the Tenant for the determination of an Expert within 20 Working Days of the date of the Tenant's notice pursuant to paragraph 3.1 of this **Schedule 2** (*Planning Conditions*) and the provisions of clause 15 (*Disputes*) shall apply.

## 5. Council to cooperate

#### 5.1 Council Co-operation

The Council shall cooperate with the Tenant and use reasonable endeavours to assist the Tenant in obtaining a Satisfactory Planning Permission and in the Tenant pursuing a Planning Appeal.

## 5.2 Council not to submit own Planning Application

The Council must not submit (or procure any other party to submit) any other application for Planning Permission in respect of the Council's Property prior to the Unconditional Date or termination of this Agreement (whichever occurs first) and without prejudice to its statutory duties it must not do any other act or thing which is likely to prejudice any Planning Application made by or on behalf of the Tenant.

#### 6. Statutory Agreements

## 6.1 Negotiation of Statutory Agreements

The Tenant shall use reasonable endeavours to negotiate and agree the form of any necessary Statutory Agreement and shall provide copies of the agreed form of the relevant Statutory Agreement, together with plans and other relevant documents to the Council within 20 Working Days of receipt.

## 6.2 Qualification of Statutory Agreements

The Tenant shall ensure that any Statutory Agreement provides that its provisions are to become operative only if development is commenced.

## 6.3 Council to be party to Statutory Agreements

If required by the Local Highway Authority or any other statutory body the Council will subject to it (i) approving the form of relevant Statutory Agreement and (ii) having the statutory power to do so enter into the relevant Statutory Agreement.

#### WFC Condition

#### 1. Definitions

In this Schedule 3 (WFC Condition) the following definitions have the meaning specified:

"WFC Monthly Donation Payments" means the sum of £23,000 per month.

"WFC Donation Payment" means a total sum of £276,000 to be paid to WFC and drawn down in the amount of the WFC Monthly Payments.

## 2. Intention of this Condition

The parties agree that the intention of the WFC Condition is for agreements to be entered into between the Council, the Tenant and WFC providing for:

- (a) the WFC Lease to be surrendered by WFC or assigned to the Council or the Tenant for surrender or other determination as the case may be ("WFC Surrender Agreement");
- (b) The Tenant shall agree to design, build and fund the new stadium works and:
  - (i) A budget of £10 Million has been allowed and that has been shown in the Viability Assessment carried out by BNP and submitted to the Council.
  - (ii) It is imperative that the Tenant is able to create a developer's profit of 20% of GDV (Gross Development Value) within the eventual scheme.
  - (iii) The specification/wish list has been prepared by Rockvolt acting jointly for the WFC and the Tenant and the parties will work together to secure value for money and procure a new stadium and facilities that provides capacity for 10,000 persons.
  - (iv) The cost of providing the services to the stadium, the demolition of the existing facilities and the levelling of the ground, are costs to be excluded from the budget, as these costs will be met as part of the residential development.
- (c) the Council to own the freehold land comprising the New Stadium;
- (d) the Council to grant a new lease to WFC (or any successor entity to WFC's business) following Practical Completion of the New Stadium;
- (e) no capital sums to be payable by the Tenant or the Council to WFC to procure documentation and conclusion of the foregoing intentions save to the extent set out in this **Schedule 3** (WFC Condition) or as otherwise agreed by the Tenant in its absolute discretion;
- (f) such agreements being conditional, inter alia, on the:
  - (i) obtaining of Satisfactory Planning Permission;
  - (ii) Final Unconditional Date occurring;

- (iii) KCS Property being transferred to or acquired by CPO by the Council;
- (iv) Ground Leases being granted to the Tenant.

## 3. Obligations of the Parties

For the purposes of endeavouring to satisfy the WFC condition:

#### 3.1 Agreement with WFC

- 3.1.1 The Council and the Tenant will use their respective reasonable endeavours to enter into agreements for:
  - (a) surrender of the WFC Lease;
  - (b) construction of the New Stadium; and
  - (c) grant of the New Stadium Lease

with WFC and if required any successor body as soon as practicable after the date of this Agreement.

3.1.2 The Tenant will make the WFC Donation Payment to WFC to be paid by the WFC Monthly Donation Payments with the first payment being made on the first Working Day of the month next after the date of this Agreement and each subsequent payment being made on the first Working Day of each subsequent month until the WFC Donation Payment has been made in full provided that in the event that WFC suffers an Event of Insolvency the Tenant shall be entitled to stop making any further WFC Monthly Donation Payments and the WFC Donation Payment shall be deemed to become immediately repayable to the Tenant; and

## 3.2 Agreement with Peter Jordan

The Tenant will

- (a) comply with its obligations in the Peter Jordan Agreement; and
- (b) use its reasonable endeavours to enforce the Peter Jordan Agreement to the extent necessary to comply with its obligations in this Agreement.

#### 4. Consequential Provisions

#### 4.1 Instructions to Solicitors

The Tenant and the Council will each instruct their respective solicitors to prepare, issue and negotiate draft documents (or to procure that WFC's Solicitors prepare) and provide such other information and instructions as are required to comply with their respective obligations in this Schedule.

#### 4.2 Information

The Tenant and the Council will regularly keep the other party informed as to respective progress in agreeing documentation and will on request supply copies of relevant documentation.

# 4.3 Existing Loan to WFC

In relation to any existing loan arrangements between the Council and WFC, the Council will provide all releases, consents and approvals necessary to enable WFC to enter into and complete the agreement for surrender and surrender of the WFC Lease and development agreement in respect of the New Stadium.

#### KCS Condition

#### 1. Intention of this Condition

The parties agree that the intention of the KCS Condition is for WBC to enter into an agreement to purchase unconditionally the KCS Property (or KCS itself by way of a share purchase) with completion no later than 30 June 2019 on terms to be agreed with KCS.

### 2. Obligations of the Parties

For the purposes of endeavouring to satisfy the KCS condition the Council will use its reasonable endeavours to enter into an agreement with KCS as soon as possible after the date of this Agreement and in any event by 30 June 2019 for the purchase of the KCS Property (or the KCS shares) up to a maximum sum of £2,000,000 (exclusive of VAT, if chargeable).

### 3. Consequential Provisions

#### 3.1 Instructions to Solicitors

The Council will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

#### 3.2 Information

The Council will regularly keep the Tenant informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

## 3.3 No Agreement by 30 June 2019

- (a) If by 30 June 2019 the Council has not either:
  - (i) entered into an agreement with KCS in accordance with this **Schedule 4** (KCS Condition) with completion no later than 30 June 2019 or such later date as the Council and the Tenant shall both approve; or
  - (ii) initiated CPO Process to acquire the KCS Property

then the Tenant shall be entitled to negotiate with KCS and thereafter to acquire the KCS Property on such terms as it thinks fit.

(b) If the Tenant enters into an agreement pursuant to paragraph 3.3(a) the Council agrees that on the Completion Date under such agreement it will accept the transfer of the KCS Property to it either directly or by way of sub-sale and will pay the purchase consideration thereunder up to a maximum sum of £2,000,000.

## **David Lloyd Condition**

#### 1. Definitions

In this Schedule 5 (David Lloyd Condition) the following definitions have the meaning specified:

"David Lloyd Heads of Terms" means the heads of terms dated 15 November 2018 between the Council, Goldev Limited and David Lloyd;

"New David Lloyd Lease" means a lease of the new David Lloyd Premises to be entered into between the Council (1) and David Lloyd (2) in accordance with terms set out in the David Lloyd HoTs;

"New David Lloyd Premises" means the new premises to be constructed by David Lloyd on part of the Egley Road Site;

## 2. Intention of this Condition

The parties agree that the intention of the David Lloyd Condition is for the Council, the Tenant and David Lloyd to enter into an agreement providing, inter alia, for the:

- (a) surrender of the David Lloyd Leases and the Nursery Sub-Lease;
- (b) grant of the New David Lloyd Lease;
- (c) funding by the Tenant of construction works of the New David Lloyd Premises to be constructed by David Lloyd and
- (d) relocation of Asquith Nurseries and the surrender of the Nursery Sub-Lease of part of the David Lloyd Property

conditional, inter alia, on:

- (i) the obtaining of Satisfactory Planning Permission;
- (ii) the Final Unconditional Date Occurring;
- (iii) the Leigh Place Land being transferred to or acquired by CPO by the Council;
- (iv) the Ground Leases being granted to the Tenant.

#### 3. Obligations of the Parties

For the purposes of endeavouring to satisfy the David Lloyd condition the Council and the Tenant will use their respective reasonable endeavours to enter into an agreement with David Lloyd as soon as possible after the date hereof for:

- (a) the surrender of the David Lloyd Leases;
- (b) the grant of the New David Lloyd Lease; and
- (c) the funding by the Tenant of construction works of the New David Lloyd Premises by David Lloyd

## 4. Consequential Provisions

### 4.1 Instructions to Solicitors

Save only to the extent that the Tenant has agreed in writing to undertake any of the obligations in this paragraph 4.1 (*Instructions to Solicitors*) the Council will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

#### 4.2 Information

The Council will regularly keep the Tenant informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

#### Snooker Club Condition

### 1. Intention of this Condition

The parties agree that the intention of the Snooker Club condition is for the Tenant to enter into an agreement with the Snooker Club for the:

- surrender of the Snooker Club Lease to the Tenant or the Council (dependent upon the structure and timing of the reversion to the Snooker Club Lease being the KCS Property); and/or
- (b) assignment of the Snooker Club Lease to the Tenant for subsequent surrender or merger in the reversionary title (as applicable) such agreement being conditional, inter alia, on:
  - (i) obtaining of Satisfactory Planning Permission;
  - (ii) Final Unconditional Date occurring;
  - (iii) KCS Property being transferred to or acquired by CPO by the Council;
  - (iv) Ground Leases being granted to the Tenant.

## 2. Obligations of the Parties

For the purposes of endeavouring to satisfy the Snooker Club condition:

## 2.1 Tenant's Obligations

The Tenant will use its reasonable endeavours to enter into an agreement with the Snooker Club in accordance with paragraph 2 of this Schedule 6 (Snooker Club Condition);

## 2.2 Council's Obligations

The Council shall provide such reasonable assistance to the Tenant in acquiring the Snooker Club as the Tenant may reasonably request and the Council will enter into the agreement with the Snooker Club to agree to accept a surrender of the Snooker Club Lease if it becomes the reversioner to the Snooker Club Lease.

## 3. Consequential Provisions

## 3.1 Instructions to Solicitors

The Tenant will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

### 3.2 Information

The Tenant will regularly keep the Council informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

### **Gym Club Condition**

#### 1. Intention of this Condition

The parties agree that the intention of the Gym Club condition is for the Council to enter into an agreement with the Gym Club for the:

- (a) surrender of the Gym Club Lease to the Council (dependent upon the structure and timing of the reversion to the Gym Club Lease being the KÇS Property); and/or
- (b) assignment of the Gym Club Lease to the Council for subsequent surrender or merger in the reversionary title (as applicable) such agreement being conditional, inter alia, on:
  - (i) obtaining of Satisfactory Planning Permission;
  - (ii) the Final Unconditional Date occurring; and
  - (iii) the KCS Property being transferred to or acquired by CPO by the Council.

### 2. Obligations of the Parties

### 2.1 Council's Obligations

For the purposes of endeavouring to satisfy the Gym Club condition the Council will use its reasonable endeavours to enter into an agreement with the Gym Club in accordance with paragraph 2 of this Schedule 7 (Gym Club Condition);

#### 2.2 Tenant's Obligations

The Tenant shall provide such reasonable assistance to the Council in acquiring the Gym Club as the Council may reasonably request and the Council will enter into the agreement with the Gym Club to agree to accept a surrender of the Gym Club Lease if it becomes the reversioner to the Gym Club Lease.

## 3. Consequential Provisions

#### 3.1 Instructions to Solicitors

Save only to the extent that the Tenant has agreed in writing to undertake any of the obligations in this paragraph 3.1 (*Instructions to Solicitors*) the Council will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

#### 3.2 Information

The Council will regularly keep the Tenant informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

#### **Telecoms Lease Condition**

## 1. Intention of this Condition

The parties agree that the intention of the Telecoms Lease Condition is for the Tenant to enter into an agreement with the Telecoms Company for the:

- (a) surrender of the Telecoms Lease to the Tenant or the Council (dependent upon the structure and timing of the reversion to the Telecoms Lease being the KCS Property); and/or
- (b) assignment of the Telecoms Lease to the Tenant for subsequent surrender or merger in the reversionary title (as applicable) such agreement being conditional, inter alia, on:
  - (i) obtaining of Satisfactory Planning Permission;
  - (ii) Final Unconditional Date occurring;
  - (iii) KCS Property being transferred to or acquired by CPO by the Council;
  - (iv) Ground Leases being granted to the Tenant.

## 2. Obligations of the Parties

## 2.1 Tenant's Obligations

For the purposes of endeavouring to satisfy the Telecoms Lease Condition the Tenant will use its reasonable endeavours to enter into an agreement with the Telecoms Company in accordance with paragraph 2 of this Schedule 8 (*Telecoms Lease Condition*);

## 2.2 Council's Obligations

The Council shall provide such reasonable assistance to the Tenant in acquiring the Telecoms Company as the Tenant may reasonably request and the Council will enter into the agreement with the Telecoms Company to agree to accept a surrender of the Telecoms Lease if it becomes the reversioner to the Telecoms Lease.

## 3. Consequential Provisions

## 3.1 Instructions to Solicitors

The Tenant will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

#### 3.2 Information

The Tenant will regularly keep the Council informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

#### Rosewood Condition

#### 1. Intention of this Condition

The parties agree that the intention of the Rosewood Condition is for the Tenant to use reasonable endeavours to enter into an agreement with the Rosewood Owners to

- (a) acquire the Rosewood Properties; and
- (b) transfer the freeholds of the Rosewood Properties to the Council with the leasehold Rosewood Properties surrendered or merged in the reversionary titles so as to extinguish them (and whether achieved at the point of transfer to the Council or previously) such Agreement to be conditional, inter alia, on:
  - (i) the obtaining of Satisfactory Planning Permission;
  - (ii) the Final Unconditional Date Occurring;
  - (iii) the Ground Leases being granted to the Tenant.

## 2. Obligations of the Parties

For the purposes of endeavouring to satisfy the Rosewood Condition

## 2.1 Tenant's Obligations

The Tenant will use its reasonable endeavours to enter into an agreement with the Rosewood Owners in accordance with paragraph 1 of this Schedule 9 (Rosewood Condition).

### 2.2 Council's Obligations

The Council shall provide such reasonable assistance to the Tenant in acquiring the Rosewood Properties as the Tenant may reasonably request and the Council will accept a transfer of the freehold Rosewood Properties and the leasehold Rosewood Properties or (in relation to the leasehold Rosewood Properties) enter into the agreement with the Rosewood Owners to agree to accept a surrender of the leasehold Rosewood Properties if it becomes the reversioner to the leasehold Rosewood Properties.

#### 3. Consequential Provisions

#### 4.1 Instructions to Solicitors

The Tenant will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

#### 4.2 Information

The Tenant will regularly keep the Council informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

## **Egley Road Condition**

## 1. Definitions

In this **Schedule 10** (*Egley Road Condition*) the following definitions have the meaning specified:

"David Lloyd HoTs" means the heads of terms dated 28 May 2018 between the Council, Goldev Limited and David Lloyd a copy of which is contained in *Appendix 10* (David Lloyd Heads of Terms).

## 2. Intention of this Condition

The parties agree that the intention of the Egley Road Condition is for the Council to purchase the Leigh Place Land unconditionally with completion no later than 30 June 2019 at a price of no more than £11,000,000 plus VAT (if payable).

## 3. Obligations of the Parties

For the purposes of endeavouring to satisfy the Egley Road Condition the Council will use reasonable endeavours as soon as possible after the date hereof to enter into an unconditional agreement to purchase the Leigh Place Land with completion no later than 30 June 2019.

## 4. Consequential Provisions

## 4.1 Instructions to Solicitors

The Council will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

## 4.2 Information

The Council will regularly keep the Tenant informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

# 4.3 No Agreement by 30 June 2019

- (a) If by 30 June 2019 the Council has not either:
  - (i) entered into an agreement with Leigh Place Properties in accordance with this **Schedule 10** (Egley Road Condition) with completion no later than 30 June 2019 or such later date as either the Council or the Tenant shall both approve; or
  - (ii) initiated CPO Process to acquire the Leigh Place Land, then the Tenant shall be entitled to negotiate with Leigh Place Properties to acquire the Leigh Place Land then the Tenant shall be entitled to negotiate with Leigh Place and thereafter to acquire the Leigh Place Land on such terms as it thinks fit;
- (b) If the Tenant enters into an agreement pursuant to paragraph 4.3(a) the Council agrees that on the Completion Date under such agreement it will accept the

transfer of the Leigh Place Land to it either directly or by way of sub-sale save for the Egley Road Freehold Residential Element and will pay the purchase consideration thereunder up to a maximum sum of £11,000,000.

## 5. Freehold Transfer of the Egley Road Residential Elements

- 5.1 No later than the Relevant Completion Date of the Ground Leases the Council will transfer the Egley Road Freehold Residential Land to the Tenant:
  - (a) free from new encumbrances and with full title guarantee (but subject to any existing encumbrances which the Leigh Place Land is transferred subject to);
  - (b) without payment of any consideration;
  - (c) pursuant to a transfer in a form agreed between the parties (and containing all rights and reservations required for the purposes of the Project and if such form of transfer is not agreed then on determination by an Expert pursuant to clause 15 (*Disputes*);
  - (d) otherwise subject to the Standard Conditions of Sale.
- 5.2 On completion of the transfer pursuant to paragraph 5.1 the parties will enter into the relevant Call Option.

## **Hoe View Condition**

## 1. Intention of this Condition

The parties agree that the intention of the Hoe View Condition is for the Council to purchase Hoe View at a price to be agreed with the registered proprietors (whether or not conditional on similar conditions in the Agreement) but not greater than

## 2. Obligations of the Parties

- (a) For the purposes of endeavouring to satisfy the Hoe View Condition, the Council will use reasonable endeavours to enter into an agreement with the registered proprietor of Hoe View whether or not conditional as set out in paragraph 1 (*Intention of this Condition*) of this Schedule;
- (b) In the event that the Tenant enters into an agreement with the owner of Hoe View it shall following the Planning Satisfaction Date assign the benefit of the agreement (if permitted) to the Council if required by the Council to do so or will otherwise procure the transfer of Hoe View to the Council immediately prior to completion of the Ground Leases.

## 3. Consequential Provisions

## 4.1 Instructions to Solicitors

The Council will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

## 4.2 Information

The Council will regularly keep the Tenant informed as to progress in agreeing documentation and will on request supply copies of relevant documentation.

#### Park View Condition

#### 1. Intention of this Condition

The parties agree that the intention of the Park View Condition is for the Council to purchase Park View at a price to be agreed with the registered proprietors (whether or not conditional on similar conditions in the Agreement) but not greater than

### 2. Obligations of the Parties

- (a) For the purposes of endeavouring to satisfy the Park View Condition, the Council will use reasonable endeavours to enter into an agreement with the registered proprietor of Park View whether or not conditional as set out in paragraph I (Intention of this Condition) of this Schedule;
- (b) In the event that the Tenant enters into an agreement with the owner of Park View it shall following the Planning Satisfaction Date assign the benefit of the agreement (if permitted) to the Council if required by the Council to do so or will otherwise procure the transfer of Park View to the Council immediately prior to completion of the Ground Leases completion date.

### 3. Consequential Provisions

#### 4.1 Instructions to Solicitors

The Council will instruct its solicitors to prepare, review, issue and negotiate (as appropriate) draft documents and provide such other information and instructions as are required to comply with its obligations in this Schedule.

#### 4.2 Information

The Council will regularly keep the Tenant informed as to respective progress in agreeing documentation and will on request supply copies of relevant documentation.

#### SCHEDULE 13

#### **CPO Provisions**

#### Part 1.

# 1. Acquisitions by Private Treaty and Transfers

# 1.1 CPO Third Party Budget

In relation to the proposed acquisition of all Non-Contracted Interest the parties shall agree, as soon as reasonably practicable after the Planning Satisfaction Date a budget which shall include budgeted sums for each potential element of claim for compensation in respect of each such Non-Contracted Interest. The budget shall be referred to as the "CPO Third Party Budget" and shall be updated, from time to time as reasonably necessary, by agreement between the parties, in each such case the parties acting reasonably and any failure by the parties to agree the CPO Third Party Budget or updates to it shall be referable by either of them to dispute resolution in accordance with clause 15 (*Disputes*).

# 1.2 Selected Agent

If there are any Non-Contracted Interests at the Planning Satisfaction Date the Selected Agent shall be jointly appointed by the Council and the Tenant at the expense of the Tenant, if not previously instructed, on terms approved by both parties (each acting reasonably) and shall undertake the following functions:

- (a) if the Tenant shall so require, any private treaty negotiations for Non-Contracted Interests; and
- (b) negotiation of CPO Compensation payable pursuant to this Agreement; and

# 1.3 Initiation of CPO

If the Council is prepared to proceed to acquire a Non-Contracted Interest for a sum higher than that referred to for that Non-Contracted Interest in the CPO Third Party Budget then they shall do so only with the Tenant's prior consent (in its absolute discretion).

# 1.4 Council Acknowledgement

The Council acknowledges that all Non-Contracted Interests (comprising freehold and/or leasehold interests) shall, for the purposes of section 237 of the Planning Act, be acquired for planning purposes, whether acquired by private treaty or pursuant to the CPO.

# 1.5 Trust Arrangement

If the Council shall acquire any Non-Contracted Interest which comprises the whole or any part of the Egley Road Freehold Residential Element pursuant to the terms of this **Schedule 13** (*CPO Provisions*) or otherwise:

(a) at the expense of the Tenant (to the extent set out in clause 8.2 (Apportionment of Ground Lease Consideration) the Council will hold that Non-Contracted Interest on trust for the Tenant;

(b) the Tenant may by notice in writing to the Council at any time require the Council to transfer to the Tenant or to such other person as the Tenant may nominate in writing to the Council such Non-Contracted Interest which comprises the whole or any part of the Egley Road Freehold Residential Element held by the Council on trust for the Tenant;

# 2. Restriction on Disposals

The Council will not dispose of any interest in or grant any lease or encumbrance over any Non-Contracted Interest acquired by private treaty or otherwise and vested in the Council save in accordance with this Agreement.

#### 3. The CPO - General

### 3.1 Preparation for CPO

The Council shall as soon as reasonably practicable after the Planning Satisfaction Date with the assistance of the Tenant and its advisers and the Land Referencing Agents, insofar as it has not already done so:

- (a) procure compilation of a register of all Non-Contracted Interests, to include full descriptions and mapping of parcels as would be necessary to make the Satisfactory CPO and the drafting and serving of requisitions for information on any affected parties pursuant to section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or section 330 of the Planning Act or section 5A of the Acquisition of Land Act 1981; and
- (b) commence or procure commencement of the drafting of the CPO and all notices, certificates and statements which may be required in the making and promotion of the CPO and provide copies of them to the Tenant for its comments and the Council shall give due consideration to such comments but the Tenant's prior approval (not to be unreasonably withheld) shall be required in respect of the statement of reasons.

### 3.2 Inclusion of Additional Interests

The Tenant may:

- (a) at any time prior to the Council's consideration of whether or not to resolve to make the CPO, make a written request to the Council to include any Third Party Interests as Non-Contracted Interests within the CPO that are necessary to facilitate the Development.
- (b) also make a subsequent request to the Council to consider whether or not to resolve to make a CPO in respect of any interest owned by a Defaulting Counterparty to which the provisions of this Schedule will also apply where so requested.

### 3.3 Seeking authority to make CPO

The Council shall, having consulted with the Tenant, consider whether to use its compulsory purchase powers. If the Council exercises its discretion in favour of exercising such powers, it shall proceed as set out in paragraph 3.4.

# 3.4 After decision to make CPO

As soon as reasonably practical after authority has been given in accordance with paragraph 3.3 the Council shall

- agree a statement of reasons with the Tenant (such approval not to be unreasonably withheld or delayed);
- (b) make the CPO in a form approved by the Tenant (such approval not to be unreasonably withheld or delayed);
- (c) seek confirmation from the Secretary of State of the CPO

in accordance with all Statutory Requirements.

# 3.5 Non-Objection by Tenant

The Tenant will not object to the CPO and shall at its own expense provide all reasonable co-operation to the Council and appoint consultants to support the Council in seeking the confirmation of the CPO, including the giving of evidence as to matters within its or their competence or proper expertise, the provision of expert witnesses and attendance or giving assistance with or without its own Counsel at any public inquiry if so required by the Council, acting reasonably.

# 3.6 Consultation with Tenant

The Council shall regularly consult with and have proper regard to all representations of the Tenant in respect of the CPO and shall keep the Tenant fully advised of the progress of the CPO throughout and the Council shall supply the Tenant with a list of the names and addresses of all those persons on whom notice of making the CPO has been served together with the date of service and copies of documents submitted to the Secretary of State as the confirming authority for the CPO.

# 3.7 Amendments and Variations

The Council shall be entitled:

- (a) to make such amendments, additions, variations, modifications and/or substitutions to the CPO as it shall reasonably determine is necessary or desirable to assist in procuring confirmation of the CPO and shall have due regard to any reasonable representations which the Tenant may make as to amendments additions or variations; and
- (b) to provide such undertakings as may be reasonably necessary to assist in the withdrawal of any objection to the CPO or generally for the enhancement of the case for the CPO at any public inquiry.

# 3.8 Opposed CPO

If the CPO is opposed, the Council and the Tenant shall work together with the aim of securing the withdrawal of every objection made to the CPO and in particular the Council shall:

(a) Send to the Tenant copies of all objections made to the CPO;

- (b) (unless otherwise agreed with the Tenant) use all reasonable endeavours to obtain the earliest practicable date for the holding of the Inquiry;
- (c) keep the Tenant informed of the arrangements for the holding of the Inquiry;
- (d) use all reasonable endeavours to prepare in a good and efficient manner for the Inquiry in liaison with the Tenant;
- (e) consult and have due regard to the views of the Tenant in connection with the preparation for the Inquiry and in particular:
  - (i) shall consult with the Tenant regarding the content and nature of any evidence to be submitted to the Inquiry;
  - (ii) shall generally permit the Tenant to take an active part in the preparation of and strategy for the Inquiry (including the giving of all relevant evidence by the Tenant and its advisors in support of the confirmation of the CPO);
  - (iii) shall invite a representative of the Tenant to attend all consultations with Counsel relating to the preparation of the case for any public inquiry into objections against the CPO and shall consult the Tenant on the selection of witnesses to give evidence on behalf of the Council at any public inquiry; and
  - (iv) consult with and obtain the Tenant's approval (not to be unreasonably withheld) in respect of the statement of case prior to its submission but if the Tenant either fails to respond or does not provide a reasoned statement of its objections to the statement within 5 Working Days of request for approval such approval shall be deemed to have been given;
- (f) prosecute the inquiry with all due diligence and use all reasonable endeavours to obtain confirmation of the CPO;
- (g) keep the Tenant advised of the progress and result of the inquiry; and
- (h) notify the Tenant of any challenge to the confirmation of the CPO.

### 3.9 Tenant's Own Counsel

If the Tenant appoints its own counsel with a view to appearing at the public inquiry, it shall invite a representative of the Council to attend all consultations with counsel relating to the preparation of the case for the public inquiry into objections against the CPO and shall consult with the Council on the selection of witnesses to give evidence on its behalf at any public inquiry.

#### 3.10 Assistance from Tenant

The Tenant shall provide such reasonable assistance to the Council as it may reasonably request in respect of the preparation of the Council's case at any inquiry.

# 3.11 Satisfactory CPO

If the CPO is Confirmed by the Secretary of State or upheld by the High Court, in either case without modification (or only subject to modifications previously agreed by the parties acting reasonably), it shall be a Satisfactory CPO for the purposes of this Agreement. If the CPO is confirmed by the Secretary of State or upheld by the High Court with modifications (other than any previously agreed by the parties) then the Tenant shall, within 20 Working Days of receipt of the confirmation or order of the High Court (as applicable) notify the Council whether, acting reasonably, it considers that such modifications render the CPO a Satisfactory CPO.

# 3.12 Failure of Tenant to Confirm Satisfactory CPO

If the Tenant does not provide the confirmation as provided for in paragraph 3.11 of this **Schedule 13** (*CPO Provisions*), or if there is any dispute or disagreement between them as to whether or not the CPO with modifications (other than ones previously agreed by the parties) confirmed by the Secretary of State or upheld by the court is a Satisfactory CPO either party may refer the question for determination in accordance with clause 15 (*Disputes*).

# 4. CPO Not Confirmed: Appeal/Judicial Review

# 4.1 Council Challenge

If the Secretary of State does not Confirm the CPO (whether as to the whole or a sufficient part of it so that in the opinions of the Council and the Tenant (each acting reasonably) it is insufficient to enable the Development to be carried out in accordance with the Agreement) then, unless otherwise agreed in writing between the parties:

- the Council and the Tenant shall, upon joint instructions at the Tenant's cost, seek the written advice of the Counsel as to the appropriate course in which to respond to such decision in order to facilitate the implementation of the Development and whether there is ("Positive Advice") or there is not ("Negative Advice") in his opinion a better than 50% chance of either an appeal to the High Court against non-confirmation or partial confirmation or an application for judicial review succeeding leaving in place a Satisfactory CPO;
- (b) having received the advice referred to in sub paragraph (a) the Council shall consult with the Tenant and consider whether or not to make an appeal or application for judicial review and the Council shall have due regard to any reasonable representations which the Tenant may make;
- (c) if the Counsel gives Positive Advice, the Council shall appeal or apply for judicial review, whichever the Counsel advises as being the more appropriate, and the reasonable and proper cost of such appeal or application for judicial review, as the case may be, shall together with all reasonable fees and expenses reasonably and properly incurred in connection with any actions reasonably taken pursuant to this paragraph 4.1(c) be a CPO Cost;
- (d) if Counsel gives Negative Advice, but notwithstanding such advice, the Council and the Tenant agree either to appeal or apply for judicial review, as the case may be, then all costs and fees incurred by the Council in making such an appeal or application shall be a CPO Cost; and

(e) if as a result of proceedings referred to in this paragraph 4 (CPO Not Confirmed: Appeal/Judicial Review) a Satisfactory CPO is not left in place, then the Council and the Tenant shall consult as to whether it is reasonable to take any further steps to prepare and promote the CPO or any part of it, each party being entitled in its absolute discretion to take no further steps.

# 5. The CPO - Third Party Challenge

# 5.1 Third Party Challenge

If a third party applies or seeks permission to apply for judicial review of the making of the CPO or any decision of the Council connected with the preparation and promotion of the CPO (the "CPO Challenge") then:

- (a) the Council shall forthwith notify the Tenant and deliver copies of all proceedings, documents and correspondence it has received relating to the CPO Challenge to the Tenant;
- (b) if requested by the Tenant, the Council and the Tenant shall, upon joint instructions at the Tenant's cost, seek the written advice of Counsel as to whether or not in his opinion there is a better than 50% chance of the CPO Challenge being successfully defended by the Council and for these purposes such defence shall include, where appropriate and necessary, an application for the Council (and if appropriate, the Tenant) to be joined to the CPO Challenge proceedings and for the expedition of the proceedings;
- (c) having received the advice referred to in sub paragraph (b) the Council shall consult with the Tenant and consider whether or not to defend the CPO Challenge and the Council shall have due regard to any reasonable representations which the Tenant may make;
- (d) if Counsel advises that there is a better than 50% chance of a successful defence to the CPO Challenge, the Council shall if requested by the Tenant diligently pursue such course of action, and the reasonable and proper costs of such defence shall be met by the Tenant, together with all reasonable and proper fees and expenses properly and reasonably incurred in connection with any action taken pursuant to this sub-paragraph 5.1;
- (e) if Counsel advises that in his opinion there is a less than 50% chance of any defence by the Council to the CPO Challenge being successful and the Council contrary to the Tenant's requirements elects to lodge a defence of the application in any event, then all costs and fees incurred by the Council in making such defence shall not form any part of the CPO Costs and shall be excluded from the indemnity in paragraph 7 of this **Schedule 13** (CPO Provisions); and
- if as a result of proceedings referred to in this paragraph 5 of this **Schedule** 13 (*CPO Provisions*) a Satisfactory CPO is not left in place, then the Council and the Tenant shall consult as to whether it is reasonable to take any further steps to prepare and promote the CPO or any part of it, each party being entitled in its absolute discretion to take no further steps.

### 6. Blight Notices

### 6.1 Blight Notices

If any Blight Notice is served upon the Council then:

- (a) the Council shall within 5 Working Days of receipt deliver a copy of the Blight Notice to the Tenant, together with any supporting correspondence and documents which may have been received with it;
- (b) within 10 Working Days after receipt by the Tenant of such Blight Notice the Council will consult with the Tenant concerning the Notice and its implications;
- (c) within 15 Working Days after receipt by the Council of a Blight Notice the Council shall investigate the grounds for service of such Blight Notice and the value of the interest the subject of the Notice and the Council and the Tenant shall procure that the Selected Agent shall also consider the value of the interest and the other compensation which may be payable to the owner of the interest concerned; and
- (d) within 15 Working Days after receipt by the Council of a Notice the Council shall consult the Tenant and decide whether a counter-notice or response notice is to be served in response to the Blight Notice and in this respect:
  - (i) the Council shall have due regard to any reasonable representations which the Tenant may make; and
  - (ii) the Council may, and if requested by the Tenant shall at the Tenant's expense, take the opinion of Counsel on whether there is a lawful ground for the service of a counter-notice or response notice and if in Counsel's opinion such a ground exists then subject to clause (c) the Council shall serve such counter-notice or response notice.

# 6.2 Introductions to Selected Agent

In the case of a Blight Notice which the Council (with the agreement of the Tenant or in respect of which the Counsel has issued a written opinion or has countersigned a written notice of conference or telephone advice that there are no lawful grounds for service of a counter-notice) accepts and in respect of which it does not serve a counter-notice or response notice or which is determined by the Upper Tribunal (Lands Chamber) to have been correctly served, the Council and the Tenant will jointly appoint the Selected Agent to negotiate on their behalf the compensation properly payable and the compensation properly payable as a result of the Notice and all costs and fees incurred by the Council in relation to the Notice, negotiation of compensation and acquisition of the land/buildings the subject of the Notice shall be CPO Costs.

### 6.3 Service of a Counter Notice

Notwithstanding Counsel's opinion that a ground(s) exists for lawful service of a counter-notice or a response notice the Council may in its discretion elect not to serve such counter-notice or response notice but if the Council so elects, it agrees to bear itself the costs incurred as a result of the Notice, unless or until the interest so

acquired by the Council is at any time requested by the Tenant for the Development in which case such costs shall be deemed to be CPO Costs.

# 7. CPO Indemnity

#### 7.1 Tenant's Indemnity

The Tenant shall indemnify and keep indemnified the Council at all times from and against all CPO Costs.

# 7.2 CPO Account Agreement or Escrow Agreement

- (a) At the direction of the Tenant either:
  - (i) the parties shall and the Tenant shall procure that the Tenant's Solicitors shall enter in to the CPO Account Agreement immediately after the parties have entered into this Agreement; or
  - (ii) the parties shall enter into the Escrow Agreement with the Escrow Agents immediately after the parties have entered into this Agreement.
- (b) In either such case the Tenant shall procure that the Tenant's Solicitors set up the CPO Account and supply full details of it to the parties.

# 7.3 Payments into CPO Account

Without limiting its obligations under paragraph 7.1 (Tenant's Indemnity) of this Schedule 13 (CPO Provisions), the Tenant shall pay into the CPO Account within 10 Working Days of written demand therefor from the Council the amount of all CPO Third Party Payments or CPO Compensation that have been paid, or are due for payment or will be due for payment by the Council within the next 60 Working Days. Each demand shall set out details of the amount demanded, the full details of the payee and their bank account. A copy of it shall also be sent, at the same time, to the Tenant's Solicitors. The Council shall only be entitled to draw monies from the CPO Account in order to make payment of CPO Payments or CPO Compensation or to reimburse to itself such CPO Costs actually paid out by the Council all as set out in written demands made by it as provided in this paragraph 7 (CPO Indemnity) of Schedule 13 (CPO Provisions).

#### 7.4 Balance of CPO Costs

In respect of all other CPO Costs (other than the CPO Third Party Payments or CPO Compensation) the Tenant shall pay the Council within 10 Working Days of demand therefor the amount of the CPO Costs that have been paid, are due for payment or will be due for payment by the Council within the next 20 Working Days or which have been incurred by the Council as internal costs and disbursements as provided for in paragraph 7.8(f) of this **Schedule 13** (*CPO Provisions*).

#### 7.5 Evidence of Costs

The Council shall:

(a) provide to the Tenant prior to, with or as part of each written demand pursuant to paragraph 7.4 (Balance of CPO Costs) of this Schedule 13 (CPO

Provisions) such reasonable evidence as may be required by the Tenant that the CPO Costs have been paid or become due for payment or will become due for payment within the next 10 Working Days and in respect of the internal costs and disbursements provided for in Clause 7.8(f), copies of all time sheets for the relevant officers in support of such a claim; and

(b) promptly notify the Tenant of the date of the payment of any CPO Costs to a Third Party.

# 7.6 Continuing Obligations to make Payments

Notwithstanding the termination of this Agreement the Tenant shall make payments which the Council was legally bound to make at the date of termination and/or in respect of a Notice or other statutory process served/or commenced prior to the date of termination, such payments to be made in accordance with the provisions of this Agreement as if the agreement was still in full force and effect.

# 7.7 Advance Payment of Compensation

If the Council is requested to make an advance payment of compensation under section 52 of the Land Compensation Act 1973 in respect of any interest included within the CPO the Council shall as soon as reasonably practicable serve a copy of the particulars of the claimant's interest on the Tenant and shall instruct the Selected Agent to negotiate with any claimant the amount of the compensation and advance payment.

# 7.8 Calculation of CPO Costs

The following provisions shall apply to CPO Costs:

- (a) a CPO Cost counted under one head (as set out in Part 2 (CPO Costs) of this Schedule 13 (CPO Provisions)) shall not, to that extent, be counted under another;
- the Council and the Tenant shall both use all reasonable endeavours to minimise the CPO Costs;
- the CPO Costs as set out under the heads of expenditure in Part 2 (CPO Costs) of this **Schedule 13** (CPO Provisions) (excluding the CPO Compensation) shall save to the extent indicated in this paragraph 7.8(c) or in Part 2 (CPO Costs) of this **Schedule 13** (CPO Provisions) be those reasonable and proper costs fees and expenses as agreed between the parties or failing agreement as determined by the Expert in accordance with clause 15 (Disputes) provided that any CPO Third Party Payment shall be deemed to be reasonable and proper in the event that it is an amount equal to or less than that shown in the CPO Third Party Budget for the relevant Third Party Interest;
- (d) the CPO Compensation shall be that amount as paid by the Council or as awarded or determined by any court or Upper Tribunal (Lands Chamber) and any costs fees and expenses associated therewith shall to the extent that they have been awarded or determined by the court or the Upper Tribunal (Lands Chamber) be such sum so awarded or determined which shall be deemed to be reasonable and proper;

- (e) CPO Costs do not include any:
  - (i) expenditure attributable to the breach, non-observance or nonperformance of the obligations on the part of the Council under this Agreement;
  - (ii) CPO Third Party Payment made in excess of the CPO Third Party Budget without the other party's consent or without the Expert's determination in the case of dispute in accordance with the provisions of paragraph 3 (*The CPO General*) of this **Schedule 13** (*CPO Provisions*), to the extent that it exceeds the CPO Third Party Budget;
  - (iii) expenditure save as provided in clause (f), comprising any of the Council's internal/in house costs and overheads, including employment costs, office expenses, management and administrative costs;
  - (iv) expenditure which, under the provisions of this Agreement, the Council is required to bear or is excluded from the CPO Costs; and
  - (v) expenditure which has been incurred or ascertained otherwise than in accordance with the provisions of this Schedule; and
  - (vi) Costs otherwise to be met by the Council pursuant to this Agreement;
- (f) and CPO Costs shall include the reasonable and proper cost of time expended and disbursements by the Council's officers on the provision of legal and surveying services in relation to the Council's obligations specifically relating to the CPO under this Schedule each item of which is budgeted and agreed with the Tenant such agreement not to be unreasonably withheld.

#### 8. Confirmation and Implementation of CPO

#### 8.1 Confirmation and Implementation of CPO

Following the Confirmation of the CPO:

- (a) the Council will publish and serve a combined notice of Confirmation and notice of intention to make a general vesting declaration and shall otherwise comply with all statutory requirements in relation to the confirmation of the CPO so as to enable it to become operative as soon as reasonably practicable, all in consultation with the Tenant and have due regard to all reasonable comments made by the Tenant and taking account of the Programme;
- (b) the Council shall promptly give written notice to the Tenant when the Council has complied with sub-paragraph (a);
- (c) Within 10 Working Days of the Council's receipt of Confirmation the Council shall supply to the Tenant a copy of the CPO as confirmed and a copy of the CPO map, together with a copy of the Secretary of State's decision and any inspector's report; and shall update the entry or entries in the Local Land Charges Register in respect of the CPO as confirmed.

- (d) the Tenant and the Council will as soon as reasonably practicable having regard to the Programme after Confirmation work together to agree the proposed structure, programme, phasing and CPO Third Party Budget for the acquisition and possession of the Non-Contracted Interests pursuant to the CPO;
- the Tenant shall thereafter give notice to the Council in writing in line with the Programme (as it may be revised from time to time) referred to in subparagraph (d) each time it wishes the Council to proceed to make a general vesting declaration(s) and/or issue notices to treat with notice(s) of entry and, if so, the Non-Contracted Interests to be included in and, as appropriate, the dates for making general vesting declarations or issuing a notice(s) to treat with a notice(s) of entry and the Tenant shall determine in each case whether a general vesting declaration or a notice to treat shall be used in respect of any Non-Contracted Interest (where either may be used);
- (f) the Council shall on receipt of a notice or notices from the Tenant in accordance with sub-paragraph (f) make a general vesting declaration or declarations or issue notices to treat or notices of entry, in respect of such Non-Contracted Interests and for possession of them at such times as the Tenant shall from time to time specify in accordance with the Programme;
- if the Council either makes a general vesting declaration or serves any notice to treat otherwise than following receipt of a notice or notices from the Tenant in accordance with sub-paragraph (f), the Council shall not be entitled to any payment or indemnity pursuant to the provisions of sub-paragraph 7 (CPO Indemnity) of this Schedule 13 (CPO Provisions) in respect of such Non-Contracted Interests as may be affected by any such general vesting declaration or notice to treat, unless at the request of the Tenant such Non-Contracted Interests is subsequently transferred to the Tenant;
- (h) on the vesting date or the expiry of the notice of entry the Council will take possession of the Non-Contracted Interests or the relevant interests or part of it and, if it is prevented from doing so, shall take all reasonable steps to secure possession through the Sheriff's Warrant procedure or any other method which may be lawful and appropriate. The Council will keep the Tenant promptly informed of its progress in obtaining and securing vacant possession; and
- where possession has been obtained through service of a notice(s) to treat with a notice(s) of entry and following agreement or determination by the Upper Tribunal (Lands Chamber) of compensation, the Council will take such steps as are necessary, including if required the making of a deed poll to secure the transfer of the relevant property to the Council.

# 8.2 Registration at Land Registry

If the Council acquires Non-Contracted Interests which require registration at the Land Registry the Council will prepare the necessary applications for use by the Council and the registration and all other fees (including stamp duty land tax) will be CPO Costs.

## 9. Upper Tribunal (Lands Chamber)

# 9.1 Compensation Not Agreed

If the Tenant or the Council is unable to agree the amount of any compensation payable to any Third Parties the following provisions of this paragraph 9 (*Upper Tribunal (Lands Chamber*)) of this **Schedule 13** (*CPO Provisions*) shall apply.

#### 9.2 Referral to Land's Tribunal

The Council shall at the request of the Tenant:

- (a) refer the matter to the Upper Tribunal (Lands Chamber); and
- (b) liaise and co-operate with the Tenant in relation to the reference and provide it with copies of all material correspondence, papers and documents as it shall reasonably require.

# 9.3 Conduct of Reference to Upper Tribunal (Lands Chamber)

In relation to any matter referred to the Upper Tribunal (Lands Chamber) the Council shall:

- (a) have conduct of the reference (unless both parties agree that the Tenant shall have conduct) and shall keep the Tenant informed of the progress of the reference;
- (b) agree with the Tenant (such approval not to be unreasonably withheld) the appointment of Counsel and the expert witnesses to represent the Council;
- (c) agree with the Tenant (such approval not to be unreasonably withheld) the amount of any sealed offer to be made; and
- (d) use all reasonable endeavours to prepare for the hearing of the reference in consultation and co-operation with the Tenant.

#### 9.4 Consultation with Tenant

The Council shall liaise with and have due regard (without being bound) to the reasonable views of the Tenant in connection with the preparation for the hearing of the reference and in particular shall:

- (a) consult the Tenant as to the content and nature of all evidence to be submitted to the Upper Tribunal (Lands Chamber) including all applications which may be made in connection with the reference and as to the overall strategy in relation to the conduct of the reference; and
- (b) invite the Tenant to attend consultations with Counsel and/or provide them with all written opinions of Counsel instructed by the Council which are relevant to the reference.

## 9.5 Consideration of Appeal

The Council shall liaise with and have due regard to (without being bound) the reasonable views of the Tenant in relation to any appeal against the decision of the Upper Tribunal (Lands Chamber) in such matters provided that the Council shall first

investigate the merits of such appeal as herein mentioned and shall (having regard to any relevant time limit) at the Tenant's expense instruct Counsel by way of instructions, approved by the Tenant (such approval not to be unreasonably withheld) for an opinion on the merits of the appeal and if Counsel advises that there is a greater than 50% chance of a successful outcome to such appeal to launch such appeal as Counsel shall so advise and thereafter:

- (a) supply copies of all relevant correspondence and other documents pertaining to the appeal to the Tenant;
- use all reasonable and commercially prudent endeavours to prosecute the appeal;
- (c) liaise with and have due regard to (but without being bound by) the reasonable views of the Tenant as to the manner of prosecution of the appeal; and
- (d) keep the Tenant apprised of the progress and result of the appeal.

# 9.6 Maximum Payment by Council

The Council shall not without the agreement of the Tenant (such approval not to be unreasonably withheld) make any payment of compensation greater than the amount to which Third Parties are entitled (as may be agreed with the Third Parties or determined by the Upper Tribunal (Lands Chamber)).

# 10. Uncompleted Interests

The provisions of this **Schedule 13** (CPO Provisions) shall apply mutatis mutandis in respect of any Uncompleted Interest.

### Part 2. CPO Costs

- 1. All costs, fees and expenses relating to any required appropriation of land (currently owned by the Council) for planning purposes.
- All costs, fees and expenses relating to any negotiation with a third party to acquire Non-Contracted Interests by private treaty.
- All costs, fees and expenses relating to any public inquiry, including those of Counsel, other external consultants and expert witnesses.
- Costs of the inspector appointed by the Secretary of State to conduct a public inquiry.
- 5. The Council's legal and valuation costs, fees and expenses in connection with the preparation and procedural requirements of the CPO including:
  - 5.1 the obtaining of the necessary resolution of the Council to make the CPO;
  - 5.2 investigations and enquiries as to the current ownerships of Third Party Interests and the beneficiaries of any rights over them which may be required during the CPO programme;

- 5.3 the preparation of notices of the making and (if relevant) confirmation of the CPO and service of those notices on all relevant owners and third parties entitled to receive those notices;
- 5.4 preparation and publication of appropriate notices in the press as required by law, both before and after the confirmation (if any) of the CPO; and
- 5.5 submission of the CPO to the Secretary of State.
- 6. Any compensation payments arising out of the making of a general vesting declaration or serving notices to treat with notices of entry in accordance with the provisions of this Schedule or any preparatory steps prior to the making of any such general vesting declaration.
- 7. Any costs, fees or expenses which the Council is obliged to pay to any party in the course of, or as a result of, any proceedings or challenge relating to the CPO and its implementation, including any costs, fees or expenses awarded by the High Court in any action for such proceedings. Where such sums are awarded by the court or any tribunal they shall be deemed to be reasonable and proper.
- 8. Compensation for the acquisition of a Non-Contracted Interests, including the value of the land or rights, severance, injurious affection, disturbance, statutory loss payments and other matters not directly based on the value of land.
- 9. Any advance payments made by the Council pursuant to the Land Compensation Act 1973 in respect of any interests acquired pursuant to the CPO (whether compulsorily or not).
- 10. All statutory loss payments whether or not payable to the vendor of land or rights and any costs incurred as a result of complying with the Council's duties pursuant to sections 39 to 43 inclusive of the Land Compensation Act 1973.
- 11. Disturbance payments made pursuant to section 37 of the Land Compensation Act 1973 and costs incurred pursuant to the provision of accommodation works and any sum payable by way of compensation to any owner whether under section 10 Compulsory Purchase Act 1965 or part I or II of the Land Compensation Act 1973 or otherwise.
- 12. Compensation pursuant to section 20 of the Compulsory Purchase Act 1965.
- 13. Any compensation payable pursuant to section 236 and/or 237 and/or 250 of the Planning Act.
- 14. Stamp duty land tax and land registry fees arising out of the acquisition by the Council of any interests and the vesting of such interests in the Council or the Tenant.
- 15. Any costs incurred by the Council, including the payment of costs of any other party, as a result of taking or defending any action in any court arising out of the CPO or the proceedings relating to it, subject to the same having been approved by the Tenant, which approval is not to be unreasonably withheld or delayed.
- 16. Any costs incurred by the Council as a result of taking or defending any action before the Upper Tribunal (Lands Chamber) arising out of the CPO, including any costs awarded to any other party by the Upper Tribunal (Lands Chamber) which costs shall be deemed to be reasonable and proper.
- 17. Any legal, valuation and other expenses which the Council incurs or is required to pay to any party in connection with the acquisition of a Non-Contracted Interests or with any claim

- referred to in paragraph 4 to paragraph 13 including the negotiation of compensation, transfer or conveyance of title, or in connection with the settling of objections raised against the CPO.
- All costs incurred by the Council, including the payment of costs of any other party, as a result of taking or defending any action in any court arising out of a claim that the Council acted unlawfully in a manner which is incompatible with a Convention right (as defined by section 6(1) of the Human Rights Act 1998) in respect of any proceedings relating to the CPO and its implementation, including any costs, fees or expenses awarded by any court.
- 19. Any compensation payable pursuant to section 8 of the Human Rights Act 1998.
- 20. Any compensation which may be payable as a result of any Road Closure Order.
- 21. Any statutory interest payable in connection with any sums referred to in this Part 2 (CPO Costs) of Schedule 13 (CPO Provisions).
- The fees of the Selected Agent and the Land Referencing Agents.
- 23. The Council's legal and surveyors costs incurred in the negotiation for, whether or not completion occurs, and the acquisition of any Third Party Interests.
- 24. The costs referred to in clause Part 1.7.8(f) of Schedule 13 (CPO Provisions).
- 25. All costs, fees and expenses relating to a claim made under section 10 of the Compulsory Purchase Act 1965.
- 26. Any irrecoverable VAT or other tax or duty which the Council shall be required to pay in connection with any of the above sums.
- 27. Any other costs, fees and expenses stated in this Agreement to be CPO Costs.
- Any other costs, fees and expenses which the Council incurs or is obliged to pay in respect of and/or relating to the CPO which are agreed between the Council and the Tenant (both acting reasonably).

# Part 3. Special Conditions

# Transfer of Relevant Third Party Interests comprising Egley Road Freehold Residential Element

- 1. Agreement for sale and purchase
  - The Council will sell, and the Tenant will buy, the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element with full vacant possession (save to the extent that the Council has been unable to procure vacant possession despite using reasonable endeavours to procure the same).
  - The risk of damage to or destruction of the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element passed to the Tenant on the making of the Tenant's request pursuant to paragraph 8.2(d).
  - 1.3 The Standard Conditions are incorporated in this Part 3 (*Transfer of Third Party Interests*) but, in the case of conflict between the terms of this Part 3 (*Transfer of Third Party Interests*) and the Standard Conditions, the terms of this Agreement are to prevail.

#### 2. Price

The price for the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element is the price calculated pursuant to clause 8.2 (Apportionment of Ground Lease Consideration).

#### 3. Deposit

No deposit is payable.

# 4. Completion arrangements

- 4.1 Completion is to take place on the Completion Date at the offices of the Council's Solicitors, or elsewhere as the Council may reasonably direct.
- 4.2 The Tenant is to pay the money due on Actual Completion by direct credit to a bank account of and nominated by the Council's Solicitors. The money is to be treated as paid to the Council at the time it is received by the relevant bank.
- 4.3 If the money due on Actual Completion is received after 2.00 pm, Actual Completion is to be treated for the purposes only of Standard Conditions 8.3 and 9.3 as taking place on the next working day. Standard condition 8.1.2 is varied accordingly.

#### 5. Title

- 5.1 The Council shall within 15 Working Days of a request from the Tenant pursuant to paragraph 9.2(d) deduce title to the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element such deduction of title to include:
  - (a) official copies of the items referred to in rules 134(1)(a) and (b) of the Land Registration Rules 2003 and unedited copies or abstracts of the items referred to in rule 135(1)(a) of those rules; and
  - (b) such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element as to which the register is not conclusive and of any matters excepted from the effect of registration as the Council or the owner of the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element (as the case may be) would have been entitled to if the land had not been registered; and
- 5.2 The Council sells with the same title guarantee as that given to the Council by its immediate predecessor(s) in title.
- 5.3 The Tenant may not raise any objection to or requisition on the title deduced by the Council.

# 6. Pending registration of Council's title

6.1 This paragraph 6 (*Pending registration of Council's title*) is to apply if the Tenant declines to complete the purchase of the Third Party Interests on the ground that the Council has not yet been registered as the proprietor of the Third Party Interests.

# 6.2 On the Completion Date:

- (a) the Council and the Tenant will account to each other for all monies in all respects as if completion were taking place on the Completion Date;
- (b) the Council will hold the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element on trust for the Tenant absolutely, and will, if so requested by the Tenant, execute a declaration of trust in favour of the Tenant in such form as the Tenant may reasonably and properly require;
- (c) the provisions of the Standard Conditions, as applicable to and varied by this Agreement with respect to completion of the sale and purchase, apply to the arrangements in this Part 3 (*Transfer of Third Party Interests*) (apart from the transfer of the legal estate in the Third Party Interests); but
- (d) the performance of the obligations of the Tenant in this paragraph 6 (*Pending registration of Council's title*) is to be treated as a discharge by performance of the corresponding obligations of the Tenant with respect to the completion of the purchase of the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element.
- The Council is not relieved of its obligation to procure the registration of itself as the proprietor of the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element, and then to complete the sale of, and transfer, to the Tenant of the legal estate in the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element without further payment.
- The Tenant is to remain entitled to its rights and remedies against the Council with respect to the registration of the Council as the proprietor of the Third Party Interests, which comprise the whole or any part of the Egley Road Freehold Residential Element and to the transfer of the legal estate by way of completion of the purchase of the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element.
- The Council will answer any requisition with respect to registration of itself as proprietor of the Third Party Interests which comprise the whole or any part of the Egley Road Freehold Residential Element raised by the Chief Land Registrar at the earliest opportunity and with due diligence.

#### SCHEDULE 14

#### **Ground Leases Grant Provisions**

## 1. Agreement for Lease

### 1.1 Grant of Ground Leases

The Council will grant and the Tenant will take the Ground Leases in accordance with this **Schedule 14** (*Ground Lease Grant Provisions*).

## 1.2 Final Form of Ground Leases

The final form of Ground Leases reflecting such additions and changes as one party shall (acting reasonably) propose to reflect adjustments shall be agreed between the parties prior to the Final Unconditional Date and if not agreed by the Final Unconditional Date shall be referred to an Expert for determination pursuant to clause 15 (Disputes).

### 1.3 No Deposit

No deposit is payable by the Tenant.

#### 2. Title

#### 2.1 Title

The Council will following the Final Unconditional Date deduce such title to the Residential Elements intended to be demised pursuant to the Ground Leases as it possesses and the Tenant will accept the Council's title without further enquiry or requisition (save in respect of matters arising from pre-completion searches).

### 2.2 Vacant Possession

The Ground Leases will be granted with vacant possession on the Relevant Completion Date.

# 2.3 Full Title Guarantee

The Council will grant the Ground Leases with full title guarantee but the operation of section 3(1) of the Law of Property (Miscellaneous Provisions) Act 1994 is limited by the deletion of the words 'and could not reasonably be expected to' in that subsection and will not extend as mentioned in section 3(2) of the Law or Property (Miscellaneous Provisions) Act 1994.

# 3. Matters affecting the Residential Land

- 3.1 The Residential Land is let subject to:
  - (a) the matters contained or referred to in the registers maintained by the Land Registry or the Land Charges Department (other than Charges);
  - (b) all matters discoverable by inspection of the Residential Land before today;
  - (c) all matters which the Tenant does not know about;

- (d) entries in any public register (whether made before or after today) other than in respect of Charges;
- (e) public requirements and any matters arising by virtue of any legislation;
- (f) all matters disclosed or which would be disclosed by searches or as a result of enquiries (formal or informal, and whether made in person, in writing or orally) mad by or for the Tenant or which a prudent tenant ought to make;
- (g) all overriding interests whether or not apparent on inspection or disclosed in any of the documents referred to in this **Schedule 14** (*Ground Leases Grant Provisions*);
- (h) all matters specified in this Schedule 14 (Ground Leases Grant Provisions);

#### 3.2 Tenant's Knowledge

The Tenant will be deemed to take the Ground Leases with full knowledge of the matters subject to which it is granted, and may not make any requisition or claim in respect of any of them (save in respect of matters arising from its pre-completion searches).

## 4. Completion and Consideration

## 4.1 Completion Date

Completion will take place on the Relevant Completion Date.

#### 4.2 Consideration

The Ground Lease Consideration shall be accounted for to the Council in accordance with the provisions of clause 11 (*Financial Provisions*) of this Agreement.

#### 5. Registration

The Tenant must make an application to the Land Registry as soon as practicable after Actual Completion for registration of its title to the Ground Leases.

### 6. Standard Conditions

# 6.1 Incorporation of Standard Conditions

This Schedule 14 (Ground Leases Grant Provisions) incorporates the Standard Conditions with the variations set out in paragraph 6.2. Where there is a conflict between the Standard Conditions and this Schedule 14 (Ground Leases Grant Provisions) prevails.

#### 6.2 Variation of Standard Conditions

The Standard Conditions are varied as follows:

- (a) Standard Conditions 1.3.3(b)g, 3.2.2, 3.3, 4.1.2, 4.1.3, 5, 6, 7.1, 7.2, 7.3, 7.4.2, 7.6, 7.6.2, 7.6.3, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 11.3 do not apply;
- (b) '5.30 p.m.' shall be substituted for '4.00 p.m.' in Standard Conditions 1.3.5(b) and 1.3.7;

no notice may be validly served on the Council's Solicitors unless it quotes the reference set out in the definition of the Council's Solicitors;

### SCHEDULE 15

#### Peter Jordan Shares

#### 1. Transfer of Peter Jordan Shares

The Tenant will, if required by the Council in writing prior to the Final Unconditional Date, procure that the Peter Jordan Shares are transferred direct to the Council by Peter Jordan pursuant to the Peter Jordan Agreement. For the avoidance of doubt, the Tenant will be responsible for the payment of all consideration due to Peter Jordan in respect of the sale of the Peter Jordan Shares.

#### **SCHEDULE 16**

#### Residential Unit Transfers

# 1. Background

- A. Pursuant to clause 11 (*Financial Provisions*) the Council is entitled to be granted leases of the Specified Dwellings as part of the financial arrangements between the Council and the Tenant.
- B. As a consequence of the Development not yet having been fully designed, the parties acknowledge that the provisions of this **Schedule 16** (Residential Unit Transfer) may not fully reflect the eventual actual position regarding the Residential Elements of the Development and the parties may need to rely on clause 34 (Not to Object, Cooperation, Information and Enforcement) for the purposes of ensuring that the provisions of this **Schedule 16** (Residential Unit Transfer) reflect the intentions of the parties.

### 2. Definitions

"Charges" means the charges appearing on the Charges Registers of the leasehold title numbers of the Ground Leases at the Relevant Completion Date;

"Cover Notice" the cover note issued by the National House Building Council or other new home warranty or insurance provider selected by the Tenant as appropriate confirming that the Property is covered by the relevant warranty or insurance;

"Residential Completion Date" means 10 Working Days after the Date of Practical Completion of a Specified Dwelling;

### 3. Standard Conditions

This Schedule incorporates the Standard Commercial Conditions in so far as they are not varied by or inconsistent with the provisions of this Schedule and terms used or defined in this Schedule have the same meaning when used in the Conditions.

#### 4. Agreement to sell

The Tenant will grant and the Council will accept a lease of each elected Dwelling with full vacant possession in accordance with this Schedule 16 (Residential Unit Transfer).

#### 5. Deposit

No deposit is payable.

#### 6. Title

The Council will accept the Tenant's title pursuant to the Ground Leases without further enquiry or requisition.

### 7. Standard Conditions

The Standard Commercial Property Conditions (Third Edition) shall apply to the transfer.

# 8. Matters affecting the leases

# 8.1 Matters to which the Reversionary Interests are Subject

The leases are granted subject to and where applicable with the benefit of:

- (a) the matters contained or referred to in the registers maintained by the Land Registry or the Land Charges Department (other than the charges)
- (b) all matters discoverable by inspection of the Dwellings before Today
- (c) all matters which the Tenant does not know about
- (d) entries in any public register (whether made before or after today) other than in respect of the Charges
- (e) public requirements and any matters arising by virtue of any legislation
- (f) all matters disclosed or which would be disclosed by searches or as a result of enquiries (formal or informal, and whether made in person, in writing or orally) made by or for the Council or which a prudent Council ought to make
- (g) all overriding interests whether or not approved or inspected or disclosed in any of the documents referred to in this Schedule

#### 8.2 Council's Knowledge

The Council will be deemed to take the lease of each Dwelling with full knowledge of the matters subject to which it is sold, and may not make any requisition or claim in respect of any of them

#### 9. Form of Lease

The lease to be granted to the Council of a Specified Dwelling shall be:

- (a) for a term of not less than 250 years calculated from the quarter day prior to Practical Completion of the relevant Dwelling;
- (b) subject to nominal ground rent; and
- (c) subject to paragraph 13 (*Restrictions on Use*) otherwise on materially the same terms as all other leases of Dwellings forming part of the Development, including necessary rights and appropriate service charge provisions with Services to be provided by the landlord or a Residential Management Company as the Tenant so specifies.

# 10. Completion

- (a) Completion of each lease of a Specified Dwelling will take place on the relevant Residential Completion Date and on each relevant Residential Completion Date the Tenant will deliver to the Council:
  - (i) a Cover Notice; and
  - (ii) an appropriate discharge or consent to dealing in respect of each Charge affecting the Tenant's title.
- (b) If the Council shall fail to accept the grant of any lease of a Specified Dwelling within 6 months of the Relevant Residential Completion Date the Tenant shall be

entitled to serve written notice immediately determining its obligation to grant a lease of that Specified Dwelling to the Council and for the purposes of this Agreement (including clause 12 (*Consents*) a grant of a lease of that Specified Dwelling shall be deemed to have been made and the Tenant will be free to dispose of the Specified Dwelling as it sees fit for its own account.

#### 11. Consideration

The Council will not be obliged to pay any monies on Actual Completion of each Specified Dwelling and the consideration for the grant of each lease will be the adjustment set out in clause 11 (Financial Provisions).

#### 12. Registration

The Council will as soon as possible after Actual Completion of each lease of a Specified Dwelling apply to the Land Registry to register the lease in its name.

#### 13. Restrictions on Use

For the avoidance of doubt, the leases of Dwellings may not contain a restriction on any sub-letting of the Dwelling being made to private rental tenants otherwise than on open market rents.

### 14. Council's Nominee

The Council may by notice in writing not less than 5 Working Days before a relevant Completion Date direct that the lease of one or more elected Dwelling shall be granted to such entity as the Council shall specify in writing to take the lease of the elected Dwelling(s) concerned. Where the Council specifies an entity to which a lease(s) should be granted, the Council will procure that that entity complies with any obligations in this Schedule which are placed on the Council in respect of the elected Dwelling(s) concerned.

#### SCHEDULE 17

#### Transfer of Reversionary Interests

# 1. Background to Schedule 17

- A. Following the Final Disposal Date it is intended that the Ground Leases be transferred back to the Council or a Council Nominee.
- B. Such transfers will be made subject to the various interests granted out of the Ground Leases (including each Unit Lease) all relevant contracts and other agreements relating to the Services to be provided pursuant to the Unit Leases (to the extent that those are not entered into by a Residential Management Company).
- C. Exactly what the eventual position will be as referred to in paragraph (B) above is at this stage not decided and accordingly the provisions of **Schedule 17** (*Transfer of Reversionary Interests*) anticipate and legislate for the transfer of the reversionary positions to the Unit Leases based on the position eventually arrived at.

#### 2. **Definitions**

"Arrears" means the amounts due to the Tenant from the tenants or rent, licence fees, service charges, insurance rent and all other sums of whatsoever nature due under the Unit Leases up to and including the relevant Date of Actual Completion but which have not been received by the Tenant or their agents as cleared funds before the relevant Date of Actual Completion

"Charges" means any charges appearing on the Charges Register of relevant title number of the relevant Ground Lease

"Commercial Leases" means the leases of Commercial Units (including occupational and overriding leases) to be granted by the Tenant in such from as the Council shall approve (such approval not to be unreasonably withheld or delayed) and "Commercial Lease" means any one of those leases

"Competent Authority" means any local authority or government department or any other body exercising powers under statute or by Royal Charter or any utility service or supply company

Completion Notice" means a notice by the Tenant to the Council that the last of the Unit Leases and any lease of Commercial Units and other interests the Tenant is obliged to grant has completed

"Contracts" means the contracts for the provision of services and maintenance leasing of equipment appointment of managing agents and other contracts relating to the supply of services pursuant to the service charge provisions of the Unit Leases and/or lease of the Commercial Units

"LRA 2002" means Land Registration Act 2002

"LT(C)A 1995" means Landlord and Tenant (Covenants) Act 1995

"Price" means £1 exclusive of VAT if any

"Transfer" means the transfer of the Reversionary Interests from the Tenant to the Council or the Council's Nominee in such form as shall be specified by the Tenant and approved by the Council

"Unit Leases" means the leases of houses or flats forming part of the Residential Elements to be granted by the Tenant in such form as the Council shall approve which (without limitation) shall provide for a nominal ground rent (such approval not to be unreasonably withheld or delayed) and "Unit Lease" means any one of those leases

"Utilities" electricity, gas, water, foul water and surface drainage, heating, ventilation and air conditioning, smoke and fumes, signals, electronic communications and all other utilities serving or consumed at the Building

#### 3. Standard Conditions

This Schedule incorporates the Standard Conditions in so far as they are not varied by or inconsistent with the provisions of this Schedule and terms used or defined in this Schedule have the same meaning when used in the Conditions provided that Standard Conditions 3.3, 4.1.3 and 5.2 do not apply to this Schedule and Standard Condition 4.1.2 will be satisfied on production of copies of such documents

## 4. Agreement to sell

- 4.1 The Tenant will sell and the Council will buy the Reversionary Interests for the Price in accordance with this Schedule
- 4.2 The Council may specify that the transfers and other assurances are made with the Council's Nominee

# 5. Grant of Occupation Leases

- 5.1 Subject to paragraph 5.2, the Tenant may grant Unit Leases and Commercial Leases or any other interests in land at such times to such persons and at such prices as the Tenant may think fit.
- 5.2 Save for a Permitted Commercial Lease the Tenant shall not grant any Commercial Leases in consideration of a capital payment, provided that any such leases shall in any event be in such form as the Council shall approve (such approval not to be unreasonably withheld or delayed).
- 5.3 The Tenant may with the approval of the Council (such approval not to be unreasonably withheld or delayed) enter into:
  - any agreement or deed reasonably required by any Competent Authority in connection with the Reversionary Interests or their use, servicing or development;
  - (b) any Contract reasonably required for and in connection with the use, servicing and management of the Reversionary Interests; or
  - (c) any other deed or agreement relating to the Development
- 5.4 The Council will where requested to do so by the Tenant approve any standard forms of Unit Lease and any documents pursuant to clause 5.3 (*Other Extensions*) and such approval shall not be unreasonably withheld or delayed and where approved the

Tenant shall not be obliged to seek further approval of any such document where only details of counterparties, dates and other specific terms and immaterial amendments are inserted into the final version of a document

#### 6. Title

The Council will accept the Tenant's title pursuant to the Ground Leases without further enquiry or requisition

# 7. Title guarantee

The Tenant will transfer the Building with full title guarantee but the operation of Law of Property (Miscellaneous Provisions) Act 1994, s 3(1) is limited by the deletion of the words 'and could not reasonably be expected to' in that subsection and will not extend as mentioned in LP(M)PA 1994, s 3(2)

## 8. Matters affecting the Reversionary Interests

# 8.1 Matters to which the Reversionary Interests are subject

The Reversionary Interests are sold subject to and where applicable with the benefit of:

- (a) the matters contained or referred to in the registers maintained by the Land Registry or the Land Charges Department other than the Charges
- (b) any Management Company Leases
- (c) all matters discoverable by inspection of the Reversionary Interests before today
- (d) all matters relating to the Reversionary Interests which the Tenant does not know about
- (e) entries in any public register (whether made before or after today) other than in respect of the Charges
- (f) public requirements and any matters arising by virtue of any legislation
- (g) the Unit Leases and the Commercial Leases and the rights to be excepted and reserved by the Unit Leases and the Commercial Leases
- (h) all matters disclosed or which would be disclosed by searches or as a result of enquiries (formal or informal, and whether made in person, in writing or orally) made by or for the Council or which a prudent Council ought to make
- (i) all overriding interests whether or not apparent on inspection or disclosed in any of the documents referred to in this **Schedule 14** (*Ground Leases Grant Provisions*);
- (i) all Contracts
- (k) all other agreements and deeds completed by the Tenant in relation to the Reversionary Interests whether entered into in accordance with paragraph 5 of this **Schedule 17** (*Transfer of Reversionary Interests*) or otherwise (save those relating to the procurement of the work relating to the Development)

### 8.2 Council's Knowledge

The Council will be deemed to take the Reversionary Interests with full knowledge of the matters subject to which it is sold, and may not make any requisition or claim in respect of any of them

#### 9. The Transfer

#### 9.1 Transfer

The Tenant will not be required to transfer the Reversionary Interests to Unit Leases and Commercial Units respectively otherwise than as a whole and to the Council or a Council Nominee at the Price

# 9.2 Engrossments

The Transfer will be engrossed by the Tenant's Solicitor

# 9.3 Registration of Transfer

The Council or the Council's Nominee must apply to the Land Registry as soon as reasonably practicable following Actual Completion for registration of the Transfer and will pursue its application expeditiously and will within 5 Working Days after completion of that registration produce to the Council's Solicitors official copies of the entries and title plan at the Land Registry showing the Council or the Council's Nominee as the registered proprietor of the Reversionary Interests

## 10. Completion

## 10.1 Completion Notice

Following completion of the last of the Unit Leases of the Commercial Units and the grant of any other interests the Tenant shall give to the Council the Completion Notice and deliver to the Council for execution the Transfer. Completion of the sale and purchase shall take place on the Relevant Completion Date

### 10.2 Completion Documents

On Actual Completion the Tenant shall deliver to the Council:

- (a) the original copy of any Health and Safety File
- (b) a copy of the as-built plans for the Reversionary Interests
- (c) copies of all plans showing the location of service media in an around the Reversionary Interests
- (d) all maintenance and servicing manuals and instructions and any warranties or guarantees relating to plant and equipment at the Reversionary Interests
- (e) any cover note for the Buildings relating to the common parts as defined in the Unit Leases issued by the National House Building Council or other construction defects provider

#### 11. Possession

The Reversionary Interests are sold subject to:

- 11.1 the Unit Leases, the Commercial Leases and all other interests granted, and
- 11.2 the presence of any third party chattels

### 12. Arrears and service charge expenditure

# 12.1 Payment of Arrears

On Actual Completion:

- (a) the Tenant will provide the Council with full details of the Arrears
- (b) the Council will pay to the Tenant all Arrears up to and including that date, and
- (c) the Tenant will give notice in writing to the tenants under the Unit Leases to pay the Arrears to the Council
- (d) to the extent that the Tenant is responsible for the service charge the Tenant will produce a final account showing all of the expenditure actually incurred by or on behalf of the Tenant and which is chargeable as a service charge and insurance or similar charge under the Unit Leases during the current service charge year and all of the all sums received by the Tenant by way of service charge and insurance or similar payments under all of the Unit Leases up to and including Actual Completion. If the final account in this clause:
  - (i) shows that the expenditure exceeds the service charge and insurance rent contributions received by the Tenant from the tenants in the current service charge year the Council will pay to the Tenant the amount of all that shortfall
  - (ii) shows that the service charge and insurance rent contributions received by the Tenant from the tenants exceeds the expenditure in the current service charge year the Tenant will pay to the Council the amount of such excess

#### 12.2 Assistance

The Tenant will if requested assist and if necessary join in any claim, action or proceedings instituted by the Council for recovery of the Arrears subject to the Council indemnifying the Tenant against all liability incurred or suffered by the Tenant

#### 13. Contracts

- 13.1 The Tenant shall assign or novate the Contracts to the Council on Actual Completion
- 13.2 In respect of any Contract which has not been novated or assigned to the Council at Actual Completion, the Tenant shall be entitled in its discretion to cancel these, in which event the Council shall make its own arrangements for such matters

# 14. State and condition of the Reversionary Interests

The Tenant gives no warranty or representations as to the state and condition of the Reversionary Interests other than those provided for in this Schedule

### 15. Release of Tenant under LT(C)A 1995

#### 15.1 Tenant's Release

The Tenant may within the period of 12 weeks beginning on Actual Completion serve notice on each of the tenants under the Unit Leases in accordance with the LT(C)A 1995, s 8(1) requesting complete release of the Tenant from future liability under the landlord contained in the Unit Leases and if any of the tenants under the Unit Leases object and persist in objecting to the release of the Tenant the Tenant may apply to the court for a declaration that the release requested by the Tenant is reasonable

#### 15.2 Information

The Council undertakes to supply promptly at the Tenant's cost such information as the Tenant may reasonably require to satisfy any of the tenants under the Unit Leases or the court that the release requested is reasonable and to act in good faith in respect of the provisions of this paragraph 15

# 15,3 Indemnity

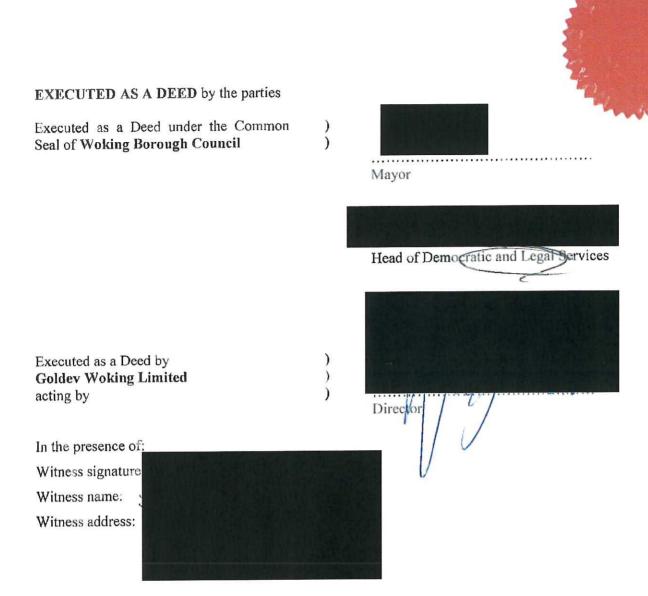
If at Actual Completion the Tenant has not received consent (whether express or implied) for its release from all the landlord covenants contained in the Unit Leases or any other lease then the transfer by the Tenant to the Council (or a Council Nominee) pursuant to this Agreement shall contain the following provisions:

- (a) with the object of affording to the Tenant a full and sufficient indemnity but not further or otherwise a covenant on the part of the Council with the Tenant that until such time (if ever) that the Tenant is fully released from the landlord covenants of the Unit Leases the Council and its successors in title will observe and perform all the landlord covenants contained in, or referred to in, or implied under, the Unit Leases and indemnify the Tenant against all costs, claims, demands and proceedings in connection with any breach non-observance or non-performance of such covenants
- a covenant on the part of the Council with the Tenant that before completion
  of any transfer by the Council or its successors in title (the "Intending
  Transferee")
  - (i) the Intending Transferee will notify the Tenant so that the Tenant has an opportunity to serve further notices under the LT(C)A 1995, s 8(1), and
  - (ii) the Intending Transferee will obtain a covenant from its transferee with the Tenant in the terms of this clause (including this sub-clause), and
- (c) an application to the Registrar to enter in the Proprietorship Register of the title to the Building a restriction in standard form L in Schedule 4 of the Land Registration Rules 2003, namely:

'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of [insert number of clause in transfer or assignment which reproduces paragraph 17.3] have been complied with']

# 16. Council Nominee

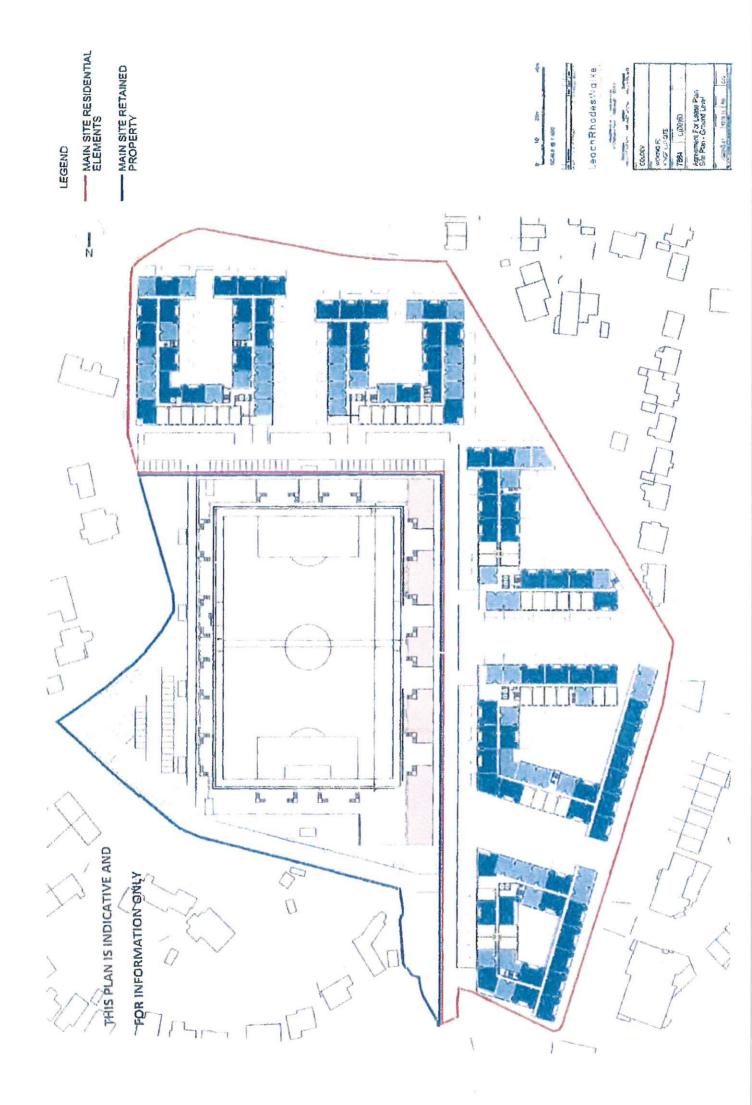
Where the Council specifies in writing prior to the Relevant Completion Date that the Reversionary Interests are to be transferred to a Council Nominee the Council will procure that the Council Nominee complies with any obligations in this **Schedule 17** (*Transfer of Reversionary Interests*) which are placed on the Council



# APPENDIX 1

Main Site Plan



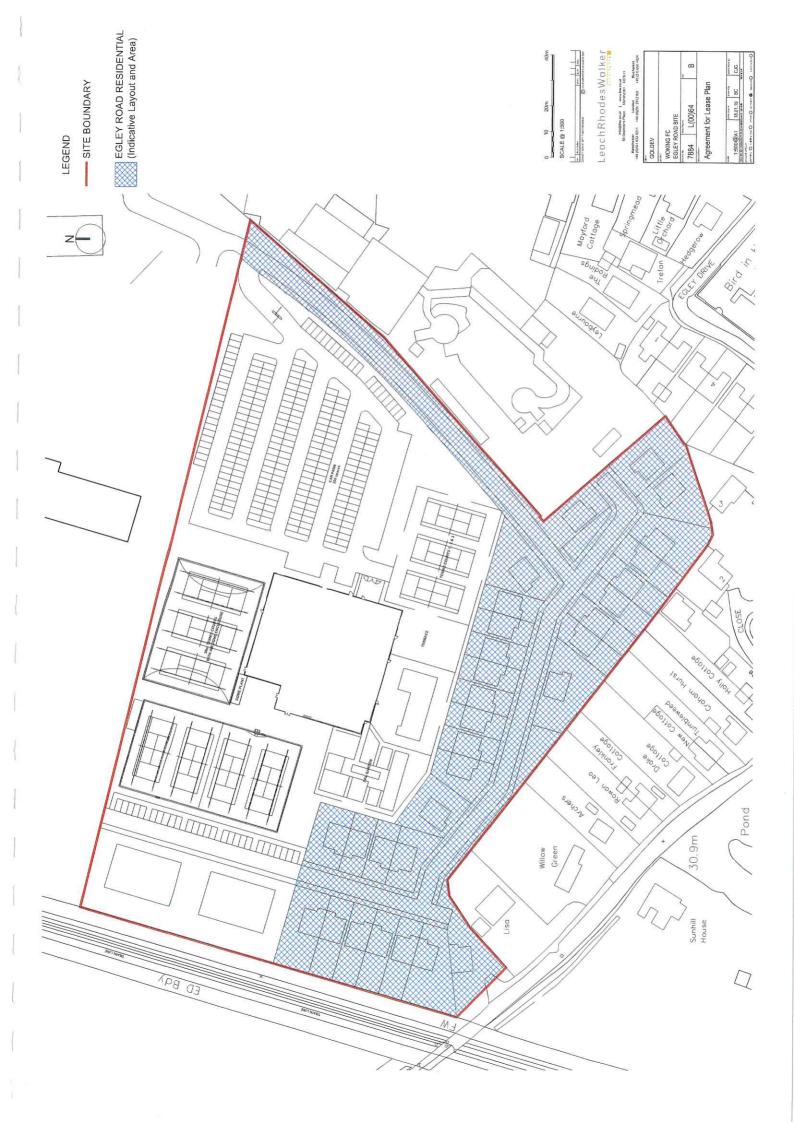




#### **APPENDIX 2**

#### Egley Road Site Plan



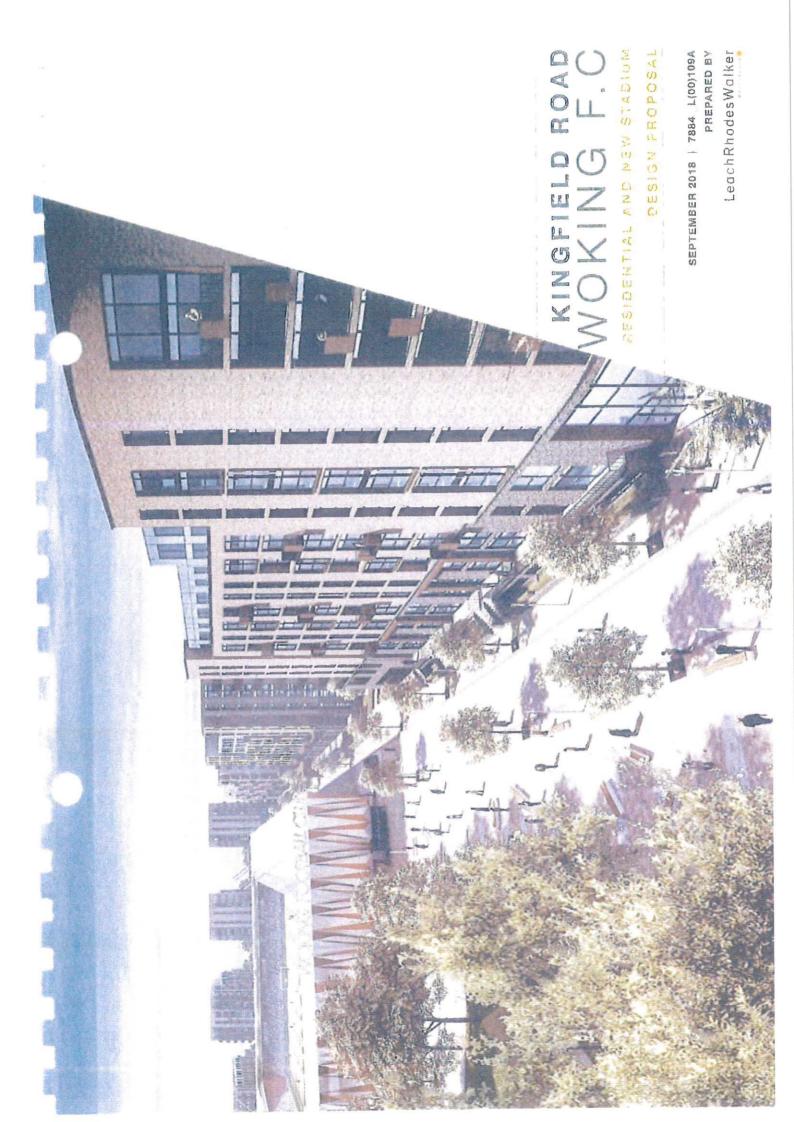


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#### APPENDIX 3

#### Concept Design Document



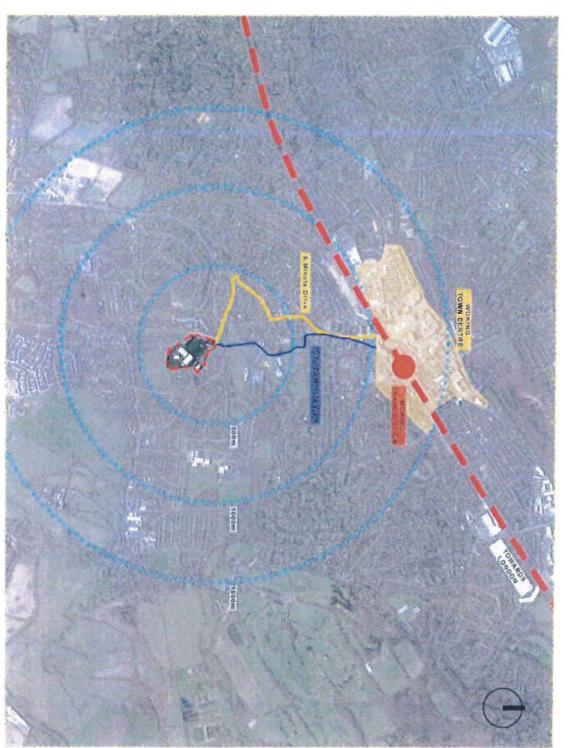


Site Analysis.



The site is located just 1000m South of Woking Town Centre, only a 6-minute drive away.

It benefits from a high degree of connectivity, being only 25 minutes away from London Waterloo Station by train, 30 minutes away from London Heathrow Airport by car, and is easily accessed from the M3 and M25 motorways.

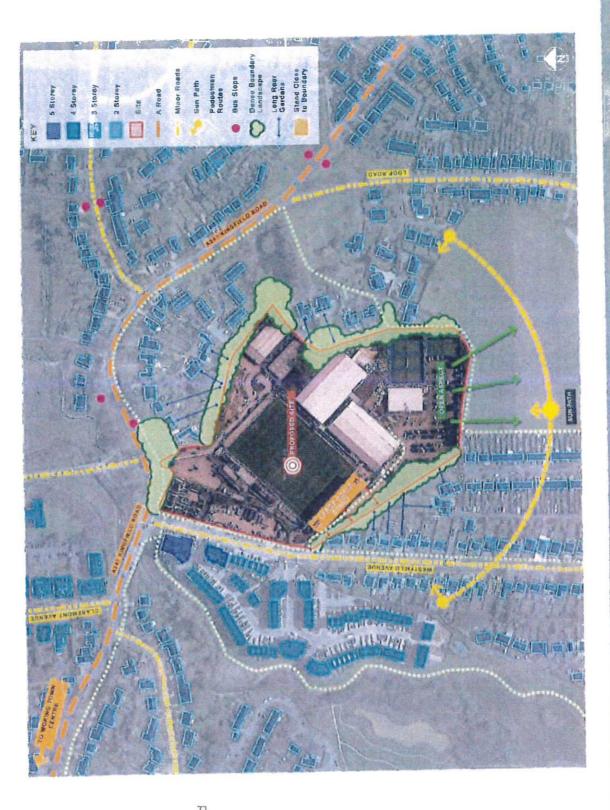


Existing Site Conditions

### Site Analysis - Site Location

#### Key Characteristics

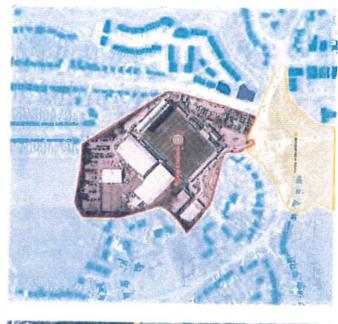
- Large site occupied by football ground and collection of large buildings
- Dense boundary
  landscape to existing
  residential and Kingfield
  Road
- Long rear gardens to existing residential
- Large scale stand in close proximity to boundary
- Open aspect to the South



Existing Site Conditions

### Site Analysis - Site Boundary - North

#### 1. Kingfield Road









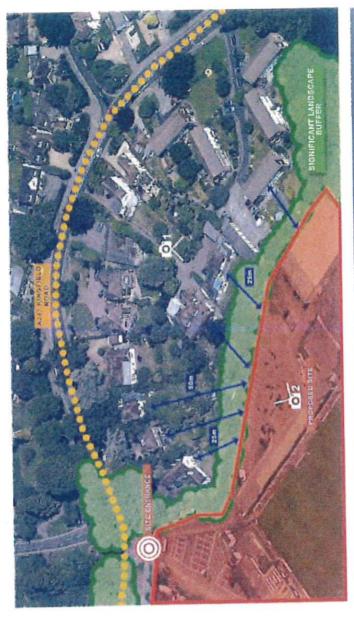
- Dense landscape and trees
- Parkland beyond
- Northern boundary No neighbouring properties opposite the
- mature trees Site entrance is screened by significant

# Site Analysis - Site Boundary - North Rear Gardens

2. Rear Gardens (North)



- Detached residential homes front Kingfield Road
- Significant front and rear gardens
- 25m to 50m rear gardens
- Significant landscape boundary to site perimeter
- New development will be set within the site



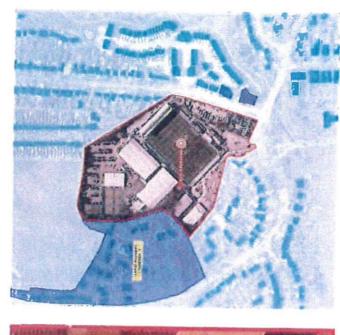


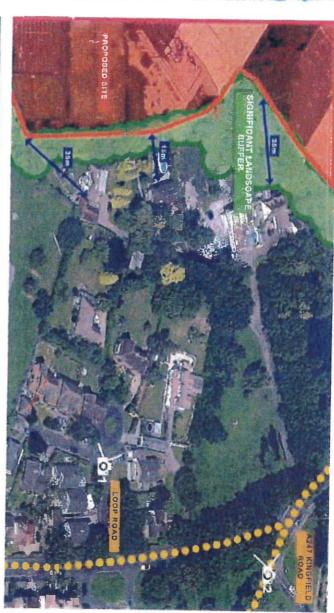




# Site Analysis - Site Boundary - East Rear Gardens

#### Housing / Gardens (East)





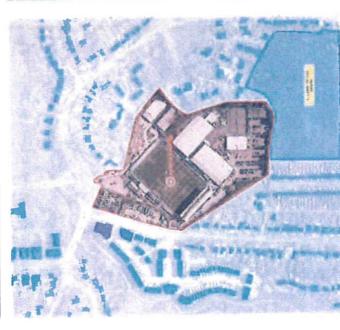
- Substantial Properties
- Set within large grounds
- Houses are set a significant distance from the site boundary.
- Boundary has major tree planting
- Large distances from properties to site boundary





# Site Analysis - Site Boundary - Southern Open Aspect

4. Land to the South













### Site Analysis - Site Boundary Western Properties not on roads

5. Rear Gardens (West)



- Significant landscape to the boundary
- Gardens increase in depth as you move to the South
- Predominantly bungalows that front Westfield Avenue
- Existing stand sits very close to the boundary
- Existing stand is over 4 storeys tall
- Existing stand has large blank face facing the rear gardens
- Any new buildings will seem tall against the Bungalows



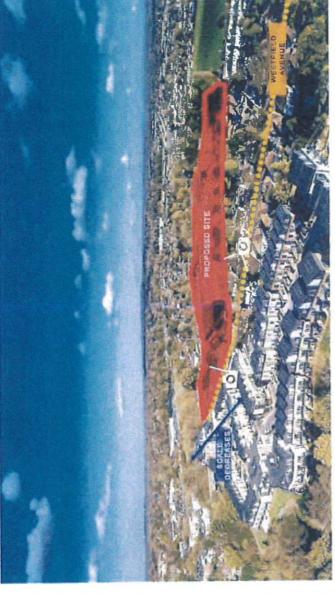




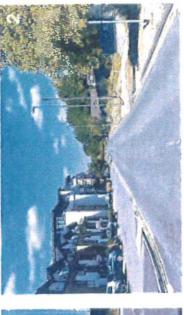
# Site Analysis - Site Boundary - West to Westfield Avenue

6. Westfield Avenue





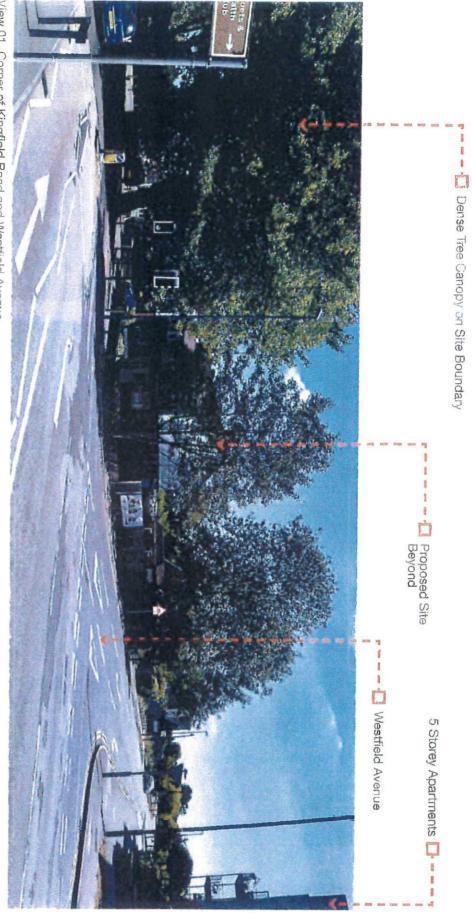




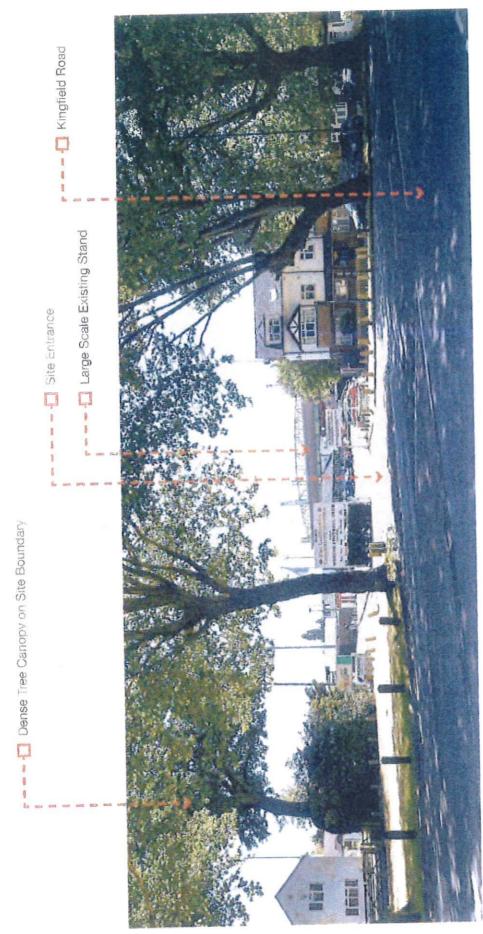
Contemporay Modern Urban Development

5 Storeys, droping to 4 Storeys, to 3 Storeys on very generous street widths

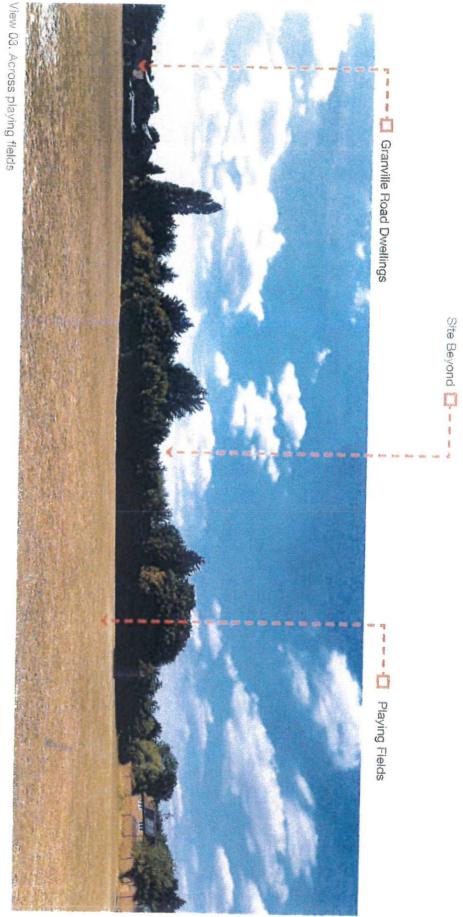




View 01. Corner of Kingfield Road and Westfield Avenue



View 02. Site Entrance

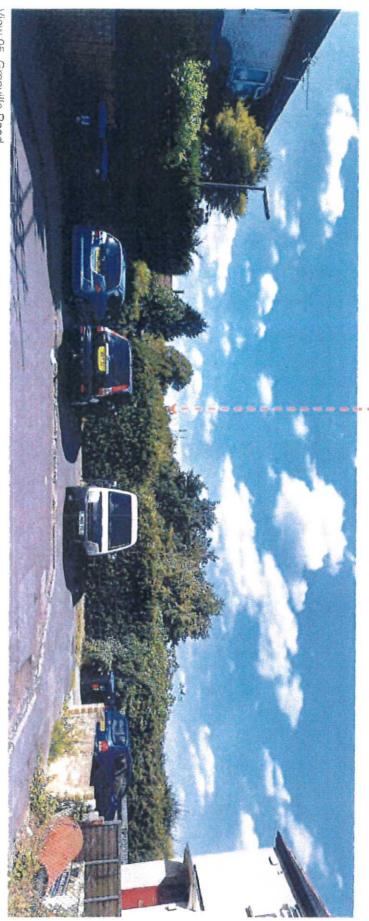




View 04. Rear of Granville Road dwellings overlooking the playingfields



Significant Scale Stand 🗀 ~



View 05. Granville Road

Significant scale windowless is a stand aleady on site

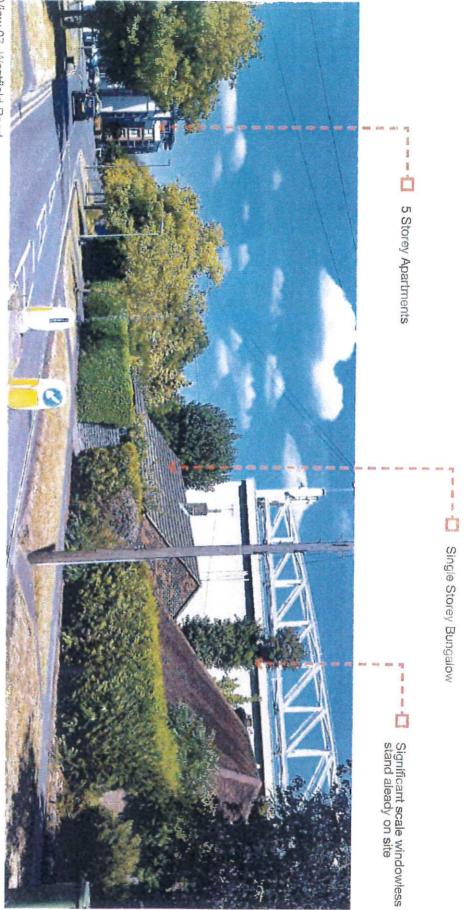
Single storey bungalows

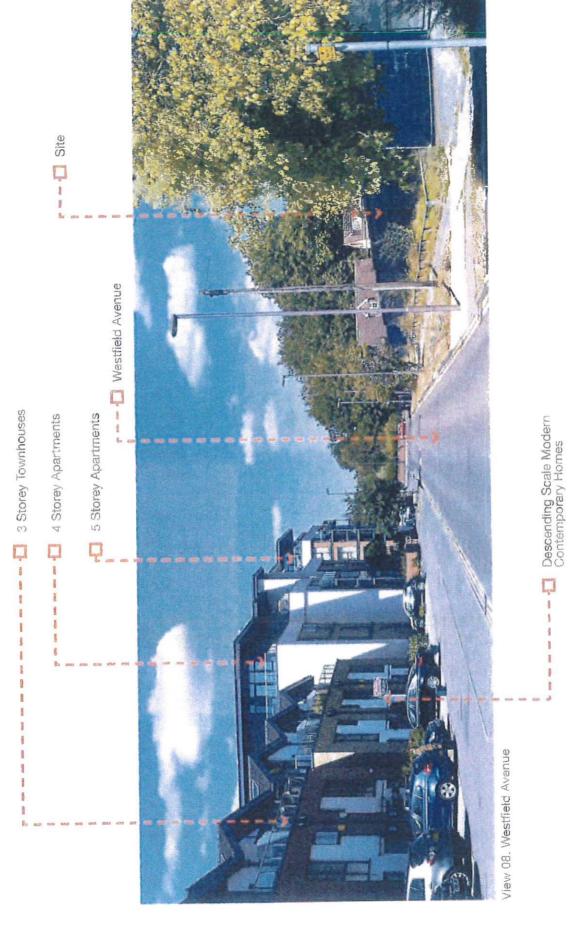
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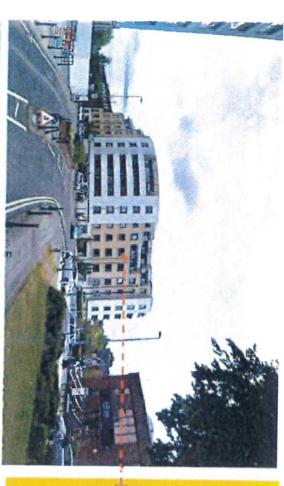
5 Storey Apartments



View 06. Westfield Road









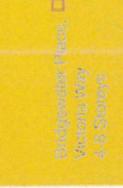












**Concepts**.

### Proposed Design - Introduction

Development consists of following key strategies:

- Residential and New Football stadium separated into Sistinct deliverable blocks
- The new football Stadium is moved to the East
- This creates an opportunity for a GeW Central average connecting to Kingfield Road.
- New stadium fronts 2 existing site boundaries
- The stadium is lower on these 2 sides where it adjoins existing residential
- Residential is in two distinct areas
- New residential Comments to exact the residential areas
- Residential fronts EXISTING highways and open space to the South minimising impact on other surrounding residential





## Proposed Design - Introduction (Continued)

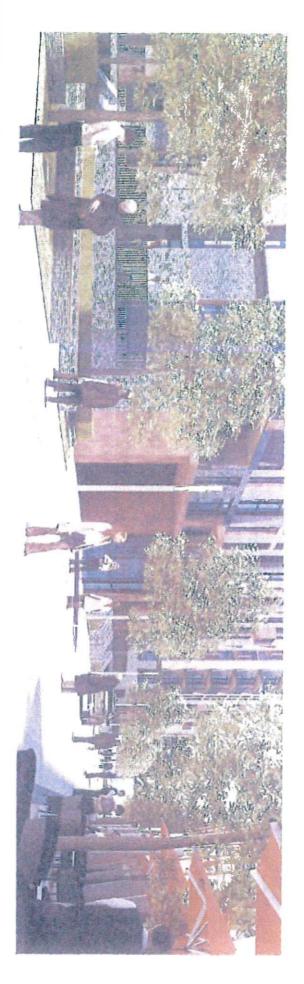
- New roads integrate the scheme into the existing context
- Introduction of diverse mix of units Studios, One-bedroom and Two-bedroom Apartments, and Two-bedroom Duplexes and townhouses
- New residential units front streets with active rantage and side cars below buildings
- N New residential units providing a vibrant character to the streets and allow passive surveillance

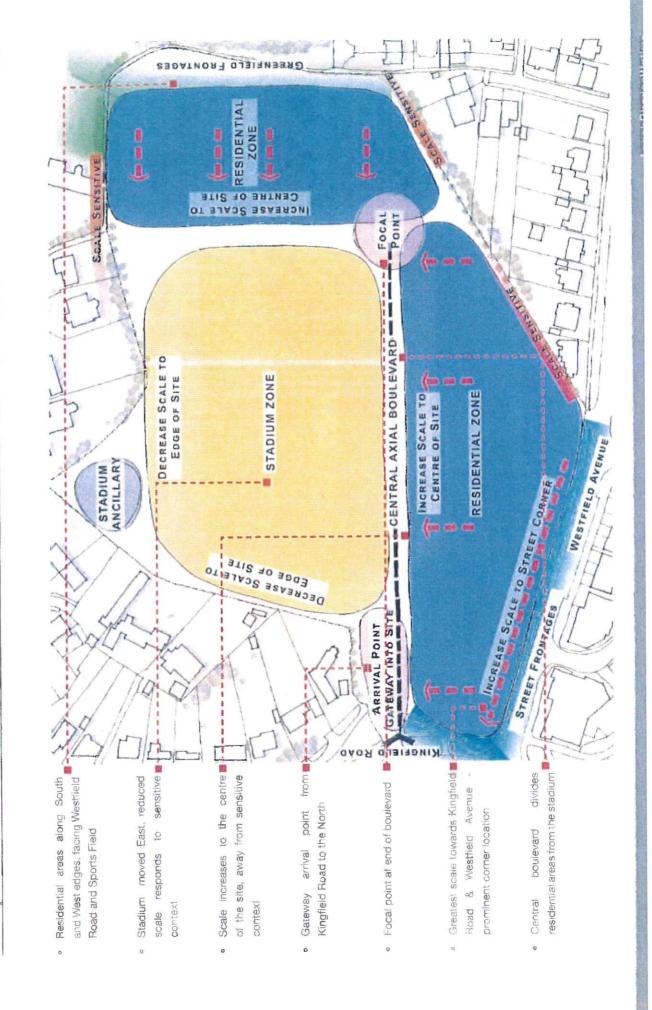
Parking has been integrated within the residential blocks, in a half-in half-out podium, with amenity space above

Site allows for phased delivery

6

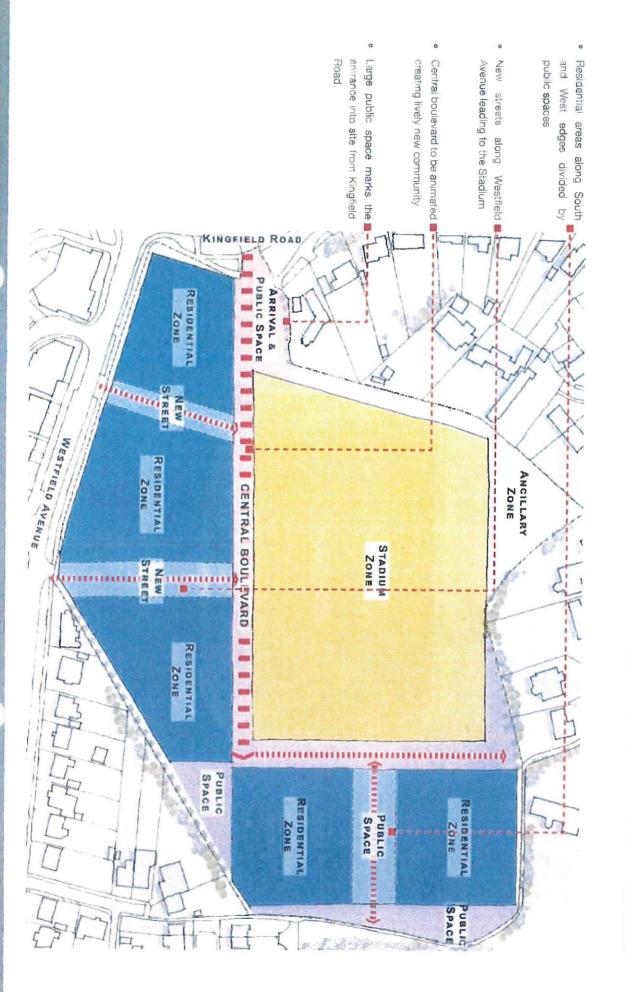
- Ch Scale responds to surrounding scale
- Maximised high quality public realm and green space within the site and on new roofs

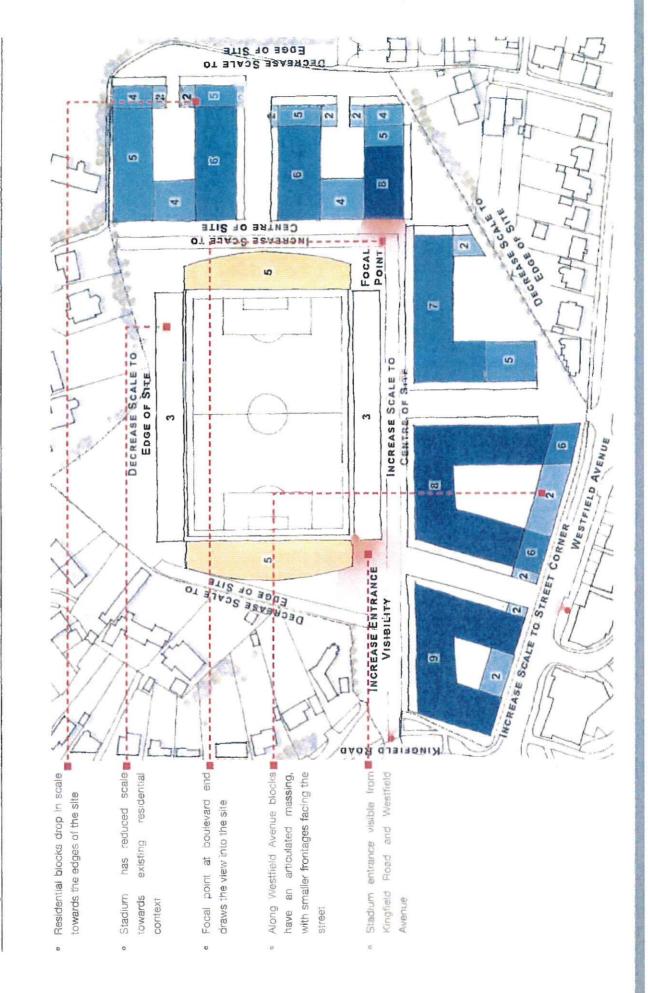


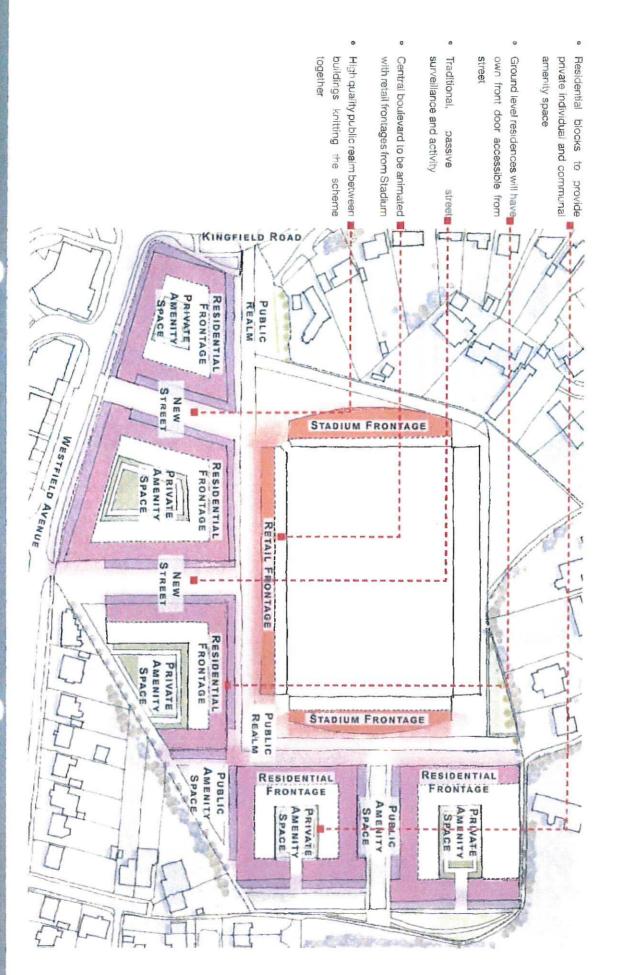


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#### Proposed Design - Concept



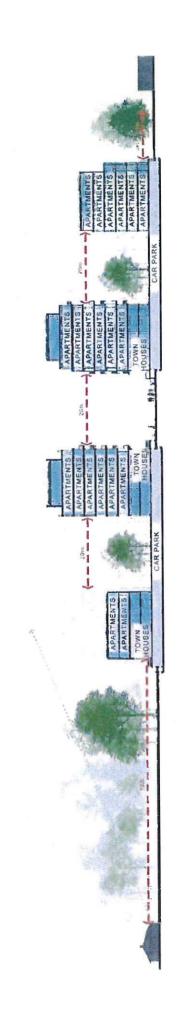




- Base level units provide family housing, have own front entrance from the new streets, animating the frontages
- Private communal amenity space provided in the courtyards between blocks
- Roofs to be landscaped and accessible to residents
- between residential blocks
- Parking provided underneath the blocks, screened away
   Block orientation maximises natural light into residences from view
- Distances between blocks at min. 20 meters
- High quality public realm and green landscape provided
   Blocks orientation kept N-S to minimise North facing

units

- and into courtyard spaces
- Block orientations minimises overshadowing

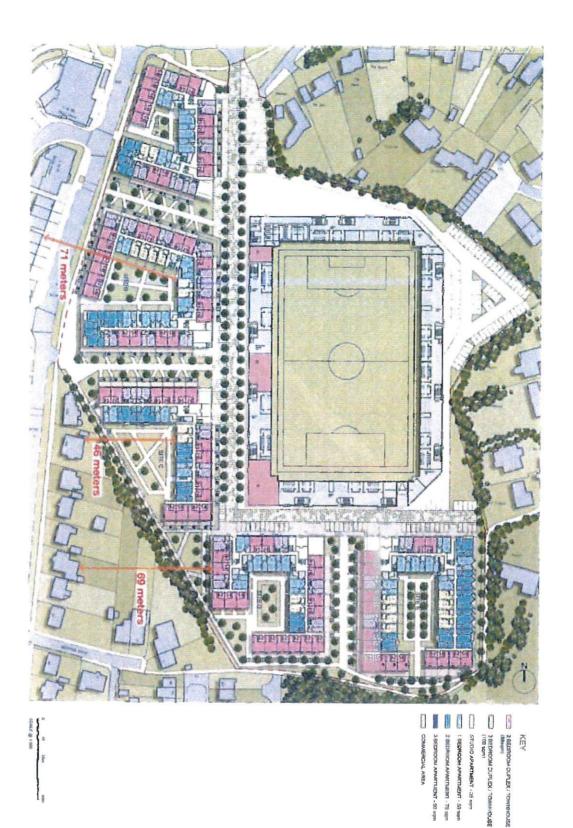


Proposals.



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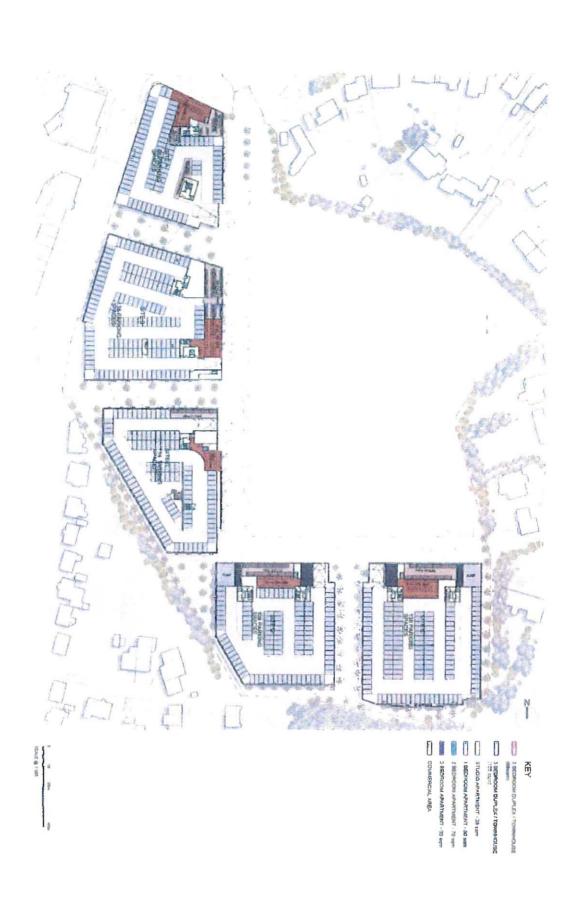
### Proposals - Ground Floor Site Plan



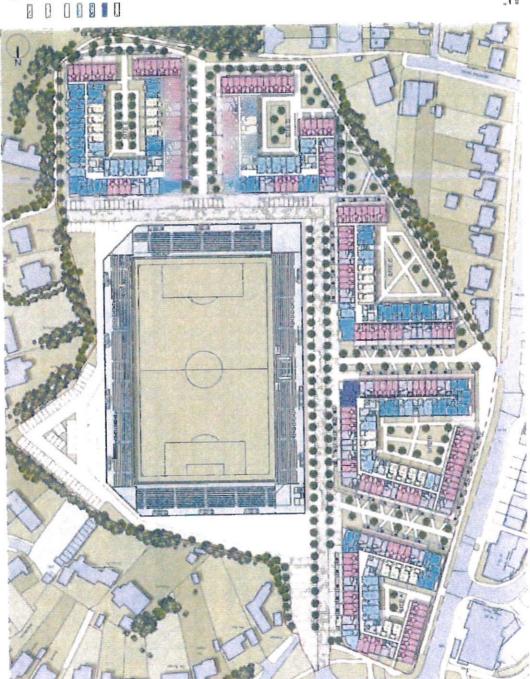
Proposals - Ground Floor Site Plan



### Proposals - Parking Provision Site Plan



### Proposals - First Floor Site Plan



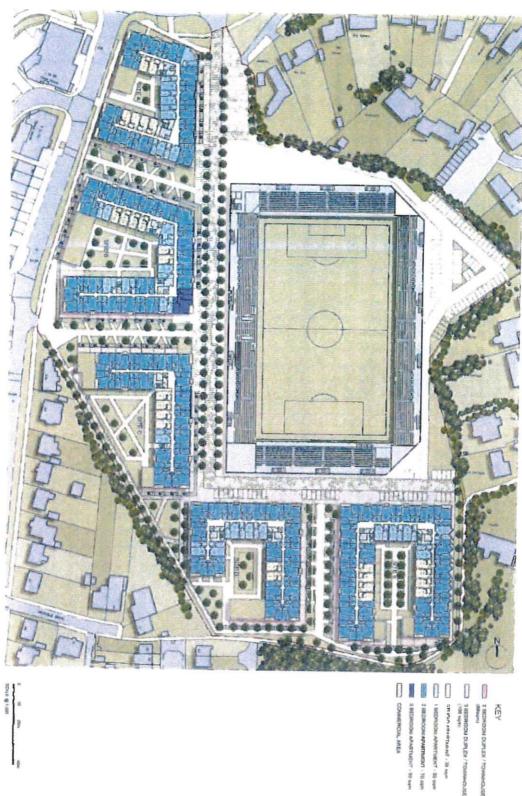
KEY
2 BEORDON DUPLEX / TOWNSHOUSE
(Matern)

S 3 BEDROOM DUPLIEX / TOWNHOUSE (1011 sem) STUDIO APARTMENT - 35 4qm

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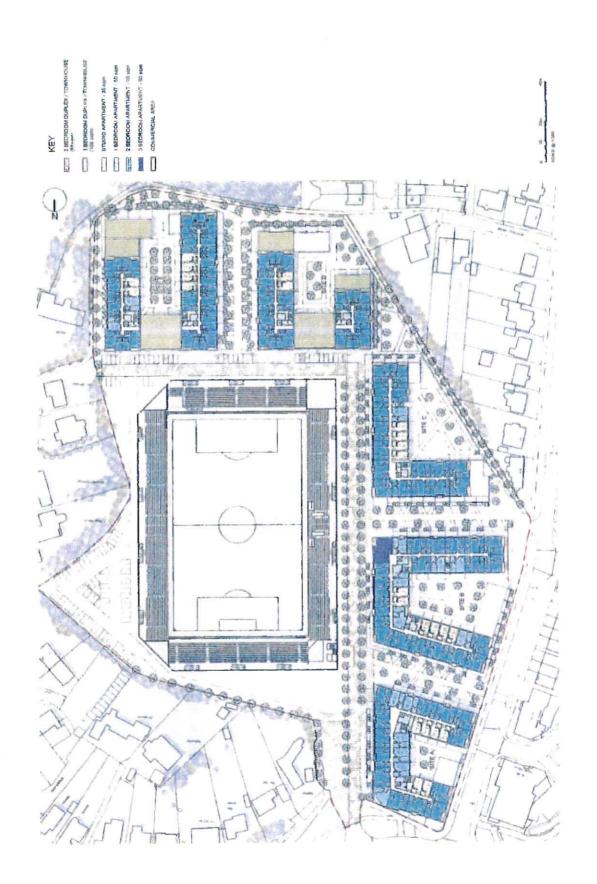
### Proposals - Second Floor Site Plan



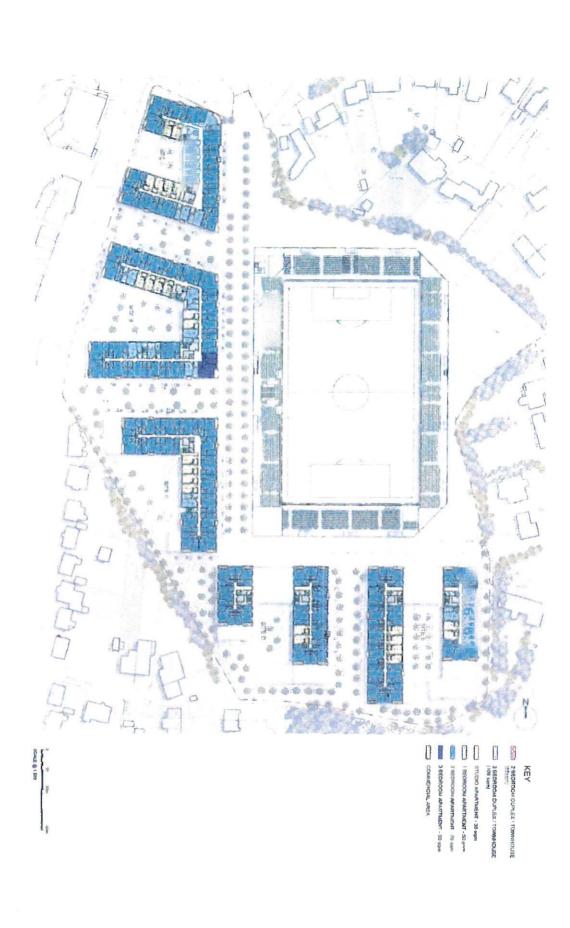
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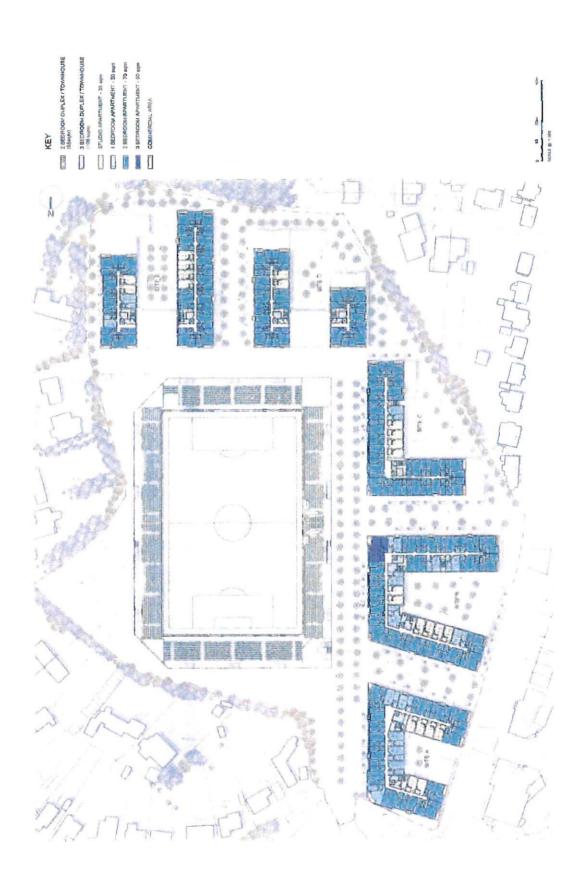
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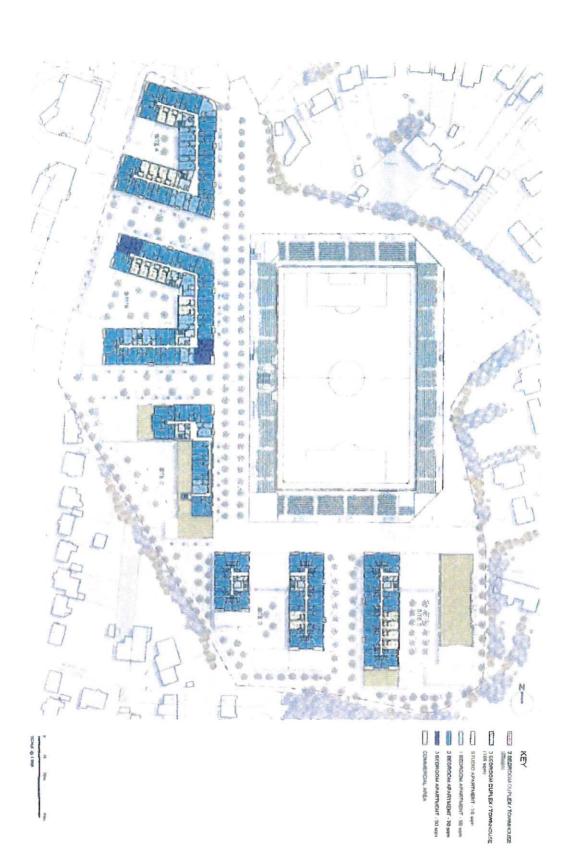
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### Proposals - Fourth Floor Site Plan

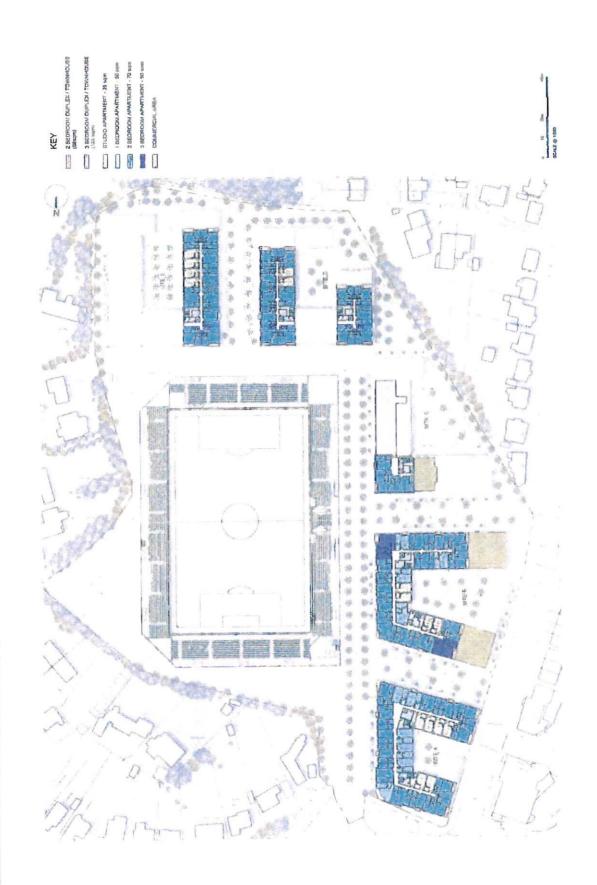




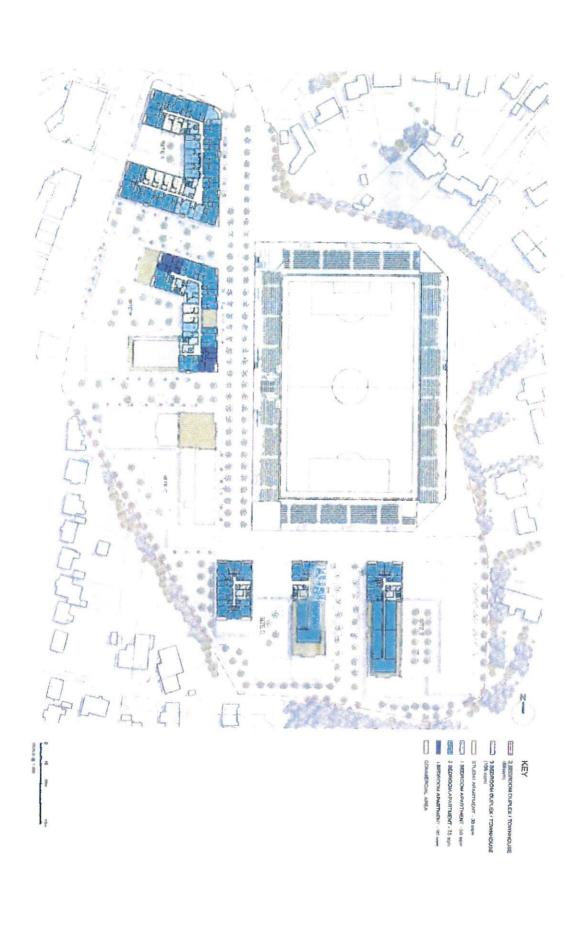


Proposals - Seventh Floor Site Plan

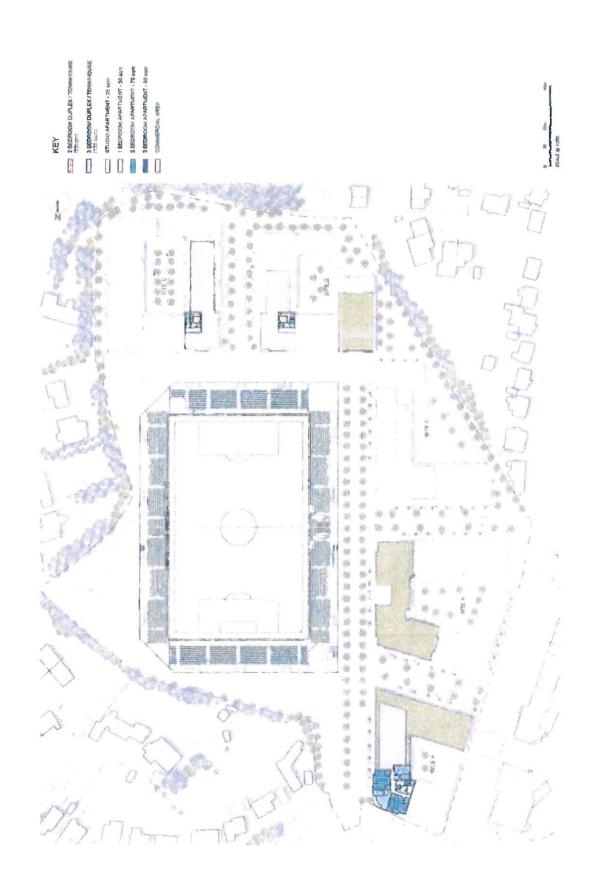
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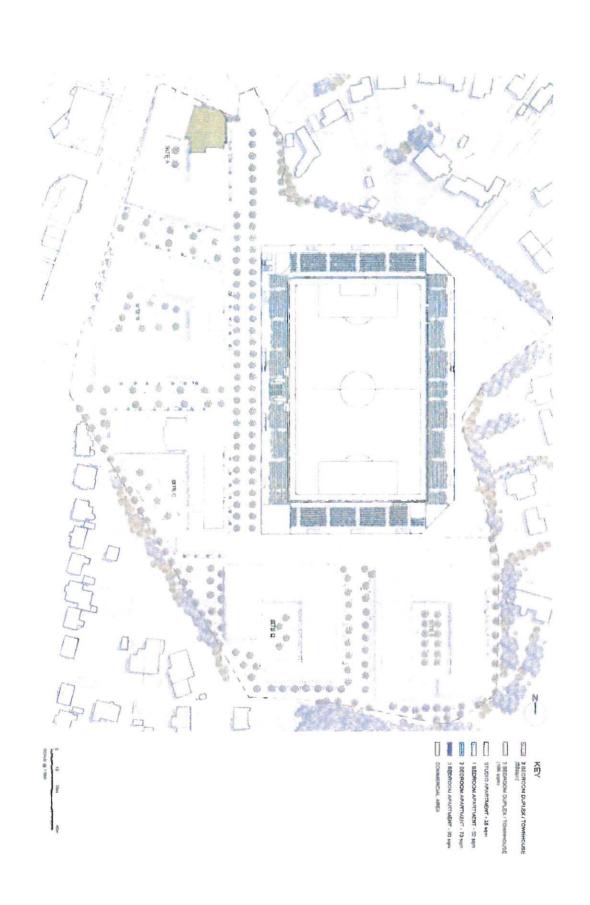
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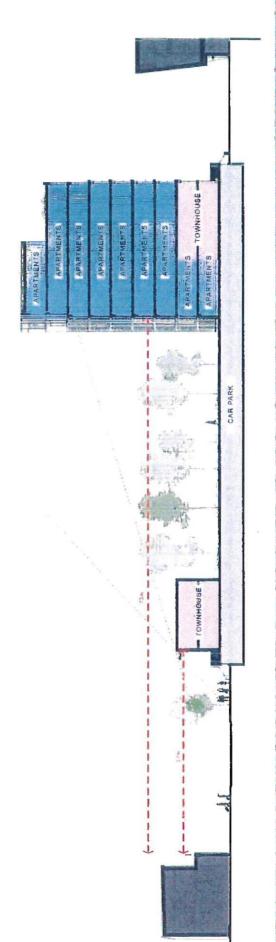


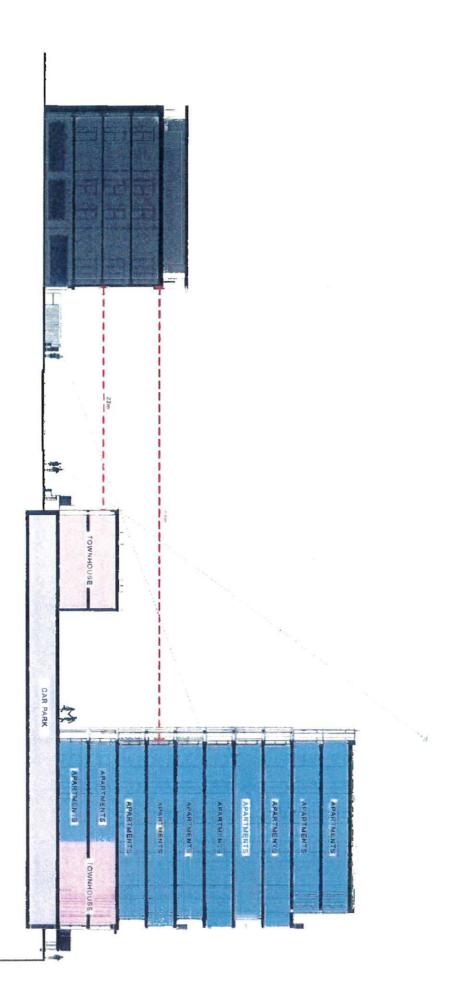
### Proposals - Roof Site Plan



### Proposals - Westfield Avenue Section

- Base level units provide family housing, have own front entrance from the new streets, animating the frontages
- in the Private communal amenity space provided courtyards between blocks 0
- Roofs to be landscaped and accessible to residents 0
- High quality public realm and green landscape provided between residential blocks
- Parking provided underneath the blocks, screened away from view ß
- ø the taller blocks are set back from Westfield Avenue at min 60 meters
- Blocks orientation kept N-S to minimise North facing
- Block orientation maximises natural light into residences and into courtyard spaces 0
- Block orientations minimises overshadowing Distances between blocks and existing at min 27 meters,

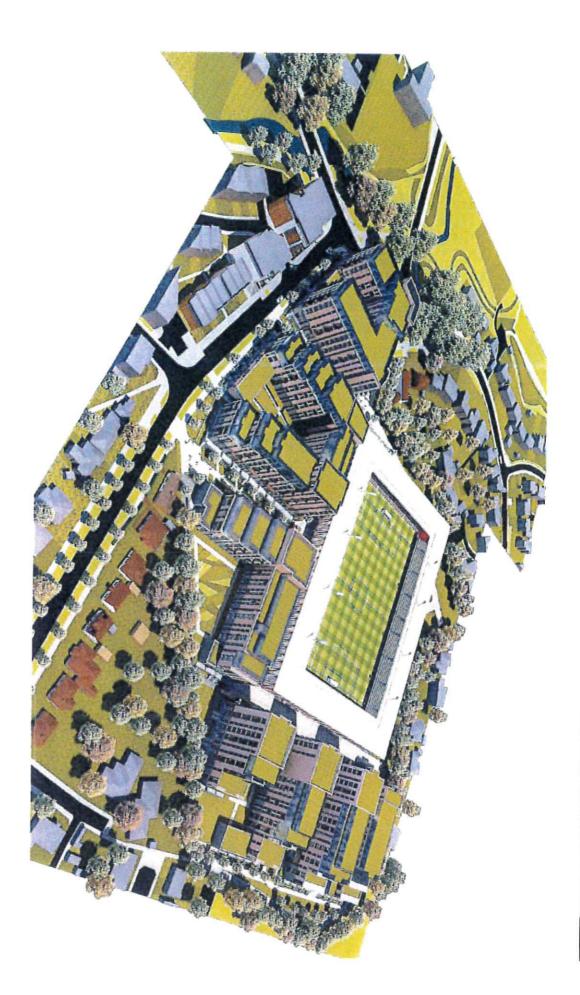




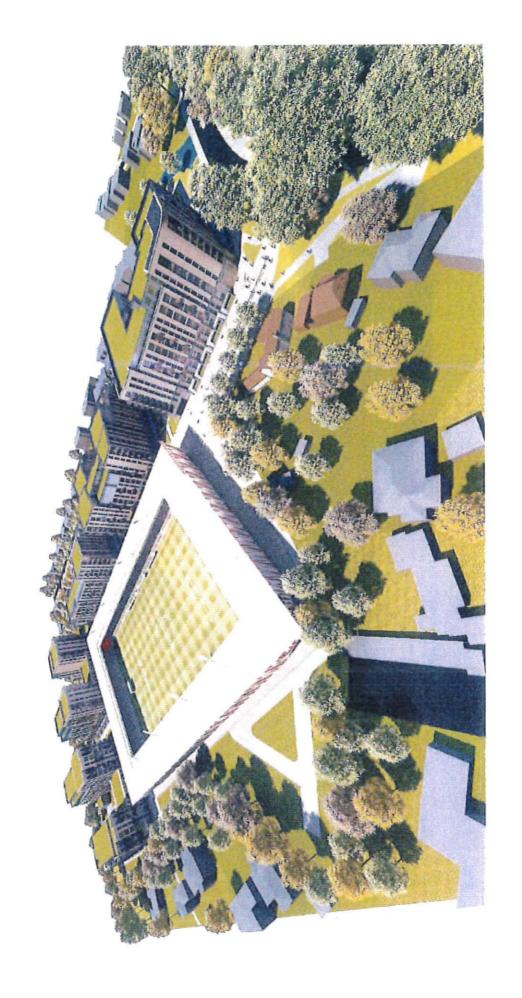
### Proposals - Scale & Massing

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### Proposals - CG Vew

View from existing entrance on Kingfield Road





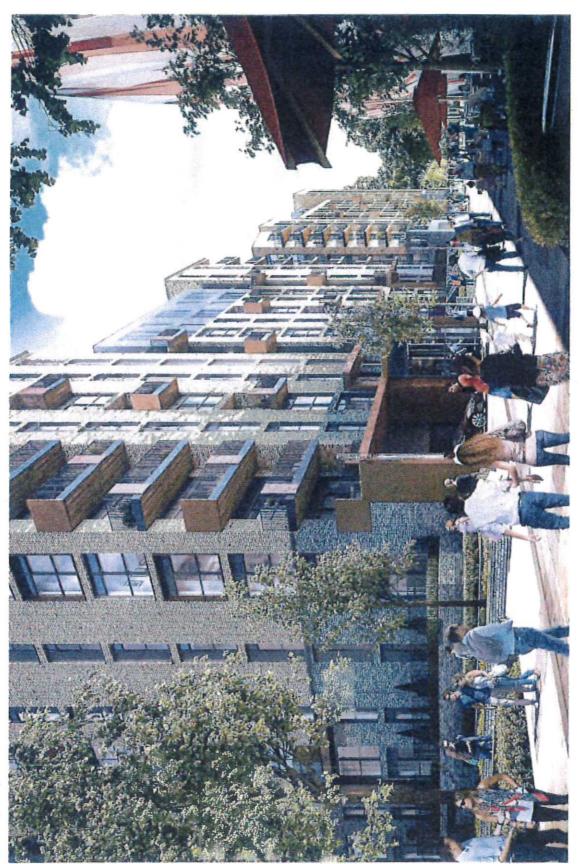
#### Proposals - CGI VIO

Proposed entrance into the site from Westfield Avenue



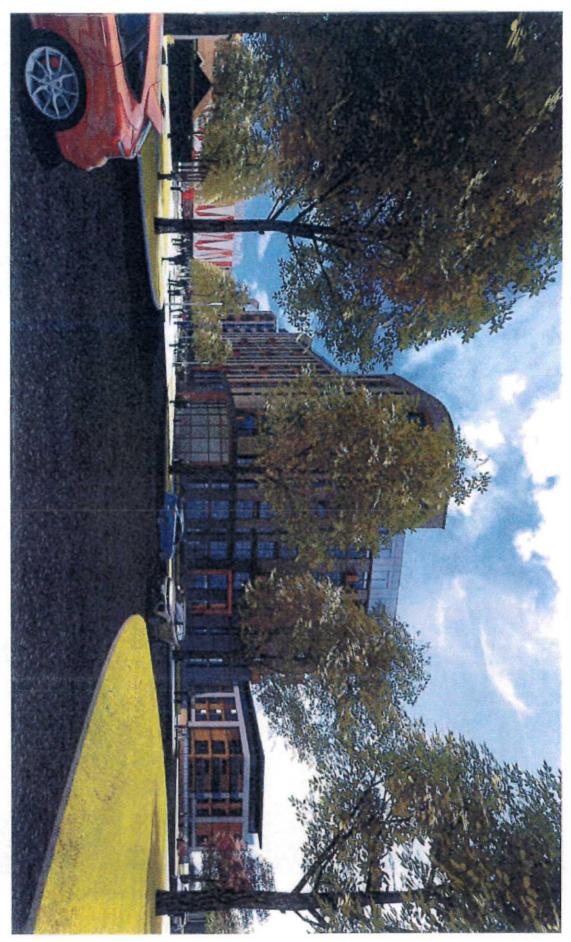
### Proposals - CG View

View from proposed internal street



#### Proposals ustrative Street Character

View from existing entrance on Kingfield Road



# Proposals -

View from the corner of Kingfield Road and Westfield Avenue



#### Proposals haracter

View from the corner of Kingfield Road and Westfield Avenue



# Proposals - Mustrative Street Character

Approach to the site from Kingfield Road







#### Proposals ustrative Street Character

Approach to the site from Kingfield Road





# Proposals - Hustrative Street Character

臘

Approach to the site from Woking Park entrance Road







# Proposals - Illustrative Street Character

View along Westfield Avenue





# Proposals - Mustrative Street Character

View along Westfield Avenue







#### Proposals ustrative Street Character

Proposed entrance into the site from Westfield Avenue



# Proposals - Illustrative Street Character

Approach to the site from Westfield Avenue







## Proposals - Mustrative Street Character

Approach to the site from Westfield Avenue





### strative Street Character Proposals - N

Approach to the site from Westfield Avenue







#### Proposals - !! ustrative Street Character

View from Acer Grove

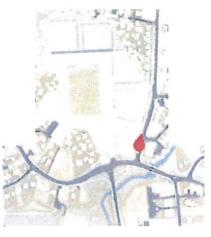




### lustrative Street Character Proposals -

View along Westfield Avenue







# Proposals - Illustrative Street Character

View from Kingfield Road down Westfield Avenue







## Proposals - Hustrative Street Character

44

View from existing entrance on Kingfield Road

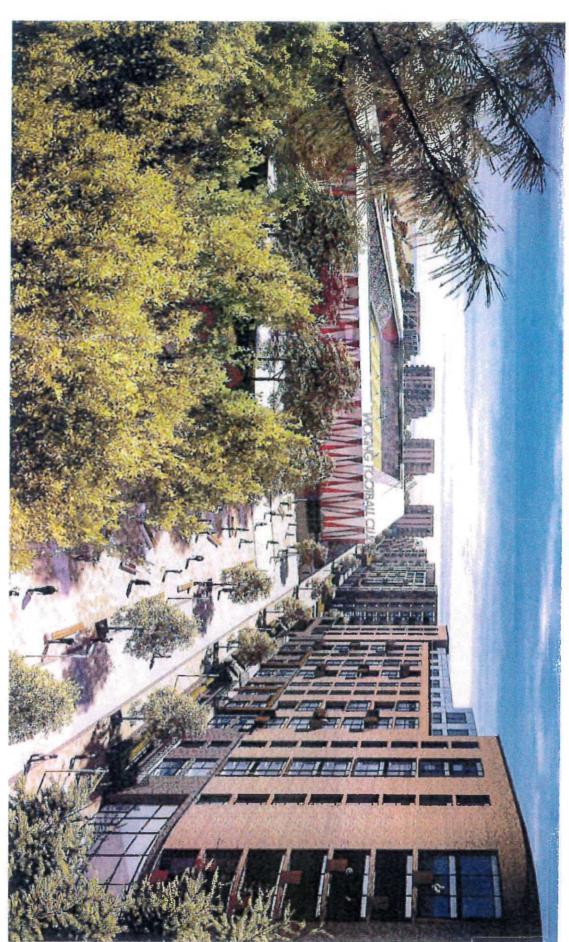






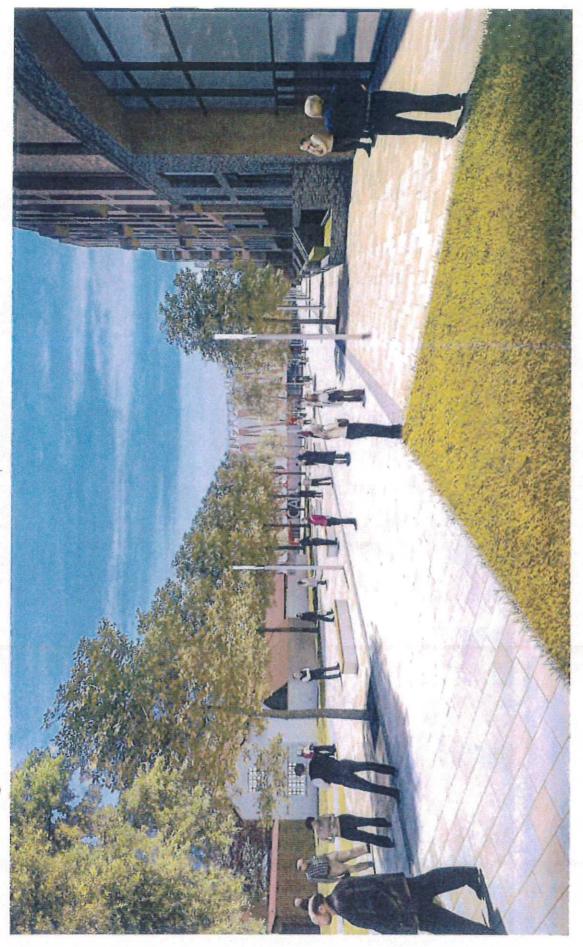
### Proposals -Istrative Street Character

View into to site from above the existing entrance



### stive Street Character Proposals -

View from existing entrance towards shared surface and public realm

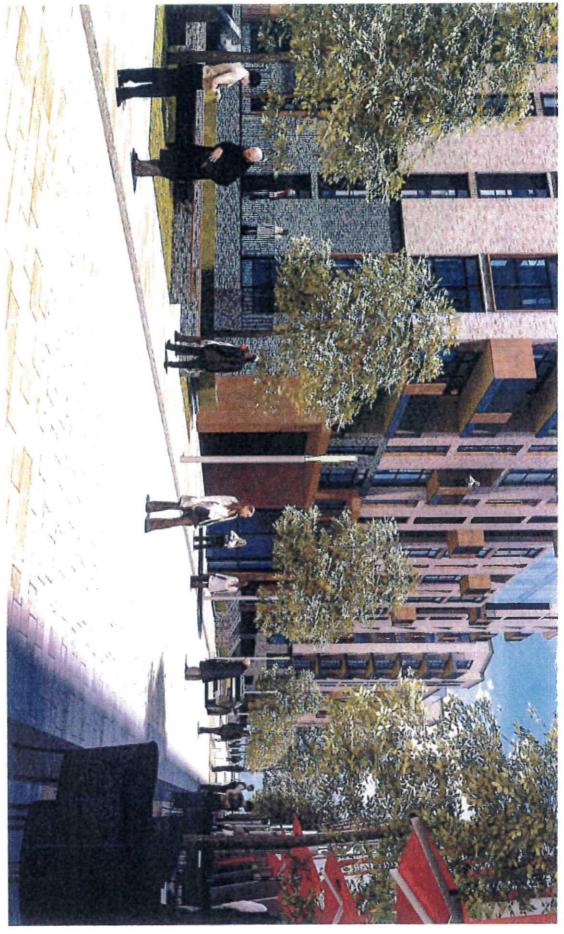






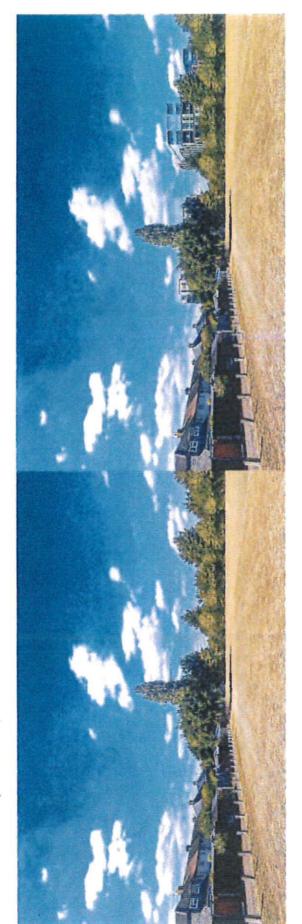
### Proposals ustrative Street Character

View from proposed internal street



## Proposals - Mustrative Street Character

View across Loop Road Sports Field.







# Proposals - Mustrative Street Character

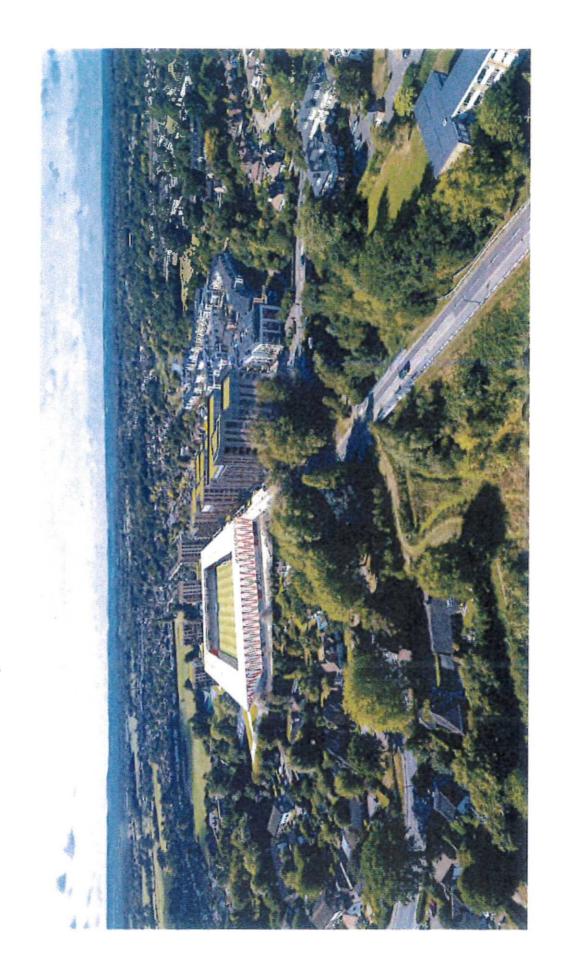
View down Granville Road.





# Proposals - Mustrative Aerial View From North

Aerial from the direction of Woking Town Centre.

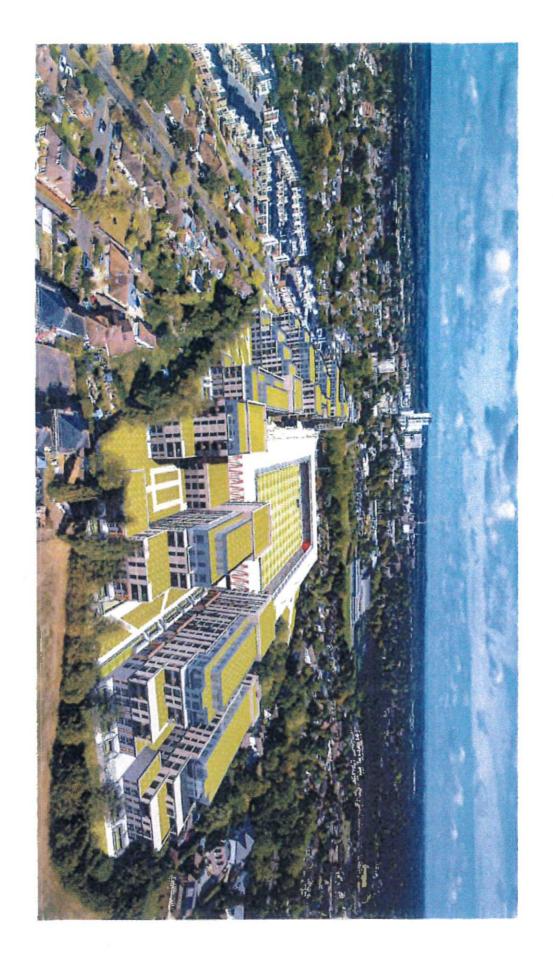






## Proposals trative Aerial View From South

Aerial towards Woking Town Centre.



Use & Amount.



### SUMMARY

	STADIUM SITE	TOTAL	On Street Parking	m	0	റ	ço	≯	SITE
Stadium Capacity Commercial Units Parking	20%	190		52	18	22	48	8	Studio
apacity al Units	16%	152		24	1.8	12	45	23	1 BED
	52%	506		231712			100		28ED
	1%	12					12		38ED
10,049 perso 6,232 sqft 66 space	8%	77		16	17	14	17	13	28ED DUPLEX
10,049 person capacity 6,232 sqft 66 spaces	2.8%	27		w	Uni	4	9	on	3BED TOWN HOUSE
apacity		964		212	161	133	238	220	RESIDENCES
	64.7%	624	40	138	108	114	138	50 05	PARKING

Precedents.

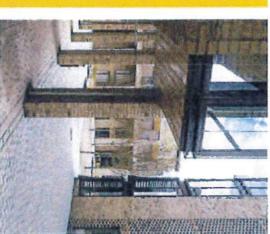














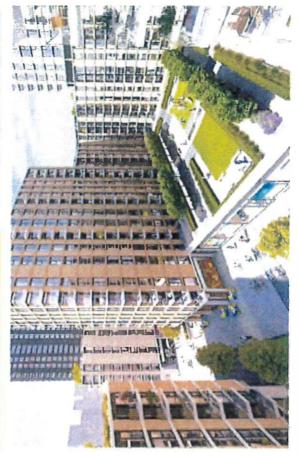
## Precedent - Building Treatment





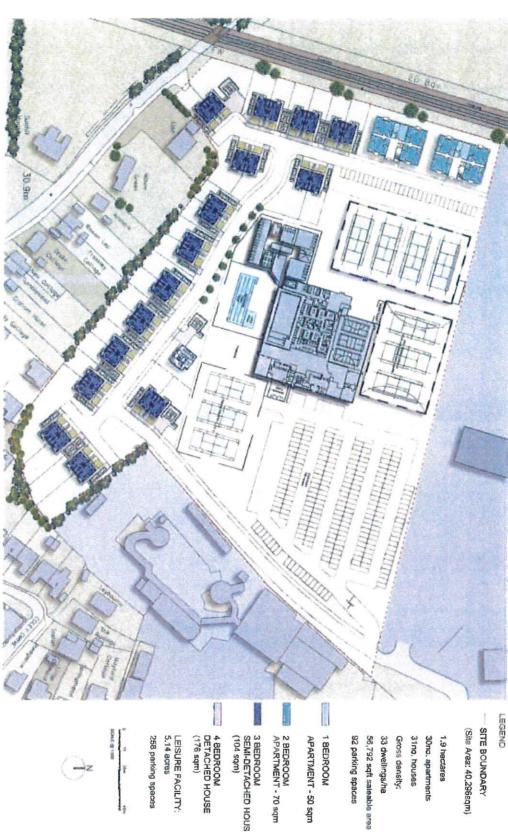








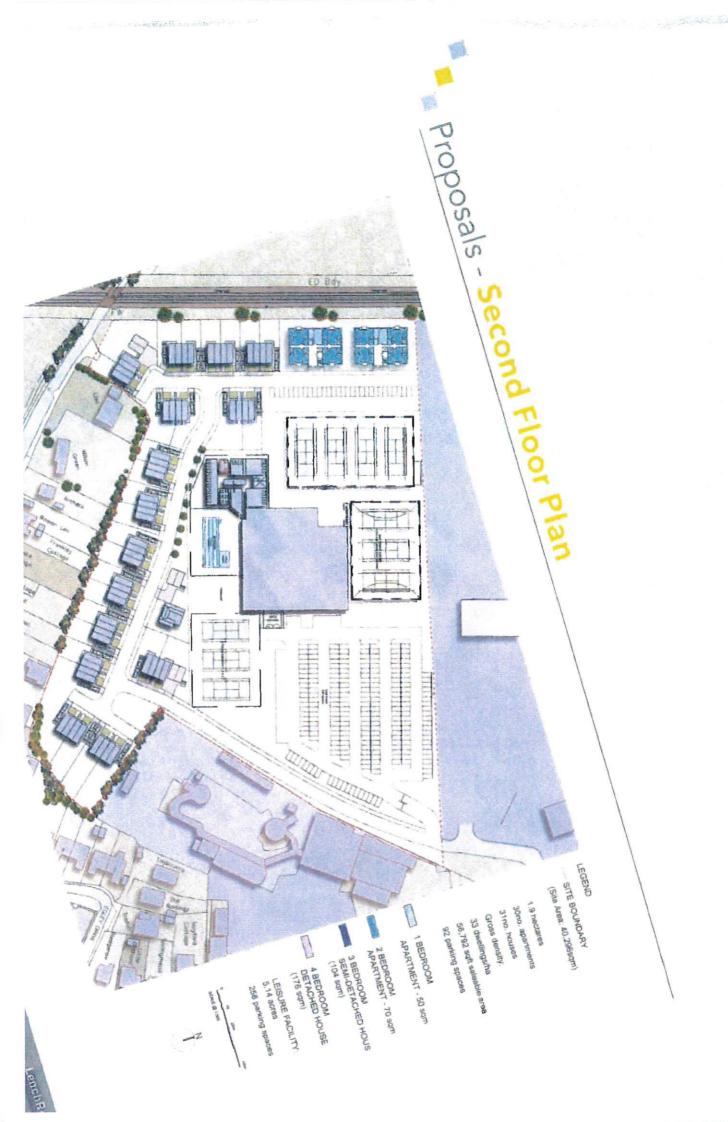
**Egley Road Site** 



## Proposals - First Floor Plan







## Proposals - Roof Plan



## Proposals - Masterplan

### **Egley Road Site Summary** total Net Internal Area

61	total no.of dwellings
	total no. 4bed houses
30	total no. 3bed houses
2	total no. 2bed flats
<b>o</b> n	total no. 1bed flats
34,546 Sql.	

d Lloyd site area	residential	site area
5.14 acre	32 dw/ha	1.9 ha

Parking spaces

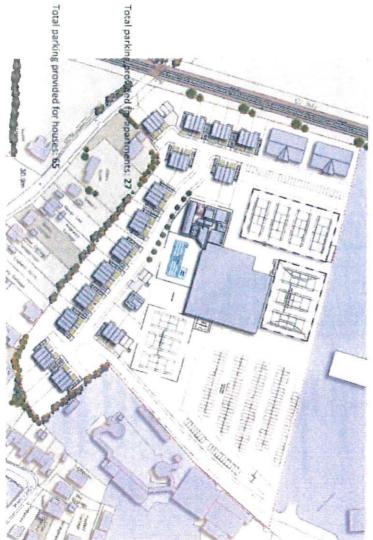
258

3	35478	3296	total	
	1,894	176		4bed house
30	33,584	3120		3bed house
nc		sqft	sqm	Houses
3	21312	1980	total	
2	18,083	1,680		2bed
	3,229	300		1bed
no.		sqft	sqm	Apartments

Note: Residential car parking provided in accordance with the Woking

allow for layout flexibility and architectural façade articulation Areas assumed for the flats based on the London Plan space standards plus 3% to

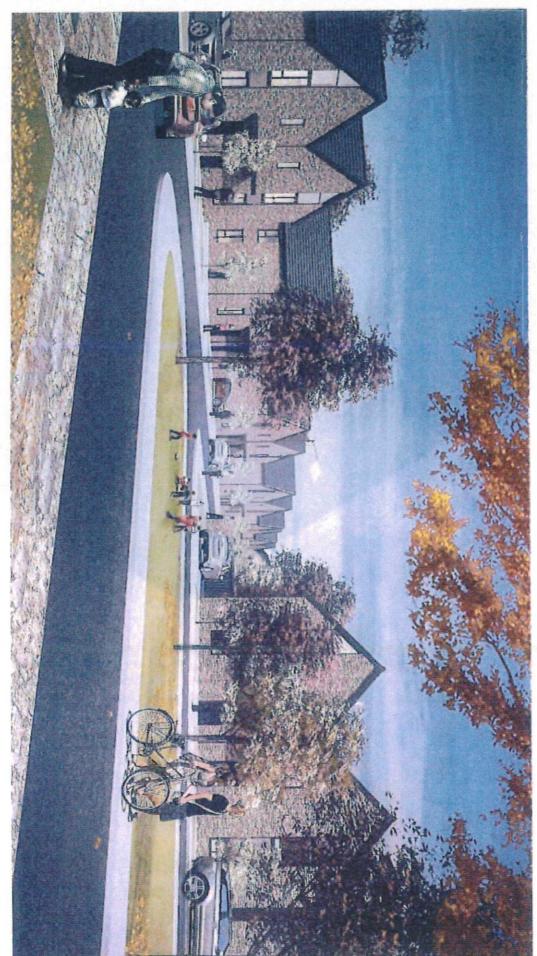
109.2 m2		3.2 m2		106 mZ	456p
ę	6	2.8 m2		93 m2	355p
7.	¥	2.1 m2		70 m2	254p
Ļī.	æ	1.5 m2	*	50 m2	1520
		3%	*	London Plan Size	



Borough Councils emerging parking standards contained in the Draft Parking Standards Supplement Planning Document of March 2017. The Brief requires 600,000 sqft of regimental Met Internal Area (Kingfield and Edley Road combined), the current proposals achieve 604,334 sqft

LeachRhodesWalker





## LEACH RHODES WALKER

info@lrw.co.uk | www.lrw.co.uk





J. D. WHER FERN SIVES

District in the house of the house of the constraints of the constrain

17 Desanstine Stront
wite /AA

50 Dearmany Place

M3 5t H

Add (0) 15 1 PG; 02 1 I

### APPENDIX 4

### **CPO Account Agreement**



DATED [ • ]

[]

### WOKING BOROUGH COUNCIL

[ ] as Developer

### **A GREEMENT**

relating to a CPO Account in respect of [ ]

### **Contents**

Clause	Na me	Page
1	Definitions and interpretation	1
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4	Transfers and delivery	2
5	Further Terms of Our Appointment	2
6	General provisions relating to this agreement	4
7	Third Party Rights	5
8	Acceptance	C
Executio	n Page	6

### DATED [ • ]

### PARTIES

- (1) [ ] ("Sol")
- (2) **WOKING BOROUGH COUNCIL** of Civic Offices Gloucester Square Woking GU21 6YL (the "Council")
- (3) [ ] (the "Developer")

### BACKGROUND

- (A) This Agreement is entered into pursuant to the terms of a CPO Deed made between the Principals of the same date as this Agreement (the "CPO Deed").
- (B) This Agreement contains the terms upon which Sol have agreed to act as escrow agents for the Principals in connection with the funds deposited in the Account.

### OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Account" means that bank account to be held in the name of Sol with the Bank pursuant to Clause 2 (*The Account*).

"Bank" means the [ ]

"Council's Account" means the bank account of the Council held at [Insert name and address of bank] having sort code [•] and account number [•].

**"Funds"** means all monies paid into the Account by the Developer or any third party in accordance with the provisions of the CPO Deed.

"Principals" means collectively the Council and the Developer.

- 1.2 The headings and sub-headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 Terms defined in the CPO Deed have the same meaning for the purposes of this Agreement.

### 2 THE ACCOUNT

- 2.1 The Principals hereby irrevocably, unconditionally and jointly instruct Sol to open an interest bearing account at the Bank in the name of Sol, which shall be the Account.
- The Funds shall be placed and held by Sol in the Account in accordance with the terms of the CPO Deed until the release of Funds from the Account in accordance with Clause 3 (*Release from Escrow*) or determination of this Agreement in accordance with Clause 6.2 (*Assignment*).

2.3 The Account shall be established on terms that an instruction may not be accepted by the Bank in relation to the Account except on written instructions signed by a partner of Sol. Sol shall nominate a number of its partners or members to be on the Bank mandate for the Account.

### 3 RELEASE FROM ESCROW

- 3.1 Subject as set out below Sol shall procure the release of Funds in accordance with the terms of a written demand which is served by the Council on the Developer in accordance with clause 11 of the CPO Deed, a copy of which the Council shall serve on Sol by instructing the Bank to transfer from the Account to Council's Account, each such payment to be made no earlier than the date 15 Working Days after Sol's receipt of each such demand.
- 3.2 If within ten Working Days of Sol's receipt of a copy of a demand served by the Council pursuant to clause 11 of the CPO Deed the Developer notifies Sol that it disputes any part of any such demand, Sol shall only pay out Funds relating to such disputed demand upon receipt of written instructions from both the Council and the Developer setting out details of and authorising payment by Sol from the Account.
- 3.3 The receipt of a written demand as set out in Clause 3.1 for the making of such transfers shall be an absolute discharge to Sol of their obligations under this Agreement unless the Developer serves a notice pursuant to Clause 3.2. If the Developer serves such a notice the giving of instructions from both the Council and the Developer pursuant to Clause 3.2 shall be an absolute discharge to Sol of their obligations under this Agreement.
- 3.4 Sol shall not be responsible for any delay or failure on the part of the Bank in executing any instruction for payment or for any loss of whatever nature howsoever arising which the Principals or any other person may suffer as a result of any default of the Bank.
- Notwithstanding any provision of this Agreement, Sol shall be entitled to transfer the Funds and any interest thereon in accordance with the terms of a Court Order (as defined in Clause 5(g)) and such a transfer of funds shall be an absolute discharge to Sol of its obligations under this Agreement.
- In the event of any dispute arising in connection with the interpretation of this Agreement, Sol shall have the rights to inter-plead the Funds and any interest earned on them pending receipt of a Court Order directing transfer of the Funds pursuant to Clause 5(g).

### 4 TRANSFERS AND DELIVERY

All monies to be transferred or delivered pursuant to the terms of this Agreement shall be transferred by clearing house automated payment system transfer in sterling. Any bank fees payable in respect of any such transfers from the Account, together with any taxation and other liabilities referable to the operation of the Account, shall be deducted from any interest accrued on the Funds in the Account prior to transfer of the Funds and to the extent accrued interest is insufficient, from the Funds.

### 5 FURTHER TERMS OF OUR APPOINTMENT

The Principals accept and acknowledge that performance by Sol of its duties under this Agreement is subject to the following terms and conditions:

- (a) Sol shall not be required to invest any Funds in any particular way or to obtain any particular rate of interest on the Funds;
- (b) this Agreement expressly sets forth all the duties of Sol with respect to any or all matters pertinent to this Agreement. No implied duties or obligations shall be read into this Agreement against Sol;
- (c) Sol shall not be liable under this Agreement except for their own wilful misconduct and, except with respect to claims that are determined by a final judgement of a court of competent jurisdiction to result from such wilful misconduct, fraud or gross negligence of Sol, the Principals jointly and severally indemnify Sol and each of their partners, members and employees ("Indemnified Persons") and hold all Indemnified Persons harmless from and against any and all losses, liabilities, claims, actions, damages and expenses (including proper legal fees and disbursements) of whatever nature, whether contemplated or not, arising out of or in connection with this Agreement. Without limiting the foregoing, Sol shall in no event be liable in connection with the investment or reinvestment of any monies held by them under this Agreement, including, without limitation, any liability for any delays in the investment or reinvestment of the Funds or any loss of interest incidental to any such delays;
- (d) Sol shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to them under this Agreement without being required to determine the authenticity or the correctness of any fact stated in them or the propriety or validity of the service of them. Sol may act in reliance upon any instrument or signature believed by them to be genuine and may assume that any persons purporting to give receipt or advice or make any statement or execute any document in connection with the provisions of this Agreement has been duly authorised to do so;
- (e) Sol may act pursuant to the advice of any firm of legal advisers or counsel with respect to any matter relating to this Agreement and may seek at any time guidance from the courts as to whether or not to distribute money from the Account, or in respect of what to do with the money in the Account and may withdraw whatever reasonable costs are involved in taking such action from the Funds held in the Account, and except with respect to claims that are determined by a final judgement of a court of competent jurisdiction to result from wilful misconduct, fraud or gross negligence of Sol, shall not be liable for any action taken or omitted in accordance with such advice;
- (f) Sol does not have any interest in the Funds deposited under this Agreement or interest accrued on them (other than as stakeholders) but are serving as Account holders only and having only possession of such monies in its capacity as the escrow agents. Sol shall be entitled to withdraw from the Funds and interest accrued on them or the Principals shall pay or reimburse Sol upon request, an amount equal to any transfer taxes or other taxes (if any) in connection with this Agreement and shall indemnify Sol and hold them harmless from any amounts that they are or become obliged to pay in the way of such taxes. Any distributions from the Account shall be subject to any applicable withholding regulations then in force;
- (g) in the event of any disagreement resulting in adverse or competing claims or demands made in connection with the escrow arrangements described

in this Agreement, or in the event that Sol are in doubt as to what action they should take hereunder, Sol shall be entitled to retain the Funds until they shall have received;

- (i) a final non-appealable order of a court of competent jurisdiction directing delivery or release of the Funds ("Court Order"); or
- (ii) a written agreement executed by all the Principals directing delivery or release of the Funds in which event Sol shall release the Funds in accordance with such order or agreement. Any Court Order shall be accompanied by a legal opinion by legal advisers to the presenting party satisfactory to Sol to the effect that the Court Order is final and non-appealable;
- (h) Sol shall not be required under any circumstances to take action that, in its sole judgement:
  - (i) is contrary to any provisions of this Agreement (as read with the relevant provisions of the CPO Deed) or any applicable law or regulations; or
  - (ii) will expose it to any liability or expense against which it has not been indemnified to its satisfaction; and
- (i) all instructions given by Sol to the Bank must comply with the Solicitors Accounts Rules 2006 or any amendment, modification or replacement of such rules, and nothing in this Agreement shall require Sol to act otherwise than in accordance with those rules.

### 6 GENERAL PROVISIONS RELATING TO THIS AGREEMENT

### 6.1 Confidentiality

The parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their employees, members or agents from making any disclosure to any person or any matter relating to this Agreement. This Clause 6.1 (*Confidentiality*) shall not apply to any disclosure required by law (including any order of a court of competent jurisdiction), any regulation, the rules of any stock exchange, the parties' reasonable internal reporting requirements, disclosure to any tax authority in connection with the disclosing entity's (or its group's) affairs, the local government ombudsman or any other person or body exercising regulatory control over the Council and, to the extent necessary, any disclosure to enable the parties to comply with their obligations under this Agreement.

### 6.2 **Assignment**

- 6.2.1 This Agreement shall continue in force notwithstanding any retirement or appointment of new partners or members in Sol. In the event that any partner or member nominated pursuant to Clause 2.3 retires or is no longer permitted to practice as a solicitor or, for whatever reason, is no longer able or willing to be a nominated partner or member, Sol shall be entitled to substitute such partner or members as it wishes and agrees to do such things and sign such documents as may reasonably be required of them to amend the Bank mandate accordingly.
- 6.2.2 On an assignment of the benefit of the CPO Deed by the Developer this Agreement shall determine and any Funds in the Account and any interest accrued on them

shall, after deduction of all fees, costs and taxes pursuant to and in accordance with Clause 4 (*Transfers and delivery*), Clause 5(e) and Clause 5(f), be paid to the Developer within ten Working Days of the date of determination and such payment shall be an absolute discharge to Sol of its obligations under this Agreement.

### 6.3 Whole Agreement

This Agreement (together with the CPO Deed and any other documents referred to in this Agreement) constitutes the whole agreement between the parties to this Agreement relating to its subject matter and no variations of it shall be effective unless made in writing signed by all the parties to this Agreement.

### 6.4 Execution

This Agreement may be executed in any number of counterparts which together shall constitute the Agreement. However the Agreement shall be of no effect unless and until each party shall have executed at least one counterpart.

### 6.5 Governing law and jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with English law. Each of the parties irrevocably agrees that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that, accordingly, any suit, action or proceedings arising out of or in connection with this Agreement shall be brought in such courts.

### 6.6 Good Faith

The parties owe to each other a duty to act with utmost good faith in relation to their respective obligations in this Agreement.

### 7 THIRD PARTY RIGHTS

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### 8 ACCEPTANCE

By signing this Agreement the Principals and Sol agree to be bound by the terms of

This Agreement has been entered into on the date stated at the beginning of this Agreement.

### EXECUTION PAGE

Executed as a deed by [ ]acting by [name of first member] and [name of second member]:	) )	
		Member
		Member
Executed under the common seal of <b>WOKING BOROUGH COUNCIL</b> in the presence of:	)	Mayor Head of Legal Services
		Head of Legal Services
Executed as a deed by [ ] acting by [name of director] and [name of second director or secretary]	)	
		Director
		Director/Secretary

### APPENDIX 5

### Form of Ground Lease



# Dated [ ] 2019

(1) WOKING BOROUGH COUNCIL

(2) GOLDEV WOKING LIMITED

# GROUND LEASE

OF

[•]¹ WOKING

NB: The footnotes in this document are for information purposes only.

<sup>1</sup> KMR: Property description to be confirmed following acquisition of the relevant titles pursuant to Agreement for Lease

Katten

Katten Muchin Rosenman UK LLP

Paternoster House 65 St Paul's Churchyard London EC4M 8AB Tel: 020 7776 7620 Fax: 020 7776 7621

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	The Encumbrances	

# LR PARTICULARS

LR1. Date of lease	[*]
LR2. Title number(s)	LR2.1 Landlord's title number(s)
	[ • ] <sup>2</sup>
	LR2.2 Other title numbers
	[•]
LR3. Parties to this Lease	Landlord
	WOKING BOROUGH COUNCIL of Civic Offices Gloucester Square, Woking, GU21 6YL
	Tenant
	GOLDEV WOKING LIMITED a company incorporated in England and Wales with company registration number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ
LR4. Property	In the case of a conflict between this Clause and the remainder of this Lease then, for the purposes of registration, this Clause shall prevail.
	As specified in Schedule 1, Part 1 (Description of the Demised Premises) of this Lease and defined in this Lease as "the Demised Premises".
LR5. Prescribed statements etc	LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of

 $<sup>^{2}</sup>$  Relevant title numbers to be inserted following acquisition of relevant titles.

	the Land Registration Rules 2003.
	None
	LR5.2 This Lease is made under, or by reference to, provisions of:
	Not applicable
LR6. Term for which the Property is leased	The term as specified in this Lease at Clause 2
LR7. Premium	None
LR8. Prohibitions or restrictions on disposing of this Lease	This Lease contains a provision that prohibits or restricts dispositions.
LR9. Rights of acquisition etc	LR9.1 Tenant's confractual rights to renew this Lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land
	LR9.2 Tenant's covenant to (or offer to) surrender this Lease
	None
	LR9.3 Landlord's contractual rights to acquire this Lease
	None
LR10. Restrictive covenants given in this Lease by the Landlord in respect of land other than the Property	None

LR11. Easements	LR11.1 Easements granted by this Lease for the benefit of the Property
	None  LR11.2 Easements granted or reserved by this Lease over the Property for the benefit of other property
	None
LR12. Estate rentcharge burdening the Property	None
LR13. Application for standard form of restriction	None
LR14. Declaration of trust where there is more than one person comprising the Tenant	Not applicable.

DATED [•] 2019

#### PARTIES

(1) WOKING BOROUGH COUNCIL of Civic Offices Gloucester Square, Woking, GU21 6YL 5HR ("Landlord")

(2) GOLDEV WOKING LIMITED a company incorporated in England and Wales with company registration number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ (the "Tenant").

#### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions in this Lease

"1987 Order" means the Town & Country Planning (Use Classes) Order 1987 as modified and amended by the 2005 Amendment Order

"Assignee's Deed of Covenant" means the deed of covenant in the form to be appended by the parties (acting reasonably) requiring any assignee of this Lease to observe and perform the obligations on the Tenant contained in the Option Agreement;

"Charge" means a charge granted over the Demised Premises by the Tenant in accordance with Clause 3.7 and of which details have been provided to the Landlord in accordance with Clause 3.8.

"Chargee" means any person to whom the Tenant may have granted a Charge and whose details have been provided to the Landlord in writing.

"Chargee's Address for Service" means the address of the Chargee set out in the notice of charge given to the Landlord pursuant to Clause 3.16 or such other address as may be notified in writing by the Chargee to the Landlord from time to time.

"Demised Premises" means the property described in Schedule 1, Part 1 (Description of the Demised Premises) and refers to each and every part of the Demised Premises and includes all buildings and other structures now or from time to time during the Term constructed on them.

"Development" has the meaning ascribed to it in the Implementation Agreement;

"Implementation Agreement" means the agreement dated [•] 2018 made between (1) the Landlord and (2) the Tenant in relation to Implementation works on inter alia the Demised Premises.

"Implementation Works" means all works carried out or to be carried out pursuant to the Implementation Agreement.

"Encumbrances" means the restrictions, stipulations, covenants, rights, reservations, provisions and other matters to which the Demised Property is or may be subject and which are contained, imposed by, or referred to, in the instruments brief particulars of which are set out in Schedule 1, Part 4 (*The Encumbrances*).

"Insured Risks" means the risks and other contingencies against which the Demised Premises are required to be, or which may from time to time be, insured under the provisions of this Lease, but subject to any exclusions, limitations or conditions imposed by or contained in the policy of insurance, and "Insured Risks" include (but without limitation) fire, lightning, explosion, storm, tempest, flood, bursting or overflowing or water tanks, apparatus or pipes, earthquake, aircraft (but not hostile aircraft), and other aerial devices or other articles dropped from them, and riot and civil commotion and such other risks as the Tenant may deem expedient to insure.

"Landlord" includes all persons entitled to the reversion immediately expectant upon the determination of this Lease.

"Lease" includes any instruments supplemental to this Lease.

"Option Agreement" means the agreement to be entered into on or around the date of this Lease by (1) the Landlord and (2) the Tenant.

"Planning Acts" means "the consolidating Acts" as defined in the Planning (Consequential Provisions) Act 1990 and any other legislation relating to town and country planning in force from time to time.

"Planning Permission" means the planning permission(s) for the Development with reference [6] and includes all supplemental permissions, variations, approvals of reserved matters and all new planning permissions obtained in respect of the Development.

"Purchaser's Deed of Covenant" means the deed of covenant in the form to be approved by the parties (acting reasonably) requiring any party to whom the Landlord's reversion tis transferred, assigned or let to observe and perform the obligations of the Landlord contained in the Option Agreement.

"Registered Entries" means all matters referred to in the property and charges register of title number  $[s] [\bullet]^4$ .

"Retained Property" has the meaning ascribed to it in the Implementation Agreement.

"Service Media" means ducts flues gutters pipes drains sewers cables conduits wires meters traps valves and other media plant equipment or apparatus for conducting controlling or measuring water soil gas electricity telephone telex and other electrical impulses air smoke and fumes inspection chambers gullies washout chambers catch pits outfalls manholes and other things of a like nature.

"Tenant" includes the Tenant's successors in title and assigns in whom this Lease may for the time being be vested.

"Tenant's Covenants" means the covenants on the part of the Tenant contained in this Lease.

"Term" means the term of years granted by this Lease.

<sup>&</sup>lt;sup>1</sup> To be specified following the grant of a 'Satisfactory Planning Permission' pursuant to the agreement for lease.

<sup>&</sup>lt;sup>4</sup> To be specified following acquisition of relevant interests per the implementation agreement.

#### 1.2 Interpretation

- 1.2.1 The clause and paragraph headings in this Lease are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.2.2 Unless the context otherwise requires, references:
  - (a) to defined terms are references to the relevant defined term in Clause 1,1;
  - (b) to numbered clauses and schedules are references to the relevant clause in or schedule to this Lease; and
  - (c) in any schedule to a numbered paragraph are references to the relevant paragraph in that schedule.
- 1.2.3 Words in this Lease importing the singular meaning, where the context so allows, include the plural meaning and vice versa.
- 1.2.4 References in this Lease to any statutes or statutory instruments include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force, and references to a statute include statutory instruments and regulations made pursuant to them.
- 1.2.5 Words in this Lease importing any one gender include both other genders and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.2.6 When a party to this Lease is two or more persons, the expression "the Landlord" or "the Tenant" as the case may be includes the plural number and obligations in this Lease expressed or implied to be made with a party shall be deemed to be made with or by such individuals jointly and severally.

#### 2. THE DEMISE

In consideration of the rent reserved by and the covenants in this Lease the Landlord lets to the Tenant together with the rights set out in Schedule 1, Part 3 all the Demised Premises except and reserved to the Landlord the rights set out in Schedule 1, Part 2 (Exceptions and reservations) for the term of 260 years from the date hereof and subject to the Encumbrances and the Registered Entries, the Tenant paying during the Term a yearly rent of £1 per annum (if demanded) together with value added tax thereon.

#### 3. TENANT'S COVENANTS

The Tenant covenants with the Landlord:

## 3.1 Outgoings

- 3.1.1 To pay and discharge all outgoings in respect of the Demised Premises.
- For the purpose of Clause 3.1.1 "outgoings" means all non-domestic rates, water rates, water charges and all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary, municipal, parochial or otherwise) which are now or may at any time be payable, charged or

assessed on property or the owner or occupier of property, but "taxes" in this context does not include value added tax, nor any taxes imposed on the Landlord or connected with the Landlord in respect of the yearly rent reserved by this Lease or in respect of a disposal of the reversionary interest in the Demised Premises.

#### 3.2 Insurance

- 3.2.1 To keep the Demised Premises insured at all times throughout the Term with an insurer of good repute and financial standing against loss or damage by the Insured Risks in the full replacement cost of the Demised Premises, and also the cost of demolition, shoring up and site clearance, architects', surveyors' and other requisite professional advisers' fees in relation to the reinstatement of the Demised Premises, three years' loss of the yearly rent payable pursuant to this lease, irrecoverable value added tax on any such items, and third party and public liability risks;
- 3.2.2 To pay the premiums for insurance promptly as they become due;
- 3.2.3 Whenever the Demised Premises may be destroyed or damaged as the result of an Insured Risk so as to render the Demised Premises unfit for occupation or use to any extent, diligently to apply the proceeds of the policy of insurance received for that purpose in rebuilding and reinstating the Demised Premises as soon as may reasonably and properly be practicable, and to make up any deficiency in the proceeds out of its own resources; and
- 3.2.4 To produce to the Landlord a copy of the insurance policy whenever reasonably and properly requested but only once in any calendar year and the receipt for the latest premium as soon as practicable after each payment has been made.
- 3.2.5 Provided always that during any period during which the Demised Premises are subject to works of construction where the building contractor is obliged to maintain insurance in respect of the Demised Premises then the provisions of clause 3.2 shall not apply to the extent that such construction insurance is in effect.

# 3.3 Contribution to facilities enjoyed in common

To pay to the Landlord on demand a fair and proper proportion (to be conclusively determined by the Landlord or the Landlord's surveyors) of the expense of cleaning, lighting, repairing, renewing, decorating, maintaining and rebuilding any party walls, fences, gutters, drains, roadways, pavements, entrance ways, stairs and passages, and access ways which are or may be used or enjoyed by an occupier of the Demised Premises in common with any other person or persons.

#### 3.4 Repair

Following practical completion of each part of the Implementation Works throughout the Term when and as often as may be required well and substantially to repair, keep in repair, maintain, clean, decorate, treat, support and uphold all future buildings forming part of the Demised Premises following completion of such Implementation Works.

# 3.5 Landlord's right of inspection and right of repair

Subject to Clause 5.2 (Landlord's Entry) to permit the Landlord and its employees or agents at all reasonable and proper times:

- 3.5.1 to enter into, inspect and view any unoccupied and unbuilt parts of the Demised Premises and examine their condition use or occupation;
- 3.5.2 to inspect and execute repairs, additions, alterations and other works to or on any other part of Landlord's adjoining or neighbouring premises;
- 3.5.3 to view the Demised Premises in connection with dealing (by way of sale, mortgage or otherwise) with the Landlord's reversionary interest in the Demised Premises; and
- 3.5.4 to exercise the rights reserved by this Lease and to comply with the obligations of the Landlord under this Lease.

## 3.6 Yield up in repair at the end of the Term

At the expiry or earlier determination of the Term quietly to yield up the Demised Premises (with all additions and improvements to the Demised Premises and all fixtures which during the Term may be fixed or fastened to or on the Demised Premises other than tenant's fixtures which the Tenant may be entitled to remove) repaired, maintained, cleaned, decorated and kept in accordance with the Tenant's covenants in this Lease.

#### 3.7 Alienation

- 3.7.1 Not to assign charge or mortgage part only of the Demised Premises (as opposed to the whole).
- 3.7.2 Not to charge or mortgage the whole of the Demised Premises (save in favour of the Landlord).
- 3.7.3 Not to assign the whole of the Demised Premises save contemporaneously with any permitted assignment under the Implementation Agreement.
- 3.7.4 Upon any assignment of the Demised Premises in accordance with this Lease to procure that the assignee contemporaneously with such assignment enters into the Assignee's Deed of Covenant.

#### 3.8 Registration of dispositions of this Lease

To produce to and leave with the solicitors for the time being of the Landlord a certified copy for retention by the Landlord within one month after any disposition of this Lease or the Demised Premises (whether by assignment, charge, transfer, or underlease, or assignment or surrender of any underlease, or upon any transmission by reason of death or otherwise affecting the Demised Premises).

## 3.9 User

- 3.9.1 Not to use the Demised Premises otherwise than for the use or uses permitted by the Planning Permission.
- 3.9.2 Nothing in this Lease implies or is to be treated as a warranty to the effect that the use of the Demised Premises for those purposes is in compliance with all town planning laws and regulations now or from time to time in force.

# 3.10 Restrictions affecting use of the Demised Premises

- 3.10.1 Not to use the Demised Premises for any noxious or offensive trade or business nor for any illegal act or purpose.
- 3.10.2 Not to hold any sales by auction on the Demised Premises.
- 3.10.3 Not to do in or upon the Demised Premises anything which may be or grow to be a legal nuisance or damage to the Landlord or to the owners, tenants and occupiers of adjoining and neighbouring properties.

provided that it is acknowledged that proper use of the Demised Premises in accordance with Clause 3.9.1 shall not constitute a breach of this Clause 3.10 (Restrictions affecting use of the Demised Premises).

## 3.11 Compliance with statutes, etc

- 3.11.1 To comply in all respects with all statutes for the time being in force and requirements of any competent authority relating to the Demised Premises or anything done in or upon them by the Tenant, and to indemnify the Landlord against all actions, proceedings, claims or demands which may be brought or made by reason of such statutes or requirements or any failure to comply with them.
- 3.11.2 To comply with all requirements under any present or future statute, order, by-law or regulation as to the use or occupation of or otherwise concerning the Demised Premises.

# 3.12 Compliance with town planning and environmental requirements

To perform and observe all the provisions and requirements of all statutes and regulations relating to town and country planning and environmental protection in relation to the Demised Premises, and to obtain any development or other consent, permit or licence which may be requisite by reason of the development or manner of use of or on the Demised Premises by the Tenant.

## 3.13 Expenses of the Landlord

To pay on demand all reasonable and proper expenses (including solicitors' costs and surveyors' fees) properly incurred by the Landlord:

- 3.13.1 incidental to or in contemplation of the preparation and service of a schedule of dilapidations and/or a notice under sections 146 and 147 of the Law of Property Act 1925, notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court; and
- 3.13.2 in connection with every application for any consent or approval made under this Lease whether or not such consent or approval is granted or given but not where such consent is unreasonably withheld or delayed or granted subject to any unlawful or unreasonable conditions.

#### 3.14 Value added tax

3.14.1 To pay value added tax on taxable supplies made by the Landlord of goods and services under or in connection with this Lease, and all consideration for the

goods and services supplied shall be treated as exclusive of value added tax chargeable on the payments.

3.14.2 Where the Landlord is entitled under this Lease to recover from the Tenant the cost of goods and services supplied to the Landlord, but in respect of which the Landlord makes no taxable supply to the Tenant, to indemnify the Landlord against so much of the input tax on the cost for which the Landlord is not entitled to credit allowance under section 26 of the Value Added Tax Act 1994.

#### 3.15 Encumbrances

By way of indemnity only to observe and perform the obligations and liabilities comprising the Encumbrances and contained in the Registered Entries so far as they relate to the Demised Premises and are capable of being enforced.

## 3.16 Notices, consents and approvals

- 3.16.1 Any notice served under or in connection with this Lease shall be in writing and be properly served if compliance is made with either the provisions of section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).
- 3.16.2 Any notice served on any Chargee shall be properly served if served on the Chargee at the Chargee's Address for Service.

#### 4. LANDLORD'S COVENANTS AND ACKNOWLEDGEMENTS

#### 4.1 Quiet Enjoyment

The Landlord covenants with the Tenant that the Tenant, paying the rents reserved and performing the Tenant's covenants in this Lease, may lawfully and peaceably enjoy the Demised Premises throughout the Term without any lawful suit, eviction or interruption by the Landlord or by any person lawfully claiming through, under or in trust for the Landlord or by title paramount.

## 5. ENTRY BY EITHER PARTY

When exercising any right of entry pursuant to the provisions of this Lease the person exercising the right and/or person entering shall:

- 5.1.1 exercise the right in a reasonable and proper manner and without unreasonable delay;
- 5.1.2 cause as little damage to the premises being entered and the other party's fixtures, fittings and equipment and shall make good as soon as reasonably possible any damage caused to the reasonable satisfaction of the other party in all respects;
- 5.1.3 give at least seven days' notice in writing (including by fax or substituted system) save in the case of emergency or genuine urgency when as much notice as practicable must be given;
- at all times be accompanied by a representative of the other party (provided that the other party makes such representative available on reasonable notice) save in the case of emergency or genuine urgency when such steps as are practicable shall be taken:

- 5.1.5 not enter into any occupied areas of the premises being entered;
- 5.1.6 comply with such reasonable directions and regulations that the other party may reasonably impose to mitigate any inconvenience to any tenants licensees or invitees of the premises being entered;

#### 6. STATUS OF TENANCY

This Lease is a new tenancy within the meaning of section 1 of the Landlord and Tenant (Covenants) Act 1995.

# 7. IMPLIED RIGHTS OF ENFORCEMENT BY THIRD PARTIES EXCLUDED

# 7.1 Exclusion of implied rights

Unless the right of enforcement is expressly granted, and save in the case of the any undertenants of the Tenant or any other persons holding title inferior to the Tenant (which shall be entitled to rely upon and enforce the covenants on the part of the Tenant and the conditions, reservations and provisos contained in this Lease), it is not intended that a third party should have the right to enforce a provision of this Lease under the Contracts (Rights of Third Parties) Act 1999.

# 7.2 No third party consent before rescission or variation

The parties may rescind or vary this Lease without the consent of a third party to whom an express right to enforce any of its terms has been provided.

## 8. SALE OF LANDLORD'S REVERSION

The Landlord covenants with the Tenant that upon any transfer assignment letting or any other transmission affecting its reversion to the Lease it shall contemporaneously with any such transaction procure that the party to whom the reversion has been transferred, assigned let or otherwise transmitted enters into a Purchaser's Deed of Covenant with the Tenant.

# 9. EXPERT DETERMINATION

# 9.1 Application of provisions

In this Lease, where any issue is required to be dealt with by, or submitted for the determination of, an independent expert, the following provisions of this Clause are to apply but, in case of conflict with other provisions specifically relating to expert determination elsewhere in this Lease, those other provisions are to prevail to the extent of the conflict.

# 9.2 Appointment of expert

The expert is to be appointed by the parties jointly, or if they cannot or do not agree on the appointment, appointed by whichever of the following is appropriate:

- 9.2.1 the president from time to time of the Royal Institution of Chartered Surveyors; or
- 9.2.2 the president from time to time of the Institute of Chartered Accountants in England and Wales,

or in either case the duly appointed deputy of the president, or other person authorised by him to make appointments on his behalf.

#### 9.3 Requirements of appointee

The person so appointed is to:

- 9.3.1 act as an expert, and not as an arbitrator; and
- 9.3.2 must afford the parties the opportunity within such a reasonable time limit as he may stipulate to make representations to him (accompanied by professional rental valuations, reports or other appropriate evidence in the relevant circumstances) and permit each party to make submissions on the representations of the other.

#### 4 Disclosure of evidence

Neither the Landlord nor the Tenant may without the consent of the other disclose to the expert correspondence or other evidence to which the privilege of non-production ("without prejudice") properly attaches.

## 9.5 Fees and expenses of expert

- 9.5.1 The fees and expenses of the expert, including the cost of his nomination, are to be borne as the expert may direct (but in the absence of such a direction, by the parties in equal shares), but (unless they otherwise agree) the parties shall bear their own costs with respect to the determination of the issue by the expert.
- 9.5.2 One party may pay the costs required to be borne by another party if they remain unpaid for more than 21 days after they become due and then recover these and any incidental expenses incurred from the other party on demand.

#### 9.6 Death incapacity and incapability of expert

If the expert refuses to act, becomes incapable of acting or dies, the Landlord or the Tenant may request the appointment of another expert in his stead under Clause 9.2 (Appointment of expert).

# 9.7 Status of expert's determination

The determination of the independent expert, except in case of manifest error, is to be binding on the Landlord and the Tenant.

#### 10. REGISTRATION OF LEASE

If this Lease should be registered at Land Registry the Tenant will:

- take all steps necessary to procure that the Tenant is registered at Land Registry as proprietor of the Lease as soon as reasonably possible; and
- deliver to the Landlord within ten days of registration, official copy entries of the registered title evidencing that the Tenant is the registered proprietor of this Lease.

#### Delivered as a deed on the date of this document.

#### SCHEDULE 1

# Part 1. Description of the Demised Premises

[ @ ] 5

## Part 2. Exceptions and Reservations

- 1. The free and uninterrupted passage of water, soil, electricity, telecommunications and gas and other services through the Service Media which are now or at any time during the Term be in or under or passing through the Demised Premises to the extent that the same are or do not become adopted and to the extent the same are capable of serving the Retained Property but not so as to overload the same and provided always that the Tenant may re-route or alter or replace any Service Media provided that it uses reasonable endeavours to ensure that their suitability are not materially affected.
- 2. Subject to the Landlord observing and complying with Clause 5, the right to enter those parts of the Demised Premises which are unbuilt upon and unoccupied from time to time to repair, inspect, renew, connect to, construct and maintain existing or new Service Media for the provision of services and supplies for the benefit of such parts of the Retained Property.
- 3. The rights of entry on the Demised Premises as referred to in Clause 3.5 (but subject to clause 5).
- 4. The right of support and protection for the Retained Property from the Demised Premises.

## Part 3. Rights

- 1. The free and uninterrupted passage of water, soil, electricity, telecommunications and gas and other services through the Service Media which are now or at any time during the Term be in or under or passing through the Retained Property to the extent that the same are or do not become adopted and to the extent the same are capable of serving the Demised Premises but not so as to overload the same and provided always that the Landlord may re-route or alter or replace any Service Media provided that it uses reasonable endeavours to ensure their suitability are not materially affected.
- 2. Subject to the Tenant observing and complying with clause 5 the right to enter those parts of the Retained Property which are unbuilt upon and unoccupied from time to time to repair, inspect, renew, connect to, construct and maintain existing or new Service Media for the provision of services and supplies for the benefit of such parts of the Demised Premises.
- 3. The right of support and protection for the Demised Premises from the Landlord's adjoining premises.
- 4. [To include such rights necessary to reflect the arrangements contemplated by clause 9, clause 10, clause 24 and the definition of "Ground Lease" in the Agreement for Lease  $^{6}$ ]

#### Part 4. The Encumbrances

Entries [ a ] and [ a ] of title number [ a ] (as at the date of this Lease)

<sup>&</sup>lt;sup>5</sup> Property description to be confirmed following acquisition of the relevant titles pursuant to Agreement for Lease

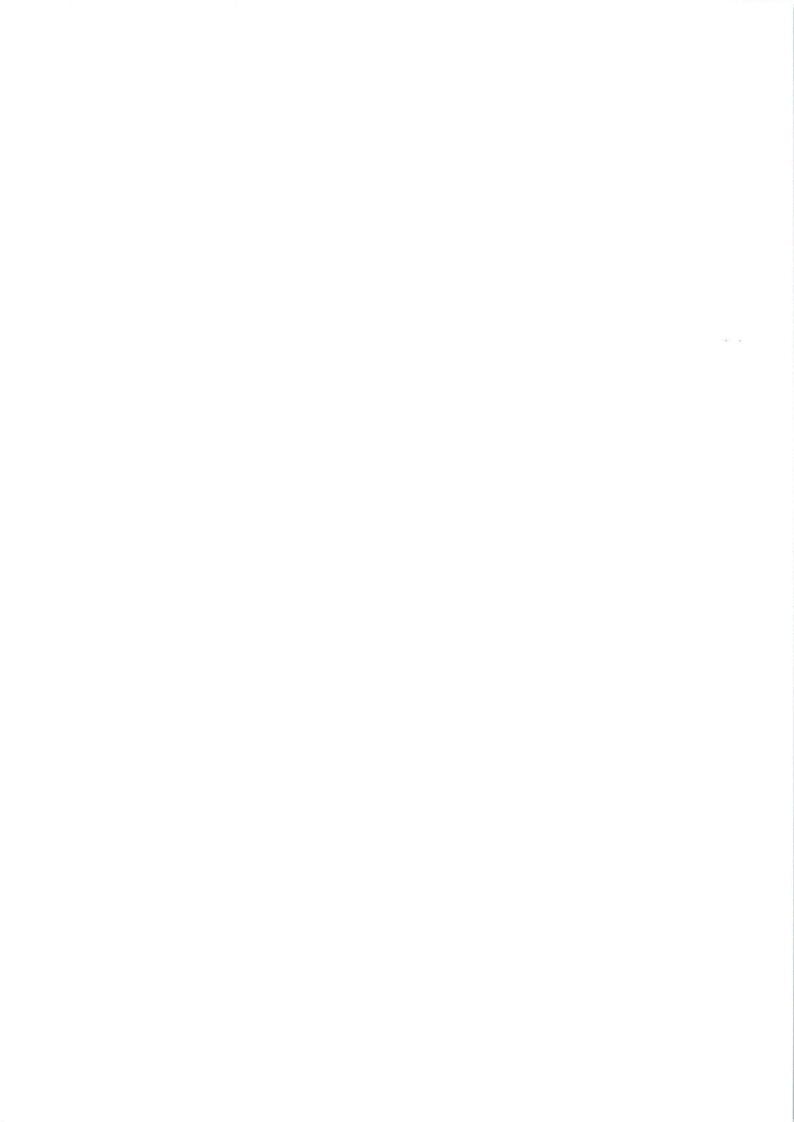
<sup>&</sup>lt;sup>6</sup> To be included prior to completion of the lease.

# **EXECUTION PAGE**

of Woking Borough Council	)	Mayor
		Head of Democratic and Legal Services
Executed as a Deed by Goldev Woking Limited eting by	)	Director
In the presence of:		
Witness signature:		
Witness name:		
Witness address:		

# APPENDIX 6

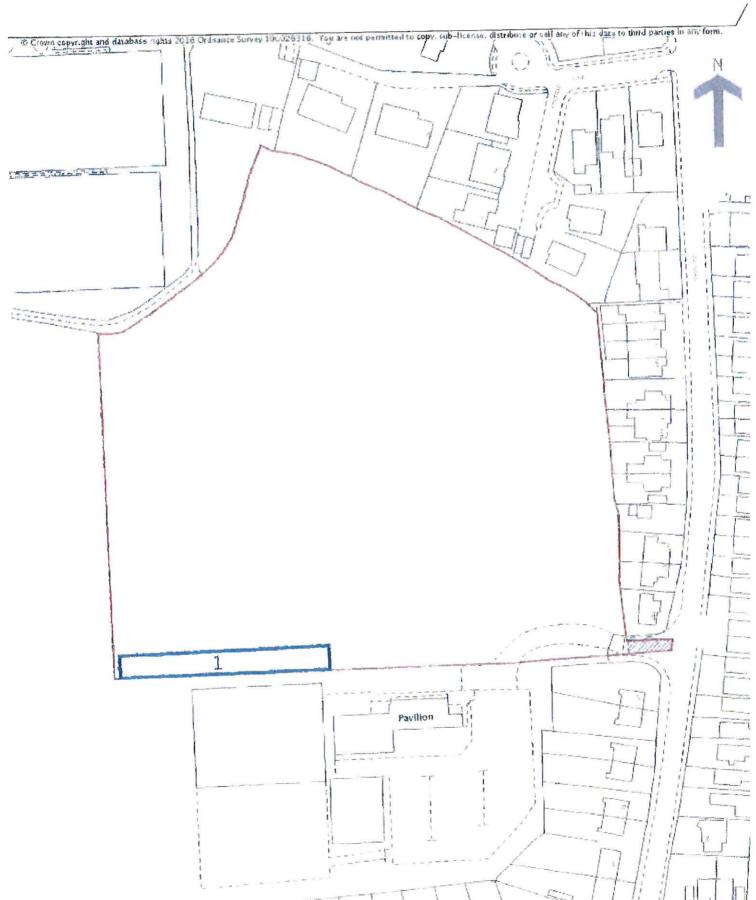
# Off Site Access Plan



# HM Land Registry Current title plan

Title number \$Y522016
Ordnance Survey map reference TQ0057SE
Scale 1:1250
Administrative area Surrey: Woking







# APPENDIX 7

# **Novation Deed**



# Dated [0] 201[0]

- (1) WOKING BOROUGH COUNCIL
  - (2) GOLDEV WOKING LIMITED
    - (3) [INCOMING DEVELOPER]

## DEED OF NOVATION



Katten Muchin Rosenman UK LLP

Paternoster House 65 St Paul's Churchyard London EC4M 8AB Tel: 020 7776 7620 Fax: 020 7776 7621

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#### **PARTIES**

- (1) Woking Borough Council of Civic Offices Gloucester Square, Woking, GU21 6YL ("the Council")
- Goldev Woking Limited a company incorporated in England and Wales with company registration number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ ("the Outgoing Developer")
- (3) [\*] incorporated in England and Wales with company registration number [\*] whose registered office is at [\*] ("the Incoming Developer")

#### RECITALS

- (A) On [•]¹ the Council and Outgoing Developer entered into an Implementation Agreement relating to Woking Football Club and other land in Woking ("the Agreement") a copy of which is attached to this deed.
- (B) On [●] the Outgoing Developer sold its interest in the Agreement to the Incoming Developer.
- (C) The Outgoing Developer wishes to be released from the Agreement and to transfer all its rights, obligations and liabilities under the Agreement to the Incoming Developer by way of novation.
- (D) The Council has agreed to the novation on the terms of this deed.

## **AGREEMENT**

#### 1. NOVATION

- The Outgoing Developer transfers all its rights and obligations under the Agreement to the Incoming Developer. The Incoming Developer shall enjoy all the rights and benefits of the Outgoing Developer under the Agreement, and all references to Outgoing Developer in the Agreement shall be read and construed as references to Incoming Developer.
- The parties agree that from the date of this deed (the "Novation Date") the Council and the Incoming Developer shall respectively perform the Agreement and be bound by its terms in every way as if the Incoming Developer were the original party to the Agreement in place of the Outgoing Developer.
- 1.3 The Council and the Incoming Developer agree that they may enforce the Agreement and pursue against the other any claims and demands under or in connection with the Agreement arising before, on or after the Novation Date as if the Incoming Developer was the original party to the Agreement instead of the Outgoing Developer.

## 2. RELEASE

The Council and the Outgoing Developer irrevocably and unconditionally release each other from all their future obligations to each other under the Agreement and from all future claims

<sup>1</sup> Insert relevant date

and demands in respect of the Agreement whether arising before, on, or after the Novation Date.

## 3. GOVERNING LAW AND JURISDICTION

This deed is governed by and shall be construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute or claim that arises in relation to it

Executed as a deed by the parties and delivered by them on the date of this deed

executed as a Deed under the Comm Seal of Woking Borough Council	on )	) ) Mayor
		Head of Democratic and Legal Services
Executed as a Deed by Goldev Woking Limited acting by	)	Director
In the presence of:		
Witness signature:		
Witness name:		
Witness address:		

# APPENDIX 8

**Balancing Payment Calculation Example** 



#### Woking Football Club and Associated Development Example of Balancing Payment Calculation per the Framework Agreement

£ Remarks No Item 1. Agreed Purchase Sums Leigh Place Land (Egley Road) 1.1 11,000,000.00 ■ Purchase Price 539,500.00 SDLT 11,539,500.00 1.2 1.3 1.4 KCS Freehold 2,000,000.00 · Purchase Price 89,500.00 • SDLT 2,089,500.00 WBC Land 7,125,000.00 1.5 7,125,000.00 2. Gym Club Contribution 1,000,000.00 New gym club contribution 1,000,000.00 Sub-total 3. Transfer of Residential Units to Council 24,000,000.00 A x B where: A = the number of Dwellings notified to the Council per clause 12.2(b); and B = the value per Dwelling agreed per clause 12.2(c) or determined per clause 12.2(d) 4. Balancing Payment Per 1 & 2 above 22,993,000.00 Agreed Purchase Sums LESS Per 3 above Value of transferred dwellings (per 2 24,000,000.00 above) -1,007,000.00 **Balancing Payment Due** 



# APPENDIX 9

# Freehold Call Option



Dated 2019

(1) WOKING BOROUGH COUNCIL

(2) GOLDEV WOKING LIMITED

# OPTION AGREEMENT

in relation to Egley Road Freehold Residential Element

NB: The footnotes in this document are for information purposes only.



Katten Muchin Rosenman UK LLP

Paternoster House 65 St Paul's Churchyard London EC4M 8AB Tel: 020 7776 7620 Fax: 020 7776 7621

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#### PARTIES

- (1) WOKING BOROUGH COUNCIL of Civic Offices Gloucester Square, Woking, GU21 6YL (the "Seller");
- (2) GOLDEV WOKING LIMITED a company incorporated in England and Wales with company registration number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ (the "Buyer").

#### BACKGROUND

- (A) The Seller has transferred the freehold interest in the Property to the Buyer on or around the date of this Agreement.
- (B) The parties agreed that in the event of a material breach by the Buyer of the obligations on the Buyer contained in the Implementation Agreement the Seller shall have an option to call for a transfer of the Property.
- (C) It is agreed that the Seller shall only be entitled to exercise the Option granted to it by the Buyer in this Agreement on the terms of this Agreement.

#### 1. **DEFINITIONS**

In this Agreement the following definitions apply:

"Affiliate" means in respect of any person:

- (i) any person connected with such person (and "connected with" bears the meaning set out in section 839 of the Income and Corporation Taxes Act 1988);
- (ii) any company under the control of such person (and "control" bears the meaning set out in section 840 of the Income and Corporation Taxes Act 1988);
- (iii) any associated company of such person (and "associated" bears the meaning set out in section 416 of the Income and Corporation Taxes Act 1988);
- (iv) any Connected Party; and
- (v) any Group Company of any such person referenced to in paragraphs (i) to (iv).

"Buyer" means the first party to this Agreement and includes its successors in title and assigns;

"Buyer's Third Party Funding Arrangement" means any arrangements entered into by the Buyer and/or any Affiliate with a Third Party Funder to obtain finance in connection with the Property;

"Buyer's Solicitors" means Katten Muchin Rosenman (UK) LLP (reference PS. 390596/1) or such other solicitors as the Buyer may notify to the Seller in writing;

"Chargee" means any person to whom the Buyer may have granted a permitted Third Party Charge and whose details have been provided to the Seller;

"Chargee's Address for Service" means the address of the Chargee as may be notified in writing by the Chargee to the Seller from time to time;

"Completion" the date on which a transfer of the Property to the Seller is actually completed;

"Completion Date" the date which is 20 Working Days after the date on which the Seller serves a valid Option Notice strictly in accordance with the provisions of clause 6 but subject to clause 6.3;

"Connected Party" means any person or company connected with a party or a Group Company or any director of a party and connected as the same meaning as in Sections 252, 254 and 255 of the Companies Act 2006 or Section 1122 of the Corporation Tax Act 2010.

"Contract Rate" 4 per cent per annum above Barclay Bank PLC base rate from time to time in force:

"Developer's Works" has the meaning ascribed to it in the Implementation Agreement;

"Expert" means an independent person with at least ten years' post-qualification experience including significant relevant experience in the subject matter of the dispute or difference who is a specialist in relation to such subject matter;

"Group Company" means any subsidiary or holding company of a party and subsidiary and holding company hall have the respective meanings ascribed to such expressions by the Companies Act 2006 Section 159 and for these purposes:

- (i) a company (A) is to be treated as a member of another company (B) if any of A's subsidiary companies is a member of B or if any shares in B are held by a person acting on behalf of A or any of its subsidiary companies; and
- (ii) the words 'Rights attached to' in the heading of the main body of the Companies Act 2006 Schedule 6 paragraph 7 shall be omitted and the words 'attached to those shares' shall be inserted between the word 'rights' and the words 'are exercisable' in each of the sub-paragraphs (a) and (b) of that paragraph.

"House" means a residential dwelling constructed and related curtilage on part of the Property as part of the Developer's Works;

"Implementation Agreement" means the agreement dated [•] 2019 made between (1) the Seller and (2) the Buyer in relation to development works on inter alia the Property;

"Option" the option granted to the Seller to require the Buyer to transfer the Property (or part of the Property) in accordance with the terms of this Agreement;

"Option Fee" £10.00 (ten pounds);

"Option Notice" a notice in the form set out in Schedule 2 to this Agreement;

"Option Notice Conditions" the conditions set out at clause 6.2.1(a) to 6.2.1(c) of this Agreement which must be satisfied before the Seller can validly serve an Option Notice;

"Option Period" the period starting on the date of this Agreement and ending on the date of transfer of the last House on the Property but subject always to the provisions of clause 3.3;

"Plan" the plan annexed to this Agreement;

"Practical Completion" has the meaning ascribed to it in the Implementation Agreement;

"Property" the [ • ]1;

"Seller" means the first party to this Agreement and includes its successors in title and assigns;

"Seller Charge" means any charge or charges granted by the Buyer in favour of the Seller inter alia over the Property;

"Seller's Solicitors" means Woking Borough Council, Legal Services Department of Civic Offices, Gloucester Square, Woking GU21 6YL (Ref: Peter Bryant) or such other solicitors as the Seller may notify to the Buyer in writing;

"Standard Conditions" the Standard Commercial Property Conditions (3rd edition) and Standard Condition means any one of them;

"Third Party Charge" means a charge granted over the Property to a Third Party Funder other than the Seller where permitted by a Seller Charge and of which details have been provided to the Seller;

"Third Party Funder" means any bank, fund, insurance company, institution or other third party providing funding by way of debt equity or otherwise to the Buyer or any Affiliate in respect of the Property to whom a Third Party Charge has been granted;

"Transfer" a transfer of the Property in such form to be agreed between the parties (acting reasonably);

"VAT" value added tax payable by virtue of the Value Added Tax Act 1994 (or any tax similar to or levied instead of value added tax);

"Working Day" any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday;

"Works Commencement Longstop Date" has the meaning ascribed to it in the Implementation Agreement.

"Works Completion Longstop Date" has the meaning ascribed to it in the Implementation Agreement.

#### 2. INTERPRETATION

- 2.1 In this Agreement:
  - 2.1.1 the table of contents and clause headings are for reference only and do not affect its construction:
  - 2.1.2 the words 'include', 'includes' and 'including' are deemed to be followed by the words 'without limitation';

The description of the "Egley Road Freehold Residential Element" (as defined in the Agreement for Lease) to be inserted here.

- 2.1.3 general words introduced by the word 'other' do not have a restrictive meaning by reason of being preceded by words indicating a particular class of acts, things or matters;
- 2.1.4 an obligation not to do something includes an obligation not to cause or allow that thing to be done;
- 2.1.5 obligations owed by or to more than one person are owed by or to them jointly and severally.
- 2.2 In this Agreement, unless otherwise specified:
  - 2.2.1 a reference to legislation is a reference to all legislation having effect in the United Kingdom at any time during the currency of this Agreement, including directives, decisions and regulations of the Council or Commission of the European Union, Acts of Parliament, orders, regulations, consents, licences, notices and byelaws made or granted under any Act of Parliament or directive, decision or regulation of the Council or Commission of the European Union, or made or granted by a local authority or by a court of competent jurisdiction and any approved codes of practice issued by a statutory body;
  - 2.2.2 reference to particular legislation is a reference to that legislation as amended, consolidated or re-enacted from time to time and all subordinate legislation made under it from time to time.

### 3. GRANT OF OPTION

- In consideration of the Option Fee paid by the Seller to the Buyer (receipt of which the Buyer acknowledges) the Buyer grants to the Seller, the Option.
- 3.2 The Option will lapse if it has not been validly exercised by the Seller before the end of the Option Period.
- 3.3 The Seller shall only be entitled to exercise the Option in respect of such parts of the Property as do not comprise a House which has already been transferred to a third party and otherwise in accordance with the terms of this Agreement.

### 4. ALIENATION

- 4.1 The benefit of this Agreement is not capable of being assigned in whole or part by the Seller or to be held in trust by the Seller for any person;
  - (a) The benefit of this Agreement may not be assigned in whole or in part by the Buyer or held in trust by the Buyer for any other person except a holding on trust of the benefit of this Agreement for an Affiliate of the Buyer;
  - (b) an assignment by way of security of the benefit of this Agreement to any Third Party Funder in connection with any Buyer's Third Party Funding Arrangements including any assignment to a Funder or Third Party Funder's nominee) pursuant to any enforcement of such Buyer's Third Party Funding Arrangements.

## 5. REGISTRATION OF THE OPTION

The Seller undertakes not to protect this Agreement on the register of the Buyer's title otherwise than by entry of a unilateral notice and not to produce this Agreement or a copy of it to Land Registry.

## 6. EXERCISING THE OPTION

- Subject to clause 6.3, the Seller may only exercise the Option during the Option Period in relation to the Property (or such lesser part as is described in clause 3.3) by serving an Option Notice on the Buyer and only upon adequately demonstrating to the Buyer in writing that each of the Option Notice Conditions, set out at clause 6.2 below, have been satisfied in full.
- 6.2 The Option Notice Conditions are that:

6.2.1

- (a) the Buyer has not commenced (or has failed to procure the commencement of) the Developer's Works on or prior to the Works Commencement Longstop Date ("Work's Commencement Breach"); or
- (b) the Developer's Works have not achieved Practical Completion by the Works Completion Longstop Date ("Developer's Works Breach"); or
- the Buyer or Seller has served notice to terminate the Implementation Agreement pursuant to and strictly in accordance with clause 13.1 of the Implementation Agreement "Implementation Agreement Breach")
- where such Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach is capable of remedy, the Buyer does not remedy it within 90 days of written notice of the Buyer Breach or Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach from the Seller; and
- 6.2.3 if the Buyer has charged the Property and notice of such Third Party Charge has been given to the Seller, the Seller has given notice to the Chargee of the Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach (together with all relevant and reasonably necessary documentation evidencing the breach); and
- 6.2.4 within 90 Working Days from the date the Chargee has received notice under clause 6.2.3, the Chargee has not:
  - (a) served a counter-notice to the Seller requiring it not to exercise the Option Notice;
  - (b) within 10 Working Days, taken reasonable and proper steps acceptable to the Seller, who is to act reasonably, by way of remedy of the Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach; and

- (c) in all material respects complied with the obligations undertaken in this paragraph to the satisfaction of the Seller acting reasonably.
- 6.3 The Buyer may, within 10 working days of receipt of an Option Notice in accordance with clause 6.1, give notice to the Seller in writing that it wishes to dispute the issue of the Option Notice and refer the matter to an Expert for determination in accordance with clause 14 and if it does so, the Option Notice shall have no legal effect pending the outcome of the determination in accordance with clause 14.

#### 6.4 If:

- (a) the Option Notice Conditions have been satisfied in full; and
- (b) the Option has been validly exercised in accordance with the terms of this Agreement; and
- (c) the Buyer has not referred the matter for determination in accordance with clause 6.3,

then the Buyer and Seller will become bound to complete on the Completion Date the sale and purchase of the Property (or such part thereof as does not comprise a House which has already been transferred to a third party prior to the Completion Date).

- 6.5 The Seller may only exercise its Option in respect of the whole of the Property (or relevant part pursuant to clause 3.3) and not in respect of part only.
- 6.6 The Seller cannot require the Buyer to:
  - 6.6.1 transfer the Property or any part of it to any person other than the Seller; or
  - 6.6.2 transfer the Property in more than one parcel or by more than one transfer.

## 7. DEPOSIT AND CONSIDERATION

- 7.1 No deposit is payable by the Seller on exercise of the Option.
- 7.2 No consideration is payable by the Seller on completion of the sale of the Property.

#### 8. TITLE

- The Buyer is registered at Land Registry as proprietor with absolute leasehold title to the Property and the Seller, having received from the Buyer before the date of this Agreement an official copy of entries subsisting on the register of the Property and of any title plans and copies or abstracts of any documents noted on that title, must accept the Buyer's title without further enquiry or requisition.
- 8.2 The Buyer sells with full title guarantee but the Buyer's covenants for title shall be modified as set out in the Transfer.

## 9. MATTERS AFFECTING THE PROPERTY

9.1 The Property is sold subject to:

- 9.1.1 the matters other than the Third Party Charge contained or referred to in the registers maintained by Land Registry under title number [♠]² the Land Charges Department of Land Registry;
- 9.1.2 the matters affecting the Property (to the extent that such are still subsisting and capable of being enforced) contained or referred to in the documents listed in Schedule 1;
- 9.1.3 all matters discoverable by inspection of the Property before the exercise of the Option;
- 9.1.4 all matters relating to the Property which the Buyer does not know about;
- 9.1.5 entries in any public register (whether made before or after today) other than in respect of the Third Party Charge;
- 9.1.6 public requirements and any matters arising by virtue of any legislation;
- 9.1.7 any unregistered interests which fall within any of the paragraphs of Schedule 3 of the Land Registration Act 2002 and any unregistered interests that affect the Property to the extent and for so long as they are preserved by the transitional provisions of Schedule 12 of the Land Registration Act 2002;
- 9.1.8 all matters disclosed or which would be disclosed by searches or as a result of enquiries (formal or informal, and whether made in person, in writing or orally) which a prudent Seller ought to have made before the exercise of the Option;
- 9.1.9 all matters specified in this Agreement and in the Transfer;
- 9.1.10 any existing charges or mortgages in favour of the Seller;
- 9.1.11 any uncompleted contracts for sale of a House which the Seller agrees to comply with.
- 9.2 The Seller will be deemed to take the Property with full knowledge of the matters subject to which it is sold, and may not make any requisition or claim in respect of any of them.

### 10. VACANT POSSESSION

The Property will be sold subject to any matters referred to in clause 9 and all leases, underleases and licences as may be subsisting as of the date of the Option Notice.

## 11. INSURANCE

- 11.1 The Buyer is under no obligation to the Seller to insure the Property.
- The Property is at all times after the exercise of the Option at the risk of the Seller who following exercise of the Option will complete the sale and purchase despite any damage or defect that may occur or become apparent.

To be completed only after acquisition complete per Agreement for Lease.

#### 12. TRANSFER

- 12.1 The Transfer will be in a form to be agreed between the parties acting reasonably.
- 12.2 The Seller must at its own cost prepare and execute the Transfer as a deed in duplicate and deliver the duplicate to the Buyer's Solicitors 5 working days before Completion.

#### 13. COMPLETION

- 13.1 Completion of the sale of the Property will take place on the Completion Date and will be effected by the Transfer.
- 13.2 Completion is to take place at the offices of the Buyer's Solicitors or at such other place in England and Wales as the Buyer's Solicitors reasonably direct.
- 13.3 The Seller must apply to Land Registry as soon as reasonably practicable following Completion for registration of the Transfer and will pursue its application expeditiously and will within 5 Working Days after completion of that registration produce to the Buyer's Solicitors official copies of the entries and title plan at Land Registry showing the Seller as the registered proprietor of the Property.

#### 14. DISPUTES

Any dispute under this Agreement (other than a dispute relating to the legal interpretation of this Agreement) may be referred at any time by either the Seller or Buyer for determination by an Expert.

#### 14.1 Appointment of Expert

Unless the parties agree or are deemed to agree the type of Expert appropriate to the dispute having due regard to the subject matter of the dispute then:

- 14.1.1 if the parties do not agree which type of Expert is appropriate to resolve the dispute either Party may refer that question to the president or next most senior available officer of the Royal Institution of Chartered Surveyors who will (with the right to take such further advice as he may require) determine that question and nominate or arrange to have nominated the appropriate Expert;
- 14.1.2 if the parties do agree the appropriate type of Expert but do not agree the identity of the Expert he will be nominated on the application of either Party by the president or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Expert but if no such organisation exists then by the president or next most senior available officer of the Royal Institution of Chartered Surveyors.

#### 14.2 Decision of Expert

The Expert shall act as an expert and not as an arbitrator and the parties shall use reasonable endeavours to procure that the Expert shall within 15 Working Days of appointment prepare a written decision and provide a copy to the Seller and Buyer.

### 14.3 Parties' Representations

The Expert must give each party the opportunity within reasonable time limits to make representations to him, inform each party of the representations of the other and allow each party to make submissions to him on the representations of the other. The Expert may call for such written evidence from the parties, and seek such legal or other technical assistance as the Expert reasonably requires.

# 14.4 Binding Decision of Expert

The Expert's decision is (except in case of manifest error) conclusive and binding on the parties save in the case of manifest error or fraud.

## 14.5 Copies of Advice etc

The Expert shall supply to the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within 10 Working Days of the parties' respective receipt of such copies.

## 14.6 Take Account of Agreement

The Expert shall be required to take into account the provisions of this Agreement.

## 14.7 Expert's Costs

The costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination in equal proportions between them;

## 14.8 Expert's Incapacity

If the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for an appointment of an Expert shall be repeated as often as necessary.

# 14.9 Disputes as to Legal Construction or Interpretation

Notwithstanding any other provisions of this Agreement any dispute as to legal construction or interpretation of this Agreement shall not be referred to the Expert but instead the parties shall submit to the jurisdiction of the courts of England and Wales.

## 15. NOTICES

- 15.1 Any notice required to be given under this Agreement pursuant must be in writing and will be valid only if:
  - 15.1.1 it is given by hand or sent by special or recorded delivery; and
  - 15.1.2 it is served on the recipient at the address of that party shown in this Agreement in the United Kingdom or such other address for service in the United Kingdom specified in a notice given by the recipient to the other party.

- Unless it is returned through the postal service undelivered, a notice sent by special delivery or recorded delivery is treated as served on the second Working Day after posting whenever (and whether or not) it is received.
- 15.3 A notice or document given or delivered under this Agreement by email shall not be validly given or delivered.

## 16. EXPIRY OF OPTION PERIOD

If the Option is not exercised during the Option Period, the Seller must forthwith following the expiry of the Option Period apply to cancel any land charge or, as the case may be, any notice or other entry registered against the Buyer's title at Land Registry, in respect of this Agreement.

#### 7. ENTIRE AGREEMENT

- 17.1 The parties acknowledge that this Agreement and any document annexed to or incorporated into it contains all the express terms of the Agreement between them for the sale and purchase of the Property.
- 17.2 The Seller acknowledges that, except for written replies given by the Buyer's Solicitors to any pre-contract enquiries raised by the Seller's Solicitors before the date of this Agreement, it has not relied upon or taken into account any statement or representation made by or on behalf of the Buyer (whether written or oral) in deciding to enter into this Agreement and shall have no remedy in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

### 18. STANDARD CONDITIONS

- 18.1 Upon service of an Option Notice the Standard Conditions shall be incorporated into this Agreement (as varied in accordance with the provisions of clause 18) in so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the terms of this Agreement and in the event of any conflict between the express terms and conditions of this Agreement and the Standard Conditions the former shall prevail.
- All references in the Standard Conditions to the 'date of the contract' shall be deemed to be references to the date of exercise of the Option.
- 18.3 All references in the Standard Conditions to the 'contract rate' shall be deemed to be the Contract Rate as defined in clause 1.
- 18.4 Standard Conditions 1.3, 2, 3, 4.1, 5, 6, 7.1, 7.2, 7.3, 7.4.2, 7.6.2, 7.6.3, 7.6.6, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5. 8.2.7 and 11 do not apply.

#### 19. GOVERNING LAW

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

## 20. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation.

## 21. THIRD PARTIES

Unless expressly stated nothing in this Agreement is intended to confer any right on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

AGREED BY THE PARTIES ON THE DATE FIRST SET OUT AT THE BEGINNING OF THIS AGREEMENT

EXECUTED AS A DEED by the parties		
Executed as a Deed under the Common Seal of Woking Borough Council	)	Mayor
		Head of Democratic and Legal Services
Executed as a Deed by Goldev Woking Limited acting by	)	Director
In the presence of:		
Witness signature:		
Witness name:		
Witness address:		

# SCHEDULE 1 - Property matters<sup>3</sup>

Date of document Parties to the document Description Document missing

[Insert details] [Insert details] [Yes/No/Copy only held]]

To be completed per Agreement for Lease

# SCHEDULE 2 - Option Notice

To: [insert full name of Buyer or successor in title]

Address: [insert address of Buyer or successor in title]

FAO: [name of appropriate person]

Option Agreement dated [insert date of agreement] made between [insert details of parties to the agreement] relating to [description of the Property] (the Option Agreement).

Property [insert description of the Property].

Pursuant to [clause 6.1] of the Option Agreement, [insert name of Seller or successor in title] hereby gives [insert name of Buyer or successor in title] notice of the exercise of the option contained in and strictly in accordance with the Option Agreement to buy the Property on the terms set out in the Option Agreement.

signed by [name]

on behalf of [insert name of Seller or successor in title]

Date: [insert date of notice]

Signed by [insert name] for and on behalf of the Buyer

Signed by [insert name] for and on behalf of the Seller

# APPENDIX 10

# David Lloyd Heads of Terms

# DRAFT HEADS OF TERMS

Between

# DAVID LLOYD LEISURE GR LIMITED

and

## WOKING BOROUGH COUNCIL

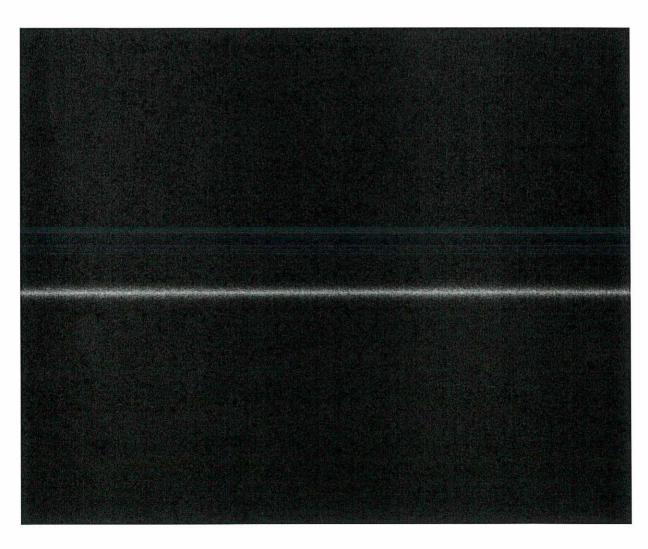
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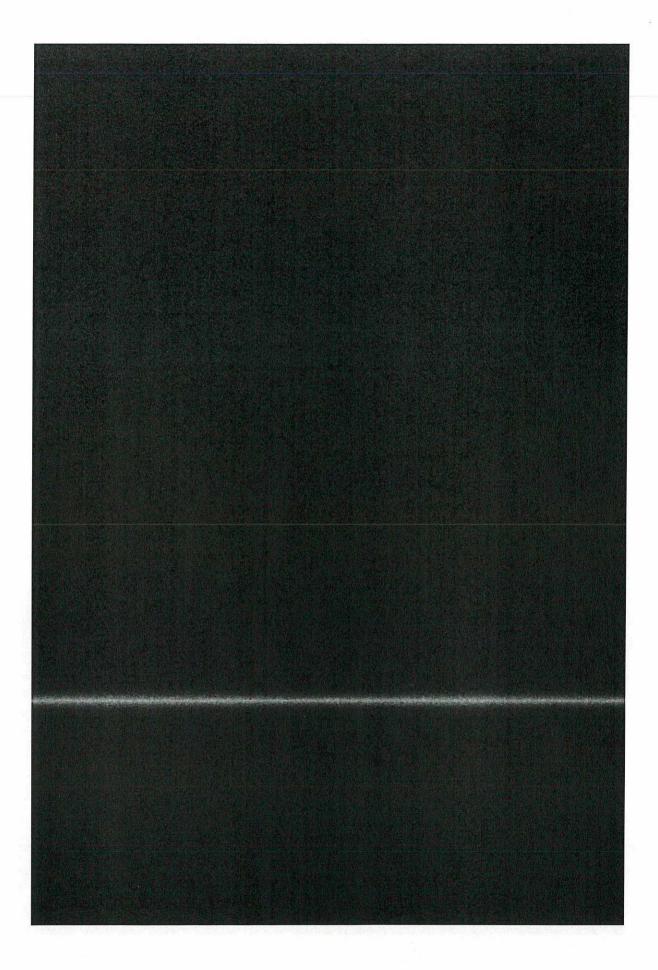
# **GOLDEV WOKING LTD**

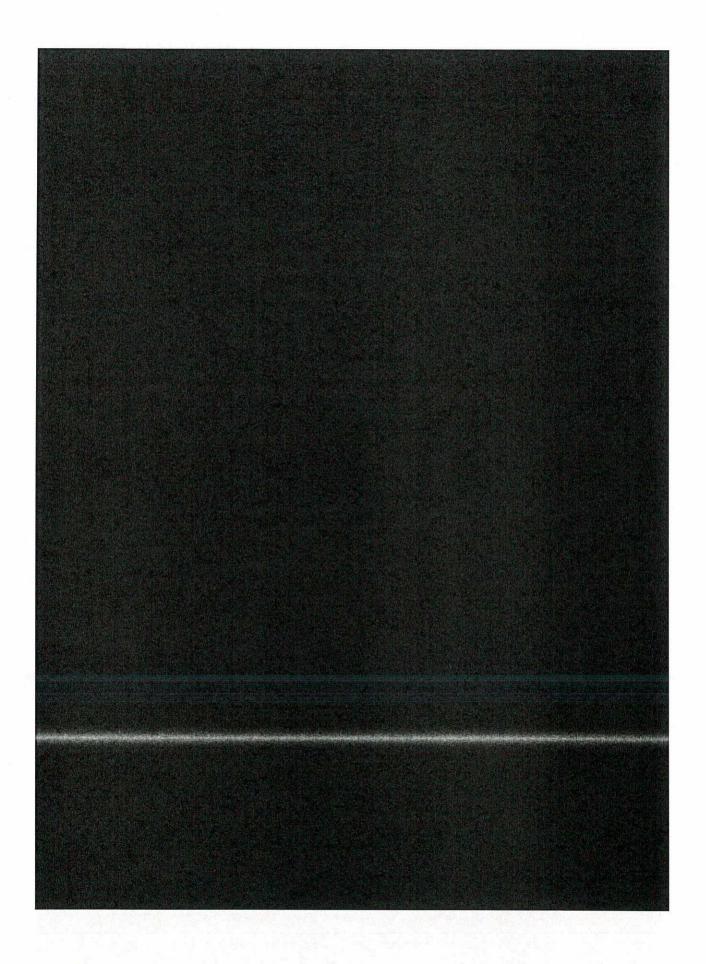
Subject to Contract

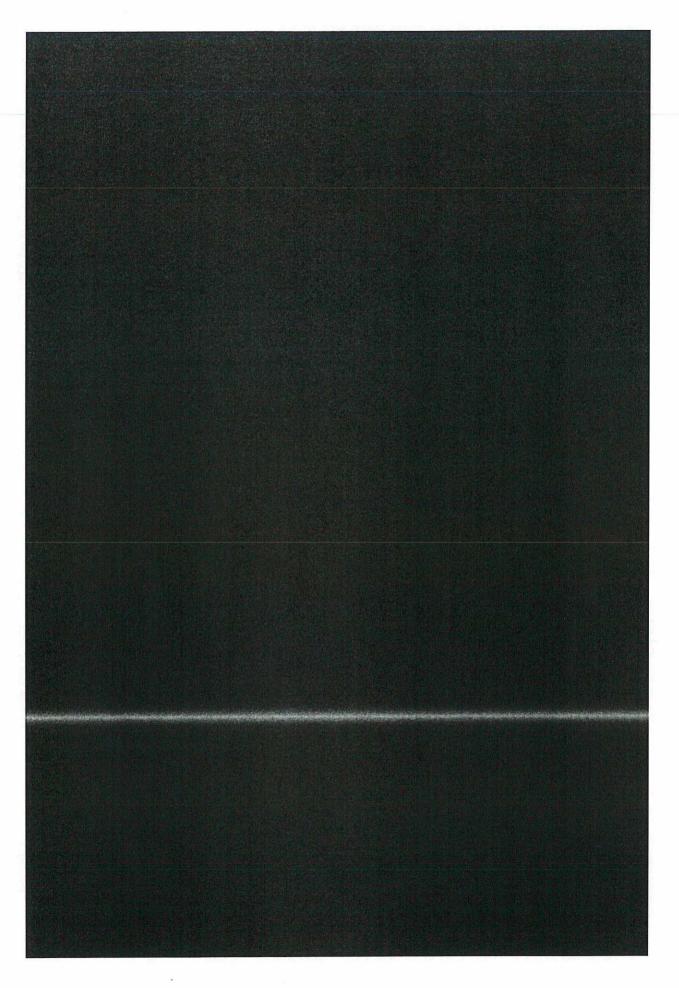
# RELOCATION FROM WESTFIELD AVENUE TO LAND OFF EGLEY ROAD, WOKING

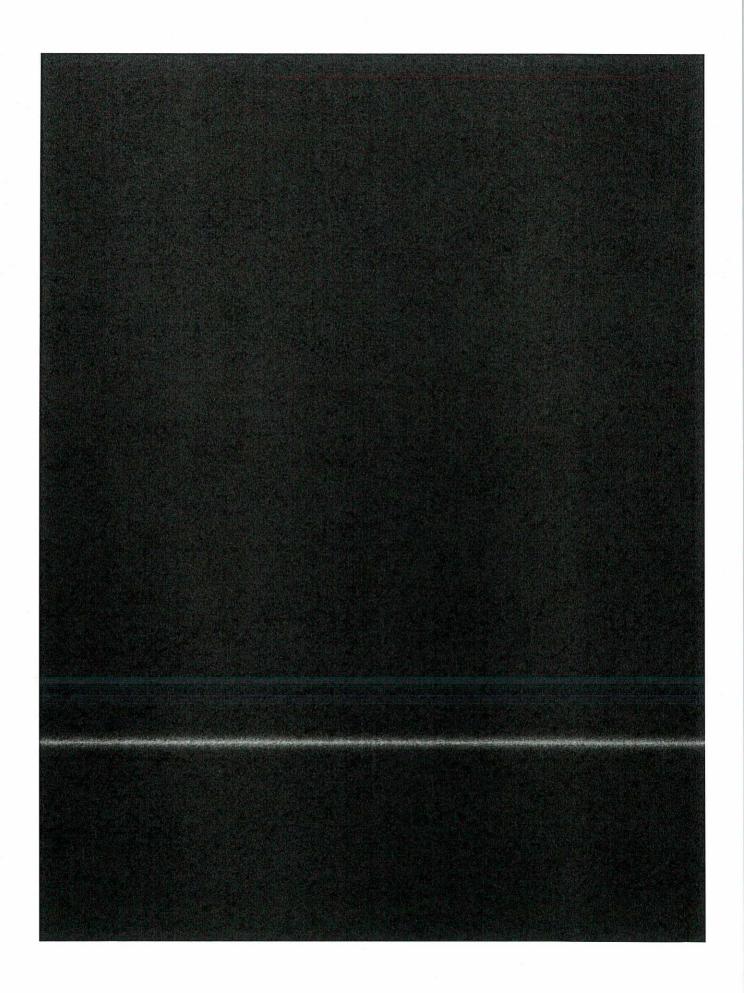
15th November 2018













# APPENDIX 11

# Leasehold Call Option



## Dated [ ] 201[ ]

- (1) WOKING BOROUGH COUNCIL
  - (2) GOLDEV WOKING LIMITED

## OPTION AGREEMENT

in relation to a Ground Lease dated  $[\, \bullet \,]^l$ 

NB: The footnotes in this document are for information purposes only.

Katten Muchin Rosenman UK LLP

Paternoster House 65 St Paul's Churchyard London EC4M 8AB Tel: 020 7776 7620 Fax: 020 7776 7621

To be completed simultaneously with grant of the Lease

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#### PARTIES

- (1) WOKING BOROUGH COUNCIL of Civic Offices Gloucester Square, Woking, GU21 6YL (the "Landlord");
- (2) GOLDEV WOKING LIMITED a company incorporated in England and Wales with company registration number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ (the "Tenant").

#### BACKGROUND

- (A) The Landlord has granted the Tenant the Lease of the Property on or around the date of this Agreement.
- (B) The parties agreed that the Lease should not contain a right for the Landlord to re-enter the Property to forfeit but instead it has been agreed that in the event of a material breach by the Tenant of the tenant covenants contained in the Lease the Landlord shall have an option to call for a transfer or surrender of the Lease.
- (C) It is agreed that the Landlord shall only be entitled to exercise the Option granted to it by the Tenant in this Agreement in its capacity as Landlord pursuant to the Lease and otherwise on the terms of this Agreement.

## 1. **DEFINITIONS**

In this Agreement the following definitions apply:

"Affiliate" means in respect of any person:

- (i) any person connected with such person (and "connected with" bears the meaning set out in section 839 of the Income and Corporation Taxes Act 1988);
- (ii) any company under the control of such person (and "control" bears the meaning set out in section 840 of the Income and Corporation Taxes Act 1988);
- (iii) any associated company of such person (and "associated" bears the meaning set out in section 416 of the Income and Corporation Taxes Act 1988);
- (iv) any Connected Party; and
- (v) any Group Company of any such person referenced to in paragraphs (i) to (iv).

"Chargee" means any person to whom the Tenant may have granted a permitted Third Party Charge and whose details have been provided to the Landlord in accordance with the provisions of the Lease;

"Chargee's Address for Service" means the address of the Chargee set out in the notice of charge given to the Landlord pursuant the Lease or such other address as may be notified in writing by the Chargee to the Landlord from time to time;

"Completion" the date on which a transfer of the Property to the Landlord is actually completed;

"Completion Date" the date which is 20 Working Days after the date on which the Landlord serves a valid Option Notice strictly in accordance with the provisions of clause 6 but subject to clause 6.3;

"Connected Party" means any person or company connected with a party or a Group Company or any director of a party and connected as the same meaning as in Sections 252, 254 and 255 of the Companies Act 2006 or Section 1122 of the Corporation Tax Act 2010.

"Contract Rate" 4 per cent per annum above Barclay Bank PLC base rate from time to time in force;

"Developer's Works" has the meaning ascribed to it in the Implementation Agreement;

"Expert" means an independent person with at least ten years' post-qualification experience including significant relevant experience in the subject matter of the dispute or difference who is a specialist in relation to such subject matter;

"Group Company" means any subsidiary or holding company of a party and subsidiary and holding company hall have the respective meanings ascribed to such expressions by the Companies Act 2006 Section 159 and for these purposes:

- (i) a company (A) is to be treated as a member of another company (B) if any of A's subsidiary companies is a member of B or if any shares in B are held by a person acting on behalf of A or any of its subsidiary companies; and
- (ii) the words 'Rights attached to' in the heading of the main body of the Companies Act 2006 Schedule 6 paragraph 7 shall be omitted and the words 'attached to those shares' shall be inserted between the word 'rights' and the words 'are exercisable' in each of the sub-paragraphs (a) and (b) of that paragraph.

"Implementation Agreement" means the agreement dated [•] 2019 made between (1) the Landlord and (2) the Tenant in relation to development works on inter alia the Property;

"Landlord" means the first party to this Agreement and includes its successors in title and assigns;

"Landlord Charge" means any charge or charges granted by the Tenant in favour of the Landlord inter alia over the Property;

"Landlord's Solicitors" means Woking Borough Council, Legal Services Department of Civic Offices, Gloucester Square, Woking GU21 6YL (Ref: Peter Bryant) or such other solicitors as the Landlord may notify to the Tenant in writing;

"Lease" means a lease dated [•]<sup>2</sup> between (1) the Landlord and (2) the Tenant in respect of the Property and all documents supplemental and collateral to the Lease;

"Option" the option granted to the Landlord to require the Tenant to transfer or surrender the Lease in accordance with the terms of this Agreement;

"Option Fee" £10.00 (ten pounds);

"Option Notice" a notice in the form set out in Schedule 2 to this Agreement;

Lease to be entered into simultaneously with this Agreement.

- "Option Notice Conditions" the conditions set out at clause 6.2.1 (a) (d) of this Agreement which must be satisfied before the Landlord can validly serve an Option Notice;
- "Option Period" the period starting on the date of this Agreement and ending on the expiry of the term of the Lease;
- "Plan" the plan annexed to this Agreement;
- "Practical Completion" has the meaning ascribed to it in the Implementation Agreement;
- "Property" the Tenant's leasehold property more particularly described in the Lease and comprising [•²];
- "Standard Conditions" the Standard Commercial Property Conditions (3rd edition) and Standard Condition means any one of them;
- "Tenant" means the first party to this Agreement and includes its successors in title and assigns;
- "Tenant's Third Party Funding Arrangement" means any arrangements entered into by the Tenant and/or any Affiliate with a Third Party Funder to obtain finance in connection with the Property;
- "Tenant's Solicitors" means Katten Muchin Rosenman (UK) LLP (reference PS. 390596/1) or such other solicitors as the Tenant may notify to the Landlord in writing;
- "Third Party Charge" means a charge granted over the Property by the Tenant to a party other than the Landlord in accordance with the provisions of the Lease and where permitted by a Landlord Charge and of which details have been provided to the Landlord in accordance with the Lease;
- "Third Party Funder" means any bank, fund, insurance company, institution or other third party providing funding by way of debt equity or otherwise to the Tenant or any Affiliate in respect of the Property to whom a Third Party Charge has been granted;
- "Transfer" a transfer of the Property in such form to be agreed between the parties (acting reasonably);
- "VAT" value added tax payable by virtue of the Value Added Tax Act 1994 (or any tax similar to or levied instead of value added tax);
- "Working Day" any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday;
- "Works Commencement Longstop Date" has the meaning ascribed to it in the Implementation Agreement.
- "Works Completion Longstop Date" has the meaning ascribed to it in the Implementation Agreement.

## 2. INTERPRETATION

2.1 In this Agreement:

<sup>3</sup> To be completed on finalising the form of Lease

- 2.1.1 the table of contents and clause headings are for reference only and do not affect its construction;
- 2.1.2 the words 'include', 'includes' and 'including' are deemed to be followed by the words 'without limitation';
- 2.1.3 general words introduced by the word 'other' do not have a restrictive meaning by reason of being preceded by words indicating a particular class of acts, things or matters;
- 2.1.4 an obligation not to do something includes an obligation not to cause or allow that thing to be done;
- 2.1.5 obligations owed by or to more than one person are owed by or to them jointly and severally.
- 2.2 In this Agreement, unless otherwise specified:
  - 2.2.1 a reference to legislation is a reference to all legislation having effect in the United Kingdom at any time during the currency of this Agreement, including directives, decisions and regulations of the Council or Commission of the European Union, Acts of Parliament, orders, regulations, consents, licences, notices and byelaws made or granted under any Act of Parliament or directive, decision or regulation of the Council or Commission of the European Union, or made or granted by a local authority or by a court of competent jurisdiction and any approved codes of practice issued by a statutory body;
  - 2.2.2 reference to particular legislation is a reference to that legislation as amended, consolidated or re-enacted from time to time and all subordinate legislation made under it from time to time.

## 3. GRANT OF OPTION

- 3.1 In consideration of the Option Fee paid by the Landlord to the Tenant (receipt of which the Tenant acknowledges) the Tenant grants to the Landlord (in its capacity as Landlord pursuant to the Lease), the Option.
- 3.2 The Option will lapse if it has not been validly exercised by the Landlord before the end of the Option Period.
- 3.3 The Landlord shall only be entitled to exercise the Option whilst it is seized of the reversionary interest to the Lease in its capacity of Landlord and otherwise in accordance with the terms of this Agreement.

## 4. ALIENATION

- 4.1 The benefit of this Agreement is not capable of being assigned in whole or part by the Landlord or to be held in trust by the Landlord for any person save that the Landlord shall assign the benefit of this Agreement upon transferring or assigning its reversionary interest in the Lease, pursuant to and in accordance with the terms of the Lease;
- 4.2 The benefit of this Agreement may not be assigned in whole or in part by the Tenant or held in trust by the Tenant for any other person except:

- (a) in accordance with the terms of the Lease;
- (b) a holding on trust of the benefit of this Agreement for an Affiliate of the Tenant;
- (c) an assignment by way of security of the benefit of this Agreement to any Third Party Funder in connection with any Tenant's Third Party Funding Arrangements including any assignment to a Funder or Third Party Funder's nominee) pursuant to any enforcement of such Tenant's Third Party Funding Arrangements.

## 5. REGISTRATION OF THE OPTION

The Landlord undertakes not to protect this Agreement on the register of the Tenant's title otherwise than by entry of a unilateral notice and not to produce this Agreement or a copy of it to Land Registry.

## 6. EXERCISING THE OPTION

- Subject to clause 6.3, the Landlord may only exercise the Option during the Option Period in relation to the Property by serving an Option Notice on the Tenant and only upon adequately demonstrating to the Tenant in writing that each of the Option Notice Conditions, set out at clause 6.2 below, have been satisfied in full.
- 6.2 The Option Notice Conditions are that:

6.2.1

- (a) the Tenant has materially failed to perform or observe any material covenants or conditions in the Lease ("Tenant Breach"); or
- (b) the Tenant has not commenced (or has failed to procure the commencement of) the Developer's Works on or prior to the Works Commencement Longstop Date ("Work's Commencement Breach"); or
- the Developer's Works have not achieved Practical Completion by the Works Completion Longstop Date ("Developer's Works Breach"); or
- (d) the Tenant or Landlord has served notice to terminate the Implementation Agreement pursuant to and strictly in accordance with clause 13.1 of the Implementation Agreement "Implementation Agreement Breach")
- where such Tenant Breach or Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach is capable of remedy, the Tenant does not remedy it within 90 days of written notice of the Tenant Breach or Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach from the Landlord; and
- 6.2.3 if the Tenant has charged the Lease and notice of such Third Party Charge has been given to the Landlord in accordance with the Lease, the Landlord has given notice to the Chargee of the Tenant Breach or Work's Commencement Breach or Developer's Works Breach or Implementation

Agreement Breach (together with all relevant and reasonably necessary documentation evidencing the breach); and

- 6.2.4 within 90 Working Days from the date the Chargee has received notice under clause 6.2.3, the Chargee has not:
  - (a) served a counter-notice to the Landlord requiring it not to exercise the Option Notice;
  - (b) within 10 Working Days, taken reasonable and proper steps acceptable to the Landlord, who is to act reasonably, by way of remedy of the Tenant Breach or Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach;
  - (c) paid to the Landlord any unpaid arrears of monies then due from the Tenant under the Lease including costs reasonably incurred arising out of the Tenant Breach or Work's Commencement Breach or Developer's Works Breach or Implementation Agreement Breach; and
  - (d) in all material respects complied with the obligations undertaken in this paragraph to the satisfaction of the Landlord acting reasonably.
- 6.3 The Tenant may, within 10 working days of receipt of an Option Notice in accordance with clause 6.1, give notice to the Landlord in writing that it wishes to dispute the issue of the Option Notice and refer the matter to an Expert for determination in accordance with clause 14 and if it does so, the Option Notice shall have no legal effect pending the outcome of the determination in accordance with clause 14.
- 6.4 If:
- (a) the Option Notice Conditions have been satisfied in full; and
- (b) the Option has been validly exercised in accordance with the terms of this Agreement; and
- (c) the Tenant has not referred the matter for determination in accordance with clause 6.3,

then the Tenant and Landlord will become bound to complete the sale and purchase of the Property on the Completion Date.

- 6.5 The Landlord may only exercise its Option in respect of the whole of the Property and not in respect of part only.
- 6.6 The Landlord cannot require the Tenant to:
  - 6.6.1 transfer the Property or any part of it to any person other than the Landlord; or
  - 6.6.2 transfer the Property in more than one parcel or by more than one transfer.

#### 7. DEPOSIT AND CONSIDERATION

7.1 No deposit is payable by the Landlord on exercise of the Option.

7.2 No consideration is payable by the Landlord on completion of the sale of the Property.

#### 8. TITLE

- 8.1 The Tenant is registered at Land Registry as proprietor with absolute leasehold title to the Property and the Landlord, having received from the Tenant before the date of this Agreement an official copy of entries subsisting on the register of the Property and of any title plans and copies or abstracts of any documents noted on that title, must accept the Tenant's title without further enquiry or requisition.
- 8.2 The Tenant sells with full title guarantee but the Tenant's covenants for title shall be modified as set out in the Transfer.

#### 9. MATTERS AFFECTING THE PROPERTY

- 9.1 The Property is sold subject to:
  - 9.1.1 the matters other than the Third Party Charge contained or referred to in the registers maintained by Land Registry under title number [•]<sup>4</sup> the Land Charges Department of Land Registry;
  - 9.1.2 the matters affecting the Property (to the extent that such are still subsisting and capable of being enforced) contained or referred to in the documents listed in Schedule 1;
  - 9.1.3 all matters discoverable by inspection of the Property before the exercise of the Option;
  - 9.1.4 all matters relating to the Property which the Tenant does not know about;
  - 9.1.5 entries in any public register (whether made before or after today) other than in respect of the Third Party Charge;
  - 9.1.6 public requirements and any matters arising by virtue of any legislation;
  - 9.1.7 any unregistered interests which fall within any of the paragraphs of Schedule 3 of the Land Registration Act 2002 and any unregistered interests that affect the Property to the extent and for so long as they are preserved by the transitional provisions of Schedule 12 of the Land Registration Act 2002;
  - 9.1.8 all matters disclosed or which would be disclosed by searches or as a result of enquiries (formal or informal, and whether made in person, in writing or orally) which a prudent Landlord ought to have made before the exercise of the Option;
  - 9.1.9 all matters specified in this Agreement and in the Transfer;
- 9.2 The Landlord will be deemed to take the Property with full knowledge of the matters subject to which it is sold, and may not make any requisition or claim in respect of any of them.

To be completed only after acquisition complete per Agreement for Lease.

#### 10. VACANT POSSESSION

The Property will be sold subject to any matters referred to in clause 9 and all leases, underleases and licences as may be subsisting as of the date of the Option Notice.

#### 11. INSURANCE

- 11.1 The Tenant is under no obligation to the Landlord to insure the Property.
- 11.2 The Property is at all times after the exercise of the Option at the risk of the Landlord who following exercise of the Option will complete the sale and purchase despite any damage or defect that may occur or become apparent.

#### 12. TRANSFER

- 12.1 The Transfer will be in a form to be agreed between the parties acting reasonably.
- 12.2 The Landlord must at its own cost prepare and execute the Transfer as a deed in duplicate and deliver the duplicate to the Tenant's Solicitors 5 working days before Completion.

#### 13. COMPLETION

- 13.1 Completion of the sale of the Property will take place on the Completion Date and will be effected by the Transfer.
- 13.2 Completion is to take place at the offices of the Tenant's Solicitors or at such other place in England and Wales as the Tenant's Solicitors reasonably direct.
- 13.3 The Landlord must apply to Land Registry as soon as reasonably practicable following Completion for registration of the Transfer and will pursue its application expeditiously and will within 5 Working Days after completion of that registration produce to the Tenant's Solicitors official copies of the entries and title plan at Land Registry showing the Landlord as the registered proprietor of the Property.

#### 14. **DISPUTES**

Any dispute under this Agreement (other than a dispute relating to the legal interpretation of this Agreement) may be referred at any time by either the Landlord or Tenant for determination by an Expert.

#### 14.1 Appointment of Expert

Unless the parties agree or are deemed to agree the type of Expert appropriate to the dispute having due regard to the subject matter of the dispute then:

- 14.1.1 if the parties do not agree which type of Expert is appropriate to resolve the dispute either Party may refer that question to the president or next most senior available officer of the Royal Institution of Chartered Surveyors who will (with the right to take such further advice as he may require) determine that question and nominate or arrange to have nominated the appropriate Expert;
- 14.1.2 if the parties do agree the appropriate type of Expert but do not agree the identity of the Expert he will be nominated on the application of either Party by the president or other most senior available officer of the organisation

generally recognised as being responsible for the relevant type of Expert but if no such organisation exists then by the president or next most senior available officer of the Royal Institution of Chartered Surveyors.

## 14.2 Decision of Expert

The Expert shall act as an expert and not as an arbitrator and the parties shall use reasonable endeavours to procure that the Expert shall within 15 Working Days of appointment prepare a written decision and provide a copy to the Landlord and Tenant.

# 14.3 Parties' Representations

The Expert must give each party the opportunity within reasonable time limits to make representations to him, inform each party of the representations of the other and allow each party to make submissions to him on the representations of the other. The Expert may call for such written evidence from the parties, and seek such legal or other technical assistance as the Expert reasonably requires.

## 14.4 Binding Decision of Expert

The Expert's decision is (except in case of manifest error) conclusive and binding on the parties save in the case of manifest error or fraud.

## 14.5 Copies of Advice etc

The Expert shall supply to the parties copies of all evidence, information and advice which he obtains for the purpose of determining the dispute and the parties shall be entitled to make written representations to the Expert with regard to them within 10 Working Days of the parties' respective receipt of such copies.

## 14.6 Take Account of Agreement

The Expert shall be required to take into account the provisions of this Agreement.

#### 14.7 Expert's Costs

The costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination in equal proportions between them;

## 14.8 Expert's Incapacity

If the Expert becomes unable or unwilling to act then the procedure hereinbefore contained for an appointment of an Expert shall be repeated as often as necessary.

# 14.9 Disputes as to Legal Construction or Interpretation

Notwithstanding any other provisions of this Agreement any dispute as to legal construction or interpretation of this Agreement shall not be referred to the Expert but instead the parties shall submit to the jurisdiction of the courts of England and Wales.

#### NOTICES

15.1 Any notice required to be given under this Agreement pursuant must be in writing and will be valid only if:

- 15.1.1 it is given by hand or sent by special or recorded delivery; and
- 15.1.2 it is served on the recipient at the address of that party shown in this Agreement in the United Kingdom or such other address for service in the United Kingdom specified in a notice given by the recipient to the other party.
- 15.2 Unless it is returned through the postal service undelivered, a notice sent by special delivery or recorded delivery is treated as served on the second Working Day after posting whenever (and whether or not) it is received.
- 15.3 A notice or document given or delivered under this Agreement by email shall not be validly given or delivered.

#### 16. EXPIRY OF OPTION PERIOD

If the Option is not exercised during the Option Period, the Landlord must forthwith following the expiry of the Option Period apply to cancel any land charge or, as the case may be, any notice or other entry registered against the Tenant's title at Land Registry, in respect of this Agreement.

#### 17. ENTIRE AGREEMENT

- 17.1 The parties acknowledge that this Agreement and any document annexed to or incorporated into it contains all the express terms of the Agreement between them for the sale and purchase of the Property.
- 17.2 The Landlord acknowledges that, except for written replies given by the Tenant's Solicitors to any pre-contract enquiries raised by the Landlord's Solicitors before the date of this Agreement, it has not relied upon or taken into account any statement or representation made by or on behalf of the Tenant (whether written or oral) in deciding to enter into this Agreement and shall have no remedy in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

#### 18. STANDARD CONDITIONS

- 18.1 Upon service of an Option Notice the Standard Conditions shall be incorporated into this Agreement (as varied in accordance with the provisions of clause 18) in so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the terms of this Agreement and in the event of any conflict between the express terms and conditions of this Agreement and the Standard Conditions the former shall prevail.
- 18.2 All references in the Standard Conditions to the 'date of the contract' shall be deemed to be references to the date of exercise of the Option.
- 18.3 All references in the Standard Conditions to the 'contract rate' shall be deemed to be the Contract Rate as defined in clause 1.
- 18.4 Standard Conditions 1.3, 2, 3, 4.1, 5, 6, 7.1, 7.2, 7.3, 7.4.2, 7.6.2, 7.6.3, 7.6.6, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5. 8.2.7 and 11 do not apply.

# 19. GOVERNING LAW

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

## 20. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation.

## 21. THIRD PARTIES

Unless expressly stated nothing in this Agreement is intended to confer any right on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

AGREED BY THE PARTIES ON THE DATE FIRST SET OUT AT THE BEGINNING OF THIS AGREEMENT

EXECUTED AS A DEED by the parties		
Executed as a Deed under the Common Seal of Woking Borough Council	)	Mayor
		Head of Democratic and Legal Services
Executed as a Deed by Goldev Woking Limited acting by	)	Director
In the presence of:		
Witness signature:		
Witness name:		
Witness address:		

# SCHEDULE 1 - Property matters 5

Date of document Parties to the document Description Document missing

[Insert details] [Insert details] [Yes/No/Copy only held]]

<sup>5</sup> To be completed per Agreement for Lease

### SCHEDULE 2 - Option Notice

To: [insert full name of Tenant or successor in title]

Address: [insert address of Tenant or successor in title]

FAO: [name of appropriate person]

Option Agreement dated [insert date of agreement] made between [insert details of parties to the agreement] relating to [description of the Property] (the Option Agreement).

Property [insert description of the Property].

Pursuant to [clause 6.1] of the Option Agreement, [insert name of Landlord or successor in title] hereby gives [insert name of Tenant or successor in title] notice of the exercise of the option contained in and strictly in accordance with the Option Agreement to buy the Property on the terms set out in the Option Agreement.

signed by [name]

on behalf of [insert name of Landlord or successor in title]

Date: [insert date of notice]

Signed by [insert name] for and on behalf of the Tenant

Signed by [insert name] for and on behalf of the Landlord



#### APPENDIX 12

New Stadium Specification







# The Woking Community Stadium

# **Functional Specification Document**

#### Version 4

#### 28 June 2018

The Functional Specification Document (FSD) specifies the functions that the stadium design should seek to provide. This clarifies and defines the daily operational requirements in terms of use and space, coupled with associated cost estimates. The FSD is to aid the architects in their initial design process.

The document has been prepared by Rockvolt in association with Woking Football Club.

#### Contents

- 1. Community Development
- 2. English Football League Compliance
- 3. Build Cost
- 4. Match Day and Event Access / Egress
- 5. Pitch Specification
- 6. Bowl Specification
- 7. Spectator Facilities
- 8. Hospitality Facilities
- 9. Technical Facilities
- 10. Associated Facilities

### 1. Community Development

1.1. The development theme and design principle will be focused on the community. The stadium, residential and retail mix will deliver significant benefits to the Kingfield area to the south of Woking centre. The heart of the development will be the new Community Stadium which will be the fulcrum to developing enterprise, commercial progression, residential enhancement and community improvements.

### 2. English Football League Compliance

2.1. As a minimum the stadium must comply with the English Football League (EFL) Membership Criteria (Regulation 8) for a League One Club. Set out in the rest of this document are more specific details that either exceed those requirements or where criteria requirements are not specified in detail.

#### 3. Build Cost

- 3.1. The development budget for the stadium has been allocated at £10m. This equates in development cost to £1k per seat. This figure is lower than other similar stadium build projects due to a significant number of building costs being attributed to the overall scheme and therefore excluded from direct association with the stadium. These include, but are not limited to:
  - 3.1.1. Break ground and preliminaries associated with works
  - 3.1.2. Demolition and clearance of the site
  - 3.1.3. Supply of main utilities to the site, including electricity, gas, water and sewage
  - 3.1.4. Excavations that are not directly concerned with the pitch or stands
  - 3.1.5. Building of shared wall structures where the football stands back onto the residential flats

### 4. Match Day and Event Access / Egress

- 4.1. The site should be accessible from each side of the ground to speed up match day and event access and egress. The majority of turnstiles should be accessed by smart cards but retaining some cash turnstiles for occasional walk up fans. All turnstiles must have accurate counting systems.
- 4.2. There should be the potential to introduce a security screening zone before the turnstiles are reached for high profile or high risk matches.
- 4.3. There should be a separate access and egress route for away supporters with their own dedicated turnstiles.
- 4.4. There should be a point of access for load-in vehicles to service any on-pitch events, such as community festivals and concerts.
- 4.5. There must be sufficient, adequate routes for emergency vehicles leading to and from all buildings and areas within the stadium footprint.

### 5. Pitch Specification

- 5.1. The pitch should be turf reinforced with a plastic fibre, such as Desso Grassmaster or SISGrass.
- 5.2. Consideration of an artificial pitch (FIFA Quality Pro) is worth reviewing with regard to the immediate extensive community use and the potential of EFL League 1 and 2 regulations changing to allow professional use.

Element	Specification	Dimensions	Cost
Pitch	Desso or SIS installation. To be used for football and rugby – undersoil heating to be considered	Pitch area including surrounds to be 120m x 80m – actual football playing surface to be 105m x 68m and rugby 100m x 70m plus 10m try zones each end	£500k-£1m depending on system chosen
Grass Growing Lighting	3 x lighting rigs, preferably utilising LED technology rather than HPS lamps due to running costs, to aid grass growth with pitch side electrical sockets	rigs are 10m x 1m	£50k per rig = £150k
Integrated Pitch Irrigation & Drainage System	To ensure pitch can be watered easily and ensure good drainage – system to be developed to minimise environmental impact		£120-150k

### 6. Bowl Specification

- 6.1. The bowl design and associated crowd infrastructure should reflect the latest draft version of the Green Guide (6<sup>th</sup> Edition) which was published for consultation on 12 March 2018.
- 6.2. Seat widths must reflect the guidelines at 500mm and seating row depth must be 800mm.
- 6.3. The seating bowl design should aim to maximise the number of seats with C values of between 90 and 120. (Please note: the C-value, which is an equation that calculates the vertical distance from a spectator's eyes to sightline of the spectator directly behind, helps produce the required rake of the stands.)
- 6.4. The design will ensure there are no obstructed views within the seating bowl.

- 6.5. The stadium will accommodate 10,000 seated fans in accordance with legislation and guidelines. This will include accommodation for disabled and mobility impaired supporters.
- 6.6. With regard to Safe Standing, the current legislation is currently being reviewed and therefore will be considered in due course, if required.
- 6.7. LED lighting at lux 800 to comply with TV requirements for match day.

### 7. Spectator Facilities

- 7.1. The new stadium must ensure that spectator facilities are of a good standard and encourage fans to arrive early and enjoy their match day experience.
- 7.2. Catering outlets should be designed so that there is one service point per 150 spectators. Not all of these service points need to be permanent but areas designated for pop up or mobile catering units must be designed with access to power, water, waste and data points. As far as possible the cellar cool rooms should be immediately adjacent to the bar area to minimise beer line waste at the end of the match.

Element	Specification	Dimensions	Cost
Food/Bar Outlets	One service point per 150 spectators - outlets should have at least two and no more than 10 service points - at least two thirds of outlets must be able to serve food (i.e. no more than one third of outlets may sell beer only)	1 service point = 1 linear metre of counter space	
Food Outlets	At least half of the food outlets should be able to serve hot, freshly cooked food such as burgers, chips, pizza, (i.e. not just reheated pies or hot dogs)	Minimum 2 outlets per stand	£50k-£100k per outlet
Bar Outlets	Bar outlets should include some form of rapid dispense system for beer dispense		£50-£70k per outlet
Disabled Access	All outlets must include an accessible service point		

7.3. There should be adequate space in the concourse adjacent to the outlets to allow spectators to enjoy their food and drink.

#### 8. Hospitality Facilities

- 8.1. Before the design is finalised a market study and demand analysis should clarify the specific number of premium seats and facilities required.
- 8.2. A hospitality lounge should be able to accommodate a minimum of 200 and up to 500 people seated for dining (subject to the findings of the market study) with bar facilities, toilets and circulation/reception space for people entering the area. The room should be divisible into two or three separate areas (dependent on the final room capacity) with the use of acoustic room dividers. In addition, there should be adequate storage for all the tables and chairs to allow the room to be utilised for other purposes on non matchdays. The lounge should be air conditioned and have views of the pitch which can be obscured by curtains or blinds if required.
- 8.3. In addition to the lounge a mix of other facilities should be provided which can be used on match day and non-match day and these should include Executive Boxes and a Directors Lounge.

Element	Specification	Dimensions	Cost
Executive Box	There must be a minimum of 6 and a maximum of 12 Executive Boxes - the box size being for 8-10 people - designed so that up to 8 of the boxes can be joined into doubles - finish to be useable as office/meeting room on non-match days - built in service bar/counter and room for table seating	6m x 3.5m for 10 person box	£50-80k per box
Boardroom / Director's Box	Designed in line with executive boxes but to be 3 x boxes wide to accommodate up to 40 people	6m x 10.5m	£100-120k £250/seat

Hospitality Lounge	Dining should allow 1.5m² per person  Bar/reception/cloakroom area should allow 0.5m² per person  Storage should allow 0.1m² per person  A PA system should be incorporated into the room design with data sockets for TV and AV presentations  Room furniture should be of a good quality with chairs that can be stacked and tables that can be folded down for easy storage - the lighting system should be dimmable	Between 420- 1,100m²	£1.5-2k/m²
Production Kitchen	The production kitchen should be immediately adjacent to the lounge - if not, a separate service kitchen must be provided to service the lounge - the production kitchen must include goods received, storage preparation, production and chilled holding, wash up, pot wash, kitchen / waiting staff changing and toilets	120-200m²	£2.5k/m²

## 9. Technical Facilities

- 9.1. These areas include the changing rooms, medical facilities, steward briefing room, press facilities, and such. All facilities should be designed to EFL League 1 specification.
- 9.2. Space should be allocated so that ground sharing is possible, for example with a rugby team.

Element	Specification	Dimensions	Cost
Changing Rooms & associated Physio / Gym facilities	There should be at least three changing rooms: one dedicated room for the home team; one for the away team; and a third for the home changing room of any ground sharing partner	Minimum of 30m <sup>2</sup> each	
Officials	There must be officials' changing rooms with both male and female areas and facilities	Minimum 10m²	
Faith Room	Dedicated faith room	6m²	
Mascots	There must be a dedicated changing room for Mascots	Minimum 6m²	
Ball Boys & Girls	There must be separate changing facilities with dedicated toilets and chaperone areas for ball boys and girls	Minimum 12m²	
Press Facilities	30 seats with desktop power points with Wi-Fi and associated media mix zone		
Grounds Storage	Storage for pitch maintenance equipment, lighting rigs and pitch frost covers (if undersoil heating is not installed)	tbc	
Laundry	For players kit	tbc	

Storage	Storerooms for catering, cleaning and maintenance		
Staff Accreditation / Welfare Room	For booking in stewarding and catering staff - room for lockers, changing and welfare	tbc	
Match Control Room	Dedicated room for match control and also for housing security feeds and servers for non-match day use as well	18m²	

## 10. Associated Facilities

10.1. These areas include offices, merchandise shop and other facilities used by the football club, which are outside of the main stadium bowl and concourses.

Element	Specification	Dimensions	Cost
Merchandise Store	Permanent facility which includes a ticket office for non-match days, a year round shop space that is supplemented with pop up units on match days	200m²	£1k/m²
Coffee Shop	Within the North Stand the market study should determine if a Coffee Shop should be incorporate for year round use on non-match days and match days in association with the wider retail offer on the whole site		
Offices	To include club chairman, management, club administration, commercial team, finance team, ticket team	tbc	£1.5k/m²
Car park spaces	100		£2-2.5k per space